

Bay Area Rapid Transit Police Department

BART PD Policy Manual

CHIEF'S PREFACE

The "Policies and Procedures Manual" contains the operational orders established by the Police Department to maintain the safety of our employees while we provide public safety and police services to our stakeholders. These policies represent our commitment to service and reflect our organizational values of "Service, Diversity, Integrity, Accountability, and Professionalism." Recognizing the need for uniformity, effectiveness, and efficiency, all San Francisco Bay Area Rapid Transit Police Department personnel are required to be familiar with the written policies and procedures contained in this manual. This manual represents our intent to identify roles, responsibilities, underlining principles and philosophies on how we should conduct ourselves as we go about our daily tasks and duties.

Written policies and procedures are necessary to clearly define our agency's position and provide guidelines with which our personnel can make administrative, investigative, and operational judgments. These policies shall remain in effect as issued and in the event of conflict with previously written directives, training bulletins, or standard operating procedures, the policies contained herein shall assume precedence. Recognition of errors or deficiencies in the intent or text of these policies and procedures shall be reported in writing to the Office of the Chief of Police, via the chain of command, for appropriate disposition.

-Edgardo Alvarez, Chief of Police

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DEPARTMENT MISSION STATEMENT AND CORE VALUES

The mission of the BART Police Department is to ensure a safe environment within our transit system, reduce crime through a highly visible police presence and proactive enforcement of the law, and to promote public confidence by working in partnership with our stakeholders and the communities we serve.

SERVICE - Placing Service above Self, we work in partnership with the community, serving with pride, courage and compassion.

ACCOUNTABILITY - We take ownership of our duties, remaining answerable to the public and accountable to the laws, rules, policies and procedures that govern and guide us.

DIVERSITY - We acknowledge and embrace the diversity in the communities we serve and strive to ensure diversity is reflected in all levels of our organization.

PROFESSIONALISM - We are committed to conduct and performance reflective of the highest standard of personal and organizational excellence.

INTEGRITY - We inspire trust and carry ourselves in a manner that demonstrates the highest levels of honesty, ethics, and moral conduct.

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Chapter 1 - Law Enforcement Role and Authority

Law Enforcement Code of Ethics

100.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that all peace officers are aware of their individual responsibilities to maintain their integrity and that of their department at all times.

100.2 POLICY

The Law Enforcement Code of Ethics shall be administered to all peace officer trainees during the Basic Academy course and to all other persons at the time of appointment (11 CCR 1013).

100.3 LAW ENFORCEMENT CODE OF ETHICS

AS A LAW ENFORCEMENT OFFICER, my fundamental duty is to serve; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against abuse or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I WILL keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I WILL never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I RECOGNIZE the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before god to my chosen profession... law enforcement.

100.3.1 OBJECTION TO RELIGIOUS AFFIRMATION

Reference to religious affirmation in the Law Enforcement Code of Ethics may be omitted where objected to by the officer.

Law Enforcement Authority

101.1 PURPOSE AND SCOPE

The purpose of this policy is to affirm the authority of the members of the Bay Area Rapid Transit Police Department to perform their functions based on established legal authority.

101.2 PEACE OFFICER POWERS

Sworn members of this department shall be considered peace officers pursuant to Penal Code § 830.33(a), which specifies a member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Public Utilities Code § 28767.5, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the district or when performing necessary duties with respect to patrons, employees and properties of the district. The authority of any such peace officer extends to any place in the State of California for the purpose of performing their primary duty or when making an arrest pursuant to Penal Code § 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Government Code § 8597 or § 8598. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency. This peace officer authority extends as follows:

- (a) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer; or
- (b) Where the peace officer has the prior consent of the chief of police, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give such consent, if the place is within a county; or
- (c) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

101.2.1 TIME OF MISDEMEANOR ARRESTS

Officers shall not arrest a person for a misdemeanor between the hours of 10:00 p.m. of any day and 6:00 a.m. of the next day unless (Penal Code § 840):

- (a) The arrest is made without a warrant pursuant to Penal Code § 836 which includes:
 - 1. A misdemeanor committed in the presence of the officer.
 - 2. Misdemeanor domestic violence offenses (See the Domestic Violence Policy).
- (b) The arrest is made in a public place.
- (c) The arrest is made with the person in custody pursuant to another lawful arrest.
- (d) The arrest is made pursuant to a warrant which, for good cause shown, directs that it may be served at any time of the day or night.

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Law Enforcement Authority

101.3 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to limit its members to only exercise the authority granted to them by law.

While this department recognizes the power of peace officers to make arrests and take other enforcement action, officers are encouraged to use sound discretion in the enforcement of the law. This department does not tolerate the abuse of law enforcement authority.

101.4 INTERSTATE PEACE OFFICER POWERS

Peace officer powers may be extended to other states:

- (a) As applicable under interstate compacts, memorandums of understanding or mutual aid agreements in compliance with the laws of each state.
- (b) When an officer enters an adjoining state in close or fresh pursuit of a person believed to have committed a felony (ARS § 13-3832; NRS 171.158; ORS 133.430).

The person arrested out of state must be taken without unnecessary delay before a magistrate of the county in which the arrest was made (ARS § 13-3833; NRS 171.158; ORS 133.440).

101.5 CONSTITUTIONAL REQUIREMENTS

All members shall observe and comply with every person's clearly established rights under the United States and California Constitutions.

Chief Executive Officer

103.1 PURPOSE AND SCOPE

The California Commission on Peace Officer Standards and Training (POST) has mandated that all sworn officers and dispatchers employed within the State of California shall receive certification by POST within prescribed time periods.

103.1.1 CHIEF EXECUTIVE OFFICER REQUIREMENTS

Any chief executive officer of this department appointed after January 1, 1999, shall, as a condition of continued employment, complete the course of training prescribed by POST and obtain the Basic Certificate by POST within two years of appointment (Penal Code § 832.4).

103.2 AUTHORITY AND RESPONSIBILITIES OF THE CHIEF OF POLICE

The Chief of Police is the Chief Executive Officer of the department and the final departmental authority in all matters of policy, budget, operations or discipline. The Chief exercises all lawful powers of the office and issues such lawful orders as are necessary to assure the effective performance of the department.

Through the Chief of Police, the department is responsible for the enforcement of all laws and ordinances coming within its legal jurisdiction. The Chief of Police is responsible for planning, directing, coordinating, controlling and staffing all activities of the department, for continuing its efficient operation, for enforcing rules and regulations within the department, for completing and forwarding such reports as may be required by competent authority, and for maintaining good relations between the department, the citizens of the District, other departments within the District and other agencies.

Oath of Office

105.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that oaths, when appropriate, are administered to department members.

105.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department that, when appropriate, department members affirm the oath of their office as an expression of commitment to the constitutional rights of those served by the Department and the dedication of its members to their duties.

105.3 OATH OF OFFICE

All department members, when appropriate, shall take and subscribe to the oaths or affirmations applicable to their positions. All sworn members shall be required to affirm the oath of office expressing commitment and intent to respect constitutional rights in discharging the duties of a law enforcement officer (Cal. Const. Art. 20, § 3; Government Code § 3102) or professional staff member. The oath shall be as follows:

"I, (employee name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."

105.4 MAINTENANCE OF RECORDS

The oath of office shall be filed as prescribed by law (Government Code § 3105).

Policy Manual

107.1 PURPOSE AND SCOPE

The manual of the Bay Area Rapid Transit Police Department is hereby established and shall be referred to as the Policy Manual or the manual. The manual is a statement of the current policies, rules and guidelines of this department. All members are to conform to the provisions of this manual.

All prior and existing manuals, orders and regulations that are in conflict with this manual are rescinded, except to the extent that portions of existing manuals, procedures, orders and other regulations that have not been included herein shall remain in effect, provided that they do not conflict with the provisions of this manual.

107.2 POLICY

Except where otherwise expressly stated, the provisions of this manual shall be considered as guidelines. It is recognized that the work of law enforcement is not always predictable and circumstances may arise which warrant departure from these guidelines. It is the intent of this manual to be viewed from an objective standard, taking into consideration the sound discretion entrusted to members of this department under the circumstances reasonably available at the time of any incident.

107.2.1 DISCLAIMER

The provisions contained in the Policy Manual are not intended to create an employment contract nor any employment rights or entitlements. The policies contained within this manual are for the internal use of the Bay Area Rapid Transit Police Department and shall not be construed to create a higher standard or duty of care for civil or criminal liability against the District, its officials or members. Violations of any provision of any policy contained within this manual shall only form the basis for department administrative action, training or discipline. The Bay Area Rapid Transit Police Department reserves the right to revise any policy content, in whole or in part.

107.3 AUTHORITY

The Chief of Police shall be considered the ultimate authority for the content and adoption of the provisions of this manual and shall ensure compliance with all applicable federal, state and local laws. The Chief of Police or the authorized designee is authorized to issue Department Bulletins, which shall modify those provisions of the manual to which they pertain. Department Bulletins shall remain in effect until such time as they may be permanently incorporated into the manual.

107.4 DEFINITIONS

The following words and terms shall have these assigned meanings throughout the Policy Manual, unless it is apparent from the content that they have a different meaning:

Adult - Any person 18 years of age or older.

CCR - California Code of Regulations (Example: 15 CCR 1151).

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CHP - The California Highway Patrol.

CFR - Code of Federal Regulations.

District - The District of San Francisco Bay Area Rapid Transit District.

Civilian - Employees and volunteers who are not sworn peace officers.

Department/BART PD - The Bay Area Rapid Transit Police Department.

DMV - The Department of Motor Vehicles.

Employee - Any person employed by the Department.

Juvenile - Any person under the age of 18 years.

Manual - The Bay Area Rapid Transit Police Department Policy Manual.

May - Indicates a permissive, discretionary or conditional action.

Member - Any person employed or appointed by the Bay Area Rapid Transit Police Department, including:

- Full- and part-time employees
- Sworn peace officers
- Civilian employees
- Volunteers.

Officer - Those employees, regardless of rank, who are sworn peace officers of the Bay Area Rapid Transit Police Department.

On-duty - A member's status during the period when he/she is actually engaged in the performance of his/her assigned duties.

Order - A written or verbal instruction issued by a superior.

POST - The California Commission on Peace Officer Standards and Training.

Rank - The title of the classification held by an officer.

Shall or will - Indicates a mandatory action.

Should - Indicates a generally required or expected action, absent a rational basis for failing to conform.

Supervisor - A person in a position of authority that may include responsibility for hiring, transfer, suspension, promotion, discharge, assignment, reward or discipline of other department members, directing the work of other members or having the authority to adjust grievances. The supervisory exercise of authority may not be merely routine or clerical in nature but requires the use of independent judgment.

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The term "supervisor" may also include any person (e.g., officer-in-charge, lead or senior worker) given responsibility for the direction of the work of others without regard to a formal job title, rank or compensation.

When there is only one department member on-duty, that person may also be the supervisor, except when circumstances reasonably require the notification or involvement of the member's off-duty supervisor or an on-call supervisor.

USC - United States Code.

107.5 ISSUING THE POLICY MANUAL

An electronic version of the Policy Manual will be made available to all members on the department network for viewing and printing. No changes shall be made to the manual without authorization from the Chief of Police or the authorized designee.

Each member shall acknowledge that he/she has been provided access to, and has had the opportunity to review the Policy Manual and Department Bulletins. Members shall seek clarification as needed from an appropriate supervisor for any provisions that they do not fully understand.

107.6 PERIODIC REVIEW OF THE POLICY MANUAL

The Chief of Police will ensure that the Policy Manual is periodically reviewed and updated as necessary.

107.7 REVISIONS TO POLICIES

All revisions to the Policy Manual will be provided to each member on or before the date the policy becomes effective. Each member will be required to acknowledge that he/she has reviewed the revisions and shall seek clarification from an appropriate supervisor as needed.

Members are responsible for keeping abreast of all Policy Manual revisions.

Each Bureau Deputy Chief will ensure that members under his/her command are aware of any Policy Manual revision.

All department members suggesting revision of the contents of the Policy Manual shall forward their written suggestions to their Bureau Deputy Chief, who will consider the recommendations and forward them to the command staff as appropriate.

Chapter 2 - Organization and Administration

Organizational Structure and Responsibility

200.1 PURPOSE AND SCOPE

The organizational structure of this department is designed to create an efficient means to accomplish our mission and goals and to provide for the best possible service to the public.

200.2 BUREAUS

The Chief of Police is responsible for administering and managing the Bay Area Rapid Transit Police Department. There are four bureaus in the Police Department as follows:

- Support Services Bureau
- Operations Bureau
- Personnel and Training Bureau
- Progressive Policing and Community Engagement Bureau

200.2.1 OFFICE OF THE CHIEF

The Chief of Police is the Chief Executive Officer of the Department and final departmental authority in all matters of policy, operations and discipline. The Chief exercises all lawful powers of the office and issues such lawful orders as are necessary to assure the effective performance of the Department.

The Chief of Police provides general administration and management direction for the Operations Bureau Deputy Chief, the Support Services Bureau Deputy Chief, the Progressive Policing and Community Engagement Bureau Deputy Chief, the Personnel and Training Bureau Deputy Chief, and the Internal Affairs Division Lieutenant.

200.2.2 OPERATIONS BUREAU

The Operations Bureau is led by a Deputy Chief who serves at the direction of the Chief of Police. Under the Deputy Chiefs direction and supervision, employees of the bureau provide for a systematic patrol of District property. The Deputy Chief is responsible for the following:

- Uniformed Patrol
- Traffic/Parking Enforcement
- K-9 Unit
- Critical Asset Protection Team
- Revenue Protection Division
- Special Patrol Teams

200.2.3 SUPPORT SERVICES BUREAU

The Support Services Bureau is led by a Deputy Chief who serves at the direction of the Chief of Police. Under the Deputy Chief's direction and supervision, employees of the division provide

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Organizational Structure and Responsibility

staff assistance to other divisions of the Police Department as may be required. The Deputy Chief is responsible for the following:

- Administrative Services
 - Budget
 - Evidence
 - Fleet Services
 - Records
 - Warrants
 - CAD/RMS Administration
- Communications Division
- Criminal Investigations Division
 - Video Recovery Unit
 - Crime Analysis Unit
 - Evidence Technician Unit
 - Counter Terrorism/Joint Terrorism Task Force
 - County Narcotics Task Force

200.2.4 PERSONNEL AND TRAINING BUREAU

The Personnel and Training Bureau is led by a Deputy Chief who serves at the direction of the Chief of Police. The Deputy Chief is responsible for the following:

- Training
- Background Investigations
- Recruiting

200.2.5 PROGRESSIVE POLICING AND COMMUNITY ENGAGEMENT BUREAU

The Progressive Policing and Community Engagement Bureau is led by a Deputy Chief who serves at the direction of the Chief of Police. The Deputy Chief is responsible for the following:

- Community Ambassador Unit
- Crisis Intervention Division
- Community Oriented Policing Division

200.3 COMMAND PROTOCOL

200.3.1 SUCCESSION OF COMMAND

The Chief of Police exercises command over all personnel in the Department. During planned absences the Chief of Police will designate a Bureau Deputy Chief to serve as the acting Chief of Police.

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Organizational Structure and Responsibility

Except when designated as above, the order of command authority in the absence or unavailability of the Chief of Police is as follows:

- (a) Operations Bureau Deputy Chief
- (b) Support Services Bureau Deputy Chief
- (c) Personnel and Training Bureau Deputy Chief
- (d) Progressive Policing and Community Engagement Bureau Deputy Chief
- (e) Watch Commander

200.3.2 UNITY OF COMMAND

The principles of unity of command ensure efficient supervision and control within the Department. Generally, each employee shall be accountable to one supervisor at any time for a given assignment or responsibility. Except where specifically delegated authority may exist by policy or special assignment, any supervisor may temporarily direct any subordinate if an operational necessity exists.

200.3.3 ORDERS

Employees shall respond to and make a good faith and reasonable effort to comply with the lawful order of superior officers and other proper authority.

200.4 COMMAND OFFICER RESPONSIBILITIES

Bureau Deputy Chiefs are appointed from the rank of Deputy Chief by the Chief of Police. They provide administrative and executive assistance to the Chief of Police. Subject to the authority of the Chief of Police, Bureau Deputy Chief shall issue such orders as may be necessary to promote the effective operations of all activities within their command.

Bureau Deputy Chiefs may be assigned additional duties by the Chief of Police. A Bureau Deputy Chief, subject to direction by the Chief of Police, shall be responsible for planning, directing, controlling and coordinating all activities within their command. Bureau Deputy Chiefs will report directly to the Chief of Police and shall submit such reports relating to their command as may be required by the Chief of Police. A commanding officer will be appointed to act as Chief of Police during the Chief's absence.

200.4.1 LIEUTENANT RESPONSIBILITIES

Lieutenants shall be subject to the direction of a higher command. Lieutenants have direct control over all employees within their command.

Lieutenants should supervise the general and individual responsibilities of all employees and supervisory employees under their command. This includes employee conduct, work performance, attendance, and adherence to established policies, orders, standard operating procedures and District rules as dictated by the command of their bureau. They are responsible for their watch, divisions and duties assigned by higher command.

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In addition to this policy, Lieutenants will be governed by standard operating procedures, departmental general orders, operational directives, special orders, District rules and procedures, and any written or verbal orders by the Chief of Police or superior command officers.

200.4.2 SUPERVISORY PERSONNEL RESPONSIBILITIES

Supervisory personnel shall be either sworn Police Sergeants or Civilian Supervisors. They are subject to the direction of a higher command. They have direct control over all employees within their supervision.

The role of supervisors, particularly first line supervisors, is crucial in the disciplinary process. First Line supervisors have the best opportunity to observe the conduct and appearance of employees and detect those instances when disciplinary actions are warranted. First line supervisors (and above) also have the opportunity to understand the personality traits of the personnel under their supervision and to determine the most effective methods of discipline, including remedial training, counseling, and informal discipline. Only the Chief of Police (or designee) may administer formal discipline.

Supervisory personnel are assigned either to the field and/or office duties. They will closely supervise the activities of their subordinates, making corrections where necessary and commending where appropriate. They will monitor employee conduct, work performance, attendance and adherence to established policies and procedures, Departmental orders, standard operating procedures and District rules as directed by the command of their bureau. They should provide close supervision, leadership and training while on duty.

An Officers-in-Charge may be granted temporary supervisory authority at the direction of a lieutenant or higher authority.

200.4.3 GENERAL RESPONSIBILITIES OF EMPLOYEES

It shall be the duty and responsibility of each employee to actively fulfill the function of the Department and the bureau, unit or team to which they are assigned, and to perform any lawful duty assigned and/or ordered by a competent authority. Employees shall abide by the established policies and procedures, Departmental orders, standard operating procedures, District rules and direction of their supervisor.

Special Order

204.1 PURPOSE AND SCOPE

Special Orders establish an interdepartmental communication that may be used by the Chief of Police to make immediate changes to policy and procedure consistent with the current Collective Bargaining Agreement and as permitted by Government Code § 3500 et seq. Special Orders will immediately modify or change and supersede sections of this manual to which they pertain. Special Orders are directives of limited and specified duration concerning individual bureaus, sections, platoons, teams or individual events which should be known by the entire Department. An expiration date shall be listed.

204.1.1 SPECIAL ORDER PROTOCOL

Special Orders will be incorporated into the manual as required upon approval of the Chief of Police. Special Orders will modify existing policies or create a new policy as appropriate and will be rescinded upon incorporation into the manual.

All existing Special Orders have now been incorporated in the updated Policy Manual as of the below revision date.

Any Special Orders issued shall be numbered consecutively starting with the last two digits of the year, followed by the number "01" For example, 10-01 signifies the first Special Order for the year 2010.

204.2 RESPONSIBILITIES

204.2.1 CHIEF OF POLICE

The Chief of Police shall issue all Special Orders.

204.3 ACCEPTANCE OF SPECIAL ORDERS

All employees are required to read and obtain any necessary clarification of all Department Bulletins. All employees are required to acknowledge in writing the receipt and review of any new Department Bulletin. Signed acknowledgement forms and/or e-mail receipts showing an employee's acknowledgement will be maintained by the Personnel and Training Lieutenant.

Emergency Management Plan

206.1 PURPOSE AND SCOPE

The following sections contain excerpts and information from the BART Emergency Plan. For complete information, consult the latest revision of the BART Emergency Plan.

The District has prepared an Emergency Plan for use by all employees in the event of a major disaster or other emergency event. The Emergency Plan provides for a strategic response by all employees and assigns specific responsibilities in the event the plan is activated.

Copies are located in Support Services and the lieutenant's office in each zone. All supervisors should familiarize themselves with the plan and what roles police personnel will play when it is implemented.

206.2 ACTIVATING THE EMERGENCY PLAN

The Emergency Management Plan can be activated in a number of ways. For the Police Department, the Chief of Police or the highest ranking official on duty may activate the Emergency Management Plan in response to a major emergency.

206.2.1 RECALL OF PERSONNEL

In the event that the Emergency Management Plan is activated, all employees of the Bay Area Rapid Transit Police Department are subject to immediate recall. Employees may also be subject to recall during extraordinary circumstances as deemed necessary by the Chief of Police or the authorized designee.

Failure to promptly respond to an order to report for duty may result in discipline.

206.3 INCIDENT COMMAND SYSTEM (ICS)

The Incident Command System (ICS) is the system used to manage emergencies at all levels and allows agencies to communicate using common terminology and operating procedures. It begins developing from the time an incident occurs until the requirement for management and operations no longer exists. The structure of ICS can be established and expanded depending upon the changing conditions of the incident. It is intended to be staffed and operated by qualified, trained personnel from throughout the BART staff and could include representatives from outside agencies such as Fire Departments, Law Enforcement Agencies, Emergency Medical Services and others. Components of this emergency management system are use of common terminology, modular organization, integrated communications, unified command structure, consolidated action plans, manageable span of control, designated incident facilities and comprehensive resource management. To prevent confusion if multiple incidents occur in the District, each incident shall be given a name by the Train Controller.

ICS can be utilized for any type or size of emergency ranging from a minor incident involving only a few members of the Emergency Organization to a catastrophic incident involving several

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agencies from outside the BART organization. It allows for the timely acquisition of a combination of resources during the time of an emergency.

BART'S Incident Commander (IC): When an incident occurs which does not require outside agency assistance, the first BART employee on the scene will assume the role of IC and establish an Incident Command Post (ICP). The OCC must then be made aware of the location of the ICP and the name of the IC. Subsequently, other management personnel may respond to assume the IC role. Any change in the location of the ICP or IC must be transmitted to the OCC. All BART employees reporting to the scene must first report to the IC or designee so that all participants and their expected actions can be documented. The IC may assign other personnel to collect this data and/or direct the operations and logistics as required by the incident.

Incident Commander (IC): BART Transportation or BART Police personnel in criminal matters will normally assume the role of IC in the field. When one or more outside agencies respond, Unified Command will be established for the incident. The BART IC will typically then become the BART Liaison Officer and work within Unified Command. Under some circumstances, there may be more than one incident occurring at the same time. In this case, there will be an IC designated by the Train Controller for each incident. The Train Controller will also name each incident using the name of the nearest facility. It will then be referred to by that name by all involved personnel. The IC has responsibility to establish on-scene command, set up an incident command post, request necessary personnel and equipment and provide a staging area for responding personnel. The OCC must be provided with the location of the Command Post.

All personnel responding to the scene are to check in with the IC or designee before assuming duties. To accomplish this, the IC should assume command responsibility and appoint others to staff a field command post, assign missions, gather intelligence and delegate other tasks as necessary to establish control. Scene management and timing in the sequence of events that follow are of the essence.

BART Liaison Officer: The BART Liaison Officer will be responsible for coordinating and communicating with other BART personnel, the OCC, the Fire Department, or any other agency under Unified Command. This Officer will report to the IC (or Liaison Officer) at the Command Post.

BART Police Department: The BART Police Department is to provide crowd control, assist in evacuating patrons and/or employees, control traffic and provide security around and within the incident site. BART Police also enforce orders and laws, control crime scenes and assist the coroner in the operations of a temporary morgue. BART Police may work as the BART Liaison Officer and/or perform IC duties until Transportation personnel are on the scene to assume that role. BART Police will retain the role of IC after required rescues are accomplished when the emergency is a potential or actual crime. Transportation: Transportation is to provide coordination of all on-rail events in the field. This is to include all necessary clearances and access/egress at the scene. Transportation will assume the role of IC when the Fire Department or BART Police is not acting in that role. They will act as the BART Liaison Officer when Unified Command is in place. Transportation will communicate with the OCC and outside response agencies at the scene, if applicable.

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206.3.1 DUTIES: INCIDENT COMMANDER OR LIAISON OFFICER

BART INCIDENT COMMANDER OR LIAISON OFFICER (FIELD OPERATIONS)

- (a) **Primary:** Transportation Supervisor, BART Police, or Maintenance & Engineering Management
- (b) **Alternate:** Transportation Supervisor, BART Police, or Maintenance & Engineering Management
- (c) **Reports To:** Operations Section Chief (EOC)
- (d) **Responsibility:** To coordinate all field forces and activities, to identify needs, and to provide necessary resources.

General Duties:

- In conjunction with pertinent outside agencies, conduct rescue operations and help restore partial or full service;
- Provide necessary access to incident;
- Update and brief Operations Section Chief in the EOC;
- Support emergency medical treatment as required;
- Isolate and control releases of hazardous materials.

Action Checklist:

- Establish and maintain communications with the OCC and the EOC Operations Section;
- Identify yourself as IC or BART;
- Track your activities, time, and expenses to support the After Action Report and to support for reimbursement claims;
- Obtain a briefing on the extent of the Emergency from the Operations Section Chief in the EOC;
- Advise the EOC Operations Section Chief of the current situation, including the number of injuries if any, the damage, and the impact on train operations;
- Advise the EOC regarding the need for personnel and material resources;
- Set up a Field Command Post. Set up appropriate staging areas for responding personnel. Notify the EOC Operations Section Chief of command post and staging location;
- Insure that a Safety Officer has been assigned to monitor and observe personnel safety at the site;
- Advise field Division Supervisors of the EOC ACTION PLAN. Advise what limitations or restrictions exist;

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- Arrange for field personnel needs (food, water, shelter, etc) through the EOC Operations Section Chief;
- Get updated weather information and determine whether weather conditions will affect field operations;
- Log your activities, time and expenses for input to an after-action report and for future reimbursement claims.

206.4 EMERGENCY PROCEDURE CHECKLISTS

The following sections contain emergency procedure checklists specific to BART Police for various types of emergencies. Checklists for other District personnel may be found in the Emergency Plan.

206.4.1 FIRE/SMOKE

- Respond to the fire/smoke emergency scene, command post, or other designated location, and assume the duties of IC until relieved by a Transportation Supervisor or Fire Department IC. BART Police will resume the role of IC when the fire appears to have resulted from the commission of a crime and fire control activities have concluded;
- Establish communication with the OCC advising the exact location, nature and severity of the fire/smoke emergency, and the impact on train operations;
- Coordinate all BART emergency response efforts at the scene until a Transportation Supervisor or the Fire Department arrives, providing necessary access to, and staging areas for, the incident. Brief responding personnel;
- Brief the Fire Department on arrival. The Fire Department will assume IC if a fire or medical emergency. Assume BART Liaison function (if appropriate);
- Assisting officers should respond to passenger stations on either side of the fire emergency, maintenance of ways, or emergency exits as appropriate, to take charge of all BART response;
- Close and clear stations within the boundaries of the incident, as necessary;
- Sweep rescue/work trains;
- Assist the fire department in rescue operations if possible, when heavy rescue or evacuation is required.
- Support emergency medical treatment as required;
- Control traffic on the perimeter of the emergency to insure access for emergency vehicles;
- Provide crowd control and prevent unauthorized access to the scene;
- Protect fire department vehicles;

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- Protect the scene and preserve evidence for investigation;
- Secure areas rendered unsafe and those which contain hazardous materials;
- Periodically update the status of the emergency with the OCC advising of any known casualties;
- Determine the need for additional police personnel, I.D. technicians, detectives, including outside agencies, county emergency services, and the American Red Cross;
- Assist the coroner in his/her duties, and in the operations of a temporary morgue;
- Record actions taken to support the investigation and reporting of the incident.

206.5 TRAIN DERAILMENT/COLLISION

- Respond to the derailment/collision scene, or other designated location, and assume the duties of IC until relieved by a Transportation Supervisor or Fire Department IC. BART Police will resume the role of IC when the derailment or collision appears to have resulted from the commission of a crime.
- Establish communication with the OCC, advising the exact location, nature and severity of the incident, and the impact on train operations.
- Coordinate all BART emergency response efforts at the scene while acting as IC, providing necessary access to and staging areas for the incident;
- Brief responding personnel;
- Brief a relieving IC upon his/her arrival;
- Assisting officers should respond to passenger stations on either side of the emergency, maintenance of ways, or emergency exits as appropriate, to take charge of all BART response;
- Close and clear stations within the boundaries of the incident, as necessary;
- Sweep rescue/work trains;
- Assist in rescue and evacuation operations;
- Support emergency medical treatment as required;
- Control traffic on the perimeter of the emergency to insure access for emergency vehicles;
- Provide crowd control and prevent unauthorized access to the scene;
- Protect fire department vehicles;
- Protect the scene and preserve evidence for investigation;
- Secure areas rendered unsafe and those that contain hazardous materials;

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- Periodically update the status of the emergency with OCC, advising of any known casualties;
- Determine the need for additional police personnel, I.D. technicians, detectives, including outside agencies, county emergency services, and the American Red Cross;
- Assist the coroner in his/her duties, and in the operations of a temporary morgue;
- Record actions taken to support the investigation and reporting of the incident.

206.5.1 DEATH OR INJURY ON THE RIGHT-OF-WAY

- Respond to the scene and assume the duties of IC;
- If rescue is involved, the Fire Department is the IC;
- Obtain a briefing from the Train Operator;
- Establish communication with the OCC, verify that power is down at the incident scene, and advise of the need to enter the trackway to check the condition of the victim. Advise other rescuers to remain clear of the trackway until verification is received;
- Interview the victim if possible. Establish injuries. Provide first aid if necessary. Notify the coroner if appropriate;
- Assist emergency medical personnel in removal of an injured party from the trackway;
- It may be necessary to restore power, uncouple and move the train to provide access to the victim. Insure that all parts of the car being moved will clear the individual;
- Identify and interview all known witnesses to the incident. If it is not convenient at the time, a witness may be interviewed later. Take statements whenever possible;
- Protect the scene from unauthorized access and preserve evidence for investigation;
- Take photos of the scene. Take measurements for a scene diagram;
- Assist the coroner in his/her duties;
- Do not release information regarding the identity of a deceased person;
- Release the scene to Transportation for clean-up when the investigation is completed;
- If the incident occurred on a trackway secured by fence, check for insecure conditions which would have provided access to the victim, and have them corrected.

206.5.2 RIGHT-OF-WAY INTRUSION

- Respond to the scene and assume the duties of IC until relieved by a Transportation Supervisor for non-criminal incidents;
- Obtain a briefing from the reporting party if he/she is available;

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- Establish communication with the OCC; advise of the nature of the intrusion, exact location, description of the intruder (person, vehicle, object etc.), how the incident will affect mainline operations, and whether the intruder has been injured;
- Advise OCC to terminate power if appropriate, particularly if the intruder is mentally unstable or violent;
- Request additional officers to position themselves to prevent the escape of, and effect the apprehension of, the intruder;
- Coordinate with any involved outside agencies;
- Apprehend and remove the intruder from the right-of-way;
- Insure all personnel are clear of the right-of-way prior to restoring service;
- Check for insecure conditions created or used by the intruder to gain access to the right-of-way and have them corrected.

206.5.3 HAZARDOUS MATERIALS SPILL/LEAK

- BPD Officer(s) nearest to the reported incident shall be dispatched upwind of the scene as near as safety permits to: prohibit unauthorized personnel from entering, establish communications with the OCC and assume the duties of IC for mainline incidents;
- For those incidents occurring off property which will affect BART employees or operations, a police sergeant or officer in charge shall be sent to the Command Post in the appropriate jurisdiction to report information to the OCC and relay information to the Command Post;
- Respond to a position upwind of the scene as near as safety permits to prohibit unauthorized personnel from entering;
- Establish communications with the OCC and assume the duties of IC for mainline incidents; advise on the exact location, nature and severity of the incident, and of its effect on train operations;
- For those incidents occurring off-property which will affect BART, respond to the command post in the appropriate jurisdiction to relay information to the OCC;
- Close, evacuate and guard stations and/or other buildings as warranted;
- Advise of the need for PG&E, fire department, emergency medical services, and other outside agencies, and of the type of materials needed to contain the emergency, if known;
- Coordinate all BART emergency response efforts at the scene until the fire department arrives, providing necessary access to, and staffing areas for the incident;
- Isolate and arrange medical treatment for any contaminated persons. Prevent unauthorized access to the emergency scene.

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206.5.4 EARTHQUAKE

- Check portable and vehicle radios to insure proper operations;
- Check all BART structures for damage and casualties; respond to specific locations assigned by BPD Dispatch;
- Report any damage or casualties to the OCC;
- Request fire department, emergency medical services, additional police and American Red Cross response as necessary; provide access to the incident;
- Assume the duties of IC at any disaster scene until relieved by a Transportation Supervisor or Fire Department IC;
- Assist in evacuation of trains and structures, rescue, and emergency medical treatment as necessary;
- Cordon off areas which have incurred severe damage or pose life-threatening hazards;
- Check facilities which contain hazardous materials;
- Move emergency vehicles to open areas in case of after shocks;
- Assist the coroner in the disposition of deceased persons and in the operations of a temporary morgue;
- Record all actions taken to support documentation of the incident;
- If there is little or no damage to BART, be prepared to provide assistance to other jurisdictions.

206.5.5 HIGH VELOCITY WINDS

- Respond to stations or other designated locations bordering the emergency scene;
- Assume the duties of IC until relieved by a Transportation Supervisor;
- Advise the OCC of the severity of the emergency, any known obstructions or damage on the trackway or structures, and the affect of the emergency on train operations;
- Identify potential hazards (power lines, trees, etc.);
- Establish a security perimeter and assist in evacuating the area as necessary;
- Assess the need for response by the local police department and other emergency support agencies having jurisdiction in the area.

NOTE: Winds over 40 miles per hour may be hazardous to BART train operations and patrons.

206.5.6 FLOODING

- Respond to the emergency scene and assume the duties of IC until relieved by a Transportation Supervisor or Fire Department IC;

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- Establish communication with the OCC and advise of the exact location, nature and severity of the emergency;
- Check for and report the number of injured persons and the extent of their injuries. Request fire department and emergency medical services if needed;
- Determine and report the condition that caused the flood. Request that the appropriate agency (water company, fire department) respond to terminate the water flow;
- Report any known damage to the trackway, structures or equipment;
- Assess and report the effect of the emergency on train operations in the area;
- Request termination of electrical power in areas affected or threatened by the emergency;
- Evacuate the area if necessary;
- Secure the scene to prevent unauthorized personnel from entering.

206.5.7 EXPLOSIONS

- Respond to the scene or other designated location, and assume the duties of IC until relieved by a Transportation Supervisor or Fire Department IC. BART Police will assume the role of IC when the explosion appears to have resulted from the commission of a crime;
- Avoid radio transmissions at the scene if the explosion could have been caused by a bomb. Evaluate the potential presence of NBC agents;
- Establish telephone communication with the OCC, and advise of all known details regarding the incident (exact location, nature, severity, casualties, damage), whether a fire has resulted, and the effect on train operations;
- Keep all personnel at least 1000 feet from the blast site to protect them from a secondary explosion;
- Request fire department, emergency medical services, additional police assistance, and the coroner, if needed;
- Advise on the need for a rescue train;
- Administer first aid; determine whether anyone has been trapped by fallen debris;
- Evacuate the scene of all patrons and non-essential personnel;
- Secure the scene and allow only authorized emergency response personnel to enter;
- Protect physical evidence;
- Identify and interview witnesses;
- Request call-out of investigators and explosive ordinance detachment as indicated;

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- Record all actions taken to support documentation of the incident.

206.5.8 HOSTAGE OR BARRICADED SUBJECT

- Respond to the scene, or other designated location, and assume the duties of IC until relieved by a BPD supervisor, command officer, or the SWAT Team Commander;
- Obtain a briefing from the reporting party regarding the exact location of the incident, suspects, weapons, hostages, demands, injuries, deaths, witnesses, and whether a train is involved;
- Confirm that a hostage or barricaded subject incident exists at the reported location;
- Establish communication with the OCC and advise of all known details of the incident, what is being done to contain it, and its effect on train operations;
- Request notification and call-out of BPD SWAT Team and hostage negotiators;
- Request an ambulance and fire department stand-by;
- Request an explosive ordinance detachment stand-by if explosives are believed to be involved;
- Ascertain that sufficient BPD officers are on the scene to contain the emergency;
- Establish boundaries for the situation, subject to modification when significant changes occur;
- Notify the OCC immediately of any boundary changes;
- Request outside police agencies to assist in establishing an outer perimeter;
- Determine the exact location of the suspects. Attempt to isolate the suspects by establishing an inner perimeter to block all possible escape routes;
- Establish a command post in a safe location near the incident site, between the inner and outer perimeter;
- Establish communications, preferably by telephone, between the command post and the OCC;
- Establish an outer perimeter, staffed by BPD and outside agency officers;
- Contain the situation pending arrival of BPD SWAT Team and hostage negotiators;
- Avoid provoking or initiating contact or communication with the suspects while awaiting SWAT Team and hostage negotiators;
- Assist the SWAT Team in evacuating non-hostage persons who are stranded within the emergency scene;
- Identify and interview evacuees, escaped or released hostages, and other witnesses prior to releasing them;

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- Record all actions taken to support investigation and documentation of the incident.

206.5.9 BOMB THREAT

- Respond to the location specified by BPD Communications and assume the duties of IC;
- Avoid radio transmissions at the scene;
- Establish landline telephone communication with BPD Communications and OCC, ascertain all details of the incident and the level of response ordered by the Watch Commander;
- Evacuate and/or search a facility or train in accordance with the response level ordered by the Watch Commander;
- If a suspicious object or a known explosive device is discovered, establish boundaries for an emergency scene, and evacuate all patrons and personnel;
- Notify BPD Communications and the OCC by telephone if an object or device is found, and request response by the explosive ordinance detachment;
- Secure the scene and insure that only authorized emergency response personnel are allowed at the incident site.8. Complete a police report documenting the details of the incident and the actions taken.

206.6 POWER OUTAGE

(a) **Dispatch:**

1. Broadcast extent of the outage to all field units;
2. Dispatch available units to impacted stations.

(b) **Field Units:**

1. Verify the extent of the outage within the System;
2. Maintain communications and report conditions to Dispatch and the OCC;
3. Determine conditions within impacted stations. (Condition of emergency lights, Crowd control problems, Persons with special needs/accessibility problems);
4. Assist with station evacuations, as required.

206.6.1 PUBLIC DEMONSTRATIONS

(a) **Dispatch:**

1. Ensure that the OCC Manager is advised of the situation;
2. Dispatch available personnel to the site(s) of the demonstration;

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3. Notify and coordinate with surrounding police agencies as directed by the Watch Commander.

(b) **Watch Commander/Incident Commander:**

1. If there is sufficient notice, communicate information to the OCC Manager and the Government and Community Relations Department for possible contact with demonstration organizers and development of a coordinated response plan;
2. Determine need for additional personnel from special assignments or call-in from off-duty;
3. Determine the location of the Command Post and establish on-scene IC;
4. Determine availability of BART Police and outside agency resources to control entry station faregates;
5. Determine and implement strategy for demonstrator access to stations;
6. Make certain that the OCC Manager is updated on the strategies undertaken;
7. Attempt to establish contact and communicate District expectations to demonstration organizers;
8. Monitor progress of the demonstration and evaluate the need to close impacted stations;
9. In consultation with Incident Commanders from other involved police agencies, determine the strategy for the end of demonstration travel;
10. Direct the implementation of the strategies at the return station based on the crowd size, demeanor of the demonstration and local needs;
11. Direct the restoration of normal service when the situation warrants;

(c) **Responding Personnel:**

1. Make certain that transportation personnel at the impacted stations are aware of the demonstration;
2. Coordinate response with personnel from outside police agencies;
3. Implement strategies as determined by the Watch Commander/Incident Commander;
4. Control access to stations as appropriate;
5. Utilize video cameras to document incidents;
6. Continuously update dispatch on the size/demeanor of the demonstration;
7. Assist adjoining law enforcement agencies as required;
8. Avoid the escalation of minor violations.

Training Policy

208.1 PURPOSE AND SCOPE

It is the policy of this department to administer a training program that will provide for the professional growth and continued development of its personnel. By doing so, the Department will ensure its personnel possess the knowledge and skills necessary to provide a professional level of service that meets the needs of the community.

208.2 PHILOSOPHY

The Department seeks to provide continued professional training and encourages all personnel to seek out other training opportunities and formal education on their own. Training is provided within the confines of funding, requirements of a given assignment, staffing levels and legal mandates. Whenever possible, the Department will use courses certified by the California Commission on Peace Officer Standards and Training. Training should be consistent with the agency's mission and values as well as its goals and objectives. Agency training functions should be the responsibility of the training committee, which shall be accountable for developing and administering training programs. Training program development should provide for input from several sources, including agency personnel in general, a training committee, the inspections function, the Deputy Chief of Police, and the Chief of Police.

208.3 OBJECTIVES

The objectives of the Training Program are to:

- (a) Enhance the level of law enforcement service to the public
- (b) Increase the technical expertise and overall effectiveness of our personnel
- (c) Provide for continued professional development of Department personnel

208.4 TRAINING COMMITTEE

The Personnel and Training Lieutenant shall establish a Training Committee, which will serve to assist with identifying training needs for the Department. The training committee should be minimally composed of the following personnel: Professional Standards and Training Deputy Chief (or designee), Personnel and Training Lieutenant, Training Sergeant, the Training officer, and a Department instructor,

The Training Committee shall report to the Personnel and Training Lieutenant. Any member of the training committee may be removed from the committee by the Personnel and Training Lieutenant, Deputy Chief of Police, or the Chief of Police for failure to remain in good standing with the Department.

The training committee shall be responsible for establishing a prioritized listing of training programs and courses for the department, and should meet at least quarterly. The training committee will also conduct an annual training needs assessment of the Department. The needs assessment

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will be reviewed by the Department's command staff. Upon approval by the command staff, the needs assessment will form the basis for the training plan for the upcoming fiscal year.

The Training Committee should review certain incidents to determine whether training would likely improve future outcomes or reduce or prevent the recurrence of the undesirable issues related to the incident. Specific incidents the Training Committee should review include, but are not limited to:

- (a) Any incident involving the death or serious injury of an employee.
- (b) Incidents involving a high risk of death, serious injury or civil liability.
- (c) Incidents identified by a supervisor as appropriate to review to identify possible training needs.

The Training Committee should convene as determined by the Personnel and Training Lieutenant to review the identified incidents. The committee shall determine by consensus whether a training need exists and then submit recommendations of its findings to the Personnel and Training Lieutenant. The recommendation should not identify specific facts of any incidents, such as identities of employees involved or the date, time and location of the incident, but should focus on the type of training being recommended.

The Personnel and Training Lieutenant will consider the recommendations of the committee and determine what training should be addressed, taking into consideration the mission of the Department and available resources.

208.5 ANNUAL ADVANCED OFFICER TRAINING

Sworn personnel will complete an annual advanced officer training program consistent with the position held and functions performed, including legal updates.

208.6 TRAINING PLAN & COURSE LESSON PLANS

A continual two year department training plan is maintained by the Personnel and Training Division. It is the responsibility of the Personnel and Training Division to maintain, review, and update the training plan on an annual basis. The plan will address the following areas:

- Legislative Changes
- State Mandated Training
- Critical Issues Training
- California POST Training Network (CPTN)
- Code of Ethics/Ethics Training (This training can be reviewed in the form of classroom, shift briefing, computer based training and bulletins, or any combination of methods as determined by this Agency.)

Courses that are developed within the BART Police Department should routinely be sent to POST for certification. The department requires lesson plans for all training courses that are conducted to include:

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1. A statement of performance and job-related objectives;
2. The content of the training and specification of the appropriate instructional techniques;
3. A list of resources used in the development of the curriculum;
4. A list of resources required in the delivery of the program;
5. A process for approval of lesson plans; and
6. The identification of any tests used in the training process.

208.6.1 TRAINING DOCUMENTATION

The training department shall document the nature of the instruction and the identity of those attending the sessions.

Every instructor/monitor should complete a roster of attendees and have each participant sign the roster which will certify completion of the instruction. The form should be sent to the training department where the information should be entered into each participant's training record and the sign-in sheet stored in accordance with records retention standards.

The department shall maintain records of all training to include, at a minimum:

1. course content (lesson plans)
2. names of attendees
3. performance of individual attendees as measured by tests, if administered.

Departmental range scores shall be maintained by the Range Master

208.7 TRAINING ATTENDANCE

All employees assigned by the department to attend training, whether on or off BART District property, shall attend as scheduled unless previously excused by their immediate supervisor. Each participant must sign the attendance roster for the day of the training. Departmental instructors are responsible for generating and submitting each day's roster to the training officer. When an outside instructor is present, the instructor's point of contact will be responsible for generating and submitting each day's roster and instructor evaluation to the training officer.

There will be no discretionary time off granted for officers on their scheduled training date(s). No mutual exchanges are allowed.

The current department attendance procedures are outlined in Policy #1014 "Sick Leave and Attendance Control." Excused absences from mandatory training should be limited to the following:

1. Court appearances
2. Guaranteed vacation
3. Sick leave / FMLA

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4. Physical limitations preventing the employee's participation.
5. Supervisor approved emergency situations

When an employee is unable to attend mandatory training, that employee shall:

1. Notify his/her supervisor or the Watch Commander no later than 45 minutes prior to the start of training.
2. Document his/her absence in a memorandum to his/her supervisor.
3. Make arrangements through his/her supervisor to attend the required training on an alternate date, if an alternate date is available.

Corrective disciplinary action may be taken for personnel who miss their scheduled training without proper authorization.

208.8 NEW HIRE ORIENTATION

All newly appointed sworn and non-sworn personnel shall receive training information regarding:

1. The agency's role, purpose, goals, policies, and procedures;
2. Working conditions and regulations; and
3. The responsibilities and rights of employees.

208.9 IMMEDIATE REMEDIAL TRAINING

Any employee who acts in a grossly unsafe manner or demonstrates dangerous and/or extremely poor decision making skills in the deployment of and/or application of any use of force related task while on duty, may be required to attend immediate remedial training prior to returning to full duty status.

If in the opinion of the supervisor/primary instructor the on duty employee's actions/decision making are so unsafe that if the employee were returned to full duty the employee may be a safety hazard to him or herself, fellow employees, and/or the public, the supervisor/primary instructor shall recommend immediate remedial training for the employee. The supervisor/primary instructor shall contact the employee's lieutenant, or in his/her absence, the on duty Watch Commander as soon as practicable and make the recommendation for immediate remedial training.

If the request for immediate remedial training is approved by a Deputy Chief or the Chief of Police, the employee shall be removed from an on duty patrol capacity and placed into a temporary administrative position until such time as that employee satisfactorily completes the immediate remedial training. Failures to correct such deficiencies may result in implementation of the progressive discipline system.

Nothing in this policy precludes the department from requiring an employee to successfully complete remedial training to correct lesser safety violations and/or marginal tactical decision making skills without the employee first being removed from full duty status.

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Training Policy

208.10 TRAINING REQUESTS

Department personnel wishing to attend any law enforcement related training shall complete a department Training Request Form, and submit it to the training department coordinator via the chain of command for approval. The training order must identify the description of the required training and training requirements.

Training requests deemed essential or desirable for personnel in special assignments for the purpose of developing and enhancing the skills, knowledge, and abilities particular to the specialized assignment (i.e. investigations, field training officers, identification technicians) shall also be submitted to the training department coordinator via the chain of command for approval. The manager of the specialized assignment will be responsible for ensuring that persons assigned to the assignment receive their allotted annual hours of training established by the training committee for their position.

All training requests will be reviewed on a case-by-case basis and approved by the training coordinator and the Chief of Police, Deputy Chief of Police, or his/her designee.

208.11 DAILY TRAINING BULLETINS

The Lexipol Daily Training Bulletins (DTBs) is a web-accessed system that provides training on the Bay Area Rapid Transit Police Department Policy Manual and other important topics. Generally, one training bulletin is available for each day of the month. Personnel assigned to participate in DTBs should only use the password and login name assigned to them by the Support Services Lieutenant. Personnel should not share their password with others and should frequently change their password to protect the security of the system. After each session, employees should log off the system to prevent unauthorized access. The content of the DTBs is copyrighted material and shall not be shared with others outside of the Department.

Employees who are assigned to participate in the DTB program should complete each DTB at the beginning of their shift or as otherwise directed by their supervisor. Employees should not allow uncompleted DTBs to build up over time. Personnel may be required to complete DTBs missed during extended absences (e.g., vacation, medical leave) upon returning to duty. Although the DTB system can be accessed from any Internet active computer, employees shall only take DTBs as part of their on-duty assignment unless directed otherwise by a supervisor.

Supervisors will be responsible for monitoring the progress of personnel under their command to ensure compliance with this policy.

Electronic Mail

212.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the proper use and application of electronic mail (email) by employees of this department. Email is a communication tool available to employees to enhance efficiency in the performance of job duties and is to be used in accordance with generally accepted business practices and current law (e.g., California Public Records Act). Messages transmitted over the email system must only be those that involve official business activities or contain information essential to employees for the accomplishment of business-related tasks and/or communication directly related to the business, administration, or practices of the Department. Note: The District's Management Procedure 75 (Electronic Communications Guideline), permits incidental and occasional personal use of email.

Also see the District's *Management Procedure 75 Electronic Communications Guideline*. Management Procedure 75 is incorporated into the Department Policy.

212.2 EMAIL RIGHT OF PRIVACY

All email messages, including any attachments, that are transmitted over department networks are considered department records and therefore are department property. The Department reserves the right to access, audit or disclose, for any lawful reason, any message including any attachment that is transmitted over its email system or that is stored on any department system.

The email system is not a confidential system since all communications transmitted on, to or from the system are the property of the Department. Therefore, the email system is not appropriate for confidential communications. If a communication must be private, an alternative method to communicate the message should be used instead of email. Employees using the Department's email system shall have no expectation of privacy concerning communications utilizing the system.

Employees should not use personal accounts to exchange email or other information that is related to the official business of the Department.

212.3 PROHIBITED USE OF EMAIL

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

Email messages addressed to the entire department are only to be used for official business related items that are of particular interest to all users and must be approved by the Chief of Police or a Bureau Deputy Chief. Personal advertisements are not acceptable.

It is a violation of this policy to transmit a message under another user's name. Users are strongly encouraged to log off the network when their computer is unattended. This added security measure would minimize the misuse of an individual's email, name and/or password by others.

Electronic Mail

212.4 EMAIL RECORD MANAGEMENT

Email may, depending upon the individual content, be a public record under the California Public Records Act and must be managed in accordance with the established records retention schedule and in compliance with state law.

The Custodian of Records shall ensure that email messages are retained and recoverable as outlined in the Records Maintenance and Release Policy.

Administrative Communications

214.1 FORMAT AND PROCESSING FOR ORDERS/BULLETINS

Orders and bulletins shall show the date of issuance and be numbered consecutively in separate series, beginning with number one on the first day in January each year. Each shall bear a title or caption showing the classification to which it belongs. The original order/bulletin will be forwarded to Support Services for numbering, logging, distribution and be maintained by the Support Services Bureau.

All orders/bulletins will be issued on white paper.

214.1.1 DEPARTMENT ORDERS

The Chief of Police shall have the authority to issue orders consistent with the law and in accord with the office of the General Manager. Such orders may be written or oral, and all employees shall observe, obey and enforce them.

214.1.2 BUREAU ORDERS

Bureau Deputy Chiefs may issue bureau orders within their respective commands, provided that such orders are not inconsistent with, or contrary to, the law or orders from the Chief of Police.

214.1.3 TRAINING ORDERS/BULLETINS

The Support Services Deputy Chief may issue training orders to all department personnel. Orders will include date, time, location and all particular conditions for the training.

The Support Services Deputy Chief may issue training bulletins to inform department personnel regarding topics of law enforcement interest.

214.1.4 DIVISION ORDERS

Watch Commanders or Section Supervisors may issue orders affecting a watch or section within their respective commands, provided that such orders are not inconsistent with or contrary to the law or to orders from their respective Bureau Deputy Chief and the Chief of Police.

214.2 PERSONNEL ORDERS

Personnel Orders may be issued by the Chief of Police to announce and document all promotions, transfers, hiring of new personnel, separations, extended leaves of absence, training assignments or other changes in status.

214.3 BULLETINS

The Chief of Police will issue bulletins for all information, announcements and other communications and matters which should be known to the entire department.

214.4 CORRESPONDENCE

Personnel should use Department letterhead only for official business and with approval of their supervisor.

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Administrative Communications

Retiree Concealed Firearms

220.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the issuance, denial, suspension or revocation of Bay Area Rapid Transit Police Department identification cards under the Law Enforcement Officers' Safety Act (LEOSA) and California law (18 USC § 926C; Penal Code § 25455).

220.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to provide identification cards to qualified former or retired officers as provided in this policy.

220.3 LEOSA

The Chief of Police may issue an identification card for LEOSA purposes to any qualified former officer of this department who (18 USC § 926C(c)):

- (a) Separated from service in good standing from this department as an officer.
- (b) Before such separation, had regular employment as a law enforcement officer for an aggregate of 10 years or more or, if employed as a law enforcement officer for less than 10 years, separated from service after completing any applicable probationary period due to a service-connected disability as determined by this department.
- (c) Has not been disqualified for reasons related to mental health.
- (d) Has not entered into an agreement with this department where the officer acknowledges that he/she is not qualified to receive a firearm qualification certificate for reasons related to mental health.
- (e) Is not prohibited by federal law from receiving or possessing a firearm.

220.3.1 LEOSA IDENTIFICATION CARD FORMAT

The LEOSA identification card should contain a photograph of the former officer and identify him/her as having been employed as an officer.

If the Bay Area Rapid Transit Police Department qualifies the former officer, the LEOSA identification card or separate certification should indicate the date the former officer was tested or otherwise found by the Department to meet the active duty standards for qualification to carry a firearm.

220.3.2 AUTHORIZATION

Any qualified former law enforcement officer, including a former officer of this department, may carry a concealed firearm under 18 USC § 926C when he/she is:

- (a) In possession of photographic identification that identifies him/her as having been employed as a law enforcement officer, and one of the following:

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1. An indication from the person's former law enforcement agency that he/she has, within the past year, been tested or otherwise found by the law enforcement agency to meet agency-established active duty standards for qualification in firearms training to carry a firearm of the same type as the concealed firearm.
2. A certification, issued by either the state in which the person resides or by a certified firearms instructor who is qualified to conduct a firearms qualification test for active duty law enforcement officers within that state, indicating that the person has, within the past year, been tested or otherwise found to meet the standards established by the state or, if not applicable, the standards of any agency in that state.
 - (b) Not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.
 - (c) Not prohibited by federal law from receiving a firearm.
 - (d) Not in a location prohibited by California law or by a private person or entity on his/her property if such prohibition is permitted by California law.

220.4 CALIFORNIA IDENTIFICATION CARD ISSUANCE

Any full-time sworn officer of this department who was authorized to, and did, carry a concealed firearm during the course and scope of his/her employment shall be issued an identification card with a Carrying Concealed Weapon endorsement, "CCW Approved," upon honorable retirement (Penal Code § 25455).

- (a) For the purpose of this policy, honorably retired includes all peace officers who have qualified for, and accepted, a service or disability retirement. It shall not include any officer who retires in lieu of termination.
- (b) No CCW Approved endorsement shall be issued to any officer retiring because of a psychological disability (Penal Code § 26305).

220.4.1 CALIFORNIA IDENTIFICATION CARD FORMAT

The identification card issued to any qualified and honorably retired officer shall be 2 inches by 3 inches, and minimally contain (Penal Code § 25460):

- (a) A photograph of the retiree.
- (b) The retiree's name and date of birth.
- (c) The date of retirement.
- (d) The name and address of this department.
- (e) A stamped CCW Approved endorsement along with the date by which the endorsement must be renewed (not more than one year). If a CCW endorsement has been denied or revoked, the identification card shall be stamped "No CCW Privilege."

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220.5 RETIREE RESPONSIBILITIES

A former officer with a card issued under this policy shall immediately notify the Watch Commander of his/her arrest or conviction in any jurisdiction, or that he/she is the subject of a court order, in accordance with the Reporting of Employee Convictions policy.

220.5.1 MAINTAINING A CALIFORNIA IDENTIFICATION CARD CCW ENDORSEMENT

In order to maintain a CCW Approved endorsement on an identification card issued under California law, the retired officer shall (Penal Code § 26305):

- (a) Qualify annually with the authorized firearm at a course approved by this department at the retired officer's expense.
- (b) Remain subject to all applicable department policies and federal, state and local laws.
- (c) Not engage in conduct that compromises public safety.
- (d) Only be authorized to carry a concealed firearm inspected and approved by the Department.

220.6 DENIAL, SUSPENSION, OR REVOCATION OF A LEOSA IDENTIFICATION CARD

A LEOSA identification card may be denied or revoked upon a showing of good cause as determined by the Department. In the event that an identification card is denied, suspended, or revoked, the former officer may request a review by the Chief of Police. The decision of the Chief of Police is final.

220.7 DENIAL, SUSPENSION, OR REVOCATION OF A CALIFORNIA CCW ENDORSEMENT CARD

A CCW endorsement for any officer retired from this department may be denied or revoked only upon a showing of good cause. The CCW endorsement may be immediately and temporarily revoked by the Watch Commander when the conduct of a retired peace officer compromises public safety (Penal Code § 25470).

- (a) In the event that a CCW endorsement is initially denied, the retired officer shall have 15 days from the date of denial to request a formal hearing. The failure to submit a timely written request for a hearing shall be deemed a waiver of such right. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received.
- (b) Prior to revocation of any CCW endorsement, the Department shall provide the affected retiree with written notice of a hearing by either personal service or first class mail, postage prepaid, return receipt requested to the retiree's last known address (Penal Code § 26315).
 - 1. The retiree shall have 15 days from the date of service to file a written request for a hearing.
 - 2. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received (Penal Code § 26315).

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3. The failure to submit a timely written request for a hearing shall be deemed a waiver of such right.
- (c) A hearing for the denial or revocation of any CCW endorsement shall be conducted before a hearing board composed of three members, one selected by the Department, one selected by the retiree or his/her employee organization, and one selected jointly (Penal Code § 26320).
1. The decision of such hearing board shall be binding on the Department and the retiree.
 2. Any retiree who waives the right to a hearing or whose CCW endorsement has been revoked at a hearing shall immediately surrender his/her identification card. The Department will then reissue a new identification card which shall be stamped "No CCW Privilege."
- (d) Members who have reason to suspect the conduct of a retiree has compromised public safety shall notify the Watch Commander as soon as practicable. The Watch Commander should promptly take appropriate steps to look into the matter and, if warranted, contact the retiree in person and advise him/her of the temporary suspension and hearing information listed below.
1. Notification of the temporary suspension should also be promptly mailed to the retiree via first class mail, postage prepaid, return receipt requested (Penal Code § 26312).
 2. The Watch Commander should document the investigation, the actions taken and, if applicable, any notification made to the retiree. The memo should be forwarded to the Chief of Police.
 3. The personal and written notification should be as follows:
 - (a) The retiree's CCW endorsement is immediately and temporarily suspended.
 - (b) The retiree has 15 days to request a hearing to determine whether the temporary suspension should become permanent revocation.
 - (c) The retiree will forfeit his/her right to a hearing and the CCW endorsement will be permanently revoked if the retiree fails to respond to the notice of hearing within the 15-day period.
 4. In the event that personal contact with the retiree cannot be reasonably achieved in a timely manner, the Watch Commander should attempt to make the above notice of temporary suspension through another law enforcement officer. For example, if a retiree was arrested or detained by a distant agency, the Watch Commander may request that a law enforcement officer from that agency act as the agent of the Department to deliver the written notification.

220.8 FIREARM QUALIFICATIONS

The Rangemaster may provide former officers from this department an opportunity to qualify. Written evidence of the qualification and the weapons used will be provided and will contain the

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date of the qualification. The Rangemaster will maintain a record of the qualifications and weapons used.

Chapter 3 - General Operations

Use of Force

300.1 PURPOSE AND SCOPE

The BART Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force, whenever feasible. This Department policy builds upon the Supreme Court's broad principles in *Graham v. Connor* (1989) 490 U.S. 386 and is more restrictive than the constitutional standard and state law. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public's trust.

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, non-biased, and reasonable manner.

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. Officers must strive to use the minimal amount of force necessary.

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm (Penal Code § 835a).

Explicit Bias - Conscious belief or attitude toward a specific social group that may lead an individual to act in discriminatory ways.

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person (Government Code § 7286(a)).

Force - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

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Implicit Bias - Unconscious belief or attitude toward a specific social group that may lead an individual to unknowingly act in discriminatory ways. People are generally unaware of their implicit biases and may even hold contradictory conscious beliefs.

Legitimate law enforcement objective - Effect a lawful arrest, detention, or search; overcome resistance or prevent escape; prevent the commission of a public offense; in defense of others or in self-defense; gain compliance with a lawful order; to prevent a person from injuring himself/herself.

Minimal amount of force necessary - The lowest level of force within the range of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others.

Non-deadly Force - Any application of force that is not reasonably anticipated and intended to create a substantial likelihood of death or very serious bodily injury shall be considered non-deadly force.

Personal Body Weapons - An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject.

Proportionality - Considers whether a particular use of force is proportionate and appropriate to the totality of the circumstances, and requires officers to consider whether alternative lesser or non-force options are feasible and likely to be effective. Proportional force does not imply equal force; officers may use superior force, consistent with this policy.

Reasonable Belief - An objective belief determined by the facts and circumstances reasonably available to the officer at the time (on-scene and without hindsight) and viewed from the perspective of a reasonable peace officer in the same situation, guided by the principles set forth in this policy.

Reasonable Force - An objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances known to or perceived by the officer at the time.

Serious bodily injury - A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement (Penal Code § 243(f)(4)).

Totality of the circumstances - All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force (Penal Code § 835a).

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

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Use of Force

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. Officers must strive to use the minimal amount of force necessary.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force. Retreating for a tactical advantage should be considered and utilized, when feasible and appropriate.

Officers shall not use force with bias, based upon: race; ethnicity or nationality; religion; sex, sexual orientation; economic status; age; cultural group; disability; or affiliation with any other similar identifiable group.

Use of force against vulnerable populations (such as, without limitation, children, elderly, pregnant women, people with physical and mental disabilities, and people with limited English proficiency) can undermine public trust and should only be used if no other options appear reasonable or effective. It is recognized that the above may not be readily apparent or known to the officer. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

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The Department recognizes that transparency and accountability in the use of force is essential to preserving the trust of the community and to maintaining professional standards. This policy therefore requires rigorous reporting and review of all instances of the use of force.

300.2.1 DUTY TO INTERCEDE

A use of excessive force by law enforcement personnel is a matter of serious concern to the community, and even a single instance of excessive force may critically undermine public trust in the Department. Any officer present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, shall, when in a position to do so, intercede to prevent the use of unreasonable force.

When observing force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)).

300.2.2 DE-ESCALATION TECHNIQUES

Officers shall use de-escalation techniques whenever feasible and appropriate: to potentially reduce or eliminate the need to use force; and to prevent injuries to the subject, the public and the officer(s). Use of de-escalation techniques must allow for the fact that officers are often forced to make split-second decisions, with limited information, and in circumstances that are tense, uncertain and rapidly evolving.

- (a) Officers shall, when feasible, continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.
- (b) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; “waiting out” subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
 1. Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.
 2. Officers should consider a variety of options, including lesser force or no force options.
 3. Officers should perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others.
 4. Officers shall not intentionally and unnecessarily escalate and/or create a need to use force.
 5. Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical,

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or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.

6. Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use force.
 - (c) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or Crisis Intervention techniques.

Establishing Communication - Communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

Supervisors conducting a use of force investigation will indicate de-escalation as a force option in BlueTeam whenever de-escalation was attempted or used in an incident.

300.2.3 FAIR AND UNBIASED USE OF FORCE

Officers are expected to carry out their duties, including the use of force, in a manner that is fair and unbiased (Government Code § 7286(b)). See the Bias-Based Policing Policy for additional guidance.

300.2.4 DUTY TO REPORT EXCESSIVE FORCE

Any employee who observes a law enforcement officer or another employee use force that potentially exceeds what the employee reasonably believes to be necessary shall promptly report these observations to a supervisor as soon as feasible.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

There are circumstances in which a force option may be legally justified under the principles set forth in *Graham v. Connor*, but the use of that force option may not be appropriate, warranted, and/or necessary.

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This policy builds upon the broad principles in *Graham v. Connor* by adding additional, more restrictive factors upon which an officer's use of force shall be evaluated. These factors should be considered when determining whether to apply force (as time and circumstances permit), and in evaluating whether an officer has used reasonable force.

Additional factors set forth by case law and by this Policy:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The feasibility, efficacy, and safety of alternative lesser or non-force options, including the availability of de-escalation techniques that might reduce or eliminate the need to use force, or prevent injuries to the subject, the public and the officer(s).
- (c) Whether the force option is proportionate and appropriate to the totality of the circumstances, and whether alternative lesser or non-force options are feasible and likely to be effective. Proportional force does not imply equal force; officers may use superior force, consistent with this policy.
- (d) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (e) The conduct of the officer prior to the use of force. Specifically, did the officer violate policy and unnecessarily escalate the situation to a use of force.
- (f) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (g) The effects of drugs or alcohol.
- (h) Subject's mental state or capacity, including any apparent/known mental health issues.
- (i) Proximity of weapons or dangerous improvised devices.
- (j) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (k) The availability of other options and their possible effectiveness.
- (l) Seriousness of the suspected offense or reason for contact with the individual.
- (m) Training and experience of the officer.
- (n) Potential for injury to officers, suspects and others.
- (o) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (p) The risk and reasonably foreseeable consequences of escape.
- (q) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (r) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (s) Prior contacts with the subject or awareness of any propensity for violence.

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- (t) Any other exigent circumstances.
- (u) Officers must strive to use the minimal amount of force necessary.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer
- (c) Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.2 PERSONAL BODY WEAPONS

Personal body weapon strikes, punches, lifts or kicks for which the officer has received department-approved training, may be used when the officer reasonably believes that the use of such force appears necessary to further a legitimate law enforcement purpose.

Personal body weapon strikes, punches, or kicks to the rear of the head, neck or spine are prohibited. The only exception to this prohibition would be under exigent circumstances when deadly force is justified and reasonable.

300.3.3 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent

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a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Department for this specific purpose.

300.3.4 RESTRICTIONS ON THE USE OF A CHOKE HOLD/CAROTID RESTRAINT

Officers of this department are not authorized to use a choke hold or carotid restraint. A choke hold means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe. Carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person. (Government Code § 7286.5).

300.4 DEADLY FORCE APPLICATIONS

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts (Penal Code 835a(5)(c)(1)(B)).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the

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present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. It is also noted that in many circumstances, disabling the driver of a vehicle may increase the potential for harm to bystanders and/or the officer.

- Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.
- Officers shall not intentionally and unnecessarily move into the path of an approaching vehicle to create their own exigent circumstance.
- Officers should not shoot at any part of a moving vehicle in an attempt to disable the vehicle.
- Officers shall not discharge a firearm at a moving vehicle or its occupants when there are other reasonable means available to avert the threat.
- Officers shall not discharge a firearm from a moving vehicle when there are other reasonable means available to avert the present threat.
- Officers may only shoot at a moving vehicle under exigent circumstances, when the driver and/or occupants are targeting others with the intent to cause great bodily injury or death and there are no other reasonable means available to avert the threat.

300.4.2 DISPLAYING OF FIREARMS

Given that individuals might perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines (Government Code § 7286(b)):

- (a) If the officer does not initially perceive a threat but reasonably believes that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- (b) If the officer reasonably believes that a threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward such threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

Whenever an officer draws/deploys a firearm during the performance of his/her duties to defend, detain or take any person into custody (the suspect is contacted or arrested, the officer is present and is within potential sight of the suspect), it is considered a use of force and an account of the incident must be made in a police report. The officer should include in the narrative of the report how the weapon was used in the incident, as well as the justification for such action. The documentation of how the weapon was used should include information on how the weapon was presented. The

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officer must notify a supervisor as soon as practical, and the supervisor will complete a Use of Force Investigation with accompanying documentation as outlined in this policy.

Whenever an officer draws/deploys a firearm during the performance of his/her duties in the presence of others, but does not use the firearm to defend, detain or take any person into custody (the suspect is not contacted or arrested), it is not considered a use of force and an account of the incident must be made in a police report.

Whenever an officer draws/deploys a firearm during the performance of his/her duties not in the presence of others, it is not considered a use of force and no documentation is required. An example of that type of incident would include, but is not limited to, the search of an empty building or car where no person is contacted during the search.

To the extent reasonable under the circumstances, officers shall consider their surroundings and potential risks to bystanders before discharging a firearm

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.

Supplemental reports will be completed by personnel who are present when force is used by another officer. Officers have a duty to report all pertinent facts known to them.

All police reports, inclusive of any supplemental reports, involving the documentation of a use of force must be reviewed and approved by a supervisor prior to the employee going off duty.

300.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following any Level 2, 3, or 4 application of force. Levels of force and the respective reporting, investigation, documentation, and review requirements are defined in section 300.5.2.

All use of force must be documented in a police report and reviewed by a supervisor.

300.5.2 USE OF FORCE INVESTIGATION, DOCUMENTATION, AND REVIEW

Upon receiving notification of a use of force, a supervisor who was not involved in the use of force incident, will determine the level of investigation and documentation.

The following categories and parameters will explain levels of force and the respective reporting, investigation, documentation, and review requirements. Incidents will be categorized as Level 1, Level 2, Level 3, or Level 4.

Level 1: Documentation in a Police Report Only

Level 1 Incident Parameters:

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- (a) Subject allowed him/herself to be searched, escorted, and/or handcuffed. The officer did not use force to overcome resistance, nor did the officer use force in the absence of resistance.
- (b) Officer used any of the following, and the circumstances of the application would lead a reasonable officer to conclude that the subject did not experience more than momentary discomfort:
 - 1. Control holds/pressure point application
 - 2. Leverage
 - 3. Grab
 - 4. Bodyweight
 - 5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.
- (c) Officer used any of following:
 - 1. Professional presence and/or verbalization
 - 2. TASER/LLIMs Deployed (no activation)
 - 3. Drawn/deployed firearm, but no suspect contacted or arrested
- (d) Subject has no visible injury due to interaction with officer.
- (e) Subject has no complaint of injury or continuing pain.
- (f) Subject does not indicate intent to pursue litigation.
- (g) Subject was not rendered unconscious due to interaction with officer.
- (h) No allegation of misconduct against officer, regarding force.
- (i) Officer body camera was activated in a timely manner, prior to the enforcement contact, per policy.

Level 1 Incidents should be documented by an officer in an appropriate police report, citation, Field Interview, and/or CADS entry. Supervisors will review police report narratives for approval.

Level 2: Use of Force

Level 2 Incident Parameters:

- (a) No suspect injury or complaint of continuing pain due to interaction with officer.
- (b) No allegation of misconduct against officer, regarding force.
- (c) Officer body camera was activated in a timely manner, prior to the enforcement contact, per policy.
- (d) Officer's use of force was limited to the following:
 - 1. Any takedown, that did not appear to cause more than momentary discomfort.
 - 2. Firearm drawn/deployed but not fired, suspect contacted

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3. Control hold, pressure point, leverage, grab, and/or bodyweight, and the application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.

An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of the involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into BlueTeam and attach a completed Use of Force Investigation Checklist with a brief summary.

Witness statements from fire and medical personnel are not required under the following circumstance: an officer assists medical personnel to restrain and/or secure a subject to a gurney for medical transport in a non-criminal detention (i.e. 5150 or 5170 detention), and all of the following conditions are met:

- (a) The officer only used force options limited to the following: grab, hold, leverage, and/or bodyweight.
- (b) No subject injury or complaint of continuing pain due to interaction with officer.
- (c) No allegation of misconduct against officer, regarding force.
- (d) Officer body camera was activated in a timely manner, per policy.
- (e) The unit number for the fire and medical personnel is obtained.

Level 3: Use of Force

Level 3 Incident Parameters:

- (a) Would have otherwise been classified as a Level 2, except one or more of the following apply:
 1. Suspect injury or complaint of injury or continuing pain due to interaction with officer.
 2. Allegation of misconduct against officer, regarding force.
 3. Officer body camera was not activated in a timely manner, prior to the enforcement contact, per policy.
- (b) The use of force is Level 3 if the officer used any of the following force options:
 1. Any takedown, that appears to have caused more than momentary discomfort.
 2. TASER Activation/LLIMS Activation
 3. Chemical Agents/Munitions
 4. Impact Weapon Strikes
 5. Personal Body Weapons
 6. Police canine deployment resulting in injury

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An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into BlueTeam and attach a completed Use of Force Investigation Checklist. The supervisor will also complete a Use of Force Investigation Report narrative for review through the Use of Force Review process. Suspect and witness statements from the crime report will be attached to the use of force investigation. Use of Force involving police canines will be documented and reviewed additionally per Policy 318.

Level 4: Use of Deadly Force

Level 4 Incident Parameters:

- (a) Use of firearm, officer involved shooting
- (b) Or any force likely to cause death or serious bodily injury

An uninvolved supervisor will respond to the scene. The incident will be investigated, documented, and reviewed in adherence to Policy 310.

300.5.3 EMPLOYEES WHO USE FORCE WHILE ON A SPECIAL ASSIGNMENT

When a BART Police employee has a use of force as defined in this policy, the use of force must be reported to a BART Police supervisor and investigated in accordance with this policy.

When two or more BART Police officers are temporarily assigned to assist an outside agency or multi-agency task force in the performance of law enforcement activities, a BART police supervisor should also be present.

300.5.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records Division Policy.

300.6 MEDICAL CONSIDERATION FOLLOWING A USE OF FORCE

Prior to booking or release, and as soon as possible under the circumstances, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed. Officers should pay particular attention to vulnerable populations, including but not limited to, children, elderly persons, pregnant individuals and individuals with physical, mental and developmental disabilities, whose vulnerabilities could exacerbate the impact or risk of injury.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another

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officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage nearby if appropriate.

300.7 SUPERVISOR RESPONSIBILITY

An uninvolved supervisor should respond to the scene of a Level 2, Level 3, or Level 4 use of force. The supervisor is expected to do the following:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Ensure that arrestees and witnesses are interviewed, and that the interviews are audio/video recorded. If the arrestee invokes their Miranda rights at any point, all interrogation shall cease as outlined per case law.
 1. Officers should take recorded suspect and witness statements related to all criminal charges as appropriate, including the circumstances involving the use of force. These statements will be documented in the crime report. If the responding supervisor conducts the interview, then the supervisor should document the statement in the crime report.
 2. In addition to the statement taken for the criminal report, supervisors conducting the use of force investigation should seek a voluntary statement regarding the use of force from suspects who have not invoked their Miranda rights. The interview should be audio/video recorded. If the statement contains information that is relevant to the criminal case but is not covered in the primary crime report, the supervisor will document the interview in a supplemental crime report.
 3. In the event that force is used on an individual with no criminal charges (i.e. psychiatric detentions), then the responding supervisor should interview the detainee regarding the use of force.

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4. In all cases, the responding supervisor should identify themselves as a supervisor to the arrestee/detainee. If the subject makes an allegation of misconduct, the supervisor will receive and forward the complaint to Internal Affairs.
 - (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
 - (e) Review the portion(s) of the body worn camera video pertaining to the use of force and/or allegation of misconduct.
 - (f) Review and approve all related reports.

In the event that an uninvolved supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit. The investigation will be documented in a Use of Force Investigation checklist and narrative as warranted.

When practical, involved supervisors, meaning those who use force in a given incident or those who witness the use of force by another officer in a given incident, should not obtain statements from other officers as part of a report on the use of force, as such is the responsibility of an uninvolved supervisor. Furthermore, involved supervisors and officers shall not attempt to influence other officers' or civilian witnesses' accounts of what occurred during the incident or otherwise compromise the integrity of the use of force investigation.

Use of Force Investigation Reports will be forwarded and reviewed through the chain of command.

300.7.1 WATCH COMMANDER RESPONSIBILITY

A watch commander will review the Use of Force Investigation Report to ensure compliance with this policy and that any training issues are addressed.

Nothing in the policy precludes the watch commander from requiring that a supervisor complete a Use of Force Investigation Report for any incident involving force.

The on-duty watch commander shall promptly notify the Office of the Independent Police Auditor in the event that a use of force resulted in significant (i.e. life threatening) injury, notwithstanding the notification requirements regarding officer-involved shootings and in-custody deaths pursuant to Policy 310.

300.8 TRAINING

Officers will receive annual training on this policy (at a minimum) and demonstrate their knowledge and understanding.

Departmental personnel authorized to carry lethal and less-lethal weapons will be issued copies of, and be instructed in, the policies of lethal and less-lethal force before being authorized to carry a weapon. The issuance and instruction shall be documented.

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Training standards and requirements relating to demonstrated knowledge and understanding of the use of force policy, and training about interactions with vulnerable populations (including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities) are established in the Department's Training Plan. Relevant course titles from the Training Plan include, but are not limited to; POST Basic Academy material, POST-Approved Field Training Program, POST Continued Professional Training, POST-Certified Force Options Update, POST-Certified Driving Update, POST-Certified Force Options Update, POST Certified Driving Update, POST Certified Arrest & Control, POST-Certified Tactical Communications, First Aid/CPR Update, Firearm Qualification, Patrol Rifle, Racial Profiling or Fair & Impartial Update, Impact Weapons Update, TASER Training, Code of Ethics Training, Crisis Intervention Training, Reality Based Training, Active Shooter Training, Cultural Diversity Training, POST Field Training Officer Course, Field Training Officer Update Course, Firearms Instructor Course, Firearms Instructor Update, Arrest & Control/Impact Weapons Instructor, Arrest & Control/Impact Instructor Update, Impact Weapons Instructor Update, In-House New Sergeant Orientation, Officer Involved Shooting – Supervisor Responsibilities, POST Basic Instructor Development Institute, Fair and Impartial Policing Train the Trainer, Racial Profiling Instructor Course, Tactical Medical Course, POST First Aid / CPR Instructors Course, Force Options Simulator Instructor Course, Basic TASER Instructor Course, TASER Instructor Recertification Course.

300.9 USE OF FORCE ANALYSIS

At least annually, the Operations Bureau Deputy Chief should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police, the Office of the Independent Police Auditor, and the BART Police Citizen Review Board. The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

300.10 USE OF FORCE COMPLAINTS

Complaints by members of the public related to this policy may be filled with the BART Police Department Internal Affairs Division (IAD), the BART Police Citizen Review Board (BPCRB) or the Office of the Independent Auditor (OIPA). The receipt, processing, and investigation of civilian complaints involving use of force incidents should be handled in accordance with the Personnel Complaints Policy (Government Code § 7286(b)). Complaints filed with the BPCRB and/or OIPA will be investigated with the applicable procedures of the BART Citizen Oversight Model.

300.11 POLICY REVIEW

The Chief of Police or the authorized designee should regularly review and update this policy to reflect developing practices and procedures (Government Code § 7286(b)).

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300.12 POLICY AVAILABILITY

The Chief of Police or the authorized designee should ensure this policy is accessible to the public (Government Code § 7286(c)).

300.13 PUBLIC RECORDS REQUESTS

Requests for public records involving an officer's personnel records shall be processed in accordance with Penal Code § 832.7 and the Personnel Records and Records Maintenance and Release policies (Government Code § 7286(b)).

Use of Force Review

302.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a process to review the use of force by employees of this department.

302.2 POLICY

The Department is charged with the important responsibility of objectively evaluating the use of force. Any use of force by a member of this department which is subject to a Supervisor's Use of Force Report (as required by Policy Manual §300.7) will be reviewed by the Operations Bureau chain of command and by the Department Defensive Tactics Coordinator. A review will also be conducted for every intentional or unintentional discharge of a firearm, whether the employee is on duty or off duty, excluding range training or recreational use.

Reviews will be routed through BlueTeam, and the routing notes should include:

- Training needs identified by the reviewer, if any
- Training assignments/referrals made by the reviewer
- Confirmation that assigned training has been scheduled/completed
- Confirmation that any late camera activations were addressed, if any
- Upon completion, the reviewer will approve the incident routing and indicate "Received and Reviewed"

If a reviewer determines that there is a potential policy violation that needs to be investigated, the reviewer should forward the incident to Internal Affairs. The chain of command review of the incident will defer to the Internal Affairs investigation for disposition.

Handcuffing and Restraints

306.1 PURPOSE AND SCOPE

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

306.2 POLICY

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

306.3 USE OF RESTRAINTS

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

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

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

306.3.1 RESTRAINT OF DETAINEES

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

306.3.2 RESTRAINT OF PREGNANT PERSONS

Persons who are known to be pregnant should be restrained in the least restrictive manner that is effective for officer safety. Leg irons, waist chains, or handcuffs behind the body should not be used unless the officer has a reasonable suspicion that the person may resist, attempt escape, injure self or others, or damage property.

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

306.3.3 RESTRAINT OF JUVENILES

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

306.3.4 NOTIFICATIONS

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

306.4 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS

Handcuffs, including temporary nylon or plastic cuffs, may be used only to restrain a person's hands to ensure officer safety.

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

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

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

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

306.5 APPLICATION OF SPIT HOODS

Spit hoods are temporary protective devices designed to prevent the wearer from biting and/or transferring or transmitting fluids (saliva and mucous) to others.

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

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Officers utilizing spit hoods should ensure that the spit hood is fastened properly to allow for adequate ventilation and so that the restrained person can breathe normally. Officers should provide assistance during the movement of a restrained person due to the potential for impairing or distorting that person's vision. Officers should avoid comingling those wearing spit hoods with other detainees.

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

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

306.6 APPLICATION OF AUXILIARY RESTRAINT DEVICES

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

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

306.7 APPLICATION OF LEG RESTRAINT DEVICES

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

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

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

306.7.1 GUIDELINES FOR USE OF LEG RESTRAINTS

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

- (a) If practicable, officers should notify a supervisor of the intent to apply the leg restraint device. In all cases, a supervisor shall be notified as soon as practicable after the application of the leg restraint device.

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- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) Once secured, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.
- (d) The restrained person should be continually monitored by an officer while in the leg restraint. The officer should ensure that the person does not roll onto and remain on his/her stomach.
- (e) The officer should look for signs of labored breathing and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
- (f) When transported by emergency medical services, the restrained person should be accompanied by an officer when requested by medical personnel. The transporting officer should describe to medical personnel any unusual behaviors or other circumstances the officer reasonably believes would be potential safety or medical risks to the person (e.g., prolonged struggle, extreme agitation, impaired respiration).

306.8 REQUIRED DOCUMENTATION

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

If a person is arrested, the use of handcuffs or other restraints shall be documented in the related report.

Officers should document the following information in reports, as appropriate, when restraints other than handcuffs are used on a person:

- (a) The factors that led to the decision to use restraints.
- (b) Supervisor notification and approval of restraint use.
- (c) The types of restraint used.
- (d) The amount of time the person was restrained.
- (e) How the person was transported and the position of the person during transport.
- (f) Observations of the person's behavior and any signs of physiological problems.
- (g) Any known or suspected drug use or other medical problems.

306.9 TRAINING

Subject to available resources, the Personnel and Training Lieutenant should ensure that officers receive periodic training on the proper use of handcuffs and other restraints, including:

- (a) Proper placement and fit of handcuffs and other restraint devices approved for use by the Department.
- (b) Response to complaints of pain by restrained persons.

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- (c) Options for restraining those who may be pregnant without the use of leg irons, waist chains, or handcuffs behind the body.
- (d) Options for restraining amputees or those with medical conditions or other physical conditions that may be aggravated by being restrained.

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308.1 PURPOSE AND SCOPE

This policy provides guidelines for the use and maintenance of control devices that are described in this policy.

308.1.1 WHEN DEVICES MAY BE USED

When a decision has been made to restrain or arrest a violent or threatening suspect, an approved control device may only be used when its use appears reasonable under the circumstances.

Officers may immediately progress to a higher level of force, depending on the severity of the situation and the amount of force necessary to bring the suspect under control. If exigent circumstances exist, dual force (the deployment of more than one control device at the same time) is allowed.

308.1.2 TRAINING FOR CONTROL DEVICES

- (a) Only officers trained and having shown adequate proficiency in the use of any control device and knowledge of this department's use of force policy are authorized to carry the device. Proficiency training must be monitored and documented by a certified weapons or tactics instructor.
- (b) All training and proficiency for control devices will be documented in the officer's training file.
- (c) Officers failing to demonstrate proficiency with the weapon or knowledge of this department's use of force policy will be provided remedial training. If, after two additional attempts, an officer still cannot demonstrate proficiency with a weapon or knowledge of this department's use of force policy, the officer may be subject to discipline.

308.2 BATONS

The baton is authorized for use when, based upon the circumstances perceived by the officer, lesser force would not reasonably appear to result in the safe control of the suspect.

Sworn police and revenue personnel may only carry the baton after having received P.O.S.T. or other departmentally approved training.

308.2.1 LONG BATON

Sworn police personnel are authorized to use either the straight long baton or side handled long baton, and are required to have the straight long baton or side handled long baton readily available within their assigned vehicle.

The straight long baton or side handled long baton shall be black or natural wood tone finish, no more than thirty (30) inches in length, and made from wood, polycarbonate material, or metal alloy

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such as aluminum. The straight long baton shall be equipped with a rubber grommet for wear on the Sam Browne gun belt.

Revenue protection personnel are required to carry the straight long baton only.

Tactical Team members are authorized to use the forty-two (42) inch riot long baton during call outs only.

308.2.2 EXPANDABLE BATON

Sworn police personnel in uniform or plainclothes are authorized to carry the expandable baton (either straight or side handled) as an optional impact weapon. Revenue protection personnel shall only carry the Monadnock model SX-24 twenty-four (24) inch expandable straight baton as an optional impact weapon.

The optional expandable baton must be black or the natural metal color, and constructed of a polycarbonate material or metal alloy. When carried by personnel in uniform, the expandable baton shall be carried in a basket weave holder designed for the baton.

Personnel assigned to a train beat for an entire shift will not be required to carry their straight long baton or side handled long baton if they are carrying an authorized expandable baton.

Sworn officers assigned to vehicle patrol will still be required to have the straight long baton or side handled long baton readily available within their assigned vehicle, but may also carry an expandable baton if desired.

308.2.3 SHORT BATON

Sworn police personnel in uniform or plainclothes are authorized to carry the short baton as an optional impact weapon.

The optional short baton must be ten (10) to fourteen (14) inches long, black or natural wood tone finish, and constructed of wood, polycarbonate material, or metal alloy such as aluminum. When carried by personnel in uniform, the short baton will be carried in the sap pocket of the standard uniform pants.

Personnel assigned to a train beat for an entire shift will not be required to carry their straight long baton or side handled long baton if they are carrying an authorized short baton.

Officers assigned to vehicle patrol will still be required to have the straight long baton or side handled long baton readily available within their assigned vehicle, but may also carry a short baton if desired.

308.2.4 BATON APPLICATION

The police baton may only be used by sworn personnel and revenue guards in the manner prescribed by department training.

Officers' and revenue guards' proficiency in the use of the police baton, as well as related policy and procedures, will be tested on a regular basis.

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Batons shall not be used as an impact weapon in mere anticipation of violence or resistance. They shall not be used merely to enforce compliance with verbal orders, and never used against a person who is under restraint.

Baton blows shall not be intentionally delivered to a person's head, neck, throat, spine, kidney, or groin area unless the officer's life, or the life of another is in imminent peril.

308.2.5 OTHER POLICE IMPACT WEAPONS

The same provisions governing the use of the baton shall apply to those authorized to use any other type of police impact weapon (i.e., Yawara stick, flashlight baton). Sap gloves are prohibited.

308.2.6 MEDICAL TREATMENT

Arrange to have the affected person evaluated by qualified medical personnel as soon as practical for clearance prior to booking. Medical personnel should determine if the suspect should be transported to a hospital prior to booking. Obtain a verbal waiver if the affected person refuses medical treatment. If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practical, should be witnessed by another officer and/or medical personnel.

308.3 CHEMICAL AGENTS

The use of chemical agents for crowd control/dispersal or against barricaded suspects shall be based on the circumstances. The watch commander, incident commander or SWAT commander may authorize the delivery and use of chemical agents, evaluating all conditions known at the time and determining that lesser force would not reasonably appear to result in the safe control of the suspect(s). When practical, fire personnel should be alerted, or summoned to the scene, to control any fires and to assist in providing medical aid or chemical evacuation, when the scene is safe. Only officers or supervisors trained in the use of chemical agent weapons should discharge such devices at the scene.

308.4 OLEORESIN CAPSICUM

Only authorized personnel may possess and maintain department-issued oleoresin capsicum spray. Oleoresin capsicum spray is used to minimize the potential for injury to officers, offenders, or other persons. It should be used only in situations where such force reasonably appears justified and necessary.

308.4.1 WATCH COMMANDER RESPONSIBILITIES

All personnel authorized to carry oleoresin capsicum spray, shall complete the required course of instruction prior to possessing and using the oleoresin capsicum spray.

Flash bangs and chemical agents other than oleoresin capsicum shall only be used on the expressed orders of a command level officer, or in immediate life threatening situations. Chemical agents and tactical devices shall be tactically deployed only by officers trained in the use of the specific arrest control devices being utilized. Such devices will be deployed in a manner which will ensure the least hazard to the public.

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308.4.2 RESPONSIBILITIES

Uniformed-field personnel carrying the oleoresin capsicum spray shall carry the device on their uniform. Plain-clothes and non-field personnel may carry the oleoresin capsicum spray as authorized, consistent with the needs of their assignment, or at the direction of their supervisor.

Canisters involved in any type of malfunction or damage shall be turned in to the property clerk for exchange. Damage to District property shall also be reported to the appropriate supervisor and the cause of damage explained.

Employees should check the expiration on their canister, and shall request a new canister prior to expiration. In the case of loss or depletion due to use, the affected employee shall submit a memo to his immediate supervisor requesting the replacement and explaining the need for same. The supervisor will arrange for immediate replacement.

308.4.3 APPLICATION OF OLEORESIN CAPSICUM

Oleoresin capsicum shall not be used indiscriminately or in mere anticipation of violence or resistance.

Except under conditions which represent an extreme hazard (immediate threat of serious injury or death), oleoresin capsicum is not to be used at any distance less than three (3) feet and is not to be aimed directly at the eyes at distances less than five (5) feet.

For maximum effectiveness, a targeted suspect should be at a distance of not less than six (6) feet or more than ten (10) feet away. At distances less than six (6) feet, it is difficult to protect oneself from being accidentally contaminated.

To be effective, oleoresin capsicum should come into contact with the face of the target. Spraying the target below the face may not cause the desired effect.

Oleoresin capsicum works well on persons who are intoxicated, under the influence of drugs, mentally deranged, or against other persons having reduced sensitivity to Mace.

Due to the close range of these encounters, it is extremely important for officers to spray a one (1) second burst of oleoresin capsicum into the face of the aggressor and then immediately move laterally to either side in order to side step any attempted attack.

Once contaminated by oleoresin capsicum, officers will have a difficult time protecting themselves since the effects are immediate and can last for up to forty-five (45) minutes.

Due to the extremely effective incapacitation qualities of oleoresin capsicum, extreme care and consideration should be exercised by officers when applying oleoresin capsicum to suspects in the field, stations, vehicles and BART trains so as not to contaminate themselves, other officers, or citizens who may be trying to assist in the control or apprehension of a resistive or aggressive/combatative subject. Because oleoresin capsicum will affect passengers or bystanders, they normally should not be used on crowded trains or crowded platforms.

Do not attempt to discharge oleoresin capsicum when positioned upwind.

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308.4.4 TREATMENT FOR CHEMICAL AGENTS/OLEORESIN CAPSICUM SPRAY EXPOSURE

Persons who have been affected by the use of chemical agents/oleoresin capsicum should be promptly provided with cold water, and exposure to fresh air as soon as practical. Remove glasses or contact lenses.

Advise the person affected not to rub the skin or eyes because of the possibility of spreading the oil to other areas. Do not apply salves, creams, oils, or lotions, as they can trap the irritant.

Arrange to have the affected person evaluated by qualified medical personnel as soon as practical. Medical personnel should determine if the suspect should be transported to a hospital prior to booking. If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practical, should be witnessed by another officer and/or medical personnel.

Whenever BART Police personnel use oleoresin capsicum to subdue an arrestee, custodial personnel will be informed of this fact when transferring custody of the prisoner.

308.4.5 REPORT OF USE

All uses of chemical agents/oleoresin capsicum shall be documented in the related arrest/crime report.

308.5 LLIMS GUIDELINES

This department is committed to reducing the potential for violent confrontations when suspects are encountered. LLIMS projectiles, when used properly, are less likely to result in death or serious physical injury.

LLIMS projectiles are approved by the department and are fired from 40 mm launchers. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

308.5.1 DEPLOYMENT

Approved munitions are justified and may be used to compel an individual to cease his or her actions when such munitions present a reasonable option for resolving a situation. LLIMS may also be used when dealing with vicious animals.

Officers are not required, or compelled, to use approved munitions in lieu of other reasonable tactics if the involved officer(s) determine that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons, and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Operators shall advise dispatch via radio when LLIMS is deployed. If not on scene, sergeants shall respond immediately to assume control of the deployment and use. When an officer is deploying LLIMS, he/she is the officer in charge until the arrival of a supervisor.

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308.5.2 EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT

Examples include, but are not limited to, the following types of situations where the subject:

- (a) Is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions
- (b) Has made credible threats to harm himself or others
- (c) Is engaged in riotous behavior or is throwing rocks, bottles, or other dangerous projectiles at people and/or officers

308.5.3 DEPLOYMENT CONSIDERATIONS

Before discharging projectiles, the officer should consider the following factors:

- (a) Severity of the crime or incident.
- (b) Subject's capability to pose an imminent threat to the safety of officers or others.
- (c) If the subject is actively resisting arrest or attempting to evade arrest by flight.
- (d) The credibility of the subject's threat, as evaluated by the officers present, and the subject's physical capacity/capability.
- (e) The proximity of weapons available to the subject.
- (f) The officer's, versus the subject's, physical factors (e.g., age, size relative strength, skill level, injury/exhaustion, the number of officer(s) versus subject(s)).
- (g) The availability of other force options and their possible effectiveness.
- (h) Distance and angle to target.
- (i) Type of munitions employed.
- (j) Type and thickness of subject's clothing.
- (k) The subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

308.5.4 DEPLOYMENT DISTANCES

Officers should keep in mind the manufacturer's recommendations regarding deployment when using control devices, but are not solely restricted to use according to these manufacturer recommendations. Each tactical situation must be evaluated on the totality of circumstances at the time of deployment.

308.5.5 SHOT PLACEMENT

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted when deadly force is not reasonably justified.

Officers should generally follow the manufacturer's recommendations regarding minimum deployment distances and target areas, however, any target area or distance may be considered

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when it reasonably appears necessary to accomplish immediate incapacitation, in order to prevent serious injury or death, and other reasonable methods have failed or reasonably appear ineffective.

308.5.6 APPROVED MUNITIONS

Patrol personnel may only utilize Defense Technologies 40mm Exact Impact Munitions.

For SWAT missions, Department trained SWAT personnel may deploy other 40mm munitions at the direction of the SWAT Commander.

308.5.7 USE OF LLIMS PROJECTILES BY SUPERVISORS AND OFFICERS

A LLIMS 40mm launcher designated for the use of LLIMS projectiles, will normally be carried in the trunk of each supervisor's unit. An additional launcher should normally be available in each zone for Field Training Officers to carry in their vehicle.

Supervisors and officers will inspect this launcher at the beginning of each shift to ensure that it is in proper working order and loaded with approved projectiles only.

308.5.8 USE OF LLIMS PROJECTILES BY SWAT

Officers who have completed a departmental-training course may carry and employ 40 mm projectiles while on duty, or while performing Special Weapons and Tactics (SWAT) missions.

308.5.9 POST DEPLOYMENT

- (a) Medical personnel should be summoned for suspects shot with LLIMS and be cleared prior to booking. Medical personnel should determine if the suspect should be transported to a hospital prior to booking.
- (b) The LLIMS projectile, if found, and casing should be placed into evidence.
- (c) Photos should be taken of the impact site and placed into evidence.
- (d) LLIMS deployments and use shall be documented in a police report on the incident.
 1. A LLIMS deployment is when the LLIMS launcher is displayed in a manner intended to control or influence a suspect's actions. (Responding to a call with the launcher slung is not a deployment.)
 2. The immediate supervisor not involved in the deployment will make a copy of the report and determine if the deployment/use was appropriate. See Policy 344 for supervisor's responsibilities.
 3. The report will be forwarded to the Chief of Police via the chain of command.

308.6 TEAR GAS GUIDELINES

Personnel who have successfully completed an approved departmental-training course shall be authorized to use LLIMS projectiles. Supervisors and officers deploying LLIMS projectiles will complete an annual recertification course.

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308.7 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES

Any application of a control device and/or technique listed within this section is considered a use of force and shall be documented pursuant to Policy Manual § 300.4, 300.5 and 344. A reviewing supervisor shall complete a Supervisors' Use of Force Report and indicate whether the use of force was justifiable, unjustifiable or unintentional.

308.7.1 NON-DEADLY FORCE REVIEW

Incidents involving the use of a control devices or techniques should be reviewed in accordance with policies 300 and 302.

Conducted Electrical Weapon - TASER

309.1 PURPOSE AND SCOPE

The purpose of this policy is to provide direction on what constitutes the appropriate and authorized use of conducted electrical weapons.

309.2 POLICY

The only CEW authorized and issued by this Department is the TASER® X26. All sworn personnel shall receive Department-approved training and may be issued a TASER for use during their current assignment.

- (a) A TASER shall be assigned and carried (i.e., worn on the person, as described at the end of this Section) as a part of a uniformed officer's and sergeant's equipment, in a holster that is designed to fit the TASER® X26. Employees must request and have the approval of the Chief, or his designee, to not carry the TASER as part of their uniform equipment. Non-uniformed officers may secure the TASER in the driver's compartment of their Department vehicle.
- (b) All TASERS shall be clearly and distinctly marked with factory yellow markings on the sides to differentiate them from the duty weapon and any other device.
- (c) Officers should carry a total of two or more TASER cartridges on their person when carrying the TASER. Only Department issued cartridges are authorized.
- (d) Officers shall be responsible for ensuring that their assigned TASER is properly maintained and in good working order at all times. Whenever an assigned TASER is damaged or inoperable, the officer shall immediately notify his/her supervisor and document the specific damage or inoperability issue in a memo sent via the chain of command to the Support Services Deputy Chief. The notified supervisor shall make an effort to have a reserve TASER assigned to the officer during that shift. Reserve TASERS shall be located in the Watch Commander's cabinet at LMA. The Supervisor shall document the damaged TASER's serial number and the assigned officer's name and badge number in an email to the Support Services Lieutenant to facilitate the equipment repair.
- (e) TASERS shall not be altered from the original factory specifications and markings.
- (f) Officers who locate a broken cartridge or have an unintentional discharge shall forward the cartridge to a Department TASER armorer. It should be loosely packaged and sealed in a brown evidence bag.
- (g) TASERS with a battery life of 20% or less shall be removed from service. These TASERS should be forwarded to the Support Services Lieutenant for battery replacement.
- (h) The Support Services Lieutenant will ensure that TASER armorers conduct annual TASER memory downloads for all TASERS.

There are two authorized ways for officers to carry the TASER:

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- (a) In a holster, opposite side from the duty weapon with no portion of the TASER crossing the mid-line of the officers belt when it is holstered. When carried in this manner, the officer shall use a support-hand draw only.
- (b) In a drop leg holster, worn on the support hand side only (opposite the duty weapon).

*When carried in this manner, the officer shall use a support-hand draw only.

309.3 VERBAL AND VISUAL WARNINGS

Unless it would otherwise endanger officer safety or is impractical due to circumstances, a verbal announcement of the intended use of the TASER shall precede its application in order to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply
- (b) Provide other officers and individuals with warning that a TASER may be activated

In instances where a verbal warning is provided prior to the use of the TASER, the subject must be given reasonable time to comply.

If after a verbal warning an individual continues to express an unwillingness to voluntarily comply with an officer's lawful orders, and it appears both reasonable and practical under the circumstances, the officer may, but is not required to, display the electrical arc (provided there is not a cartridge loaded into the TASER) or built-in laser in a further attempt to gain compliance prior to the application of the TASER. The laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.

The fact that a verbal and/ or other warning was given, or reasons a warning was not given, shall be documented in any related reports.

309.4 USE OF THE TASER

It is the policy of this Department that an officer shall use only that amount of force which is objectively reasonable in light of the facts and circumstances confronting the officer at the time of the event giving rise to the use of force. Activation of the TASER is, at all times, subject to this standard. Each individual activation of the TASER, even during the same incident, becomes a separate use of force and must be objectively reasonable. In some cases, other control techniques may be more appropriate as determined by the subject's degree of resistance and/or threat level to others.

Subject to the objective reasonableness standard, an officer generally may activate the TASER when grounds to arrest or detain are present, and the subject:

- Uses force or attempts to use force against the officer or another person
- Physically resists the arrest or detention or demonstrates an intention to physically resist (such as the assumption of a fighting stance)
- Refuses to comply with verbal orders without any physical resistance or demonstrated intention to physically resist, but is believed to be armed

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- Flees in order to evade arrest or detention and presents an imminent or immediate threat to the officer or other individuals

Officers may also generally activate the TASER to subdue a vicious animal that presents a danger to the officer or other individuals.

Similarly subject to the objective reasonableness standard, an officer generally may not activate the TASER when the subject:

- Refuses to comply with verbal orders without any physical resistance or demonstrated intention to physically resist, and is not believed to be armed
- Flees in order to evade arrest or detention but does not present an imminent or immediate threat to the officer or other individuals

Because the use of the TASER is considered a proportional use of force, it should only be activated in response to a situation in which a reasonable officer would perceive some immediate danger that could be mitigated by using the TASER (*Armstrong v. Pinehurst*).

As with any law enforcement equipment, the TASER has limitations and restrictions requiring consideration before its use. The TASER should only be activated when its operator can safely approach the subject within the operational range of the TASER. Although the TASER rarely fails and is generally effective in subduing most individuals, officers should be aware of this potential and be prepared with other options in the unlikely event of such a failure.

Every application of the TASER becomes a separate use of force and must be justified by the officer.

Although not absolutely prohibited officers should avoid, absent extenuating circumstances, applying the TASER to any of the following individuals:

- (a) Obviously pregnant females
- (b) Elderly individuals, obvious juveniles, or the visibly frail
- (c) Individuals who have been recently sprayed with alcohol-based pepper spray or potentially flammable chemical agents, or who are otherwise in close proximity to any combustible material
- (d) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles)
- (e) Handcuffed persons, unless they pose an immediate threat of great bodily injury to themselves or others
- (f) Fleeing subjects (fleeing should not be the sole justification for activating a TASER against a subject; personnel should consider the severity of the offense, the subject's threat level to others, and the risk of serious injury to the subject before deciding to use a TASER on a fleeing subject)
- (g) Subjects who are simply non-compliant or who are in control of a vehicle in motion (including automobiles, motorcycles and bicycles).

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(h) Individuals suspected of being under the influence of drugs/alcohol or exhibiting symptoms of excited delirium (e.g., nudity, profuse sweating, irrational behavior, extraordinary strength beyond physical characteristics or imperviousness to pain). These subjects may be more susceptible to collateral problems and should be closely monitored (e.g., breathing pattern) following the application of the TASER until they can be examined by paramedics or other medical personnel.

Because the application of the TASER in the drive stun mode (i.e., direct contact without darts) relies primarily on pain compliance and requires close proximity to the subject, the controlling effects may be limited. Additional caution should be exercised.

When the probes are in contact with a person, no more than one officer should intentionally activate a TASER against that person.

The TASER shall not be used:

- To torture, psychologically torment, or inflict undue pain on any individual
- As a prod or escort device
- When confronting non-violent resistance, that does not represent a threat to officers or others (*Armstrong v. Pinehurst*)
- To rouse unconscious, impaired, or intoxicated individuals

Officers should not hold both a firearm and the TASER at the same time unless lethal force is justified.

In addition to the specific circumstances listed above, all evaluations of a use of force subject to the objective reasonableness standard may take into account a number of factors including, but not limited to:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time)
- (b) Officer/subject factors (i.e., age, size, relative strength, skill level, injury/exhaustion, number of officers vs. subjects)
- (c) Influence of drugs/alcohol (mental capacity)
- (d) Proximity of weapons
- (e) The degree to which the subject has been effectively restrained and his/her ability to resist, despite being restrained
- (f) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances)
- (g) Seriousness of the suspected offense or the reason for contact with the individual
- (h) Training and experience of the officer
- (i) Potential for injury to citizens, officers, and suspects
- (j) Risk of escape
- (k) Other exigent circumstances

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309.4.1 ADDITIONAL CONSIDERATIONS

As with any law enforcement equipment, the TASER has limitations and restrictions requiring consideration before its use. The TASER should only be used when its operator can safely approach the subject within the operational range of the TASER. Officers should be aware of the potential that a TASER will fail to subdue an individual, and they should be prepared with other options in the event of such a failure.

If, after a single application of the TASER, an officer is still unable to gain compliance from an individual and circumstances allow, the officer should consider:

- (a) Whether or not the probes are making proper contact
- (b) Whether use of the TASER is limiting the ability of the individual to comply
- (c) Whether other options or tactics may be more appropriate
- (d) This, however, shall not preclude an officer from multiple, reasonable applications of the TASER on an individual. When probes are in contact with the individual or when drive stun mode is in contact with the individual, no more than three activations should be administered on the same individual. The TASER should not be intentionally activated at the subject's head, neck, chest, or groin.

Because the application of the TASER in the drive stun mode (i.e., direct contact without darts) relies primarily on pain compliance and requires close proximity to the subject, the controlling effects may be limited. Additional caution should be exercised.

When the probes are in contact with a person, no more than one officer should intentionally activate a TASER against that person.

309.4.2 REPORT OF USE

It is essential that officers exercise sound discretion and carefully articulate the totality of the circumstances giving rise to every TASER application. Verbal warnings, deployments, and TASER activations shall be documented in the related crime report. The incident along with the type of usage (verbal, deployment, or activation) shall be thoroughly documented in the narrative of the police report.

When the TASER is activated the police report should include the following:

- (a) Details of the subject's level of aggression justifying activation
- (b) Number and approximate duration of cycle(s)
- (c) Point of impact of the probes and/or drive stun mode on a subject
- (d) Response and actions of the subject after activation
- (e) Number of officers on scene
- (f) Names of individuals who provided medical care on scene and the names of medical personnel who removed the probes
- (g) Serial numbers of the TASER and cartridge

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- (h) Photographic evidence, to include the subject prior to and after probe removal, the drive stun contact point, and any injuries incurred by the subject or officer as result of the incident
- (i) Name of the person receiving custody of the subject and advised of the CEW activation on the subject

Supplemental reports shall be completed by personnel who are present during a TASER activation.

A TASER armorer shall download the on-board CEW memory and save it with the related crime report; the on-scene supervisor is responsible for assigning this task. TASERS will not be taken out of service after an activation unless directed by a command-level officer.

309.4.3 SUPERVISORY RESPONSIBILITY

A supervisor shall respond to the scene of any TASER activation including negligent or unintentional activations. The supervisor shall confirm (with the officer) that any probes that have pierced a subject's skin are removed by medical personnel and that the subject is medically cleared, as outlined in Section 309.5, prior to being booked into a detention facility. The supervisor will confirm that all evidence (including the TASER's memory record) has been collected, review and approve the related crime reports, and provide a replacement CEW cartridge(s) as necessary.

Upon reviewing the report, the supervisor must make a copy for review by the officer's chain of command and complete a Supervisor's Use of Force Report. The reviewing supervisor must review the use of the CEW and make a recommendation on whether the use of the CEW was justified or not. A copy of the approved police report and completed Use of Force Report will be forwarded to the Chief of Police via the chain of command. The incident will be reviewed in accordance with Policies 300 and 301.

Justifiable: When the circumstances, at the time of using the CEW, were consistent with the provisions of this Policy, the use of the device shall be classified as justifiable.

Unjustifiable: When the circumstances, at the time of using the CEW, were not consistent with the provisions of this Policy, the use of the device shall be classified as unjustifiable.

The investigating supervisor will forward the police report and the Use of Force Report to the Use of Force Review Committee Chairperson. The Use of Force Committee Chairperson will forward the police report and the Use of Force Report to the Operations Division Deputy Chief for review.

The Operations Division Deputy Chief will forward the police report and Use of Force Report to the Professional Standards and Training Division Deputy Chief (Internal Affairs Section) who will log the police report and Use of Force Report and send them to the Chief of Police for review.

Negligent or unintentional activations of a TASER cartridge shall be reported immediately to a supervisor. The incident shall not be documented as a use of force. The incident shall be documented in a memo, via the chain of command to the Division Deputy Chief to which the employee reports. This memo will include the TASER and cartridge serial numbers and an explanation of the circumstances surrounding the activations. Officers responsible for accidental,

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unintentional or unjustifiable discharges shall be subject to progressive discipline. Negligent activations shall be included in the Departments Early Warning System.

309.5 MEDICAL TREATMENT

Only qualified medical personnel, including certified paramedics, should remove TASER darts from a person's body. Used TASER darts shall be considered a sharp biohazard, similar to a used hypodermic needle. Universal precautions should be taken accordingly.

All detained or arrested persons who have been struck by TASER darts or who have been subjected to the electric discharge of the device shall be transported, by medical personnel, for medical assessment at a local medical facility as soon as practicable.

Special consideration (including enhanced observation and a Code 3 medical response) should be provided to individuals who fall under any of the following categories:

- (a) The person is suspected of being under the influence of a controlled substance(s) and/or alcohol
- (b) The person may be pregnant
- (c) The person reasonably appears to be in need of medical attention
- (d) The TASER darts are lodged in a sensitive area (e.g., groin, female breast, near the eyes)
- (e) The person requests medical treatment

In addition, persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond physical characteristics, imperviousness to pain, or who require a protracted physical encounter with multiple officers to bring them under control, may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable (a Code 3 medical response). All individuals shall be medically cleared, prior to booking.

If any person subjected to an unintentional application refuses medical attention, such a refusal should, absent extenuating circumstances, be witnessed by medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or interview with the individual, any refusal should be included.

The transporting officer shall inform any person receiving custody or any person placed in a position of providing care that the individual has been subjected to the application of the TASER.

309.6 TRAINING

In addition to the initial Department approved training required to carry and use a TASER, annual training will be provided to all sworn personnel. A reassessment of an officer's knowledge and/or practical skills may be required at any time if deemed appropriate.

A certified TASER instructor should ensure that CEW training material and lesson plans include the following:

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- (a) A review of this Policy
- (b) A review of the Use of Force Policy 300
- (c) Target area considerations, to include techniques or options to reduce the intentional application of probes near the head, neck, chest, and groin
- (d) De-escalation techniques
- (e) Scenario-based training

309.6.1 TASER INSTRUCTOR TRAINING

The below, listed training is from the Department's Training Plan and is either mandatory, essential, or desirable (the Training Plan is located within the G/drive, Training Unit folder):

- Mandatory TASER training - Basic instructor course
- Desirable TASER training - TASER armorer certification course, advanced instructor course

309.6.2 REMEDIAL TRAINING

Any employee who acts in a grossly unsafe manner or demonstrates dangerous and/or extremely poor decision-making skills in the deployment of and/or application of any use-of-force related task (in the field or in training) shall be required to attend mandatory remedial training prior to returning to full-duty status.

If, in the opinion of the supervisor/primary instructor at the site of the training, the employee's decision making and actions are so unsafe that if returned to full duty he/she may be a safety hazard to him or herself, fellow employees, and/or the public, the supervisor/primary instructor shall recommend additional mandatory remedial training for the employee. The primary instructor shall contact the on-duty Watch Commander as soon as practicable and make the recommendation for additional mandatory remedial training.

If the request for additional training is approved, the employee shall be removed from an on-duty patrol status and placed into a temporary administrative position until such time as that employee satisfactorily completes the mandatory remedial training.

Repeated failures to correct such deficiencies may result in implementation of the Progressive Discipline System, similar to Policy Section 461.5.1. Nothing in this Policy precludes the Department from requiring an employee to successfully complete remedial training to correct lesser safety violations and/or marginal tactical decision-making skills, without the employee first being removed from full-duty status.

309.7 TASER® X26 NOMENCLATURE

- 1 - Probes
- 2 - AFID Tags
- 3 - TASER Cartridge

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- 4 - Mechanical Sight
- 5 - Serial Number Plate
- 6 - Illumination Selector Switch
- 7 - Safety Switch
- 8 - Central Information Display (CID)
- 9 - DPM Release Button
- 10 - Stainless Steel Shock Plate
- 11 - Digital Power Magazine (DPM)
- 12 - Trigger
- 13 - Low Intensity Lights (LIL)
- 14 - Built-in Laser (pointing to beam)

See attachment: [taser.JPG](#)

Officer-Involved Shootings and Deaths

310.1 PURPOSE AND SCOPE

The purpose of this policy is to establish policy and procedures for the investigation of an incident in which a person is injured or dies as the result of an officer-involved shooting or dies as a result of other action of an officer.

In other incidents not covered by this policy, the Chief of Police may decide that the investigation will follow the process provided in this policy.

310.2 POLICY

The policy of the Bay Area Rapid Transit Police Department is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner.

310.3 TYPES OF INVESTIGATIONS

Officer-involved shootings and deaths involve several separate investigations. The investigations may include:

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved officer's actions.
- An administrative investigation as to policy compliance by involved officers.
- A civil investigation to determine potential liability.

310.4 CONTROL OF INVESTIGATIONS

Investigators from surrounding agencies may be assigned to work on the criminal investigation of officer-involved shootings and deaths. This may include at least one investigator from the agency that employs the involved officer.

Jurisdiction is determined by the location of the shooting or death and the agency employing the involved officer. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.

310.4.1 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

The investigation of any possible criminal conduct by the suspect is controlled by the agency in whose jurisdiction the suspect's crime occurred. For example, the Bay Area Rapid Transit Police Department would control the investigation if the suspect's crime occurred in San Francisco Bay Area Rapid Transit District.

If multiple crimes have been committed in multiple jurisdictions, identification of the agency that will control the investigation may be reached in the same way as with any other crime. The investigation may be conducted by another agency, at the discretion of the Chief of Police and with concurrence from the other agency.

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310.4.2 CRIMINAL INVESTIGATION OF OFFICER ACTIONS

The control of the criminal investigation into the involved officer's conduct during the incident will be determined by the employing agency's protocol. When an officer from this department is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

Requests made of this department to investigate a shooting or death involving an outside agency's officer shall be referred to the Chief of Police or the authorized designee for approval.

310.4.3 ADMINISTRATIVE AND CIVIL INVESTIGATION

Regardless of where the incident occurs, the administrative and civil investigation of each involved officer is controlled by the respective employing agency.

310.4.4 INVESTIGATION RESPONSIBILITY MATRIX

The following table helps identify the possible scenarios and responsibilities for the investigation of officer-involved shootings. This may vary based on the incident county and their protocol.

	Criminal Investigation of Suspect(s)	Criminal Investigation of Officer(s)	Civil Investigation	Administrative Investigation
BPD Officer in This Jurisdiction	BPD Investigators	BPD Investigators w/District Attorney's Office	BART Legal Counsel	BPD Office of Professional Standards / BART Office of the Independent Police Auditor
Allied Agency's Officer in This Jurisdiction	BPD Investigators	District Attorney's Office	Involved Officer's Department	Involved Officer's Department
BPD Officer in Another Jurisdiction	Agency where incident occurred	Decision made by agency where incident occurred	BART Legal Counsel	BPD Office of Professional Standards / BART Office of the Independent Police Auditor

310.5 INVESTIGATION PROCESS

The following procedures are guidelines used in the investigation of an officer-involved shooting or death. The following checklist is a guideline that should be followed following an incident involving an officer-involved shooting or death;

- The BART Police Department officer assigned to the original call is in command of the scene until relieved by a supervisor or other person of higher authority. This includes those instances where more than one agency is participating or assisting in the investigation in BART's jurisdiction.
- Ensure that all necessary life-saving efforts are undertaken for any injured persons.

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- The Incident Commander is responsible for deployment of personnel and equipment necessary to provide for the containment of the crime scene, security of the surrounding area, preservation of evidence, and compliance with all reporting requirements. The Incident Commander shall request all necessary resources to fulfill this responsibility.
- All necessary notifications shall be made in accordance with section 310.5.3 of this policy
- Obtain a public safety statement from involved officer(s) to establish crime scene boundaries, location of injured persons or other information to ensure the safety of the public regarding the incident.
- Assign an officer to ride with injured suspect(s) in the ambulance with a recording device to maintain custody of arrestee, document any spontaneous statements / dying declarations, and preserve any physical evidence.
- Only assigned investigative and emergency medical personnel will be allowed within the perimeter of the crime scene, unless authorized by the Incident Commander or higher authority.
- Locate, identify and seek voluntary compliance of witnesses to remain at the scene or other designated area to be interviewed regarding the incident.
- Coordinate a systematic canvass of the area for other witnesses, locating unaccounted vehicles, weapons, people, etc.
- Ensure radio broadcasts and teletypes regarding outstanding suspects, vehicles or witnesses are transmitted as soon as practical.
- The Incident Commander should conduct an on scene briefing once all investigative entities have arrived on scene. The briefing should include basic factual information known at that time such as type of call, date and time of incident, number of officers involved, summary of public safety statement(s), etc.
- Coordinate the preservation / collection of all evidence, including but not limited to, the officer's body worn camera, gunshot residue, etc. with Evidence Technicians and the Criminal Investigations Division.
- All personnel entering the scene will check in with the crime scene scribe and record the entry / exit time and reason for entering on the crime scene log.
- Any person(s) entering the crime scene may be ordered by the Incident Commander to prepare a supplemental report regarding their reasons for entering the crime scene and their actions while there.
- All officers directly involved in the shooting should be isolated from the immediate crime scene as soon as practical. Another officer or supervisor should be assigned to remain with these officers to attend to any personal needs that may arise until the arrival of assigned investigative units.
- If more than one officer is directly involved in the shooting, the directly involved officers should be separated as soon as possible and should remain separated until after they have given a statement to the investigators.

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- The officer's weapon will become evidence if the suspect was struck or if there is any indication that the weapon malfunctioned.
- The Criminal Investigations Division Lieutenant, or designee, will be responsible for ensuring that a replacement weapon is issued when the officer's weapon is taken as evidence.
- Coordinate with the Criminal Investigations Division / Internal Affairs Division to ensure that a drug / alcohol test is administered to the involved officer(s) (requested through the Operations Control Center (OCC) Manager). Accommodations should be made for the involved officer(s) to be later driven to his / her place of residence after the conclusion of the initial investigation.
- In cases of officer involved shootings where a fatality is involved, the Chief of Police should designate a Department representative to be assigned as a liaison to the family of the decedent. To the extent allowed by law, the liaison shall be responsible for keeping the family informed about updates to the investigation and the status of involved personnel.

310.5.1 OFFICER IN CHARGE - RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting, the first uninvolved BART PD officer will be the officer-in-charge and will assume the responsibilities of a supervisor until properly relieved. This officer should, as appropriate:

- (a) Secure the scene and identify and eliminate hazards for all those involved.
- (b) Take reasonable steps to obtain emergency medical attention for injured individuals.
- (c) Request additional resources from the Department or other agencies.
- (d) Coordinate a perimeter or pursuit of suspects.
- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor upon arrival.

310.5.2 WATCH COMMANDER RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the Watch Commander shall be responsible for coordinating all aspects of the incident until he/she is relieved by the Chief of Police or a Division Commander.

All outside inquiries about the incident shall be directed to the Watch Commander.

310.5.3 NOTIFICATIONS

The following notifications shall be made soon as practical after an officer involved shooting:

- BART Police Communications Center
- On-duty supervisor and officers responsible for the area in which the incident occurred
- On-duty Watch Commander or on-call command officer
- If other than BART Police, the agency having primary investigative responsibility

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- Detective Sergeant and on-call detective
- Chief of Police and appropriate command officers
- Operations Control Center (If necessary)
- County Officer Involved Shooting Protocol rollout team
- Department of Media Affairs as directed by the Chief
- Coroner (if necessary)
- BPMA/BPOA Representative
- Trauma Response Team
- Office of the Independent Police Auditor

All outside inquiries about the incident shall be directed to the Watch Commander.

310.6 CRIMINAL INVESTIGATION

The District Attorney's Office is responsible for the criminal investigation into the circumstances of any officer-involved shooting or death.

If available, investigative personnel from this department may be assigned to partner with investigators from outside agencies or the District Attorney's Office to avoid duplicating efforts in related criminal investigations.

Once public safety issues have been addressed, criminal investigators should be given the opportunity to obtain a voluntary statement from involved officers and to complete their interviews.

The following shall be considered for the involved officer:

- (a) BART PD supervisors and Internal Affairs Division personnel should not participate directly in any voluntary interview of BART PD officers. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry. The BART Independent Police Auditor and Independent Police Investigators shall be provided with the same opportunity to monitor interviews and provide criminal investigators with topics for inquiry.
- (b) If requested, any involved officer will be afforded the opportunity to consult individually with a representative of his/her choosing or an attorney prior to speaking with criminal investigators (Government Code § 3303(i)). However, in order to maintain the integrity of each involved officer's statement, involved officers shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.
- (c) If any involved officer is physically, emotionally or otherwise not in a position to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.
- (d) Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators.

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310.6.1 REPORTS BY INVOLVED BART PD OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved BART PD officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals (Government Code § 3304(a)).

While the involved BART PD officer may write the report, it is generally recommended that such reports be completed by assigned investigators, who should interview all involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved BART PD officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures but should also be included for reference in the investigation of the officer-involved shooting or death.

310.6.2 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an officer-involved shooting or death may become unavailable or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available personnel for the following:

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

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- (c) Promptly contacting the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

310.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of BART PD officers to determine conformance with department policy. The investigation will be conducted under the supervision of the Internal Affairs Division and will be considered a confidential officer personnel file.

Interviews of members shall be subject to department policies and applicable laws (see the Personnel Complaints Policy).

- (a) Any officer involved in a shooting or death may be requested or administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
 1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his/her prior statement before proceeding with any subsequent interviews.
- (c) In the event that an involved officer has elected to not provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
 2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed (Government Code § 3303(i)).
 3. Administrative interviews should be recorded by the investigator. The officer may also record the interview (Government Code § 3303(g)).
 4. The officer shall be informed of the nature of the investigation. If an officer refuses to answer questions, he/she should be given his/her *Lybarger* or *Garrity* rights and ordered to provide full and truthful answers to all questions. The officer shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.

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5. The Internal Affairs Division shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
6. Regardless of whether the use of force is an issue in the case, the completed administrative investigation shall be submitted to the Use of Force Review Board, which will restrict its findings as to whether there was compliance with the Use of Force Policy.
7. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

310.8 MEDIA RELATIONS

Any media release shall be prepared with input and concurrence from the supervisor and department representative responsible for each phase of the investigation. Releases will be available to the Watch Commander, Criminal Investigations Division Commander and Media Relations in the event of inquiries from the media.

The Department shall not subject any involved BART PD officer to visits by the media (Government Code § 3303(e)). No involved BART PD officer shall make any comment to the media unless he/she is authorized by the Chief of Police or a Division Commander. Department members receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

310.9 DEBRIEFING

Following an officer-involved shooting or death, the Bay Area Rapid Transit Police Department shall conduct both a critical incident/stress debriefing and a tactical debriefing.

310.9.1 TACTICAL DEBRIEFING

A tactical debriefing should take place to identify any training or areas of policy that need improvement. The Chief of Police should identify the appropriate participants. This debriefing should not be conducted until all involved members have provided recorded or formal statements to criminal and/or administrative investigators.

310.9.2 CRITICAL INCIDENT/STRESS DEBRIEFING

A critical incident/stress debriefing should occur as soon as practicable. The Support Services Division Commander is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law, or a valid court order.

Attendance at the debriefing shall only include those members of the Department directly involved in the incident, which can include support personnel (e.g., dispatchers, other civilian personnel).

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Family or other support personnel may attend with the concurrence of those involved in the incident. The debriefing shall be closed to the public and should be closed to all other members of the Department, including supervisory and Internal Affairs Division personnel.

310.10 REPORTING

If the death of an individual occurs in the Bay Area Rapid Transit Police Department jurisdiction and qualifies to be reported to the state as a justifiable homicide or an in-custody death, the Operations Division Commander will ensure that the Records Supervisor is provided with enough information to meet the reporting requirements (Penal Code § 196; Penal Code § 13022; Government Code § 12525).

310.11 OFFICE OF THE INDEPENDENT POLICE AUDITOR (OIPA)

- (a) After notification of any officer-involved shooting or death has been made to OIPA pursuant to Section 310.5.3, the BART Independent Police Auditor and the Independent Police Investigator(s) shall be granted access to the scene(s) of the incident(s) in the same manner as granted to BPD Internal Affairs Investigators.
- (b) The BART Independent Police Auditor and the Independent Police Investigator(s) shall be granted the same opportunity as BPD Internal Affairs investigators to monitor criminal investigation interviews and to submit requests for questions to the criminal interviewers.

310.12 RETURN TO ACTIVE DUTY

The following checklist guideline outlines the protocol which should be followed to facilitate the involved officer's return to active duty after an officer involved shooting where death / serious bodily injury occurs.

- The involved officer(s) are not cleared for regular patrol duties until the results of the mandatory drug testing individually clears the involved officer(s).
- The involved officer(s) successfully completes an individual session with a Department approved psychologist.
- The Chief of Police, or designee, may keep the officer(s) from active duty if they believe, based upon the totality of the circumstances, that placing the employee on active duty poses an unreasonable safety and/or security risk to the Department, employees or the public.
- The Chief of Police, or designee, may keep the officer(s) from active duty if a preliminary determination appears to show that the officer's conduct was not in compliance with policy.
- A member of Command Staff should consult with the involved officer(s) individually to confirm that they feel ready to return to full duty.
- The involved officer(s) shall successfully complete a firearms qualification with the Department Rangemaster.

Firearms

312.1 PURPOSE AND SCOPE

This policy provides guidelines for issuing firearms, the safe and legal carrying of firearms, firearms maintenance and firearms training.

This policy does not apply to issues related to the use of firearms that are addressed in the Use of Force or Officer-Involved Shootings and Deaths policies.

This policy only applies to those members who are authorized to carry firearms.

312.1.1 PERSONNEL AUTHORIZED TO POSSESS FIREARMS WHILE ON-DUTY

- (a) All sworn personnel who have successfully completed a department authorized course of firearms instruction and qualified with the firearm at a department firearms qualification.
- (b) Other police department employees performing the duties of Revenue Protection Guard and after successful completion of the PC 832 course of firearms instruction and qualified with the firearm at a department firearms qualification.

312.2 POLICY

The Bay Area Rapid Transit Police Department will equip its members with firearms to address the risks posed to the public and department members by violent and sometimes well-armed persons. The Department will ensure firearms are appropriate and in good working order and that relevant training is provided as resources allow.

312.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS

Members shall only use firearms that are issued or approved by the Department and have been thoroughly inspected by the Rangemaster. Except in an emergency or as directed by a supervisor, no firearm shall be carried by a member who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including but not limited to edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express written authorization of the member's Division Commander. This exclusion does not apply to the carrying of a single folding pocketknife that is not otherwise prohibited by law.

312.3.1 DUTY HANDGUNS

The authorized departmental issued handgun is the Sig Sauer P320 chambered in 9mm parabellum. The department will issue weapons only to personnel who will carry the Sig Sauer P320 as their primary duty weapon while in uniform and/or plainclothes assignments. Members of the Range Staff may be issued Sig Sauer P320 pistols for training purposes.

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Personnel may select and have issued an appropriate sized Sig Sauer grip module to obtain a satisfactory firing grip on the P320 pistol (subject to availability).

(a) Duty Handgun Modifications:

Department issued P320 firearms shall not be altered in any way to change its general appearance or function without written Rangemaster approval. A copy of the written approval will be kept in the employees' personnel file. This includes modifications of the grip module, change or modification of the Fire control unit (i.e. Sig Sauer flat/straight triggers), change or addition of sights (including laser sights), slide or any mechanism. All modifications will be at the expense of the desiring officer. Any department firearm returned to the department must be returned in its original configuration.

Modifications that will not be approved include:

1. A polymer frame with any finish other than black.
2. A barrel length that has been altered from the original manufacturer's specifications.
3. The surface engraved, etched, or inlaid with other than a personal alpha/numeric identifier unless approved by the Rangemaster.

Only department armorers may remove the firing control unit from the grip module and change sights. Any substitution of the grip module must be performed by a Department Armorer.

Any substitution of the grip module or other change to the P320 will require personnel to conduct a test fire of the firearm at a department approved range.

b. Authorized Optional Duty Handguns:

1. Personnel who requested and were authorized (2018 and prior) to carry an optional duty handgun may continue to carry their previously authorized duty weapon, however any personnel hired after 2017 will only be authorized to carry a department issued Sig Sauer P320 as a duty weapon. Personnel choosing not to carry the department issued pistol may carry any 9mm, .40 S&W, or .45 ACP caliber pistol approved by the Support Services Deputy Chief. Authorized manufacturers include: Beretta, Glock, Heckler & Koch, Sig Sauer, Smith & Wesson, Colt, Kimber, Springfield Armory, Para Ordinance, STI, Walther, and others as approved by the Rangemaster. A copy of the authorization will be kept in the employees personnel file.

2. The pistol may be a single-action or double-action/safe-action type, semi-automatic, capable of carrying at least seven (7) rounds in its magazine. Personnel may carry a single-action type pistol after successfully completing a departmental single-action pistol training course or equivalent training and successfully completing a duty qualification course.

- i. Authorized finishes include blue, black, parkerized, nickel or stainless steel.
- ii. Personnel primarily assigned to administrative assignments may (subject to availability) be issued an additional Sig p320 pistol but in a compact size. Compact pistol

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configurations shall be returned to the department when member concludes service in the administrative assignment.

All expenses incurred with regards to the optional firearm will be borne by the member choosing to carry the weapon, except for duty ammunition and a reasonable amount of practice ammunition annually.

Any firearm used during an officer-involved shooting, may be retained as evidence for at least one year without compensation to the employee.

312.3.2 SECONDARY (BACK-UP) HANDGUNS ARE NOT AUTHORIZED BY THIS DEPARTMENT

312.3.3 SHOTGUNS

The department-issued shotgun is a Remington Model 870 pump action 12-gauge shotgun. Shotguns, when carried in police vehicles or District armored vehicles, must be secured in locking gun racks. The shotgun shall be carried in the "cruiser-ready" configuration (magazine tube loaded to capacity with 12-gauge, double-ought (00) buckshot, hammer forward on an empty chamber, and safety on). Additional rounds of double-ought buckshot shall be carried in the side saddle ammunition carrier attached to the weapon. Personnel shall carry only department authorized ammunition. Authorized ammunition is Federal Premium 00 Buck. Use of the police shotgun in enforcement situations shall be guided by officer/revenue guard discretion when warranted by the seriousness and hazards of the situation confronting the officer/revenue protection guard.

Shotguns will be removed from vehicles whenever the vehicle will not be driven on the on-coming shift.

312.3.4 PATROL RIFLES

The authorized department-issued patrol rifles are the Colt 6920 .223 and Sig Sauer M400 chambered in .223 and/or 5.56 mm.

Members may deploy the patrol rifle in any circumstance where the member can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include, but are not limited to:

- (a) Situations where the member reasonably anticipates an armed encounter.
- (b) When a member is faced with a situation that may require accurate and effective fire at long range.
- (c) Situations where a member reasonably expects the need to meet or exceed a suspect's firepower.
- (d) When a member reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage.
- (e) When a member reasonably believes that a suspect may be wearing body armor.
- (f) When authorized or requested by a supervisor.

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- (g) When needed to euthanize an animal.

When not deployed, the patrol rifle shall be properly secured consistent with department training in a locking weapons rack in the patrol vehicle.

312.3.5 AUTHORIZED OFF-DUTY FIREARMS

The carrying of firearms by members while off-duty is permitted by the Chief of Police but may be rescinded should circumstances dictate (e.g., administrative leave). Members who choose to carry a firearm while off-duty, based on their authority as peace officers, will be required to meet the following guidelines:

- (a) The member may use his/her duty firearm or may use a personally owned firearm that is carried and inspected in accordance with the Personally Owned Duty Firearms requirements in this policy. A member carrying his/her duty firearm will be deemed to have complied with (c), (d) and (e) of this section.
 - 1. The purchase of the personally owned firearm and ammunition shall be the responsibility of the member.
- (b) The firearm shall be carried concealed at all times and in such a manner as to prevent accidental unintentional cocking, discharge or loss of physical control.
- (c) It will be the responsibility of the member to submit the firearm to the Rangemaster for inspection prior to being personally carried. Thereafter the firearm shall be subject to periodic inspection by the Rangemaster.
- (d) Prior to carrying any off-duty firearm, the member shall demonstrate to the Rangemaster that he/she is proficient in handling and firing the firearm and that it will be carried in a safe manner.
- (e) The member will successfully qualify with the firearm prior to it being carried.
- (f) Members shall provide written notice of the make, model, color, serial number and caliber of the firearm to the Rangemaster, who will maintain a list of the information.
- (g) If a member desires to use more than one firearm while off-duty, he/she may do so, as long as all requirements set forth in this policy for each firearm are met.
- (h) Members shall only carry department-authorized ammunition.
- (i) When armed, officers shall carry their badges and Bay Area Rapid Transit Police Department identification cards under circumstances requiring possession of such identification.

312.3.6 AMMUNITION

Members shall carry only department-authorized ammunition. Members shall be issued fresh duty ammunition in the specified quantity for all department-issued firearms during the member's firearms qualification. Replacements for unserviceable or depleted ammunition issued by the Department shall be dispensed by the Rangemaster when needed, in accordance with established policy.

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The department authorized handgun ammunition is 9mm Federal Premium HST 147 grain, .40 caliber Federal Premium HST 180 grain and .45 caliber Federal Premium HST 230 grain.

The only authorized ammunition for the 12 gauge shotgun is Federal Premium 00 Buck.

The only authorized ammunition for the AR15 platform is Federal Premium Hi-Shok SP 64 grain and Federal Premium Bonded SP 62 grain.

Members carrying personally owned authorized firearms of a caliber differing from department-issued firearms shall be responsible for obtaining fresh duty ammunition in accordance with the above, at their own expense.

312.3.7 SPECIAL WEAPONS AND TACTICS (SWAT) WEAPONS AND EQUIPMENT

Members assigned to SWAT may modify and utilize firearms, ammunitions, and accessories other than those listed in the previous sections of this policy manual with Team Commander and Department Rangemaster approval. Said weapons, modifications, and accessories may be utilized on patrol as well as in a SWAT capacity.

- SWAT members are allowed to utilize firearms chambered in .308.
 - Said members must successfully complete a semi-annual Department approved SWAT Sniper Qualification Course.
 - The department approved and issued .308 caliber ammunitions are the Ruag Swiss P Styx 167 grain, Tactical 164 grain, and Amour Piercing (AP) 196 grain.
- SWAT members are allowed to utilize weapons of various colors as long as it serves a tactical purpose as approved by the Department Rangemaster.
- Members who have been assigned to SWAT are authorized to utilize variable power optics, night vision devices (including visible and infrared lasers), thermal imaging devices, and suppressors other than the Sig Sauer SRD556.

312.4 EQUIPMENT

Firearms carried on- or off-duty shall be maintained in a clean, serviceable condition. Maintenance and repair of authorized personally owned firearms are the responsibility of the individual member.

312.4.1 REPAIRS OR MODIFICATIONS

Each member shall be responsible for promptly reporting any damage or malfunction of an assigned firearm to a supervisor or the Rangemaster.

Firearms that are the property of the Department or personally owned firearms that are approved for department use may be repaired or modified only by a person who is department-approved and certified as an armorer or gunsmith in the repair of the specific firearm. Such modification or repair must be authorized in advance by the Rangemaster.

Any repairs or modifications to the member's personally owned firearm shall be done at his/her expense and must be approved by the Rangemaster.

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312.4.2 HOLSTERS

Only department-approved holsters shall be used and worn by members. Members shall periodically inspect their holsters to make sure they are serviceable and provide the proper security and retention of the handgun.

312.4.3 TACTICAL WEAPON MOUNTED LIGHTS

Tactical lights may only be installed on a firearm carried on- or off-duty after they have been examined and approved by the Rangemaster. Once the approved tactical lights have been properly installed on any firearm, the member shall qualify with the firearm to ensure proper functionality and sighting of the firearm prior to carrying it.

Personnel may utilize weapon-mounted lights on their duty and off-duty firearms. Weapon-mounted lights are intended to be used for searching, threat assessment, and target acquisition of potentially dangerous persons. Weapon-mounted lights shall not be used as ordinary flashlights for routine lighting purposes.

Authorized brands include Blackhawk, Surefire, Streamlight, and any others approved by the Rangemaster.

Weapon-mounted lights are subject to the following requirements:

- (a) Personnel must demonstrate proficiency with the weapon-mounted light prior to carrying it in an on-duty capacity.
- (b) The weapon shall be carried with the light affixed to it. This will require a holster designed to accommodate the weapon and light combination.
- (c) Personnel equipped with a weapon-mounted light shall also have a handheld light readily available to them at all times while on-duty.

312.5 SAFE HANDLING, INSPECTION AND STORAGE

Members shall maintain the highest level of safety when handling firearms and shall consider the following:

- (a) Members shall not unnecessarily display or handle any firearm.
- (b) Members shall be governed by all rules and regulations pertaining to the use of the range and shall obey all orders issued by the Rangemaster. Members shall not dry fire or practice quick draws except as instructed by the Rangemaster or other firearms training staff.
- (c) Members shall not clean, repair, load or unload a firearm anywhere in the Department, except where clearing barrels are present.
- (d) Shotguns or rifles removed from vehicles or the equipment storage room shall be loaded and unloaded in the parking lot and outside of the vehicle, using clearing barrels.
- (e) Members shall not place or store any firearm, ammunition, or other weapon on department premises, or at any other location, except where the place of storage is locked. No one shall carry firearms into the jail section or any part thereof when

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securing or processing an arrestee, but shall place all firearms in a secured location. Members providing access to the jail section to persons from outside agencies are responsible for ensuring firearms are not brought into the jail section.

- (f) Members shall not use any automatic firearm, heavy caliber rifle, gas or other type of chemical weapon or firearm from the armory, except with approval of a supervisor.
- (g) Any firearm authorized by the Department to be carried on- or off-duty that is determined by a member to be malfunctioning or in need of service or repair shall not be carried. It shall be promptly presented to the Department or a Rangemaster approved by the Department for inspection and repair. Any firearm deemed in need of repair or service by the Rangemaster will be immediately removed from service. If the firearm is the member's primary duty firearm, a replacement firearm will be issued to the member until the duty firearm is serviceable.

312.5.1 FIREARMS RANGE

The Department utilizes firearms ranges located throughout the Bay Area open to law enforcement use. Range training is held in order to improve and enhance public and officer safety. The annual training shall include marksmanship, weapon manipulation, qualifications, low light operation, mindset, officer safety, use of force, less lethal application, communication, stress inoculation, weapon transitions, active shooter, tactical first aid other tactical topics.

Weapons used during departmental range training may consist of departmental issued and/or authorized platforms: pistol, rifle, shotgun, LLIMS, and TASER. Targets used at department ranges will be approved by the Rangemaster

Range restrictions depend on the various rules of ranges used and will be determined by the range owner. All officers attending department training shall abide by the four basic firearms safety rules:

- (a) Consider all guns to be loaded unless positively confirmed otherwise.
- (b) Never let the muzzle cover anything you are not prepared to shoot.
- (c) Keep finger off trigger until sights are on the target and you have made a conscious decision to shoot.
- (d) Be sure of your target (positive I.D.) and what is beyond it.

Firearms Safety rules shall be reviewed at all department firearms training by range staff. Staff shall also identify the locations of the trauma and first aid kit with all attendees.

Most types of new factory ammunition for the above weapon platforms are approved for range use. The only exceptions are tracer rounds and armor piercing rounds (unless on SWAT). Caution should also be used when using metal targets. Instructors should ensure proper safety measures have been addressed (i.e. distance, safety glasses for students, target/shooter angle). Minimum range safety equipment shall include eye protection, ear protection, trauma kit, first aid kit, and cell phone for communication with 911.

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312.5.2 RANGE STAFF DUTIES

Members of the Range Staff will be assigned to assist the Rangemaster and/or Range Sergeants in conducting the established training program and will report directly to the Rangemaster or Range Sergeant. The range officers, under the direction of the Rangemaster or Range Sergeant, shall have authority to enforce rules and policies established by the Chief of Police.

At the range, the senior firearms instructor shall serve as the range supervisor if no range sergeant is present. It will be the responsibility of the range sergeant/supervisors to ensure range safety protocols are being followed.

All firearms instructors are required to attend basic firearms instructor school. Firearms instructor update training and Tactical Medicine Training is recommended every 5 years. Firearm Instructors may also serve as Department armorers. Armorers are required to re-certify every three years to maintain their armorer status.

312.5.3 INSPECTION AND STORAGE

All Department firearms will be inspected annually by the Rangemaster a qualified armorer, weapons instructor or designee.

Handguns shall be inspected regularly and upon access or possession by another person. Shotguns and rifles shall be inspected at the beginning of the shift by the member to whom the weapon is issued. The member shall ensure that the firearm is carried in the proper condition and loaded with approved ammunition. Inspection of the shotgun and rifle shall be done while standing outside of the patrol vehicle. All firearms shall be pointed in a safe direction or into clearing barrels.

Firearms may be safely stored in lockers at the end of the shift. Handguns may remain loaded if they are secured in an appropriate holster. Shotguns and rifles shall be unloaded in a safe manner outside the building and then stored.

If a firearm fails any field function test, it will be deemed unsafe and taken out of service. As soon as possible, notification should be made to the Rangemaster. A replacement firearm will be issued and a qualification (if applicable) be conducted as soon as possible. The unsafe firearm(s) will be stored unloaded in a police department safe as to not be re-issued until an inspection by the Rangemaster or designee. The firearm shall not be returned to service until inspected by the Rangemaster or designee.

312.5.4 INVENTORY

An accurate inventory of all department firearms shall be maintained by the Department Rangemaster and quartermaster. The data collection mechanisms include TMS (Training Management System), Armorerlink and Excel.

312.5.5 STORAGE AT HOME

Members shall ensure that all firearms and ammunition are locked and secured while in their homes, vehicles or any other area under their control, and in a manner that will keep them inaccessible to children and others who should not have access. Members shall not permit department-issued firearms to be handled by anyone not authorized by the Department to do so.

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Members should be aware that negligent storage of a firearm could result in civil and criminal liability (Penal Code § 25100).

312.5.6 STORAGE IN VEHICLES

When leaving a handgun in an unattended vehicle, members shall ensure that it is locked in the trunk, or in a locked container that is placed out of view, or in a locked container that is permanently affixed to the vehicle's interior and not in plain view, or in a locked toolbox or utility box permanently affixed to the vehicle (Penal Code § 16850; Penal Code § 25140; Penal Code § 25452).

If the vehicle does not have a trunk or a locked container, then the firearm should be locked within the center utility console that can be locked with a padlock, keylock, combination lock, or other similar locking device (Penal Code § 25140).

Officers are exempt from these requirements during circumstances requiring immediate aid or action in the course of official duties (Penal Code § 25140).

312.5.7 ALCOHOL AND DRUGS

Firearms shall not be carried by any member, either on- or off-duty, who has consumed an amount of an alcoholic beverage, taken any drugs or medication, or has taken any combination thereof that would tend to adversely affect the member's senses or judgment.

312.6 FIREARMS TRAINING AND QUALIFICATIONS

All members who carry a firearm while on-duty are required to successfully complete training semi-annually with their duty firearms. In addition to semi-annually training, all members will qualify at least annually with their duty firearms. Members will qualify with off-duty firearms at least once a year. Training and qualifications must be on an approved range course.

At least annually, all members carrying a firearm should receive practical training designed to simulate field situations including low-light shooting.

312.6.1 NON-CERTIFICATION OR NON-QUALIFICATION

If any member fails to meet minimum standards for firearms training or qualification for any reason, including injury, illness, duty status or scheduling conflict, that member shall submit a memorandum to his/her immediate supervisor prior to the end of the required training or qualification period.

Those who fail to meet minimum standards or qualify on their first shooting attempt shall be provided remedial training and will be subject to the following requirements:

- (a) Additional range assignments may be scheduled to assist the member in demonstrating consistent firearm proficiency.
- (b) Members shall be given credit for a range training or qualification when obtaining a qualifying score or meeting standards after remedial training.
- (c) No range credit will be given for the following:
 1. Unauthorized range make-up

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2. Failure to meet minimum standards or qualify after remedial training

Members who repeatedly fail to meet minimum standards will be removed from field assignment and may be subject to disciplinary action.

312.6.2 FAILURE TO QUALIFY WITH DUTY HANDGUN

Personnel who are unable to qualify by the end of their scheduled shift or the conclusion of the training day (whichever comes first) shall be reassigned to a non-armed administrative position and prohibited from carrying a firearm off-duty. The Rangemaster or on-site Range Sergeant shall, as soon as practicable, notify the on-duty Watch Commander of the failure to qualify. Progressive discipline may be implemented at the level of a Letter of Discussion. The Rangemaster or designee shall arrange for a 4-hour remedial firearms training session as soon as practicable for the non-qualifying personnel

Personnel who are unable to qualify by the conclusion of the first remedial firearms training session, shall remain assigned to a non-armed administrative position, restricted from carrying a firearm off-duty and shall be scheduled to attend a second 4-hour remedial firearms training session. Personnel will progress to the next level in progressive discipline, not less than an oral counseling.

Personnel who are unable to qualify by the conclusion of the second remedial firearms training session, shall remain assigned to a non-armed administrative position, restricted from carrying a firearm off-duty, and a third 4-hour remedial firearms training session will be scheduled. Personnel will progress to the next level in the discipline system, not less than a written reprimand.

Personnel that are unable to qualify by the conclusion of the third remedial firearms training session, shall remain assigned to a non-armed administrative position and restricted from carrying a firearm off-duty. Another opportunity to qualify will be scheduled. Personnel will progress to the next level in progressive discipline, not less than a pay-step reduction. The member/employee should be examined by a District medical doctor to ensure no medical condition exists that prevents the employee from qualifying.

Personnel who are unable to qualify by the conclusion of their fourth remedial firearms training session, shall remain assigned to a non-armed administrative position, restricted from carrying a firearm off-duty, and subject to the next step in progressive discipline, suspension without pay.

Personnel who are unable to qualify by the conclusion of their fifth remedial firearms training session, shall remain assigned to a non-armed administrative position, restricted from carrying a firearm off-duty, and are subject to the fourth level of progressive discipline, demotion, or the final level of discipline, termination.

312.6.3 FAILURE TO QUALIFY WITH OFF-DUTY HANDGUN

Sworn personnel that fail to annually qualify with their secondary and/or off-duty handguns shall be prohibited from carrying those firearms until they successfully complete the required departmental qualification course.

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312.6.4 PATROL RIFLE QUALIFICATION

(applies to Patrol Rifle Operators only, refer to policy 432)

- Day Light and Low Light: annually

312.6.5 FAILURE TO QUALIFY WITH SHOTGUN OR RIFLE

Personnel who fail to attain the minimum passing qualification score with the shotgun or rifle shall be allowed a minimum of one additional opportunity to qualify during that training day. Those personnel that are still unable to qualify may receive additional firearms training that day if training time and a sufficient number of Range Staff are available. In situations involving personnel that are unable to qualify by the end of their scheduled shift or the conclusion of the training day (whichever comes first), the Rangemaster or on-site Range Sergeant shall, as soon as practicable, notify the employee's immediate supervisor or the on-duty Watch Commander of the failure to qualify.

Non-qualifying personnel shall not be authorized to deploy the shotgun or rifle in the performance of their duties until they are able to demonstrate acceptable proficiency and achieve a passing qualification score. Progressive discipline will be implemented at the level of a Letter of Discussion.

The Rangemaster or designee shall arrange for a 4-hour remedial shotgun or rifle training session as soon as practical for the non-qualifying personnel. Personnel that are unable to qualify by the conclusion of the first remedial firearms training session, shall not be authorized to deploy the shotgun or rifle in the performance of their duties, and a second 4-hour remedial shotgun or rifle training session will be scheduled. Progressive discipline will be administered in the same manner as described under the Failure to Qualify with Duty Handgun section.

Personnel who are unable to qualify by the conclusion of the second remedial firearms training session, shall not be authorized to deploy the shotgun or rifle in the performance of their duties, and a third 4-hour remedial shotgun or rifle training session will be scheduled. The member/employee should be examined by a District medical doctor to ensure no medical condition exists that prevents the employee from qualifying. Progressive discipline will move to the next step.

Personnel who are unable to qualify by the conclusion of the third remedial firearms training session, shall not be authorized to deploy the shotgun or rifle in the performance of their duties. The employee may, at the discretion of the Chief of Police, progress to the next level in progressive discipline.

312.7 REMEDIAL TRAINING

Any employee who handles a firearm in a grossly unsafe manner, demonstrates dangerous and/or extremely poor decision-making skills in the deployment of and/or application of any use of force-related task, in the field or in training, may be required to attend mandatory remedial training prior to returning to full-duty status.

If in the opinion of the supervisor/primary trainer at the site of the training, the employee's actions/decision-making is so unsafe that if they were returned to full duty, the employee may be a safety hazard to themselves, fellow employees, and/or the public; the supervisor/primary trainer shall recommend mandatory remedial training for the employee. The primary trainer shall contact the

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on-duty Watch Commander as soon as practicable and make the recommendation for mandatory remedial training.

If the request for mandatory remedial training is approved, the employee shall be removed from a firearm-carrying capacity and placed into a temporary administrative position until such time as that employee satisfactorily completes the mandatory remedial training.

Repeated failures to correct such deficiencies may result in implementation of progressive discipline.

Nothing in this policy precludes the department from requiring an employee to successfully complete remedial training to correct lesser safety violations and/or marginal tactical decision-making skills, without the employee first being removed from full-duty status.

312.8 FIREARM DISCHARGE

Except during training or recreational use, any member who discharges a firearm intentionally or unintentionally, on- or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If the discharge results in injury or death to another person, additional statements and reports shall be made in accordance with the Officer-Involved Shootings and Deaths Policy. If a firearm was discharged as a use of force, the involved member shall adhere to the additional reporting requirements set forth in the Use of Force Policy.

In all other cases, written reports shall be made as follows:

- (a) If on-duty at the time of the incident, the member shall file a written report with his/her Division Commander or provide a recorded statement to investigators prior to the end of shift, unless otherwise directed.
- (b) If off-duty at the time of the incident, the member shall file a written report or provide a recorded statement no later than the end of the next regularly scheduled shift, unless otherwise directed by a supervisor.

312.8.1 DANGEROUS ANIMALS

Members are authorized to use firearms to stop an animal in circumstances where the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

In circumstances where there is sufficient advance notice that a potentially dangerous animal may be encountered, department members should develop reasonable contingency plans for dealing with the animal (e.g., fire extinguisher, TASER® device, oleoresin capsicum (OC) spray, animal control officer). Nothing in this policy shall prohibit any member from shooting a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.

312.8.2 INJURED ANIMALS

With the approval of a supervisor, a member may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impractical.

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Stray or abandoned injured animals that may be moved or taken to an available veterinarian should not be euthanized. With supervisor approval, abandoned injured animals (with the exception of dogs and cats) may only be euthanized after a reasonable search to locate the owner has been made. Injured dogs and cats found without their owners shall be taken to an appropriate veterinarian for determination of whether they should be treated or humanely destroyed (Penal Code § 597.1).

312.8.3 WARNING AND OTHER SHOTS

Generally, warning shots or shots fired for the purpose of summoning aid are discouraged. Warning shots are only allowed when lethal force is justifiable. Generally, warning shots should be directed in a manner that minimizes the risk of injury to bystanders, ricochet dangers and property damage.

312.9 RANGEMASTER DUTIES

The rangemaster falls under the Personnel and Training Division and reports to the Personnel and Training Division Lieutenant.

The range will be under the exclusive control of the Rangemaster. All members attending will follow the directions of the Rangemaster. The Rangemaster will maintain a roster of all members attending the range and will submit the roster to the Personnel and Training Lieutenant after each range date. Failure of any member to sign in and out with the Rangemaster may result in non-qualification.

The range shall remain operational and accessible to Department members during hours established by the Department.

The Rangemaster has the responsibility of making periodic inspection, at least once a year, of all duty firearms carried by members of this department to verify proper operation. The Rangemaster has the authority to deem any department-issued or personally owned firearm unfit for service. The member will be responsible for all repairs to his/her personally owned firearm and it will not be returned to service until inspected by the Rangemaster.

The Rangemaster has the responsibility for ensuring each member meets the minimum requirements during training shoots and, on at least a yearly basis, can demonstrate proficiency in the care, cleaning and safety of all firearms the member is authorized to carry. At a minimum, the Rangemaster shall conduct a semiannual inventory of all firearms under the Department's control.

The Rangemaster shall complete and submit to the Personnel and Training Lieutenant documentation of the training courses provided. Documentation shall include the qualifications of each instructor who provides the training, a description of the training provided and, on a form that has been approved by the Department, a list of each member who completes the training. The Rangemaster should keep accurate records of all training shoots, qualifications, repairs, maintenance or other records as directed by the Personnel and Training Lieutenant.

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312.10 ALCOHOL & DRUGS

Firearms shall not be carried by any personnel who have consumed an amount of an alcoholic beverage or taken any drugs that would tend to adversely affect the employee's senses or judgment.

312.11 RETIREES

The Office of the Chief shall issue honorably retired sworn personnel an identification card with a CCW endorsement, see Policy Manual § 220.

Vehicle Pursuits

314.1 OFFICER RESPONSIBILITIES

Vehicle pursuits shall only be conducted using authorized police department emergency vehicles that are equipped with and displaying emergency lighting and sirens as required by Vehicle Code § 21055. Officers are responsible for continuously driving with due regard and caution for the safety of all persons and property (Vehicle Code § 21056).

314.1.1 WHEN TO INITIATE A PURSUIT

Officers are authorized to initiate a pursuit when the officer reasonably believes that a suspect, who has been given appropriate signal to stop by a law enforcement officer, is attempting to evade arrest or detention by fleeing in a vehicle.

Factors that should be considered in deciding whether to initiate a pursuit include:

- (a) The seriousness of the known or reasonably suspected crime and its relationship to community safety.
- (b) The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to officers, innocent motorists, and others.
- (c) The safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic (e.g., school zones), and the speed of the pursuit relative to these factors.
- (d) The pursuing officers' familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the dispatcher supervisor, and the driving capabilities of the pursuing officers under the conditions of the pursuit.
- (e) Whether weather, traffic, and road conditions unreasonably increase the danger of the pursuit when weighed against the risk of the suspect's escape.
- (f) Whether the identity of the suspect has been verified and whether there is comparatively minimal risk in allowing the suspect to be apprehended at a later time.
- (g) The performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.
- (h) Emergency lighting and siren limitations on unmarked police department vehicles that may reduce visibility of the vehicle, such as visor or dash-mounted lights, concealable or temporary emergency lighting equipment, and concealed or obstructed siren positioning.
- (i) Suspect and officer vehicle speeds.
- (j) Other persons in or on the pursued vehicle (e.g., passengers, co-offenders, hostages).
- (k) Availability of other resources such as air support or vehicle locator or deactivation technology.

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314.1.2 WHEN TO TERMINATE A PURSUIT

Pursuits should be terminated whenever the totality of objective circumstances known or which reasonably ought to be known to the officer or supervisor during the pursuit indicates that the present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the suspect's escape.

The factors listed in this policy on when to initiate a pursuit will apply equally to the decision to terminate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists, themselves, and the public when electing to continue a pursuit.

In addition to the factors that govern when to initiate a pursuit, other factors should be considered in deciding whether to terminate a pursuit, including:

- (a) The distance between the pursuing vehicle and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time and/or distance.
- (b) The pursued vehicle's location is no longer definitely known.
- (c) The pursuing vehicle sustains damage or a mechanical failure that renders it unsafe to drive.
- (d) The pursuing vehicle's emergency lighting equipment or siren becomes partially or completely inoperable.
- (e) Hazards to uninvolved bystanders or motorists.
- (f) The danger that the continued pursuit poses to the public, the officers, or the suspect, balanced against the risk of allowing the suspect to remain at large.
- (g) The identity of the suspect is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit.
- (h) Extended pursuits of violators for misdemeanors not involving violence, risk of serious harm, or weapons (independent of the pursuit) are generally discouraged.

314.1.3 SPEED LIMITS

The speed of a pursuit is a factor that should be evaluated on a continuing basis by the officer and supervisor. Evaluation of vehicle speeds should take into consideration public safety, officer safety, and the safety of the occupants of the fleeing vehicle.

Should high vehicle speeds be reached during a pursuit, officers and supervisors should also consider these factors when determining the reasonableness of the speed of the pursuit:

- (a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
- (b) Pursuit speeds have exceeded the driving ability of the officer.
- (c) Pursuit speeds are beyond the capabilities of the pursuit vehicle thus making its operation unsafe.

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314.1.4 TERMINATING A PURSUIT

The primary officer, monitoring supervisor, or watch commander may terminate a vehicle pursuit at anytime. The primary officer shall terminate a pursuit when any of the criteria for terminating a pursuit, listed in this policy, have been met, or when directed by a supervisor.

Pursuits should be discontinued whenever the totality of objective circumstances known or which reasonably ought to be known to the officer or supervisor during the pursuit indicates that the present risks (i.e., the immediate danger to bystanders, other motorists, or involved officers) of continuing the pursuit reasonably appear to be greater than the potential danger resulting from the suspect(s) remaining at large.

The factors listed in this policy are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists and themselves when electing to continue a pursuit. In the context of this policy, the term "terminate" shall be construed to mean discontinue or to stop chasing the fleeing vehicle(s).

In addition to the factors listed in this policy the following factors should also be considered in deciding whether to terminate a pursuit:

- Distance between the pursuing officers and the fleeing vehicle(s) is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time and/or distance
- Pursued vehicle's location is no longer definitely known
- Officer's pursuit vehicle sustains any type of damage that renders it unsafe to drive
- The suspect can be identified to the point where later apprehension will likely be accomplished, and the pursuing officers reasonably believe that the public and/or victim are not placed in greater danger by the suspect remaining at large

314.1.5 PROTOCOL FOR TERMINATING A PURSUIT

Whenever a pursuit is terminated, the termination shall be broadcast over the police radio. All officers involved in the pursuit shall acknowledge the broadcast and immediately deactivate all emergency equipment, while returning to normal driving, unless otherwise advised by the monitoring supervisor or Watch Commander.

314.1.6 PROTOCOL AT PURSUIT TERMINATION POINT

When a pursuit ends, the primary officer is responsible for notification to the Communications Center so that other responding units can shut down their emergency equipment if necessary.

When the pursued vehicle is lost, the primary unit should broadcast pertinent information to assist other units in locating suspects. The primary unit will be responsible for coordinating any further search for the pursued vehicle.

If the pursuit ends because the suspect vehicle stops, the primary officer is responsible for coordinating the response of other units until relieved by a supervisor. Coordinating the response

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of other units entails giving updates as to the status of the suspect(s), direction of flight if fleeing on foot, whether or not other units need to continue Code-3, and to broadcast any assignments and/or resources that are needed.

The monitoring supervisor shall proceed directly to the termination point of any pursuit to confer with the primary officer and provide supervision/coordination at the scene.

314.2 PURSUIT UNITS

When involved in a pursuit, unmarked police department emergency vehicles should be replaced by marked emergency vehicles whenever practicable

Vehicle pursuits should be limited to three vehicles (two units and a supervisor); however, the number of units involved may vary with the circumstances.

An officer or supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it reasonably appears that the number of officers involved may be insufficient to safely arrest the suspects. All other officers should stay out of the pursuit, but should remain alert to its progress and location. Any officer who drops out of a pursuit may then, if necessary, proceed to the termination point at legal speeds, following the appropriate rules of the road.

314.2.1 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing unit will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless the officer is unable to remain reasonably close to the suspect's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the suspects without unreasonable danger to any person.

The primary unit should notify the dispatcher commencing with a request for priority radio traffic, that a vehicle pursuit has been initiated, and as soon as practicable provide information including but not limited to:

- (a) The location, direction of travel, and estimated speed of the suspect's vehicle.
- (b) The description of the suspect's vehicle including license plate number, if known.
- (c) The reason for the pursuit.
- (d) Known or suspected weapons. Threat of force, violence, injuries, hostages, or other unusual hazards.
- (e) The suspected number of occupants and identity or description.
- (f) The weather, road, and traffic conditions.
- (g) The need for any additional resources or equipment.
- (h) The identity of other law enforcement agencies involved in the pursuit.

Until relieved by a supervisor or secondary unit, the officer in the primary unit is responsible for the broadcasting of the progress of the pursuit. Unless circumstances reasonably indicate otherwise, the primary pursuing officer should, as soon as practicable, relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or air support joining the pursuit

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to minimize distractions and allow the primary pursuing officer to concentrate foremost on safe pursuit tactics.

314.2.2 SECONDARY UNIT RESPONSIBILITIES

The second officer in the pursuit will be designated as the secondary unit and is responsible for:

- (a) The officer in the secondary unit should immediately notify the dispatcher of entry into the pursuit as soon as reasonably practicable.
- (b) Remaining a safe distance behind the primary unit unless directed to assume the role of primary pursuit vehicle or if the primary pursuit vehicle is unable to continue the pursuit.
- (c) Broadcasting the progress, updating known or critical information, and providing changes in the pursuit, unless the situation indicates otherwise.
- (d) Identifying the need for additional resources or equipment as appropriate.
- (e) Serving as backup to the primary pursuing officer once the suspect has been stopped.

314.2.3 PURSUIT DRIVING

The decision to use specific driving tactics requires the same assessment of the factors the officer considered when determining whether to initiate and/or terminate a pursuit. The following are tactics for units involved in the pursuit:

- (a) Officers, considering their driving skills and vehicle performance capabilities, will space themselves from other involved vehicles such that they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle.
- (b) Because intersections can present increased risks, the following tactics should be considered:
 - 1. Available units not directly involved in the pursuit may proceed safely to controlled intersections ahead of the pursuit in an effort to warn cross traffic.
 - 2. Pursuing units should exercise due regard and caution when proceeding through controlled intersections.
- (c) As a general rule, officers should not pursue a vehicle driving left of center (wrong way) against traffic. In the event that the pursued vehicle does so, the following tactics should be considered:
 - 1. Requesting assistance from available air support.
 - 2. Maintain visual contact with the pursued vehicle by paralleling it on the correct side of the roadway.
 - 3. Request other units to observe exits available to the suspects.
- (d) Notify the California Highway Patrol (CHP) and/or other law enforcement agency if it appears that the pursuit may enter its jurisdiction.
- (e) Officers involved in a pursuit should not attempt to pass other units unless the situation indicates otherwise or they are requested to do so by the primary unit and with a clear understanding of the maneuver process between the involved units.

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314.2.4 UNITS NOT INVOLVED IN THE PURSUIT

There should be no paralleling of the pursuit route. Officers are authorized to use emergency equipment at intersections along the pursuit path to clear intersections of vehicular and pedestrian traffic to protect the public. Officers should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.

The primary and secondary units should be the only units operating under emergency conditions (red light and siren) unless other units are assigned to the pursuit.

314.3 SUPERVISORY CONTROL AND RESPONSIBILITIES

Available supervisory and management control will be exercised over all vehicle pursuits involving officers from this department.

The field supervisor of the officer initiating the pursuit, or if unavailable, the nearest field supervisor will be responsible for:

- (a) Immediately notifying involved unit and the dispatcher of supervisory presence and ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit.
- (b) Engaging in the pursuit, when appropriate, to provide on-scene supervision.
- (c) Exercising management and control of the pursuit even if not engaged in it.
- (d) Ensuring that no more than the required number of units are involved in the pursuit under the guidelines set forth in this policy.
- (e) Directing that the pursuit be terminated if, in the supervisor's judgment, it is unreasonable to continue the pursuit under the guidelines of this policy.
- (f) Ensuring that assistance from air support, canines, or additional resources is requested, if available and appropriate.
- (g) Ensuring that the proper radio channel is being used.
- (h) Ensuring that the Watch Commander is notified of the pursuit as soon as practicable.
- (i) Ensuring the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this department.
- (j) Controlling and managing Bay Area Rapid Transit Police Department units when a pursuit enters another jurisdiction.
- (k) Preparing a post-pursuit review and documentation of the pursuit.
 1. Supervisors should initiate follow up or additional review when appropriate.

314.3.1 WATCH COMMANDER RESPONSIBILITIES

Upon becoming aware that a pursuit has been initiated, the Watch Commander should monitor and continually assess the situation and ensure the pursuit is conducted within the guidelines and requirements of this policy. Once notified, the Watch Commander has the final responsibility for the coordination, control, and termination of a vehicle pursuit and shall be in overall command.

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314.4 INTEGRATED SECURITY RESPONSE CENTER

If the pursuit is confined within the District limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or dispatcher. If the pursuit leaves the jurisdiction of this department or such is imminent, involved units should, whenever available, switch radio communications to a tactical or emergency channel most accessible by participating agencies and units.

314.4.1 INTEGRATED SECURITY RESPONSE CENTER RESPONSIBILITIES

Upon notification or becoming aware that a pursuit has been initiated, the dispatcher is responsible for:

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

314.5 INTER-JURISDICTIONAL CONSIDERATIONS

When a pursuit enters another agency's jurisdiction, the primary officer or supervisor, taking into consideration distance traveled, unfamiliarity with the area and other pertinent facts, should determine whether to request the other agency to assume the pursuit. Unless entry into another jurisdiction is expected to be brief, it is generally recommended that the primary officer or supervisor ensure that notification is provided to each outside jurisdiction into which the pursuit is reasonably expected to enter, regardless of whether such jurisdiction is expected to assist.

314.5.1 ASSUMPTION OF PURSUIT BY ANOTHER AGENCY

Officers will relinquish control of the pursuit when another agency has assumed the pursuit, unless the continued assistance of the Bay Area Rapid Transit Police Department is requested by the agency assuming the pursuit. Upon relinquishing control of the pursuit, the involved officers may proceed, with supervisory approval, to the termination point of the pursuit to assist in the investigation. The supervisor should coordinate such assistance with the assuming agency and obtain any information that is necessary for any reports. Notification of a pursuit in progress should not be construed as a request to join the pursuit. Requests to or from another agency to assume a pursuit should be specific.

314.5.2 PURSUITS EXTENDING INTO THIS JURISDICTION

The agency that initiates a pursuit is responsible for conducting the pursuit. Units from this department should not join a pursuit unless specifically requested to do so by the pursuing agency and with approval from a supervisor. The exception to this is when a single unit from the initiating agency is in pursuit. Under this circumstance, a supervisor may authorize units from this

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department to join the pursuit until sufficient units from the initiating agency join the pursuit or until additional information is provided allowing withdrawal of the pursuit.

When a request is made for this department to assist or take over a pursuit that has entered the jurisdiction of Bay Area Rapid Transit Police Department, the supervisor should consider:

- (a) The public's safety within this jurisdiction.
- (b) The safety of the pursuing officers.
- (c) Whether the circumstances are serious enough to continue the pursuit.
- (d) Whether there is adequate staffing to continue the pursuit.
- (e) The ability to maintain the pursuit.

As soon as practicable, a supervisor or the Watch Commander should review a request for assistance from another agency. The Watch Commander or supervisor, after considering the above factors, may decline to assist in, or assume the other agency's pursuit.

Assistance to a pursuing allied agency by officers of this department will terminate at the District limits provided that the pursuing officers have sufficient assistance from other sources. Ongoing participation from this department may continue only until sufficient assistance is present.

In the event that a pursuit from another agency terminates within this jurisdiction, officers should provide appropriate assistance to officers from the allied agency including but not limited to scene control, coordination and completion of supplemental reports, and any other reasonable assistance requested or needed.

314.6 PURSUIT INTERVENTION

Pursuit intervention is an attempt to terminate the ability of a suspect to continue to flee in a motor vehicle through tactical application of technology, road spikes, blocking, boxing, PIT (Pursuit Intervention Technique), ramming or roadblock procedures. In this context, ramming shall be construed to mean maneuvering the police unit into contact with the pursued vehicle to mechanically disable or forcibly position it such that further flight is not possible or practicable. Pursuit interventions are not authorized by this department.

314.6.1 CAPTURE OF SUSPECTS

Proper self-discipline and sound professional judgment are the keys to a successful conclusion of a pursuit and apprehension of evading suspects. Officers shall use only that amount of force, which reasonably appears necessary under the circumstances, to accomplish a legitimate law enforcement purpose.

Unless relieved by a supervisor, the primary pursuing officer should coordinate efforts to apprehend the suspects following the pursuit. Officers should consider safety of the public and the involved officers when formulating plans for setting up perimeters or for containing and capturing the suspects.

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314.7 REPORTING REQUIREMENTS

The following reports should be completed upon conclusion of all pursuits:

- (a) The primary officer should complete appropriate crime/arrest reports.
- (b) The zone sergeant, or designated supervisor, shall ensure that an Allied Agency Vehicle Pursuit Report (form CHP 187A) is filed with the CHP not later than 30 days following the pursuit (Vehicle Code § 14602.1).
- (c) The zone sergeant, or designated supervisor, is responsible for completing an administrative review Pursuit Incident in BlueTeam.

Annually, the Chief of Police should direct a documented review and analysis of Department's vehicle pursuit reports to minimally include policy suitability, policy compliance, and training or equipment needs.

314.7.1 REGULAR AND PERIODIC PURSUIT TRAINING

The Personnel and Training Lieutenant shall make available to all officers initial and supplementary Police Officer Standard Training (POST) training on pursuits required by Penal Code § 13519.8, and no less than annual training addressing:

- (a) This policy.
- (b) The importance of vehicle safety and protecting the public.
- (c) The need to balance the known offense and the need for immediate capture against the risks to officers and others (Vehicle Code § 17004.7(d)).

314.7.2 POLICY REVIEW

Officers of this department shall certify in writing that they have received, read, and understand this policy initially, upon any amendments, and whenever training on this policy is provided. The POST attestation form, or an equivalent form, may be used to document the compliance and should be retained in the member's training file.

314.8 APPLICATION OF VEHICLE PURSUIT POLICY

This policy is expressly written and adopted pursuant to the provisions of Vehicle Code § 17004.7, with additional input from the POST Vehicle Pursuit Guidelines.

314.9 PURPOSE AND SCOPE

This policy provides guidelines for vehicle pursuits in order to protect the safety of involved officers, the public, and fleeing suspects.

314.9.1 DEFINITIONS

Blocking - A low-speed tactic where one or more authorized police department emergency vehicles intentionally restrict the movement of a suspect vehicle, with the goal of containment or preventing a pursuit. Blocking is not boxing in or a roadblock.

Boxing-in - A tactic designed to stop a suspect's moving vehicle by surrounding it with law enforcement vehicles and then slowing all vehicles to a stop.

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Pursuit Intervention - An attempt to stop the suspect's ability to continue to flee in a vehicle through tactical application of technology, tire deflation devices, blocking or vehicle intercept, boxing-in, the PIT (known as Pursuit Intervention Technique or Precision Immobilization Technique), ramming, or roadblock procedures.

Pursuit Intervention Technique (PIT) - A low-speed tactic intentionally applied to cause the suspect vehicle to spin out and terminate the pursuit.

Ramming - The deliberate act of impacting a suspect's vehicle with another vehicle to functionally damage or otherwise force the suspect's vehicle to stop.

Roadblocks - A tactic designed to stop a suspect's vehicle by intentionally placing an emergency vehicle or other immovable object in the path of the suspect's vehicle.

Tire deflation device - A device that extends across the roadway designed to puncture the tires of the pursued vehicle, sometimes referred to as spike strips.

Terminate - To discontinue a pursuit or stop chasing fleeing vehicles.

Trail - Following the path of the pursuit at a safe speed while obeying all traffic laws and without activating emergency equipment. If the pursuit is at a slow rate of speed, the trailing vehicle will maintain sufficient distance from the pursuit vehicles so as to clearly indicate an absence of participation in the pursuit

Vehicle Pursuit - An event involving one or more law enforcement officers attempting to apprehend a suspect, who is attempting to avoid arrest while operating a motor vehicle by using high-speed driving or other evasive tactics, such as driving off a highway, turning suddenly, or driving in a legal manner but willfully failing to yield to an officer's signal to stop.

314.10 POLICY

It is the policy of this department to balance the importance of apprehending suspects who unlawfully flee from law enforcement against the risks associated with vehicle pursuits.

Officer Response to Calls

316.1 PURPOSE AND SCOPE

This policy provides for the safe and appropriate response to emergency and non-emergency situations whether dispatched or self-initiated.

316.1.1 LEVELS OF RESPONSE

316.1.2 DEFINITIONS

- **Code-1:** A non-emergency response. Officers should respond to the assignment as soon as practical, operate their vehicles without activation of emergency equipment, and obey all traffic laws.
- **Code-2:** A non-emergency response. Officers should respond directly to the assignment without unnecessary delay, operate their vehicles without activation of emergency equipment, and obey all traffic laws.
- **Code-3:** An emergency response. Officers will respond without delay, operate their vehicles with emergency equipment activated (minimally, red light forward and siren), and proceed with due regard for the safety of all persons and property.

316.1.3 REQUIRED CIRCUMSTANCES FOR CODE-3 RESPONSE:

Code-3 responses may only be used under the following circumstances:

- (a) When a situation involves the reasonable potential for serious injury or death to officers or other persons (e.g., in-progress robberies, aggravated assaults, medical emergencies).
- (b) When a Code-3 response would significantly enhance the likelihood of apprehending a felony suspect who has caused, is likely to cause, or has threatened to cause, serious injury or death.
- (c) When there is a public hazard that presents an imminent or immediate threat to public safety (e.g., fire, explosion, chem-bio incident).
- (d) When an officer requests Code-3 cover or broadcasts an "11-99."
- (e) When approved by a sergeant or command officer.

316.2 RESPONSE TO CALLS

Officers dispatched "Code-3" shall consider the call an emergency response and proceed immediately. Officers responding Code-3 shall continuously operate emergency lighting equipment, including at minimum a steady forward facing red light, and shall sound the siren as reasonably necessary pursuant to Vehicle Code § 21055.

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Responding with emergency light(s) and siren does not relieve the officer of the duty to continue to drive with due regard for the safety of all persons. The use of any other warning equipment without a red light and siren does not provide any exemption from the Vehicle Code.

Any call that is not dispatched as Code-3 is a routine call. Officers not authorized to respond Code-3 shall observe all traffic laws and proceed without the use of emergency lights and siren.

316.2.1 REQUIREMENTS FOR RESPONDING CODE-3

The vehicle's steady forward facing red light must be activated and visible under normal atmospheric conditions for 1000 feet. All other auxiliary lights should be activated as reasonably necessary. The auxiliary lights should be activated when entering and traveling through an intersection or if the vehicle is being driven against traffic controls.

The driver of the vehicle should sound the vehicle's siren as reasonably necessary. It should be sounded when entering and traveling through an intersection or if the vehicle is being driven against traffic controls.

The vehicle should be driven in compliance with California's basic speed law, which reads, "no person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent, having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property." (Vehicle Code §22350)

The provisions regarding authorized emergency vehicles responding Code-3 do not relieve the officer/driver from the duty to drive with due regard for the safety of all persons and property (Vehicle Code §21807).

316.3 REQUESTING EMERGENCY ASSISTANCE

Requests for emergency assistance should be limited to those situations where the involved personnel reasonably believe that there is an immediate threat to the safety of officers, or assistance is needed to prevent imminent serious harm to a citizen. In any event, where a situation has stabilized and emergency response is not required, the requesting officer shall immediately notify the Communications Center.

If circumstances permit, the requesting officer should give the following information:

- The unit number
- The location
- The reason for the request and type of emergency
- The number of units required

316.3.1 NUMBER OF UNITS ASSIGNED

Normally, only one unit should respond to an emergency call Code-3 unless the Watch Commander or the field supervisor authorizes an additional unit(s).

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316.4 INITIATING CODE 3 RESPONSE

If an officer believes a Code-3 response to any call is appropriate, the officer shall immediately notify Integrated Security Response Center. Generally, only one unit should respond Code-3 to any situation. Should another officer believe a Code-3 response is appropriate, Integrated Security Response Center shall be notified and the Watch Commander or field supervisor will make a determination as to whether one or more officers driving Code-3 is appropriate.

316.4.1 STANDARD TERMINOLOGY

If an officer is in need of emergency assistance, he/she should state, "send Code-3 cover," or "11-99" as appropriate. Non-standard terms such as "expedite cover" or "step it up" should not be used as a request for Code-3 cover, nor should assisting units automatically respond Code-3 when hearing these types of terms.

316.5 RESPONSIBILITIES OF RESPONDING OFFICER(S)

Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle.

The decision to continue a Code-3 response is at the discretion of the officer. If, in the officer's judgment, the roadway conditions or traffic congestion does not permit such a response without unreasonable risk, the officer may elect to respond to the call without the use of red lights and siren at the legal speed limit. In such an event, the officer should immediately notify Integrated Security Response Center. An officer shall also discontinue the Code-3 response when directed by a supervisor.

Upon receiving authorization or determining a Code-3 response is appropriate, an officer shall immediately give the location from which he/she is responding.

316.5.1 INITIATING/CONTINUING EMERGENCY RESPONSE

The first officer arriving on scene at an emergency should evaluate whether any other units need to initiate or continue a Code-3 response. The officer should broadcast this information via radio as soon as possible so that other units may respond appropriately.

When a Code-3 response is no longer required, and the unit(s) responding Code-3 become aware of this, those units are responsible for terminating their emergency response and advising the Communications Center of this.

Officers should not respond Code-3 with an arrestee or civilian in the vehicle.

316.6 COMMUNICATIONS RESPONSIBILITIES

A dispatcher shall assign a Code-3 response when an officer requests emergency assistance or available information reasonably indicates that the public is threatened with serious injury or death and immediate police response is needed. In all other circumstances, the dispatcher shall obtain authorization from the Watch Commander or a field supervisor prior to assigning units Code-3 . The dispatcher shall:

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- (a) Attempt to assign the closest available unit to the location requiring assistance
- (b) Immediately notify the Watch Commander and appropriate field supervisor
- (c) Confirm the location from which the unit is responding
- (d) Notify and coordinate allied emergency services (e.g., fire and ambulance)
- (e) Continue to obtain and broadcast information as necessary concerning the response and monitor the situation until it is stabilized or terminated
- (f) Control all radio communications during the emergency and coordinate assistance under the direction of the Watch Commander or field supervisor

316.6.1 TERMINATION OF EMERGENCY RESPONSE

Upon termination of a Code-3 response, the communications center should advise all responding units of the termination. The Communications Center is responsible for confirming that each responding unit has acknowledged the termination.

316.7 SUPERVISORY RESPONSIBILITIES

Upon being notified that a Code-3 response has been initiated, the Watch Commander or the field supervisor shall verify the following:

- (a) The proper response has been initiated.
- (b) No more than those units reasonably necessary under the circumstances are involved in the response.
- (c) Affected outside jurisdictions are being notified as practical.

The field supervisor shall monitor the response until it has been stabilized or terminated and assert control by directing units into or out of the response if necessary. If, in the supervisor's judgment, the circumstances require additional units to be assigned a Code-3 response, the supervisor may do so.

It is the supervisor's responsibility to terminate a Code-3 response that, in his/her judgment is inappropriate due to the circumstances.

When making the decision to authorize a Code-3 response, the Watch Commander or the field supervisor should consider the following:

- The type of call
- The necessity of a timely response
- Traffic and roadway conditions
- The location of the responding units

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316.8 FAILURE OF EMERGENCY EQUIPMENT

If the emergency equipment on the vehicle should fail to operate, the officer must terminate the Code-3 response and respond accordingly. In all cases, the officer shall notify the Watch Commander, field supervisor, or Integrated Security Response Center of the equipment failure so that another unit may be assigned to the emergency response.

Canines

318.1 PURPOSE AND SCOPE

This policy establishes guidelines for the use of canines to augment police services in the community, including but not limited to locating individuals and contraband and apprehending criminal offenders.

318.1.1 DEFINITIONS

- (a) **Police Canine:** A canine teamed with a police officer and trained in protection and/or explosives detection.
- (b) **Canine Handler:** A sworn officer trained and designated to work with a police canine.
- (c) **Canine Team:** A police officer/handler and assigned police canine.
- (d) **Canine Coordinator:** A police sergeant designated to supervise department canine teams and assistants.
- (e) **K-9 Unit:** Department canines and personnel assigned as coordinators, handlers, and assistants.
- (f) **Protection Training:** Canine training involving searching for persons, apprehension of suspects, and protection.
- (g) **Explosives Detection Training:** Canine training involving searching for and locating explosives.

318.1.2 TASKS AND OBJECTIVES OF CANINE TEAMS

Police canine teams will be used to accomplish a variety of police-related tasks and objectives including:

- (a) Increase the perception of police presence by providing highly visible deterrent patrols within stations, trains and parking facilities
- (b) Decrease the possibility of a terrorist attack against the District by performing security checks of trains and stations with explosives-detection canines
- (c) Increase public awareness of anti-terrorism measures through regular patrol and explosives-detection training in trains and stations
- (d) Increase the safety of District employees and patrons by providing a visible deterrent to crime and terrorism within the system
- (e) Patrol checks of District facilities
- (f) Canine units also act in support of other police personnel and respond to calls where the canine's presence will assist in resolving the situation safely and more effectively. Canine officers respond throughout the District to assist as needed. When assigned to a beat or detail, canine handlers shall seek supervisory approval to respond to other than his/her assigned beat or area.

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318.1.3 TASKS AND OBJECTIVES OF PROTECTION-TRAINED CANINE TEAMS

Protection-trained canine teams will be used to accomplish a variety of police-related tasks and objectives including:

- (a) Reduce injuries to police officers and other District employees resulting from criminal attacks
- (b) Reduce personnel deployment and time spent searching buildings, structures, and open areas for suspects, evidence or property
- (c) Tracking persons
- (d) Locating victims of fires, earthquakes, or other natural disasters and to aid at other disaster scenes

318.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department that teams of handlers and canines meet and maintain the appropriate proficiency to effectively and reasonably carry out legitimate law enforcement objectives.

318.3 ASSIGNMENT

Canine teams should be assigned to assist and supplement the Operations Bureau to function primarily in assist or cover assignments. However, they may be assigned by the Watch Commander to other functions, such as routine calls for service, based on the current operational needs.

Canine teams should generally not be assigned to handle routine matters that will take them out of service for extended periods of time. If such assignment is necessary, it should only be made with the approval of the Watch Commander.

318.4 CANINE COORDINATOR

The canine coordinator shall be appointed by and directly responsible to the Operations Bureau or the authorized designee.

The responsibilities of the coordinator include but are not limited to:

- (a) Reviewing all canine use reports to ensure compliance with policy and to identify training issues and other needs of the program.
- (b) Maintaining a liaison with the vendor kennel.
- (c) Maintaining a liaison with command staff and functional supervisors.
- (d) Maintaining a liaison with other agency canine coordinators.
- (e) Maintaining accurate records to document canine activities.
- (f) Recommending and overseeing the procurement of equipment and services for the teams of handlers and canines.
- (g) Scheduling all canine-related activities.

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- (h) Ensuring the canine teams are scheduled for regular training to maximize their capabilities.

318.5 REQUESTS FOR CANINE TEAMS

Operations Bureau members are encouraged to request the use of a canine. Requests for a canine team from department units outside of the Operations Bureau shall be reviewed by the Watch Commander.

318.5.1 OUTSIDE AGENCY REQUEST

All requests for canine assistance from outside agencies must be approved by the Watch Commander and are subject to the following:

- (a) Canine teams shall not be used for any assignment that is not consistent with this policy.
- (b) The canine handler can provide input on whether to utilize a canine for a specific assignment.
- (c) Calling out off-duty canine teams is discouraged.
- (d) It shall be the responsibility of the canine handler to coordinate operations with agency personnel in order to minimize the risk of unintended injury.
- (e) It shall be the responsibility of the canine handler to complete all necessary reports or as directed.

318.5.2 PUBLIC DEMONSTRATION

All public requests for a canine team shall be reviewed and, if appropriate, approved by the canine coordinator prior to making any resource commitment. The canine coordinator is responsible for obtaining resources and coordinating involvement in the demonstration to include proper safety protocols. Canine handlers shall not demonstrate any apprehension work unless authorized to do so by the canine coordinator.

318.6 APPREHENSION GUIDELINES

A protection trained canine may be used to locate and apprehend a suspect if the canine handler reasonably believes that the individual has committed, is committing, or is threatening to commit any serious offense and if any of the following conditions exist:

- (a) There is a reasonable belief the suspect poses an imminent threat of violence or serious harm to the public, any officer, or the handler.
- (b) The suspect is physically resisting or threatening to resist arrest and the use of a canine reasonably appears to be necessary to overcome such resistance.
- (c) The suspect is believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of officers or the public.

It is recognized that situations may arise that do not fall within the provisions set forth in this policy. Such events require consideration of the totality of the circumstances and the use of an objective reasonableness standard applied to the decision to use a canine.

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Absent a reasonable belief that a suspect has committed, is committing, or is threatening to commit a serious offense, mere flight from a pursuing officer, without any of the above conditions, shall not serve as the basis for the use of a canine to apprehend a suspect.

Use of a canine to locate and apprehend a suspect wanted for a lesser criminal offense than those identified above requires approval from the Watch Commander. Absent a change in circumstances that presents an imminent threat to officers, the canine or the public, such canine use should be conducted on-leash or under conditions that minimize the likelihood the canine will bite or otherwise injure the individual.

In all applications, once the suspect has been located and no longer reasonably appears to present a threat or risk of escape, the handler should secure the canine as soon as it becomes reasonably practicable.

If the canine has apprehended the suspect with a secure bite, and the handler believes that the suspect no longer poses a threat, the handler should promptly command the canine to release the suspect.

318.6.1 REPORTING DEPLOYMENTS, BITES, AND INJURIES

Handlers should document canine deployments in a canine use report. Whenever a canine deployment results in a bite or causes injury to an intended suspect, a supervisor should be promptly notified and the injuries documented in the canine use report. The injured person shall be promptly treated by Emergency Medical Services personnel and, if appropriate, transported to an appropriate medical facility for further treatment. The deployment and injuries should also be included in any related incident or arrest report.

Any unintended bite or injury caused by a canine, whether on- or off-duty, shall be promptly reported to the canine coordinator. Unintended bites or injuries caused by a canine should be documented in an administrative report, not in a canine use report.

If an individual alleges an injury, either visible or not visible, a supervisor shall be notified and both the individual's injured and uninjured areas shall be photographed as soon as practicable after first tending to the immediate needs of the injured party. Photographs shall be retained as evidence in accordance with current department evidence procedures. The photographs shall be retained until the criminal proceeding is completed and the time for any related civil proceeding has expired.

Canines used by law enforcement agencies are generally exempt from impoundment and reporting requirements. However, the canine shall be made available for examination at any reasonable time if requested by the local health department. The canine handler shall also notify the local health department if the canine exhibits any abnormal behavior after a bite (Health and Safety Code § 121685).

318.7 NON-APPREHENSION GUIDELINES

Properly trained canines may be used to track or search for non-criminals (e.g., lost children, individuals who may be disoriented or in need of medical attention). The canine handler is responsible for determining the canine's suitability for such assignments based on the conditions

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and the particular abilities of the canine. When the canine is deployed in a search or other non-apprehension operation, the following guidelines apply:

- (a) Absent a change in circumstances that presents an imminent threat to officers, the canine, or the public, such applications should be conducted on-leash or under conditions that minimize the likelihood the canine will bite or otherwise injure the individual, if located.
- (b) Unless otherwise directed by a supervisor, assisting members should take direction from the handler in order to minimize interference with the canine.
- (c) Throughout the deployment, the handler should periodically give verbal assurances that the canine will not bite or hurt the individual and encourage the individual to make him/herself known.
- (d) Once the individual has been located, the handler should place the canine in a down-stay or otherwise secure it as soon as reasonably practicable.

318.7.1 ARTICLE DETECTION

A canine trained to find objects or property related to a person or crime may be used to locate or identify articles. A canine search should be conducted in a manner that minimizes the likelihood of unintended bites or injuries.

318.7.2 BOMB/EXPLOSIVE DETECTION

Because of the high risk of danger to the public and officers when a bomb or other explosive device is suspected, the use of a canine team trained in explosive detection may be considered. When available, an explosive-detection canine team may be used in accordance with current law and under certain circumstances, including:

- (a) Assisting in the search of a building, structure, area, vehicle, or article where an actual or suspected explosive device has been reported or located.
- (b) Assisting with searches at transportation facilities and vehicles (e.g., buses, airplanes, trains).
- (c) Preventive searches at special events, VIP visits, official buildings, and other restricted areas. Searches of individuals should remain minimally intrusive and shall be strictly limited to the purpose of detecting explosives.
- (d) Assisting in the search of scenes where an explosion has occurred and an explosive device or secondary explosive device is suspected.

At no time will an explosive-detection trained canine be used to render a suspected device safe or clear.

318.8 HANDLER SELECTION

The minimum qualifications for the assignment of canine handler include:

- (a) An officer who is currently off probation with three (3) years of police patrol experience.
- (b) Residing in an adequately fenced, single-family residence (minimum 5-foot high fence with locking gates).

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- (c) If taking a Department vehicle home, a garage that can be secured and accommodate the canine vehicle.
- (d) If electing to transport the canine in a personal vehicle, the vehicle must be suitable for safely and securely transporting the canine. When transporting a canine in the bed of a truck, handlers shall comply with 23117 of the California Vehicle Code.
- (e) Agreeing to be assigned to the position for a minimum of three years.
- (f) Unless authorized by the Chief of Police or their designee, canine handlers will only be allowed to participate in one other special or ancillary assignment due to the training time required to maintain a competent and proficient canine.

318.9 HANDLER RESPONSIBILITIES

The canine handler shall ultimately be responsible for the health and welfare of the canine and shall ensure that the canine receives proper nutrition, grooming, training, medical care, affection and living conditions.

Whether on or off leash, canines must be under the full control of the assigned handler at all times.

The canine handler will be responsible for the following:

- (a) Except as required during appropriate deployment, the handler shall not expose the canine to any foreseeable and unreasonable risk of harm.
- (b) The handler shall maintain all department equipment under his/her control in a clean and serviceable condition.
- (c) When not in service, the handler shall maintain the canine vehicle in a locked garage, away from public view.
- (d) Handlers shall permit the canine coordinator to conduct spontaneous on-site inspections of affected areas of their homes as well as their canine vehicles to verify that conditions and equipment conform to this policy.
- (e) Any changes in the living status of the handler that may affect the lodging or environment of the canine shall be reported to the canine coordinator as soon as possible.
- (f) When off-duty, the canine shall be in a kennel provided by the District at the home of the handler. When a canine is kenneled at the handler's home, the gate shall be secured with a lock. When off-duty, the canine may be let out of the kennel while under the direct control of the handler.
- (g) The canine should be permitted to socialize in the home with the handler's family for short periods of time and under the direct supervision of the handler.
- (h) Under no circumstances will the canine be lodged at another location unless approved by the canine coordinator or Watch Commander.
- (i) When off-duty, the handler shall not involve the canine in any law enforcement activity or official conduct unless approved in advance by the canine coordinator or Watch Commander.

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- (j) Whenever a canine handler is off-duty for an extended number of days, it may be necessary to temporarily relocate the canine. In those situations, the handler shall give reasonable notice to the canine coordinator so that appropriate arrangements can be made.

318.10 HANDLER COMPENSATION

The canine handler shall be available for call-out under conditions specified by the canine coordinator.

The canine handler shall be compensated for time spent in the care, feeding, grooming, and other needs of the canine in accordance with the Fair Labor Standards Act (FLSA), and according to the terms of the collective bargaining agreement (29 USC § 207).

318.11 CANINE INJURY AND MEDICAL CARE

In the event that a canine is injured, or there is an indication that the canine is not in good physical condition, the injury or condition will be reported to the canine coordinator or Watch Commander as soon as practicable and appropriately documented.

All medical attention shall be rendered by the designated canine veterinarian, except during an emergency where treatment should be obtained from the nearest available veterinarian. All records of medical treatment shall be maintained in the handler's personnel file.

318.12 TRAINING

Before assignment in the field, each canine team shall be trained and certified to meet current POST guidelines or other recognized and approved certification standards.

The canine coordinator shall be responsible for scheduling periodic training for all department members in order to familiarize them with how to conduct themselves in the presence of department canines.

All canine training should be conducted while on-duty unless otherwise approved by the canine coordinator or Watch Commander.

318.12.1 CONTINUED TRAINING

Each canine team shall thereafter be recertified to a current POST or other recognized and approved certification standards on an annual basis. Additional training considerations are as follows:

- (a) Canine teams should receive training as defined in the current contract with the Bay Area Rapid Transit Police Department canine training provider.
- (b) Canine handlers are encouraged to engage in additional training with approval of the canine coordinator.
- (c) To ensure that all training is consistent, no handler, trainer or outside vendor is authorized to train to a standard that is not reviewed and approved by this department.

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318.12.2 FAILURE TO SUCCESSFULLY COMPLETE TRAINING

Any canine team failing to graduate or obtain certification shall not be deployed in the field for tasks the team is not certified to perform until graduation or certification is achieved. When reasonably practicable, pending successful certification, the canine handler shall be temporarily reassigned to regular patrol duties.

318.12.3 TRAINING RECORDS

All canine training records shall be maintained in the canine handler's and the canine's training file. Canine handlers shall maintain accurate records of all training-related activity (e.g. maintenance training, trials, and public demonstrations). Training records will be reviewed and signed by the canine coordinator with the handler once a month. Training records shall be kept in the canine team's training file for the working life of the canine plus two years, after which they will be purged.

318.12.4 TRAINING AIDS

Training aids are required to effectively train and maintain the skills of canines. Officers possessing, using or transporting explosives for canine training purposes must comply with federal and state requirements. Alternatively, the Bay Area Rapid Transit Police Department may work with outside trainers with the applicable licenses or permits.

318.12.5 EXPLOSIVE TRAINING AIDS

Officers may possess, transport, store, or use explosives or destructive devices in compliance with state and federal laws (Penal Code § 18800; 18 USC § 842; 27 CFR 555.41).

Explosive training aids designed specifically for canine teams should be used whenever feasible. Due to the safety concerns in the handling and transportation of explosives, inert or non-hazardous training aids should be employed whenever feasible. The use of explosives or destructive devices for training aids by canine teams is subject to the following:

- (a) All explosive training aids, when not in use, shall be properly stored in a secure facility appropriate for the type of materials.
- (b) An inventory ledger shall be maintained to document the type and quantity of explosive training aids that are stored.
- (c) The canine coordinator shall be responsible for verifying the explosive training aids on hand against the inventory ledger once each quarter.
- (d) Only members of the canine team shall have access to the explosive training aids storage facility.
- (e) A primary and secondary custodian will be designated to minimize the possibility of loss of explosive training aids during and after the training. Generally, the handler will be designated as the primary custodian while the trainer or authorized second person on-scene will be designated as the secondary custodian.
- (f) Any lost or damaged explosive training aids shall be promptly reported to the canine coordinator, who will determine if any further action will be necessary. Any loss of explosives will be reported to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

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318.13 BREEDING

Departmental canines shall not be bred.

Domestic Violence

320.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to deter, prevent and reduce domestic violence through vigorous enforcement and to address domestic violence as a serious crime against society. The policy specifically addresses the commitment of this department to take enforcement action when appropriate, to provide assistance to victims and to guide officers in the investigation of domestic violence.

320.1.1 DEFINITIONS

Definitions related to this policy include:

Court order - All forms of orders related to domestic violence that have been issued by a court of this state or another, whether civil or criminal, regardless of whether service has been made.

320.2 POLICY

The Bay Area Rapid Transit Police Department's response to incidents of domestic violence and violations of related court orders shall stress enforcement of the law to protect the victim and shall communicate the philosophy that domestic violence is criminal behavior. It is also the policy of this department to facilitate victims' and offenders' access to appropriate civil remedies and community resources whenever feasible.

320.3 OFFICER SAFETY

The investigation of domestic violence cases often places officers in emotionally charged and sometimes highly dangerous environments. No provision of this policy is intended to supersede the responsibility of all officers to exercise due caution and reasonable care in providing for the safety of any officers and parties involved.

320.4 INVESTIGATIONS

The following guidelines should be followed by officers when investigating domestic violence cases:

- (a) Calls of reported, threatened, imminent, or ongoing domestic violence and the violation of any court order are of extreme importance and should be considered among the highest response priorities. This includes incomplete 9-1-1 calls.
- (b) When practicable, officers should obtain and document statements from the victim, the suspect, and any witnesses, including children, in or around the household or location of occurrence.
- (c) Officers should list the full name and date of birth (and school if available) of each child who was present in the household at the time of the offense. The names of other children who may not have been in the house at that particular time should also be obtained for follow-up.

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- (d) When practicable and legally permitted, video or audio record all significant statements and observations.
- (e) All injuries should be photographed, regardless of severity, taking care to preserve the victim's personal privacy. Where practicable, photographs should be taken by a person of the same sex. Victims whose injuries are not visible at the time of the incident should be asked to contact the Criminal Investigations Division in the event that the injuries later become visible.
- (f) Officers should request that the victim complete and sign an authorization for release of medical records related to the incident when applicable.
- (g) If the suspect is no longer at the scene, officers should make reasonable efforts to locate the suspect to further the investigation, provide the suspect with an opportunity to make a statement, and make an arrest or seek an arrest warrant if appropriate.
- (h) Seize any firearms or other dangerous weapons in the home, if appropriate and legally permitted, for safekeeping or as evidence. If the domestic violence involved threats of bodily harm, any firearm discovered in plain view or pursuant to consent or other lawful search must be taken into temporary custody (Penal Code § 18250).
- (i) When completing an incident or arrest report for violation of a court order, officers should include specific information that establishes that the offender has been served, including the date the offender was served, the name of the agency that served the order, and the provision of the order that the subject is alleged to have violated. When reasonably available, the arresting officer should attach a copy of the order to the incident or arrest report.
- (j) Officers should take appropriate enforcement action when there is probable cause to believe an offense has occurred. Factors that should not be used as sole justification for declining to take enforcement action include:
 - 1. Whether the suspect lives on the premises with the victim.
 - 2. Claims by the suspect that the victim provoked or perpetuated the violence.
 - 3. The potential financial or child custody consequences of arrest.
 - 4. The physical or emotional state of either party.
 - 5. Use of drugs or alcohol by either party.
 - 6. Denial that the abuse occurred where evidence indicates otherwise.
 - 7. A request by the victim not to arrest the suspect.
 - 8. Location of the incident (public/private).
 - 9. Speculation that the complainant may not follow through with the prosecution.
 - 10. Actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or marital status of the victim or suspect.
 - 11. The social status, community status, or professional position of the victim or suspect.

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320.4.1 IF A SUSPECT IS ARRESTED

If a suspect is arrested, officers should:

- (a) Advise the victim that there is no guarantee the suspect will remain in custody.
- (b) Provide the victim's contact information to the jail staff to enable notification of the victim upon the suspect's release from jail.
- (c) Advise the victim whether any type of court order will be in effect when the suspect is released from jail.

320.4.2 IF NO ARREST IS MADE

If no arrest is made, the officer should:

- (a) Advise the parties of any options, including but not limited to:
 1. Voluntary separation of the parties.
 2. Appropriate resource referrals (e.g., counselors, friends, relatives, shelter homes, victim witness unit).
- (b) Document the resolution in a report.

320.5 VICTIM ASSISTANCE

Victims may be traumatized or confused. Officers should:

- (a) Recognize that a victim's behavior and actions may be affected.
- (b) Provide the victim with the department's domestic violence information handout, even if the incident may not rise to the level of a crime.
- (c) Alert the victim to any available victim advocates, shelters and community resources.
- (d) Stand by for a reasonable amount of time when an involved person requests law enforcement assistance while removing essential items of personal property.
- (e) Seek medical assistance as soon as practicable for the victim if he/she has sustained injury or complains of pain.
- (f) Ask the victim whether he/she has a safe place to stay. Assist in arranging to transport the victim to an alternate shelter if the victim expresses a concern for his/her safety or if the officer determines that a need exists.
- (g) Make reasonable efforts to ensure that children or dependent adults who are under the supervision of the suspect or victim are being properly cared for.
- (h) Seek or assist the victim in obtaining an emergency order if appropriate.

An officer shall advise an individual protected by a Canadian domestic violence protection order of available local victim services (Family Code § 6452).

320.6 DISPATCH ASSISTANCE

All calls of domestic violence, including incomplete 9-1-1 calls, should be dispatched as soon as practicable.

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Dispatchers are not required to verify the validity of a court order before responding to a request for assistance. Officers should request that dispatchers check whether any of the involved persons are subject to the terms of a court order.

320.7 FOREIGN COURT ORDERS

Various types of orders may be issued in domestic violence cases. Any foreign court order properly issued by a court of another state, Indian tribe, or territory shall be enforced by officers as if it were the order of a court in this state. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC § 2265). An otherwise valid out-of-state court or foreign order shall be enforced, regardless of whether the order has been properly registered with this state (Family Code § 6403).

Canadian domestic violence protection orders shall also be enforced in the same manner as if issued in this state (Family Code § 6452).

320.8 VERIFICATION OF COURT ORDERS

Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, officers should carefully review the actual order when available, and where appropriate and practicable:

- (a) Ask the subject of the order about his/her notice or receipt of the order, his/her knowledge of its terms and efforts to respond to the order.
 1. If a determination is made that a valid foreign order cannot be enforced because the subject has not been notified or served the order, the officer shall inform the subject of the order, make a reasonable effort to serve the order upon the subject, and allow the subject a reasonable opportunity to comply with the order before enforcing the order. Verbal notice of the terms of the order is sufficient notice (Family Code § 6403).
- (b) Check available records or databases that may show the status or conditions of the order.
 1. Registration or filing of an order in California is not required for the enforcement of a valid foreign order (Family Code § 6403).
- (c) Contact the issuing court to verify the validity of the order.
- (d) Contact a law enforcement official from the jurisdiction where the order was issued to verify information.

Officers should document in an appropriate report their efforts to verify the validity of an order, regardless of whether an arrest is made. Officers should contact a supervisor for clarification when needed.

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320.9 LEGAL MANDATES AND RELEVANT LAWS

California law provides for the following:

320.9.1 STANDARDS FOR ARRESTS

Officers investigating a domestic violence report should consider the following:

- (a) An arrest should be made when there is probable cause to believe that a felony or misdemeanor domestic violence offense has been committed (Penal Code § 13701). Any decision to not arrest an adult when there is probable cause to do so requires supervisor approval.
 - 1. Officers are only authorized to make an arrest without a warrant for a misdemeanor domestic violence offense if the officer makes the arrest as soon as probable cause arises (Penal Code § 836).
- (b) An officer responding to a domestic violence call who cannot make an arrest will advise the victim of his/her right to make a private person's arrest. The advisement should be made out of the presence of the suspect and shall include advising the victim how to safely execute the arrest. Officers shall not dissuade victims from making a lawful private person's arrest. Officers should refer to the provisions in the Private Persons Arrests Policy for options regarding the disposition of private person's arrests (Penal Code § 836(b)).
- (c) Officers shall not cite and release a person for the following offenses (Penal Code § 853.6(a)(3)):
 - 1. Penal Code § 243(e)(1) (battery against spouse, cohabitant)
 - 2. Penal Code § 273.5 (corporal injury on spouse, cohabitant, fiancé/fiancée, person of a previous dating or engagement relationship, mother/father of the offender's child)
 - 3. Penal Code § 273.6 (violation of protective order) if violence or threats of violence have occurred or the suspect has gone to the workplace or residence of the protected party
 - 4. Penal Code § 646.9 (stalking)
 - 5. Other serious or violent felonies specified in Penal Code § 1270.1
- (d) In responding to domestic violence incidents, including mutual protective order violations, officers should generally be reluctant to make dual arrests. Officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person who has been determined to be the most significant, rather than the first, aggressor (Penal Code § 13701). In identifying the dominant aggressor, an officer shall consider:
 - 1. The intent of the law to protect victims of domestic violence from continuing abuse.
 - 2. The threats creating fear of physical injury.
 - 3. The history of domestic violence between the persons involved.
 - 4. Whether either person acted in self-defense.

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- (e) An arrest shall be made when there is probable cause to believe that a violation of a domestic violence court order has been committed (Penal Code § 13701; Penal Code § 836), regardless of whether the offense was committed in the officer's presence. After arrest, the officer shall confirm that a copy of the order has been registered, unless the victim provides a copy (Penal Code § 836).

320.9.2 COURT ORDERS

- (a) An officer who obtains an emergency protective order from the court shall serve it on the restrained person if the person can be reasonably located, and shall provide the person protected or the person's parent/guardian with a copy of the order. The officer shall file a copy with the court as soon as practicable and shall have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (Family Code § 6271; Penal Code § 646.91).
- (b) At the request of the petitioner, an officer at the scene of a reported domestic violence incident shall serve a court order on a restrained person (Family Code § 6383; Penal Code § 13710).
- (c) Any officer serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm/ammunition be immediately surrendered (Family Code § 6389(c)(2)).
- (d) During the service of a protective order any firearm discovered in plain view or pursuant to consent or other lawful search shall be taken into temporary custody (Penal Code § 18250).
- (e) If a valid Canadian order cannot be enforced because the person subject to the order has not been notified or served with the order, the officer shall notify the protected individual that reasonable efforts shall be made to contact the person subject to the order. The officer shall make a reasonable effort to inform the person subject to the order of the existence and terms of the order and provide him/her with a record of the order, if available, and shall allow the person a reasonable opportunity to comply with the order before taking enforcement action (Family Code § 6452).

320.9.3 PUBLIC ACCESS TO POLICY

A copy of this domestic violence policy will be provided to members of the public upon request (Penal Code § 13701).

320.9.4 REPORTS AND RECORDS

- (a) A written report shall be completed on all incidents of domestic violence. All such reports should be documented on the appropriate form, which includes information and notations specific to domestic violence incidents as required by Penal Code § 13730.
- (b) Reporting officers should provide the victim with the case number of the report. The case number may be placed in the space provided on the domestic violence victim information handout provided to the victim. If the case number is not immediately available, an explanation should be given regarding how the victim can obtain the information at a later time.

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- (c) Officers who seize any firearm or other deadly weapon in a domestic violence incident shall issue the individual possessing such weapon a receipt that includes the name and residential mailing address of the owner or person who possessed the weapon and notice of where the weapon may be recovered, along with the applicable time limit for recovery (Penal Code § 18250; Penal Code § 18255; Penal Code § 33800; Family Code § 6389(c)(2)).

320.9.5 RECORD-KEEPING AND DATA COLLECTION

This department shall maintain records of court orders related to domestic violence and the service status of each (Penal Code § 13710), as well as records on the number of domestic violence related calls reported to the Department, including whether weapons were used in the incident or whether the incident involved strangulation or suffocation (Penal Code § 13730). This information is to be reported to the Attorney General monthly. It shall be the responsibility of the Records Supervisor to maintain and report this information as required.

320.9.6 DECLARATION IN SUPPORT OF BAIL INCREASE

Any officer who makes a warrantless arrest for a felony or misdemeanor violation of a domestic violence restraining order shall evaluate the totality of the circumstances to determine whether reasonable cause exists to seek an increased bail amount. If there is reasonable cause to believe that the scheduled bail amount is insufficient to assure the arrestee's appearance or to protect the victim or family member of a victim, the officer shall prepare a declaration in support of increased bail (Penal Code § 1269c).

Search and Seizure

322.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Bay Area Rapid Transit Police Department personnel to consider when dealing with search and seizure issues.

322.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

322.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

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322.3.1 DETENTIONS

A detention occurs whenever a reasonable person would believe he/she is not free to leave or otherwise disregard the police and go about his/her business. (Hodari D. (1991) 499 U.S. 621, 627-628; Bostick (1991) 501 U.S. 429, 434; Souza (1994) 9 Cal.4th 224, 229; Daugherty (1996) 50 Cal.App.4th 275, 283.) Such belief may result from physical restraint, unequivocal verbal commands, or words or conduct by you that clearly relate to the investigation of specific criminal acts. (Brueckner (1990) 223 Cal.App.3d 1500, 1505.)

For a detention to be valid, you must have reasonable suspicion that: (1) criminal activity may be afoot and (2) the person you are about to detain is connected with that possible criminal activity. (Wardlow (2000) 528 U.S. 119; Ornelas (1996) 517 U.S. 690, 695-696; Sokolow (1989) 490 U.S. 1, 7-8; Bennett (1998) 17 Cal.4th 373, 386.) A detention can never be based solely on a hunch, rumor, intuition, instinct or curiosity. (Wardlow (2000) 528 U.S. 119, 123-124; Tony C. (1978) 21 Cal.3d 888; Raybourn (1990) 218 Cal.App.3d 308.) You must have specific facts justifying your suspicion and you must be able to articulate those facts.

A suspect has no right to resist a lawful detention. (Lloyd (1989) 216 Cal.App.3d 1425, 1429.) You may use whatever physical force necessary to make him/her stop. (Johnson (1991) 231 Cal.App.3d 1, 12-13; Gregory S. (1980) 112 Cal.App.3d 764, 778.)

Generally speaking, you should avoid using force and/or physical restraints, such as handcuffs or guns, during a detention. These indications of custody may cause a court to view the detention as an arrest. The use of force, handcuffs, etc., does not necessarily turn a detention into an arrest. The courts will look at the totality of the circumstances and evaluate the intrusiveness of the detention.

Be extremely careful in moving a subject during a detention. Moving a subject may turn a detention into an unlawful arrest. You may move a detainee a short distance for your protection (Courtney (1970) 11 Cal.App.3d 1185--crowd gathering), or to avoid embarrassment to the suspect (Rosenberg (5th Cir. 1972) 458 F.2d 1183--public place), but requiring the subject to accompany you to another location is only permitted under certain circumstances. These exceptions include: when there is probable cause to arrest, when the subject consents, when the victim cannot be moved, or if moving the subject is the best or only practical alternative (e.g., no other officers available). (Harris (1975) 15 Cal.3d 384; Rafael (1982) 132 Cal.App.3d 977; Gatch (1976) 56 Cal.App.3d 505.)

The time or the duration of a detention also needs to be considered. A detention is temporary and may last no longer than is necessary to resolve the circumstances that justified its initiation. There is no set time limit for a detention, the key is whether you took reasonable steps to confirm or deny your suspicions. (Sharpe (1985) 470 U.S. 675, 686-688.)

You are permitted to conduct a limited search of a detainee's outer clothing for weapons or objects that could be used as a weapon, only if you have specific facts indicating that the individual may pose a danger to you. (Terry (1968) 392 U.S. 1; Flippen (9th Cir. 1991) 924 F.2d 163, 166; Hill (1974) 12 Cal.3d 731.) "Standard procedure" isn't good enough. (Santos (1984) 154 Cal.App.3d 1178.) You must reasonably suspect that the person is armed or may be armed (Dickerson (1993)

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508 U.S. 366, 373; Limon (1993) 17 Cal.App.4th 524, 532), although you do not need to be positive (\$109,179 (9th Cir. 2000) 228 F.3d 1080, 1086; Frank V. (1991) 233 Cal.App.3d 1232, 1240; Wright (1988) 206 Cal.App.3d 1107; Stephen L. (1984) 162 Cal.App.3d 257). Dealing with a suspected dangerous felon is by definition enough cause. Similarly, if you come across a container on the person being detained, you are entitled to seize and open it, as long as it is reasonable to believe that it is a weapon or contains a weapon. (Flippin (9th Cir. 1991) 924 F.2d 163, 166; Limon (1993) 17 Cal.App.4th 524, 535-536.)

If during a search for weapons, you discover an item of contraband which becomes immediately apparent to you, you may seize the item. You cannot conduct any additional feeling, grabbing or manipulating of the object in order to determine what it is. (Dickerson (1993) 508 U.S. 366.) This would be considered an illegal search.

322.3.2 ARRESTS

An arrest occurs when you take a person into custody. This requires either (1) that you physically restrain or at least touch the person, or (2) that he/she submits to your authority. (Pen. Code, § 835; Hodari D. (1991) 499 U.S. 621, 626; Turner (1994) 8 Cal.4th 137, 180.) Incident to a lawful, custodial arrest you are entitled to search the person you arrested incident to arrest. (Robinson (1973) 414 U.S. 218, 235.) Cite and release offenses are not included here because a cite and release offense does not qualify as a custodial arrest, even where you have the power to make such arrest. (Knowles (1998) 525 U.S. 113, 114-115; Arturo D. (2002) 27 Cal.4th 60, 75, fn. 15.)

A lawful, custodial arrest allows a full body search of the suspect, including any open or closed containers, involving any offenses from murder to outstanding traffic warrants. A search will be valid as incident to arrest only if the search was and arrest were carried out contemporaneously (i.e., same location at approximately the same time). (Rawlings (1980) 448 U.S. 98; Lennies H. (2005) 126 Cal.App.4th 1232; Gonzales (1989) 216 Cal.App.3d 1185; Fay (1986) 184 Cal.App.3d 882.)

You are also able to search, incident to arrest, the area within the immediate control of the suspect. (Robinson (1973) 414 U.S. 218, 235.) This generally means within arm's reach of the arrestee. (Chimel (1969) 395 U.S. 752.) You may also search any containers that are on his/her person or under his/her immediate control, such as a purse, fanny pack, or backpack. (Belton (1981) 453 U.S. 454; Dennis (1985) 172 Cal.App.3d 287; Rodriguez (9th Cir. 1989) 869 F.2d 479.)

For a felony, you may make an arrest--with or without a warrant--at any time of the day or night. (Pen. Code, § 840.)

However, for a misdemeanor or infraction, there is a time limitation. You must make the arrest--with or without a warrant--between 6:00 a.m. and 10:00 p.m. unless:

1. the misdemeanor or infraction occurred in your presence (see Welsch (1984) 151 Cal.App.3d 1038 for discussion of "presence"); or
2. the arrest is made in a public place; or
3. you have a warrant endorsed for nighttime service; or

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4. the arrestee is already in custody on another charge or is taken into custody on a citizen's arrest; or
5. you make the arrest for violation of a domestic violence protective order, even though the violation did not occur in your presence.(Pen. Code, §§ 836, 840.)

322.3.3 SEARCHING FOR IDENTIFICATION

Normally, a search of a person being detained for identification is not permitted unless you have consent, probable cause to arrest, or other factors are present. For example, if a detainee admits to having identification on him/her but refuses to produce it, you may conduct a limited search for it (Calif. Peace Officers Legal Sourcebook, Search and Seizure-Persons, 2.14). Also, if a detainee verbally provided his/her name and states he/she has no identification, but you see what appears to be a wallet in a pocket, you may ask him/her to take it out and look through it while you observe. (Long (1987) 189 Cal.App.3d 77.) Additionally, if during a proper and legal search for weapons, you feel what appears to be a wallet, it would be proper to remove the wallet and look through it. (Loudermilk (1987) 195 Cal.App.3d 996.)

322.4 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search and how the search will be conducted.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) When the person to be searched is of the opposite sex as the searching officer, an officer of the like sex should be summoned to the scene to conduct the search if the requested officer is within a reasonable distance/response time (i.e. adjacent beat).
- (f) However, a search may be undertaken by a member of the opposite sex when it is not practical to summon an officer of the like sex, if exigent/officer safety circumstances exists, or with supervisory approval. In these instances, the officers will adhere to the following guidelines:
 1. Another officer or a supervisor should witness the search, if practical.
 2. The search shall be filmed using the officer's body worn camera in accordance with Policy 451 (Body Worn Camera). Officers and/or supervisors assisting as cover officers or witnesses during the search shall also activate their body worn cameras, if practicable.
 3. Officers will use techniques for person searches taught in Departmental and Academy approved training.

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4. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

322.5 DOCUMENTATION

Officers are responsible to document any search and to ensure that any required reports are sufficient including, at minimum, documentation of the following:

- Reason for the search
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- What, if any, injuries or damage occurred
- All steps taken to secure property
- The results of the search, including a description of any property or contraband seized
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.

322.6 VEHICLES

322.6.1 DETENTIONS

During a traffic stop or investigative vehicle detention, generally you may not conduct a full search either of the vehicle or its occupants. This is because the detention is based on reasonable suspicion and not probable cause to arrest or search. (Terry (1968) 392 U.S. 1; Orozco (1981) 114 Cal.App.3d 435.) There are two exceptions as follows:

- (a) Limited search of the occupant(s) for weapons: You are permitted to conduct a limited search of any occupant for weapons or objects that could be used as a weapon, only if you have specific facts indicating that the individual may pose a danger to you (the rule for searching a driver or occupants does not change because the person(s) is in a vehicle - Calif. Peace Officer's Legal Sourcebook, 4.4a).
- (b) Limited search of the vehicle for license and registration: During any vehicle stop, you are entitled to see and examine the driver's license and the vehicle's registration. (Arturo D. (2002) 27 Cal.4th 60; Webster (1991) 54 Cal.3d 411, 430; Hart (1999) 73 Cal.App.4th 852, 860.) If the driver, upon your request, fails to produce the necessary documentation, you have the right to conduct a limited search for the driver's license or identification and/or the vehicle registration. This search may include any area within the vehicle where such documentation reasonably may be expected to be found. (Arturo D. (2002) 27 Cal.4th 60.) This area would normally not include the trunk.

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- (c) Limited search of the vehicle for weapons: It is proper for you to enter a vehicle during a detention to conduct a limited, protective search for weapons in situations where the circumstances justify it. For example, a limited, protective search of the passenger compartment may be conducted in areas where a weapon could be placed or hidden if you believe, based on specific facts, that the suspect is dangerous and may gain immediate access to a weapon. (Long (1983) 463 U.S.1032; Lafitte (1989) 211 Cal.App.3d 1429; see also Molina (1994) 25 Cal.App.4th 1038, 1042.)

322.6.2 ARRESTS

When you make a lawful arrest of the driver or any occupant of a vehicle, you are entitled to search both the person you arrested and the passenger compartment of the vehicle incident to arrest. (Belton (1981) 453 U.S. 454; Stoffle (1991) 1 Cal.App.4th 1671.) Cite and release traffic offenses are not included here because a cite and release offense does not qualify as a custodial arrest, even where you have the power to make such arrest. (Knowles (1998) 525 U.S. 113, 114-115; Arturo D. (2002) 27 Cal.4th 60, 75, fn. 15.) A lawful custodial arrest allows a full body search of the driver, any occupant, or any recent occupant, including any containers. (Robinson (1973) 414 U.S. 218; Gustafson (1973) 414 U.S. 260.) If the arrest is of an occupant of a vehicle, you may search the passenger compartment, including the glove compartment, and any containers (Belton (1981) 453 U.S. 454; Banks (1990) 217 Cal.App.3d 1358, 1364), including those possessed by non-arrested occupants. (Mitchell (1995) 36 Cal.App.4th 672, 677; accord Prance (1991) 226 Cal.App.3d 1525.) A search will be valid as incident to arrest only if the search was and arrest were carried out contemporaneously (i.e., same location at approximately the same time).

322.6.3 SEARCHES BASED ON PROBABLE CAUSE

You may conduct a warrantless search of any part of a vehicle that is being used on a public thoroughfare or which is reasonably capable of such use as long as you have probable cause to believe the object you are looking for may be located in that portion of the vehicle. This would include the glove compartment, under the hood, the locked trunk, or in any of the vehicle's contents, as long as what you are looking for might reasonably be located there. (Houghton (1999) 526 U.S. 295; Ross (1982) 456 U.S.798, 820-821; Acevedo (1991) 500 U.S. 565, 569-570, 580; Panah (2005) 35 Cal.4th 395, 469; Superior Court (Nasmeh) (2007) 151 Cal.App.4th 85, 100-101; Carpenter (1997) 15 Cal.4th 312, 365.) Additionally, any containers located in these areas may also be searched which may reasonably contain the object you are looking for. This automobile exception also applies to other vehicles, including motor homes, vans, bicycles, motorcycles, and houseboats.

322.6.4 PLAIN VIEW

Because an individual does not have an expectation of privacy as to items that are in plain view, no "search" has taken place in a constitutional sense when an object is viewed from a location where the officer has a right to be. An item in plain view may generally be seized when all of the following conditions exist: it was viewed from a lawful location; there is probable cause to believe that the item is linked to criminal activity; and, the location of the item can be legally accessed. It

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is important to note that the so-called "Nexus Rule" requires that even items in plain view must not be seized unless there is probable cause to believe that the item will aid in an investigation. Such a nexus should be included in any related reports.

322.6.5 EXIGENT CIRCUMSTANCES

Exigent circumstances permitting entry into premises without a warrant or valid consent generally include any of the following: imminent danger of injury or death, serious damage to property, imminent escape of a suspect, or, the destruction of evidence. An exigency created by the officer's own conduct as an excuse for a warrantless entry is not generally permitted.

322.7 CONSENT

Entry into a location for the purpose of conducting a search for any item reasonably believed relevant to any investigation is permitted once valid consent has been obtained. A search by consent is only valid if the following criteria are met:

- Voluntary (i.e., clear, specific, and unequivocal)
- Obtained from a person with authority to give the consent
- Does not exceed the scope of the consent given

Unless unusual circumstances would not otherwise prevent the use of the Department's Consent to Search form, officers should have the subject read the form, ensure he/she understands it, have the subject sign the form, and then provide him/her with a copy. If unusual circumstances prevent the use of the Consent to Search form, officers should describe such circumstances in related report(s). While there is no requirement that an individual be told of their right to refuse consent, such a warning and the use of the Consent to Search form provide strong support for the validity of any consent. Consent must be obtained as the product of a free will. It cannot be obtained through submission to authority, expressed or implied. A person with authority to consent to search should be present or otherwise in a position to communicate a withdrawal of consent should they so desire. Absent other legal justification, any related search should be discontinued at any point that consent is withdrawn.

Warrants

323.1 PURPOSE AND SCOPE

To establish a procedure for the service and processing of all warrants as ordered by the courts of issuance and in accordance with applicable statutes and departmental policies.

323.2 POLICY

It shall be the policy of this Police Department to make a diligent effort to serve all warrants issued for BART-related offenses, as well as those brought to our attention through inquiry to AWS, NCIC, or other channels of communication within the law enforcement community. Pursuant to the guidelines set forth in 827.1 P.C., it shall be the policy of this department to issue citations, in lieu of booking, for most misdemeanor/infraction warrants.

323.3 DEFINITIONS

Arrest Warrant - An order of the court to a peace officer, directing the officer to arrest a person and bring him/her before a magistrate.

AWS - Automated Warrant System: Comprised of warrant data from all enforcement agencies within Alameda, San Francisco and San Mateo counties.

WPS - Wanted Persons System: Comprised of high misdemeanor and felony warrant data from law enforcement agencies within California. Only felony warrants and misdemeanor warrants with bail \$1,000.00 or more from this agency shall be entered into WPS.

NCIC - National Crime and Information Center: Comprised of felony warrant data from law enforcement agencies within the United States and U.S. territories.

Time of Service - Felony warrants may be served at any time in any location. warrants for misdemeanors and infractions may be served any time in a public place and between 0700 and 2200 hours at a place of residence, unless authorized for night service by the issuing magistrate.

Select Traffic Warrants - Warrants issued for the following violations of the Vehicle Code: 10851 , 14601, 14601.1, 20002, 23152 , 23103 , 23104, 23109. Unlike non-select traffic warrants, select traffic warrants have no restrictions regarding the booking process.

Non-Select Traffic Warrant (40304.5 CVC) - Warrants issued for failure to appear on parking citations or traffic infractions not specified in the definition for Select Traffic Warrants and warrants issued for violation of local ordinances.

Local Warrant - A warrant issued by a court within the District as a result of BART Police action (includes warrants issued by Northern Judicial District, San Mateo County).

Foreign Warrant - A warrant issued by a court outside the District.

No-Bail Warrant - Posting of bail is not allowed; booking is mandatory.

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Ramey Warrant - An arrest warrant issued on probable cause authorizing an officer to arrest the subject named in the warrant inside his/her residence.

Search Warrant - An order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before a magistrate.

Arrest Warrant Postcard - A postcard sent from the warrant clerk to notify a person that a BART arrest warrant is currently outstanding.

323.4 PROCEDURE

Due to varying procedures utilized by the courts and jails in the numerous jurisdictions that interface with the BART Police Department, the following procedures have been established:

(a) **Dispatch Warrant Files:**

1. The BART Police Department shall maintain a file for the purpose of holding all warrants awaiting service. It shall be the responsibility of the warrant clerk to promptly enter and remove material in order to maintain a current file.
2. Access to all warrant files located in BART Police Dispatch are restricted to the warrant clerk, warrant clerk's supervisor, dispatchers, dispatchers' supervisors, call takers, any police officer working his/her shift as a dispatcher, and others as authorized by the warrant supervisor.
3. Any warrant removed from the dispatch file shall not be refiled by any person other than the warrant clerk. Warrants removed with no action taken shall be placed in the warrant refile box for refileing by the warrant clerk. Dispatchers and Call-takers are reminded to check the warrant refile box when looking for a warrant.

- (b) **Arrest Warrant Postcard:** It shall be the responsibility of the warrant clerk to send an arrest warrant postcard to all recipients of a BART Police misdemeanor/infraction warrant for the purpose of notification, due diligence, and to reduce the hours spent serving warrants at incorrect or non-existent addresses.

323.4.1 FIELD SERVICE OF ARREST WARRANTS

Upon receipt of information that a subject of inquiry has outstanding warrants, the officer shall determine the charge(s) and total bail if applicable.

The officer may exercise discretion in the service of warrants and consider the available alternatives, including:

- (a) Foreign "non-select" traffic warrants where the aggregate bail of two or fewer warrants is under \$200.00; release the subject after advising that he is still subject to arrest until bail is posted for the warrants.
1. Exception: All BART "non-select" traffic warrants shall be served regardless of dollar amount.

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- (b) Issue a notice to appear pursuant to 818 P.C., 853.6 P.C., and 827.1 P.C.
 - 1. Exception: Persons named in misdemeanor/infraction warrants will not be released on a citation if any of the following conditions exists:
 - (a) The warrant violation is for drunk driving;
 - (b) The recipient of the warrant has 3 or more failures to appear.

323.4.2 RESIDENTIAL SERVICE

- (a) Patrol officers, at the direction of a sergeant, may assist the Special Operations and Investigations Bureau in the service of warrants. Warrants shall be served by patrol officers in accordance with procedures outlined herein. Warrant Service Cards containing all pertinent information will be used to effect service in the field.
- (b) Run PIN check on subjects of all warrants prior to attempted service to determine if there are other outstanding warrants for the same persons.
- (c) Record all attempts to serve the warrant on the reverse side of the Warrant Service Card in the area provided. This should include date and time of attempted contact, name(s) of person(s) contacted, summary of information received, and new address information if subject has moved.
- (d) The officer shall check the face of the Warrant Service Card for special instructions as to time of service, mandatory appearance, and bail forfeiture. Some of the Warrant Service Cards may be marked "1029" to alert officers to possible hazardous conditions.
- (e) On contacting the subject of the warrant, the officer shall obtain warrant verification through dispatch prior to service and arrest. When arrest and booking become necessary, dispatch shall forward a warrant abstract to the appropriate booking agency.
 - 1. When the subject is booked, dispatch shall update the status of the warrant.
 - 2. If the county issuing the warrant is different than the county in which the subject is arrested, an 821-822 PC statement form must be signed by the subject prior to transporting to the county of issuance.
- (f) Upon collection of bail or issuance of a notice to appear, BART Police Dispatch shall update the status of the warrant in the appropriate automated system and affix the printout(s) to the warrant and place the warrant into the record box for processing by the warrant clerk.
- (g) The officer shall immediately notify Dispatch of the disposition.
- (h) The officer shall complete the face of the Warrant Service Card. In the event that no Warrant Service Card exists, the return of service on the original warrant shall be completed.

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323.4.3 TWO OFFICER WARRANT SERVICE GUIDELINES

After receiving supervisory approval, an officer may be teamed with a second officer for the purpose of serving any warrant, under the following conditions:

- All felony warrants.
- A potentially hazardous warrant violation and/or location.

323.4.4 PAROLE SEARCHES, RAMEY AND SEARCH WARRANTS

When conducting a parole search, serving a Ramey warrant, or search warrant, the following guidelines shall apply:

- A BART Police manager shall be present and responsible for coordinating and overseeing all activities at the scene of the above listed warrant and parole searches.
- It shall be the responsibility of the manager to notify the jurisdiction wherein the warrants will be served and/or the parole searches conducted.

323.4.5 WARRANT SERVICE BY OUTSIDE AGENCIES

Outside agencies shall be assisted in the service of BART warrants according to the following:

- (a) BART Police Dispatch shall forward abstracts on warrants when requested by outside agencies. Warrant verification shall not be sent if the original warrant cannot be located.
 1. Warrant abstracts shall be sent immediately to any agency within the AWS System.
 2. If the warrant status has not been changed within twenty-four hours of sending the abstract, Dispatch shall contact the agency who requested the abstract to determine the status. If the warrant has not been served, it shall be returned to the warrant refile box for return to the active file. If the warrant has been served, Dispatch shall request the serving agency to make the update. If the agency is located outside the PIN area, Dispatch shall request a teletype.
- (b) Dispatch shall attach the update to the warrant and place the warrant and all related material in the records box for processing by the warrant clerk.
- (c) When the subject is in custody and is unable to post bail and must be transported to a local jail or other detention facility by our department, notify the Watch Commander to arrange for transportation.

323.4.6 BOOKING AND TRANSPORTING

The booking/transporting officer shall:

- (a) Obtain a copy of the pick-up request from Dispatch.
- (b) Confirm with the holding agency that the defendant will still be in custody upon your arrival.

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- (c) Advise the holding agency of your ETA.
- (d) Confirm with the holding agency that the defendant has signed the 821 and 822 PC statement form authorizing inter-county transportation.
- (e) After the transporting officer advises that he/she has picked up the prisoner, Dispatch shall send a warrant abstract to the facility to which the prisoner is being transported.
- (f) Request a computer generated report on the transportation assignment. NOTE: Under Sections 821 and 822 PC, the subject must be taken before the magistrate who issued the warrant within five (5) days of notification that the subject is ready for pick-up. Dispatch shall forward the original pick-up request to the Traffic/Warrant Clerk, along with the advisory note, setting out the date and time of the prisoner pick-up.
- (g) Dispatch shall update WPS and NCIC Systems when applicable.
- (h) When the subject is in custody outside the local AWS area and is unable to post bail and must be transported to a holding facility in another jurisdiction pending arraignment, notification shall be made to the Operations Deputy Chief. The Operations Bureau Deputy Chief will then make the necessary arrangement to either return the subject to the Bay Area or secure the subject's release as may be appropriate. Notification shall have been deemed to have been made when Dispatch forwards the original pick-up request to the Operations Bureau Deputy Chief and the on-duty watch commander.

323.4.7 OUT-OF-STATE WARRANT BOOKING (S) AT THE SAN FRANCISCO JAIL

In order for the San Francisco Police Department's Fugitive Unit to meet its responsibilities when an arrestee is booked by this department on an out-of-state warrant, the following procedures shall be followed to enable proper follow-up on the warrant.

- (a) When Dispatch is in contact with the agency holding the warrant, request agency to send a confirmation TT to SFPD Warrants (XTWO) as well as to this agency.
- (b) If the agency holding the warrant refused to send the second TT to SFPD Warrants, Dispatch shall send a TT to SFPD Warrants (XTWO) containing the suspect and warrant information plus the fact that this agency has booked the fugitive at the San Francisco jail.
- (c) The booking officer shall respond to the Central Warrant Bureau, Room 460 at SFPD, obtain the above mentioned TT, and attach same to the booking paperwork.

323.5 OFFICE SERVICE

323.5.1 WEEKDAY BUSINESS HOURS

Individuals who voluntarily appear at the Police Department wishing to post bail in person should be referred directly to the Warrant Clerk or Traffic Officer. If the Clerk or Officer is unavailable, the following steps shall apply:

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323.5.2 WEEKEND/WEEKDAY AFTER BUSINESS HOURS

In the absence of either the Warrant Clerk or Traffic Officer, the records supervisor shall accept bail from those individuals who appear in person at the Police Department.

The department receipt book shall be utilized for issuance of a receipt for all bails posted. Each receipt consists of a serialized original and two copies. The receipts are distributed as follows:

- Original: Attach with bail and warrant.
- Yellow: Give to defendant or person posting bail.
- Pink: Dispose of.

A separate bail receipt shall be prepared for warrants issued out of different jurisdictions. When bail is collected on other than a BART warrant, attach the bail and receipt to the abstract available in Dispatch.

323.5.3 BAIL RECEIPTS

Bail receipts shall be completed as follows:

- Bail: Check box.
- Amount: Amount of bail monies.
- Date: Date monies received.
- For: Defendant.
- Address/City: Defendant's address and city of residence.
- Received From: Name of person posting bail if other than defendant.
- Address/City: Address and city of residence of person posting bail.
- Charge: Quote violations listed on face of warrant.
- Warrant/ Report No.: Quote warrant and/or docket number.
- Judicial District: Insert name of court where warrant emanated from.
- Issuing Magistrate: Insert name of judge who signed the warrant.
- Payment Received: Check appropriate box, either cash or other. If payment received by money order, insert the money order number over the line designated "other." Money orders shall be written to the appropriate court. Record the warrant number on the money order. Personal checks shall not be accepted for warrants issued out of the Oakland-Piedmont Judicial District.
- Surety Bond: Disregard this line. DO NOT issue receipt on a Surety Bond. The bond acts as a receipt.
- Treasury Bond: Disregard this line. Treasury Bonds are not to be accepted for bail.

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- Disposition: As appropriate, check "Will Appear" or "Forfeit." NOTE: If warrant states that appearance of the defendant is mandatory, or if defendant is released on a notice to appear, a court date shall be set and the defendant shall be instructed to appear at the date, time and place stated on the warrant. Appearance information can be taken from the face of the warrant, except Oakland, which is available through Dispatch. Warrants which do not specifically state that bail may be forfeited shall be considered as a mandatory appearance warrant and court date shall be set.
- Time: Insert time of appearance.
- Date: Insert date of appearance. NOTE: Officer sets date as dictated by court, not for convenience of defendant.
- Court: Insert court name and department number (indicated on warrant).
- Address: Insert street address of court.
- City: Insert name of city where court is located.
- Received By: Insert name of police employee receiving bail.

323.5.4 DISPOSITION OF RECEIPTS, MONIES, AND SERVED WARRANT(S)

- (a) The officer's supervisor shall compare the bail(s) collected by the officer, and the original receipt(s) attached to those monies.
- (b) The warrant, bail and original receipts shall be placed in an envelope, clearly marked "Warrant Bail Money", sealed and deposited in evidence Locker #1 by the officer who collected same.
- (c) All discrepancies between receipts and bails that are not immediately resolved are to be reported via memo to the Chief of Police, via the chain of command. Unresolved discrepancies shall be cause for disciplinary action.
- (d) Citations issued at Lake Merritt in lieu of physical arrest or bail collection shall be attached to the warrant, abstract, or verification, placed in an envelope, clearly marked "Warrant Citation" and deposited in the Citation File Box located in the squad room. No receipt shall be issued when defendant is released on an NTA.
- (e) The officer shall complete a brief police report entitled "Warrant Service."

Temporary Custody of Juveniles

324.1 PURPOSE AND SCOPE

This policy provides guidelines consistent with the Juvenile Justice and Delinquency Prevention Act for juveniles taken into temporary custody by members of the Bay Area Rapid Transit Police Department (34 USC § 11133).

Guidance regarding contacting juveniles at schools or who may be victims is provided in the Child Abuse Policy.

324.1.1 DEFINITIONS

Definitions related to this policy include:

Juvenile non-offender - An abused, neglected, dependent, or alien juvenile who may be legally held for his/her own safety or welfare. This also includes any juvenile who may have initially been contacted for an offense that would not subject an adult to arrest (e.g., fine-only offense) but was taken into custody for his/her protection or for purposes of reuniting the juvenile with a parent, guardian, or other responsible person. Juveniles 11 years of age or younger are considered juvenile non-offenders even if they have committed an offense that would subject an adult to arrest.

Juvenile offender - A juvenile 12 to 17 years of age who is alleged to have committed an offense that would subject an adult to arrest (a non-status offense) (Welfare and Institutions Code § 602). It also includes an offense under Penal Code § 29610 for underage possession of a handgun or concealable firearm (28 CFR 31.303).

Non-secure custody - When a juvenile is held in the presence of an officer or other custody employee at all times and is not placed in a locked room, cell, or behind any locked doors. Juveniles in non-secure custody may be handcuffed but not to a stationary or secure object. Personal supervision, through direct visual monitoring and audio two-way communication is maintained. Monitoring through electronic devices, such as video, does not replace direct visual observation (Welfare and Institutions Code § 207.1(d); 15 CCR 1150).

Safety checks - Direct, visual observation personally by a member of this department performed at random intervals within time frames prescribed in this policy to provide for the health and welfare of juveniles in temporary custody.

Secure custody - When a juvenile offender is held in a locked room, a set of rooms, or a cell. Secure custody also includes being physically secured to a stationary object (15 CCR 1146).

Examples of secure custody include:

- (a) A juvenile left alone in an unlocked room within the secure perimeter of the adult temporary holding area.
- (b) A juvenile handcuffed to a rail.
- (c) A juvenile placed in a room that contains doors with delayed egress devices that have a delay of more than 30 seconds.

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- (d) A juvenile being processed in a secure booking area when a non-secure booking area is available.
- (e) A juvenile left alone in a secure booking area after being photographed and fingerprinted.
- (f) A juvenile placed in a cell within the adult temporary holding area, whether or not the cell door is locked.
- (g) A juvenile placed in a room that is capable of being locked or contains a fixed object designed for cuffing or restricting movement.

Sight and sound separation - Located or arranged to prevent physical, visual, or auditory contact.

Status offender - A juvenile suspected of committing a criminal violation of the law that would not be a criminal violation but for the age of the offender. Examples may include running away, underage possession of tobacco, curfew violation, and truancy. A juvenile in custody on a court order or warrant based upon a status offense is also a status offender. This includes the habitually disobedient or truant juvenile under Welfare and Institutions Code § 601 and any juvenile suspected of an offense that would not subject an adult to arrest (e.g., fine-only offense).

324.2 POLICY

The Bay Area Rapid Transit Police Department is committed to releasing juveniles from temporary custody as soon as reasonably practicable and keeping juveniles safe while they are in temporary custody at the Bay Area Rapid Transit Police Department. Juveniles should be held in temporary custody only for as long as reasonably necessary for processing, transfer, or release.

324.3 JUVENILES WHO SHOULD NOT BE HELD

Juveniles who exhibit any of the following conditions should not be held at the Bay Area Rapid Transit Police Department:

- (a) Unconscious
- (b) Seriously injured
- (c) A known suicide risk or obviously severely emotionally disturbed
- (d) Significantly intoxicated except when approved by the Watch Commander. A medical clearance shall be obtained for minors who are under the influence of drugs, alcohol, or any other intoxicating substance to the extent that they are unable to care for themselves (15 CCR 1151).
- (e) Extremely violent or continuously violent

Officers taking custody of a juvenile who exhibits any of the above conditions should take reasonable steps to provide medical attention or mental health assistance and notify a supervisor of the situation (15 CCR 1142; 15 CCR 1151).

These juveniles should not be held at the Bay Area Rapid Transit Police Department unless they have been evaluated by a qualified medical and/or mental health professional (15 CCR 1142).

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If the officer taking custody of the juvenile believes the juvenile may be a suicide risk, the juvenile shall be under continuous direct supervision until evaluation, release, or a transfer is completed (15 CCR 1142).

324.3.1 EMERGENCY MEDICAL CARE OF JUVENILES IN CUSTODY

When emergency medical attention is required for a juvenile, medical assistance will be called immediately. The Watch Commander shall be notified of the need for medical attention for the juvenile. Department members should administer first aid as applicable (15 CCR 1142).

324.3.2 SUICIDE PREVENTION OF JUVENILES IN CUSTODY

Department members should be alert to potential symptoms based upon exhibited behavior that may indicate the juvenile is a suicide risk. These symptoms may include depression, refusal to communicate, verbally threatening to kill him/herself, or any unusual behavior which may indicate the juvenile may harm him/herself while in either secure or non-secure custody (15 CCR 1142).

324.4 CUSTODY OF JUVENILES

Officers should take custody of a juvenile and temporarily hold the juvenile at the Bay Area Rapid Transit Police Department when there is no other lawful and practicable alternative to temporary custody. Refer to the Child Abuse Policy for additional information regarding detaining a juvenile that is suspected of being a victim.

No juvenile should be held in temporary custody at the Bay Area Rapid Transit Police Department without authorization of the arresting officer's supervisor or the Watch Commander. Juveniles taken into custody shall be held in non-secure custody unless otherwise authorized by this policy.

Any juvenile taken into custody shall be released to the care of the juvenile's parent or other responsible adult or transferred to a juvenile custody facility or to other authority as soon as practicable and in no event shall a juvenile be held beyond six hours from the time of his/her entry into the Bay Area Rapid Transit Police Department (34 USC § 11133; Welfare and Institutions Code § 207.1(d)).

324.4.1 CUSTODY OF JUVENILE NON-OFFENDERS

Non-offenders taken into protective custody in compliance with the Child Abuse Policy should generally not be held at the Bay Area Rapid Transit Police Department. Custodial arrangements should be made for non-offenders as soon as reasonably possible. Juvenile non-offenders shall not be held in secure custody (34 USC § 11133; Welfare and Institutions Code § 206).

Juveniles 11 years of age or younger who have committed an offense that would subject an adult to arrest may be held in non-secure custody for the offenses listed in Welfare and Institutions Code § 602(b) (murder and the sexual assault offenses) and should be referred to a probation officer for a placement determination.

324.4.2 CUSTODY OF JUVENILE STATUS OFFENDERS

Status offenders should generally be released by citation or with a warning rather than taken into temporary custody. However, officers may take custody of a status offender if requested to do

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so by a parent or legal guardian in order to facilitate reunification (e.g., transported home or to the station to await a parent). Juvenile status offenders shall not be held in secure custody (34 USC § 11133).

324.4.3 CUSTODY OF JUVENILE OFFENDERS

Juvenile offenders should be held in non-secure custody while at the Bay Area Rapid Transit Police Department unless another form of custody is authorized by this policy or is necessary due to exigent circumstances.

Generally, a juvenile offender may be taken into custody when authorized by a court order or when there is probable cause to believe the juvenile has committed an offense that would subject an adult to arrest (Welfare and Institutions Code § 625).

A juvenile offender who is 14 years of age or older and suspected of using a firearm in violation of Welfare and Institutions Code § 625.3 shall be transported to a juvenile facility.

A juvenile offender suspected of committing murder or a sex offense that may subject a juvenile to criminal jurisdiction under Welfare and Institutions Code § 602(b), or a serious or violent felony should be referred to a probation officer for a decision on further detention.

In all other cases the juvenile offender may be:

- (a) Released upon warning or citation.
- (b) Released to a parent or other responsible adult after processing at the Department.
- (c) Referred to a probation officer for a decision regarding whether to transport the juvenile offender to a juvenile facility.
- (d) Transported to his/her home or to the place where the juvenile offender was taken into custody (Welfare and Institutions Code § 207.2).

In determining which disposition is appropriate, the investigating officer or supervisor shall prefer the alternative that least restricts the juvenile's freedom of movement, provided that alternative is compatible with the best interests of the juvenile and the community (Welfare and Institutions Code § 626).

Whenever a juvenile offender under the age of 14 is taken into custody, the officer should take reasonable steps to verify and document the child's ability to differentiate between right and wrong, particularly in relation to the alleged offense (Penal Code § 26).

324.5 ADVISEMENTS

Officers shall take immediate steps to notify the juvenile's parent, guardian, or a responsible relative that the juvenile is in custody, the location where the juvenile is being held, and the intended disposition (Welfare and Institutions Code § 627).

Whenever a juvenile is taken into temporary custody, he/she shall be given the *Miranda* rights advisement regardless of whether questioning is intended (Welfare and Institutions Code § 625).

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Anytime a juvenile offender is placed in secure custody, he/she shall be informed of the purpose of the secure custody, the length of time the secure custody is expected to last, and of the maximum six-hour limitation (Welfare and Institutions Code § 207.1(d)).

Juveniles taken into custody for an offense shall immediately be advised (or at least within one hour from being taken into custody, if possible) that they may make three telephone calls: one call completed to his/her parent or guardian; one to a responsible relative or his/her employer; and another call completed to an attorney. The calls shall be at no expense to the juvenile when completed to telephone numbers within the local calling area. Juveniles should be asked whether they are a caregiver and provided two more phone calls in the same manner as provided to adults in the Temporary Custody of Adults Policy (Welfare and Institutions Code § 627; Penal Code § 851.5).

324.6 JUVENILE CUSTODY LOGS

Any time a juvenile is held in custody at the Department, the custody shall be promptly and properly documented in the juvenile custody log, including:

- (a) Identifying information about the juvenile.
- (b) Date and time of arrival and release from the Bay Area Rapid Transit Police Department (15 CCR 1150).
- (c) Supervisor notification and approval to temporarily hold the juvenile.
- (d) Any charges for which the juvenile is being held and classification of the juvenile as a juvenile offender, status offender or non-offender.
- (e) Any changes in status (e.g., emergency situations, unusual incidents).
- (f) Time of all safety checks.
- (g) Any medical and other screening requested and completed (15 CCR 1142).
- (h) Circumstances that justify any secure custody (Welfare and Institutions Code § 207.1(d); 15 CCR 1145).
- (i) Any other information that may be required by other authorities, such as compliance inspectors or a local juvenile court authority.

The zone sergeant shall initial the log to approve the custody, including any secure custody, and shall also initial the log when the juvenile is released.

324.7 NO-CONTACT REQUIREMENTS

Sight and sound separation shall be maintained between all juveniles and adults while in custody at the Department (34 USC § 11133; Welfare and Institutions Code § 207.1(d); Welfare and Institutions Code § 208; 15 CCR 1144). There should also be sight and sound separation between non-offenders and juvenile and status offenders.

In situations where brief or accidental contact may occur (e.g., during the brief time a juvenile is being fingerprinted and/or photographed in booking), a member of the Bay Area Rapid Transit

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Police Department (trained in the supervision of persons in custody) shall maintain a constant, immediate, side-by-side presence with the juvenile or the adult to minimize any contact. If inadvertent or accidental contact does occur, reasonable efforts shall be taken to end the contact (15 CCR 1144).

324.8 TEMPORARY CUSTODY REQUIREMENTS

Members and supervisors assigned to monitor or process any juvenile at the Bay Area Rapid Transit Police Department shall ensure the following:

- (a) The Watch Commander should be notified if it is anticipated that a juvenile may need to remain at the Bay Area Rapid Transit Police Department more than four hours. This will enable the Watch Commander to ensure no juvenile is held at the Bay Area Rapid Transit Police Department more than six hours.
- (b) A staff member of the same sex shall supervise personal hygiene activities and care, such as changing clothing or using the restroom, without direct observation to allow for privacy.
- (c) Personal safety checks and significant incidents/activities shall be noted on the log.
- (d) Juveniles in custody are informed that they will be monitored at all times, except when using the toilet.
 - 1. There shall be no viewing devices, such as peep holes or mirrors, of which the juvenile is not aware.
 - 2. This does not apply to surreptitious and legally obtained recorded interrogations.
- (e) Juveniles shall have reasonable access to toilets and wash basins (15 CCR 1143).
- (f) Food shall be provided if a juvenile has not eaten within the past four hours or is otherwise in need of nourishment, including any special diet required for the health of the juvenile (15 CCR 1143).
- (g) Juveniles shall have reasonable access to a drinking fountain or water (15 CCR 1143).
- (h) Juveniles shall have reasonable opportunities to stand and stretch, particularly if handcuffed or restrained in any way.
- (i) Juveniles shall have privacy during family, guardian, and/or lawyer visits (15 CCR 1143).
- (j) Juveniles shall be permitted to remain in their personal clothing unless the clothing is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody (15 CCR 1143).
- (k) Blankets shall be provided as reasonably necessary (15 CCR 1143).
 - 1. The supervisor should ensure that there is an adequate supply of clean blankets.
- (l) Adequate shelter, heat, light, and ventilation should be provided without compromising security or enabling escape.
- (m) Juveniles shall have adequate furnishings, including suitable chairs or benches.

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- (n) Juveniles shall have the right to the same number of telephone calls as an adult in temporary custody.
- (o) No discipline may be administered to any juvenile, nor may juveniles be subjected to corporal or unusual punishment, humiliation, or mental abuse (15 CCR 1142).

324.9 USE OF RESTRAINT DEVICES

Juvenile offenders may be handcuffed in accordance with the Handcuffing and Restraints Policy. A juvenile offender may be handcuffed at the Bay Area Rapid Transit Police Department when the juvenile presents a heightened risk. However, non-offenders and status offenders should not be handcuffed unless they are combative or threatening (15 CCR 1142).

Other restraints shall only be used after less restrictive measures have failed and with the approval of the Watch Commander. Restraints shall only be used so long as it reasonably appears necessary for the juvenile's protection or the protection of others (15 CCR 1142).

Juveniles in restraints shall be kept away from other unrestrained juveniles or monitored in such a way as to protect the juvenile from abuse (15 CCR 1142).

324.10 PERSONAL PROPERTY

The officer taking custody of a juvenile offender or status offender at the Bay Area Rapid Transit Police Department shall ensure a thorough search of the juvenile's property is made and all property is removed from the juvenile, especially those items that could compromise safety, such as pens, pencils, and belts.

The personal property of a juvenile should be placed in a property bag. The property should be inventoried in the juvenile's presence and sealed into the bag. The property should be kept in a monitored or secure location until the juvenile is released from the custody of the Bay Area Rapid Transit Police Department.

324.11 SECURE CUSTODY

Only juvenile offenders 14 years of age or older may be placed in secure custody (Welfare and Institutions Code § 207; 15 CCR 1145). Watch Commander approval is required before placing a juvenile offender in secure custody.

Secure custody should only be used for juvenile offenders when there is a reasonable belief that the juvenile is a serious risk of harm to him/herself or others. Factors to be considered when determining if the juvenile offender presents a serious security risk to him/herself or others include the following (15 CCR 1145):

- (a) Age, maturity, and delinquent history
- (b) Severity of offense for which the juvenile was taken into custody
- (c) The juvenile offender's behavior
- (d) Availability of staff to provide adequate supervision or protection of the juvenile offender

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- (e) Age, type, and number of other individuals in custody at the facility

Members of this department shall not use secure custody for convenience when non-secure custody is, or later becomes, a reasonable option (15 CCR 1145).

When practicable and when no locked enclosure is available, handcuffing one hand of a juvenile offender to a fixed object while otherwise maintaining the juvenile in non-secure custody should be considered as the method of secure custody. An employee must be present at all times to ensure the juvenile's safety while secured to a stationary object (15 CCR 1148).

Juveniles shall not be secured to a stationary object for more than 60 minutes. Supervisor approval is required to secure a juvenile to a stationary object for longer than 60 minutes and every 30 minutes thereafter (15 CCR 1148). Supervisor approval should be documented.

The decision for securing a minor to a stationary object for longer than 60 minutes and every 30 minutes thereafter shall be based upon the best interests of the juvenile offender (15 CCR 1148).

324.11.1 LOCKED ENCLOSURES

A thorough inspection of the area shall be conducted before placing a juvenile into the enclosure. A second inspection shall be conducted after removing the juvenile. Any damage noted to the room should be photographed and documented in the crime report.

The following requirements shall apply to a juvenile offender who is held inside a locked enclosure:

- (a) The juvenile shall constantly be monitored by an audio/video system during the entire custody.
- (b) Juveniles shall have constant auditory access to department members (15 CCR 1147).
- (c) Initial placement into and removal from a locked enclosure shall be logged (Welfare and Institutions Code § 207.1(d)).
- (d) Unscheduled safety checks to provide for the health and welfare of the juvenile by a staff member, no less than once every 15 minutes, shall occur (15 CCR 1147; 15 CCR 1151).
 - 1. All safety checks shall be logged.
 - 2. The safety check should involve questioning the juvenile as to his/her well-being (sleeping juveniles or apparently sleeping juveniles should be awakened).
 - 3. Requests or concerns of the juvenile should be logged.
- (e) Males and females shall not be placed in the same locked room (15 CCR 1147).
- (f) Juvenile offenders should be separated according to severity of the crime (e.g., felony or misdemeanor).
- (g) Restrained juveniles shall not be mixed in a cell or room with unrestrained juveniles.

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324.12 SUICIDE ATTEMPT, DEATH, OR SERIOUS INJURY OF A JUVENILE

The Watch Commander will ensure procedures are in place to address the suicide attempt, death, or serious injury of any juvenile held at the Bay Area Rapid Transit Police Department (15 CCR 1142; 15 CCR 1047). The procedures will address:

- (a) Immediate notification of the on-duty supervisor, Chief of Police, and Criminal Investigations Bureau Supervisor.
- (b) Notification of the parent, guardian, or person standing in loco parentis of the juvenile.
- (c) Notification of the appropriate prosecutor.
- (d) Notification of the District attorney.
- (e) Notification to the coroner.
- (f) Notification of the juvenile court.
- (g) In the case of a death, providing a report to the Attorney General under Government Code § 12525 within 10 calendar days of the death, and forwarding the same report to the Board of State and Community Corrections within the same time frame (15 CCR 1046).
- (h) A medical and operational review of deaths and suicide attempts pursuant to 15 CCR 1046.
- (i) Evidence preservation.

324.13 INTERVIEWING OR INTERROGATING JUVENILE SUSPECTS

No interview or interrogation of a juvenile should occur unless the juvenile has the apparent capacity to consent, and does consent to an interview or interrogation.

Prior to conducting a custodial interrogation, including the waiver of *Miranda* rights, an officer shall permit a juvenile 15 years of age or younger to consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived by the juvenile. The requirement to consult with legal counsel does not apply when (Welfare and Institutions Code § 625.6):

- (a) Information is necessary to protect life or property from an imminent threat.
- (b) The questions are limited to what is reasonably necessary to obtain the information relating to the threat.

324.13.1 MANDATORY RECORDINGS OF JUVENILES

Any interrogation of an individual under 18 years of age who is in custody and suspected of committing murder shall be audio and video recorded when the interview takes place at a department facility, jail, detention facility, or other fixed place of detention. The recording shall include the entire interview and a *Miranda* advisement preceding the interrogation (Penal Code § 859.5).

This recording is not mandatory when (Penal Code § 859.5):

- (a) Recording is not feasible because of exigent circumstances that are later documented in a report.

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- (b) The individual refuses to have the interrogation recorded, including a refusal any time during the interrogation, and the refusal is documented in a report. If feasible, the refusal shall be electronically recorded.
- (c) The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.
- (d) The interrogation occurs when no member conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating member develops a reason to believe the individual committed murder.
- (e) The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an officer, the individual being interrogated, or another individual. Such circumstances shall be documented in a report.
- (f) A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.
- (g) The questions are part of a routine processing or booking, and are not an interrogation.
- (h) The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

These recordings shall be retained until a conviction is final and all direct and habeas corpus appeals are exhausted, a court no longer has any jurisdiction over the individual, or the prosecution for that offense is barred (Penal Code § 859.5; Welfare and Institutions Code § 626.8).

324.14 FORMAL BOOKING

No juvenile offender shall be formally booked without the authorization of the arresting officer's supervisor, or in his/her absence, the Watch Commander.

Any juvenile 14 years of age or older who is taken into custody for a felony, or any juvenile whose acts amount to a sex crime, shall be booked, fingerprinted, and photographed.

For all other acts defined as crimes, juveniles may be booked, fingerprinted or photographed upon the approval from the Watch Commander or Criminal Investigations Division supervisor, giving due consideration to the following:

- (a) The gravity of the offense
- (b) The past record of the offender
- (c) The age of the offender

324.15 RELEASE OF INFORMATION CONCERNING JUVENILES

Court decisions and legislation have combined to carefully specify situations in which information may be given out or exchanged when a case involves a juvenile. Members of this department shall not divulge any information regarding juveniles unless they are certain of the legal authority to do so.

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A copy of the current policy of the juvenile court concerning authorized release of information and appropriate acknowledgment forms shall be kept with copies of this procedure in the Bay Area Rapid Transit Police Department Policy Manual. Such releases are authorized by Welfare and Institutions Code § 827.

Welfare and Institutions Code § 828 authorizes the release of certain information to other agencies. It shall be the responsibility of the Records Supervisor and the appropriate Criminal Investigations Division supervisors to ensure that personnel of those bureaus act within legal guidelines.

324.16 BOARD OF STATE AND COMMUNITY CORRECTIONS CERTIFICATION

The Support Services Bureau Deputy Chief shall coordinate the procedures related to the custody of juveniles held at the Bay Area Rapid Transit Police Department and ensure any required certification is maintained (Welfare and Institution Code § 210.2).

Juvenile Operations

325.1 PURPOSE AND SCOPE

This Policy is to establish guidelines and operational procedures for the department regarding aspects of preventing and combating juvenile delinquency.

325.2 RESPONSIBILITY OF DEPARTMENT MEMBERS

The BART Police Department recognizes the importance of preventing and combating juvenile delinquency. The department also further recognizes that traditional methods for dealing with juvenile offenders may not be sufficient. To meet its commitment to provide exceptional services to the community, the department participates in preventive programs and actions designed to assist in preventing young people from engaging in criminal behavior. In addition, department members are encouraged to participate in community and school programs or events which foster positive relationships and communication with juveniles.

All employees share in the responsibility for participating in and supporting the juvenile operations function to ensure that the appropriate action is taken in all cases where juveniles come to the attention of the department. All sworn personnel will maintain a working knowledge of the California Welfare and Institutions Code concerning the handling of juveniles and familiarize themselves with the various support programs Juvenile Courts use. Each officer assists, as applicable, in the design and implementation of programs intended to prevent and control delinquent and criminal behavior by juveniles.

325.2.1 DISPOSITIONS

Officers have a wide range of alternatives they may employ when dealing with juvenile offenders, from warnings to intake. Officers should use the least coercive alternative that is appropriate when deciding what action to take with juvenile offenders, including juvenile diversion programs, if available. Furthermore, it is the policy of the BART Police Department to implement problem-solving strategies through positive programs that deal with delinquency and youth crime.

The following should be considered when making diversion decisions:

- (a) The nature of the offense
- (b) The age and circumstances of the offender
- (c) The offender's record
- (d) The availability of community-based rehabilitation programs
- (e) Recommendations for diversion from complainants or victims

Agency referral of alleged juvenile offenders for formal legal proceeding should be restricted to those cases involving serious criminal conduct or repeated criminal violations. These cases may include the following delinquent acts:

- (a) that if committed by an adult would constitute a felony
- (b) involving weapons

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- (c) involving gang-related activity
- (d) involving aggravated assault, battery, or threats of violence
- (e) committed by a juvenile on probation or parole
- (f) committed by a juvenile with a case pending
- (g) committed by a juvenile with repeated delinquent acts within the preceding 12 months

325.3 JUVENILE SPECIALIST

The BART Police Department recognizes the importance of having employees who are specially trained regarding the Juvenile Justice System. The Investigations Unit Sergeant serves as the department's juvenile specialist and is assigned to the Support Services Bureau.

325.4 JUVENILE PROGRAM AND POLICY DEVELOPMENT AND REVIEW

As the Juvenile Specialist, the Investigations Unit Sergeant, or his/her designee, assists in the development and implementation of delinquency prevention programs and acts as the liaison between the department and other components of the Juvenile Justice System. This relationship ensures the department's juvenile policies and procedures are consistent with other agencies within the counties served by the BART.

The Investigations Unit Sergeant, or his/her designee, will meet with County probation departments and resource agencies to review and obtain information on relevant juvenile and related resources and programs. During meetings with the probation departments and resource agencies, the Investigations Unit Sergeant should encourage and solicit review and comment of our policies and procedures as they relate to juveniles.

An annual review and evaluation of all enforcement and prevention programs relating to juveniles shall be prepared by the Investigations Unit Sergeant.

Adult Abuse

326.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the investigation and reporting of suspected abuse of certain adults who may be more vulnerable than others. This policy also addresses mandatory notification for Bay Area Rapid Transit Police Department members as required by law.

326.1.1 DEFINITIONS

Definitions related to this policy include:

Adult abuse - Any offense or attempted offense involving violence or neglect of an adult victim when committed by a person responsible for the adult's care, or any other act that would mandate reporting or notification to a social service agency or law enforcement (Penal Code § 368).

Abuse of an elder (age 65 or older) or dependent adult - Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. Neglect includes self-neglect (Welfare and Institutions Code § 15610.07; Penal Code § 368.5).

326.2 POLICY

The Bay Area Rapid Transit Police Department will investigate all reported incidents of alleged adult abuse and ensure proper reporting and notification as required by law.

326.3 INVESTIGATIONS AND REPORTING

All reported or suspected cases of adult abuse require investigation and a report, even if the allegations appear unfounded or unsubstantiated.

Investigations and reports related to suspected cases of adult abuse should address, as applicable:

- (a) The overall basis for the contact. This should be done by the investigating officer in all circumstances where a suspected adult abuse victim is contacted.
- (b) Any relevant statements the victim may have made and to whom he/she made the statements.
- (c) If a person is taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.
- (d) Documentation of any visible injuries or any injuries identified by the victim. This should include photographs of such injuries, if practicable.
- (e) Whether the victim was transported for medical treatment or a medical examination.
- (f) Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other potential victims or witnesses who may reside in the residence.

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- (g) Identification of any prior related reports or allegations of abuse, including other jurisdictions, as reasonably known.
- (h) Previous addresses of the victim and suspect.
- (i) Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.
- (j) Results of investigations shall be provided to those agencies (Adult Protective Services (APS), long-term ombudsman) that referred or reported the adult abuse (Welfare and Institutions Code § 15640(f)).
- (k) Whether a death involved the End of Life Option Act:
 - 1. Whether or not assistance was provided to the person beyond that allowed by law (Health and Safety Code § 443.14)
 - 2. Whether an individual knowingly altered or forged a request for an aid-in-dying drug to end a person's life without his/her authorization, or concealed or destroyed a withdrawal or rescission of a request for an aid-in-dying drug (Health and Safety Code § 443.17)
 - 3. Whether coercion or undue influence was exerted on the person to request or ingest an aid-in-dying drug or to destroy a withdrawal or rescission of a request for such medication (Health and Safety Code § 443.17)
 - 4. Whether an aid-in-dying drug was administered to a person without his/her knowledge or consent (Health and Safety Code § 443.17).

Any unexplained death of an adult who was in the care of a guardian or caretaker should be considered as potential adult abuse and investigated similarly.

326.4 TRAINING

The Department should provide training on best practices in adult abuse investigations to members tasked with investigating these cases. The training should include:

- (a) Participating in multidisciplinary investigations, as appropriate.
- (b) Conducting interviews.
- (c) Availability of therapy services for adults and families.
- (d) Availability of specialized forensic medical exams.
- (e) Cultural competence (including interpretive services) related to adult abuse investigations.
- (f) Availability of victim advocates or other support.

326.5 QUALIFIED INVESTIGATORS

Qualified investigators should be available to investigate cases of adult abuse. These investigators should:

- (a) Conduct interviews in appropriate interview facilities.

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- (b) Be familiar with forensic interview techniques specific to adult abuse investigations.
- (c) Present all cases of alleged adult abuse to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and facility administrators as needed.
- (e) Provide referrals to therapy services, victim advocates, guardians and support for the victim and family as appropriate.
- (f) Participate in or coordinate with multidisciplinary investigative teams as applicable (Welfare and Institutions Code § 15610.55).

326.6 MANDATORY NOTIFICATION

Members of the Bay Area Rapid Transit Police Department shall notify the local office of the California Department of Social Services (CDSS) APS agency when they reasonably suspect, have observed, or have knowledge of an incident that reasonably appears to be abuse of an elder (age 65 or older) or dependent adult, or are told by an elder or dependent adult that he/she has experienced abuse (Welfare and Institutions Code § 15630(b)).

Notification shall be made by telephone as soon as practicable and a written report shall be provided within two working days as provided in Welfare and Institutions Code § 15630(b)(c)).

A dependent adult is an individual, regardless of whether the individual lives independently, between 18 and 64 years of age who has physical or mental limitations that restrict his/her ability to carry out normal activities or to protect his/her rights, including but not limited to persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. This also includes those admitted as inpatients to a 24-hour health facility, as defined in state law (Welfare and Institutions Code § 15610.23).

Notification shall also be made to the following agencies as soon as practicable or as provided below (Welfare and Institutions Code § 15630):

- (a) If the abuse is physical abuse and occurred in a long-term care facility (not a state mental health hospital or a state developmental center) notification shall be made as follows (Welfare and Institutions Code § 15630(b)(1)):
 - 1. If there is serious bodily injury, notification shall be made by telephone and, within two hours, a written report shall be made to the local ombudsman and the corresponding licensing agency.
 - 2. If there is physical abuse and no serious bodily injury, notification shall be made by telephone and, within 24 hours, a written report shall be made to the local ombudsman and the corresponding licensing agency.
 - 3. If the abuse is allegedly caused by a resident with dementia and there is no serious bodily injury, notification shall be made by telephone and a written report to the local ombudsman within 24 hours.

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4. When a report of abuse is received by the Department, the local ombudsman shall be called to coordinate efforts to provide the most immediate and appropriate response (Welfare and Institutions Code § 15630(b)).
 - (b) If the abuse is in a long-term care facility (not a state mental health or a state developmental center) and is other than physical abuse, a telephone report and a written report shall be made to the local ombudsman as soon as practicable (Welfare and Institutions Code § 15630(b)).
 - (c) The California Department of Public Health (DPH) shall be notified of all known or suspected abuse in a long-term care facility.
 - (d) The SDSS shall be notified of all known or suspected abuse occurring in a residential care facility for the elderly or in an adult day program.
 - (e) If the abuse occurred in an adult day health care center, DPH and the California Department of Aging shall be notified.
 - (f) The Bureau of Medi-Cal Fraud and Elder Abuse shall be notified of all abuse that constitutes criminal activity in a long-term care facility.
 - (g) The District Attorney's office shall be notified of all cases of physical abuse and financial abuse in a long-term care facility.
 - (h) If the abuse occurred at a state mental hospital or a state developmental center, notification shall be made to the designated investigators of the California Department of State Hospitals or the California Department of Developmental Services as soon as practicable but no later than two hours after law enforcement becomes aware of the abuse (Welfare and Institutions Code § 15630(b)).
1. When a report of abuse is received by the Department, investigation efforts shall be coordinated with the designated investigators of the California Department of State Hospitals or the California Department of Developmental Services (Welfare and Institutions Code § 15630(b)).
 - (i) If during an investigation it is determined that the adult abuse is being committed by a licensed health practitioner as identified in Welfare and Institutions Code § 15640(b), the appropriate licensing agency shall be immediately notified (Welfare and Institutions Code 15640(b)).
 - (j) When the Department receives a report of abuse, neglect or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, the licensing agency shall be notified by telephone as soon as practicable (Welfare and Institutions Code § 15640(e)).

The Criminal Investigations Division supervisor is responsible for ensuring that proper notifications have occurred to the District Attorney's Office and any other regulatory agency that may be applicable based upon where the abuse took place (e.g., care facility, hospital) per Welfare and Institutions Code § 15630(b).

Notification is not required for a person who was merely present when a person self-administered a prescribed aid-in-dying drug or a person prepared an aid-in-dying drug so long as the person

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did not assist the individual in ingesting the aid-in-dying drug (Health and Safety Code § 443.14; Health and Safety Code § 443.18).

326.6.1 NOTIFICATION PROCEDURE

Notification should include the following information, if known (Welfare and Institutions Code § 15630(e)):

- (a) The name of the person making the report.
- (b) The name and age of the elder or dependent adult.
- (c) The present location of the elder or dependent adult.
- (d) The names and addresses of family members or any other adult responsible for the care of the elder or dependent adult.
- (e) The nature and extent of the condition of the elder or dependent adult.
- (f) The date of incident.
- (g) Any other information, including information that led the person to suspect elder or dependent adult abuse.

326.7 PROTECTIVE CUSTODY

Before taking an adult abuse victim into protective custody when facts indicate the adult may not be able to care for him/herself, the officer should make reasonable attempts to contact APS. Generally, removal of an adult abuse victim from his/her family, guardian or other responsible adult should be left to the welfare authorities when they are present or have become involved in an investigation.

Generally, members of this department should remove an adult abuse victim from his/her family or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the victim. Prior to taking an adult abuse victim into protective custody, the officer should take reasonable steps to deliver the adult to another qualified legal guardian, unless it reasonably appears that the release would endanger the victim or result in abduction. If this is not a reasonable option, the officer shall ensure that the adult is delivered to APS.

Whenever practicable, the officer should inform a supervisor of the circumstances prior to taking an adult abuse victim into protective custody. If prior notification is not practicable, officers should contact a supervisor promptly after taking the adult into protective custody.

When adult abuse victims are under state control, have a state-appointed guardian or there are other legal holdings for guardianship, it may be necessary or reasonable to seek a court order on behalf of the adult victim to either remove the adult from a dangerous environment (protective custody) or restrain a person from contact with the adult.

326.7.1 EMERGENCY PROTECTIVE ORDERS

In any situation which an officer reasonably believes that an elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or

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threat of abuse (other than financial abuse alone), the officer may seek an emergency protective order against the person alleged to have committed or threatened such abuse (Family Code § 6250(d)).

326.8 INTERVIEWS

326.8.1 PRELIMINARY INTERVIEWS

Absent extenuating circumstances or impracticality, officers should audio record the preliminary interview with a suspected adult abuse victim. Officers should avoid multiple interviews with the victim and should attempt to gather only the information necessary to begin an investigation. When practicable, investigating officers should defer interviews until a person who is specially trained in such interviews is available.

326.8.2 DETAINING VICTIMS FOR INTERVIEWS

An officer should not detain an adult involuntarily who is suspected of being a victim of abuse solely for the purpose of an interview or physical exam without his/her consent or the consent of a guardian unless one of the following applies:

- (a) Exigent circumstances exist, such as:
 - 1. A reasonable belief that medical issues of the adult need to be addressed immediately.
 - 2. A reasonable belief that the adult is or will be in danger of harm if the interview or physical exam is not immediately completed.
 - 3. The alleged offender is a family member or guardian and there is reason to believe the adult may be in continued danger.
- (b) A court order or warrant has been issued.

326.9 MEDICAL EXAMINATIONS

When an adult abuse investigation requires a medical examination, the investigating officer should obtain consent for such examination from the victim, guardian, agency or entity having legal custody of the adult. The officer should also arrange for the adult's transportation to the appropriate medical facility.

In cases where the alleged offender is a family member, guardian, agency or entity having legal custody and is refusing to give consent for the medical examination, officers should notify a supervisor before proceeding. If exigent circumstances do not exist or if state law does not provide for officers to take the adult for a medical examination, the supervisor should consider other government agencies or services that may obtain a court order for such an examination.

326.10 DRUG-ENDANGERED VICTIMS

A coordinated response by law enforcement and social services agencies is appropriate to meet the immediate and longer-term medical and safety needs of an adult abuse victim who has been exposed to the manufacturing, trafficking or use of narcotics.

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326.10.1 OFFICER RESPONSIBILITIES

Officers responding to a drug lab or other narcotics crime scene where an adult abuse victim is present or where there is evidence that an adult abuse victim lives should:

- (a) Document the environmental, medical, social and other conditions of the adult, using photography as appropriate and the checklist or form developed for this purpose.
- (b) Notify the Criminal Investigations Division supervisor so an interagency response can begin.

326.10.2 SUPERVISOR RESPONSIBILITIES

The Criminal Investigations Division supervisor should:

- (a) Work with professionals from the appropriate agencies, including APS, other law enforcement agencies, medical service providers and local prosecutors, to develop community specific procedures for responding to situations where there are adult abuse victims endangered by exposure to methamphetamine labs or the manufacture and trafficking of other drugs.
- (b) Activate any available interagency response when an officer notifies the Criminal Investigations Division supervisor that he/she has responded to a drug lab or other narcotics crime scene where an adult abuse victim is present or where evidence indicates that an adult abuse victim lives.
- (c) Develop a report format or checklist for use when officers respond to drug labs or other narcotics crime scenes. The checklist will help officers document the environmental, medical, social and other conditions that may affect the adult.

326.11 RECORDS BUREAU RESPONSIBILITIES

The Records Division is responsible for:

- (a) Providing a copy of the adult abuse report to the APS, ombudsman or other agency as applicable within two working days or as required by law (Welfare and Institutions Code § 15630; Welfare and Institutions Code § 15640(c)).
- (b) Retaining the original adult abuse report with the initial case file.

326.12 JURISDICTION

The Bay Area Rapid Transit Police Department has concurrent jurisdiction with state law enforcement agencies when investigating elder and dependent adult abuse and all other crimes against elder victims and victims with disabilities (Penal Code § 368.5).

Adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect and may assist in criminal investigations upon request in such cases. However, this department will retain responsibility for the criminal investigations (Penal Code § 368.5).

326.13 RELEVANT STATUTES

Penal Code § 368 (c)

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Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

Penal Code § 368 (f)

(f) A person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

Welfare and Institutions Code § 15610.05

“Abandonment” means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

Welfare and Institutions Code § 15610.06

“Abduction” means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court.

Welfare and Institutions Code § 15610.30

(a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

- (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

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(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(d) For purposes of this section, “representative” means a person or entity that is either of the following:

- (1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.
- (2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

Welfare and Institutions Code § 15610.43

(a) “Isolation” means any of the following:

- (1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
- (2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.
- (3) False imprisonment, as defined in Section 236 of the Penal Code.
- (4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

(b) The acts set forth in subdivision (a) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.

(c) The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safe

Welfare and Institutions Code § 15610.57

(a) “Neglect” means either of the following:

- (1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
- (2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

(b) Neglect includes, but is not limited to, all of the following:

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- (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
- (2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
- (3) Failure to protect from health and safety hazards.
- (4) Failure to prevent malnutrition or dehydration.
- (5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

Welfare and Institutions Code § 15610.63

15610.63. "Physical abuse" means any of the following:

- (a) Assault, as defined in Section 240 of the Penal Code.
- (b) Battery, as defined in Section 242 of the Penal Code.
- (c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.
- (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.
- (e) Sexual assault, that means any of the following:
 - (1) Sexual battery, as defined in Section 243.4 of the Penal Code.
 - (2) Rape, as defined in Section 261 of the Penal Code.
 - (3) Rape in concert, as described in Section 264.1 of the Penal Code.
 - (4) Spousal rape, as defined in Section 262 of the Penal Code.
 - (5) Incest, as defined in Section 285 of the Penal Code.
 - (6) Sodomy, as defined in Section 286 of the Penal Code.
 - (7) Oral copulation, as defined in Section 287 or former Section 288a of the Penal Code.
 - (8) Sexual penetration, as defined in Section 289 of the Penal Code.
 - (9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code.
- (f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
 - (1) For punishment.

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(2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

(3) For any purpose not authorized by the physician and surgeon.

Discriminatory Harassment

328.1 PURPOSE AND SCOPE

The purpose of this policy is to prevent department members from being subjected to discriminatory harassment, including sexual harassment and retaliation. Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

328.2 POLICY

The Bay Area Rapid Transit Police Department is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation (Government Code § 12940(k); 2 CCR 11023). The Department will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits and other privileges of employment. The Department will take preventive and corrective action to address any behavior that violates this policy or the rights it is designed to protect.

The nondiscrimination policies of the Department may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject a member to discipline.

328.3 DEFINITIONS

Definitions related to this policy include:

328.3.1 DISCRIMINATION

The Department prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law.

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment can include making derogatory comments; making crude and offensive statements or remarks; making slurs or off-color jokes, stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters, or material; making inappropriate physical contact; or using written material or department equipment and/or systems to transmit or receive offensive material, statements, or pictures. Such conduct is contrary to department policy and to a work environment that is free of discrimination.

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328.3.2 SEXUAL HARASSMENT

The Department prohibits all forms of discrimination and discriminatory harassment, including sexual harassment. It is unlawful to harass an applicant or a member because of that person's sex.

Sexual harassment includes but is not limited to unwelcome sexual advances, requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment, position, or compensation.
- (b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

328.3.3 ADDITIONAL CONSIDERATIONS

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles, or standards, including:

- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission (EEOC) and the California Fair Employment and Housing Council guidelines.
- (b) Bona fide requests or demands by a supervisor that the member improve the member's work quality or output, that the member report to the job site on time, that the member comply with District or department rules or regulations, or any other appropriate work-related communication between supervisor and member.

328.3.4 RETALIATION

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because the person has engaged in protected activity, filed a charge of discrimination, participated in an investigation, or opposed a discriminatory practice. Retaliation will not be tolerated.

328.4 RESPONSIBILITIES

This policy applies to all department personnel. All members shall follow the intent of these guidelines in a manner that reflects department policy, professional standards, and the best interest of the Department and its mission.

Members are encouraged to promptly report any discriminatory, retaliatory, or harassing conduct or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to the member's immediate supervisor may bypass the chain of command and make the report to a higher-ranking supervisor or manager. Complaints may also be filed with the Chief of Police, the Assistant General Manager, Administration, or the General Manager.

Any member who believes, in good faith, that the member has been discriminated against, harassed, or subjected to retaliation, or who has observed harassment, discrimination, or

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retaliation, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall proceed with resolution as stated below.

328.4.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of supervisors and managers shall include but are not limited to:

- (a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment, or retaliation.
- (c) Ensuring that their subordinates understand their responsibilities under this policy.
- (d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- (e) Making a timely determination regarding the substance of any allegation based upon all available facts.
- (f) Notifying the Chief of Police or the Assistant General Manager, Administration in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment, or retaliation no later than the next business day.

328.4.2 SUPERVISOR'S ROLE

Supervisors and managers shall be aware of the following:

- (a) Behavior of supervisors and managers should represent the values of the Department and professional standards.
- (b) False or mistaken accusations of discrimination, harassment, or retaliation can have negative effects on the careers of innocent members.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling members, or issuing discipline, in a manner that is consistent with established procedures.

328.4.3 QUESTIONS OR CLARIFICATION

Members with questions regarding what constitutes discrimination, sexual harassment, or retaliation are encouraged to contact a supervisor, a manager, the Chief of Police, the Assistant General Manager, Administration, the General Manager, or the California Department of Fair Employment and Housing (DFEH) for further information, direction, or clarification (Government Code § 12950).

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328.5 INVESTIGATION OF COMPLAINTS

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the Department that all complaints of discrimination, retaliation, or harassment shall be fully documented and promptly and thoroughly investigated.

328.5.1 SUPERVISOR RESOLUTION

Members who believe they are experiencing discrimination, harassment, or retaliation should be encouraged to inform the individual that the behavior is unwelcome, offensive, unprofessional, or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing the member's concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

328.5.2 FORMAL INVESTIGATION

If the complaint cannot be satisfactorily resolved through the supervisory resolution process, a formal investigation will be conducted.

The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint, or for offering testimony or evidence in an investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include but is not limited to details of the specific incident, frequency and dates of occurrences, and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, harassed, or retaliated against because of their protected status, are encouraged to follow the chain of command but may also file a complaint directly with the Chief of Police, the Assistant General Manager, Administration, or the General Manager.

328.5.3 ALTERNATIVE COMPLAINT PROCESS

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the Department. Members who believe that they have been harassed, discriminated against, or retaliated against are entitled to bring complaints of employment discrimination to federal, state, and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

328.6 DOCUMENTATION OF COMPLAINTS

All complaints or allegations shall be thoroughly documented on forms and in a manner designated by the Chief of Police. The outcome of all reports shall be:

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- (a) Approve by the Chief of Police, the General Manager, or the Assistant General Manager, Administration, depending on the ranks of the involved parties.
- (b) Maintained in accordance with the department's established records retention schedule.

328.6.1 NOTIFICATION OF DISPOSITION

The complainant and/or victim will be notified in writing of the disposition of the investigation and the actions taken to remedy or address the circumstances giving rise to the complaint.

328.7 TRAINING

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that the member has been advised of this policy, is aware of and understands its contents, and agrees to abide by its provisions during the member's term with the Department.

All members shall receive annual training on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents, and agree that they will continue to abide by its provisions.

328.7.1 STATE-REQUIRED TRAINING

The Personnel and Training Lieutenant should ensure that employees receive the required state training and education regarding sexual harassment, prevention of abusive conduct, and harassment based on gender identity, gender expression, and sexual orientation as follows (Government Code § 12950.1; 2 CCR 11024):

- (a) Supervisory employees shall receive two hours of classroom or other effective interactive training and education within six months of assuming a supervisory position.
- (b) All other employees shall receive one hour of classroom or other effective interactive training and education within six months of their employment or sooner for seasonal or temporary employees as described in Government Code § 12950.1.
- (c) All employees shall receive refresher training every two years thereafter.

If the required training is to be provided by DFEH online training courses, the Personnel and Training Lieutenant should ensure that employees are provided the link or website address to the training course (Government Code § 12950).

328.7.2 TRAINING RECORDS

The Personnel and Training Lieutenant shall be responsible for maintaining records of all discriminatory harassment training provided to members. Records shall be retained in accordance with established records retention schedules and for a minimum of two years (2 CCR 11024).

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328.8 WORKING CONDITIONS

The Support Services Division Commander or the authorized designee should be responsible for reviewing facility design and working conditions for discriminatory practices. This person should collaborate with other District employees who are similarly tasked (2 CCR 11034).

328.9 REQUIRED POSTERS

The Department shall display the required posters regarding discrimination, harassment and transgender rights in a prominent and accessible location for members (Government Code § 12950).

Child Abuse

330.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the investigation of suspected child abuse. This policy also addresses when Bay Area Rapid Transit Police Department members are required to notify the county Child Protective Services (CPS) of suspected child abuse.

330.1.1 DEFINITIONS

Definitions related to this policy include:

Child - Unless otherwise specified by a cited statute, a child is any person under the age of 18 years.

Child abuse - Any offense or attempted offense involving violence or neglect with a child victim when committed by a person responsible for the child's care or any other act that would mandate notification to a social service agency or law enforcement (Penal Code § 11165.9; Penal Code § 11166).

330.2 POLICY

The Bay Area Rapid Transit Police Department will investigate all reported incidents of alleged criminal child abuse and ensure CPS is notified as required by law.

330.3 MANDATORY NOTIFICATION

The child protection agency shall be notified when (Penal Code § 11166):

- (a) There is a known or suspected instance of child abuse or neglect reported, which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or
- (b) A person responsible for the child's welfare fails to adequately protect the child from abuse when the person knew or reasonably should have known that the child was in danger of abuse.

The District Attorney's office shall be notified in all instances of known or suspected child abuse or neglect reported to this department. Reports only involving neglect by a person, who has the care or custody of a child, to provide adequate food, clothing, shelter, medical care or supervision where no physical injury to the child has occurred should not be reported to the District Attorney (Penal Code § 11166).

When the abuse or neglect occurs at a licensed facility or is alleged to have resulted from the actions of a person who is required to have a state license (e.g., foster homes, group homes, day care), notification shall also be made to the California Department of Social Services or other applicable licensing authority (Penal Code 11166.1; Penal Code 11166.2).

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For purposes of notification, the abuse or neglect includes physical injury or death inflicted by other than accidental means upon a child by another person; sexual abuse (Penal Code § 11165.1); neglect (Penal Code § 11165.2); the willful harming or injuring of a child or the endangering of the person or health of a child (Penal Code § 11165.3); and unlawful corporal punishment or injury (Penal Code § 11165.4). Child abuse or neglect does not include a mutual affray between minors, nor does it include an injury caused by the reasonable and necessary force used by a peace officer acting within the course and scope of his/her employment as a peace officer.

330.3.1 NOTIFICATION PROCEDURE

Notification should occur as follows (Penal Code § 11166):

- (a) Notification shall be made immediately, or as soon as practicable, by telephone, fax or electronic transmission.
- (b) A written follow-up report should be forwarded within 36 hours of receiving the information concerning the incident.

330.4 QUALIFIED INVESTIGATORS

Qualified investigators should be available for child abuse investigations. These investigators should:

- (a) Conduct interviews in child appropriate interview facilities.
- (b) Be familiar with forensic interview techniques specific to child abuse investigations.
- (c) Present all cases of alleged child abuse to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and school administrators as needed.
- (e) Provide referrals to therapy services, victim advocates, guardians and support for the child and family as appropriate.
- (f) Participate in or coordinate with multidisciplinary investigative teams as applicable (Welfare and Institutions Code § 18961.7).

330.5 INVESTIGATIONS AND REPORTING

In all reported or suspected cases of child abuse, a report will be written. Officers shall write a report even if the allegations appear unfounded or unsubstantiated.

Investigations and reports related to suspected cases of child abuse should address, as applicable:

- (a) The overall basis for the contact. This should be done by the investigating officer in all circumstances where a suspected child abuse victim was contacted.
- (b) The exigent circumstances that existed if officers interviewed the child victim without the presence of a parent or guardian.

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- (c) Any relevant statements the child may have made and to whom he/she made the statements.
- (d) If a child was taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.
- (e) Documentation of any visible injuries or any injuries identified by the child. This should include photographs of such injuries, if practicable.
- (f) Whether the child victim was transported for medical treatment or a medical examination.
- (g) Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other children who may reside in the residence.
- (h) Identification of any prior related reports or allegations of child abuse, including other jurisdictions, as reasonably known.
- (i) Previous addresses of the victim and suspect.
- (j) Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.

All cases of the unexplained death of a child should be investigated as thoroughly as if it had been a case of suspected child abuse (e.g., a sudden or unexplained death of an infant).

330.5.1 EXTRA JURISDICTIONAL REPORTS

If a report of known or suspected child abuse or neglect that is alleged to have occurred outside this jurisdiction is received, department members shall ensure that the caller is immediately transferred to the agency with proper jurisdiction for the investigation of the case. If the caller cannot be successfully transferred to the appropriate agency, a report shall be taken and immediately referred by telephone, fax or electronic transfer to the agency with proper jurisdiction (Penal Code 11165.9).

330.6 PROTECTIVE CUSTODY

Before taking any child into protective custody, the officer should make reasonable attempts to contact CPS. Generally, removal of a child from his/her family, guardian or other responsible adult should be left to the child welfare authorities when they are present or have become involved in an investigation.

Generally, members of this department should remove a child from his/her parent or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the child. Prior to taking a child into protective custody, the officer should take reasonable steps to deliver the child to another qualified parent or legal guardian, unless it reasonably appears that the release would endanger the child or result in abduction. If this is not a reasonable option, the officer shall ensure that the child is delivered to CPS.

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Whenever practicable, the officer should inform a supervisor of the circumstances prior to taking a child into protective custody. If prior notification is not practicable, officers should contact a supervisor promptly after taking a child into protective custody.

Children may only be removed from a parent or guardian in the following situations when a court order cannot reasonably be obtained in a timely manner (Welfare and Institutions Code § 305):

- (a) The officer reasonably believes the child is a person described in Welfare and Institutions Code § 300, or a commercially exploited child under Penal Code § 647 and Penal Code § 653.22, and further has good cause to believe that any of the following conditions exist:
 1. The child has an immediate need for medical care.
 2. The child is in immediate danger of physical or sexual abuse.
 3. The physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. In the case of a child left unattended, the officer shall first attempt to locate and determine if a responsible parent or guardian is available and capable of assuming custody before taking the child into protective custody.
- (b) The officer reasonably believes the child requires protective custody under the provisions of Penal Code § 279.6, in one of the following circumstances:
 1. It reasonably appears to the officer that a person is likely to conceal the child, flee the jurisdiction with the child or, by flight or concealment, evade the authority of the court.
 2. There is no lawful custodian available to take custody of the child.
 3. There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child.
 4. The child is an abducted child.
- (c) The child is in the company of, or under the control of, a person arrested for Penal Code § 278 (Detainment or concealment of child from legal custodian) or Penal Code § 278.5 (Deprivation of custody of a child or right to visitation) (Penal Code § 279.6).

A child taken into protective custody shall be delivered to CPS unless otherwise directed by court order.

330.6.1 CALIFORNIA SAFELY SURRENDERED BABY LAW

An individual having lawful custody of an infant less than 72 hours old is not guilty of abandonment if the individual voluntarily surrenders physical custody of the infant to personnel on-duty at a safe-surrender site, such as a hospital or fire department (Penal Code § 271.5). The law requires the surrender site to notify CPS.

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330.7 INTERVIEWS

330.7.1 PRELIMINARY INTERVIEWS

Absent extenuating circumstances or impracticality, officers should record the preliminary interview with suspected child abuse victims. Officers should avoid multiple interviews with a child victim and should attempt to gather only the information necessary to begin an investigation. When practicable, investigating officers should defer interviews until a person who is specially trained in such interviews is available. Generally, child victims should not be interviewed in the home or location where the alleged abuse occurred.

330.7.2 DETAINING SUSPECTED CHILD ABUSE VICTIMS FOR AN INTERVIEW

An officer should not detain a child involuntarily who is suspected of being a victim of child abuse solely for the purpose of an interview or physical exam without the consent of a parent or guardian unless one of the following applies:

- (a) Exigent circumstances exist, such as:
 - 1. A reasonable belief that medical issues of the child need to be addressed immediately.
 - 2. A reasonable belief that the child is or will be in danger of harm if the interview or physical exam is not immediately completed.
 - 3. The alleged offender is the custodial parent or guardian and there is reason to believe the child may be in continued danger.
- (b) A court order or warrant has been issued.

330.7.3 INTERVIEWS AT A SCHOOL

Any student at school who is a suspected victim of child abuse shall be afforded the option of being interviewed in private or selecting any qualified available adult member of the school staff to be present. The purpose of the staff member's presence is to provide comfort and support. The staff member shall not participate in the interview. The selection of a staff member should be such that it does not burden the school with costs or hardship (Penal Code § 11174.3).

330.8 MEDICAL EXAMINATIONS

If the child has been the victim of abuse that requires a medical examination, the investigating officer should obtain consent for such examination from the appropriate parent, guardian or agency having legal custody of the child. The officer should also arrange for the child's transportation to the appropriate medical facility.

In cases where the alleged offender is the custodial parent or guardian and is refusing consent for the medical examination, officers should notify a supervisor before proceeding. If exigent circumstances do not exist or if state law does not provide for officers to take the child for a medical examination, the notified supervisor should consider obtaining a court order for such an examination.

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330.9 DRUG-ENDANGERED CHILDREN

A coordinated response by law enforcement and social services agencies is appropriate to meet the immediate and longer-term medical and safety needs of children exposed to the manufacturing, trafficking or use of narcotics.

330.9.1 SUPERVISOR RESPONSIBILITIES

The Criminal Investigations Division supervisor should:

- (a) Work with professionals from the appropriate agencies, including CPS, other law enforcement agencies, medical service providers and local prosecutors to develop community specific procedures for responding to situations where there are children endangered by exposure to methamphetamine labs or the manufacture and trafficking of other drugs.
- (b) Activate any available interagency response when an officer notifies the Criminal Investigations Division supervisor that the officer has responded to a drug lab or other narcotics crime scene where a child is present or where evidence indicates that a child lives there.
- (c) Develop a report format or checklist for use when officers respond to drug labs or other narcotics crime scenes. The checklist will help officers document the environmental, medical, social and other conditions that may affect the child.

330.9.2 OFFICER RESPONSIBILITIES

Officers responding to a drug lab or other narcotics crime scene where a child is present or where there is evidence that a child lives should:

- (a) Document the environmental, medical, social and other conditions of the child using photography as appropriate and the checklist or form developed for this purpose.
- (b) Notify the Criminal Investigations Division supervisor so an interagency response can begin.

330.10 STATE MANDATES AND OTHER RELEVANT LAWS

California requires or permits the following:

330.10.1 RELEASE OF REPORTS

Information related to incidents of child abuse or suspected child abuse shall be confidential and may only be disclosed pursuant to state law and the Records Maintenance and Release Policy (Penal Code 841.5; Penal Code § 11167.5).

330.10.2 REQUESTS FOR REMOVAL FROM THE CHILD ABUSE CENTRAL INDEX (CACI)

Any person whose name has been forwarded to the California Department of Justice (DOJ) for placement in California's CACI, as a result of an investigation, may request that his/her name be removed from the CACI list. Requests shall not qualify for consideration if there is an active case, ongoing investigation or pending prosecution that precipitated the entry to CACI (Penal

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Code § 11169). All requests for removal shall be submitted in writing by the requesting person and promptly routed to the CACI hearing officer.

330.10.3 CACI HEARING OFFICER

The Criminal Investigations Division supervisor will normally serve as the hearing officer but must not be actively connected with the case that resulted in the person's name being submitted to CACI. Upon receiving a qualified request for removal, the hearing officer shall promptly schedule a hearing to take place during normal business hours and provide written notification of the time and place of the hearing to the requesting party.

330.10.4 CACI HEARING PROCEDURES

The hearing is an informal process where the person requesting removal from the CACI list will be permitted to present relevant evidence (e.g., certified copy of an acquittal, factual finding of innocence) as to why his/her name should be removed. The person requesting the hearing may record the hearing at his/her own expense.

Formal rules of evidence will not apply and the hearing officer may consider, in addition to evidence submitted by the person requesting the hearing, any relevant information including, but not limited to, the following:

- (a) Case reports including any supplemental reports
- (b) Statements by investigators
- (c) Statements from representatives of the District Attorney's Office
- (d) Statements by representatives of a child protective agency who may be familiar with the case

After considering all information presented, the hearing officer shall make a determination as to whether the requesting party's name should be removed from the CACI list. Such determination shall be based on a finding that the allegations in the investigation are not substantiated (Penal Code § 11169).

If, after considering the evidence, the hearing officer finds that the allegations are not substantiated, he/she shall cause a request to be completed and forwarded to the DOJ that the person's name be removed from the CACI list. A copy of the hearing results and the request for removal will be attached to the case reports.

The findings of the hearing officer shall be considered final and binding.

330.10.5 CHILD DEATH REVIEW TEAM

This department should cooperate with any interagency child death review team investigation. Written and oral information relating to the death of a child that would otherwise be subject to release restrictions may be disclosed to the child death review team upon written request and approval of a supervisor (Penal Code § 11174.32).

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330.11 TRAINING

The Department should provide training on best practices in child abuse investigations to members tasked with investigating these cases. The training should include:

- (a) Participating in multidisciplinary investigations, as appropriate.
- (b) Conducting forensic interviews.
- (c) Availability of therapy services for children and families.
- (d) Availability of specialized forensic medical exams.
- (e) Cultural competence (including interpretive services) related to child abuse investigations.
- (f) Availability of victim advocate or guardian ad litem support.

Missing Persons

332.1 PURPOSE AND SCOPE

This policy provides guidance for handling missing person investigations.

332.1.1 DEFINITIONS

At risk - Includes, but is not limited to (Penal Code § 14215):

- A victim of a crime or foul play.
- A person missing and in need of medical attention.
- A missing person with no pattern of running away or disappearing.
- A missing person who may be the victim of parental abduction.
- A mentally impaired missing person, including cognitively impaired or developmentally disabled.

Missing person - Any person who is reported missing to law enforcement when the person's location is unknown. This includes a child who has been taken, detained, concealed, enticed away or kept by a parent in violation of the law (Penal Code § 277 et seq.). It also includes any child who is missing voluntarily, involuntarily or under circumstances that do not conform to his/her ordinary habits or behavior, and who may be in need of assistance (Penal Code § 14215).

Missing person networks - Databases or computer networks available to law enforcement and that are suitable for information related to missing persons investigations. These include the National Crime Information Center (NCIC), the California Law Enforcement Telecommunications System (CLETS), Missing Person System (MPS) and the Unidentified Persons System (UPS).

332.2 POLICY

The Bay Area Rapid Transit Police Department does not consider any report of a missing person to be routine and assumes that the missing person is in need of immediate assistance until an investigation reveals otherwise. The Bay Area Rapid Transit Police Department gives missing person cases priority over property-related cases and will not require any time frame to pass before beginning a missing person investigation (Penal Code § 14211).

332.3 REQUIRED FORMS AND BIOLOGICAL SAMPLE COLLECTION KITS

The Criminal Investigations supervisor should ensure the forms and kits are developed and available in accordance with this policy, state law, federal law and the California Peace Officer Standards and Training (POST) Missing Persons Investigations guidelines, including:

- Department report form for use in missing person cases
- Missing person investigation checklist that provides investigation guidelines and resources that could be helpful in the early hours of a missing person investigation (Penal Code § 13519.07)

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- Missing person school notification form
- Medical records release form from the California Department of Justice
- California DOJ missing person forms as appropriate
- Biological sample collection kits

332.4 ACCEPTANCE OF REPORTS

Any member encountering a person who wishes to report a missing person or runaway shall render assistance without delay (Penal Code § 14211). This can be accomplished by accepting the report via telephone or in-person and initiating the investigation. Those members who do not take such reports or who are unable to render immediate assistance shall promptly dispatch or alert a member who can take the report.

A report shall be accepted in all cases and regardless of where the person was last seen, where the person resides or any other question of jurisdiction (Penal Code § 14211).

332.5 INITIAL INVESTIGATION

Officers or other members conducting the initial investigation of a missing person should take the following investigative actions, as applicable:

- (a) Respond to a dispatched call for service as soon as practicable.
- (b) Interview the reporting party and any witnesses to determine whether the person qualifies as a missing person and, if so, whether the person may be at risk.
- (c) Notify a supervisor immediately if there is evidence that a missing person is either at risk or may qualify for a public alert, or both (see the Public Alerts Policy).
- (d) Broadcast a "Be on the Look-Out" (BOLO) bulletin if the person is under 21 years of age or there is evidence that the missing person is at risk. The BOLO should be broadcast as soon as practicable but in no event more than one hour after determining the missing person is under 21 years of age or may be at risk (Penal Code § 14211).
- (e) Ensure that entries are made into the appropriate missing person networks as follows:
 1. Immediately, when the missing person is at risk.
 2. In all other cases, as soon as practicable, but not later than two hours from the time of the initial report.
- (f) Complete the appropriate report forms accurately and completely and initiate a search as applicable under the facts.
- (g) Collect and/or review:
 1. A photograph and a fingerprint card of the missing person, if available.
 2. A voluntarily provided biological sample of the missing person, if available (e.g., toothbrush, hairbrush).

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3. Any documents that may assist in the investigation, such as court orders regarding custody.
 4. Any other evidence that may assist in the investigation, including personal electronic devices (e.g., cell phones, computers).
- (h) When circumstances permit and if appropriate, attempt to determine the missing person's location through his/her telecommunications carrier.
- (i) Contact the appropriate agency if the report relates to a previously made missing person report and another agency is actively investigating that report. When this is not practical, the information should be documented in an appropriate report for transmission to the appropriate agency. If the information relates to an at-risk missing person, the member should notify a supervisor and proceed with reasonable steps to locate the missing person.

332.6 REPORT PROCEDURES AND ROUTING

Employees should complete all missing person reports and forms promptly and advise the appropriate supervisor as soon as a missing person report is ready for review.

332.6.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of the supervisor shall include, but are not limited to:

- (a) Reviewing and approving missing person reports upon receipt.
 1. The reports should be promptly sent to the Records Division.
- (b) Ensuring resources are deployed as appropriate.
- (c) Initiating a command post as needed.
- (d) Ensuring applicable notifications and public alerts are made and documented.
- (e) Ensuring that records have been entered into the appropriate missing persons networks.
- (f) Taking reasonable steps to identify and address any jurisdictional issues to ensure cooperation among agencies.

If the case falls within the jurisdiction of another agency, the supervisor should facilitate transfer of the case to the agency of jurisdiction.

332.6.2 RECORDS DIVISION RESPONSIBILITIES

The receiving member shall:

- (a) As soon as reasonable under the circumstances, notify and forward a copy of the report to the law enforcement agency having jurisdiction over the missing person's residence in cases where the missing person is a resident of another jurisdiction (Penal Code § 14211).

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- (b) Notify and forward a copy of the report to the law enforcement agency in whose jurisdiction the missing person was last seen (Penal Code § 14211).
- (c) Notify and forward a copy of the report to the law enforcement agency having jurisdiction over the missing person's intended or possible destination, if known.
- (d) Forward a copy of the report to the Criminal Investigations Division.
- (e) Coordinate with the NCIC Terminal Contractor for California to have the missing person record in the NCIC computer networks updated with additional information obtained from missing person investigations (34 USC § 41308).

332.7 CRIMINAL INVESTIGATIONS DIVISION FOLLOW-UP

In addition to completing or continuing any actions listed above, the investigator assigned to a missing person investigation:

- (a) Shall ensure that the missing person's school is notified within 10 days if the missing person is a juvenile.
 - 1. The notice shall be in writing and should also include a photograph (Education Code § 49068.6).
 - 2. The investigator should meet with school officials regarding the notice as appropriate to stress the importance of including the notice in the child's student file, along with contact information if the school receives a call requesting the transfer of the missing child's files to another school.
- (b) Should recontact the reporting person and/or other witnesses within 30 days of the initial report and within 30 days thereafter to determine if any additional information has become available via the reporting party.
- (c) Should consider contacting other agencies involved in the case to determine if any additional information is available.
- (d) Shall verify and update CLETS, NCIC, and any other applicable missing person networks within 30 days of the original entry into the networks and every 30 days thereafter until the missing person is located (34 USC § 41308).
- (e) Should continue to make reasonable efforts to locate the missing person and document these efforts at least every 30 days.
- (f) Shall maintain a close liaison with state and local child welfare systems and the National Center for Missing and Exploited Children® (NCMEC) if the missing person is under the age of 21 and shall promptly notify NCMEC when the person is missing from a foster care family home or childcare institution (34 USC § 41308).
- (g) Should make appropriate inquiry with the Coroner.
- (h) Should obtain and forward medical and dental records, photos, X-rays, and biological samples pursuant to Penal Code § 14212 and Penal Code § 14250.
- (i) Shall attempt to obtain the most recent photograph for persons under 18 years of age if it has not previously been obtained and forward the photograph to California DOJ (Penal Code § 14210) and enter the photograph into applicable missing person networks (34 USC § 41308).

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- (j) Should consider making appropriate entries and searches in the National Missing and Unidentified Persons System (NamUs).
- (k) In the case of an at-risk missing person or a person who has been missing for an extended time, should consult with a supervisor regarding seeking federal assistance from the FBI and the U.S. Marshals Service (28 USC § 566).

332.8 WHEN A MISSING PERSON IS FOUND

When any person reported missing is found, the assigned investigator shall document the location of the missing person in the appropriate report, notify the relatives and/or reporting party, as appropriate, and other involved agencies and refer the case for additional investigation if warranted.

The Records Supervisor shall ensure that, upon receipt of information that a missing person has been located, the following occurs (Penal Code § 14213):

- (a) Notification is made to California DOJ.
- (b) The missing person's school is notified.
- (c) Entries are made in the applicable missing person networks.
- (d) Immediately notify the Attorney General's Office.
- (e) Notification shall be made to any other law enforcement agency that took the initial report or participated in the investigation within 24 hours.

332.8.1 UNIDENTIFIED PERSONS

Department members investigating a case of an unidentified person who is deceased or a living person who cannot assist in identifying him/herself should:

- (a) Obtain a complete description of the person.
- (b) Enter the unidentified person's description into the NCIC Unidentified Person File.
- (c) Use available resources, such as those related to missing persons, to identify the person.

332.9 CASE CLOSURE

The Criminal Investigations Division supervisor may authorize the closure of a missing person case after considering the following:

- (a) Closure is appropriate when the missing person is confirmed returned or evidence has matched an unidentified person or body.
- (b) If the missing person is reported to this department, the case should be kept under active investigation for as long as the person may still be alive. Exhaustion of leads in the investigation should not be a reason for closing a case.

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- (c) If this department is not the lead agency, the case can be made inactive if all investigative leads have been exhausted, the lead agency has been notified and entries are made in the applicable missing person networks as appropriate.
- (d) A missing person case should not be closed or reclassified because the person would have reached a certain age or adulthood or because the person is now the subject of a criminal or civil warrant.

332.10 TRAINING

Subject to available resources, the Personnel and Training Lieutenant should ensure that members of this department whose duties include missing person investigations and reports receive regular training that includes:

- (a) The initial investigation:
 - 1. Assessments and interviews
 - 2. Use of current resources, such as Mobile Audio Video (MAV)
 - 3. Confirming missing status and custody status of minors
 - 4. Evaluating the need for a heightened response
 - 5. Identifying the zone of safety based on chronological age and developmental stage
- (b) Briefing of department members at the scene.
- (c) Identifying NCIC Missing Person File categories (e.g., disability, endangered, involuntary, juvenile and catastrophe).
- (d) Verifying the accuracy of all descriptive information.
- (e) Initiating a neighborhood investigation.
- (f) Investigating any relevant recent family dynamics.
- (g) Addressing conflicting information.
- (h) Key investigative and coordination steps.
- (i) Managing a missing person case.
- (j) Additional resources and specialized services.
- (k) Update procedures for case information and descriptions.
- (l) Preserving scenes.
- (m) Internet and technology issues (e.g., Internet use, cell phone use).
- (n) Media relations.

Public Alerts

334.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for alerting the public to important information and soliciting public aid when appropriate.

334.2 POLICY

Public alerts may be employed using the Emergency Alert System (EAS), local radio, television and press organizations and other groups to notify the public of incidents, or enlist the aid of the public, when the exchange of information may enhance the safety of the community. Various types of alerts may be available based upon each situation and the alert system's individual criteria.

334.3 RESPONSIBILITIES

334.3.1 EMPLOYEE RESPONSIBILITIES

Employees of the Bay Area Rapid Transit Police Department should notify their supervisor, Watch Commander or Criminal Investigations Division Supervisor as soon as practicable upon learning of a situation where public notification, a warning or enlisting the help of the media and public could assist in locating a missing person, apprehending a dangerous person or gathering information.

334.3.2 SUPERVISOR RESPONSIBILITIES

A supervisor apprised of the need for a public alert is responsible to make the appropriate notifications based upon the circumstances of each situation. The supervisor shall promptly notify the Chief of Police, the appropriate Division Commander and the Media Relations when any public alert is generated.

The supervisor in charge of the investigation to which the alert relates is responsible for the following:

- (a) Updating alerts
- (b) Canceling alerts
- (c) Ensuring all appropriate reports are completed
- (d) Preparing an after-action evaluation of the investigation to be forwarded to the Division Commander

334.4 AMBER ALERTS

The AMBER Alert™ Program is a voluntary partnership between law enforcement agencies, broadcasters, transportation agencies and the wireless industry, to activate urgent bulletins in child abduction cases.

334.4.1 CRITERIA FOR AMBER ALERT

The following conditions must be met before activating an AMBER Alert (Government Code § 8594(a)):

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- (a) A child has been abducted or taken by anyone, including but not limited to a custodial parent or guardian.
- (b) The victim is 17 years of age or younger, or has a proven mental or physical disability.
- (c) The victim is in imminent danger of serious injury or death.
- (d) There is information available that, if provided to the public, could assist in the child's safe recovery.

334.4.2 PROCEDURE FOR AMBER ALERT

The supervisor in charge will ensure the following:

- (a) An initial press release is prepared that includes all available information that might aid in locating the child:
 - 1. The child's identity, age and description
 - 2. Photograph if available
 - 3. The suspect's identity, age and description, if known
 - 4. Pertinent vehicle description
 - 5. Detail regarding location of incident, direction of travel, potential destinations, if known
 - 6. Name and telephone number of the Media Relations or other authorized individual to handle media liaison
 - 7. A telephone number for the public to call with leads or information
- (b) The local California Highway Patrol communications center should be contacted to initiate a multi-regional or statewide EAS broadcast, following any policies and procedures developed by CHP (Government Code § 8594).
- (c) The press release information is forwarded to the Sheriff's Department Emergency Communications Bureau so that general broadcasts can be made to local law enforcement agencies.
- (d) Information regarding the missing person should be entered into the California Law Enforcement Telecommunication System (CLETS).
- (e) Information regarding the missing person should be entered into the California Department of Justice Missing and Unidentified Persons System (MUPS)/National Crime Information Center (NCIC).
- (f) The following resources should be considered as circumstances dictate:
 - 1. The local FBI office
 - 2. National Center for Missing and Exploited Children (NCMEC)

334.5 BLUE ALERTS

Blue Alerts may be issued when an officer is killed, injured or assaulted and the suspect may pose a threat to the public or other law enforcement personnel.

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334.5.1 CRITERIA FOR BLUE ALERTS

All of the following conditions must be met before activating a Blue Alert (Government Code § 8594.5):

- (a) A law enforcement officer has been killed, suffered serious bodily injury or has been assaulted with a deadly weapon, and the suspect has fled the scene of the offense.
- (b) The investigating law enforcement agency has determined that the suspect poses an imminent threat to the public or other law enforcement personnel.
- (c) A detailed description of the suspect's vehicle or license plate is available for broadcast.
- (d) Public dissemination of available information may help avert further harm or accelerate apprehension of the suspect.

334.5.2 PROCEDURE FOR BLUE ALERT

The supervisor in charge should ensure the following:

- (a) An initial press release is prepared that includes all available information that might aid in locating the suspect:
 - 1. The license number and/or any other available description or photograph of the vehicle
 - 2. Photograph, description and/or identification of the suspect
 - 3. The suspect's identity, age and description, if known
 - 4. Detail regarding location of incident, direction of travel, potential destinations, if known
 - 5. Name and telephone number of the Media Relations or other authorized individual to handle media liaison
 - 6. A telephone number for the public to call with leads or information
- (b) The local California Highway Patrol communications center is contacted to initiate a multi-regional or statewide EAS broadcast.
- (c) The information in the press release is forwarded to the Sheriff's Department Emergency Communications Bureau so that general broadcasts can be made to local law enforcement agencies.
- (d) The following resources should be considered as circumstances dictate:
 - 1. Entry into the California Law Enforcement Telecommunication System (CLETS)
 - 2. The FBI local office

334.6 SILVER ALERTS

Silver Alerts® is an emergency notification system for people who are 65 years of age or older, developmentally disabled or cognitively impaired and have been reported missing (Government Code § 8594.10).

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334.6.1 CRITERIA FOR SILVER ALERTS

All of the following conditions must be met before activating a Silver Alert (Government Code § 8594.10):

- (a) The missing person is 65 years of age or older, developmentally disabled or cognitively impaired.
- (b) The department has utilized all available local resources.
- (c) The investigating officer or supervisor has determined that the person is missing under unexplained or suspicious circumstances.
- (d) The investigating officer or supervisor believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or that there are other factors indicating that the person may be in peril.
- (e) There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

334.6.2 PROCEDURE FOR SILVER ALERT

Requests for a Silver Alert shall be made through the California Highway Patrol (Government Code § 8594.10).

334.7 MUTUAL AID

The experiences of other law enforcement jurisdictions that have implemented similar plans indicate a public alert will generate a high volume of telephone calls to the handling agency.

The Sheriff's Department emergency communications facilities and staff can be made available in the event of a high call volume.

If the Watch Commander or Criminal Investigations Division Supervisor elects to use the services of the Sheriff's Department, the following will apply:

- (a) Notify the Sheriff's Department Watch Commander of the incident and the request for assistance. He/she will provide you with a telephone number for the public to call.
- (b) In the press release, direct the public to the telephone number provided by the Sheriff's Department Watch Commander.
- (c) The Media Relations will continue to handle all press releases and media inquiries. Any press inquiries received by the Sheriff's Department will be referred back to this department.

The Bay Area Rapid Transit Police Department shall assign a minimum of two detectives/officers to respond to the Sheriff's Department emergency communications facility to screen and relay information and any clues received from incoming calls. As circumstances dictate, more staff resources from the handling law enforcement agency may be necessary to assist the staff at the emergency communications facility.

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334.8 ADDITIONAL ALERTS FOR PUBLIC SAFETY EMERGENCIES

Additional public safety emergency alerts may be authorized that utilize wireless emergency alert system (WEA) and emergency alert system (EAS) equipment for alerting and warning the public to protect lives and save property (Government Code § 8593.7).

334.8.1 CRITERIA

Public safety emergency alerts may be issued to alert or warn the public about events including but not limited to:

- (a) Evacuation orders (including evacuation routes, shelter information, key information).
- (b) Shelter-in-place guidance due to severe weather.
- (c) Terrorist threats.
- (d) HazMat incidents.

334.8.2 PROCEDURE

Public safety emergency alerts should be activated by following the guidelines issued by the Office of Emergency Services (Government Code § 8593.7).

Victim and Witness Assistance

336.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that crime victims and witnesses receive appropriate assistance, that they are provided with information from government and private resources, and that the agency meets all related legal mandates.

336.2 POLICY

The Bay Area Rapid Transit Police Department is committed to providing guidance and assistance to the victims and witnesses of crime. The members of the Bay Area Rapid Transit Police Department will show compassion and understanding for victims and witnesses and will make reasonable efforts to provide the support and information identified in this policy.

336.2.1 SUMMARY OF CRIME VICTIM/WITNESS RIGHTS

This is an overview of constitutional and statutory rights provided to victims/witnesses:

- (a) **Right to Keep Address Confidential** - In cases of child abuse, spousal abuse and sex crimes, victims/witnesses have a right to have their addresses kept confidential. Their addresses may be given only to the attorney for the defendant, but will not appear on any forms or public documents. (Penal Code § 293; Government Code § 6254(f) (2) et seq.).
- (b) **Right Not to be Threatened or Intimidated** - If anyone threatens a victim or witness, law enforcement has the responsibility to investigate such threat or intimidation. It is a crime for anyone to attempt to dissuade or prevent a victim or witness from assisting law enforcement agencies or prosecutors or from attending or giving testimony at any trial or proceeding authorized by law. It is a felony if any such efforts involve coercion, threats or force, or are done for financial gain.
- (c) **Right to be Present at Sentencing and Parole Hearings** - Crime victims/witnesses are entitled to appear at the sentencing hearing and to speak on matters concerning the crime, the penalty and the need for restitution.
- (d) **Right to be Informed of the Sentence Recommended by the Probation Officer** - Victims/ witnesses have a right to make a statement at parole hearings.
- (e) **Right to Restitution and Return of Property** - Victims/witnesses have a right to restitution from the person who is convicted of a misdemeanor or felony where the victim/witness suffered economic loss a result of the offender's conduct, as well as the return of their property when no longer needed as evidence in a court proceeding.

336.2.2 VICTIM/WITNESS INDEMNIFICATION

Law Enforcement agencies are charged with the responsibility of notifying victims/witnesses of violent crimes of their right to indemnification. For the purpose of indemnification by the State of California, the definition of victim shall include (Government Code § 13950 et seq.):

- (a) A person who sustains injury or death as a direct result of a crime.

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- (b) A person legally dependent for support upon a person who sustains injury or death as a direct result of a crime.
- (c) A family member or any person in close relationship to a victim who was present during the commission of the crime and whose treatment or presence during treatment of the victim is required for successful medical treatment.
- (d) Any individual who legally assumes the obligation or who voluntarily pays the medical or burial expenses incurred as a direct result of a death caused by a crime.

336.2.3 THREATS AND/OR INTIMIDATION OF VICTIMS/WITNESSES

- (a) It shall be the policy of the Bay Area Rapid Transit Police Department to provide appropriate assistance to victims/witnesses within our jurisdiction who have been threatened or who express specific, credible reasons for fearing intimidation or further victimization.
- (b) Appropriate assistance may include referral to the local district attorney's office for consideration of protective custody, referral for safety planning by a victim advocate, and/ or offering words of support.
- (c) If an employee of the Bay Area Rapid Transit Police Department becomes aware of danger to a victim or witness, that employee shall promptly notify a supervisor so that appropriate notifications can be made to the victim/witness and the appropriate law enforcement agency.
- (d) When notifying another agency of possible danger to a victim/witness within their jurisdiction, the notifying Bay Area Rapid Transit Police employee shall inform the agency of the danger and request that the agency take reasonable precautions.

336.3 CRIME VICTIM LIAISON

The Chief of Police shall appoint a member of the Department to serve as the crime victim liaison (2 CCR 649.36). The crime victim liaison will be the point of contact for individuals requiring further assistance or information from the Bay Area Rapid Transit Police Department regarding benefits from crime victim resources. This person shall also be responsible for maintaining compliance with all legal mandates related to crime victims and/or witnesses.

336.3.1 CRIME VICTIM LIAISON DUTIES

The crime victim liaison is specifically tasked with the following:

- (a) Developing and implementing written procedures for notifying and providing forms for filing with the California Victim Compensation Board (CalVCB) to crime victims, their dependents, or family. Access to information or an application for victim compensation shall not be denied based on the victim's or derivative victim's designation as a gang member, associate, or affiliate, or on the person's documentation or immigration status (Government Code § 13962; 2 CCR 649.35; 2 CCR 649.36).
- (b) Responding to inquiries concerning the procedures for filing a claim with CalVCB (2 CCR 649.36).

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- (c) Providing copies of crime reports requested by CalVCB or victim witness assistance centers. Disclosure of reports must comply with the Records Maintenance and Release Policy.
- (d) Annually providing CalVCB with his/her contact information (Government Code § 13962).
- (e) Developing in consultation with sexual assault experts a sexual assault victim card explaining the rights of victims under California law (Penal Code § 680.2).
 - 1. Ensuring that sufficient copies of the rights of sexual assault victim card are provided to each provider of medical evidentiary examinations or physical examinations arising out of sexual assault in the Bay Area Rapid Transit Police Department jurisdiction (Penal Code § 680.2).

336.4 CRIME VICTIMS

Officers should provide all victims with the applicable victim information handouts and information about the subsequent steps in the processing of the case.

Officers should never guarantee a victim's safety from future harm but may make practical safety suggestions to victims who express fear of future harm or retaliation. Officers should never guarantee that a person qualifies as a victim for the purpose of compensation or restitution but may direct him/her to the proper written department material or available victim resources.

Members should provide a phone number that the victim may use to report additional information about the case or to obtain information about the status of the case.

336.4.1 FOLLOW-UP INVESTIGATIONS

Members conducting follow-up investigations should explain to victims/witnesses the procedures involved in the prosecution of their cases and their role in those procedures.

The victim/witness should be recontacted periodically to determine whether their needs are being met, if in the opinion of this agency, the impact of a crime on a victim/witness has been unusually severe.

When feasible, line-ups, interviews, and other required appearances should be scheduled at the convenience of the victim/witness.

336.4.2 VICTIMS OF HUMAN TRAFFICKING

Officers investigating or receiving a report involving a victim of human trafficking shall inform the victim, or the victim's parent or guardian if the victim is a minor, that upon the request of the victim the names and images of the victim and his/her immediate family members may be withheld from becoming a matter of public record until the conclusion of the investigation or prosecution (Penal Code § 293).

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336.5 VICTIM INFORMATION

The Support Services Supervisor shall ensure that victim information handouts are available and current. These should include as appropriate:

- (a) Shelters and other community resources for victims of domestic violence.
- (b) Community resources for victims of sexual assault.
- (c) Assurance that sexual assault victims will not incur out-of-pocket expenses for forensic medical exams, and information about evidence collection, storage, and preservation in sexual assault cases (34 USC § 10449; 34 USC § 20109; Penal Code § 13823.95(a)).
- (d) An explanation that victims of sexual assault who seek a standardized medical evidentiary examination shall not be required to participate or agree to participate in the criminal justice system, either prior to the examination or at any other time (Penal Code § 13823.95(b)).
- (e) An advisement that a person who was arrested may be released on bond or some other form of release and that the victim should not rely upon an arrest as a guarantee of safety.
- (f) A clear explanation of relevant court orders and how they can be obtained.
- (g) Information regarding available compensation for qualifying victims of crime (Government Code § 13962).
- (h) VINE® information (Victim Information and Notification Everyday), including the telephone number and whether this free service is available to allow victims to check on an offender's custody status and to register for automatic notification when a person is released from jail.
- (i) Notice regarding U visa and T visa application processes.
- (j) Resources available for victims of identity theft.
- (k) A place for the officer's name, badge number, and any applicable case or incident number.
- (l) The "Victims of Domestic Violence" card containing the names, phone numbers, or local county hotlines of local shelters for battered women and rape victim counseling centers within the county and their 24-hour counseling service telephone numbers (Penal Code § 264.2).
- (m) The rights of sexual assault victims card with the required information as provided in Penal Code § 680.2.
- (n) Any additional information required by state law (Penal Code § 13701; Penal Code § 679.02; Penal Code § 679.04; Penal Code § 679.05; Penal Code § 679.026).

336.6 WITNESSES

Officers should never guarantee a witness' safety from future harm or that his/her identity will always remain confidential. Officers may make practical safety suggestions to witnesses who express fear of future harm or retaliation.

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Officers should investigate allegations of witness intimidation and take enforcement action when lawful and reasonable.

Property taken as evidence from a witness shall be promptly returned, except for contraband, disputed property, and weapons used in the course of the crime, where permitted by law or rules of evidence if feasible.

336.7 NOTIFICATIONS AND RELATIONSHIPS

The Bay Area Rapid Transit Police Department will make every effort to inform the public and media about the agency's victim/witness assistance services. The Department will also maintain a strong relationship with other agencies and organizations versed with victim/witness assistance.

The Bay Area Rapid Transit Police Department maintains an operational agreement for victim/witness assistance with the Alameda County District Attorney's Victim/Witness Assistance Division. Through this cooperative agreement, the Alameda County District Attorney's Victim/Witness Assistance Division will provide appropriate comprehensive services as mandated by law (13835.5 Penal Code) including, but not limited to: crisis intervention, emergency assistance, resource and referral counseling, assistance in filing for State Compensation, property return, orientation to the criminal justice system, court support, case status and disposition. The Alameda County District Attorney's Victim/Witness Assistance Division will deploy the Advocate Crisis Response team upon receiving instructions from the Alameda County District Attorney, Chief of Inspectors, or Assistant Chief of Inspectors if requested by the Bay Area Rapid Transit Police Department to assist victims and families in the immediate aftermath of a crime related or disaster related mass casualty/victimization incident. The Alameda County District Attorney's Victim/Witness Assistance Division may be available to assist with incidents outside of Alameda County if local resources for victim/witness assistance are insufficient or overwhelmed in the event of a major incident. The Watch Commander or Incident Commander may request assistance from the Alameda County District Attorney's Victim/Witness Assistance Division by telephone via the Alameda County Sheriff Office Emergency Services Dispatch Center (510-667-7721).

Notification of Next-of-Kin

337.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for notifying next-of-kin in cases of death, serious injury or serious illness.

337.2 NOTIFICATIONS GENERALLY

Department members may accept and deliver emergency messages or make death or injury/illness notifications with the approval of a supervisor when other reasonable efforts from other agencies or persons have been exhausted.

In all notifications these guidelines should be followed:

- (a) Obtain as much information from the requesting party as may be necessary to answer questions that may be asked by the person being notified.
- (b) Obtain the name and telephone number of the person that the party being notified should contact for additional information.
- (c) In appropriate situations, officers should offer the services of BART Police Department Chaplaincy Program.
- (d) Attempt to contact a third party who may act as a support to the person being notified.
- (e) Answer only those questions that can be answered with facts.
- (f) The notification shall be made in person if possible.

337.2.1 INJURY AND ILLNESS NOTIFICATION

Normally, a representative of the hospital administering aid to the injured or ill person should make notification of the next-of-kin in situations involving hospitalized persons. However, notification requests from a hospital will be honored when all other practical means have failed.

337.3 LINE OF DUTY OR SERIOUS INJURY

Next-of-kin notification in the case of an BART Police Department Member shall be made in accordance to the Policy 388 Line-of-Duty Deaths or Serious Injury.

Hate Crimes

338.1 PURPOSE AND SCOPE

This policy is designed to assist in identifying and handling crimes motivated by hate or other bias toward individuals and groups with legally defined protected characteristics, to define appropriate steps for assisting victims, and to provide a guide to conducting related investigations. It outlines the general policy framework for prevention, response, accessing assistance, victim assistance and follow-up, and reporting as related to law enforcement's role in handling hate crimes. It also serves as a declaration that hate crimes are taken seriously and demonstrates how the Bay Area Rapid Transit Police Department may best use its resources to investigate and solve an offense, in addition to building community trust and increasing police legitimacy (Penal Code § 13519.6).

338.1.1 DEFINITION AND LAWS

In accordance with Penal Code § 422.55; Penal Code § 422.56; Penal Code § 422.6; and Penal Code § 422.87, for purposes of all other state law, unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

Bias motivation - Bias motivation is a pre-existing negative attitude toward actual or perceived characteristics referenced in Penal Code § 422.55. Depending on the circumstances of each case, bias motivation may include but is not limited to hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including but not limited to disability or gender.

Disability - Disability includes mental disability and physical disability as defined in Government Code § 12926, regardless of whether those disabilities are temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness.

Disability bias - In recognizing suspected disability-bias hate crimes, officers should consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as but not limited to dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore "deserving victims," a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations.

In recognizing suspected disability-bias hate crimes, officers should consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in anti-disability bias. This includes but is not limited to situations where a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons, such as inebriated persons or persons with perceived disabilities different from those of the victim. Such circumstances could be evidence that the perpetrator's motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity.

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Gender - Gender means sex and includes a person's gender identity and gender expression.

Gender expression - Gender expression means a person's gender-related appearance and behavior, whether or not stereotypically associated with the person's assigned sex at birth.

Gender identity- Gender identity means each person's internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender (2 CCR § 11030).

Hate crime - "Hate crime" includes but is not limited to a violation of Penal Code § 422.6, and means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

- (a) Disability
- (b) Gender
- (c) Nationality
- (d) Race or ethnicity
- (e) Religion
- (f) Sexual orientation
- (g) Association with a person or group with one or more of these actual or perceived characteristics:
 1. "Association with a person or group with these actual or perceived characteristics" includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of "hate crime" under paragraphs 1 to 6, inclusive, of Penal Code § 422.55(a).

Note: A "hate crime" need not be motivated by hate but may be motivated by any bias against a protected characteristic.

Hate incident - A hate incident is an action or behavior motivated by hate or bias but legally protected by the First Amendment right to freedom of expression. Examples of hate incidents include:

- Name-calling
- Insults and epithets
- Distributing hate material in public places
- Displaying hate material on your own property

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Hate speech - The First Amendment to the U.S. Constitution protects most speech, even when it is disagreeable, offensive, or hurtful. The following types of speech are generally not protected:

- Fighting words
- True threats
- Perjury
- Blackmail
- Incitement to lawless action
- Conspiracy
- Solicitation to commit any crime

In whole or in part - “In whole or in part because of” means that the bias motivation must be a cause in fact of the offense whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that a crime would not have been committed but for the actual or perceived characteristic.

Nationality - Nationality includes citizenship, country of origin, and national origin.

Race or ethnicity - Race or ethnicity includes ancestry, color, and ethnic background.

Religion - Religion includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

Sexual orientation - Sexual orientation means heterosexuality, homosexuality, or bisexuality.

Victim - Victim includes but is not limited to:

- Community center
- Educational facility
- Entity
- Family
- Group
- Individual
- Office
- Meeting hall
- Person
- Place of worship
- Private institution
- Public agency

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- Library
- Other victim or intended victim of the offense

338.2 POLICY

It is the policy of this department to safeguard the rights of all individuals irrespective of their disability, gender, nationality, race or ethnicity, religion, sexual orientation, and/or association with a person or group with one or more of these actual or perceived characteristics. Any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by hate or bias should be viewed very seriously and given high priority.

This department will employ reasonably available resources and vigorous law enforcement action to identify and arrest hate crime perpetrators. Also, recognizing the particular fears and distress typically suffered by victims, the potential for reprisal and escalation of violence, and the far-reaching negative consequences of these crimes on the community, this department should take all reasonable steps to attend to the security and related concerns of the immediate victims and their families as feasible.

All officers are required to be familiar with the policy and use reasonable diligence to carry out the policy unless directed by the Chief of Police or other command-level officer to whom the Chief of Police formally delegates this responsibility.

338.3 PLANNING AND PREVENTION

In order to facilitate the guidelines contained within this policy, department members will continuously work to build and strengthen relationships with the community, engage in dialogue, and provide education to the community about this policy. Department personnel are also encouraged to learn about the inherent issues concerning their communities in relation to hate crimes.

Although hate incidents are not criminal events, they can be indicators of, or precursors to, hate crimes. Hate incidents should be investigated and documented as part of an overall strategy to prevent hate crimes.

338.3.1 HATE CRIMES COORDINATOR

A department member appointed by the Chief of Police or the authorized designee will serve as the Hate Crimes Coordinator. The responsibilities of the Hate Crimes Coordinator should include but not be limited to (Penal Code § 422.87):

- (a) Finding, evaluating, and monitoring public social media sources to identify possible suspects in reported hate crimes; to identify suspects or suspect groups in future hate crimes or hate incidents affecting individuals, groups, or communities that may be victimized; and to predict future hate-based events.
- (b) Providing direct and referral assistance to the victim and the victim's family.
- (c) Establishing relationships with formal community-based organizations and leaders.

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- (d) Reviewing the Attorney General's latest opinion on hate crime statistics and targets in order to prepare and plan for future crimes, specifically for Arab/Middle Eastern and Muslim communities (Penal Code § 13519.6(b)(8)).
- (e) Coordinating with the Personnel and Training Lieutenant to include in a training plan recognition of hate crime bias characteristics, including information on general underreporting of hate crimes.
- (f) Verifying a process is in place to provide this policy and related orders to officers in the field; and taking reasonable steps to rectify the situation if such a process is not in place.
- (g) Taking reasonable steps to ensure hate crime data is provided to the Records Division for mandated reporting to the Department of Justice.
- (h) Reporting any suspected multi-mission extremist crimes to the agency Terrorism Liaison Officer, the assigned designee, or other appropriate resource; and verifying that such data is transmitted to the Joint Regional Information Exchange System in accordance with the protocols of the Records Division Policy.
- (i) Maintaining the department's supply of up-to-date hate crimes brochures (Penal Code § 422.92; Penal Code § 422.87).
- (j) Annually assessing this policy, including:
 - 1. Keeping abreast of the Commission on Peace Officer Standards and Training (POST) model policy framework for hate crimes for revisions or additions, including definitions, responsibilities, training resources, and planning and prevention methods.
 - 2. Analysis of the department's data collection as well as the available outside data (e.g., annual California Attorney General's report on hate crime) in preparation for and response to future hate crimes.

338.3.2 RELEASE OF INFORMATION

Establishing a relationship with stakeholders, before any incident occurs, to develop a network and protocol for disclosure often assists greatly in any disclosure.

The benefit of public disclosure of hate crime incidents includes:

- (a) Dissemination of correct information.
- (b) Assurance to affected communities or groups that the matter is being properly and promptly investigated.
- (c) The ability to request information regarding the commission of the crimes from the victimized community.

Information or records relating to hate crimes subject to public disclosure shall be released as provided by the Records Maintenance and Release Policy or as allowed by law. In accordance with the Media Relations Policy, the supervisor, public information officer, or the authorized designee should be provided with information that can be responsibly reported to the media. When

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appropriate, the department spokesperson should reiterate that hate crimes will not be tolerated, will be investigated seriously, and will be prosecuted to the fullest extent of the law.

The Department should consider the following when releasing information to the public regarding hate crimes and hate incidents that have been reported within the jurisdiction:

- Inform community organizations in a timely manner when a community group has been the target of a hate crime.
- Inform the community of the impact of these crimes on the victim, the victim's family, and the community, and of the assistance and compensation available to victims.
- Inform the community regarding hate crime law and the legal rights of, and remedies available to, victims of hate crimes.
- Provide the community with ongoing information regarding hate crimes and/or hate incidents.

338.4 RESPONSE, VICTIM ASSISTANCE, AND FOLLOW-UP

338.4.1 INITIAL RESPONSE

First responding officers should know the role of all department personnel as they relate to the department's investigation of hate crimes and/or incidents. Responding officers should evaluate the need for additional assistance and, working with supervision and/or investigations, access needed assistance if applicable.

At the scene of a suspected hate or bias crime, officers should take preliminary actions reasonably deemed necessary, including but not limited to the following:

- (a) Use agency checklist (per Penal Code § 422.87) to assist in the investigation of any hate crime (see Appendix).
- (b) Stabilize the victims and request medical attention when necessary.
- (c) Properly protect the safety of victims, witnesses, and perpetrators.
 1. Assist victims in seeking a Temporary Restraining Order (if applicable).
- (d) Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- (e) Properly protect, preserve, and process the crime scene, and remove all physical evidence of the incident as soon as possible after the offense is documented. If evidence of an inflammatory nature cannot be physically removed, the property owner should be contacted to facilitate removal or covering as soon as reasonably possible. Department personnel should follow up with the property owner to determine if this was accomplished in a timely manner.
- (f) Collect and photograph physical evidence or indicators of hate crimes such as:
 1. Hate literature.
 2. Spray paint cans.

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3. Threatening letters.
4. Symbols used by hate groups.
- (g) Identify criminal evidence on the victim.
- (h) Request the assistance of translators or interpreters when needed to establish effective communication with witnesses, victims, or others as appropriate.
- (i) Conduct a preliminary investigation and record pertinent information including but not limited to:
 1. Identity of suspected perpetrators.
 2. Identity of witnesses, including those no longer at the scene.
 3. The offer of victim confidentiality per Government Code § 5264.
 4. Prior occurrences in this area or with this victim.
 5. Statements made by suspects; exact wording is critical.
 6. The victim's protected characteristics and determine if bias was a motivation "in whole or in part" in the commission of the crime.
- (j) Adhere to Penal Code § 422.93, which protects hate crime victims and witnesses from being reported to federal immigration authorities if they have not committed any crime under state law.
- (k) Provide information regarding immigration remedies available to victims of crime (e.g., U-Visa, T-Visa, S-Visa).
- (l) Provide the department's Hate Crimes Brochure (per Penal Code § 422.92) if asked, if necessary, or per policy.
- (m) Utilize proper techniques for interviewing people with disabilities and be aware of and provide appropriate accommodations (e.g., ADA standards, Braille, visuals, translators for the deaf or hard of hearing).
- (n) Document any suspected multi-mission extremist crimes.

338.4.2 INVESTIGATION

Investigators at the scene of, or performing follow-up investigation on, a suspected hate or bias crime or hate incident should take all actions deemed reasonably necessary, including but not limited to the following:

- (a) Consider typologies of perpetrators of hate crimes and incidents, including but not limited to thrill, reactive/defensive, and mission (hard core).
- (b) Utilize investigative techniques and methods to handle hate crimes or hate incidents in a professional manner.
- (c) Utilize proper techniques for interviewing people with disabilities and be aware of and provide appropriate accommodations (e.g., ADA standards, Braille, visuals, translators for the deaf or hard of hearing).

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- (d) Properly investigate any report of a hate crime committed under the color of authority per Penal Code § 422.6 and Penal Code § 13519.6.
- (e) Document physical evidence or indicators of hate crimes, in accordance with the provisions of the Property and Evidence Policy, such as:
 - 1. Hate literature.
 - 2. Spray paint cans.
 - 3. Threatening letters.
 - 4. Symbols used by hate groups.
 - 5. Desecration of religious symbols, objects, or buildings.
- (f) Request the assistance of translators or interpreters when needed to establish effective communication.
- (g) Conduct a preliminary investigation and record information regarding:
 - 1. Identity of suspected perpetrators.
 - 2. Identity of witnesses, including those no longer at the scene.
 - 3. Offer of victim confidentiality per Government Code § 5264.
 - 4. Prior occurrences, in this area or with this victim.
 - 5. Statements made by suspects; exact wording is critical.
 - 6. Document the victim's protected characteristics.
- (h) Provide victim assistance and follow-up.
- (i) Canvass the area for additional witnesses.
- (j) Examine suspect's social media activity for potential evidence of bias motivation.
- (k) Coordinate the investigation with department, state, and regional intelligence operations. These sources can provide the investigator with an analysis of any patterns, organized hate groups, and suspects potentially involved in the offense.
- (l) Coordinate the investigation with the crime scene investigation unit (if applicable) or other appropriate units of the Department.
- (m) Determine if the incident should be classified as a hate crime.
- (n) Take reasonable steps to provide appropriate assistance to hate crime victims, including the following measures:
 - 1. Contact victims periodically to determine whether they are receiving adequate and appropriate assistance.
 - 2. Provide ongoing information to victims about the status of the criminal investigation.
 - 3. Provide victims and any other interested persons the brochure on hate crimes per Penal Code § 422.92 and information on any local advocacy groups (if asked).

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- (o) Document any suspected multi-mission extremist crimes.
- (p) Coordinate with other law enforcement agencies in the area to assess patterns of hate crimes and/or hate incidents, and determine if organized hate groups are involved.

338.4.3 SUPERVISION

The supervisor shall confer with the initial responding officer and take reasonable steps to ensure that necessary preliminary actions have been taken. The supervisor shall request any appropriate personnel necessary to accomplish the following:

- (a) Provide immediate assistance to the crime victim by:
 - 1. Expressing the department's official position on the importance of these cases and the measures that will be taken to apprehend the perpetrators.
 - 2. Expressing the department's interest in protecting victims' anonymity (confidentiality forms, Government Code § 6254) to the extent reasonably possible. Allow the victims to convey their immediate concerns and feelings.
 - 3. Identifying individuals or agencies that may provide victim assistance and support. Local victim assistance resources may include family members or close acquaintances, clergy, or a department chaplain, as well as community service agencies that provide shelter, food, clothing, child care, or other related services (per Penal Code § 422.92).
- (b) Take reasonable steps to ensure that all relevant facts are documented on an incident and/or arrest report and make an initial determination as to whether the incident should be classified as a hate crime for federal and state bias-crimes reporting purposes.
- (c) Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- (d) In cases of large-scale hate crime waves, or in circumstances where the potential exists for subsequent hate crimes or incidents, consider directing resources to protect vulnerable sites (such as assigning an officer to specific locations that could become targets).
- (e) Verify hate crimes are being properly reported, including reporting to the Department of Justice, pursuant to Penal Code § 13023.
- (f) Verify adherence to Penal Code § 422.93, which protects hate crime victims and witnesses from being reported to federal immigration authorities if they have not committed any crime under state law. Supervisors should also be aware of the immigration remedies available to victims of crime (e.g., U-Visa, T-Visa, S-Visa).
- (g) Respond to and properly initiate an investigation of any reports of hate crimes committed under the color of authority.
- (h) Provide appropriate assistance, including activating the California Department of Justice hate crime rapid response protocol if necessary. For additional information refer to the California Department of Justice website.

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- (i) Verify reporting of any suspected multi-mission extremist crimes to the agency Hate Crimes Coordinator.
- (j) Make a final determination as to whether the incident should be classified as a hate crime and forward to the Chief of Police for approval.

338.5 TRAINING

All members of this department will receive POST-approved training on hate crime recognition and investigation as provided by Penal Code § 13519.6. Training should include (Penal Code § 422.87):

- (a) Recognition of bias motivators such as ranges of attitudes and perceptions toward a specific characteristic or group, including disability bias and gender bias.
- (b) Accurate reporting by officers, including information on the general underreporting of hate crimes.
- (c) Distribution of hate crime brochures.

338.6 APPENDIX

See attachments:

[Statutes and Legal Requirements.pdf](#)

[Hate Crime Checklist.pdf](#)

Standards of Conduct

340.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Bay Area Rapid Transit Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

340.2 POLICY

The continued employment or appointment of every member of the Bay Area Rapid Transit Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

340.3 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Employees shall maintain cooperation between the ranks and units of the Department and other District employees to accomplish the District objective of providing a safe, efficient and fast transit system for the public.

Members shall familiarize themselves with policies and procedures, as well as all applicable laws and regulations, and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Employees are required to obey any lawful order of a superior, including any order relayed from a superior by an employee of the same or lesser rank. Deliberate refusal of any employee to obey a lawful order given by proper authority shall be insubordination.

Obedience to an unlawful order is never a defense for an unlawful action. Therefore, no employee is required to obey any order which is contrary to Federal or State law. Responsibility for refusal to obey rests with the employee and said employee shall be strictly required to justify his action.

Upon receipt of an order conflicting with any previous order or instruction, the member affected will advise the person issuing the second order of this fact. Responsibility for countermanding the original instruction then rests with the individual issuing the second order. If so directed, the latter command shall be obeyed first. Orders will be countermanded or conflicting orders will be issued only when reasonably necessary for the good of the Department.

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Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

340.3.1 INFORMAL PRE-DISCIPLINE

The informal steps of the progressive discipline system are as follows:

- (a) **Informal Counseling (first level of pre-discipline):** When warranted, an informal counseling may be the first step of the process. It is an informal discussion between a supervisor and an employee about conduct, attendance or work performance. It is not documented and is pre-disciplinary.
- (b) **Letter of Discussion (second level of pre-discipline):** A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation.
 - 1. After the supervisor has discussed the performance or infraction with the employee, the Letter of Discussion memorandum should be presented to the employee for his or her signature. The supervisor shall give a copy of the Letter of Discussion to the employee, and the supervisor then forwards a copy to the Support Services Deputy Chief for placement into the employee's personnel file. The Letter of Discussion will remain in the employee's personnel file for a period as determined by the collective bargaining agreement.
- (c) **Oral Counseling (third level of pre-discipline):** An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline. After the supervisor has discussed the performance or infraction with the employee, the Oral Counseling memorandum should be presented to the employee for his or her initials. The supervisor shall give a copy of the Oral Counseling to the employee, while the supervisor then forwards a copy to the Support Services Deputy Chief for placement into the employee's personnel file. The Oral Counseling will remain in the employee's personnel file for a period as determined by the collective bargaining agreement.

References to Letter (s) of Discussion/Oral Counseling (s) may be included in an employee's semi-annual performance evaluation if the informal pre-discipline was issued during the evaluation period. Later annual performance evaluations received by the employee shall not reference the letter of discussion or the oral counseling.

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340.3.2 FORMAL DISCIPLINE

If informal pre-discipline does not correct the conduct, attendance, work performance or the violation is of such a nature to warrant formal discipline, formal discipline may be warranted.

- (a) The steps of formal discipline are:
 - 1. First level: Written Reprimand
 - 2. Second level: Pay Step Reduction (up to six months)
 - 3. Third level: Suspension without pay (thirty (30) day maximum)
 - 4. Fourth level: Demotion
- (b) Application:
 - 1. A single occurrence may be serious enough to warrant formal disciplinary action.
- (c) Removal of Discipline:
 - 1. If there have been no re-occurrences at the end of the time frames as determined by the collective bargaining agreement, the immediate supervisor shall meet with the employee and advise him/her that the progressive discipline has become inactive and has been removed from the employee's personnel files.
 - 2. If an employee is unable to perform his/her assigned duties due to a non-industrial injury, leave of absence, or military leave occurring during the active period of the discipline, the deactivation date shall be extended for the total number of days the employee was unable to perform his/her assigned duties.
 - 3. The Support Services Bureau removes the progressive discipline from the employee's departmental personnel file and also sends a memorandum to Human Resources instructing them to remove the discipline from the employee's District personnel file. A copy of this memorandum will also be sent directly to the employee.
 - 4. References to formal discipline should be made in the employee's semi-annual performance evaluation, if the discipline was issued during the evaluation period. Material in the personnel file may be utilized in progressive discipline and/or grievance proceedings as determined by collective bargaining agreement.

340.3.3 TERMINATION

Termination is the final level of Progressive Discipline.

340.3.4 CRISIS SUSPENSION

A crisis suspension should be used when an employee's inappropriate behavior is so serious that immediate removal from the workplace is necessary. The employee may be placed on administrative leave, with pay, pending further investigation by supervisory personnel. The preliminary investigation should normally be conducted within twenty-four (24) hours of the incident. The employee will be informed by his/her immediate supervisor to report to the Support Services Deputy Chief at 10:00 hours on the next business day. The Chief of Police and the

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employee's zone Lieutenant or Bureau Deputy Chief must be notified as soon as appropriate on all crisis suspensions.

(a) Cause for Crisis Suspensions

1. Allegations or infractions serious enough to result in termination may result in a crisis suspension.

340.4 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

340.4.1 LAWS, RULES AND ORDERS

- (a) Violation of, or ordering or instructing a subordinate to violate any law (federal, state, local, or administrative), policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or District manuals.
- (b) Disobedience of any legal directive or order issued by any department member of a higher rank.

340.4.2 ETHICS

- (a) Using or disclosing one's status as a member of the Bay Area Rapid Transit Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
- (b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- (d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.
- (e) Offer or acceptance of a bribe or gratuity.
- (f) Misappropriation or misuse of public funds, property, personnel or services.
- (g) Any other failure to abide by the standards of ethical conduct.

340.4.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM

Unless required by law or policy, discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, and any other classification or status protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful.

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340.4.4 RELATIONSHIPS

Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.

- (a) Engaging in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.
- (b) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- (c) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
- (d) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.

340.4.5 ATTENDANCE

- (a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- (b) Unexcused or unauthorized absence or tardiness.
- (c) Excessive absenteeism or abuse of leave privileges.
- (d) Failure to report to work or to the place of assignment at the time specified and fully prepared to perform duties without reasonable excuse.

340.4.6 UNAUTHORIZED ACCESS, DISCLOSURE, OR USE

- (a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms, or reports obtained as a result of the member's position with this department.
 - (a) Members of this department shall not disclose the name, address, or image of any victim of human trafficking except as authorized by law (Penal Code § 293).
- (b) Disclosing to any unauthorized person any active investigation information.
- (c) The use of any information, photograph, video, or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
- (d) Loaning, selling, allowing unauthorized use, giving away, or appropriating any department property for personal use, personal gain, or any other improper or unauthorized use or purpose.

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- (e) Using department resources in association with any portion of an independent civil action. These resources include but are not limited to personnel, vehicles, equipment, and non-subpoenaed records.
- (f) Duplicating any District key or loaning any District key to any person not authorized to possess same, unless instructed to do so by a command officer.

340.4.7 EFFICIENCY

- (a) Neglect of duty.
- (b) Unsatisfactory work performance including but not limited to failure, incompetence, inefficiency, or delay in performing and/or carrying out proper orders, work assignments, or the instructions of supervisors without a reasonable and bona fide excuse.
- (c) Concealing, attempting to conceal, removing, or destroying defective or incompetent work.
- (d) Unauthorized sleeping during on-duty time or assignments.
- (e) Failure to notify the Department within 24 hours of any change in residence address or contact numbers.
- (f) Failure to notify the Human Resources Department of changes in relevant personal information (e.g., information associated with benefits determination) in a timely fashion.

340.4.8 PERFORMANCE

- (a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
- (b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.
- (c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department -related business.
- (d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
- (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
- (f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:

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1. While on department premises.
 2. At any work site, while on-duty or while in uniform, or while using any department equipment or system.
 3. Gambling activity undertaken as part of an officer official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- (g) Improper political activity including:
- (a) Unauthorized attendance while on-duty at official legislative or political sessions.
 - (b) Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty or, on department property except as expressly authorized by District policy, the memorandum of understanding, or the Chief of Police.
- (h) Engaging in political activities during assigned working hours except as expressly authorized by District policy, the memorandum of understanding, or the Chief of Police.
- (i) Concealing oneself except for the furtherance of some police purpose. Members shall be readily available to the public during duty hours.
- (j) Any act on- or off- duty that brings discredit to this department.

340.4.9 CONDUCT

- (a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency or that may result in criminal prosecution or discipline under this policy. If the employee believes the information is of such gravity that it must be brought to the immediate attention of the Chief of Police, official channels may be bypassed.
- (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.
- (c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- (d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- (e) Engaging in horseplay that reasonably could result in injury or property damage.
- (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the District.
- (g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.
- (h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
- (i) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.

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- (j) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.
- (k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
- (l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.
- (m) Seeking restraining orders against individuals encountered in the line of duty without the express permission of the Chief of Police.
- (n) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.
- (o) Failure to provide names and/or badge numbers in a courteous manner upon request.
- (p) Employees shall not permit their names or photographs to be used to endorse any product or service which is in any way connected with law enforcement without the permission of the Chief of Police. They shall not, without the permission of the Chief of Police, allow their names or photographs to be used in any commercial testimonial which alludes to their position or employment with the District.
- (q) Employees shall not seek personal publicity in the course of their employment.

340.4.10 SAFETY

- (a) Failure to observe or violating department safety standards or safe working practices.
- (b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
- (c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.
- (e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
- (f) Unsafe or improper driving habits or actions in the course of employment or appointment.
- (g) Any personal action contributing to a preventable traffic collision.
- (h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

340.4.11 INTOXICANTS

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- (a) Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.
- (b) Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.
- (c) Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.

340.4.12 TOBACCO USE

Members shall not smoke, vape, or chew any tobacco substance when within direct contact with the public. All special instructions regarding "no smoking" shall be obeyed.

340.5 COOPERATION WITH INVESTIGATIONS

Employees will cooperate in any investigation conducted by:

- (a) Any competent investigative body
- (b) A judicial tribunal
- (c) A hearing board of officer
- (d) A person authorized to take testimony
- (e) The BART Office of the Independent Police Auditor (OIPA)

Employees are required to answer questions by, or render material and relevant statements to, a competent authority in a District personnel investigation when so directed.

340.6 POST INVESTIGATION PROCEDURES

340.6.1 BUREAU DEPUTY CHIEF RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Bureau Deputy Chief of the involved employee shall review the entire investigative file, the employee's personnel file and any other relevant materials.

The Bureau Deputy Chief may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

- (a) Prior to forwarding recommendations to the Chief of Police, the Bureau Deputy Chief may return the entire investigation to the assigned detective or supervisor for further investigation or action
- (b) When forwarding any written recommendation to the Chief of Police, the Bureau Deputy Chief shall include all relevant materials supporting the recommendation. Actual copies of an employee's existing personnel file need not be provided and may be incorporated by reference

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340.6.2 RESPONSIBILITIES OF THE CHIEF OF POLICE

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials.

The Chief of Police may modify any recommendation and/or may return the file to the Bureau Deputy Chief for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, to be imposed.

In the event disciplinary action is recommended, the Chief of Police shall provide the employee with written (Skelly) notice of the following information within one year of the date of the discovery of the alleged misconduct (absent an exception set forth in Government Code § 3304(d) or 3508.1):

- (a) Specific charges set forth in separate counts, describing the conduct underlying each count.
- (b) A separate recommendation of proposed discipline for each charge.
- (c) A statement that the employee has been provided with or given access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (d) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the Skelly notice.
 1. Upon a showing of good cause by the employee, the Chief of Police may grant a reasonable extension of time for the employee to respond.
 2. If the employee elects to respond orally, the presentation shall be recorded by the Department. Upon request, the employee shall be provided with a copy of the recording.

340.7 EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) This Skelly response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the Skelly response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results of such subsequent investigation prior to the imposition of any discipline.

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- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issue(s) of information raised in any subsequent materials.
- (f) Once the employee has completed his/her Skelly response or, if the employee has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall thereafter render a timely written decision to the employee imposing, modifying or rejecting the recommended discipline. In the event of a termination, the final notice of discipline shall also inform the employee of the reason(s) for termination and the process to receive all remaining fringe and retirement benefits.
- (g) Once the Chief of Police has issued a written decision, the discipline shall become effective.

340.8 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that an employee tenders a written retirement or resignation prior to the imposition of discipline, it shall be noted in the file.

The tender of a retirement or resignation by itself shall not serve as grounds for the termination of pending discipline.

340.9 POST SKELLY PROCEDURE

In situations resulting in the imposition of a suspension, punitive transfer, demotion, termination of a non-probationary employee, the employee shall have the right to an evidentiary appeal of the Chief of Police's imposition of discipline pursuant to the operative Memorandum of Understanding (MOU) and personnel rules.

340.10 DISCIPLINARY ACTION AGAINST PROBATIONARY EMPLOYEES

In the event that a probationary employee is terminated solely for unsatisfactory performance or the failure to meet department standards, the employee shall have no right to appeal and the following shall be considered:

- (a) Termination of a probationary employee for such failure to pass probation shall be so reflected in the employee's personnel file
- (b) In the event that a probationary employee is disciplined or terminated for misconduct, the employee shall only be entitled to appeal the decision in the same manner as set forth in the Skelly procedure as set forth above. This appeal process may be held prior to or within a reasonable time after the imposition of discipline
- (c) At all times during any investigation of allegations of misconduct involving a probationary officer, such officer shall be afforded all procedural rights set forth in Government Code § 3303 and applicable Department policies
- (d) A probationary employee's appeal of disciplinary action shall be limited to an opportunity for the employee to attempt to establish that the underlying allegations should not be sustained. Nothing in this policy or procedure, however, should be

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construed to establish any sort of property interest in or right to the employee's continuation of employment

- (e) The burden of proof for any probationary employee's appeal of disciplinary action shall rest with the employee and will require proof by a preponderance of the evidence
- (f) In the event that a probationary employee meets his or her burden of proof in such a disciplinary appeal, the Department shall remove all reference to the underlying allegations of misconduct from the employee's personnel file
- (g) In the event that a probationary employee fails to meet his or her burden of proof in such a disciplinary appeal, the employee shall have no further right to appeal beyond the Chief of Police

Information Technology Use

342.1 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.

342.1.1 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 Bay Area Rapid Transit 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.

342.2 POLICY

It is the policy of the Bay Area Rapid Transit 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.

342.3 PRIVACY EXPECTATION

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

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

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The Department shall not require a member to disclose a personal username or password for accessing personal social media or to open a personal social website; however, the Department may request access when it is reasonably believed to be relevant to the investigation of allegations of work-related misconduct (Labor Code § 980).

342.4 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.

342.4.1 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 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 District-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.

342.4.2 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.

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342.4.3 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.

342.5 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.

342.6 INSPECTION OR REVIEW

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

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

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

342.7 DISTRICT MANAGEMENT PROCEDURES

All employees should review the following BART Management Procedures regarding District computer use:

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- Management Procedure 25 - Personal Computer (PC) Procedure;
- Management Procedure 40 - Internet Use Guidelines;
- Management Procedure 75 - Electronic Communications Guidelines.

Management Procedures can be located in WebBART.

Report Preparation

344.1 PURPOSE AND SCOPE

Report preparation is a major part of each officer's job. The purpose of reports is to document sufficient information to refresh the officer's memory and to provide sufficient information for follow-up investigation and successful prosecution. Report writing is the subject of substantial formalized training and on-the-job training.

344.1.1 REPORT PREPARATION

Employees should ensure that reports are sufficiently detailed for their purpose and free from errors prior to submission. It is the responsibility of the assigned employee to complete and submit all reports taken during the shift before going off-duty unless permission to hold the report has been approved by a supervisor. Generally, reports requiring prompt follow-up action on active leads, or arrest reports where the suspect remains in custody should not be held. Employees shall not approve their own reports.

Handwritten reports must be prepared legibly. If the report is not legible, the submitting employee will be required by the reviewing supervisor to promptly make corrections and resubmit the report. Employees who dictate reports shall use appropriate grammar, as content is not the responsibility of the typist. Employees who generate reports on computers are subject to all requirements of this policy.

All reports shall accurately reflect the identity of the persons involved, all pertinent information seen, heard or assimilated by any other sense, and any actions taken. Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing. Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such.

344.2 REQUIRED REPORTING

Written reports are required in all of the following situations on the appropriate department approved form unless otherwise approved by a supervisor.

344.2.1 CRIMINAL ACTIVITY

When a member responds to a call for service, or as a result of self-initiated activity becomes aware of any activity where a crime has occurred, the member shall document the incident regardless of whether a victim desires prosecution. Activity to be documented in a written report includes:

- (a) All arrests
- (b) All felony crimes
- (c) Non-Felony incidents involving threats or stalking behavior
- (d) Situations covered by separate policy. These include:
 1. Use of Force Policy

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2. Domestic Violence Policy
3. Child Abuse Policy
4. Adult Abuse Policy
5. Hate Crimes Policy
6. Suspicious Activity Reporting Policy

- (e) All misdemeanor crimes where the victim desires a report

Misdemeanor crimes where the victim does not desire a report shall be documented using the department-approved alternative reporting method (e.g., dispatch log).

344.2.2 NON-CRIMINAL ACTIVITY

The following incidents require the preparation of a written report:

- (a) When an officer points a firearm at any person, or deploys a firearm, CEW or LLIMS launcher in the presence of bystanders to defend, detain, or take any person into custody
- (b) Reported missing persons (regardless of jurisdiction)
- (c) Found contraband and found evidence
- (d) All incidents involving the death of a human being (see Policy Manual § 360 Death Investigations)
- (e) Traffic collisions above minimum reporting level
- (f) Suspicious Persons or Circumstances where a CAD entry would not be sufficient to explain the incident
- (g) Hazardous Material incidents where a CAD entry would not be sufficient to explain the incident
- (h) Illnesses or injuries meeting criteria of section 344.2.4 or section 344.2.5

344.2.3 DEATH CASES

Cases of obvious suicide must be investigated and completed by the officer. If the officer is unable to determine the manner of death, he/she shall proceed as though it is a homicide.

The on-call detective will be notified in all unattended death cases. Detectives may respond to the scene to assist the reporting officer with the investigation.

344.2.4 INJURY OR DAMAGE BY DISTRICT PERSONNEL

Reports shall be taken if an injury occurs that is a result of an act of a District employee. Additionally, reports shall be taken involving significant damage to District property or District equipment.

344.2.5 MISCELLANEOUS INJURIES

Any injury that is reported to this department shall require a report when:

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- (a) The injury/illness is a result of drug overdose
- (b) Attempted suicide
- (c) The injury or illness is major/serious, whereas death could result
- (d) The circumstances surrounding the incident are suspicious in nature and it is desirable to record the event
- (e) The injury occurred on District property or the illness is attributed to the District.

The above reporting requirements are not intended to be all-inclusive. A supervisor may direct an employee to document any incident he/she deems necessary. Illnesses not attributed to the District and/or injuries not occurring on District property may be documented in the Call for Service on the TriTech CAD/Mobile software. When documenting in the Call for Service, employees will ensure the name of the individual has been added to the supplemental information and the location the injured or sick person was transported to is entered into the call notes.

344.2.6 MANDATORY REPORTING OF JUVENILE GUNSHOT INJURIES

A report shall be taken when any incident in which a child 18 years or younger suffered an unintentional or self-inflicted gunshot wound. The Records Division shall notify the California Department of Public Health (CDPH) of the incident as required by CDPH (Penal Code § 23685).

344.2.7 MANDATORY REPORTING OF JUVENILE DETENTIONS

Welfare and Institutions Code section 210.2(b) requires the tracking of all juvenile detentions which occur in any police facilities that contain any secure or non-secure detention rooms. Officers will document juvenile detention information on the BART Police Juvenile Detention log. This information will then be compiled by the Records Section and forwarded to the Board of Corrections.

344.2.8 EVENTS WHICH DO NOT REQUIRE A WRITTEN REPORT

The following events may be cleared by a dispatch CADS entry without a written report:

- (a) Infraction citation of an adult
- (b) Traffic infraction citation where the violation occurred on or off BART property
- (c) 647(g) PC cases where the subject is taken to detox
- (d) 911 calls, hang-ups and call box alarms with no evidence of criminal activity, no one detained and there is no property damage or personal injury
- (e) Reports of police radio problems (PRIP)
- (f) Mislabeled vehicles with no evidence of tampering
- (g) Parking complaints with no property damage or personal injury
- (h) Misdemeanor/Infraction violations where an unidentified suspect is gone on the officer's arrival and there is no victim wishing to file a report
- (i) Unsecured doors and gates to District facilities with no evidence of criminal activity
- (j) Prisoner transports for warrants that are handled without incident

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- (k) Monthly emergency exit checks
- (l) Miscellaneous service calls of a non-criminal nature that do not require follow-up, such as motorist/citizen assists and patron/fare disputes that do not result in the detention or identification of anyone by officers.

In order to document detentions of adults for infraction violations or on-property traffic stops where the suspect is identified and the identity is confirmed through a records check, the officer shall complete a Field Interview Card. The information from the card will be entered into a Field Interview Report in the TriTech system by the reporting officer.

344.3 GENERAL POLICY OF EXPEDITIOUS REPORTING

In general, all officers and supervisors shall act with promptness and efficiency in the preparation and processing of all reports. An incomplete report, unorganized reports or reports delayed without supervisory approval are not acceptable. Reports shall be processed according to established priorities or according to special priority necessary under exceptional circumstances.

344.3.1 GENERAL POLICY OF HANDWRITTEN REPORTS

Some incidents and report forms lend themselves to block print rather than typing. In general, the narrative portion of those reports where an arrest is made or when there is a long narrative should be typed or dictated.

Supervisors may require, with the foregoing general policy in mind, block printing or typing of reports of any nature for department consistency.

344.4 REPORT CORRECTIONS

Supervisors shall review reports for content and accuracy. If a correction is necessary, the reviewing supervisor should promptly return the report to the author for correction, stating the reasons for rejection. The report should be resubmitted for approval as soon as practical. It shall be the responsibility of the originating officer to ensure that any report returned for correction is processed in a timely manner.

344.5 REPORT CHANGES OR ALTERATIONS

Reports that have been approved by a supervisor and submitted to the Records Division for filing and distribution shall not be modified or altered except by way of a supplemental report. Reviewed reports that have not yet been submitted to the Records Division may be corrected or modified by the authoring officer only with the knowledge and authorization of the reviewing supervisor.

344.6 CASE ASSIGNMENTS

The following types of reports will be forwarded to the Criminal Investigations Division by the approving supervisor selecting "Investigations" in the Division box under the Case Management Section of the employee's report:

- Felonies Cases and Felony Arrests

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- Except property crimes with no witnesses, video requests, leads, or evidence
- Except stand-alone Felony warrant arrests
- Misdemeanors Arrests and Citations
 - Except stand-alone misdemeanor warrant arrests
- Sex Crimes
- All employee related assaults or batteries
- Coroner's Cases
- Sick/Injured persons cases where the illness/injury may result in death
- Missing Person Cases
- Domestic Violence Cases

Cases that do not meet the above criteria shall not be forwarded to the Criminal Investigations Division and should be handled at the patrol level until leads are exhausted or it is no longer practical to investigate the case. Any exceptions to the above criteria must be approved by the Criminal Investigations Division sergeant prior to forwarding the cases.

Supervisors shall ensure the case is forwarded and the "Arrest Report" is completed by no later than 0500 hours the morning after the arrest. If this threshold cannot be met, the supervisor shall verbally notify the Criminal Investigations Division of the delay. If verbal notification is not possible, an email shall be sent to the on-call detective.

All cases that contain a video request will be forwarded to the Video Recovery Unit by the approving supervisor selecting "Video Recovery" in the Division box under the Case Management Section of the employee's report.

344.7 COMPUTERIZED REPORT USAGE AND COMPLETION GUIDELINES

344.7.1 COMPUTERIZED REPORT TYPES

The TriTech system provides the following types of reports separated by county jurisdiction:

Incident Report - This is the standard format for criminal and non-criminal reports. The Incident Report should include the suspects/victims, associated vehicles involved in the incident and any guns, drugs, property or evidence seized by the primary reporting officer.

Supplemental - This report is used to document actions by assisting officers who were not assigned the primary role in an incident. It should also be used to record the results of follow-up investigation and to document facts discovered after the primary report has been submitted. Supplemental reports should not include offenses, suspects, victims, persons, vehicles, property, guns or drugs documented in the initial Incident Report unless the supplemental is providing updated information for those entries. Supplemental reports should include any property/evidence seized by the assisting officer.

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Arrest Report - This report is a supplemental report to an Incident Report when the suspect is arrested, issued a misdemeanor citation or a notice to appear citation for an outstanding warrant.

Field Interview Report - This report is used to document detentions of adults for infraction violations or on-property traffic stops where the suspect received a verbal warning or was contacted for suspicious activity. Officers should attempt to fully identify the suspect, the violation and any identifiers such as scars, marks, tattoos, piercings, clothing, and license plate(s) etc... Entering this information in the Field Interview Report allows the suspect and vehicle to be searched for prior contacts.

Police Report Dispositions - In order to maintain accurate records of final dispositions of events and cases, it is imperative that the correct disposition is communicated between officers and dispatchers. When communicating via police radio, mobile data computer (MDC) or telephone with police dispatch, all police personnel will give the final disposition of their events and cases for data input. The final dispositions are:

- Arrest
- Able to care
- Assistance to citizen (non-criminal contacts)
- Citation
- Field interview
- Information
- No merit
- Outside agency assist
- Reassign
- Report (any written case report, excluding an arrest)
- Secure (emergency exit checks)
- Transport
- UTL/GOA (Unable to locate/Gone on arrival)
- Cancel (used by Dispatch when appropriate)

344.7.2 COMPLETING NARRATIVES IN TRITECH WEB RMS

Before beginning the narrative portion of the report, the following information should be listed if applicable:

- Video Request
- Any cross-referenced cases
- Description of injuries
- Outside agency case number (San Francisco)

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- Laboratory number (San Francisco)
- List of on-scene personnel
- Mobile video recorder activation information

The narrative should provide a chronological account of what transpired during the incident, in as much detail as possible. The following items must be addressed in the narrative, if applicable:

- Use of force
- Application of handcuffs and leg restraints (officers should note that the restraints were checked for proper fit and double locked)
- Drawing of firearm (when firearm is drawn in the presence of the public and/ or is used to accomplish a detention or take a suspect into custody) or other weapon. This includes pistol, shotgun, patrol rifle and LLIMS launcher, as well as the TASER.

344.8 HAND-WRITTEN REPORTS

This department uses a number of hand-written forms to document officers' activities. These documents should be completed and listed in the "Related Documents" field of the Management page, where appropriate. The forms should be turned into the Records section after being approved by a supervisor, where needed.

344.8.1 DOMESTIC VIOLENCE REPORT/SUPPLEMENTAL

This form is used to document pertinent details of domestic violence incidents. This includes details of the relationships between the suspect and victim, prior domestic violence history, restraining order status, suspect and victim demeanor, medical treatment received, victim assistance provided and diagrams of injuries. This form should be attached as a related document in domestic violence cases.

344.8.2 REPORT OF NON-RELEASE MISDEMEANOR ARREST

This form may be completed in order to document the circumstances whereby a suspect arrested for a misdemeanor violation was not cited and released. This form is only required if the receiving jail facility requests it be completed. Most facilities incorporate this non-release information on their unique booking forms, or have their own non-release forms that must be completed at the time of booking. If completed, this form should be attached as a related document. In any event, the circumstances surrounding the non-release should be explained in the report narrative by the arresting officer.

344.8.3 SUSPECT STATEMENT

This form is used to document suspect statements. All boxes at the top of the form should be completed. The statement form includes the Miranda Admonition and Waiver. The Miranda rights should be read to the suspect prior to beginning any questioning, and the suspect's responses (yes/no) should be circled. When completing the waiver portion, the suspect's verbatim responses should be included on the lines following each waiver question, and the suspect should sign the

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form and note the date and time. If the suspect invokes his rights to counsel or to remain silent, this should be indicated on the form, which should be booked into evidence.

Generally speaking, the officer taking the statement should interview the suspect in order to obtain sufficient details regarding the incident to write the suspect's version of events on the statement form, using the first-person from the suspect's point of view. The statement should use the suspect's words and phraseology as much as possible. The completed statement should be shown and read to the suspect for any corrections necessary. The suspect should then sign at the end of the statement, and initial next to any corrections. The BART Police Report page 2 form may be used as additional pages if the suspect statement will not fit on the Suspect Statement form. If the suspect refuses to sign the form after giving a statement, the officer should write "refused" where the signature would normally be and book the form into evidence.

When completed and signed, the reporting officer should photocopy the statement and attach the copy as a related document to the report. The original suspect statement should be placed into evidence.

A summary of the suspect's statement should be included in the narrative portion of the crime report.

344.8.4 POLICE REPORT PAGE 2

This form may be used to document victim and witness statements and as continuation pages for suspect statements. Victim and witness statements should be taken in the same manner as suspect statements, with the exception of Miranda warnings and waivers. The completed forms should be listed as related documents on the crime report. The statements should be summarized in the narrative portion of the crime report. Victim and witness statements are not booked into evidence. They should be turned in to records for inclusion in the case file.

344.8.5 PRIVATE PERSON (CITIZEN'S) ARREST REPORT

This form is used to document private person arrests. All information pertaining to the arrestee, the complainant and the crime should be completed. The pink copy of the form should be given to the person making the arrest. The form should be listed as a related document on the crime report. See Policy 364 for further details regarding private person arrests.

344.8.6 CERTIFICATE OF RELEASE

This form is used to document incidents where a subject has been detained for investigation of a crime, then released per the requirements of 849(b) PC. All such releases should be approved by a supervisor. The pink copy of the certificate should be given to the person released. The white and yellow copies should be forwarded to Records and should be listed as a related document on the police report.

344.8.7 STATEMENT PURSUANT TO 821 & 822 PC

This form is used to document situations where a suspect arrested on a warrant waives his right to be booked in the county of arrest, and is transported to the county which issued the warrant for

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booking. The arrestee should sign the form, which is listed as a related document on the police report.

344.8.8 CONFIDENTIALITY NOTIFICATION

This form is used to document the victim's desires regarding confidentiality in cases qualifying for confidentiality under 293 PC. Qualifying crimes are: 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6. The law requires victims of the above offenses be informed of their right to have their name kept confidential. The victim's information should be completed and their desire to request or decline confidentiality should be checked. The form should be listed in the report as a related document.

344.8.9 APPLICATION FOR EMERGENCY PROTECTIVE ORDER

This form is used to obtain an emergency protective order. All portions of the form should be completed once a judicial officer has granted the protective order. The proof of service should be completed when the restrained party is notified of the order. The order should be entered into CLETS by the communications center and the form should be listed on the crime report as a related document. The CLETS entry information should be included in the narrative portion of the crime report.

344.8.10 VERBAL NOTICE OF PEACE OFFICER (DL-310)

This form is used to document verbal notice by an officer of the suspension of a person's driver license. The suspension information should be inserted and the license should be confiscated by the officer, if the subject is in possession of the license. The pink copy of the DL-310 form should be given to the driver at the scene. The license should be attached to the white and yellow copies of the DL-310 and forwarded to the Traffic Officer so the license can be returned to the DMV. The DL-310 form should be listed as a related document in the police report.

344.8.11 NOTICE TO APPEAR

The notice to appear (citation) form is used to document an infraction or misdemeanor violation where the suspect is to appear in court to answer the charges. All pertinent boxes should be completed as accurately as possible. In the case of on-viewed infraction violations, the citation requires no accompanying police report. The citation stands alone and is forwarded to records. The citing officer should complete the reverse of the citation, making sufficient notes so that the incident can be recalled accurately in court at a later date.

In the case of private person (citizen's) arrests for infractions and misdemeanor violations, a police report is required in addition to the citation itself. Juveniles may be issued notices to appear for infraction violations only. A police report is required whenever a juvenile is issued a citation, or detained for a crime. The suspect should be given the yellow copy of the citation form. Citations should be listed as related documents when a police report is completed.

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344.8.12 NOTICE TO APPEAR - CONTINUATION FORM

This form is used to document additional charges that will not fit in the violations box of the standard citation. More than one continuation form may be used if necessary. The suspect should be given the yellow copy of the citation form. Continuation forms should be listed as related documents when a police report is completed.

344.8.13 UNIFORM JUVENILE CITATION

This form is used to provide juvenile suspects notice to appear on felony and misdemeanor violations, where the juvenile is not booked into a juvenile detention facility. The form should be completed as thoroughly as possible. The parent/guardian accepting custody of the juvenile should sign the citation form, as well as the juvenile arrestee. The parent/guardian should be given the pink copy of the juvenile citation form. The citation should be listed as a related document on the police report.

344.8.14 NOTICE OF CORRECTION & PROOF OF SERVICE (CITATION CORRECTION FORM)

This form is used to correct a Notice to Appear that was issued to a suspect. The form should be completed to indicate the required change and the affected court. The pink proof of service portion of the form should be completed and mailed to the suspect at their mailing address. The original form should be forwarded to Records for transmission to the affected court. The form should be listed as a related document on the crime report.

344.8.15 BOOKING SHEETS/CARDS

County booking sheets or cards and juvenile intake forms are used to document a suspect being booked into an adult or juvenile detention facility. Each county has unique requirements for their booking paperwork, and this department will abide by each county's policies regarding the completion of booking paperwork. A copy of the booking forms should be listed as a related document on the police report.

344.8.16 JUVENILE INTAKE FORMS

Each county has unique requirements for documenting juvenile arrests and contacts. This department will abide by each county's policies regarding the completion of booking/contact paperwork.

Alameda County requires that a Juvenile Intake Disposition Form be completed when booking a juvenile into Juvenile Hall. The completed form must be turned in to the facility, along with a copy of the completed police report, at the time the juvenile is booked into Juvenile Hall.

Contra Costa County requires the completion of their Juvenile Admission Form, if the officer is citing the juvenile for a misdemeanor or felony. If the juvenile is being booked into Juvenile Hall, a probable cause declaration must be completed in the ARIES system at time of booking. These forms are in addition to the reports normally completed by the officer. The forms provide information related specifically to juvenile offenders and provides space for a statement of probable cause. The department's probable cause declaration form should also be completed.

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San Francisco County requires completion of an Admission Form, in addition to the reports normally completed by the officer. This form provides information related specifically to juvenile offenders booked into the Juvenile Justice Center. For juveniles dropped off at the CARC Center, a Juvenile Detention Disposition Report should be completed. The department's probable cause declaration should also be completed.

San Mateo County requires completion of a Juvenile Contact Report when booking a juvenile into Juvenile Hall. For juvenile offenders 14 years of age or older, who are taken into custody for a felony violation, the county requires completion of their special Promise to Appear (Form #JV-365), rather than the department's Uniform Juvenile Citation. The department's probable cause declaration should also be completed.

344.8.17 PROBABLE CAUSE DECLARATIONS

This form is used to establish probable cause for warrantless arrests. The form should be completed for all misdemeanor and felony arrests (with the exception of warrant only arrests). They should also be completed for any misdemeanor private person (citizen's) arrest citation case. Officers should use the computerized template when completing this form, but the form may be completed by hand if necessary. **Names of victims, witnesses and reporting parties should not be included in the Probable Cause Declaration. If necessary, refer to the person by role, rather than by name.**

In Alameda County the Consolidated Records Information Management System (CRIMS) should be utilized to send an electronic PC Declaration. CRIMS can be found following the URL <https://crims.acgovapp/> or log into CRIMS through the BPD Links folder short cut. For CRIMS log in problems contact the CRIMS help desk anytime at (510)272-3744.

In Contra Costa County the Automated Regional Information Exchange System (ARIES) should be utilized to send an electronic PC Declaration for in-custody arrests. ARIES can be found following the URL <https://ariessystem.us/Main/Login.aspx> or log into ARIES through the BPD Links short cut folder. For ARIES log in problems contact the BART Police ARIES Administrator (currently the BART Police Crime Analyst).

In San Francisco and San Mateo Counties, as well as all out of custody cases in Contra Costa County, the BART Police Probable Cause Declaration form is to be used.

344.8.18 VEHICLE RELEASE

This form is used to provide a vehicle owner a release so their stolen/embezzled vehicle may be retrieved from a towing company. It may be used to release a vehicle that was reported stolen to our department and recovered by another agency, a vehicle reported stolen to another agency and recovered by this department, or a stolen vehicle that was both reported to and recovered by this department. The form should be completed as appropriate with our case number, the outside agency case number, the vehicle information and the releasing officer's information. The vehicle owner should sign the form and the yellow copy of the form should be given to the owner/agent. The original form should be forwarded to records.

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344.8.19 MISSING PERSON REPORTING FORM

This form is used to document reports of missing persons. This department is required by law to accept all reports of missing persons, regardless of the ultimate investigative jurisdiction of the case. All available information should be included on the form to document the report as accurately as possible. The communications center is required by law to enter the information into the MUPS system within 4 hours. This form should be listed as a related document on the report. The Department of Justice Missing Persons report form can be located in the G drive under the Police Forms folder.

344.8.20 DENTAL/SKELETAL X-RAY/PHOTOGRAPH RELEASE FORM

In the case of missing juveniles not located within 30 days, this form should be completed, authorizing doctors and dentists with records pertaining to the juvenile to release them to this department in order to assist the investigation. The form may be completed prior to 30 days, and officers should make an effort to have the parent/ guardian sign the form at the time the initial report is made, so the signed form is available if necessary. This form should be listed as a related document on the report.

344.8.21 11550 H&S NARCOTICS INFLUENCE REPORT

This form is used to document the objective symptoms of a suspect arrested for 11550 H & S. The completed form should be attached to the report as a related document.

344.8.22 VEHICLE REPORT (CHP-180)

This form is intended to accomplish multiple tasks related to vehicles and license plates. As a result, not all boxes will be applicable to each report. However, all boxes that apply to the incident in question should be completed by the reporting officer, using as much detail as possible. It is important to obtain signatures from garage principals, in the case of towed vehicles, and reporting parties, in the case of stolen/ embezzled vehicles and plates.

When towing a vehicle, it is important to document existing damage on the vehicle diagrams on the face of the form. Officers should shade any areas of existing damage, and describe significant damage in the remarks section at the bottom of the face page.

Stolen/Embezzled and Recovery narratives should be documented in a criminal or non-criminal Incident Report (as applicable) in the TriTech Field Based Report system. The narrative should include the SVS entry information, indicating the date and time of the entry and the badge number of the employee who made the entry.

Completed and approved Vehicle Report forms documenting a towed vehicle should be faxed to Administration, at extension 7089, prior to the end of the officer's shift. The form should be listed as a related document on the report.

344.8.23 APPLICATION FOR EMERGENCY PSYCHIATRIC DETENTION (5150 W&I)

This form along with a non-criminal incident report is used to document all incidents where a subject is detained for emergency psychiatric evaluation. All boxes should be completed with as much detail as possible. The reporting officer should document the detainment advisement

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required by 5157 W & I, which is printed on the form. If the advisement was not completed, a brief explanation must be included in the space provided.

All 5150 W & I reports which include a criminal hold, including all warrants, will be treated as an "in custody" and classified in the TriTech report writing system as an "arrest" in the Arrest report. The report, including all supplements, shall be written, submitted and approved by a supervisor prior to the reporting officer(s) going off duty. This shall also apply to arrestees who are transported for medical treatment prior to being booked into a jail facility. These reports cannot be approved by Field Training Officers and must be approved by a supervisor.

When an arrestee is transported from a medical or mental health facility and booked into a jail, the transporting officer shall complete a supplemental report and send an email to all Detectives and the Detective Sergeant advising them of the booking. The email should include the arrestee's name and case number and should be sent as soon as practicable after the transport has been completed.

Psychiatric self-committals will be treated as a sick person (not attributed to BART) and may be documented in the Call for Service on the TriTech CAD/Mobile software. When documenting in the Call for Service, employees will ensure the name of the individual has been added to the supplemental information and the location the injured or sick person was transported to is entered into the call notes.

The narrative section should be completed in enough detail to document the subject's condition and actions, and explain why the reporting officer believed the subject was a danger to him/herself, a danger to others, or was gravely disabled due to a mental condition or inebriation.

In the event that criminal charges will be filed against the subject, the officer should complete the Certification of Criminal Charges portion of the form, indicating who should be notified prior to the subject being released from mental health custody. In this case, an incident report and arrest report must also be completed, in order to document the criminal offense.

Normally all of the green copies of the form should be given to the transporting ambulance and/or the mental health facility. If the transporting ambulance or admitting mental health facility requests the white copy instead, the reporting officer should ensure that the BART case number is legibly written on the remaining green copies for proper filing, as it will not be recorded from the face page. This form should be listed as a related document on the report.

344.8.24 PROPERTY DAMAGE ONLY REPORT (CHP 555-03)

This scanned document is a two-part form used to record traffic collisions which qualify for the PDO report (two or fewer vehicles involved, no injuries, and no intended prosecution). The form should be completed using the standard format found in the CHP Collision Investigation Manual (CIM). All applicable boxes should be completed. The sketch should be done using standard figures as found in the CIM. The narrative should be completed in a non-criminal incident report using the format located in the CIM.

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The original report should be forwarded to Records. The reporting officer may give each party to the collision a copy of the form. The copy contains the upper portion of the completed report, listing the parties, any witnesses and the sketch of the collision. This form should be listed as a related document.

344.8.25 DRIVING UNDER THE INFLUENCE ARREST INVESTIGATION REPORT (CHP 202)

This handwritten form serves to document the investigation of suspected DUI cases. Each applicable box should be completed in as much detail as possible. This form should be a related document, listed on the TriTech incident report.

The face page of the CHP 202 documents the suspect's information, vehicle details, and witness/passenger/victim information. There is a Miranda admonition printed on the form. The suspect's acknowledgment and waiver or invocation of Miranda rights should be recorded on the form. The suspect should sign the form to document his/ her choices.

The Misdemeanor Incarceration portion of the form should be completed if the suspect is booked. All situations that apply should be checked, to document the reasons for the suspect being booked for a misdemeanor violation, pursuant to 853.6 PC.

The reverse of the form documents the investigation interview, objective symptoms of intoxication and field sobriety test location. There is also a section to document the results of a Preliminary Alcohol Screening test, if applicable. The results of any chemical tests (Breath/Blood) should also be recorded on the form. The final item on the reverse of the form documents the Trombetta Advisement, and the suspect's election regarding additional test samples.

344.8.26 INTOXICATION EVALUATION/ARREST

This form is used to document the results of Field Sobriety Tests (FST's) given to suspects in DUI cases. The form provides boxes to identify the suspect and related vehicle, as well as sections for standard FST's, with diagrams which can be completed to record the suspect's performance on each test. All portions of the form should be completed in enough detail to accurately document the suspect's performance during the FST's. This form supplements the CHP 202 and is a related document in the TriTech incident report.

344.8.27 AGE 21 & OLDER OFFICER'S STATEMENT (DMV 367), UNDER 21 OFFICER'S STATEMENT (DMV 367M), UNDER 21 OFFICER'S STATEMENT - SPANISH (DMV 367M SPANISH)

These forms are used to document the DUI arrest and suspension/revocation of a suspect's license by the arresting officer. This form does not replace the Intoxication Evaluation/Arrest form, but is instead sent to the Department of Motor Vehicles to document the arrest and confiscation of the suspect's driver license. The Over 21 version (gray) of the form is to be used for all suspects 21 years and older. The suspect is provided the pink copy of the form, which provides information regarding the suspension of their license and administrative review procedures conducted by DMV. The Spanish version (red) of the form is printed in English on the face of the document, in order for the officer to document the arrest and confiscation of the license. The pink copy of the

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form, provided to Spanish speaking suspects, explains the hearing issues and DMV formalities in Spanish on the reverse.

The Under 21 (green) version of the form is to be used with suspects under the age of 21, and is similar to the other forms, with the exception of the lower blood alcohol level allowed. Again, the pink copy of the form is provided to the suspect. This form should be listed as a related document on the report.

344.8.28 PURSUIT REPORT (CHP187A)

The pursuit report should be prepared by the responsible supervisor as soon as possible following a pursuit (see also Policy #314). This form should be completed with as much information as is known about the suspects, vehicles involved, and the results of the pursuit. Detailed directions for completion of the form are located on the reverse side of the form. This form should be listed as a related document on the report.

344.8.29 CITIZEN PROPERTY RECEIPT (FORM #1448)

This form is used to provide a receipt for property taken or located by members of this department. The item taken into custody should be described as fully as possible and the storage location should be noted. The original of the form should be forwarded to the Property/Evidence bureau. The citizen should be given the yellow copy of the form for their records.

The Property Label (Form #0470) with wire attachments, is used in conjunction with the Property Receipt, and should be used to identify large or bulky items, such as bicycles, that cannot be packaged in standard departmental evidence envelopes/ bags. The hard copy of the form should be attached to the item with the wire. The top copy of the form should be forwarded to the Property/Evidence bureau for their records.

Both forms should be listed as related documents on the report.

344.8.30 EVIDENCE ENVELOPE (FORM #1220)

The manila evidence envelope is the standard container for booking collected evidence items. All portions of the envelope should be completed as appropriate. Officers should check the appropriate box to classify the item inside as either evidence, safekeeping or found property. Officers should also check the box indicating whether the item inside is narcotics, currency, fingerprints, or other. The reporting officer should then complete the boxes for Victim, Case Number, Suspect, Item Number, Location, and Offense. The item should be described as clearly as possible, along with the identity of the recovering officer and the date and time of recovery. The chain of custody is documented using the appropriate section on the evidence envelope. If the envelope contains narcotics, the boxes at the bottom of the envelope should be checked to indicate what drug the substance should be analyzed for. The glue flap should be sealed and evidence tape should be placed over the flap. The sealing officer should write the case number, date and his/her badge number over the tape.

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If the envelope contains currency, the amount of currency and/or coin should be noted in the blocks on the reverse of the envelope. The officer counting the money should place his/her name and badge number, as well as the date and time in the appropriate blocks.

If the envelope contains narcotics or currency, a witness signature is also required, in the witness block.

If the evidence item is too large to fit into the evidence envelope, the pre-printed evidence bag should be used. The bag should be completed in the same manner as the evidence envelope.

344.8.31 TICKET EVIDENCE ENVELOPE (FORM #0720)

This white evidence envelope is intended only to contain BART tickets taken as evidence. It is completed in the same manner as the large evidence envelope.

344.8.32 FORENSIC MEDICAL REPORT: NON-ACUTE (>72 HOURS) CHILD/ADOLESCENT SEXUAL ABUSE EXAMINATION (OCJP 925)

This form must be completed when documenting reported incidents of sexual abuse of children. It is meant to be completed in conjunction with a physician or other medical professional during a medical examination searching for evidence of sexual abuse. The original of the form should be retained as evidence by this department. Copies should be provided to Child Protective Services and the Medical Facility conducting the examination. This form should be listed as a related document on the report.

344.8.33 REPORT OF SUSPECTED DEPENDENT ADULT/ELDER ABUSE (SOC 341)

This form is used to document reports of possible dependent adult/elder abuse received by this department, as required by 15630 and 15658(a)(1) W&I. A "Dependent Adult" is anyone aged 18-64, residing in this state, who has physical or mental limitations that restrict his/her ability to carry out normal activities or to protect his/her rights. An "Elder" is anyone 65 years of age or older, who resides in this state.

Officers of this department are mandated reporters pursuant to 15630(a) W&I. As such, any instance of known or suspected abuse (physical abuse, sexual abuse, financial abuse, abduction, neglect (including self-neglect), isolation, and abandonment involving an elder or a dependent adult must be documented using this form. The original report must be completed and submitted to the Investigations bureau within two working days, if the instance of abuse took place in BART's jurisdiction. The original form should be placed in the case file. The responsible county Adult Protective Services office should be notified as soon as possible, and should be provided a copy of the report form. If the instance of abuse took place in another jurisdiction, the law enforcement agency with jurisdiction and the county Adult Protective Services agency must be notified within two working days of receiving the report, and both agencies should be provided a copy of the form. This form should be listed as a related document on the report.

Failure of a mandated reporter to report abuse of a dependent adult/elder is a misdemeanor offense.

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344.9 SPECIAL CIRCUMSTANCES AND APPLICATIONS

344.9.1 MULTIPLE INCIDENTS/MULTIPLE VICTIM REPORTS

A multiple incident/multiple victim event is one where a suspect commits separate acts against the person or property of others, resulting in multiple victims of the same/similar type of crime, for example, a suspect burglarizes several automobiles at the same station. In order to document this type of event, all involved victims, vehicles, property and evidence will be entered into one report. The narrative of this report will describe the entire investigation completed by the officer.

344.9.2 MULTIPLE VICTIM REPORTS

A multiple victim incident is caused by a suspect's singular act that results in injury or property loss to more than one person, such as a suspect committing an armed robbery of a group of people. Multiple victim reports should be documented in one case, listing all victims and involved parties in the same report.

344.9.3 HATE MOTIVATED CRIMES

Hate motivated crimes are any criminal act or attempt to cause physical injury, emotional suffering or property damage where there is reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's actual or perceived race, ethnicity, religion, gender, sexual orientation or physical or mental disability. (See Policy 338 for further details regarding Hate Crimes)

The reporting officer should notify a supervisor as soon as possible if he/she believes an incident is a hate crime. The supervisor will notify the on-duty watch commander. The watch commander will determine the need for additional notifications.

344.9.4 CONFIDENTIAL CASES

A Confidential Case is an investigation that may involve a BART employee, BART affiliated contractor or person otherwise associated with BART, where disclosure of the person's identity or affiliation, or other facts could compromise the investigation.

When police personnel receive information regarding employee criminal activity, the investigating officer should discreetly gather sufficient facts to make an oral report to a supervisor. The supervisor will determine the appropriate response. In-progress crimes should be handled by officers as they normally would, with an immediate police response to stabilize the situation and investigate the crime at hand. A supervisor will coordinate the response and preliminary investigation to maintain confidentiality, if at all possible. The supervisor may consider the use of a telephone report or a delayed response if the appearance of uniformed police personnel at the scene might be detrimental to the successful investigation of the crime.

If the initial investigation indicates a more thorough, confidential investigation is warranted, these circumstances should be documented as a Confidential Case and the following procedures should be followed:

- (a) The reporting officer should obtain a case number from the Communications Section and request that the case be classified as "Confidential-Criminal Investigations," or

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"Confidential-Internal Affairs." Confidential reports will be entered directly into the Inform Records Management System and contained in a confidential folder with access granted to only the investigator and/or investigating supervisor.

- (b) The supervisor should notify either the investigations lieutenant, zone lieutenant/watch commander, or Internal Affairs lieutenant, as applicable.
- (c) The supervisor should approve the completed police report, and assign primary responsibility, as appropriate. No copies of the report should be printed.

344.9.5 TELEPHONE REPORTS

Telephone reports may be taken in certain circumstances. Personal follow-ups on telephone reports should be conducted whenever the case appears to warrant it. Telephone reports may be taken in cases that meet any of the following criteria and they should be completed using the appropriate report form as outlined in this policy:

- The nearest officer is not available within a reasonable time.
- The reporting party/victim is unable or unwilling to wait or has already left the scene.
- The call does not require immediate police action.

344.9.6 REPORTS PREPARED BY COMMUNITY SERVICE OFFICERS

Community Service Officers (CSOs) are authorized to prepare police reports if the following criteria are met:

- The suspect has left the scene and cannot be located.
- There is no potential for immediate investigative follow-up which could lead to the identification and/or apprehension of the suspect.
- The case does not require video surveillance requests and review.

344.9.7 REPORT REVIEWS

A Report Review form should be used when a police supervisor or manager believes that a documented assessment of a police report is appropriate. As supervisors are responsible for the daily review of police reports generated in their zones, this will normally occur when a police supervisor finds a report to be either exceptional, or deficient. However, any police supervisor or manager may generate a report review. A report review may be challenged through the chain of command. The final decision concerning challenged report reviews will be made by the report writer's Bureau Deputy Chief. The following procedures apply to the preparation and filing of report reviews:

- (a) Preparation:
 - 1. The supervisor/manager preparing the review should document the facts in the report that make it exceptional or deficient in as much detail as possible. If the report is deficient, the deficiencies should be identified clearly, with required corrective action specifically listed. The review should be attached to a printed

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copy of the report so that the review comments can be matched to the written document.

2. Normally, reviews involving report deficiencies should have a due date assigned by the supervisor/manager who initiated the review. If the identified corrections must be made prior to the report being transmitted outside the department, the reviewing supervisor should mark the "immediate" box on the Report Review form. The reporting officer shall then be responsible for making the necessary corrections on his/her next work day. Other deficiencies may have longer due dates assigned by the reviewing supervisor/manager.

(b) Routing of Report Reviews:

1. When a review is generated, it is the responsibility of the supervisor/ manager preparing the review to route it to the reporting officer via the chain of command. If the reporting officer is assigned to the Field Training Officer program, the report review should be sent to the trainee via the field training chain of command. The supervisor of the reporting officer is responsible for making sure all necessary follow-up is completed and noted deficiencies are corrected.
2. The supervisor/manager preparing the review is responsible for directing copies of the review to any others that would be concerned with the information (e.g., Criminal Investigations, Records, etc...).

(c) Filing of Report Reviews:

1. Report reviews should be filed in the report writer's Employee Development Record (EDR) file and may be mentioned in the writer's performance evaluation. Employees should view and initial report review forms that are placed in their EDR file.

Media Relations

346.1 PURPOSE AND SCOPE

This policy provides guidelines for media releases and media access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities.

346.2 RESPONSIBILITIES

The ultimate authority and responsibility for the release of information to the media shall remain with the Chief of Police, however, in situations not warranting immediate notice to the Chief of Police and in situations where the Chief of Police has given prior approval, Division Commanders, Watch Commanders and designated Media Relations(s) may prepare and release information to the media in accordance with this policy and the applicable law.

346.2.1 MEDIA REQUEST

Any media request for information or access to a law enforcement situation shall be referred to the designated department media representative, or if unavailable, to the first available supervisor. Prior to releasing any information to the media, employees shall consider the following:

- (a) At no time shall any employee of this department make any comment or release any official information to the media without prior approval from a supervisor or the designated department media representative.
- (b) In situations involving multiple law enforcement agencies, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this department.
- (c) Under no circumstance should any member of this department make any comments to the media regarding any law enforcement incident not involving this department without prior approval of the Chief of Police.

346.3 MEDIA ACCESS

Authorized members of the media shall be provided access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities subject to the following conditions (Penal Code § 409.5(d)):

- (a) The media representative shall produce valid press credentials that shall be prominently displayed at all times while in areas otherwise closed to the public.
- (b) Media representatives may be prevented from interfering with emergency operations and criminal investigations.
 - 1. Reasonable effort should be made to provide a safe staging area for the media that is near the incident and that will not interfere with emergency or criminal investigation operations. All information released to the media should

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be coordinated through the department Media Relations or other designated spokesperson.

2. Whenever the presence of media or other aircraft pose a threat to public or officer safety or significantly hampers incident operations, the field supervisor should consider requesting a Temporary Flight Restriction (TFR). All requests for a TFR should be routed through the Watch Commander. The TFR request should include specific information regarding the perimeter and altitude necessary for the incident and should be requested through the appropriate control tower. If the control tower is not known, the Federal Aviation Administration should be contacted (14 CFR 91.137).
- (c) No member of this department who is under investigation shall be subjected to media visits or interviews without the consent of the involved employee (Government Code § 3303(e)).
 - (d) Media interviews with individuals who are in custody should not be permitted without the approval of the Chief of Police and the express consent of the person in custody.

A tactical operation should be handled in the same manner as a crime scene, except the news media shall be permitted within the outer perimeter of the scene, subject to any restrictions as determined by the supervisor in charge. Department members shall not jeopardize a tactical operation in order to accommodate the news media. All comments to the media shall be coordinated through a supervisor or the Media Relations.

346.3.1 PROVIDING ADVANCE INFORMATION

To protect the safety and rights of officers and other persons, advance information about planned actions by law enforcement personnel, such as movement of persons in custody or the execution of an arrest or search warrant, should not be disclosed to the news media, nor should media representatives be invited to be present at such actions except with the prior approval of the Chief of Police.

Any exceptions to the above should only be considered for the furtherance of legitimate law enforcement purposes. Prior to approving any exception the Chief of Police will consider, at minimum, whether the release of information or presence of the media would unreasonably endanger any individual, prejudice the rights of any person or is otherwise prohibited by law.

346.4 SCOPE OF INFORMATION SUBJECT TO RELEASE

The Department will maintain a daily information log of significant law enforcement activities that shall be made available, upon request, to media representatives through the Watch Commander. This log will generally contain the following information:

- (a) The date, time, location, case number, type of crime, extent of injury or loss, and names of individuals (except confidential informants) involved in crimes occurring within this jurisdiction unless the release of such information would endanger the

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safety of any individual or jeopardize the successful completion of any ongoing investigation

- (b) The date, time, location, case number, name, birth date and charges for each person arrested by this department unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation
- (c) The time and location of other significant law enforcement activities or requests for service with a brief summary of the incident subject to the restrictions of this policy and applicable law

At no time shall identifying information pertaining to a juvenile arrestee (13 years of age and under), victim or witness be publicly released without prior approval of a competent court. The identity of a minor 14 years of age or older shall not be publicly disclosed unless the minor has been arrested for a serious felony and the release of such information has been approved by the Watch Commander (Welfare and Institutions Code § 827.5).

Identifying information concerning deceased individuals shall not be released to the media until notification of next of kin or otherwise cleared through the Coroner's Office.

Any requests for copies of related reports or additional information not contained in this log shall be referred to the designated department media representative, the custodian of records, or if unavailable, to the Watch Commander. Such requests will generally be processed in accordance with the provisions of the Public Records Act (Government Code § 6250, et seq.).

346.4.1 RESTRICTED INFORMATION

It shall be the responsibility of the authorized employee dealing with media requests to ensure that restricted information is not inappropriately released to the media by this department. When in doubt, authorized and available legal counsel should be obtained.

Subpoenas and Court Appearances

348.1 PURPOSE AND SCOPE

This policy establishes the guidelines for department members who must appear in court. It will allow the Bay Area Rapid Transit Police Department to cover any related work absences and keep the Department informed about relevant legal matters.

348.2 POLICY

Bay Area Rapid Transit Police Department members will respond appropriately to all subpoenas and any other court-ordered appearances.

348.2.1 OFF-DUTY RELATED SUBPOENAS

Employees receiving valid subpoenas for actions taken off-duty not related to their employment with the department shall comply with the requirements of the subpoena. Employees receiving these subpoenas are not compensated for their appearance and arrangements for time off shall be coordinated through their immediate supervisor. This includes employees who receive subpoenas for action taken while working for a prior employer. Release time may be granted for employees on duty.

348.3 SUBPOENAS

Only department members authorized to receive a subpoena on behalf of this department or any of its members may do so. This may be accomplished by personal service to the officer or by delivery of two copies of the subpoena to the officer's supervisor or other authorized department agent (Government Code § 68097.1; Penal Code § 1328(c)).

The party that issues a civil subpoena to an officer to testify as a witness must tender the statutory fee of \$275 with the subpoena for each day that an appearance is required before service is accepted of the subpoena (Government Code § 68097.2).

An immediate supervisor or authorized individual may refuse to accept service for a criminal subpoena if (Penal Code § 1328(d)(e)):

- (a) He/she knows that he/she will be unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena.
- (b) It is less than five working days prior to the date listed for an appearance and he/she is not reasonably certain that service can be completed.

If, after initially accepting service of a criminal subpoena, a supervisor or other authorized individual determines that he/she is unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena, the supervisor or the subpoena clerk shall notify the server or the attorney named on the subpoena of such not less than 48 hours prior to the date listed for the appearance (Penal Code § 1328(f)).

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348.3.1 SPECIAL NOTIFICATION REQUIREMENTS

Any member who is subpoenaed to testify, agrees to testify or provides information on behalf of or at the request of any party other than the General Counsel or the prosecutor shall notify his/her immediate supervisor without delay regarding:

- (a) Any civil case where the District or one of its members, as a result of his/her official capacity, is a party.
- (b) Any civil case where any other city, county, state or federal unit of government or a member of any such unit of government, as a result of his/her official capacity, is a party.
- (c) Any criminal proceeding where the member is called to testify or provide information on behalf of the defense.
- (d) Any civil action stemming from the member's on-duty activity or because of his/her association with the Bay Area Rapid Transit Police Department.
- (e) Any personnel or disciplinary matter when called to testify or to provide information by a government entity other than the Bay Area Rapid Transit Police Department.

The supervisor will then notify the Chief of Police and the appropriate prosecuting attorney as may be indicated by the case. The Chief of Police should determine if additional legal support is necessary.

No member shall be retaliated against for testifying in any matter.

348.3.2 CIVIL SUBPOENA

The Department will compensate members who appear in their official capacities on civil matters arising out of their official duties, as directed by the current memorandum of understanding or collective bargaining agreement.

The Department should seek reimbursement for the member's compensation through the civil attorney of record who subpoenaed the member.

348.3.3 OFF-DUTY RELATED SUBPOENAS

Members receiving valid subpoenas for off-duty actions not related to their employment or appointment will not be compensated for their appearance. Arrangements for time off shall be coordinated through their immediate supervisors.

348.4 FAILURE TO APPEAR

Any member who fails to comply with the terms of any properly served subpoena or court-ordered appearance may be subject to discipline. This includes properly served orders to appear that were issued by a state administrative agency.

348.5 STANDBY

To facilitate standby agreements, members are required to provide and maintain current information on their addresses and contact telephone numbers with the Department.

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If a member on standby changes his/her location during the day, the member shall notify the designated department member of how he/she can be reached. Members are required to remain on standby until released by the court or the party that issued the subpoena.

348.6 COURTROOM PROTOCOL

When appearing in court, members shall:

- (a) Be punctual and prepared to proceed immediately with the case for which they are scheduled to appear.
- (b) Dress in the department uniform or business attire.
- (c) Observe all rules of the court in which they are appearing and remain alert to changes in the assigned courtroom where their matter is to be heard.

348.6.1 TESTIMONY

Before the date of testifying, the subpoenaed member shall request a copy of relevant reports and become familiar with the content in order to be prepared for court.

348.7 OVERTIME APPEARANCES

When a member appears in court on his/her off-duty time, he/she will be compensated in accordance with the current memorandum of understanding or collective bargaining agreement.

Outside Agency Assistance

352.1 PURPOSE AND SCOPE

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

352.1.1 ASSISTING OUTSIDE AGENCIES

Generally, calls for assistance from other agencies are routed to the watch commander for approval. When an authorized employee of an outside agency requests the assistance of this department including taking a person into custody, assisting at a crime scene, or a search, available officers shall respond and assist. If an officer receives a request in the field for assistance, that officer shall notify a supervisor.

Arrestees may be temporarily detained by our agency until arrangements for transportation are made by the outside agency. Only in exceptional circumstances will this department provide transportation of arrestees to other county facilities.

When such assistance is rendered, a case number for an "outside assist" report will be issued to report action taken by this department.

352.1.2 ON-VIEW INCIDENTS

Whenever a BART police officer on-views an offense in another jurisdiction, he/she should take immediate prudent action required to protect life and property, stabilize crime scenes, locate witnesses, and apprehend suspects. As soon as practicable after a crime scene has been stabilized, the officer will relinquish the crime scene and investigative responsibility to the law-enforcement agency that has primary jurisdiction.

352.1.3 REQUEST FOR CANINE ASSISTANCE FROM OTHER AGENCIES

The policy governing requests for BART police canine teams from other agencies is documented in Policy 318 - CANINE PROGRAM, subsection 3.1 - REQUEST FOR ASSISTANCE FROM OTHER AGENCIES.

352.1.4 MUTUAL AID/COOPERATIVE POLICE AGREEMENTS

Nothing in this policy is meant to circumvent any cooperative policing agreements or mutual aid agreements between the BART Police Department and any allied agency, city or county. Any agreement between this department and an outside agency can be located in the Records Section.

352.2 ASSISTING OUTSIDE AGENCIES

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

When another law enforcement agency requests assistance from this department, the Watch Commander may authorize, if available, an appropriate number of personnel to assist. Members

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are reminded that their actions when rendering assistance must conform with applicable laws and be consistent with the policies of this department.

Officers may respond to a request for emergency assistance, however, they shall notify a supervisor of their activity as soon as practicable.

Arrestees may be temporarily detained by this department until arrangements for transportation are made by the outside agency.

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

352.2.1 INITIATED ACTIVITY

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

352.3 REPORTING REQUIREMENTS

Incidents of outside assistance or law enforcement activities that are not documented in a crime report shall be documented in a general case report or as directed by the Watch Commander.

352.4 REQUESTING OUTSIDE ASSISTANCE

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

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

352.5 POLICY

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

352.6 MANDATORY SHARING

Equipment and supplies purchased with federal funds or grants that require such equipment and supplies be shared with other agencies should be documented and updated as necessary by the Support Services Bureau Deputy Chief or the authorized designee.

The documentation should include:

- (a) The conditions relative to sharing.
- (b) The training requirements for:

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1. The use of the supplies and equipment.
 2. The members trained in the use of the supplies and equipment.
- (c) Any other requirements for use of the equipment and supplies.

Copies of the documentation should be provided to Integrated Security Response Center and the Watch Commander to ensure use of the equipment and supplies is in compliance with the applicable sharing agreements.

The Personnel and Training Lieutenant should maintain documentation that the appropriate members have received the required training.

Major Incident Notification

358.1 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.

358.2 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. 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 San Francisco Bay Area Rapid Transit District official
- Arrest of a department employee or prominent San Francisco Bay Area Rapid Transit District official
- Aircraft crash with major damage and/or injury or death
- In-custody deaths

358.3 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 cellular telephone number first and then by any other available contact numbers.

358.3.1 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 and the Detective Lieutenant if that bureau is affected.

358.3.2 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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358.3.3 MEDIA RELATIONS (PIO)

BART Media Relations shall be called after members of staff have been notified that it appears the media may have a significant interest in the incident.

358.3.4 CLOSE-PROXIMITY CASES

Whenever incidents of media significance occur near or in close proximity to a BART facility, and the department is notified, or is in any way involved in the incident, arrest, or investigation, then notification should proceed according to this policy.

Death Investigation

360.1 PURPOSE AND SCOPE

The investigations of cases involving death include those ranging from natural cause to homicide. Some causes of death may not be readily apparent and some cases differ substantially from what they appeared to be initially. The thoroughness of death investigations cannot be emphasized enough.

360.2 INVESTIGATION CONSIDERATIONS

Death investigation cases require certain actions be taken. Paramedics shall be called in all suspected death cases unless the death is obvious (e.g., decapitated, decomposed). The on-call detective or detective sergeant shall be notified in all death investigations.

360.2.1 CORONER REQUEST

Government Code § 27491 and Health & Safety Code § 102850 direct the Coroner to inquire into and determine the circumstances, manner and cause of certain deaths. The Coroner shall be called in any of the following cases:

- (a) Unattended deaths (No physician in attendance or during the continued absence of the attending physician. Also, includes all deaths outside hospitals and nursing care facilities).
- (b) Deaths where the deceased has not been attended by either a physician or a registered nurse, who is a member of a hospice care interdisciplinary team, as defined by Health and Safety Code § 1746 in the 20 days prior to death.
- (c) Physician unable to state the cause of death. Unwillingness does not apply. Includes all sudden, unexpected and unusual deaths and fetal deaths when the underlying cause is unknown.
- (d) Known or suspected homicide.
- (e) Known or suspected suicide.
- (f) Involving any criminal action or suspicion of a criminal act. Includes child and dependent adult negligence and abuse.
- (g) Related to or following known or suspected self-induced or criminal abortion.
- (h) Associated with a known or alleged rape or crime against nature.
- (i) Following an accident or injury (primary or contributory). Deaths known or suspected as resulting (in whole or in part) from or related to accident or injury, either old or recent.
- (j) Drowning, fire, hanging, gunshot, stabbing, cutting, starvation, exposure, alcoholism, drug addiction, strangulation or aspiration.
- (k) Accidental poisoning (food, chemical, drug, therapeutic agents).

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- (l) Occupational diseases or occupational hazards.
- (m) Known or suspected contagious disease and constituting a public hazard.
- (n) All deaths in operating rooms and all deaths where a patient has not fully recovered from an anesthetic, whether in surgery, recovery room or elsewhere.
- (o) In prison or while under sentence. Includes all in-custody and police involved deaths.
- (p) All deaths of unidentified persons.
- (q) All deaths of state hospital patients.
- (r) Suspected Sudden Infant Death Syndrome (SIDS) deaths.
- (s) All deaths where the patient is comatose throughout the period of the physician's attendance. Includes patients admitted to hospitals unresponsive and expire without regaining consciousness.

The body shall not be disturbed or moved from the position or place of death without permission of the coroner.

360.2.2 SEARCHING DEAD BODIES

The Coroner or Deputy Coroner is generally the only person permitted to search a body known to be dead from any of the circumstances set forth in Government Code § 27491. The only exception is that an officer is permitted to search the body of a person killed in a traffic collision for the limited purpose of locating an anatomical donor card (Government Code § 27491.3). If such a donor card is located, the Coroner or a designee shall be promptly notified. Should exigent circumstances indicate to an officer that any search of a known dead body is warranted prior to the arrival of the Coroner or a designee; the investigating officer shall first obtain verbal consent from the Coroner or a designee (Government Code § 27491.2).

Whenever possible, a witness, preferably a relative to the deceased or a member of the household, should be requested to remain at the scene with the officer pending the arrival of the Coroner or a designee. The name and address of this person shall be included in the narrative of the death report. Whenever personal effects are removed from the body of the deceased by the Coroner or a designee, a receipt shall be obtained. This receipt shall be attached to the death report.

360.2.3 DEATH NOTIFICATION

When practical, and if not handled by the Coroner's Office, notification to the next-of-kin of the deceased person shall be made, in person, by the officer assigned to the incident. If the next-of-kin lives in another jurisdiction, a law enforcement official from that jurisdiction shall be requested to make the personal notification. If the relatives live outside this county, the Coroner may be requested to make the notification. The Coroner needs to know if notification has been made. Assigned detectives may need to talk to the next-of-kin.

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360.2.4 UNIDENTIFIED DEAD BODIES

If the identity of a dead body cannot be established after the Coroner arrives, the Coroner's office will issue a "John Doe" or "Jane Doe" number for the report.

360.2.5 DEATH INVESTIGATION REPORTING

All incidents involving a death shall be documented on the appropriate form.

360.2.6 SUSPECTED HOMICIDE

If the initially assigned officer suspects that the death involves a homicide or other suspicious circumstances, the Criminal Investigations Bureau shall be notified to determine the possible need for a detective to respond to the scene for further immediate investigation.

360.2.7 EMPLOYMENT RELATED DEATHS OR INJURIES

Any member of this agency who responds to and determines that a death, serious illness, or serious injury has occurred as a result of an accident at or in connection with the victim's employment shall request that BART's System Safety Department is notified. The System Safety Department will ensure that the nearest office of Cal-OSHA is notified by telephone immediately or as soon as practical with all pertinent information (8 CCR 342(b)).

360.2.8 DEATH OR INJURY ON THE RIGHT-OF-WAY

Department personnel shall follow the BART Emergency Plan police procedure checklist for all deaths or injuries which occur on the BART right-of-way

Identity Theft

362.1 PURPOSE AND SCOPE

Identity theft is a growing trend that frequently involves related crimes in multiple jurisdictions. This policy is intended to provide guidelines for the reporting and investigation of such crimes.

362.2 REPORTING

- (a) The crime of identity theft (Penal Code § 530.6) should be reported to the law enforcement agency where the victim resides. Therefore, victims of identity theft (as the District has no permanent residents) should be advised that they should report this crime to the law enforcement agency having jurisdiction where they live.
- (b) A departmental supervisor/manager may approve the taking of a courtesy identity theft report. If a courtesy report is taken, the following shall apply:
 1. The report should include all known incidents of fraudulent activity (e.g., credit card number applied for in victim's name when the victim has never made such an application).
 2. The report should cross-reference all other known reports made by the victim (e.g., U.S. Secret Service, credit reporting bureaus, U.S. Postal Service and DMV) with all known report numbers.
 3. The reporting officer should inform the victim of identity theft of his/her right to obtain court ordered access to the Department of Justice identity theft database pursuant to Penal Code § 530.7.
 4. A copy of any courtesy reports should be forwarded to the victim's residence agency by Records Bureau personnel.
- (c) While the crime of identity theft should be reported to the law enforcement agency where the victim resides, officers of this department should investigate and report crimes occurring within this jurisdiction which have resulted from the original identity theft (e.g., the identity theft occurred elsewhere, but the credit card fraud occurred and is reported in this jurisdiction). If a report of this nature is taken, the following shall apply:
 1. Following supervisory review and departmental processing, the initial report should be forwarded to the Detective Bureau for follow up investigation.
 2. The assigned Detective should coordinate the case and prosecution with any other involved agencies as circumstances dictate.

Private Persons Arrests

364.1 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.

364.2 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.

364.3 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.

364.4 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.

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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
- (c) The person being arrested shall be advised that he/she is under arrest. This advisement may be done by the private person or the officer. If performed by the officer, the officer should explain to the private person and the subject that the private person is making the arrest. In either case, the subject should also be told of the offense(s) that he/she is being arrested for.

364.4.1 WHEN A PRIVATE PERSON'S ARREST IS NOT REQUIRED

A private person's arrest is not required when an arrest is made under the following circumstances:

- (a) The offense is a felony or wobbler
- (b) The suspect is a juvenile
- (c) The arrest is for DUI with special circumstances (see 40300.5 V.C.)
- (d) Carrying a loaded firearm
- (e) Carrying a concealed firearm in an airport
- (f) Domestic violence
- (g) Violation of a domestic violence protective order
- (h) Assault on school property
- (i) Assault on a firefighter/EMT

364.4.2 REQUIRED BOOKING

Adult suspects who are arrested for assault or battery on a District employee shall be booked [853.6(g) P.C.]. A command-level officer must approve any exceptions to this policy.

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364.5 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 misdemeanor cases, the private person making the arrest shall also be asked to provide a written statement.

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.

Limited English Proficiency Services

368.1 PURPOSE AND SCOPE

This policy provides guidance to members when communicating with individuals with limited English proficiency (LEP) (42 USC § 2000d).

368.1.1 DEFINITIONS

Definitions related to this policy include:

Authorized interpreter - A person who has been screened and authorized by the Department to act as an interpreter and/or translator for others.

Interpret or interpretation - The act of listening to a communication in one language (source language) and orally converting it to another language (target language), while retaining the same meaning.

Limited English proficient (LEP) - Any individual whose primary language is not English and who has a limited ability to read, write, speak or understand English. These individuals may be competent in certain types of communication (e.g., speaking or understanding) but still be LEP for other purposes (e.g., reading or writing). Similarly, LEP designations are context-specific; an individual may possess sufficient English language skills to function in one setting but these skills may be insufficient in other situations.

Qualified bilingual member - A member of the Bay Area Rapid Transit Police Department, designated by the Department, who has the ability to communicate fluently, directly and accurately in both English and another language. Bilingual members may be fluent enough to communicate in a non-English language but may not be sufficiently fluent to interpret or translate from one language into another.

Translate or translation - The replacement of written text from one language (source language) into an equivalent written text (target language).

368.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to reasonably ensure that LEP individuals have meaningful access to law enforcement services, programs and activities, while not imposing undue burdens on its members.

The Department will not discriminate against or deny any individual access to services, rights or programs based upon national origin or any other protected interest or right.

368.3 LEP COORDINATOR

The Chief of Police shall delegate certain responsibilities to an LEP Coordinator. The LEP Coordinator shall be appointed by, and directly responsible to, the Operations Division Commander or the authorized designee.

The responsibilities of the LEP Coordinator include, but are not limited to:

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- (a) Coordinating and implementing all aspects of the Bay Area Rapid Transit Police Department's LEP services to LEP individuals.
- (b) Developing procedures that will enable members to access LEP services, including telephonic interpreters, and ensuring the procedures are available to all members.
- (c) Ensuring that a list of all qualified bilingual members and authorized interpreters is maintained and available to each Watch Commander and Communications Supervisor. The list should include information regarding the following:
 - 1. Languages spoken
 - 2. Contact information
 - 3. Availability
- (d) Ensuring signage stating that interpreters are available free of charge to LEP individuals is posted in appropriate areas and in the most commonly spoken languages.
- (e) Reviewing existing and newly developed documents to determine which are vital documents and should be translated, and into which languages the documents should be translated.
- (f) Annually assessing demographic data and other resources, including contracted language services utilization data and community-based organizations, to determine if there are additional documents or languages that are appropriate for translation.
- (g) Identifying standards and assessments to be used by the Department to qualify individuals as qualified bilingual members or authorized interpreters.
- (h) Periodically reviewing efforts of the Department in providing meaningful access to LEP individuals, and, as appropriate, developing reports, new procedures or recommending modifications to this policy.
- (i) Receiving and responding to complaints regarding department LEP services.
- (j) Ensuring appropriate processes are in place to provide for the prompt and equitable resolution of complaints and inquiries regarding discrimination in access to department services, programs and activities.

368.4 FOUR-FACTOR ANALYSIS

Since there are many different languages that members could encounter, the Department will utilize the four-factor analysis outlined in the U.S. Department of Justice (DOJ) Guidance to Federal Financial Assistance Recipients, available at the DOJ website, to determine which measures will provide meaningful access to its services and programs. It is recognized that law enforcement contacts and circumstances will vary considerably. This analysis, therefore, must remain flexible and will require an ongoing balance of four factors, which are:

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- (a) The number or proportion of LEP individuals eligible to be served or likely to be encountered by department members, or who may benefit from programs or services within the jurisdiction of the Department or a particular geographic area.
- (b) The frequency with which LEP individuals are likely to come in contact with department members, programs or services.
- (c) The nature and importance of the contact, program, information or service provided.
- (d) The cost of providing LEP assistance and the resources available.

368.5 TYPES OF LEP ASSISTANCE AVAILABLE

Bay Area Rapid Transit Police Department members should never refuse service to an LEP individual who is requesting assistance, nor should they require an LEP individual to furnish an interpreter as a condition for receiving assistance. The Department will make every reasonable effort to provide meaningful and timely assistance to LEP individuals through a variety of services.

The Department will utilize all reasonably available tools, such as language identification cards, when attempting to determine an LEP individual's primary language.

LEP individuals may choose to accept department-provided LEP services at no cost or they may choose to provide their own.

Department-provided LEP services may include, but are not limited to, the assistance methods described in this policy.

368.6 WRITTEN FORMS AND GUIDELINES

Vital documents or those that are frequently used should be translated into languages most likely to be encountered. The LEP Coordinator will arrange to make these translated documents available to members and other appropriate individuals, as necessary.

368.7 AUDIO RECORDINGS

The following materials will be made available to employees to assist in providing access and service to LEP individuals:

- (a) A list of departmental bilingual employees, languages spoken and contact and shift information
- (b) A list of department-certified interpretation services, bilingual interpreters, languages spoken and contact and availability information
- (c) The telephone number and access code of telephonic interpretation services
- (d) Language identification cards
- (e) Translated *Miranda* warning cards and other frequently used documents
- (f) Audio recordings/warnings that are developed in non-English languages

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368.8 QUALIFIED BILINGUAL MEMBERS

Bilingual members may be qualified to provide LEP services when they have demonstrated through established department procedures a sufficient level of skill and competence to fluently communicate in both English and a non-English language. Members utilized for LEP services must demonstrate knowledge of the functions of an interpreter/translator and the ethical issues involved when acting as a language conduit. Additionally, bilingual members must be able to communicate technical and law enforcement terminology, and be sufficiently proficient in the non-English language to perform complicated tasks, such as conducting interrogations, taking statements, collecting evidence or conveying rights or responsibilities.

When a qualified bilingual member from this department is not available, personnel from other District departments, who have been identified by the Department as having the requisite skills and competence, may be requested.

368.9 AUTHORIZED INTERPRETERS

Any person designated by the Department to act as an authorized interpreter and/or translator must have demonstrated competence in both English and the involved non-English language, must have an understanding of the functions of an interpreter that allows for correct and effective translation, and should not be a person with an interest in the department case or investigation involving the LEP individual. A person providing interpretation or translation services may be required to establish the accuracy and trustworthiness of the interpretation or translation in a court proceeding.

Authorized interpreters must pass a screening process established by the LEP Coordinator which demonstrates that their skills and abilities include:

- (a) The competence and ability to communicate information accurately in both English and in the target language.
- (b) Knowledge, in both languages, of any specialized terms or concepts peculiar to this department and of any particularized vocabulary or phraseology used by the LEP individual.
- (c) The ability to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.
- (d) Knowledge of the ethical issues involved when acting as a language conduit.

368.9.1 SOURCES OF AUTHORIZED INTERPRETERS

The Department may contract with authorized interpreters who are available over the telephone. Members may use these services with the approval of a supervisor and in compliance with established procedures.

Other sources may include:

- Qualified bilingual members of this department or personnel from other District departments.

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- Individuals employed exclusively to perform interpretation services.
- Contracted in-person interpreters, such as state or federal court interpreters, among others.
- Interpreters from other agencies who have been qualified as interpreters by this department, and with whom the Department has a resource-sharing or other arrangement that they will interpret according to department guidelines.

368.9.2 COMMUNITY VOLUNTEERS AND OTHER SOURCES OF LANGUAGE ASSISTANCE

Language assistance may be available from community volunteers who have demonstrated competence in either monolingual (direct) communication and/or in interpretation or translation (as noted in above), and have been approved by the Department to communicate with LEP individuals.

Where qualified bilingual members or other authorized interpreters are unavailable to assist, approved community volunteers who have demonstrated competence may be called upon when appropriate. However, department members must carefully consider the nature of the contact and the relationship between the LEP individual and the volunteer to ensure that the volunteer can provide neutral and unbiased assistance.

While family or friends of an LEP individual may offer to assist with communication or interpretation, members should carefully consider the circumstances before relying on such individuals. For example, children should not be relied upon except in exigent or very informal and non-confrontational situations.

368.10 CONTACT AND REPORTING

While all law enforcement contacts, services and individual rights are important, this department will utilize the four-factor analysis to prioritize service to LEP individuals so that such services may be targeted where they are most needed, according to the nature and importance of the particular law enforcement activity involved.

Whenever any member of this department is required to complete a report or other documentation, and interpretation services are provided to any involved LEP individual, such services should be noted in the related report. Members should document the type of interpretation services utilized and whether the individual elected to use services provided by the Department or some other identified source.

368.11 RECEIVING AND RESPONDING TO REQUESTS FOR ASSISTANCE

The Bay Area Rapid Transit Police Department will take reasonable steps and will work with the Human Resources Department to develop in-house language capacity by hiring or appointing qualified members proficient in languages representative of the community being served.

368.11.1 EMERGENCY CALLS TO 9-1-1

Department members will make every reasonable effort to promptly accommodate LEP individuals utilizing 9-1-1 lines. When a 9-1-1 call-taker receives a call and determines that the caller is an LEP

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individual, the call-taker shall quickly determine whether sufficient information can be obtained to initiate an appropriate emergency response. If language assistance is still needed, the language is known and a qualified bilingual member is available in Integrated Security Response Center, the call shall immediately be handled by the qualified bilingual member.

If a qualified bilingual member is not available or the call-taker is unable to identify the caller's language, the call-taker will contact the contracted telephone interpretation service and establish a three-way call between the call-taker, the LEP individual and the interpreter.

Dispatchers will make every reasonable effort to dispatch a qualified bilingual member to the assignment, if available and appropriate.

While 9-1-1 calls shall receive top priority, reasonable efforts should also be made to accommodate LEP individuals seeking routine access to services and information by utilizing the resources listed in this policy.

368.12 FIELD ENFORCEMENT

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve LEP individuals. The scope and nature of these activities and contacts will inevitably vary. Members and/or supervisors must assess each situation to determine the need and availability of language assistance to all involved LEP individuals and utilize the methods outlined in this policy to provide such assistance.

Although not every situation can be addressed in this policy, it is important that members are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action. For example, it would be meaningless to request consent to search if the officer is unable to effectively communicate with an LEP individual.

If available, officers should obtain the assistance of a qualified bilingual member or an authorized interpreter before placing an LEP individual under arrest.

368.13 INVESTIGATIVE FIELD INTERVIEWS

In any situation where an interview may reveal information that could be used as the basis for arrest or prosecution of an LEP individual and a qualified bilingual member is unavailable or lacks the skills to directly communicate with the LEP individual, an authorized interpreter should be used. This includes interviews conducted during an investigation with victims, witnesses and suspects. In such situations, audio recordings of the interviews should be made when reasonably possible. Identification and contact information for the interpreter (e.g., name, address) should be documented so that the person can be subpoenaed for trial if necessary.

If an authorized interpreter is needed, officers should consider calling for an authorized interpreter in the following order:

- An authorized department member or allied agency interpreter
- An authorized telephone interpreter

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- Any other authorized interpreter

Any *Miranda* warnings shall be provided to suspects in their primary language by an authorized interpreter or, if the suspect is literate, by providing a translated *Miranda* warning card.

The use of an LEP individual's bilingual friends, family members, children, neighbors or bystanders may be used only when a qualified bilingual member or authorized interpreter is unavailable and there is an immediate need to interview an LEP individual.

368.14 CUSTODIAL INTERROGATIONS

Miscommunication during custodial interrogations may have a substantial impact on the evidence presented in a criminal prosecution. Only qualified bilingual members or, if none is available or appropriate, authorized interpreters shall be used during custodial interrogations. *Miranda* warnings shall be provided to suspects in their primary language by the qualified bilingual member or an authorized interpreter.

In order to ensure that translations during custodial interrogations are accurately documented and are admissible as evidence, interrogations should be recorded whenever reasonably possible. See guidance on recording custodial interrogations in the Investigation and Prosecution Policy.

368.15 BOOKINGS

When gathering information during the booking process, members should remain alert to the impediments that language barriers can create. In the interest of the arrestee's health and welfare, the safety and security of the facility, and to protect individual rights, it is important that accurate medical screening and booking information be obtained. Members should seek the assistance of a qualified bilingual member whenever there is concern that accurate information cannot be obtained or that booking instructions may not be properly understood by an LEP individual.

368.16 COMPLAINTS

The Department shall ensure that LEP individuals who wish to file a complaint regarding members of this department are able to do so. The Department may provide an authorized interpreter or translated forms, as appropriate. Complaints will be referred to the LEP Coordinator.

Investigations into such complaints shall be handled in accordance with the Personnel Complaints Policy. Authorized interpreters used for any interview with an LEP individual during an investigation should not be members of this department.

Any notice required to be sent to an LEP individual as a complaining party pursuant to the Personnel Complaints Policy should be translated or otherwise communicated in a language-accessible manner.

368.17 COMMUNITY OUTREACH

Community outreach programs and other such services offered by this department are important to the ultimate success of more traditional law enforcement duties. This department will continue

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to work with community groups, local businesses and neighborhoods to provide equal access to such programs and services.

368.18 TRAINING

To ensure that all members who may have contact with LEP individuals are properly trained, the Department will provide periodic training on this policy and related procedures, including how to access department-authorized telephonic and in-person interpreters and other available resources.

The Personnel and Training Lieutenant shall be responsible for ensuring new members receive LEP training. Those who may have contact with LEP individuals should receive refresher training at least once every two years thereafter. The Personnel and Training Lieutenant shall maintain records of all LEP training provided, and will retain a copy in each member's training file in accordance with established records retention schedules.

Communications with Persons with Disabilities

370.1 PURPOSE AND SCOPE

This policy provides guidance to members when communicating with individuals with disabilities, including those who are deaf or hard of hearing, have impaired speech or vision, or are blind.

370.1.1 DEFINITIONS

Definitions related to this policy include:

Auxiliary aids - Tools used to communicate with people who have a disability or impairment. They include, but are not limited to, the use of gestures or visual aids to supplement oral communication; a notepad and pen or pencil to exchange written notes; a computer or typewriter; an assistive listening system or device to amplify sound; a teletypewriter (TTY) or videophones (video relay service or VRS); taped text; qualified readers; or a qualified interpreter.

Disability or impairment - A physical or mental impairment that substantially limits a major life activity, including hearing or seeing, regardless of whether the disabled person uses assistive or adaptive devices or auxiliary aids. Individuals who wear ordinary eyeglasses or contact lenses are not considered to have a disability (42 USC § 12102).

Qualified interpreter - A person who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include oral interpreters, translators, sign language interpreters and intermediary interpreters.

370.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to reasonably ensure that people with disabilities, including victims, witnesses, suspects and arrestees have equal access to law enforcement services, programs and activities. Members must make efforts to communicate effectively with individuals with disabilities.

The Department will not discriminate against or deny any individual access to services, rights or programs based upon disabilities.

370.3 AMERICANS WITH DISABILITIES (ADA) COORDINATOR

The Chief of Police shall delegate certain responsibilities to an ADA Coordinator (28 CFR 35.107). The ADA Coordinator shall be appointed by, and directly responsible, to the Operations Division Commander or the authorized designee.

The responsibilities of the ADA Coordinator shall include, but not be limited to:

- (a) Working with the District ADA coordinator regarding the Bay Area Rapid Transit Police Department's efforts to ensure equal access to services, programs and activities.
- (b) Developing reports, new procedures, or recommending modifications to this policy.

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- (c) Acting as a liaison with local disability advocacy groups or other disability groups regarding access to department services, programs and activities.
- (d) Ensuring that a list of qualified interpreter services is maintained and available to each Watch Commander and Communications Supervisor. The list should include information regarding the following:
 - 1. Contact information
 - 2. Availability
- (e) Developing procedures that will enable members to access auxiliary aids or services, including qualified interpreters, and ensure the procedures are available to all members.
- (f) Ensuring signage is posted in appropriate areas, indicating that auxiliary aids are available free of charge to people with disabilities.
- (g) Ensuring appropriate processes are in place to provide for the prompt and equitable resolution of complaints and inquiries regarding discrimination in access to department services, programs and activities.

370.4 FACTORS TO CONSIDER

Because the nature of any law enforcement contact may vary substantially from one situation to the next, members of this department should consider all information reasonably available to them when determining how to communicate with an individual with a disability. Members should carefully balance all known factors in an effort to reasonably ensure people who are disabled have equal access to services, programs and activities. These factors may include, but are not limited to:

- (a) Members should not always assume that effective communication is being achieved. The fact that an individual appears to be nodding in agreement does not always mean he/she completely understands the message. When there is any doubt, members should ask the individual to communicate back or otherwise demonstrate their understanding.
- (b) The nature of the disability (e.g., deafness or blindness vs. hard of hearing or low vision).
- (c) The nature of the law enforcement contact (e.g., emergency vs. non-emergency, custodial vs. consensual contact).
- (d) The availability of auxiliary aids. The fact that a particular aid is not available does not eliminate the obligation to reasonably ensure access. However, in an emergency, availability may factor into the type of aid used.

Communications with Persons with Disabilities

370.5 INITIAL AND IMMEDIATE CONSIDERATIONS

Recognizing that various law enforcement encounters may be potentially volatile and/or emotionally charged, members should remain alert to the possibility of communication problems.

Members should exercise special care in the use of all gestures, and verbal and written communication to minimize initial confusion and misunderstanding when dealing with any individual with known or suspected disabilities.

In a non-emergency situation, when a member knows or suspects an individual requires assistance to effectively communicate, the member shall identify the individual's choice of auxiliary aid or service.

The individual's preferred communication method must be honored unless another effective method of communication exists under the circumstances (28 CFR 35.160).

Factors to consider when determining whether an alternative method is effective include:

- (a) The methods of communication usually used by the individual.
- (b) The nature, length and complexity of the communication involved.
- (c) The context of the communication.

In emergency situations involving an imminent threat to the safety or welfare of any person, members may use whatever auxiliary aids and services that reasonably appear effective under the circumstances. This may include, for example, exchanging written notes or using the services of a person who knows sign language but is not a qualified interpreter, even if the person who is deaf or hard of hearing would prefer a qualified sign language interpreter or another appropriate auxiliary aid or service. Once the emergency has ended, the continued method of communication should be reconsidered. The member should inquire as to the individual's preference and give primary consideration to that preference.

If an individual who is deaf, hard of hearing or has impaired speech must be handcuffed while in the custody of the Bay Area Rapid Transit Police Department, consideration should be given, safety permitting, to placing the handcuffs in the front of the body to facilitate communication using sign language or writing.

370.6 TYPES OF ASSISTANCE AVAILABLE

Bay Area Rapid Transit Police Department members shall never refuse to assist an individual with disabilities who is requesting assistance. The Department will not charge anyone to receive auxiliary aids, nor shall they require anyone to furnish their own auxiliary aid or service as a condition for receiving assistance. The Department will make every reasonable effort to provide equal access and timely assistance to individuals who are disabled through a variety of services.

A person who is disabled may choose to accept department-provided auxiliary aids or services or they may choose to provide their own.

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Department-provided auxiliary aids or services may include, but are not limited to, the assistance methods described in this policy.

370.7 AUDIO RECORDINGS AND ENLARGED PRINT

The Department may develop audio recordings to assist people who are blind or have a visual impairment with accessing important information. If such a recording is not available, members may read aloud from the appropriate form, for example a personnel complaint form, or provide forms with enlarged print.

370.8 QUALIFIED INTERPRETERS

A qualified interpreter may be needed in lengthy or complex transactions (e.g., interviewing a victim, witness, suspect or arrestee), if the individual to be interviewed normally relies on sign language or speechreading (lip-reading) to understand what others are saying. The qualified interpreter should not be a person with an interest in the case or investigation involving the disabled individual. A person providing interpretation services may be required to establish the accuracy and trustworthiness of the interpretation in a court proceeding.

Qualified interpreters should be:

- (a) Available within a reasonable amount of time but in no event longer than one hour if requested.
- (b) Experienced in providing interpretation services related to law enforcement matters.
- (c) Familiar with the use of VRS and/or video remote interpreting services.
- (d) Certified in either American Sign Language (ASL) or Signed English (SE).
- (e) Able to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.
- (f) Knowledgeable of the ethical issues involved when providing interpreter services.

Members should use department-approved procedures to request a qualified interpreter at the earliest reasonable opportunity, and generally not more than 15 minutes after a request for an interpreter has been made or it is reasonably apparent that an interpreter is needed. No individual who is disabled shall be required to provide his/her own interpreter (28 CFR 35.160).

370.9 TTY AND RELAY SERVICES

In situations where an individual without a disability would have access to a telephone (e.g., booking or attorney contacts), members must also provide those who are deaf, hard of hearing or have impaired speech the opportunity to place calls using an available TTY (also known as a telecommunications device for deaf people, or TDD). Members shall provide additional time, as needed, for effective communication due to the slower nature of TTY and TDD communications.

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Communications with Persons with Disabilities

The Department will accept all TTY or TDD calls placed by those who are deaf or hard of hearing and received via a telecommunications relay service (28 CFR 35.162).

Note that relay services translate verbatim, so the conversation must be conducted as if speaking directly to the caller.

370.10 COMMUNITY VOLUNTEERS

Interpreter services may be available from community volunteers who have demonstrated competence in communication services, such as ASL or SE, and have been approved by the Department to provide interpreter services.

Where qualified interpreters are unavailable to assist, approved community volunteers who have demonstrated competence may be called upon when appropriate. However, department members must carefully consider the nature of the contact and the relationship between the individual with the disability and the volunteer to ensure that the volunteer can provide neutral and unbiased assistance.

370.11 FAMILY AND FRIENDS

While family or friends may offer to assist with interpretation, members should carefully consider the circumstances before relying on such individuals. The nature of the contact and relationship between the individual with the disability and the person offering services must be carefully considered (e.g., victim/suspect).

Children shall not be relied upon except in emergency or critical situations when there is no qualified interpreter reasonably available.

Adults may be relied upon when (28 CFR 35.160):

- (a) There is an emergency or critical situation and there is no qualified interpreter reasonably available.
- (b) The person with the disability requests that the adult interpret or facilitate communication and the adult agrees to provide such assistance, and reliance on that adult for such assistance is reasonable under the circumstances.

370.12 REPORTING

Whenever any member of this department is required to complete a report or other documentation, and communication assistance has been provided, such services should be noted in the related report. Members should document the type of communication services utilized and whether the individual elected to use services provided by the Department or some other identified source. If the individual's express preference is not honored, the member must document why another method of communication was used.

All written communications exchanged in a criminal case shall be attached to the report or placed into evidence.

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370.13 FIELD ENFORCEMENT

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve individuals with disabilities. The scope and nature of these activities and contacts will inevitably vary.

The Department recognizes that it would be virtually impossible to provide immediate access to complete communication services to every member of this department. Members and/or supervisors must assess each situation and consider the length, complexity and importance of the communication, as well as the individual's preferred method of communication, when determining the type of resources to use and whether a qualified interpreter is needed.

Although not every situation can be addressed in this policy, it is important that members are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action. For example, it would be meaningless to verbally request consent to search if the officer is unable to effectively communicate with an individual who is deaf or hard of hearing and requires communications assistance.

If available, officers should obtain the assistance of a qualified interpreter before placing an individual with a disability under arrest. Individuals who are arrested and are assisted by service animals should be permitted to make arrangements for the care of such animals prior to transport.

370.13.1 FIELD RESOURCES

Examples of methods that may be sufficient for transactions, such as checking a license or giving directions to a location or for urgent situations such as responding to a violent crime in progress, may, depending on the circumstances, include such simple things as:

- (a) Hand gestures or visual aids with an individual who is deaf, hard of hearing or has impaired speech.
- (b) Exchange of written notes or communications.
- (c) Verbal communication with an individual who can speechread by facing the individual and speaking slowly and clearly.
- (d) Use of computer, word processing, personal communication device or similar device to exchange texts or notes.
- (e) Slowly and clearly speaking or reading simple terms to individuals who have a visual or mental impairment.

Members should be aware that these techniques may not provide effective communication as required by law and this policy depending on the circumstances.

370.14 CUSTODIAL INTERROGATIONS

In an effort to ensure that the rights of individuals who are deaf, hard of hearing or have speech impairment are protected during a custodial interrogation, this department will provide interpreter services before beginning an interrogation, unless exigent circumstances exist or the individual

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has made a clear indication that he/she understands the process and desires to proceed without an interpreter. The use of a video remote interpreting service should be considered, where appropriate, if a live interpreter is not available. *Miranda* warnings shall be provided to suspects who are deaf or hard of hearing by a qualified interpreter or by providing a written *Miranda* warning card.

In order to ensure that communications during custodial investigations are accurately documented and are admissible as evidence, interrogations should be recorded whenever reasonably possible. See guidance on recording custodial interrogations in the Investigation and Prosecution Policy.

370.15 ARREST AND BOOKINGS

If an individual with speech or hearing disabilities is arrested, the arresting officer shall use department-approved procedures to provide a qualified interpreter at the place of arrest or booking as soon as reasonably practicable, unless the individual indicates that he/she prefers a different auxiliary aid or service or the officer reasonably determines another effective method of communication exists under the circumstances.

When gathering information during the booking process, members should remain alert to the impediments that often exist when communicating with those who are deaf, hard of hearing, who have impaired speech or vision, are blind, or have other disabilities. In the interest of the arrestee's health and welfare, the safety and security of the facility and to protect individual rights, it is important that accurate medical screening and booking information be obtained. If necessary, members should seek the assistance of a qualified interpreter whenever there is concern that accurate information cannot be obtained or that booking instructions may not be properly understood by the individual.

Individuals who require and possess personally owned communication aids (e.g., hearing aids, cochlear processors) should be permitted to retain them while in custody.

370.16 COMPLAINTS

The Department shall ensure that individuals with disabilities who wish to file a complaint regarding members of this department are able to do so. The Department may provide a qualified interpreter or forms in enlarged print, as appropriate. Complaints will be referred to the department ADA Coordinator.

Investigations into such complaints shall be handled in accordance with the Personnel Complaints Policy. Qualified interpreters used during the investigation of a complaint should not be members of this Department.

370.17 COMMUNITY OUTREACH

Community outreach programs and other such services offered by this department are important to the ultimate success of more traditional law enforcement duties. This department will continue to work with community groups, local businesses and neighborhoods to provide equal access to such programs and services.

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370.18 TRAINING

To ensure that all members who may have contact with individuals who are disabled are properly trained, the Department will provide periodic training that should include:

- (a) Awareness and understanding of this policy and related procedures, related forms and available resources.
- (b) Procedures for accessing qualified interpreters and other available resources.
- (c) Working with in-person and telephone interpreters and related equipment.

The Personnel and Training Lieutenant shall be responsible for ensuring new members receive training related to interacting with individuals who have disabilities, including individuals who are deaf, hard of hearing, who have impaired speech or vision, or are blind. Those who may have contact with such individuals should receive refresher training at least once every two years thereafter. The Personnel and Training Lieutenant shall maintain records of all training provided, and will retain a copy in each member's training file in accordance with established records retention schedules.

370.18.1 CALL-TAKER TRAINING

Emergency call-takers shall be trained in the use of TTY equipment protocols for communicating with individuals who are deaf, hard of hearing or who have speech impairments. Such training and information should include:

- (a) The requirements of the ADA and Section 504 of the Rehabilitation Act for telephone emergency service providers.
- (b) ASL syntax and accepted abbreviations.
- (c) Practical instruction on identifying and processing TTY or TDD calls, including the importance of recognizing silent TTY or TDD calls, using proper syntax, abbreviations and protocol when responding to TTY or TDD calls.
- (d) Hands-on experience in TTY and TDD communications, including identification of TTY or TDD tones.

Training should be mandatory for all Integrated Security Response Center members who may have contact with individuals from the public who are deaf, hard of hearing or have impaired speech. Refresher training should occur every six months.

Mandatory Employer Notification

372.1 PURPOSE AND SCOPE

The purpose of this policy is to describe the requirements and procedures to follow when a public or private school employee (teacher and non-teacher) has been arrested under certain circumstances.

372.2 MANDATORY SCHOOL EMPLOYEE ARREST REPORTING

In the event a school employee is arrested for any offense enumerated below, the Chief of Police or his/her designee is required to report the arrest as follows.

372.2.1 ARREST OF PUBLIC SCHOOL TEACHER

In the event a public school teacher is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290, Penal Code § 261(a), or Education Code § 44010, the Chief of Police or his/her designee is mandated to immediately notify by telephone the superintendent of the school district employing the teacher and to immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed (Health and Safety Code § 11591; Penal Code § 291).

372.2.2 ARREST OF PUBLIC SCHOOL NON-TEACHER EMPLOYEE

In the event a public school non-teacher employee is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290, Penal Code § 261(a), or Education Code § 44010, the Chief of Police or his/her designee is mandated to immediately notify by telephone the superintendent of the school district employing the non-teacher and to immediately give written notice of the arrest to the governing board of the school district employing the person (Health and Safety Code § 11591; Penal Code § 291).

372.2.3 ARREST OF PRIVATE SCHOOL TEACHER

In the event a private school teacher is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290 or Education Code § 44010, the Chief of Police or his/her designee is mandated to immediately notify by telephone the private school authority employing the teacher and to immediately give written notice of the arrest to the private school authority employing the teacher (Health and Safety Code § 11591; Penal Code § 291.1).

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Mandatory Employer Notification

372.2.4 ARREST OF COMMUNITY COLLEGE INSTRUCTOR

In the event a teacher or instructor employed in a community college district school is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591.5 or Health and Safety § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(9), or for any of the offenses enumerated in Penal Code § 290 or in Penal Code § 261(a)(1), the Chief of Police or the authorized designee is mandated to immediately notify by telephone the superintendent of the community college district employing the person, and shall immediately give written notice of the arrest to the California Community Colleges Chancellor's Office (Health and Safety Code § 11591.5; Penal Code § 291.5).

372.3 POLICY

The Bay Area Rapid Transit Police Department will meet the reporting requirements of California law to minimize the risks to children and others.

372.4 ARREST OF PERSONS EMPLOYED IN COMMUNITY CARE FACILITIES

In the event an employee of a community treatment facility, a day treatment facility, a group home, a short-term residential therapeutic program or a foster family agency is arrested for child abuse (as defined in Penal Code § 11165.6) and the employee is free to return to work where children are present, the investigating member shall notify the licensee of the charge of abuse (Health and Safety Code § 1522.2).

Chaplains

376.1 PURPOSE AND SCOPE

This policy establishes the guidelines for Bay Area Rapid Transit Police Department chaplains to provide counseling or emotional support to members of the Department, their families and members of the public.

376.2 POLICY

The Bay Area Rapid Transit Police Department shall ensure that department chaplains are properly appointed, trained and supervised to carry out their responsibilities without financial compensation.

376.3 ELIGIBILITY

Requirements for participation as a chaplain for the Department may include, but are not limited to:

- (a) Being above reproach, temperate, prudent, respectable, hospitable, able to teach, be free from addiction to alcohol or other drugs, and excessive debt.
- (b) Must be ordained and licensed by a recognized religious body.
- (c) Must have a minimum of one year of successful ministry experience within a recognized church or religious denomination.
- (d) Managing their households, families and personal affairs well.
- (e) Having a good reputation in the community.
- (f) Successful completion of an appropriate-level background investigation.
- (g) A minimum of five years of some form of counseling experience.
- (h) Possession of a valid California driver license.
- (i) Possession of current individual medical and automobile insurance coverage.

The Chief of Police may apply exceptions for eligibility based on organizational needs and the qualifications of the individual.

376.4 RECRUITMENT, SELECTION AND APPOINTMENT

The Bay Area Rapid Transit Police Department shall endeavor to recruit and appoint only those applicants who meet the high ethical, moral and professional standards set forth by this department.

All applicants shall be required to meet and pass the same pre-employment procedures as department personnel before appointment.

376.4.1 SELECTION AND APPOINTMENT

Chaplain candidates shall successfully complete the following process prior to appointment as a chaplain:

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- (a) Submit the appropriate written application.
- (b) Include a recommendation from employers or volunteer programs.
- (c) Include a recommendation or endorsement from a recognized church and religious denomination.
- (d) Interview with the Chief of Police or his/her designee and the chaplain coordinator.
- (e) Successfully complete an appropriate-level background investigation.
- (f) Complete an appropriate Chaplain FOCUS program and probationary period as designated by the Chief of Police.

Chaplains are volunteers and serve at the discretion of the Chief of Police. Chaplains shall have no property interest in continued appointment. However, if a chaplain is removed for alleged misconduct, the chaplain 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 the authorized designee.

376.5 IDENTIFICATION AND UNIFORMS

As representatives of the Department, chaplains are responsible for presenting a professional image to the community. Chaplains shall dress appropriately for the conditions and performance of their duties. Uniforms and necessary safety equipment will be provided for each chaplain. Identification symbols worn by chaplains shall be different and distinct from those worn by officers through the inclusion of "Chaplain" on the uniform and not reflect any religious affiliation.

Chaplains will be issued Bay Area Rapid Transit Police Department identification cards, which must be carried at all times while on-duty. The identification cards will be the standard Bay Area Rapid Transit Police Department identification cards, with the exception that "Chaplain" will be indicated on the cards. Chaplains shall be required to return any issued uniforms or department property at the termination of service.

Chaplains shall conform to all uniform regulations and appearance standards of this department.

376.6 CHAPLAIN COORDINATOR

The Chief of Police shall delegate certain responsibilities to a chaplain coordinator. The coordinator shall be appointed by and directly responsible to the Professional Standards and Training Bureau Deputy Chief or their authorized designee.

The chaplain coordinator shall serve as the liaison between the chaplains and the Chief of Police. The function of the coordinator is to provide a central coordinating point for effective chaplain management within the Department, and to direct and assist efforts to jointly provide more productive chaplain services. Under the general direction of the Chief of Police or the authorized designee, chaplains shall report to the chaplain coordinator and/or Watch Commander.

The chaplain coordinator may appoint a senior chaplain or other designee to assist in the coordination of chaplains and their activities.

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The responsibilities of the coordinator or the authorized designee include, but are not limited to:

- (a) Recruiting, selecting and training qualified chaplains.
- (b) Conducting chaplain meetings.
- (c) Establishing and maintaining a chaplain callout roster.
- (d) Maintaining records for each chaplain.
- (e) Tracking and evaluating the contribution of chaplains.
- (f) Maintaining a record of chaplain schedules and work hours.
- (g) Completing and disseminating, as appropriate, all necessary paperwork and information.
- (h) Planning periodic recognition events.
- (i) Maintaining liaison with other agency chaplain coordinators.

An evaluation of the overall use of chaplains will be conducted on an annual basis by the coordinator.

376.7 DUTIES AND RESPONSIBILITIES

Chaplains assist the Department, its members and the community, as needed. Assignments of chaplains will usually be to augment the Operations Bureau . Chaplains may be assigned to other areas within the Department as needed. Chaplains should be placed only in assignments or programs that are consistent with their knowledge, skills, abilities and the needs of the Department.

All chaplains will be assigned to duties by the chaplain coordinator or the authorized designee.

Chaplains may not proselytize or attempt to recruit members of the Department or the public into a religious affiliation while representing themselves as chaplains with this department. If there is any question as to the receiving person's intent, chaplains should verify that the person is desirous of spiritual counseling or guidance before engaging in such discussion.

Chaplains may not accept gratuities for any service or any subsequent actions or follow-up contacts that were provided while functioning as a chaplain for the Bay Area Rapid Transit Police Department.

376.7.1 COMPLIANCE

Chaplains are volunteer members of this department, and except as otherwise specified within this policy, are required to comply with all applicable policies.

376.7.2 OPERATIONAL GUIDELINES

- (a) Chaplains will be scheduled to be on-call for a period of 14 consecutive days during each month, beginning on Monday and ending on the following Sunday.
- (b) Generally, each chaplain will serve with Bay Area Rapid Transit Police Department personnel a minimum of eight hours per month.

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- (c) At the end of each watch the chaplain will complete a chaplain shift report and submit it to the Chief of Police or the authorized designee.
- (d) Chaplains shall be permitted to ride with officers during any shift and observe Bay Area Rapid Transit Police Department operations, provided the Watch Commander has been notified and has approved the activity.
- (e) Chaplains shall not be evaluators of members of the Department.
- (f) In responding to incidents, a chaplain shall never function as an officer.
- (g) When responding to in-progress calls for service, chaplains may be required to stand-by in a secure area until the situation has been deemed safe.
- (h) Chaplains shall serve only within the jurisdiction of the Bay Area Rapid Transit Police Department unless otherwise authorized by the Chief of Police or the authorized designee.
- (i) Each chaplain shall have access to current department member rosters, addresses, telephone numbers, duty assignments and other information that may assist in his/her duties. Such information will be considered confidential and each chaplain will exercise appropriate security measures to prevent distribution of the data.

376.7.3 ASSISTING DEPARTMENT MEMBERS

The responsibilities of a chaplain related to department members include, but are not limited to:

- (a) Assisting in making notification to families of members who have been seriously injured or killed and, after notification, responding to the hospital or home of the member.
- (b) Visiting sick or injured members in the hospital or at home.
- (c) Attending and participating, when requested, in funerals of active or retired members.
- (d) Serving as a resource for members when dealing with the public in incidents, such as accidental deaths, suicides, suicidal subjects, serious accidents, drug and alcohol abuse and other such situations that may arise.
- (e) Providing counseling and support for members and their families.
- (f) Being alert to the needs of members and their families.

376.7.4 ASSISTING THE DEPARTMENT

The responsibilities of a chaplain related to this department include, but are not limited to:

- (a) Assisting members in the diffusion of a conflict or incident, when requested.
- (b) Responding to natural and accidental deaths, suicides and attempted suicides, family disturbances and any other incident that in the judgment of the Watch Commander or supervisor aids in accomplishing the mission of the Department.
- (c) Responding to all major disasters, such as natural disasters, bombings and similar critical incidents.
- (d) Being on-call and, if possible, on-duty during major demonstrations or any public function that requires the presence of a large number of department members.

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- (e) Attending department and academy graduations, ceremonies and social events and offering invocations and benedictions, as requested.
- (f) Participating in in-service training classes.
- (g) Willingness to train others to enhance the effectiveness of the Department.

376.7.5 ASSISTING THE COMMUNITY

The duties of a chaplain related to the community include, but are not limited to:

- (a) Fostering familiarity with the role of law enforcement in the community.
- (b) Providing an additional link between the community, other chaplain coordinators and the Department.
- (c) Providing liaison with various civic, business and religious organizations.
- (d) Promptly facilitating requests for representatives or leaders of various denominations.
- (e) Assisting the community in any other function as needed or requested.
- (f) Making referrals in cases where specialized attention is needed or in cases that are beyond the chaplain's ability to assist.

376.7.6 CHAPLAIN MEETINGS

All chaplains are required to attend scheduled meetings. Any absences must be satisfactorily explained to the chaplain coordinator. Chaplains should notify the chaplain coordinator of all absences at least an hour prior to the start time of the meeting.

376.8 PRIVILEGED COMMUNICATIONS

No person who provides chaplain services to members of the Department may work or volunteer for the Bay Area Rapid Transit Police Department in any capacity other than that of chaplain.

Department chaplains shall be familiar with state evidentiary laws and rules pertaining to the limits of the clergy-penitent, psychotherapist-patient and other potentially applicable privileges and shall inform members when it appears reasonably likely that the member is discussing matters that are not subject to privileged communications. In such cases, the chaplain should consider referring the member to a non-department counseling resource.

No chaplain shall provide counsel to or receive confidential communications from any Bay Area Rapid Transit Police Department member concerning an incident personally witnessed by the chaplain or concerning an incident involving the chaplain.

376.9 TRAINING

The Department will establish a minimum number of training hours and standards for department chaplains. The training, as approved by the Personnel and Training Lieutenant, may include:

- Stress management
- Death notifications
- Symptoms of post-traumatic stress

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- Burnout for members of law enforcement and chaplains
- Legal liability and confidentiality
- Ethics
- Responding to crisis situations
- The law enforcement family
- Substance abuse
- Suicide
- Officer injury or death
- Sensitivity and diversity

376.9.1 DISMISSAL AS A VOLUNTEER POLICE CHAPLAIN

Reasons for dismissal from the BART Police Chaplain Program include, but are not limited to:

- (a) Violation of BART Police Policies.
- (b) Failure or refusal to respond when called.
- (c) Excessive tardiness/absences as determined by the CC;
- (d) Breach of confidentiality.
- (e) Failure to satisfactorily perform duties.
- (f) Failure or refusal to participate in approved chaplain continuing education.
- (g) Failure to maintain ecclesiastical endorsement from the chaplain's judicatory;
- (h) Inhibition to perform clerical tasks (defrocking).
- (i) Chief of Police determines the voluntary chaplain's services are no longer required and/or dismissal of the voluntary chaplain is in the best interest of the Department.

In the event one or more of the above violations occurs, the chaplain may be subject to counseling with the Chaplain Coordinator and Chaplain Adviser. It should be noted that any volunteer chaplain may be dismissed as a volunteer police chaplain by the Chief of Police without cause at any time. Volunteer police chaplains, as volunteers, do not retain "property rights" to the position of volunteer police chaplain and are not subject to Civil Service due process procedures.

376.9.2 BART RIDING PRIVILEGES FOR VOLUNTEER CHAPLAINS

Volunteer chaplains will be provided with free riding privileges aboard BART as long as they are serving the department in an official capacity. Upon resigning from or being removed from the Chaplain Program riding privileges will be terminated.

Trauma Response Team

377.1 PURPOSE AND SCOPE

Traumatic events precipitate feelings of anger, guilt, and disillusionment. These feelings are natural and should be expected as part of the psychological and physiological phenomena that occur during a traumatic event. Unfortunately these natural reactions are seldom understood or acknowledged and can, if not immediately addressed, lead to Post Traumatic Stress Disorder which could result in mental and physical health problems for the individual and his or her family, destructive behavior, and poor performance.

In an effort to minimize their effects, the BART Police Department has developed a Trauma Response Team comprised of personnel who are trained to perform psychological debriefing to those who are involved in a traumatic event.

377.1.1 PSYCHOLOGICAL CONSIDERATIONS FOR STRESSFUL SITUATIONS

Studies have shown that psychological trauma may occur when an officer has caused or witnessed the death or serious injury of another human being or has been directly involved in other traumatic situations. This procedure has been developed to assist our police personnel who may find themselves experiencing such a situation.

Therefore, the officers of this department who are subjected to severely stressful situations such as, but not limited to the following events should be afforded a debriefing to diagnose, assist, and prevent the symptoms of Post Traumatic Stress Disorder:

- a. Involvement in the death or serious injury of a human being
- b. Involvement in a situation when an officer is seriously injured but is physically able to receive counseling
- c. Involvement in any other extremely stressful situations i.e., (taken hostage, partner killed or seriously injured, prolonged assignment to mass death situation)

377.1.2 PSYCHOLOGICAL CONSULTATION EMPLOYEE INITIATED

Psychological counseling is available to any member of the department for problems arising from both work and non-work related situations based on decisions from the Trauma Response Team (TRT) Lieutenant or the Watch Commander.

When an employee desires to obtain psychological counseling for a work related problem, he/she shall contact the TRT Lieutenant or Watch Commander. The Watch Commander will assist the employee in processing the required workers compensation forms, when appropriate.

An employee who wishes to seek assistance on his or her own may obtain confidential counseling through the BART Police Department-Employee Assistance Program (EAP) by contacting Claremont EAP at (800) 788-8829. Claremont EAP can be reached 24 hours a day 7 days a week and is available to all employees and their families. All referrals will be kept confidential as permitted by law.

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377.1.3 GUIDELINES FOR TRAUMA RESPONSE TEAM

The Trauma Response Team will act in accordance with the following guidelines:

Confidentiality: The BART Police Department recognizes as "privileged communication" the dialog during a debriefing between members of the Trauma Response Team, acting under the direction of a licensed psychologist, and those employees affected by the traumatic event. However, "privileged communication" will not be recognized when information shared would lead a reasonable person to believe that a criminal act has occurred. This is in accordance with department Policy 201 General Duty Regulations and Conduct. Therefore, the Trauma Response Team will verbally notify the employee of this exception prior to any debriefing.

a. **Purpose:** The purpose of the Trauma Response Team is threefold:

1. To diagnose the symptoms of Post Traumatic Stress Disorder.
2. To provide comfort and support by meeting the involved employees' immediate needs.
3. To facilitate the understanding and expression of feelings and/or perceptual distortions experience during a traumatic event.

b. **Scope of Responsibility:** The Trauma Response Team should provide immediate and ongoing assistance under the following conditions:

1. When an employee perceives that he/she has been involved in a traumatic event, on or off-duty, and the employee requests the services of the Trauma Response Team.
2. When a supervisor recognizes that an employee has been involved in a traumatic event, on or off duty, that may have the result of severe emotional shock. Members of the Trauma Response Team will be aware of the differences in rank and the impact that difference may have on the debriefing process. Discretion will be used when considering debriefing a member of a different classification.

c. **Team Composition and Structure :** The Trauma Response Team is comprised of a TRT Lieutenant, a Team Coordinator and Debriefers,(which may include Sergeants, Officers, and Dispatchers). These team members will be in good standing with the department, have significant experience in police related traumatic incidents and have specialized ongoing training in assisting fellow officers and their families in dealing with the immediate adverse psychological reactions to traumatic situations. Department personnel can be removed from the team at any time based on the Chief of Police's discretion.

d. **Activation:** Under the conditions defined herein, under Scope of Responsibility, the on-duty Watch Commander should activate the Trauma Response Team in the following manner:

1. The Trauma Response Team Coordinator will maintain a roster of qualified personnel who are subject to call in the event of a traumatic incident. The roster will be maintained in the G-drive in the TRT file. The Watch Commander will notify the team coordinator and provide a synopsis of the event including the number of involved personnel. Once directed by the psychologist to proceed the Team Coordinator will determine the size of the deployment and make the appropriate

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notifications. A deployment will include a team supervisor and an appropriate cadre of team members based on the number of involved employees.

2. The Team Coordinator or Watch Commander will contact the psychologist and provide the psychologist with the description of the event.

3. Once activated, Trauma Response Team members will contact the incident or scene supervisor prior to contacting the personnel involved in the traumatic event. They will identify themselves to the affected employee(s) as members of the Trauma Response Team and explain the purpose of a debriefing which is to diagnose the symptoms of Post Traumatic Stress Disorder. The employee(s) may decline to participate in the debriefing. The employee(s) will be referred to the BART Police Department EAP at (800) 788-8829. In the event the employee refused a debriefing by the Trauma Response Team, the department may choose to mandate an evaluation by a licensed psychologist prior to the employee returning to regular duty.

4. The Watch Commander will activate the on-call chaplain. If necessary based on the need additional chaplains may be requested to respond. Trauma Response Team Members will coordinate with the police chaplain(s) and advise them of all the details concerning the event. The BART Police Department recognizes as "privileged communication" the dialog during a debriefing between police chaplains and those employees affected by the traumatic event. However, based on department Policy 376 Chaplain Program "privileged communication" will not be recognized when:

(a) A police chaplain who, as a consequence of obtaining any information from a member or employee, believes that the member /employee is an immediate danger to him/herself or others.

(b) Child, elder or dependent abuse is discovered while acting as a marriage, family, or child counselor and when acting as a religious practitioner, who diagnoses, examines, or treats children, elders, or dependent adults.

5. The BART Police Department places a high priority on the mental and emotional health of all of its employees. The effects of Post Traumatic Stress Disorder need to be addressed in a timely manner. The department will place a priority on the debriefing, allowing it to take place prior to criminal interviews, unless determined otherwise by the Chief of Police.

6. A Trauma Response Team member who is directly involved in a traumatic event as a subject or witness officer shall be excluded from performing the duties of a Trauma Response Team Member during a call- out.

377.1.4 COMMAND RESPONSIBILITY

The TRT Lieutenant will act as liaison between the Team, Command Staff and the Chief of Police.

The Trauma Response Team Coordinator, one of the TRT Sergeants, will be responsible for the following:

a. Supervision and administrative duties of the Trauma Response Team

b. In the absence of the TRT Lieutenant, acting as the liaison between the staff and the Team

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- c. Keeping the TRT Lieutenant apprised of any call outs or utilization of Trauma Response Team members
- d. Keeping the Watch Commander updated on the activities of the Team
- e. Arranging training for team members

377.1.5 TEAM SUPERVISOR

When activated, a Trauma Response Team Sergeant or designated member assumes the responsibility for all Trauma Response Team functions. These responsibilities will include, but are not limited to:

- a. Contact the department psychologist and advise him/her of the circumstances of the incident
- b. Liaison with all other involved investigative personnel as required
- c. Assess the need for additional team members
- d. Activation of other resources and liaison with the involved officer's family
- e. Advise the Team Coordinator of the circumstances of the activation, employees involved, Trauma Response Team members being used, and status of the debriefed personnel
- f. When unable to contact the Team Coordinator, contact the TRT Lieutenant and advise him/her of the circumstances of the activation, employees involved, team members being used and status of the debriefed personnel
- g. Update the Watch Commander of the activities of the Trauma Response Team
- h. Insure that the Trauma Response Team Activity Form is submitted to the Administrative Lieutenant after the conclusion of the debriefing

377.1.6 TRAINING

All Trauma Response Team members shall attend the basic training course. New members of the team will attend this course as soon as possible after being assigned to the team.

Any team member who has not attended the entire basic training course may not participate as a primary debriefer.

All Trauma Response Team members shall attend quarterly training. These training sessions range from four to eight hours and are presented by a licensed psychologist or designee. Absence from training must be approved by a Trauma Support Team supervisor.

377.1.7 OUTSIDE AGENCY REQUESTS FOR TRAUMA SUPPORT

The TRT Lieutenant will be immediately notified regarding any outside agency requests for the Trauma Response Team. The TRT Lieutenant will consider the following factors when deciding if the Trauma Response Team will assist the requesting agency:

- Type of incident
- Number of individuals needed to be debriefed

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- The number of Trauma Response Team members required

The TRT Lieutenant will receive approval from a Deputy Chief before activating team members for an outside agency request.

377.1.8 TRAUMA RESPONSE TEAM ACTIVITY FORM

The Department provides a Trauma Response Team Activity Form, which is to be submitted to the TRT Lieutenant after the conclusion of the debriefing. The response form will be maintained by the TRT Lieutenant. The activity form will document:

- The debriefers' activities
- Personnel debriefed
- A synopsis of the traumatic incident
- Logistical considerations such as overtime used and any incidental purchases

Within seven (7) working days after a debriefing, a completed "Trauma Response Team Activity Form" will be forwarded to:

- The Chief of Police;
- Deputy Chiefs

A quarterly Trauma Response Team Report describing the Team's activities will be completed by the TRT Lieutenant and forwarded via the chain of command to the Chief of Police for his/her review.

Child and Dependent Adult Safety

380.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that children and dependent adults are not left without appropriate care in the event their caregiver or guardian is arrested or otherwise prevented from providing care due to actions taken by members of this department (Penal Code § 833.2(a)).

This policy does not address the actions to be taken during the course of a child abuse or dependent adult investigation. These are covered in the Child Abuse and Adult Abuse policies.

380.2 POLICY

It is the policy of this department to mitigate, to the extent reasonably possible, the stressful experience individuals may have when their parent or caregiver is arrested. The Bay Area Rapid Transit Police Department will endeavor to create a strong, cooperative relationship with local, state and community-based social services to ensure an effective, collaborative response that addresses the needs of those affected, including call-out availability and follow-up responsibilities.

380.3 PROCEDURES DURING AN ARREST

When encountering an arrest or prolonged detention situation, officers should make reasonable attempts to determine if the arrestee is responsible for children or dependent adults. In some cases this may be obvious, such as when children or dependent adults are present. However, officers should inquire if the arrestee has caregiver responsibilities for any children or dependent adults who are without appropriate supervision. The following steps should be taken (Penal Code § 13517.7(b)(1)):

- (a) Inquire about and confirm the location of any children or dependent adults.
- (b) Look for evidence of children and dependent adults. Officers should be mindful that some arrestees may conceal the fact that they have a dependent for fear the individual may be taken from them.
- (c) Consider inquiring of witnesses, neighbors, friends and relatives of the arrestee as to whether the person is responsible for a child or dependent adult.

Whenever reasonably possible, officers should take reasonable steps to accomplish the arrest of a parent, guardian or caregiver out of the presence of his/her child or dependent adult. Removing children or dependent adults from the scene in advance of the arrest will generally ensure the best outcome for the individual.

Whenever it is safe to do so, officers should allow the parent or caregiver to assure children or dependent adults that they will be provided care. If this is not safe or if the demeanor of the parent or caregiver suggests this conversation would be non-productive, the officer at the scene should explain the reason for the arrest in age-appropriate language and offer reassurance to the child or dependent adult that he/she will receive appropriate care.

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380.3.1 AFTER AN ARREST

Whenever an arrest is made, the officer should take all reasonable steps to ensure the safety of the arrestee's disclosed or discovered children or dependent adults.

Officers should allow the arrestee reasonable time to arrange for care of children and dependent adults. Temporary placement with family or friends may be appropriate. However, any decision should give priority to a care solution that is in the best interest of the child or dependent adult. In such cases the following guidelines should be followed:

- (a) Allow the person reasonable time to arrange for the care of children and dependent adults with a responsible party, as appropriate.
 - 1. Officers should consider allowing the person to use his/her cell phone to facilitate arrangements through access to contact phone numbers, and to lessen the likelihood of call screening by the recipients due to calls from unknown sources.
- (b) Unless there is evidence to the contrary (e.g., signs of abuse, drug use, unsafe environment), officers should respect the parent or caregiver's judgment regarding arrangements for care. It is generally best if the child or dependent adult remains with relatives or family friends that he/she knows and trusts because familiarity with surroundings and consideration for comfort, emotional state and safety are important.
 - 1. Except when a court order exists limiting contact, the officer should attempt to locate and place children or dependent adults with the non-arrested parent, guardian or caregiver.
- (c) Provide for the immediate supervision of children or dependent adults until an appropriate caregiver arrives.
- (d) Notify Child Protective Services or the Division of Aging and Adult Services, if appropriate.
- (e) Notify the field supervisor or Watch Commander of the disposition of children or dependent adults.

If children or dependent adults are at school or another known location outside the household at the time of arrest, the arresting officer should attempt to contact the school or other known location and inform the principal or appropriate responsible adult of the caregiver's arrest and of the arrangements being made for the care of the arrestee's dependent. The result of such actions should be documented in the associated report.

380.3.2 DURING THE BOOKING PROCESS

During the booking process the arrestee shall be allowed to make additional telephone calls to relatives or other responsible individuals as is reasonably necessary to arrange for the care of any child or dependent adult. These telephone calls should be given as soon as practicable and are in addition to any other telephone calls allowed by law (Penal Code § 851.5(c)).

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If an arrestee is unable to resolve the care of any child or dependent adult through this process, a supervisor should be contacted to determine the appropriate steps to arrange for care. These steps may include additional telephone calls or contacting a local, county or state services agency.

380.3.3 REPORTING

- (a) For all arrests where children are present or living in the household, the reporting member will document the following information:
 - 1. Name
 - 2. Sex
 - 3. Age
 - 4. Special needs (e.g., medical, mental health)
 - 5. How, where and with whom or which agency the child was placed
 - 6. Identities and contact information for other potential caregivers
 - 7. Notifications made to other adults (e.g., schools, relatives)
- (b) For all arrests where dependent adults are present or living in the household, the reporting member will document the following information:
 - 1. Name
 - 2. Sex
 - 3. Age
 - 4. Whether he/she reasonably appears able to care for him/herself
 - 5. Disposition or placement information if he/she is unable to care for him/herself

380.3.4 SUPPORT AND COUNSELING REFERRAL

If, in the judgment of the handling officers, the child or dependent adult would benefit from additional assistance, such as counseling services, contact with a victim advocate or a crisis telephone number, the appropriate referral information may be provided.

380.4 DEPENDENT WELFARE SERVICES

Whenever an arrestee is unwilling or incapable of arranging for the appropriate care of any child or dependent adult, the handling officer should contact the appropriate welfare service or other department-approved social service to determine whether protective custody is appropriate (Welfare and Institutions Code § 305).

Only when other reasonable options are exhausted should a child or dependent adult be transported to the police facility, transported in a marked patrol car, or taken into formal protective custody.

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Under no circumstances should a child or dependent adult be left unattended or without appropriate care.

380.5 TRAINING

The Personnel and Training Lieutenant is responsible to ensure that all personnel of this department who may be involved in arrests affecting children or dependent adults receive approved POST-approved training on effective safety measures when a parent, guardian or caregiver is arrested (Penal Code § 13517.7).

Service Animals

382.1 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).

382.1.1 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).

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)).

382.2 POLICY

It is the policy of the Bay Area Rapid Transit 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.

382.3 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.
- 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.

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- 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.

382.4 MEMBER RESPONSIBILITIES

Service animals that are assisting individuals with disabilities are 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 Bay Area Rapid Transit Police Department affords to all members of the public (28 CFR 35.136).

382.4.1 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.

382.4.2 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.

382.4.3 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 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.

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382.4.4 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 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 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).

Off-Duty Law Enforcement Actions

386.1 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 Bay Area Rapid Transit Police Department with respect to taking law enforcement action while off-duty.

386.2 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.

386.3 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 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.

386.4 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.

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- (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.

386.4.1 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 Bay Area Rapid Transit Police Department officer until acknowledged. Official identification should also be displayed.

386.4.2 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.

386.4.3 CIVILIAN RESPONSIBILITIES

Civilian 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.

386.4.4 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.

386.5 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.

Line-of-Duty Deaths

388.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members of the BART Police Department in the event of the death of a member occurring in the line of duty and to direct the Department in providing proper support for the member's survivors.

The Chief of Police may also apply all or some of this policy in situations where members are injured in the line of duty and the injuries are life-threatening.

388.1.1 DEFINITIONS

Definitions related to this policy include:

Line-of-duty death - The death of a sworn member during the course of performing law enforcement-related functions while on or off-duty, or a non-sworn civilian member during the course of performing their assigned duties.

Survivors - Immediate family members of the deceased member, which can include spouse, children, parents, other next of kin or significant others. The determination of who should be considered a survivor for purposes of this policy should be made on a case-by-case basis given the individual's relationship with the member and whether the individual was previously designated by the deceased member.

388.2 POLICY

It is the policy of the BART Police Department to make appropriate notifications, as well as provide assistance and support to survivors and coworkers of a member who dies in the line of duty.

It is also the policy of this Department to respect the requests of the survivors when they conflict with these guidelines, as appropriate.

388.3 INITIAL ACTIONS BY COMMAND STAFF

- (a) Upon learning of a line-of-duty death, the deceased member's supervisor should provide all reasonably available information to the Watch Commander and the ISRC.
 1. Communication of information concerning the member and the incident should be restricted to secure networks to avoid interception by the media or others (see the Press Information Officer section of this policy).
- (b) The Watch Commander should ensure that notifications are made in accordance with the Officer-Involved Shootings and Deaths and Major Incident Notification policies as applicable.
- (c) If the member has been transported to the hospital, the Watch Commander or the designee should respond to the hospital to assume temporary responsibilities as the Hospital Liaison.
- (d) The Chief of Police or the authorized designee should assign members to handle survivor notifications and assign members to the roles of Hospital Liaison (to relieve

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the temporary Hospital Liaison) and the Department Liaison as soon as practicable (see the Notifying Survivors section and the Department Liaison and Hospital Liaison subsections in this policy).

388.4 NOTIFYING SURVIVORS

Survivors should be notified as soon as possible in order to avoid the survivors hearing about the incident in other ways.

The Chief of Police or the authorized designee should review the deceased member's emergency contact information and make accommodations to respect the member's wishes and instructions specific to notifying survivors. However, notification should not be excessively delayed because of attempts to assemble a notification team in accordance with the member's wishes.

The Chief of Police, Watch Commander or the authorized designee should select at least two members to conduct notification of survivors, one of which may be a Department Chaplain.

Notifying members should:

- (a) Make notifications in a direct and compassionate manner, communicating as many facts of the incident as possible, including the current location of the member. Information that is not verified should not be provided until an investigation has been completed.
- (b) Determine the method of notifying surviving children by consulting with other survivors and taking into account factors such as the child's age, maturity and current location (e.g., small children at home, children in school).
- (c) Plan for concerns such as known health concerns of survivors or language barriers.
- (d) Offer to transport survivors to the hospital, if appropriate. Survivors should be transported in department vehicles. Notifying members shall inform the Hospital Liaison over a secure network that the survivors are on their way to the hospital and should remain at the hospital while the survivors are present.
- (e) When survivors are not at their residences or known places of employment, actively seek information and follow leads from neighbors, other law enforcement, postal authorities and other sources of information in order to accomplish notification in as timely a fashion as possible. Notifying members shall not disclose the reason for their contact other than a family emergency.
- (f) If making notification at a survivor's workplace, ask a workplace supervisor for the use of a quiet, private room to meet with the survivor. Members shall not inform the workplace supervisor of the purpose of their visit other than to indicate that it is a family emergency.
- (g) Offer to call other survivors, friends or clergy to support the survivors and to avoid leaving survivors alone after notification.
- (h) Assist the survivors with meeting childcare or other immediate needs.

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- (i) Provide other assistance to survivors and take reasonable measures to accommodate their needs, wishes and desires. Care should be taken not to make promises or commitments to survivors that cannot be met.
- (j) Inform the survivors of the name and phone number of the Survivor Support Liaison (see the Survivor Support Liaison section of this policy), if known, and the Department Liaison.
- (k) Provide their contact information to the survivors before departing.
- (l) Document the survivor's names and contact information, as well as the time and location of notification. This information should be forwarded to the Department Liaison.
- (m) Inform the Chief of Police or the authorized designee once survivor notifications have been made so that other BART Police Department members may be apprised that survivor notifications are complete.

388.4.1 OUT-OF-AREA NOTIFICATIONS

The Department Liaison should request assistance from law enforcement agencies in appropriate jurisdictions for in-person notification to survivors who are out of the area.

- (a) The Department Liaison should contact the appropriate jurisdiction using a secure network and provide the assisting agency with the name and telephone number of the department member that the survivors can call for more information following the notification by the assisting agency.
- (b) The Department Liaison may assist in making transportation arrangements for the member's survivors, but will not obligate the Department to pay travel expenses without the authorization of the Chief of Police.

388.5 NOTIFYING DEPARTMENT MEMBERS

Supervisors or members designated by the Chief of Police are responsible for notifying department members of the line-of-duty death as soon as possible after the survivor notification is made. Notifications and related information should be communicated in person or using secure networks and should not be transmitted over the radio.

Notifications should be made in person and as promptly as possible to all members on-duty at the time of the incident. Members reporting for subsequent shifts within a short amount of time should be notified in person at the beginning of their shift. Those members who are working later shifts or are on days off should be notified by phone as soon as practicable.

Members having a close bond with the deceased member should be notified of the incident in person. Supervisors should consider assistance (e.g., peer support group, modifying work schedules, approving sick leave) for members who are especially affected by the incident.

Supervisors should direct members not to disclose any information outside the Department regarding the deceased member or the incident.

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388.6 LIAISONS AND COORDINATORS

The Chief of Police or the authorized designee should select members to serve as liaisons and coordinators to handle responsibilities related to a line-of-duty death, including, but not limited to:

- (a) Department Liaison
- (b) Hospital Liaison
- (c) Survivor Support Liaison
- (d) Critical Incident Stress Management (CISM) coordinator
- (e) Funeral Liaison
- (f) Mutual aid coordinator
- (g) Benefits Liaison
- (h) Finance coordinator

Liaisons and coordinators will be directed by the Department Liaison and should be given sufficient duty time to complete their assignments.

Members may be assigned responsibilities of more than one liaison or coordinator position depending on available department resources. The Department Liaison may assign separate liaisons and coordinators to accommodate multiple family units, if needed.

388.6.1 DEPARTMENT LIAISON

The Department Liaison should be a Division Commander or of sufficient rank to effectively coordinate department resources, and should serve as a facilitator between the deceased member's survivors and the Department. The Department Liaison reports directly to the Chief of Police. The Department Liaison's responsibilities include, but are not limited to:

- (a) Directing the other liaisons and coordinators in fulfilling survivors' needs and requests. Consideration should be given to organizing the effort using the National Incident Management System (NIMS).
- (b) Establishing contact with survivors within 24 hours of the incident and providing them contact information.
- (c) Advising survivors of the other liaison and coordinator positions and their roles and responsibilities.
- (d) Identifying locations that will accommodate a law enforcement funeral and presenting the options to the appropriate survivors, who will select the location.
- (e) Coordinating all official law enforcement notifications and arrangements.
- (f) Making necessary contacts for authorization to display flags at half-mast.
- (g) Ensuring that department members are reminded of appropriate information—sharing restrictions regarding the release of information that could undermine future legal proceedings.
- (h) Coordinating security checks of the member's residence as necessary and reasonable.

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- (i) Serving as a liaison with visiting law enforcement agencies during memorial and funeral services.

388.6.2 HOSPITAL LIAISON

The Hospital Liaison should work with hospital personnel to:

- (a) Arrange for appropriate and separate waiting areas for:
 1. The survivors and others whose presence is requested by the survivors.
 2. Department members and friends of the deceased member.
 3. Media personnel.
- (b) Ensure, as much as practicable, that any suspects who are in the hospital and their families or friends are not in close proximity to the member's survivors or BART Police Department members (except for members who may be guarding the suspect).
- (c) Ensure that survivors receive timely updates regarding the member before information is released to others.
- (d) Arrange for survivors to have private time with the member, if requested.
 1. The Hospital Liaison or hospital personnel may need to explain the condition of the member to the survivors to prepare them accordingly.
 2. The Hospital Liaison should accompany the survivors into the room, if requested.
- (e) Stay with survivors and ensure that they are provided with other assistance as needed at the hospital.
- (f) If applicable, explain to the survivors why an autopsy may be needed.
- (g) Ensure hospital bills are directed to the Department, that the survivors are not asked to sign as guarantor of payment for any hospital treatment and that the member's residence address, insurance information and next of kin are not included on hospital paperwork.

Other responsibilities of the Hospital Liaison include, but are not limited to:

- Arranging transportation for the survivors back to their residence.
- Working with investigators to gather and preserve the deceased member's equipment and other items that may be of evidentiary value.
- Documenting his/her actions at the conclusion of his/her duties.

388.6.3 SURVIVOR SUPPORT LIAISON

The Survivor Support Liaison should work with the Department Liaison to fulfill the immediate needs and requests of the survivors of any member who has died in the line of duty, and serve as the long-term department contact for survivors.

The Survivor Support Liaison should be selected by the deceased member's Division Commander. The following should be considered when selecting the Survivor Support Liaison:

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- The liaison should be an individual the survivors know and with whom they are comfortable working.
- If the survivors have no preference, the selection may be made from names recommended by the deceased member's supervisor and/or coworkers. The deceased member's partner or close friends may not be the best selections for this assignment because the emotional connection to the member or survivors may impair their ability to conduct adequate liaison duties.
- The liaison must be willing to assume the assignment with an understanding of the emotional and time demands involved.

The responsibilities of the Survivor Support Liaison include, but are not limited to:

- (a) Arranging for transportation of survivors to hospitals, places of worship, funeral homes and other locations, as appropriate.
- (b) Communicating with the Department Liaison regarding appropriate security measures for the family residence, as needed.
- (c) If requested by the survivors, providing assistance with instituting methods of screening telephone calls made to their residence after the incident.
- (d) Providing assistance with travel and lodging arrangements for out-of-town survivors.
- (e) Returning the deceased member's personal effects from the Department and the hospital to the survivors. The following should be considered when returning the personal effects:
 1. Items should not be delivered to the survivors until they are ready to receive the items.
 2. Items not retained as evidence should be delivered in a clean, unmarked box.
 3. All clothing not retained as evidence should be cleaned and made presentable (e.g., items should be free of blood or other signs of the incident).
 4. The return of some personal effects may be delayed due to ongoing investigations.
- (f) Assisting with the return of department-issued equipment that may be at the deceased member's residence.
 1. Unless there are safety concerns, the return of the equipment should take place after the funeral at a time and in a manner considerate of the survivors' wishes.
- (g) Working with the CISM coordinator to ensure that survivors have access to available counseling services.
- (h) Coordinating with the department's Press Information Officer (PIO) to brief the survivors on pending press releases related to the incident and to assist the survivors with media relations in accordance with their wishes (see the Press Information Officer section of this policy).
- (i) Briefing survivors on investigative processes related to the line-of-duty death, such as criminal, internal and administrative investigations.

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- (j) Informing survivors of any related criminal proceedings and accompanying them to such proceedings.
- (k) Introducing survivors to prosecutors, victim's assistance personnel and other involved personnel as appropriate.
- (l) Maintaining long-term contact with survivors and taking measures to sustain a supportive relationship (e.g., follow-up visits, phone calls, cards on special occasions, special support during holidays).
- (m) Inviting survivors to Department activities, memorial services or other functions as appropriate.

Survivor Support Liaisons providing services after an incident resulting in multiple members being killed should coordinate with and support each other through conference calls or meetings as necessary.

The Department recognizes that the duties of a Survivor Support Liaison will often affect regular assignments over many years, and is committed to supporting members in the assignment.

If needed, the Survivor Support Liaison should be issued a personal communication device (PCD) owned by the Department to facilitate communications necessary to the assignment. The department-issued PCD shall be used in accordance with the Personal Communication Devices Policy.

388.6.4 CRITICAL INCIDENT STRESS MANAGEMENT COORDINATOR

The CISM coordinator should work with the Chief of Police or the authorized designee, liaisons, coordinators and other resources to make CISM and counseling services available to members and survivors who are impacted by a line-of-duty death. The responsibilities of the CISM coordinator include, but are not limited to:

- (a) Identifying members who are likely to be significantly affected by the incident and may have an increased need for CISM and counseling services, including:
 - 1. Members involved in the incident
 - 2. Members who witnessed the incident
 - 3. Members who worked closely with the deceased member but were not involved in the incident
- (b) Ensuring that members who were involved in or witnessed the incident are relieved of department responsibilities until they can receive CISM support as appropriate and possible.
- (c) Ensuring that CISM and counseling resources (e.g., peer support, debriefing, grief counselors) are available to members as soon as reasonably practicable following the line-of-duty death.
- (d) Coordinating with the Survivor Support Liaison to ensure survivors are aware of available CISM and counseling services and assisting with arrangements as needed.

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- (e) Following up with members and the Survivor Support Liaison in the months following the incident to determine if additional CISM or counseling services are needed.

388.6.5 FUNERAL LIAISON

The Funeral Liaison should work with the Department Liaison, Survivor Support Liaison and survivors to coordinate funeral arrangements to the extent the survivors wish. The Funeral Liaison's responsibilities include, but are not limited to:

- (a) Assisting survivors in working with the funeral director regarding funeral arrangements and briefing them on law enforcement funeral procedures.
- (b) Completing funeral notification to other law enforcement agencies.
- (c) Coordinating the funeral activities of the Department, including, but not limited to the following:
 1. Honor Guard
 - (a) Casket watch
 - (b) Color guard
 - (c) Pallbearers
 - (d) Bell/rifle salute
 2. Bagpipers/bugler
 3. Uniform for burial
 4. Flag presentation
 5. Last radio call
- (d) Briefing the Chief of Police and command staff concerning funeral arrangements.
- (e) Assigning an officer to remain at the family home during the viewing and funeral.
- (f) Arranging for transportation of the survivors to and from the funeral home and interment site using department vehicles and drivers.

388.6.6 MUTUAL AID COORDINATOR

The mutual aid coordinator should work with the Department Liaison and the Funeral Liaison to request and coordinate any assistance from outside law enforcement agencies needed for, but not limited to:

- (a) Traffic control during the deceased member's funeral.
- (b) Area coverage so that as many BART Police Department members can attend funeral services as possible.

The mutual aid coordinator should perform his/her duties in accordance with the Mutual Aid and Outside Agency Assistance Policy.

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388.6.7 BENEFITS LIAISON

The Benefits Liaison should provide survivors with information concerning available benefits and assist them in applying for benefits. Responsibilities of the Benefits Liaison include, but are not limited to:

- (a) Confirming the filing of workers' compensation claims and related paperwork (see the Occupational Disease and Work-Related Injury Reporting Policy).
- (b) Researching and assisting survivors with application for federal government survivor benefits, such as those offered through the:
 1. Public Safety Officers' Benefits (PSOB) Programs
 2. Public Safety Officers' Educational Assistance (PSOEA) Program
 3. Social Security Administration
 4. Department of Veterans Affairs
 5. Concerns of Police Survivors (C.O.P.S.)
- (c) Researching and assisting survivors with application for state and local government survivor benefits.
 1. Education benefits (Education Code § 68120)
 2. Health benefits (Labor Code § 4856)
 3. Worker's compensation death benefit (Labor Code § 4702)
- (d) Researching and assisting survivors with application for other survivor benefits such as:
 1. Private foundation survivor benefits programs
 2. Survivor scholarship programs
- (e) Researching and informing survivors of support programs sponsored by police and/or sheriff's associations, as well as other organizations.
- (f) Documenting and informing survivors of inquiries and interest regarding public donations to the survivors.
 1. If requested, working with the finance coordinator to assist survivors with establishing a process for the receipt of public donations..
- (g) Providing survivors with a summary of the nature and amount of benefits applied for, including the name of a contact person at each benefit office. Printed copies of the summary and benefit application documentation should be provided to affected survivors.
- (h) Maintaining contact with the survivors and assisting with subsequent benefit questions and processes as needed.

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388.6.8 FINANCE COORDINATOR

The finance coordinator should work with the Chief of Police and the Department Liaison to manage financial matters related to the line-of-duty death. The finance coordinator's responsibilities include, but are not limited to:

- (a) Establishing methods for purchasing and monitoring costs related to the incident.
- (b) Providing information on finance-related issues, such as:
 - 1. Paying survivors' travel costs if authorized.
 - 2. Transportation costs for the deceased.
 - 3. Funeral and memorial costs.
 - 4. Related funding or accounting questions and issues.
- (c) Working with the Benefits Liaison to establish a process for the receipt of public donations to the deceased member's survivors.
- (d) Providing accounting and cost information as needed.

388.7 PRESS INFORMATION OFFICER

In the event of a line-of-duty death, the department's PIO should be the department's contact point for media related matters, working in conjunction with BART's Media and Public Affairs Department. As such, the PIO, should coordinate with the Department Liaison to:

- (a) Collect and maintain the most current incident information and determine what information should be released.
- (b) Ensure that department members are instructed to direct any media inquiries to the PIO or BART's Media and Public Affairs Department.
- (c) Prepare necessary press releases.
 - 1. Ensure coordination with other entities having media roles (e.g., outside agencies involved in the investigation or incident).
 - 2. Ensure that important public information is disseminated, such as information on how the public can show support for the Department and deceased member's survivors.
- (d) Arrange for community and media briefings by the Chief of Police or the authorized designee as appropriate.
- (e) Respond, or coordinate the response, to media inquiries.
- (f) If requested, assist the member's survivors with media inquiries.
 - 1. Brief the survivors on handling sensitive issues such as the types of questions that reasonably could jeopardize future legal proceedings.
- (g) Release information regarding memorial services and funeral arrangements to department members, other agencies and the media as appropriate.
- (h) If desired by the survivors, arrange for the recording of memorial and funeral services via photos and/or video.

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The identity of deceased members should be withheld until the member's survivors have been notified. If the media has obtained identifying information for the deceased member prior to survivor notification, the PIO should request that the media withhold the information from release until proper notification can be made to survivors. The PIO should ensure that media are notified when survivor notifications have been made.

388.8 DEPARTMENT CHAPLAIN

The Department chaplain may serve a significant role in line-of-duty deaths. His/her duties may include, but are not limited to:

- Assisting with survivor notifications and assisting the survivors with counseling, emotional support or other matters, such as funeral planning, as appropriate.
- Assisting liaisons and coordinators with their assignments, as appropriate.
- Assisting department members with counseling or emotional support, as requested and appropriate.

Further information on the potential roles and responsibilities of the chaplain are contained in the Chaplain Program policy – 376.

388.9 INVESTIGATION OF THE INCIDENT

The Chief of Police shall ensure that line-of-duty deaths are investigated thoroughly and may choose to use the investigation process outlined in the Officer-Involved Shootings and Deaths Policy.

Investigators from other agencies may be assigned to work on any criminal investigation related to line-of-duty deaths. Partners, close friends or personnel who worked closely with the deceased member should not have any investigative responsibilities because such relationships may impair the objectivity required for an impartial investigation of the incident.

Involved department members should be kept informed of the progress of the investigations and provide investigators with any information that may be pertinent to the investigations.

388.10 LINE-OF-DUTY DEATH OF A LAW ENFORCEMENT ANIMAL

The Chief of Police may authorize appropriate memorial and funeral services for law enforcement animals killed in the line of duty.

388.11 NON-LINE-OF-DUTY DEATH

The Chief of Police may authorize certain support services for the death of a member not occurring in the line of duty.

Gun Violence Restraining Orders

389.1 PURPOSE AND SCOPE

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 (Penal Code § 18108).

389.1.1 DEFINITIONS

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).

389.2 POLICY

It is the policy of the Bay Area Rapid Transit 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.

389.3 GUN VIOLENCE RESTRAINING ORDERS

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 a temporary order (Penal Code § 18140).

389.3.1 ADDITIONAL CONSIDERATIONS

Officers should also consider requesting permission to petition the court for a gun violence restraining order (Penal Code § 18108):

- (a) When responding to a domestic disturbance where the residence is associated with a firearm registration or record.
- (b) When responding to any call or incident when a firearm is present or when one of the involved parties owns or possesses a firearm.

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- (c) During a contact with a person exhibiting mental health issues, including suicidal thoughts, statements, or actions if that person owns or possesses a firearm.

Officers should consider obtaining a mental health evaluation if the encounter involves a situation where there is a reasonable cause to believe that the person poses an immediate and present danger of causing personal injury to themselves or another person by having custody or control of a firearm (see the Mental Illness Commitments Policy) (Penal Code § 18108).

389.4 SERVICE OF GUN VIOLENCE RESTRAINING ORDERS

An officer

deadly weapon discovered in plain view or pursuant to consent or other lawful search (Penal Code § 18250).

- (a) Inform the restrained person of any scheduled hearing regarding the order (Penal Code § 18160).
- (b) Transmit the original proof of service form to the issuing court as soon as practicable but within one business day (Penal Code § 18115).
- (c) As soon as practicable, but by the end of his/her shift, submit proof of service to the Records Supervisor 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.

389.4.1 TEMPORARY EMERGENCY GUN VIOLENCE RESTRAINING ORDERS

An officer requesting a temporary emergency gun violence restraining order shall (Penal Code § 18140):

- (a) For oral requests, sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer and memorialize the order of the court on the form approved by the Judicial Council.
- (b) Serve the order on the restrained person if the person can be reasonably located.
- (c) Forward a copy of the order to the Records Supervisor for filing with the court and appropriate databases.

389.5 SEARCH WARRANTS

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.

389.6 RECORDS SUPERVISOR RESPONSIBILITIES

The Records Supervisor 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) Temporary orders are entered into the California Restraining and Protective Order System (Penal Code § 18140).
- (c) Copies of temporary orders are filed with the court as soon as practicable, but no later than three court days, after issuance (Penal Code § 18140).
- (d) 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).
- (e) Any relinquishment of firearm rights form received from the court is entered into the California Restraining and Protective Order System within one business day of receipt (Penal Code § 18115).

389.7 COURT-ORDERED FIREARMS AND AMMUNITION SURRENDERS

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.

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- (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.

389.8 RELEASE OF FIREARMS AND AMMUNITION

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.

389.9 GUN VIOLENCE RESTRAINING ORDER COORDINATOR

The Chief of Police will appoint a gun violence restraining order coordinator. The responsibilities of the coordinator include:

- (a) Developing and maintaining procedures for the filing of a petition for an order or a renewal of an order by department members, also including procedures for requesting and serving (Penal Code § 18108):
 - 1. A temporary emergency gun violence restraining order.
 - 2. An ex parte gun violence restraining order.
 - 3. A gun violence restraining order issued after notice and hearing.
- (b) Developing and maintaining factors to consider when assessing the need to seek an order, including:
 - 1. Whether threats have been made, and if so, whether the threats are credible and specific.
 - 2. Whether the potential victim is within close proximity.
 - 3. Whether the person has expressed suicidal tendencies.
 - 4. Whether the person has access to firearms.
 - 5. The criminal history of the person, in particular any history of criminal violence, including whether the person is currently on parole, probation, or monitored release.
 - 6. The mental health history of the person, in particular whether the person has any history of mental illness or has ever been detained for being a danger to themselves or others.
 - 7. Any upcoming holidays, anniversaries, or other dates of significance that may serve as a trigger for the person, such as the death of a family member.
 - 8. Whether the person has any history of drug or alcohol abuse.
- (c) Developing and maintaining procedures for the receipt and service of orders consistent with the requirements of Penal Code § 18115; Penal Code § 18120; Penal Code § 18135; Penal Code § 18140; and Penal Code § 18160. Procedures should include:

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1. Evaluation of an order to determine appropriate service and necessary precautions (see the Warrant Service Policy and the Operations Planning and Deconfliction Policy).
 2. Forwarding orders to the Records Supervisor for recording in appropriate databases and required notice to the court, as applicable.
 3. Preparing or obtaining a search warrant prior to attempting service of an order, when appropriate (Penal Code § 18108).
 4. Seizure procedures of firearms and ammunition at the time of issuance of a temporary emergency gun violence restraining order.
 5. Verification procedures for the removal of firearms and ammunition from the subject of a gun violence restraining order.
- (d) Coordinating with the Personnel and Training Lieutenant to provide officers who may be involved in petitioning for or serving orders with training on such orders. Training should include determining when a petition is appropriate, the process for seeking an order, and the service of such orders.
- (e) Reviewing each petition and any associated court documents for an order prepared by members, for compliance with this policy, department procedures, and state law.
- (f) Developing and maintaining procedures for members to accept voluntarily surrendered prohibited items at times other than when an order is being served by the Department.
1. Procedures should include preparing and providing a receipt identifying all prohibited items to the person surrendering the items.
- (g) Coordinating review of notices of court hearings and providing notice to the appropriate officer of the hearing date and the responsibility to appear (Penal Code § 18108).

389.10 RENEWAL OF GUN VIOLENCE RESTRAINING ORDERS

The Criminal Investigations Division supervisor is responsible for the review of a gun violence restraining order obtained by the Department to determine if renewal should be requested within the time prescribed by law (Penal Code § 18190).

389.11 POLICY AVAILABILITY

The Chief of Police or the authorized designee shall be responsible for making this policy available to the public upon request (Penal Code § 18108).

389.12 TRAINING

The Personnel and Training Lieutenant should ensure that members receive periodic training on the requirements of this policy (Penal Code § 18108).

Chapter 4 - Patrol Operations

Operations Function

400.1 PURPOSE AND SCOPE

The purpose of this policy is to define the patrol function and address intraorganizational cooperation and information sharing.

400.1.1 TERRORISM

It is the goal of the Bay Area Rapid Transit Police Department to make every reasonable effort to investigate and appropriately gather and report any intelligence that may relate incidents of significant security concerns. It is important that information be communicated between federal, state and local agencies. These incidents may or may not be related terrorism. Officers should advise a supervisor as soon as practicable of any activity believed to be of a significant security concern to the District. Such incidents should be thoroughly investigated and documented with a written report. Field interviews (FI) or contacts which may raise significant security concerns should also be reported. The supervisor should notify the watch commander of all the pertinent details and will ensure that all terrorism related reports and FIs are forwarded to the Criminal Investigations Division Supervisor in a timely fashion.

The watch commander is responsible for notifying the Transportation Security Operations Center (TSOC) at 1-866 615-5150 (e-mail TSOC.ST@dhs.gov) and the Operations Bureau Deputy Chief. Refer to policy #471 for further details about notification to TSOC.

400.2 INFORMATION SHARING

To the extent feasible, all information relevant to the mission of the Department should be shared among all bureaus and specialized units on a timely basis. Members should be provided with opportunities on a regular basis to share information during the daily roll calls and to attend roll calls of other bureaus or specialized units.

Additionally, information should be shared with outside agencies and the public in conformance with department policies and applicable laws. Members are encouraged to share information with other units and bureaus.

400.2.1 CRIME REPORTS

A crime report may be completed by any patrol officer who receives criminal information. The report will be processed and forwarded to the appropriate bureau for retention or follow-up investigation.

400.2.2 PATROL BRIEFINGS

Patrol supervisors, the detective sergeant, and special unit sergeants are encouraged to share information as much as possible. All supervisors and/or officers will be provided an opportunity to share information at the daily patrol briefings as time permits.

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400.2.3 INFORMATION CLIPBOARDS

Several information clipboards will be maintained in the briefing room and will be available for review by officers from all bureaus within the department. These will include, but not be limited to, the patrol-check clipboard, the wanted-persons clipboard, and the written-directives clipboard.

400.2.4 BULLETIN BOARDS

A bulletin board will be kept in the briefing room for display of suspect information, intelligence reports and photographs. New special orders will be made available to patrol supervisors and will be discussed at briefings and shift meetings. A copy of new special orders will be placed on the briefing-room information clipboard.

400.3 CROWDS, EVENTS AND GATHERINGS

Officers may encounter gatherings of people, including but not limited to, civil demonstrations, civic, social and business events, public displays, parades and sporting events. Officers should monitor such events as time permits in an effort to keep the peace and protect the safety and rights of those present. A patrol supervisor should be notified when it becomes reasonably foreseeable that such an event may require increased monitoring, contact or intervention.

Officers responding to an event or gathering that warrants law enforcement involvement should carefully balance the speech and association rights of those present with applicable public safety concerns before taking enforcement action.

Generally, officers should consider seeking compliance through advisements and warnings for minor violations and should reserve greater enforcement options for more serious violations or when voluntary compliance with the law is not achieved.

Officers are encouraged to contact organizers or responsible persons to seek voluntary compliance that may address relevant public safety/order concerns.

Officers should consider enforcement of applicable state and local laws, such as Penal Code 602.1 (obstructing or intimidating business operators), when the activity blocks the entrance or egress of a facility or location and when voluntary compliance with the law is not achieved.

400.4 FUNCTION

Patrol will generally be conducted by uniformed officers in clearly marked law enforcement vehicles in assigned jurisdictional areas of San Francisco Bay Area Rapid Transit District. The function of patrol is to respond to calls for assistance and reports of criminal activity, act as a deterrent to crime, enforce state and local laws, identify community needs, provide support and assistance to the community and respond to emergencies.

Patrol services include, but are not limited to:

- (a) Responding to emergency calls for service.
- (b) Apprehending criminal offenders.

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- (c) Providing mutual aid and assistance to other agencies for emergency and law enforcement-related activities.
- (d) Preventing criminal acts, traffic violations and collisions, maintaining public order and discovering hazardous situations or conditions.
- (e) Responding to reports of criminal and non-criminal acts.
- (f) Responding to routine calls for service, such as public assistance or public safety.
- (g) Carrying out crime prevention activities such as residential inspections, business inspections and community presentations.
- (h) Carrying out community oriented policing and problem-solving activities including the application of resources to improve or resolve specific problems or situations and contacting or assisting members of the public in a positive way.
- (i) Directing and controlling traffic.

400.5 POLICY

The Bay Area Rapid Transit Police Department provides patrol services 24 hours a day, seven days a week and will prioritize responses to requests for emergency services using available resources to enhance the safety of the public and department members.

Bias-Based Policing

402.1 PURPOSE AND SCOPE

This policy provides guidance to department members and establishes appropriate controls to ensure that employees of the Bay Area Rapid Transit Police Department do not engage in racial- or bias-based profiling or violate any related laws while serving the community.

402.1.1 DEFINITIONS

Definitions related to this policy include:

Bias-based policing - An inappropriate reliance on actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement (Penal Code § 13519.4).

402.2 POLICY

The Bay Area Rapid Transit Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly and without discrimination toward any individual or group.

Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law.

402.3 RACIAL- OR BIAS-BASED PROFILING PROHIBITED

Racial- or bias-based profiling is strictly prohibited. However, nothing in this policy is intended to prohibit an officer from considering factors such as race or ethnicity in combination with other legitimate factors to establish reasonable suspicion or probable cause (e.g., suspect description is limited to a specific race or group).

402.3.1 CALIFORNIA RELIGIOUS FREEDOM ACT

Members shall not collect information from a person based on religious belief, practice, affiliation, national origin or ethnicity unless permitted under state or federal law (Government Code § 8310.3).

Members shall not assist federal government authorities (Government Code § 8310.3):

- (a) In compiling personal information about a person's religious belief, practice, affiliation, national origin or ethnicity.
- (b) By investigating, enforcing or assisting with the investigation or enforcement of any requirement that a person register with the federal government based on religious belief, practice, or affiliation, or national origin or ethnicity.

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402.4 MEMBER RESPONSIBILITY

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any known instances of racial- or bias-based profiling to a supervisor.

402.4.1 REASON FOR DETENTION

Officers detaining a person shall be prepared to articulate sufficient reasonable suspicion to justify a detention, independent of the individual's membership in a protected class.

To the extent that written documentation would otherwise be completed (e.g., arrest report, Field Interview (FI) card), the involved officer should include those facts giving rise to the officer's reasonable suspicion or probable cause for the detention, as applicable.

Nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

402.4.2 REPORTING TRAFFIC STOPS

Each time an officer makes a traffic stop, the officer shall report any information required in the Traffic Function and Responsibility Policy.

402.5 SUPERVISOR RESPONSIBILITY

Supervisors shall monitor those individuals under their command for any behavior that may conflict with the purpose of this policy and shall handle any alleged or observed violation of this policy in accordance with the Personnel Complaints Policy.

- (a) Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner.
- (b) Supervisors should periodically review MAV recordings, MDC data and any other available resource used to document contact between officers and the public to ensure compliance with the policy.
 1. Supervisors should document these periodic reviews.
 2. Recordings that capture a potential instance of racial- or bias-based profiling should be appropriately retained for administrative investigation purposes.
- (c) Supervisors shall initiate investigations of any actual or alleged violations of this policy.
- (d) Supervisors should ensure that no retaliatory action is taken against any member of this department who discloses information concerning racial- or bias-based profiling.

402.6 ADMINISTRATION

Each year, the Operations Division Commander shall review the efforts of the Department to prevent racial- or bias-based profiling and submit an overview, including public concerns and complaints, to the Chief of Police.

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This report should not contain any identifying information regarding any specific complaint, citizen or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors shall review the annual report and discuss the results with those they are assigned to supervise.

402.7 TRAINING

Training on racial- or bias-based profiling and review of this policy should be conducted as directed by the Personnel and Training Bureau.

- (a) All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of racial- or bias-based profiling.
- (b) Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.
- (c) Each sworn member of this department who received initial racial- or bias-based profiling training will thereafter be required to complete an approved refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial and cultural trends (Penal Code § 13519.4(i)).

402.8 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Internal Affairs Division Manager shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and provided to the Records Supervisor for required reporting to the DOJ (Penal Code § 13012; Penal Code § 13020). See the Records Division Policy.

Supervisors should ensure that data stop reports are provided to the Records Supervisor for required annual reporting to the DOJ (Government Code § 12525.5) (See Records Bureau Policy).

Interactions With Individuals Identifying As Transgender

403.1 PURPOSE AND SCOPE

The San Francisco Bay Area Rapid Transit District Police Department (BPD) recognizes and places a high priority on the rights of all people. This policy establishes a procedure for handling interactions with transgender people.

403.2 DEFINITION

Gender Identity - One's internal, deeply held sense of gender. Unlike gender expression (see below), gender identity is not visible to others.

Gender Expression - External manifestations of gender; expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics.

Transgender (adj.) - An umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth. People under the transgender umbrella may describe themselves using one or more of a wide variety of terms, including transgender.

403.3 INTERACTIONS WITH TRANSGENDER PEOPLE

BPD officers and employees are to interact with transgender people and the transgender community in a manner that is professional, respectful, and courteous.

Officers are cautioned not to treat a person's transgender status or appearance as a basis of suspicion or as evidence of a crime.

Officers shall follow the policies governing interactions with transgender people when either of these two conditions is met:

- (a) A person explicitly informs the officer(s) that the person is a transgender person.
- (b) An officer has good reason to believe that the person is a transgender person. Good reason may be based on apparent intention of gender appearance and presentation; reasonable observation; background checks; third party information; prior interaction, and/or routine policing procedures.

If gender expression does not clearly indicate a transgender person's identity, an officer may politely and respectfully ask how the person wishes to be addressed. For example, an officer may ask a transgender person which name and pronoun the person prefers.

When a person self-identifies as a transgender person, officers should not question this identity or ask about the person's transition status. An officer should not engage in any argument, disagreement, or debate regarding a person's self-identification as a transgender person. If an officer does question such self-identification, or asks about a person's transgender status, that

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officer shall provide a compelling, professional, and articulable reason for having done so. The reason(s) shall be properly documented in writing in the form of a BPD Police Report, at minimum.

An officer should not ask questions or make statements about a transgender person's genitalia, breasts, or transition status. If an officer does ask such questions or make such statements, that officer shall provide a compelling, professional, and articulable reason for having done so. The reason(s) shall be properly documented in writing in the form of a BPD Police Report, at minimum.

Whether or not the name on a person's driver's license or identification card coincides with the person's gender identity, an officer shall address or refer to the person by the name that the person has used to identify him or herself. An officer shall also use the pronouns consistent with the name provided by the person.

This department recognizes and places a high priority on the rights of all individuals guaranteed under the Constitution and the laws of this state. Under no circumstances may an officer frisk, search, or otherwise touch any person for the purpose of obtaining information about that person's gender status. An officer shall comply with all existing laws and BPD policies regarding search and seizure (Lexipol Policy 322). Under no circumstances shall transgender people be subject to more invasive search procedures than non-transgender people.

403.4 DETERMINATION OF LEGAL NAME

In the event a transgender person's legal name is required, the person's legal name should be obtained in the following manner:

Absent extenuating circumstances, an officer should ask the person for his or her legal name in a one-on-one situation. If the contact is in a group environment, the officer should ask the person to step outside the group to obtain the legal name and avoid "outing" the person.

If an officer asks a transgender person for his or her legal name in the presence of others, that officer shall provide a compelling, professional, and articulable reason for having done so. The reason(s) shall be properly documented in writing in the form of a BPD Police Report, at minimum.

403.5 MEDICAL TREATMENT OF TRANSGENDER ARRESTEES

Whenever a transgender person who is detained by or in the custody of BPD requires or expresses a need for medical attention or medication (including, but not limited to hormone therapy), an officer shall respond to and address the need with the same urgency and respect as required in connection with any other medical need, illness, or injury experienced by any other detainee or arrestee.

403.6 PROCESSING OF TRANSGENDER ARRESTEES

Appearance-related items, including, but not limited to, prosthetics, clothes, wigs, or make-up should not be confiscated or removed from transgender people unless such items present a safety hazard, impede the administration of medical attention, or are needed for evidentiary reasons (Lexipol Policy 902). If an officer confiscates or removes a transgender person's appearance-

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related items, that officer shall provide a compelling, professional, and articulable reason for having done so. The reason(s) shall be properly documented in writing in the form of a BPD Police Report, at minimum.

403.7 JUVENILE TRANSGENDER INDIVIDUALS

All interactions with juvenile transgender individuals shall conform to the mandates set out by this policy. This policy does not affect any other provisions outlined in applicable directives and laws covering the processing and handling of juveniles.

403.8 PROTECTION OF PRIVACY

Under no circumstances should an officer disclose that a person is transgender to non-police personnel or to other non-relevant BPD personnel. If an officer does disclose such information as described, that officer shall provide a compelling, professional, and articulable reason for having done so. The reason(s) shall be properly documented in writing in the form of a BPD Police Report, at minimum.

403.9 CONFIDENTIALITY OF RECORDS AND DATA

If a person has self-identified as transgender, this information may be recorded in public documents. If the person has not self-identified as transgender, this information should not be recorded in public documents. If an officer does record such information in any public document, that officer shall provide a compelling, professional, and articulable reason for having done so. The reason(s) shall be properly documented in writing in the form of a BPD Police Report, at minimum.

403.10 RECORD - KEEPING AND DATA TRACKING

All BPD forms and reports (both paper and computerized/digital) which record the gender of a person shall be revised to include transgender identity.

BPD shall establish and maintain records concerning the number of calls involving transgender people and the corresponding police service response. The Chief of Police, or his/her designee, shall report to the BART Citizen Review Board annually about the number of calls involving transgender people and the corresponding police service response.

All case reports, other reports and non-charging documents shall refer to a transgender person's name as shown on official documents. The person's preferred name shall be listed as an alias or, "Also Known As," (AKA). Preferred gender pronouns should be used in the narrative.

403.11 TRAINING

Training on interactions with transgender people and review of this Policy shall be conducted as directed by the Personnel and Training Section.

All BPD members will be scheduled to attend a Peace Officer Standards and Training (POST) or other departmentally approved training on the subject of interactions with transgender people.

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Each sworn member of this Department who receives initial training will thereafter be required to complete an approved refresher course, as deemed necessary, in order to stay apprised of changing cultural conditions.

Roll Call Training

404.1 PURPOSE AND SCOPE

Roll Call training is generally conducted at the beginning of the officer's assigned shift. Roll Call provides an opportunity for important exchange between employees and supervisors. A supervisor generally will conduct Roll Call; however officers may conduct Roll Call for training purposes with supervisor approval.

Roll Call should accomplish, at a minimum, the following basic tasks:

- (a) Briefing officers with information regarding daily patrol activity, with particular attention given to unusual situations and changes in the status of wanted persons, stolen vehicles, and major investigations
- (b) Notifying officers of changes in schedules and assignments
- (c) Notifying officers of new Department Bulletins or changes in Department Bulletins
- (d) Reviewing recent incidents for training purposes
- (e) Providing training on a variety of subjects

404.2 PREPARATION OF MATERIALS

The supervisor conducting Roll Call is responsible for preparation of the materials necessary for a constructive briefing. Supervisors may delegate this responsibility to a subordinate officer in his or her absence or for training purposes.

404.3 RETENTION OF ROLL CALL TRAINING RECORDS

Roll Call training materials and a curriculum or summary shall be forwarded to the Personnel and Training Lieutenant for inclusion in training records, as appropriate.

Use of Electric Personal Vehicles

405.1 POLICY

The policy of the Department is that electric personal vehicle shall only be operated in a safe and effective manner by fully trained employees.

- (a) Each member selected to participate in electric personal vehicle operator training shall successfully complete Department approved electric personal vehicle training.
- (b) Duty uniform and equipment requirements are as follows when operating an electric personal vehicle:
 1. Wear the respective classification Department uniform;
 2. Wear, at all times while operating the electric personal vehicle, the current Department-issued bicycle helmet with the chinstrap securely fastened;
- (c) Operational Requirements
 1. Any electric personal vehicle that is malfunctioning or is not properly equipped shall not be placed in service.
 2. Operation of the electric personal vehicle shall include the following:
 - (a) Keep both hands on the handlebar except when operating the police radio or giving hand signals;
 - (b) Maintain a safe and cautious speed, based on location and other people.
 - (c) When feasible, personnel should utilize elevators and not escalators to transport electric personal vehicles between different levels within the stations.
 - (d) Use caution to not bump into pedestrians/persons in the BART station.
 - (e) Sworn personnel may use the electric personal vehicle to pursue suspects who are fleeing on foot, but with due caution.
 - (f) Dismount the electric personal vehicle safely, and store the electric personal vehicle in a safe position.
 - (g) Members shall use the High Visibility Lighting Device and Audible Warning Device only to safely and effectively light the member's path and audibly announce a police presence. The equipment shall not be used to announce the electric personal vehicle as an emergency vehicle.
 - (h) Notify your assigned supervisor of any accident resulting in injury or damage, for documentation. Forward to Accident Review Board when appropriate.
 3. Members shall not operate the electric personal vehicle as follows:
 - (a) The electric personal vehicle shall not be used as an emergency vehicle to engage in a vehicular pursuit.

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- (b) Members shall not transport another person on the electric personal vehicle.

405.2 MAINTENANCE

- (a) Prior to patrolling on an electric personal vehicle, personnel should conduct an inspection of the electric personal vehicle to verify that the tires are properly inflated, that the electric personal vehicle is functioning properly, and that the safety equipment is in place.
- (b) Any electric personal vehicle that is malfunctioning or is not properly equipped shall not be placed in service. Personnel should immediately notify their assigned supervisor of a malfunctioning or improperly equipped electric personal vehicle.
- (c) The Area Commander will assign a member the responsibility for coordinating the repair of, and equipment repair or replacement for, the electric personal vehicle,
- (d) The Area Commander will establish an area within which the electric personal vehicle can be secured and charged.

405.3 SAFETY EQUIPMENT

In compliance with Vehicle Code 21281, Department electric personal vehicle shall be equipped as follows:

- (a) Front, rear, and side reflectors.
- (b) If the electric personal vehicle is operated (outdoors) between one-half hour after sunset and one-half hour before sunrise, a lamp emitting a white light that, while the electric personal vehicle is in motion, illuminates the area in front of the operator and is visible from a distance of 300 feet in front of the electric personal vehicle.
- (c) A sound emitting device that can be activated from time to time by the operator, as appropriate, to alert nearby persons.

Crime and Disaster Scene Integrity

406.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance in handling a major crime or disaster.

406.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to secure crime or disaster scenes so that evidence is preserved, and to identify and mitigate the dangers associated with a major crime or disaster scene for the safety of the community and those required to enter or work near the scene.

406.3 SCENE RESPONSIBILITY

The first officer at the scene of a crime or major incident is generally responsible for the immediate safety of the public and preservation of the scene. Officers shall also consider officer safety and the safety of those persons entering or exiting the area, including those rendering medical aid to any injured parties. Once an officer has assumed or been assigned to maintain the integrity and security of the crime or disaster scene, the officer shall maintain the crime or disaster scene until he/she is properly relieved by a supervisor or other designated person.

406.4 FIRST RESPONDER CONSIDERATIONS

The following list generally describes the first responder's function at a crime or disaster scene. This list is not intended to be all-inclusive, is not necessarily in order and may be altered according to the demands of each situation:

- (a) Broadcast emergency information, including requests for additional assistance and resources.
- (b) Provide for the general safety of those within the immediate area by mitigating, reducing or eliminating threats or dangers.
- (c) Locate or identify suspects and determine whether dangerous suspects are still within the area.
- (d) Provide first aid to injured parties if it can be done safely.
- (e) Evacuate the location safely as required or appropriate.
- (f) Secure the inner perimeter.
- (g) Protect items of apparent evidentiary value.
- (h) Secure an outer perimeter.
- (i) Identify potential witnesses.
- (j) Start a chronological log noting critical times and personnel allowed access.

Crime and Disaster Scene Integrity

406.5 SEARCHES

Officers arriving at crime or disaster scenes are often faced with the immediate need to search for and render aid to victims, and to determine if suspects are present and continue to pose a threat. Once officers are satisfied that no additional suspects are present and/or there are no injured persons to be treated, those exigent circumstances will likely no longer exist. Officers should thereafter secure the scene and conduct no further search until additional or alternate authority for the search is obtained, such as consent or a search warrant.

406.5.1 CONSENT

When possible, officers should seek written consent to search from authorized individuals. However, in the case of serious crimes or major investigations, it may be prudent to also obtain a search warrant. Consent as an additional authorization may be sought, even in cases where a search warrant has been granted.

406.6 EXECUTION OF HEALTH ORDERS

Any sworn member of this department is authorized to enforce all orders of the local health officer that have been issued for the purpose of preventing the spread of any contagious, infectious or communicable disease (Health and Safety Code § 120155).

Overdose and Prevention Naloxone Program

407.1 PURPOSE

The purpose of this Policy is to establish guidelines and regulations governing the utilization of Naloxone, a medication used to block the effects of opioids, especially in overdose, by the Bay Area Rapid Transit District (“BART”) Police Department (“BPD”). The objectives of the Policy are to reduce the number of fatal opiate overdoses and increase officer safety.

407.2 POLICY

It is the policy of the BPD that employees assigned to patrol, property, and evidence are required to be trained in the use and the appropriate application of a Naloxone. BPD personnel shall receive training in based on the use standards provided by the California Department of Healthcare Services (DHS).

407.3 DEFINITIONS

Naloxone Hydrochloride (“Narcan”): Naloxone, also commonly known as Narcan, is a prescription medication used for the treatment of a possible Opioid or suspected Opioid overdose.

Intranasal: Naloxone is a narcotic antagonist which works by affecting Opiate receptor sites within the brain. Naloxone may be administered into the subject’s nose via intranasal administration (spray). The nasal cavity is covered by a thin mucosa, which is extremely vascular and provides a direct route into the bloodstream of the subject. This method of administration is noninvasive and quickly effective.

Opioid Overdose: An Opioid overdose is an acute, life-threatening, medical condition caused by excessive intake of Opiates, such as Heroin, Morphine, Tramadol, and Oxycodone. This medical condition causes the victim to suffer from an altered level of consciousness, pinpoint pupils, respiratory arrest, and can lead to lasting health effects including, but not limited to, death.

407.4 PROCEDURE

The Department Property Specialist will issue the Naloxone kits to the necessary personnel.

407.4.1 ISSUING NALOXONE KITS

1. BPD personnel who have completed authorized training in the use and application of Naloxone will be assigned to carry and utilize Naloxone.
2. The standing order issued by the State Public Health Officer (Authorized by California Civil Code Section 1714.22) is to: 1) allow organizations, like the BPD, not currently working with a physician to distribute naloxone to a person at risk of an opioid-related overdose, and 2) allow for the administration of naloxone to a person experiencing or reasonably suspected of experiencing an opioid overdose. The standing order permits personnel who have been trained to possess and administer nasal Naloxone to a person who is experiencing a possible opiate overdose.

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3. Naloxone will be assigned to all field level personnel and to those assigned to the property and evidence unit after receiving the necessary training. All field personnel assigned to property and evidence are required to carry the Naloxone on their person during their assigned shifts.
4. Naloxone will be supplied and managed by the Police Administrative Specialist (PAS) in charge of Department property. The PAS shall complete an Equipment Inventory Log, including the assigned Naloxone kit number, date, and time the equipment was assigned and to whom. Each employee receiving Naloxone will be responsible for keeping it in good condition and reporting any issues with their supplied dosages, including loss and or use to the PAS. Employees who lose their issued Naloxone will be required to submit a memorandum to their Bureau Deputy Chief to document the loss.
5. Naloxone must be stored in a climate-controlled area and in a location where access to the medication can be secured and controlled. BPD personnel will be required to carry it upon their person during their respective work hours. Naloxone should not be left in patrol bags or inside patrol cars. BPD personnel should, upon completion of their shift, store the Naloxone within their department assigned locker in a temperature-controlled environment.
6. Each assigned Officer shall conduct a pre-service inspection of the Naloxone kit and confirm the Naloxone kit is in suitable condition.
7. BPD personnel will inspect the secured safety case to ensure that it is clean, undamaged, and non-expired. BPD personnel will carry the Naloxone kit in a location on their person in which it can be easily accessed and utilized when needed, but out of direct sunlight.

407.4.2 USING NALOXONE

1. BPD personnel trained in the use of Naloxone, are authorized to use it without prior approval in cases where an Opiate overdose is suspected.
2. When using Naloxone, BPD personnel will maintain and apply universal precautions against bloodborne pathogens as well as substances of a suspected opiate (e.g., Fentanyl). Personnel administering Naloxone should make every effort to don personal protective equipment (Nitrile gloves at a minimum) before contacting any infected subjects.
3. Before administration of Naloxone, personnel must assess the victim for lack of breathing, pulse, and unresponsiveness. BPD personnel should conduct a brief visual survey for any obvious evidence of drug use or exposure.
4. If it is determined the victim is suffering from Opiate-based overdose, BPD personnel will request Emergency Medical Services (“EMS”) immediately before the administration of Naloxone.
5. Naloxone shall be administered by BPD personnel utilizing the intranasal method only as approved by the local EMS Director and in accordance with training guidelines. BPD personnel using Naloxone on any person, including other, but not limited to, members

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of the BPD or other law enforcement agencies, shall notify the appropriate medical personnel to facilitate a more thorough medical assessment.

407.4.3 TRAINING

Before being issued and/or administering Naloxone, personnel must complete Department approved training. The authorized training will follow the training guidelines recommended by the California Department of Health Care Services.

407.4.4 MAINTENANCE AND REPLACEMENT

1. BPD personnel issued a Naloxone kit, shall be responsible for inspection of the Naloxone kit. BPD personnel should inspect the kit before the start of their shift. Naloxone kits shall be stored in such a way as to avoid exposing the kit to extreme temperatures.
2. The BPD Property Specialist will keep and maintain an inventory of Naloxone kits and replace supplies when depleted and/or expired.
3. Missing or damaged Naloxone kits will be reported to the officer's immediate supervisor. The sergeant will notify the Naloxone Specialist who will re-issue supplies. A departmental memo will be generated for any missing or damaged Naloxone kits.
4. Naloxone can only be obtained by prescription and will be ordered for the BART Police Department on an as needed basis by the California State Health Officer.

407.4.5 DOCUMENTATION AND REPORTING

Upon administering Naloxone and advising the appropriate medical staff, the involved BPD personnel shall complete an incident report describing the details, circumstances, and results of the incident. The incident report shall include any information of victims, witnesses or suspects and include a detailed narrative describing symptoms observed and any evidence of drug use observed at the scene. The incident report shall contain, at minimum, the offense code of "NARCAN DEPLOYMENT." The offense code "NARCAN DEPLOYMENT" is not to be used if BPD personnel are not administering naloxone. The BPD Records unit shall forward the approved report to the local EMS Agency where the Naloxone was administered and will report the usage to the California Department of Health Services. This report is necessary for the State and local EMS Agencies to conduct an audit of Naloxone administration within their jurisdictions and for California Department of Health Services as the supplier of Naloxone and standing order provider.

Electric Motorcycles

408.1 PURPOSE

The purpose of this policy is to establish guidelines for the operation of electric motorcycles by the San Francisco Bay Area Rapid Transit Police Department.

408.2 POLICY

The San Francisco Bay Area Rapid Transit District Police Department will deploy street legal electric motorcycles to patrol throughout the District. The motor officers will be used to augment the normal patrol staffing and will have the primary responsibility to function as cover units.

408.3 OPERATIONAL GUIDELINES

1. Officers deploying electric motorcycles will ride in a safe manner consistent with their training. On a daily basis and immediately prior to deploying the electric motorcycle, the assigned officer will ensure the motorcycle meets minimum safety operational standards, to include checking tires and wheels, cables, lights, electrical, chain (or belt) and any additional inspections recommended by the vehicle manufacturer. Motorcycles that do not pass this safety check will not be operated until they have been serviced.
2. Officers will not operate the electric motorcycles in severe storm conditions or weather conditions that are unsafe.
3. Only officers who are assigned as motor officers and who have successfully completed the mandated POST 80-hour dual purpose motorcycle course will operate the electric motorcycles while on patrol. Officers who have been selected to serve as motor officers may operate the electric motorcycles during the initial training as long as they possess a valid California Class M1 license.
4. All electric motorcycles will be operated in accordance with California State law. Electric motorcycles will be equipped with emergency equipment; emergency lights and sirens, but will not be used to engage in any vehicle pursuits.
5. Officers operating electric motorcycles may engage in traffic enforcement and are allowed to initiate traffic stops of a motor vehicle when necessary, but should not be devoted to traffic enforcement duties unless authorized by the Operations Bureau Deputy Chief.
6. Service of the electric motorcycles will be performed by the electric motorcycle vendor.
7. Electric motorcycles will be kept in a secure location identified by Support Services Bureau Deputy Chief.
8. Officers deploying electric motorcycles shall wash them as necessary to enhance their appearance.
9. The vehicle maintenance unit will maintain the service histories of the electric motorcycles.

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10. The Administrative Services unit will maintain a record of the associated uniforms and equipment issued to officers.

408.4 SELECTION REQUIREMENTS

The minimum qualifications for the assignment of electric motorcycle officer include:

1. Three (3) years of patrol experience
2. At least two (2) years of BART Police patrol experience
3. Possession of a valid California Class M1 license prior to selection and maintaining a California Class M1 license while assigned as a motorcycle officer
4. Demonstrated proactive work performance
5. Demonstrated ability to work with limited direct supervision
6. Willingness to adjust shift schedules and days off based on the needs of the Department

408.5 REMOVAL FROM ASSIGNMENT

1. Inability to successfully complete the mandated POST 80-hour dual purpose motorcycle course
2. Pursuant to any reason in Policy 1028.5

408.6 TRAINING REQUIREMENTS

1. Upon assignment as an electric motorcycle officer, the officer must successfully complete the POST 80-hour dual purpose motorcycle course
2. BART PD will conduct in-service training on an annual basis and attendance by the electric motorcycle officers will be mandatory

Revenue Vehicle Camera System

409.1 PURPOSE AND SCOPE

The San Francisco Bay Area Rapid Transit District Police Department (BART) is outfitting each of the new revenue protection tractor units with exterior and interior continuously recording cameras.

The system will consist of two exterior cameras and two interior cameras. The two exterior cameras are mounted on each side view mirror facing the rear of the tractor unit. One of the interior cameras is mounted near the center of the dashboard to capture a view out the front window of the tractor unit, while the second interior camera is mounted on the passenger side pillar to capture a view of the driver.

The camera system is intended to provide an objective, unbiased, video record of any incident involving the tractor unit and/or operator(s). The use of the camera system is intended to document evidence in criminal investigations, civil litigation, and administrative investigations. In the event of a robbery or attempted robbery, it is intended that the recordings will be used to identify the suspect(s). All evidence shall be maintained by the BART Police Department as an investigatory record if it supports a criminal or civil investigation.

Personnel shall not disable, modify, or tamper with the camera system in any way. Personnel shall not purposely obstruct any camera to prevent the recording of the view it is intended to capture.

409.2 REVENUE GUARD RESPONSIBILITIES

Prior to going into service, the operator of the tractor unit will ensure all cameras are functioning and are not obstructed in any way by reviewing each of the camera images using the monitoring equipment mounted inside the vehicle. The operator will immediately notify their supervisor if any of the cameras are not working properly or if the cameras are not aimed properly. The cameras will only be adjusted with permission of the Revenue Division supervisor and/or their designee.

409.3 REVIEW OF RECORDED MEDIA

Recorded files shall be reviewed in any of the following situations:

- (a) By any member of the Department who is authorized to participate in an official investigation in the following type of cases only: personnel complaints, administrative investigations, criminal investigations or vehicle accident.
- (b) Pursuant to a lawful process or by members of the District Attorney's office or court personnel otherwise authorized to review evidence in a related case.
- (c) With the expressed permission of the Chief of Police or authorized designee.
- (d) By the "System Administrators" for the purpose of managing the video evidence and checking quality assurance when needed.

In the event of a serious incident (i.e. employee involved shooting, serious injury or death, serious use of force incident, serious vehicle accident) employees and supervisors will refrain from viewing revenue vehicle camera system recordings until the Chief of Police, or their designee, authorizes

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the review. If the employee is giving a formal statement about an incident or if the employee is subject to a disciplinary investigation, it is the intent of this policy to generally allow the employee to have the option of reviewing the recordings in the presence of their attorney.

Ride-Along Policy

410.1 PURPOSE AND SCOPE

The Ride-Along Program provides an opportunity for citizens to experience the law enforcement function first hand. This policy provides the requirements, approval process, and hours of operation for the Ride-Along Program.

410.1.1 ELIGIBILITY

The Bay Area Rapid Transit Police Department Ride-Along Program is offered to everyone. Every attempt will be made to accommodate interested persons however any applicant may be disqualified without cause.

The following factors may be considered in disqualifying an applicant and are not limited to:

- Being under 15 years of age
- Prior criminal history
- Pending criminal action
- Pending lawsuit against the Department
- Denial by any supervisor

410.1.2 AVAILABILITY

The Ride-Along Program is available on most days of the week, with certain exceptions. The ride-along times are from 6:00 a.m. to 11:00 p.m. Exceptions to this schedule may be made as approved by the Watch Commander.

410.2 PROCEDURE TO REQUEST A RIDE-ALONG

Generally, ride-along requests will be scheduled by the Watch Commander. The participant will complete a ride-along waiver form. Information requested will include a valid ID or California driver's license, address, and telephone number. If the participant is under 18 years of age, a parent/guardian must be present to complete the Ride-Along Form.

The Watch Commander will schedule a date, based on availability, at least one week after the date of application. If approved, a copy will be forwarded to the respective Watch Commander as soon as possible for his/her scheduling considerations.

If the ride-along is denied after the request has been made, a representative of the Department will contact the applicant and advise him/her of the denial.

410.2.1 PROGRAM REQUIREMENTS

Once approved, civilian ride-alongs will be allowed to ride no more than once every six months. An exception would apply to the following: Explorers, Chaplains, police applicants, and all others with approval of the Watch Commander.

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An effort will be made to ensure that no more than one citizen will participate in a ride-along during any given time period. Normally, no more than one ride-along will be allowed in the officer's vehicle at a given time.

410.2.2 SUITABLE ATTIRE

Any person approved to ride along is required to be suitably dressed in collared shirt, blouse or jacket, slacks and shoes. Sandals, T-shirts, tank tops, shorts and ripped or torn blue jeans are not permitted. Hats and ball caps will not be worn in the police vehicle. The Watch Commander or field supervisor may refuse a ride along to anyone not properly dressed. The ride along vest is required to be worn by everyone except members of the BART Police Department and/or sworn law enforcement personnel.

410.2.3 PEACE OFFICER RIDE-ALONGS

Off-duty members of this department or any other law enforcement agency will not be permitted to ride-along with on-duty officers without the expressed consent of the Watch Commander. In the event that such a ride-along is permitted, the off-duty employee shall not be considered on-duty and shall not represent themselves as a peace officer or participate in any law enforcement activity except as emergency circumstances may require.

410.2.4 RIDE-ALONG CRIMINAL HISTORY CHECK

All Ride-along applicants are subject to a criminal history check. The criminal history check may include a local records check and a Department of Justice Automated Criminal History System check through CLETS prior to their approval as a ride-along with a law enforcement officer (provided that the ride-along is not an employee of the Bay Area Rapid Transit Police Department) (CLETS Policies, Practices and Procedures Manual § 1.6.1.F.2.).

410.3 OFFICER'S RESPONSIBILITY

The officer shall advise the dispatcher that a ride-along is present in the vehicle before going into service. Officers shall consider the safety of the ride-along at all times. Officers should use sound discretion when encountering a potentially dangerous situation, and if feasible, let the participant out of the vehicle in a well-lighted place of safety. The dispatcher will be advised of the situation and as soon as practical have another police unit respond to pick up the participant at that location. The ride-along may be continued or terminated at this time.

The Watch Commander is responsible for maintaining and scheduling ride-alongs. Upon completion of the ride-along, the form shall be returned to the Watch Commander with any comments which may be offered by the officer.

410.4 CONTROL OF RIDE-ALONG

The assigned employee shall maintain control over the ride-along at all times and instruct him/her in the conditions that necessarily limit their participation. These instructions should include:

- (a) The ride-along will follow the directions of the officer

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- (b) The ride-along will not become involved in any investigation, handling of evidence, discussions with victims or suspects, or handling any police equipment
- (c) The ride-along may terminate the ride at any time and the officer may return the observer to their home or to the station if the ride-along interferes with the performance of the officer's duties
- (d) Ride-alongs may be allowed to continue riding during the transportation and booking process provided this does not jeopardize their safety
- (e) Officers will not allow any ride-alongs to be present in any residences or situations that would jeopardize their safety or cause undue stress or embarrassment to a victim or any other citizen
- (f) Under no circumstance shall a civilian ride along be permitted to enter a private residence with an officer without the expressed consent of the resident or other authorized person

Hazardous Material Response

412.1 PURPOSE AND SCOPE

Hazardous materials present a potential harm to employees resulting from their exposure. To comply with Title 8, California Code of Regulations, § 5194, the following is to be the policy of this department.

412.1.1 HAZARDOUS MATERIAL DEFINED

A hazardous material is a substance which by its nature, containment and reactivity, has the capability of inflicting harm during exposure; characterized as being toxic, corrosive, flammable, reactive, an irritant or strong sensitizer and thereby posing a threat to health when improperly managed.

412.2 HAZARDOUS MATERIAL RESPONSE

Employees may encounter situations involving suspected hazardous materials, such as at the scene of a traffic accident, chemical spill or fire. When employees come into contact with a suspected hazardous material, certain steps should be taken to protect themselves and citizens.

The following steps should be considered at any scene involving suspected hazardous materials:

- (a) Attempt to identify the type of hazardous substance. (Identification can be determined by placard, driver's manifest or statements from the person transporting).
- (b) Notify the Fire Department.
- (c) Provide first-aid for injured parties if it can be done safely and without contamination.
- (d) Begin evacuation of the immediate area and surrounding areas, depending on the substance. Voluntary evacuation should be considered; however, depending on the substance, mandatory evacuation may be necessary.
- (e) Notify the local health authority. Such notification is mandatory when a spilled or released item is a pesticide (Health and Safety Code § 105215).
- (f) Notify the Department of Toxic Substances Control. This is mandatory when an officer comes in contact with, or is aware of, the presence of a suspected hazardous substance at a site where an illegal controlled substance is or was manufactured (Health and Safety § 25354.5).

412.3 REPORTING EXPOSURE(S)

Employee's who believe that they have been exposed to a hazardous material shall immediately report the exposure to a supervisor. Each exposure shall be documented by the supervisor on the District's employee report of injury and worker's compensation forms. Should the affected employee be unable to document the exposure for any reason, it shall be the responsibility of the notified supervisor to complete the District employee report of injury and worker's compensation forms.

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Hazardous Material Response

Injury or illness caused or believed to be caused from exposure to hazardous materials shall be reported the same as any other on-duty injury or illness in addition to a crime report or incident report.

412.3.1 SUPERVISOR RESPONSIBILITY

When a supervisor has been informed that an employee has been exposed to a hazardous material, the supervisor shall ensure that immediate medical treatment is obtained and appropriate action is taken to lessen the exposure.

To ensure the safety of employees, safety equipment is available through supervisory personnel. Safety items not maintained by the Department will be obtained through the Fire Department.

Mental Illness Commitments

418.1 PURPOSE AND SCOPE

This policy provides guidelines for when officers may take a person into custody for psychiatric evaluation and treatment (5150 commitment) (Welfare and Institutions Code § 5150).

418.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to protect the public and individuals through legal and appropriate use of the 72-hour treatment and evaluation commitment (5150 commitment) process.

418.3 AUTHORITY

An officer having probable cause may take a person into custody and place the person in an approved mental health facility for 72-hour treatment and evaluation when the officer believes that, as a result of a mental disorder, the person is a danger to him/herself or others or the person is gravely disabled (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5585.50).

When determining whether to take a person into custody, officers are not limited to determining the person is an imminent danger and shall consider reasonably available information about the historical course of the person's mental disorder, which may include evidence presented from any of the following (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5150.05):

- (a) An individual who is providing or has provided mental health treatment or related support services to the person
- (b) A family member
- (c) The person subject to the determination or anyone designated by the person

418.3.1 VOLUNTARY EVALUATION

If an officer encounters an individual who may qualify for a 5150 commitment, he/she may inquire as to whether the person desires to voluntarily be evaluated at an appropriate facility. If the person so desires, the officers should:

- (a) Transport the person to an appropriate facility that is able to conduct the evaluation and admit the person pursuant to a 5150 commitment.
- (b) If at any point the person changes his/her mind regarding voluntary evaluation, officers should proceed with the 5150 commitment, if appropriate.
- (c) Document the circumstances surrounding the individual's desire to pursue voluntary evaluation and/or admission.

418.3.2 MENTAL HEALTH DOCUMENTATION

The officer will complete an Application For 72-Hour Detention for Evaluation and Treatment form (MH-302) and provide it to the staff member assigned to that patient. The officer will retain a copy

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of the 72-hour evaluation for inclusion in the case report. The officer shall also provide a verbal summary to an emergency department staff member regarding the circumstances leading to the involuntary detention. The officer will document the incident on a BART Police report CR-1 form. These reports must be written, submitted and approved by a supervisor prior to the reporting officer(s) going off duty. A self-committal will continue to be classified in Alliance as a "sick person" with the subject being assigned the role of a "sick person."

All 5150 W&I reports which include a criminal hold, including all warrants, will be treated as an "in custody" and classified in the Alliance report writing system as an "arrest," with the subject being assigned the role of an "arrestee." The report, including all supplements, shall be written, submitted and approved by a supervisor prior to the reporting officer(s) going off duty. This shall also apply to arrestees who are transported for medical treatment prior to being booked into a jail facility. These reports cannot be approved by Field Training Officers and must be approved by a supervisor.

When an arrestee is transported from a medical or mental health care facility and booked into a jail, the transporting officer shall complete a supplemental report and send an email to all Detectives and the Detective Sergeant advising them of the booking. The email should include the arrestee's name and case number and be sent as soon as practicable after the transport has been completed.

418.4 CONSIDERATIONS AND RESPONSIBILITIES

Any officer handling a call involving an individual who may qualify for a 5150 commitment should consider, as time and circumstances reasonably permit:

- (a) Available information that might assist in determining the cause and nature of the person's action or stated intentions.
- (b) Community or neighborhood mediation services.
- (c) Conflict resolution and de-escalation techniques.
- (d) Community or other resources available to assist in dealing with mental health issues.

While these steps are encouraged, nothing in this section is intended to dissuade officers from taking reasonable action to ensure the safety of the officers and others.

Officers should consider a 5150 commitment over arrest when mental health issues appear to be a mitigating factor for people who are suspected of committing minor crimes or creating other public safety issues.

418.4.1 SECURING OF PROPERTY

When a person is taken into custody for evaluation, or within a reasonable time thereafter, and unless a responsible relative, guardian or conservator is in possession of the person's personal property, the officer shall take reasonable precautions to safeguard the individual's personal property in his/her possession or on the premises occupied by the person (Welfare and Institutions Code § 5150).

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The officer taking the person into custody shall provide a report to the court that describes the person's property and its disposition in the format provided in Welfare and Institutions Code § 5211, unless a responsible person took possession of the property, in which case the officer shall only include the name of the responsible person and the location of the property (Welfare and Institutions Code § 5150).

418.5 TRANSPORTATION

When transporting any individual for a 5150 commitment, the transporting officer should have Integrated Security Response Center notify the receiving facility of the estimated time of arrival, the level of cooperation of the individual and whether any special medical care is needed.

Officers may transport individuals in a patrol unit and shall secure them in accordance with the Handcuffing and Restraints Policy. Should the detainee require transport in a medical transport vehicle and the safety of any person, including the detainee, requires the presence of an officer during the transport, Watch Commander approval is required before transport commences.

418.6 TRANSFER TO APPROPRIATE FACILITY

Upon arrival at the facility, the officer will escort the individual into a treatment area designated by a facility staff member. If the individual is not seeking treatment voluntarily, the officer should provide the staff member with the written application for a 5150 commitment and remain present to provide clarification of the grounds for detention, upon request.

Absent exigent circumstances, the transporting officer should not assist facility staff with the admission process, including restraint of the individual. However, if the individual is transported and delivered while restrained, the officer may assist with transferring the individual to facility restraints and will be available to assist during the admission process, if requested. Under normal circumstances, officers will not apply facility-ordered restraints.

418.7 DOCUMENTATION

The officer shall complete an application for a 72-Hour detention for evaluation and treatment, provide it to the facility staff member assigned to that patient and retain a copy of the application for inclusion in the case report.

The application shall include the circumstances for officer involvement; the probable cause to believe the person is, as a result of a mental health disorder, a danger to others or him/herself or gravely disabled; and all information used for the determination of probable cause (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5150.05).

The officer should also provide a verbal summary to any evaluating staff member regarding the circumstances leading to the involuntary detention.

418.7.1 ADVISEMENT

The officer taking a person into custody for evaluation shall advise the person of:

- (a) The officer's name and agency.

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- (b) The fact that the person is not under criminal arrest but is being taken for examination by mental health professionals and the mental health staff will advise him/her of their rights.
- (c) The name of the facility to which the person is being taken.
- (d) If the person is being taken into custody at his/her residence, he/she should also be advised that he/she may take a few personal items, which the officer must approve, and may make a telephone call or leave a note indicating where he/she is being taken. The officer should also ask if the person needs assistance turning off any appliance or water.

The advisement shall be given in a language the person understands. If the person cannot understand an oral advisement, the information shall be provided in writing (Welfare and Institutions Code § 5150).

418.8 JUVENILE MENTAL ILLNESS COMMITMENTS

It is the policy of the Police Department to detain dangerous or gravely disabled juveniles due to a mental disorder or inebriation, when they are a danger to themselves or others. It is the responsibility of the primary officer to notify the juvenile's parent or guardian of the circumstances regarding the 5150 W&I commitment.

418.8.1 COMMITMENT FACILITIES

Juvenile 5150 W&I committals should be transported to the following facilities via an ambulance, except where ambulance service is not provided for this purpose:

- (a) **Alameda County**
 - 1. 11 years old and under: John George Pavilion Psychiatric Hospital, 2000 Fairmount Avenue, San Leandro, 510-481-4141.
 - 2. 12 through 17 years old: Alta Bates Adolescent Services, Herrick Campus, 2001 Dwight Way, Berkeley, 510-204-4405 or 510-204-4546.
- (b) **Contra Costa County**
 - 1. Contra Costa County Regional Center, 2500 Alhambra Avenue, Martinez, 925-370-5000.
 - 2. Mount Diablo Hospital, 2540 East Street, Concord, 925-674-2333.
- (c) **San Francisco County**
 - 1. Child Crisis Services, 3801 3rd Street, Suite #400, San Francisco, 415-970-3800. Call for pick-up arrangements.
 - 2. If juvenile is violent or aggressive, transport to San Francisco County General Hospital, 1001 Potrero Street, San Francisco, 415-206-8000.
- (d) **San Mateo County**

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1. North County Peninsula Hospital, 1783 El Camino Real, Burlingame, 650-696-5170.
2. South County San Mateo Medical Center, 222 West 39th Avenue, San Mateo, 650-573-2662.

418.9 CRIMINAL OFFENSES

Officers investigating an individual who is suspected of committing a minor criminal offense and who is being taken on a 5150 commitment should resolve the criminal matter by issuing a warning or a Notice to Appear as appropriate.

When an individual who may qualify for a 5150 commitment has committed a serious criminal offense that would normally result in an arrest and transfer to a jail facility, the officer should:

- (a) Arrest the individual when there is probable cause to do so.
- (b) Notify the appropriate supervisor of the facts supporting the arrest and the facts that would support the 5150 commitment.
- (c) Facilitate the individual's transfer to jail.
- (d) Thoroughly document in the related reports the circumstances that indicate the individual may qualify for a 5150 commitment.

In the supervisor's judgment, the individual may instead be arrested or booked and transported to the appropriate mental health facility. The supervisor should consider the seriousness of the offense, the treatment options available, the ability of this department to regain custody of the individual, department resources (e.g., posting a guard) and other relevant factors in making this decision.

418.9.1 INTERVIEWS & INTERROGATIONS

Members will afford every individual investigated, interviewed, or interrogated their constitutional rights. An individual's constitutional rights are not diminished because of his/her mental illness.

When administering the Miranda warnings, members should make every effort to determine the extent to which the person's illness, or the psychotropic medication that he or she is taking to treat the illness, impairs his/her ability to comprehend and give informed consent.

When members doubt a person's capacity to understand his/her rights, they will ask the person to explain each of the Miranda warnings in his/her own words and make a record of the person's explanations. If the member believes that the person does not have an understanding of his/her rights, questioning of the person related to the criminal investigation should cease.

418.10 FIREARMS AND OTHER WEAPONS

Whenever a person is taken into custody for a 5150 commitment, the handling officers should seek to determine if the person owns or has access to any firearm or other deadly weapon defined in Welfare and Institutions Code § 8100. Officers should consider whether it is appropriate and

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consistent with current search and seizure law under the circumstances to seize any such firearms or other dangerous weapons (e.g., safekeeping, evidence, consent).

Officers are cautioned that a search warrant may be needed before entering a residence or other place to search, unless lawful, warrantless entry has already been made (e.g., exigent circumstances, consent). A search warrant may also be needed before searching for or seizing weapons

The handling officers shall issue a receipt describing the deadly weapon or any firearm seized, and list any serial number or other identification that is on the firearm. Officers shall advise the person of the procedure for the return of any firearm or other weapon that has been taken into custody (Welfare and Institutions Code § 8102 (b)) (see Property and Evidence Policy).

418.10.1 PETITION FOR RETURN OF FIREARMS AND OTHER WEAPONS

Whenever the handling officer has cause to believe that the future return of any confiscated weapon might endanger the person or others, the officer shall detail those facts and circumstances in a report. The report shall be forwarded to the Criminal Investigations Division, which shall be responsible for initiating a petition to the Superior Court for a hearing in accordance with Welfare and Institutions Code § 8102(c), to determine whether the weapon will be returned.

The petition to the Superior Court shall be initiated within 30 days of the release of the individual from whom such weapon has been confiscated, unless the Department makes an ex parte application to the court to extend the time to file such a petition, up to a maximum of 60 days. At the time any such petition is initiated, the Department shall send written notice to the individual informing him/her of the right to a hearing on the issue, that he/she has 30 days to confirm with the court clerk any desire for a hearing and that the failure to do so will result in the forfeiture of any confiscated weapon.

418.11 TRAINING

This department will endeavor to provide Peace Officer Standards and Training (POST)-approved advanced officer training on interaction with persons with mental disabilities, 5150 commitments and crisis intervention.

Fare Evasion

419.1 PURPOSE AND SCOPE

The purpose of this policy is to establish uniform procedures for the legal detention of individuals suspected of fare evasion on the BART system.

419.2 POLICY

It shall be the policy of the BART Police Department to vigorously enforce transit specific crimes including fare evasion.

419.2.1 FARE EVASION ENFORCEMENT

The California Penal Code for fare evasion used by officers of the BART Police Department is 640(c)(1): Evasion of the payment of a fare of the system. For purposes of this section, fare evasion includes entering an enclosed area of a public transit facility beyond posted signs prohibiting entrance without obtaining valid fare, in addition to entering a transit vehicle without valid fare.

The offense is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during his or her hours of school attendance or employment.

The aforementioned penal code does not, absent probable cause to suspect fare evasion, authorize police officers to ask persons to display their ticket for validation. Officers shall not use civil codes as probable cause to ask persons to display their ticket for validation.

419.2.2 FARE EVASION DEFINED

Fare evasion occurs when an individual travels or attempts to travel on the BART system without payment of the required fare. Fare evasion can be reflected in a variety of ways:

- A person who jumps over the fare gate.
- A person who walks closely behind another person, who is using a valid ticket, through a fare gate before the fare gate closes (piggybacking).
- A person who enters/exits the station from an elevator from the free to paid area/paid to free area with intent to avoid paying fare.
- A person who enters/exits through the emergency gate from the free to paid/paid to free area with intent to avoid paying fare.

419.2.3 CONSENSUAL ENCOUNTER, REASONABLE SUSPICION, AND PROBABLE CAUSE

The following are the most common definitions of consensual encounter, reasonable suspicion, and probable cause:

- (a) **Consensual Encounter:** A consensual encounter is a contact between an officer and an individual which is strictly voluntary. The key element is that the person remains

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totally free to leave or not cooperate. An officer does not need any objective reason or justification for initiating this type of contact.

- (b) **Reasonable Suspicion:** Reasonable suspicion to detain a suspect exists if officers were aware of specific facts that reasonably indicated the person was in the process of committing a crime, or was wanted for a completed crime. It is based on objective facts. Reasonable suspicion is the level of proof necessary for a temporary detention.
- (c) **Probable Cause to Arrest:** Although some courts continue to cite the old definition which requires an "honest and strong suspicion", the trend is toward incorporating the new "fair probability" standard; i.e. probable cause to arrest exists if there is a fair probability that the suspect committed the crime. Probable cause is the level of suspicion required to make an arrest.

419.2.4 FARE EVASION/MISUSE OF DISCOUNT TICKET REPORTS BY BART EMPLOYEES

Every officer who responds to a call for service by any BART District employee regarding any report of a fare evasion or the misuse of a discount ticket will contact the BART employee who reported the incident, and ask the BART employee who reported the incident whether he/she wants the subject(s) suspected of fare evasion or the misuse of a discount ticket placed under citizen's arrest for fare evasion or the misuse of a discount ticket before making a disposition of the case. This includes requesting via dispatch that the BART employee arrive at the location where the officer has the suspect(s) detained for fare evasion or the misuse of a discount ticket to in order make a positive identification before making a disposition of the case.

If the officer is unable to locate and detain the suspected fare evader and/or misuse of discount ticket user at or near the scene, then it will not be necessary to contact the BART employee.

419.3 LEGAL ISSUES REGARDING FARE EVASION CONTACTS

With the exception of passes and vouchers issued by the District or other electronic payment methods, BART customers are required to have a valid ticket with at least a minimum value (currently \$1.75) to enter the paid areas of BART.

Persons obviously attempting to evade fare payment of fare such as using the emergency gate without authorization, jumping the fare gates, or piggybacking are subject to being cited for fare evasion under the Penal Code.

Aside from these obvious examples, there are other situations where a person in the paid area may be cited for fare evasion. Generally, in these contacts the person was brought to the attention of police by a station agent or in the course of an unrelated police contact. One of the key issues in less obvious cases of fare evasion is determining when a person in the paid area can be required to show that he/she has a valid ticket.

Based on recent research and review with the local District Attorney offices in the four counties in which BART serves, sections of the California Civil Code, which include 2186-2188, shall not be used as the basis for establishing reasonable suspicion to detain or probable cause to arrest

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persons within the BART system. Officers should not require persons to show their fare ticket, unless that officer has already established reasonable suspicion or probable cause regarding fare evasion or any other criminal activity.

Facts are needed to establish both reasonable suspicion and probable cause. Sometimes one fact is sufficient and sometimes it takes a combination of facts. Hunches, instincts, or unsupported conclusions are inadmissible. An officer's subjective feelings or beliefs are immaterial. Specific facts are needed to justify your suspicion and must be articulated in the police report.

Examples where a person should not be required to show his/her ticket include:

- Entering the paid area (without using an authorized method) to use the restroom, buy a newspaper, or use a pay phone
- Waiting in the paid area for an extended period of time
- Inspection of fare tickets during station or train sweeps
- Arbitrarily asking to see a person's ticket while he/she is in the paid areas

Without more facts, a crime has not occurred in the above examples. In order for the officer to develop cause to detain a person, the officer has to be patient and observe the actions of the person to gather more facts. A person who uses the emergency gate to enter the station, buys a newspaper, then proceeds directly to the platform may be detained for fare evasion.

Arbitrarily asking to see someone's ticket may give the perception of profiling. Officers should only ask to see a person's fare ticket after determining that they have reasonable suspicion or probable cause.

It is not automatically fare evasion for a person to lose his or her BART ticket. The District has policies in place which permit for the payment of fare in this type of situation. The officer would have to investigate the circumstances further to develop facts in order to make a determination that a fare evasion has occurred.

Officers must have reasonable suspicion or probable cause to believe that the person has committed some crime or infraction in order to detain and arrest someone and to check his or her ticket. Ultimately, officers should be guided by their training and experience in determining whether reasonable suspicion or probable cause exists for contacting an individual within the paid area.

Cite and Release Policy

420.1 PURPOSE AND SCOPE

This policy provides guidance on when to release adults who are arrested for a criminal misdemeanor offense on a written notice to appear (citation) and when to hold for court or bail.

420.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to release all persons arrested on misdemeanor or other qualifying charges on a citation with certain exceptions (Penal Code § 853.6).

If there is a reason for non-release, the Department's mission to protect the community will be the primary consideration when determining whether to release any individual in lieu of holding for court or bail.

420.3 RELEASE BY CITATION

Except in cases where a reason for non-release as described below exists, adults arrested for a misdemeanor offense, including a private persons arrest, shall be released from custody on a citation (Penal Code § 853.6).

The citing officer shall, at the time the defendant signs the notice to appear, call attention to the time and place for appearance and take any other steps he/she deems necessary to ensure that the defendant understands his/her written promise to appear.

420.3.1 FIELD CITATIONS

In most cases an adult arrested for a misdemeanor offense may be released in the field on a citation in lieu of physical arrest when booking and fingerprinting is not practicable or immediately required provided the individual can be satisfactorily identified, there is no outstanding arrest warrant for the individual and none of the below described disqualifying circumstances are present (Penal Code § 853.6; Penal Code § 1270.1). In such cases the arresting officer should check the booking required box on the citation form to indicate that the person will be photographed and fingerprinted at a later time when ordered by the court.

When a booking photo or fingerprints are needed for the furtherance of any investigation, the person should be released on citation after booking instead of on a field citation.

420.3.2 RELEASE AFTER BOOKING

In some cases it may not be feasible or desirable to release a person in the field. The person should instead be released on citation after booking at the jail. All bookings shall be approved by a sergeant.

420.4 NON-RELEASE

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420.4.1 DISQUALIFYING OFFENSES

An adult arrested on any of the following disqualifying charges shall not be released on citation and shall be transported to the appropriate detention facility or held for court or bail after booking (Penal Code § 1270.1):

- (a) Misdemeanor domestic battery (Penal Code § 243(e)(1))
- (b) Felony domestic battery (Penal Code § 273.5)
- (c) Serious or violent felonies (Penal Code § 1270.1(a)(1))
- (d) Felony intimidation of witnesses and victims (Penal Code § 136.1)
- (e) Rape of a spouse (Penal Code § 262)
- (f) Violation of a protective order and the arrested person has made threats, used violence, or has gone to the protected person's workplace or residence (Penal Code § 273.6)
- (g) Stalking (Penal Code § 646.9)
- (h) Misdemeanor violations of a protective order relating to domestic violence if there is a reasonable likelihood the offense will continue or the safety of the individuals or property would be endangered (Penal Code § 853.6)

420.4.2 REASONS FOR NON-RELEASE

A person arrested for a misdemeanor shall be released on a citation unless there is a reason for non-release. The Watch Commander may authorize a release on citation regardless of whether a reason for non-release exists when it is determined to be in the best interest of the Department and does not present an unreasonable risk to the community (e.g., release of an intoxicated or ill person to a responsible adult).

Reasons for non-release include (Penal Code § 853.6(i)):

- (a) The person arrested is so intoxicated that he/she could be a danger to him/herself or to others. Release may occur as soon as this condition no longer exists.
- (b) The person arrested requires medical examination or medical care or is otherwise unable to care for his/her own safety
 1. The Bay Area Rapid Transit Police Department shall not release an arrestee from custody for the purpose of allowing that person to seek medical care at a hospital, and then immediately re-arrest the same individual upon discharge from the hospital, unless the hospital determines this action will enable it to bill and collect from a third-party payment source (Penal Code § 4011.10).
- (c) The person is arrested for one or more of the offenses listed in Vehicle Code § 40302, Vehicle Code § 40303, and Vehicle Code § 40305.
- (d) The person has been cited, arrested, or convicted for theft from a store or vehicle in the previous six months, or there is probable cause to believe the person is guilty of committing organized retail theft, as defined in Penal Code § 490.4(a).

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- (e) There are one or more outstanding arrest warrants for the person or failures to appear in court on previous misdemeanor citations that have not been resolved (see Misdemeanor Warrants elsewhere in this policy).
- (f) The person could not provide satisfactory evidence of personal identification.
 - 1. If a person released on citation does not have satisfactory identification in his/her possession, a right thumbprint or fingerprint should be obtained on the citation form.
- (g) The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by the immediate release of the person arrested.
- (h) There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by the release of the person arrested.
- (i) The person arrested demands to be taken before a magistrate or has refused to sign the notice to appear.
- (j) There is reason to believe that the person would not appear at the time and place specified in the notice to appear. The basis for this determination shall be specifically documented. An arrest warrant or failure to appear that is currently pending shall constitute reason to believe that the person will not appear. Other reasons may include:
 - (a) Previous failure to appear is on record
 - (b) The person lacks ties to the area, such as a residence, job, or family
 - (c) Unusual circumstances lead the officer responsible for the release of prisoners to conclude that the suspect should be held for further investigation

When a person is arrested on a misdemeanor offense and is not released by criminal citation, the reason for non-release shall be noted on the booking form. This form shall be submitted to the Watch Commander for approval and included with the case file in the Records Division.

420.5 MISDEMEANOR WARRANTS

An adult arrested on a misdemeanor warrant may be released, subject to Watch Commander approval, unless any of the following conditions exist:

- (a) The misdemeanor cited in the warrant involves violence.
- (b) The misdemeanor cited in the warrant involves a firearm.
- (c) The misdemeanor cited in the warrant involves resisting arrest.
- (d) The misdemeanor cited in the warrant involves giving false information to a peace officer.
- (e) The person arrested is a danger to him/herself or others due to intoxication or being under the influence of drugs or narcotics.

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- (f) The person requires medical examination or medical care or was otherwise unable to care for his/her own safety.
- (g) The person has other ineligible charges pending against him/her.
- (h) There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be immediately endangered by the release of the person.
- (i) The person refuses to sign the notice to appear.
- (j) The person cannot provide satisfactory evidence of personal identification.
- (k) The warrant of arrest indicates that the person is not eligible to be released on a notice to appear.

Release under this section shall be done in accordance with the provisions of this policy.

420.6 FIELD INTERVIEWS

Officers may stop individuals for the purpose of conducting an FI where reasonable suspicion is present. In justifying the stop, the officer should be able to point to specific facts which, when taken together with rational inferences, reasonably warrant the stop. Such facts include, but are not limited to, the following:

- (a) The appearance or demeanor of an individual suggests that he/she is part of a criminal enterprise or is engaged in a criminal act.
- (b) The actions of the suspect suggest that he/she is engaged in a criminal activity.
- (c) The hour of day or night is inappropriate for the suspect's presence in the area.
- (d) The suspect's presence in the particular area is suspicious. (e) The suspect is carrying a suspicious object.
- (f) The suspect's clothing bulges in a manner that suggests he/she is carrying a weapon.
- (g) The suspect is located in proximate time and place to an alleged crime.
- (h) The officer has knowledge of the suspect's prior criminal record or involvement in criminal activity.

Field interview contacts may be documented to provide other officers, investigators, and crime analysts with information concerning suspicious persons and situations. Information gathered on field interviews may be considered criminal intelligence.

Crimes Related to Transit Conduct

421.1 PURPOSE AND SCOPE

To establish a uniform procedure for the enforcement of transit-related infractions under section 640 of the California Penal Code.

421.2 POLICY

It shall be the policy of the BART Police Department to vigorously enforce transit specific crimes. The District views the enforcement of quality of life violations under 640 P.C. as an important method of maintaining the system as an attractive, crime-free environment.

421.3 DEFINITION

Several crimes against the transit district are defined in section 640 of the California Penal Code. Any of the acts described therein are infractions punishable by a fine and/or community service when committed on or in any of the following:

(a) (1) Any of the acts described in paragraphs (1) to (5), inclusive, of subdivision (b) is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during the violator's hours of school attendance or employment. Any of the acts described in paragraphs (1) to (3), inclusive, of subdivision (c), upon a first or second violation, is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during the violator's hours of school attendance or employment. A third or subsequent violation of any of the acts described in paragraphs (1) to (3), inclusive, of subdivision (c) is a misdemeanor punishable by a fine of not more than four hundred dollars (\$400) or by imprisonment in a county jail for a period of not more than 90 days, or by both that fine and imprisonment. Any of the acts described in subdivision (d) shall be punishable by a fine of not more than four hundred dollars (\$400), by imprisonment in a county jail for a period of not more than 90 days, or by both that fine and imprisonment.

(2) This section shall apply only to acts committed on or in a facility or vehicle of a public transportation system.

(b)(1) Eating or drinking in or on a system facility or vehicle in areas where those activities are prohibited by that system. (2) Disturbing another person by loud or unreasonable noise. (3) Smoking in or on a system facility or vehicle in areas where those activities are prohibited by that system. (4) Expectoating upon a system facility or vehicle. (5) Skateboarding, roller skating, bicycle riding, roller blading, or operating a motorized scooter or similar device, as defined in Section 407.5 of the Vehicle Code in a system facility, vehicle, or parking structure. This paragraph does not apply to an activity that is necessary for utilization of the transit facility by a bicyclist, including, but not limited to, an activity that is necessary for parking a bicycle or transporting a bicycle aboard a transit vehicle, if that activity is conducted with the permission of the transit

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agency in a manner that does not interfere with the safety of the bicyclist or other patrons of the transit facility.

(c)(1) Evasion of the payment of a fare of the system. For purposes of this section, fare evasion includes entering an enclosed area of a public transit facility beyond posted signs prohibiting entrance without obtaining valid fare, in addition to entering a transit vehicle without valid fare.

(2) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.

(3) (A) Unauthorized use of a discount ticket or failure to present, upon request from a transit system representative, acceptable proof of eligibility to use a discount ticket, in accordance with Section 99155 of the Public Utilities Code and posted system identification policies when entering or exiting a transit station or vehicle. Acceptable proof of eligibility must be clearly defined in the posting. (B) In the event that an eligible discount ticket user is not in possession of acceptable proof at the time of request, any citation issued shall be held for a period of 72 hours to allow the user to produce acceptable proof. If the proof is provided, the citation shall be voided. If the proof is not produced within that time period, the citation shall be processed.

(d)(1) Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior. (2) Carrying an explosive, acid, or flammable liquid in a public transit facility or vehicle. (3) Urinating or defecating in a system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to a person who cannot comply with this paragraph as a result of a disability, age, or a medical condition. (4) Willfully blocking the free movement of another person in a system facility or vehicle. This paragraph shall not be interpreted to affect any lawful activities permitted or First Amendment rights protected under the laws of this state or applicable federal law, including, but not limited to, laws related to collective bargaining, labor relations, or labor disputes. (5) Willfully tampering with, removing, displacing, injuring, or destroying any part of any facility or vehicle of a public transportation system. (e) Notwithstanding subdivision (a), the City and County of San Francisco, the Los Angeles County Metropolitan Transportation Authority, the Santa Clara Valley Transportation Authority, the Sacramento Regional Transit District, Long Beach Transit, Foothill Transit, and the Alameda-Contra Costa Transit District may enact and enforce an ordinance providing that any of the acts described in subdivision (b) or (c) on or in a facility or vehicle described in subdivision (a) for which the City and County of San Francisco, the Los Angeles County Metropolitan Transportation Authority, the Santa Clara Valley Transportation Authority, the Sacramento Regional Transit District, Long Beach Transit, Foothill Transit, or the Alameda-Contra Costa Transit District has jurisdiction shall be subject only to an administrative penalty imposed and enforced in a civil proceeding. The ordinance for imposing and enforcing the administrative penalty shall be governed by Chapter 8 (commencing with Section 99580) of Part 11 of Division 10 of the Public Utilities Code and shall not apply to minors. (f) For purposes of this section, a "facility or vehicle of a public transportation system" means any of the following: (1) A facility or vehicle of a public transportation system as defined by Section 99211 of the Public Utilities Code. (2) A facility of, or vehicle operated by any entity subsidized by, the Department of Transportation. (3) A leased or rented facility or vehicle for which any of the entities described in paragraph (1) or (2) incurs costs of cleanup, repair, or replacement as a result of any of those acts.

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421.4 PROCEDURE

BART Police will diligently pursue the enforcement of the above crimes against the District in order to provide a safe and secure environment for BART patrons. Officers may use discretion and demonstrate diplomacy through verbal and/or written warnings, and through the issuance of citations for 640 PC violations.

- (a) **Fare Evasion** - Refer to policy manual 419 for fare evasion procedures.
- (b) **Smoking Violations on Trains** - Officers shall issue citations for violations of the "no smoking" regulation observed inside BART trains.
- (c) **Smoking, Eating and Drinking Violations Inside the Paid Area of BART Stations** - Officers may exercise discretion in enforcement of "no smoking, eating or drinking" regulations or violations occurring inside the paid area of BART stations and consider available alternatives including:
 - 1. Issuance of a warning, absent any previous warnings as determined by a records check;
 - 2. Issuance of a citation, if the subject has been previously warned as determined by a records check;
 - 3. Issuance of a citation for a first offense without extending a warning when warranted by the circumstances.

421.5 DISCOUNT TICKETS

- (a) **Red Discount Ticket** - A red discount ticket provides a 62.5% discount for seniors 65 years and older or for persons with disabilities. Also for medicare cardholders and children 5-12 years old.
- (b) **Green Discount Ticket** - A green discount ticket provides a 62.5% discount for seniors 65 years and older or for persons with disabilities.
- (c) **Orange Discount Ticket** - An orange discount ticket provides a 50% discount for middle and secondary school students. Tickets include a last ride bonus allowing a trip of any value to be made with last remaining value of as little as \$0.05). Special purchasing restrictions apply. Tickets may be used only by the student (s) who purchased them.
 - 1. Orange tickets are sold to participating schools within Alameda, Contra Costa, San Francisco, and San Mateo Counties, and are only to be used to and from school, or school related activities (including summer school). Tickets are sold by the school, and can also be ordered on-line by establishing an on-line account with the participating school (limit four per month). Schools collect payment in advance from students and place ticket orders directly with BART. Students should check with their school administrator for requirements and forms. School administrators should call (510) 464-6406 to request an information packet.

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2. Students age 13 to 18 who are enrolled in middle or secondary school, and have no history of vandalism with their school or the BART District are eligible. The orange ticket may be used only for trips to and from school or school-sponsored events, Monday through Friday only. Student must present school ID card or other verifying identification if requested to do so by BART Personnel. A citation from BART Police for violating law or BART rules may result in revocation of program privileges.

421.5.1 PROCEDURE FOR RED AND GREEN DISCOUNT TICKETS

Penal Code sections 640 (c)(3)(A) shall be used when taking enforcement action on the use of red, green, or orange discount tickets. Officers who contact a person using a red, green, or orange discount ticket should verify the person's eligibility through either disability, age, or education requirement.

It shall be the policy of the BART Police Department provide enforcement against the illegal use of red, green, and orange discount tickets. It will also be the policy of this department to use discretion and to demonstrate diplomacy if it becomes necessary to cite a person who has a physical/mental handicap.

If the discount ticket user claims eligibility as a result of a disability, several forms of identification can be presented for proof of eligibility. Acceptable proofs of eligibility include:

- A valid Regional Transit Card
- A California DMV Disabled Veterans placard
- A valid discount card from any California transit operator
- A valid Medicare Card

Station agents and police personnel have discretion to accept other forms of identification that he/she believes is valid. If the discount ticket claims eligibility as a result of a disability, two forms of identification can be used to substantiate the disability. If the discount ticket user cannot substantiate their disability with either of these identification cards, and the officer elects to issue a citation for 640 (c)(3) A) PC, the officer shall:

- Instruct the person cited to present an acceptable form of identification with the citation to a BART Police Department officer at any BART station within the five day grace period from the issuance date of the citation.
- Inform the person that only BART Police Department officers can verify the possession of valid identification cards for this particular purpose.
- Give the person cited the five day grace period advisement notice along with a copy of the citation.

In accordance to 640 (c)(3)(B) PC, in the event that an eligible discount ticket user is not in possession of acceptable proof at the time of request, any citation issued shall be held for a period

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of 72 hours to allow the user to produce acceptable proof. If the proof is provided, the citation shall be voided. If the proof is not produced within that time period, the citation shall be processed. Though 72 hours is the minimum mandated by the law this department will allow up to 5 days before taking the following steps whenever he/she is requested to verify the individual's transit discount identification card:

- (a) Verify that the card was issued to the bearer, and is currently in effect. It is not necessary that the ID card was valid at the time the citation was issued.
- (b) The retrieved citation will be placed back into the "five day hold" citation box before the officer goes off duty.
- (c) Direct reporting officers will give verified citations to their supervisor who will place citation in the "five day hold" box.
- (d) The Traffic Officer will send all such verified 640 (c)(3)(A) PC citations to the court requesting dismissal.
- (e) Once the court returns the disposition of the request, the Traffic Officer will notify the subject via mail of the court's disposition.

Individuals seeking discount card verification on citations received outside the five working day grace period shall be informed that the matter will have to be adjudicated in a court of law. In such cases, the officer will not accept the citation.

Foreign Diplomatic and Consular Representatives

422.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that members of the Bay Area Rapid Transit Police Department extend appropriate privileges and immunities to foreign diplomatic and consular representatives in accordance with international law.

422.2 POLICY

The Bay Area Rapid Transit Police Department respects international laws related to the special privileges and immunities afforded foreign diplomatic and consular representatives assigned to the United States.

All foreign diplomatic and consular representatives shall be treated with respect and courtesy, regardless of any privileges or immunities afforded them.

422.3 CLAIMS OF IMMUNITY

If a member comes into contact with a person where law enforcement action may be warranted and the person claims diplomatic or consular privileges and immunities, the member should, without delay:

- (a) Notify a supervisor.
- (b) Advise the person that his/her claim will be investigated and he/she may be released in accordance with the law upon confirmation of the person's status.
- (c) Request the person's identification card, either issued by the U.S. Department of State (DOS), Office of the Chief of Protocol, or in the case of persons accredited to the United Nations, by the U.S. Mission to the United Nations. These are the only reliable documents for purposes of determining privileges and immunities.
- (d) Contact the DOS Diplomatic Security Command Center at 571-345-3146 or toll free at 866-217-2089, or at another current telephone number and inform the center of the circumstances.
- (e) Verify the immunity status with DOS and follow any instructions regarding further detention, arrest, prosecution and/or release, as indicated by the DOS representative. This may require immediate release, even if a crime has been committed.

Identity or immunity status should not be presumed from the type of license plates displayed on a vehicle. If there is a question as to the status or the legitimate possession of a Diplomat or Consul license plate, a query should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state.

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422.4 ENFORCEMENT

If the DOS is not immediately available for consultation regarding law enforcement action, members shall be aware of the following:

- (a) Generally, all persons with diplomatic and consular privileges and immunities may be issued a citation or notice to appear. However, the person may not be compelled to sign the citation.
- (b) All persons, even those with a valid privilege or immunity, may be reasonably restrained in exigent circumstances for purposes of self-defense, public safety or the prevention of serious criminal acts.
- (c) An impaired foreign diplomatic or consular representative may be prevented from driving a vehicle, even if the person may not be arrested due to privileges and immunities.
 - 1. Investigations, including the request for field sobriety tests, chemical tests and any other tests regarding impaired driving may proceed but they shall not be compelled.
- (d) The following persons may not be detained or arrested, and any property or vehicle owned by these persons may not be searched or seized:
 - 1. Diplomatic-level staff of missions to international organizations and recognized family members
 - 2. Diplomatic agents and recognized family members
 - 3. Members of administrative and technical staff of a diplomatic mission and recognized family members
 - 4. Career consular officers, unless the person is the subject of a felony warrant
- (e) The following persons may generally be detained and arrested:
 - 1. International organization staff; however, some senior officers are entitled to the same treatment as diplomatic agents.
 - 2. Support staff of missions to international organizations
 - 3. Diplomatic service staff and consular employees; however, special bilateral agreements may exclude employees of certain foreign countries.
 - 4. Honorary consular officers
 - 5. Whenever an officer arrests and incarcerates, or detains for investigation for over two hours, a person with diplomatic and consular privileges and immunities, the officer shall promptly advise the person that he/she is entitled to have his/her government notified of the arrest or detention (Penal Code § 834c). If the individual wants his/her government notified, the officer shall begin the notification process.

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422.5 DOCUMENTATION

All contacts with persons who have claimed privileges and immunities afforded foreign diplomatic and consular representatives should be thoroughly documented and the related reports forwarded to DOS.

422.6 DIPLOMATIC IMMUNITY TABLE

Reference table on diplomatic immunity:

Category	Arrested or Detained	Enter Residence Subject to Ordinary Procedures	Issued Traffic Citation	Subpoenaed as Witness	Prosecuted	Recognized Family Members
Diplomatic Agent	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Member of Admin and Tech Staff	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Service Staff	Yes (note (a))	Yes	Yes	Yes	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
Career Consul Officer	Yes if for a felony and pursuant to a warrant (note (a))	Yes (note (d))	Yes	No for official acts Testimony may not be compelled in any case	No for official acts. Yes otherwise (note (a))	No immunity or inviolability
Honorable Consul Officer	Yes	Yes	Yes	No for official acts Yes otherwise.	No for official acts Yes otherwise	No immunity or inviolability
Consulate Employees	Yes (note (a))	Yes	Yes	No for official acts Yes otherwise.	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
Int'l Org Staff (note (b))	Yes (note (c))	Yes (note (c))	Yes	Yes (note (c))	No for official acts. Yes otherwise (note (c))	No immunity or inviolability

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Diplomatic-Level Staff of Missions to Int'l Org	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Support Staff of Missions to Int'l Orgs	Yes	Yes	Yes	Yes	No for official acts Yes otherwise	No immunity or inviolability

Notes for diplomatic immunity table:

- (a) This table presents general rules. The employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.
- (b) Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or in the prevention of serious criminal acts.
- (c) A small number of senior officers are entitled to be treated identically to diplomatic agents.
- (d) Note that consul residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.

San Francisco Arrest Procedures Involving, Narcotics, Misdemeanor In-Custody Reports and Non-Traffic Misdemeanor Citations

423.1 PURPOSE AND SCOPE

To establish a uniform procedure for the disposition of San Francisco arrest cases and cases where evidence has been logged into the San Francisco Police Department Property Control Section.

423.2 DEFINITIONS

Outside Agency Incident Case Number - A nine-digit number (i.e. 000 000 001) which is assigned by the San Francisco Police Department to allow for the tracking of prisoners through the San Francisco criminal justice system. This number must be obtained whenever an arrest is made for a felony and/or misdemeanor, or a misdemeanor citation given. The number for an Outside Agency Incident Case Number is 415-575-0737

423.3 NARCOTIC EVIDENCE

On any case where narcotic evidence is confiscated the officer originating the case shall contact the San Francisco Police Department's Records Section at 1-415-575-0737. The officer shall request an Outside Agency Incident Case Number. This number shall be placed on the secured SFPD evidence envelope prior to booking the evidence. The Outside Agency Incident Case Number shall be included prior to the police report narrative.

The arresting officer will be responsible for the weighing, packaging and booking of all narcotic evidence. The evidence will be left in the evidence drop box located at SFPD, 850 Bryant St.

423.4 PRISONERS BOOKED AT SAN FRANCISCO SHERIFF'S DEPARTMENT JAIL

On any case where a suspect is to be booked at a San Francisco Sheriff's Department facility, the officer originating the case shall contact San Francisco Police Department Records Section at 1-415-575-0737. The officer shall request an Outside Agency Incident Case Number from the Records Clerk. This number must be furnished to the Sheriff's Department Personnel when the suspect is booked. The Outside Agency Incident Case Number shall also be included before the narrative of the report. The report is then faxed to the OR Project at 1-415-431-3658. Officers shall also call the Sheriff's Central Warrants Bureau at 415-553-1871. Officers need to check for any outstanding San Francisco warrants and document the warrant clerks name and star number on the booking card.

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San Francisco Arrest Procedures Involving, Narcotics, Misdemeanor In-Custody Reports and Non-Traffic Misdemeanor Citations

423.5 BOOKINGS

On all cases where a suspect is arrested and booked on a felony or misdemeanor charge in San Francisco the report shall be faxed to San Francisco Police Inspector at 415-553-9876 and to the OR Project at 1-415-431-3658. OR Project can be called at 415-552-2202.

423.6 NON-BOOKING OFFENSES AND FELONY OFFENSES

On any requests for criminal complaints through the San Francisco District Attorney's Office, the assigned investigator shall make certain an Outside Incident Case Number has been obtained and is included prior to the narrative of the report. If the number has not previously been obtained, the assigned investigator shall obtain the number from San Francisco Police Department Records Bureau prior to delivering the report to the District Attorney's Office of the Police Department. The number will be reflected in a follow-up report in order that the case can be tracked.

Reporting Police Activity Outside of Jurisdiction

426.1 PURPOSE AND SCOPE

This policy provides general guidelines for reporting police activity while on or off-duty and occurring outside the jurisdiction of the Bay Area Rapid Transit Police Department.

426.1.1 ASSISTANCE TO AGENCIES OUTSIDE THE DISTRICT

When an officer is on-duty and is requested by an allied agency to participate in law enforcement activity in another jurisdiction, he/she shall obtain prior approval from the immediate supervisor or the Watch Commander. If the request is of an emergency nature, the officer shall notify Integrated Security Response Center before responding and thereafter notify a supervisor as soon as practical.

426.1.2 LAW ENFORCEMENT ACTIVITY OUTSIDE THE DISTRICT

Any on-duty officer, who engages in law enforcement activities of any type outside the immediate jurisdiction of BART shall notify his or her supervisor or the Watch Commander at the earliest possible opportunity. Any off-duty officer who engages in any law enforcement activities, regardless of jurisdiction shall notify the Watch Commander as soon as practical.

The involved officer(s) will complete a case report or other documentation of the their activity. The report or other documentation shall be forwarded to the officer's Bureau Deputy Chief via the chain of command.

Immigration Violations

428.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Bay Area Rapid Transit Police Department relating to immigration and interacting with federal immigration officials.

428.1.1 DEFINITIONS

The following definitions apply to this policy (Government Code § 7284.4):

Criminal immigration violation - Any federal criminal immigration violation that penalizes a person's presence in, entry, or reentry to, or employment in, the United States. This does not include any offense where a judicial warrant already has been issued.

Immigration enforcement - Any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, including any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry or reentry to, or employment in the United States.

Judicial warrant - An arrest warrant for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge.

428.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

428.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and not in any way that would violate the United States or California constitutions.

428.4 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

428.4.1 CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM (CLETS)

Members shall not use information transmitted through CLETS for immigration enforcement purposes except for criminal history information and only when consistent with the California Values Act (Government Code § 15160).

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Members shall not use the system to investigate immigration violations of 8 USC § 1325 (improper entry) if that violation is the only criminal history in an individual's record (Government Code § 15160).

428.5 DETENTIONS AND ARRESTS

An officer shall not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant (Government Code § 7284.6).

An officer who has a reasonable suspicion that an individual already lawfully contacted or detained has committed a criminal violation of 8 USC § 1326(a) (unlawful reentry) that may be subject to an enhancement due to a previous conviction of an aggravated felony under 8 USC § 1326(b) (2), may detain the person for a reasonable period of time to contact federal immigration officials to verify whether the United States Attorney General has granted the individual permission for reentry and whether the violation is subject to enhancement (Government Code § 7284.6). No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

If the officer has facts that establish probable cause to believe that a person already lawfully detained has violated 8 USC § 1326(a) and the penalty may be subject to enhancement due to prior conviction for specified aggravated felonies, he/she may arrest the individual for that offense (Government Code § 7284.6).

An officer shall not detain any individual, for any length of time, for any other criminal immigration violation of federal immigration laws (Government Code § 7284.6).

An officer should notify a supervisor as soon as practicable whenever an individual is arrested for violation of 8 USC § 1326(a).

428.6 FEDERAL REQUESTS FOR ASSISTANCE

Absent an urgent issue of officer safety or other emergency circumstances, requests by federal immigration officials for assistance from this department should be directed to a supervisor. The supervisor is responsible for determining whether the requested assistance would be permitted under the California Values Act (Government Code § 7284.2 et seq.).

428.7 INFORMATION SHARING

No member of this department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373; Government Code § 7284.6):

- (a) Sending information to, or requesting or receiving such information from federal immigration officials
- (b) Maintaining such information in department records
- (c) Exchanging such information with any other federal, state, or local government entity

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Nothing in this policy restricts sharing information that is permissible under the California Values Act.

428.7.1 IMMIGRATION DETAINERS

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 (Government Code § 7284.6).

Notification to a federal authority may be made prior to release of an individual who is the subject of a notification request only if the individual meets one of the following conditions (Government Code § 7282.5; Government Code § 7284.6):

- (a) The individual has been arrested and had a judicial probable cause determination for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c).
- (b) The individual has been arrested and had a judicial probable cause determination for a felony punishable by time in a state prison.
- (c) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (d) The individual is a current registrant on the California Sex and Arson Registry.
- (e) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

428.7.2 NOTICE TO INDIVIDUALS

Individuals in custody shall be given a copy of documentation received from U.S. Immigration and Customs Enforcement (ICE) regarding a hold, notification, or transfer request along with information as to whether the Bay Area Rapid Transit Police Department intends to comply with the request (Government Code § 7283.1).

If the Bay Area Rapid Transit Police Department provides ICE with notification that an individual is being, or will be, released on a certain date, the same notification shall be provided in writing to the individual and to his/her attorney or to one additional person who the individual may designate (Government Code § 7283.1).

428.7.3 TRANSFERS TO IMMIGRATION AUTHORITIES

Members shall not transfer an individual to immigration authorities unless one of the following circumstances exist (Government Code § 7282.5; Government Code § 7284.6):

- (a) Transfer is authorized by a judicial warrant or judicial probable cause determination.
- (b) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (c) The individual is a current registrant on the California Sex and Arson Registry.
- (d) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

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428.7.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Criminal Investigations Division supervisor shall ensure that data regarding the number of transfers of an individual to immigration authorities, as permitted by Government Code § 7284.6(a)(4), and the offense that allowed for the transfer is collected and provided to the Records Supervisor for required reporting to the DOJ (Government Code § 7284.6(c)(2)(see the Records Division Policy).

428.8 U VISA AND T VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Criminal Investigations Division supervisor assigned to oversee the handling of any related case. The Criminal Investigations Division supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
 2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). Form I-914 Supplement B certification shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking).
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
- (e) Inform the victim liaison of any requests and their status.

428.8.1 TIME FRAMES FOR COMPLETION

Officers and their supervisors who are assigned to investigate a case of human trafficking as defined by Penal Code § 236.1 shall complete the above process and the documents needed for indicating the individual is a victim for the T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Officers and their supervisors shall complete the above process and the documents needed certifying victim cooperation for a U visa or T visa application pursuant to Penal Code § 679.10

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and Penal Code § 679.11 within 30 days of a request from the victim, victim's family, or authorized representative (as defined in Penal Code § 679.10 and Penal Code § 679.11) related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within seven days of the first business day following the day the request was received.

428.8.2 REPORTING TO LEGISLATURE

The Criminal Investigations Division supervisor or the authorized designee should ensure that certification requests are reported to the Legislature in January of each year and include the number of certifications signed and the number denied. The report shall comply with Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11).

428.8.3 POLICE REPORTS

Upon request, an officer or supervisor should provide a victim or authorized representative with a copy of the report filed by the victim within seven days of the request (Penal Code § 679.10).

428.9 TRAINING

The Personnel and Training Lieutenant should ensure that all appropriate members receive training on immigration issues.

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration violation has been committed.
- (c) Prohibitions contained in the California Values Act (Government Code § 7284 et seq.).

Patrol Rifle Operator Program

432.1 PURPOSE AND SCOPE

The members of the Patrol Rifle Operator Program are a cadre of trained personnel with the ability to effectively place accurate rifle fire from close quarters to distances beyond the effective range of pistols and shotguns. The Patrol Rifle Operator Program has been designed with the intent to enhance police officer and public safety. Patrol Rifles may be employed in any situation where police firearms use is justified, taking into account the enhanced range and penetration capabilities of the rifle.

432.2 PATROL RIFLE

The Department-issued patrol rifle is a semi-automatic, AR15-style rifle, chambered for 5.56 mm ammunition. Department Rifles individually assigned to officers are the Colt AR-15 A2/A3/A4 variants as well as the Sig Sauer M400. Department Pool Rifles (rifles assigned to a specific direct report location for shared use) are the Sig Sauer M400. Patrol rifles, when carried in police vehicles, it must be secured in locking gun racks or weapons cases stored in vehicle trunks. The patrol rifle shall be carried in the "cruiser ready" configuration (18 or 28 round magazine inserted in the rifle, hammer forward on an empty chamber, and safety "off").

432.3 SPECIFICATIONS

- Semi-automatic: AR-15 type rifle
- Caliber: .223 and/or 5.56 mm
- Chamber: 5.56 NATO
- Barrel Length: 16"
- Barrel twist rate: 1:7" to 1:9"
- Carry handle: Fixed or detachable (flat top receiver)
- Sights: Metal sights adjustable for elevation and windage (minimum)
- Stocks: Fixed or collapsible
- Slings: Required. Two- or two-point sling from a quality manufacturer (determined by the Rangemaster or designee)
- Magazines: Minimum of 20 round box magazines (minimum two magazines).
- Approved personal Rifle Manufacturers to include, but are not limited to: Armalite, Bushmaster, Colt, JP Enterprises, Lewis Machine and Tool, LWRC, Noveske, Rock River Arms, Sig Sauer and Smith & Wesson (other approved manufacturers will be determined by the Rangemaster). "Kit guns" or other personally assembled rifles are not authorized.
- Authorized Accessories:

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- Optics: Aimpoint, EOTech 500 series or newer, Trijicon ACOG series or Reflex series, Sig Sauer Romeo Series. Other manufacturers may be authorized at the discretion of the Rangemaster or his/her designee. If an optic is attached to the rifle, a backup sighting system is required
- Magnifiers for optics
- Rail-interface systems
- Vertical foregrips/hand stops
- Lights (required) from a quality manufacturer
 - Approved manufacturers to include, but are not limited to Surefire, Streamlight, and Modlite Systems. Other manufacturers may be authorized by the Rangemaster or his/her designee.

Personnel may add approved accessories (at their own expense) to individually issued departmental patrol rifles. However, a change of optics and/or sights require passing a departmental qualification course prior to carrying the weapon on duty. The patrol rifle must be returned to its original configuration prior to turn in.

Written approval from the Rangemaster is required for any exceptions to the aforementioned specifications and authorized accessories. A copy of written approval will be kept in the employees personnel file.

A personally-owned rifle used in an officer-involved shooting, may be retained as evidence without compensation or issuance of a replacement to the officer-owner.

432.3.1 WEAPON-MOUNTED LIGHTS

Personnel may utilize weapons-mounted lights on their patrol rifles. Weapon-mounted lights are intended to be used for searching, threat assessment, and target acquisition of potentially dangerous persons. Weapon-mounted lights shall not be used as ordinary flashlights for routine lighting purposes. Authorized manufacturers include Pelican, Pentagon Lights, Surefire, and Streamlight.

Weapon-mounted lights are subject to the following requirements:

- (a) Personnel must demonstrate proficiency with the weapon-mounted light prior to carrying it in an on-duty capacity.
- (b) The weapon shall be carried with the light affixed to it.
- (c) Personnel equipped with a weapon-mounted light shall also have a handheld light readily available to them at all times while on-duty.

432.3.2 AMMUNITION

Patrol Rifle Operators shall carry only department-authorized ammunition while on duty. Patrol Rifle Operators shall annually be issued duty ammunition rifle during the semi-annual patrol rifle update and qualification training session. Replacements for unserviceable or depleted ammunition

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issued by the Department shall be dispensed by the Rangemaster when needed in accordance with established policy.

The only authorized ammunition for the AR15 platform is Federal Premium Hi-Shok SP 64 grain and Federal Premium Bonded SP 62 grain.

Required Ammunition (Quantity):

- Patrol Rifle Operators shall carry a minimum of two (2) rifle magazines of department-issued duty ammunition. Additional magazines may be carried in a magazine pouch mounted on the stock, coupled to the magazine in the rifle, and/or carried in a pouch/holder separate from the rifle.

432.4 RIFLE MAINTENANCE

Patrol Rifle Operators are authorized to carry a department-issued patrol rifle, or to carry a personally-owned patrol rifle. Personnel must successfully complete a departmental training course or equivalent (with approval of the Rangemaster), and departmental qualification prior to carrying or using any patrol rifle on duty. The purchase and all expenses related to a personally-owned patrol rifle will be the responsibility of the owner. Duty and practice ammunition for approved training will be provided by the department. Officers who purchase patrol rifles must comply with bureau 12280(g)(2) PC, which requires sworn peace officers to register the weapon with the Department of Justice not later than 90 days after purchase. Decertification of Operations Rifle Operators

Patrol rifle operators may be decertified for any of the following reasons:

- (a) Failure to qualify
- (b) Failure to successfully complete required training.
- (c) Failure to attend training sessions
- (d) Willful and deliberate mistreatment, neglect, or improper use of the patrol rifle.
- (e) Exhibiting a pattern of unsafe tactics during actual rifle deployments.

Patrol Rifle Operators may voluntarily resign from the program by submitting a written request to the Rangemaster.

Active Patrol Rifle Operators may be required to turn-in their assigned Departmental rifles for the following reasons:

- Upon promotion in rank
- Assignment to a non-patrol special assignment
- Qualification with a personally-owned rifle
- Assignment to the SWAT Team
- For the needs of the Department

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432.5 TRAINING

Personnel shall not carry or utilize patrol rifles unless they have successfully completed a Departmental patrol rifle operator course or equivalent training (requires Rangemaster approval), in addition to successfully completing the Departmental patrol rifle qualification course.

The Departmental patrol rifle operator course shall consist of a minimum of 16 hours.

Personnel shall thereafter be required to successfully complete semi-annual patrol rifle update and qualification training conducted by the Range Staff.

432.5.1 QUALIFICATION

Patrol Rifle Operators are required to successfully complete: (1) Day Light and (1) Low Light patrol rifle qualification course per year.

432.6 DEPLOYMENT OF THE PATROL RIFLE

Officers may deploy the patrol rifle in any circumstance where the officer can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include, but are not limited to:

- (a) Situations where the officer reasonably anticipates an armed encounter.
- (b) When an officer is faced with a situation that may require the delivery of accurate and effective fire at long range.
- (c) Situations where an officer reasonably expects the need to meet or exceed a suspect's firepower.
- (d) When an officer reasonably believes that there may be a need to deliver fire on a barricaded suspect or a suspect with a hostage.
- (e) When an officer reasonably believes that a suspect may be wearing body armor.
- (f) When authorized or requested by a supervisor.
- (g) When needed to euthanize an animal.

432.6.1 PATROL RIFLE DEPLOYMENT REPORTING

Whenever an employee deploys a patrol rifle during the performance of his/her duty in the presence of bystanders or to defend, detain, or to take any person into custody, an account of the incident shall be made in a police report. The employee should include in the narrative of the report how the weapon was used in the incident, as well as justification for such action. The documentation of how the patrol rifle was used should include information on how the weapon was presented. Examples of such documentation include, but are not limited to; the rifle was held at a low-ready position or pointed directly at a person.

432.7 DISCHARGE OF THE PATROL RIFLE

The discharge of the patrol rifle shall be governed by the Department's Deadly Force Policy, Policy Manual § 300.

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432.8 PATROL READY

Primary responsibility for maintenance of patrol rifles shall fall on the individual patrol rifle operator. No modification shall be made to any patrol rifle without prior written authorization from the Rangemaster or designee.

Any patrol rifle that is found to be malfunctioning or needing service shall not be carried and shall be promptly presented to an armorer-trained member of the range staff for inspection. Any weapon determined to be in need of service or repair during the inspection will be immediately removed from service. If a replacement rifle is available, it may be issued to the individual until the duty weapon is again rendered serviceable. However, the replacement rifle cannot be carried on duty until after the patrol rifle operator qualifies with it.

432.9 RIFLE STORAGE

Patrol rifles shall be stored in the trunk vault or removed from vehicles whenever:

- The vehicle will not be driven on the on-coming shift;
- The on-coming employee is not a patrol rifle or SWAT operator.

When not in use, patrol rifles will be stored in a gun safe or locked locker in the following condition:

- (a) Empty chamber
- (b) Bolt forward with the hammer down
- (c) The safety selector in "off" position
- (d) No magazine in the weapon
- (e) Optics (if equipped) turned off (if applicable)

Aircraft Accidents

434.1 PURPOSE AND SCOPE

The purpose of this policy is to provide department members with guidelines for handling aircraft accidents.

This policy does not supersede, and is supplementary to, applicable portions of the Crime and Disaster Scene Integrity, Emergency Management Plan and Hazardous Material Response policies.

434.1.1 DEFINITIONS

Definitions related to this policy include:

Aircraft - Any fixed wing aircraft, rotorcraft, balloon, blimp/dirigible or glider that is capable of carrying a person or any unmanned aerial vehicle other than those intended for non-commercial recreational use.

434.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to provide an appropriate emergency response to aircraft accidents. This includes emergency medical care and scene management.

434.3 ARRIVAL AT SCENE

Officers or other authorized members tasked with initial scene management should establish an inner and outer perimeter to:

- (a) Protect persons and property.
- (b) Prevent any disturbance or further damage to the wreckage or debris, except to preserve life or rescue the injured.
- (c) Preserve ground scars and marks made by the aircraft.
- (d) Manage the admission and access of public safety and medical personnel to the extent necessary to preserve life or to stabilize hazardous materials.
- (e) Maintain a record of persons who enter the accident site.
- (f) Consider implementation of an Incident Command System (ICS).

434.4 INJURIES AND CASUALTIES

Members should address emergency medical issues and provide care as a first priority.

Those tasked with the supervision of the scene should coordinate with the National Transportation Safety Board (NTSB) before the removal of bodies. If that is not possible, the scene supervisor should ensure documentation of what was disturbed, including switch/control positions and instrument/gauge readings.

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434.5 NOTIFICATIONS

When an aircraft accident is reported to this department, the responding supervisor shall ensure notification is or has been made to NTSB, the Federal Aviation Administration (FAA), and when applicable, the appropriate branch of the military.

Supervisors shall ensure other notifications are made once an aircraft accident has been reported. The notifications will vary depending on the type of accident, extent of injuries or damage, and the type of aircraft involved. When an aircraft accident has occurred, it is generally necessary to notify the following:

- (a) Fire department
- (b) Appropriate airport tower
- (c) Emergency medical services (EMS)

434.6 CONTROLLING ACCESS AND SCENE AUTHORITY

Prior to NTSB arrival, scene access should be limited to authorized personnel from the:

- (a) FAA.
- (b) Fire department, EMS or other assisting law enforcement agencies.
- (c) Coroner.
- (d) Air Carrier/Operators investigative teams with NTSB approval.
- (e) Appropriate branch of the military, when applicable.
- (f) Other emergency services agencies (e.g., hazardous materials teams, biohazard decontamination teams, fuel recovery specialists, explosive ordnance disposal specialists).

The NTSB has primary responsibility for investigating accidents involving civil aircraft. In the case of a military aircraft accident, the appropriate branch of the military will have primary investigation responsibility.

After the NTSB or military representative arrives on-scene, the efforts of this department will shift to a support role for those agencies.

If NTSB or a military representative determines that an aircraft or accident does not qualify under its jurisdiction, the on-scene department supervisor should ensure the accident is still appropriately investigated and documented.

434.7 DANGEROUS MATERIALS

Members should be aware of potentially dangerous materials that might be present. These may include, but are not limited to:

- (a) Fuel, chemicals, explosives, biological or radioactive materials and bombs or other ordnance.
- (b) Pressure vessels, compressed gas bottles, accumulators and tires.

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- (c) Fluids, batteries, flares and igniters.
- (d) Evacuation chutes, ballistic parachute systems and composite materials.

434.8 DOCUMENTATION

All aircraft accidents occurring within the District of San Francisco Bay Area Rapid Transit District shall be documented. At a minimum the documentation should include the date, time and location of the incident; any witness statements, if taken; the names of BART PD members deployed to assist; other District resources that were utilized; and cross reference information to other investigating agencies. Suspected criminal activity should be documented on the appropriate crime report.

434.8.1 WRECKAGE

When reasonably safe, members should:

- (a) Obtain the aircraft registration number (N number) and note the type of aircraft.
- (b) Attempt to ascertain the number of casualties.
- (c) Obtain photographs or video of the overall wreckage, including the cockpit and damage, starting at the initial point of impact, if possible, and any ground scars or marks made by the aircraft.
 - 1. Military aircraft may contain classified equipment and therefore shall not be photographed unless authorized by a military commanding officer (18 USC § 795).
- (d) Secure, if requested by the lead authority, any electronic data or video recorders from the aircraft that became dislodged or cell phones or other recording devices that are part of the wreckage.
- (e) Acquire copies of any recordings from security cameras that may have captured the incident.

434.8.2 WITNESSES

Members tasked with contacting witnesses should obtain:

- (a) The location of the witness at the time of his/her observation relative to the accident site.
- (b) A detailed description of what was observed or heard.
- (c) Any photographs or recordings of the accident witnesses may be willing to voluntarily surrender.
- (d) The names of all persons reporting the accident, even if not yet interviewed.
- (e) Any audio recordings of reports to 9-1-1 regarding the accident and dispatch records.

434.9 MEDIA RELATIONS

The Media Relations (PIO) should coordinate a response to the media, including access issues, road closures, detours and any safety information that is pertinent to the surrounding community.

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Any release of information regarding details of the accident itself should be coordinated with the NTSB or other authority who may have assumed responsibility for the investigation.

Depending on the type of aircraft, the airline or the military may be responsible for family notifications and the release of victims' names. The PIO should coordinate with other involved entities before the release of information.

Field Training Officer Program

436.1 PURPOSE AND SCOPE

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

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

436.2 FIELD TRAINING OFFICER - SELECTION AND TRAINING

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

436.2.1 SELECTION PROCESS

FTOs should be selected based on the following minimum requirements:

- (a) Desire to be an FTO
- (b) Minimum of three years of police patrol experience, and off of probation as of the submission deadline indicated on the memorandum of interest bulletin
- (c) Demonstrated ability as a positive role model
- (d) Participate and pass an internal oral interview selection process
- (e) Evaluation by supervisors and current FTOs
- (f) Possess a POST Basic certificate

436.2.2 TRAINING

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

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

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

436.3 FIELD TRAINING OFFICER PROGRAM SUPERVISOR

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

The responsibilities of the FTO Program supervisor include the following:

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- (a) Assignment of trainees to FTOs
- (b) Conduct FTO meetings
- (c) Maintain and ensure FTO/trainee performance evaluations are completed
- (d) Maintain, update, and issue the Field Training Manual to each trainee
- (e) Monitor individual FTO performance
- (f) Monitor overall progress of all trainees in the program
- (g) Monitor overall FTO Program
- (h) Maintain liaison with FTO coordinators of other agencies
- (i) Maintain liaison with academy staff on recruit performance during the academy
- (j) Develop ongoing training for FTOs

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

436.3.1 FIELD TRAINING PROGRAM SUPERVISORS

The Operations Bureau Deputy Chief, or his/her designee, will appoint a sufficient number of FTO supervisors to effectively monitor the daily workings of the FTO program. These supervisors will be selected from the rank of sergeant. Ideally, these supervisors will have performed duties as field training officers during their careers and will be well versed in the intricacies of the FTO program.

The FTO supervisor shall review and approve the Daily Trainee Performance Evaluations. The evaluations shall be made available for the field training coordinator to review. Using the daily evaluations, the supervisor will also prepare a statistical report on each assigned trainee, tracking performance in each evaluated category. This report will be used to identify performance trends that need to be addressed while the officer is assigned to the training program.

FTO supervisors will be responsible for the following:

- (a) Assignment of trainees to FTOs. In the event of a field training schedule change, the FTO sergeant shall make notification to the effected zone sergeants, and/or watch commander.
- (b) Review, track, sign trainee evaluations, and make them available to the program coordinator for review. The program coordinator will ensure that the original evaluations are placed into the trainee's personnel file in accordance with department and District rules, regulations, and policies.
- (c) Meet with assigned trainees every four to six weeks for performance discussions or anytime there is a serious performance issue and/or trend. The purpose of the meeting will be to provide guidance, input, retraining, or to place the trainee on notice. Discussions shall be documented in a memo and submitted to the FTO coordinator.
- (d) Administer quizzes and written tests in a timely manner. The FTO supervisor will ensure that any material related to an upcoming quiz has been documented in the trainee's manual prior to the trainee taking the quiz. No quiz shall be faxed or mailed

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to a location. Quizzes may also be administered by an FTO or sergeant upon approval of the program coordinator.

- (e) Monitor individual FTO performance and conduct within their respective zones. Preparation of quarterly performance evaluations while the trainee is in the FTO program. Once a trainee successfully graduates from the FTO program, their quarterly evaluations shall be completed by their respective assigned patrol sergeant and forwarded to the Personnel and Training Lieutenant. The Personnel and Training Lieutenant will be responsible for keeping track of pending quarterly evaluations and notifying the appropriate sergeant(s).
- (f) Ensure that all sections of the training manual, including all beat/zone orientation checklists, are completed prior to the beginning of the shadow phase of the training period.

436.4 TRAINEE DEFINED

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

436.4.1 REPORTS AND EVALUATIONS

FTOs shall follow the report writing guidelines per Policy 344. FTOs are to approve non-in-custody reports which do not involve the use of force for their trainees. All in-custody reports and reports involving the use of force are to be approved by a supervisor.

Unless FTO supervisor approval is granted, all reports generated by the FTO/trainee will be completed and approved by the end of the second work day. Examples: a) if the FTO has a trainee for two days, then reports generated during the first day are to be completed and approved by the end of the second work day; b) if the FTO has a trainee for one day, then the reports are to be completed and approved at the end of that shift.

With supervisor approval, overtime may be granted for the completion and approval of outstanding reports due to calls for service or cases generated toward the end of the shift that occur on the last day.

The FTO shall attach copies of all citations with case numbers, non-Alliance system documents, and the narrative & property/evidence sections of reports from the report writing system to the trainee's evaluation, when deemed appropriate by the FTO.

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

- (a) FTOs shall complete and submit a written evaluation for each day of training, documenting the performance of their assigned trainee, to the assigned FTO supervisor. FTOs will evaluate trainees based on the "solo beat officer" standard. FTOs shall ensure that their evaluations have the correct ratings, and are free of spelling and/or grammatical errors. These performance evaluations shall be prepared on the departmental computerized form, and will cover all aspects of the training provided.

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- (b) All evaluations shall be discussed with the trainee, then signed by the field training officer and the trainee. A completed copy of each evaluation shall be sent via department e-mail to the trainee's field training sergeant and FTO coordinator no later than 48 hours after the evaluation's training date (FTO regular days off excluded).

436.4.2 FIELD TRAINING MANUAL

FTOs shall be responsible for the completion of signing off all topics contained in the Field Training Manual, including the beat/zone orientation checklist, noting the method(s) of learning and evaluating the performance of their assigned trainee. The training officers will also ensure that their name is placed on the POST certificate of completion page in the trainee's manual.

436.4.3 RETENTION

Any member of the field training program may be removed from the program by the Chief of Police. Reasons for removal include:

- Engages in unlawful or unprofessional behavior
- Fails to adhere to the rules and regulations of this policy
- Demonstrates a pattern of unsafe or unacceptable police practices
- Is a principal in any departmental investigation which results in a sustained finding
- Has substandard ratings on departmental performance evaluations
- Voluntarily withdraws from the FTO program

Any FTO or supervisor wishing to withdraw from the program voluntarily should submit a memorandum, via the chain of command, directed to the Operations Bureau Deputy Chief. Those FTOs or supervisors withdrawing voluntarily or involuntarily from the program may be readmitted when new openings occur by going through the selection process again.

The FTO staff will make a recommendation as to whether to reinstate the FTO. The final determination will rest with the Chief of Police. Returning FTOs may be required to participate in a two week patrol orientation with a field training officer prior to being assigned trainees.

The FTO coordinator will make a recommendation to the command staff as to whether to reinstate an FTO supervisor. The final determination will rest with the Chief of Police.

436.4.4 TIME OFF REQUESTS

FTOs will not be granted compensatory time off or discretionary time off while assigned to a trainee unless all of the following conditions are fulfilled:

- The assigned FTO must locate and assign a certified FTO for the date(s) of the time off request. Email or phone message notification must be made to the FTO's supervisor of the change.

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- The FTO must receive permission from his/her supervisor for the time off and make an email or phone message notification to the trainees FTO supervisor of the time off request.

The FTO requesting the time off is solely responsible for completing the aforementioned conditions. Time off requests by the trainee while in the FTO program will be approved by the FTO coordinator on a case-by-case basis.

436.5 REQUIRED TRAINING

Entry level officers shall be required to successfully complete the Field Training Program, consisting of a minimum of 10 weeks (11 CCR 1004; 11 CCR 1005).

The training period for a lateral officer may be modified depending on the trainee's demonstrated performance and level of experience, but shall consist of a minimum of ten weeks, unless determined otherwise by the Deputy Chief of the Professional Standards and Training Bureau.

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

436.5.1 FIELD TRAINING MANUAL

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

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

436.5.2 REQUIRED TRAINING

Entry level officers shall be required to successfully complete the Field Training Program, consisting of a minimum of twelve (12) weeks. The training period for a lateral officers may be modified depending on the trainee's demonstrated performance and level of experience, but shall consist of a minimum of ten (10) weeks, unless determined otherwise by the Deputy Chief of the Professional Standards and Training Bureau.

436.5.3 TRAINEE RESPONSIBILITIES

Trainee officer should review and acknowledge each daily evaluation with his/her assigned FTO. If the trainee has any questions or concerns regarding the content of the evaluation, he/she should indicate on the evaluation that he/she wishes to discuss the matter with the field training supervisor.

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

Field Training Officer Program

436.6 EVALUATIONS

Evaluations are an important component of the training process and are designed to measure competency in the required skills, knowledge, and abilities. Evaluations shall be completed daily, unless approved by an FTO program supervisor.

Obtaining Air Support

438.1 PURPOSE AND SCOPE

The use of a police helicopter can be invaluable in certain situations. This policy specifies potential situations where the use of a helicopter may be requested and the responsibilities for making a request.

438.2 REQUEST FOR HELICOPTER ASSISTANCE

If a supervisor or officer in charge of an incident determines that the use of a helicopter would be beneficial, a request to obtain helicopter assistance may be made.

438.2.1 REQUEST FOR ASSISTANCE FROM ANOTHER AGENCY

After consideration and approval of the request for a helicopter, the Watch Commander, or his/her designee, will call the closest agency having helicopter support available. The Watch Commander on duty will apprise that agency of the specific details of the incident prompting the request.

438.2.2 CIRCUMSTANCES UNDER WHICH AID MAY BE REQUESTED

Police helicopters may be requested under any of the following conditions:

- (a) When the helicopter is activated under existing mutual aid agreements
- (b) Whenever the safety of law enforcement personnel is in jeopardy and the presence of the helicopters may reduce such hazard
- (c) When the use of the helicopters will aid in the capture of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community
- (d) When a helicopter is needed to locate a person who has strayed or is lost and whose continued absence constitutes a serious health or safety hazard
- (e) Vehicle pursuits

While it is recognized that the availability of helicopter support will generally provide valuable assistance to ground personnel, the presence of a helicopter will rarely replace the need for officers on the ground.

Contacts and Temporary Detentions

440.1 PURPOSE AND SCOPE

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

440.1.1 DEFINITIONS

Definitions related to this policy include:

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

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

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

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

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

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

440.2 POLICY

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

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440.3 PAT-DOWN SEARCHES

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

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.
- (b) Where more than one suspect must be handled by a single officer.
- (c) The hour of the day and the location or neighborhood where the stop takes place.
- (d) Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
- (e) The actions and demeanor of the suspect.
- (f) Visual indications which suggest that the suspect is carrying a firearm or other weapon.

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

440.4 FIELD PHOTOGRAPHS

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

440.4.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT

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

440.4.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT

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

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

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

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440.4.3 SUPERVISOR RESPONSIBILITIES

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

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

440.5 WITNESS IDENTIFICATION AND INTERVIEWS

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

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

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442.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that the Bay Area Rapid Transit Police Department appropriately utilizes criminal intelligence systems and temporary information files to support investigations of criminal organizations and enterprises.

442.1.1 DEFINITIONS

Definitions related to this policy include:

Criminal intelligence system - Any record system that receives, stores, exchanges or disseminates information that has been evaluated and determined to be relevant to the identification of a criminal organization or enterprise, its members or affiliates. This does not include temporary information files.

442.2 POLICY

The Bay Area Rapid Transit Police Department recognizes that certain criminal activities, including but not limited to gang crimes and drug trafficking, often involve some degree of regular coordination and may involve a large number of participants over a broad geographical area.

It is the policy of this department to collect and share relevant information while respecting the privacy and legal rights of the public.

442.3 CRIMINAL INTELLIGENCE SYSTEMS

No department member may create, submit to or obtain information from a criminal intelligence system unless the Chief of Police has approved the system for department use.

Any criminal intelligence system approved for department use should meet or exceed the standards of 28 CFR 23.20.

A designated supervisor will be responsible for maintaining each criminal intelligence system that has been approved for department use. The supervisor or the authorized designee should ensure the following:

- (a) Members using any such system are appropriately selected and trained.
- (b) Use of every criminal intelligence system is appropriately reviewed and audited.
- (c) Any system security issues are reasonably addressed.

442.3.1 SYSTEM ENTRIES

It is the designated supervisor's responsibility to approve the entry of any information from a report, field interview (FI), photo or other relevant document into an authorized criminal intelligence system. If entries are made based upon information that is not on file with this department, such as open or public source documents or documents that are on file at another agency, the designated supervisor should ensure copies of those documents are retained by the Records Division. Any

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supporting documentation for an entry shall be retained by the Records Division in accordance with the established records retention schedule and for at least as long as the entry is maintained in the system.

The designated supervisor should ensure that any documents retained by the Records Division are appropriately marked as intelligence information. The Records Supervisor may not purge such documents without the approval of the designated supervisor.

442.3.2 GANG DATABASES

The Chief of Police may approve participation by the gang unit in a shared criminal gang intelligence database, such as CALGANG®. Members must obtain the requisite training before accessing any such database (11 CCR 751.6).

It is the gang unit supervisor's responsibility to determine whether any report or FI contains information that would qualify for entry into the database. Prior to designating any person as a suspected gang member, associate, or affiliate in a shared gang database; or submitting a document to the Attorney General's office for the purpose of designating a person in a shared gang database; or otherwise identifying the person in a shared gang database, the gang unit supervisor shall provide written notice to the person and, if the person is under the age of 18, to his/her parent or guardian of the designation and the basis for the designation, unless providing that notification would compromise an active criminal investigation or compromise the health or safety of a minor. Notice shall also describe the process to contest the designation (Penal Code § 186.34).

The person, an attorney working on his/her behalf, or his/her parent or guardian (if the person is under 18 years of age) may request, in writing, information as to whether the person is designated as a suspected gang member, associate, or affiliate in a shared gang database accessible by the Department, the basis for that designation, and the name of the agency that made the designation. The Department shall respond to a valid request in writing within 30 days, and shall provide the information requested unless doing so would compromise an active investigation or compromise the health and safety of the person if he/she is under 18 years of age (Penal Code § 186.34).

The person, or his/her parent or guardian if the person is under 18 years of age, may contest the designation by submitting written documentation, which shall be reviewed by the gang unit supervisor. If it is determined that the person is not a suspected gang member, associate, or affiliate, the person shall be removed from the database. The person and the parent or guardian shall be provided written verification of the department's decision within 30 days of receipt of the written documentation contesting the designation and shall include the reason for a denial when applicable (Penal Code § 186.34).

The gang unit supervisor should forward reports or FIs to the Records Division after appropriate database entries are made. The supervisor should clearly mark the report/FI as gang intelligence information.

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It is the responsibility of the Records Division supervisor to retain reports and FIs in compliance with the database rules and any applicable end user agreement.

Records contained in a shared gang database shall not be disclosed for employment or military screening purposes, and shall not be disclosed for the purpose of enforcing federal immigration law unless required by state or federal statute or regulation (Penal Code § 186.36).

442.4 TEMPORARY INFORMATION FILE

No member may create or keep files on individuals that are separate from the approved criminal intelligence system. However, members may maintain temporary information that is necessary to actively investigate whether a person or group qualifies for entry into the department-approved criminal intelligence system only as provided in this section. Once information qualifies for inclusion, it should be submitted to the supervisor responsible for consideration of criminal intelligence system entries.

442.4.1 FILE CONTENTS

A temporary information file may only contain information and documents that, within one year, will have a reasonable likelihood to meet the criteria for entry into an authorized criminal intelligence system.

Information and documents contained in a temporary information file:

- (a) Must only be included upon documented authorization of the responsible department supervisor.
- (b) Should not be originals that would ordinarily be retained by the Records Division or Property and Evidence Section, but should be copies of, or references to, retained documents such as copies of reports, FI forms, Integrated Security Response Center records or booking forms.
- (c) Shall not include opinions. No person, organization or enterprise shall be labeled as being involved in crime beyond what is already in the document or information.
- (d) May include information collected from publicly available sources or references to documents on file with another government agency. Attribution identifying the source should be retained with the information.

442.4.2 FILE REVIEW AND PURGING

The contents of a temporary information file shall not be retained longer than one year. At the end of one year, the contents must be purged.

The designated supervisor shall periodically review the temporary information files to verify that the contents meet the criteria for retention. Validation and purging of files is the responsibility of the supervisor.

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442.5 INFORMATION RECOGNITION

Department members should document facts that suggest an individual, organization or enterprise is involved in criminal activity and should forward that information appropriately. Examples include, but are not limited to:

- (a) Gang indicia associated with a person or residence.
- (b) Information related to a drug-trafficking operation.
- (c) Vandalism indicating an animus for a particular group.
- (d) Information related to an illegal gambling operation.

Department supervisors who utilize an authorized criminal intelligence system should work with the Personnel and Training Lieutenant to train members to identify information that may be particularly relevant for inclusion.

442.6 RELEASE OF INFORMATION

Department members shall comply with the rules of an authorized criminal intelligence system regarding inquiries and release of information.

Information from a temporary information file may only be furnished to department members and other law enforcement agencies on a need-to-know basis and consistent with the Records Maintenance and Release Policy.

When an inquiry is made by the parent or guardian of a juvenile as to whether that juvenile's name is in a temporary information file, such information should be provided by the supervisor responsible for the temporary information file, unless there is good cause to believe that the release of such information might jeopardize an ongoing criminal investigation.

442.7 CRIMINAL STREET GANGS

The Criminal Investigations Division supervisor should ensure that there are an appropriate number of department members who can:

- (a) Testify as experts on matters related to criminal street gangs, and maintain an above average familiarity with:
 - 1. Any organization, associate or group of three or more persons that meets the definition of a criminal street gang under Penal Code § 186.22(f).
 - 2. Identification of a person as a criminal street gang member and criminal street gang-related crimes.
 - 3. The California Street Terrorism Enforcement and Prevention Act (Penal Code § 186.21 et seq.), associated crimes and what defines a criminal street gang (Penal Code § 186.22).

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- (b) Coordinate with other agencies in the region regarding criminal street gang-related crimes and information.
- (c) Train other members to identify gang indicia and investigate criminal street gang-related crimes.

442.8 TRAINING

The Personnel and Training Lieutenant should provide training on best practices in the use of each authorized criminal intelligence system to those tasked with investigating criminal organizations and enterprises. Training should include:

- (a) The protection of civil liberties.
- (b) Participation in a multiagency criminal intelligence system.
- (c) Submission of information into a multiagency criminal intelligence system or the receipt of information from such a system, including any governing federal and state rules and statutes.
- (d) The type of information appropriate for entry into a criminal intelligence system or temporary information file.
- (e) The review and purging of temporary information files.

442.8.1 SHARED GANG DATABASE TRAINING

The Personnel and Training Lieutenant should ensure that members who are authorized users of a shared gang database receive the required training from the California Department of Justice (DOJ) or an instructor certified by the DOJ that includes comprehensive and standardized training on the use of shared gang databases, and any other associated training required by the Department (Penal Code § 186.36; 11 CCR 751.6).

Watch Commanders

444.1 PURPOSE AND SCOPE

Each patrol shift must be directed by supervisors who are capable of making decisions and communicating in a manner consistent with departmental policies, procedures, practices, functions and objectives. To accomplish this goal, a Lieutenant heads each watch.

444.2 DESIGNATION AS ACTING WATCH COMMANDER

When a Lieutenant is unavailable for duty as Watch Commander, in most instances the senior qualified sergeant shall be designated as acting Watch Commander. This policy does not preclude designating a less senior sergeant as an acting Watch Commander when operational needs require or training permits.

444.3 WATCH COMMANDERS DUTIES

The following are a list of Watch Commanders duties. Other duties may be assigned as needed by a Deputy Chief or Chief of Police.

- Notify the Chief and Operations Bureau Deputy Chief of any significant case(s)
- Report significant security concerns to TSA. As required by 49 C.F.R. §1580.203(b), the TSA's Transportation Security Operations Center (TSOC) will immediately be notified telephonically by the Watch Commander during any incident involving any potential threats or significant security concerns. The telephone number for the TSOC is 1-866-615-5150.
- Coordinate Transportation operations and police activity with Central whenever necessary
- Make entries in the public log as follows:
 - Include:
 - Positive community/COPPS events
 - Adult arrests
 - Juvenile arrests/citations for felonies
 - Any string of associated incidents involving multiple victims
 - Any significant felony even when a suspect is not arrested (temporary exceptions may be made to delay the log entry if disclosing information would compromise the investigation and apprehension of an outstanding suspect, the entry should still be made at a later date)
 - Battery of BART employee
 - Bicycle thefts
 - Any entry into the confidential watch commander's log should have an accompanying, redacted, entry into the public log

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- Incidents that will draw significant public/media interest
- Provide:
 - Date, time, and location
 - Suspect name, age, and city of residence (do not include ethnicity)
 - Code violation,
 - If prohibition order was issued
 - Method of bicycle theft, when applicable
 - Case number
- Make entries into the confidential log as follows:
 - Include:
 - All cases that would be of benefit for subsequent shifts to know about
 - All cases that require notification, per policy 358 and the notification matrix
 - Provide:
 - Incident summary, date, time, and location
 - Suspect name(s), DOB(s), and City of Residence
 - Description of outstanding suspect(s)
 - Victim injuries and loss
 - Involved officers and detective names
 - Case number
- Approve call outs for K-9 use by outside agencies
- Accept or refer IA complaints
- Verbally update relief Watch Commander
- Ensure proper info is received and dispatched to patrol
- Notify Communications Department of inquiries from press regarding BPD activity prior to releasing information.
- Handle logistics request during emergencies
- Activating EOC if required
- Take sick calls and make BAP entries.
- Monitor overtime and inverse to fill empty assignments.
- Call out Criminal Investigations for in-custody Part I crimes and significant cases.
- Monitor Alameda County PC declarations for approval status.

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- Document circumstances surrounding incidents that involve train delays of 30 minutes or more in an email message to the Operations Bureau Deputy Chief and Chief of Police.

Mobile Data Computer Use

448.1 PURPOSE AND SCOPE

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

448.2 POLICY

Bay Area Rapid Transit Police Department members using the MDC shall comply with all appropriate federal and state rules and regulations and shall use the MDC in a professional manner, in accordance with this policy.

448.3 PRIVACY EXPECTATION

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

448.4 RESTRICTED ACCESS AND USE

MDC use is subject to the Information Technology Use and Protected Information policies. The introduction of unauthorized software programs or other files to the MDC is strictly prohibited. The manipulation or alteration of current software running on the MDC, with the exception of adjustments to the display, is also prohibited.

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

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

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

Messages may be reviewed by supervisors at any time without prior notification. It shall be the responsibility of the supervisors to enforce this policy and to monitor messages being sent by employees to ensure compliance with professional standards and policy.

It is a violation of this policy to transmit a message or access a law enforcement database under another member's name or to use the password of another member to log in to the MDC system

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unless directed to do so by a supervisor. Members are required to log off the MDC or secure the MDC when it is unattended. This added security measure will minimize the potential for unauthorized access or misuse.

448.4.1 USE WHILE DRIVING

Use of the MDC by the vehicle operator should be limited to times when the vehicle is stopped.

Information that is required for immediate enforcement, investigative, tactical or safety needs should be transmitted over the radio.

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

448.5 DOCUMENTATION OF ACTIVITY

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

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

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

448.5.1 STATUS CHANGES

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

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

448.5.2 EMERGENCY ACTIVATION

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

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

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

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448.6 EQUIPMENT CONSIDERATIONS

448.6.1 BOMB CALLS

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

448.6.2 MALFUNCTIONING MDC

Whenever possible, members will not use vehicles with malfunctioning MDCs. Whenever members must drive a vehicle in which the MDC is not working, they shall notify their immediate supervisor.

Body Worn Camera

451.1 PURPOSE AND SCOPE

The San Francisco Bay Area Rapid Transit District Police Department (BART) is providing each of its sergeants, officers, and fare inspectors with a body worn camera for use while on-duty. Lieutenants will be issued body worn cameras and are required to wear them when they are expecting to take enforcement action while in uniform. The body worn camera is designed to record both video and audio activity of members during the course of their official police duties. The body worn camera is intended to assist officers in the performance of their duties by providing an objective, unbiased video and audio record of a contact and/or incident.

The use of the body worn camera provides documentary evidence for criminal investigations, civil litigation, and allegations of officer misconduct. Such evidence shall be maintained by the Police Department as an investigatory record if it supports a criminal investigation based on reason to believe the subject of the investigation is or may be involved in criminal conduct, or for purposes of an administrative investigation on the conduct of a member(s) of the Police Department.

Officers shall utilize the body worn camera in accordance with the provision of this Policy in order to maximize the effectiveness of the device, enhance transparency, and ensure the integrity of evidence.

451.2 DEFINITIONS

- (a) "AXON camera" This refers to the camera system that captures audio and video signals that is individually worn by officers and that includes at a minimum a recorder, microphone, and paired monitoring device.
- (b) "Audio Recording" is the electronic recording of sound. "Evidence.com" is the online web-based digital media storage facility. The virtual warehouse stores digitally-encrypted data (photographs, audio and video recordings) in a highly secure environment. The digital recordings are accessible to authorized personnel based upon a security clearance and maintain an audit trail of user activity.
- (c) "Evidence Transfer Manager" (ETM) is a docking station that simultaneously recharges the AXON camera and uploads all data captured from the camera's point of view during officer's shift to bartpd.evidence.com. The ETM ensures that evidence handling is secured and cannot be altered.
- (d) The AXON camera manages the video compression and storage and is capable of playback via a Bluetooth paired smart device. The AXON camera ensures that evidence handling is secured and cannot be altered. Once plugged into the docking station, the AXON camera will upload digitally-encrypted data through the Evidence Transfer Manager to bartpd.evidence.com.
- (e) "AXON Technician" An employee of the department assigned by the system administrator that will assign, oversees, and tracks Department equipment. The AXON Technician shall oversee needed repairs or replacement of the AXON cameras and Evidence Transfer Manager equipment through AXON representatives.

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- (f) "System Administrator" The Administrative Services Supervisor will be the bartpd.evidence.com system administrator with full access to user rights who controls passwords, coordinates with the AXON Technician, and acts as liaison with AXON representatives.
- (g) "Video Recording" is the electronic recording of visual images with or without audio component.
- (h) "Impound" is the process by which video and audio files are uploaded to Evidence.com by docking the AXON camera to the Evidence Transfer Manager thereby ensuring files are secure and unable to be altered.

451.2.1 CATEGORIES AND RETENTION PERIODS

The BART Police Department has categories to tag and retain our videos in Evidence.com, which can be updated at any time by BPD. The retention period for each category will be determined by the records retention schedule. It should be noted that retention times can be extended at any time by a Supervisor, Internal Affairs, Evidence Specialist, BPD System Administrator for evidence.com, or by the Chief of Police or his/her designee.

All videos must be promptly categorized with one of the following categories as applicable;

- GOA/UTL or No Merit – Used for all evidence when the suspect/victims are gone and unable to be located or when there is no merit to any criminal activity.
- Infraction Crime – Used for all evidence of crimes involving only infraction violations.
- Misdemeanor Crime – Used for all misdemeanor crimes (do not use if additional crimes are felony)
- Felony Crime – Used for all felony crimes.
- Detention – Used for detentions where the involved person(s) are released without any further enforcement.
- Proof of Payment – Used only by Fare Inspectors when conducting proof of payment fare enforcement.
- Welfare Check/Sick Person – Used for all welfare checks and/or sick persons with no further action taken (i.e. no arrest or citation).
- 5150 W&I – Used for emergency psychiatric evaluations with no criminal enforcement/arrest.
- Injured Person – Used for all injured persons with no criminal enforcement.
- Non-Criminal – Used for all non-criminal activities not captured under other categories.
- Consensual Contact – Used to document all consensual contacts that don't involve a detention or arrest.
- Adult Arrest – Used for all videos when an adult is arrested (includes cite/release and bookings).
- Juvenile Arrest – Used for all videos when a juvenile is arrested (includes cite/release and bookings).

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- Outside Agency Assist – Used for all incidents handled by another agency or when acting as a cover officer for an outside agency (no enforcement action taken by our agency).
- Homicide/Death/Sex Crime – Used for all homicides, deaths, and/or sex crimes.
- Testing – Used only for test videos.
- Accidental – Used for accidental recordings (notification required pursuant to Lexipol Policy 451).
- Use-of-Force – Category used by supervisors for all evidence related to a supervisor's use of force investigation and placed on all videos that capture the actual use of force (this category should not be placed on all videos associated with a case).
- OIS – Used for all evidence related to an officer involved shooting or in-custody death.

Personnel should use the most applicable category, such as “Adult Arrest” for an adult arrested for 211 PC (instead of “Felony Crime”). Always use the highest classification which applies to the overall incident (i.e. “Misdemeanor Arrest” if the person was stopped for fare evasion and eventually arrested for a misdemeanor).

451.3 UNIFORMED OFFICER RESPONSIBILITIES

Prior to going into service, each uniformed patrol officer equipped with a Department issued AXON camera will be responsible for making sure that the AXON camera is in good working order. The AXON camera shall be conspicuously placed on the officer's person and worn in such a way as to provide an unobstructed camera view of officer/citizen contacts. The camera shall be considered mounted correctly if it is mounted using an AXON approved mounting accessory.

Members of the Department that are assigned an AXON camera shall receive mobile video training prior to deployment of the device in an operational setting. At this training, each officer will be provided a standard checklist of steps they are required to complete in order to ensure their AXON camera and mounting systems are in good working order.

451.4 NON-UNIFORMED OFFICER RESPONSIBILITIES

Any officer assigned to a non-uniformed position may carry a Department-issued AXON camera at any time the officer believes that such a device may be utilized in order to assist the officer in the performance of their duties by providing an objective, unbiased video and audio record of a contact and/or incident. However, whenever a non-uniformed officer is working a uniformed patrol assignment he/she shall wear a Department - issued AXON camera in accordance with this policy.

451.5 ACTIVATION OF THE VIDEO/AUDIO RECORDER

Penal Code Section 632 prohibits any individual from surreptitiously recording any conversation (confidential communication) in which any party to the conversation has a reasonable belief that the conversation is private or confidential. This excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that

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the communication may be overheard or recorded. However Penal Code Section 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation as follows:

- (a) No member of the Department may surreptitiously record a contact with or conversation of any other member of this Department without the expressed knowledge and consent of all parties present, including the member whose acts or conversation are being recorded. Nothing in this Section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code Section 3303(g).
- (b) Any member of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation:
 1. For the purpose of this Policy, any officer contacting an individual suspected of violating any law or during the course of any official, law enforcement-related activity shall be presumed to be engaged in a criminal investigation. This presumption shall not apply to contacts with other employees conducted solely for administrative purposes.
 2. For the purpose of this Policy, it shall further be presumed that any individual contacted by a uniformed officer wearing a conspicuously mounted body worn camera will have knowledge that such a contact is being recorded. This subsection shall not apply to contact between a member of the Department wearing a conspicuously mounted body worn camera and other member(s) of the Department or employees of the BART Office of the Independent Police Auditor. For purposes of this policy, contact between members of this Department is governed by section 451.5(a), and 451.5(b) (1).
- (c) All on-scene officers (inclusive of all initiating and witness officers) equipped with a body worn camera shall activate their cameras prior to making contact with individuals in any of the following circumstances:
 1. Any law enforcement contact including:
 - (a) detentions (as outlined in Policy Section 322.3.1),
 - (b) vehicle stops
 - (c) walking stops
 - (d) ejection of a subject from a BART station or train (no immediate voluntary compliance)
 - (e) probation and parole searches
 - (f) service of a search or arrest warrant
 - (g) any contact with a subject suspected for criminal behavior
 - (h) processing, transporting, and booking of all prisoners
 2. Any contact with a subject for a suspicious person

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3. Officers are encouraged to activate their body worn camera on consensual contacts (as outlined in Policy section 322.3) and officers are required to activate their body worn camera anytime a consensual contact becomes a detention.
- (d) Members of the Department are expected to activate their body worn camera any time they reasonably believe that a recording of an on-duty contact with a member of the public may be of future benefit to the Department.
1. At no time should an officer jeopardize his/her safety or the safety of another in order to activate their body worn camera.
 2. Members of the Department are expressly prohibited from utilizing Department recorders and recorded media for personal use.
 3. Members of the Department will not make copies of any recordings for their personal use and are prohibited from using a recording device (such as a phone camera or secondary video camera) to record media from bartpd.evidence.com or the AXON camera unit. Nothing in this policy shall be construed as limiting an officer's right to carry and use a personal device such as a smart-phone, however officers shall not carry or use another mobile video recorder in addition to the District issued body worn camera without express approval of the Chief of Police.
 4. When an equipment malfunction is identified as a reason for a non-activation or late activation, a supervisor must confirm whether the member performed the required equipment test prior to deployment.

451.6 AXON CAMERA OPERATING PROCEDURES

Prior to going into service each officer shall perform an inspection and record a test video, to ensure that his/her AXON camera is operational. If problems are encountered with any component of the system, the AXON camera equipment will not be used. The officer to whom the problematic equipment is assigned shall report the problem to their immediate supervisor upon becoming aware of it. A spare AXON camera shall be issued to that officer through a supervisor prior to the officer going into service. The officer and supervisor shall inform the AXON Technician via email of problems that are occurring with the problem unit as well as what spare AXON camera was assigned to the officer (number of AXON camera unit). The problematic AXON camera shall be routed to the AXON Technician to diagnose and shall reassign a new unit to the affected employee.

- (a) The officers shall report the loss or theft of an AXON camera to their immediate supervisor. The officer shall prepare a memo to be routed via the chain of command to their Bureau Deputy Chief documenting the circumstances surrounding the loss or theft of the device. The AXON technician should be informed via email from the immediate supervisor of the loss. A spare AXON camera shall be issued to the officer through a supervisor prior to going back into service. The officer and supervisor shall inform the AXON Technician via email of what spare was issued (number of AXON camera unit). The AXON Technician shall assign a new unit to the officer as soon as possible after receiving notification of the loss or theft of the camera.

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- (b) Once the AXON camera is activated pursuant to Section 451.5 of this policy, it shall remain on until the event giving rise to the activation has reached a conclusion and/or the officer leaves the scene of the event, whichever occurs first. Officers shall record further interaction with suspects, including searching, processing, transporting, and booking. Any exceptions will be documented in the police report and reported to a supervisor. When the officer reasonably believes the event giving rise to the activation is over, he/she may deactivate the AXON camera from the recording mode. If the event giving rise to the activation resumes following the officer's termination of the AXON camera recording the officer shall reactivate their AXON camera.
- (c) When the AXON camera is used in any incident, investigation, or during a traffic stop, this fact will be documented on any relevant citation and/or report prepared regarding the incident. Conversely, when the AXON camera is not used in any incident, investigation, or during a traffic stop, the reason for non-use will be documented on any relevant citation and/or report prepared regarding the incident. Conversely, whenever the AXON camera is not activated as required by Section 451.5 of this policy, the reason for the lack of activation will be documented on the relevant citation and/or police report prepared regarding the event that otherwise would have given rise to activation. For the purposes of capturing the recording or lack of recording in the police report it should be mentioned at the beginning of the narrative summary.
- (d) Department personnel shall not intentionally erase, alter, reuse, modify or tamper with audio-video recordings, nor shall they attempt to erase, alter, reuse, modify or tamper with audio-video recordings.
- (e) If the AXON camera is accidentally activated, the officer shall inform his or her immediate supervisor requesting the recording be deleted. The request shall be sent via email and routed to the AXON Administrator. Once the video has been reviewed by the supervisor and administrator and deemed to have no evidentiary value the video will be categorized as "ACCIDENTAL" and retained for thirty (30) days prior to deletion. Officers should note accidental recordings by labeling them using their Department issued device prior to download.
- (f) Once an officer has completed a recordable encounter he or she shall label the recording using their Department issued device. The officers shall provide the event number, category, and title of the video. This information will be uploaded along with the video once docked into the ETM at the end of shift. Supervisory personnel shall conduct regular audits to determine whether recordings are labeled in compliance with this section.
- (g) Officers working overtime assignments outside of their direct report locations will ensure they bring their issued AXON camera to the location of their overtime assignment.
- (h) When an officer discovers that his/her AXON camera battery is becoming depleted (as evidenced by a yellow indicator light and/or a sounding tone when recording), the officer shall immediately exchange the camera for a spare located in the Integrated Security Response Center (ISRC). If the officer will be delayed in exchanging the camera, or if the officer is unable to locate a charged spare Axon camera, the officer shall notify a supervisor and the supervisor will locate a charged spare Axon camera for the officer's use as soon as possible.

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451.7 AXON CAMERA IMPOUNDING PROCEDURE

To download the videos from their AXON cameras, officers shall place the AXON camera into an assigned open slot on the Evidence Transfer Manager (docking station). This will allow the data to be transferred from the AXON camera, via the docking station, to bartpd.evidence.com. The data is considered impounded at this point and the AXON camera is cleared of existing data.

Officers will ensure all videos capturing arrests, uses of force, and/or any incident deemed necessary by a supervisor, have been downloaded when not leaving their AXON camera in an ETM at the completion of a work shift. Any exceptions to this requirement will only be made in unusual circumstance and with supervisory approval.

451.8 REVIEW OF RECORDED MEDIA

Recorded files may be reviewed in any of the following situations:

- (a) Officers are given access to review his/her recordings when preparing written reports and/or statements relevant to any incident, to help ensure consistency of accounts. Officers must wait for authorization from the Chief of Police, or his or her designee, prior to reviewing video of critical incidents (e.g. Officer Involved Shootings, In-custody Deaths).
- (b) By a supervisor investigating a specific incident, issue, and/or act of officer conduct.
- (c) By any member of the Department who is authorized to participate in an official investigation in the following type of cases only: personnel complaints, administrative investigations, or criminal investigations.
- (d) Pursuant to a lawful process or by members of the District Attorney's office or court personnel otherwise authorized to review evidence in a related case.
- (e) By the BART Independent Police Auditor and/or his/her authorized personnel..
- (f) With the expressed permission of the Chief of Police or authorized designee.
- (g) By the "System Administrators" for the purpose of managing the video evidence, quality assurance, and to categorize, label, provide case numbers to videos when needed.

451.9 MOBILE VIDEO RECORDERS

The Department assigned AXON camera shall be the only mobile video recorder allowed for Department employees while on-duty. Any other mobile video recorder shall only be used with the expressed permission of the Chief of Police.

Medical Marijuana

452.1 PURPOSE AND SCOPE

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

452.1.1 DEFINITIONS

Definitions related to this policy include:

Cardholder - A person issued a current identification card.

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

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

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

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

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

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

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

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452.2 POLICY

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

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

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

452.3 INVESTIGATION

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

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

452.3.1 INVESTIGATIONS WITH NO MEDICINAL CLAIM

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

452.3.2 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A CARDHOLDER

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

- (a) The information contained in the card is false or falsified.
- (b) The card has been obtained or used by means of fraud.
- (c) The person is otherwise in violation of the provisions of the MMP.
- (d) The person possesses marijuana but not for personal medical purposes.

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

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

452.3.3 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A NON-CARDHOLDER

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

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

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

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

452.3.4 ADDITIONAL CONSIDERATIONS

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

- (a) Because enforcement of medical marijuana laws can be complex, time consuming, and call for resources unavailable at the time of initial investigation, officers may consider submitting a report to the prosecutor for review, in lieu of making an arrest. This can be particularly appropriate when:
 1. The suspect has been identified and can be easily located at a later time.
 2. The case would benefit from review by a person with expertise in medical marijuana investigations.
 3. Sufficient evidence, such as photographs or samples, has been lawfully obtained.

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4. Other relevant factors, such as available department resources and time constraints prohibit making an immediate arrest.
- (b) Whenever the initial investigation reveals an amount of marijuana greater than the statutory amount, officers should consider the following when determining whether the form and amount is reasonably related to the patient's needs:
1. The amount of marijuana recommended by a medical professional to be ingested.
 2. The quality of the marijuana.
 3. The method of ingestion (e.g., smoking, eating, nebulizer).
 4. The timing of the possession in relation to a harvest (patient may be storing marijuana).
 5. Whether the marijuana is being cultivated indoors or outdoors.
- (c) Before proceeding with enforcement related to collective gardens or dispensaries, officers should consider conferring with a supervisor, an applicable state regulatory agency or other member with special knowledge in this area, and/or appropriate legal counsel (Business and Professions Code § 26010; Business and Professions Code § 26060). Licensing, zoning, and other related issues can be complex. Patients, primary caregivers, and cardholders who collectively or cooperatively cultivate marijuana for medical purposes may be licensed or may have a defense in certain circumstances (Business and Professions Code § 26032; Business and Professions Code § 26033).
- (d) Investigating members should not order a patient to destroy marijuana plants under threat of arrest.

452.3.5 EXCEPTIONS

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

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

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- (d) Use of marijuana by a person on probation or parole, or on bail and use is prohibited by the terms of release (Health and Safety Code § 11362.795).

452.3.6 INVESTIGATIONS INVOLVING A STATE LICENSEE

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

452.4 FEDERAL LAW ENFORCEMENT

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

452.5 PROPERTY AND EVIDENCE SECTION SUPERVISOR RESPONSIBILITIES

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

Upon the prosecutor's decision to forgo prosecution, or the dismissal of charges or an acquittal, the Property and Evidence Section supervisor should, as soon as practicable, return to the person from whom it was seized any useable medical marijuana, plants, drug paraphernalia or other related property.

The Property and Evidence Section supervisor may release marijuana to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Criminal Investigations Division supervisor.

Aggressive Panhandling

453.1 PURPOSE AND SCOPE

The purpose of this policy is to regulate aggressive panhandling within the San Francisco Bay Area Rapid Transit District by protecting citizens from harassment without infringing upon the Constitutional protection of free speech under the First Amendment.

453.2 POLICY

The practice of aggressive panhandling has been identified as a significant social and safety concern. Departmental policies regulating aggressive panhandling are a necessary component of a coordinated approach to ameliorate the negative impact of aggressive panhandling activities on BART District property.

Panhandling for gratuitous donations is protected under the U.S. Constitution's First Amendment. However, aggressive panhandling is illegal under California law.

California Penal Code 647(c) provides that anyone who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms is guilty of disorderly conduct, a misdemeanor.

Merely requesting and/or receiving a gratuitous (free) donation is not a violation of law and cannot form the basis for a detention.

453.3 DEFINITIONS

Panhandling - The personal, spoken, written or gestural direct solicitation by a person of gratuitous donations of money, food or goods of any kind from any member of the public.

Accosting - Approaching and/or stopping somebody in order to speak to that person in an unreasonably insistent, threatening, intimidating, or intrusive manner.

Aggressive Panhandling - The solicitation of donations in an unreasonably insistent, threatening, intimidating, or intrusive manner.

453.4 EXAMPLES OF AGGRESSIVE PANHANDLING

Examples of aggressive panhandling include:

- The use of overt or veiled threats in an effort to solicit.
- The invasion of personal space by cornering, blocking, or following others in an effort to solicit.
- Touching others in an effort to solicit.
- Reaching or leaning into a car window or across a seated BART customer to solicit.
- Intimidating or obstructing vehicular or pedestrian traffic to solicit.

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453.5 PROCEDURES

Although an officer may attempt a consensual contact in circumstances when reasonable suspicion of unlawful activity has not yet been established, an officer cannot detain a lawful panhandler unless and until the officer has established reasonable suspicion that an individual is being or has been accosted. When encountering a person suspected of aggressive panhandling where the continued freedom of the individual would not result in a breach of the peace or a more serious crime, police officers are encouraged to utilize referrals to other appropriate social service providers in lieu of physical arrest. The discretion to make a physical arrest of a person suspected of aggressive panhandling shall be the responsibility of the individual officer. When feasible, an officer shall collect evidence of aggressive panhandling prior to detaining or citing a person in connection with a violation of California Penal Code 647 (c). Such evidence may be obtained by way of:

- Personal observation of aggressive behavior by an officer.
- A statement made to an officer by an individual claiming to have been accosted in any manner including but not limited to the examples provided herein.
- Witness statements made to an officer or dispatcher.
- Video of aggressive conduct or accosting recorded using body-worn mobile video recorders, station video cameras, cell phone cameras, or any other video recording device.
- Audio recordings.

Any evidence collected by an officer that generates reasonable suspicion or probable cause to cite or detain an individual for violation of California Penal Code 647(c) shall be documented and included in the narrative section of the officer's police report.

Officers shall be able to articulate the means by which reasonable suspicion or probable cause was developed prior to detaining any individual suspected of aggressive panhandling.

Officers should rely on the elements listed in California Penal Code Section 647(c) as the basis for establishing reasonable suspicion of aggressive panhandling. Officers should be cautious in utilizing the elements listed in any local law or Municipal Code when assessing and establishing the existence of reasonable suspicion or probable cause to cite or detain because these laws may not apply to circumstances within the BART system and/or may not conform to the parameters set forth in this policy.

453.5.1 REPORTING

Officers having interactions and or contacts with persons suspected of aggressive panhandling as a result of self-initiated contact, a citizen complaint, or a BART employee complaint shall contact dispatch with the disposition of the incident.

453.5.2 TRAINING

Training on enforcement of California Penal Code section 647(c) and review of this Policy shall be conducted as directed by the Personnel and Training Division.

Bicycle Patrol Unit

454.1 PURPOSE AND SCOPE

The Department has established the Bicycle Patrol Unit (BPU) for the purpose of enhancing patrol efforts in the community. Bicycle patrol has been shown to be an effective way to increase officer visibility in congested areas and their quiet operation can provide a tactical approach to crimes in progress. The purpose of this policy is to provide guidelines for the safe and effective operation of the patrol bicycle.

454.2 POLICY

Patrol bicycles may be used for regular patrol duty, parking control, or special events. The use of the patrol bicycle will emphasize their mobility and visibility to the community.

Bicycles may be deployed to any area during the day, according to Department needs and as staffing levels allow. Bicycles shall not be ridden in the rain. They will not be ridden between BART stations without the approval of the Watch Commander

Requests for specific deployment of bicycle patrol officers shall be coordinated through the Bicycle Patrol Unit supervisor or the Watch Commander.

454.3 SELECTION OF PERSONNEL

Interested sworn personnel and Community Service Officers, who are off probation and not currently under discipline, shall submit a Memo of Interest to their sergeant. A copy will be forwarded to the BPU supervisor. Interested personnel shall be evaluated by the following criteria:

- (a) Recognized competence and ability as evidenced by performance.
- (b) Special skills or training as it pertains to the assignment.
- (c) Good physical condition.
- (d) Willingness to perform duties using the bicycle as a mode of transportation.

454.3.1 BICYCLE PATROL UNIT SUPERVISOR

The Bicycle Patrol Unit supervisor will be selected from the rank of sergeant by the Operations Bureau Deputy Chief or his/her designee.

The Bicycle Patrol Unit supervisor shall have responsibility for the following:

- (a) Organizing bicycle patrol training.
- (b) Inspecting and maintaining inventory of patrol bicycles and program equipment.
- (c) Scheduling maintenance and repairs.
- (d) Evaluating performance of bicycle officers.
- (e) Coordinating activities with the Patrol Bureau.

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- (f) Other activities as required to maintain the efficient operation of the Bicycle Patrol Unit.

454.4 TRAINING

Participants in the program must complete an initial Department approved bicycle-training course after acceptance into the program. Thereafter bicycle patrol officers should receive once yearly in-service training to improve skills and refresh safety, health and operational procedures. The initial training shall minimally include the following:

- Bicycle patrol strategies.
- Bicycle safety and accident prevention.
- Operational tactics using bicycles.

Bicycle patrol officers will be required to qualify with their duty firearm while wearing bicycle safety equipment including the helmet and riding gloves.

454.5 UNIFORMS AND EQUIPMENT

Bicycles officers shall wear the departmentally approved uniform and safety equipment while operating the police bicycle. Safety equipment includes departmentally approved helmet, riding gloves, protective eyewear and approved footwear. Soft body armor/vest is required. Community Service Officers are not required to wear soft body armor/vests.

The bicycle uniform consists of the standard short sleeve class "A" Coolmax® uniform shirt with department approved badge and patches and black bicycle patrol pants or shorts with uniform appearance.

Optional equipment includes jacket in colder weather; turtleneck shirts are permitted when worn under the uniform shirt, radio head set and microphone.

Bicycle officers and CSOs shall carry the same equipment on the bicycle patrol duty belt as they would on a regular patrol assignment.

Officers and CSOs will be responsible for obtaining necessary forms, citation books and other needed equipment to keep available while on bike patrol.

454.6 CARE AND USE OF PATROL BICYCLES

Officers will be assigned a specially marked and equipped patrol bicycle, attached gear bag, two batteries and a charger.

Bicycles utilized for uniformed bicycle patrol shall be primarily black or white in with a "POLICE" decal affixed to each side of the crossbar or the bike's saddlebag. Every such bicycle shall be equipped with front and rear reflectors front lights and a siren/horn satisfying the requirements of Vehicle Code §2800.1(b). The Community Service Officers will be issued the same bicycles but, without the emergency lighting.

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Bicycles utilized for uniformed bicycle patrol shall be equipped with a rear rack and/or saddle bag(s) sufficient to carry all necessary equipment to handle routine patrol calls including report writing, vehicle storage and citations.

Each bicycle gear bag shall include a first aid kit, tire pump, repair tool, tire tube, security lock, equipment information and use manuals. These items are to remain with/on the bicycle at all times.

Each bicycle ridden by sworn personnel shall be equipped with a steady or flashing blue warning light that is visible from the front, sides, or rear of the bicycle. (Vehicle Code § 21201.3)

Bicycle officers shall conduct an inspection of the bicycle and equipment prior to use to insure proper working order of the equipment. Officers are responsible for the routine care and maintenance of their assigned equipment (e.g., tire pressure, chain lubrication, overall cleaning). Officers shall promptly report any damage to the bicycle and note it on the Damage Control Card for the bike.

If a needed repair is beyond the ability of the bicycle officer, a To/From memo will be completed and forwarded to the program supervisor for repair by an approved technician.

Each bicycle will have scheduled maintenance once yearly to be performed by a department approved repair shop/technician.

At the end of a bicycle assignment, the bicycle shall be returned clean and ready for the next tour of duty.

Officers and CSOs shall not modify the patrol bicycle, remove, modify or add components except with the expressed approval of the bicycle supervisor, or in the event of an emergency.

Vehicle bicycle racks are available should the officer need to transport the patrol bicycle. Due to possible component damage, transportation of the patrol bicycle in a trunk or on a patrol car push-bumper is discouraged.

Bicycles shall be properly secured when not in the officer's immediate presence.

Officers and CSOs can purchase their own bikes for patrol use. The bicycles must be approved by the BPU Lieutenant prior to purchase. Officers purchasing their own bikes shall be responsible for all maintenance, damage or loss.

454.7 OFFICER RESPONSIBILITY

Officers and CSOs must operate the bicycle in compliance with the vehicle code under normal operation. Officers may not operate the bicycle hours of darkness.

Officers are exempt from the rules of the road under the following conditions (Vehicle Code § 21200(b)(1)):

- (a) In response to an emergency call.
- (b) While engaged in rescue operations.
- (c) In the immediate pursuit of an actual or suspected violator of the law

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CSOs are not exempt from the rules of the road at any time.

Animals On District Trackways

455.1 PURPOSE AND SCOPE

The purpose of this directive is to establish procedures for the safe removal of live, injured or dead animals from District trackways.

455.2 DEFINITION

Trackway - The portion of the BART system within protective fencing, tunnels, tubes, subways, stations or aerial structures, wherein trains operate.

455.3 PROCEDURE

When assigned to a call of a live, injured or dead animal on the trackway, the responding officer will take the following appropriate action:

- (a) **Notification:** The animal control services department in that jurisdiction will be requested to respond to the reported animal's location. If an animal control officer responds, the BART Police Department officer shall accompany the animal control officer at all times while in the trackway. The BART Police Department officer shall apprise the animal control officer of all dangers within the trackway area (i.e., third rail, train traffic, etc.).
- (b) **Live Animals:** If an animal is interfering with mainline train traffic, immediate attempts should be made to clear the animal from the trackway with or without the assistance of an animal control officer. If repeated attempts have failed to accomplish the safe and timely removal of the animal from the trackway, the BART Police Department officer shall contact a supervisor who will determine if the animal should be dispatched.
 1. If the animal is not interfering with mainline train traffic, attempts should be made to first clear the animal from the trackway, or capture the animal. If repeated attempts fail to accomplish the safe and timely removal of the animal from the trackway, the officer shall contact a supervisor who will determine if dispatching the animal is warranted.
- (c) **Injured Animals:** Injured animals shall be treated in the same manner as live animals. All officers should be aware that any injured animal is a potential risk and may turn vicious without warning. Injured animals actually on the tracks or near the third rail should be dispatched prior to removal to insure the safety of the BART Police Department officer or the animal control officer.
- (d) **Dead Animals:** For any animal removal officers will be responsible in evaluating that the conditions are safe. They shall also evaluate whether the dead animal is to large, heavy or in a condition which will allow for its easy and clean removal.

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1. Officers assigned to accompany animal control officers may, with the approval of a supervisor, assist in the removing of the dead animals from the trackway to a safe area.
2. In the event the removal of a dead animal is requested during non-business hours of the animal control services department, the BART officer may, with the approval of a supervisor, move the dead animal to a safe area for later animal control removal.

Delay of Revenue Trains

457.1 PURPOSE AND SCOPE

To provide guidelines for the holding of revenue trains when police intervention is required.

457.2 POLICY

It is the policy of the Department that revenue train delays resulting from police action will be kept to the minimal level necessitated by the circumstances and in consideration of the District goals to achieve maximum train performance while maintaining patron safety.

457.3 PROCEDURE

- (a) **Train Control:** The overall control of revenue train operations is the responsibility of the Operations Control Center manager.
- (b) **Scene Control/Coordination:** BART Police Department personnel will adhere to the provisions of the Operations Rules and Procedures Manual and the BART Emergency Plan. Specifically, it is the responsibility of police personnel requesting any interruption of revenue train service to inform the Operations Control Center of all pertinent circumstances at the earliest possible time. In all life-threatening situations, the police officer at the scene shall inform the Operations Control Center of the circumstances and shall have complete control to accomplish the police function.
- (c) **Considerations:** The following factors should be considered in any request to hold a revenue train for police action:
 - 1. Patron safety and protection
 - 2. Severity of the situation
 - 3. Necessity for immediate versus delayed police action
 - 4. Impact of the delay in operations during peak hours versus non-peak service
 - 5. Alternatives to holding a train
- (d) **Format:** Officers shall provide the Operations Control Center with the following information as part of any request to hold a train:
 - 1. Reason for the request to hold
 - 2. Station or mile post location
 - 3. Track identifier
 - 4. Train destination
 - 5. Platform identifier where appropriate.

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- (e) **Restoration of Service:** Officers shall avoid any delay in notifying the Operations Control Center to resume service. Any delay in the rapid resumption of revenue service must be agreed upon by the Operations Control Center manager and by the BART police watch commander or sergeant-in-charge.
 - 1. Under no circumstances will revenue service be delayed beyond a reasonable period of time for situations that are routine and not life-threatening in nature.

Foot Pursuits

458.1 PURPOSE AND SCOPE

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

458.2 DECISION TO PURSUE

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

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

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

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

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

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

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458.2.1 PURSUIT INTO RIGHTS-OF-WAY

- (a) **Pursuits by BART Officers:** Officers should use extreme caution when deciding whether to pursue a suspect into a District right-of-way, particularly if the suspect flees using the trackway or into an underground tunnel area. The danger posed by moving trains, switches and the electric third rail make such pursuits extremely hazardous and they should not be undertaken for minor offenses. In no case should an officer pursue a suspect onto a right-of-way until he/she has established contact with dispatch and ensured that trains are being held out of the affected area and, if reasonably necessary, that electrical power is shut off as well. Only then should an officer enter the right-of-way to pursue the suspect.
1. In these situations, priority should be given to positioning officers at the next logical exit point and intercepting the suspect, rather than pursuing along the right-of-way.
- (b) **Pursuits by Other Agencies:** From time to time, officers from other agencies may pursue suspects into stations, or onto District rights-of-way. These pursuits are even more hazardous, as there is often no coordination between BART and the pursuing agency and the pursuing officers often have no ability to communicate with their own dispatch centers. If BART officers are in a position to assist another agency with the pursuit of a suspect who has fled into the BART system, officers should exercise the same caution and coordinate holding revenue trains and electrical power before allowing the other agency's officers to enter the right of way. A BART officer should accompany the other agency to assist with communication and coordination.

458.2.2 PURSUIT FOR MINOR OFFENSES

The decision to initiate or continue a foot pursuit for a minor offense, such as fare evasion, should be carefully considered by the officer(s) involved. While it is true that suspects detained for minor offenses often elect to flee because they are attempting to elude arrest for more serious crimes, officers must weigh the inherent hazards of a foot pursuit against the known seriousness of the crime at hand. Minor offenses which may not justify the risk of a foot pursuit, or the expenditure of significant resources in order to capture the suspect, infraction violations and non-violent misdemeanor offenses. Officers should also carefully weigh involving outside agencies in extended foot pursuits or area searches for minor violations.

Officers should make every effort however, to locate and apprehend those suspects reasonably believed to be involved in more serious criminal activity. Suspects known to have outstanding felony arrest warrants, as well as those suspects believed to have committed felony or violent misdemeanor offenses should be pursued as long as the pursuit can be accomplished with a reasonable degree of safety for the pursuing officers, the general public and the pursued suspect. These cases are also more likely to warrant the involvement of outside agencies, air support, the use of police canines and the resources required to establish a perimeter and to conduct a potentially lengthy area search.

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Supervisors should carefully monitor extended foot pursuits for minor violations and direct the pursuit to be terminated if the risks of continued pursuit outweigh the likely benefit of continuing the pursuit.

458.3 GENERAL GUIDELINES

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

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

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immediate threat to department members or the public if the suspect is not immediately apprehended.

- (o) The officer's ability to safely continue the pursuit is impaired by inclement weather, darkness or other environmental conditions.

458.4 RESPONSIBILITIES IN FOOT PURSUITS

458.4.1 INITIATING OFFICER RESPONSIBILITIES

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

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

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

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

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

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

458.4.2 ASSISTING OFFICER RESPONSIBILITIES

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

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458.4.3 SUPERVISOR RESPONSIBILITIES

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

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

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

458.4.4 INTEGRATED SECURITY RESPONSE CENTER RESPONSIBILITIES

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

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

458.5 REPORTING REQUIREMENTS

The initiating officer shall complete appropriate crime/arrest reports documenting, at minimum:

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

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- (i) Any property or equipment damage.
- (j) Name of the supervisor at the scene or who handled the incident.

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

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

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

Critical Asset Patrol Program

460.1 PURPOSE AND SCOPE

This policy shall outline the BART District's "Critical Asset Corridor", the responsibilities of the Critical Asset Patrol (CAP) team, establish the minimum qualifications for the position of CAP personnel, and establish the procedures for the selection, testing, qualifying and retention of CAP personnel.

460.2 OBJECTIVE

The Bay Area Rapid Transit District was given a grant by the United States Department of Homeland Security under the Transit Security Grant Program for security enhancements to the District's "Critical Asset Corridor". The critical asset corridor is the most traveled underground stations, and under tubes and tunnels within BART properties. They include:

- The Trans Bay Tube (TBT), 3.7 miles of underwater track way connecting Oakland to San Francisco
- San Francisco Transition Structure (SFTS), major connecting point of the TBT to San Francisco
- Oakland Transition Structure (OTS), major connecting point of the TBT to Oakland
- Operations Control Center (OCC), heartbeat of the computer system that operates the Bay Area Rapid Transit at the Lake Merritt Station
- Berkeley Hills Tunnel (BHT), connects critical asset corridor in Oakland to Orinda and seven of ten BART stations located in Contra Costa County
- The Fruitvale, Lake Merritt, 12th Street, 19th Street, MacArthur, West Oakland, Rockridge, Orinda, Embarcadero, Montgomery Street, Powell Street, and Civic Center stations

The objective of the Critical Asset Patrol (CAP) team is to provide high visibility, uniformed law-enforcement presence (primarily on trains) within the critical asset corridor. CAP team personnel must be proactive and alert to preventing incidents of significant security concerns, focusing on crimes against persons and destruction of District properties. The CAP team may participate in joint deployment assignments within the District involving the Transportation Administration's Visible Intermodal Prevention and Response (VIPR) teams, made up of sworn Federal Air Marshals (FAMs).

460.2.1 COMPLIANCE WITH FUNDING OPPORTUNITY ANNOUNCEMENT

All allocations and use of funds under this grant shall be in accordance with the Funding Opportunity Announcement. The BART Police Department must ensure that Federal funds for the Critical Asset Patrol team do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources. The department may be required to demonstrate and document to the United States Department of Homeland Security that a reduction in non-Federal resources occurred for reasons other than the receipt of Federal funds.

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460.3 PHILOSOPHY

The presence of highly visible uniformed officers with the critical asset corridor represents BART's commitment to be as vigilant and progressive as possible to deter and mitigate in the event of an act of terrorism. This would result in a high level impact that would be apparent through the highly visible deployment of the CAP team within the corridor. The CAP team will further enhance BART's immediate response to the threat or act of terrorism by responding to suspicious and unusual behaviors within the critical asset corridor.

460.4 TRAINING

It shall be the goal of this department to administer continuous professional training from California POST or Department of Homeland Security approved courses that will provide for professional growth and continued development of CAP personnel. By doing so, the department will ensure its CAP personnel possess the knowledge and skills necessary to provide a professional level of service that meets the needs of the community.

CAP team personnel are Terrorism Liaison Officers who may provide anti-terrorism training on surveillance, planning, rehearsal for mobilization activities, and the sharing of terrorism intelligence with District employees and allied agencies.

460.5 CAP PROGRAM PERSONNEL

460.5.1 CAP COORDINATOR

The CAP program coordinator shall be selected from the rank of Lieutenant by the Chief of Police or his/her designee. The coordinator of the CAP team will be responsible for managing the CAP program

460.5.2 CAP SERGEANT

The CAP sergeant shall be selected from the rank of sergeant by the Chief of Police or his/her designee. The CAP program sergeant will be responsible for:

- (a) Grant compliance and monitoring of CAP team personnel.
- (b) Conducting CAP team meetings.
- (c) Ensuring CAP team personnel performance evaluations are completed.
- (d) Developing ongoing training for CAP team personnel.

460.5.3 CAP OFFICERS

CAP team officers shall be selected by the Chief of Police or his/her designee.

- (a) All CAP officers shall report directly to and utilize their assigned CAP sergeant as the first step in their chain of command.
- (b) Unless supervisor approval is given in advance, all officers shall attend daily line up briefing during work days at the assigned times.

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- (c) When using the BAP timekeeping system, officers will enter "79HN000-Final Design" when arriving to work on regular days.
- (d) Work day and shift hours for personnel shall be deployed at the supervisor's discretion.

460.6 CRITICAL ASSET CORRIDOR ASSIGNMENTS

Officers will use individual unit identifiers for their call sign, and, absent any prior duties assigned by a supervisor, will assume a high visibility police presence within the critical asset corridor that present the highest risk of threat to our patrons, employees, and the BART system. Sergeants and officers shall radio their status changes to dispatch.

Officers will normally patrol beats as solo units. Field training officers with trainees will be considered a two officer unit. Officers working on both A-Platoon and B-Platoon shall take their lunch breaks on their assigned beats. Each officer shall conduct security inspections at both the Oakland and San Francisco Transitional Structures during their shift. The documentation of each security inspection shall be transmitted over the air to dispatch, and shall also be included in the officers' daily activity log.

460.7 ANCILLARY ASSIGNMENTS

Additional CAP team assignments will be made at the discretion of the Chief of Police or his/her designee.

460.7.1 MANDATORY EMERGENCY STAFFING

Due to emergency staffing needs, CAP personnel may be required to fill immediate patrol vacancies within the critical asset corridor. Mandatory emergency staffing shall be considered any unpredictable required job assignment or duty deemed necessary to be performed immediately in order to accomplish a department task. Such staffing may be declared by any supervisor when an immediate vacancy occurs in patrol.

"Immediate vacancy" shall be defined as any patrol vacancy due to absence, injury, or sudden withdrawal from duty by a current patrol sergeant or officer 45 minutes prior to the beginning of the absent sergeant or officer's shift. In all other cases, the supervisor may staff the immediate vacancy with non-CAP team patrol personnel (i.e. patrol officer, K-9 officer, or officer in a special assignment) prior to assigning any CAP personnel.

460.8 VEHICLES

The following rules will apply to the use of the CAP Team/Command Staff Sports Utility Vehicle (SUV):

- (a) Except as outlined below, CAP Team members and Command Staff are primarily authorized to utilize the Departmental SUVs.
- (b) SUVs are to be parked in the MTC parking lot.
- (c) All vehicle keys shall be checked in/out through the on-duty Watch Commander. If the Watch Commander is not available, then contact an on-duty Lieutenant.

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- (d) The SUVs shall be returned in a cleaned condition and fully fueled.
- (e) Use of the SUVs outside of normal parameters (i.e. special assignments and events) shall be cleared through the Watch Commander.

460.9 SELECTION PROCESS

The purpose of the selection process is to provide a fair and impartial procedure for selecting personnel for CAP team assignments. The selection process shall be conducted in accordance with Department Policy #1028 - Special Assignments, Non-Patrol and Specialized Job Assignments.

Defensive Tactics/Impact Weapons Program

461.1 PURPOSE AND SCOPE

The defensive tactics/impact weapons program is intended to provide a standardized program to equip police officers and revenue protection guards with the technical and communication skills necessary in the areas of weaponless defense, impact weapons, and the mechanics of arrest.

This policy shall establish the procedures for the selection, testing, qualifying, retention, and re-admission of defensive tactics/impact weapons instructors. This policy also establishes procedures for training qualification and remediation procedures for officers and revenue protection guards.

The Chief of Police or his designee shall approve all department defensive tactics/impact weapons training before they are acquired and utilized by any member of this department.

461.2 DEFENSIVE TACTICS/IMPACT WEAPONS INSTRUCTOR

The defensive tactics/impact weapons instructor is an experienced officer trained in the art of supervising, training and evaluating police officers and revenue protection guards in the application of weaponless defense, impact weapons, and the mechanics of arrest.

461.2.1 SELECTION PROCESS

Defensive tactics/impact weapons instructors will be selected based on the following requirements:

- Minimum of two years non-probationary patrol experience, including at least one non-probationary year as a BART police officer
- Possess a POST Basic certificate
- Immediate supervisor's recommendation
- Satisfactory performance evaluations, and an attendance record that complies with department guidelines
- Pass an internal oral interview selection process

A defensive tactics/impact weapons instructors selection committee shall be established, and this committee shall be composed of the following personnel who shall convene for the purposes of screening and selecting qualified applicants for defensive tactics instructor:

- Defensive tactics/impact weapons program coordinator
- Defensive tactics/impact weapons program sergeant
- Defensive tactics/impact weapons instructor selected by the BPOA

The selection process for defensive tactics/impact weapons instructor shall be as follows:

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- (a) Upon notification of memorandums of interest being accepted for defensive tactics/impact weapons instructor, all interested officers meeting the minimum qualifications listed shall submit memorandums of interest to the defensive tactics/impact weapons program coordinator via the chain of command.
- (b) It will be the responsibility of the applicant's immediate supervisor to prepare a written recommendation as to the applicant's suitability for the defensive tactics/impact weapons instructor position. Additionally, all supervisor's written recommendations will include comments on attendance, discipline, skills related to the assignment, EDR file review, and ensure compliance with established minimum qualifications.
- (c) All qualified applicants will be invited to participate in a oral interview to be administered by the defensive tactics/impact weapons program staff.
- (d) The oral interview will be scored by the defensive tactics/impact weapons program staff. A score of 75% or higher is required to pass. Those passing will comprise an eligibility pool.

Unless otherwise stated, a pool of five shall be established. An exception could be a one-time selection for a given period. The rest of the candidates will be ranked numerically. When one person is selected from the pool, the person ranked number one moves into the pool.

If fewer than five persons are eligible to be placed in the pool, the pool will consist of those persons who are eligible (Example: only three people achieve a score of 75%. There will be a pool of three, with zero persons ranked numerically).

The final selection for defensive tactics/impact weapons instructor will be made by the Chief of Police. A bulletin will be issued announcing the selections and candidates in the eligibility pool. The pool will remain in effect for eighteen (18) months from the date of the bulletin, but may be extended by the Chief of Police.

461.2.2 TRAINING

An officer selected as a defensive tactics/impact weapons instructor shall successfully complete a POST certified 80-hour defensive tactics instructor course, and a POST certified 80 hour impact weapons instructor course prior to being assigned as an instructor.

All instructors must complete updated (re-certification) courses for defensive tactics and impact weapons every three (3) years.

461.3 DEFENSIVE TACTICS/IMPACT WEAPONS PROGRAM COORDINATOR

The defensive tactics/impact weapons program coordinator will be selected from the rank of lieutenant by the Operations Bureau Deputy Chief or his/her designee, and shall possess a POST Supervisory Certificate.

The defensive tactics/impact weapons program coordinator shall have the overall responsibility for, but not be limited to the following:

- Conduct regular defensive tactics/impact weapons instructor meetings.

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- Monitor and direct overall defensive tactics/impact weapons program.
- Maintain liaison with other agency's defensive tactics/impact weapons coordinators.
- Develop ongoing training for defensive tactics/impact weapons instructors.

The below listed training is from the Department' Training Plan and is either mandatory, essential or desirable.

Essential tactical coordinator - Defensive tactics instructor, defensive tactics instructor update.

461.3.1 DEFENSIVE TACTICS/IMPACT WEAPONS PROGRAM SUPERVISORS

The Patrol Bureau Deputy Chief, or his/her designee, will appoint a sufficient number of defensive tactics/impact weapons supervisors to effectively monitor the defensive tactics/impact weapons program. These supervisors will be selected from the rank of sergeant, and shall possess a POST Supervisory Certificate. These supervisors will have performed duties as defensive tactics/impact weapons instructor during their careers, and will be well versed in the intricacies of the defensive tactics/impact weapons program.

Defensive tactics/impact weapons supervisors will be responsible for the following:

- Scheduling instructors for upcoming training dates.
- Maintaining regular contact with assigned instructors to provide assistance where necessary.
- Monitoring individual defensive tactics/impact weapons instructor's performance.

The below listed training is from the Department's Training Plan and is either mandatory, essential or desirable.

Essential defensive tactics/impact weapons supervisor training - Defensive tactics/impact weapons instructor, defensive tactics/impact weapons instructor update.

461.4 RETENTION

Defensive tactics/impact weapons instructors shall perform their duties in strict accordance to departmental policies, and shall only teach the material presented in the current course outline approved by the defensive tactics/impact weapons coordinator.

Instructors may be removed from the defensive tactics/impact weapons program by either the defensive tactics/impact weapons coordinator or Chief of Police if an instructor:

- Fails to adhere to the rules and regulations of this policy
- Fails to perform the require tasks of the current course outline satisfactorily
- Engages in unlawful or unprofessional behavior
- Demonstrates a pattern of unsafe or unacceptable police practices
- Is a principal in any departmental disciplinary action which results in a sustained finding

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- Voluntarily withdraws from the program

The length of the defensive tactics/impact weapons instructor's assignment shall be at the discretion of the Chief of Police. Any defensive tactics/impact weapons instructor wishing to withdraw from the program voluntarily should submit a memorandum, via the chain of command, directed to the Operations Bureau Deputy Chief.

461.4.1 RE-ADMISSION

Those instructors withdrawing voluntarily from the program may be readmitted when new openings occur by going through the selection process again. The defensive tactics/impact weapons program staff will make a recommendation as to whether to reinstate the instructor. The final determination will rest with the Operations Bureau Deputy Chief.

461.5 DEFENSIVE TACTICS/IMPACT WEAPONS TRAINING QUALIFICATION

The defensive tactics/impact weapons staff shall provide all sworn and revenue protection officers with yearly training designed to enhance skills and improve proficiency in the areas of the use of force and control devices techniques.

The defensive tactics/impact weapons coordinator, with approval of the Chief of Police, shall establish acceptable levels of proficiency in the use of defensive tactics and impact weapons training. Defensive tactics/impact weapons training qualification may be changed and modified in an effort to increase the proficiency of personnel training in defensive tactics and impact weapons.

Qualification and training records shall be forwarded to the Personnel & Training Bureau. The Operations and Support Services Deputy Chiefs, or their designees, are to ensure that all sworn personnel and/or revenue protection guards under their respective commands qualify in accordance with this policy.

461.5.1 FAILURE TO QUALIFY

Any sworn police officer or revenue protection guard who does not strictly adhere to the requests or instructions of the instructors will not be allowed to participate in training.

If any officer is unable to qualify for any reason, including injury, illness, duty status, or scheduling conflict, that officer shall submit a memorandum to his or her immediate supervisor prior to the end of the required defensive tactics qualification period.

Personnel who fail to qualify shall be allowed a minimum of one additional opportunity to qualify during that training day. Those personnel who are still unable to qualify may receive additional defensive tactics training that day if training time and a sufficient number of defensive tactics staff are available.

In situations involving personnel who are unable to qualify by the end of their scheduled shift or the conclusion of the training day (whichever comes first), the on-site defensive tactics supervisor shall, as soon as practicable, notify the employee's immediate supervisor or the on-duty Watch Commander of the failure to qualify. The department's Progressive Discipline System will be implemented to include no less than a letter of discussion.

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The defensive tactics/impact weapons coordinator or designee shall arrange for a 4-hour remedial defensive tactics or impact weapons training session as soon as practical for the non-qualifying personnel. Personnel who are unable to qualify by the conclusion of the first remedial training session shall be scheduled to attend a second 4-hour remedial training session. Personnel will progress to the next level in the Progressive Discipline System, not less than an a written reprimand.

Personnel who are unable to qualify by the conclusion of the second remedial defensive tactics or impact weapons training session, shall be assigned to an administrative position, and a third 4-hour training session will be scheduled. Progress to the next level in the Progressive Discipline System, not less than a pay step reduction.

Personnel that are unable to qualify by the conclusion of the third remedial defensive tactics or impact weapon training session, shall remain assigned to an administrative position. A final opportunity to qualify will be scheduled. Progress to the next level in the Progressive Discipline System, not less than suspension without pay.

Personnel who are unable to qualify by the conclusion of their fourth remedial defensive tactics or impact weapons training session, shall remain assigned to an administrative position. The member/employee shall be examined by a District medical doctor to ensure no medical condition exists that prevents the employee from qualifying.

If no medical condition exists, the member/employee will be subject to termination proceedings.

461.5.2 REMEDIAL TRAINING

Any employee who acts in a grossly unsafe manner or demonstrates dangerous and/or extremely poor decision-making skills in the deployment of and/or application of any use of force-related task, in the field or in training, may be required to attend mandatory remedial training prior to returning to full-duty status.

If in the opinion of the supervisor/primary instructor at the site of the training, the employee's actions/decision-making are so unsafe that if the employee were returned to full duty, the employee may be a safety hazard to him or herself, fellow employees, and/or the public, the supervisor/primary instructor shall recommend mandatory remedial training for the employee. The primary instructor shall contact the on-duty Watch Commander as soon as practicable and make the recommendation for mandatory remedial training.

If the request for mandatory remedial training is approved, the employee shall be removed from an on-duty patrol capacity and placed into a temporary administrative position until such time as that employee satisfactorily completes the mandatory remedial training.

Repeated failures to correct such deficiencies may result in implementation of the Progressive Discipline System. Nothing in this policy precludes the department from requiring an employee to successfully complete remedial training to correct lesser safety violations and/or marginal tactical decision-making skills, without the employee first being removed from full-duty status.

Wrap Restraint

462.1 PURPOSE AND SCOPE

It is the policy of the BART Police Department to use objectively reasonable force and authority when making an arrest, preventing the escape of an offender, or overcoming resistance. The BART Police Department has approved the use of the WRAP within the guidelines provided.

This policy is intended to familiarize Department personnel with the WRAP and procedural guidelines for its use. The WRAP provides a safe and quick method of controlling and immobilizing a violent or potentially violent/combative subject who has been detained or taken into custody.

462.2 DESCRIPTION

The WRAP Restraint manufactured by Safe Restraints, Inc., was designed as a temporary restraining device. Used properly it can increase officer safety and reduce the risk of liability due to injuries and in-custody deaths. The WRAP immobilizes the body and restricts a subject's ability to kick or do harm to oneself or others. The WRAP minimizes the time required to secure a person safely, restrains the subject in an upright position, and has the subject prepared for transportation or movement.

462.3 GUIDELINES FOR THE USE OF THE WRAP

Subjects should NOT be left unmonitored. The WRAP can be used prior to or after a violent/combative subject is controlled using approved departmental methods. As with any restraint device, do not assume the WRAP is escape proof.

The WRAP should be considered for use under the following situations:

- (a) When pre - assaultive, violent, or combative behavior is indicated
- (b) To immobilize a violent/combative subject
- (c) To limit violent/combative subjects from causing injury to themselves or others
- (d) To prevent violent/combative subjects from causing property damage by kicking
- (e) To restrain a subject after a chemical spray or stunning device is used
- (f) When conventional methods of restraint are not effective
- (g) In transportation of violent/combative subjects

Once the subject is properly restrained in the WRAP, the subject should be placed on his/her side, or in a sitting position. This will increase the oxygen recovery rate and will reduce the incident of respiratory fatigue.

462.3.1 APPLICATION OF THE WRAP

The WRAP can be applied by one person, but for violent/combative subjects, two to four people should be used. Only qualified personnel who have received training in the use of the WRAP should use this restraining device. However, under exigent circumstances, those who are qualified

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to use the Wrap may direct personnel who are not trained in its application on a violent/combative subject.

462.3.2 SAFETY PRECAUTIONS

- (a) The shoulder harness should never be tightened to the point that it interferes with the subject's ability to breathe
- (b) The leg bands and shoulder harness must be checked frequently for tightness and re-tightened or loosened as necessary until the WRAP is removed
- (c) If the restrained subject complains of or shows signs of breathing distress (shortness of breath, sudden calmness, a change in facial color, etc.), medical attention should be provided immediately
- (d) The subject should NOT be left unmonitored
- (e) Subjects should be placed in an upright sitting position or on their side as soon as possible to allow for respiratory recovery
- (f) The WRAP is a temporary restraining device and is NOT escape proof

462.3.3 TRANSPORTATION

Movement of a restrained subject can be accomplished in two ways depending on their cooperation. The restrained subject can either be carried or allowed to stand and shuffle step to the destination. Officers shall observe the following procedures:

- (a) To carry the restrained subject, it is recommended between two to four personnel should be used depending on the size and weight of the subject. Lift the subject under the arms and ankles. A "log lift" carrying technique may be used when moving the subject. Proper lifting techniques should be used to prevent injury to officers.
- (b) As an alternative to lifting, the subject may be moved by means of a shuffle. If the subject is cooperative the lower WRAP leg band can be loosened to allow some leg movement below the knees without compromising security or safety. By loosening the tether to the shoulder harness, the subject can be brought to a standing position with the help of officers and then allowed to shuffle to or from a vehicle or holding cell. If this method is used, appropriate support must be given to the subject to prevent possible injury by falling.

Prior to vehicle transportation, re-check all belts to ensure that they are securely fastened. The use of a seat belt is required to limit movement and reduce the risk of injury to the subject. If needed, consider having an officer ride with the subject to ensure all straps remain tight and the subject has no medical problems. Re-checking the security of the WRAP and keeping the subject under constant observation should apply to any movement of the subject.

462.3.4 DOCUMENTATION

Body worn cameras shall be activated in accordance with Departmental policy and during any incident in which the WRAP is being considered for use. Any time the restraint device is used, the circumstances requiring its use shall be documented in the related report(s). The officer should include the following in the report:

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- (a) The reason and/ or justification for use
- (b) The amount of time the suspect was restrained
- (c) How the suspect was transported and the position of the suspect
- (d) Observations of the suspect's physical and physiological actions
- (e) Information about the application and removal of the WRAP
- (f) Any known or suspected drug use or other medical problems
- (g) Documentation of continuous activation of body worn cameras prior to, during, and after the use of the WRAP

A supervisor shall be responsible for conducting a use of force investigation and shall ensure that the Watch Commander is advised of the incident.

462.4 STORAGE AND RE-USE OF WRAP

It is important that the WRAP is immediately ready for use and prepared for storage in a way that prevents the loop fastening material on the bands from becoming dirty or entangled. This allows the WRAP to be quickly laid out next to the subject and applied without the confusion of having to untangle the bands. The WRAP shall be kept in the provided storage bag as follows:

- (a) The WRAP shall be inspected for signs of wear or damage. If cleaning is necessary, a mild soapy solution may be used. Allow the WRAP to thoroughly air dry prior to storage
- (b) Lay the WRAP on a flat surface with the leg band side up and detach the shoulder harness. Extend each of the leg bands out flat
- (c) Individually fold each of the leg bands back onto itself so that the fold of the band protrudes an inch or two from the edge of the WRAP body
- (d) Be sure the retaining "D" ring on the body of the WRAP and harness is open and ready for use
- (e) Keeping the bands inside, roll the WRAP tightly towards the buckle and secure with the ankle strap and place in the storage bag
- (f) Fully extend the harness buckles and tether. Attach buckles to its counterpart and roll the harness up and place it in the storage bag compartment

462.5 TRAINING

The Department shall provide certified training in the use of the WRAP restraint. Only those personnel who have successfully completed the training shall apply this restraining device and, under exigent circumstances, may direct personnel who are not trained in its application on a violent/ combative subject.

Train Searches

463.1 PURPOSE AND SCOPE

To establish standardized guidelines for the search of revenue trains when required due to known or suspected criminal activity.

463.1.1 POLICY

It is the policy of the BART Police Department to minimize the risk to BART patrons and police officers when it is necessary to search a revenue train in the furtherance of protecting life, property and apprehending suspects.

Nothing in this policy precludes officers from responding directly to the location of a suspect or a disturbance on a train when that suspect or disturbance can be located without searching the entire train. Nothing in this policy precludes officers from employing different tactics to meet the unique needs of a rapidly evolving incident when such tactics would likely result in greater safety for patrons and officers.

463.1.2 DEFINITIONS

Hazardous Train Search: Searches which are conducted in response to reports of armed or violent criminal suspects on a train and situations where suspects have just used, or are threatening to use, a deadly weapon in a threatening manner to commit an act of violence. The major concern in such circumstances is to prevent a hostage-type situation.

Non-Hazardous Train Search: Searches which are conducted in response to reports of unarmed or non-violent criminal suspects on a train.

Robbery Apprehension Tracking System (RATS): An electronic tracking system utilized by the San Francisco, Oakland, Berkeley, and Hayward police departments to track tagged bait money surrendered in bank robberies, kidnappings, and other crimes where it is necessary to track the stolen money or property to apprehend the suspect(s). The system uses pocket detectors, hand-held and vehicle-mounted tracking units, and fixed-location remote receivers. Personnel shall note that all of the information regarding the RAT system is highly confidential, and is not to be discussed with the general public or the media.

Tag or Rat: An electronic transmitting device hidden in currency bundles or other trackable items, such as vehicles, jewelry, or briefcases.

Trap: Tag/rat deactivation device.

Pocket Detector: Close-range (up to 70 feet) tracking device.

Area-Wide Monitor: Monitor and grid map located at RAT-equipped police department communications centers which highlights the area of the tag's location.

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463.2 HAZARDOUS TRAIN SEARCH

Officers dispatched to reported incidents involving armed or violent suspects on board a revenue train shall be provided with all available information by dispatch, including the number of cars on the train, the arrival time of the incident train, and the description and location of the suspect(s) on the train.

The zone sergeant-in-charge or watch commander has the responsibility for determining whether or not the incident warrants a hazardous train search.

Dispatch shall advise the San Francisco Bay Area Rapid Transit District Central supervisor of the situation and request that the incident train be held at the platform with the doors open.

At least three (3) officers should be dispatched to the scene whenever possible. Officers from outside agencies will be called when needed and should report to San Francisco Bay Area Rapid Transit District officers on the scene to be briefed on the search method to be used. Shotguns should not be taken to the platform when a large number of patrons is present.

Officers shall approach the platform using areas of cover and concealment whenever possible. If possible, responding officers may allow disembarking patrons to clear the train and platform area. If possible, platforms may be evacuated prior to initiation of the search. Evacuations are not mandatory, and officers may elect not to conduct evacuations in situations involving large crowds and limited resources for crowd control, or when there is an urgent need to locate suspects immediately or when tactics dictate a low-key approach without announcing the fact that police are present and searching for a suspect(s). Officers not directly involved in searching the train should maintain a station perimeter to prevent the escape of suspects with exiting passengers. In most cases, the perimeter should be maintained by allied agencies with San Francisco Bay Area Rapid Transit District officers searching the train.

Officers should take the following positions before beginning the search:

- (a) Three officers inside the train who work together and are responsible for searching the interior of the train for suspects and evidence.
- (b) One officer (when available) on the outside of the train who maintains long-cover for the exterior of the train in case the suspects exit the train while the search is in progress. This officer may utilize train doorways for concealment and should follow the officers searching the interior of the train.
- (c) When available, additional officers may be deployed as a rear-guard element for the interior train search team or for the officer maintaining exterior security on the train. When a fifth officer is available, he/she should join the officer searching the exterior of the train. Officers shall advise dispatch when the incident train can be released for service.

The search may be started from whatever location on the train provides for the greatest tactical advantage in searching the train. When a search is started from the middle of a train, the search may either be divided between four teams moving in opposite directions or searched by one team

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that moves in one direction and then returns to search the remaining section of the train. In cases where one team performs a split-search of the train, consideration should be given to posting an officer to observe the portion of the train that has yet to be searched while the search team completes searching the first portion of the train.

In situations involving trains that are loaded to a capacity that prevents officers from moving along the interior of the train, officers may opt to search the train from the exterior using the windows to view the interior of the train. If a suspect is located, at least one officer should be posted to cover the suspect while additional officers move to apprehend the suspect inside the train.

Officers shall advise dispatch when the incident train can be released to resume service.

463.3 NON-HAZARDOUS TRAIN SEARCH

Officers dispatched to reported incidents involving unarmed and non-violent suspects on board a revenue train shall be provided with all available information by dispatch including the arrival time of the incident train, the number of cars in the train, and the description and location of the suspects on the train.

Dispatch shall advise the Operations Control Center (OCC) supervisor of the situation and request that the incident train be held at the platform with the doors closed.

The search may be started from whatever location on the train provides for the greatest tactical advantage in searching the train. When a search is started from the middle of a train, the search may either be divided between two teams moving in opposite directions or searched by one team that moves in one direction and then returns to search the remaining section of the train. In cases where one team performs a split-search of the train, consideration should be given to posting an officer to observe the portion of the train that has yet to be searched while the search team completes searching the first portion of the train.

In situations involving trains that are loaded to a capacity that prevents officers from moving along the interior of the train, officers may opt to search the train from the exterior using the windows to view the interior of the train. If a suspect is located, at least one officer should be posted to cover the suspect while additional officers move to apprehend the suspect inside the train.

Officers not directly involved in searching the train should maintain a station perimeter. In most cases, the perimeter should be maintained by officers from allied agencies with BART officers searching the train.

Officers shall advise dispatch when the incident train can be released to resume service.

Depending on the circumstances, non-hazardous train searches may be conducted on a moving train.

This procedure does not preclude having one officer search a train in a non-hazardous train search.

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463.4 RESPONDING TO ROBBERY APPREHENSION TRACKING (RAT) SYSTEM ALARMS

In the event of a bank robbery in San Francisco near any BART Station, the San Francisco Police Department (SFPD) will advise the BART Police Department of incident. If a tag is taken in the robbery, SFPD will check the Area-Wide Monitor and advise if it indicates the tag is on board a train as it enters the Transbay Tube, or if the tag passes through Balboa Park Station. SFPD will advise BART police dispatch of the location of tag within the District. BART officers will then respond to either West Oakland or a San Francisco BART station to intercept the incident train.

In the event of a bank robbery in Oakland, Berkeley, or Hayward near any BART Station, the involved police department will advise BART police dispatch of the incident. If a tag is taken in the robbery, the Oakland Police Department will check the Area-Wide Monitor and advise if it indicates the tag is on board a train as it enters the Transbay Tube, passes through the North Berkeley BART Station, or passes through the Rockridge BART Station. Oakland Police Department will advise BART Police dispatch of the location of the tag within the BART District and BART Police will respond to either Embarcadero, El Cerrito Plaza, or Orinda BART station to intercept the incident train.

In response to any Robbery Apprehension Tracking System alarm, officers will conduct a train search in accordance with the methods outlined in this directive.

Pocket detectors are kept in locked boxes in the station agent's booth of the West Oakland, El Cerrito Plaza, Orinda, and Embarcadero stations. At the Embarcadero station, it will be located at the station agent's booth near the Drumm Street exit. The lock boxes may be accessed with a BART police key and the pocket detectors will normally be stored with the 9 volt battery removed. The responding officers should place the battery into the unit and turn it on. Once activated, the unit will begin a self-test, buzzing for several seconds and then becoming silent if no tag is present. If a tag is present in the area, the buzzing will continue.

When there are sufficient personnel to conduct a safe search, officers should respond to the platform with the pocket detector to scan the train for the tag. OCC should immediately be advised of the alarm and requested to hold the train outside the station until officers reach the platform. The train should then be requested to proceed to the platform under manual control as the officer monitors for the tag to determine which car within the train consist contains the tag.

Officers must be alert to the possibility that the suspect(s) may discard the tag or that the initial reading on the pocket detector may be unclear. Therefore, the search must be performed only with cover officer(s) present and with constant alertness to all persons in the area.

If the incident train reaches the platform prior to the officer's arrival, the responding officers should use the pocket detector to search the train from the outside. If the detector indicates that a specific car may contain the tag, then an interior search should be conducted on that car.

If no tag signal is detected during the exterior search, an interior search should be performed with the pocket detector to confirm the finding. As with all searches, officers must remain alert for potential suspects exiting the train or posing a threat. Special emphasis must be placed on

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protecting the officer using the pocket detector since his/her attention will be focused on the pocket detector unit.

San Francisco, Oakland, Berkeley, or Hayward Police Departments will normally dispatch units to assist in any required train searches in response to the RAT alarm and to continue their investigation and/or arrest of the suspect(s). These officers will normally be equipped with more precise tracking equipment and should be utilized in the train search.

Once the tag is located, it should be deactivated as soon as possible by placing the bait money into the trap provided by the responding RAT-equipped police department.

At the conclusion of the search, all recovered bait money, RAT equipment (except for BART-stored pocket detectors), and suspect(s) shall be turned over to the RAT-equipped police agency investigating the bank robbery.

Homeless Persons

467.1 PURPOSE AND SCOPE

The purpose of this policy is ensure that personnel are sensitive to the needs and rights of the homeless population, to establish procedures to guide police officers during casual and arrest situation contacts with the homeless, and to reaffirm that homelessness is not a crime.

467.2 POLICY

It is the policy of the BART Police Department for all officials and personnel to provide appropriate law enforcement services to the entire community while protecting the rights, dignity and personal property of the homeless by policy, rules, regulations and practices.

467.3 DEFINITIONS

Homeless Person - A homeless person is an individual who lacks housing because he/she cannot afford, pay for, or is otherwise unable to maintain regular, safe, and adequate housing. A homeless person may also have a primary day or night-time residency that is:

- A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
- An institution that provides a temporary residence for individuals intended to be institutionalized;
- A public or private place not designed for use as a regular sleeping accommodation for human beings.

Basic criteria of a homeless individual is one who appears to need personal shelter, warmth and safety. This may include:

- Personal privacy, especially for sleeping;
- Safekeeping of bedding, clothing and possessions, which may have to be carried at all times;
- Hygiene and shaving complications;
- Obtaining, preparing and storing food in small quantities;
- Keeping contacts without a permanent location or mailing address.

Illegal Lodging - Under California Penal Code 647(e), anyone who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it is guilty of disorderly conduct, a misdemeanor.

Per *Black's Law Dictionary* and *The Civil Rights Legal Division Coalition on Homelessness*, a person is not lodging if he/she is just "hanging out" or "sleeping" for awhile. Lodging means that a person is establishing living accommodations or a place of temporary residence by staying in

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one place for an extended period of time (more than a few days). An example of this would be a person living out of a tent on District property for a period of time.

467.4 PROCEDURE

- (a) **Casual Contact:** At any time, and for any reason, police officers may approach a homeless person on BART District property who has not been observed engaging in any criminal conduct to advise him or her of shelters, services, or assistance which are currently available. The homeless person may or may not accept the advice, or may even walk away from the area. The rationale is to pro-actively provide referrals to the homeless.
1. Police officers may escort homeless persons off District property toward alternative locations for shelter, service, or assistance.
 2. Police officers may transport homeless persons to any shelter, service, or assistance when the person accepts such referral. The homeless individual will be searched for weapons and/or contraband before being transported.
 3. The officer shall generate a case number from dispatch with the facts of the incident, the referral and disposition.
- (b) **Arrest Situations:** Arrests of all persons including those defined as homeless shall comply with California law, Municipal Ordinances, and Department policies and procedures.
1. If a police officer observes a homeless person(s) engaged in criminal activity, when practical and prudent to do so, an alternative to a physical arrest shall be used.
 2. An officer always has the right to approach any individual including a homeless person, to allay any suspicions an officer may have about the individual and ascertain that no criminal activity is occurring.
 3. When encountering a homeless person who has committed a misdemeanor law violation where the continued freedom of the individual would not result in a breach of the peace or a more serious crime, police officers are encouraged to utilize referral to homeless shelters or other appropriate social service provider, in lieu of physical arrest. It must be recognized that such referral is contingent on the voluntary agreement of the homeless person to accept such referral. The discretion to make a physical arrest of a person determined to be homeless for misdemeanor violations shall be the responsibility of the individual officer.

467.5 PERSONAL PROPERTY

The personal property of all homeless persons shall be respected. In no event shall any officer destroy any personal property known to belong to a homeless person, or readily recognizable as

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property of a homeless person unless it is contaminated or otherwise poses a health hazard to an officer or to members of the public. Officers are not responsible for taking custody of mattresses.

All property of the arrested person should be turned over to detention personnel at the jail. If the jail refuses to take the property it should be stored for safe keeping. All perishables should be dispensed of. If property is dirty it should be placed in a plastic bag prior to being stored.

467.6 REPORTING

Officers having interactions and or contacts with persons determined to be homeless as a result of self initiated contact or as a result of a citizen complaint shall contact dispatch with the disposition of the contact.

Radiological/Chemical (CBRNE) Detection Operations

469.1 PURPOSE AND SCOPE

Uncontrolled or weaponized radioactive and or chemical materials present a hazard to employees, the public, and/or the environment. Due to the increase of terrorist or home-grown violent extremist (HGVE) threats throughout the country and the world, the possibility exists for malicious use of radiological and/or chemical materials, transportation, or storage within the State of California. To support early detection and response to radiological and/or chemical threats and potential public safety issues, this Department may employ Chemical, Biological, Radiological, Nuclear, or Explosive (CBRNE) detection systems throughout the jurisdiction. This policy establishes requirements and guidelines for Department CBRNE detection equipment use and response to CBRNE alerts.

469.1.1 DEFINITIONS

Adjudication - The process of identifying, with reasonable certainty, the type or nature of material or device causing a CBRNE detector to alert and assessing the potential threat that the material might pose and the need for further action. The alert adjudication process will result in the alert being classified as a Threat or Non-Threat.

CBRNE - Chemical, Biological, Radiological, Nuclear, or Explosive material

CBRNE Detector Alert - Either an audible, vibratory or visual notification from the CBRNE detector indicating the detection and presence or possible presence of CBRNE material.

Legitimate radiation/chemical source - Transportation or possession of radioactive and/or chemical materials as intended and within regulatory requirements, such as people undergoing nuclear medicine treatments, material for use in industrial or medical applications, consumer products, radioactive and or chemical material shipments, and naturally occurring radioactive material (NORM).

NCRIC - Northern California Regional Intelligence Center

Radioactive material – Material containing unstable atoms that disintegrate spontaneously, emitting radiation.

TSOC - TSA Transit Security Operations Center. See Policy 471.

469.2 POLICY

It is the policy of the BART Police Department to protect the public and individuals from CBRNE threats and hazards through legal and appropriate use of CBRNE detection equipment and approved CBRNE-alert response and resolution processes.

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Radiological/Chemical (CBRNE) Detection Operations

469.3 AUTHORITY

Where reasonable suspicion of a criminal act is present, Officers may detain for the purpose of conducting a Field Interview in response to a CBRNE detector alert. In justifying the stop, the officer should be able to point to specific facts, when taken together with rational inferences, to reasonably warrant the stop. Officers will request additional resources, as needed, to help resolve a CBRNE alert while being mindful of the search and seizure and legal detention procedures.

A mere CBRNE detector alert does not give reasonable suspicion to warrant a detention. Specific and articulable facts are needed to establish reasonable suspicion to detain or probable cause to arrest persons.

Nothing in this policy is intended to discourage consensual contacts in conjunction with CBRNE detection equipment alerts. Frequent and random casual contacts with consenting individuals are encouraged by the BART Police Department to strengthen our community involvement, community awareness and problem identification.

469.4 CBRNE DETECTION EQUIPMENT

CBRNE detection equipment shall always be operated in a safe manner not to exceed the capabilities of the equipment or the operator. CBRNE detection equipment shall only be used for official business of the Department, not for recreation or other unofficial personal use. Only trained and authorized CBRNE detection operators shall deploy the equipment during regularly scheduled patrols, special events, or operations in conjunction with allied agencies.

CBRNE detection equipment utilized by the BART Police department will only alert personnel to a CBRNE source. Identification, if related to a criminal or suspicious detention or source, will need to be conducted by an outside agency or trained secondary screener with proper CBRNE Detection Equipment.

469.4.1 EQUIPMENT MAINTENANCE

Maintenance of the Department CBRNE detection equipment is critical to safe operation and effective deployment. All CBRNE detection operators shall conduct pre- and post- operations maintenance as required by procedures.

The Critical Asset Patrol Sergeant is responsible for planning, scheduling and ensuring the conduct of regularly scheduled maintenance in accordance with factory equipment manuals and publications. All maintenance, including pre-operation and regularly scheduled maintenance should be documented. CBRNE detection operators should record and/or forward maintenance documentation to the Critical Asset Patrol Sergeant.

All CBRNE detection operators should promptly report equipment defects to the Critical Asset Patrol Sergeant. At no time should CBRNE detection equipment be used when defective or in a condition that could impact its reliability or result confidence.

469.5 CBRNE DETECTION EQUIPMENT OPERATORS

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Radiological/Chemical (CBRNE) Detection Operations

469.5.1 SELECTION

CBRNE detection operators shall primarily be team members from the Critical Asset Patrol team and/or K-9 unit. Being trained and assigned as a Radiation/Chemical Detection Operator is a collateral duty in addition to regularly assigned duties. Additional personnel may be selected to deploy CBRNE detection equipment to enhance the security of special events, for the mitigation of potential threats, or for the protection of critical infrastructure as deemed necessary by the Department.

469.5.2 TRAINING

Radiation detection operators shall initially attend and complete a Department approved preventive radiological/nuclear detection operator's course and all prerequisites associated with the course. After completion of the Department approved course, all CBRNE detection operators shall demonstrate the ability to safely and effectively operate the Department CBRNE detection equipment before being authorized to deploy the equipment.

All Department trained and authorized CBRNE detection operators shall receive refresher training covering CBRNE safety, equipment operation, maintenance, and any policy or procedure changes.

469.5.3 RESPONSIBILITIES

1. Conduct pre-operation checks and inspections prior to CBRNE detection equipment deployment.
2. Resolve and report CBRNE detection alerts per this Policy and applicable Department procedures.

469.6 CBRNE ALERT RESPONSE AND RESOLUTION PROCEDURE

During the course of regularly assigned duties, officers may locate legitimate radiological and/or chemical material, CBRNE material that is out of regulatory control, or the malicious use or transport of CBRNE material. The Officers will practice due diligence to find the source of CBRNE detector alerts and determine if there is a hazard to the public or the environment, and determine if a criminal violation is involved.

Utilizing tactics and techniques learned in training, Officers may detect, verify and localize the source of the elevated radiation or chemicals. Officers may use the totality of the information available to them, including behaviors, interview information, and the nature/location of the possible CBRNE concern to support a preliminary assessment of the alert and determine if there is reasonable suspicion to investigate further.

469.7 DOCUMENTATION AND NOTIFICATION

Operators who make detentions or consensual contacts as the result of a CBRNE detector alert shall document those contacts per department policy. A Suspicious Activity Report to the NCRIC should be completed by a Terrorism Liaison Officer as appropriate. Notification should be made

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to the BART Police Department Joint Terrorism Task Force liaison, BART Director of Security and TSOC if the CBRNE alert is determined to be non-medical or suspicious in nature.

Community Oriented Policing Program

473.1 PURPOSE AND SCOPE

The BART Police Department's community oriented policing program is a proactive approach to policing that involves problem identification and resolution, and creating partnerships between the members of the police department and the communities they serve. Officers in the BART Police Department are expected to be community resources who assist citizens in solving problems within their jurisdictions. It is expected that the officers will work with patrons, community residents and other city departments to provide a long-term solution to existing and potential issues concerning safety.

Officers involved in community oriented policing are concerned with improving the quality of life in and around the BART District. Officers may be assigned to a specific geographic area for a long term in order to provide them with the opportunity to get to know transit patrons and community residents on a more personal level, learn what they perceive as problems, and develop ways of addressing those problems.

473.2 PHILOSOPHY

Community oriented policing is a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to pro-actively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.

Community oriented policing goes beyond traditional policing to build a cooperative and mutually beneficial relationship between the police and the community by:

- Ensuring active involvement on the part of problem-solving officers and neighborhood services coordinators in the affairs of the community.
- Encouraging active citizen involvement in policing efforts.
- Focusing on issues of ongoing public concern.
- Providing continuity of service to the community.

473.3 COMMUNITY ORIENTED POLICING OFFICER SELECTION PROCESS

- (a) Community oriented policing officers will be selected based on the following requirements:
1. Minimum of two (2) years non-probationary patrol experience, including at least one (1) non-probationary year as a BART police officer
 2. Possess a POST Basic certificate
 3. Immediate supervisor's recommendation

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4. Satisfactory performance evaluations, and an attendance record that complies with department guidelines
 5. Pass an oral interview selection process
 6. Applicants must be assigned to the Patrol Bureau at the time of selection, and have an exemplary work record
- (b) A community oriented policing program selection committee shall be established, and this committee shall be composed of the following personnel who shall convene for the purposes of screening and selecting qualified applicants for community oriented police officers:
1. Community oriented police program coordinator
 2. Community oriented police supervisor
 3. Community oriented police officer selected by the BPOA
- (c) The selection process for community oriented policing officer shall be as follows:
1. Upon notification of memorandums of interest being accepted for community oriented policing officer, all interested officers meeting the minimum qualifications listed shall submit memorandums of interest to the community oriented policing program coordinator via the chain of command. All memorandums of interest must include a resume of law enforcement experience with BART police, other police agencies, and community activities.
 2. It will be the responsibility of the applicant's immediate supervisor to prepare a written recommendation as to the applicant's suitability for the community oriented policing officer position. Additionally, all supervisor's written recommendations will include comments on attendance, discipline, EDR file review, and ensure compliance with established minimum qualifications.
 3. All qualified applicants will be invited to participate in an oral assessment interview. The members of the oral interview assessment panel will be the community oriented policing program selection committee. The committee will rate all candidates on a communication assessment form. An overall score of 75% is needed to pass. Those passing will comprise an eligibility pool that will remain in effect for twelve (12) months.
- (d) The ultimate decision regarding the final selection shall rest with the Chief of Police. Among the criteria considered in making the selection will be:
1. Supervisor's recommendation
 2. Review of personnel and Internal Affairs files
 3. Prior performance evaluations

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4. Performance on the oral assessment phase of the selection process

473.3.1 COMMUNITY ORIENTED POLICING COORDINATOR

The community oriented policing program coordinator will be selected from the rank of lieutenant by the Operations Bureau Deputy Chief or his/her designee and shall possess a POST Supervisory Certificate.

The community oriented policing coordinator shall have the overall responsibility for, but not be limited to the following:

- Monitor and direct overall community oriented policing program.
- Monitor community oriented policing officer and supervisor performances.
- Maintain liaisons with other agency's community oriented policing coordinators.
- Develop ongoing training for community oriented policing personnel.

473.3.2 COMMUNITY ORIENTED POLICING PROGRAM SUPERVISORS

The Operations Bureau Deputy Chief, or his/her designee, will appoint a sufficient number of community oriented policing supervisors to effectively monitor the daily workings of the community oriented policing program. Ideally, these supervisors will have performed duties as community oriented policing officers during their careers and will be well versed in the intricacies of the community oriented policing program.

Community oriented policing supervisors will be responsible for the following:

- Assignment of community oriented policing officers.
- Monitor individual community oriented policing officer performance and conduct within their respective areas of responsibility.

473.3.3 COMMUNITY ORIENTED POLICING OFFICERS

The Operations Bureau Deputy Chief, or his/her designee, will appoint a sufficient number of community oriented policing officers to effectively perform the daily workings of the community oriented policing program. COP personnel will address a variety of civic, school, resident, and business groups on matters relating to personal safety and ways to reduce the likelihood of becoming a crime victim.

473.3.4 RETENTION

Any member of the community oriented policing program may be removed from the program by the Chief of Police. Reasons for removal include:

- Engaging in unlawful or unprofessional behavior
- Failing to adhere to the rules and regulations of this policy
- Demonstrating a pattern of unsafe or unacceptable police practices
- Being a principal in any departmental investigation which results in a sustained finding

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- Having substandard ratings on departmental performance evaluations
- Voluntarily withdrawing from the community outreach program

Any community oriented policing officer or supervisor wishing to withdraw from the program voluntarily should submit a memorandum, via the chain of command, directed to the Operations Bureau Deputy Chief. Those community oriented policing officers or supervisors withdrawing voluntarily or involuntarily from the program may be readmitted when new openings occur by going through the selection process again.

The community oriented policing program staff will make a recommendation as to whether to reinstate the officer or supervisor. The final determination will rest with the Operations Bureau Deputy Chief. The community oriented policing coordinator will make a recommendation as to whether to reinstate an community oriented policing supervisor. The final determination will rest with the Operations Bureau Deputy Chief.

Chapter 5 - Traffic Operations

Traffic Function and Responsibility

500.1 PURPOSE AND SCOPE

The ultimate goal of traffic law enforcement is to reduce traffic collisions. This may be achieved through the application of such techniques as geographic/temporal assignment of personnel and equipment and the establishment of preventive patrols to deal with specific categories of unlawful driving behavior. Traffic enforcement techniques are based on accident data, enforcement activity records, traffic volume, and traffic conditions. This Department provides enforcement efforts toward violations, not only in proportion to the frequency of their occurrence in accident situations, but also in terms of traffic-related needs.

The BART Police Department traffic law enforcement practices will include:

- Visible traffic patrol, whether area, line, or directed;
- Stationary observation, covert and overt;

The use of unmarked or unconventional vehicles solely for traffic law enforcement is prohibited by California Vehicle Code § 40800.

500.1.1 TRAFFIC COMPLAINT AND DATA REVIEW PROCESS

The traffic officer (or designee) will establish a procedure for responding to traffic complaints and coordinate efforts with District engineers. The procedure will include the collection and examination of roadway traffic data (speed, volume, time of day) and the accident data to determine the responses to complaints.

The traffic officer (or designee) will ensure that a report is compiled, at minimum quarterly, that includes:

- (a) Traffic collision data;
- (b) Traffic enforcement activities;
- (c) Traffic complaints;
- (d) Review of enforcement activities and collisions, by location and primary collision factor to evaluate the efficacy of traffic enforcement activities. Issues noted will be forwarded to the Operations Bureau and/or District engineers as appropriate.

The traffic officer (or designee) will complete a documented annual review of selective traffic enforcement activities.

500.2 AUTHORITY

California Penal Code 830.33(a): The primary duty of a peace officer who is a member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code is the enforcement of the law in or about the properties owned, operated, or administered by the District or when performing necessary duties with respect to patrons, employees, and properties of the District.

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Traffic Function and Responsibility

California Vehicle Code 21113(a): No person shall drive any vehicle or animal, nor shall any person stop, park, or leave standing any vehicle or animal, whether attended or unattended, upon the driveways, paths, parking facilities, or the grounds of any public school, state university, state college, unit of the state park system, county park, municipal airport, rapid transit district, transit development board, or transit district.

California Vehicle Code 21113(c): When any governing board, legislative body, or officer permits public traffic upon the driveways, paths, parking facilities, or grounds under their control then, except for those conditions imposed or regulations enacted by the governing board, legislative body, or officer applicable to the traffic, all the provisions of this code relating to traffic upon the highways shall be applicable to the traffic upon the driveways, paths, parking facilities, or grounds.

500.2.1 TRAFFIC RECORDS

The data used to deploy traffic officers may include data stored in the Records Management System regarding traffic collision data, traffic enforcement data and roadway hazard information. The traffic officer (or designee) is responsible to coordinate data distribution to the District's Civil Engineering Department.

500.3 DISTRICT PROPERTY ENFORCEMENT

District property traffic enforcement stops should only be done in police vehicles that are equipped with at least a steady burning red light in the front, amber flashing lights to the rear and a siren.

All officers assigned to patrol or traffic enforcement functions will emphasize enforcement of accident causing violations during high accident hours and at locations of occurrence. All officers will take directed enforcement action on request, and random enforcement action when appropriate against violators as a matter of routine. All officers shall maintain high visibility while working general enforcement, especially at high accident locations.

Other factors to be considered for deployment are requests from the public, construction zones or special events.

District property traffic enforcement (other than speed or reckless driving violations) shall only be done for those parking and/or moving violations where appropriate and maintained signage and/or road markings exists that conform to Department of Transportation standards.

District property traffic enforcement actions are commensurate with applicable laws and take into account the degree and severity of the violation committed. This department does not establish ticket quotas and the number of arrests or citations issued by any officer shall not be used as the sole criterion for evaluating officer overall performance (Vehicle Code § 41603). The visibility and quality of an officer's work effort will be commensurate with the philosophy of this policy. Several methods are effective in the reduction of collisions:

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500.3.1 WARNINGS

Warnings or other non-punitive enforcement actions should be considered in each situation and substituted for arrests or citations when circumstances warrant, especially in the case of inadvertent violations.

500.3.2 CITATIONS

Citations may be issued when an officer believes it is appropriate. It is essential that officers fully explain the rights and requirements imposed on motorists upon issuance of a citation for a traffic violation. Officers should provide the following information at a minimum:

- (a) Explanation of the violation or charge
- (b) Court appearance procedure including the optional or mandatory appearance by the motorist
- (c) Notice of whether the motorist can enter a plea and pay the fine by mail or at the court

500.3.3 PHYSICAL ARREST

Physical arrest can be made on a number of criminal traffic offenses outlined in the Vehicle Code or Penal Code. These physical arrest cases usually deal with, but are not limited to:

- (a) Vehicular manslaughter
- (b) Felony and misdemeanor driving under the influence of alcohol/drugs
- (c) Felony or misdemeanor hit-and-run
- (d) Refusal to sign notice to appear
- (e) Any other misdemeanor at the discretion of the officer, such as reckless driving with extenuating circumstances

500.3.4 HANDLING SPECIAL CIRCUMSTANCE - TRAFFIC LAW VIOLATIONS

Foreign Diplomats/Consular Officials will be dealt with in accordance with Policy Manual § 422. Nonresident violators, members of the legislature and military personnel will be processed in the same manner as a private citizen.

Juvenile violators are processed in the same manner as adult violators.

500.3.5 UNIFORM ENFORCEMENT GUIDELINES

Officers should take enforcement action when serious violations are observed or reported. It is the intention of the BART Police Department to take maximum enforcement action when a threat to life and public safety are involved. The following violations are examples of serious:

- Violations involving drug/alcohol impairment
- Drivers with a suspended or revoked license
- Serious speed violations resulting in added danger to the public
- Other hazardous violations including but not limited to reckless driving and speed contests

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- Multiple violations
- Violations resulting in traffic collisions

Officers observing less serious violations are encouraged to take appropriate action. Officers should use discretion in determining enforcement action for things such as:

- Offroad vehicle violations
- Equipment violations
- Public carrier and commercial violations
- Other nonhazardous violations
- Newly enacted laws and/or regulations
- Pedestrian and bicycle violations

500.4 OFF-PROPERTY TRAFFIC ENFORCEMENT

Off-property traffic stops are any stops initiated for violations that occur off the property owned by the District. Any off-property traffic stop will be conducted in a safe manner, keeping the mission, objectives and values of the department in mind. Because enforcement stops initiated for off-property violations keep departmental resources away from the District, police employees shall limit off property enforcement activity to serious, flagrant or life-threatening violations. Officers may conduct traffic enforcement stops for any witnessed violation adjacent to BART stations if they believe the occupants may be involved in criminal activity impacting BART.

Off-property vehicle stops will not be initiated for equipment, registration or other vehicle code moving violations, unless the driving actions constitute a life-threatening hazard to citizens in the area. Examples of off-property vehicle stops that would justify the expenditure of sworn personnel's time away from the District include investigation of driving under the influence of alcohol or drugs, reckless driving or reasonable cause to believe involvement in serious criminal activity. To ensure the safety of sworn personnel and citizens, off-property vehicle stops generally should be initiated with fully-marked police vehicles, minimally equipped with a steady burning red light to the front, amber flashing lights to the rear and a siren.

Officers initiating an off-property vehicle stop, shall use police code "11-95X" to advise dispatch of the stop. At an officer's or supervisor's request, dispatch will contact the local police agency that has primary jurisdiction; however, the officer may choose to handle any necessary citations or warnings without the assistance of the local agency.

Police personnel may stop and render assistance to stranded motorists and assist other public agencies as a cover unit or at an accident scene off District property. Dispatch shall be notified and an event generated. A supervisor may require a report be written documenting the member's actions.

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500.5 SPEED MEASURING

Officers are authorized to utilize the patrol vehicle speedometer for pacing violator vehicles to enforce speed laws. Officers should consider visual observations of the violator vehicle's speed, distance traveled while pacing the violator, paced speed of violator in excess of speed law, and any other factors while developing reasonable suspicion for an enforcement stop. Unlike other means of speed enforcement, a POST certification course is not required.

Ford Police Interceptor Sedans and Ford Police Interceptor Utility vehicles come with a factory certified calibrated speedometer display head assembly. The speedometer display head in the sedan and utility Police Interceptors are expected to maintain their accuracy (+/- 2 miles per hour) over the useful life of the vehicle. Officers using alternate vehicles for pacing enforcement should ensure the accuracy of the vehicle's speedometer. Officers should be aware that improper tire inflation, tire wear, excessive vehicle loading, etc., may affect speedometer calibration. Any concerns with vehicle maintenance issues, including excessive tire wear or speedometer calibration, should be brought to the attention of their supervisor and the Vehicle Maintenance Unit.

500.6 HIGH-VISIBILITY VESTS

The Department has provided American National Standards Institute (ANSI) Class II high-visibility vests to increase the visibility of department members who may be exposed to hazards presented by passing traffic, maneuvering or operating vehicles, machinery and equipment (23 CFR 655.601; 8 CCR 1598).

Although intended primarily for use while performing traffic related assignments, high-visibility vests should be worn at any time increased visibility would improve the safety or efficiency of the member.

Suspended, Revoked, and Unlicensed Drivers

501.1 PURPOSE AND SCOPE

To enforce laws pertaining to unlicensed or suspended and revoked drivers and provide a procedure for handling drivers operating vehicles while unlicensed, or while driving with a suspended and/or revoked drivers license. To provide a procedure for the tow and impound of vehicles used by such violators.

501.2 DRIVER LICENSE STATUES VERIFICATION

Officers who contact the driver of a vehicle and become aware that he/she is operating the vehicle while unlicensed, or with a suspended and/or revoked drivers license shall:

- (a) Verify, whether on their MDC's or via dispatch, the driver's license statues via CLETS. Officers should request that dispatch print a copy with the case number on it. Officers shall request the service code on any suspension or revocation. Service Codes B through G and M indicate the person has been served notice of any suspensions and/or revocations.
- (b) If the driver's license has been suspended or revoked, but he or she has not been notified of the suspension or revocation, give him/her verbal notice of the suspension or revocation. Complete a DL-310 form and have the driver sign it. If the driver refuses to sign, write "refused" on the signature line. Confiscate any California Drivers License(s) per 4460 V.C. Forward the license and DL-310 to the traffic officer. Do not place the license into evidence.
- (c) If the driver has prior notification of the suspension or revocation, issue the driver a citation for the appropriate violation of 14601-14601.5 V.C. The violator's vehicle may be towed and stored per 22651(p) V.C. or towed and impounded per 14602.6(a) V.C.
- (d) Officers shall document their actions via the appropriate arrest report. A CHP-180 report will be required if the vehicle is impounded or stored. Officers citing drivers for infraction violations of 12500(a) V.C. or 14601.1(a) V.C. may use a citation report, unless the vehicle is impounded or stored.
- (e) Persons seeking release of their vehicles should be advised to contact the Traffic Officer during business hours.

501.2.1 DRIVER AND PASSENGERS OF VEHICLES BEING TOWED

Refer to Policy 510 for the departments towing policy. Consideration should be given to the safety of the driver and any passengers when deciding whether to tow the vehicle. Officers may summon a taxi or other party to pick up the people, at their request, or the people may be transported to a safe area. In no case should an unlicensed driver, or a person with a suspended or revoked driving privilege, be allowed to take control of the vehicle. Vehicles seized pursuant to sections

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(b) and (c), listed in 501.2 above, may be subject to forfeiture under section 14607.6(a) V.C. Such forfeiture should be reviewed by the Administrative Traffic Officer.

501.2.2 30 DAY VEHICLE IMPOUNDS

When impounding a vehicle pursuant to section 14602.6(a)(1) VC, officers shall indicate on the CHP 180 form that a vehicle is to be held for 30 days in the box labeled "Storage Authority and Reason", by writing "14602.6(a)(1) VC-30 day hold".

Vehicles may be released prior to 30 days if the "30 day hold" wording is absent. Dispatchers shall enter "14602.6(a)(1)VC-30 day hold" wording in the narrative of their CADS screen.

[In cases where a 30 day hold is not warranted, 22651\(p\)VC shall be used.](#)

501.2.3 VEHICLE RELEASE

The owners or agents seeking the release of vehicles towed, stored or impounded pursuant to 14602.6(a) V.C. may request a hearing by the Administrative Traffic Officer during regular business hours at x7038.

Traffic Collision Involving Police Personnel

502.1 PURPOSE AND SCOPE

This policy is to establish a procedure for reporting and reviewing traffic collisions involving on-duty BART police employees; and traffic collisions involving vehicles owned, leased or rented by the District and operated by, or assigned to, an on- or off-duty BART police employee.

502.1.1 PROCEDURE

A Collision Review Board shall review traffic collisions involving on-duty police employees and traffic collisions involving vehicles owned, leased or rented by the District and operated by, or assigned to, an on- or off-duty BART police employee. The Board will determine if the collision was preventable, non-preventable, a non-collision, or legal intervention. The Board will not be responsible for determining or recommending discipline, or investigating or deciding on other possible procedural, rule, or legal violations.

The Board will not be used to review traffic collision involving the Chief of Police or Deputy Chief. The Chief will review collisions involving commanders, while the District General Manager will review collisions involving the chief.

Investigations of collisions covered under this policy will be conducted by sworn supervisors.

502.2 COLLISIONS OCCURRING ON DISTRICT PROPERTY

- (a) BPD employees involved in a collision occurring on District property shall notify the Communications Center as soon as practicable. The involved employee will advise that he/she has been involved in a traffic collision and request medical assistance for any involved parties, as needed. The employee shall also request that the appropriate zone supervisor be notified.
- (b) Upon notification, the zone supervisor should proceed to the collision scene. The supervisor shall attempt to take verbal statements from all involved parties and complete the collision investigation. Any exceptions to having a supervisor at the collision scene to handle the investigation must be approved by a watch commander.
- (c) Collisions will be documented on the appropriate CHP Traffic Collision Report form, as follows:
 1. Property Damage Only (PDO) forms (CHP 555-03) may be used if:
 - (a) One or two parties are involved;
 - (b) No injuries or fatalities are incurred (including a complaint of pain);
 - (c) No anticipated prosecution;
 - (d) Non-injury hit-and-run collisions where prosecution is not anticipated or no follow-up information is available.

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1. A PDO requires a Collision Report narrative. This format consists of a following report headings: Notification, Statements, Summary, Area of Impact, and Cause. A sketch is required when preparing a PDO; however, a diagram is not. Refer to the CHP Collision Investigation Manual for specific report-preparation instructions.
 2. (Note: Nothing in this directive prohibits the documentation of a report qualifying as a PDO from being completed as a Collision Investigation as described below, at the discretion of the reporting officer or as directed by a supervisor.)
2. All other collisions not qualified for completion on a PDO form shall be documented on a Traffic Collision Report (CHP 555) and will utilize the Investigation Narrative Format. This format requires the use of the following report headings: Facts (Notification, Scene, Parties, Physical Evidence, Hit and Run, Hazardous Materials, and Other Factual Information); Statements; Opinions and Conclusions (Summary, Area of Impact, Intoxication, and Cause); and, Recommendations. The Investigation Format requires a sketch and factual diagram.
 - (a) All Statements, causes, opinions and conclusions, and recommendations will be documented as required by either report format, regardless of who is at fault in the collision.
 - (d) All police employees operating, last in control of, riding in the involved vehicle(s), or witnessing the collision, shall submit a memorandum through the chain of command to the on-scene supervisor. Memos will detail the circumstances of the collision. If the involved employee(s) is unable to prepare a memo, the investigating supervisor shall take a verbal statement.
 - (e) If a supervisor does not prepare the collision report, that supervisor will gather all relevant information and prepare a memo describing the circumstances of the collision and an opinion as to fault. If fault is unclear, this fact must be noted. This memo shall be forwarded to the Collision Review Board chairperson.
 - (f) The on-scene or assigned supervisor will send a **copy** of the traffic collision report and all original memorandum(s) to the Board chairperson. All original reports shall be forwarded to the Records Section.
 - (g) In the event any involved party sustains fatal or severe injuries, the California Highway Patrol will be requested to respond and handle the investigation. If the CHP does not respond, a BPD supervisor shall handle the investigation as outlined above. (Note: A severe injury is defined as an injury that results in broken, dislocated or distorted limbs, severe lacerations, or unconsciousness.)

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Traffic Collision Involving Police Personnel

502.3 TRAFFIC COLLISION REPORTING

- (a) BPD employees involved in a collision occurring off District property must notify the Communications Center as soon as practicable. The involved employee shall advise that he/she has been involved in a traffic collision and request medical assistance for any involved parties, as needed. The employee shall also request that the appropriate BPD supervisor be notified and the law-enforcement agency with jurisdiction of the collision site be contacted and requested to respond to investigate the collision. If the local agency is unable or declines to respond, a BPD supervisor will be assigned to investigate the collision, providing that it occurred within the BART counties.
- (b) If the local law enforcement agency responds and handles the investigation, the involved employee is responsible for obtaining the investigating officer's name, case or incident number, and identifying information of the other involved parties.
- (c) All police employees operating, last in control of, or riding in the involved vehicle(s), or witnessing the collision, will submit a memorandum through the chain of command to the on-scene supervisor. Memos shall detail the circumstances of the collision. If the involved employee(s) is unable to prepare a memo, the investigating supervisor will take a verbal statement.
- (d) If the local law enforcement agency does not investigate the collision, the same reporting requirements regarding PDOs and Traffic Collision Reports, as listed in section 502.2 shall be utilized by the investigating BPD supervisor.

502.4 REPORTING SITUATIONS

In the event an employee is injured as a result of a traffic collision as described in this directive, a supervisor shall complete the Supervisor's Report of Injury/Illness report, and the Employee's Claim for Workers' Compensation Benefits form. The completed forms will be faxed to the appropriate locations and forwarded to the Records Section. All other injury reporting procedures also apply.

The supervisor shall also follow all procedures regarding the District's post-accident testing. Regulations for all safety-sensitive employees (all sworn classifications and Revenue Protection Guards) call for post-accident testing if the collision results in the following: a fatality, regardless of the circumstances; an injury to any person which requires immediate medical treatment away from the scene of the accident; or, one or more of the involved District vehicles incurs disabling damage as a result of the occurrence and is transported from the scene by tow truck or other vehicle. (Note: "Disabling damage" means damage that prevents a vehicle's departure from the scene and would require more than temporary simple repairs or the changing of a tire in order to be driven away.)

For those employees not designated as safety-sensitive (civilian classifications except RPGs), regulations call for post-accident testing if the collision results in the following: a fatality; a medical

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injury; or, District property damage of \$5,000 or more. (See District Substance Abuse Program for further details regarding post-accident testing for all BPD employees.)

The supervisor shall also complete the involved vehicle's Vehicle Damage Report Form and Accident Control Card.

502.5 NOTIFICATION OF TRAFFIC BUREAU SUPERVISION

The Collision Review Board will be comprised of the following personnel:

- (a) A command-level officer (chairperson) selected by the chief of police. If the involved employee is a lieutenant, the chairperson shall be a Deputy Chief;
- (b) A sergeant selected by the chairperson;
- (c) An employee of equal rank to the individual involved in the accident or other designee named by the involved employee's bargaining unit.

502.6 BOARD FINDINGS

The Collision Review Board shall determine if the collision was preventable, non-preventable, a non-collision, or legal intervention as defined below:

- (a) **Preventable:** A traffic collision is preventable when the driver fails to take reasonable action to prevent a collision. Vehicle operators are expected to actively attempt to avoid collisions. Any traffic collision that is proven to be the fault of the driver through neglect of his/her duty as a driver is negligence. Failure to exercise the care that a prudent person usually takes shall be deemed a preventable accident caused by negligence.
- (b) **Non-Preventable:** Any traffic collision in which the driver has no control (mechanical failure or being physically incapacitated while driving) or when the driver has taken reasonable and precautionary action to avoid a collision.
- (c) **Non-Collision:** An event in which the involved vehicle may have struck another vehicle or object, or may have been struck by another vehicle or object but no damage to any involved vehicle or object has occurred and no injury to any involved party has occurred. As provided in the CHP Collision Investigation Manual, these events do not constitute a traffic collision.
- (d) **Legal Intervention:** Injury or damage caused by enforcement intervention (usually apprehension or an attempt to apprehend) using a motor vehicle is not a motor-vehicle collision insofar as the enforcing agency and violator relationship are concerned. (If, however, intentional acts are committed and injury or damage goes beyond the original intent, the excessive acts are considered accidental and meet the definition of a motor-vehicle collision.)

The findings of the Collision Review Board will be in writing. The original memorandum detailing the findings shall be kept with the Board's file containing all reports and information pertinent to

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the collision. A copy of the findings memorandum will be sent to the employee via the chain of command.

502.7 DISCIPLINARY ACTION

Pre-discipline or disciplinary action, when warranted, will be in accordance with established procedures.

502.8 COLLISION REVIEW FILE

The chairperson will maintain a file that includes the documentation and findings of each traffic collision reviewed by the Board. The documentation of each collision will be retained for five (5) years from the date of the Board's findings.

Traffic Collision Reporting

503.1 PURPOSE AND SCOPE

The Bay Area Rapid Transit Police Department prepares traffic collision reports in compliance with the California Highway Patrol Collision Investigation Manual (CIM) and as a public service makes traffic collision reports available to the community with some exceptions.

503.1.1 RESPONSIBILITY

The Administrative Traffic Officer will be responsible for distribution of the Collision Investigation Manual. The Administrative Traffic Officer will receive all changes in the state manual and ensure conformity with this policy.

503.2 RESPONSE TO COLLISION SCENES

It is the policy of the Bay Area Rapid Transit Police Department to respond to all injury collisions on District property. The definition of an injury collision is one in which a party involved is transported to the hospital with a visible or serious injury or if the injury constitutes a trauma activation.

Officers will respond to all traffic collisions upon District owned roadways except when resources are not available. In the event officers are not available or have a delayed response time to an injury traffic collision, assistance from the appropriate allied agency shall be requested. In cases where officers are not available to respond to minor collisions, department members should identify alternate means for the parties to complete a collision report.

When a traffic collision occurs on a District owned roadway, the unit dispatched shall assume primary responsibility for the collision scene and documentation of any reporting requirements. Such primary responsibilities may be reassigned by the patrol supervisor.

In any circumstance where an officer/unit witnesses or becomes first on-scene to any injury or major accident investigation that occurred outside of the District's jurisdiction, that unit shall make a reasonable effort to safely maintain the integrity of the scene and summon emergency medical aid until that jurisdictional authority can properly assume control and investigative responsibility of the scene.

Regardless of jurisdiction, the first officer on the scene of any traffic collision shall identify and assess all involved parties for injury and ensure that appropriate medical aid is summoned.

503.2.1 MAJOR ACCIDENT INVESTIGATION

Major accident scenes involving serious injuries, death or unusual circumstances that may be beyond the Department's accident investigative abilities will be brought to the attention of the Watch Commander. The Watch Commander will decide if a request for accident investigation assistance is warranted from a local allied agency or the California Highway Patrol.

If an officer has responded to a major accident and is awaiting the arrival of additional investigative personnel, the officer should ensure that the scene remains secure and free from contamination.

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503.3 TRAFFIC CONGESTION DUE TO COLLISIONS, REMOVAL OF VEHICLES

It is important that officers endeavor to clear roadways as quickly as possible after a collision to limit the impact on the motoring public. However, some serious collisions involving major injuries or death may require the closure of a roadway for extended periods of time.

If the closure of a roadway is anticipated for an extended period (more than 30 minutes) officers should utilize additional resource to reroute or detour traffic when possible.

Officers may order drivers to move their vehicles from the roadway or have them towed if damage does not permit movement. All efforts should be made to tow vehicles at the owner's request. If an owner is not available or refuses towing, the officer should complete a Tow/Storage Form (CHP 180) and order the removal if authority exists.

503.4 TRAFFIC COLLISION REPORTING

All traffic collision reports taken by members of this department shall be completed in a timely manner and submitted to their supervisor for approval. Any traffic collision reports completed on manual forms shall be submitted to the Records Unit for data entry into the Records Management System.

503.4.1 DEFINITIONS

Serious Injury - Any injury that may result in a fatality.

503.4.2 TRAFFIC COLLISIONS ON ROADWAYS OR HIGHWAYS

Traffic collision reports have several formats varying in complexity. Generally, traffic collision reports are taken when the collision occurs on a roadway or highway within the jurisdiction of this department.

Traffic collision reports may be taken when they occur on a roadway or highway within the District's jurisdiction. A collision shall be documented as an INVESTIGATION when one or more of the following conditions exist:

- (a) When there is a death or severe injury to any persons involved in the collision (on or off highway).
- (b) When there is visible injury (on or off highway) requiring transportation by ambulance non- visible injury warranting a trauma activation.
- (c) When the collision results from an identifiable violation of law, and collection of evidence is required to support prosecution.
- (d) When the collision involves a school bus carrying any student at or below the twelfth grade level, the reporting investigation of such a collision shall be referred to the California Highway Patrol (Refer to C.I.M.).
- (e) When the collision involves a hit and run with sufficient information or evidence for follow-up and potential prosecution at a later time.

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(f) When a collision involves fire, or the release or potential release of Hazardous Materials, the Bay Area Rapid Transit Police Department will take a supporting role to the local Fire Department within the jurisdiction, who is responsible for all fire and Haz-Mat incidents.

503.4.3 SUMMARY CAUSE COLLISION REPORT

A Collision Report CHP § 555 (Summary Cause) shall be made when one or more of the following conditions exist:

- (a) When a "complaint of pain" is reported regardless if a party is being transported via ambulance for medical care.
- (b) When collisions result in those injuries classified as "other visible injuries", as defined by the C.I.M., and the person was not transported for medical care.
- (c) When an officer witnesses a property damage only collision and the causing violation, including DUI (Vehicle Code § 23152a), and the officer issues a traffic citation or collision notice for that violation.

Narrative of Summary Cause reports shall include:

- Notifications
- Summary
- Cause
- Recommendations

503.4.4 PROPERTY DAMAGE ONLY REPORT

Property Damage Only (PDO) forms (CHP 555-03) may be used if:

- (a) One or two parties are involved;
- (b) No injuries or fatalities are incurred (including complaint of pain);
- (c) No anticipated prosecution;
- (d) Non-injury hit-and-run collisions where prosecution is not anticipated or no follow-up information is available.

1. A PDO requires a Collision Report narrative. This format consists of a following report headings: Notification, Statements, Summary, Area of Impact, and Cause. A sketch is required when preparing a PDO; however, a diagram is not. Refer to the CHP Collision Investigation Manual for specific report-preparation instructions.

2. (Note: Nothing in this directive prohibits the documentation of a report qualifying as a PDO from being completed as a Collision Investigation as described below, at the discretion of the reporting officer or as directed by a supervisor.)

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503.4.5 TRAFFIC COLLISIONS INVOLVING NON-POLICE DISTRICT VEHICLES

- (a) Photographs of the collision scene and vehicle damage and/or property damage should be taken by the Investigating Officer or supervisor.
- (b) Traffic collision reports (CHP 555 form) shall be taken when a District vehicle is involved in a traffic collision, or District property is damaged due to a traffic collision, within BART District property, wherein any damage or injury results.
- (c) When the collision occurs outside District boundaries, the local law enforcement jurisdiction shall be requested to complete the investigation. In the event the local agency is unable to handle the investigation, the Watch Commander shall assign an BART PD officer.

503.4.6 TRAFFIC COLLISIONS WITH OTHER DISTRICT EMPLOYEES OR OFFICIALS

The on-duty Watch Commander may request assistance from the California Highway Patrol for the investigation of any traffic collision involving any District official or employee where a serious injury or fatality has occurred.

503.5 CONTROLLING PROPERTY BELONGING TO COLLISION VICTIMS

When an officer at the scene of a traffic collision becomes aware of the personal private property of an incapacitated subject, said property should be taken into custody for safekeeping if that officer is not able to secure the property.

503.6 DISTURBANCES AT SCENES OF COLLISIONS

Upon arriving at the scene of a collision where a disturbance between involved individuals or others is on-going, defuse the situation as appropriate. At the discretion of the officer, it may be prudent to document the circumstances of the disturbance in the corresponding collision report.

Traffic Enforcement

505.1 PURPOSE AND SCOPE

The ultimate goal of traffic law enforcement is to reduce traffic collisions. This may be achieved through the application of such techniques as geographic/temporal assignment of personnel and equipment and the establishment of preventive patrols to deal with specific categories of unlawful driving behavior. Traffic enforcement techniques are based on accident data, enforcement activity records, traffic volume, and traffic conditions. This Department provides enforcement efforts toward violations, not only in proportion to the frequency of their occurrence in accident situations, but also in terms of traffic-related needs.

The BART Police Department traffic law enforcement practices will include:

- Visible traffic patrol, whether in patrol or directed enforcement;
- Stationary observation or overt

The use of unmarked or unconventional vehicles solely for traffic law enforcement is prohibited by California Vehicle Code § 40800.

505.1.1 TRAFFIC COMPLAINT AND DATA REVIEW PROCESS

The traffic officer (or designee) will establish a procedure for responding to traffic complaints and coordinate efforts with District engineers. The procedure will include the collection and examination of roadway traffic data (speed, volume, time of day) and the accident data to determine the responses to complaints.

The traffic officer (or designee) will ensure that a report is compiled, at minimum quarterly, that includes:

- (a) Traffic collision data;
- (b) Traffic enforcement activities;
- (c) Traffic complaints;
- (d) Analysis of enforcement activities and collisions, by location and primary collision factor to evaluate the efficacy of traffic enforcement activities.

505.1.2 TRAFFIC RECORDS

The data used by the traffic officer may include data stored in the Records Management System regarding traffic collision data, traffic enforcement data and roadway hazard information. The traffic officer (or designee) is responsible to coordinate data distribution to the District's Civil Engineering Department.

505.2 TRAFFIC LAWS

California Penal Code 830.33(a): The primary duty of a peace officer who is a member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code is the enforcement of the law in or about the properties owned, operated, or administered by the District or when performing necessary duties with respect to patrons, employees, and properties of the District.

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California Vehicle Code 21113(a): No person shall drive any vehicle or animal, nor shall any person stop, park, or leave standing any vehicle or animal, whether attended or unattended, upon the driveways, paths, parking facilities, or the grounds of any public school, state university, state college, unit of the state park system, county park, municipal airport, rapid transit district, transit development board, or transit district.

California Vehicle Code 21113(c): When any governing board, legislative body, or officer permits public traffic upon the driveways, paths, parking facilities, or grounds under their control then, except for those conditions imposed or regulations enacted by the governing board, legislative body, or officer applicable to the traffic, all the provisions of this code relating to traffic upon the highways shall be applicable to the traffic upon the driveways, paths, parking facilities, or grounds.

505.3 ENFORCEMENT

District property traffic enforcement stops should only be done in police vehicles that are equipped with at least a steady burning red light in the front, amber flashing lights to the rear and a siren.

District property traffic enforcement (other than speed or reckless driving violations) shall only be done for those parking and/or moving violations where appropriate and maintained signage and/or road markings exists that conform to Department of Transportation standards and the California Vehicle Code as applicable.

District property traffic enforcement actions are commensurate with applicable laws and take into account the degree and severity of the violation committed. This department does not establish citation quotas and the number of arrests or citations issued by any officer shall not be used as the sole criterion for evaluating officer overall performance (Vehicle Code § 41603). The visibility and quality of an officer's work effort will be commensurate with the philosophy of this policy.

505.3.1 WARNINGS

Warnings or other non-punitive enforcement actions should be considered in each situation and substituted for arrests or citations when circumstances warrant, especially in the case of inadvertent violations.

505.3.2 CITATIONS

Citations may be issued when an officer believes it is appropriate. It is essential that officers fully explain the rights and requirements imposed on motorists upon issuance of a citation for a traffic violation. Officers should provide the following information at a minimum:

- (a) Explanation of the violation or charge
- (b) Court appearance procedure including the optional or mandatory appearance by the motorist
- (c) Notice of whether the motorist can enter a plea and pay the fine by mail or at the court

505.3.3 PHYSICAL ARREST

Physical arrest can be made on a number of criminal traffic offenses outlined in the Vehicle Code or Penal Code. These physical arrest cases usually deal with, but are not limited to:

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- (a) Vehicular manslaughter
- (b) Felony and misdemeanor driving under the influence of alcohol/drugs
- (c) Felony or misdemeanor hit-and-run
- (d) Refusal to sign notice to appear
- (e) Any other misdemeanor at the discretion of the officer, and within department policies, such as reckless driving with extenuating circumstances

505.3.4 HANDLING SPECIAL CIRCUMSTANCE - TRAFFIC LAW VIOLATIONS

Foreign Diplomats/Consular Officials will be dealt with in accordance with Policy Manual § 422. Nonresident violators, members of the legislature and military personnel will be processed in the same manner as a private citizen.

Juvenile violators are processed in the same manner as adult violators.

505.3.5 UNIFORM ENFORCEMENT GUIDELINES

Officers should take enforcement action when serious violations are observed or reported. It is the intention of the BART Police Department to take maximum enforcement action when a threat to life and public safety are involved.

The following violations are examples of serious violations:

- Violations involving drug/alcohol impairment
- Drivers with a suspended or revoked license
- Serious speed violations resulting in added danger to the public
- Other hazardous violations including but not limited to reckless driving and speed contests
- Multiple violations
- Violations resulting in traffic collisions

Officers observing less serious violations are encouraged to take appropriate action.

Officers should use discretion in determining enforcement action for things such as:

- Off road vehicle violations
- Equipment violations
- Public carrier and commercial violations
- Other nonhazardous violations
- Newly enacted laws and/or regulations
- Pedestrian and bicycle violations

505.4 CITATION HANDLING

The Traffic Officer shall be responsible for the development and design of all Department traffic citations in compliance with state law and the Judicial Council. The Traffic officer is responsible for oversight and maintenance of the citation supply and issuance system. The Traffic Officer shall be responsible for the issuance of citation books and the secure retention of completed citations.

In the issuance of a citation book, the Traffic Officer will be required to log the employee's name, the date and citation number range on the citation issuance spreadsheet. The Traffic Administrative

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Supervisor shall be responsible for performing an annual citation audit to include Traffic, Parking and Administrative Citations. Once any traffic citation is written, it shall be sent to the Records Division at the end of each business day for filing. The traffic citations shall be processed and hard copies will be maintained in the secure storage facility under the control of the Records Division. At all times, the supply of unissued citation books will remain in a secure storage facility under the control of the Traffic Officer.

Vehicle Towing and Release

510.1 PURPOSE AND SCOPE

This policy provides the procedures for towing a vehicle by or at the direction of the Bay Area Rapid Transit Police Department. Nothing in this policy shall require the Department to tow a vehicle.

510.2 STORAGE AND IMPOUNDS

When circumstances permit, for example when towing a vehicle for parking or registration violations, the handling employee should, prior to having the vehicle towed, make a good faith effort to notify the owner of the vehicle that it is subject to removal. This may be accomplished by personal contact, telephone or by leaving a notice attached to the vehicle at least 24 hours prior to removal. If a vehicle presents a hazard, such as being abandoned on the roadway, it may be towed immediately.

The responsibilities of those employees towing, storing or impounding a vehicle are listed below.

510.2.1 VEHICLE STORAGE REPORT

Department members requesting towing, storage or impound of a vehicle shall complete CHP Form 180 and accurately record the mileage and a description of property within the vehicle (Vehicle Code § 22850). A copy of the storage report should be given to the tow truck operator and the original shall be submitted to the Records Division as soon as practicable after the vehicle is stored.

Whenever a vehicle is towed the towing officer shall fax a copy of the CHP form 180 to the Records Section, x7089, prior to the end of their shift.

510.2.2 REMOVAL FROM TRAFFIC COLLISION SCENES

When a vehicle has been involved in a traffic collision and must be removed from the scene, the officer shall have the driver select a towing company, if possible, and shall relay the request for the specified towing company to the dispatcher. When there is no preferred company requested, a company will be selected from the rotational list of towing companies in the Communications Center.

If the owner is incapacitated, or for any reason it is necessary for the Department to assume responsibility for a vehicle involved in a collision, the officer shall request the dispatcher to call for a rotational tow. The officer will then store the vehicle using a CHP Form 180.

510.2.3 STORAGE AT ARREST SCENES

Whenever a person in charge or in control of a vehicle is arrested, it is the policy of this department to provide reasonable safekeeping by storing the arrestee's vehicle subject to the exceptions described below. The vehicle, however, shall be stored whenever it is needed for the furtherance of the investigation or prosecution of the case, or when the community caretaker doctrine would reasonably suggest that the vehicle should be stored (e.g., traffic hazard, high-crime area).

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The following are examples of situations where consideration should be given to leaving a vehicle at the scene in lieu of storing, provided the vehicle can be lawfully parked and left in a reasonably secured and safe condition:

- Traffic-related warrant arrest.
- Situations where the vehicle was not used to further the offense for which the driver was arrested.
- Whenever the licensed owner of the vehicle is present, willing, and able to take control of any vehicle not involved in criminal activity.
- Whenever the vehicle otherwise does not need to be stored and the owner requests that it be left at the scene. In such cases, the owner shall be informed that the Department will not be responsible for theft or damages.

510.2.4 IMPOUNDMENT AT SOBRIETY CHECKPOINTS

Whenever a driver is stopped at a sobriety checkpoint and the only violation is that the operator is driving without a valid driver's license, the officer shall make a reasonable attempt to identify the registered owner of the vehicle (Vehicle Code § 2814.2). The officer shall release the vehicle to the registered owner if the person is a licensed driver, or to another licensed driver authorized by the registered owner, provided the vehicle is claimed prior to the conclusion of the checkpoint operation.

If the vehicle is released at the checkpoint, the officer shall list on his/her copy of the notice to appear the name and driver's license number of the person to whom the vehicle is released.

When a vehicle cannot be released at the checkpoint, it shall be towed (Vehicle Code § 22651(p)). When a vehicle is removed at the checkpoint, it shall be released during the normal business hours of the storage facility to the registered owner or his/her agent upon presentation of a valid driver's license and current vehicle registration.

510.2.5 DRIVING A NON-CITY VEHICLE

Vehicles which have been towed by or at the direction of the Department should not be driven by police personnel unless it is necessary to move a vehicle a short distance to eliminate a hazard, prevent the obstruction of a fire hydrant or to comply with posted signs.

510.2.6 DISPATCHER'S RESPONSIBILITIES

Approved storage forms shall be promptly placed into the case file so that they are immediately available for release or review should inquiries be made.

Within 48 hours, excluding weekends and holidays, of the storage of any such vehicle it shall be the responsibility of the Records Section to determine the names and addresses of any individuals having an interest in the vehicle through DMV or CLETS computers. Notice shall be sent to all such individuals by first-class mail (Vehicle Code §§ 22851.3(d), 22852(a), and 14602.6(a)(2)). The notice shall include the following information (Vehicle Code § 22852b):

- (a) The name, address, and telephone number of this Department.

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- (b) The location of the place of storage and description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage.
- (c) The authority and purpose for the removal of the vehicle.
- (d) A statement that, in order to receive their post-storage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within 10 days of the date appearing on the notice.

510.3 TOWING SERVICES

The department should maintain a list of selected tow companies to act as the official tow service. These firms, based on county location, will be used in the following situations:

- (a) When it is necessary to safeguard a vehicle due to the inability of the owner or operator to take the required action
- (b) When a vehicle is being held as evidence in connection with an investigation
- (c) When it is otherwise necessary to store a motor vehicle. This would include situations involving the recovery of stolen or abandoned vehicles, and the removal from the streets of vehicles obstructing traffic in violation of state or local regulations

Nothing in this policy shall require the Department to tow a vehicle.

510.4 VEHICLE INVENTORY

All property in a stored or impounded vehicle shall be inventoried and listed on the vehicle storage form. This includes the trunk and any compartments or containers, even if closed and/or locked. Members conducting inventory searches should be as thorough and accurate as practical in preparing an itemized inventory. These inventory procedures are for the purpose of protecting an owner's property while in police custody, to provide for the safety of officers, and to protect the Department against fraudulent claims of lost, stolen, or damaged property.

510.5 SECURITY OF VEHICLES AND PROPERTY

Unless it would cause an unreasonable delay in the completion of a vehicle impound/storage or create an issue of officer safety, officers should make reasonable accommodations to permit a driver/owner to retrieve small items of value or personal need (e.g., cash, jewelry, cell phone, prescriptions) that are not considered evidence or contraband.

If a search of a vehicle leaves the vehicle or any property contained therein vulnerable to unauthorized entry, theft, or damage, personnel conducting the search shall take such steps as are reasonably necessary to secure and/or preserve the vehicle or property from such hazards.

510.6 RELEASE OF VEHICLE

The Department will maintain a listed, 24-hour telephone number to provide information regarding impoundment of vehicles and the right of the registered owner to request a storage hearing.

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Releases for towed vehicles will be made available during regular, non-emergency business hours (Vehicle Code § 14602.6).

- (a) Vehicles removed pursuant to Vehicle Code § 22850 shall be released after proof of current registration is provided by the owner or the person in control of the vehicle and after all applicable fees are paid (Vehicle Code § 22850.3; Vehicle Code § 22850.5).
- (b) Vehicles removed that require payment of parking fines or proof of valid driver's license shall only be released upon presentation of proof of compliance, proof of payment, completion of affidavit, and payment of applicable fees related to the removal (Vehicle Code § 22651 et seq., Vehicle Code § 22652 et seq., Vehicle Code § 22850.3; Vehicle Code § 22850.5).
- (c) A vehicle removed pursuant to Vehicle Code § 14602.6(a) shall be released to the registered owner or his/her agent with proof of current registration, proof of a valid driver's license, and applicable fees paid prior to the end of the 30-day impoundment period under any of the following circumstances:
 1. The vehicle was stolen.
 2. If the driver reinstates his/her driver's license or acquires a license and provides proof of proper insurance.
 3. Any other circumstance as set forth in Vehicle Code § 14602.6.
 4. When there is no remaining community caretaking need to continue impound of the vehicle or the continued impound would not otherwise comply with the Fourth Amendment.
- (d) An autonomous vehicle removed under authority of Vehicle Code § 22651(o)(1)(D) shall be released to the registered owner or person in control of the autonomous vehicle if the requirements of Vehicle Code § 22651(o)(3)(B) are met.

Personnel whose duties include releasing towed vehicles should consult the Vehicle Code under which the vehicle was towed or impounded for any specific requirements prior to release.

Employees who suspect that a vehicle was impounded in error should promptly advise a supervisor. Supervisors should approve, when appropriate, the release of the vehicle without requiring the registered owner or his/her agent to request a hearing, as described in the Vehicle Impound Hearings Policy.

510.7 RELEASE OF VEHICLE

- Vehicles removed pursuant to Vehicle Code § 22850 shall be released after proof of current registration is provided by the owner or person in control of the vehicle and after all applicable fees are paid (Vehicle Code §§ 22850.3 and 5).
- Vehicles removed that require payment of parking fines or proof of valid driver's license shall only be released upon presentation of proof of compliance, proof of payment, completion of affidavit and payment of applicable fees related to the removal (Vehicle Code §§ 22651 (et seq.), 22652 (et seq.), 22850.3 and 5).

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- A vehicle removed pursuant to Vehicle Code § 14602.6(a) and impounded for 30 days shall be released at the end of the impoundment period only when the registered owner or agent presents his/her valid driver's license and proof of current vehicle registration, or upon order of a court (Vehicle Code § 14602.6(d)(2)).

A vehicle removed pursuant to Vehicle Code § 14602.6(a) shall be released to the registered owner or his or her agent with proof of current registration, proof of a valid driver's license and applicable fees paid prior to the end of the 30 day impoundment period under any of the following circumstances (Vehicle Code § 14602.6(d)(1)):

- (a) In response to a valid order of a court.
- (b) When the vehicle is a stolen vehicle.
- (c) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.
- (d) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Vehicle Code § 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Vehicle Code § 13350) of Chapter 2 of Division 6.
- (e) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.
- (f) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.
- (g) To the legal owner when all of the following are met:
 1. The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.
 2. The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle.
 3. The legal owner or the legal owner's agent presents a copy of the documents specified in Vehicle Code § 14602.6(f)(3).

Vehicles may be released prior to the 30 days if the registered owner requests a hearing with the Traffic Officer. Based on the research and circumstances surrounding the towing of the vehicle the Traffic Officer may authorize the release of the vehicle.

Officers or Community Services Officers, with supervisory approval, shall complete the Vehicle Release Form for all impounded or stored vehicles. The original copy of the form shall be forwarded to the records sections. The copy shall be given to the legal owner or their agent.

Vehicle Impound Hearings

512.1 PURPOSE AND SCOPE

This policy establishes a procedure for the requirement to provide vehicle storage or impound hearings pursuant to Vehicle Code § 22852.

512.2 STORED OR IMPOUND HEARING

When a vehicle is stored or impounded by any member of the Bay Area Rapid Transit Police Department, a hearing will be conducted upon the request of the registered or legal owner of the vehicle or his/her agent (Vehicle Code § 22650(a); Vehicle Code § 22852(a)).

The hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The hearing officer must be a person other than the person who directed the storage or impound of the vehicle (Vehicle Code § 22852(c)).

512.2.1 HEARING PROCEDURES

The vehicle storage hearing is an informal process to evaluate the validity of an order to store or impound a vehicle. The employee who caused the storage or removal of the vehicle does not need to be present for this hearing.

All requests for a hearing on a stored or impounded vehicle shall be submitted in person, in writing or by telephone within 10 days of the date appearing on the notice (Vehicle Code § 22852(d)). The Traffic Officer will generally serve as the hearing officer. The person requesting the hearing may record the hearing at his/her own expense.

The failure of either the registered or legal owner or interested person or his/her agent to request a hearing in a timely manner or to attend a scheduled hearing shall be considered a waiver of and satisfaction of the post-storage hearing requirement (Vehicle Code §§ 22851.3(e)(2) and 22852(d)).

Any relevant evidence may be submitted and reviewed by the hearing officer to determine if reasonable grounds have been established for the storage or impound of the vehicle. The initial burden of proof established by a preponderance of the evidence that the storage/impound was based on probable cause rests with the Department.

After consideration of all information, the hearing officer shall determine the validity of the storage or impound of the vehicle in question and then render a decision. The hearing officer shall also consider any mitigating circumstances attendant to the storage that reasonably would warrant the release of the vehicle or a modification or reduction of the period the vehicle is impounded (Vehicle Code §§14602.6(b) and 14602.8(b)).

Aside from those mitigating circumstances enumerated in the Vehicle Code, the registered owner's lack of actual knowledge that the driver to whom the vehicle was loaned was not validly licensed may constitute a mitigating circumstance under Vehicle Code §§ 14602.6(b) or 14608(b), warranting release of the vehicle. This mitigating circumstance exception is not limited to situations

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where the owner made a reasonable inquiry as to the licensed status of the driver before lending the vehicle.

The legislative intent and this department's policy is to prevent unlicensed driving pursuant to Vehicle Code §14602.6. If this purpose is not furthered by the continued impoundment of a vehicle, release is most often appropriate.

- (a) If a decision is made that reasonable grounds for storage or impound have been established, the hearing officer shall advise the inquiring party of the decision and that the inquiring party may pursue further civil remedies if desired.
 - 1. If mitigating circumstances are found to be relevant, the hearing officer shall make reasonable adjustments to the impound period, storage or assessment of fees as warranted.
- (b) If a decision is made that reasonable grounds for storage or impound have not been established or sufficient mitigating circumstances exist, the vehicle in storage shall be released immediately. Towing and storage fees will be paid at the Department's expense (Vehicle Code § 22852(e)).
- (c) If a decision is made that reasonable grounds for storage have not been established or sufficient mitigating circumstances exist, and the vehicle has been released with fees having been paid, the receipt for such fees will be forwarded with a letter to the appropriate Bureau Deputy Chief. The hearing officer will recommend to the appropriate Bureau Deputy Chief that the fees paid by the registered or legal owner of the vehicle in question or their agent be reimbursed by the Department.

Impaired Driving

514.1 PURPOSE AND SCOPE

This policy provides guidance to those department members who play a role in the detection and investigation of driving under the influence (DUI).

514.2 POLICY

The Bay Area Rapid Transit Police Department is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of California's impaired driving laws.

514.3 INVESTIGATIONS

Officers should not enforce DUI laws to the exclusion of their other duties unless specifically assigned to DUI enforcement. All officers are expected to enforce these laws with due diligence.

The Civilian Supervisor will develop and maintain, in consultation with the prosecuting attorney, report forms with appropriate checklists to assist investigating officers in documenting relevant information and maximizing efficiency. Any DUI investigation will be documented using these forms. Information documented elsewhere on the form does not need to be duplicated in the report narrative. Information that should be documented includes, at a minimum:

- (a) The field sobriety tests (FSTs) administered and the results.
- (b) The officer's observations that indicate impairment on the part of the individual, and the officer's health-related inquiries that may help to identify any serious health concerns (e.g., diabetic shock).
- (c) Sources of additional information (e.g., reporting party, witnesses) and their observations.
- (d) Information about any audio and/or video recording of the individual's driving or subsequent actions.
- (e) The location and time frame of the individual's vehicle operation and how this was determined.
- (f) Any prior related convictions in California or another jurisdiction.

514.4 CHEMICAL TESTS

A person implies consent to a chemical test or tests, and to providing the associated chemical sample, under any of the following (Vehicle Code § 23612):

- (a) The person is arrested for driving a vehicle while under the influence, pursuant to Vehicle Code § 23152.
- (b) The person is under 21 years of age and is arrested by an officer having reasonable cause to believe that the person's blood alcohol content is 0.05 or more (Vehicle Code § 23140).

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- (c) The person is under 21 years of age and detained by an officer having reasonable cause to believe that the person was driving a vehicle while having a blood alcohol content of 0.01 or more (Vehicle Code § 23136).
- (d) The person was operating a vehicle while under the influence and proximately caused bodily injury to another person (Vehicle Code § 23153).

If a person withdraws this implied consent, or is unable to withdraw consent (e.g., the person is unconscious), the officer should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

514.4.1 CHOICE OF TESTS

Officers shall respect a viable choice of chemical test made by an arrestee, as provided for by law (e.g., breath will not be acceptable for suspected narcotics influence).

A person arrested for DUI has the choice of whether the test is of his/her blood or breath, and the officer shall advise the person that he/she has that choice. If the person arrested either is incapable, or states that he/she is incapable, of completing the chosen test, the person shall submit to the remaining test.

If the person chooses to submit to a breath test and there is reasonable cause to believe that the person is under the influence of a drug or the combined influence of alcohol and any drug, the officer may also request that the person submit to a blood test. If the person is incapable of completing a blood test, the person shall submit to and complete a urine test (Vehicle Code § 23612(a)(2)(C)).

514.4.2 BLOOD SAMPLES

Only persons authorized by law to draw blood shall collect blood samples (Vehicle Code § 23158). The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task.

Officers should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be collected for alternate testing. Unless medical personnel object, two samples should be collected and retained as evidence, so long as only one puncture is required.

The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test. Such inability to take a blood test should not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

514.4.3 URINE SAMPLES

If a urine test will be performed, the arrestee should be promptly transported to the appropriate testing site. The officer shall follow any directions accompanying the urine evidence collection kit.

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Urine samples shall be collected and witnessed by an officer or jail staff member of the same sex as the individual giving the sample. The arrestee should be allowed sufficient privacy to maintain his/her dignity, to the extent possible, while still ensuring the accuracy of the sample (Vehicle Code § 23158(i)).

The sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

514.4.4 STATUTORY NOTIFICATIONS

Officers requesting that a person submit to chemical testing shall provide the person with the mandatory warning pursuant to Vehicle Code § 23612(a)(1)(D) and Vehicle Code § 23612(a)(4).

514.4.5 PRELIMINARY ALCOHOL SCREENING

Officers may use a preliminary alcohol screening (PAS) test to assist in establishing reasonable cause to believe a person is DUI. The officer shall advise the person that the PAS test is being requested to assist in determining whether the person is under the influence of alcohol or drugs, or a combination of the two. Unless the person is under the age of 21, he/she shall be advised that the PAS test is voluntary. The officer shall also advise the person that submitting to a PAS test does not satisfy his/her obligation to submit to a chemical test as otherwise required by law (Vehicle Code § 23612).

514.4.6 PRELIMINARY ALCOHOL SCREENING FOR A PERSON UNDER AGE 21

If an officer lawfully detains a person under 21 years of age who is driving a motor vehicle and the officer has reasonable cause to believe that the person has a blood alcohol content of 0.01 or more, the officer shall request that the person take a PAS test to determine the presence of alcohol in the person, if a PAS test device is immediately available. If a PAS test device is not immediately available, the officer may request the person to submit to chemical testing of his/her blood, breath or urine, conducted pursuant to Vehicle Code § 23612 (Vehicle Code § 13388).

If the person refuses to take or fails to complete the PAS test or other chemical test, or if the result of either test reveals a blood alcohol content of 0.01 or more, the officer shall proceed to serve the person with a notice of order of suspension pursuant to this policy (Vehicle Code § 13388).

514.5 REFUSALS

When an arrestee refuses to provide a viable chemical sample, officers should:

- (a) Advise the arrestee of the requirement to provide a sample (Vehicle Code § 23612).
- (b) Audio- and/or video-record the admonishment when it is practicable.
- (c) Document the refusal in the appropriate report.

514.5.1 BLOOD SAMPLE WITHOUT CONSENT

A blood sample may be obtained from a person who refuses a chemical test when any of the following conditions exist:

- (a) A search warrant has been obtained (Penal Code § 1524).

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- (b) The officer can articulate that exigent circumstances exist. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited substances in the person's bloodstream. Exigency can be established by the existence of special facts such as a lengthy time delay in obtaining a blood sample due to an accident investigation or medical treatment of the person.

514.5.2 FORCED BLOOD SAMPLE

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the officer should request a supervisor to respond.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (b) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes a viable form of testing in a timely manner.
- (c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer) and attempt to persuade the individual to submit to such a sample without physical resistance.
 - 1. This dialogue should be recorded on audio and/or video if practicable.
- (d) Ensure that the blood sample is taken in a medically approved manner.
- (e) Ensure the forced blood draw is recorded on audio and/or video when practicable.
- (f) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances:
 - 1. Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
 - 2. In misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
 - 3. In felony cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
- (g) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, officers are expected to use sound judgment and perform as a responding supervisor, as set forth above.

514.5.3 STATUTORY NOTIFICATIONS UPON REFUSAL

Upon refusal to submit to a chemical test as required by law, officers shall personally serve the notice of order of suspension upon the arrestee and take possession of any state-issued license

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to operate a motor vehicle that is held by that individual (Vehicle Code § 23612(e); Vehicle Code § 23612(f)).

514.6 RECORDS DIVISION RESPONSIBILITIES

The Records Supervisor will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office.

514.7 ADMINISTRATIVE HEARINGS

The Records Supervisor will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to DMV.

Any officer who receives notice of required attendance to an administrative license suspension hearing should promptly notify the prosecuting attorney.

An officer called to testify at an administrative hearing should document the hearing date and DMV file number in a supplemental report. Specific details of the hearing generally should not be included in the report unless errors, additional evidence or witnesses are identified.

514.8 TRAINING

The Personnel and Training Lieutenant should ensure that officers participating in the enforcement of DUI laws receive regular training. Training should include, at minimum, current laws on impaired driving, investigative techniques and rules of evidence pertaining to DUI investigations. The Personnel and Training Lieutenant should confer with the prosecuting attorney's office and update training topics as needed.

514.9 STATE AND REGIONAL DUI EFFORTS

The BART Police Department will, when possible, participate in state and regional efforts to combat DUI including:

- California Office of Traffic Safety Grant Programs, i.e.: OTS DUI Mini-Grant administered by Berkeley Traffic Safety Center
- County wide Grant Programs, i.e.: Avoid the 21
- Ad hoc interagency efforts

The Zone Lieutenant is responsible for coordinating these efforts.

514.10 ARREST AND INVESTIGATION

514.10.1 WARRANTLESS ARREST

In addition to the arrest authority granted to officers pursuant to Penal Code § 836, an officer may make a warrantless arrest of a person that the officer has reasonable cause to believe has been driving under the influence of an alcoholic beverage or any drug, or under the combined influence of the same when (Vehicle Code § 40300.5):

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- (a) The person is involved in a traffic accident.
- (b) The person is observed in or about a vehicle that is obstructing the roadway.
- (c) The person will not be apprehended unless immediately arrested.
- (d) The person may cause injury to him/herself or damage property unless immediately arrested.
- (e) The person may destroy or conceal evidence of a crime unless immediately arrested.

514.10.2 OFFICER RESPONSIBILITIES

The officer serving the arrested person with a notice of an order of suspension shall immediately (Vehicle Code § 23612):

- (a) Forward a copy of the completed notice of suspension or revocation form and any confiscated driver's license to the Department of Motor Vehicles (DMV).
- (b) Forward a sworn report to DMV that contains the required information in Vehicle Code § 13380.
- (c) Forward the results to the appropriate forensic laboratory if the person submitted to a blood or urine test.

Traffic Citations

516.1 PURPOSE AND SCOPE

This policy outlines the responsibility for traffic citations, the procedure for dismissal, correction, and voiding of traffic citations.

516.2 RESPONSIBILITIES

The Civilian Supervisor shall be responsible for the development and design of all Department traffic citations in compliance with state law and the Judicial Council.

The Records Division shall be responsible for the supply and accounting of all traffic citations issued to employees of this department.

516.3 DISMISSAL OF TRAFFIC CITATIONS

Employees of this department do not have the authority to dismiss a citation once it has been issued. Only the court has the authority to dismiss a citation that has been issued (Vehicle Code § 40500(d)). Any request from a recipient to dismiss a citation shall be referred to the Administrative Services Supervisor. Upon a review of the circumstances involving the issuance of the traffic citation, the Administrative Services Supervisor may request the Operations Bureau Deputy Chief to recommend dismissal of the traffic citation. If approved, the citation will be forwarded to the appropriate court with a request for dismissal. All recipients of traffic citations whose request for the dismissal of a traffic citation has been denied shall be referred to the appropriate court.

Should an officer determine prior to a court proceeding that any citation should be dismissed in the interest of justice or where prosecution is deemed inappropriate the officer will send a memo, via the chain of command, to their Bureau Deputy Chief immediately after receiving the subpoena. Personnel will not request dismissals without approval from the command-level officer.

516.4 VOIDING TRAFFIC CITATIONS

Voiding a traffic citation may occur when a traffic citation has not been completed or where it is completed, but not issued. The citation shall have an explanation on the back copy of why the citation was voided. The citation will be sent to the Administrative Services Supervisor.

516.5 CORRECTION OF TRAFFIC CITATIONS

When a traffic citation is issued and is in need of correction, the officer issuing the citation shall submit the citation and complete a notice of citation correction form that shall indicate the corrections made to the citation. A copy of the correction notice shall be mailed by the reporting officer to the violator. A copy of the notice shall be attached with the citation and forwarded to the Records Section.

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516.6 DISPOSITION OF TRAFFIC CITATIONS

The court and file copies of all traffic citations issued by members of this department shall be forwarded to the employee's immediate supervisor for review. The citation copies shall then be filed with the Records Division.

Upon separation from employment with this department, all employees issued traffic citation books shall return any unused citations to the Records Division.

516.7 NOTICE OF PARKING VIOLATION APPEAL PROCEDURE

Disposition of notice of parking violation appeals is conducted pursuant to Vehicle Code § 40215.

516.7.1 APPEAL STAGES

Appeals may be pursued sequentially at three different levels (Vehicle Code § 40215; Vehicle Code § 40230):

- (a) Administrative reviews are conducted by the Traffic Bureau who will review written/ documentary data. Requests for administrative reviews are available at the front desk or Traffic Bureau of the Bay Area Rapid Transit Police Department. These requests are informal written statements outlining why the notice of parking violation should be dismissed. Copies of documentation relating to the notice of parking violation and the request for dismissal must be mailed to the current mailing address of the processing agency.
- (b) If the appellant wishes to pursue the matter beyond administrative review, an administrative hearing may be conducted in person or by written application, at the election of the appellant. Independent referees review the existent administrative file, amendments, and/or testimonial material provided by the appellant and may conduct further investigation or follow-up on their own.
- (c) If the appellant wishes to pursue the matter beyond an administrative hearing, a Superior Court review may be presented in person by the appellant after an application for review and designated filing fees have been paid to the Superior Court of California.

516.7.2 TIME REQUIREMENTS

Administrative review or appearance before a hearing examiner will not be provided if the mandated time limits are not adhered to by the violator.

- (a) Requests for an administrative review must be postmarked within 21 calendar days of issuance of the notice of parking violation, or within 14 calendar days of the mailing of the Notice of Delinquent Parking Violation (Vehicle Code § 40215(a)).
- (b) Requests for administrative hearings must be made no later than 21 calendar days following the notification mailing of the results of the administrative review (Vehicle Code § 40215(b)).
- (c) An administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing, excluding time tolled pursuant to Vehicle Code § 40200 - 40225. The person requesting the hearing may request one continuance, not to exceed 21 calendar days (Vehicle Code § 40215).

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- (d) Registered owners of vehicles may transfer responsibility for the violation via timely affidavit of non-liability when the vehicle has been transferred, rented or under certain other circumstances (Vehicle Code § 40209; Vehicle Code § 40210).

516.7.3 COSTS

- (a) There is no cost for an administrative review.
- (b) Appellants must deposit the full amount due for the citation before receiving an administrative hearing, unless the person is indigent, as defined in Vehicle Code § 40220, and provides satisfactory proof of inability to pay (Vehicle Code § 40215).
- (c) An appeal through Superior Court requires prior payment of filing costs, including applicable court charges and fees. These costs will be reimbursed to the appellant in addition to any previously paid fines if appellant's liability is overruled by the Superior Court.

516.8 JUVENILE CITATIONS

Completion of traffic citation forms for juveniles may vary slightly from the procedure for adults. The juvenile's age, place of residency, and the type of offense should be considered before issuing the juvenile a citation.

516.9 CITATION ISSUANCE AND CONTROL

The Department's citation inventory and control is maintained by the Department Traffic Officer. It is the Traffic Officer's responsibility to order, update, maintain, track and issue citations including the officer it has been assigned to.

Serialized citation books will be issued on a one for one basis, meaning a depleted citation book will be exchanged for a new one. Citation distribution will be tracked via spreadsheet managed by the Department Traffic Officer. If a citation book is lost, a memorandum, via the chain of command, addressed to the Traffic and Parking Administrative Supervisor is required.

Disabled Vehicles

520.1 PURPOSE AND SCOPE

Vehicle Code § 20018 provides that all law enforcement agencies having responsibility for traffic enforcement may develop and adopt a written policy to provide assistance to motorists in disabled vehicles within their primary jurisdiction.

520.2 OFFICER RESPONSIBILITY

When an on-duty officer observes a disabled vehicle on the roadway, the officer should make a reasonable effort to provide assistance. If that officer is assigned to a call of higher priority, the dispatcher should be advised of the location of the disabled vehicle and the need for assistance. The dispatcher should then assign another available officer to respond for assistance as soon as practical.

520.2.1 OFF PROPERTY MOTORIST ASSISTANCE

Whenever motorist assistance is provided off District property as a result of a situation requiring immediate attention, the incident shall be documented as an "Outside Assist Incident Report". In such cases, the officer/ CSO will stay only as long as it takes to stabilize the situation or until relieved by the local jurisdiction.

520.3 EXTENT OF ASSISTANCE

In most cases, a disabled motorist will require assistance. After arrangements for assistance are made, continued involvement by department personnel will be contingent on the time of day, the location, the availability of department resources, and the vulnerability of the disabled motorist.

520.3.1 MECHANICAL REPAIRS

Department personnel shall not make mechanical repairs to a disabled vehicle. The use of push bumpers to relocate vehicles to a position of safety is not considered a mechanical repair.

520.3.2 RELOCATION OF DISABLED VEHICLES

The relocation of disabled vehicles by members of this department by pushing or pulling a vehicle should only occur when the conditions reasonably indicate that immediate movement is necessary to reduce a hazard presented by the disabled vehicle.

520.3.3 RELOCATION OF DISABLED MOTORIST

The relocation of a disabled motorist should only occur with the person's consent and should be suggested when conditions reasonably indicate that immediate movement is necessary to mitigate a potential hazard. The department member may stay with the disabled motorist or transport him/her to a safe area to await pickup.

520.4 PUBLIC ACCESS TO THIS POLICY

This written policy is available upon request.

Parking Enforcement

521.1 PURPOSE AND SCOPE

The purpose of this policy is to delineate the District's parking programs, restricted parking areas, regulations, and departmental parking-enforcement procedures.

It shall be the policy of this department to regularly enforce parking violations in District parking facilities by the issuance of parking citations, parking violation warning notices, or verbal warnings. When parking citations are issued, appropriate BART Resolution or California Vehicle Code sections will be used. Parking citations shall only be issued by sworn personnel and community service officers.

District parking is governed by respective union/association contracts, designated parking spaces, and District parking programs and regulations listed herein as applicable.

(a) **Board of Director Permits:**

1. Directors employed by the Metropolitan Transportation Commission (MTC) are issued permits by the MTC. Parking for these permitted vehicles is located in the MTC parking lot located at 101-8th Street, Oakland. These vehicles are allowed to park in designated parking areas located beneath the building's overhang. All other vehicles parked in violation of the posted signs designating restricted hours should be issued citations or warning notices as appropriate.

(b) **Special Permits:** The District's Parking Division, as well as the chief of police, may at times issue special parking permits for various reasons. These permits may allow a vehicle to be legally parked in areas that it may not otherwise be permitted. If in doubt as to the validity or restrictions of any particular permit, the citing employee shall contact the Parking Division, the department's traffic officer, or the employee's supervisor for clarification.

(c) **Warning Notices:** Warning notices shall be issued for a pre-determined length of time to vehicles that are parked illegally but are subject to a modified or newly adopted regulation. The pre-determined length of time will be determined by the department. Warning notices should also be considered if there has been significant disruption in regular enforcement or if markings or signage is not reasonably clear.

(d) **Verbal Warnings:** Verbal warnings shall be given to drivers who stop and wait in a no-parking zone to drop off or pick-up passengers. Drivers will be told to move their vehicles. Those who refuse to heed the warning should be cited for the parking violation, not for failure to obey traffic control signs. Exceptions would be drivers who clearly violate posted "Do Not Enter" and "Bus Zone" signs.

For additional Definitions on District parking programs visit <https://www.bart.gov/guide/parking>

521.2 PROCEDURES

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521.2.1 ISSUING PARKING CITATIONS

Prior to issuance, parking citations shall be completed in their entirety. Handwritten citations shall be completed using a pen containing black ink only. The Parking Violation Notices are two-part (no carbon required) and the pen must have a hard writing point so that the written information is transferred from the top copy of the citation to the copy below. Once the required date, time observed, time issued location, vehicle identifying information, violation, fine amount, and additional remarks are completed, the issuing employee shall print his/her name and badge number in the space provided. Citations shall be printed clearly and legibly, including the name and ID number of the issuing employee.

Electronically-generated citations may also be issued if authorized handheld electronic units are available. As above, these citations must also be completed in their entirety.

Completed citations shall be left under the vehicle's driver side windshield wiper. If the vehicle does not have windshield wipers, some other secure method of attachment should be utilized and the citation should be placed where it is obvious to the returning driver.

If the issuing employee encounters a situation in which a car is parked in violation of parking restrictions, and it appears to the employee that it may not be clear to a reasonable person that the vehicle was parked in violation (e.g., missing or poorly located signage, very worn curb markings), the employee shall refrain from issuing a citation until the problem is rectified. If it is questionable as to the clarity of the signage or marking, a police supervisor may be consulted and/or a warning notice may be issued in lieu of citation.

Specific problems with poor or unclear signage or markings will be reported via e-mail to the administrative traffic supervisor, who will convey the need for corrective measures to the Parking Division and/or other appropriate department.

Handwritten citations shall be turned in by end of the issuing employee's shift and forwarded to the Traffic Division for sending to the Citation Processing Center. Electronic citations shall be uploaded by the end of the employee's shift.

521.2.2 VOIDING PARKING CITATIONS

If a citation has been started or completed and prior to issuance mitigating circumstances arise that support that the citation should not be issued, the citation may be voided. To do this, the issuing employee shall write "VOID" in large letters, across the face of the citation. The voided citation shall then be forwarded to the Traffic Division for processing or for sending to the Citation Processing Center for processing. For electronic citations, the issuing employee should void the citation via assigned handheld. If unable to do so, the issuing employee should send an email to the citation processing center to request a void of the citation.

Once a parking citation has been completed and secured to the vehicle, employees may not normally void the citation. Even if the issuing employee or supervisor determines that the citation should have not been issued or it should be dismissed in the interest of justice. When such instances occur, the person receiving the citation should be instructed to appeal it via the instructions on the back of the citation (see below).

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There is an exception to this process. If the citation was issued for BR-2495-4, Sign Violation-Fee Required, the citation may be voided after issuance if it falls within certain parameters. If, after issuance, the person receiving the citation reports that the citation was issued in error and provides a receipt proving that the required parking fee was paid to or in close proximity to the issuance of the citation, then the receiving employee shall collect the citation (Note: "close proximity" as used in the preceding sentence is defined as the few minutes that it would take a customer to park and proceed into the station to pay for parking, while a citation could be issued prior to payment). The citation shall then be voided and forwarded, along with the receipt provided by the person receiving the citation, to LMA for sending to the Citation Processing Center. The receiving employee shall also issue the person a Parking Control Machine Verification Receipt (form #1400).

521.2.3 APPEAL PROCESS

For those receiving a parking citation, 40215(a) CVC allows for an initial review of the citation to determine if the violation did not occur, the registered owner was not responsible for the violation, or that extenuating circumstances make dismissal of the citation appropriate in the interest of justice. If, during the review, any of the above listed reasons are found to be prevailing, the traffic office may cancel the citation or will contact the Citation Processing Center and instruct them to cancel the citation. The citation review must be received within 21 calendar days of the issuance of the citation or 14 calendar days from the mailing of the notice of delinquent parking violation. The review may be made by electronically, in writing via the Citation Processing Center, or in person. Per 40215(b) CVC, if the subject contesting the citation is dissatisfied with the results of the initial review, the person may request an administrative hearing of the violation(s) no later than 21 calendar days following the mailing of the results of the initial review. This hearing may take place by mail, electronically via the Citation Processing Center website, or in person scheduled via the Citation Processing Center.

521.2.4 MONTHLY RESERVED PARKING

Both monthly reserved and airport/long term-parking permits are assigned numbers which are printed on the permits. These permit numbers can be input into a cellular telephone equipped with a Web browser provided by Parking Permit vendor in order to check the permit's validity and expiration date. Those CSOs that have access to the enforcement cell phones should regularly check vehicles displaying these permits to assure permit validity.

521.2.5 VEHICLE CODE REGISTRATION AND EQUIPMENT VIOLATIONS

Unattended vehicles may be issued parking citations for registration violations (e.g., expired registration, missing registration tabs. Citations for expired registration will not be issued unless a registration has been expired for more than six (6) months. Unattended vehicles will not be issued citations for equipment violations (e.g., cracked windshields, missing gas cap, no front license plate).

521.2.6 APPLICABLE PARKING ENFORCEMENT CODE SECTIONS

Applicable parking enforcement code sections can be found at <https://www.bart.gov/guide/parking/citations>.

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521.3 TOWING OF VEHICLES FOR PARKING VIOLATIONS

521.3.1 EXCESSIVE OUTSTANDING PARKING CITATIONS

California Vehicle Code Section 22651 (i) allows for the towing and impounding of any vehicle, excluding rental vehicles, that are known to have been issued five (5) or more notices of parking violations to which the owner or person in control of the vehicle has not responded to within 21 calendar days of citation issuance, or 14 calendar days of the mailing of a notice of delinquent parking violations, or the registered owner has not paid the applicable fines, or has failed to appear in court to adjudicate the outstanding citations. It shall be the policy of this department to tow only after (10) or more parking citations are on file. In such cases, the employee seeking to tow and impound of the vehicle in question, shall contact the department's traffic officer for confirmation through DMV and/or Citation Processing Center of the outstanding citations. If the traffic officer cannot confirm that at least 10 outstanding parking citations meet the above criteria, the vehicle shall not be towed. If the vehicle has five (5) confirmed notices of parking violations and is involved in a criminal investigation, it can be towed without exception. All tows done under section 22651(i) CVC must be approved in advance by the zone sergeant.

521.3.2 PARKING WITH REGISTRATION EXPIRED IN EXCESS OF SIX MONTHS

California Vehicle code section 22651(o) allows for the towing and impounding of vehicles in which the registration is expired in excess of six (6) months.

521.3.3 PARKING AND ENFORCEMENT INFORMATION CONTACTS

The District's Parking Division may be contacted at parking@bart.gov. This division is responsible for establishing and managing the District's parking programs. The Parking Division is also responsible for managing, ordering, and follow-up on placement and replacement of parking signage, repaving, pavement paintings and markings, and stall numbers.

District parking information may be found at www.bart.gov/guide/parking. This Web site also directs parties to the parking permit vendor. The parking permit vendor stores permit-user databases and collects the fees paid for these programs. Their systems may also be contacted by telephone at (877) 700-PARK (7275).

The Citation Processing Center tabulates issued parking citations, collects fines for parking violations, and administers the citation-dispute process. The Citation Processing Center may be contacted at:

Citation Processing Center-BART

P.O. Box 10479

Newport Beach, CA 92648-0479

Telephone: (800) 989-2058

Taxi Rules

523.1 TAXI POLICY

The BART District's taxi rules are intended to facilitate the orderly operation of taxis on BART District property. Violators of these rules are subject to a citation under section 21113(a) of the California Vehicle Code. Section 21113 (a) V.C. requires proper notice in the form of signage. Absent proper signage at or near the location, officers shall give verbal warnings to violators. Officers should endeavor to educate the Taxi drivers of the rules by providing a copy of these rules to violators. In addition, all Federal, State, and Local regulations apply.

(a) **Taxi Rules:**

1. To pick up customers on District property, taxis shall be parked within the limits of the taxi stand (yellow-white-green curb) or designated Taxi area.
2. Taxis shall be driven along the most direct route to a taxi stand and shall be parked in the taxi stand by order of arrival only.
3. Except for a customer deliberately choosing a different taxi, taxis shall pick-up customers and leave the taxi standby order of arrival only.
4. When the taxi stand is full, taxis shall immediately be driven off the property via the most direct route without stopping, parking, circling, or roaming.
5. No more than two taxis owned by the same company may be parked in a taxi stand at the same time.
6. In stations with a taxi stand, the passenger zone (white curb) may be used by taxis to drop off but not to pick-up customers.
7. In stations without a taxi stand, the passenger zone will serve as the default taxi stand but only one taxi may be parked to pick-up customers there.
8. A ramped taxi, specifically requested by a customer using a wheelchair, is allowed to park in the passenger zone to pick-up that customer.
9. Drivers of taxis may not reserve a place in a taxi stand for another taxi.
10. While waiting for customers, taxi drivers should not physically stand on the roadway side of their taxis.
11. No mechanical repairs or any type of general maintenance shall be performed on taxis while on District property.
12. A taxi shall not be left unattended for more than five minutes.
13. The trunk area of a taxi shall have space to accommodate luggage and collapsible wheelchairs.

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14. Drivers of taxis shall not solicit patronage by words or gestures but shall wait in or near their taxis for customers to request their services.
15. Drivers of taxis that are parked in taxi stands shall not refuse to transport customers who lawfully request their services.
16. Drivers of taxis shall not use words or gestures to discourage or prohibit customers from choosing taxis out of sequence in a taxi stand.
17. Drivers of taxis shall not engage in verbal or physical altercations with each other or with their customers.

72-Hour Parking Violations

524.1 PURPOSE AND SCOPE

This policy provides procedures for the marking, recording, and storage of vehicles parked in violation of the San Francisco Bay Area Rapid Transit District Ordinance regulating 72-hour parking violations and abandoned vehicles under the authority of Vehicle Code § 22669.

524.2 MARKING VEHICLES

Vehicles suspected of being in violation of the District of San Francisco Bay Area Rapid Transit District 72-Hour Parking Ordinance shall be marked and noted on the Bay Area Rapid Transit Police Department 72-hour Tow Tag. No case number is required at this time.

A visible chalk mark should be placed on one of the vehicle's tire treads. The investigating employee should make a good faith effort to notify the owner of any vehicle subject to towing prior to having the vehicle removed. This may be accomplished by personal contact, telephone or by leaving notice attached to the vehicle at least 24 hours prior to removal.

524.2.1 VEHICLE STORAGE

Any vehicle in violation shall be stored by the authorized towing service and a vehicle storage report shall be completed by the officer authorizing the storage of the vehicle.

The storage report form shall be submitted to the Records Division immediately following the storage of the vehicle. A copy of the completed CHP 180 form shall be faxed to the Records Section at x7089 prior to the end of shift. It shall be the responsibility of the Records Division to immediately notify the Stolen Vehicle System (SVS) of the Department of Justice in Sacramento (Vehicle Code § 22851.3(b)). Notification may also be made to the National Law Enforcement Telecommunications System (NLETS)(Vehicle Code § 22854.5).

Within 48 hours of the storage of any such vehicle, excluding weekends and holidays, it shall be the responsibility of the Records Division to determine the names and addresses of any individuals having an interest in the vehicle through DMV or CLETS computers. Notice to all such individuals shall be sent first-class or certified mail pursuant to Vehicle Code § 22851.3(d).

524.2.2 TOWING OF VEHICLES FOR 72-HOUR RESTRICTION

Per BR2495-4e, no person shall park or leave any vehicles in a District parking facility for a period in excess of 72 consecutive hours. Notwithstanding this restriction, vehicles may park for longer than 72 consecutive hours if the vehicle has been issued an Airport/Long-Term Parking permit or other arrangements have been made with an authorized District representative. The 72-hour period does not begin until the vehicle has been properly marked and tagged.

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Additionally, the vehicle must be tagged with a departmental brightly colored warning tag entitled, "THIS VEHICLE IS PARKING IN VIOLATION OF THE LAW." (Form #0701.) This warning tag shall be completed and placed on the vehicle's windshield. The warning tag shall contain the following information: vehicle make, mileage (if observable), license number, date marked, location, and officer's name and badge number. the tag shall also indicate the date in which the vehicle is to be moved by before it may be towed.

After a vehicle has been marked and tagged, and it has been determined that the vehicle has not been moved for 72 or more hours after being marked, the vehicle may be towed under towing authority 22651 (k) CVC.

Chapter 6 - Investigation Operations

Investigation and Prosecution

600.1 PURPOSE AND SCOPE

The purpose of this policy is to set guidelines and requirements pertaining to the handling and disposition of criminal investigations.

600.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to investigate crimes thoroughly and with due diligence, and to evaluate and prepare criminal cases for appropriate clearance or submission to a prosecutor.

600.3 INITIAL INVESTIGATION

600.3.1 OFFICER RESPONSIBILITIES

An officer responsible for an initial investigation shall complete no less than the following:

- (a) Make a preliminary determination of whether a crime has been committed by completing, at a minimum:
 - 1. An initial statement from any witnesses or complainants.
 - 2. A cursory examination for evidence.
- (b) If information indicates a crime has occurred, the officer shall:
 - 1. Preserve the scene and any evidence as required to complete the initial and follow-up investigation.
 - 2. Determine if additional investigative resources (e.g., investigators or scene processing) are necessary and request assistance as required.
 - 3. If assistance is warranted, or if the incident is not routine, notify a supervisor or the Watch Commander.
 - 4. Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects.
 - 5. Collect any evidence.
 - 6. Take any appropriate law enforcement action.
 - 7. Complete and submit the appropriate reports and documentation.
- (c) If the preliminary determination is that no crime occurred, determine what other action may be necessary, what other resources may be available, and advise the informant or complainant of this information.

600.3.2 CIVILIAN MEMBER RESPONSIBILITIES

A civilian member assigned to any preliminary investigation is responsible for all investigative steps, except making any attempt to locate, contact or interview a suspect face-to-face or take

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any enforcement action. Should an initial investigation indicate that those steps are required, the assistance of an officer shall be requested.

600.4 CUSTODIAL INTERROGATION REQUIREMENTS

Suspects who are in custody and subjected to an interrogation shall be given the *Miranda* warning, unless an exception applies. Interview or interrogation of a juvenile shall be in accordance with the Temporary Custody of Juveniles Policy.

600.4.1 AUDIO/VIDEO RECORDINGS

Any custodial interrogation of an individual who is suspected of having committed any violent felony offense should be recorded (audio or video with audio as available) in its entirety. Regardless of where the interrogation occurs, every reasonable effort should be made to secure functional recording equipment to accomplish such recordings.

Consideration should also be given to recording a custodial interrogation, or any investigative interview, for any other offense when it is reasonable to believe it would be appropriate and beneficial to the investigation and is otherwise allowed by law.

No recording of a custodial interrogation should be destroyed or altered without written authorization from the prosecuting attorney and the Criminal Investigations Division supervisor. Copies of recorded interrogations or interviews may be made in the same or a different format as the original recording, provided the copies are true, accurate and complete and are made only for authorized and legitimate law enforcement purposes.

Recordings should not take the place of a thorough report and investigative interviews. Written statements from suspects should continue to be obtained when applicable.

600.4.2 MANDATORY RECORDING OF ADULTS

Any custodial interrogation of an adult who is suspected of having committed any murder shall be recorded in its entirety. The recording should be video with audio if reasonably feasible (Penal Code § 859.5).

This recording is not mandatory when (Penal Code § 859.5):

- (a) Recording is not feasible because of exigent circumstances that are later documented in a report.
- (b) The suspect refuses to have the interrogation recorded, including a refusal any time during the interrogation, and the refusal is documented in a report. If feasible, the refusal shall be electronically recorded.
- (c) The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.
- (d) The interrogation occurs when no member conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating member develops a reason to believe the individual committed murder.

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- (e) The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an officer, the individual being interrogated or another individual. Such circumstances shall be documented in a report.
- (f) A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.
- (g) The questions are part of a routine processing or booking, and are not an interrogation.
- (h) The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

The Department shall maintain an original or an exact copy of the recording until a conviction relating to the interrogation is final and all appeals are exhausted or prosecution is barred by law (Penal Code § 859.5).

600.5 DISCONTINUATION OF INVESTIGATIONS

The investigation of a criminal case or efforts to seek prosecution should only be discontinued if one of the following applies:

- (a) All reasonable investigative efforts have been exhausted, no reasonable belief that the person who committed the crime can be identified, and the incident has been documented appropriately.
- (b) The perpetrator of a misdemeanor has been identified and a warning is the most appropriate disposition.
 - 1. In these cases, the investigator shall document that the person was warned and why prosecution was not sought.
 - 2. Warnings shall not be given for felony offenses or other offenses identified in this policy or by law that require an arrest or submission of a case to a prosecutor.
- (c) The case has been submitted to the appropriate prosecutor but no charges have been filed. Further investigation is not reasonable nor has the prosecutor requested further investigation.
- (d) The case has been submitted to the appropriate prosecutor, charges have been filed, and further investigation is not reasonable, warranted or requested, and there is no need to take the suspect into custody.
- (e) Suspects have been arrested, there are no other suspects, and further investigation is either not warranted or requested.
- (f) Investigation has proven that a crime was not committed (see the Sexual Assault Investigations Policy for special considerations in these cases).

The Domestic Violence, Child Abuse Sexual Assault Investigations and Adult Abuse policies may also require an arrest or submittal of a case to a prosecutor.

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600.6 COMPUTERS AND DIGITAL EVIDENCE

The collection, preservation, transportation and storage of computers, cell phones and other digital devices may require specialized handling to preserve the value of the related evidence. If it is anticipated that computers or similar equipment will be seized, officers should request that computer forensic examiners assist with seizing computers and related evidence. If a forensic examiner is unavailable, officers should take reasonable steps to prepare for such seizure and use the resources that are available.

600.7 INVESTIGATIVE USE OF SOCIAL MEDIA AND INTERNET SOURCES

Use of social media and any other Internet source to access information for the purpose of criminal investigation shall comply with applicable laws and policies regarding privacy, civil rights and civil liberties. Information gathered via the Internet should only be accessed by members while on-duty and for purposes related to the mission of this department. If a member encounters information relevant to a criminal investigation while off-duty or while using his/her own equipment, the member should note the dates, times and locations of the information and report the discovery to his/her supervisor as soon as practicable. The member, or others who have been assigned to do so, should attempt to replicate the finding when on-duty and using department equipment. Information obtained via the Internet should not be archived or stored in any manner other than department-established record keeping systems (see the Records Maintenance and Release and the Criminal Organizations policies).

600.7.1 ACCESS RESTRICTIONS

Information that can be accessed from any department computer, without the need of an account, password, email address, alias or other identifier (unrestricted websites), may be accessed and used for legitimate investigative purposes without supervisory approval.

Accessing information from any Internet source that requires the use or creation of an account, password, email address, alias or other identifier, or the use of nongovernment IP addresses, requires supervisor approval prior to access. The supervisor will review the justification for accessing the information and consult with legal counsel as necessary to identify any policy or legal restrictions. Any such access and the supervisor approval shall be documented in the related investigative report.

Accessing information that requires the use of a third party's account or online identifier requires supervisor approval and the consent of the third party. The consent must be voluntary and shall be documented in the related investigative report.

Information gathered from any Internet source should be evaluated for its validity, authenticity, accuracy and reliability. Corroborative evidence should be sought and documented in the related investigative report.

Any information collected in furtherance of an investigation through an Internet source should be documented in the related report. Documentation should include the source of information and the dates and times that the information was gathered.

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600.7.2 INTERCEPTING ELECTRONIC COMMUNICATION

Intercepting social media communications in real time may be subject to federal and state wiretap laws. Officers should seek legal counsel before any such interception.

600.8 CELLULAR COMMUNICATIONS INTERCEPTION TECHNOLOGY

The Criminal Investigations Division Commander is responsible for ensuring the following for cellular communications interception technology operations (Government Code § 53166):

- (a) Security procedures are developed to protect information gathered through the use of the technology.
- (b) A usage and privacy policy is developed that includes:
 - (a) The purposes for which using cellular communications interception technology and collecting information is authorized.
 - (b) Identification by job title or other designation of employees who are authorized to use or access information collected through the use of cellular communications interception technology.
 - (c) Training requirements necessary for those authorized employees.
 - (d) A description of how the Department will monitor the use of its cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws.
 - (e) Process and time period system audits.
 - (f) Identification of the existence of any memorandum of understanding or other agreement with any other local agency or other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.
 - (g) The purpose of, process for and restrictions on the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.
 - (h) The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.

Members shall only use approved devices and usage shall be in compliance with department security procedures, the department's usage and privacy procedures and all applicable laws.

600.9 MODIFICATION OF CHARGES FILED

Members are not authorized to recommend to the prosecutor or to any other official of the court that charges on a pending case be amended or dismissed without the authorization of a Division Commander or the Chief of Police. Any authorized request to modify the charges or to recommend dismissal of charges shall be made to the prosecutor.

Criminal Investigation Administration

601.1 PURPOSE AND SCOPE

The purpose of this section is to create a framework for efficient and effective criminal investigations. Criminal investigations can be performed by both uniformed officers or detectives specialized in investigations.

601.2 24-HOUR CRIMINAL INVESTIGATION

The Criminal Investigations Division produces an on-call schedule for the purpose of having assigned investigators available at times other than normal business hours. The on-call schedule will be made available to the communications Center, Watch Commanders, patrol supervisors, administrative staff, and will be posted on the patrol roster. The Criminal Investigations Division Sergeant is responsible for notifying the Watch Commander of any changes to the rosters or to change the roster itself. The on duty Watch Commander will determine need before calling the on-call detective. In determining when to call out Investigative personnel, the Watch Commander should consider the seriousness of the offense, complexity of the case or crime scene, staleness of the crime, available staffing and their expertise. The on-duty Watch Commander has final authority as to whether or not Investigators are called out.

601.2.1 RESPONSIBILITY AT CRIME SCENES

When an Investigator is summoned to a crime scene, the Investigator will confer with the patrol officer and/or Sergeant in charge. The Investigator will assume responsibility as the case officer and have the authority to control the crime scene, direct the investigation and direct those police resources at the scene. Criminal Investigations Division and Patrol Bureau personnel shall endeavor to cooperate to the utmost level, having the solution of the crime and public safety foremost in mind.

601.2.2 INVESTIGATORS ATTENDANCE AT PATROL LINE-UPS

The Criminal Investigations Division Sergeant shall ensure that investigations personnel attend patrol briefings quarterly to share information and the status of cases.

601.3 CASE SCREENING AND INVESTIGATION

Case screening focuses the available work force on the investigation of crimes that have the best chances for a successful conclusion. The Criminal Investigations Division Sergeant(s) screen new cases to decide the course of the investigation, basing his/her decisions on:

- (a) The seriousness of the incident.
- (b) The solvability factors that are present, including:
 - 1. Suspect Leads
 - 2. Witnesses
 - 3. Identifiable Suspect Vehicles

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4. Distinctive Methods of Operation
 5. Available Physical Evidence and/or Lack of Traceable Property
- (c) The Investigative Workload.

Cases should be assigned to available investigators with the special skills, knowledge, or abilities necessary to complete the investigation. The Criminal Investigations Division Sergeant is responsible for recording and monitoring cases assigned to investigators.

601.3.1 SUSPENDING CASES

The suspension of case investigations that are not major cases, e.g., property crimes not involving a criminal ring, may occur with corroboration between the investigator and the Criminal Investigations Division Sergeant. The suspension of major cases may occur only after review by and the approval of the Criminal Investigations Division Sergeant or Lieutenant. Cases may be suspended for reasons that include the following:

- Lack of Workable Leads
- Lack of Corroborative Witnesses
- Lack of Victim Cooperation
- Unavailability of Investigative Resources

601.3.2 COLD CASES

A cold case is any murder, missing person, suspicious death or other crime not subject to a statute of limitation, that is not currently being actively investigated. The Criminal Investigations Division Sergeant will review cold cases at least every other year for potential solvability. Solvability criteria may include DNA evidence, new leads or new technology that is directly related to the case. Cold case murders normally fall into three categories:

- Unsolved: No known suspects.
- Unresolved: Suspect(s) known/suspected but never successfully prosecuted.
- Unidentified: Victim identity unknown (Jane or John Doe).
- All follow up investigative actions and activities shall be documented on a supplemental crime report.

601.4 CASE STATUS CONTROL SYSTEM

Upon screening a potential case, the Criminal Investigations Division Sergeant will decide which investigator will be assigned the case and enter or update the case information in the automated case management system. Minimally, the case management information should include:

- The Investigator's Name
- The Date Assigned
- The Case Number

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- The Crime Offense
- Other Pertinent Information

601.4.1 ADMINISTRATIVE DESIGNATORS

All crimes investigated by the BART Police Department shall have administrative clearance designations that meet the guidelines of the California Department of Justice. Authors of criminal investigation reports shall use the most appropriate designation as to the explanation of clearance.

The clearance designations are:

- Cleared by Arrest
- Cleared by Arrest by Another Agency
- Exceptional Clearance
- Located (Missing Persons)
- Not Cleared

601.4.2 INVESTIGATIONS CASE FILES

When a case is assigned to an Investigator, a temporary case file may be created and stored within the Criminal Investigations Division. This file should only contain copies of the original case as all original case files are maintained within the Records Division and the Records Management System (RMS). Upon completion of the case or upon update of original record, the Investigator shall assure that all relevant and/or discoverable information is transferred from the investigations case file to permanent record and/or the Property/ Evidence Unit.

When the Investigator assigned to a case no longer needs the case file and all pertinent information has been transferred to the permanent record, case notes and work product material may be purged and shredded.

601.4.3 REPORT ACCESSIBILITY

The Records Management System (RMS) allows Department-wide viewing of most case files. Personnel assigned to the Criminal Investigations Division have immediate access to RMS via their desktop or laptop computers 24-hours a day. However, with the approval of a supervisor, general access to the report may be restricted, as in Juvenile reports. Restricted access may limit the number of personnel who can view the report, prohibit changes or modifications, or ban users from printing or forwarding sensitive or classified reports

601.5 PRELIMINARY INVESTIGATIONS

Patrol officers are the first responders and responsible for the preliminary investigation of crimes. Patrol officers conduct the follow-up investigation, if practicable, for cases they are assigned. Patrol officers investigating serious felonies should ask their supervisor if it is appropriate to request an Investigator be called out. Patrol officers shall attempt to follow up on all known investigatory leads until the leads are exhausted. If a Patrol Officer is unable to complete follow-up on a routine case, that case should be forwarded to the Criminal Investigations Division.

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- (a) A preliminary investigation begins when the responding officer or detective arrives at the scene of an incident and first contacts the reporting party, or becomes aware that a crime may have been or is being committed. The initial investigation must continue until the postponement of the investigation or the transfer of investigative responsibility occurs. The preliminary investigation may be sufficient to bring the case to a satisfactory conclusion, thus reducing the amount of work to be done from a follow-up perspective.
- (b) Preliminary investigations usually include, but is not limited to, the following:
1. Observing all conditions, events, and remarks at the scene to find out if an offense has been committed and if so, the exact nature of the offense.
 2. Locating and obtaining complete identification of all witnesses.
 3. Protecting the crime scene to ensure that evidence is not lost or contaminated.
 4. Finding the identity of the suspect and making an arrest if possible either at the scene or through immediate action.
 5. Providing other personnel with descriptions, method and direction of flight, and other relevant information concerning wanted persons or vehicles.
 6. Detecting what information is known by the victims and witnesses.
 7. Identifying the circumstances of the offense.
 8. Arranging for the collection of evidence.
 9. Obtaining statements from victims and witnesses, and the suspect.
 10. Accurately and completely recording all pertinent information in proper form.

601.6 FOLLOW UP INVESTIGATIONS

The Criminal Investigations Division conducts the follow-up investigation on serious and complex cases or those where follow-up by patrol is not practicable. Investigators generally will be requested to handle cases involving the following:

- Felony Cases and Felony Arrests
 - Except property crimes with no witnesses, video requests, leads, or evidence
 - Except stand-alone felony warrant arrests
- Misdemeanor Arrests and Citations
 - Except stand-alone misdemeanor warrant arrests
- Sex Crimes
- All employee related assaults or batteries
- Coroner Cases
- Sick/Injured persons cases where the illness/injury may result in death
- Missing Person Cases

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- Domestic Violence Cases

It will be the responsibility of field officers to conduct follow-up on all misdemeanor cases assigned to them with exception of those outlined above. Field officers are responsible for exhausting all leads, viewing associated surveillance video and completing supplemental reports on their findings. Exceptions to the above criteria may be referred by a patrol supervisor, but must be approved by the Criminal Investigations Division sergeant prior to forwarding the case.

601.6.1 STEPS IN CONDUCTING FOLLOW UP INVESTIGATIONS

After a preliminary investigation has been completed and the case has been routed to criminal investigations, the Detective Sergeant (or designee) will review the case. If there is additional follow-up required, the case will be assigned to a detective as an active case. The detective will be accountable for conducting a thorough and timely follow-up investigation, with the ultimate goal of identifying the responsible party, eliminating innocent parties from suspicion, and presenting the case to the appropriate District Attorney's office for criminal filing.

Investigative steps may include, but are not limited to:

- (a) Each detective will review and analyze all preliminary reports prepared by uniformed officers, departmental records, and laboratory results of any physical evidence collected related to the case under investigation
- (b) Detectives will conduct additional interviews of suspects, victims, witnesses, officers, and informants when necessary
- (c) The detective will ensure that information, which if shared could enhance the chance for a satisfactory conclusion, is passed on to other appropriate personnel including personnel from other criminal justice agencies
- (d) The detective should return to the scene if necessary. This may turn up evidence or leads that might still be available.
- (e) It is the responsibility of the detective to ensure that reports, statements, drawings, sketches and other materials of any kind are organized in such a manner that the prosecutor can successfully present them in court. The detective should become so familiar with the case that he can answer any questions that the prosecutors or supervisors pose, and can testify professionally and knowledgeably
- (f) When developing a suspect, it is the responsibility of the detective to check all available sources to:
 1. Ensure the correct identification of the suspect. Identification of a suspect may occur through photo or stand-up lineups, testimony of witnesses and from physical evidence that identifies a particular suspect
 2. Conduct research into the suspect's involvement in past offenses, through arrest records and criminal history checks
 3. Detectives should utilize crime analyst and prior incidents of a similar nature, to determine if the suspect is involved in other crimes.

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601.7 HABITUAL-SERIOUS OFFENDERS

The Bay Area Rapid Transit Police Department is dedicated to tracking and apprehending those individuals identified as multiple and repeat felony offenders. Commonly known as a Habitual/Serious Offenders, these individuals commit a substantial and disproportionate amount of serious crimes against the patrons of the Bay Area Rapid Transit District.

- (a) A Habitual Offender is an individual who has a history with Bay Area Rapid Transit Police Department and has been arrested for the same offense, or whose criminal history shows three or more convictions.
- (b) A Serious Offender is an individual with two or more felony convictions for the same offense or has caused serious bodily injury or emotional trauma. Some of the categories included for both Habitual and Serious Offenders are: Vehicle Theft, Burglary, Trespassing, Sexual Assault, Vandalism, Domestic Violence, Physical Assaults, and Drug/Alcohol Related offenses.
- (c) It will be the responsibility of the patrol officer when writing their report to make certain the arrestee or subject under investigation is identified as a serious or habitual offender if the conditions exist. If the conditions exist the reporting officer will note this at the start of his narrative.
- (d) When preparing a case to be submitted to the District Attorney's Office for criminal prosecution, investigators or officers will utilize the Crime Analyst for information on prior crimes of a similar nature and criminal history background information to determine if a suspect is a Serious/Habitual Offender. It will be the responsibility of the investigator or officer to include all pertinent information in his/her report to aid the prosecuting attorney when seeking a criminal filing. The prosecutor may utilize this information to decide if special handling of the case is necessary.
- (e) The Crime Analyst will assist in the tracking of Serious/Habitual Offenders based on reading Arrest/Crime reports, information obtained from LEAP, LEADS, Criminal History information and other law enforcement agencies.

Sexual Assault Investigations

602.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the investigation of sexual assaults. These guidelines will address some of the unique aspects of such cases and the effects that these crimes have on the victims.

Mandatory notifications requirements are addressed in the Child Abuse and Adult Abuse policies.

602.1.1 DEFINITIONS

Definitions related to this policy include:

Sexual assault - Any crime or attempted crime of a sexual nature, to include but not limited to offenses defined in Penal Code § 243.4, Penal Code § 261 et seq., and Penal Code § 285 et seq.

Sexual Assault Response Team (SART) - A multidisciplinary team generally comprised of advocates; law enforcement officers; forensic medical examiners, including sexual assault forensic examiners (SAFEs) or sexual assault nurse examiners (SANEs) if possible; forensic laboratory personnel; and prosecutors. The team is designed to coordinate a broad response to sexual assault victims.

602.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department that its members, when responding to reports of sexual assaults, will strive to minimize the trauma experienced by the victims, and will aggressively investigate sexual assaults, pursue expeditious apprehension and conviction of perpetrators, and protect the safety of the victims and the community.

602.3 QUALIFIED INVESTIGATORS

Qualified investigators should be available for assignment of sexual assault investigations. These investigators should:

- (a) Have specialized training in, and be familiar with, interview techniques and the medical and legal issues that are specific to sexual assault investigations.
- (b) Conduct follow-up interviews and investigation.
- (c) Present appropriate cases of alleged sexual assault to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and medical personnel as needed.
- (e) Provide referrals to therapy services, victim advocates and support for the victim.
- (f) Participate in or coordinate with SART.

Sexual Assault Investigations

602.4 REPORTING

In all reported or suspected cases of sexual assault, a report should be written and assigned for follow-up investigation. This includes incidents in which the allegations appear unfounded or unsubstantiated.

602.5 VICTIM INTERVIEWS

The primary considerations in sexual assault investigations, which begin with the initial call to Integrated Security Response Center, should be the health and safety of the victim, the preservation of evidence, and preliminary interviews to determine if a crime has been committed and to attempt to identify the suspect.

Whenever possible, a member of SART should be included in the initial victim interviews. An in-depth follow-up interview should not be conducted until after the medical and forensic examinations are completed and the personal needs of the victim have been met (e.g., change of clothes, bathing). The follow-up interview may be delayed to the following day based upon the circumstances. Whenever practicable, the follow-up interview should be conducted by a qualified investigator.

No opinion of whether the case is unfounded shall be included in the report.

Victims shall not be asked or required to take a polygraph examination (34 USC § 10451; Penal Code § 637.4).

Victims should be apprised of applicable victim's rights provisions, as outlined in the Victim and Witness Assistance Policy.

602.5.1 VICTIM RIGHTS

Whenever there is an alleged sexual assault, the assigned officer shall accomplish the following:

- (a) Advise the victim in writing of the right to have a victim advocate and a support person of the victim's choosing present at any interview or contact by law enforcement, any other rights of a sexual assault victim pursuant to Penal Code § 680.2, and the right to have a person of the same or opposite gender present in the room during any interview with a law enforcement official unless no such person is reasonably available (Penal Code § 679.04).
- (b) If the victim is transported to a hospital for any medical evidentiary or physical examination, the officer shall immediately cause the local rape victim counseling center to be notified (Penal Code § 264.2).
 1. The officer shall not discourage a victim from receiving a medical evidentiary or physical examination (Penal Code § 679.04).
 2. A support person may be excluded from the examination by the officer or the medical provider if his/her presence would be detrimental to the purpose of the examination (Penal Code § 264.2).

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Sexual Assault Investigations

602.5.2 VICTIM CONFIDENTIALITY

Officers investigating or receiving a report of an alleged sex offense shall inform the victim, or the victim's parent or guardian if the victim is a minor, that his/her name will become a matter of public record unless the victim requests that his/her name not be made public. The reporting officer shall document in his/her report that the victim was properly informed and shall include any related response made by the victim, or if a minor, any response made by the victim's parent or guardian (Penal Code § 293).

Except as authorized by law, members of this department shall not publicly disclose the name of any victim of a sex crime who has exercised his/her right to confidentiality (Penal Code § 293).

602.6 COLLECTION AND TESTING OF BIOLOGICAL EVIDENCE

Whenever possible, a SART member should be involved in the collection of forensic evidence from the victim.

When the facts of the case indicate that collection of biological evidence is warranted, it should be collected regardless of how much time has elapsed since the reported assault.

If a drug-facilitated sexual assault is suspected, urine and blood samples should be collected from the victim as soon as practicable.

Subject to requirements set forth in this policy, biological evidence from all sexual assault cases, including cases where the suspect is known by the victim, should be submitted for testing.

Victims who choose not to assist with an investigation, do not desire that the matter be investigated, or wish to remain anonymous may still consent to the collection of evidence under their control. In these circumstances, the evidence should be collected and stored appropriately.

602.6.1 COLLECTION AND TESTING REQUIREMENTS

Members investigating a sexual assault offense should take every reasonable step to ensure that DNA testing of such evidence is performed in a timely manner and within the time periods prescribed by Penal Code § 803(g). SAFE kits should be submitted to the crime lab within 20 days after being booked into evidence (Penal Code § 680).

In order to maximize the effectiveness of such testing and identify the perpetrator of any sexual assault, the assigned officer shall ensure that an information profile for the SAFE kit evidence has been created in the California Department of Justice (DOJ) SAFE-T database within 120 days of collection and should further ensure that the results of any such test have been timely entered into and checked against both the DOJ Cal-DNA database and the Combined DNA Index System (CODIS) (Penal Code § 680.3).

If the assigned officer determines that a SAFE kit submitted to a private laboratory for analysis has not been tested within 120 days after submission, the officer shall update the SAFE-T database to reflect the reason for the delay in testing. The assigned officer shall continue to update the status every 120 days thereafter until the evidence has been analyzed or the statute of limitations has run (Penal Code § 680.3).

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If, for any reason, DNA evidence in a sexual assault case in which the identity of the perpetrator is in issue and is not going to be analyzed within 18 months of the crime, the assigned officer shall notify the victim of such fact in writing no less than 60 days prior to the expiration of the 18-month period (Penal Code § 680).

Additional guidance regarding evidence retention and destruction is found in the Property and Evidence Policy.

602.6.2 DNA TEST RESULTS

A SART member should be consulted regarding the best way to deliver biological testing results to a victim so as to minimize victim trauma, especially in cases where there has been a significant delay in getting biological testing results (e.g., delays in testing the evidence or delayed DNA databank hits). Members should make reasonable efforts to assist the victim by providing available information on local assistance programs and organizations as provided in the Victim and Witness Assistance Policy.

- (a) Upon receipt of a written request from a sexual assault victim or the victim's authorized designee, members investigating sexual assault cases shall inform the victim of the status of the DNA testing of any evidence from the victim's case (Penal Code § 680).
 1. Although such information may be communicated orally, the assigned officer should thereafter follow-up with and retain a copy of confirmation by either written or electronic mail.
 2. Absent a written request, no member of this department is required to, but may, communicate with the victim or the victim's authorized designee regarding the status of any DNA testing.
- (b) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims shall further have the following rights (Penal Code § 680):
 1. To be informed if a DNA profile of the assailant was obtained from the testing of the SAFE kit or other crime scene evidence from their case.
 2. To be informed if there is a match between the DNA profile of the assailant developed from the evidence and a DNA profile contained in the DOJ Convicted Offender DNA Database, providing that disclosure would not impede or compromise an ongoing investigation.
 3. To be informed if the DNA profile of the assailant developed from the evidence has been entered into the DOJ Databank of case evidence.
- (c) Provided that the sexual assault victim or the victim's authorized designee has kept the assigned officer informed with regard to current address, telephone number, and email address (if available), any victim or the victim's authorized designee shall, upon request, be advised of any known significant changes regarding the victim's case (Penal Code § 680).

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1. Although such information may be communicated orally, the assigned officer should thereafter follow-up with and retain a copy of confirmation by either written or electronic mail.
2. No officer shall be required or expected to release any information which might impede or compromise any ongoing investigation.

602.6.3 STANDARDIZED SEXUAL ASSAULT FORENSIC MEDICAL EVIDENCE KIT

The Property and Evidence Section supervisor should make California standardized sexual assault forensic medical evidence (SAFE) kits available to members who may investigate sexual assault cases. Members investigating a sexual assault should use these SAFE kits when appropriate and follow related usage guidelines issued by the California Clinical Forensic Medical Training Center (Penal Code § 13823.14).

602.7 DISPOSITION OF CASES

If the assigned investigator has reason to believe the case is without merit, the case may be classified as unfounded only upon review and approval of the Criminal Investigations Division supervisor.

Classification of a sexual assault case as unfounded requires the Criminal Investigations Division supervisor to determine that the facts have significant irregularities with reported information and that the incident could not have happened as it was reported. When a victim has recanted his/her original statement, there must be corroborating evidence that the allegations were false or baseless (i.e., no crime occurred) before the case should be determined as unfounded.

602.8 CASE REVIEW

The Criminal Investigations Division supervisor should ensure case dispositions are reviewed on a periodic basis, at least annually, using an identified group that is independent of the investigation process. The reviews should include an analysis of:

- Case dispositions.
- Decisions to collect biological evidence.
- Submissions of biological evidence for lab testing.

The SART and/or victim advocates should be considered for involvement in this audit. Summary reports on these reviews should be forwarded through the chain of command to the Chief of Police.

602.9 RELEASING INFORMATION TO THE PUBLIC

In cases where the perpetrator is not known to the victim, and especially if there are multiple crimes where more than one appear to be related, consideration should be given to releasing information to the public whenever there is a reasonable likelihood that doing so may result in developing helpful investigative leads. The Criminal Investigations Division supervisor should weigh the risk of alerting the suspect to the investigation with the need to protect the victim and the public, and to prevent more crimes.

Sexual Assault Investigations

602.10 TRAINING

Subject to available resources, periodic training should be provided to:

- (a) Members who are first responders. Training should include:
 - 1. Initial response to sexual assaults.
 - 2. Legal issues.
 - 3. Victim advocacy.
 - 4. Victim's response to trauma.
 - 5. Proper use and handling of the California standardized SAFE kit (Penal Code § 13823.14).
- (b) Qualified investigators, who should receive advanced training on additional topics. Advanced training should include:
 - 1. Interviewing sexual assault victims.
 - 2. SART.
 - 3. Medical and legal aspects of sexual assault investigations.
 - 4. Serial crimes investigations.
 - 5. Use of community and other federal and state investigative resources, such as the Violent Criminal Apprehension Program (ViCAP).
 - 6. Techniques for communicating with victims to minimize trauma.

Vice, Drugs and Organized Crime

603.1 PURPOSE AND SCOPE

The investigation of vice, drug and organized crime activities can involve large expenditures of time, money and effort. This policy will help to evaluate the accuracy and credibility of initial information and determine the scope and relative importance of the problem.

603.2 COMPLAINT HANDLING

When alleged vice, drug, or organized crime activity information is received, it shall be documented, indicating the source, the activity, pertinent dates and times, the name or employee number of the person receiving the information, and any other pertinent information. Documentation shall be by memorandum or official report if necessary, to the Investigations Unit Supervisor.

Reports regarding vice, drug or organized crime shall be routed to the Investigations Unit Supervisor. The case may be assigned to a detective for possible follow-up or routed to the appropriate jurisdiction. If the case or information is routed to another agency or jurisdiction, such routing shall be documented in the report or incident. Information received from outside agencies shall be reviewed by the Investigations Unit Supervisor and disseminated as appropriate. The Investigations Unit Supervisor shall notify the Chief of Police, via chain of command, of any high-profile vice, drug or organized crime arrests or cases.

603.3 RECORD KEEPING

The Investigations Unit Supervisor shall maintain the security levels on electronic case files of a sensitive nature. Access shall be restricted to a "need to know" basis. Cases of a sensitive nature are not to be printed in hard file until it is determined the case is closed and placing the information in the records system would not jeopardize the case, witnesses or investigators.

603.4 CONFIDENTIAL FUNDS

The Investigations Unit Supervisor is responsible for maintaining a Confidential Investigations Fund, for its disbursement, and for the accounting of each expenditure. This cash fund is maintained to pay for specialized investigative expenses incurred in active organized crime, drug and vice investigations. Any payments to individuals will be in accordance to policy 608, any other operational purchases will be documented by receipt.

603.5 SURVEILLANCE/UNDERCOVER EQUIPMENT

The Investigations Unit Supervisor or designee shall have the responsibility for the Department owned surveillance and undercover equipment which shall be kept in a secured manner. Small equipment should be stored in a locked room or cabinet under the control of the Investigations Unit Supervisor. Any Department member with an official need to use the surveillance equipment may contact the Investigations Unit and request its use.

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The Investigations Unit Supervisor shall maintain an equipment checkout system that at all time accounts for the departmental surveillance and undercover equipment. Any department member requesting usage of equipment shall sign for it upon receipt, note purpose of request and return it promptly when the purpose is complete. Upon return the receiving officer shall sign the equipment back in, and note if there were any problems with its usage.

603.6 CONDUCTING/PARTICIPATING IN SURVEILLANCE

When any surveillance, undercover decoy, or special operation is planned, the department member in charge of the operation shall prepare an Operations Plan in accordance to the procedure established in the Operations section of the Procedures Manual prior to engaging in the operation. The department member in charge of the operation shall ensure that personnel engaged in the operation are appropriately briefed on the plan and the plan has been approved by the Watch Commander. In the event that a member assigned to a task force prepares an Operations Plan, that plan shall be approved by the task force supervisor.

Department members shall not participate in surveillance, undercover activities or decoy operations with outside agencies that do not generally meet the requirements of this section.

Department members in full time assignments with a county task force are exempt from this requirement.

Criminal Intelligence Collection and Maintenance

607.1 PURPOSE AND SCOPE

It is the policy of the Bay Area Rapid Transit Police Department to collect, process, maintain and, under proper circumstances, disseminate suspicious incidents and both developmental and criminal intelligence information on individuals, groups, associations and organizations who or which are: (1) subject of efforts to gather more information for legitimate law enforcement purposes or (2) reasonably suspected of definable criminal or terrorist activity. This effort is necessary to suppress criminal and/or terrorist activity and thereby provide for the safety and security of persons and property within the Bay Area Rapid Transit District

The purpose of this policy is to declare the intention of the Bay Area Rapid Transit Police Department to comply with the standards established by the California Attorney General Guidelines, Code of Federal Regulations, Title 28, Part 23 and the Law Enforcement Intelligence Unit (LEIU) Criminal Intelligence File Guidelines. These standards strike the proper balance between the needs of law enforcement to collect, apply and share intelligence in a manner that protects an individual's Constitutional rights and right of privacy.

It is the responsibility of all Departmental personnel to report any suspicious incidents or criminal intelligence relating to criminal or homeland security activities to the Criminal Investigation Division.

607.2 CRIMINAL INVESTIGATION DIVISION

A function of the Criminal Investigation Division is to collect, process, maintain and disseminate suspicious incidents and information on individuals, groups, associations and organizations reasonably suspected of definable criminal activity in order to suppress such activity. The objectives are:

- (a) To provide intelligence support for field operations with an emphasis on officer safety; and
- (b) To develop strategic intelligence assessments designed to:
 1. Identify criminal organizations which engage in, facilitate or otherwise support criminal activity which impacts the Bay Area Rapid Transit District;
 2. Identify individuals who engage in criminal activity which impacts the Bay Area Rapid Transit District;
 3. Provide guidance on the best use of resources to provide for control of individual and organized criminal activity which impacts the Bay Area Rapid Transit District
 4. Provide insights into emerging crime trends which may impact the Bay Area Rapid Transit District. Collect, process and disseminate information related to suspicious incidents, which occur in/around the Bay Area Rapid Transit District; and

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- (c) To enable the Department to cooperate with and participate in local, state and national intelligence initiatives which benefit the patrons of the Bay Area Rapid Transit District.

607.3 DEFINITIONS

Activity Which Endangers the Public: means any activity which is carried out on a scale which or in a manner which (or both) endangers the participants, any person observing or present during the activity on public or private property.

Criminal Activity: means any activity which violates federal statutes, state statutes, local ordinances or codes and is made a criminal act by such statutes, ordinances or codes.

Criminal Associate: means any person(s) who is reasonably suspected of knowingly supporting, assisting or facilitating criminal activity by a person(s), group, association or organization in any manner.

Criminal Intelligence File: means a file relating to a specific person, group, association or organization which contains criminal intelligence information that demonstrates a criminal predicate exists as to the person, group, association or organization. In this context "person" may include persons known to exist whose identities have not yet been ascertained.

Criminal Intelligence Information: means legally gathered factual data which has been analyzed to determine that it is relevant to the identification of or the criminal activity engaged in by person(s), groups, associations or organizations.

Criminal Intelligence System or Intelligence System: means the arrangements, equipment, facilities and procedures used for the gathering, analyzing, receipt, storage, access and dissemination of criminal intelligence information, criminal intelligence files, developmental information and developmental files, and the inter-jurisdictional pooling of the information contained in the individual agency files.

Criminal Predicate: means criminal intelligence information which supports the finding that there is reasonable suspicion to believe that a person(s), group, association or organization is engaged in definable criminal activity. This term is the standard by which the determination as to whether information may be used to create an intelligence file is made.

Developmental Information: means information about activity which endangers the public that is gathered for a legitimate law enforcement purpose.

Developmental (Temporary) File: means a file which contains developmental information on person(s), groups, associations or organizations which information is held and analyzed for a discrete period of time to determine whether a criminal predicate exists. Such files may also be known as "tips and leads", "working files" or "temporary files".

Legitimate Law Enforcement Purpose: means information about activity which endangers the public and is gathered by law enforcement to determine whether a criminal predicate exists which would support the creation of an intelligence file.

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Need to Know: means a state of facts that supports the legitimacy of access to specific intelligence by a person with a right to know. The need to know must be pertinent to and necessary to the performance of a specific law enforcement activity.

Reasonable Suspicion: means the state of known information which establishes sufficient facts to give a trained law enforcement officer, criminal investigator or employee a basis to believe that a person(s), group, association or organization is engaged in definable criminal activity or enterprise.

Right to Know: means having the legal status that allows the party to have access to criminal intelligence information. 28 CFR § 28.20(e) imposes the qualification that the right to know must be in "the performance of a law enforcement activity." Such status may be based on status as a law enforcement officer, investigator or employee or may be based on a court order, statute or a binding judicial decision if there is a need to know.

607.4 COMMAND AND CONTROL

- (a) The Chief of Police of the Bay Area Rapid Transit Police Department or the Criminal Investigation Division Lieutenant shall be responsible for supervising the intelligence system and ensuring that these policies and procedures are enforced.
- (b) The Chief of Police shall meet with the Criminal Investigation Division Lieutenant at least once a month or whenever the circumstances require. The purpose of this meeting shall be to inform the Chief of Police of the activities of the Criminal Investigation Division and obtain guidance on issues that require executive level guidance.
- (c) The Criminal Investigation Division Lieutenant shall have overall responsibility for all aspects of the intelligence system, including the training of Departmental personnel and auditing of the system. This person shall also be responsible for reviewing files to determine whether they have source and content validity as well as determining whether the files are current. The training of Department personnel will be accomplished on an individual or group basis depending upon the needs of the Department and will cover this entire policy.

607.5 DEVELOPMENTAL (TEMPORARY) FILES

- (a) Developmental files may be created and used for the sole purpose of gathering information to determine whether there is reasonable suspicion that person(s), groups, associations or organizations as to whom or which the information is gathered are engaged in definable criminal activity which would permit the creation of an intelligence file. An individual, organization, business or group may be given "temporary" status in the following cases:
 1. Subject or entity is unidentifiable "" The subject or entity, although suspected of being engaged in criminal activities, has no known physical descriptors, identification numbers, or distinguishing characteristics available.
 2. Involvement is questionable "" Involvement in criminal activities by a subject or entity is suspected which has either:

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- (a) Possible criminal associations " Individual, organization, business, or group not currently reported to be criminally active but associates with a known criminal who is reasonably suspected of being involved in illegal activities.
 - (b) History of criminal conduct " Individual, organization, business, or group not currently reported to be criminally active but has a history of criminal conduct; and the circumstances currently being reported (i.e., new position or ownership of a business) indicate they may have, again, become criminally active.
 - (c) Reliability and/or validity unknown " The reliability of the information sources and/or the validity of the information cannot be determined at the time of receipt; however, the information appears to be significant and merits temporary storage while verification attempts are made.
 - (d) Developmental (Temporary) files shall be "actively" worked in an effort to determine whether it should be added to the intelligence files or be destroyed. Failure to actively work and document the files progress will be grounds for the file in question to be destroyed.
- (b) Developmental files shall be permitted for legitimate law enforcement purposes only and shall be maintained for a period of time not to exceed one (1) year.
 - (c) Developmental files shall not include information regarding political, religious, sexual information or social views, associations or activities unless such views, associations or activities are directly related to the activity which is believed to be criminal and which is the basis for creating the developmental file.
 - (d) Information placed in developmental files shall be information collected using only legal methods. Any information offered from any source which is known to have been or learned to have been unlawfully obtained shall be rejected or purged.
 - (e) In no case shall Criminal Offender Record Information (CORI) or Department of Motor Vehicle (DMV) data be incorporated into the intelligence file (Title 11 CFR Section § 703). The CORI/DMV files shall be kept at a separate location from the intelligence file system.
 - (f) Developmental files shall be maintained in the same secure location as intelligence files, but shall not be commingled with intelligence files. Developmental files shall be subject to the same command and control requirements as intelligence files.
 - (g) Developmental files shall be assigned a discrete identifying number.
 - (h) The developmental file contents shall be governed by the same content evaluation rules as apply to intelligence files.

607.5.1 DISSEMINATION/ACCESS RULES FOR DEVELOPMENTAL FILES

- (a) These files shall be accessed only on a need to know/ right to know basis.
- (b) The Criminal Investigation Division Lieutenant shall determine who shall have access to these files.

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- (c) If access is granted by use of an intranet or internet connection with the authorized recipient that access shall be read only and no printing shall be permitted.
- (d) If access is not remote it shall be granted in the secure area only and the file shall not be permitted to be removed from the secure area.
- (e) Any printing or copying of developmental files or any portion of developmental files shall occur only if the Criminal Investigation Division Lieutenant approves. Both the request to print or copy and the approval shall be documented. The requesting party shall not be permitted to print or copy unless that party has demonstrated to the Bay Area Rapid Transit Police Department that that party has written policies and procedures in place which are at least as stringent as these policies and procedures. The requesting party shall agree in writing that it will not disseminate the developmental information received to a third party without notification to and consent from the Bay Area Rapid Transit Police Department.
- (f) When a file is printed or copied the recipient party shall be given the discrete number assigned to that file.
- (g) In all cases when there is an imminent threat of harm to persons or property, information in these files which might assist in preventing such harm shall be disseminated to persons, agencies or other entities, public or private who may be in such imminent danger or in a position to assist in preventing such harm.

607.5.2 PURGING OF DEVELOPMENTAL FILES RULES

- (a) Developmental files shall be retained for no more than one year. If at the end of this period no criminal predicate has been established, or if the file contains inaccurate information, the file and all its contents shall be destroyed. Because of the requirements of Government Code Section § 26202 documents such as developmental files cannot be actually destroyed until two years after their creation. Therefore, a developmental file which does not become an intelligence file shall, at the end of the one year period: (a) be removed from the developmental file system; (b) be sealed; (c) be signed by the person sealing the file; and, be stored in a secure location until actual destruction. In such situations, the discrete file number shall be retained and the file shall be identified by that number only. The developmental file system shall carry the notation that the file, identified by the discrete number, has been removed from the system and sealed. When the actual destruction occurs, the notation shall be changed to reflect the destruction of the file.
- (b) Any and all persons/agencies other than Bay Area Rapid Transit Police Department personnel who were given access to a developmental file shall be notified that no criminal predicate was established and that the file has been destroyed. Copies of these notices shall be maintained by the Bay Area Rapid Transit Police Department. These notices shall use the discrete number rather than the name of any person(s), group, association or organization.
- (c) Any persons/agencies given permission to print or copy all or any portion of the developmental file shall be notified as required by item 2 above and shall also be asked to provide written (paper or electronic) verification that the information has

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been purged from their system. Copies of that verification shall be maintained by the Criminal Investigation Division.

- (d) In all cases the documents attesting to the destruction of developmental files shall use the discrete number assigned to the file instead of any identifier which could be traced to any person(s), group, association or organization.

607.6 CRIMINAL INTELLIGENCE FILES

- (a) Criminal intelligence files shall be created and maintained as to persons, groups, associations and/or organizations only when there is reasonable suspicion that the subject(s) is/are engaged in definable criminal activity. A criminal intelligence file is only useful if its information is reliable, accurate and current. The two critical components of information to determine these values are:
 - 1. The reliability of the source.
 - 2. The validity of the content.
- (b) Criminal intelligence files shall be maintained for a time period not to exceed four years unless:
 - 1. Before the four-year period has elapsed, it is discovered that the information upon which the determination that reasonable suspicion existed was inaccurate or illegally obtained. In such situations, the information which was inaccurate or illegally obtained shall be purged from the file and the file shall be reevaluated to determine whether the remaining information supports a finding of reasonable suspicion; if it does the edited file shall be retained, if it does not the entire file shall be destroyed.
 - 2. Before the four-year period has elapsed additional information that supports the initial reasonable suspicion determination or demonstrates an additional criminal predicate exists comes to the attention of the intelligence unit. In such cases, a new four-year retention period shall start from the date of discovery of the additional information.
 - 3. An intelligence file may be maintained for an indefinite period of time so long as there is information that demonstrates the continued validity of the criminal predicate or another criminal predicate within the last four years.
- (c) Excluded Material: Only lawfully collected information, based on a reasonable suspicion of criminal activity, should be stored in criminal intelligence files. Information that shall be specifically excluded from criminal intelligence files includes:
 - 1. Information on an individual or group merely on the basis that such individual or group supports unpopular causes.
 - 2. Information on an individual or group merely on the basis of race, gender, age, sexual preference or ethnic background
 - 3. Information on an individual or group merely on the basis of religious or political affiliations or beliefs

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4. Information on an individual or group merely on the basis of personal habits and/or predilections that do not violate any criminal laws or threaten the safety of others
 5. Information on an individual or group merely on the basis of involvement in expressive activity that takes the form of non-violent civil disobedience that amounts, at most, to a misdemeanor offense.
 6. In no case shall Criminal Offender Record Information (CORI) or Department of Motor Vehicle (DMV) data be incorporated into the intelligence file (Title 11 CFR Section § 703). The CORI/DMV file shall be kept at a separate location from the intelligence file system.
- (d) Information contained in intelligence files shall be collected only using legal means. Any information offered from any source which is known to have been or is learned to have been illegally obtained shall be rejected or purged from the intelligence file(s).
- (e) Intelligence files shall be maintained in a secure location which cannot be accessed by the public or agency personnel not assigned to the Criminal Investigations Division without the permission of the Criminal Investigation Division Lieutenant. Developmental files shall be maintained in the same secure location but separate from the intelligence files.
1. The secure area shall be physically separate from other areas.
 2. All files shall be maintained under lock and key or, if electronic, password protected. File access shall be limited to personnel assigned to the Criminal Investigations Division unless another law enforcement officer or law enforcement agency employee has been granted access pursuant to another provision of this policy.
 3. A log of persons requesting intelligence information from the Criminal Investigations Division, after stating their lawful purpose, shall be maintained on a daily basis and shall be available for audit.
 4. Each file maintained by the Criminal Investigations Division, "either developmental file or intelligence file," shall have an access log attached to it. This log, whether in paper or electronic form, shall show who has accessed the file, the date of the access and the purpose for the access. These access rules and log requirements shall apply to persons assigned to the Criminal Investigations Division as well as all other persons. This file log shall be maintained on a daily basis and shall be available for audit.
- (f) Each intelligence file shall be assigned a discrete number.
- (g) File contents rules:
1. Each file shall contain copies of the source documents which were the basis for the finding that reasonable suspicion (or a legitimate law enforcement purpose) existed.
 2. When additional information is added to the file copies of source documents shall also be added.

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3. Information placed in the file shall be labeled for source reliability and content validity prior to its submission for entry into the file. The Criminal Investigation Division Lieutenant or his/her designee will be responsible for approving all information contained in the file. Certain combinations of information standing alone will not support a finding of reasonable suspicion. (Examples would be an unreliable source which has provided information, and the content validity of which could not be judged or was doubtful). If reasonable suspicion has already been established from appropriate sources, then addition of information from an unknown source that cannot be judged as to content validity might be appropriate. It is difficult to justify adding information from an unreliable source that has doubtful or cannot be judged content validity to an existing file regardless of whether reasonable suspicion has already been established.
 - (a) Source reliability is based on the accuracy and consistency of the information provided by a given source. The categories of source reliability are:
 1. Reliable - the reliability of the source is unquestioned or has been tested in the past.
 2. Usually reliable - the source of information can usually be relied upon. The majority of the information provided in the past has proved to be reliable.
 3. Unreliable - the reliability of the source has been sporadic in the past.
 4. Unknown - the reliability of the source cannot be judged; either experience or investigation has not yet determined authenticity or trustworthiness.
 - (b) Content validity is an assessment of the truthfulness of the information provided by the source. The categories of content validity are:
 1. Confirmed - the information has been corroborated by an investigation or another reliable, independent source.
 2. Probable - the information is consistent with past accounts or other information.
 3. Doubtful - the information is inconsistent with past accounts or other information.
 4. Cannot be Judged - the information cannot be judged as to its truthfulness because of lack of time to investigate it or its lack of relation to or corroboration by any other information.
 - (c) Re-evaluation of criminal intelligence should be an ongoing process and each file shall be continually re-evaluated by the assigned investigator. This process will re-evaluate and cull the information that has no potential to become intelligence matter from the rest of the information. The process will be dynamic and unique to each "batch" of information.

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4. Each file shall contain the name of the person(s) who analyzed the information and a statement of the reasons on which that person(s) based his /her finding of reasonable suspicion (such reasons may include conclusions based on training or experience so long as the specific relevance of that training or experience is articulated).
5. Each file should describe the definable criminal activity of which the file subject is reasonably suspected (or articulate the public safety concern that underlies the legitimate law enforcement purpose). Examples would include the following:
 - (a) Narcotics Trafficking.
 - (b) Unlawful Gambling.
 - (c) Loan Sharking.
 - (d) Extortion.
 - (e) Vice and Pornography.
 - (f) Infiltration of Legitimate Business for Illegitimate Purpose.
 - (g) Bribery.
 - (h) Major Crimes Including Homicide, Sexual Assault, Burglary, Destruction of Property, Auto Theft, Kidnapping, Robbery, Fraud, Fencing of Stolen Property and Arson.
 - (i) Manufacturing, Use, or Possession of Explosive Devices for purposes of Homicide, Mass Murder, Fraud, Intimidation, or Political Motivation.
 - (j) Threats to Public Officials or Private Persons.
 - (k) Gang Activity.
 - (l) Stolen Securities.
 - (m) Corruption of Public Officials.
6. Source documents should identify the agency, officer, and other identifiers such as case number, arrest number, etc.
7. If open source documents were employed as part of the process of determining whether reasonable suspicion exists, copies of such documents and information that permits verification of the existence of the open source should be in the file.
8. The file should contain all available identifying information which pertains to the file subject. A non-exhaustive list would include:
 - (a) The full name of the person, group, association or organization.
 - (b) Any aliases.
 - (c) Any nicknames or "monikers."
 - (d) Date of birth or historical information.
 - (e) Place of birth.

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- (f) Citizenship or membership data.
 - (g) Social Security number(s).
 - (h) Driver's license number(s).
 - (i) Physical descriptors including gender and ethnicity.
 - (j) Distinguishing marks, scars or tattoos.
 - (k) FBI, CII or any other criminal history identification numbers.
 - (l) Evaluations of violence potential or other officer/citizen safety information.
 - (m) Any other information helpful to identifying or locating the file subject. [In this connection, so called "non-criminal identifying information," which relates to anyone who is not a known criminal associate, should not be discoverable or searchable except as a "locator file" or "drop down" file under the name of the file subject.]
 - (n) In no case shall files be categorized, sorted or otherwise quantified by ethnicity or gender; these factors shall only appear as factors relating to the identifying characteristics of a person. If a group, organization or association has made gender or ethnicity a determining factor in the membership or association then that characteristic of the group, organization or association may be noted in the files pertaining to that group, organization or association.
 - (o) In no case shall Criminal Offender Record Information (CORI) data be incorporated into the intelligence file (Title 11 CFR Section § 703). The CORI file shall be kept at a separate location from the intelligence file system.
9. All source information in the file should identify the date of submission of the information, the submitting agency and the submitting officer or employee. If the information came from a source other than law enforcement the same information should be entered except that proper considerations should be given to protect the identity of confidential informants and citizen informants.
10. Intelligence files should contain "feedback" information that allows for the evaluation whether the accessed/disseminated intelligence was useful or not useful, accurate or inaccurate.
- (h) Intelligence file information may be made available to law enforcement officers or law enforcement agency employees who have both the "right to know" and "the need to know." The access/dissemination rules shall be the same for intelligence files as those set forth for developmental files and shall comply with the log maintenance provisions of this part.

607.7 INFORMATION CLASSIFICATION

Criminal Intelligence files should be classified to indicate the degree to which it is restricted in order to protect sources, open investigations, and to ensure the individuals rights to privacy.

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- (a) **Top Secret or Secret:** Highest level of security. Access limited to only those who possess the applicable federally granted Top Secret or Secret level clearance. Currently the positions who possess this clearance are the Chief of Police, Deputy Chief, Criminal Investigation Division Lieutenant and the Terrorism Liaison Detective.
- (b) **Sensitive:** Substantial level of security. Access limited to those whose names appear on the cover sheet. Information, including, but not limited to, active police investigations, informant identification information, corruption, and those reports which require strict dissemination and release criteria.
- (c) **Confidential:** Medium level of security. Access limited to Terrorism Liaison Detective / Intelligence personnel only.
- (d) **Restricted:** Lowest level of security. Access limited to law enforcement personnel only. Information obtained through intelligence channels that is not classified as sensitive and is for law enforcement use only. Restricted information may include previously classified sensitive information for which the need for a high level of security no longer exists.
- (e) **Unclassified:** Public Information. Information that is public in nature. This includes the following:
 - 1. Information to which, in its original form, the general public has or had direct access (i.e., birth and death certificates).
 - 2. News media information, such as newspaper, magazine, periodical clippings, and / or videotapes, dealing with specified criminal events.
 - 3. Other open-source material (i.e., internet information).

607.8 DISSEMINATION/ACCESS RULES FOR CRIMINAL INTELLIGENCE FILES

- (a) These files shall be accessed only on a need to know/ right to know basis in the performance of a law enforcement activity.
- (b) The person directly in charge of the Criminal Investigation Division and/or his/her designee shall determine who shall have access to these files.
- (c) If access is granted by use of an intranet or internet connection with the authorized recipient, one of the following levels of security will be applied:
 - 1. **Free Access:** Other parties may enter information to existing files without prior authorization. Other parties may not remove or alter existing information.
 - 2. **Read-Only Access:** Other parties may see all or part of the existing information, but may not enter information.
 - 3. **"Pointer" Access:** Other parties may enter identifiers. If the result is a match to information in the file, they do not see the information, but instead are "pointed" to a contact.
- (d) If intranet or internet access is not remote, access shall be granted in the secure area only and the file shall not be permitted to be removed from the secure area.

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- (e) Any printing or copying of any portion of criminal intelligence files shall occur only if the person in charge of the Criminal Investigation Division or his/her designee approves. Both the request to print or copy and the approval shall be documented. The requesting party shall not be permitted to print or copy unless it has demonstrated to the Bay Area Rapid Transit Police Department that the party has written policies and procedures in place which are at least as stringent as these policies and procedures. The requesting party shall agree in writing that it will not disseminate the criminal intelligence information received to a third party without notification to, and consent from, the Bay Area Rapid Transit Police Department.
- (f) When a file is printed or copied, the recipient party shall be given the discrete number assigned to that file.
- (g) In all cases when there is an imminent threat of harm to persons or property and information in these files, which might assist in preventing such harm, shall be disseminated to persons, agencies or other entities, public or private, who may be in such imminent danger or in a position to assist in preventing such harm.

607.9 PURGING OF CRIMINAL INTELLIGENCE FILES RULES

Intelligence files shall be purged from the system using the rules for purge applicable to developmental files (refer to Policy Manual § 607.5.2) at that point in time when they are no longer current, accurate or otherwise reliable or when five years have expired without any additional information which could support the conclusion that the subject of the file is still engaged in definable criminal activity.

607.10 PROCEDURE AND PROCESS REQUIREMENTS

- (a) Every twelve months the Bay Area Rapid Transit Police Department developmental and intelligence files shall be reviewed for compliance with these policies and procedures.
- (b) Specific attention shall be paid to:
 - 1. Whether all source documents are in the file.
 - 2. Source information has been evaluated for source and content validity.
 - 3. Whether a purge date has been established which is current and accurate.
 - 4. Whether procedures and processes contained within this policy are in need of updating.
- (c) This review shall be conducted by the Lieutenant in charge of the Criminal Investigations Division. It shall be certified by him/her as a complete and accurate review or, if the file size is too great to be completely reviewed, a complete review of a representative sample of at least twenty (20) percent of the files shall be reviewed each year. When a percentage of the file only is reviewed a record of the control numbers of that percentage of the files shall be kept and the group of files shall not be reviewed again until the entire system has been reviewed.
- (d) This review result shall be reported to the Chief of Police.

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- (e) If any files are found to be out of compliance with the requirements of these policies, those files shall be withdrawn from the system of which they are part, brought into compliance, and/or re-evaluated

607.11 SPECIALIZED EQUIPMENT

The Department will make available specialized equipment to support the intelligence-gathering function. Such equipment may include night vision devices, binoculars, cameras, cellular and audiovisual equipment, and unmarked vehicles. The Criminal Investigation Division Lieutenant will be responsible for controlling surveillance and undercover equipment owned or used by the Department.

Informants

608.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the use of informants.

608.1.1 DEFINITIONS

Definitions related to this policy include:

Informant - A person who covertly interacts with other individuals or suspects at the direction of, request of, or by agreement with, the Bay Area Rapid Transit Police Department for law enforcement purposes. This also includes a person agreeing to supply information to the Bay Area Rapid Transit Police Department for a benefit (e.g., a quid pro quo in the form of a reduced criminal penalty, money).

608.2 POLICY

The Bay Area Rapid Transit Police Department recognizes the value of informants to law enforcement efforts and will strive to protect the integrity of the informant process. It is the policy of this department that all funds related to informant payments will be routinely audited and that payments to informants will be made according to the criteria outlined in this policy.

608.3 USE OF INFORMANTS

608.3.1 INITIAL APPROVAL

Before using an individual as an informant, an officer must receive approval from his/her supervisor. The officer shall compile sufficient information through a background investigation and experience with the informant in order to determine the suitability of the individual, including age, maturity and risk of physical harm, as well as any indicators of his/her reliability and credibility.

Members of this department should not guarantee absolute safety or confidentiality to an informant.

608.3.2 JUVENILE INFORMANTS

The use of informants under the age of 13 is prohibited.

Except for the enforcement of laws related to the commercial sale of alcohol, marijuana or tobacco products, a juvenile 13 years of age or older may only be used as an informant with the written consent of each of the following:

- (a) The juvenile's parents or legal guardians
- (b) The juvenile's attorney, if any
- (c) The court in which the juvenile's case is being handled, if applicable (Penal Code § 701.5)
- (d) The Chief of Police or the authorized designee

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608.3.3 INFORMANT AGREEMENTS

All informants are required to sign and abide by the provisions of the designated department informant agreement. The officer using the informant shall discuss each of the provisions of the agreement with the informant.

Details of the agreement are to be approved in writing by a supervisor before being finalized with the informant.

608.4 INFORMANT INTEGRITY

To maintain the integrity of the informant process, the following must be adhered to:

- (a) The identity of an informant acting in a confidential capacity shall not be withheld from the Chief of Police, Division Commander, Criminal Investigations Division supervisor or their authorized designees.
 - 1. Identities of informants acting in a confidential capacity shall otherwise be kept confidential.
- (b) Criminal activity by informants shall not be condoned.
- (c) Informants shall be told they are not acting as police officers, employees or agents of the Bay Area Rapid Transit Police Department, and that they shall not represent themselves as such.
- (d) The relationship between department members and informants shall always be ethical and professional.
 - 1. Members shall not become intimately involved with an informant.
 - 2. Social contact shall be avoided unless it is necessary to conduct an official investigation, and only with prior approval of the Criminal Investigations Division supervisor.
 - 3. Members shall neither solicit nor accept gratuities or engage in any private business transaction with an informant.
- (e) Officers shall not meet with informants in a private place unless accompanied by at least one additional officer or with prior approval of the Criminal Investigations Division supervisor.
 - 1. Officers may meet informants alone in an occupied public place, such as a restaurant.
- (f) When contacting informants for the purpose of making payments, officers shall arrange for the presence of another officer.
- (g) In all instances when department funds are paid to informants, a voucher shall be completed in advance, itemizing the expenses.
- (h) Since the decision rests with the appropriate prosecutor, officers shall not promise that the informant will receive any form of leniency or immunity from criminal prosecution.

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608.4.1 UNSUITABLE INFORMANTS

The suitability of any informant should be considered before engaging him/her in any way in a covert or other investigative process. Members who become aware that an informant may be unsuitable will notify the supervisor, who will initiate a review to determine suitability. Until a determination has been made by a supervisor, the informant should not be used by any member. The supervisor shall determine whether the informant should be used by the Department and, if so, what conditions will be placed on his/her participation or any information the informant provides. The supervisor shall document the decision and conditions in file notes and mark the file "unsuitable" when appropriate.

Considerations for determining whether an informant is unsuitable include, but are not limited to, the following:

- (a) The informant has provided untruthful or unreliable information in the past.
- (b) The informant behaves in a way that may endanger the safety of an officer.
- (c) The informant reveals to suspects the identity of an officer or the existence of an investigation.
- (d) The informant appears to be using his/her affiliation with this department to further criminal objectives.
- (e) The informant creates officer-safety issues by providing information to multiple law enforcement agencies simultaneously, without prior notification and approval of each agency.
- (f) The informant engages in any other behavior that could jeopardize the safety of officers or the integrity of a criminal investigation.
- (g) The informant commits criminal acts subsequent to entering into an informant agreement.

608.5 INFORMANT FILES

Informant files shall be utilized as a source of background information about the informant, to enable review and evaluation of information provided by the informant, and to minimize incidents that could be used to question the integrity of department members or the reliability of the informant.

Informant files shall be maintained in a secure area within the Criminal Investigations Division. The Criminal Investigations Division supervisor or the authorized designee shall be responsible for maintaining informant files. Access to the informant files shall be restricted to the Chief of Police, Division Commander, Criminal Investigations Division supervisor or their authorized designees.

The Criminal Investigations Division Commander should arrange for an audit using a representative sample of randomly selected informant files on a periodic basis, but no less than one time per year. If the Criminal Investigations Division supervisor is replaced, the files will be audited before the new supervisor takes over management of the files. The purpose of the audit is to ensure compliance with file content and updating provisions of this policy. The audit should be conducted by a supervisor who does not have normal access to the informant files.

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608.5.1 FILE SYSTEM PROCEDURE

A separate file shall be maintained on each informant and shall be coded with an assigned informant control number. An informant history that includes the following information shall be prepared for each file:

- (a) Name and aliases
- (b) Date of birth
- (c) Physical description: sex, race, height, weight, hair color, eye color, scars, tattoos or other distinguishing features
- (d) Photograph
- (e) Current home address and telephone numbers
- (f) Current employers, positions, addresses and telephone numbers
- (g) Vehicles owned and registration information
- (h) Places frequented
- (i) Briefs of information provided by the informant and his/her subsequent reliability
 1. If an informant is determined to be unsuitable, the informant's file is to be marked "unsuitable" and notations included detailing the issues that caused this classification.
- (j) Name of the officer initiating use of the informant
- (k) Signed informant agreement
- (l) Update on active or inactive status of informant

608.6 INFORMANT PAYMENTS

No informant will be told in advance or given an exact amount or percentage for his/her service. The amount of funds to be paid to any informant will be evaluated against the following criteria:

- The extent of the informant's personal involvement in the case
- The significance, value or effect on crime
- The value of assets seized
- The quantity of the drugs or other contraband seized
- The informant's previous criminal activity
- The level of risk taken by the informant

The Criminal Investigations Division supervisor will discuss the above factors with the Operations Division Commander and recommend the type and level of payment subject to approval by the Chief of Police.

608.6.1 PAYMENT PROCESS

Approved payments to an informant should be in cash using the following process:

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- (a) Payments of \$500 and under may be paid in cash from a Criminal Investigations Division buy/expense fund.
 - 1. The Criminal Investigations Division supervisor shall sign the voucher for cash payouts from the buy/expense fund.
- (b) Payments exceeding \$500 shall be made by issuance of a check, payable to the officer who will be delivering the payment.
 - 1. The check shall list the case numbers related to and supporting the payment.
 - 2. A written statement of the informant's involvement in the case shall be placed in the informant's file.
 - 3. The statement shall be signed by the informant verifying the statement as a true summary of his/her actions in the case.
 - 4. Authorization signatures from the Chief of Police and the General Manager are required for disbursement of the funds.
- (c) To complete the payment process for any amount, the officer delivering the payment shall complete a cash transfer form.
 - 1. The cash transfer form shall include the following:
 - (a) Date
 - (b) Payment amount
 - (c) Bay Area Rapid Transit Police Department case number
 - (d) A statement that the informant is receiving funds in payment for information voluntarily rendered.
 - 2. The cash transfer form shall be signed by the informant.
 - 3. The cash transfer form will be kept in the informant's file.

608.6.2 REPORTING OF PAYMENTS

Each informant receiving a cash payment shall be advised of his/her responsibility to report the cash to the Internal Revenue Service (IRS) as income. If funds distributed exceed \$600 in any reporting year, the informant should be provided IRS Form 1099 (26 CFR 1.6041-1). If such documentation or reporting may reveal the identity of the informant and by doing so jeopardize any investigation, the safety of officers or the safety of the informant (26 CFR 1.6041-3), then IRS Form 1099 should not be issued.

In such cases, the informant shall be provided a letter identifying the amount he/she must report on a tax return as "other income" and shall be required to provide a signed acknowledgement of receipt of the letter. The completed acknowledgement form and a copy of the letter shall be retained in the informant's file.

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608.6.3 AUDIT OF PAYMENTS

The Criminal Investigations Division supervisor or the authorized designee shall be responsible for compliance with any audit requirements associated with grant provisions and applicable state and federal law.

At least once every six months, the Chief of Police or the authorized designee should conduct an audit of all informant funds for the purpose of accountability and security of the funds. The funds and related documents (e.g., buy/expense fund records, cash transfer forms, invoices, receipts and logs) will assist with the audit process.

Eyewitness Identification

610.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this department employ eyewitness identification techniques (Penal Code § 859.7).

610.1.1 DEFINITIONS

Definitions related to the policy include:

Eyewitness identification process - Any field identification, live lineup or photographic identification.

Field identification - A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

Live lineup - A live presentation of individuals to a witness for the purpose of identifying or eliminating an individual as the suspect.

Photographic lineup - Presentation of photographs to a witness for the purpose of identifying or eliminating an individual as the suspect.

610.2 POLICY

The Bay Area Rapid Transit Police Department will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

610.3 INTERPRETIVE SERVICES

Members should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

Before the interpreter is permitted to discuss any matter with the witness, the investigating member should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

610.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

The Criminal Investigations Division supervisor shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

The process should include appropriate forms or reports that provide (Penal Code § 859.7):

- (a) The date, time and location of the eyewitness identification procedure.
- (b) The name and identifying information of the witness.

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- (c) The name of the person administering the identification procedure.
- (d) If applicable, the names of all of the individuals present during the identification procedure.
- (e) An instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.
- (f) An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification.
- (g) If the identification process is a photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as he/she did on the date of the incident.
- (h) An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.
- (i) A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.
- (j) A statement from the witness in the witness's own words describing how certain he/she is of the identification or non-identification. This statement should be taken at the time of the identification procedure.
- (k) Any other direction to meet the requirements of Penal Code § 859.7, including direction regarding blind or blinded administrations and filler selection.

The process and related forms should be reviewed at least annually and modified when necessary.

610.5 EYEWITNESS IDENTIFICATION

Members are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case.

Members should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified or failed to identify the individual as the suspect.

In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

Whenever feasible, the eyewitness identification procedure should be audio and video recorded and the recording should be retained according to current evidence procedures (Penal Code § 859.7).

610.6 DOCUMENTATION

A thorough description of the eyewitness process and the result of any eyewitness identification should be documented in the case report.

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If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

610.6.1 DOCUMENTATION RELATED TO RECORDINGS

The handling member shall document the reason that a video recording or any other recording of an identification was not obtained (Penal Code § 859.7).

610.6.2 DOCUMENTATION RELATED TO BLIND ADMINISTRATION

If a presentation of a lineup is not conducted using blind administration, the handling member shall document the reason (Penal Code § 859.7).

610.7 FIELD IDENTIFICATION CONSIDERATIONS

Field identifications, also known as field elimination show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo or live lineup identifications. A field elimination show-up or one-on-one identification should not be used when independent probable cause exists to arrest a suspect. In such cases a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.

When initiating a field identification, the member should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.
- (b) Assess whether a witness should be included in a field identification process by considering:
 1. The length of time the witness observed the suspect.
 2. The distance between the witness and the suspect.
 3. Whether the witness could view the suspect's face.
 4. The quality of the lighting when the suspect was observed by the witness.
 5. Whether there were distracting noises or activity during the observation.
 6. Any other circumstances affecting the witness's opportunity to observe the suspect.
 7. The length of time that has elapsed since the witness observed the suspect.
- (c) If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.
- (d) When feasible, members should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.
- (e) The person who is the subject of the show-up should not be shown to the same witness more than once.
- (f) In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.

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- (g) The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.
- (h) If a witness positively identifies a subject of the show-up as the suspect, members should not conduct any further field identifications with other witnesses for that suspect. In such instances members should document the contact information for any additional witnesses for follow up, if necessary.

610.8 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS

When practicable, the member presenting the lineup should not be involved in the investigation of the case or know the identity of the suspect. In no case should the member presenting a lineup to a witness know which photograph or person in the lineup is being viewed by the witness (Penal Code § 859.7). Techniques to achieve this include randomly numbering photographs, shuffling folders, or using a computer program to order the persons in the lineup.

Individuals in the lineup should reasonably match the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup (Penal Code § 859.7).

The member presenting the lineup should do so sequentially (i.e., show the witness one person at a time) and not simultaneously. The witness should view all persons in the lineup.

A live lineup should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating member should contact the appropriate prosecuting attorney before proceeding.

610.8.1 OTHER SAFEGUARDS

Witnesses should be asked for suspect descriptions as close in time to the incident as possible and before conducting an eyewitness identification. No information concerning a suspect should be given prior to obtaining a statement from the witness describing how certain he/she is of the identification or non-identification. Members should not say anything to a witness that may validate or invalidate an eyewitness' identification. In photographic lineups, writings or information concerning any previous arrest of a suspect shall not be visible to the witness (Penal Code § 859.7).

Brady Material Disclosure

612.1 PURPOSE AND SCOPE

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (so-called “*Brady* information”) to a prosecuting attorney.

612.1.1 DEFINITIONS

Definitions related to this policy include:

Brady information -Information known or possessed by the Bay Area Rapid Transit Police Department that is both favorable and material to the current prosecution or defense of a criminal defendant.

612.2 POLICY

The Bay Area Rapid Transit Police Department will conduct fair and impartial criminal investigations and will provide the prosecution with both incriminating and exculpatory evidence, as well as information that may adversely affect the credibility of a witness. In addition to reporting all evidence of guilt, the Bay Area Rapid Transit Police Department will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the defense. The Department will identify and disclose to the prosecution potentially exculpatory information, as provided in this policy.

612.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

Officers must include in their investigative reports adequate investigative information and reference to all material evidence and facts that are reasonably believed to be either incriminating or exculpatory to any individual in the case. If an officer learns of potentially incriminating or exculpatory information any time after submission of a case, the officer or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practicable. Supplemental reports shall be promptly processed and transmitted to the prosecutor’s office.

If information is believed to be privileged or confidential (e.g., confidential informant or attorney-client information, attorney work product), the officer should discuss the matter with a supervisor and/or prosecutor to determine the appropriate manner in which to proceed.

Evidence or facts are considered material if there is a reasonable probability that they would affect the outcome of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If an officer is unsure whether evidence or facts are material, the officer should address the issue with a supervisor.

Supervisors who are uncertain about whether evidence or facts are material should address the issue in a written memo to an appropriate prosecutor. A copy of the memo should be retained in the Department case file.

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612.4 DISCLOSURE OF PERSONNEL INFORMATION

Whenever it is determined that *Brady* information is located in the personnel file of a member of this department who is a material witness in a criminal case, the following procedure shall apply:

- (a) In the event that a *Pitchess* motion has not already been filed by the criminal defendant or other party pursuant to Evidence Code § 1043, the prosecuting attorney shall be notified of the potential presence of *Brady* information in the officer's personnel file.
- (b) The prosecuting attorney should then be requested to file a *Pitchess* motion in order to initiate an in-camera review by the court.
- (c) Any member who is the subject of such a motion shall be notified in writing that a motion has been filed.
- (d) The Custodian of Records shall accompany all relevant files during any in-camera inspection and address any issues or questions raised by the court in determining whether any information contained in the files is both material and favorable to the criminal defendant.
- (e) If the court determines that there is relevant *Brady* information contained in the files, only that information ordered released will be copied and released to the parties filing the motion.
 1. Prior to the release of any information pursuant to this process, the Custodian of Records should request a protective order from the court limiting the use of such information to the involved case and requiring the return of all copies upon completion of the case.

612.5 INVESTIGATING BRADY ISSUES

If the Department receives information from any source that a member may have issues of credibility, dishonesty or has been engaged in an act of moral turpitude or criminal conduct, the information shall be investigated and processed in accordance with the Personnel Complaints Policy.

612.6 TRAINING

Department members should receive periodic training on the requirements of this policy.

Operations Planning and Deconfliction

613.1 PURPOSE AND SCOPE

This policy provides guidelines for planning, deconfliction and execution of high-risk operations.

Additional guidance on planning and serving high-risk warrants is provided in the Warrant Service Policy.

613.1.1 DEFINITIONS

Definitions related to this policy include:

High-risk operations - Operations, including service of search and arrest warrants and sting operations, that are likely to present higher risks than are commonly faced by officers on a daily basis, including suspected fortified locations, reasonable risk of violence or confrontation with multiple persons, or reason to suspect that persons anticipate the operation.

613.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to properly plan and carry out high-risk operations, including participation in a regional deconfliction system, in order to provide coordination, enhance the safety of members and the public, decrease the risk of compromising investigations and prevent duplicating efforts.

613.3 OPERATIONS DIRECTOR

The Chief of Police will designate a member of this department to be the operations director.

The operations director will develop and maintain a risk assessment form to assess, plan and coordinate operations. This form should provide a process to identify high-risk operations.

The operations director will review risk assessment forms with involved supervisors to determine whether a particular incident qualifies as a high-risk operation. The director will also have the responsibility for coordinating operations that are categorized as high risk.

613.4 RISK ASSESSMENT

613.4.1 RISK ASSESSMENT FORM PREPARATION

Officers assigned as operational leads for any operation that may qualify as a high-risk operation shall complete a risk assessment form.

When preparing the form, the officer should query all relevant and reasonably available intelligence resources for information about the subject of investigation, others who may be present and the involved location. These sources may include regional intelligence and criminal justice databases, target deconfliction systems, firearm records, commercial databases and property records. Where appropriate, the officer should also submit information to these resources.

The officer should gather available information that includes, but is not limited to:

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- (a) Photographs, including aerial photographs, if available, of the involved location, neighboring yards and obstacles.
- (b) Maps of the location.
- (c) Diagrams of any property and the interior of any buildings that are involved.
- (d) Historical information about the subject of investigation (e.g., history of weapon possession or use, known mental illness, known drug use, threats against police, gang affiliation, criminal history).
- (e) Historical information about others who may be present at the location (e.g., other criminals, innocent third parties, dependent adults, children, animals).
- (f) Obstacles associated with the location (e.g., fortification, booby traps, reinforced doors/windows, surveillance measures, number and type of buildings, geographic and perimeter barriers, the number and types of weapons likely to be present, information that suggests the presence of explosives, chemicals or other hazardous materials, the potential for multiple dwellings or living spaces, availability of keys/door combinations).
- (g) Other environmental factors (e.g., nearby venues such as schools and day care centers, proximity of adjacent homes or other occupied buildings, anticipated pedestrian and vehicle traffic at the time of service).
- (h) Other available options that may minimize the risk to officers and others (e.g., making an off-site arrest or detention of the subject of investigation).

613.4.2 RISK ASSESSMENT REVIEW

Officers will present the risk assessment form and other relevant documents (such as copies of search warrants and affidavits and arrest warrants) to their supervisor and the operations director.

The supervisor and operations director shall confer and determine the level of risk. Supervisors should take reasonable actions if there is a change in circumstances that elevates the risks associated with the operation.

613.4.3 HIGH-RISK OPERATIONS

If the operations director, after consultation with the involved supervisor, determines that the operation is high risk, the operations director should:

- (a) Determine what resources will be needed at the location, and contact and/or place on standby any of the following appropriate and available resources:
 - 1. (Designated Specialized Response Unit)
 - 2. Additional personnel
 - 3. Outside agency assistance
 - 4. Special equipment
 - 5. Medical personnel
 - 6. Persons trained in negotiation
 - 7. Additional surveillance

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8. Canines
 9. Property and Evidence Section or analytical personnel to assist with cataloguing seizures
 10. Forensic specialists
 11. Specialized mapping for larger or complex locations
- (b) Contact the appropriate department members or other agencies as warranted to begin preparation.
 - (c) Ensure that all legal documents such as search warrants are complete and have any modifications reasonably necessary to support the operation.
 - (d) Coordinate the actual operation.

613.5 DECONFLICTION

Deconfliction systems are designed to identify persons and locations associated with investigations or law enforcement operations, and alert participating agencies when others are planning or conducting operations in close proximity or time or are investigating the same individuals, groups or locations. This is particularly important for agencies with concurrent or contiguous jurisdictions that are involved in high risk activities such as undercover operations, surveillances, execution of search warrants, or fugitive apprehensions.

The officer who is the operations lead shall ensure the subject of investigation and operations information have been entered in an applicable deconfliction system to determine if there is reported conflicting activity. This should occur as early in the process as practicable, but no later than two hours prior to the commencement of the operation. The officer should also enter relevant updated information when it is received.

If any conflict is discovered, the supervisor will contact the involved jurisdiction and resolve the potential conflict before proceeding.. Investigating personnel must refrain from executing any operations until identified conflicts have been resolved.

Unresolved operational conflicts will be immediately referred to command/supervisory level personnel.

Any exemption or deviation from this policy shall be considered on a case-by-case basis and approved only by a command/supervisory level officer.

613.5.1 AUTHORIZED ADMINISTRATOR AND USERS

The Operations Director, or designee, shall be the administrator for the Bay Area Rapid Transit Police Department's involvement with any regional deconfliction systems. The administrator will ensure that all managers, supervisors, investigative personnel, and other personnel with assignments that may require them to perform deconfliction, have user access rights, training, and required documentation to systems used by this department. The administrator will keep abreast of system contact personnel and any changes to distribution and information requirements.

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613.5.2 DECONFLICTION ENTRIES

Deconfliction entries should be made to the system prior to any preplanned execution of:

- (a) Search warrants;
- (b) Arrest warrants;
- (c) Planned arrest of a person immediately after delivering or receiving, or attempting to deliver or receive, contraband to or from an officer or informant
- (d) Predetermined surveillance operations, whether stationary or mobile, including those occurring in our agency's jurisdiction or the jurisdiction of a non-participating law enforcement agency;
- (e) Covert or undercover operation with identifiable location and/or subject information, by officers or informants acting under the direction of officers, that could initiate a response from citizens or local police who may reasonably believe that a crime is in progress;
- (f) Any other high-risk or specialized law enforcement activities that would benefit from deconfliction

Entries should include:

- (a) Date and time of planned operation;
- (b) Type of operation;
- (c) Location of the operation, including any staging areas;
- (d) Information about the suspect(s) including full names, aliases or monikers, date of birth, vehicle information, phone numbers, contraband to be purchased and amount of money involved;
- (e) Lead and participating agency names;
- (f) Name and agency of the person entering the operation, including cellular telephone number, along with a secondary point of contact for the operation;
- (g) Specify the radius of the deconfliction (if not specified by the deconfliction system)

613.6 OPERATIONS PLAN

The operations director should ensure that a written operations plan is developed for all high-risk operations. Plans should also be considered for other operations that would benefit from having a formal plan.

The plan should address such issues as:

- (a) Operation goals, objectives and strategies.
- (b) Operation location and people:
 1. The subject of investigation (e.g., history of weapon possession/use, known mental illness issues, known drug use, threats against police, gang affiliation, criminal history)

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2. The location (e.g., fortification, booby traps, reinforced doors/windows, surveillance cameras and/or lookouts, number/type of buildings, geographic and perimeter barriers, the number and types of weapons likely to be present, information that suggests the presence of explosives, chemicals or other hazardous materials, the potential for multiple dwellings or living spaces, availability of keys/door combinations), including aerial photos, if available, and maps of neighboring yards and obstacles, diagrams and other visual aids
 3. Other environmental factors (e.g., nearby venues such as schools and day care centers, proximity of adjacent homes or other occupied buildings, anticipated pedestrian and vehicle traffic at the time of service)
 4. Identification of other people who may be present in or around the operation, such as other criminal suspects, innocent third parties and children
- (c) Information from the risk assessment form by attaching a completed copy in the operational plan.
1. The volume or complexity of the information may indicate that the plan includes a synopsis of the information contained on the risk assessment form to ensure clarity and highlighting of critical information.
- (d) Participants and their roles.
1. An adequate number of uniformed officers should be included in the operation team to provide reasonable notice of a legitimate law enforcement operation.
 2. How all participants will be identified as law enforcement.
- (e) Whether deconfliction submissions are current and all involved individuals, groups and locations have been deconflicted to the extent reasonably practicable.
- (f) Identification of all communications channels and call-signs.
- (g) Use of force issues.
- (h) Contingencies for handling medical emergencies (e.g., services available at the location, closest hospital, closest trauma center).
- (i) Plans for detaining people who are not under arrest.
- (j) Contingencies for handling children, dependent adults, animals and other people who might be at the location in accordance with the Child Abuse, Adult Abuse, Child and Dependent Adult Safety and Animal Control policies.
- (k) Communications plan
- (l) Responsibilities for writing, collecting, reviewing and approving reports.

613.6.1 OPERATIONS PLAN RETENTION

Since the operations plan contains intelligence information and descriptions of law enforcement tactics, it shall not be filed with the report. The operations plan shall be stored separately and retained in accordance with the established records retention schedule.

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613.7 OPERATIONS BRIEFING

A briefing should be held prior to the commencement of any high-risk operation to allow all participants to understand the operation, see and identify each other, identify roles and responsibilities and ask questions or seek clarification as needed. Anyone who is not present at the briefing should not respond to the operation location without specific supervisory approval.

- (a) The briefing should include a verbal review of plan elements, using visual aids, to enhance the participants' understanding of the operations plan.
- (b) All participants should be provided a copy of the operations plan and search warrant, if applicable. Participating personnel should be directed to read the search warrant and initial a copy that is retained with the operation plan. Any items to be seized should be identified at the briefing.
- (c) The operations director shall ensure that all participants are visually identifiable as law enforcement officers.
 1. Exceptions may be made by the operations director for officers who are conducting surveillance or working under cover. However, those members exempt from visual identification should be able to transition to a visible law enforcement indicator at the time of enforcement actions, such as entries or arrests, if necessary.
- (d) The briefing should include details of the communications plan.
 1. It is the responsibility of the operations director to ensure that Integrated Security Response Center is notified of the time and location of the operation, and to provide a copy of the operation plan prior to officers arriving at the location.
 2. If the radio channel needs to be monitored by Integrated Security Response Center, the dispatcher assigned to monitor the operation should attend the briefing, if practicable, but at a minimum should receive a copy of the operation plan.
 3. The briefing should include a communications check to ensure that all participants are able to communicate with the available equipment on the designated radio channel.

613.8 DESIGNATED SPECIALIZED RESPONSE UNIT PARTICIPATION

If the operations director determines that Designated Specialized Response Unit participation is appropriate, the director and the Designated Specialized Response Unit supervisor shall work together to develop a written plan. The Designated Specialized Response Unit supervisor shall assume operational control until all persons at the scene are appropriately detained and it is safe to begin a search. When this occurs, the Designated Specialized Response Unit supervisor shall transfer control of the scene to the handling supervisor. This transfer should be communicated to the officers present.

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613.9 MEDIA ACCESS

No advance information regarding planned operations shall be released without the approval of the Chief of Police. Any media inquiries or press release after the fact shall be handled in accordance with the News Media Relations Policy.

613.10 OPERATIONS DEBRIEFING

High-risk operations should be debriefed as soon as reasonably practicable. The debriefing should include as many participants as possible. This debrief may be separate from any Designated Specialized Response Unit debriefing.

613.11 TRAINING

The Personnel and Training Lieutenant should ensure officers and Designated Specialized Response Unit team members who participate in operations subject to this policy should receive periodic training including, but not limited to, topics such as legal issues, deconfliction practices, operations planning concepts and reporting requirements.

Chapter 7 - Equipment

Department Owned and Personal Property

700.1 PURPOSE AND SCOPE

Department employees are expected to properly care for department property assigned or entrusted to them. Employees may also suffer occasional loss or damage to personal or department property while performing their assigned duty. Certain procedures are required depending on the loss and ownership of the item.

700.2 CARE AND REPLACEMENT OF DEPARTMENTAL PROPERTY

Employees shall be responsible for the safekeeping, serviceable condition, proper care and use of department property assigned or entrusted to them. An employee's intentional or negligent abuse or misuse of department property may lead to discipline including, but not limited to the cost of repair or replacement.

- (a) Employees shall promptly report to their supervisor, any lost or damaged department issued property or equipment assigned for their use. Supervisors shall inspect the damaged item and recommend replacement if appropriate. Employees shall utilize the Police Uniform/Equipment/Personal Property Replacement Form to replace damaged or lost items. Actual receipts, not copies, need to be submitted with this form. The request must be approved by a command level officer who will forward the form and receipt for the new items to the Support Services Bureau. All signature's need to be obtained, on the form, prior to being submitted for any re-reimbursement's
- (b) Employees will be responsible for minor repairs to their uniforms or personal property as a result of damage caused by normal wear and tear or other minor damage occurring while performing authorized duties. Minor repairs are considered to be any repair costing less \$100 (excluding personal property). Any repair costing more than \$100 will be considered a major repair. If the damage is not due to employee negligence, the affected employee may request reimbursement by submitting the damaged item and a Police Uniform/Equipment/Personal Property Replacement Form to his/her immediate supervisor. the supervisor will inspect the damaged item and recommend replacement if appropriate. The request must be approved by a command level officer who will forward the form and receipt for the new item to the Support Services Bureau.
- (c) The use of damaged or unrepairable department property should be discontinued as soon as practical and replaced with comparable department property as soon as available and following notice to a supervisor. Employees should check with the Property Clerk prior to purchasing replacement equipment to see if the department has the equipment available.
- (d) Except when otherwise directed by a supervisor or required by exigent circumstances, department property shall only be used by those to whom it was assigned. Use should be limited to official purposes and in the capacity for which it was designed.

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- (e) Department property shall not be thrown away, sold, traded, donated, destroyed, or otherwise disposed of without proper authority.
- (f) In the event that any department property becomes damaged or unrepairable, no employee shall attempt to repair the property without prior approval of a supervisor.

700.3 FILING CLAIMS FOR PERSONAL PROPERTY

Reimbursement claims for personal property damaged, lost or rendered unserviceable in the line of duty must be submitted, via the chain of command, on a Uniform/Equipment Replacement Form. This form should be submitted to the employee's immediate supervisor within ten (10) days of the incident.

Employees making the request will provide his/her supervisor with an estimate of the replacement cost for the damaged article. The supervisor will examine the damaged article, determine if the damage was due to negligence and consider the condition of the article at the time it was damaged before submitting the reimbursement request to a command level officer for approval.

The replacement of the following personal equipment items are subject to the following conditions:

- (a) The replacement cost of damaged or destroyed prescription glasses or the repair of damaged glasses providing District authorized vendors are patronized;
- (b) Wrist watch not to exceed \$50 (unless otherwise stipulated in the collective bargaining agreement);
- (c) Personal weapon not to exceed cost of District issued weapon (unless otherwise stipulated in the collective bargaining agreement).

At no time will the reimbursement of any personal property exceed the fair market value cost of the article when it was new.

The supervisor shall direct a memo to the appropriate Bureau Deputy Chief via chain of command, which shall include the results of his/her investigation and whether the employee followed proper procedures. The supervisor's report shall address whether reasonable care was taken to prevent the loss or damage.

Upon review by staff and a finding that no misconduct or negligence was involved, repair or replacement may be recommended by the Chief of Police who will then forward the claim to the Finance Department.

The department will not replace or repair luxurious or overly expensive items (jewelry, exotic equipment, etc.) that are not reasonably required as a part of work.

700.3.1 REPORTING REQUIREMENT

A verbal report shall be made to the employee's immediate supervisor as soon as circumstances permit.

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A written report documenting the circumstances causing the damage shall be submitted before the employee goes off duty or within the time frame directed by the supervisor to whom the verbal report is made. If the damage or loss did not occur during any enforcement action but while on duty, a verbal report as soon as practical, as well as a Speedy Memo, along with the Police Uniform/Equipment/Personal Property Replacement Form shall be submitted to the supervisor within 10 days.

700.4 LOSS OR DAMAGE OF PROPERTY OF ANOTHER

Officers and other employees intentionally or unintentionally may cause damage to the real or personal property of another while performing their duties. Any employee who damages or causes to be damaged any real or personal property of another while performing any law enforcement functions, regardless of jurisdiction, shall report it as provided below.

- (a) A verbal report shall be made to the employee's immediate supervisor as soon as circumstances permit.
- (b) A written report shall be submitted before the employee goes off duty or within the time frame directed by the supervisor to whom the verbal report is made.

700.4.1 DAMAGE BY PERSON OF ANOTHER AGENCY

If employees of another jurisdiction cause damage to real or personal property belonging to the District, it shall be the responsibility of the employee present or the employee responsible for the property to make a verbal report to his/her immediate supervisor as soon as circumstances permit. The employee shall submit a written report before going off duty or as otherwise directed by the supervisor.

These written reports, accompanied by the supervisor's written report, shall promptly be forwarded to the appropriate Bureau Deputy Chief.

Personal Communication Devices

702.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued or funded by the Department or personally owned, while on-duty or when used for authorized work-related purposes.

This policy generically refers to all such devices as Personal Communication Devices (PCDs) but is intended to include all mobile telephones, personal digital assistants (PDAs), wireless capable tablets and similar wireless two-way communications and/or portable Internet access devices. PCD use includes, but is not limited to, placing and receiving calls, text messaging, blogging and microblogging, emailing, using video or camera features, playing games and accessing sites or services on the Internet.

702.2 POLICY

The Bay Area Rapid Transit Police Department allows members to utilize department-issued or funded PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. Any PCD used while on-duty, or used off-duty in any manner reasonably related to the business of the Department, will be subject to monitoring and inspection consistent with the standards set forth in this policy.

The inappropriate use of a PCD while on-duty may impair officer safety. Additionally, members are advised and cautioned that the use of a personally owned PCD either on-duty or after duty hours for business-related purposes may subject the member and the member's PCD records to civil or criminal discovery or disclosure under applicable public records laws.

Members who have questions regarding the application of this policy or the guidelines contained herein are encouraged to seek clarification from supervisory personnel.

702.2.1 INDIVIDUALLY OWNED PCD

Employees may carry their own PCD while on duty subject to the following conditions:

- (a) Carrying an individually-owned personal communication device is optional.
- (b) The device shall be purchased, used and maintained at the employee's expense.
- (c) The employee shall not be reimbursed by the department for any personally owned device which is lost, stolen or broken while the employee is on duty.

702.2.2 USE OF PERSONAL COMMUNICATION DEVICES

PCDs, whether provided by the Department or personally-owned, should only be used by on-duty employees for legitimate department business except as provided for below. Employees may use a PCD to communicate with other personnel in those situations where the use of the radio is either impractical or not feasible. PCDs however, should not be used to replace regular radio communications.

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- (a) PCD's may not be used to conduct personal business while on duty except when brief personal communications may be warranted by the circumstances (e.g., inform family of extended hours). While employee's may use personally owned PCDs for personal business during authorized breaks, such usage should be limited as much as practical to areas where the communication will not be seen or heard by members of the public.
- (b) Extended or frequent use of department-issued PCDs or personally owned PCDs while on duty for personal use is prohibited and may be subject to discipline. Employees may be responsible for reimbursing the Department for any charges incurred as a result of personal use.

702.2.3 USE WHILE DRIVING

The use of a PCD while driving can cause unnecessary distractions and presents a negative image to the public. Officers operating emergency vehicles should restrict the use of these devices while driving to matters of an urgent nature and should, where practical, stop the vehicle at an appropriate location to complete their call.

Except in the case of an emergency, employees who are operating non-emergency vehicles shall not use cellular phones or other personal communication devices while driving unless the telephone is specifically designed and configured to allow hands-free listening and talking (Vehicle Code 23123 (a)). Such use should be restricted to business related calls or calls of an urgent nature.

702.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to any communication accessed, transmitted, received or reviewed on any PCD issued or funded by the Department and shall have no expectation of privacy in their location should the device be equipped with location detection capabilities (see the Information Technology Use Policy for additional guidance).

702.3.1 CALIFORNIA ELECTRONIC COMMUNICATIONS PRIVACY ACT (CALECPA)

No member is authorized to be the sole possessor of a department-issued PCD. Department-issued PCDs can be retrieved, reassigned, accessed or used by any member as directed by a supervisor without notice. Member use of a department-issued PCD and use of a personal PCD at work or for work-related business constitutes specific consent for access for department purposes. Prior to conducting an administrative search of a PCD, supervisors should consult legal counsel to ensure access is consistent with CalECPA (Penal Code § 1546; Penal Code § 1546.1).

702.4 DEPARTMENT-ISSUED PCD

Depending on a member's assignment and the needs of the position, the Department may, at its discretion, issue or fund a PCD. Department-issued or funded PCDs are provided as a convenience to facilitate on-duty performance only. Such devices and the associated telephone number shall remain the sole property of the Department and shall be subject to inspection or monitoring (including all related records and content) at any time without notice and without cause.

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702.5 PERSONALLY OWNED PCD

Members may carry a personally owned PCD while on-duty, subject to the following conditions and limitations:

- (a) Permission to carry a personally owned PCD may be revoked if it is used contrary to provisions of this policy.
- (b) The Department accepts no responsibility for loss of or damage to a personally owned PCD.
- (c) The PCD and any associated services shall be purchased, used and maintained solely at the member's expense.
- (d) The device should not be used for work-related purposes except in exigent circumstances (e.g., unavailability of radio communications). Members will have a reduced expectation of privacy when using a personally owned PCD in the workplace and have no expectation of privacy with regard to any department business-related communication.
 - 1. Members may use personally owned PCDs on-duty for routine administrative work as authorized by the Chief of Police.
- (e) The device shall not be utilized to record or disclose any business-related information, including photographs, video or the recording or transmittal of any information or material obtained or made accessible as a result of employment with the Department, without the express authorization of the Chief of Police or the authorized designee.
- (f) Use of a personally owned PCD while at work or for work-related business constitutes consent for the Department to access the PCD to inspect and copy data to meet the needs of the Department, which may include litigation, public records retention and release obligations and internal investigations. If the PCD is carried on-duty, members will provide the Department with the telephone number of the device.
- (g) All work-related documents, emails, photographs, recordings or other public records created or received on a member's personally owned PCD should be transferred to the Bay Area Rapid Transit Police Department and deleted from the member's PCD as soon as reasonably practicable but no later than the end of the member's shift.

Except with prior express authorization from their supervisor, members are not obligated or required to carry, access, monitor or respond to electronic communications using a personally owned PCD while off-duty. If a member is in an authorized status that allows for appropriate compensation consistent with policy or existing memorandum of understanding or collective bargaining agreements, or if the member has prior express authorization from his/her supervisor, the member may engage in business-related communications. Should members engage in such approved off-duty communications or work, members entitled to compensation shall promptly document the time worked and communicate the information to their supervisors to ensure appropriate compensation. Members who independently document off-duty department-related

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business activities in any manner shall promptly provide the Department with a copy of such records to ensure accurate record keeping.

702.6 USE OF PCD

The following protocols shall apply to all PCDs that are carried while on-duty or used to conduct department business:

- (a) A PCD shall not be carried in a manner that allows it to be visible while in uniform, unless it is in an approved carrier.
- (b) All PCDs in the workplace shall be set to silent or vibrate mode.
- (c) A PCD may not be used to conduct personal business while on-duty, except for brief personal communications (e.g., informing family of extended hours). Members shall endeavor to limit their use of PCDs to authorized break times, unless an emergency exists.
- (d) Members may use a PCD to communicate with other personnel in situations where the use of radio communications is either impracticable or not feasible. PCDs should not be used as a substitute for, as a way to avoid, or in lieu of regular radio communications.
- (e) Members are prohibited from taking pictures, audio or video recordings or making copies of any such picture or recording media unless it is directly related to official department business. Disclosure of any such information to any third party through any means, without the express authorization of the Chief of Police or the authorized designee, may result in discipline.
- (f) Members will not access social networking sites for any purpose that is not official department business.
- (g) Using PCDs to harass, threaten, coerce or otherwise engage in inappropriate conduct with any third party is prohibited. Any member having knowledge of such conduct shall promptly notify a supervisor.

702.7 SUPERVISOR RESPONSIBILITIES

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that members under their command are provided appropriate training on the use of PCDs consistent with this policy.
- (b) Monitoring, to the extent practicable, PCD use in the workplace and taking prompt corrective action if a member is observed or reported to be improperly using a PCD.
 - 1. An investigation into improper conduct should be promptly initiated when circumstances warrant.

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2. Before conducting any administrative search of a member's personally owned device, supervisors should consult with the Chief of Police or the authorized designee.

702.8 USE WHILE DRIVING

The use of a PCD while driving can adversely affect safety, cause unnecessary distractions and present a negative image to the public. Officers operating emergency vehicles should restrict the use of these devices to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to use the PCD.

Members who are operating department vehicles that are not authorized emergency vehicles shall not use a PCD while driving unless the device is specifically designed and configured to allow hands-free use. In an emergency, a wireless phone may be used to place an emergency call to the Department or other emergency services agency (Vehicle Code § 23123; Vehicle Code § 23123.5). Hands-free use should be restricted to business-related calls or calls of an urgent nature.

702.9 OFFICIAL USE

Members are reminded that PCDs are not secure devices and conversations may be intercepted or overheard. Caution should be exercised while utilizing PCDs to ensure that sensitive information is not inadvertently transmitted. As soon as reasonably possible, members shall conduct sensitive or private communications on a land-based or other department communications network.

Vehicle Maintenance

704.1 PURPOSE AND SCOPE

Employees are responsible for assisting in maintaining Department vehicles so that they are properly equipped, properly maintained, properly refueled and present a clean appearance.

704.2 DEFECTIVE VEHICLES

When a department vehicle becomes inoperative or in need of repair that affects the safety of the vehicle, that vehicle shall be removed from service for repair. Proper documentation shall be promptly completed by the employee who first becomes aware of the defective condition, describing the correction needed. The supervisor shall decide if the vehicle should be driven or towed to the Oakland Shops for repair and shall notify the department vehicle maintenance CSO describing the required repairs at x6656. The paperwork shall be promptly forwarded to vehicle maintenance for repair.

704.2.1 REMOVAL OF WEAPONS

All firearms, weapons and control devices shall be removed from a vehicle and properly secured in the department armory or Department gun safe prior to the vehicle being released for maintenance, service or repair.

704.3 VEHICLE EQUIPMENT

Certain items shall be maintained in all department vehicles for emergency purposes and to perform routine duties.

704.3.1 PATROL VEHICLES

Officers shall inspect the patrol vehicle at the beginning of the shift and ensure that the following equipment, at a minimum, is present in the vehicle:

- Assigned vehicle keys
- Assigned MDC
- Accident Control Log
- Fire Extinguisher
- First Aid Kit
- Road Flares
- Barricade Tape
- Bolt Cutters
- Shotgun (and ammunition to ensure fully loaded)
- Trauma Kit (sealed)

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- Fingerprint Kit
- Rolatape
- Traffic Chalk
- Dog Snare
- Pry Axe
- Slim Jim
- Disposable Blankets
- Tactical Rifle and 3 Loaded Magazines (if assigned)
- Street Level Subway Access Keys
- Spare Tire, Jack, & Lug Wrench
- Wrap
- Spit Hood
- Laptop Key

Zone Commanders will ensure the vehicle inventory log is completed and sent to the Vehicle Maintenance Unit on a monthly basis. Logs are due by the 10th of each month.

704.4 VEHICLE REFUELING

Absent emergency conditions or supervisor approval, officers driving patrol vehicles should not place a vehicle in service that has less than one-half tank of fuel. Vehicles shall only be refueled at the authorized location with regular unleaded fuel. Whenever possible, vehicles in Oakland will be re-fueled at the Oakland Shops.

704.5 WASHING OF VEHICLES

All units shall be kept clean at all times and weather conditions permitting, shall be washed as necessary to enhance their appearance.

Officers in patrol shall obtain clearance from the dispatcher before responding to the car wash. Only one marked unit should be at the car wash at the same time unless otherwise approved by a supervisor.

Employees using a vehicle shall remove any trash or debris at the end of their shift. Confidential material should be placed in a designated receptacle provided for the shredding of this matter.

704.6 CIVILIAN EMPLOYEE USE

Civilian employees using marked vehicles shall ensure all weapons are removed from vehicles before going into service. Civilian employees shall also prominently display the “out of service” placards or lightbar covers at all times. Civilian employees shall not operate the emergency lights or siren of any vehicle unless expressly authorized by a supervisor.

Vehicle Use

706.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a system of accountability to ensure department vehicles are used appropriately. This policy provides guidelines for on- and off-duty use of department vehicles and shall not be construed to create or imply any contractual obligation by the District of San Francisco Bay Area Rapid Transit District to provide assigned take-home vehicles.

706.2 POLICY

The Bay Area Rapid Transit Police Department provides vehicles for department-related business and may assign patrol and unmarked vehicles based on a determination of operational efficiency, economic impact to the Department, requirements for tactical deployments and other considerations.

706.3 USE OF VEHICLES

706.3.1 SHIFT ASSIGNED VEHICLES

Zone sergeants shall ensure the assigned vehicles are entered onto the shift assignment roster indicating member assignments and vehicle numbers for each shift. If a member exchanges vehicles during his/her shift, the new vehicle number shall be documented on the roster.

706.3.2 OTHER USE OF VEHICLES

Members utilizing a vehicle for any purpose other than their normally assigned duties or normal vehicle assignment (e.g., transportation to training, community event) shall first notify the Watch Commander. A notation will be made on the shift assignment roster indicating the member's name and vehicle number.

This subsection does not apply to those who are assigned to vehicle transportation duties to and from the maintenance yard or carwash.

706.3.3 INSPECTIONS

Members shall be responsible for inspecting the interior and exterior of any assigned vehicle before taking the vehicle into service and at the conclusion of their shifts. Any previously unreported damage, mechanical problems, unauthorized contents or other problems with the vehicle shall be promptly reported to a supervisor and documented as appropriate.

When transporting any suspect, prisoner or arrestee, the transporting member shall search all areas of the vehicle that are accessible by the person before and after that person is transported. This is to ensure that unauthorized or personal items have not been left in the vehicle.

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All department vehicles are subject to inspection and/or search at any time by a supervisor without notice and without cause. No member assigned to or operating such vehicle shall be entitled to any expectation of privacy with respect to the vehicle or its contents.

706.3.4 MDC

Members assigned to vehicles equipped with a Mobile Data Computer (MDC) shall log onto the MDC with the required information when going on-duty. Members who are aware of an MDC not working should promptly email BPDsupport. Use of the MDC is governed by the Mobile Data Computer Use Policy.

706.3.5 VEHICLE LOCATION SYSTEM

Patrol and other vehicles, at the discretion of the Chief of Police, may be equipped with a system designed to track the vehicle's location. While the system may provide vehicle location and other information, members are not relieved of their responsibility to use required communication practices to report their location and status.

Members shall not make any unauthorized modifications to the system. At the start of each shift, members shall verify that the system is on and report any malfunctions to their supervisor. If the member finds that the system is not functioning properly at any time during the shift, he/she should exchange the vehicle for one with a working system, if available.

System data may be accessed by supervisors at any time. However, access to historical data by other than supervisors will require Division Commander approval.

All data captured by the system shall be retained in accordance with the established records retention schedule.

706.3.6 KEYS

Members approved to operate marked patrol vehicles should be issued a copy of the key as part of their initial equipment distribution. Members who are assigned a specific vehicle should be issued keys for that vehicle.

Members shall not duplicate keys. The loss of a key shall be promptly reported in writing through the member's chain of command.

706.3.7 AUTHORIZED PASSENGERS

Members operating department vehicles should not permit persons other than District personnel or persons required to be conveyed in the performance of duty, or as otherwise authorized, to ride as passengers in the vehicle, except as stated in the Ride-Along Policy.

706.3.8 ALCOHOL

Members who have consumed alcohol are prohibited from operating any department vehicle unless it is required by the duty assignment (e.g., task force, undercover work). Regardless of assignment, members may not violate state law regarding vehicle operation while intoxicated.

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706.3.9 PARKING

Except when responding to an emergency or when attending to department-related business requires otherwise, members driving department vehicles should obey all parking regulations at all times.

Members shall not park privately owned vehicles in stalls assigned to department vehicles or in other areas of the parking lot that are not so designated unless authorized by a supervisor. Privately owned motorcycles shall be parked in designated areas.

706.3.10 ACCESSORIES AND/OR MODIFICATIONS

There shall be no modifications, additions or removal of any equipment or accessories without written permission from the Support Services Deputy Chief.

706.3.11 CIVILIAN MEMBER USE

Civilian members using marked emergency vehicles shall ensure that all weapons have been removed before going into service. Civilian members shall prominently display the "out of service" placards or light bar covers at all times. Civilian members shall not operate the emergency lights or siren of any vehicle unless expressly authorized by a supervisor.

706.4 INDIVIDUAL MEMBER ASSIGNMENT TO VEHICLES

Department vehicles may be assigned to individual members at the discretion of the Chief of Police. Vehicles may be assigned for on-duty and/or take-home use. Assigned vehicles may be changed at any time. Permission to take home a vehicle may be withdrawn at any time.

The assignment of vehicles may be suspended when the member is unable to perform his/her regular assignment.

706.4.1 ON-DUTY USE

Vehicle assignments shall be based on the nature of the member's duties, job description and essential functions, and employment or appointment status. Vehicles may be reassigned or utilized by other department members at the discretion of the Chief of Police or the authorized designee.

706.4.2 UNSCHEDULED TAKE-HOME USE

Circumstances may arise where department vehicles must be used by members to commute to and from a work assignment. Members may take home department vehicles only with prior approval of a supervisor and shall meet the following criteria:

- (a) The circumstances are unplanned and were created by the needs of the department.
- (b) Other reasonable transportation options are not available.
- (c) Off-street parking will be available at the member's residence.
- (d) Vehicles will be locked when not attended.

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- (e) All firearms, weapons and control devices will be removed from the interior of the vehicle and properly secured in the residence when the vehicle is not attended, unless the vehicle is parked in a locked garage.

706.4.3 ASSIGNED VEHICLES

Assignment of take-home vehicles shall be based on the location of the member's residence, the nature of the member's duties, job description and essential functions, and employment or appointment status. Residence in the District of San Francisco Bay Area Rapid Transit District is a prime consideration for assignment of a take-home vehicle. Members who reside outside the District of San Francisco Bay Area Rapid Transit District may be required to secure the vehicle at a designated location or the Department at the discretion of the Chief of Police.

Members are cautioned that under federal and local tax rules, personal use of a District vehicle may create an income tax liability for the member. Questions regarding tax rules should be directed to the member's tax adviser.

Criteria for use of take-home vehicles include the following:

- (a) Vehicles shall only be used for work-related purposes and shall not be used for personal errands or transports, unless special circumstances exist and the Chief of Police or a command-level officer gives authorization.
- (b) Vehicles may be used to transport the member to and from the member's residence for work-related purposes.
- (c) Vehicles will not be used when off-duty except:
 - (a) In circumstances when a member has been placed on call by the Chief of Police or designee(s) and there is a high probability that the member may be called back to duty.
 - (b) When the member is performing a work-related function during what normally would be an off-duty period, including vehicle maintenance or travelling to or from a work-related activity or function.
 - (c) When the member has received permission from the Chief of Police or designee(s).
 - (d) When the vehicle is being used by the Chief of Police, command staff member or members who are in on-call administrative positions.
 - (e) When the vehicle is being used by on-call investigators.
- (d) While operating the vehicle, authorized members will carry and have accessible an authorized firearm and be prepared to perform any function they would be expected to perform while on-duty.
- (e) The two-way communications radio, MDC and global positioning satellite device, if equipped, should be on and set to an audible volume when the vehicle is in operation.
- (f) Unattended vehicles are to be locked and secured at all times.

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1. No key should be left in the vehicle except when it is necessary that the vehicle be left running (e.g., continued activation of emergency lights, canine safety, equipment charging).
 2. All weapons shall be secured while the vehicle is unattended.
 3. All department identification, portable radios and equipment should be secured.
- (g) Vehicles are to be parked off-street at the member's residence unless prior arrangements have been made with the Chief of Police or the authorized designee. If the vehicle is not secured inside a locked garage, all firearms and kinetic impact weapons shall be removed and properly secured in the residence (see the Firearms Policy regarding safe storage of firearms at home).
- (h) Vehicles are to be secured at the member's residence or the appropriate department facility, at the discretion of the Department when a member will be away (e.g., on vacation).
1. If the vehicle remains at the residence of the member, the Department shall have access to the vehicle.
 2. If the member is unable to provide access to the vehicle, it shall be parked at the Department.
- (i) The member is responsible for the care and maintenance of the vehicle.

706.4.4 ENFORCEMENT ACTIONS

When driving a take-home vehicle to and from work outside of the jurisdiction of the Bay Area Rapid Transit Police Department or while off-duty, an officer should not initiate enforcement actions except in those circumstances where a potential threat to life or serious property damage exists (see the Off-Duty Law Enforcement Actions and Law Enforcement Authority policies).

Officers may render public assistance when it is deemed prudent (e.g., to a stranded motorist).

Officers driving take-home vehicles shall be armed, appropriately attired and carry their department-issued identification. Officers should also ensure that department radio communication capabilities are maintained to the extent feasible.

706.4.5 MAINTENANCE

Members are responsible for the cleanliness (exterior and interior) and overall maintenance of their assigned vehicles. Cleaning and maintenance supplies will be provided by the Department. Failure to adhere to these requirements may result in discipline and loss of vehicle assignment. The following should be performed as outlined below:

- (a) Members shall make daily inspections of their assigned vehicles for service/maintenance requirements and damage.
- (b) It is the member's responsibility to ensure that his/her assigned vehicle is maintained according to the established service and maintenance schedule.
- (c) All scheduled vehicle maintenance and car washes shall be performed as necessary at a facility approved by the department supervisor in charge of vehicle maintenance.

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- (d) The Department shall be notified of problems with the vehicle and approve any major repairs before they are performed.
- (e) All weapons shall be removed from any vehicle left for maintenance.
- (f) Supervisors shall make, at a minimum, monthly inspections of vehicles assigned to members under their command to ensure the vehicles are being maintained in accordance with this policy.

706.5 UNMARKED VEHICLES

Vehicles are assigned to various bureaus and their use is restricted to the respective bureau and the assigned member, unless otherwise approved by a bureau supervisor.

706.6 DAMAGE, ABUSE AND MISUSE

When any department vehicle is involved in a traffic collision or otherwise incurs damage, the involved member shall promptly notify a supervisor. Any traffic collision report shall be filed with the agency having jurisdiction (see the Traffic Collision Reporting Policy).

Damage to any department vehicle that was not caused by a traffic collision shall be immediately reported during the shift in which the damage was discovered, documented in memorandum format and forwarded to the Watch Commander. An administrative investigation should be initiated to determine if there has been any vehicle abuse or misuse.

706.7 TOLL ROAD USAGE

Law enforcement vehicles are not routinely exempted from incurring toll road charges.

To avoid unnecessary toll road charges, all members operating department vehicles on a toll road shall adhere to the following:

- (a) Members operating department vehicles for any reason other than in response to an emergency shall pay the appropriate toll charge or utilize the appropriate toll way transponder. Members may submit a request for reimbursement from the District for any toll fees incurred in the course of official business.
- (b) Members passing through a toll plaza or booth during a response to an emergency shall notify, in writing, the appropriate Division Commander within five working days explaining the circumstances.

706.8 ATTIRE AND APPEARANCE

When operating any department vehicle while off-duty, members may dress in a manner appropriate for their intended activity. Whenever in view of or in contact with the public, attire and appearance, regardless of the activity, should be suitable to reflect positively upon the Department.

Video Surveillance

707.1 PURPOSE AND SCOPE

The BART District and BART Police Department are committed to providing a safe and secure environment for our patrons, employees and the community. The purpose of video surveillance systems is to provide situational awareness for transit operations, assist police in criminal investigations and to detect, deter and prevent potential terrorist and/or criminal activities within the BART system.

707.1.1 DEFINITIONS

- a. CCTV: Closed-circuit television (CCTV) is the use of video cameras to transmit a signal to a specific place, on a limited set of monitors. Video images may be recorded to a data storage system.
- b. Data Storage System: A computer or electronic device dedicated to the purpose of storing data.
- c. Video Recovery Personnel (VRP): BART Police Department employee(s) specifically assigned to collect and/or retrieve video from a data storage system. The VRP is responsible for logging all video requests and retrievals.
- d. Fixed Camera: Is a video camera that has a single and primary view/focus that may not be electronically modified after installation.
- e. PTZ: Pan/Tilt/Zoom (PTZ) features are available on select camera models that gives the remote user the ability to reposition and refocus the camera on any object or view within a 360 degree radius of the cameras mounting position
- f. Public Area: Areas open for public use where the expectation of privacy is not violated by what could normally be openly observed.
- g. Private Areas: Areas such as bathrooms, lockers and changing rooms; areas where a reasonable person might change clothing, or private offices. Exceptions are cameras used narrowly to safeguard money, documents, or supplies, from theft, destruction, or tampering.

707.1.2 POLICY

This policy details how the BART Police Department employees will operate District or law enforcement specific video surveillance equipment throughout the BART District. It also details the procedures to be used for recording, retaining and using information obtained from the use of video surveillance equipment installed throughout the BART District.

This policy will specify rules of acceptable BART Police Department use of video surveillance and designate specifications in order to achieve program goals without compromising the public's right to privacy. This document must also be flexible to adjust for unanticipated incidents, occurrences or applications for future improvements.

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707.1.3 RACIAL PROFILING AND/OR BIASED-BASED POLICING

No person will be targeted, monitored or tracked based solely on the actual or perceived race, religion or creed, age, national origin, gender (including gender identity), sexual orientation, disability, or political status or beliefs.

707.1.4 VIDEO SURVEILLANCE SYSTEM SPECIFICATIONS

The video surveillance system used will utilize multiple fixed and adjustable cameras focused on predetermined public areas in public places, including BART train cars. Cameras shall be situated in a manner and located in public places that will maximize the field of view of public areas for public safety and security purposes

Camera placement will minimize the potential inadvertent capture of images from areas where there would be a reasonable expectation of privacy.

Pan, Tilt, and Zoom (PTZ) cameras are also in place and these cameras have capabilities that allow operators to manipulate the framing or focal length of a video image only for the specific purpose of monitoring potential suspicious persons, or activities.

707.1.5 VIDEO STORAGE CAPABILITY

Structure and facility images captured from the video surveillance system will automatically be downloaded onto a secure data storage system where they will be stored based on the systems' design and recording capabilities before being overwritten by new data; which varies from seven (7) to thirty (30) days. The design of some legacy camera systems in District facilities will only record video when the camera is being actively monitored by an authorized user.

Train car video recorders store images for two (2) to seven (7) days before being overwritten.

This video image storage time frame is based on the various recording systems design, capabilities, and District resources.

707.1.6 VIDEO REQUEST PROCEDURE

Police employees requesting any station or train car video images for an incident will note the video request at the top of their report narrative. Employees must specify whether they are requesting train car video, BART station video, or both. The request should minimally include the date and time for which video is requested, as well as the exact location (i.e. platform, parking structure, bus zone, etc.) for where video is requested. When requesting train car video, employees must include the following information: train run number, train car number(s), train destination direction, and location of the train at the time of the occurrence. Employees should attempt to narrow down the area of the train consist in which the incident occurred and should not normally request video for an entire train consist.

Requests for video from outside agencies and from supervisors completing administrative investigations are still made by emailing policevideo@bart.gov with the information outlined above. Should the request be urgent, the requestor shall be directed to the on-duty Watch Commander.

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Personnel should request video for all crimes against persons. Personnel will only request video for property crimes when there is a narrowly defined timeframe in which to request video (approximately one hour). Video requests should not be made for extended periods of time. The Criminal Investigations Division may request video for extended periods of time when investigating a series of crimes.

707.1.7 PRIORITY VIDEO REQUESTS

In the event that there is an immediate need for the retrieval of video images (any incident deemed priority by a Detective or on-duty supervisor), including video that may be in danger of being purged, the Watch Commander or supervising member of the Criminal Investigations Division will make direct notification to the Video Recovery Personnel during their normal working hours. In the event that VRP are off-duty, the Watch Commander shall authorize the call-out of the necessary personnel.

707.1.8 RELEASE OF VIDEO IMAGES TO THE GENERAL PUBLIC

All video images/data shall be used for District operations, law enforcement or public safety purposes only; except as required by law, subpoenas or other court process, such data will not otherwise be disclosed/released by the BART Police Department without the consent of the Chief of Police.

Department employees shall not release any information, including capabilities regarding the Districts CCTV systems to the public without prior authorization from the Chief of Police, or the appropriate designee. Personnel shall not release the Video Recovery Personnel telephone number or email address to members of the public.

707.1.9 REQUESTS FOR VIDEO IMAGES FROM THE MEMBERS OF THE PUBLIC

Persons that have a subpoena or preservation letter, and are interested in requesting video footage, shall be directed to the Department's Records Division during normal business hours, or via fax at 510-464-7089.

Persons that do not have a subpoena or preservation letter, and are interested in requesting video footage are to be directed to the District Secretary's Office at 510-464-6000 or via fax at 510-464-6011.

707.1.10 VIDEO IMAGES AS EVIDENCE

The review and retrieval of images may be for the purpose of criminal or administrative investigations only. Any working copies shall be accounted for by the officer, investigator or agency authorized to access and utilize the video images.

707.1.11 RETRIEVAL AND HANDLING OF VIDEO EVIDENCE

Processing requests for downloading and/or retrieval of video images will be the responsibility of the Video Recovery Personnel. In criminal investigations and instances where there is an associated BART Police case number*, the VRP will make a master copy of the video image(s)

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and submit them as evidence. VRP will document their action with a supplemental report in the report writing system if the video request is associated with a BART Police case number.

*Video image requests generated for administrative purposes will not be submitted to evidence, unless specifically requested.

Video footage that is retrieved as evidence shall be handled in a manner that is consistent with the Department's evidence handling guidelines - Policy 804. Personnel shall adhere to a strict chain of custody, and shall always submit the original video cassettes/discs/digital files into evidence.

707.1.12 CAPTURING OF VIDEO IMAGES WITH PERSONAL DEVICES

Personnel without access to retrieve video footage recorded on District surveillance systems shall not use any video or still image cameras, recorders or cell phones to capture video or still images from the District video surveillance system. This applies to equipment privately and District-owned, and includes stored video images as well as video footage being viewed live.

707.1.13 USER ACCESS

All persons designated by the Department as video surveillance system users shall receive necessary training. When technologically feasible, unique user identification shall be used in order to access the system. Images stored on servers shall only be accessed and retrieved by authorized personnel and only in response to public safety emergencies or authorized internal or criminal investigations.

Access to the video system will not be arbitrarily provided. Rather, only police personnel with a need to access this system will be granted access. All requests for access shall be completed by the employee's direct supervisor and should be forwarded to the appropriate designee in charge of CCTV system access. Prior to being given access to the system, each authorized employee will be briefed on this policy.

Any personnel not employed by a law enforcement agency that have a need to access, view or review the CCTV system must have the consent of the Chief of Police, as well as complete a background screening prior to being provided access. Such personnel will also be required to review this policy and sign both a confidentiality agreement, which strictly limits the purposes for which accessed data may be used and imposes sanctions for any violation, as well as an agreement promising to adhere to the guidelines set forth in this policy.

707.1.14 LEGITIMATE LAW ENFORCEMENT PURPOSES

The BART Police Department may collect data that would be relevant to other legitimate law enforcement uses and subject to certain restrictions. Similar to the "plain view" exception in Fourth Amendment law, a police officer properly observing public scenes through a visual surveillance system may act upon evidence of criminal behavior as if he/she had witnessed it in person. This is true whether the officer is viewing the footage in real time or via a recording.

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707.1.15 PAN, TILT AND ZOOM (PTZ) CAMERA USAGE

Any active, continual observation of an individual, involving the use of PTZ cameras, shall be done to support a legitimate District operational or safety purpose, or as the result of reasonable suspicion of the individual's involvement in actual or suspected criminal activity. PTZ camera operators are responsible for protecting the public's right to privacy as delineated by Citizens' Constitutional rights to privacy.

707.1.16 PRIVACY AND ANONYMITY

In regards to video surveillance, it is the intent of these policies and guidelines to ensure that all citizens, who may be conducting their activities in a place generally described as "public," be assured that their Constitutional right to privacy is respected and acknowledged. The system will not be used for viewing activities where a reasonable expectation of privacy may exist.

707.1.17 AUDITS

The video surveillance system may be equipped with capabilities that provide an audit trail of system use and user access. When available, this information should include the user ID and the ability to review all activities concerning the use of the PTZ features of that particular operator.

A designee(s) at the direction of the Chief of Police may regularly audit use of the video surveillance system. The report will address compliance issues with this policy and any audits of operators and the subsequent findings. Any user's unusual activity and/or other access that is deemed suspicious will also be included in the audit.

707.1.18 SAFEGUARDING AND PROTECTING STORED DATA

The BART Police Department will take all reasonably appropriate technological, physical, administrative, procedural, and personnel measures to protect the confidentiality and integrity of all sensitive video data and evidence, whether in transit or in storage.

707.1.19 PUBLIC NOTIFICATION OF VIDEO CAMERAS

Whenever practical, signage notifying the public that a video surveillance system is being used and images are being recorded will be posted in conspicuous locations proximate to the entrances of stations and other facilities. The signs at the very least will show the image of a camera. Exceptions will be made for confidential police cases.

707.1.20 CAMERA ERRORS/MAINTENANCE, ADDS, MOVES AND CHANGES

Personnel who notice that a camera feed is inoperative or that the image is out of focus or obscured, shall immediately notify the Communications/Maintenance Toll Test Board at ext. 7210, and should send a notification to policevideo@bart.gov for follow up.

Personnel who feel that additional camera coverage is needed in a specific location or that a camera would better serve the District if moved or refocused, shall email their requests to policevideo@bart.gov via their chain of command. Each request will be reviewed and considered for presentation to the District's CCTV Change Control Board.

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707.1.21 NEW TECHNOLOGY

Any changes to the scope, capabilities and the uses of the system should be in accordance to current state and federal laws and within the scope of this policy and agency guidelines. At no point should this system or policy be altered so that it violates or poses a significant threat to violate an individual's constitutional rights.

Any technological advances that could be incorporated into the existing video surveillance system should also first be presented to the District's CCTV Change Control Board, the Chief of Police, as well as his/her CCTV designee(s).

707.1.22 POLICY VIOLATIONS

Unauthorized access to the system, misuse of the system, unauthorized reproduction of images, unauthorized distribution of images, or any other violations of this policy may result in disciplinary action up to and including termination.

Portable Aerial Observation Tower

709.1 PURPOSE AND SCOPE

This policy governs the use of portable aerial observation tower(s) for surveillance and crime detection.

709.2 EQUIPMENT

The department's portable aerial observation tower(s) are intended for use in areas where a raised surveillance platform is beneficial as a crime deterrent or for enhanced situational awareness. The tower permits an employee to be elevated to a position in a secure cab approximately 25 feet above the ground where they can better monitor the surrounding areas. The tower cab is equipped with tinted windows which prevent observation of the occupancy status of the tower. The tower may be raised or lowered from inside the cab or from a ground level control panel located in a secure compartment on the trailer. The tower is equipped with interior and exterior lights, a chair and a writing table, 110-volt power, PA system, portable radio charger and a HVAC system. The tower is powered by an on board gasoline generator or by an external 110-volt source.

709.3 MARKINGS

The portable aerial observation tower(s) are distinctively marked with the BART Police Department insignia in a highly visible manner.

709.4 DEPLOYMENT

The portable aerial observation tower(s) will be deployed at locations at the direction of a Zone Commander, the Watch Commander or any member of command staff. Any employee may request the deployment of a portable aerial observation tower for official projects via a request through the employee's chain of command. The Detective Sergeant, or designee, will be responsible for scheduling the availability of the tower(s).

In order to track the use of the tower(s), the Watch Commander will make a daily log entry for each deployment of a tower unless such notification would compromise an active investigation. Employees on patrol shall make periodic checks of unoccupied tower(s) on their beat.

The Operations Deputy Chief must review and approve overnight deployments at locations where the tower will not be continuously monitored. Employees should consider monitoring the status of unoccupied tower(s) via CCTV when deployed at locations with sufficient CCTV coverage.

When not deployed, the tower(s) will be stored at a location at the direction of the Detective Sergeant.

709.5 OPERATION

Portable aerial observation tower(s) will be operated and transported in a safe and prudent manner. The tower may only be moved by a vehicle properly equipped for towing the weight of the trailer. The trailer dimensions (height, width and length) and towing weights (overall and tongue-

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weight) are listed in a conspicuous location on the outside of each tower. Employees should check and confirm that the tires are inflated to the recommended pressure prior to moving the trailer. Employees will successfully complete an orientation on the safe operation of the tower prior to operating a tower in the field. Prior to duty on a tower, each operator must complete a safety inspection consisting of the following;

- (a) All outrigger arms are extended, locked and not loose
- (b) The tower is level
- (c) The wind speed is below 40 mph
- (d) There are no overhead obstructions or hazards

All doors and access panels will be locked when the portable aerial observation tower is not occupied. The keys for the tower will be secured with the beat officer or at the nearest police zone facility if the trailer is left unoccupied on a deployment for an extended duration of time. The trailer will be secured with a "Denver boot" on one of the tires whenever it is parked at a deployment location or parked for storage. The tower may be left in the elevated position when unoccupied. The generator disconnect switch shall be left in the disconnected position whenever the tower is left for an extended period of time with the generator turned off.

709.6 SAFETY

Portable Aerial Observation tower(s) will not be elevated during periods of high wind (40 MPH or greater). Employees who observe an unoccupied portable aerial observation tower in an elevated position during a period of high wind shall immediately report the situation to the Watch Commander or immediately lower the tower if trained to operate the equipment.

The portable aerial observation tower(s) are equipped with weather stations which include a removable external anemometer to measure the wind speed. The anemometer shall be in the installed position and operational before the tower is elevated. The anemometer shall be removed and placed in the secure storage compartment when the trailer is towed.

The portable aerial observation tower outriggers shall be deployed and the trailer leveled to the manufacturer's specifications before the cab is elevated. The supplied wheel chocks shall be used when securing the tower for deployment. Before elevating the cab, employees shall ensure that the door is securely closed and that the safety cable is attached to the door. To prevent unintentional openings of the cab door, employees shall never lean on the door or manipulate the door latch while the cab is in the elevated position.

The cab is equipped with a camera and monitor to view the area below the cab when it is in the elevated position. Employees shall confirm that the area below the cab is safe before lowering the cab to the ground level. The tower is designed to be stable when it is fully elevated or fully lowered. The tower will not be deployed in a partially elevated position.

The cab is equipped with an emergency release lever to safely lower the cab in the event of an emergency, such as a loss of power, where the normal controls are not operational. Pulling the

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lever and holding it will cause the cab to lower to the ground at a controlled speed. A second emergency release is located at ground level in the secure cabinet where the tower controls are located.

Cash Handling, Security and Management

710.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure department members handle cash appropriately in the performance of their duties.

This policy does not address cash-handling issues specific to the Property and Evidence and Informants policies.

710.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to properly handle and document cash transactions and to maintain accurate records of cash transactions in order to protect the integrity of department operations and ensure the public trust. The terms "fund manager" and "petty cash custodian" are synonymous for the purpose of this policy.

710.3 PETTY CASH FUNDS

The Chief of Police shall designate a person as the fund manager responsible for maintaining and managing the petty cash fund, including the dispersal of cash reimbursements..

Each petty cash fund requires the creation and maintenance of an accurate and current transaction ledger and the filing of invoices, receipts, cash transfer forms and expense reports by the fund manager. The fund manager shall maintain a balance sheet or ledger that identifies initial balance, credits (cash income received), debits (cash disbursed) and the balance on hand. He/she shall maintain receipts for documentation for cash fund transactions. The fund manager is responsible for the petty cash box. The locking petty cash box is not to exceed \$500 and will be kept out of site in a locked location when not in use.

710.4 PETTY CASH TRANSACTIONS

The fund manager shall document all transactions on the ledger and any other appropriate forms. Cash fund distributions must be authorized by the Budget Administrative Supervisor. The Support Services Bureau Lieutenant may authorize transactions in the Budget Administrative Supervisor's absence. The fund manager must record and document all cash reimbursement transactions. Each petty cash transaction should not exceed \$100. Cash reimbursements over \$100 must be approved by the Chief of Police.

The fund manager will generate a petty cash receipt. This receipt will be signed by Budget Administrative Supervisor, or the Support Services Bureau Lieutenant in their absence, documenting the transaction. Only the employee seeking reimbursement may sign for and receive the cash reimbursement. Any exceptions will be documented in writing in advance of the reimbursement dispersal.

Transactions that are not documented by a receipt, invoice or cash transfer form require an expense report.

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710.5 PETTY CASH AUDITS

The Budget Administrative Supervisor shall perform an audit quarterly. This audit requires that the Budget Administrative Supervisor and at least one command staff member, selected by the Chief of Police, review the transaction ledger and verify the accuracy of the accounting. The Budget Administrative Supervisor and the participating member shall sign or otherwise validate the ledger attesting to the accuracy of all documentation and fund accounting. A discrepancy in the audit requires documentation by those performing the audit and an immediate reporting of the discrepancy to the Chief of Police.

Transference of fund management to another member shall require a separate petty cash audit and involve a command staff member.

A separate audit of each petty cash fund should be completed on a random date, approximately once each year by the Chief of Police or the District.

710.6 ROUTINE CASH HANDLING

Those who handle cash as part of their property or Criminal Investigations Division supervisor duties shall discharge those duties in accordance with the Property and Evidence and Informants policies.

Members who routinely accept payment for department services shall discharge those duties in accordance with the procedures established for those tasks.

710.7 OTHER CASH HANDLING

Members of the Department who, within the course of their duties, are in possession of cash that is not their property or that is outside their defined cash-handling responsibilities shall, as soon as practicable, verify the amount, summon another member to verify their accounting, and process the cash for safekeeping or as evidence or found property, in accordance with the Property and Evidence Policy.

Cash in excess of \$1,000 requires immediate notification of a supervisor, special handling, verification and accounting by the supervisor. Each member involved in this process shall complete an appropriate report or record entry.

Chapter 8 - Support Services

Crime Analysis

800.1 PURPOSE AND SCOPE

Crime analysis should provide currently useful information to aid operational personnel in meeting their tactical crime control and prevention objectives by identifying and analyzing methods of operation of individual criminals, providing crime pattern recognition, and providing analysis of data from field interrogations and arrests. Crime analysis can be useful to the Department's long range planning efforts by providing estimates of future crime trends and assisting in the identification of enforcement priorities.

800.2 DATA SOURCES

Crime analysis data is extracted from many sources including, but not limited to:

- Crime reports
- Statewide Integrated Traffic Reporting System (SWITRS)
- Computer Aided Dispatch data
- Regional Law Enforcement RMS data/Crime Analyst reports
- Parole and Probation records
- Field Interview cards

800.3 CRIME ANALYSIS FACTORS

The following minimum criteria should be used in collecting data for Crime Analysis:

- Frequency by type of crime
- Physical evidence information
- Modus operandi factors
- Suspect vehicle descriptors
- Suspect descriptors
- Victim and target descriptors
- Temporal factors
- Geographic factors

800.4 EVALUATION OF DATA AND FINDINGS

The crime analysts may use techniques that may include repeat offender analysis, link analysis, telephone record analysis, temporal analysis, geographic analysis, and other resources as directed. For our crime analysis operation to remain effective, BART PD encourages feedback to the Support Services Bureau Deputy Chief so that adjustments can be made to the analysis process based on the input of those operational components using the analyses produced.

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Crime Analysis

A key element to developing actionable intelligence relative to crime is the evaluation of the data collected for accuracy and the subsequent organization of that data by filtering erroneous information and arranging the data in a manner that can be easily analyzed. Crime data is analyzed by this agency using analytical tools such as spreadsheets, geographic information systems, and statistical software. Through these tools, an analyst can identify and interpret criminal activity, patterns, and trends, and forecast trends to aid in staffing and deployment of resources. Additionally, research on known offenders is conducted to provide potential suspect leads to patrol and investigative units.

800.5 CRIME ANALYSIS DISSEMINATION

For a crime analysis system to function effectively, information should be disseminated to the appropriate units or persons on a timely basis. Information that is relevant to the operational and tactical plans of specific line units should be sent directly to them. The Crime Analyst will distribute, via email, a printed product, and/or briefing, consisting of routine crime analysis information, patterns, and trends to appropriate units. This includes the Chief of Police and Command Staff at Command Staff meetings, the Operations Bureau, Support Services Bureau, and the Professional Standards and Training Bureau, as needed.

800.6 CRIME ANALYST TRAINING

Please see the Department's Training Plan for mandatory, essential and/or desirable training for the position of Crime Analyst.

Department Form Management

801.1 PURPOSE AND SCOPE

The purpose of department form management and control is to prevent form proliferation. Form management allows for the control, creation, revision, and purchasing of all forms used by the department. The accountability for agency forms includes procedures for development, modification, approval, and review. This policy provides that:

1. Every form to be created or revised shall be reviewed;
2. A sufficient inventory of forms will be maintained; and
3. Existing forms will be analyzed for elimination, consolidation, or improved format.

801.2 RESPONSIBILITIES

- (a) The Records Division has primary responsibility for the ordering of forms, inventory of forms and maintaining an orderly and sufficient inventory of forms in the Forms Supply Room located in the Records Division.
- (b) All personnel are responsible for identifying problems with forms and communicating any suggestions to their supervisor, who will forward the information to the Records Supervisor.
- (c) The Records Supervisor must approve any procurement of forms from the District Print shop or outside vendors.
- (d) No forms designed for use and distribution by the Department will be created without the approval of the Chief of Police or his/her designee.

801.3 NEW OR REVISED FORMS

- (a) An employee who identifies a need for a new form or proposes a revision to an existing form will complete a "Request for New or Revised Form" and submit it to the Records Supervisor.
- (b) Before the clearance of any new or revised forms, the forms specialist will:
 1. Determine the necessity of the form; and
 2. Ensure that the form has a title, number, edition date, and conforms to the standards of good form design.
- (c) If a form is in need of revision, notification shall be made to the appropriate personnel in the Records Division not to reorder unless cleared through the Records Supervisor.
- (d) The Chief of Police or his/her designee shall approve all new or revised forms.
- (e) The Records Division will establish the quantity to be stocked in the Forms Supply Room and will arrange for the production of the new or revised form.
- (f) The Records Division will notify the user when a supply of the new or revised form is available.

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Department Form Management

801.4 ORDERING FORMS

Forms will be ordered through the Records Division using the Department form number.

The Communications Center

802.1 PURPOSE AND SCOPE

This policy establishes guidelines for the basic functions of Integrated Security Response Center. It addresses the immediate information needs of the Department in the course of its normal daily activities and during emergencies.

802.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to provide 24-hour telephone service to the public for information and for routine or emergency assistance. The Department provides two-way radio capability providing continuous communication between Integrated Security Response Center and department members in the field.

802.3 INTEGRATED SECURITY RESPONSE CENTER SECURITY

The communications function is vital and central to all emergency service operations. The safety and security of Integrated Security Response Center, its members and its equipment must be a high priority. Special security procedures should be established in a separate operations manual for Integrated Security Response Center.

Access to Integrated Security Response Center shall be limited to Integrated Security Response Center members, the Watch Commander, command staff and department members with a specific business-related purpose.

802.4 CALL HANDLING

This Department provides members of the public with access to the 9-1-1 system for a single emergency telephone number.

When a call for services is received, the dispatcher will reasonably and quickly attempt to determine whether the call is an emergency or non-emergency, and shall quickly ascertain the call type, location and priority by asking four key questions:

- Where?
- What?
- When?
- Who?

If the dispatcher determines that the caller has a hearing and/or speech impairment or disability, he/she shall immediately initiate a connection with the individual via available TDD/TTY equipment or Telephone Relay Service (TRS), as mandated by the Americans with Disabilities Act (ADA).

If the dispatcher determines that the caller is a limited English proficiency (LEP) individual, the dispatcher should quickly determine whether sufficient information can be obtained to initiate an appropriate response. If language assistance is still needed, the language is known and a

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language-appropriate authorized interpreter is available in Integrated Security Response Center, the dispatcher should immediately connect the LEP caller to the authorized interpreter.

If no authorized interpreter is available or the dispatcher is unable to identify the caller's language, the dispatcher will contact the contracted telephonic interpretation service and establish a three-party call connecting the dispatcher, the LEP individual and the interpreter.

Dispatchers should be courteous, patient and respectful when dealing with the public.

802.4.1 EMERGENCY CALLS

A call is considered an emergency when there is an immediate or potential threat to life or serious property damage, and the timely arrival of public safety assistance is of the utmost importance. A person reporting an emergency should not be placed on hold until the dispatcher has obtained all necessary information to ensure the safety of the responding department members and affected individuals.

Emergency calls should be dispatched immediately. The Watch Commander shall be notified of pending emergency calls for service when department members are unavailable for dispatch.

802.4.2 NON-EMERGENCY CALLS

A call is considered a non-emergency call when there is no immediate or potential threat to life or property. A person reporting a non-emergency may be placed on hold, if necessary, to allow the dispatcher to handle a higher priority or emergency call.

The reporting person should be advised if there will be a delay in the dispatcher returning to the telephone line or when there will be a delay in the response for service.

802.5 RESPONSIBILITIES

802.5.1 COMMUNICATIONS SUPERVISOR

The Chief of Police shall appoint and delegate certain responsibilities to a Communications Supervisor. The Communications Supervisor is directly responsible to the Lieutenant of Support Services or the authorized designee.

The responsibilities of the Communications Supervisor include, but are not limited to:

- (a) Overseeing the efficient and effective operation of Integrated Security Response Center in coordination with other supervisors.
- (b) Scheduling and maintaining dispatcher time records.
- (c) Supervising, training and evaluating dispatchers.
- (d) Ensuring the radio and telephone recording system is operational.
 - 1. Recordings shall be maintained in accordance with the established records retention schedule and as required by law.
- (e) Processing requests for copies of Integrated Security Response Center information for release.

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- (f) Maintaining Integrated Security Response Center database systems.
- (g) Maintaining and updating Integrated Security Response Center procedures manual.
 - 1. Procedures for specific types of crime reports may be necessary. For example, specific questions and instructions may be necessary when talking with a victim of a sexual assault to ensure that his/her health and safety needs are met, as well as steps that he/she may take to preserve evidence.
 - 2. Ensuring dispatcher compliance with established policies and procedures.
- (h) Handling internal and external inquiries regarding services provided and accepting personnel complaints in accordance with the Personnel Complaints Policy.

802.5.2 DISPATCHERS

Dispatchers report to the Communications Supervisor. The responsibilities of the dispatcher include, but are not limited to:

- (a) Receiving and handling all incoming and transmitted communications, including:
 - 1. Emergency 9-1-1 lines.
 - 2. Business telephone lines.
 - 3. Telecommunications Device for the Deaf (TDD)/Text Telephone (TTY) equipment.
 - 4. Radio communications with department members in the field and support resources (e.g., fire department, emergency medical services (EMS), allied agency law enforcement units).
 - 5. Other electronic sources of information (e.g., text messages, digital photographs, video).
- (b) Documenting the field activities of department members and support resources (e.g., fire department, EMS, allied agency law enforcement units).
- (c) Inquiry and entry of information through Integrated Security Response Center, department and other law enforcement database systems (CLETS, DMV, NCIC).
- (d) Monitoring department video surveillance systems.
- (e) Maintaining the current status of members in the field, their locations and the nature of calls for service.
- (f) Notifying the Watch Commander or field supervisor of emergency activity, including, but not limited to:
 - (a) Vehicle pursuits.
 - (b) Foot pursuits.
 - (c) Assignment of emergency response.

802.6 RADIO COMMUNICATIONS

The police radio system is for official use only, to be used by dispatchers to communicate with department members in the field. All transmissions shall be professional and made in a calm,

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businesslike manner, using proper language and correct procedures. Such transmissions shall include, but are not limited to:

- (a) Members acknowledging the dispatcher with their radio identification call signs and current location.
- (b) Dispatchers acknowledging and responding promptly to all radio transmissions.
- (c) Members keeping the dispatcher advised of their status and location.
- (d) Member and dispatcher acknowledgements shall be concise and without further comment unless additional information is needed.

The Communications Supervisor shall be notified of radio procedure violations or other causes for complaint. All complaints and violations will be investigated and reported to the complainant's supervisor and processed through the chain of command.

802.6.1 FEDERAL COMMUNICATIONS COMMISSION COMPLIANCE

Bay Area Rapid Transit Police Department radio operations shall be conducted in accordance with Federal Communications Commission (FCC) procedures and requirements.

802.6.2 RADIO IDENTIFICATION

Radio call signs are assigned to department members based on factors such as duty assignment, uniformed patrol assignment and/or member identification number. Dispatchers shall identify themselves on the radio with the appropriate station name or number, and identify the department member by his/her call sign. Members should use their call signs when initiating communication with the dispatcher. The use of the call sign allows for a brief pause so that the dispatcher can acknowledge the appropriate department member. Members initiating communication with other law enforcement or support agencies shall use their entire radio call sign, which includes the department station name or number.

802.7 AUDIO RECORDING OF RADIO AND TELEPHONE

The Communications Division will maintain a system for recording and immediate playback of all telephone and radio transmissions within the Integrated Security Response Center (ISRC). The records shall be maintained in accordance with the SF Bay Area Rapid Transit District Retention Policy, unless the communication is identified as being needed as evidence. Those recordings identified will be copied and placed into evidence. All non-evidence audio recordings will be maintained for a minimum of 90 days.

The Support Services Division Lieutenant shall assure that security measures are in place and maintained for the digital recordings referred in this section.

Review of the recordings are available for immediate review by Department personnel for business purposes. Supervisors and managers may review audio recording for purposes of quality control, evaluation and training.

External requests for copies of audio recordings from the Integrated Security Response Center shall be routed through the Communications Supervisor or his/her designee.

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802.8 VICTIM/WITNESS REQUESTS FOR INFORMATION

The following are procedures for communications personnel to respond to victim/witness requests for information and/or services to include initial and subsequent requests:

- Determine what the caller wants or is asking for.
- Advise the caller that we can either assist with the request or refer them to an outside agency.
- If their request can be handled by this agency, we will provide those services.
- If their request cannot be handled by this agency, we will transfer the caller to the appropriate agency for service.

802.9 DOCUMENTATION

It shall be the responsibility of Integrated Security Response Center to document all relevant information on calls for service or self-initiated activity. Dispatchers shall attempt to elicit, document and relay as much information as possible to enhance the safety of the member and assist in anticipating conditions that may be encountered at the scene. Desirable information would include, at a minimum:

- Incident control number.
- Date and time of request.
- Name and address of the reporting person, if possible.
- Type of incident reported.
- Involvement of weapons, drugs and/or alcohol.
- Location of incident reported.
- Identification of members assigned as primary and backup.
- Time of dispatch.
- Time of the responding member's arrival.
- Time of member's return to service.
- Disposition or status of reported incident.

802.10 CONFIDENTIALITY

Information that becomes available through Integrated Security Response Center may be confidential or sensitive in nature. All members of Integrated Security Response Center shall treat information that becomes known to them as confidential and release that information in accordance with the Protected Information Policy.

Automated data, such as Department of Motor Vehicle records, warrants, criminal history information, records of internal police files or medical information, shall only be made available to

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authorized law enforcement personnel. Prior to transmitting confidential information via the radio, an admonishment shall be made that confidential information is about to be broadcast.

802.11 TRAINING AND CERTIFICATION

Dispatchers shall receive training consistent with minimum standards established by POST (Penal Code § 13510).

Evidence Handling

803.1 COLLECTION OF EVIDENCE FROM KNOWN SOURCES

A significant degree of the value of laboratory examinations concerns the identification of substances and the comparison of these materials with materials from known sources.

Whenever such materials or substances are available, and it is legal to do so, Field Evidence Technicians may, when necessary, collect standards from known sources. After collection, these items will be appropriately packaged and booked into the BART Police Department evidence system for preservation and laboratory coordination. Materials and substances to consider collecting for comparison include:

1. Blood
2. Biological fluids
3. Hair
4. Fibers
5. Paint
6. Glass
7. Wood
8. Metal
9. Soil
10. Tools
11. Footwear

Other items not listed above may be valuable for comparison, such as non-expended ammunition, or other objects specific to each case.

803.2 TRANSPORTING EVIDENCE

When personnel process a scene, they are responsible for transporting the evidence in a safe, secure and timely manner to one of the BART Police Department facilities, while maintaining the chain of custody. The evidence will be packaged and booked into the Evidence Room or substation evidence lockers (Refer to BART PD Lexipol Policy 804 regarding proper evidence packaging).

803.3 SUBMITTING EVIDENCE TO THE LAB

The BART Police Department processes all evidence to the capability of the department. Also available are the Alameda County, Contra Costa County, San Francisco County, San Mateo County, Santa Clara County, FBI, private and the Department of Justice Criminalistics Laboratories

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Evidence Handling

Evidence Submission Responsibility - The responsibility of submitting evidence and requesting laboratory examinations lies with the Investigations Unit. Any requests must be made via a Request for Laboratory Services form. One copy of the Request for Laboratory Services form is attached to the approved report for submission to the lab.

If the evidence is to be processed by an outside laboratory, the assigned detective then completes a Physical Evidence Submission Form requesting the types of laboratory analysis necessary.

If the California Department of Justice Crime Scene Investigators or any federal crime scene investigators (i.e. FBI or ATF) assist with a crime scene, evidence may be submitted to them directly at the scene. An investigator or Field Evidence Technician must create a complete list and description of the items on a Property Receipt. The assisting agency personnel who receive the item(s) must sign the reverse side of the Property receipt. The items must also be entered in the property section of the written report as being in the possession of DOJ or the FBI, etc.

If evidence is to be sent to an outside Laboratory it should be sent with department personnel or, depending upon the evidence, can be sent via US Mail or by FedEx.

Documentation - If an outside Laboratory is to process evidence, a copy of the examination request form and a copy of the report must accompany the evidence.

Receipts for Chain of Evidence – It is the responsibility of Property/Evidence personnel to indicate the transfer of evidence from BART Police Department Evidence to any other location including to the DOJ. A receipt is given to the department transporter documenting the evidence transfer. This record will be kept in the Property/Evidence Room.

Results in Writing - All reports pertaining to the results of evidence analysis performed must be in writing. Employees must forward an original copy of this report to Records, for filing with the original reports on the offense.

Property and Evidence

804.1 PURPOSE AND SCOPE

This policy provides for the proper collection, storage, and security of evidence and other property. Additionally, this policy provides for the protection of the chain of evidence and identifies those persons authorized to remove and/or destroy property.

804.2 DEFINITIONS

Property - Includes all items of evidence, items taken for safekeeping and found property.

Evidence - Includes items taken or recovered in the course of an investigation that may be used in the prosecution of a case. This includes photographs and latent fingerprints.

Safekeeping - Includes the following types of property:

- Property obtained by the Department for safekeeping such as a firearm
- Personal property of an arrestee not taken as evidence
- Property taken for safekeeping under authority of a law (e.g., Welfare and Institutions Code § 5150 (mentally ill persons))

Found property - Includes property found by an employee or citizen that has no apparent evidentiary value and where the owner cannot be readily identified or contacted.

Found property that is not contraband and/or cash exceeding \$500 should be turned into the BART District's Lost and Found via the on-duty station agent when available.

804.3 PROPERTY HANDLING

Any employee who first comes into possession of any property shall retain such property in his/her possession until it is properly labeled and placed in the designated temporary locker or storage room. Care shall be taken to maintain the chain of custody for all evidence.

Where ownership can be established as to found property with no apparent evidentiary value, such property may be released to the owner without the need for booking. The property form (#1448) must be completed to document the release of property not booked and the owner shall sign the form acknowledging receipt of the items. Once completed, the form should be forwarded to the Records Division for filing.

804.3.1 PROPERTY BOOKING PROCEDURE

All property must be booked prior to the employee going off-duty unless otherwise approved by a supervisor. Employees booking property shall observe the following guidelines:

- (a) Complete the property module in the report writing system describing each item of property separately, listing all serial numbers, owner's name, finder's name, and other identifying information or markings.

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- (b) Place the property in the proper evidence envelope and/or container. Make sure all the data fields are completely and accurately filled out.
- (c) Print an evidence/property bar code and attach it to each package or envelope in which the property is stored.
- (d) Seal all openings with evidence tape and write your initials/badge number so it is on both the evidence container and evidence tape.
- (e) The original property form shall be submitted to the Records Division to be added to the case report.
- (f) When the property is too large to be placed in a temporary locker, the item(s) shall be brought to the Lake Merritt Police Facility and placed into one of the large item storage rooms available before the end of their shift. The officer shall note the location in the property management system.

804.3.2 NARCOTICS AND DANGEROUS DRUGS

All narcotics and dangerous drugs shall be booked separately using the specific county crime lab evidence envelopes and containers. Paraphernalia as defined by Health and Safety Code § 11364 shall also be booked separately.

The officer seizing the narcotics and dangerous drugs shall weigh and measure all drugs prior to booking the items into evidence and shall have a witnessing officer or supervisor sign off on the measurement. The narcotics and or dangerous drugs shall be placed them in the a designated temporary locker or dropped off to the county crime lab for testing. Officers will note the location in the property management system.

804.3.3 EXPLOSIVES

Officers who encounter a suspected explosive device shall promptly notify their immediate supervisor or the Watch Commander. The bomb squad will be called to handle explosive-related incidents and will be responsible for the handling, storage, sampling and disposal of all suspected explosives.

Explosives will not be retained in the police facility. Only fireworks that are considered stable and safe and road flares or similar signaling devices may be booked into property. All such items shall be stored in proper containers and in an area designated for the storage of flammable materials. The Evidence PAS/CSO is responsible for contacting to the Alameda County Sheriff's Office EOD Unit, on a regular basis, to dispose of any fireworks or signaling devices that are not retained as evidence.

804.3.4 EXCEPTIONAL HANDLING

Certain property items require a separate process. The following items shall be processed in the described manner:

- (a) Bodily fluids such as blood or semen stains shall be air dried prior to booking. Biological items requiring temperature control (refrigerated/frozen) shall be booked into the temporary fridge/freezer at the Lake Merritt Station as soon as possible. Officers shall note the location within the property management system

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- (b) License plates found not to be stolen or connected with a known crime, should be released directly to the Evidence PAS/CSO, or placed in the designated container for return to the Department of Motor Vehicles. No formal property booking process is required.
- (c) All bicycles and bicycle frames require a property record that shall include the serial number. Property tags will be securely attached to each bicycle or bicycle frame with the property bar code attached to the back of the tag. All bicycles shall be transported to the Lake Merritt Station and placed in the evidence processing room before the end of shift.
- (d) All cash shall be counted in the presence of a supervisor and/or witnessing officer and the envelope initialed by both. The Watch Commander shall be contacted for cash in excess of \$1,000 for special handling procedures.

District property, unless connected to a known criminal case, should be released directly to the appropriate District department. No formal booking is required. In cases where no responsible person can be located, the property should be booked for safekeeping in the normal manner.

804.3.5 RIGHT OF REFUSAL

The Evidence Custodian and CSO's assigned to the evidence unit have a right to refuse improperly booked evidence and safekeeping items. Those items will be placed in a refusal locker which can be opened by the booking officer via a onetime combination code provided by evidence staff. The items must be rebooked according to instructions provided by the evidence unit. The officer shall document what changes were made in a supplemental report. Once the mistakes have been corrected the items shall be placed back into a temporary storage locker for pick up.

804.3.6 RELINQUISHED FIREARMS

Individuals who relinquish firearms pursuant to the provisions of Penal Code § 29850 shall be issued a receipt that describes the firearm, the serial number or other identification of the firearm at the time of relinquishment (Penal Code § 29810).

Relinquished firearms shall be retained for 30 days, after which time they may be destroyed, retained, sold or otherwise transferred, unless (Penal Code § 29810):

- (a) A certificate is issued by a judge of a court of record or the District Attorney stating the firearms shall be retained; or
- (b) The convicted person provides written notice of an intent to appeal the conviction that necessitated the relinquishment; or
- (c) The Automated Firearms System indicates that the firearm was reported lost or stolen.
 1. In such event, the firearm shall be restored to the lawful owner as soon as it is no longer needed as evidence, the lawful owner has identified the weapon and provided proof of ownership, and the Department has complied with the requirements of Penal Code § 33850 et seq.

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The Evidence PAS/CSO shall ensure the Records Supervisor is notified of the relinquished firearm for purposes of updating the Automated Firearms System and the disposition of the firearm for purposes of notifying the California Department of Justice (DOJ) (See the Records Division Policy).

804.4 PACKAGING OF PROPERTY

Certain items require special consideration and shall be booked separately as follows:

- (a) Narcotics and dangerous drugs
- (b) Firearms (ensure they are unloaded and booked separately from ammunition)
- (c) Property with more than one known owner
- (d) Paraphernalia as described in Health and Safety Code § 11364
- (e) Fireworks
- (f) Contraband
- (g) Currency
- (h) Flammable items

804.4.1 PACKAGING CONTAINER

Employees shall package all property, except narcotics and dangerous drugs in a suitable container available for its size. Knife, guns and rifle boxes should be used to package these items. Syringe tubes should be used to package syringes and needles. Syringes may be disposed of in a red sharps container.

A property bar code tag shall be securely attached to the outside of all items taken for evidence or safekeeping.

804.4.2 PACKAGING NARCOTICS

The officer seizing narcotics and dangerous drugs shall retain such property in his/her possession until it is properly weighed, packaged, labeled, and placed in the temporary locker. Prior to packaging and if the quantity allows, a presumptive test should be made on all suspected narcotics. If conducted, the results of this test shall be included in the officer's report.

Narcotics and dangerous drugs shall be packaged in an envelope of appropriate size available in the report room. The booking officer shall initial the sealed envelope. Narcotics and dangerous drugs shall not be packaged with other property.

A completed property bar code tag shall be attached to the outside of the container. The chain of custody shall be recorded within the property management system.

804.5 RECORDING OF PROPERTY

The Evidence PAS/CSO receiving custody of evidence or property shall manage the property within the property management system which records the name of the receiver, the date and time the property was received and where the property is stored.

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A property number is assigned for each item. This number is recorded on the property bar code tag and within the property management system.

Any changes in the location of property held by the Bay Area Rapid Transit Police Department shall be noted within the property management system.

804.6 PROPERTY CONTROL

Each time the Evidence PAS/CSO receives property or releases property to another person, he/she shall enter this information in the property management system. Officers desiring property for court shall contact the Evidence PAS/CSO at least three days prior to the court day.

804.6.1 RESPONSIBILITY OF OTHER PERSONNEL

Every time property is released or received, an appropriate entry on the evidence package shall be completed to maintain the chain of custody. No property or evidence is to be released without first receiving written authorization from a supervisor or detective.

Request for analysis for items other than narcotics or drugs shall be requested by a detective who will notify the Evidence PAS/CSO. The detective is responsible for filling out all lab paperwork prior to the transport of the item to the applicable crime laboratory. This request may occur any time after booking of the property or evidence.

804.6.2 TRANSFER OF EVIDENCE TO CRIME LABORATORY

The transporting employee will check the evidence out of property, indicating the date and time in the property management system and the request for laboratory analysis.

The Evidence PAS/CSO releasing the evidence must complete the required information within the property management system and the chain of custody found on the evidence packaging. The lab forms, if required, will be transported with the property to the examining laboratory. Upon delivering the item involved, the Evidence PAS/CSO will record the delivery time within the evidence management system and the chain of custody found on the evidence packaging. The Evidence PAS/CSO will indicate the locker in which the item was placed or the employee to whom it was delivered. The original copy of the lab form will remain with the evidence and the copy will be returned to the Records Division for filing with the case.

804.6.3 STATUS OF PROPERTY

Each person receiving property will make the appropriate entry to document the chain of custody. Temporary release of property to officers for investigative purposes, or for court, shall be noted within the property management system and the chain of custody found on the envelopes and/or containers, stating the date, time and to whom released.

The Evidence PAS/CSO shall obtain the signature of the person to whom property is released, and the reason for release. Any employee receiving property shall be responsible for such property until it is properly returned to property or properly released to another authorized person or entity.

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The return of the property should be recorded in the property management system, indicating date, time, and the person who returned the property.

804.6.4 AUTHORITY TO RELEASE PROPERTY

The Criminal Investigations Division shall authorize the disposition or release of all evidence and property coming into the care and custody of the Department.

804.6.5 RELEASE OF PROPERTY

All reasonable attempts shall be made to identify the rightful owner of found property or evidence not needed for an investigation.

Release of property shall be made upon receipt of an authorized release form, listing the name and address of the person to whom the property is to be released. The release authorization shall be signed by the authorizing supervisor or detective and must conform to the items listed on the property form or must specify the specific item(s) to be released. Release of all property shall be documented on the property form.

With the exception of firearms and other property specifically regulated by statute, found property and property held for safekeeping shall be held for a minimum of 60 days. During such period, property personnel shall attempt to contact the rightful owner by telephone and/or mail when sufficient identifying information is available. Property not held for any other purpose and not claimed within 60 days after notification (or receipt, if notification is not feasible) may be auctioned to the highest bidder at a properly published public auction. If such property is not sold at auction or otherwise lawfully claimed, it may thereafter be destroyed (Civil Code § 2080.6). The final disposition of all such property shall be fully documented in related reports.

An Evidence PAS/CSO shall release the property upon proper identification being presented by the owner for which an authorized release has been received. A signature of the person receiving the property shall be recorded on the original property release form. After release of all property entered on the property release form, the form shall be forwarded to the Records Division for filing with the case. All property releases shall be documented within the property management system.

Under no circumstances shall any firearm, magazine, or ammunition be returned to any individual unless and until such person presents valid identification and written notification from the California Department of Justice that conforms to the provisions of Penal Code § 33865.

The Property and Evidence Section Supervisor should also make reasonable efforts to determine whether the person is the subject of any court order preventing the person from possessing a firearm and, if so, the firearm should not be released to the person while the order is in effect.

The Department is not required to retain any firearm, magazine, or ammunition longer than 180 days after notice has been provided to the owner that such items are available for return. At the expiration of such period, the firearm, magazine, or ammunition may be processed for disposal in accordance with applicable law (Penal Code § 33875).

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804.6.6 DISPUTED CLAIMS TO PROPERTY

Occasionally more than one party may claim an interest in property being held by the Department, and the legal rights of the parties cannot be clearly established. Such property shall not be released until one party has obtained a valid court order or other undisputed right to the involved property.

All parties should be advised that their claims are civil and in extreme situations, legal counsel for the Department may wish to file an interpleader to resolve the disputed claim (Code of Civil Procedure § 386(b)).

804.6.7 CONTROL OF NARCOTICS AND DANGEROUS DRUGS

The Support Services Bureau will be responsible for the storage, control and destruction of all narcotics and dangerous drugs coming into the custody of this department, including paraphernalia as described in Health and Safety Code § 11364.

804.6.8 RELEASE OF FIREARM IN DOMESTIC VIOLENCE MATTERS

Within five days of the expiration of a restraining order issued in a domestic violence matter that required the relinquishment of a firearm, the Evidence PAS/CSO shall return the weapon to the owner if the requirements of Penal Code § 33850 and Penal Code § 33855 are met unless the firearm is determined to be stolen, evidence in a criminal investigation or the individual is otherwise prohibited from possessing a firearm (Family Code § 6389(g); Penal Code § 33855).

804.6.9 RELEASE OF FIREARMS AND WEAPONS IN MENTAL ILLNESS MATTERS

Firearms and other deadly weapons confiscated from an individual detained for an evaluation by a mental health professional or subject to the provisions of Welfare and Institutions Code § 8100 or Welfare and Institutions Code § 8103 shall be released or disposed of as follows:

- (a) If a petition for a hearing regarding the return of a firearm or a weapon has been initiated pursuant to Welfare and Institutions Code § 8102(c), the firearm or weapon shall be released or disposed of as provided by an order of the court. If the court orders a firearm returned, the firearm shall not be returned unless and until the person presents valid identification and written notification from the California Department of Justice (DOJ) that conforms to the provisions of Penal Code § 33865.
- (b) If no petition has been initiated pursuant to Welfare and Institutions Code § 8102(c) and the firearm or weapon is not retained as evidence, the Department shall make the firearm or weapon available for return. No firearm will be returned unless and until the person presents valid identification and written notification from the California DOJ that conforms to the provisions of Penal Code § 33865.
- (c) Unless the person contacts the Department to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Penal Code § 33870, firearms not returned should be sold, transferred, destroyed, or retained as provided in Welfare and Institutions Code § 8102.

804.6.10 RELEASE OF FIREARMS IN GUN VIOLENCE RESTRAINING ORDER MATTERS

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

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the order and in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18120).

If the restrained person who owns the firearms or ammunition does not wish to have the firearm or ammunition returned, he/she is entitled to sell or transfer title to a licensed dealer, provided that the firearms or ammunition are legal to own or possess and the restrained person has right to title of the firearms or ammunition (Penal Code § 18120).

If a person other than the restrained person claims title to the firearms or ammunition surrendered pursuant to Penal Code § 18120 and the Bay Area Rapid Transit Police Department determines him/her to be the lawful owner, the firearms or ammunition shall be returned in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18120).

Firearms and ammunition that are not claimed are subject to the requirements of Penal Code § 34000.

804.6.11 RELEASE OF FIREARMS, MAGAZINES, AND AMMUNITION

The Department shall not return any firearm, magazine, or ammunition taken into custody to any individual unless all requirements of Penal Code § 33855 are met.

804.7 DISPOSITION OF PROPERTY

All property not held for evidence in a pending criminal investigation or proceeding, and held for six months or longer where the owner has not been located or fails to claim the property, may be disposed of in compliance with existing laws upon receipt of proper authorization for disposal. The Evidence PAS/CSO shall request a disposition or status on all property which has been held in excess of 120 days, and for which no disposition has been received from a supervisor or detective.

804.7.1 EXCEPTIONAL DISPOSITIONS

The following types of property shall be destroyed or disposed of in the manner, and at the time prescribed by law, unless a different disposition is ordered by a court of competent jurisdiction:

- Weapons declared by law to be nuisances (Penal Code § 29300; Penal Code § 18010; Penal Code § 32750)
- Animals, birds, and related equipment that have been ordered forfeited by the court (Penal Code § 599a)
- Counterfeiting equipment (Penal Code § 480)
- Gaming devices (Penal Code § 335a)
- Obscene matter ordered to be destroyed by the court (Penal Code § 312)
- Altered vehicles or component parts (Vehicle Code § 10751)
- Narcotics (Health and Safety Code § 11474 et seq.)
- Unclaimed, stolen, or embezzled property (Penal Code § 1411)
- Destructive devices (Penal Code § 19000)

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- Sexual assault evidence (Penal Code § 680)

804.7.2 UNCLAIMED MONEY

If found or seized money is no longer required as evidence and remains unclaimed after three years, the Department shall cause a notice to be published each week for a period of two consecutive weeks in a local newspaper of general circulation (Government Code § 50050). Such notice shall state the amount of money, the fund in which it is held and that the money will become the property of the agency on a designated date not less than 45 days and not more than 60 days after the first publication (Government Code § 50051).

Any individual item with a value of less than \$15.00, or any amount if the depositor/owner's name is unknown, which remains unclaimed for a year or by order of the court, may be transferred to the general fund without the necessity of public notice (Government Code § 50055).

If the money remains unclaimed as of the date designated in the published notice, the money will become the property of this department to fund official law enforcement operations. Money representing restitution collected on behalf of victims shall either be deposited into the Restitution Fund or used for purposes of victim services.

804.7.3 RETENTION OF BIOLOGICAL EVIDENCE

The Property and Evidence Section Supervisor shall ensure that no biological evidence held by the Department is destroyed without adequate notification to the following persons, when applicable:

- (a) The defendant
- (b) The defendant's attorney
- (c) The appropriate prosecutor and Attorney General
- (d) Any sexual assault victim
- (e) The Criminal Investigations Bureau supervisor

Biological evidence shall be retained for either a minimum period that has been established by law (Penal Code § 1417.9) or that has been established by the Property and Evidence Section Supervisor, or until the expiration of any imposed sentence that is related to the evidence, whichever time period is greater. Following the retention period, notifications should be made by certified mail and should inform the recipient that the evidence will be destroyed after a date specified in the notice unless a motion seeking an order to retain the sample is filed and served on the Department within 180 days of the date of the notification. A record of all certified mail receipts shall be retained in the appropriate file. Any objection to, or motion regarding, the destruction of the biological evidence should be retained in the appropriate file and a copy forwarded to the Criminal Investigations Bureau supervisor.

Biological evidence related to a homicide shall be retained indefinitely and may only be destroyed with the written approval of the Chief of Police and the head of the applicable prosecutor's office.

Biological evidence or other crime scene evidence from an unsolved sexual assault should not be disposed of prior to expiration of the statute of limitations and shall be retained as required

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in Penal Code § 680. Even after expiration of an applicable statute of limitations, the Criminal Investigations Bureau supervisor should be consulted and the sexual assault victim shall be notified at least 60 days prior to the disposal (Penal Code § 680). Reasons for not analyzing biological evidence shall be documented in writing (Penal Code § 680.3).

804.8 INSPECTIONS OF THE EVIDENCE ROOM

- (a) On a semi-annual basis, the supervisor of the evidence custodian shall make an inspection of the evidence storage facilities and practices to ensure adherence to appropriate policies and procedures.
- (b) Unannounced inspections of evidence storage areas shall be conducted annually as directed by the Chief of Police.
- (c) An annual audit of evidence held by the Department shall be conducted by a Division Commander (as appointed by the Chief of Police) not routinely or directly connected with evidence control.
- (d) Whenever a change is made in personnel who have access to the evidence room, an inventory of all evidence/property shall be made by an individual not associated to the property room or function to ensure that records are correct and all evidence property is accounted for.

Field Collection and Preservation of Evidence

805.1 PURPOSE AND SCOPE

The procedure provides for the proper collection and preservation of evidence in the field. The protection of the crime scene, the investigation of the crime, and the prosecution of offenders require that information about the crime be obtained through the application of scientific methods.

805.2 CRIME SCENE RESPONSIBILITY

The first officer on the scene is responsible for the initial securing and protection of the crime scene including preservation of evidence. The officer will call others to assist as needed, however, responsibility for the scene remains with the officer who is assigned the call until a supervisor or investigator assumes responsibility.

The patrol supervisor and/or watch commander must decide whether field personnel are to be responsible for the processing of an extraordinary crime scene or if detectives will be called out. When deciding the need, supervisors should consider the seriousness of the offense, the existence of complex evidence, and the condition of the scene. As a guide, patrol officers should collect all evidentiary items for crimes, except for those listed:

1. Murder
2. Kidnapping
3. Rape
4. Suspicious deaths
5. Attempted Murders/Serious Assaults

However, in the case of the transient evidence which would otherwise be lost, patrol officers may be required to collect/protect evidentiary items for all cases. In these cases, the officer should consult with their supervisor. For the indicated crimes, the Watch Commander should call the on-call detective and Field Evidence Technician (FET) for response to the major crime scenes. The Watch Commander or the detective may initiate the call-out of the Field Evidence Technicians. FETs or detectives should collect or direct the collection of all evidentiary items for scenes in which they are called to.

For homicide scenes, Alameda, Contra Costa, San Francisco, San Mateo or Santa Clara County Crime Lab personnel may be summoned. The resources of the Federal Bureau of Investigation should be used for crimes such as kidnapping or where suspect interstate flight is suspected. The request should come from the Investigations Unit.

If a detective takes over the investigation of the scene, he or she has the authority of the management of the crime scene. The detective should assign, direct and manage crime scene personnel as he or she deems appropriate.

Crime Scene Protection

A secured crime scene area should be surrounded with yellow crime scene tape.

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Crime Scene Log

No one should enter the crime scene unless they have an official purpose to be there. All persons entering the crime scene must check in and out with the crime scene scribe designated by the officer/supervisor in charge of the crime scene. The scribe will broadcast his/her location so that officers can check in prior to entering the crime scene. Only officers involved in the investigation may enter the crime scene for official purposes. The scribe's crime scene log shall contain the rank, name, star number, entry time and exit time of those entering/exiting the crime scene. Police personnel entering the crime scene may be required to complete a written report. All personnel shall complete a supplement report upon exiting officer involved shooting scenes and homicides.

The officer/supervisor in charge of the scene shall ensure the crime scene is secure by assigning and may use uniformed personnel to accomplish this objective. Once a complex crime scene is secured, there are several component steps used for the processing of a crime scene.

Organize and Search

The detective and FET will organize a systematic and thorough search of the crime scene for any and all evidence.

Record

The crime scene shall be properly recorded. There are several recording methods:

1. Photography - photographs taken at any crime scene should be taken in the following sequence prior to any evidence collection or processing:
 - (a) Taken from general to specific to include overall photos.
 - (b) Subject material from various angles
 - (c) If possible, photos or video of scene should be taken from the vantage point of witnesses.
 - (d) Any photograph requiring a scale should be duplicated with and without scale
2. Video procedures should be the same as for still photography.
3. Crime scene sketching and diagramming – When a sketch or diagram is made at a crime scene, the following elements should be included in the sketch:
 - (a) Name of the person preparing the sketch
 - (b) Date of preparation
 - (c) Complete address or description of location, including floor or room number, as appropriate
 - (d) Relation of scene to buildings, geographical features or roads
 - (e) Dimensions
 - (f) Direction of magnetic north
 - (g) “Not to scale” notation on sketches that are not to scale
 - (h) Diagrams that are to scale should include the scale in bar form showing the distance and what that distance represents

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- (i) Evidence locations
 - (j) Completion of a log identifying items of evidence noted on the sketch.
4. Latent print recovery - The Field Evidence Technician will use the appropriate methods to develop latent prints. After latent impressions are developed, it is at the Field Evidence Technician's discretion to photograph prior to lifting the obtainable prints. The latent print cards will be booked as evidence. Elimination prints will be taken from owners/victims connected to the property and the cards booked as evidence.

Marking of Evidence

The actual physical evidence collected by investigators and Field Evidence Technicians should not be marked or altered in any way.

Collection of Evidence

The investigator or Field Evidence Technician responsible for the collection of evidence will use the proper packaging container as per their training. Consideration of the evidence, e.g., volatile, biological, or fluid, is essential.

The investigator or Field Evidence Technician will seal the evidence in a proper container with red evidence tape, placing his/her mark and date on the seal. The preservation of the condition of the evidence and prevention of contamination are the utmost importance. A property bar-code label will be securely attached to the container prior to evidence being booked into the property and evidence room. The integrity of the chain of custody must be maintained and all evidence shall be booked as soon as practical in during the course of the investigation.

805.3 IN-FIELD PROCESSING - SPECIAL CONSIDERATIONS

Weapons and explosives are items that shall be considered as "special", i.e., they require unique handling.

Weapons

Firearms shall be rendered safe and placed into a firearms box if possible. Nothing should be placed into the barrel of a firearm, or the firing chamber. **Always treat any firearm as if it is loaded. If you are not familiar with the firearm, find an officer who is - prior to unloading. Use extreme care while unloading the firearm to preserve fragile trace evidence.** Extreme care should also be taken during transport of the firearm to preserve trace evidence. Knives should be placed into a knife box.

Explosives or Hazardous Materials

Limited amounts of volatile fluid of evidential value may be collected in a metal or glass container and then booked into a hazardous materials evidence container. Other hazardous materials such as chemicals, biological specimens, nuclear material, or other unsafe matter will be photographed and disposed of according to applicable law. Non-evidentiary items will be disposed of according to BART PD hazardous materials policy (Policy 412).

All evidence and property should be properly packaged to protect it from contamination, alteration, destruction or damage.

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805.4 EVIDENCE COLLECTION

All items of evidence collected at a crime scene will be documented on a Property/Evidence Report. The report should include, when applicable:

1. Brand
2. Model
3. Identifying numbers such as serial numbers
4. Location obtained from
5. Received from whom
6. A thorough description of the evidence, such as size, color, special markings, etc.

805.5 TRANSFER OF EVIDENCE

If evidence is transferred from one person to another prior to the booking of evidence, the transfer must be documented as part of the chain of custody. In such cases, the following shall be documented:

1. Date and time of transfer
2. Releasing person's name
3. Reason for transfer
4. Accepting person's name

Any evidence items which require processing by an investigative laboratory shall first be booked into BART PD property and evidence room. Requests for laboratory processing will be made by the investigations unit. The only exception to this will be if an outside Crime Scene Investigations Unit (FBI, DOJ, ATF) is on scene working with the Investigations Unit, evidence may be submitted to them directly.

805.6 CRIME SCENE AND EVIDENTIARY PHOTOGRAPHY

Photographs should be taken from general to specific. Some photographs may be taken by the responding patrol officer; others during the "walk through" of the scene by the detective or field evidence technician. More photographs may be taken prior to booking evidence when the items can be placed on a table.

Photographs need to be taken so they depict the overall scene, the approach to evidence and areas of interest, and close up. These photographs shall be, if feasible to do so, taken prior to any alteration of the crime scene due to evidence collection. It is the responsibility of the detective or the field evidence technician to photograph crime scenes by use of a digital camera, and/or video camera, for the types of crimes listed below. Digital evidence will then be uploaded into Evidence.com for storage and assigned the category labeled, "Video held."

1. Kidnapping
2. Murder

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3. Rape
4. Suspicious deaths

805.6.1 INFORMATION TO BE RECORDED

The following should be documented when photographic evidence is recorded:

1. Date
2. Location
3. Equipment used

805.7 VIDEO CAMERAS

If a video camera is used, the procedures are the same as taking still digital photos. The videotape or CD is booked as evidence using the standard evidence booking procedures. An audio plug should be used to prevent audio from recording; however, the field evidence technician or detective may elect to provide a narration of the scene as the video is recording.

805.8 FINGERPRINTS

The two fundamental forms of fingerprint evidence are:

Latent – not readily visible deposits of oil, salt, water, etc., on a surface, and

Patents – an impression visible to the naked eye

The use of powders and chemicals constitute a potential safety hazard to the FET. A respiratory mask should always be used when working with powders of any kind.

Fingerprint evidence can be processed in the field or in the lab. The procedures to use in the field are:

1. Powders – Fingerprints on smooth, non-porous surfaces can usually be developed with latent powders. In some cases, a magnetic brush and magnetic powder may be easier to work with. The FET should rely on their training and experience in choosing the type of powder to use in the processing.
2. Handling – To prevent contamination always use gloves when processing a crime scene.
3. Processing and developing – The fingerprint brush should be clean and free from debris. The brush should be swirled to remove excess powder, then lightly dipped into the powder, and swirled again before being lightly applied to the surface in a gentle circular motion. Once the latent becomes visible, the print should be dusted in the direction of the ridges until the print is as visible as possible. Avoid over dusting.
4. Lifting – Using fingerprint tape, release an adequate length of tape from the roll. Using a finger place the tape down to cover the entire print. The tape should be rubbed to remove any air bubbles. If the tape can be lifted, it should be placed on a latent card. If the tape cannot be removed without destroying the print, the entire item should be

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collected. If the item cannot be collected, the print should be photographed with a 1:1 ratio.

5. Labeling – The employee must complete the following information on the latent fingerprint card:
 - (a) Location of Lift or where print is lifted from
 - (b) Date/Time of Lift
 - (c) Processor's name and badge number
 - (d) Sketch of object and orientation of latent print
 - (e) Crime code or classification
 - (f) Case number
6. Storage of prints – If the print is associated with a Contra Costa County case, the print shall be placed in a fingerprint evidence envelope. The requested information shall be filled out and the chain of custody signed. Latent fingerprint cards from Contra Costa County are booked into evidence in the Contra Costa County white fingerprint envelope. Latent fingerprint cards from Alameda County, San Francisco County, San Mateo County and Santa Clara County are placed into BART PD manila evidence envelopes and booked into evidence.

If additional processing is warranted, the detectives will forward the latent prints to the appropriate crime lab.

Elimination prints are fingerprints taken from known individuals using an Elimination Fingerprint Kit. They can be taken at the crime scene or taken at a later time. Elimination prints are generally associated with a specific case and booked as evidence using the standard evidence booking procedures.

805.9 CRIME SCENE PROCESSING EQUIPMENT

Crime scene processing equipment is issued to field evidence technicians who have attended the 80-hour Evidence Technician course.

805.10 RECOVERY OF LATENT FINGERPRINTS

Every patrol vehicle is issued a fingerprint kit as a part of their equipment. The fingerprint kit consists of fingerprint cards, adhesive tape, a brush, and black powder. The fingerprint kit is re-supplied by the Property & Evidence Specialist or Property Clerk upon request by the officer.

805.11 PHOTOGRAPHY

Patrol officers are assigned a digital camera as part of their equipment. It should remain on their person for use during their shift. In the event a camera is damaged or lost, the Officer responsible for the camera should report the damage or loss to their immediate supervisor by means of a memo. The supervisor can request that the camera be replaced or repaired through the Administration Division.

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805.12 SKETCH OF THE SCENE

The FET assigned to the investigation should use their discretion in determining whether or not a sketch of the crime scene should be done keeping in mind the goal of prosecuting the offenders. A sketch is a rough drawing representing the chief features of an object or scene as a preliminary study that can be done on graph paper. Pads of graph paper can be obtained in the evidence booking room.

805.13 COLLECTION AND PRESERVATION OF EVIDENCE

The FET is responsible for using the appropriate packaging materials when collecting evidence. These materials include paper bags of various sizes, plastic containers with lids of various sizes, red evidence tape, and marking pens. Replacement evidence collection items are located in the evidence booking room. Additional items can be requested through the FET coordinator.

805.14 COMPUTER AND OTHER DEVICE SEIZURE

When the need arises to collect and store computer equipment and/or other devices capable of storing data in an electronic format, as evidence, a specialist may be notified. Officers working at the direction of trained personnel must properly collect computer equipment, data storage devices, and related apparatus to ensure that actions taken should not add, modify, or destroy data. It is important that officers protect the area and consider possible fingerprints and/or other evidence.

Collection

All collected electronic evidence will be properly documented. If the computer or device is on, leave it on. If the computer or device is off, leave it off. Photograph the entire scene including the front of the screen and record displayed information if applicable. Identify telephone lines attached to devices such as modems and caller ID boxes. Label each telephone line from the walls if possible.

Label, photograph and inventory all electronic evidence including cables prior to disconnect to allow for later reassembly. Consider and properly package for possible latent analysis. If the computer or device is on, remove the power source cable from the computer or device, not from the wall outlet. Remove any portable storage devices from the system, package and label properly. Pack magnetic media in antistatic packaging (paper or antistatic plastic bags). Keep electronic evidence away from magnetic sources, radio transmitters, and speaker magnets. These sources are examples of items that can damage electronic evidence.

Transportation- Maintain the chain of custody on all evidence transported. Transport away from any other electronic devices. Be mindful of patrol car mobile computers, cellular phones, modems, etc.

Other Considerations- Potential evidence such as dates, times and system configurations can be lost as a result of prolonged storage; therefore, investigations personnel should be informed that a device powered by batteries is in need of immediate attention.

Only personnel who have been trained in Computer Forensics should examine and extract data on a seized computer or electronic device.

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805.15 REPORTING OF PROCESSING A CRIME SCENE/TRAFFIC COLLISION

It is the responsibility of any personnel who process a crime scene or traffic collision scene for investigative purposes to submit a complete report on the sequence of events associated with his/her scene investigation. The reports must contain the following information:

1. Date and time of occurrence
2. Date and time of arrival at scene
3. Location
4. Victim's name (if known)
5. Suspect's name (if known)
6. Actions taken at the scene including photography, video, etc.
7. Whether measurements were made
8. List of physical evidence recovered

If an investigator or field evidence technician is summoned to the scene, he/she should write a supplemental report. The report will document actions taken including:

1. The date and time of the call-out
2. Any additional collection and/or disposition of evidence
3. Any measurements taken.

Investigations of traffic collisions will be conducted and recorded consistent with the California Highway Patrol's Collision Investigation Manual (CIM). Refer to the CIM for specific report details.

805.16 DNA EVIDENCE COLLECTION

DNA is contained in blood, semen, skin cells, tissue, organs, muscle, brain cells, bone, teeth, hair, saliva, mucus, perspiration, fingernails, urine, feces, etc.

The first officer on the scene where DNA Evidence may be a factor is responsible for the initial securing and protection of the crime scene including preservation of DNA evidence. The officer will call others to assist as needed, however, responsibility for the scene remains with the officer who is assigned the call until a supervisor or investigator assumes responsibility.

Every officer should be aware of important issues involved in the identification, collection, transportation, and storage of DNA evidence. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary. Evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his or her mouth, nose or other part of the face and then touches the area of the evidence containing the DNA.

Crime Scene(s) which require the collection of DNA evidence should be recovered and collected by a Field Evidence Technician. Field Evidence Technicians will refer to their specialized training regarding the proper techniques for collection of DNA evidence.

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Patrol Officers who are collecting DNA evidence will refer to their continued professional training for proper techniques regarding the collection of DNA evidence.

Procedures for Collection, Storage, and Transportation of DNA Evidence – DNA evidence should be collected in accordance with these procedures.

Contamination

The use of Polymerase chain reaction techniques by the lab in DNA typing requires extra precautions. To avoid contamination of evidence that may contain DNA, collectors should take the following precautions:

1. Wear gloves and change them between sample collections.
2. Use disposable instruments.
3. Avoid touching the area where DNA may exist.
4. Avoid talking, sneezing, and coughing over evidence.
5. Avoid touching of the face, nose, and mouth when collecting and packaging evidence.
6. Air-dry evidence thoroughly before packaging.
7. Put evidence into new paper bags or envelopes, not into plastic bags.

Controls

Anytime a swab is taken of suspected DNA evidence, a control sample needs to be taken. The control should be taken from an area where DNA is not suspected to be located. Control swabs are to be treated the same as evidence swabs.

Collection

Properly collected and preserved evidence can establish a strong link between an individual and a criminal act. Procedures for collection of DNA evidence vary somewhat, but the common rule is not to use plastic containers for storage. The use of paper bags or envelopes is required for long term storage. However, saturated bloody items may be transported in plastic bags to the evidence room where the items can be dried.

Blood on a Person

1. Wet blood
 - (a) Absorb suspected liquid blood onto a clean swab.
 - (b) Using a second swab, swab an unstained area as a control.
 - (c) Air-dry the swabs and pack in the storage containers that come with the swabs. Be sure to mark the evidence number, date, time of collection, and the collector's name on the container.
 - (d) Package in paper envelopes and place in evidence freezer.
2. Dried blood-Absorb
 - (a) Absorb suspected dried blood onto a clean swab moistened with distilled water.

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- (b) Using a second swab moistened with distilled water, swab an unstained area as a control.
- (c) Air-dry the swabs and pack in the storage containers that come with the swabs. Be sure to mark the evidence number, date, time of collection, and the collector's name on the container.
- (d) Package in paper envelopes and place into evidence freezer.

Bloodstains

1. Moveable objects
 - (a) Wrap dried bloodstained garments in clean paper.
 - (b) Do not place wet or dried garments in plastic or airtight containers, other than for immediate transport to the property and evidence room.
 - (c) Place all debris or residue from the garments in an evidence envelope.
 - (d) Avoid creating additional stain patterns during drying and packaging, i.e., try not to fold wet items over onto themselves.
 - (e) Pack in clean paper.
 - (f) Package in paper envelopes and place into evidence freezer.
2. Immovable objects
 - (a) Sample that can be removed
 1. Cut a large sample of suspected bloodstains from immovable objects with a clean, sharp instrument.
 2. Collect an unstained control sample.
 3. Pack to prevent stain removal by abrasive action during shipping.
 4. Pack in clean paper.
 5. Package in paper envelopes and place into evidence freezer.
 - (b) Sample that can not be removed.
 - (a) Absorb suspected dried bloodstains on immovable objects onto a clean swab moistened with distilled water.
 - (b) Using a second swab moistened with distilled water, swab an unstained area as a control.
 - (c) Air-dry the swabs and pack in the storage containers that come with the swabs. Be sure to mark the evidence number, date, time of collection, and the collector's name on the container.
 - (d) Package in paper envelopes and place into evidence freezer.

Semen and Semen Stains

1. Liquid semen

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- (a) Absorb suspected liquid semen onto a clean swab.
 - (b) Using a second swab, swab an unstained area as a control.
 - (c) Air-dry the swabs and pack in the storage containers that come with the swabs. Be sure to mark the evidence number, date, time of collection, and the collector's name on the container.
 - (d) Package in paper envelopes and place into evidence freezer.
2. Dry semen
 - (a) Absorb suspected dried semen stains on immovable objects onto a clean cotton cloth or swab moistened with distilled water.
 - (b) Using a second swab moistened with distilled water, swab an unstained area as a control.
 - (c) Air-dry the swabs and pack in the storage containers that come with the swabs. Be sure to mark the evidence number, date, time of collection, and the collector's name on the container.
 - (d) Package in paper envelopes and place into evidence freezer.

Saliva and Urine

1. Liquid Saliva and Urine
 - (a) Absorb suspected liquid saliva or urine onto a clean swab.
 - (b) Using a second swab, swab an unstained area as a control.
 - (c) Air-dry the swabs and pack in the storage containers that come with the swabs. Be sure to mark the evidence number, date, time of collection, and the collector's name on the container.
 - (d) Package in paper envelopes and place into evidence freezer.
2. Dry Saliva and Urine
 - (a) Submit suspected small, dry saliva-or urine-stained objects by packing to prevent stain removal by abrasive action during shipping.
 - (b) Pack in clean paper or an evidence envelope.
 - (c) Package in paper envelopes and place into evidence freezer.

Hair

1. Pick up hair carefully with clean forceps to prevent damaging the root tissue.
2. Air-dry hair mixed with suspected body fluids.
3. Package each group of hair separately in clean paper and an evidence envelope.
4. Package in paper.

Transportation and storage - Once DNA evidence has been secured in paper bags or envelopes, it must be sealed, labeled, and transported in a way that ensures proper identification of where

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it was found and the proper chain of custody. During subsequent transportation and storage, the evidence that may contain DNA must be kept dry and at room temperature or be frozen.

DNA evidence should not be stored in plastic bags because plastic bags will retain damaging moisture. Direct sunlight and warmer conditions also may be harmful to DNA. Avoid keeping evidence in places that may get hot, such as a room or police car without air conditioning.

Procedures for the Submission of DNA Evidence to the DOJ Laboratory

The responsibility for submitting DNA evidence and requesting laboratory examinations lies with the BART PD investigations unit.

The detectives are responsible for submitting a CL-010 for Contra Costa County or an Alameda County, San Francisco County, San Mateo County or Santa Clara County "Request for Crime Lab Services" form.

It is the responsibility of the Investigations Unit to review cases that require accredited DNA Laboratory forensic services. If additional types of laboratory analysis are necessary, or new or additional evidence becomes available, the investigator must submit a new request to the Property and Evidence Specialist concerning the additional analysis.

The Alameda County, Contra Costa County, San Francisco County, San Mateo County and Santa Clara County crime laboratories provide written reports pertaining to the results of all evidence analysis they perform. The report must be forwarded to Records for filing with the original crime reports. A copy must also be sent to the Investigations Unit.

Records Division

806.1 PURPOSE AND SCOPE

This policy establishes the guidelines for the operational functions of the Bay Area Rapid Transit Police Department Records Division. The policy addresses department file access and internal requests for case reports.

806.1.1 NUMERICAL FILING SYSTEM

Case reports are filed numerically within the Records Management system.

Reports are numbered commencing with month and date of the current year followed by a sequential number beginning with 00001 starting at midnight on the first day of January of each year. As an example, case number 0110-00001 would be the first new case beginning January 1, 2010.

806.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to maintain department records securely, professionally, and efficiently. The BART Police Department maintains a secure Records Management system accessible to authorized personnel 24-hours a day.

806.3 RESPONSIBILITIES

806.3.1 RECORDS SUPERVISOR

The Chief of Police shall appoint and delegate certain responsibilities to a Records Supervisor. The Records Supervisor shall be directly responsible to the Support Services Division Commander or the authorized designee.

The responsibilities of the Records Supervisor include but are not limited to:

- (a) Overseeing the efficient and effective operation of the Records Division.
- (b) Scheduling and maintaining Records Division time records.
- (c) Supervising, training, and evaluating Records Division staff.
- (d) Maintaining and updating a Records Division procedure manual.
- (e) Ensuring compliance with established policies and procedures.
- (f) Supervising the access, use, and release of protected information (see the Protected Information Policy).
- (g) Establishing security and access protocols for case reports designated as sensitive, where additional restrictions to access have been implemented. Sensitive reports may include but are not limited to:
 1. Homicides.
 2. Cases involving department members or public officials.
 3. Any case where restricted access is prudent.

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806.3.2 RECORDS DIVISION

The responsibilities of the Records Division include but are not limited to:

- (a) Maintaining a records management system for case reports.
 - 1. The records management system should include a process for numbering, identifying, tracking, and retrieving case reports.
- (b) Entering case report information into the records management system.
 - 1. Modification of case reports shall only be made when authorized by a supervisor.
- (c) Providing members of the Department with access to case reports when needed for investigation or court proceedings.
- (d) Maintaining compliance with federal, state, and local regulations regarding reporting requirements of crime statistics. This includes reporting statistical data to the California Department of Justice (DOJ) for:
 - 1. All officer-involved shootings and incidents involving use of force resulting in serious bodily injury (Government Code § 12525.2).
 - 2. Suspected hate crimes (Penal Code § 13023).
 - 3. Complaints of racial bias against officers (Penal Code § 13012; Penal Code § 13020).
 - 4. Civilian complaints made against officers (Penal Code § 832.5; Penal Code § 13012).
 - 5. Stop data required by Government Code § 12525.5 and 11 CCR 999.226.
 - (a) The reported information must not contain personally identifiable information of the person stopped or other information exempt from disclosure pursuant to Government Code § 12525.5 (11 CCR 999.228).
- (e) Maintaining compliance with federal, state, and local regulations regarding criminal history reports and auditing.
- (f) Identifying missing case reports and notifying the responsible member's supervisor.
- (g) Updating the Automated Firearms System to reflect any firearms relinquished to the Department and the subsequent disposition to the DOJ pursuant to Penal Code § 34010 (Penal Code § 29810).
- (h) Entering into the Automated Firearms System information about each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, or under observation within seven calendar days of the precipitating event (Penal Code § 11108.2).
- (i) Maintaining compliance with the state and DOJ reporting requirements regarding the number of transfers of individuals to immigration authorities and offenses that allowed for the transfers (Government Code § 7284.6(c)(2)).
- (j) Transmitting data to the Joint Regional Information Exchange System on any suspected multi-mission extremist crimes.

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Records Division

806.4 DETERMINATION OF FACTUAL INNOCENCE

In any case where a person has been arrested by officers of the Bay Area Rapid Transit Police Department and no accusatory pleading has been filed, the person arrested may petition the Department to destroy the related arrest records. Petitions should be forwarded to the Support Services Supervisor. The Support Services Supervisor should promptly contact the prosecuting attorney and request a written opinion as to whether the petitioner is factually innocent of the charges (Penal Code § 851.8). Factual innocence means the accused person did not commit the crime.

Upon receipt of a written opinion from the prosecuting attorney affirming factual innocence, the Support Services Supervisor should forward the petition to the Criminal Investigations Division Supervisor and the General Counsel for review. After such review and consultation with the General Counsel, the Criminal Investigations Division Supervisor and the Support Services Supervisor shall decide whether a finding of factual innocence is appropriate.

Upon determination that a finding of factual innocence is appropriate, the Support Services Supervisor shall ensure that the arrest record and petition are sealed for later destruction and the required notifications are made to the California DOJ and other law enforcement agencies (Penal Code § 851.8).

The Support Services Supervisor should respond to a petition with the Department's decision within 45 days of receipt. Responses should include only the decision of the Department, not an explanation of the analysis leading to the decision.

806.5 CONFIDENTIALITY

Records Division staff has access to information that may be confidential or sensitive in nature. Records Division staff shall not access, view, or distribute, or allow anyone else to access, view, or distribute any record, file, or report, whether in hard copy or electronic file format, or any other confidential, protected, or sensitive information except in accordance with the Records Maintenance and Release and Protected Information policies and the Records Division procedure manual.

806.6 ARREST WITHOUT FILING OF ACCUSATORY PLEADING

The Operations Division Commander should ensure a process is in place for when an individual is arrested and released and no accusatory pleading is filed so that the following occurs (Penal Code § 849.5; Penal Code § 851.6):

- (a) The individual is issued a certificate describing the action as a detention.
- (b) All references to an arrest are deleted from the arrest records of the Department and the record reflects only a detention.
- (c) The California DOJ is notified.

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Records Division

806.7 FILE ACCESS AND SECURITY

The security of files in the Records Division must be a high priority and shall be maintained as mandated by state or federal law. All case reports including but not limited to initial, supplemental, follow-up, evidence, and any other reports related to a police department case, including field interview (FI) cards, criminal history records, and publicly accessible logs, shall be maintained in the secure Records Management system (RMS) under the control of the Records Division. The release of record files during normal business hours, other than those reports required as part of a booking procedure of a local agency, is the responsibility of the Records Division. All requests for releasable reports will be entered into the case report of the RMS system.

The Records Division will also maintain a secure file for case reports deemed by the Chief of Police as sensitive or otherwise requiring extraordinary access restrictions.

Requests for department police reports from outside law enforcement agencies may be requested after hours through the Watch Commander's office. The requesting agency shall fax or email, on department letterhead, the report request. The Watch Commander shall forward the request to the Administrative Services Supervisor with notice that the report was faxed or emailed. A copy of the fax or email will be retained in the Records Management system to note the release.

Records Retention

807.1 PURPOSE AND SCOPE

The purpose of the Records Retention Schedule is to provide guidance on the management of the Department's records and the process to follow when deciding on which records should be kept, for how long, and for the destruction of records that have reached the end of their retention period. The Records Retention Schedule takes into account the Department and District's needs as well as statutory requirements set by state law.

The Records Retention Schedule will serve as a guide to provide Department personnel the appropriate records to retain and the retention period for those records. The Records Retention Schedule will be revised as experience dictates to reflect current methods, procedures, and changes in the law governing law enforcement records.

Under Public Utilities Code Section 28830, the BART District General Manager is responsible for the administration of the business affairs of the District and is therefore empowered to arrange for the management of District records. Additionally, Resolution 1026 of the District's Board of Directors, delegates the General Manager the authority to dispose of District Records.

807.2 RECORDS RETENTION SCHEDULE

See attachment: [BART_Records Retention Schedule_2019.21.18.pdf](#)

807.3 RESPONSIBILITIES

The Records Retention Schedule is broken down by the divisions responsible for the records on the schedule. The Office of the Chief, Deputy Chiefs of Operations, Support Services, and Professional Standards and Training will delegate a member of their bureau to be responsible for the management, security, and destruction of their bureau's records.

Records listed on the Records Retention Schedule should be reviewed annually to identify records that have reached their maximum retention period. Those records meeting the schedule's requirements for destruction should be cataloged. Paper records shall be boxed, labeled, and placed in the secure file room (MET 357) temporarily. Each division will be responsible for documenting the records to be destroyed, in memo format, to be reviewed and approved by the Chief of Police and BART Legal before destruction.

Upon approval, the memo should be forwarded to the Records Supervisor. The Records Supervisor will be responsible for scheduling and monitoring the onsite the destruction of paper records. Records that are maintained electronically by the Department shall be deleted by the unit that is responsible for managing them.

Email records are the responsibility of BART IT and are not managed under the BART Police Department Records Retention Schedule.

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Records Retention

807.4 RECORDS SECURITY

Security of records shall be the responsibility of the respective Bureau/Operational Component. Physical records shall be securely stored in locking file cabinets or drawers when not in use.

807.5 DESTRUCTION OF RECORDS

A bonded shredding company will destroy paper records. The destruction will be conducted on-site and observed by the Records Supervisor and/or designee. The shredding company shall provide a receipt upon completion of the destruction which shall be attached to the destruction memos signed off by the Chief of Police and BART Legal. These records shall be kept indefinitely.

Restoration of Firearm Serial Numbers

808.1 PURPOSE AND SCOPE

The primary purpose for restoring firearm serial numbers is to determine the prior owners or origin of the item from which the number has been recovered. Thus, property can be returned to rightful owners or investigations can be initiated to curb illegal trade of contraband firearms. The purpose of this plan is to develop standards, methodologies, and safety protocols for the recovery of obliterated serial numbers from firearms and other objects using procedures that are accepted as industry standards in the forensic community. All personnel who are involved in the restoration of serial numbers will observe the following guidelines. This policy complies with Penal Code § 11108.9.

808.2 PROCEDURE

Any firearm coming into the possession of the Bay Area Rapid Transit Police Department as evidence, found property, etc., where the serial numbers have been removed or obliterated will be processed in the following manner:

808.2.1 PRELIMINARY FIREARM EXAMINATION

- (a) Always keep the muzzle pointed in a safe direction. Be sure the firearm is in an unloaded condition. This includes removal of the ammunition source (e.g., the detachable magazine, contents of the tubular magazine) as well as the chamber contents.
- (b) If the firearm is corroded shut or in a condition that would preclude inspection of the chamber contents, treat the firearm as if it is loaded. Make immediate arrangements for a firearms examiner or other qualified examiner to render the firearm safe.
- (c) Accurately record/document the condition of the gun when received. Note the positions of the various components such as the safeties, cylinder, magazine, slide, hammer, etc. Accurately record/document cylinder chamber and magazine contents. Package the ammunition separately.
- (d) If the firearm is to be processed for fingerprints or trace evidence, process **before** the serial number restoration is attempted. First record/document important aspects such as halos on the revolver cylinder face or other relevant evidence that might be obscured by the fingerprinting chemicals.

808.2.2 PROPERTY BOOKING PROCEDURE

Any employee taking possession of a firearm with removed/obliterated serial numbers shall book the firearm into property following standard procedures. The employee booking the firearm shall indicate on the property form that serial numbers have been removed or obliterated.

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Restoration of Firearm Serial Numbers

808.2.3 OFFICER RESPONSIBILITY

The Evidence clerk receiving a firearm when the serial numbers have been removed or obliterated shall arrange for the firearm to be transported to the crime lab for restoration and maintain the chain of evidence.

808.2.4 DOCUMENTATION

Case reports are prepared in order to document the chain of custody and the initial examination and handling of evidence from the time it is received/collected until it is released.

This report must include a record of the manner in which and/or from whom the firearm was received. This may appear on the request form or property form depending on the type of evidence.

808.2.5 FIREARM TRACE

After the serial number has been restored (or partially restored) by the criminalistics laboratory, the Evidence PAS/CSO will complete a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Tracing Center (NTC) Obliterated Serial Number Trace Request Form (ATF 3312.1-OBL) and forward the form to the NTC in Falling Waters, West Virginia or enter the data into the ATF eTrace system.

808.3 BULLET AND CASING IDENTIFICATION

Exemplar bullets and cartridge cases from the firearm, depending upon acceptance criteria and protocol, may be submitted to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Integrated Ballistic Information Network (NIBIN) which uses the Integrated Ballistic Identification System (IBIS) technology to search the national database and compare with ballistic evidence recovered from other crime scenes.

Legal Process

809.1 PURPOSE AND SCOPE

This procedure establishes guidelines for legal processes that the Department maintains.

Traditional civil/legal process is handled by the five County Sheriff's Offices civil division's in which the BART District operates. The BART Police Department may be called upon to assist in the legal process, responding to court orders and appear in court in response to a legally executed subpoena. The following process outlines the duties and responsibilities of employees when called upon to participate in the legal process.

809.2 ACCREDITATION STANDARDS

This section pertains to the following CALEA Standards: 74.1.3, 74.2.1, 74.3.1, 74.3.2

809.3 PROCEDURE - CIVIL PROCESS

Officers and employees may be ordered to appear in court to testify in various criminal or civil proceedings via legal service of a court-issued subpoena during their employment.

The service of the court issued criminal and civil subpoenas is the responsibility of the issuing court. As it relates to the acceptance of subpoenas, members should reference the Acceptance of Subpoenas subsection in the Court Appearance and Subpoenas policy.

If BART Police is required to serve civil process documents, Officers will abide by the following procedures:

- Document the date and time service was executed/attempted
- Document the name of officer(s) executing/attempting service
- Document the name of the person on whom legal process was served/attempted
- Document the method of service/reason for non-service
- Document the address of service/attempt

Civil Process Documents/Orders that officers may serve include:

- Emergency Protective Orders (EPO's)
- Temporary Restraining Orders (TRO's)
- Harassment Orders
- District Prohibition Orders

809.4 PROCEDURE - CRIMINAL PROCESS

Officers are required to serve criminal warrants in the performance of their duties. Arrest warrants will be executed by sworn law enforcement officers only. Criminal Warrants include the following:

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- Felony Warrants
- Misdemeanor Warrants
- Search Warrants
- Ramey Warrants
- Criminal Protection Orders
- Any other criminal warrant or order issued by the criminal court.

809.5 TERRITORIAL LIMITATIONS FOR EXECUTION OF WARRANTS

Officers can serve or attempt to serve criminal process warrants anywhere in the State of California. Officers serving or attempting to serve warrants outside the geographical boundaries of the BART District shall secure prior approval from their immediate supervisor, as appropriate.

809.6 TIME REQUIREMENTS FOR EXECUTION OF WARRANTS

- Officers can execute a felony arrest warrant at any time
- Officers can execute a misdemeanor arrest warrant between 0600 hours and 2200 hours unless:
 - The arrest is made in a public place.
 - The person is already “in custody” on another lawful matter, or
 - The judge states on the warrant that it may be executed at any time.
 - Refer to Penal Code § 840.
- Officers can execute a search warrant between 0700 hours and 2200 hours unless:
 - The judge states on the warrant that it may be executed at any time.
 - Refer to Penal Code § 1533.
- Officers shall execute a search warrant and return it to the issuing Court within ten days of issuance (Refer to Penal Code § 1534)

809.7 AUTOMATED WARRANT SYSTEM (AWS)

The BART Police Department’s jurisdiction incorporates five counties but is based in Alameda County. The counties in which BART Police operate in are responsible for entering all warrants/wanted persons into their warrant systems as outlined in the Criminal Process section of this procedure. Alameda County maintains an Automated Warrants System (AWS). Each police agency in the county has 24-hour interface capabilities with this system to access and update the system when warrants are served, and wanted subjects are caught. The AWS system includes the following:

- Establishing criteria for entering notices in regional, state, and federal information systems

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- Establishing criteria for receiving information from other jurisdictions
- Recording the information in agency files
- Verifying information
- Canceling information; and
- Requiring 24-hour access to the warrant

While the Alameda County Sheriff's Office maintains the system by handling the above-listed items, the BART Police Department can enter into AWSRamey warrants issued on behalf of a BART Police Department. The BART Police Department also complies with due diligence by distributing an active monthly warrant list to officers in furtherance of serving them. The Department maintains direct access to AWS to update the status of warrants when a person is arrested.

Records Maintenance and Release

810.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of department records. Protected information is separately covered in the Protected Information Policy.

810.2 POLICY

The Bay Area Rapid Transit Police Department is committed to providing public access to records in a manner that is consistent with the California Public Records Act (Government Code § 6250 et seq.).

810.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

The Chief of Police shall designate a Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to:

- (a) Managing the records management system for the Department, including the retention, archiving, release, and destruction of department public records.
- (b) Maintaining and updating the department records retention schedule including:
 1. Identifying the minimum length of time the Department must keep records.
 2. Identifying the department bureau responsible for the original record.
- (c) Establishing rules regarding the inspection and copying of department public records as reasonably necessary for the protection of such records (Government Code § 6253).
- (d) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
- (e) Establishing rules regarding the processing of subpoenas for the production of records.
- (f) Ensuring a current schedule of fees for public records as allowed by law is available (Government Code § 6253).
- (g) Determining how the department's website may be used to post public records in accordance with Government Code § 6253.
- (h) Ensuring that all department current standards, policies, practices, operating procedures, and education and training materials are posted on the department website in accordance with Penal Code § 13650.
- (i) Ensuring that public records posted on the Department website meet the requirements of Government Code § 6253.10 including but not limited to posting in an open format where a record may be retrieved, downloaded, indexed, and searched by a commonly used internet search application.

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- (j) Ensuring that a list and description, when applicable, of enterprise systems (as defined by Government Code § 6270.5) is publicly available upon request and posted in a prominent location on the Department's website.

810.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

Any department member who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

810.4.1 REQUESTS FOR RECORDS

Any member of the public, including the media and elected officials, may access unrestricted records of this department, during regular business hours by submitting a written and signed request that reasonably describes each record sought and paying any associated fees (Government Code § 6253).

The processing of requests for any record is subject to the following (Government Code § 6253):

- (a) The Department is not required to create records that do not exist.
- (b) Victims of an incident or their authorized representative shall not be required to show proof of legal presence in the United States to obtain department records or information. If identification is required, a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship or current Matricula Consular card is acceptable (Government Code § 6254.30).
- (c) Either the requested record or the reason for non-disclosure will be provided promptly, but no later than 10 days from the date of request, unless unusual circumstances preclude doing so. If more time is needed, an extension of up to 14 additional days may be authorized by the Custodian of Records or the authorized designee. If an extension is authorized, the Department shall provide the requester written notice that includes the reason for the extension and the anticipated date of the response.
 1. When the request does not reasonably describe the records sought, the Custodian of Records shall assist the requester in making the request focused and effective in a way to identify the records or information that would be responsive to the request including providing assistance for overcoming any practical basis for denying access to the records or information. The Custodian of Records shall also assist in describing the information technology and physical location in which the record exists (Government Code § 6253.1).
 2. If the record requested is available on the department website, the requester may be directed to the location on the website where the record is posted. If the requester is unable to access or reproduce the record, a copy of the record shall be promptly provided.
- (d) Upon request, a record shall be provided in an electronic format utilized by the Department. Records shall not be provided only in electronic format unless specifically requested (Government Code § 6253.9).

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- (e) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.
 - 1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
- (f) If a record request is denied in whole or part, the requester shall be provided a written response that includes the statutory exemption for withholding the record or facts that the public interest served by nondisclosure outweighs the interest served by disclosure (Government Code § 6255). The written response shall also include the names, titles or positions of each person responsible for the denial.

810.5 RELEASE RESTRICTIONS

Examples of release restrictions include:

- (a) Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record, or any department record including traffic collision reports, are restricted except as authorized by the Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722).
- (b) Social Security numbers (Government Code § 6254.29).
- (c) Personnel records, medical records, and similar records which would involve an unwarranted invasion of personal privacy except as allowed by law (Government Code § 6254; Penal Code § 832.7; Penal Code § 832.8; Evidence Code § 1043 et seq.).
 - 1. Peace officer personnel records that are deemed confidential shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order.
 - 2. The identity of any officer subject to any criminal or administrative investigation shall not be released without the consent of the involved officer, prior approval of the Chief of Police, or as required by law.
- (d) Victim information that may be protected by statutes, including victims of certain crimes who have requested that their identifying information be kept confidential, victims who are minors, and victims of certain offenses (e.g., sex crimes or human trafficking, Penal Code § 293). Addresses and telephone numbers of a victim or a witness to any arrested person or to any person who may be a defendant in a criminal action shall not be disclosed, unless it is required by law (Government Code § 6254; Penal Code § 841.5).
 - 1. Victims of certain offenses (e.g., domestic violence, sexual assault, stalking, human trafficking, adult abuse) or their representatives shall be

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provided, upon request and without charge, one copy of all incident report face sheets, one copy of all incident reports, or both, pursuant to the requirements and time frames of Family Code § 6228.

2. Victims of sexual assault, upon written request, shall be provided a free copy of the initial crime report regardless of whether the report has been closed. Personal identifying information may be redacted (Penal Code § 680.2(b)).
- (e) Video or audio recordings created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident except as provided by Government Code § 6254.4.5.
 - (f) Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved, or information that would endanger the successful completion of the investigation or a related investigation. This includes analysis and conclusions of investigating officers (Evidence Code § 1041; Government Code § 6254).
 1. Absent a statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Government Code § 6254(f).
 - (g) Local criminal history information including but not limited to arrest history and disposition, and fingerprints shall only be subject to release to those agencies and individuals set forth in Penal Code § 13300.
 1. All requests from criminal defendants and their authorized representatives (including attorneys) shall be referred to the District Attorney, General Counsel, or the courts pursuant to Penal Code § 1054.5.
 - (h) Certain types of reports involving but not limited to child abuse and molestation (Penal Code § 11167.5), elder and dependent abuse (Welfare and Institutions Code § 15633), and juveniles (Welfare and Institutions Code § 827).
 - (i) Sealed autopsy and private medical information concerning a murdered child with the exceptions that allow dissemination of those reports to law enforcement agents, prosecutors, defendants, or civil litigants under state and federal discovery laws (Code of Civil Procedure §130).
 - (j) Information contained in applications for licenses to carry firearms or other files that indicates when or where the applicant is vulnerable or which contains medical or psychological information (Government Code § 6254).
 - (k) Traffic collision reports (and related supplemental reports) shall be considered confidential and subject to release only to the California Highway Patrol, Department of Motor Vehicles (DMV), other law enforcement agencies, and those individuals and their authorized representatives set forth in Vehicle Code § 20012.
 - (l) Any record created exclusively in anticipation of potential litigation involving this department (Government Code § 6254).
 - (m) Any memorandum from legal counsel until the pending litigation has been adjudicated or otherwise settled (Government Code § 6254.25).

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- (n) Records relating to the security of the department's electronic technology systems (Government Code § 6254.19).
- (o) A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint if the complaint is frivolous, as defined by Code of Civil Procedure § 128.5, or if the complaint is unfounded (Penal Code § 832.7 (b)(8)).
- (p) Any other record not addressed in this policy shall not be subject to release where such record is exempt or prohibited from disclosure pursuant to state or federal law, including but not limited to provisions of the Evidence Code relating to privilege (Government Code § 6254).
- (q) Information connected with juvenile court proceedings or the detention or custody of a juvenile. Federal officials may be required to obtain a court order to obtain certain juvenile information (Welfare and Institutions Code § 827.9; Welfare and Institutions Code § 827.95; Welfare and Institutions Code § 831).

810.6 JUVENILE RECORDS AND RELEASE

Records involving juvenile suspects and/or wards of the court are confidential. The unauthorized release of information or records pertaining to juveniles may subject the releasing employee to criminal or civil liability, as well as possible disciplinary actions.

Juvenile Records are contained in the Departments Records Management System (RMS). The Custodian of Records and records staff, under direction from the Custodian of Records, are the only authorized personnel to release juvenile records. Records staff identifies juvenile records by reviewing the record for suspects and victims whose ages are listed as 17 and under.

- A) Juvenile records and information may be released to law enforcement agencies for law enforcement purposes and any persons as specified in the current "TNG Order" (W&I 827) signed by the presiding Juvenile Court Judge for the County in which the record was produced.
- B) All official reports, photographs, fingerprints, other identifying information and Summary Criminal History about juveniles, if obtained, shall be noted in the report. Relevant documents attached to the case or booked into evidence shall be available to authorized employees upon lawful request.
- C) Unless ordered by a court to expunge juvenile information from our Records Management System, or pursuant to State statute, those records will be retained indefinitely, even upon the juvenile reaching adult age. If ordered by the court to expunge records, the Custodian of Records or designee will comply with the specific directions of that order and seal the record in RMS by removing access.

810.6.1 CUSTODIAN OF RECORDS PROCEDURE

The Custodian of Records may release, for governmental purposes, all available information regarding a minor to any of the persons, officials, or agencies, as specified in the current "TNG Order" W&I 827.

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EXCEPTION: Juvenile Arrest records on file may only be released by the Custodian of Records pursuant to a subpoena or court order.

A) Welfare & Institution Code Section 828 requires that any information gathered by the Department relating to the arrest of a minor may be disclosed to another law enforcement agency, or to any person or agency which has a legitimate need for the information for official disposition of a case. All available disposition information regarding the arrest must be disclosed along with other information.

B) The Custodian of Records shall not release any information to a member of the public under the following circumstances:

1. If there is a reasonable likelihood that releasing the requested information would endanger a persons' safety or the success of an investigation, the request must be referred to the Investigations Sergeant.
2. In the case of a victim pursuing a civil remedy from an offender who is a minor, the minors name and address cannot be released until final disposition of the case has been made. If it's not known that a final disposition of the case has been made, the request for information shall be referred to the Investigations Sergeant.
3. All requests for information made by the press should be referred to the Chief of Police. If the press already knows a minor's identity, this information may be confirmed.

810.7 SUBPOENAS AND DISCOVERY REQUESTS

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Custodian of Records for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the District Attorney, General Counsel or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Department so that a timely response can be prepared.

810.8 RELEASED RECORDS TO BE MARKED

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the department name and to whom the record was released.

Each audio/video recording released should include the department name and to whom the record was released.

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810.9 SEALED RECORD ORDERS

Sealed record orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall seal such records as ordered by the court. Records may include but are not limited to a record of arrest, investigation, detention, or conviction. Once the record is sealed, members shall respond to any inquiry as though the record did not exist (Penal Code § 851.8; Welfare and Institutions Code § 781).

When an arrest record is sealed pursuant to Penal Code § 851.87, Penal Code § 851.90, Penal Code § 851.91, Penal Code § 1000.4, or Penal Code § 1001.9, the Records Supervisor shall ensure that the required notations on local summary criminal history information and police investigative reports are made. Sealed records may be disclosed or used as authorized by Penal Code § 851.92.

810.9.1 SEALED JUVENILE ARREST RECORDS

Upon receiving notice from a probation department to seal juvenile arrest records pursuant to Welfare and Institutions Code § 786.5, the Records Supervisor should ensure that the records are sealed within 60 days of that notice and that the probation department is notified once the records have been sealed (Welfare and Institutions Code § 786.5).

810.10 SECURITY BREACHES

The Records Supervisor shall ensure notice is given anytime there is a reasonable belief an unauthorized person has acquired either unencrypted personal identifying information or encrypted personal information along with the encryption key or security credential stored in any Department information system (Civil Code § 1798.29).

Notice shall be given as soon as reasonably practicable to all individuals whose information may have been acquired. The notification may be delayed if the Department determines that notification will impede a criminal investigation or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

For the purposes of this requirement, personal identifying information includes an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security number
- Driver license number, California identification card number, tax identification number, passport number, military identification number, or other unique identification number issued on a government document commonly used to verify the identity of a specific individual
- Account number or credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account
- Medical information
- Health insurance information

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- A username or email address, in combination with a password or security question and answer that permits access to an online account
- Information or data collected by Automated License Plate Reader (ALPR) technology
- Unique biometric data

810.10.1 FORM OF NOTICE

- (a) The notice shall be written in plain language, be consistent with the format provided in Civil Code § 1798.29 and include, to the extent possible, the following:
1. The date of the notice.
 2. Name and contact information for the Bay Area Rapid Transit Police Department.
 3. A list of the types of personal information that were or are reasonably believed to have been acquired.
 4. The estimated date or date range within which the security breach occurred.
 5. Whether the notification was delayed as a result of a law enforcement investigation.
 6. A general description of the security breach.
 7. The toll-free telephone numbers and addresses of the major credit reporting agencies, if the breach exposed a Social Security number or a driver license or California identification card number.
- (b) The notice may also include information about what the Bay Area Rapid Transit Police Department has done to protect individuals whose information has been breached and may include information on steps that the person whose information has been breached may take to protect him/herself (Civil Code § 1798.29).
- (c) When a breach involves an online account, and only a username or email address in combination with either a password or security question and answer that would permit access to an online account, and no other personal information has been breached (Civil Code § 1798.29):
1. Notification may be provided electronically or in another form directing the person to promptly change either his/her password or security question and answer, as applicable, or to take other appropriate steps to protect the online account with the Department in addition to any other online accounts for which the person uses the same username or email address and password or security question and answer.
 2. When the breach involves an email address that was furnished by the Bay Area Rapid Transit Police Department, notification of the breach should not be sent to that email address but should instead be made by another appropriate medium as prescribed by Civil Code § 1798.29.

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810.10.2 MANNER OF NOTICE

- (a) Notice may be provided by one of the following methods (Civil Code § 1798.29):
1. Written notice.
 2. Electronic notice if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 USC § 7001.
 3. Substitute notice if the cost of providing notice would exceed \$250,000, the number of individuals exceeds 500,000 or the Department does not have sufficient contact information. Substitute notice shall consist of all of the following:
 - (a) Email notice when the Department has an email address for the subject person.
 - (b) Conspicuous posting of the notice on the department's webpage for a minimum of 30 days.
 4. Notification to major statewide media and the California Information Security Office within the California Department of Technology.
- (b) If a single breach requires the Department to notify more than 500 California residents, the Department shall electronically submit a sample copy of the notification, excluding any personally identifiable information, to the Attorney General.

810.11 RELEASE OF AUDIO OR VIDEO RECORDINGS RELATED TO CRITICAL INCIDENTS

Video and audio recordings related to critical incidents shall be released upon a proper public record request and subject to delayed release, redaction, and other release restrictions as provided by law (Government Code § 6254(f)(4)).

For purposes of this section, a video or audio recording relates to a critical incident if it depicts an incident involving the discharge of a firearm at a person by an officer, or depicts an incident in which the use of force by an officer against a person resulted in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) (Government Code § 6254(f)(4)).

The Custodian of Records should work as appropriate with the Chief of Police or the Internal Affairs Division supervisor in determining what recordings may qualify for disclosure when a request for a recording is received and if the requested recording is subject to delay from disclosure, redaction, or other release restrictions.

810.11.1 DELAY OF RELEASE

Disclosure of critical incident recordings during active criminal or administrative investigations may be delayed as follows if disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source:

- (a) Disclosure may be delayed up to 45 days from the date the Department knew or reasonably should have known about the incident.

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- (b) Delay of disclosure may continue after the initial 45 days and up to one year if the Department demonstrates that disclosure would substantially interfere with the investigation.
- (c) Any delay of disclosure longer than one year must be supported by clear and convincing evidence that disclosure would substantially interfere with the investigation (Government Code § 6254(f)(4)).

810.11.2 NOTICE OF DELAY OF RELEASE

When there is justification to delay disclosure of a recording, the Custodian of Records shall provide written notice to the requester as follows (Government Code § 6254(f)(4)):

- (a) During the initial 45 days, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination that disclosure would substantially interfere with the investigation. The notice shall also include the estimated date for the disclosure.
- (b) When delay is continued after the initial 45 days, the Custodian of Records shall promptly provide the requester with written notice of the specific basis for the determination that the interest in preventing interference with an active investigation outweighs the public interest in the disclosure, and the estimated date for the disclosure. The Custodian of Records should work with the Chief of Police in reassessing the decision to continue withholding a recording and notify the requester every 30 days.

Recordings withheld shall be disclosed promptly when the specific basis for withholding the recording is resolved.

810.11.3 REDACTION

If the Custodian of Records, in consultation with the Chief of Police or authorized designee, determines that specific portions of the recording may violate the reasonable expectation of privacy of a person depicted in the recording, the Department should use redaction technology to redact portions of recordings made available for release. The redaction should not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording, and the recording should not otherwise be edited or altered (Government Code § 6254(f)(4)).

If any portions of a recording are withheld to protect the reasonable expectation of privacy of a person depicted in the recording, the Custodian of Records shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served (Government Code § 6254(f)(4)).

810.11.4 RECORDINGS WITHHELD FROM PUBLIC DISCLOSURE

If the reasonable expectation of privacy of a person depicted in the recording cannot adequately be protected through redaction, and that interest outweighs the public interest in disclosure, the Department may withhold the recording from the public, except that the recording, either redacted or unredacted, shall be disclosed promptly, upon request, to any of the following (Government Code § 6254(f)(4)):

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- (a) The person in the recording whose privacy is to be protected, or his/her authorized representative.
- (b) If the person is a minor, the parent or legal guardian of the person whose privacy is to be protected.
- (c) If the person whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased person whose privacy is to be protected.

If the Department determines that this disclosure would substantially interfere with an active criminal or administrative investigation, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination and the estimated date of disclosure (Government Code § 6254(f)(4)).

The Department may continue to delay release of the recording from the public for 45 days with extensions as provided in this policy (Government Code § 6254(f)(4)(A)).

Protected Information

812.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the access, transmission, release and security of protected information by members of the Bay Area Rapid Transit Police Department. This policy addresses the protected information that is used in the day-to-day operation of the Department and not the public records information covered in the Records Maintenance and Release Policy.

812.1.1 DEFINITIONS

Definitions related to this policy include:

Protected information - Any information or data that is collected, stored or accessed by members of the Bay Area Rapid Transit Police Department and is subject to any access or release restrictions imposed by law, regulation, order or use agreement. This includes all information contained in federal, state or local law enforcement databases that is not accessible to the public.

812.2 POLICY

Members of the Bay Area Rapid Transit Police Department will adhere to all applicable laws, orders, regulations, use agreements and training related to the access, use, dissemination and release of protected information.

812.3 RESPONSIBILITIES

The Chief of Police shall select a member of the Department to coordinate the use of protected information.

The responsibilities of this position include, but are not limited to:

- (a) Ensuring member compliance with this policy and with requirements applicable to protected information, including requirements for the National Crime Information Center (NCIC) system, National Law Enforcement Telecommunications System (NLETS), Department of Motor Vehicle (DMV) records and California Law Enforcement Telecommunications System (CLETS).
- (b) Developing, disseminating and maintaining procedures that adopt or comply with the U.S. Department of Justice's current Criminal Justice Information Services (CJIS) Security Policy.
- (c) Developing, disseminating and maintaining any other procedures necessary to comply with any other requirements for the access, use, dissemination, release and security of protected information.
- (d) Developing procedures to ensure training and certification requirements are met.
- (e) Resolving specific questions that arise regarding authorized recipients of protected information.
- (f) Ensuring security practices and procedures are in place to comply with requirements applicable to protected information.

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812.4 ACCESS TO PROTECTED INFORMATION

Protected information shall not be accessed in violation of any law, order, regulation, user agreement, Bay Area Rapid Transit Police Department policy or training. Only those members who have completed applicable training and met any applicable requirements, such as a background check, may access protected information, and only when the member has a legitimate work-related reason for such access.

Unauthorized access, including access for other than a legitimate work-related purpose, is prohibited and may subject a member to administrative action pursuant to the Personnel Complaints Policy and/or criminal prosecution.

812.4.1 PENALTIES FOR MISUSE OF RECORDS

It is a misdemeanor to furnish, buy, receive or possess Department of Justice criminal history information without authorization by law (Penal Code § 11143).

Authorized persons or agencies violating state regulations regarding the security of Criminal Offender Record Information (CORI) maintained by the California Department of Justice may lose direct access to CORI (11 CCR 702).

812.5 RELEASE OR DISSEMINATION OF PROTECTED INFORMATION

Protected information may be released only to authorized recipients who have both a right to know and a need to know.

A member who is asked to release protected information that should not be released should refer the requesting person to a supervisor or to the Records Supervisor for information regarding a formal request.

Unless otherwise ordered or when an investigation would be jeopardized, protected information maintained by the Department may generally be shared with authorized persons from other law enforcement agencies who are assisting in the investigation or conducting a related investigation. Any such information should be released through the Records Division to ensure proper documentation of the release (see the Records Maintenance and Release Policy).

812.5.1 REVIEW OF CRIMINAL OFFENDER RECORD

Individuals requesting to review their own California criminal history information shall be referred to the Department of Justice (Penal Code § 11121).

Individuals shall be allowed to review their arrest or conviction record on file with the Department after complying with all legal requirements regarding authority and procedures in Penal Code § 11120 through Penal Code § 11127 (Penal Code § 13321).

812.5.2 TRANSMISSION GUIDELINES

Protected information, such as restricted Criminal Justice Information (CJI), which includes Criminal History Record Information (CHRI), should not be transmitted via unencrypted radio.

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When circumstances reasonably indicate that the immediate safety of officers, other department members, or the public is at risk, only summary information may be transmitted.

In cases where the transmission of protected information, such as Personally Identifiable Information, is necessary to accomplish a legitimate law enforcement purpose, and utilization of an encrypted radio channel is infeasible, a MDC or department-issued cellular telephone should be utilized when practicable. If neither are available, unencrypted radio transmissions shall be subject to the following:

- Elements of protected information should be broken up into multiple transmissions, to minimally separate an individual's combined last name and any identifying number associated with the individual, from either first name or first initial.
- Additional information regarding the individual, including date of birth, home address, or physical descriptors, should be relayed in separate transmissions.

Nothing in this policy is intended to prohibit broadcasting warrant information.

812.6 SECURITY OF PROTECTED INFORMATION

The Chief of Police will select a member of the Department to oversee the security of protected information.

The responsibilities of this position include, but are not limited to:

- (a) Developing and maintaining security practices, procedures and training.
- (b) Ensuring federal and state compliance with the CJIS Security Policy and the requirements of any state or local criminal history records systems.
- (c) Establishing procedures to provide for the preparation, prevention, detection, analysis and containment of security incidents including computer attacks.
- (d) Tracking, documenting and reporting all breach of security incidents to the Chief of Police and appropriate authorities.

812.6.1 MEMBER RESPONSIBILITIES

Members accessing or receiving protected information shall ensure the information is not accessed or received by persons who are not authorized to access or receive it. This includes leaving protected information, such as documents or computer databases, accessible to others when it is reasonably foreseeable that unauthorized access may occur (e.g., on an unattended table or desk; in or on an unattended vehicle; in an unlocked desk drawer or file cabinet; on an unattended computer terminal).

812.7 TRAINING

All members authorized to access or release protected information shall complete a training program that complies with any protected information system requirements and identifies authorized access and use of protected information, as well as its proper handling and dissemination.

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812.8 CALIFORNIA RELIGIOUS FREEDOM ACT

Members shall not release personal information from any agency database for the purpose of investigation or enforcement of any program compiling data on individuals based on religious belief, practice, affiliation, national origin or ethnicity (Government Code § 8310.3).

Computers and Digital Evidence

814.1 PURPOSE AND SCOPE

This policy establishes procedures for the seizure and storage of computers, personal communications devices (PCD's) digital cameras, digital recorders and other electronic devices that are capable of storing digital information; and for the preservation and storage of digital evidence. All evidence seized and/or processed pursuant to this policy shall be done so in compliance with clearly established Fourth Amendment and search and seizure provisions.

When employees have reason to believe that a search may result in a seizure of materials relating to First Amendment activities such as publishing or posting materials on the World Wide Web, they must consider the effect of the Privacy Protection Act ("PPA"), 42 U.S.C. § 2000aa. Every computer search that implicates the PPA must be approved by the local District Attorney. Under the Privacy Protection Act ("PPA"), 42 U.S.C. § 2000aa, law enforcement must take special steps when planning a search that agents have reason to believe may result in the seizure of certain First Amendment materials. Law enforcement searches that implicate the PPA must be pre-approved by legal counsel.

814.2 SEIZING COMPUTERS AND RELATED EVIDENCE

Computer equipment requires specialized training and handling to preserve its value as evidence. Officers should be aware of the potential to destroy information through careless or improper handling, and utilize the most knowledgeable available resources. When seizing a computer and accessories the following steps should be taken:

- (a) Photograph each item, front and back, specifically including cable connections to other items. Look for a phone line or cable to a modem for Internet access.
- (b) Do not overlook the possibility of the presence of physical evidence on and around the hardware relevant to the particular investigation such as fingerprints, biological or trace evidence, and/or documents.
- (c) If the computer is off, do not turn it on.
- (d) If the computer is on, do not shut it down normally and do not click on anything or examine any files.
 1. Photograph the screen, if possible, and note any programs or windows that appear to be open and running.
 2. Disconnect the power cable from the back of the computer box or if a portable notebook style, disconnect any power cable from the case and remove the battery).
- (e) Label each item with case number, evidence sheet number, and item number.
- (f) Handle and transport the computer and storage media (e.g., tape, discs, memory cards, flash memory, external drives) with care so that potential evidence is not lost.

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Computers and Digital Evidence

- (g) Lodge all computer items in the Property Room. Do not store computers where normal room temperature and humidity is not maintained.
- (h) At minimum, officers should document the following in related reports:
 - 1. Where the computer was located and whether or not it was in operation.
 - 2. Who was using it at the time.
 - 3. Who claimed ownership.
 - 4. If it can be determined, how it was being used.
- (i) In most cases when a computer is involved in criminal acts and is in the possession of the suspect, the computer itself and all storage devices (hard drives, tape drives, and disk drives) should be seized along with all media. Accessories (printers, monitors, mouse, scanner, keyboard, cables, software and manuals) should not be seized unless as a precursor to forfeiture.

814.2.1 BUSINESS OR NETWORKED COMPUTERS

If the computer belongs to a business or is part of a shared network, it may not be feasible to seize the entire computer. Cases involving networks require specialized handling. Officers should contact a certified forensic computer examiner for instructions or a response to the scene. It may be possible to perform an on-site inspection, or to image the hard drive only of the involved computer. This should only be done by someone specifically trained in processing computers for evidence.

814.2.2 FORENSIC EXAMINATION OF COMPUTERS

If an examination of the contents of the computer's hard drive, or floppy disks, compact discs, or any other storage media is required, forward the following items to a computer forensic examiner:

- (a) Copy of report(s) involving the computer, including the Evidence/Property sheet.
- (b) Copy of a consent to search form signed by the computer owner or the person in possession of the computer, or a copy of a search warrant authorizing the search of the computer hard drive for evidence relating to investigation.
- (c) A listing of the items to search for (e.g., photographs, financial records, e-mail, documents).
- (d) An exact duplicate of the hard drive or disk will be made using a forensic computer and a forensic software program by someone trained in the examination of computer storage devices for evidence.

814.3 SEIZING DIGITAL STORAGE MEDIA

Digital storage media including hard drives, floppy discs, CD's, DVD's, tapes, memory cards, or flash memory devices should be seized and stored in a manner that will protect them from damage.

- (a) If the media has a physical write-protection tab or switch, it should be activated.

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- (b) Do not review, access or open digital files prior to submission. If the information is needed for immediate investigation, request that the investigator assigned to the case copy the contents to an appropriate form of storage media.
- (c) Many kinds of storage media can be erased or damaged by magnetic fields. Keep all media away from magnetic devices, electric motors, radio transmitters or other sources of magnetic fields.
- (d) Do not leave storage media where they would be subject to excessive heat such as in a parked vehicle on a hot day.
- (e) Use plastic cases designed to protect the media, or other protective packaging, to prevent damage.

814.4 SEIZING PCDS

Personal communication devices such as cell phones, PDAs or other hand-held devices connected to any communication network must be handled with care to preserve evidence that may be on the device including messages, stored data and/or images.

- (a) Officers should not attempt to access, review or search the contents of such devices prior to examination by a forensic expert. Unsent messages can be lost, data can be inadvertently deleted and incoming messages can override stored messages.
- (b) Do not turn the device on or off. The device should be placed in a solid metal container such as a paint can or in a faraday bag, to prevent the device from sending or receiving information from its host network.
- (c) When seizing the devices, also seize the charging units and keep them plugged in to the chargers until they can be examined. If the batteries go dead all the data may be lost.

814.5 DIGITAL EVIDENCE RECORDED BY OFFICERS

Officers handling and submitting recorded and digitally stored evidence from digital cameras and audio or video recorders will comply with these procedures to ensure the integrity and admissibility of such evidence.

814.5.1 COLLECTION OF DIGITAL EVIDENCE

Once evidence is recorded it shall not be erased, deleted or altered in any way prior to submission. Video and audio files will not be altered in any way.

814.5.2 SUBMISSION OF DIGITAL MEDIA

The following are required procedures for the submission of digital media used by cameras or other recorders:

- (a) The recording media (smart card, compact flash card or any other media) shall be brought to a police facility as soon as possible for submission into evidence. Officers

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shall either submit the entire memory card as evidence or shall use appropriate computer software provided by the Department to download a copy of the evidence and burn those files to CD or DVD media. The CD or DVD media shall then be submitted as evidence.

- (b) Officers requiring a copy of the digital files must request a copy from the Investigations Section. Officers shall not keep personal copies of evidence items except as is required for legitimate business purposes.

814.5.3 DOWNLOADING OF DIGITAL FILES

Digital information such as video or audio files recorded on devices using internal memory must be downloaded to storage media. The following procedures are to be followed:

- (a) Files should not be opened or reviewed prior to downloading and storage.
- (b) Where possible, the device should be connected to a computer and the files accessed directly from the computer directory or downloaded to a folder on the host computer for copying to the storage media.

814.5.4 PRESERVATION OF DIGITAL EVIDENCE

- (a) Digital media that is held as evidence may only be duplicated under the direction of the Investigations Section. The original digital media shall remain in evidence and shall remain unaltered.
- (b) Digital images that are enhanced to provide a better quality photograph for identification and investigative purposes must only be made from a copy of the original media.
- (c) If any enhancement is done to the copy of the original, it shall be noted in the corresponding incident report.

Chapter 9 - Custody

Temporary Custody of Adults

900.1 PURPOSE AND SCOPE

This policy provides guidelines to address the health and safety of adults taken into temporary custody by members of the Bay Area Rapid Transit Police Department for processing prior to being released or transferred to a housing or other type of facility.

Temporary custody of juveniles is addressed in the Temporary Custody of Juveniles Policy.

Custodial searches are addressed in the Custodial Searches Policy.

900.1.1 DEFINITIONS

Definitions related to this policy include:

Lock Up - A room or secure enclosure that is primarily for the secure detention of adults upon arrest.

Administrative Cuffing Station - An immovable bench with a ring to secure handcuffs where the detainee is not left unattended during pre-booking processing. (Civic Center and Fruitvale offices)

Safety checks - Direct, visual observation by a member of this department performed at random intervals, within time frames prescribed in this policy, to provide for the health and welfare of adults in temporary custody.

Temporary custody - The time period an adult is in custody at the Bay Area Rapid Transit Police Department prior to being released or transported to a housing or other type of facility.

900.1.2 DETENTION OF PRISONERS IN THE TEMPORARY HOLDING FACILITY

It is the policy of the BART Police Department that prisoners detained in the our lock ups shall be released or transported to another facility, per the provisions of this manual, as soon as possible and practical.

The BART Police Department Detention Facilities are classified by the California Board of State and Community Corrections as "Lock Ups" and do not meet the definition of a local detention facility pursuant to California Penal Code 6031.4. It is the policy of the BART Police Department that prisoners should not be detained in the lock ups for a period of more than six (6) hours, absent exigent circumstances. Any prisoner detained in a lock up in excess of six (6) hours will require watch commander notification and documentation in the related incident report of the exigent circumstances. Supervision and accountability for processing, searching, and temporary detention of individuals within the facility is the responsibility of the arresting officer, unless relieved by an authorized department member.

Restraint devices, other than handcuffs or the WRAP device, will not be used in the BART Police Department Lock Up Facilities. Any prisoners that would require any type of restraint device, other than handcuffs or WRAP device, will be transported to the appropriate facility. Prisoners will not be secured to fixed objects unless it is designed and intended for such use. This does not preclude other approved restraint devices being utilized for transportation purposes.

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900.1.3 SUBSECTION TITLE

Test Adding subsection

900.2 POLICY

The Bay Area Rapid Transit Police Department is committed to releasing adults from temporary custody as soon as reasonably practicable, and to keeping adults safe while in temporary custody at the Department. Adults should be in temporary custody only for as long as reasonably necessary for investigation, processing, transfer or release.

An administrative review of lock up areas and procedures will be completed annually. The zone commanders will write a memorandum to the Support Services lieutenant to documenting the status of their zone's lock up areas, as well as any recommendations to changes in the procedures outlined in this policy. The zone commander will ensure any facility issues affecting the lock up area(s) are resolved and the Support Services lieutenant will facilitate making changes to the policy or procedures.

900.2.1 OPERATIONAL RESPONSIBILITIES - ZONE SERGEANTS

The zone sergeant is responsible for the operation of the lock up facilities during his/her shift. Such responsibility includes, but is not limited to:

1. Making the decision as to who may or may not be held.
2. Inspection of the facilities to insure compliance with all applicable laws, standards, policies and procedures and reporting any deficiencies to the appropriate zone commander. The inspection will include but not be limited to:
 - (a) Ensuring inspections are conducted on a monthly basis.
 - (b) Ensuring a visual inspection of each cell to include under the bench and drinking fountain/toilet, if applicable, prior to each use.
 - (c) Reviewing all custody logs to insure completeness.
 - (d) Ensuring there are adequate supplies to include first aid kit, gloves, and report forms.
 - (e) Ensuring cleanliness and all hygiene standards are being met.
 - (f) Ensuring a check of fire and life safety items to include the fire extinguisher and first aid/CPR supplies, as well as ensure a visual inspection of the fire sprinkler heads for obstructions, rust or leakage, is conducted.
3. If necessary, assuring arrestees are allowed access to a telephone per Penal Code § 851.5.
4. Assuring that no arrestee is held for more than six hours, nor longer than legally allowable, absent exigent circumstances, without the appropriate documentation and notification to the on-duty watch commander.
5. Evaluating injured prisoners and arranging for proper medical aid.
6. Assuring all arrestees are promptly released according to all applicable laws or are transported to County Jail as soon as possible.

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7. Assure appropriate charges are added or included in the arrest report in all instances which result in physical harm or serious threat of physical harm, to any employee or arrestee or any person or whenever an arrestee damages or destroys District property or attempts to do so.
8. Assure constant supervision of detainees not contained in a secured lockup area.
9. Assure face-to-face visual safety checks of secured detainees are made at least once every thirty (30) minutes.
10. Assure that a briefing is conducted at shift change, alerting oncoming personnel as to the status of the prisoner(s).

900.2.2 PRISONER CLASSIFICATION AND SCREENING

It is the policy of the BART Police Department to segregate prisoners by gender.

900.3 GENERAL CRITERIA AND SUPERVISION

No adult should be in temporary custody for longer than six hours, absent exigent circumstances. Only authorized employees of the BART Police Department or sworn law enforcement officers from an allied agency shall have access to an individual held in one of our temporary holding facilities.

900.3.1 INDIVIDUALS WHO SHOULD NOT BE IN TEMPORARY CUSTODY

Individuals who exhibit certain behaviors or conditions should not be in temporary custody at the Bay Area Rapid Transit Police Department, but should be transported to a jail facility, a medical facility or other type of facility as appropriate. These include:

- (a) Any individual who is unconscious or has been unconscious while being taken into custody or while being transported.
- (b) Any individual who has a medical condition, including pregnancy, that may require medical attention, supervision or medication while in temporary custody.
- (c) Any individual who is seriously injured.
- (d) Individuals who are a suspected suicide risk (see the Mental Illness Commitments Policy).
 - (a) If the officer taking custody of an individual believes that he/she may be a suicide risk, the officer shall ensure continuous direct supervision until evaluation, release or a transfer to an appropriate facility is completed.
- (e) Individuals who are obviously in crisis.
- (f) Individuals who are under the influence of alcohol, a controlled substance or any substance to the degree that may require medical attention, or who have ingested any substance that poses a significant risk to their health, whether or not they appear intoxicated.
- (g) Any individual who has exhibited extremely violent or continuously violent behavior including behavior that results in the destruction of property or demonstrates an intent to cause physical harm to him/herself or others.

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- (h) Any individual who claims to have, is known to be afflicted with, or displays symptoms of any communicable disease that poses an unreasonable exposure risk.
- (i) Any individual with a prosthetic or orthopedic device where removal of the device would be injurious to his/her health or safety.
- (j) Any individual who is obviously developmentally disabled.
- (k) Any individual who appears to be a danger to him/herself or others due to a mental disorder, or who appears gravely disabled.
- (l) Any individual who needs restraint beyond the use of handcuffs or WRAP device for security reasons.
- (m) Any individual obviously suffering from drug or alcohol withdrawal.

Officers taking custody of a person who exhibits any of the above conditions should notify a supervisor of the situation. These individuals should not be in temporary custody at the Department unless they have been evaluated by a qualified medical or mental health professional, as appropriate for the circumstances.

900.3.2 SUPERVISION IN TEMPORARY CUSTODY

An authorized department member capable of supervising shall be present at all times when an individual is held in temporary custody. The member responsible for supervising should not have other duties that could unreasonably conflict with his/her supervision. Any individual in custody must be able to summon the supervising member if needed. If the person in custody is deaf or hard of hearing or cannot speak, accommodations shall be made to provide this ability.

When utilizing an administrative cuffing station, officers will ensure detainees are not left unattended and are under constant supervision. Officers can remain armed when using the two administrative cuffing station locations.

No individual in custody shall be permitted to supervise, control or exert any authority over other individuals in custody.

900.4 INITIATING TEMPORARY CUSTODY

The officer responsible for an individual in temporary custody should evaluate the person for any apparent chronic illness, disability, vermin infestation, possible communicable disease or any other potential risk to the health or safety of the individual or others. The officer should specifically ask if the individual is contemplating suicide and evaluate him/her for obvious signs or indications of suicidal intent. If there is any suspicion that the individual may be suicidal, he/she shall be transported to the local or county jail or the appropriate mental health facility.

The officer should promptly notify their supervisor of any conditions that may warrant immediate medical attention or other appropriate action. The supervisor shall determine whether the individual will be placed in a lock up, immediately released or transported to jail or other facility.

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900.4.1 RELEASE OF INTOXICATED PRISONERS

Intoxicated persons will be handled in the most expedient manner possible. Intoxicated persons will not be held in the lock up longer than necessary to complete the booking paperwork and should be transported to the county jail as soon as possible.

900.4.2 OTHER RELEASE REQUIREMENTS

- (a) The releasing officer shall inspect the cell area for damage prior to the release or transportation of any inmate.
- (b) Record any damages noted in the criminal incident report.
- (c) Photograph such damage to support additional charges.
- (d) All property, not to include evidence, contraband or dangerous weapons, shall be returned to the prisoner.
- (e) Dispatch is to be notified of the prisoner's release.

900.4.3 SCREENING AND PLACEMENT

The officer responsible for an individual in custody shall do the following:

- (a) When feasible, ensure males and females are separated by sight and conversational sound.
- (b) Ensure restrained individuals are not placed in cells with unrestrained individuals.
- (c) Ensure that those confined under civil process or for civil causes are kept separate from those who are in temporary custody pending criminal charges.
- (d) Ensure separation, as appropriate, based on other factors, such as age (juveniles), criminal sophistication, assaultive/non-assaultive behavior, mental state, disabilities and sexual orientation. Juveniles should be separated from adults by sight and conversational sound.

900.5 SAFETY, HEALTH AND OTHER PROVISIONS

900.5.1 TEMPORARY CUSTODY REQUIREMENTS

Members monitoring or processing anyone in temporary custody shall ensure:

- (a) Safety checks are conducted and significant incidents/activities are reported to their supervisor.
- (b) Individuals in custody are informed that they will be monitored at all times, except when using the toilet.
 - (a) There shall be no viewing devices, such as peep holes or mirrors, of which the individual is not aware.
 - (b) This does not apply to surreptitious and legally obtained recorded interrogations.
- (c) There is reasonable access to toilets and wash basins, upon request.
- (d) There is reasonable access to a drinking fountain or water, upon request.

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- (e) There are reasonable opportunities to stand and stretch, particularly if handcuffed or otherwise restrained.
- (f) Those in temporary custody are generally permitted to remain in their personal clothing unless it is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody.
- (g) Adequate shelter, heat, light and ventilation are provided without compromising security or enabling escape.
- (h) Adequate furnishings are available, including suitable chairs or benches.

900.5.2 MEDICAL CARE

First-aid equipment and basic medical supplies should be available to department members. At least one member who has current certification in basic first aid and CPR should be on-duty at all times.

Should a person in custody be injured or become ill, appropriate medical assistance should be sought. An officer should meet with those providing medical aid at the facility to allow access to the person. Members shall comply with the opinion of medical personnel as to whether an individual in temporary custody should be transported to the hospital. If the person is transported while still in custody, he/she will be accompanied by an officer.

Those who require medication while in temporary custody should not be held in any lock up at the Bay Area Rapid Transit Police Department. They should be released or transferred to another facility as appropriate.

900.5.3 ORTHOPEDIC OR PROSTHETIC APPLIANCE

Subject to safety and security concerns, individuals shall be permitted to retain an orthopedic or prosthetic appliance. However, if the member supervising the individual has probable cause to believe the possession of the appliance presents a risk of bodily harm to any person or is a risk to the security of the facility, the appliance may be removed from the individual unless its removal would be injurious to his/her health or safety.

Whenever a prosthetic or orthopedic appliance is removed, the supervisor shall be promptly apprised of the reason. It shall be promptly returned when it reasonably appears that any risk no longer exists.

900.5.4 TELEPHONE CALLS

Immediately upon being booked and, except where physically impossible, no later than three hours after arrest, an individual in custody has the right to make at least three completed calls to an attorney, bail bondsman, and a relative or other person (Penal Code § 851.5). Additional calls may be made as reasonable and necessary. In providing further access to a telephone beyond that required by Penal Code § 851.5, legitimate law enforcement interests such as officer safety, effect on ongoing criminal investigations and logistics should be balanced against the individual's desire for further telephone access.

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- (a) Telephone calls may be limited to local calls, except that long-distance calls may be made by the individual at his/her own expense.
 - 1. The Department should pay the cost of any long-distance calls related to arranging for the care of a child or dependent adult (see the Child and Dependent Adult Safety Policy).
 - 2. The provisions of Penal Code § 851.5 concerning this issue shall be posted in bold, block type in a conspicuous place within the facility.
- (b) The individual should be given sufficient time to contact whomever he/she desires and to make any necessary arrangements, including child or dependent adult care, or transportation upon release.
 - 1. Telephone calls are not intended to be lengthy conversations. The member assigned to monitor or process the individual may use his/her judgment in determining the duration of the calls.
 - 2. Within three hours of the arrest, the member supervising the individual should inquire whether the individual is a custodial parent with responsibility for a minor child, and notify the individual that he/she may make two additional telephone calls to a relative or other person for the purpose of arranging for the care of minor children (Penal Code § 851.5).
- (c) Calls between an individual in temporary custody and his/her attorney shall be deemed confidential and shall not be monitored, eavesdropped upon or recorded (Penal Code § 851.5(b)(1)).

900.5.5 FIREARMS AND OTHER SECURITY MEASURES

- 1. Firearms and knives shall not be permitted in the lock up area. They should be properly secured in the provided lock boxes. An exception may occur only during emergencies.
- 2. All perimeter doors to secure areas shall be kept locked at all times, except during routine cleaning, when no individuals in custody are present or in the event of an emergency, such as an evacuation.
- 3. Cell doors are to be locked at all times when prisoners are detained in the lock ups.
- 4. Individual portable radios are equipped with orange panic buttons that, when activated, alerts dispatch to an emergency situation.

900.6 PERSONAL PROPERTY

The personal property of an individual in temporary custody should be removed, inventoried and processed, unless the individual requests a different disposition. For example, an individual may request property (i.e., cash, car or house keys, medications) be released to another person. The releasing officer shall document whom the property was released to in their police report.

If the individual is transferred to another facility or court, the member transporting the individual shall turn over all property to the other facility. All property that is not accepted by the other facility or court will be inventoried and placed into safekeeping. The individual will be required to sign

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a BART Police property receipt for the property being retained in safekeeping. The Department shall maintain a copy of this property receipt.

A supervisor shall be notified whenever an individual alleges that there is a shortage or discrepancy regarding his/her property.

900.7 USAGE OF LOCK UP

A thorough inspection of a cell shall be conducted before placing an individual into the cell to ensure there are no weapons or contraband and that the cell is clean and sanitary. An inspection also should be conducted when he/she is released. Any damage noted to the cell should be photographed and documented.

The following requirements shall apply:

- (a) The individual shall be searched, and anything that could create a security or suicide risk, such as contraband, hazardous items, belts, shoes or shoelaces and jackets, shall be removed.
- (b) If available, the individual should be constantly monitored by an audio/video system during the entire custody.
- (c) The individual shall have constant auditory access to department members.
- (d) The individual's initial placement into, including the applicable charge(s), and the removal from a locked enclosure shall be logged on the appropriate form.
- (e) Any meals provided to the individual should be noted in the incident report and detention log, if applicable.
- (f) Safety checks by department members shall occur no less than every 30 minutes.
 - (a) Safety checks should be at varying times.
 - (b) All safety checks shall be logged.
 - (c) The safety check should involve questioning the individual as to his/her well-being.
 - (d) Individuals who are sleeping or apparently sleeping should be awakened.
 - (e) Requests or concerns of the individual should be logged.

900.8 SUICIDE ATTEMPT, DEATH OR SERIOUS INJURY

The Operations Bureau Deputy Chief will ensure procedures are in place to address any suicide attempt, death or serious injury of any individual in temporary custody at the Bay Area Rapid Transit Police Department. The procedures should include the following:

- (a) Immediate request for emergency medical assistance if appropriate
- (b) Immediate notification of the Watch Commander, Chief of Police, Operations Bureau Deputy Chief, and the Investigations Division Lieutenant

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- (c) Notification of the spouse, next of kin or other appropriate person
- (d) Notification of the appropriate prosecutor
- (e) Notification of the BART Legal Department
- (f) Notification of the Coroner
- (g) Notification of the Office of Independent Police Auditor (OIPA)
- (h) Evidence preservation.
- (i) Notification to the Attorney General within 10 days of any death in custody including any reasonably known facts concerning the death (Government Code § 12525).

900.9 RELEASE AND/OR TRANSFER

When an individual is released or transferred from custody, the member releasing the individual should ensure the following:

- (a) All forms and logs have been completed prior to release.
- (b) A check has been made to ensure that the individual is not reported as missing and does not have outstanding warrants.
- (c) If applicable, the photographing and fingerprinting of arrestees will be accomplished by the receiving local or county jail as outlined in their respective policy and booking procedures.
- (d) It has been confirmed that the correct individual is being released or transported.
- (e) All property, except evidence, contraband or dangerous weapons, has been returned to, or sent with, the individual.
- (f) All pertinent documentation accompanies the individual being transported to another facility (e.g., copies of booking forms, medical records, an itemized list of his/her property, warrant copies).
- (g) The individual is not permitted in any nonpublic areas of the Bay Area Rapid Transit Police Department unless escorted by a member of the Department.
- (h) Any known threat or danger the individual may pose (e.g., escape risk, suicide potential, medical condition) is documented, and the documentation transported with the individual if he/she is being sent to another facility.
 - 1. The department member transporting the individual shall ensure such risks are communicated to intake personnel at the other facility.
- (i) Generally, persons of the opposite sex, or adults and juveniles, should not be transported in the same vehicle unless they are physically separated by a solid barrier. If segregating individuals is not practicable, officers should be alert to inappropriate physical or verbal contact and take appropriate action as necessary.

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900.9.1 ESCAPE

- (a) Attempted Escape - During the course of an escape, the Officer responsible for the prisoner in custody shall use any one of the following means to summon assistance and prevent the escape of a prisoner:
 - 1. Notify Police personnel via radio
 - 2. Use the facility telephone to notify Police personnel
 - 3. Or any verbal means to summon assistance in preventing the escape.
- (b) Confirmed Escape
 - 1. When an escape has been confirmed, the Watch Commander will be the incident commander and will direct the search and investigation.
 - 2. The Watch Commander and assisting officers will take immediate action to correct any security breach to prevent further escapes.
 - 3. The arresting officer of the escapee will provide the following information to assist police personnel:
 - (a) Name and number of escapees
 - (b) Physical description of escapee(s)
 - (c) Last known direction of travel
 - (d) Method of escape and weapons, if any
 - (e) Provide escapee photograph as soon as possible
 - (f) Provide any relevant information about the escapee
 - (g) Address of escapee's residence
 - (h) Identity and address of friends, relatives or associates of escapee
 - (i) Description of escapee's vehicle
 - 4. There will be an immediate notification to all local law enforcement agencies regarding the escape.
 - 5. The Watch Commander will notify the Chief of Police and Operations Bureau Deputy Chief.
 - 6. The Criminal Investigations Division will be notified and requested to respond to assist in the investigation.

900.10 ASSIGNED ADMINISTRATOR

The zone commanders will ensure any reasonably necessary supplemental procedures are in place to address the following issues:

- (a) General security
- (b) Key control
- (c) Sanitation and maintenance

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- (d) Emergency medical treatment
- (e) Escapes
- (f) Evacuation plans
- (g) Fire- and life-safety
- (h) Disaster plans
- (i) Building and safety code compliance
- (j) Civil and other disturbances including hostage situations
- (k) Periodic testing of emergency equipment
- (l) Inspections and operations reviews

900.11 FIRE SAFETY

The lock up areas shall be inspected on a monthly basis by an individual designated by zone commander to ensure:

- (a) No flammable materials are stored in the detention area
- (b) Fire extinguishers are serviceable
- (c) First aid kits are readily available and completely stocked
- (d) Smoke detectors are operational

The results of the monthly inspection shall be documented in writing in a memorandum to the zone commander. The memorandums will be forwarded to the Records Division and will be retained for a period of two years.

900.11.1 FIRE PROCEDURES

In the event of a fire in the lock up area the discovering employee should immediately:

1. Notify the Fire Department, Watch Commander and on duty patrol personnel simultaneously through the Communications Center
2. Initiate movement of all prisoners to an area of safety through the utilization of the evacuation plan
3. Begin fire suppression procedures as applicable.

Responding patrol officers should be responsible for:

1. The evacuation of prisoners
2. Obtaining medical services as needed
3. Securing prisoners in a safe area
4. Arranging transportation of prisoners to the County Jail
5. Initiating an investigation concerning the origin of the fire along with filing necessary reports.

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The County Fire Marshall should make annual inspections of the lock ups.

900.11.2 EVACUATION OF LOCK UP

If an evacuation of the lock up becomes necessary, the following should be considered:

- (a) PRIMARY CONCERNS
 - 1. Safety of public
 - 2. Safety of department personnel
 - 3. Safety of prisoners
 - 4. Security of prisoners
- (b) NOTIFICATION
 - 1. Watch Commander
 - 2. Zone Sergeant
 - 3. All available sworn personnel
 - 4. Fire Department
 - 5. Medical aid
 - 6. Chief of Police
 - 7. Operations Bureau Deputy Chief
- (c) EMERGENCY EVACUATION - When time permits, all inmates will be restrained, as deemed necessary by the officer conducting the evacuation. The evacuation will be conducted in an orderly fashion.
- (d) EVACUATION FORMATION AREA - All prisoners will form in the designated location where they will be held until the lock up can again be safely occupied, or as in the case of an emergency of a long duration, until they can be transported to another facility.
 - 1. If possible, juveniles are to be kept separate from adult prisoners, and females from male prisoners.
 - 2. Only after the safety and security of the prisoners is assured will personnel, not detailed to prisoner security, participate in fire suppression or other emergency activities.
- (e) DISTRICT-WIDE OR REGIONAL DISASTERS - In cases of District-wide or regional disasters, the Watch Commander may authorize the release of prisoners detained for misdemeanors or felonies involving property crimes only. Every available effort will be made to continue the custody of violent felons or felons accused of violent crimes to ensure the safety of the public.
- (f) REPORTS - The zone sergeant will ensure that any emergency evacuation of the lock up is documented and that copies of those reports be forwarded to the Chief of Police.

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900.12 TRAINING

Department members should be trained and familiar with this policy and any supplemental procedures.

The Personnel and Training Lieutenant shall maintain records of all such training in the member's training file.

Custodial Searches

902.1 PURPOSE AND SCOPE

This policy provides guidance regarding searches of individuals in custody. Such searches are necessary to eliminate the introduction of contraband, intoxicants or weapons into the Bay Area Rapid Transit Police Department facility. Such items can pose a serious risk to the safety and security of department members, individuals in custody, contractors and the public.

Nothing in this policy is intended to prohibit the otherwise lawful collection of evidence from an individual in custody.

902.1.1 DEFINITIONS

Definitions related to this policy include:

Custody search - An in-custody search of an individual and of his/her property, shoes and clothing, including pockets, cuffs and folds on the clothing, to remove all weapons, dangerous items and contraband.

Physical body cavity search - A search that includes a visual inspection and may include a physical intrusion into a body cavity. Body cavity means the stomach or rectal cavity of an individual, and the vagina of a female person.

Strip search - A search that requires an individual to remove or rearrange some or all of his/her clothing to permit a visual inspection of the underclothing, breasts, buttocks, anus or outer genitalia. This includes monitoring an individual who is changing clothes, where his/her underclothing, buttocks, genitalia or female breasts are visible.

902.2 POLICY

All searches shall be conducted with concern for safety, dignity, courtesy, respect for privacy and hygiene, and in compliance with policy and law to protect the rights of those who are subject to any search.

Searches shall not be used for intimidation, harassment, punishment or retaliation.

902.2.1 SEARCH PROTOCOL

Employees will refer to Policy 322.4 for the search protocol

902.3 FIELD AND TRANSPORTATION SEARCHES

An officer should conduct a custody search of an individual immediately after his/her arrest, when receiving an individual from the custody of another, and before transporting a person who is in custody in any department vehicle.

Whenever practicable, a custody search should be conducted by an officer of the same sex as the person being searched. If an officer of the same sex is not reasonably available, a witnessing officer should be present during the search.

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902.4 SEARCHES AT POLICE FACILITIES

Custody searches shall be conducted on all individuals in custody, upon entry to the Bay Area Rapid Transit Police Department facilities. Except in exigent circumstances, the search should be conducted by a member of the same sex as the individual being searched. If a member of the same sex is not available, a witnessing member must be present during the search.

Custody searches should also be conducted any time an individual in custody enters or re-enters a secure area, or any time it is reasonably believed that a search is necessary to maintain the safety and security of the facility.

902.4.1 PROPERTY

Members shall take reasonable care in handling the property of an individual in custody to avoid discrepancies or losses. Property retained for safekeeping shall be kept in a secure location until the individual is released or transferred.

Some property may not be accepted by a facility or agency that is taking custody of an individual from this department, such as weapons or large items. These items should be retained for safekeeping in accordance with the Property and Evidence Policy.

All property shall be inventoried by objective description (this does not include an estimated value). The individual from whom it was taken shall be required to sign the completed inventory. If the individual's signature cannot be obtained, the inventory shall be witnessed by another department member. The inventory should include the case number, date, time, member's Bay Area Rapid Transit Police Department identification number and information regarding how and when the property may be released.

902.4.2 VERIFICATION OF MONEY

All money shall be counted in front of the individual from whom it was received. When possible, the individual shall initial the dollar amount on the inventory. Additionally, all money should be placed in a separate envelope and sealed. Negotiable checks or other instruments and foreign currency should also be sealed in an envelope with the amount indicated but not added to the cash total. All envelopes should clearly indicate the contents on the front. The department member sealing it should place his/her initials across the sealed flap. Should any money be withdrawn or added, the member making such change shall enter the amount below the original entry and initial it. The amount of money in the envelope should always be totaled and written on the outside of the envelope.

902.5 STRIP SEARCHES

No individual in temporary custody at any Bay Area Rapid Transit Police Department facility shall be subjected to a strip search unless there is reasonable suspicion based upon specific and articulable facts to believe the individual has a health condition requiring immediate medical attention or is concealing a weapon or contraband. Factors to be considered in determining reasonable suspicion include, but are not limited to:

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- (a) The detection of an object during a custody search that may be a weapon or contraband and cannot be safely retrieved without a strip search.
- (b) Circumstances of a current arrest that specifically indicate the individual may be concealing a weapon or contraband.
 - 1. A felony arrest charge or being under the influence of a controlled substance should not suffice as reasonable suspicion absent other facts.
- (c) Custody history (e.g., past possession of contraband while in custody, assaults on department members, escape attempts).
- (d) The individual's actions or demeanor.
- (e) Criminal history (i.e., level of experience in a custody setting).

No transgender or intersex individual shall be searched or examined for the sole purpose of determining the individual's genital status. If the individual's genital status is unknown, it may be determined during conversations with the person, by reviewing medical records, or as a result of a broader medical examination conducted in private by a medical practitioner (28 CFR 115.115).

902.5.1 STRIP SEARCH PROCEDURES

Strip searches at Bay Area Rapid Transit Police Department facilities shall be conducted as follows (28 CFR 115.115; Penal Code § 4030):

- (a) Written authorization from the Watch Commander shall be obtained prior to the strip search.
- (b) All members involved with the strip search shall be of the same sex as the individual being searched, unless the search is conducted by a medical practitioner.
- (c) All strip searches shall be conducted in a professional manner under sanitary conditions and in a secure area of privacy so that it cannot be observed by those not participating in the search. The search shall not be reproduced through a visual or sound recording.
- (d) Whenever possible, a second member of the same sex should also be present during the search, for security and as a witness to the finding of evidence.
- (e) Members conducting a strip search shall not touch the breasts, buttocks or genitalia of the individual being searched.
- (f) The primary member conducting the search shall prepare a written report to include:
 - 1. The facts that led to the decision to perform a strip search.
 - 2. The reasons less intrusive methods of searching were not used or were insufficient.
 - 3. The written authorization for the search, obtained from the Watch Commander.

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4. The name of the individual who was searched.
 5. The name and sex of the members who conducted the search.
 6. The name, sex and role of any person present during the search.
 7. The time and date of the search.
 8. The place at which the search was conducted.
 9. A list of the items, if any, that were recovered.
 10. The facts upon which the member based his/her belief that the individual was concealing a weapon or contraband.
- (g) No member should view an individual's private underclothing, buttocks, genitalia or female breasts while that individual is showering, performing bodily functions or changing clothes, unless he/she otherwise qualifies for a strip search. However, if serious hygiene or health issues make it reasonably necessary to assist the individual with a shower or a change of clothes, a supervisor should be contacted to ensure reasonable steps are taken to obtain the individual's consent and/or otherwise protect his/her privacy and dignity.
- (h) If the individual has been arrested for a misdemeanor or infraction offense, the written authorization from the Watch Commander shall include specific and articulable facts and circumstances upon which the reasonable suspicion determination for the search was made.
- (i) A copy of the written authorization shall be retained and made available upon request to the individual or the individual's authorized representative. A record of the time, date, place of the search, the name and sex of the person conducting the search, and a statement of the results of the search shall also be retained and made available upon request to the individual or the individual's authorized representative.

902.5.2 SPECIAL CIRCUMSTANCE FIELD STRIP SEARCHES

A strip search may be conducted in the field only with Watch Commander authorization and only in exceptional circumstances, such as when:

- (a) There is probable cause to believe that the individual is concealing a weapon or other dangerous item that cannot be recovered by a more limited search.
- (b) There is probable cause to believe that the individual is concealing controlled substances or evidence that cannot be recovered by a more limited search, and there is no reasonable alternative to ensure the individual cannot destroy or ingest the substance during transportation.

These special-circumstance field strip searches shall only be authorized and conducted under the same restrictions as the strip search procedures in this policy, except that the Watch Commander authorization does not need to be in writing.

Custodial Searches

902.6 PHYSICAL BODY CAVITY SEARCH

Physical body cavity searches shall be subject to the following (Penal Code § 4030):

- (a) No individual shall be subjected to a physical body cavity search without written approval of the Watch Commander and only upon a search warrant. A copy of any search warrant and the results of the physical body cavity search shall be included with the related reports and made available, upon request, to the individual or authorized representative (except for those portions of the warrant ordered sealed by a court).
- (b) Only a physician, nurse practitioner, registered nurse, licensed vocational nurse or Emergency Medical Technician Level II licensed to practice in California may conduct a physical body cavity search.
- (c) Except for the physician or licensed medical personnel conducting the search, persons present must be of the same sex as the individual being searched. Only the necessary department members needed to maintain the safety and security of the medical personnel shall be present.
- (d) Privacy requirements, including restricted touching of body parts and sanitary condition requirements, are the same as required for a strip search.
- (e) All such searches shall be documented, including:
 - 1. The facts that led to the decision to perform a physical body cavity search of the individual.
 - 2. The reasons less intrusive methods of searching were not used or were insufficient.
 - 3. The Watch Commander's approval.
 - 4. A copy of the search warrant.
 - 5. The time, date and location of the search.
 - 6. The medical personnel present.
 - 7. The names, sex and roles of any department members present.
 - 8. Any contraband or weapons discovered by the search.
- (f) Copies of the written authorization and search warrant shall be retained and shall be provided to the individual who was searched or other authorized representative upon request. A record of the time, date, place of the search, the name and sex of the person conducting the search and a statement of the results of the search shall also be retained and made available upon request to the individual or the individual's authorized representative.

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902.7 TRAINING

The Personnel and Training Lieutenant shall ensure members have training that includes (28 CFR 115.115):

- (a) Conducting searches of cross-gender individuals.
- (b) Conducting searches of transgender and intersex individuals.
- (c) Conducting searches in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

902.8 BODY SCANNER SEARCH

If a body scanner is available, a body scan search should be performed on all inmates/arrestees upon entering the secure booking area of the facility. Members (Penal Code § 4030):

- (a) Within sight of the visual display of a body scanner that is depicting the body during a scan shall be of the same sex as the person being scanned, except for physicians or licensed medical personnel.
- (b) Should ask female inmates if they are pregnant prior to a body scan and should not knowingly use a body scanner on a woman who is pregnant.

Processing and Handling of Arrestees

903.1 PURPOSE AND SCOPE

To establish procedures for the safe handling and processing of arrestees.

903.2 POLICY

Although recommended for most arrest situations, handcuffing is a discretionary procedure and not an absolute rule of the Department. The arresting officer should consider the circumstances leading to the arrest, the attitude of the arrested person, and the age, sex, and health of the person before handcuffing. It must be recognized that officer safety is the primary concern.

It is not the intent of the Department to dissuade officers from handcuffing all persons they believe warrant that degree of restraint, nor is it the intent of this policy to create the atmosphere that in order to avoid risk, an officer should handcuff all persons regardless of the circumstances. In most situations handcuffs should be applied with the hands behind the person. Handcuffs should be removed as soon as the arrested person is safely confined within the jail.

Arrestees should be handcuffed and relieved of all personal property while held in any lock up. Arrestees not handcuffed, for the purposes of interviewing or processing, are the sole responsibility of the officers who have custody of the arrestee.

903.2.1 AUTHORIZED TEMPORARY CUSTODY LOCATIONS

The following are the only authorized locations where employees will bring prisoners for processing:

Zone 1

- Lake Merritt
- Fruitvale (administrative cuffing station)
- MET Building (Criminal Investigations Division)

Zone 2 (R-Line)

- El Cerrito Del Norte

Zone 2 (C-Line)

- Walnut Creek
- Concord
- Pittsburg/Bay Point

Zone 3

- Castro Valley
- West Dublin

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- Bay Fair
- Fremont

Zone 4

- Powell Street
- Civic Center (administrative cuffing station)

Zone 5

- San Francisco Airport
- Millbrae

Employees will not bring prisoners into any other offices, break rooms, or police facilities.

903.2.2 DOCUMENTATION OF TEMPORARY CUSTODY

Prisoner activity sheets are required to be completed for all prisoners (juveniles and adults) held in any Department authorized temporary custody location. The prisoner activity sheet does not replace the secure and non-secure juvenile detention logs, which are also to be completed for all juvenile detentions. The completed prisoner activity sheets will be forwarded to the Records Division with all associated paperwork for the case.

903.3 DEFINITIONS

Lock Up – A room or secure enclosure that is primarily for the secure detention of adults upon arrest.

Zone Facility - Any police substation or remote-reporting location.

Arrestee - Any person detained for investigation of a criminal incident.

903.4 PROCEDURES

All persons placed under physical arrest should be handcuffed with the hands to the rear, and the handcuffs shall be double-locked and checked for comfort. Arrestees should remain cuffed from the time of arrest until that person is turned over to the custody of a jail facility or other competent authority, unless the person is being interviewed, processed, treated at a medical facility or granted toilet privileges.

Arrestees may be handcuffed to the front only when it is necessary due to medical reasons or due to the physical size of the person. Complaints of handcuff irritation shall be checked as soon as practicable. Prior to granting toilet privileges, the facility or restroom must be checked for security and privacy. Officers are required to accompany arrestees into the restroom to maintain visual control. Arrestees shall be accompanied by an officer(s) of the same sex.

When an arrestee is detained in any lock up, all personal property that could be used as a weapon or device to attempt suicide, shall be removed from the arrestee prior to placing the arrestee into the lock up.

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No items which could be used as a weapon shall be placed in the lock up.

Officers entering any lock up shall secure their firearms prior to taking the handcuffs off any arrestee.

Violent arrestees shall be restrained by use of an approved restraint method to minimize self-inflicted injuries and injury to department personnel. Officers using a restraint method shall closely monitor the arrestee's vital signs to minimize any injury.

Whenever a lock up is occupied, the lock shall remain engaged.

903.4.1 RELEASE FROM CUSTODY

Anytime a person is arrested and released pursuant to 849 (b)(1) or (3) PC, the person shall be issued a certificate-of-release (BART Police form #0462) signed by the releasing officer or supervisor, describing the action as a detention.

903.4.2 TRANSPORT OF ARRESTEE TO ANOTHER FACILITY

Whenever a prisoner is to be transported from the Temporary Holding Facility to another facility by a member of this department, the transporting officer shall be responsible for the following:

- (a) Verify that the identity of each prisoner to be transported matches the booking paperwork.
- (b) Ensure that all pertinent documentation accompanies the prisoner, such as copies of booking forms, medical records when appropriate, an itemized list of the prisoner's property, warrant copies, etc.
- (c) Ensure that any known threat or danger the prisoner may pose, such as escape risk, suicide potential, or medical condition, is recorded on the prisoner's booking documentation and is transported with the prisoner to the next facility. The transporting officer shall ensure such threat or danger is communicated to intake personnel at the facility.

903.4.3 ASSISTING CRIMINALS

Employees shall not communicate in any manner, directly or indirectly any information which might assist persons suspected of committing criminal acts to escape arrest or punishment or which may enable them to dispose of or secrete evidence of unlawful activity or money merchandise, or other property unlawfully obtained.

903.4.4 ACTING AS BAILOR PROHIBITED

Employees cannot act as bailors for any person in BART Police custody, except relatives, and in no case where any fee, gratuity or reward is solicited or accepted.

903.4.5 RECOMMENDING ATTORNEYS AND BAIL BOND BROKERS PROHIBITED

Employees shall not suggest, recommend, advise or otherwise counsel the retention of any attorney or bail bond broker to any person coming to their attention as a result of department business.

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903.4.6 MONIES ACCEPTANCE OF

Officers shall not accept money as bailer in payment of a fine except as provided in Departmental orders.

903.5 CUSTODY OF PRISONERS

Officers charged with the custody of prisoners shall observe all laws and Departmental orders regarding this activity. Prisoners shall be kept secure, treated fairly and humanely, and shall not be subjected to unnecessary force. Member shall strictly observe the laws of arrest and the following provisions when making arrests:

- Only necessary restraint to assure safe custody and the safety of the officer shall be employed.
- The arresting officer is responsible for the safety and protection of the arrested person while in his custody. He/She shall notify the transporting officers of any injury, apparent illness, or other condition which indicates the arrested person may need special care.
- The arresting officer is responsible for the security of personal property in the possession of the arrested person under his control at the time of arrest. This responsibility transfers to the transporting officers when they accept custody of the arrested person, except for vehicles.
- A disabled detainee in a wheel chair or who uses walking aids may not require the use of restraints in all circumstances, depending on the nature of the disability.
- The officer's supervisor shall be notified in all arrest situations prior to booking.

903.6 TRANSPORTATION OF PRISONERS

Officers transporting prisoners shall do so in accordance with Departmental policy.

- (a) The transporting officer shall search the prisoner's person and belongings prior to transportation to a booking or medical facility.
- (b) Prisoners requiring medical attention shall be delivered to the appropriate emergency hospital, and the transporting officers shall be responsible for the security of the prisoner until properly relieved, unless otherwise directed by a higher ranking officer.
- (c) Prisoners and their property shall be surrendered at the jail to custodial officers or as directed otherwise by supervisory personnel.
- (d) Any prisoner transported to a hospital in an ambulance shall be accompanied and guarded by an officer unless police emergencies dictate otherwise.
- (e) Any Department vehicle used for transporting an arrested person is to be searched at the beginning of each shift, and prior to and following transporting an arrested person, for contraband or weapons.
- (f) During the transportation of prisoners, prisoners will not be allowed to communicate with outside parties, including attorneys, clergy and family members.
- (g) Employees shall not communicate in any manner, directly or indirectly, any information which might assist persons suspected of committing criminal acts to escape arrest or

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punishment or which may enable them to dispose of or secrete evidence of unlawful activity or money, merchandise, or other property unlawfully obtained.

903.6.1 MAINTAINING OBSERVATIONS OF TRANSPORTED PRISONERS

Prisoners shall be properly restrained and should be transported in a caged patrol vehicle. Officers will not lose sight of prisoners. The prisoner shall be placed in a position to allow the greatest degree of visibility and control by the transporting officer(s).

Prisoners should be transported in a police vehicle equipped with a safety barrier, except in incidents requiring medical attention or other emergencies. No more than three prisoners shall be transported in a marked/caged patrol vehicle.

When a vehicle is equipped with a safety barrier, the prisoner should be transported within the confines of the safety barrier. Officers should position prisoners in the right-hand rear seat so they can be observed by the transporting officer.

If the vehicle is not equipped with a safety barrier, a single prisoner should be placed in the front seat where the transporting officer can maintain observation and control of the prisoner. If a second officer is available to assist transport, the prisoner should be placed in the rear seat with the assisting officer positioned behind the transporting officer.

Under certain circumstances, Detective Officers may be used to transport prisoners, but they must follow the guidelines as stated above.

While transporting prisoners, officers shall not respond to routine calls for service, initiate any enforcement action or become involved in a pursuit.

Upon observation of a situation requiring police action along the transport route, BART PD dispatch shall be advised. Transporting officers should respond only to situations where risk of serious bodily injury or death to third parties is imminent and the risk to the prisoner is minimal.

903.7 SECURITY CONCERNS

In any instance where the department becomes aware that a particular prisoner poses a security risk, whether it is due to previous escape attempts or other information which would constitute a risk, said information will be communicated to county jail officials or any other receiving custodial institution.

903.8 TRANSPORTATION TO DETENTION FACILITIES

When transporting a prisoner to a detention facility, the officer shall do the following upon arrival:

- (a) Secure weapons either in a firearm locker or in the trunk of the patrol vehicle. The vehicle's shotgun and rifle may remain locked in the electro-lock mechanism of the patrol car.
- (b) Restraints will be removed at the direction of the receiving officer.
- (c) Complete and submit all necessary paperwork to the receiving officer and advise of any medical or security hazards. Retain a copy of the pre-booking sheet for return to the Records Unit to confirm transfer of custody.

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903.9 ESCAPE OF PRISONER DURING TRANSPORT

If an escape occurs, the transporting officer must immediately advise the BART PD communications center of the following:

- (a) Officer's call sign
- (b) The location of the escape.
- (c) The escapee's description.
- (d) The charge the escapee was in custody on.
- (e) Any known accomplice.
- (f) Whether the escapee and/or accomplices are armed.
- (g) Method of flight including vehicle description.
- (h) Direction of flight.

If the escape occurs within radio range of the BART PD Integrated Security Response Center, the officer must request that the center notify applicable on duty patrol units and/or law enforcement agencies. If the escape occurs beyond radio range of BART PD Integrated Security Response Center, the officer must, as soon as practicable, contact the BART Police Department Integrated Security Response Center. The BART Police Integrated Security Response Center must then notify the on duty patrol watch commander.

The initial law enforcement response to assist and search for an escaped prisoner should be coordinated by the supervising officer of the agency having jurisdiction over the location where the escape occurred, or is believed to have occurred. The transporting officer is responsible for any additional prisoners he/she is transporting. Therefore, in the event of an escape during transport, he/she should remain with the transport vehicle and any remaining prisoners. Extenuating circumstances may dictate a different course of action.

Upon making the above notifications, and as soon as practicable, the officer should transport the remaining prisoners to their destination, or the nearest detention facility, as circumstances dictate. Officers must complete all necessary reports and procedures before reporting off duty. Officers must follow all Department policies and procedures applicable to the Use of Force regarding any attempt to prevent an escape or to recapture an escapee.

903.10 TRANSPORTING SICK, INJURED OR DISABLED PRISONERS

Any prisoner who has sustained an injury that requires medical attention shall be medically cleared prior to transporting to the nearest Jail. A medical clearance may be obtained at the emergency room of a county or local hospital. If the prisoner is in transport and requires immediate medical attention the officer shall take the prisoner to the nearest medical emergency facility.

If, while in custody, a prisoner appears to need medical attention or expresses a desire for medical attention (even if no obvious medical problems are apparent), request medial aid and immediately notify a supervisor.

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If the prisoner is mentally or physically disabled to the point that they cannot be safely transported in a police vehicle, the officer shall contact the on-duty supervisor. If continued custody is essential, the prisoner may be transported by ambulance, or at the supervisor's discretion. If transported by ambulance, appropriate restraints should be used and the arresting officer should accompany if possible.

Medicine, medical devices, walking aids and prosthetic devices shall be placed in an area not accessible to the prisoner, absent those devices (such as oxygen) required to sustain essential life functions.

903.11 TRANSPORT TO MEDICAL FACILITIES

When transported to a medical facility, officers should ensure that prisoners are isolated from other patients and are not left unattended. All contacts with the prisoner should be monitored. Restraints should be removed only when necessary and at the direction of medical personnel.

The officer shall not leave the medical facility until relieved by another officer or released by a supervisor. If the prisoner is admitted to the hospital, a supervisor should be notified to determine if the prisoner can be released on a citation or a warrant sought.

When the prisoner is released from the hospital, the officer should obtain written instructions for future treatments and medication, and the prisoner should be searched and properly restrained.

903.12 SPECIAL CIRCUMSTANCES

Prisoners will not normally be transported to locations other than medical or detention facilities. Any exceptions will be made with the approval of the on-duty supervisor. Prisoners will be handcuffed at all times during unusual situations.

903.13 TRANSPORTING PRISONERS OF OPPOSITE GENDER

Prisoners of the opposite gender should not be transported together. Under certain circumstances, the Watch Commander may authorize opposite gender prisoners to be transported together.

903.14 TRANSPORTING JUVENILE PRISONERS

Juveniles shall not be transported with adults regardless of relationship. Juvenile prisoners may be transported together unless of opposite gender.

Chapter 10 - Personnel

Recruitment and Selection

1000.1 PURPOSE AND SCOPE

This policy provides a framework for employee recruiting efforts and identifying job-related standards for the selection process. This policy supplements the rules that govern employment practices for the Bay Area Rapid Transit Police Department and that are promulgated and maintained by the Human Resources Department.

1000.2 POLICY

In accordance with applicable federal, state, and local law, the Bay Area Rapid Transit Police Department provides equal opportunities for applicants and employees regardless of actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law. The Department does not show partiality or grant any special status to any applicant, employee, or group of employees unless otherwise required by law.

The Department will recruit and hire only those individuals who demonstrate a commitment to service and who possess the traits and characteristics that reflect personal integrity and high ethical standards.

The selection process for all personnel shall be administered, evaluated, and interpreted in a uniform manner.

1000.3 STANDARDS

The Department is committed to having valid non-discriminatory policies which will allow it to lawfully exclude persons who do not meet the department or State of California hiring standards. The California Commission on Peace Officer Standards and Training (POST) developed a Job Dimensions list, which is used as a professional standard in background investigations.

The following standards have been adopted for public safety applicants. Only the Chief of Police may make exceptions to any of the following disqualifying rules:

1000.3.1 OPERATION OF A MOTOR VEHICLE

- (a) The ability to possess a valid California driver's license
- (b) The ability to drive safely
- (c) The ability to control a motor vehicle at high speeds
- (d) The ability to operate a motor vehicle in all types of weather conditions
- (e) The following shall be disqualifying:
 1. Receipt of three or more moving violations (or any single violation of a potential life threatening violation, such as reckless driving, speed contest, suspect of a

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pursuit, etc.) within three years prior to application. Moving violations for which there is a factual finding of innocence shall not be included.

2. Involvement as a driver in two or more chargeable (at fault) collisions within three years prior to date of application.
3. A conviction for driving under the influence of alcohol and/or drugs within three years prior to application or any two convictions for driving under the influence of alcohol and/or drugs. Being on active probationary status for driving under the influence of alcohol and/or drugs.

1000.3.2 INTEGRITY

- (a) Refusing to yield to the temptation of bribes, gratuities, payoffs, etc.
- (b) Refusing to tolerate unethical or illegal conduct on the part of other law enforcement personnel
- (c) Showing strong moral character and integrity in dealing with the public
- (d) Being honest in dealing with the public
- (e) The following shall be disqualifying:
 1. Any material misstatement of fact or significant admission during the application or background process shall be disqualifying, including inconsistent statements made during the initial background interview (Personal History Statement or Supplemental Questionnaire) or polygraph examination or discrepancies between this background investigation and other investigations conducted by other law enforcement agencies.
 2. Any forgery, alteration, or intentional omission of material facts on an official employment application document or sustained episodes of academic cheating.

1000.3.3 CREDIBILITY AS A WITNESS IN A COURT OF LAW

- (a) The ability to give testimony in a court of law without being subject to impeachment due to his/her honesty or veracity (or their opposites) or due to prior felony conviction.
- (b) The following shall be disqualifying:
 1. Conviction of any criminal offense classified as a misdemeanor under California law within three years prior to application
 2. Conviction for two or more misdemeanor offenses under California law as an adult
 3. Conviction of any offense classified as a misdemeanor under California law while employed as a peace officer (including military police officers)
 4. Admission(s) of having committed any act amounting to a felony (including felony- misdemeanor offenses) under California law, as an adult, within five years prior to application or while employed as a peace officer (including military police officers)

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5. Admission(s) of administrative conviction of any act while employed as a peace officer (including military police officers) involving lying, falsification of any official report or document, or theft
6. Admission(s) of any act of domestic violence as defined by law, committed as an adult
7. Admission(s) of any criminal act, whether misdemeanor or felony, committed against children including but not limited to: molesting or annoying children, child abduction, child abuse, lewd and lascivious acts with a child, or indecent exposure. Acts of consensual unlawful intercourse accomplished between two minors shall not be included, unless more than four years difference in age existed at the time of the acts
8. Any history of actions resulting in civil lawsuits against the applicant or his/her employer may be disqualifying

1000.3.4 DEPENDABILITY

- (a) Having a record of submitting reports on time and not malingering on calls, etc.
- (b) A record of being motivated to perform well
- (c) A record of dependability and follow through on assignment
- (d) A history of taking the extra effort required for complete accuracy in all details of work
- (e) A willingness to work the hours needed to complete a job
- (f) The following shall be disqualifying:
 1. Missing any scheduled appointment during the process without prior permission
 2. Having been disciplined by any employer (including military) as an adult for abuse of leave, gross insubordination, dereliction of duty, or persistent failure to follow established policies and regulations
 3. Having been involuntarily dismissed (for any reason other than lay-off) from two or more employers as an adult
 4. Having held more than seven paid positions with different employers within the past four years, or more than 15 paid positions with different employers in the past ten years (excluding military). Students who attend school away from their permanent legal residence may be excused from this requirement
 5. Having undergone personal bankruptcy more than once, having current financial obligations for which legal judgments have not been satisfied, currently having wages garnished, or any other history of financial instability
 6. Resigning from any paid position without notice shall be disqualifying, except where the presence of a hostile work environment is alleged
 7. Having any outstanding warrant of arrest at time of application

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1000.3.5 LEARNING ABILITY

- (a) The ability to comprehend and retain information
- (b) The ability to recall information pertaining to laws, statutes, codes, etc.
- (c) The ability to learn and to apply what is learned
- (d) The ability to learn and apply the material, tactics and procedures that are required of a law enforcement officer
- (e) The following shall be disqualifying:
 - 1. Being under current academic dismissal from any college or university where such dismissal is still in effect and was initiated within the past two years prior to the date of application
 - 2. Having been academically dismissed from any POST certified basic law enforcement academy wherein no demonstrated effort has been made to improve in the deficient areas, except: subsequent successful completion of another POST basic law enforcement academy shall rescind this requirement

1000.3.6 PERSONAL SENSITIVITY

- (a) The ability to resolve problems in a way that shows sensitivity for the feelings of others
- (b) Empathy
- (c) Discretion, not enforcing the law blindly
- (d) Effectiveness in dealing with people without arousing antagonism
- (e) The ability to understand the motives of people and how they will react and interact
- (f) The following shall be disqualifying:
 - 1. Having been disciplined by any employer (including the military and/or any law enforcement training facility) for acts constituting racial, ethnic or sexual harassment or discrimination
 - 2. Uttering any epithet derogatory of another person's race, religion, gender, national origin or sexual orientation
 - 3. Having been disciplined by any employer as an adult for fighting in the workplace

1000.3.7 JUDGMENT UNDER PRESSURE

- (a) The ability to apply common sense during pressure situations
- (b) The ability to make sound decisions on the spot
- (c) The ability to use good judgment in dealing with potentially explosive situations
- (d) The ability to make effective, logical decisions under pressure
- (e) The following shall be disqualifying:

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1. Admission(s) of administrative conviction or criminal convictions for any act amounting to assault under color of authority or any other violation of federal or state Civil Rights laws
2. Any admission(s) of administrative conviction or criminal conviction for failure to properly report witnessed criminal conduct committed by another law enforcement officer

1000.3.8 ILLEGAL USE OR POSSESSION OF DRUGS

- (a) The following examples of illegal drug use or possession will be considered automatic disqualifiers for public safety applicants:
 1. Any adult use or possession of a drug classified as a hallucinogenic within seven years prior to application for employment
 2. Any adult use or possession of marijuana within one year prior to application for employment
 3. Any other illegal adult use or possession of a drug not mentioned above (including cocaine) within three years prior to application for employment
 4. Any illegal adult use or possession of a drug while employed in any law enforcement capacity, military police, or as a student enrolled in college-accredited courses related to the criminal justice field
 5. Any adult manufacture or cultivation of a drug or illegal substance
 6. Failure to divulge to the Department any information about personal illegal use or possession of drugs
 7. Any drug test of the applicant, during the course of the hiring process, where illegal drugs are detected
- (b) The following examples of illegal drug use or possession will be considered in relationship to the overall background of that individual and may result in disqualification:
 1. Any illegal use or possession of a drug as a juvenile
 2. Any illegal adult use or possession of a drug that does not meet the criteria of the automatic disqualifiers specified above (e.g., marijuana use longer than one year ago or cocaine use longer than three years ago.)
 3. Any illegal or unauthorized use of prescription medications

1000.4 RECRUITMENT

The Professional Standards and Training Bureau should employ a comprehensive recruitment and selection strategy to recruit and select employees from a qualified and diverse pool of candidates.

The strategy should include:

- (a) Identification of racially and culturally diverse target markets.
- (b) Use of marketing strategies to target diverse applicant pools.

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- (c) Expanded use of technology and maintenance of a strong internet presence. This may include an interactive department website and the use of department-managed social networking sites, if resources permit.
- (d) Expanded outreach through partnerships with media, community groups, citizen academies, local colleges, universities, and the military.
- (e) Employee referral and recruitment incentive programs.
- (f) Consideration of shared or collaborative regional testing processes.

The Professional Standards and Training Bureau shall avoid advertising, recruiting and screening practices that tend to stereotype, focus on homogeneous applicant pools or screen applicants in a discriminatory manner.

The Department should strive to facilitate and expedite the screening and testing process, and should periodically inform each candidate of his/her status in the recruiting process.

1000.5 SELECTION PROCESS

The Department shall actively strive to identify a diverse group of candidates who have in some manner distinguished themselves as being outstanding prospects. Minimally, the Department should employ a comprehensive screening, background investigation, and selection process that assesses cognitive and physical abilities and includes review and verification of the following:

- (a) A comprehensive application for employment (including previous employment, references, current and prior addresses, education, military record)
- (b) Driving record
- (c) Reference checks
- (d) Employment eligibility, including U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form I-9 and acceptable identity and employment authorization documents consistent with Labor Code § 1019.1. This required documentation should not be requested until a candidate is hired. This does not prohibit obtaining documents required for other purposes.
- (e) Information obtained from public internet sites
- (f) Financial history consistent with the Fair Credit Reporting Act (FCRA) (15 USC § 1681 et seq.)
- (g) Local, state, and federal criminal history record checks
- (h) Lie detector test (when legally permissible) (Labor Code § 432.2)
- (i) Medical and psychological examination (may only be given after a conditional offer of employment)
- (j) Review board or selection committee assessment

The use of results of a polygraph examination or other instrument for the detection of deception as a single determinant of employment status, is prohibited.

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1000.5.1 VETERAN'S PREFERENCE

Qualifying veterans of the United States Armed Forces who receive a passing score on an entrance examination shall be ranked in the top rank of any resulting eligibility list. The veteran's preference shall also apply to a widow or widower of a veteran or a spouse of a 100 percent disabled veteran (Government Code § 18973.1).

1000.6 BACKGROUND INVESTIGATION

Every candidate shall undergo a thorough background investigation to verify his/her personal integrity and high ethical standards, and to identify any past behavior that may be indicative of the candidate's unsuitability to perform duties relevant to the operation of the Bay Area Rapid Transit Police Department (11 CCR 1953).

The narrative report and any other relevant background information shall be shared with the psychological evaluator. Information shall also be shared with others involved in the hiring process if it is relevant to their respective evaluations (11 CCR 1953).

1000.6.1 BACKGROUND INVESTIGATION UPDATE

A background investigation update may, at the discretion of the Chief of Police, be conducted in lieu of a complete new background investigation on a peace officer candidate who is reappointed within 180 days of voluntary separation from the Bay Area Rapid Transit Police Department, or who is an interim police chief meeting the requirements contained in 11 CCR 1953(f).

1000.6.2 NOTICES

Background investigators shall ensure that investigations are conducted and notices provided in accordance with the requirements of the FCRA and the California Investigative Consumer Reporting Agencies Act (15 USC § 1681d; Civil Code § 1786.16).

1000.6.3 STATE NOTICES

If information disclosed in a candidate's criminal offender record information (CORI) is the basis for an adverse employment decision, a copy of the CORI shall be provided to the applicant (Penal Code § 11105).

1000.6.4 REVIEW OF SOCIAL MEDIA SITES

Due to the potential for accessing unsubstantiated, private, or protected information, the Professional Standards and Training Bureau shall not require candidates to provide passwords, account information, or access to password-protected social media accounts (Labor Code § 980).

1000.6.5 DOCUMENTING AND REPORTING

The background investigator shall summarize the results of the background investigation in a narrative report that includes sufficient information to allow the reviewing authority to decide whether to extend a conditional offer of employment. The report shall not include any information that is prohibited from use, including that from social media sites, in making employment decisions. The report and all supporting documentation shall be included in the candidate's background investigation file (11 CCR 1953).

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1000.6.6 RECORDS RETENTION

The background report and all supporting documentation shall be maintained for a minimum of two years and in accordance with the established records retention schedule (Government Code § 12946; 11 CCR 1953).

Selection materials related to a backgrounds investigation shall be stored in a secure area when not being used and are disposed in a manner that prevents disclosure from within.

1000.7 DISQUALIFICATION GUIDELINES

As a general rule, performance indicators and candidate information and records shall be evaluated by considering the candidate as a whole, and taking into consideration the following:

- Age at the time the behavior occurred
- Passage of time
- Patterns of past behavior
- Severity of behavior
- Probable consequences if past behavior is repeated or made public
- Likelihood of recurrence
- Relevance of past behavior to public safety employment
- Aggravating and mitigating factors
- Other relevant considerations

A candidate's qualifications will be assessed on a case-by-case basis, using a totality-of-the-circumstances framework.

1000.8 EMPLOYMENT STANDARDS

All candidates shall meet the minimum standards required by state law (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.). Candidates will be evaluated based on merit, ability, competence, and experience, in accordance with the high standards of integrity and ethics valued by the Department and the community. The California Commission on Peace Officer Standards and Training (POST) developed a Job Dimensions list, which is used as a professional standard in background investigations.

Validated, job-related, and nondiscriminatory employment standards shall be established for each job classification and shall minimally identify the training, abilities, knowledge, and skills required to perform the position's essential duties in a satisfactory manner. Each standard should include performance indicators for candidate evaluation. The Human Resources Department should maintain validated standards for all positions.

1000.8.1 STANDARDS FOR OFFICERS

Candidates shall meet the minimum standards established by POST (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.):

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- (a) Free of any felony convictions
- (b) Citizen of the United States, or permanent resident alien eligible for and has applied for citizenship
- (c) At least 18 years of age
- (d) Fingerprinted for local, state, and national fingerprint check
- (e) Good moral character as determined by a thorough background investigation (11 CCR 1953)
- (f) High school graduate, passed the GED or other high school equivalency test, or obtained a two-year, four-year, or advanced degree from an accredited or approved institution
- (g) Free from any physical, emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation which might adversely affect the exercise of police powers (11 CCR 1954; 11 CCR 1955)
- (h) Candidates must also satisfy the POST selection requirements, including (11 CCR 1950 et seq.):
 - 1. Reading and writing ability assessment (11 CCR 1951)
 - 2. Oral interview to determine suitability for law enforcement service (11 CCR 1952)

In addition to the above minimum POST required standards, candidates may be subjected to additional standards established by the Department (Penal Code § 13510(d)).

1000.8.2 STANDARDS FOR DISPATCHER

Candidates shall satisfy the POST selection requirements, including (11 CCR 1956):

- (a) A verbal, reasoning, memory, and perceptual abilities assessment (11 CCR 1957)
- (b) An oral communication assessment (11 CCR 1958)
- (c) A medical evaluation (11 CCR 1960)

Police Promotional Process

1001.1 POLICY

It is the policy of the San Francisco Bay Area Rapid Transit Police Department to adhere to the promotional and eligibility list policies of the Human Resources Department of the San Francisco Bay Area Rapid Transit District.

1001.2 ATTACHMENTS

1001.2.1 BART HUMAN RESOURCES - POLICE PROMOTIONAL POLICY

See attachment: [BART HR Policy - Police Promotions.pdf](#)

1001.2.2 BART HUMAN RESOURCES - ELIGIBILITY LIST POLICY

See attachment: [BART HR Policy - Police Eligibility List.pdf](#)

Evaluation of Employees

1002.1 PURPOSE AND SCOPE

The Department's employee performance evaluation system is designed to record work performance for both the Department and the employee, providing recognition for good work and developing a guide for improvement.

1002.2 POLICY

The Bay Area Rapid Transit Police Department utilizes a performance evaluation report to measure performance and to use as a factor in making personnel decisions that relate to merit increases, promotion, reassignment, discipline, demotion, and termination. The evaluation report is intended to serve as a guide for work planning and review by the supervisor and employee. It gives supervisors a way to create an objective history of work performance based on job standards.

The Department evaluates employees in a non-discriminatory manner based upon job-related factors specific to the employee's position, without regard to actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law.

1002.3 FULL TIME PROBATIONARY PERSONNEL

Civilian personnel are on probation for Specified in MOU before being eligible for certification as permanent employees. An evaluation is completed daily or weekly during initial training (depending on classification) and then quarterly during the remainder of their probationary period.

Sworn personnel are on probation for 12 months before being eligible for certification as permanent employees. Probationary officers are evaluated daily during Field Training, and then quarterly during the remainder of their probationary period.

1002.4 RATING OF BPOA AND BPMA EMPLOYEES

When completing the semi-annual and quarterly BPOA Employee Performance Evaluation, the rater will place a check mark in the column that best describes the employee's performance. The definition of each rating category is as follows:

- a. Superior - Work performance is consistently above the standard requirements for this position. Justification must be presented in writing to substantiate this rating.
- b. Competent - Is the performance of a fully competent employee. It means satisfactory performance that meets the standards required of the position.
- c. Improvement Needed - Is a level of performance less than that expected of a fully competent employee and less than standards required of the position. A needs improvement rating must be thoroughly discussed with the employee.
- d. Unsatisfactory

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- Performance is inferior to the standards required of the position. It is very inadequate or undesirable performance that cannot be tolerated.

Space for written comments is provided at the end of the evaluation in the rater narrative section. This section allows the rater to document the employee's strengths, weaknesses, and suggestions for improvement. Any rating under any job dimension marked improvement needed, unsatisfactory or outstanding shall be substantiated in the rater comments section

When completing the semi-annual and quarterly BPMA Managers Performance Appraisal, the rater will place a check mark in the column that best describes the employee's performance. The definition of each rating category is as follows:

a. Superior - Work performance is consistently above the standard requirements for this position. Justification must be presented in writing to substantiate this rating. b. Effective " Manager adequately accomplishes tasks, producing expected result. c. Marginal " Generally meets job standards however improved performance is required in specific area. d. Unsatisfactory - Performance is inferior to the standards required of the position. It is very inadequate or undesirable performance that cannot be tolerated.

Space for written comments is provided on the next page of the evaluation in the rater narrative section. This section allows the rater to document the employee's strengths, weaknesses, and suggestions for improvement. Any rating under any job dimension marked marginal, unsatisfactory or superior shall be substantiated in the rater comments section. All pages of the evaluation need to be signed by the employee, rater and any co-raters.

1002.4.1 EVALUATION INTERVIEW

When the supervisor has completed the quarterly and semi-annual evaluation, arrangements shall be made for a private discussion of the evaluation with the employee. The supervisor should discuss the results of the just completed rating period and clarify any questions the employee may have. If the employee has valid and reasonable protests of any of the ratings, the supervisor may make appropriate changes to the evaluation. Areas needing improvement and goals for reaching the expected level of performance should be identified and discussed. The supervisor should also provide relevant counseling regarding promotion, special assignments and training opportunities. The supervisor and employee will sign and date the evaluation. The rated employee shall have 30 days within which to file a written response, via the chain of command, to any adverse comment written in the evaluation. Such written responses shall be attached to, and shall accompany, the evaluation.

1002.5 EVALUATION REVIEW AND DISTRIBUTION

The original performance evaluation shall be maintained in the employee's personnel file in the Support Services Supervisor's office for the tenure of the employee's employment. A copy will be given to the employee.

After the supervisor finishes the discussion with the employee, the signed performance evaluation is forwarded to the rater's supervisor (Lieutenant, Bureau Deputy Chief, and Chief of Police).

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The reviewing manager shall review the evaluation for fairness, impartiality, uniformity, and consistency. The reviewing manager shall evaluate the supervisor on the quality of ratings given and return the evaluation with the EDR file promptly to the Administrative Civilian Supervisor.

1002.6 EMPLOYEE DEVELOPMENT RECORD - EDR

Tracking employee activity through documentation of quality performance, performance deficiencies, training needs, etc. is a critical part of the supervisor's job. An effective system for storing and maintaining information that may be used in an employee's quarterly performance review and semi-annual evaluation is an essential part of this process. Employee Development Records (EDRs) shall be used as a storage location for documents to be used to substantiate evaluation ratings. Such documents should include written commendations, monthly statistical sheets, supervisory notes forms, training bulletins, uniform inspection forms, report reviews as well as any documentation that can be used to assist in the evaluation of the employee's performance.

The EDR will include an employee resource form and prior evaluation in front. The employee's new supervisor shall review and update the employee's resource form, with the employee, at the beginning of every sign-up. He/she shall also review the employee's last evaluation to identify areas in which the employee would like to improve as well as discuss the expectations of the supervisor during the evaluation period.

All shift's EDRs shall be kept within one centralized cabinet in the zone supervisor's office. This will allow easy location of the files to any visiting supervisor who has the opportunity to add a comment to an employee's EDR file. All sergeant-in-charges EDR files will be located in the Watch Commanders office. Lieutenant's EDR files will be assigned to their respective Deputy Chief.

EDR files shall be kept under strict control of the supervisor's on-duty. They are not to be shared with other employees at any time. Employees are allowed to review their EDR file at anytime upon request to a supervisor.

1002.7 SUPERVISORY NOTES FORM- SNF

A standardized form should be used to document employee conduct, work performance and attendance. The following procedure sets forth the proper method for documenting employee performance issues in compliance with Government Code § 3305, which says in part that public safety officers shall not have adverse comments entered into their personnel files without the opportunity to read and sign the instrument containing the comments. For purposes of this procedure, one "instrument" used to place information in the employee's shift file is the Supervisory Notes Form (SNF). Other "instruments" may include letters, summaries of conversations, copies of reports etc

Any comments or actions that amount to Progressive Discipline is outside the scope of this procedure and should be addressed pursuant to § 344 of this manual.

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1002.7.1 SUPERVISORY NOTES FORM PROCEDURE

Supervisors will use the SNF to document favorable as well as adverse comments as soon as possible after receiving the supporting information or making personal observations. Favorable comments include but are not limited to: praise of the employee based on personal observation; comments received by the employee's peers and coworkers; compliments from citizens or others with who the officer has had contact; and written correspondence. Adverse comments include but are not limited to: synopsis of informal training given by the supervisor in response to inappropriate behavior on the employee's part; educational reminders; review of department policy and procedure in light of the employee's performance during a particular incident; critique of the employee's safety practices and field tactics; critique of written work; and statements concerning the employee's investigative skills.

When available, supervisors should attach supporting documents, whether favorable or adverse in nature, to the SNF.

Once the supervisor has discussed the information on the SNF with the employee, he/she shall request the employee sign the form. Once signed, the supervisor will give the employee a copy of the comment form and any attached documents. If the employee refuses to sign the form, the supervisor should note the refusal in the employee signature box, and request the employee to initial next to the signature box. The supervisor will advise his/her supervisor if the employee has refused to sign.

When an SNF is completed employees shall be advised that they have 30 days to respond, in writing, to any adverse comments and that any such written response will be attached to the SNF.

While an employee performance evaluation is being completed, the supervisor conducting the evaluation will check the employee's EDR file and consider all SNF's, as well as any other documentation, when completing the evaluation. The SNF's will then remain in the EDR file until the evaluation is reviewed by the Bureau Deputy Chief. The EDR file will then be purged of all documents except the employee's resource form and a copy of their last evaluation. All purged documents shall be returned to the employee.

1002.8 EVALUATION FREQUENCY

Employee evaluations are based on the following chart;

POSITION	EVALUATION EVERY THREE MONTHS	EVALUATION EVERY SIX MONTHS	LENGTH OF PROBATION
Probationary Employee	x		One year
Non-probationary employees		x	
BPMA new appointments	x		One year

1002.8.1 NEW EMPLOYEES AND PROMOTIONAL APPOINTMENTS

New hire sworn and non-sworn employees have a 12 month probationary period beginning with the date they are sworn-in. Newly appointed BPMA members have a one year probationary period

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beginning with the date of the appointment. Evaluations shall be completed every three months by a designated supervisor for probationary employees. This is in addition to daily Field Training Evaluations during training. Probationary employees may be evaluated daily, weekly and monthly.

Per association agreements probation may be extended at the discretion of the Chief of Police.

1002.8.2 EVALUATION PREPARATION

The Administrative Civilian Supervisor shall be the control person for all evaluations. He/she shall inspect all Employee Development Reports (EDR's) to insure they are purged and contain only the employee's last evaluation and personnel sheet.

EDR's will be distributed to the team Lieutenants who will distribute them to their team supervisors. The team supervisors will follow the policy. Upon the completion of the evaluation process they will return the EDR's with the new evaluations and all supporting documentation to their Lieutenant for review. The Lieutenant will forward the evaluations to their Bureau Deputy Chief who will also review evaluation. The Chief of Police, at his discretion, may ask to review selected employee evaluations. The EDR's will be returned to the Support Services Supervisor who will ensure that all material is purged and returned to employees. Only the updated employee resource form and the last evaluation will be included in the re-distributed EDR files. Those files will once again be distributed to the Lieutenants for re-distribution to the zone sergeants.

Supervisors are encouraged to complete this evaluation process prior to the actual due date. Those that will not be able to do so shall write a memo to their Bureau Deputy Chief via the chain of command notifying him/her as to why the evaluation is delinquent.

Performance Improvement Plans

1003.1 PURPOSE AND SCOPE

The Performance Improvement Plan (PIP) is intended to be a positive approach designed to assist employees who have demonstrated substandard performance or behavior and who may benefit from intervention before it results in discipline or other negative consequences. The PIP is not intended as discipline. Rather, it is intended to aid employees by implementing a structured, written intervention plan focused on achieving desirable performance or behavior outcomes. In addition, the PIP serves as an integral tool of the performance appraisal process in that it provides for timely, constructive feedback while creating opportunities for an employee(s) to receive supervisory guidance and assistance to correct deficient work. This proactive strategy reflects the BART Police Department's commitment to maintaining employee performance and behavior to the standards reflected in the Department's performance evaluation dimensions and policies.

1003.1.1 DEFINITION

The Performance Improvement Plan (PIP) is a written and structured intervention plan designed to assist employees to achieve acceptable performance/behavior outcomes when they have demonstrated a pattern of substandard performance or behavior.

1003.2 PROCEDURE

The components of the Performance Improvement Plan include Identification and Selection, Plan Development, and Plan Administration.

1003.2.1 IDENTIFICATION AND SELECTION

The purpose of identification and selection is to first recognize a pattern of performance and/or behavior which fails to meet published performance expectations or policy standards. Supervisors and managers are charged with continuously evaluating subordinate work and to identify those employees who may benefit from a performance or behavior intervention. Furthermore, supervisors and managers are expected to analyze the substance of substandard performance and/or behavior to determine the most appropriate course of corrective action. The PIP is not intended to replace disciplinary intervention when supervisors and managers determine discipline to be the most appropriate course of action.

In most cases when there is a minor policy violation or performance deficiency supervisors and managers may institute progressive intervention. Progressive intervention may include, but is not limited to verbal counseling, training, monitoring or other strategies. Intervention efforts should be documented on a Supervisor Notes and Observations form or other memorandum. The supervisor(s) and manager of the affected employee may consider selection for a Performance Improvement Plan once progressive intervention efforts fail to produce desired results. Should the manager choose to select an employee to participate in a PIP, s/he shall first seek the approval of the affected employee's Deputy Chief. Upon approval of the Deputy Chief, the manager and/or supervisor(s) shall notify the affected employee of their intention to implement a PIP as soon as practical.

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1003.2.2 PLAN DEVELOPMENT

The affected employee's supervisor(s) and manager will be responsible to author the content of the PIP unless otherwise directed by the responsible Deputy Chief. The PIP document will consist of six distinct categories in memorandum format as follows:

- (a) **Summary:** Provide a brief description of the pattern of performance or behavior demonstrated by the affected employee and how it fails to meet published performance expectations or policy standards.
- (b) **Specific Circumstances:** This section of the PIP should detail the circumstances and specific examples of the affected employee's performance or behavior that established a pattern of concern warranting supervisory intervention. Additionally, previous intervention efforts should be referenced in support of cause to select the affected employee for PIP participation.
- (c) **Substandard Performance and/or Policy Violations:** This section of the PIP should identify the specific performance dimension(s) or policy standards and how the affected employee failed to meet them.
- (d) **Impact of Employee's Performance and/or Behavior:** This section of the PIP should help the affected employee understand the impact and associated consequences of their substandard performance or behavior.
- (e) **Strategies to Achieve Desirable Performance and/or Behavior Outcomes:** This section of the PIP is intended for the author(s) and the affected employee to work together in crafting objectives intended to map a successful outcome. Objectives should be SMART:
 1. **Specific:** Write expectations that are clear and concise to help ensure the employee grasps an understanding of them.
 2. **Measurable:** Install benchmarks so that progress or lack thereof is readily discernible.
 3. **Attainable:** Make reasonable efforts to ensure the employee has ample opportunity and resources to meet the expectations of the objective.
 4. **Relevant:** Draw a clear nexus between the expectation and named performance dimension(s) or policy standard(s).
 5. **Time Based:** Develop a reasonable timeline to help define expectations and motivate positive progress.
- (f) **Performance Improvement Plan Terms:** This section of the PIP defines the duration of the plan, identifies the PIP administrator(s), prescribes supervisor feedback intervals, and other necessary terms. The following guidelines should apply to the PIP terms:

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1. **Duration:** The duration of a PIP should be no longer than three months unless the affected employee's Deputy Chief determines an extension, not to exceed an additional three months, is likely to benefit both the affected employee and the Department. The PIP may be tolled to compensate for employee leave of absence and resume upon their return to full duty.
2. **Feedback Intervals:** The PIP administrator is expected to provide timely feedback and ongoing guidance to the affected employee. The administrator should make reasonable efforts to meet with the employee no less than biweekly unless circumstances require a change of administrator or other unanticipated need(s).
3. **Other Necessary Terms:** Other necessary terms may include, but are not limited to the following:
 - (a) The employee may be required to attend training prescribed by the PIP administrator.
 - (b) The employee may submit to a voluntary assignment transfer.
 - (c) The PIP administrator may limit or restrict the affected employee from participating in work activities outside the scope of their primary assignment including, but not limited to ancillary responsibilities, voluntary overtime assignments, or other work that the PIP administrator reasonably believes may impede the employee's progress or success.
 - (d) Employees who are participating in a PIP will not be placed into a special assignment.

1003.2.3 PLAN ADMINISTRATION

The Performance Improvement Plan will be administered in the following manner:

(a) **Supervisor Responsibilities:**

1. Once an employee is selected for a PIP intervention, his/her supervisor and/or manager should meet with the affected employee to receive input on the content of the PIP.
2. The supervisor/manager should prepare a draft PIP and forward it through the chain of command to the affected employee's Deputy Chief for approval.
3. The affected employee's supervisor should summarize the PIP intervention in the employee's performance evaluation within the same rating period as the PIP intervention.

(b) **PIP Administrator Responsibilities:**

1. The supervisor charged with administering the PIP will be known as the PIP administrator. The PIP administrator may be different than the affected

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employee's supervisor based on, but not limited to the terms of the PIP, needs of the employee or the Department, unanticipated absence, or change of assignment.

2. The PIP administrator should present the final version of the PIP to the affected employee to explain its content, expectations, and terms.
3. The PIP administrator is expected to execute the terms of the PIP.
4. The PIP administrator will document counseling sessions, feedback, employee progress or lack thereof, final review, or any other relevant information on a Supervisor Notes and Observations form or other memoranda and attach it to the PIP.

(c) Deputy Chief Responsibilities:

1. Review the draft PIP, make changes or recommendations as necessary, and provide final approval to execute the PIP.
2. Review written rebuttals properly delivered in the manner described below and direct changes or recommendations to the PIP as deemed necessary.
3. Ensure feedback memoranda, final review, written rebuttals or other relevant documents are attached to the PIP.
4. Forward the PIP and related attachments to the Office of Ethical Standards where it can be maintained in the affected employee's personnel file until eligibility to be expunged as described below.

(d) Employee Responsibilities:

1. The affected employee will meet with his/her supervisor as directed and provide input into the development of the PIP in a reasonable and constructive manner.
2. The employee will review and acknowledge s/he has read the final version of the PIP by signing his/her name and date in the designated area of the PIP.
3. The employee maintains the opportunity to prepare a written rebuttal to the PIP and forward it through his/her chain of command to the responsible Deputy Chief. The written rebuttal must be presented by midnight on the seventh day after the start date of the PIP.
4. The employee will honor the terms of the PIP to the best of his/her ability.

1003.3 RECORD RETENTION

Once the PIP is completed, it will be retained in the affected employee's Employment Development Record personnel file for six months. The affected employee's Deputy Chief will determine if the PIP may be expunged from the affected employee's personnel file if the following qualifications apply:

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- (a) The affected employee has successfully satisfied the terms of the PIP and has not repeated a pattern of similar substandard behavior and/or performance.
- (b) The affected employee continues to meet performance standards established by published Department policy and/or performance evaluation dimensions following the administration of the PIP for a period of three years.
- (c) The affected employee is not being investigated by the Department for alleged misconduct.
- (d) The affected employee is not a party to a civil suit in their capacity as an employee of the city.

Processing of Voluntary/Involuntary Resignations

1005.1 PURPOSE AND SCOPE

To provide guidelines for the administrative processing of voluntary resignations or involuntary resignations, i.e., probationary/disciplinary discharges.

1005.2 VOLUNTARY RESIGNATIONS

An employee intending to resign from his/her position with the BART Police Department will submit a memorandum to the Chief of Police, via the chain of command, at least two weeks prior to his/her resignation. The memorandum shall state the actual last working date of the employee, which must be a weekday, excluding holidays.

Upon the approval of the Chief of Police, voluntary resignations shall be processed by the Support Services Bureau as follows:

- (a) Upon receipt of a resignation or retirement memo, the Administrative Services Supervisor will email the employee acknowledging receipt of the resignation or retirement decision and will enter the resignation or retirement into PeopleSoft.
- (b) Retiring employees will be transferred to the Support Services Bureau for his/her last work day.
- (c) Resigning employees will complete their final regular work day and turn in all issued equipment at the end of their shift.
- (d) On the employee's last working day, the Police Administrative Specialist in charge of property/equipment, or his/her designee, will check in all BART issued equipment which the resigning employee was issued. If the equipment is not collected by the Police Administrative Specialist then it will be secured in a location until it can be turned over to the specialist.
- (e) An exit interview will be conducted by the Chief of Police, or his/her designee, prior to the last working day of the employee.
- (f) The resigning employee will check out with BART's Human Resources, signing any necessary termination papers and will be given or mailed his/her termination check.
- (g) The Training Officer will complete a POST Notice of Appointment/Termination form on all peace officers.
- (h) A Department bulletin announcing the resignation shall be prepared by the employee's respective Bureau.

1005.3 INVOLUNTARY RESIGNATION/DISCHARGE

Upon receipt of written notification from the Chief of Police that an employee is to be discharged, the following procedure shall be adhered to:

- (a) The Administrative Services Supervisor will enter the termination into PeopleSoft.

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- (b) The employee to be discharged shall be notified in writing that he/she will report to the Support Services Bureau at a specific date and time for final processing.
- (c) The Police Administrative Specialist in charge of property/equipment, or his/her designee, will check in all equipment belonging to the District that was issued to the employee.
- (d) The employee will check out with BART's Human Resources Department, signing any necessary paperwork, and will make arrangements with the District to receive any payments due him/her.
- (e) The Training Officer will complete a POST Notice of Appointment/Termination form on all peace officers.
- (f) A Department bulletin announcing the termination shall be prepared by the employee's respective Bureau.

Request For Employee Address, Phone and Name Changes

1007.1 PURPOSE AND SCOPE

To establish a uniform procedure to record of address, phone, and name changes by police employees.

1007.2 PROCEDURE

Employees shall record their correct residence address and telephone number within the TeleStaff database. Employees are required to have a phone number where they can be reached in case of an emergency. This phone number must have the ability to accept voice messages. Employees may elect to use P.O. Boxes where District mail can be sent, however employees must also report actual residence address information to the department. Changes in address or telephone number shall be reported to TeleStaffSupport@bart.gov within 24 hours of the change. This shall be done within the specified time, whether the employee is working or on leave. The "1st Contact" field in TeleStaff should contain the phone number where employees can be contacted in case of emergencies. Any subsequent contact fields are optional. If employees want to be notified of last minute overtime positions, they should use the "2nd Contact" field to enter their email address.

Employees will update their contact information for the District using webBART. Employees can update their information using "Self Service" and selecting one of the options listed under "Personal Information." Changes in address or telephone number shall be updated in webBART within 24 hours of the change.

For any name changes, employees will complete the District's form which can be downloaded in webBART and submit it to Human Resources.

The Support Services Division and Communications Section will utilize the TeleStaff database to maintain a record of each employee's current address and phone number.

Anti-Retaliation

1008.1 PURPOSE AND SCOPE

This policy prohibits retaliation against members who identify workplace issues, such as fraud, waste, abuse of authority, gross mismanagement or any inappropriate conduct or practices, including violations that may pose a threat to the health, safety or well-being of members.

This policy does not prohibit actions taken for nondiscriminatory or non-retaliatory reasons, such as discipline for cause.

These guidelines are intended to supplement and not limit members' access to other applicable remedies. Nothing in this policy shall diminish the rights or remedies of a member pursuant to any applicable federal law, provision of the U.S. Constitution, law, ordinance or memorandum of understanding.

1008.2 POLICY

The Bay Area Rapid Transit Police Department has a zero tolerance for retaliation and is committed to taking reasonable steps to protect from retaliation members who, in good faith, engage in permitted behavior or who report or participate in the reporting or investigation of workplace issues. All complaints of retaliation will be taken seriously and will be promptly and appropriately investigated.

1008.3 RETALIATION PROHIBITED

No member may retaliate against any person for engaging in lawful or otherwise permitted behavior; for opposing a practice believed to be unlawful, unethical, discriminatory or retaliatory; for reporting or making a complaint under this policy; or for participating in any investigation related to a complaint under this or any other policy.

Retaliation includes any adverse action or conduct, including but not limited to:

- Refusing to hire or denying a promotion.
- Extending the probationary period.
- Unjustified reassignment of duties or change of work schedule.
- Real or implied threats or other forms of intimidation to dissuade the reporting of wrongdoing or filing of a complaint, or as a consequence of having reported or participated in protected activity.
- Taking unwarranted disciplinary action.
- Spreading rumors about the person filing the complaint or about the alleged wrongdoing.
- Shunning or unreasonably avoiding a person because he/she has engaged in protected activity.

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1008.4 COMPLAINTS OF RETALIATION

Any member who feels he/she has been retaliated against in violation of this policy should promptly report the matter to any supervisor, command staff member, Chief of Police or the District Assistant General Manager, Administration.

Members shall act in good faith, not engage in unwarranted reporting of trivial or minor deviations or transgressions, and make reasonable efforts to verify facts before making any complaint in order to avoid baseless allegations. Members shall not report or state an intention to report information or an allegation knowing it to be false, with willful or reckless disregard for the truth or falsity of the information or otherwise act in bad faith.

Investigations are generally more effective when the identity of the reporting member is known, thereby allowing investigators to obtain additional information from the reporting member. However, complaints may be made anonymously. All reasonable efforts shall be made to protect the reporting member's identity. However, confidential information may be disclosed to the extent required by law or to the degree necessary to conduct an adequate investigation and make a determination regarding a complaint. In some situations, the investigative process may not be complete unless the source of the information and a statement by the member is part of the investigative process.

1008.5 SUPERVISOR RESPONSIBILITIES

Supervisors are expected to remain familiar with this policy and ensure that members under their command are aware of its provisions.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring complaints of retaliation are investigated as provided in the Personnel Complaints Policy.
- (b) Receiving all complaints in a fair and impartial manner.
- (c) Documenting the complaint and any steps taken to resolve the problem.
- (d) Acknowledging receipt of the complaint, notifying the Chief of Police via the chain of command and explaining to the member how the complaint will be handled.
- (e) Taking appropriate and reasonable steps to mitigate any further violations of this policy.
- (f) Monitoring the work environment to ensure that any member making a complaint is not subjected to further retaliation.
- (g) Periodic follow-up with the complainant to ensure that retaliation is not continuing.
- (h) Not interfering with or denying the right of a member to make any complaint.
- (i) Taking reasonable steps to accommodate requests for assignment or schedule changes made by a member who may be the target of retaliation if it would likely mitigate the potential for further violations of this policy.

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1008.6 COMMAND STAFF RESPONSIBILITIES

The Chief of Police should communicate to all supervisors the prohibition against retaliation.

Command staff shall treat all complaints as serious matters and shall ensure that prompt actions take place, including but not limited to:

- (a) Communicating to all members the prohibition against retaliation.
- (b) The timely review of complaint investigations.
- (c) Remediation of any inappropriate conduct or condition and instituting measures to eliminate or minimize the likelihood of recurrence.
- (d) The timely communication of the outcome to the complainant.

1008.7 WHISTLE-BLOWING

California law protects members who (Labor Code § 1102.5; Government Code § 53296 et seq.):

- (a) Report a violation of a state or federal statute or regulation to a government or law enforcement agency, including the member's supervisor or any other member with the authority to investigate the reported violation.
- (b) Provide information or testify before a public body if the member has reasonable cause to believe a violation of law occurred.
- (c) Refuse to participate in an activity that would result in a violation of a state or federal statute or regulation.
- (d) File a complaint with a local agency about gross mismanagement or a significant waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. Members shall exhaust all available administrative remedies prior to filing a formal complaint.
- (e) Are family members of a person who has engaged in any protected acts described above.

Members are encouraged to report any legal violations through the chain of command (Labor Code § 1102.5).

Members who believe they have been the subject of retaliation for engaging in such protected behaviors should promptly report it to a supervisor. Supervisors should refer the complaint to the Internal Affairs Division for investigation pursuant to the Personnel Complaints Policy.

1008.7.1 DISPLAY OF WHISTLE-BLOWER LAWS

The Department shall display a notice to members regarding their rights and responsibilities under the whistle-blower laws, including the whistle-blower hotline maintained by the Office of the Attorney General (Labor Code § 1102.8).

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1008.8 RECORDS RETENTION AND RELEASE

The Records Supervisor shall ensure that documentation of investigations is maintained in accordance with the established records retention schedules.

1008.9 TRAINING

The policy should be reviewed with each new member.

All members should receive periodic refresher training on the requirements of this policy.

Reporting of Employee Convictions

1010.1 PURPOSE AND SCOPE

Convictions of certain offenses may restrict or prohibit an employee's ability to properly perform official duties. Therefore, all employees shall be required to promptly notify the Department of any past and current criminal convictions.

1010.2 DOMESTIC VIOLENCE CONVICTIONS, OUTSTANDING WARRANTS AND RESTRAINING ORDERS

California and federal law prohibit individuals convicted of, or having an outstanding warrant for, certain offenses and individuals subject to certain court orders from lawfully possessing a firearm. Such convictions and court orders often involve allegations of the use or attempted use of force or threatened use of a weapon on any individual in a domestic relationship (e.g., spouse, cohabitant, parent, child) (18 USC § 922; Penal Code § 29805).

All members are responsible for ensuring that they have not been disqualified from possessing a firearm by any such conviction or court order and shall promptly report any such conviction or court order to a supervisor, as provided in this policy.

1010.3 OTHER CRIMINAL CONVICTIONS AND COURT ORDERS

Government Code § 1029 prohibits any person convicted of a felony from being a peace officer in the State of California. This prohibition applies regardless of whether the guilt was established by way of a verdict, guilty or nolo contendere plea.

Convictions of certain violations of the Vehicle Code and other provisions of law may also place restrictions on an employee's ability to fully perform the duties of the job.

Outstanding warrants as provided in Penal Code § 29805 also place restrictions on a member's ability to possess a firearm.

Moreover, while legal restrictions may or may not be imposed by statute or by the courts upon conviction of any criminal offense, criminal conduct by members of this department may be inherently in conflict with law enforcement duties and the public trust.

1010.4 REPORTING PROCEDURE

All members of this department and all retired officers with an identification card issued by the Department shall promptly notify their immediate supervisor (or the Chief of Police in the case of retired officers) in writing of any past or current criminal arrest, outstanding warrant or conviction regardless of whether or not the matter is currently on appeal and regardless of the penalty or sentence, if any.

All members and all retired officers with an identification card issued by the Department shall further promptly notify their immediate supervisor (or the Chief of Police in the case of retired

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officers) in writing if the member or retiree becomes the subject of a domestic violence restraining order or similar court order or becomes the subject of an outstanding warrant.

Any member whose criminal conviction unduly restricts or prohibits that member from fully and properly performing his/her duties may be disciplined including, but not limited to, being placed on administrative leave, reassignment and/or termination. Any effort to remove such disqualification or restriction shall remain entirely the responsibility of the member on his/her own time and expense.

Any member failing to provide prompt written notice pursuant to this policy shall be subject to discipline.

1010.5 PROCEDURE FOR RELIEF

Pursuant to Penal Code § 29855, a peace officer may petition the court for permission to carry a firearm following a conviction under state law. Federal law, however, does not provide for any such similar judicial relief and the granting of a state court petition under Penal Code § 29855 will not relieve one of the restrictions imposed by federal law. Therefore, relief for any employee falling under the restrictions imposed by federal law may only be obtained by expungement of the conviction. Each employee shall seek relief from firearm restrictions on their own time and through their own resources.

Pursuant to Family Code § 6389(h), an individual may petition the court for an exemption to any restraining order, which would thereafter permit the individual to carry a firearm as a part of their employment. Relief from any domestic violence or other restriction shall also be pursued through the employee's own resources and on the employee's own time.

Pending satisfactory proof of relief from any legal restriction imposed on an employee's duties, the employee may be placed on administrative leave, reassigned or disciplined. The Department may, but is not required to return an employee to any assignment, reinstate any employee or reverse any pending or imposed discipline upon presentation of satisfactory proof of relief from any legal restriction set forth in this policy.

1010.5.1 NOTIFICATION REQUIREMENTS

The Support Services Supervisor shall submit within 30 days of final disposition a notice to the Commission on Peace Officer Standards and Training (POST) of a felony conviction or Government Code § 1029 reason that disqualifies any current peace officer employed by this department or any former peace officer if this department was responsible for the investigation (11 CCR 1003).

The Support Services Supervisor shall submit within 30 days a notice to POST of any appointment, termination, reinstatement, name change, or status change regarding any peace officer, reserve peace officer, public safety dispatcher, and records supervisor employed by this department (11 CCR 1003).

Drug- and Alcohol-Free Workplace

1012.1 PURPOSE AND SCOPE

The intent of this policy is to deter the misuse or abuse of legal or illegal substances that create a threat to the safety and health of any employee or member of the public. The Bay Area Rapid Transit Police Department discourages alcohol and drug abuse and strives to achieve a workforce free from the influence of drugs and alcohol.

1012.2 POLICY

It is the policy of this department to provide a drug- and alcohol-free workplace for all members.

1012.2.1 USE OF PRESCRIBED MEDICATIONS

Any employee who is required to take any medication with side effects which might impair his/her ability to fully and safely perform all requirements of the position shall report the need for such medication to the immediate supervisor prior to commencing any on-duty status. No employee shall be permitted to work or drive a department-owned or department-leased vehicle while taking such potentially impairing medication without a written release from his/her physician.

1012.3 GENERAL GUIDELINES

All types of District drug and alcohol testing including Pre-employment, Reasonable Cause, Post-Accident, Random, Return to Duty and Follow-up in compliance with federal mandates and negotiated District policy are coordinated through Employee Services. Random testing is conducted on site at all job locations, 24-hours a day/7 days a week including weekends and holidays. For more information about drug and alcohol testing, contact the Drug Testing Coordinator at 510-287-4761, or call 510-464-6198.

1012.3.1 USE OF MEDICATIONS

Members should avoid taking any medications that will impair their ability to safely and completely perform their duties. Any member who is medically required or has a need to take any such medication shall report that need to his/her immediate supervisor prior to commencing any on-duty status.

No member shall be permitted to work or drive a vehicle owned or leased by the Department while taking any medication that has the potential to impair his/her abilities, without a written release from his/her physician.

1012.3.2 SUBSTANCE ABUSE REHABILITATION

There may be available a voluntary employee assistance program to assist employees who wish to seek help for alcohol and drug problems. There is also available a variety of insurance coverage which provide treatment for drug and alcohol abuse. Employees may contact the Human Resources Department, their insurance provider, or the Employee Assistance Program for additional information.

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Employees who experience drug or alcohol problems are encouraged to seek referral for rehabilitation through the Employee Assistance Programs or their insurance provider. It is the responsibility of each employee to seek assistance before alcohol or drug problems lead to performance problems.

Substance abuse rehabilitation services are available to all employees, including part-time and probationary. The District offers two types of admission into substance abuse rehabilitation, Voluntary and Mandatory.

- (a) Voluntary admission occurs when an employee comes forward and requests assistance prior to, and separate from, any type of drug testing. With Voluntary admission BART pays all treatment costs and salary continuation for up to a maximum of 90 days.
- (b) Mandatory admission occurs following a positive drug or alcohol test. In this situation, the employee is required to use sick or vacation leave for time off work and rehabilitation costs are borne by the employee and/or paid by his/her insurance plan. With both plans the employee will be monitored from one to five years upon his/her return to work.

Confidential contact for admission to these services is through 510-464-6198.

1012.3.3 CONFIDENTIALITY

The Department recognizes the confidentiality and privacy due employees, and disclosure of any information relating to chemical abuse treatment, except on a need to know basis, shall only be with the expressed written consent of the employee involved or pursuant to lawful process.

1012.3.4 USE OF MARIJUANA

Possession of marijuana, including medical marijuana, or being under the influence of marijuana on- or off-duty is prohibited and may lead to disciplinary action.

1012.4 MEMBER RESPONSIBILITIES

Members shall report for work in an appropriate mental and physical condition. Members are prohibited from purchasing, manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol on department premises or on department time (41 USC § 8103). The lawful possession or use of prescribed medications or over-the-counter remedies is excluded from this prohibition.

Members who are authorized to consume alcohol as part of a special assignment shall not do so to the extent of impairing on-duty performance.

Members shall notify a supervisor immediately if they observe behavior or other evidence that they believe demonstrates that a fellow member poses a risk to the health and safety of the member or others due to drug or alcohol use.

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Members are required to notify their immediate supervisors of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction (41 USC § 8103).

1012.5 EMPLOYEE ASSISTANCE PROGRAM

There may be available a voluntary employee assistance program to assist those who wish to seek help for alcohol and drug problems (41 USC § 8103). Insurance coverage that provides treatment for drug and alcohol abuse also may be available. Employees should contact the Human Resources Department, their insurance providers or the employee assistance program for additional information. It is the responsibility of each employee to seek assistance before alcohol or drug problems lead to performance problems.

1012.6 WORK RESTRICTIONS

If a member informs a supervisor that he/she has consumed any alcohol, drug or medication that could interfere with a safe and efficient job performance, the member may be required to obtain clearance from his/her physician before continuing to work.

If the supervisor reasonably believes, based on objective facts, that a member is impaired by the consumption of alcohol or other drugs, the supervisor shall prevent the member from continuing work and shall ensure that he/she is safely transported away from the Department.

1012.7 REQUESTING SCREENING TESTS

The supervisor may request an employee to submit to a screening test under the following circumstances:

- (a) The supervisor reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs that are impairing his/her ability to perform duties safely and efficiently.
- (b) The employee discharges a firearm, other than by accident, in the performance of his/her duties.
- (c) During the performance of his/her duties, the employee drives a motor vehicle and becomes involved in an incident that results in bodily injury to him/herself or another person, or substantial damage to property.

1012.7.1 SUPERVISOR RESPONSIBILITY

The supervisor shall prepare a written record documenting the specific facts that led to the decision to request the test, and shall inform the employee in writing of the following:

- (a) The test will be given to detect either alcohol or drugs, or both.
- (b) The result of the test is not admissible in any criminal proceeding against the employee.

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- (c) The employee may refuse the test, but refusal may result in dismissal or other disciplinary action.

1012.7.2 SCREENING TEST REFUSAL

An employee may be subject to disciplinary action if he/she:

- (a) Fails or refuses to submit to a screening test as requested.
- (b) After taking a screening test that indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested, that he/she took the controlled substance as directed, pursuant to a current and lawful prescription issued in his/her name.
- (c) Violates any provisions of this policy.

1012.8 COMPLIANCE WITH THE DRUG-FREE WORKPLACE ACT

No later than 30 days following notice of any drug statute conviction for a violation occurring in the workplace involving a member, the Department will take appropriate disciplinary action, up to and including dismissal, and/or requiring the member to satisfactorily participate in a drug abuse assistance or rehabilitation program (41 USC § 8104).

1012.9 CONFIDENTIALITY

The Department recognizes the confidentiality and privacy due to its members. Disclosure of any information relating to substance abuse treatment, except on a need-to-know basis, shall only be with the express written consent of the member involved or pursuant to lawful process.

The written results of any screening tests and all documents generated by the employee assistance program are considered confidential medical records and shall be maintained separately from the employee's other personnel files.

Sick Leave

1014.1 PURPOSE AND SCOPE

This policy provides general guidance regarding the use and processing of sick leave. The accrual and terms of use of sick leave for eligible employees are detailed in the District personnel manual or applicable collective bargaining agreement.

This policy is not intended to cover all types of sick or other leaves. For example, employees may be entitled to additional paid or unpaid leave for certain family and medical reasons as provided for in the Family and Medical Leave Act (FMLA) (29 USC § 2601 et seq.), the California Family Rights Act, leave for victims of crime or abuse, or for organ or bone marrow donor procedures (29 CFR 825; Government Code § 12945.2; Labor Code § 230.1; Labor Code § 1510).

1014.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to provide eligible employees with a sick leave benefit.

1014.3 USE OF SICK LEAVE

Sick leave is intended to be used for qualified absences. Sick leave is not considered vacation. Abuse of sick leave may result in discipline, denial of sick leave benefits, or both.

Employees on sick leave shall not engage in other employment or self-employment or participate in any sport, hobby, recreational activity or other activity that may impede recovery from the injury or illness (see Outside Employment Policy).

Qualified appointments should be scheduled during a member's non-working hours when it is reasonable to do so.

1014.3.1 NOTIFICATION

All members should notify the Watch Commander or appropriate special assignment supervisor as soon as they are aware that they will not be able to report to work and no less than 45 minutes before the start of their scheduled shifts. If, due to an emergency, a member is unable to contact the supervisor, every effort should be made to have a representative for the member contact the supervisor (Labor Code § 246). Employees in the Patrol Division must make verbal contact with the watch commander, as voicemail messages do not suffice for notification.

When the necessity to be absent from work is foreseeable, such as planned medical appointments or treatments, the member shall, whenever possible and practicable, provide the Department with no less than 30 days' notice of the impending absence (Labor Code § 246).

Upon return to work, members are responsible for ensuring their time off was appropriately accounted for, and for completing and submitting the required documentation describing the type of time off used and the specific amount of time taken.

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1014.4 EXTENDED ABSENCE

Members absent from duty for more than three consecutive days may be required to furnish a statement from a health care provider supporting the need to be absent and/or the ability to return to work. Members on an extended absence shall, if possible, contact their supervisor at specified intervals to provide an update on their absence and expected date of return.

Nothing in this section precludes a supervisor from requiring, with cause, a health care provider's statement for an absence of three or fewer days after the first three days of paid sick leave are used in a 12-month period.

1014.4.1 CORRECTIVE ACTION

Management will take appropriate corrective action for abuse of sick leave. Any of several criteria may be used to indicate excessive sick leave use or abuse by an employee. Criteria to be evaluated by management include, but are not limited to: the use of sick leave in a regular and/or patterned manner, such as sick leave usage in conjunction with regular days-off at regular intervals, or on special-event days; or, the use of sick leave which exceeds 40 hours in any six-month period, and/or 80 hours or more of sick leave utilized in four or more instances during a 12-month period, when not supported by medical documentation. The employee's total sick-leave record may be reviewed and the entire pattern and amount of usage will be considered in determining the appropriateness of usage. Management retains the right to initiate corrective action if it determines that sick-leave usage is excessive or abusive, and the decision as to whether or not counseling or further action is appropriate will be the determination of the employee's supervisor or higher-level management in the employee's chain of command.

1014.4.2 TARDINESS

Employees who are tardy will be docked for actual time lost. Employees who are tardy 15 minutes or more shall prepare a written memorandum explaining the reason for the tardiness and submit it to their supervisor. Employees who are tardy two times in a six-month period may receive an Attendance Discussion. Further cases of tardiness may result in disciplinary action. Nothing in this directive prohibits a supervisor from counseling an employee for the first instance of tardiness.

1014.4.3 ATTENDANCE DISCUSSION

An Attendance Discussion may be used as the initial step of the corrective process regarding excessive or abusive sick-leave usage or tardiness. An Attendance Discussion shall be pre-disciplinary in nature, documented on an Attendance Discussion Form, and will include the following information:

- (a) The discussion is pre-disciplinary and informative only;
- (b) An improvement in the attendance record is required of the employee or the formal process of the Progressive Discipline System may be initiated;
- (c) As appropriate, for a specified time period, each future absence may require satisfactory written medical verification as to the necessary and compelling reasons for the employee's absence;

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- (d) The supervisor is ready and willing to provide reasonable assistance if there is a particular problem for which assistance can be offered;
- (e) The purpose of the discussion is to bring the matter of absenteeism to the attention of the employee so that he/she can correct it, avoiding any further need for corrective action.

The Attendance Discussion form will be retained in the employee's EDR file until the next performance evaluation.

1014.5 SUPERVISOR RESPONSIBILITIES

The responsibilities of supervisors include, but are not limited to:

- (a) Monitoring and regularly reviewing the attendance of those under their command to ensure that the use of sick leave and absences is consistent with this policy.
- (b) Attempting to determine whether an absence of four or more days may qualify as family medical leave and consulting with legal counsel or the Human Resources Department as appropriate.
- (c) Addressing absences and sick leave use in the member's performance evaluation when excessive or unusual use has:
 - 1. Negatively affected the member's performance or ability to complete assigned duties.
 - 2. Negatively affected department operations.
- (d) When appropriate, counseling members regarding excessive absences and/or inappropriate use of sick leave.
- (e) Referring eligible members to an available employee assistance program when appropriate.

1014.6 REQUIRED NOTICES

The Assistant General Manager, Administration shall ensure:

- (a) Written notice of the amount of paid sick leave available is provided to employees as provided in Labor Code § 246.
- (b) A poster is displayed in a conspicuous place for employees to review that contains information on paid sick leave as provided in Labor Code § 247.

Communicable Diseases

1016.1 PURPOSE AND SCOPE

This policy provides general guidelines to assist in minimizing the risk of department members contracting and/or spreading communicable diseases.

1016.1.1 DEFINITIONS

Definitions related to this policy include:

Communicable disease - A human disease caused by microorganisms that are present in and transmissible through human blood, bodily fluid, tissue, or by breathing or coughing. These diseases commonly include, but are not limited to, hepatitis B virus (HBV), HIV and tuberculosis.

Exposure - When an eye, mouth, mucous membrane or non-intact skin comes into contact with blood or other potentially infectious materials, or when these substances are injected or infused under the skin; when an individual is exposed to a person who has a disease that can be passed through the air by talking, sneezing or coughing (e.g., tuberculosis), or the individual is in an area that was occupied by such a person. Exposure only includes those instances that occur due to a member's position at the Bay Area Rapid Transit Police Department. (See the exposure control plan for further details to assist in identifying whether an exposure has occurred.)

1016.2 POLICY

The Bay Area Rapid Transit Police Department is committed to providing a safe work environment for its members. Members should be aware that they are ultimately responsible for their own health and safety.

1016.3 EXPOSURE CONTROL OFFICER

The Chief of Police will assign a person as the Exposure Control Officer (ECO). The ECO shall develop an exposure control plan that includes:

- (a) Exposure-prevention and decontamination procedures.
- (b) Procedures for when and how to obtain medical attention in the event of an exposure or suspected exposure.
- (c) The provision that department members will have no-cost access to the appropriate personal protective equipment (PPE) (e.g., gloves, face masks, eye protection, pocket masks) for each member's position and risk of exposure.
- (d) Evaluation of persons in custody for any exposure risk and measures to separate them (15 CCR 1051; 15 CCR 1207).
- (e) Compliance with all relevant laws or regulations related to communicable diseases, including:
 1. Responding to requests and notifications regarding exposures covered under the Ryan White law (42 USC § 300ff-133; 42 USC § 300ff-136).
 2. Bloodborne pathogen mandates including (8 CCR 5193):

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- (a) Sharps injury log.
 - (b) Needleless systems and sharps injury protection.
 3. Airborne transmissible disease mandates including (8 CCR 5199):
 - (a) Engineering and work practice controls related to airborne transmissible diseases.
 - (b) Distribution of appropriate personal protective equipment to minimize exposure to airborne disease.
 4. Promptly notifying the county health officer regarding member exposures (Penal Code § 7510).
 5. Establishing procedures to ensure that members request exposure notification from health facilities when transporting a person that may have a communicable disease and that the member is notified of any exposure as required by Health and Safety Code § 1797.188.
 6. Informing members of the provisions of Health and Safety Code § 1797.188 (exposure to communicable diseases and notification).
- (f) Provisions for acting as the designated officer liaison with health care facilities regarding communicable disease or condition exposure notification. The designated officer should coordinate with other department members to fulfill the role when not available. The designated officer shall ensure that the name, title and telephone number of the designated officer is posted on the Department website (Health and Safety Code § 1797.188).

The ECO should also act as the liaison with the Division of Occupational Safety and Health (Cal/ OSHA) and may request voluntary compliance inspections. The ECO shall annually review and update the exposure control plan and review implementation of the plan (8 CCR 5193).

1016.4 EXPOSURE PREVENTION AND MITIGATION

1016.4.1 GENERAL PRECAUTIONS

All members are expected to use good judgment and follow training and procedures related to mitigating the risks associated with communicable disease. This includes, but is not limited to (8 CCR 5193):

- (a) Stocking disposable gloves, antiseptic hand cleanser, CPR masks or other specialized equipment in the work area or department vehicles, as applicable.
- (b) Wearing department-approved disposable gloves when contact with blood, other potentially infectious materials, mucous membranes and non-intact skin can be reasonably anticipated.
- (c) Washing hands immediately or as soon as feasible after removal of gloves or other PPE.
- (d) Treating all human blood and bodily fluids/tissue as if it is known to be infectious for a communicable disease.

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- (e) Using an appropriate barrier device when providing CPR.
- (f) Using a face mask or shield if it is reasonable to anticipate an exposure to an airborne transmissible disease.
- (g) Decontaminating non-disposable equipment (e.g., flashlight, control devices, clothing and portable radio) as soon as possible if the equipment is a potential source of exposure.
 - 1. Clothing that has been contaminated by blood or other potentially infectious materials shall be removed immediately or as soon as feasible and stored/decontaminated appropriately.
- (h) Handling all sharps and items that cut or puncture (e.g., needles, broken glass, razors, knives) cautiously and using puncture-resistant containers for their storage and/or transportation.
- (i) Avoiding eating, drinking, smoking, applying cosmetics or lip balm, or handling contact lenses where there is a reasonable likelihood of exposure.
- (j) Disposing of biohazardous waste appropriately or labeling biohazardous material properly when it is stored.

1016.4.2 IMMUNIZATIONS

Members who could be exposed to HBV due to their positions may receive the HBV vaccine and any routine booster at no cost (8 CCR 5193).

1016.5 POST EXPOSURE

1016.5.1 INITIAL POST-EXPOSURE STEPS

Members who experience an exposure or suspected exposure shall:

- (a) Begin decontamination procedures immediately (e.g., wash hands and any other skin with soap and water, flush mucous membranes with water).
- (b) Obtain medical attention as appropriate.
- (c) Notify a supervisor as soon as practicable.

1016.5.2 REPORTING REQUIREMENTS

The supervisor on-duty shall investigate every exposure or suspected exposure that occurs as soon as possible following the incident. The supervisor shall ensure the following information is documented (8 CCR 5193):

- (a) Name and Social Security number of the member exposed
- (b) Date and time of the incident
- (c) Location of the incident
- (d) Potentially infectious materials involved and the source of exposure (e.g., identification of the person who may have been the source)
- (e) Work being done during exposure

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- (f) How the incident occurred or was caused
- (g) PPE in use at the time of the incident
- (h) Actions taken post-event (e.g., clean-up, notifications)

The supervisor shall advise the member that disclosing the identity and/or infectious status of a source to the public or to anyone who is not involved in the follow-up process is prohibited. The supervisor should complete the incident documentation in conjunction with other reporting requirements that may apply (see the Occupational Disease and Work-Related Injury Reporting Policy).

1016.5.3 MEDICAL CONSULTATION, EVALUATION AND TREATMENT

Department members shall have the opportunity to have a confidential medical evaluation immediately after an exposure and follow-up evaluations as necessary (8 CCR 5193).

The ECO should request a written opinion/evaluation from the treating medical professional that contains only the following information:

- (a) Whether the member has been informed of the results of the evaluation.
- (b) Whether the member has been notified of any medical conditions resulting from exposure to blood or other potentially infectious materials which require further evaluation or treatment.

No other information should be requested or accepted by the ECO.

1016.5.4 COUNSELING

The Department shall provide the member, and his/her family if necessary, the opportunity for counseling and consultation regarding the exposure (8 CCR 5193).

1016.5.5 SOURCE TESTING

Testing a person for communicable diseases when that person was the source of an exposure should be done when it is desired by the exposed member or when it is otherwise appropriate (8 CCR 5193). Source testing is the responsibility of the ECO. If the ECO is unavailable to seek timely testing of the source, it is the responsibility of the exposed member's supervisor to ensure testing is sought.

Source testing may be achieved by:

- (a) Obtaining consent from the individual.
- (b) Complying with the statutory scheme of Health and Safety Code § 121060. This includes seeking consent from the person who was the source of the exposure and seeking a court order if consent is not given.
- (c) Testing the exposed member for evidence of a communicable disease and seeking consent from the source individual to either access existing blood samples for testing or for the source to submit to testing (Health and Safety Code § 120262).
- (d) Taking reasonable steps to immediately contact the County Health Officer and provide preliminary information regarding the circumstances of the exposure and the status

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of the involved individuals to determine whether the County Health Officer will order testing (Penal Code § 7510).

- (e) Under certain circumstances, a court may issue a search warrant for the purpose of HIV testing a person when the exposed member qualifies as a crime victim (Penal Code § 1524.1).

Since there is the potential for overlap between the different manners in which source testing may occur, the ECO is responsible for coordinating the testing to prevent unnecessary or duplicate testing.

The ECO should seek the consent of the individual for testing and consult the General Counsel to discuss other options when no statute exists for compelling the source of an exposure to undergo testing if he/she refuses.

1016.6 CONFIDENTIALITY OF REPORTS

Medical information shall remain in confidential files and shall not be disclosed to anyone without the member's written consent (except as required by law). Test results from persons who may have been the source of an exposure are to be kept confidential as well.

1016.7 TRAINING

All members shall participate in training regarding communicable diseases commensurate with the requirements of their position. The training (8 CCR 5193):

- (a) Shall be provided at the time of initial assignment to tasks where an occupational exposure may take place and at least annually after the initial training.
- (b) Shall be provided whenever the member is assigned new tasks or procedures affecting his/her potential exposure to communicable disease.
- (c) Should provide guidance on what constitutes an exposure, what steps can be taken to avoid an exposure and what steps should be taken if a suspected exposure occurs.

Smoking and Tobacco Use

1018.1 PURPOSE AND SCOPE

This policy establishes limitations on smoking and the use of tobacco products by members and others while on-duty or while in Bay Area Rapid Transit Police Department facilities or vehicles.

For the purposes of this policy, smoking and tobacco use includes, but is not limited to, any tobacco product, such as cigarettes, cigars, pipe tobacco, snuff, tobacco pouches and chewing tobacco, as well as any device intended to simulate smoking, such as an electronic cigarette or personal vaporizer.

1018.2 POLICY

The Bay Area Rapid Transit Police Department recognizes that tobacco use is a health risk and can be offensive to others.

Smoking and tobacco use also presents an unprofessional image for the Department and its members. Therefore smoking and tobacco use is prohibited by members and visitors in all department facilities, buildings and vehicles, and as is further outlined in this policy (Government Code § 7597; Labor Code § 6404.5).

1018.3 SMOKING AND TOBACCO USE

Smoking and tobacco use by members is prohibited anytime members are in public view representing the Bay Area Rapid Transit Police Department.

It shall be the responsibility of each member to ensure that no person under his/her supervision smokes or uses any tobacco product inside District facilities and vehicles.

1018.4 ADDITIONAL PROHIBITIONS

No person shall use tobacco products within 20 feet of a main entrance, exit or operable window of any public building (including any department facility), or buildings on the campuses of the University of California, California State University and California community colleges, whether present for training, enforcement or any other purpose (Government Code § 7596 et seq.).

1018.4.1 NOTICE

The Chief of Police or the authorized designee should ensure that proper signage is posted at each entrance to the Department facility (Labor Code § 6404.5).

Early Warning System

1019.1 PURPOSE AND SCOPE

The purpose of this order is to establish policy and procedure for an informal performance review and intervention program, the "Early Warning System" (EWS). The program monitors employee performance that may be inconsistent with professional police conduct and cooperatively engages employees to resolve areas of concern. The goal of EWS is early identification of employee performance issues and correction of these issues through constructive counseling sessions, intervention, and/or training rather than the formal disciplinary process.

1019.2 POLICY

It is the policy of the BART Police Department to maintain an Early Warning System to provide early intervention to possible problematic behaviors so that changes can be made prior to discipline being the only corrective option. The EWS is one method by which employees may be identified as possibly needing assistance with performance and/or stress related problems. The EWS is intended as an approach to highlight tendencies that may otherwise be overlooked.

All employees shall participate in the EWS program and comply with the guidelines set forth in this policy. Participation in the EWS program shall not be deemed punitive, nor a formal disciplinary process. Notwithstanding the initiation of the EWS process, the Department retains its right and responsibility with regard to investigation of policy violation and enforcement of employee discipline.

1019.3 PROCEDURE

EWS is a non-disciplinary tool that does not relieve supervisors and managers of their responsibility to directly monitor the performance of their subordinates and take appropriate action in response to performance or behavioral issues.

Employee behavior or performance that is subject to EWS review includes, but is not limited to:

- (a) Administrative Internal Affairs investigations
- (b) Formal citizen complaints
- (c) Informal citizen complaints
- (d) Use of force incidents
- (e) Obstructing/resisting arrest incidents
- (f) Preventable Vehicle collisions
- (g) Negligent discharge (firearm/TASER)
- (h) Substandard conduct/performance concerns observed by a supervisor or manager
- (i) Attendance discussion or corrective action as defined in Policy 1014
- (j) Late activation or non-activation of body worn cameras when activation is required by Policy 451.5

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- (k) Negligent discharge of TASER (not to include training scenarios)

Personnel assigned to the Internal Affairs Unit shall maintain records of the above incidents. When a designated threshold level is met for a single category or for the sum of all categories, Internal Affairs will notify the involved employee that a threshold level has been met and will be reviewed for potential initiation of the EWS program. The review will be conducted within the employee's chain of command and/or the Internal Affairs Unit. Incidents of obstructing/resisting arrest on the part of suspects will also be analyzed during the review to determine if there is anything associated with the employee's performance and/or conduct that may be eliciting resistance from suspects.

Threshold levels are established as follows:

Category	Threshold Level
Administrative Investigation	2 in 12 months
Formal Citizen Complaint	3 in 12 months
Informal Citizen Complaint	3 in 12 months
Use of Force	12 in 12 months
Preventable Vehicle Collisions	2 in 24 months
Negligent Discharge of a Firearm	1 in 12 months
Attendance Discussion or Corrective Action	2 in 12 months
Late Activation or Non-activation of AXON Flex	2 in 6 months
Negligent Discharge of a TASER (not to include training scenarios)	1 in 12 months
Overall	15 in 12 months

Supervisors and managers shall monitor the activity of their subordinate employees to identify actual or perceived unprofessional behavior and/or substandard performance that is subject to EWS review. They shall communicate such information to the Chief of Police via the Chain of Command. The EWS may be initiated based on cause, even when none of the listed threshold levels have been met.

The Office of the Chief of Police shall be responsible for aggregation and administrative management of information and records associated with the EWS program. The Administrative Analyst assigned to the Office of the Chief of Police shall be responsible for preparing quarterly reports summarizing information and activities associated with the EWS program. The reports will contain documentation as to whether or not EWS was implemented for the employee, and the associated reasoning.

Information and records associated with the EWS program are used for personnel purposes. Accordingly, they are confidential personnel files and not public records. Documents, data, and records shall be maintained by the Office of the Chief for a period of two (2) years.

Access to EWS records shall be restricted to the Office of the Chief. An individual employee shall be granted access to EWS records that pertain to that employee. The employee will give the Office of the Chief a reasonable amount of notice before having access to the file.

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1019.4 ADMINISTRATIVE REVIEW BOARD

The Chief of Police shall convene a quarterly Review Board comprised of the Divisions Deputy Chiefs and the Internal Affairs Lieutenant, to review program records to determine if initiation of the EWS Program is recommended. Upon consideration of the Review Board's recommendation, the Chief of Police may direct an employee to participate in the EWS program. The Board may also convene as needed to review situations of relative urgency.

1019.5 INITIATION OF THE EWS PROGRAM

Upon direction of the Chief of Police, an informal counseling meeting shall be held that may include:

- (a) The subject employee
- (b) The Chief of Police and/or his designee.
- (c) The employee's Bureau Deputy Chief and/or his/her designee.
- (d) The employee's direct supervisor.

The subject employee may have one fellow employee accompany him/her to the counseling meeting. The accompanying employee's presence is allowed to offer general support to the subject employee, not to be an active participant in the counseling meeting.

Unless impractical, the counseling meeting shall be held during the employee's regularly scheduled working hours.

The meeting shall not be deemed a punitive or disciplinary proceeding against the employee. In the meeting, the employee shall be informed of the behavioral and/or performance concern(s) at issue, and he/she shall be allowed an opportunity to offer a response. If applicable, the employee may be required to attend necessary training. The employee may also be given information regarding the BART District Employee Assistance Program.

If the subject employee requests training, the Chief of Police may grant the request if the training is relevant and appropriate.

The content of the meeting, and/or resulting training for the employee, may be documented for placement into the employee's personnel file and/or Employee Development Record (EDR). Training issues may also be documented in an employee evaluation. All quarterly reviews and meetings shall be maintained in the strictest confidence and shall not be discussed with other employees without an authorized need to know. Purging of material in personnel files shall be governed by applicable law and the collective bargaining agreement.

If EWS is initiated multiple times for the same employee, additional training, referral, and/or other responsive action may be directed as appropriate.

Personnel Complaints

1020.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Bay Area Rapid Transit Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1020.1.1 DEFINITIONS

Personnel complaints shall be defined as any allegation of misconduct or improper job performance against any Department employee that, if true, would constitute a violation of Department policy, federal, state or local law. When an allegation warrants investigation, such complaints will be referred to the Internal Affairs Unit for assignment.

If a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

Definitions:

- (a) **Allegation:** An unproven accusation that a member of the Police Department violated Department/District policy or procedure, or the law.
- (b) **Misconduct:** An act or omission by a Department member that is a violation of Department/District policy or procedure, or the law; which if sustained, could result in disciplinary action.
- (c) **Formal Complaint:** An expression of dissatisfaction or disapproval in regards to the performance of a Police Department employee.
- (d) **Informal Complaint:** A comment on the actions of a Department employee, where either the reporting party expressly states that he or she does not feel that the matter should be formally investigated (with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee), or the Department determines that the nature of the allegation(s) indicates that the investigation should be handled as an Informal Complaint.
- (e) **Supervisor Referral:** For instances involving an Informal Complaint, the Internal Affairs Unit may address the issue through a Supervisor Referral. An assigned supervisor would then address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Unit.
 - 1. If the alleged involved employee cannot be identified by the complainant or through investigation by Internal Affairs, then the Supervisory Referral will be attributed to “unknown” employee.
 - 2. If the involved employee has a repeated history of similar complaints, the incident may be formally investigated.

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3. If the nature of the allegation(s) warrants investigation, then a formal investigation will be conducted.
 4. Generally, the following will not be addressed through a Supervisory Referral: allegations of excessive/improper force, racial animus, bias-based policing, or workplace discrimination (exceptions may only be approved by the Chief of Police or his/her designee).
- (f) **Complaint Mediation Program:** For instances involving an Informal Complaint, the issue may also be addressed through Complaint Mediation as defined and specified in Policy 1021. Internal Affairs personnel will advise complainants of the Mediation Program option if the complaint is eligible for mediation.
1. Participation in the Complaint Mediation Program must be voluntary for both the complainant(s) and the involved employee(s).
 2. Complaints that include any of the following allegations will not be eligible for the Complaint Mediation program:
 - (a) Use of Deadly Force
 - (b) Suspicious and Wrongful Deaths
 - (c) Unnecessary or Excessive Use of Force
 - (d) Truthfulness
 - (e) Racial Animus
 - (f) Bias-Based Policing and/or Racial Profiling
 - (g) Sexual Orientation Bias
 - (h) Sexual Harassment
 - (i) Arrest or Detention
 - (j) Search or Seizure
 - (k) Reporting Misconduct
 - (l) Workplace Discrimination/Harassment
 - (m) Supervision
 - (n) Substantial injury suffered by any of the involved parties
 3. The Chief of Police, or the Chief's designee, at his or her discretion, may deem any complaint ineligible for mediation.
- (g) **Inquiry:** A question or comment regarding the actions of a Department employee or the implementation of Department policy, with no allegation of misconduct. An inquiry could also be a circumstance where a complainant initiates a complaint with Internal Affairs; however it is later determined that the involved party is not a BART Police employee. The case will be referred to the correct agency or department. The BART inquiry will be Administratively Closed.

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- (h) **Service Review:** When a citizen/customer raises a concern pertaining to a global practice throughout the Department such as Department policy, procedure and/or tactics. Depending on the circumstances, the concern may be evaluated and addressed through a Service Review conducted by Internal Affairs, a designated review committee, or a member of Command Staff. When appropriate, a Service Review could result in a change to Department policy, training and/or tactics.
- (i) **Administrative Closure:** Allegations that are received and documented; however the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

A case may be administratively closed under (but not limited to) the following circumstances:

- The complaint fails to articulate an act, or failure to act, which would constitute a violation of policy, procedure or law that could lead to discipline if proven true.
- The complaint is received after one year or more has elapsed from the date of the incident, making it difficult to investigate the incident in a thorough, fair, and complete manner. (Particularly, allegations such as courtesy or minor procedural violations may be Administratively Closed if the Department is not made aware of the complaint in a timely manner.)
- The complaint lacks specificity and the complainant either refuses to cooperate or becomes unavailable to provide information necessary to investigate the incident.
- Complaints limited to parking or infraction citations, where there is no allegation of misconduct, shall be referred to the parking citation appeals process or the respective court.
- Complaints that appear to not be based in reality may be administratively closed, including but not limited to the following:
 - The complaint appears hallucinatory and/or fantastical, and there does not appear to be facts available to ground the complaint in reality.
 - The complaint is grossly illogical and/or incomprehensible.
 - The complaint centers on the alleged existence of a broad conspiracy; however there are no articulated facts to be investigated.
 - The complaint is largely similar in content and/or nature to a previous complaint brought by the same complainant, and the previous complaint resulted in a finding of "Unfounded."

A complaint may also be administratively closed under the following circumstances:

- If the incident giving rise to the complaint is recorded on video (body-worn video, surveillance video, and/or any other available video), and the video directly and completely refutes all allegations, then the complaint may be administratively closed based on the following conditions:

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- Internal Affairs reviews the complaint and the video and determines that the allegation is either unfounded or exonerated based on the video, and
- Internal Affairs determines that no further investigation is necessary to unfound or exonerate the allegation and
- The BART Office of Independent Police Auditor (OIPA) exercises its authority under the BART Citizen Oversight Model to review the Internal Affairs investigative processes and findings and determines that the findings and administrative closure are justified.
- In these circumstances, and only after review by OIPA pursuant to the Model, Internal Affairs will document the allegation, summarize the video, and justify a disposition of unfounded or exonerated in an Administrative Closure memorandum to file.
- If OIPA determines that the evidence does not support a finding of unfounded or exonerated and/or that an administrative closure is inappropriate, then a full Internal Affairs investigation will be conducted.

If a complaining party initiates a complaint but then either refuses to cooperate with the investigation or becomes unavailable, the Internal Affairs Unit will exercise due diligence and proceed with an investigation. Based on a lack of information, the Chief of Police or his/her designee may determine that a matter does not need to be classified as a personnel complaint and the investigation may be administratively closed. However, depending on the seriousness of the complaint and the availability of information, further investigation may be conducted by the Internal Affairs Unit.

1020.1.2 ALLEGATION CLASSIFICATIONS

The following classifications of allegations will be used. The purpose of these classifications is to objectively characterize the potential misconduct while avoiding the use of value-laden words that could prejudice the investigation.

- (a) **Arrest or Detention:** An allegation that an arrest lacked probable cause or a detention lacked reasonable suspicion.
- (b) **Bias-Based Policing:** An allegation that a Department member engaged in conduct based on a person's race, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identify, medical condition, or disability.
- (c) **Courtesy:** An allegation that a Department member inappropriately used profane or derogatory language, obscene gesture, or an unprofessional demeanor during a contact with a member of the public.
- (d) **Conduct Unbecoming:** An allegation that a member's conduct, either on or off-duty, was conduct that a reasonable person would find unbecoming a police employee. The nature of the conduct could potentially reflect adversely upon the Department.
- (e) **Force:** An allegation that the amount of force used by a Department member was not objectively reasonable.

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- (f) **Neglect of Duty:** An allegation that a Department member neglected his/her duties and failed to take action as required by law, or by Department policy or procedure, or in compliance with a lawfully given order from a supervisor.
- (g) **Performance of Duty:** An allegation that a Department member did not exercise an appropriate amount of effort to meet Department expectations in the performance of his/her duty per Department policy, practice or procedure.
- (h) **Policy/Procedure:** An allegation that action taken by a Department member did not follow appropriate Department/District policy, procedures or guidelines.
- (i) **Policy Complaint:** An allegation regarding a current Department policy that was properly implemented by a Department member; but which the complainant believes is inappropriate or not valid. A policy complaint is not grounds for discipline.
- (j) **Reporting Misconduct:** An allegation that a Department member failed to notify a Department supervisor of misconduct that threatens the rights of private persons and/or the well being and reputation of the Department.
- (k) **Racial Animus:** An alleged expression or act of animosity toward an individual or group based on race or ethnicity.
- (l) **Supervision:** An allegation that a supervisor did not detect a pattern of misconduct by a Department member that he/she reasonably should have known about; and/or an allegation that a supervisor did not properly supervise and take corrective action for misconduct that he/she knows or reasonably should have known about.
- (m) **Search Or Seizure:** An allegation that a search or seizure was conducted by a Department member in violation of the 4th Amendment.
- (n) **Truthfulness:** An allegation that a Department member knowingly made a false statement or purposely omitted pertinent facts to a supervisor, in a police report, court testimony, or investigative interview conducted by the Department; or the fabrication or destruction of evidence.
- (o) **Workplace Discrimination and (WH) Workplace Harassment:** See BART Operations Rules and Procedures Manual section 1307.

The definitions of Discrimination and Harassment only apply to workplace interactions between BART employees and to Department Initiated Investigations that arise from allegations of workplace discrimination and harassment. Discrimination or harassment by Department members toward members of the public shall be characterized as an allegation of Bias Based Policing (BBP) and/or Racial Animus.

1020.2 POLICY

The Bay Area Rapid Transit Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

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It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1020.2.1 ACCEPTANCE OF COMPLAINTS

A complaint may be filed in person, in writing, by e-mail, or by telephoning the Department.

- (a) Any Department employee who is informed of potential misconduct shall immediately notify a supervisor.
- (b) During normal operational hours, allegations of misconduct shall be referred to the Internal Affairs Unit. When an Internal Affairs investigator is unavailable, the complainant will be put in contact with a Watch Commander, or lastly a Zone Sergeant.
- (c) Depending on the urgency and seriousness of the allegations involved, complaints from juveniles should generally be taken only with their parents or guardians present and after the parents or guardians have been informed of the circumstances prompting the complaint.
- (d) Supervisors shall receive and document all complaints from any source alleging misconduct of an employee.
 - (a) If the reporting party states that they would like to make a Formal Complaint, the supervisor shall use a complaint intake form to document the reporting person's contact information and the nature of the allegation. The supervisor shall then forward the information to the Internal Affairs Unit.
 - (b) If the reporting person makes an Informal Complaint, the receiving supervisor will forward the information to the Internal Affairs Unit.
 - (c) Even in the absence of a Formal or Informal Complaint request, if the nature of the allegation(s) warrants investigation and/or could result in discipline, then the statements made by the reporting person and their contact information shall be documented on a complaint intake form and forwarded to the Internal Affairs Unit
- (e) When a complainant is intoxicated to a degree that his/her physical state may significantly inhibit his/her ability to give a thorough and complete statement, a supervisor should not attempt to take a detailed statement at that time. Instead, the supervisor should take a brief recorded statement, obtain the complainant's contact information, and give the complainant a complaint form for future reference. The Office of Internal Affairs will take appropriate actions to contact the complainant and take a detailed statement at a time when the complainant is no longer impaired due to intoxication.

1020.2.2 DEPARTMENT INITIATED INVESTIGATIONS

Allegations of misconduct generated within the police department that cannot be addressed at the supervisory level will be investigated through the Internal Affairs Unit.

- (a) Any Department employee who witnesses potential misconduct shall immediately notify a supervisor.
- (b) Allegations of misconduct may be reported to the Department by employees, union representatives, or supervisors.

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- (c) The Internal Affairs Unit may initiate an allegation of misconduct based on cause.
- (d) If an investigation discloses misconduct or improper job performance which was not included in the original allegation(s), the investigation will address the additional allegation(s).

1020.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1020.3.1 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1020.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1020.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other District facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1020.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall

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obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

A complainant shall be provided with a copy of his/her statement at the time it is filed with the Department (Penal Code § 832.7). The Office of Internal Affairs will additionally provide complainants with a brochure from the BART Office of the Independent Police Auditor.

1020.4.3 AVAILABILITY OF WRITTEN PROCEDURES

The Department shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

1020.5 DOCUMENTATION

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form and emailed to the Office of Internal Affairs. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

1020.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1020.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
 - (a) The original complaint form will be directed to the Office of Internal Affairs of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
 - (b) In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Deputy Chief or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complainants in a courteous and professional manner.

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- (c) Resolving those personnel complaints that can be resolved immediately.
 - (a) Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
 - (b) If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Office of Internal Affairs.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Office of Internal Affairs and the Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Human Resources Department and the Office of Internal Affairs for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Office of Internal Affairs, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:
 - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed (Government Code § 3303 et seq.).
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1020.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Internal Affairs Division, the following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Bay Area Rapid Transit Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank and command of the officer in charge of the investigation, the interviewing officers and all other persons to be present during the interview.

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- (e) All interviews shall be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 - (a) A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Lybarger* advisement. Administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
 - (b) No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
- (i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All members shall provide complete and truthful responses to questions posed during interviews.
- (k) No member may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

1020.6.3 INTERNAL AFFAIRS INVESTIGATION PROCESS

- (a) The Internal Affairs Unit shall be the principal entity for receiving, classifying, assigning, investigating, and filing allegations of misconduct. All allegations of misconduct will be forwarded to the Internal Affairs Unit.

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- (b) The Internal Affairs Unit is responsible for case tracking and the assignment of due dates for allegation of misconduct investigations. The assigned investigator is expected to complete each investigation in a timely manner. The investigator will conduct a thorough, accurate, and objective investigation.
- (c) The Internal Affairs Unit will apprise the Chief of Police of all allegations of misconduct and status of investigations.
- (d) If a command-level officer is the subject of an allegation of misconduct, the Chief of Police will review the allegation and assign an appropriate investigator. If the Chief of Police is the subject of an allegation, the BART General Manager will review the allegation and assign an appropriate investigator.

1020.6.4 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1020.6.5 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

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Sustained - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an officer were found to violate law or department policy (Penal Code § 832.8).

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1020.6.6 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (Government Code § 3304).

In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

1020.6.7 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

1020.7 ADMINISTRATIVE SEARCHES

An employee of this Department may be administratively ordered to submit to a blood, breath, or urine test for alcohol and drugs under any of the following circumstances:

- When the employee, whether on or off-duty, is involved in a shooting or police related death.
- When the employee is involved in an injury or fatal accident while on duty.
- When the employee is involved in an injury or fatal accident while operating any District owned vehicle whether on or off-duty.
- When the employee is found to be exhibiting objective symptoms of intoxication or drug influence while on duty.

The use of compelled testing results shall be restricted to the administrative investigation.

Any employee may also be required to be photographed, video and/or audio recorded, and/or ordered to participate in a line up during an Internal Affairs investigation.

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

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Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code § 3309).

1020.7.1 DISCLOSURE OF FINANCIAL INFORMATION

An employee may be compelled to disclose personal financial information under the following circumstances (Government Code § 3308):

- (a) Pursuant to a state law or proper legal process
- (b) Information exists that tends to indicate a conflict of interest with official duties
- (c) If the employee is assigned to or being considered for a special assignment with a potential for bribes or other improper inducements

1020.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

When an employee is placed on administrative leave with conditions that prohibit access to District facilities, the Department should conduct an assessment to determine if the terms of the administrative leave should be transmitted to the Department. In situations where the safety and/or security of the Department would be enhanced by notifying Department employees of the restrictions placed on the subject employee, the Watch Commander should send a confidential email message to the "BPD_Users" email list notifying the Department of the conditions restricting the subject employee's access to District facilities. The Watch Commander should use a standardized template for the confidential message which will be provided by the Internal Affairs unit. The message shall not contain restricted information about the nature of the allegations in the complaint against the subject employee. If the employee is cleared to return to work from administrative leave, the Watch Commander shall send an email message restoring access permission for the subject employee.

1020.8.1 ACCESS TO INTERNAL AFFAIRS RECORDS

Only those members of the Department authorized by the Chief of Police will be allowed access to Internal Affairs records. In addition, the Office of the Independent Police Auditor is authorized to access to the Internal Affairs records. Information within the record shall be kept with strict

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confidentiality. The following personnel are authorized access to a member's personnel file, with the indicated limitations:

- (a) The member: Members may review their own personnel file during normal business hours, after making the request through the Office of the Chief of Police.
- (b) Internal Affairs personnel: Any member assigned to the Internal Affairs Unit may review another member's Internal Affairs records for the purpose of effectively completing an internal investigation.
- (c) Outside requests: Any requests to review a member's Internal Affairs records by an outside agency must be approved by the BART Legal Department in accordance with California Evidence Code Section 1043, or requested pursuant to a Federal court order.

1020.9 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

The Bay Area Rapid Transit Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1020.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

1020.10.1 DIVISION COMMANDER RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Division Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Division Commander may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Division Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

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When forwarding any written recommendation to the Chief of Police, the Division Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1020.10.2 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Division Commander for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a pre-disciplinary procedural due process hearing (*Skelly*) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within one year from the date of discovery of the misconduct (Government Code § 3304(d)). The Chief of Police shall also provide the member with:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
 1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
 2. If the member elects to respond orally, the presentation may be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

1020.10.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint (Penal Code § 832.7(f)).

1020.10.4 NOTICE REQUIREMENTS

The disposition of any civilian's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall not include what discipline, if any, was imposed (Penal Code § 832.7(f)).

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1020.11 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

1020.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1020.13 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

During any administrative appeal, evidence that an officer has been placed on a *Brady* list or is otherwise subject to *Brady* restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such *Brady* evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

1020.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and those members other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any

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probationary officer subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the POBR (Government Code § 3303; Government Code § 3304).

At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Chief of Police or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief of Police shall be final.

1020.15 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

Complaint Mediation Program

1021.1 PURPOSE AND SCOPE

Alternative dispute resolution in the form of mediation can often yield the optimal outcome of an incident involving alleged misconduct, both for the complainant and the involved employee. It may be the most effective way for a complainant to feel that his or her concern was genuinely listened to, and it presents an opportunity for an employee to share his or her views about the incident that gave rise to the complaint in a non- interrogatory setting. By maximizing the chance that each party will listen to the other's point of view, mediation often makes it possible for both sides to gain a new understanding of each other and of why the interaction between them might have escalated into a conflict in the first place.

Mediation is based on voluntary participation by all parties to a dispute, and it focuses on understanding, problem solving, and reconciliation rather than fact finding, determining guilt or innocence, and assigning responsibility.

1021.2 ELIGIBILITY FOR MEDIATION

The eligibility of complaints for inclusion in the Complaint Mediation Program is detailed in this section. As a corollary, any complaints that are not eligible for inclusion in the program, for any reason, shall be handled as complaints pursuant to Department Policy 1020 and/or the BART Citizen Oversight Model, as applicable.

1021.2.1 CASE ELIGIBILITY

Participation in the Complaint Mediation Program must be voluntary for both the complainant(s) and the involved employee(s). Before the actual mediation process begins, all such parties must consent to the process in writing. Without written consent from all complainants and involved employees, the case is ineligible for inclusion in the program. Written consent may be obtained from the parties at the site of mediation, prior to the mediation session beginning.

- (a) Complaints that include the below-listed allegations and/or alleged circumstances are ineligible for the Complaint Mediation Program, regardless of the consent of the involved parties; when a complaint involves any of these allegations and/or alleged circumstances, as well as other allegations and/or alleged circumstances not on this list, the entire complaint is ineligible for the Complaint Mediation Program:
1. Use of Deadly Force
 2. Suspicious and Wrongful Deaths
 3. Unnecessary or Excessive Use of Force
 4. Truthfulness
 5. Racial Animus
 6. Bias-Based Policing and/or Racial Profiling
 7. Sexual Orientation Bias

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8. Sexual Harassment
 9. Arrest or Detention
 10. Search or Seizure
 11. Reporting Misconduct
 12. Workplace Discrimination/Harassment
 13. Supervision
 14. Substantial injury suffered by any of the involved parties
- (b) Subject to all of the exclusions listed above, the types of allegations eligible for inclusion in the Complaint Mediation Program include, but are not necessarily limited to:
1. Performance of Duty
 2. Conduct Unbecoming an Officer
 3. Courtesy
 4. Policy/Procedure
 5. Policy Complaint*

*When a complaint is eligible for mediation, but the complaint is against a Department policy and not a specific employee, the Department may designate an employee that it feels is appropriate to participate in the mediation as a Department representative.

1021.2.2 OFFICER ELIGIBILITY

Any new complaint is ineligible for the Complaint Mediation Program when any involved employee who is being accused of misconduct in the complaint:

- (a) Has had any allegation of misconduct Sustained against him or her within the 12 months prior to the date that the new complaint was initiated; or
- (b) Has been accused of misconduct in a Citizen Complaint, Administrative Investigation, or Comment of Non-Complaint, or any combination thereof, on three or more occasions within the 12 months prior to the date that the new complaint was initiated; or
- (c) Has participated in the Complaint Mediation Program, as an employee being accused of misconduct, on three or more occasions within the 12 months prior to the date that the new complaint was initiated.

1021.2.3 DISCRETION OF THE CHIEF OF POLICE

The Chief of Police, or the Chief's designee, at his or her discretion, may deem any complaint ineligible for mediation. The Chief shall promptly notify the Office of the Independent Police Auditor (OIPA) upon making such a determination.

1021.3 COMPLAINT MEDIATION PROGRAM PROCEDURES

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Complaint Mediation Program

1021.3.1 INTAKE OF NEW COMPLAINTS BY INTERNAL AFFAIRS SECTION

Upon receiving a new complaint of misconduct that does not, on its face, fall into the prohibited categories listed in Section 1021.2.1, the Internal Affairs Section shall inform the complainant that his or her complaint may be eligible for the Complaint Mediation Program in lieu of an investigation.

Internal Affairs shall also inform the complainant of his or her option, regardless of eligibility for mediation, to have the complaint handled in accordance with the procedures laid out in Department Policy 1020. If the complainant prefers to pursue mediation, Internal Affairs shall forward the complainant's contact information to OIPA, which shall then be responsible for contacting the involved employee(s) pursuant to Section 1021.3.3.

Internal Affairs shall continue its practice of recording all new complaints in its case database, including the assignment of a case number to each complaint. All cases that end up being a part of the Complaint Mediation Program shall be categorized as "Citizen Complaints."

Internal Affairs shall attempt to identify and gather all evidence about the new complaint that is known or reasonably should be known to be perishable, even if all parties to a complaint indicate their consent to have it handled through the Complaint Mediation Program. The gathering of such evidence is important if mediation does not ultimately take place, in which case a formal investigation may be required to be completed instead.*

*It is acknowledged that even with the requirement to collect perishable evidence, Internal Affairs may not be made aware of as much information about the circumstances giving rise to the complaint as they would be by conducting a series of formal interviews; their ability to discover some of the evidence, perishable or not, that is relevant to the complaint may therefore be curtailed to some degree.

1021.3.2 INTAKE OF NEW COMPLAINTS BY THE OFFICE OF THE INDEPENDENT POLICE AUDITOR

Upon receiving a new complaint of misconduct that does not, on its face, fall into the prohibited categories listed in Section 1021.2.1, OIPA shall inform the complainant that his or her complaint may be eligible for the Complaint Mediation Program in lieu of an investigation . OIPA shall also inform the complainant of his or her option, regardless of eligibility for mediation, to have the complaint handled in accordance with the procedures laid out in Department Policy 1020. If the complainant prefers to pursue mediation, OIPA shall notify Internal Affairs of the information about the complaint it has learned at that point (as is already done with other complaints received by OIPA). OIPA shall then be responsible for contacting the involved employee(s) pursuant to Section 1021.3.3.

Internal Affairs shall attempt to identify and gather all evidence about the new complaint that is known or reasonably should be known to be perishable, even if all parties to a complaint indicate their consent to have it handled through the Complaint Mediation Program. The gathering of such evidence is important if mediation does not ultimately take place, in which case a formal investigation may be required to be completed instead.*

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*It is acknowledged that even with the requirement to collect perishable evidence, Internal Affairs may not be made aware of as much information about the circumstances giving rise to the complaint as they would be by conducting a series of formal interviews; their ability to discover some of the evidence, perishable or not, that is relevant to the complaint may therefore be curtailed to some degree.

1021.3.3 CONSENT FROM ALL INVOLVED EMPLOYEES

Once a complainant has indicated a preference to pursue mediation of an eligible complaint, OIPA shall determine whether all involved employees are eligible for mediation in accordance with Section 1021.2.2. If any involved employees are ineligible, OIPA will inform the complainant that mediation is not a viable option for that complaint, which will instead be handled in accordance with BPD Policy 1020. If all involved employees are eligible for mediation, OIPA shall contact each of them to determine whether they consent to mediation of the complaint against them. In making such contact, OIPA shall notify each involved employee of the nature of the allegation(s) raised against him or her. Contact with the employees will be made by OIPA via email message, with a copy to each employee's supervisor.*

*OIPA shall make good faith efforts to establish contact with all involved employees via any means it deems effective and appropriate. The use of email is meant to be the single mandated method of contact in each case. Email is the preferred mandatory method because it lends itself to easy documentation and record-keeping.

If any one of the involved employees decline to consent to mediation, the complaint will be deemed as ineligible for the Complaint Mediation Program. OIPA shall notify IA of this, and IA shall handle the complaint pursuant to BPD Policy 1020.

Once the required email notification has been sent to the involved employees, if OIPA does not subsequently receive a response from any one (or more) of the employees for more than 7 calendar days after that employee was last on-duty, the complaint will be deemed as ineligible for the Complaint Mediation Program. OIPA shall notify the complainant and IA of this, and IA shall handle the complaint pursuant to BPD Policy 1020.

If any employees are involved who are unable to be identified through the best efforts of OIPA, the complaint will be deemed as ineligible for the Complaint Mediation Program. OIPA shall notify IA of this, and IA shall handle the complaint pursuant to BPD Policy 1020.

If all of the involved employees have been successfully identified and deemed eligible for mediation, and all of them have indicated their consent to mediation of the complaint involving them, then the mediation process shall continue pursuant to Section 1021.3.4.

1021.3.4 REFERRAL TO SEEDS

OIPA shall contact the SEEDS Community Resolution Center (SEEDS) to initiate mediation proceedings. OIPA will also be responsible for providing SEEDS with whatever information they require about the complaint at issue. In accordance with standard SEEDS operating procedure, SEEDS will then establish contact with the involved parties and schedule a date and time for the

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mediation to take place. BPD employees shall be allowed to attend mediation while on-duty, but they shall inform their immediate supervisor as far in advance as is reasonably feasible before doing so. BPD employees who attend mediation while off- duty shall be compensated for their time.

As noted above in Section 1021.2.1, all parties to mediation must document their consent to the mediation process in writing. Once such documentation has been submitted to either IA, OIPA, or SEEDS (i.e. – at the site of mediation) by all parties, the subsequent failure of the complainant to attend a mediation session scheduled by SEEDS shall not result in any further investigation by IA into the underlying complaint; conversely, the subsequent failure of any of the involved BPD employees to attend a mediation session scheduled by SEEDS shall result in the termination of mediation efforts with respect to the underlying complaint, which will be then be handled by IA pursuant to BPD Policy 1020.

If, for any reason, SEEDS is unable to schedule a date for the mediation that is within 90 days of the date that the underlying complaint was initiated, OIPA will notify SEEDS to cease further attempts at scheduling the mediation. IA shall then handle the complaint pursuant to BPD Policy 1020.

Upon completion of its mediation efforts, SEEDS will contact OIPA to inform it of the outcome of those efforts. OIPA will, in turn, notify IA of the outcome.

If SEEDS reports that mediation occurred, IA shall indicate the disposition of the underlying Citizen Complaint as “Mediated.” No further investigation will be conducted by IA with regard to the mediated complaint, and the complaint shall not be relied upon, in any way, as a basis for disciplinary proceedings or in the evaluation of an employee. This does not preclude a mediated complaint from being considered when determining officer eligibility for a separate mediation, in accordance with Section 1021.2.2.

If SEEDS reports that mediation did not occur, SEEDS will also send a “No Mediation Letter” to the party that was requesting the mediation.

Involved BPD employees in receipt of such a letter may forward a copy to IA, which shall include the copy in the file for the associated case. IA shall also indicate the disposition of the underlying Citizen Complaint as “Mediated.” No further investigation will be conducted by IA with regard to the mediated complaint, and the complaint shall not be relied upon, in any way, as a basis for disciplinary proceedings or in the evaluation of an employee. This does not preclude a mediated complaint from being considered when determining officer eligibility for a separate mediation, in accordance with Section 1021.2.2.

Complainants in receipt of such a letter may forward a copy to IA, which shall include the copy in the file for the associated case. IA shall then handle the complaint pursuant to BPD Policy 1020.

1021.3.5 CONDUCT OF MEDIATION

The mediation itself shall be conducted according to the rules established for Community Mediation by SEEDS. Neither OIPA nor IA shall have any role in conducting any of the mediation sessions, nor shall they be present during any such sessions.

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Pursuant to SEEDS standard practice, requests by either party in a mediation to be accompanied by a representative or another person must be made directly to SEEDS prior to the mediation session; this is so that consent can be sought by SEEDS from the opposite party before the request is granted to the requesting party.

Exclusive of any materials it deems confidential in line with its standard operating procedures, SEEDS shall deliver all of the materials it has related to the mediation proceeding (i.e. - written consent to the mediation from the involved parties) to OIPA. OIPA shall deliver a copy of all such materials to IA.

1021.3.6 COST OF MEDIATION

OIPA shall be responsible for the payment of all fees arising out of the mediation services provided by SEEDS pursuant to the Complaint Mediation Program.

Seat Belts

1022.1 PURPOSE AND SCOPE

This policy establishes guidelines for the use of seat belts and child restraints. This policy will apply to all members operating or riding in department vehicles (Vehicle Code § 27315.5).

1022.1.1 DEFINITIONS

Definitions related to this policy include:

Child restraint system - An infant or child passenger restraint system that meets Federal Motor Vehicle Safety Standards (FMVSS) and Regulations set forth in 49 CFR 571.213.

1022.2 WEARING OF SAFETY RESTRAINTS

All members shall wear properly adjusted safety restraints when operating or riding in a seat equipped with restraints, in any vehicle owned, leased or rented by this department while on- or off-duty, or in any privately owned vehicle while on-duty. The member driving such a vehicle shall ensure that all other occupants, including non-members, are also properly restrained.

Exceptions to the requirement to wear safety restraints may be made only in exceptional situations where, due to unusual circumstances, wearing a seat belt would endanger the member or the public. Members must be prepared to justify any deviation from this requirement.

1022.3 TRANSPORTING SUSPECTS, PRISONERS OR ARRESTEES

Suspects, prisoners and arrestees should be in a seated position and secured in the rear seat of any department vehicle with a prisoner restraint system or, when a prisoner restraint system is not available, by seat belts provided by the vehicle manufacturer. The prisoner restraint system is not intended to be a substitute for handcuffs or other appendage restraints.

Prisoners in leg restraints shall be transported in accordance with the Handcuffing and Restraints Policy.

1022.4 INOPERABLE SEAT BELTS

Department vehicles shall not be operated when the seat belt in the driver's position is inoperable. Persons shall not be transported in a seat in which the seat belt is inoperable.

Department vehicle seat belts shall not be modified, removed, deactivated or altered in any way, except by the vehicle maintenance and repair staff, who shall do so only with the express authorization of the Chief of Police.

Members who discover an inoperable restraint system shall report the defect to the appropriate supervisor. Prompt action will be taken to replace or repair the system.

1022.5 POLICY

It is the policy of the Bay Area Rapid Transit Police Department that members use safety and child restraint systems to reduce the possibility of death or injury in a motor vehicle collision.

Seat Belts

1022.6 TRANSPORTING CHILDREN

Children under the age of 8 shall be transported in compliance with California's child restraint system requirements (Vehicle Code § 27360; Vehicle Code § 27363).

Rear seat passengers in a cage-equipped vehicle may have reduced clearance, which requires careful seating and positioning of seat belts. Due to this reduced clearance, and if permitted by law, children and any child restraint system may be secured in the front seat of such vehicles provided this positioning meets federal safety standards and the vehicle and child restraint system manufacturer's design and use recommendations. In the event that a child is transported in the front seat of a vehicle, the seat should be pushed back as far as possible and the passenger-side airbag should be deactivated. If this is not possible, members should arrange alternate transportation when feasible. A child shall not be transported in a rear-facing child restraint system in the front seat in a vehicle that is equipped with an active frontal passenger airbag (Vehicle Code § 27363).

1022.7 VEHICLES MANUFACTURED WITHOUT SEAT BELTS

Vehicles manufactured and certified for use without seat belts or other restraint systems are subject to the manufacturer's operator requirements for safe use.

1022.8 VEHICLE AIRBAGS

In all vehicles equipped with airbag restraint systems, the system will not be tampered with or deactivated, except when transporting children as written elsewhere in this policy. All equipment installed in vehicles equipped with airbags will be installed as per the vehicle manufacturer specifications to avoid the danger of interfering with the effective deployment of the airbag device.

Body Armor

1024.1 PURPOSE AND SCOPE

Practical safety measures should be used to reduce the risks and hazards associated with police work. The department provides soft body armor for personnel in an effort to improve safety.

1024.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to maximize officer safety through the use of body armor in combination with prescribed safety procedures. While body armor provides a significant level of protection, it is not a substitute for the observance of officer safety procedures.

1024.2.1 WEARING OF BODY ARMOR

All sworn officers and RPG's working in a patrol assignment shall wear body armor, unless a doctors note is on file with the Support Services Supervisor releasing the officer from wearing body armor for a medical purpose. Command level personnel who are assigned to an administrative or office position, and wear a uniform, are not required to wear body armor. Doctors notes are to be updated on an annual basis.

1024.2.2 PRE-PLANNED HIGH RISK SITUATIONS

All personnel engaged in pre-planned high risk operations shall wear body armor. High-risk operations include, but are not limited to, planned warrant executions, drug raids, etc.

1024.3 RANGEMASTER RESPONSIBILITIES

The Rangemaster should:

- (a) Monitor technological advances in the body armor industry for any appropriate changes to Department approved body armor.
- (b) Assess weapons and ammunition currently in use and the suitability of approved body armor to protect against those threats.
- (c) Provide training that educates officers about the safety benefits of wearing body armor.

Officer Wellness Program

1025.1 PURPOSE AND SCOPE

It is the policy of the Bay Area Rapid Transit Police Department to assist and support employees who have been involved in a critical incident or are experiencing acute or chronic stress. This support may include, but is not limited to:

- (a) traumatic event/critical incident education
- (b) use of the Peer Support Team or individual Peer Support Team members
- (c) defusing and/or debriefing activities
- (d) support of family members
- (e) referral to appropriate professional resources

The purpose of the Officer Wellness Program is to minimize the physical, emotional, and psychological reactions to stress. The program aims to achieve this by providing necessary and appropriate resources and information on employee benefits and help and guidance for employees and their families who have been involved in a critical incident, injury or death, and/or are experiencing acute or chronic stress.

This program is intended to work in conjunction with, and not supersede access to, the District's Employee Assistance Program (EAP).

The Law Enforcement Peer Support and Crisis Referral Services Program (Government Code § 8669.1) was added into California law on January 1, 2020. The law provides specific legal protections to law enforcement personnel receiving or providing Peer Support services.

1025.2 DEFINITIONS

- (a) **Traumatic Event/Critical Incident:** Directly experiencing or witnessing actual or threatened death or serious injury or experiencing a threat to one's own physical integrity or the physical integrity of someone else. Any event that may temporarily overwhelm an individual's usual methods of coping or produce unusually strong reactions. Examples include, but are not limited to:
 - 1. Officer Involved Shootings
 - 2. First responder death
 - 3. Serious injury to employee(s)
 - 4. Employee suicide
 - 5. Traumatic death, serious injury or significant event involving a child
 - 6. Victim personally known to employee
 - 7. Multiple homicides
 - 8. Death of person in police custody

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9. Injury or death of a civilian as a result of operational procedures
- (b) **First Responder Support Network (FRSN):** FRSN is a professional and educational organization, dedicated to providing first responders and their families tools to reduce the effects of traumatic stress.
 - (c) **International Critical Incident Stress Foundation (ICISF):** ICISF is a worldwide organization dedicated to the prevention and mitigation of disabling stress through education, training and support services for all emergency services professions.
 - (d) **Peer Support Team:** A team comprised of BART Police Department employees of various ranks who will provide support and referral to employees to prevent and mitigate the negative impacts of stress.
 - (e) **Peer Support Team Member:** An employee trained to provide support and referrals for employees of the BART Police Department.
 - (f) **Peer Support Team Coordinators:** Sergeants who will be appointed by the Peer Support Team Manager, who will coordinate team training, communicate with the team's designated Mental Health Professional, ensure appropriate team deployment, track follow-up services, and perform other administrative duties related to the Peer Support Team.
 - (g) **Peer Support Team Manager:** A lieutenant, appointed by the Chief of Police, will be responsible for providing overall management and direction over the budget, training, and deployment of the Peer Support Team.
 - (h) **Mental Health Professional:** A licensed mental health professional who has specific expertise, experience, education and training in the field of critical incident stress management with special emphasis on public safety personnel, who is a designated consultant retained by the BART Police Department for the Officer Wellness Program
 - (i) **Critical Incident Stress Debriefings, Defusings and/or Demobilizations (CISD):** Different types of meetings designed to mitigate the psychological impact of a traumatic event, prevent the subsequent development of post-traumatic stress disorder, and serve as an early identification mechanism for individuals who may require professional mental health follow-up. Debriefings, Defusings and Demobilizations are structured group meetings or discussions during which personnel are given an opportunity to discuss their thoughts and reactions concerning a traumatic event in a controlled environment under the direction of a mental health professional and/or peer support personnel.
 - 1. **Debriefing:** The debriefing is a process that should be conducted within 72-hours of the traumatic event. It is led by a qualified mental health professional assisted by Peer Support Team Members.
 - 2. **Defusing:** A shortened version of the debriefing, generally lasting less than one hour. A defusing is a process that should take place as soon as possible after the traumatic event (usually within 3-8 hours, and ideally before the end of shift). The defusing may be used to determine the need for debriefing and/or other services and are typically conducted by a Peer Support Team Member.

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3. Demobilization: A brief informational session applied when operational units have been released from service at a major incident/disaster that requires unusually large numbers of personnel or lengthy periods of deployment. It serves a secondary function as a screening opportunity to assure that individuals who may need assistance are identified early after a traumatic event.
- (j) **Peer Support:** A process by which trained personnel provide emotional support and referrals for a colleague during a crisis or when they are under stress. Generally, peer support is sought by the employee in need, or suggested by the employee's peer(s) or supervisor(s). Peer support does not replace the need for structured group intervention following a critical incident. Peer support is not a replacement for the Department's contracted Employee Assistance Program (EAP) but can serve a role in assisting the employee seeking peer support with access to professional mental health services.
- (k) **Employee Assistance Program (EAP):** The BART Police Department Employee Assistance Program is a consulting/counseling service for a variety of personal issues, separate from traumatic events experienced in the line of duty. The EAP is a provided benefit to all permanent District employees and provides services such as counseling, legal consultation, financial services, dependent care referrals, discounted access to treatment programs, and referral to community resources.

1025.3 INITIATION OF GROUP PEER SUPPORT TEAM RESPONSE

- (a) Trauma takes a variety of forms and cannot be accurately or exhaustively quantified by description. However, certain events are of such magnitude that they impact nearly everyone involved. When such incidents occur a Peer Support or Critical Incident response may be initiated. For the purposes of BART Police Department response criteria, these incidents are defined as follows:
 1. Line of duty death
 2. Serious line of duty injury
 3. Suicide of a Public Safety employee
 4. Off-duty employee death
 5. Disaster
 6. Multi-casualty incident
 7. Officer-involved shooting
- (b) Additional incidents that may warrant group Peer Support team call-out include, but are not limited to:
 1. Death of a person in police custody
 2. Serious injury or death of a civilian as a result of operational procedures
 3. Significant events involving children
 4. Victim of serious crime or accident known to employee(s)
 5. Excessive media interest portraying employee(s) in a negative manner

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- (c) The Watch/Incident Commander shall ensure the on-call Peer Support Team Coordinator is notified. The Peer Support Team Coordinator may notify the team's contracted Mental Health Professional for consultation. The type of intervention and response will be assessed and if appropriate, a Peer Support or Critical Incident response will be initiated.
- (d) In consultation with the Peer Support Team Manager, the Peer Support Team Coordinator will discuss the possibility of a group CISD with the Watch/Incident Commander, who will make the final determination.
- (e) The effectiveness of this program is dependent upon a consistent, Departmental response to traumatic events, to reduce the physical, psychological and emotional impact of such events upon our employees, and to mitigate the effects of post-traumatic stress.
- (f) The critical incident stress debriefing or defusing (CISD) should include all Department personnel directly involved in the incident.
- (g) While a non-affected employee may be required to attend a CISD, active participation is not mandatory. However, employees are reminded that non-affected or moderately-affected employees may have vital information/perspective that could help a fellow employee better understand an incident.

1025.4 INITIATION OF INDIVIDUAL PEER SUPPORT RESPONSE

- (a) One-on-one peer support is the crux of this program, with group intervention being used only for the most traumatic events. Any employee in need of peer support assistance may contact a Peer Support Team member of their choosing for such support. Peer Support Team members' contact information shall be available via the G:/ drive in the Officer Wellness Folder.
- (b) Members of the Peer Support Team shall not engage in psychological or personal counseling as defined in Business & Professions Code § 2903 and shall refer employees to professional assistance when appropriate. Examples of situations requiring professional referral include, but are not limited to:
 - 1. Alcohol and/or substance abuse issues
 - 2. Suicidal thoughts or extreme depression

1025.5 TEAM COMPOSITION

- (a) The BART Police Department Peer Support Team is comprised of personnel representing various ranks of sworn and civilian members who have specialized training in assisting peers and their families with the immediate adverse effects of a traumatic event and a broad range of emotional and professional issues.
- (b) Peer Support Team members shall be made available on a 24-hour basis.
- (c) Being a member of the Peer Support Team is voluntary. In most cases, peer support should take the form of an on-duty meeting of a relatively short duration. Prolonged peer support, such as debriefings or defusings, should be scheduled on-duty when possible.

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- (d) Peer Support Team Members shall be compensated only under the following circumstances, and only with the prior approval of the Peer Support Team Manager:
 - 1. Scheduled team training
 - 2. Mandatory meetings
 - 3. CISD's

1025.6 TEAM SELECTION AND REQUIRED TRAINING

- (a) Peer Support Team Members will be chosen based on the following criteria:
 - 1. A BART Police Department peer driven selection process consisting of memorandums submitted by department personnel nominating potential Peer Support Team Members
 - 2. Expressed desire to be a Peer Support Team Member
 - 3. Minimum commitment of three (3) years
 - 4. No work restrictions involving psychological stress
 - 5. Must be a member of the BART PD Police Department who has successfully completed probation
 - 6. Must consistently display solid judgment and discretion in sensitive matters
 - 7. Must display empathy and have strong interpersonal communication skills
- (b) Team selection will be reviewed by Command Staff with the final selection made by the Peer Support Team Manager
- (c) Peer Support Team Members shall receive the following training prior to providing services as a team member:
 - 1. Post Approved Peer Support Training
- (d) Team members may also receive the following training:
 - 1. Intermediate or Advanced Peer Support Course
 - 2. Intermediate or Advanced Critical Incident Stress Management Course
 - 3. COPS Traumas of Law Enforcement Course
- (e) Peer Support Team members should also attend quarterly in-house team training with the teams' Mental Health Professional and Peer Support Team Coordinator(s) (minimum of 4-hours)
- (f) The Peer Support Team Manager shall be responsible for ensuring compliance with FRSN and Government Code § 8669.1.

1025.7 CONFIDENTIALITY

- (a) A critical responsibility of Peer Support Team Members is the promotion of trust, anonymity and confidentiality. Therefore, communications between Peer Support Team Members and law enforcement personnel receiving Peer Support services are

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considered privileged and confidential by both the BART Police Department and the State of California (Government Code § 8669.1). The legally provided protections allow law enforcement personnel, whether or not they were/are involved, to refuse and/or prevent the disclosure of communications between Peer Support Team Members and personnel receiving Peer Support Team services, except, but not limited to, the following circumstances (Government Code § 8669.4):

1. If the Peer Support Team Member reasonably believes disclosure is necessary to prevent death, substantial bodily harm, or commission of a crime
 2. To refer law enforcement personnel to professional services
 3. During Federal court or state criminal proceedings
 4. If involved law enforcement personnel expressly agree in writing to waive confidentiality
 5. Any circumstances in which mandated reporting laws take precedence, including child abuse
- (b) Peer Support Team Members shall not make or maintain any notes of their communications. Statistics will be maintained on Team responses by the Peer Support Team Coordinator(s), but content and nature of conversation(s) will be specifically excluded.
- (c) A violation of confidentiality, except as mandated by law, is grounds for immediate removal from the Peer Support Team. The Team Coordinator, Team Manager, or the Team Mental Health Professional may recommend removal of any Team member to the Chief of Police whose decision shall be final.

1025.8 EMPLOYEE ASSISTANCE PROGRAM (EAP)

EAP services are available to all employees. Five (5) counseling visits per family per calendar year are offered including assistance for domestic violence issues, legal issues, financial concerns, marital or family problems, personal problems or job-related issues. Support is also available for managers and supervisors regarding employee performance concerns, more effective way of working with employees, responding to problems between employees and other issues. Participation in EAP is voluntary.

All counseling services are confidential and are offered by a network of professional therapists from throughout the Bay Area. Appointments are scheduled near the employee's home. All services can be accessed by calling Claremont Behavioral Services, 24 hours a day. Pre-authorization is not required. For more information, contact BART Employee Services or visit Claremont EAP online at Claremonteap.com.

Peer Support Personnel are trained in the EAP program service offerings. They can assist non-Peer Support supervisor's in understanding their role and responsibility, and identification of employee behaviors which would indicate the existence of employee concerns, problems and/or issues that could impact employee job performance and well-being, to encourage employees to seek voluntary EAP program services.

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1025.9 ANNUAL REVIEW

An annual review of the program activities will be conducted including any recommendations for modification by the Peer Support Team Manager for review by the Chief of Police.

Personnel Records

1026.1 PURPOSE AND SCOPE

This policy governs maintenance and access to personnel records. Personnel records include any file maintained under an individual member's name.

1026.2 POLICY

It is the policy of this department to maintain personnel records and preserve the confidentiality of personnel records pursuant to the Constitution and the laws of California (Penal Code § 832.7).

1026.3 DEPARTMENT FILE

The department file shall be maintained as a record of a person's employment/appointment with this department. The department file should contain, at a minimum:

- (a) Personal data, including photographs, marital status, names of family members, educational and employment history, or similar information. A photograph of the member should be permanently retained.
- (b) Election of employee benefits.
- (c) Personnel action reports reflecting assignments, promotions, and other changes in employment/appointment status. These should be permanently retained.
- (d) Original performance evaluations. These should be permanently maintained.
- (e) Discipline records, including copies of sustained personnel complaints.
 - 1. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained pursuant to the established records retention schedule and at least two years (Government Code § 26202; Government Code § 34090).
 - 2. Disciplinary action resulting from a sustained civilian's complaint shall be maintained pursuant to the established records retention schedule and at least five years (Penal Code § 832.5).
- (f) Adverse comments such as supervisor notes or memos may be retained in the department file after the member has had the opportunity to read and initial the comment (Government Code § 3305).
 - 1. Once a member has had an opportunity to read and initial any adverse comment, the member shall be given the opportunity to respond in writing to the adverse comment within 30 days (Government Code § 3306).
 - 2. Any member response shall be attached to and retained with the original adverse comment (Government Code § 3306).
 - 3. If a member refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment and the member should sign or initial the noted refusal. Such a refusal, however, shall

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not be deemed insubordination, nor shall it prohibit the entry of the adverse comment into the member's file (Government Code § 3305).

- (g) Commendations and awards.
- (h) Any other information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

1026.4 BUREAU FILE

Bureau files may be separately maintained internally by a member's supervisor for the purpose of completing timely performance evaluations. The Bureau file may contain supervisor comments, notes, notices to correct and other materials that are intended to serve as a foundation for the completion of timely performance evaluations.

All materials intended for this interim file shall be provided to the employee prior to being placed in the file in accordance with Government Code § 3305 and Government Code § 3306.

1026.5 TRAINING FILE

An individual training file shall be maintained by the Personnel and Training Lieutenant for each member. Training files will contain records of all training; original or photocopies of available certificates, transcripts, diplomas and other documentation; and education and firearms qualifications. Training records may also be created and stored remotely, either manually or automatically (e.g., Daily Training Bulletin (DTB) records).

- (a) The involved member is responsible for providing the Personnel and Training Lieutenant or immediate supervisor with evidence of completed training/education in a timely manner.
- (b) The Personnel and Training Lieutenant or supervisor shall ensure that copies of such training records are placed in the member's training file.

1026.6 INTERNAL AFFAIRS FILE

Internal affairs files shall be maintained under the exclusive control of the Internal Affairs Division in conjunction with the office of the Chief of Police. Access to these files may only be approved by the Chief of Police or the Internal Affairs Division lieutenant or deputy chief.

These files shall contain the complete investigation of all formal complaints of member misconduct, regardless of disposition (Penal Code § 832.12). Investigations of complaints that result in the following findings shall not be placed in the member's file but will be maintained in the internal affairs file:

- (a) Not sustained
- (b) Unfounded
- (c) Exonerated

Investigation files arising out of civilian's complaints shall be maintained pursuant to the established records retention schedule and for a period of at least five years. Investigations that

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resulted in other than a sustained finding may not be used by the Department to adversely affect an employee's career (Penal Code § 832.5).

Investigation files arising out of internally generated complaints shall be maintained pursuant to the established records retention schedule and for at least two years (Government Code § 26202; Government Code § 34090).

1026.7 MEDICAL FILE

A medical file shall be maintained separately from all other personnel records and shall contain all documents relating to the member's medical condition and history, including but not limited to:

- (a) Materials relating to a medical leave of absence, including leave under the Family and Medical Leave Act (FMLA).
- (b) Documents relating to workers' compensation claims or the receipt of short- or long-term disability benefits.
- (c) Fitness-for-duty examinations, psychological and physical examinations, follow-up inquiries and related documents.
- (d) Medical release forms, doctor's slips and attendance records that reveal a member's medical condition.
- (e) Any other documents or materials that reveal the member's medical history or medical condition, including past, present or future anticipated mental, psychological or physical limitations.

1026.8 SECURITY

Personnel records should be maintained in a secured location and locked either in a cabinet or access-controlled room. Personnel records maintained in an electronic format should have adequate password protection.

Personnel records are subject to disclosure only as provided in this policy, the Records Maintenance and Release Policy or according to applicable discovery procedures.

Nothing in this policy is intended to preclude review of personnel records by the General Manager, General Counsel or other attorneys or representatives of the District in connection with official business.

1026.8.1 REQUESTS FOR DISCLOSURE

Any member receiving a request for a personnel record shall promptly notify the Custodian of Records or other person charged with the maintenance of such records.

Upon receipt of any such request, the responsible person shall notify the affected member as soon as practicable that such a request has been made (Evidence Code § 1043).

The responsible person shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this may require assistance of available legal counsel.

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All requests for disclosure that result in access to a member's personnel records shall be logged in the corresponding file.

1026.8.2 RELEASE OF PERSONNEL INFORMATION

Personnel records shall not be disclosed except as allowed by law (Penal Code § 832.7; Evidence Code § 1043) (See also Records Maintenance and Release Policy).

Any person who maliciously, and with the intent to obstruct justice or the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any member of this department may be guilty of a misdemeanor (Penal Code § 146e).

The Department may release any factual information concerning a disciplinary investigation if the member who is the subject of the investigation (or the member's representative) publicly makes a statement that is published in the media and that the member (or representative) knows to be false. The disclosure of such information, if any, shall be limited to facts that refute any such false statement (Penal Code § 832.7).

1026.9 RELEASE OF PERSONNEL RECORDS AND RECORDS RELATED TO CERTAIN INCIDENTS, COMPLAINTS, AND INVESTIGATIONS OF OFFICERS

Personnel records and records related to certain incidents, complaints, and investigations of officers shall be released pursuant to a proper request under the Public Records Act and subject to redaction and delayed release as provided by law.

The Custodian of Records should work as appropriate with the Chief of Police or the Internal Affairs Division supervisor in determining what records may qualify for disclosure when a request for records is received and if the requested record is subject to redaction or delay from disclosure.

For purposes of this section, a record includes (Penal Code § 832.7(b)(2)):

- All investigation reports.
- Photographic, audio, and video evidence.
- Transcripts or recordings of interviews.
- Autopsy reports.
- All materials compiled and presented for review to the District Attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and department policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take.
- Documents setting forth findings or recommending findings.
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the *Skelly* or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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Unless a record or information is confidential or qualifies for delayed disclosure as provided by Penal Code § 832.7(b)(7) or other law, the following records shall be made available for public inspection upon request (Penal Code § 832.7):

- (a) Records relating to the report, investigation, or findings of:
 - 1. The discharge of a firearm at another person by an officer.
 - 2. The use of force against a person resulting in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) by an officer.
- (b) Records relating to an incident where a sustained finding (see the Personnel Complaints Policy) was made by the department or oversight agency regarding:
 - 1. An officer engaged in sexual assault of a member of the public (as defined by Penal Code § 832.7(b)).
 - 2. Dishonesty of an officer relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another officer, including but not limited to any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure (Penal Code § 832.7(b)(3)).

When an investigation involves multiple officers, the Department shall not release information about allegations of misconduct or the analysis or disposition of an investigation of an officer unless it relates to a sustained finding of a qualified allegation as provided by Penal Code § 832.7(b)(4) against the officer. However, factual information about the action of the officer during an incident or the statements of an officer shall be released if the statements are relevant to a sustained finding of the qualified allegation against another officer that is subject to release (Penal Code § 832.7(b)(4)).

1026.9.1 REDACTION

The Custodian of Records, in consultation with the Chief of Police or authorized designee, shall redact the following portions of records made available for release (Penal Code § 832.7(b)(5)):

- (a) Personal data or information (e.g., home address, telephone number, identities of family members) other than the names and work-related information of officers
- (b) Information that would compromise the anonymity of complainants and witnesses
- (c) Confidential medical, financial, or other information where disclosure is prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force
- (d) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the officer or another person

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Additionally, a record may be redacted, including redacting personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing it (Penal Code § 832.7(b)(6)).

1026.9.2 DELAY OF RELEASE

Unless otherwise directed by the Chief of Police, the Custodian of Records should consult with a supervisor familiar with the underlying investigation to determine whether to delay disclosure of records relating to the discharge of a firearm or use of force resulting in death or in great bodily injury due to any of the following conditions (Penal Code § 832.7):

- (a) Active criminal investigations
 - 1. Disclosure may be delayed 60 days from the date the use of force occurred or until the District Attorney determines whether to file criminal charges, whichever occurs sooner.
 - 2. After the initial 60 days, delay of disclosure may be continued if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer or against someone other than an officer who used the force.
- (b) Filed criminal charges
 - 1. When charges are filed related to an incident where force was used, disclosure may be delayed until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea has passed.
- (c) Administrative investigations
 - 1. Disclosure may be delayed until whichever occurs later:
 - (a) There is a determination from the investigation whether the use of force violated law or department policy, but no longer than 180 days after the date of the department's discovery of the use of force or allegation of use of force
 - (b) Thirty days after the close of any criminal investigation related to the officer's use of force

1026.9.3 NOTICE OF DELAY OF RECORDS

When there is justification for delay of disclosure of records relating to the discharge of a firearm or use of force resulting in death or in great bodily injury during an active criminal investigation, the Custodian of Records shall provide written notice of the reason for any delay to a requester as follows (Penal Code § 832.7):

- (a) Provide the specific basis for the determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. The notice shall also include the estimated date for the disclosure of the withheld information.
- (b) When delay is continued beyond the initial 60 days because of criminal enforcement proceedings against anyone, at 180-day intervals provide the specific basis that

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disclosure could reasonably be expected to interfere with a criminal enforcement proceeding and the estimated date for disclosure.

1. Information withheld shall be disclosed when the specific basis for withholding the information is resolved, the investigation or proceeding is no longer active, or no later than 18 months after the date of the incident, whichever occurs sooner, unless:
 - (a) When the criminal proceeding is against someone other than an officer and there are extraordinary circumstances to warrant a continued delay due to the ongoing criminal investigation or proceeding, then the Department must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest for prompt disclosure of records about use of serious force by officers.

In cases where an action to compel disclosure is brought pursuant to Government Code § 6258, the Department may justify delay by filing an application to seal the basis for withholding if disclosure of the written basis itself would impact a privilege or compromise a pending investigation (Penal Code § 832.7(b)(7)).

1026.10 MEMBER ACCESS TO HIS/HER OWN PERSONNEL RECORDS

Any member may request access to his/her own personnel records during the normal business hours of those responsible for maintaining such files. Any member seeking the removal of any item from his/her personnel records shall file a written request to the Chief of Police through the chain of command. The Department shall remove any such item if appropriate, or within 30 days provide the member with a written explanation of why the contested item will not be removed. If the contested item is not removed from the file, the member's request and the written response from the Department shall be retained with the contested item in the member's corresponding personnel record (Government Code § 3306.5).

Members may be restricted from accessing files containing any of the following information:

- (a) An ongoing internal affairs investigation to the extent that it could jeopardize or compromise the investigation pending final disposition or notice to the member of the intent to discipline.
- (b) Confidential portions of internal affairs files that have not been sustained against the member.
- (c) Criminal investigations involving the member.
- (d) Letters of reference concerning employment/appointment, licensing or issuance of permits regarding the member.
- (e) Any portion of a test document, except the cumulative total test score for either a section of the test document or for the entire test document.
- (f) Materials used by the Department for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments,

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management bonus plans, promotions and job assignments or other comments or ratings used for department planning purposes.

- (g) Information of a personal nature about a person other than the member if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
- (h) Records relevant to any other pending claim between the Department and the member that may be discovered in a judicial proceeding.

1026.11 RETENTION AND PURGING

Unless provided otherwise in this policy, personnel records shall be maintained in accordance with the established records retention schedule.

- (a) During the preparation of each member's performance evaluation, all personnel complaints and disciplinary actions should be reviewed to determine the relevancy, if any, to progressive discipline, training and career development. Each supervisor responsible for completing the member's performance evaluation should determine whether any prior sustained disciplinary file should be retained beyond the required period for reasons other than pending litigation or other ongoing legal proceedings.
- (b) If a supervisor determines that records of prior discipline should be retained beyond the required period, approval for such retention should be obtained through the chain of command from the Chief of Police.
- (c) If, in the opinion of the Chief of Police, a personnel complaint or disciplinary action maintained beyond the required retention period is no longer relevant, all records of such matter may be destroyed in accordance with the established records retention schedule.

Senior Officer Progression and Master Officer Program

1027.1 PURPOSE AND SCOPE-SENIOR OFFICER PROGRESSION AND MASTER POLICE OFFICER

To provide a uniform procedure for the submission and processing of requests for consideration for advancement to the position of Senior Police Officer and Master Police Officer Status.

1027.2 DEFINITIONS-SENIOR POLICE OFFICER

- (a) **Senior Police Officer** - That classification which a police officer may progress to, or continue to be ranked as, when all requirements as set forth by the BART Police Department are satisfied. There are two (2) levels of Senior Police Officer:
 - 1. Senior Officer Intermediate, and
 - 2. Senior Officer Advanced. (Each level requires different minimum qualifications.)
- (b) **Non-Credit Time** - Time that does not count toward service-time experience in determining senior officer progression eligibility. Non-credit time includes the following:
 - 1. Any non-paid leave of absence
 - 2. Employee receiving disability insurance after thirty-one (31) continuous days
 - 3. Any suspensions of more than fifteen (15) days
 - 4. Employee is placed on industrial injury disability leave (4850 time) after thirty-one (31) continuous days
 - 5. Employee placed on Temporary Modified Duty Assignment or on an extended leave of absence after thirty-one (31) continuous days on industrial or non-industrial injury disability
 - 6. Employees on Administrative Leave after thirty-one (31) continuous days

1027.3 MINIMUM REQUIREMENTS-SENIOR OFFICER PROGRESSION

Only full-time paid status is applicable in determining years of service-time experience for senior officer progression. All time, based on days, weeks or months on non-credit status shall be deducted from the total service-time experience. All candidates seeking final approval for senior officer progression must have received an annual rating of "competent" or better in all categories on his/her Employees Performance Evaluation within six months of his/her request for senior officer progression; a positive recommendation by the Support Services Deputy Chief; and have met the qualifications for Senior Officer Intermediate or Advanced described below.

- (a) **Senior Officer Intermediate:**

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- (a) A twelve (12) month probationary period and an additional twenty-four (24) month non-probationary period as a police officer with the BART Police Department.
- (b) Possession of an Intermediate P.O.S.T. Certificate.
- (b) **Senior Officer Advanced:**
 - (a) Police Officers must have completed the following:
 - (a) A twelve (12) month probationary period and an additional twenty-four (24) month non-probationary period as a police officer with the BART Police Department.
 - (b) Possession of an Advanced P.O.S.T. Certificate.

1027.4 REQUESTING OFFICER'S RESPONSIBILITY

A qualified police officer desiring progression to senior officer status shall submit a memorandum of request for Senior Officer Intermediate or Advanced status and a copy of his/her Intermediate or Advanced P.O.S.T. Certificate via the chain of command to the Support Services Deputy Chief.

An officer may apply for an Intermediate or Advanced Certificate from P.O.S.T. up to thirty (30) days in advance of his/her actual date of eligibility. Upon meeting the required service time for advancement to Senior Officer Intermediate or Advanced and receiving a competent or better rating on his/her Employee Performance Evaluation, the officer shall submit a memorandum of request and a copy of his/her application for a P.O.S.T. Certificate, signed by the Chief of Police, to the Support Services Bureau Deputy Chief and retain a copy of each document for himself/herself. Upon receipt of his/her certificate, the officer shall forward a copy of the P.O.S.T. Certificate to the Support Services Bureau Deputy Chief.

Memorandums requesting progression to senior officer will not be accepted prior to the actual date of eligibility.

Fully completed and qualifying senior officer progression shall be retroactive to the date when the request was received by the officer's immediate supervisor, or in his/her absence, a command-level officer.

The requesting officer shall include the following information in a memorandum of request to his/her immediate supervisor for review and approval:

- His/her date of hire as a police officer with the BART Police Department, the date he/she completed probation and the actual date of eligibility;
- The names and dates of service of all police department(s) where he/she was previously employed as a sworn police officer;
- All dates involving non-credit time.

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1027.5 SUPERVISOR'S RESPONSIBILITY

The officer's immediate supervisor at the time of application shall be responsible for the following:

- (a) Signing and dating receipt of the required documents submitted by the officer for progression and returning a copy of same to the officer for his/her records;
- (b) Verifying the officer's service time by contacting the Administrative Services Supervisor to obtain records of non-credit status time. The supervisor shall confirm the officer's date of hire as a police officer with the BART Police Department and the total service time. Any non-credit status time shall be noted and subtracted from the total service time;
- (c) Verifying all prior service time, as a sworn police officer, including the names of the agencies and the dates of service. Only service time as a full-time paid non-probationary police officer shall be counted. Service time as a reserve officer or non-sworn classification (e.g. cadet, aide, dispatcher, jailer, parking control aide or community service assistant) shall not be counted;
- (d) Verifying that the correct P.O.S.T. Certificate has been attached to the memorandum of request or a copy of the officer's application for a P.O.S.T Certificate signed by the Chief of Police has been attached to the request;
- (e) Ensuring that the officer has received an annual evaluation within six months of the memorandum of request. If no evaluation is on file, the supervisor will complete an evaluation within ten (10) calendar days of the receipt of the memorandum of request;
- (f) Forwarding the completed memorandum of request and supporting documentation to the Support Services Deputy Chief via the chain-of-command.

1027.6 SENIOR OFFICER REVIEW -SUPPORT SERVICES BUREAU

Memorandums of request to senior officer status will be reviewed and processed by the Support Services Bureau Deputy Chief. If the officer meets the qualifications for progression, the application shall be approved and processed accordingly. The Deputy Chief will review the officer's request and performance evaluation to confirm that the officer is rated competent or better in all performance categories, and approve the necessary certification documents. The decision to grant progression will be made within 30 calendar days of the receipt of the completed senior officer application package and in accordance with applicable BPOA Bargaining Agreement language.

Progression shall be contingent upon merit and completion of the requirements for either step of the classification and approval of necessary certification documents. Merit eligibility shall be determined by a competent or better performance rating in all applicable performance categories.

In the event an officer is denied progression, he or she will be informed of the reason (s) for denial within 30 days of the decision.

1027.7 OFFICE OF THE CHIEF

The Chief of Police or his/her designee shall review all documents relating to the officer and will make the final determination whether an officer is awarded Senior Officer status.

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1027.8 SUPPORT SERVICES BUREAU

The Support Services Deputy Chief will notify the Human Resources Department when an officer is granted a Senior Police Officer status as determined by the Chief of Police. A copy of such determination will be placed in the affected officer's personnel file.

1027.9 CONTINUED RANKING

Once attained, senior officer status shall become permanent.

1027.10 MASTER OFFICER PROGRAM

Only employees in the rank of Master Police Officer at the time of full ratification of the 2018-2022 BPOA collective bargaining agreement may remain in the rank of Master Police Officer. No Officers may enter the rank of Master Police Officer after said ratification.

Special Assignments, Non-Patrol and Specialized Job Assignments

1028.1 PURPOSE AND SCOPE

To provide a vehicle for interested employees to declare their intent for special assignments, non-patrol and specialized job assignments, and to provide a fair and impartial process for selecting personnel for these assignments.

1028.1.1 DEFINITIONS

Special Assignment - Short-term job assignment filled by officers assigned to Patrol.

Non-Patrol Assignment - Job assignments outside of Patrol (e.g., Detectives, SPU, Traffic). Non-patrol special assignments are normally three (3) years in length but may be extended by two additional six month extensions at the request of the employee and the discretion of the Chief.

Employees selected for the Detective Section will have a five (5) year assignment.

Specialized Job Assignment - Job assignments that require special skills or training (e.g., Range Officer, Canine Handler, FTO, ID technician).

1028.2 MEMORANDUMS-OF-INTEREST

Personnel may submit memorandums-of-interest (MOIs) for a special assignment, non-patrol or specialized job assignment when a position is announced. The employee should list his/her qualifications, including but not limited to, all experience, education and training that is relevant to the desired assignment. Memos are due by the deadline listed in the announcement and should be sent via the chain-of-command to the Bureau Deputy Chief or other person listed in the bulletin. Candidates must be eligible for the assignment by the MOI deadline date.

1028.2.1 SUPERVISORY RESPONSIBILITY

Supervisors who receive an MOI should complete a recommendation for the candidate regarding the assignment desired. Supervisors must comment on the following areas regarding a candidate's qualifications and suitability for any particular assignment:

- Attendance
- Discipline
- EDR file review
- Compliance with minimum qualifications

Additionally, the supervisor should include a recommendation (positive or negative) and any other information that would be relevant to making a selection.

Recommendations should normally be completed by the candidate's immediate supervisor, provided that he/she has directly supervised the candidate for at least three (3) months. Other

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supervisors who provided supervisory responsibility over the candidate during last 12 months may also provide input.

1028.3 TESTING PROCESS (IF APPLICABLE)

If a testing process is included in the selection of a candidate(s), the testing process will be outlined in the original announcement bulletin. A testing process may consist of any or all of the following:

- Interview panel (consisting of a command-level officer, person in-charge of the unit, section, or team being tested, and a member from and approved by the BPOA as per the BPOA agreement)
- Written exam (minimum passing score of 75%)
- Practical exercise

Prior to the testing process, the weight of each phase should be announced. An overall score of 75% is required to be placed onto an eligibility test.

1028.4 SELECTION PROCESS

Unless otherwise stated, a pool of five (5) candidates that have been deemed qualified for the position (through the selection process) will be established for any given assignment. An exception to this may be if the assignment was a one-time selection for a given period. Additionally, if less than five candidates are deemed qualified, the pool will only consist of those qualified. Any additional candidates beyond the pool of five should be ranked and listed numerically. When a person is selected from the pool of five, the first ranked person from beyond the pool then moves into the pool.

A candidate's qualifications, work performance, attendance record, active discipline, sustained IA complaints, prior and current assignments, passing test results, and any recommendations from the oral panel will be considered. The final selection will be made by the Chief of Police.

A bulletin will be issued announcing the selection of an employee to any special assignment, non-patrol or specialized job assignment. The eligibility list should remain in effect until exhausted or as long as indicated in the announcement bulletin. The Chief of Police may extend the length of the eligibility list.

1028.5 TIME COMMITMENT

Personnel selected for special assignments will be expected to fulfill their time commitments to their respective assignment as listed in their Association's Collective Bargaining Agreement (CBA) or Department Memorandum of Interest (MOI). The only exceptions will be separation from the Department, promotion to a higher rank, or at the discretion of the Chief of Police.

1028.6 REMOVAL FROM ASSIGNMENT

An employee may be removed from an assignment for any of the following reasons:

- Fails to perform the required tasks satisfactorily

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- Fails to meet or exceed standards in all categories of his/her Employee Performance Evaluation
- Demonstrates a pattern of unsafe or unacceptable practices
- For any reason identified by the Chief of Police, which may include a disciplinary finding
- Voluntary request in writing by the employee, with a 30-day notice, unless waived by the deputy chief of the affected chain of command
- The time-limit for the assignment expires

Bilingual Certification Procedure

1029.1 PURPOSE AND SCOPE

To establish a procedure to identify BART police personnel who are fluent in a non-English language frequently used by non-English speaking BART patrons.

1029.2 POLICY

The Chief of Police shall determine the foreign language(s) most commonly used by the communities served by BART; and the certification process for those active employees who seek compensation by the District for utilization of their foreign language skills.

Compensation for members certified by the Department shall be in accordance the collective bargaining agreements.

1029.3 DEFINITIONS

Bilingual Examination Panel - A departmentally-approved panel consisting of two examiners for each language.

Designated Language - A Language or dialect designated by the Chief of Police for purposes of the bilingual certification process. The current languages are Cantonese, Mandarin, Spanish, Tagalog, Japanese, Hindi, Urdu, Cambodian, Thai, Ibo and American Sign Language.

1029.4 PROCEDURES

The Department shall establish a bilingual examination panel consistent with section 1029.3 of this policy.

Members who want to be certified as bilingual in the designated languages for compensation shall contact the Support Services Lieutenant.

Two examiners will test applicants in their respective languages. Applicants must demonstrate that they are fluent in a particular designated language. The duration of the examination will not be for any specified time. Under certain circumstances, applicants may be sent to an outside facility for certification (e.g., a school that teaches American sign language). The exam will include, but is not necessarily limited to, sufficient dialog to obtain information necessary to complete a page one of a BART Police Department crime report.

If the applicant is determined to be fluent in the tested Language, the examiners shall complete a "Letter of Bilingual Certification" and forward it to the Support Services Lieutenant. Unsuccessful applicants may retest in one year.

The Support Services Lieutenant will notify the applicant of the results of the examination and a memo requesting compensation will be sent to the Human Relations Department.

Commendations and Awards

1030.1 PURPOSE AND SCOPE

This policy provides general guidelines for recognizing commendable or meritorious acts of members of the Bay Area Rapid Transit Police Department and individuals from the community.

1030.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to recognize and acknowledge exceptional individual or group achievements, performance, proficiency, heroism and service of its members and individuals from the community through commendations and awards.

1030.3 COMMENDATIONS

Commendations for members of the Department or for individuals from the community may be initiated by any department member or by any person from the community.

1030.4 CRITERIA

A meritorious or commendable act may include, but is not limited to:

- Superior handling of a difficult situation.
- Conspicuous bravery or outstanding performance.
- Any action or performance that is above and beyond typical duties.

1030.4.1 DEPARTMENT MEMBER DOCUMENTATION

Members of the Department should document meritorious or commendable acts. The documentation should contain:

- (a) Identifying information:
 1. For members of the Department - name, bureau and assignment at the date and time of the meritorious or commendable act
 2. For individuals from the community - name, address, telephone number
- (b) A brief account of the meritorious or commendable act with report numbers, as appropriate.
- (c) The signature of the member submitting the documentation.

1030.4.2 COMMUNITY MEMBER DOCUMENTATION

Documentation of a meritorious or commendable act submitted by a person from the community should be accepted in any form. However, written documentation is preferred. Department members accepting the documentation should attempt to obtain detailed information regarding the matter, including:

- (a) Identifying information:

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1. For members of the Department - name, bureau and assignment at the date and time of the meritorious or commendable act
 2. For individuals from the community - name, address, telephone number
- (b) A brief account of the meritorious or commendable act with report numbers, as appropriate.
- (c) The signature of the person submitting the documentation.

1030.4.3 PROCESSING DOCUMENTATION

Documentation regarding the meritorious or commendable act of a member of the Department should be forwarded to the appropriate Division Commander for his/her review. The Division Commander should sign and forward the documentation to the Chief of Police for his/her review.

The Chief of Police or the authorized designee will present the commendation to the department member for his/her signature. The documentation will then be returned to the Support Services secretary for entry into the member's personnel file.

Documentation regarding the meritorious or commendable act of an individual from the community should be forwarded to the Support Services Division Commander. The documentation will be signed by the Division Commander and forwarded to the Chief of Police for his/her review. An appropriate venue or ceremony to acknowledge the individual's actions should be arranged. Documentation of the commendation shall be maintained in a file designated for such records.

1030.5 AWARDS

Awards may be bestowed upon members of the Department and individuals from the community. These awards include:

- Award of Merit.
- Award of Valor.
- Lifesaving Award.
- Meritorious Conduct.

Criteria for each award and the selection, presentation and display of any award are determined by the Chief of Police.

Fitness for Duty

1032.1 PURPOSE AND SCOPE

All officers are required to be free from any physical, emotional, or mental condition which might adversely affect the exercise of peace officer powers. The purpose of this policy is to ensure that all officers of this department remain fit for duty and able to perform their job functions (Government Code § 1031).

1032.2 EMPLOYEE RESPONSIBILITIES

- (a) It shall be the responsibility of each member of this department to maintain good physical condition sufficient to safely and properly perform essential duties of their position.
- (b) Each member of this department shall perform his/her respective duties without physical, emotional, and/or mental constraints.
- (c) During working hours, all employees are required to be alert, attentive, and capable of performing his/her assigned responsibilities.
- (d) Any employee who feels unable to perform his/her duties shall promptly notify a supervisor. In the event that an employee believes that another employee is unable to perform his/her duties, such observations and/or belief shall be promptly reported to a supervisor.

1032.3 SUPERVISOR RESPONSIBILITIES

- (a) A supervisor observing an employee, or receiving a report of an employee who is perceived to be, unable to safely perform his/her duties due to a physical or mental condition shall take prompt and appropriate action in an effort to resolve the situation.
- (b) Whenever feasible, the supervisor should attempt to ascertain the reason or source of the problem and in all cases a preliminary evaluation should be made in an effort to determine the level of inability of the employee to perform his/her duties.
- (c) In the event the employee appears to be in need of immediate medical or psychiatric treatment, all reasonable efforts should be made to provide such care.
- (d) In conjunction with the Watch Commander or employee's available Bureau Deputy Chief, a determination should be made whether or not the employee should be temporarily relieved from his/her duties.
- (e) The Chief of Police shall be promptly notified in the event that any employee is relieved from duty.

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1032.4 NON-WORK RELATED CONDITIONS

Any employee suffering from a non-work related condition which warrants a temporary relief from duty may be required to use sick leave or other paid time off (PTO) in order to obtain medical treatment or other reasonable rest period.

1032.5 WORK RELATED CONDITIONS

Any employee suffering from a work related condition which warrants a temporary relief from duty shall be required to comply with personnel rules and guidelines for processing such claims.

Upon the concurrence of a Bureau Deputy Chief, any employee whose actions or use of force in an official capacity result in death or serious injury to another will be temporarily removed from regularly assigned duties and/or placed on paid administrative leave for the wellbeing of the employee and until such time as the following may be completed:

- (a) A preliminary determination that the employee's conduct appears to be in compliance with policy and, if appropriate.
- (b) The employee has had the opportunity to receive necessary counseling and/or psychological clearance to return to full duty.

1032.6 PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS

- (a) Whenever circumstances reasonably indicate that an employee is unfit for duty, the Chief of Police may serve that employee with a written order to undergo a physical and/or psychological examination in cooperation with Human Resources Department to determine the level of the employee's fitness for duty. The order shall indicate the date, time and place for the examination.
- (b) The examining physician or therapist will provide the Department with a report indicating that the employee is either fit for duty or, if not, listing any functional limitations which limit the employee's ability to perform job duties. If the employee places his/her condition at issue in any subsequent or related administrative action/grievance, the examining physician or therapist may be required to disclose any and all information which is relevant to such proceeding (Civil Code § 56.10(c)(8)).
- (c) In order to facilitate the examination of any employee, the Department will provide all appropriate documents and available information to assist in the evaluation and/or treatment.
- (d) All reports and evaluations submitted by the treating physician or therapist shall be part of the employee's confidential personnel file.
- (e) Any employee ordered to receive a fitness for duty examination shall comply with the terms of the order and cooperate fully with the examining physician or therapist regarding any clinical interview, tests administered or other procedures as directed. Any failure to comply with such an order and any failure to cooperate with the

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examining physician or therapist may be deemed insubordination and shall be subject to discipline up to and including termination.

- (f) Once an employee has been deemed fit for duty by the examining physician or therapist, the employee will be notified to resume his/her duties.

1032.7 LIMITATION ON HOURS WORKED

Absent emergency operations members should not work more than:

- 20 hours in one day (24 hour) period or
- 30 hours in any 2 day (48 hour) period or
- 84 hours in any 7 day (168 hour) period

Except in very limited circumstances members should have a minimum of 8 hours off between shifts. Supervisors should give consideration to reasonable rest periods and are authorized to deny overtime or relieve to off-duty status any member who has exceeded the above guidelines.

Limitations on the number of hours worked apply to shift changes, shift trades, rotation, holdover, training, general overtime and any other work assignments.

Meal Periods and Breaks

1034.1 PURPOSE AND SCOPE

This policy regarding meals and breaks, insofar as possible shall conform to the policy governing all District employees that has been established by the General Manager.

1034.1.1 MEAL PERIODS

Sworn employees and dispatchers shall remain on duty subject to call during meal breaks. All other employees are not on call during meal breaks unless directed otherwise by a supervisor.

Uniformed patrol officers shall request clearance from the Communications Center prior to taking a meal period. Uniformed officers shall take their breaks within the District limits unless on assignment outside of the District.

The time spent for the meal period shall not exceed the authorized time allowed.

1034.1.2 15 MINUTE BREAKS

Each employee is entitled to a 15 minute break, near the mid point, for each four- or five-hour work period, as applicable per an eight- or ten-hour work day. Only one 15 minute break shall be taken during each four- or five-hours of duty. No breaks shall be taken during the first or last hour of an employee's shift unless approved by a supervisor.

Field officers will take their breaks in their assigned areas, subject to call and shall monitor their radios. When field officers take their breaks away from their vehicles, they shall do so only with the knowledge and clearance of the Communications Center.

Lactation Break Policy

1035.1 PURPOSE AND SCOPE

The purpose of this policy is to provide reasonable accommodations to employees desiring to express breast milk for the employee's infant child (Labor Code § 1034).

1035.2 POLICY

It is the policy of this department to provide, in compliance with the Fair Labor Standards Act, reasonable break time and appropriate facilities to accommodate any employee desiring to express breast milk for her nursing infant child (29 USC § 207; Labor Code § 1030).

1035.3 LACTATION BREAK TIME

A rest period should be permitted each time the employee has the need to express breast milk (29 USC § 207; Labor Code § 1030). In general, lactation breaks that cumulatively total 30 minutes or less during any four-hour work period or major portion of a four-hour work period would be considered reasonable. However, individual circumstances may require more or less time. Such breaks, if feasible, should be taken at the same time as the employee's regularly scheduled rest or meal periods.

While a reasonable effort will be made to provide additional time beyond authorized breaks, any such time exceeding regularly scheduled and paid break time will be unpaid (Labor Code § 1030).

Employees desiring to take a lactation break shall notify Integrated Security Response Center or a supervisor prior to taking such a break. Such breaks may be reasonably delayed if they would seriously disrupt department operations (Labor Code § 1032).

Once a lactation break has been approved, the break should not be interrupted except for emergency or exigent circumstances.

1035.4 PRIVATE LOCATION

The Department will make reasonable efforts to accommodate employees with the use of an appropriate room or other location to express milk in private. Such room or place should be in close proximity to the employee's work area and shall be other than a bathroom or toilet stall. The location must be shielded from view and free from intrusion from co-workers and the public (29 USC § 207; Labor Code § 1031).

Employees occupying such private areas shall either secure the door or otherwise make it clear to others that the area is occupied with a need for privacy. All other employees should avoid interrupting an employee during an authorized break, except to announce an emergency or other urgent circumstance.

Authorized lactation breaks for employees assigned to the field may be taken at the nearest appropriate private area.

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1035.5 STORAGE OF EXPRESSED MILK

Any employee storing expressed milk in any authorized refrigerated area within the Department shall clearly label it as such and shall remove it when the employee ends her shift.

1035.5.1 STATE REQUIREMENTS

Employees have the right to request lactation accommodations. If a break time or location accommodation cannot be provided, the supervisor shall provide the member with a written response regarding the reasons for the determination (Labor Code § 1034).

Lactation rooms or other locations should comply with the prescribed feature and access requirements of Labor Code § 1031.

Employees who believe that their rights have been violated under this policy or have been the subject of discrimination or retaliation for exercising or attempting to exercise their rights under this policy, are encouraged to follow the chain of command in reporting a violation, but may also file a complaint directly with the Labor Commissioner (Labor Code § 1033).

Long Term Military Activation of Department Members

1039.1 PURPOSE AND SCOPE

Military reservists and members of the National Guard are vital components of our nation's security against foreign and domestic threats. The San Francisco Bay Area Rapid Transit District Police Department recognizes and encourages the contribution of these service men and woman.

1039.2 POLICY

The San Francisco Bay Area Rapid Transit District Police Department will abide and guarantee all reemployment rights afforded to members by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

1039.3 PRE-MILITARY ACTIVATION OF MEMBERS

In the event of long term (excess of 180 days) Reservist or National Guard activation, the San Francisco Bay Area Rapid Transit District Police Department will develop a method of regular contact between the member and the Support Services Lieutenant or designee. This plan will accommodate the specific needs of the member and will include an exit interview with the Chief of Police or designee and the storage of department issued equipment. The plan will also address a means of communication with the deployed member, to include issuing and/or authorizing equipment for regular contact, such as a calling card, phone, or device, if necessary.

Prior to Deployment, the service member will meet with the Support Services Lieutenant to ensure that all administrative matters are in order within the Department and the District, to include human resource, payroll and benefit needs. BART HRIS will be the point of contact for human resources.

1039.4 REINTEGRATION AND POST DEPLOYMENT

Once the service member has been released from service and is ready to return to work, the service member will:

1. Meet with the Support Services Lieutenant or designee to ensure all necessary paperwork has been processed for human resources, payroll and benefits.
2. Meet with the Chief of Police or designee.
3. Receive previously issued equipment or be issued new equipment as needed.
4. Meet with the Personnel and Training Sergeant to be reintegrated, retrained and requalified as necessary before being required to return to their duty assignment.

Outside Employment

1040.1 PURPOSE AND SCOPE

In order to avoid actual or perceived conflicts of interest for department employees engaging in outside employment, all employees shall obtain written approval from the Chief of Police prior to engaging in any outside employment. Approval of outside employment shall be at the discretion of the Chief of Police in accordance with the provisions of this policy.

1040.1.1 DEFINITIONS

Outside Employment - Any member of this department who receives wages, compensation or other consideration of value from another employer, organization or individual not affiliated directly with this department for services, product(s) or benefits rendered. For purposes of this section, the definition of outside employment includes those employees who are self-employed and not affiliated directly with this department for services, product(s) or benefits rendered.

Outside Overtime - Any member of this department who performs duties or services on behalf of an outside organization, company, or individual within this jurisdiction. Such outside overtime shall be requested and scheduled directly through this department so that the Department may be reimbursed for the cost of wages and benefits.

1040.2 OBTAINING APPROVAL

No member of this department may engage in any outside employment without first obtaining prior written approval of the Chief of Police. Failure to obtain prior written approval for outside employment or engaging in outside employment prohibited by this policy may lead to disciplinary action.

In order to obtain approval for outside employment, the employee must complete a Permit for Outside Employment (form #0269). Additionally, the employee must have the potential outside employer complete an Outside Employer's Liability Agreement (forms #0271 and 0271-1). Both completed forms shall be submitted to the employee's immediate supervisor. The application and liability forms will then be forwarded through channels to the Chief of Police for consideration.

If approved, the employee will be provided with a copy of the approved permit. Unless otherwise indicated in writing on the approved permit, a permit will be valid through the end of the calendar year in which the permit is approved. Any employee seeking to renew a permit shall submit a new Permit for Outside Employment form and an Outside Employer's Liability Agreement in a timely manner.

Any employee seeking approval of outside employment, whose request has been denied, shall be provided with a written reason for the denial of the application at the time of the denial (Penal Code § 70(e)(3)).

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1040.2.1 APPEAL OF DENIAL OF OUTSIDE EMPLOYMENT

If an employee's Outside Employment Application is denied or withdrawn by the Department, the employee may file a written notice of appeal to the Chief of Police within ten days of the date of denial.

If the employee's appeal is denied, the employee may file a grievance pursuant to the procedure set forth in the current Memorandum of Understanding (MOU).

1040.2.2 REVOCATION/SUSPENSION OF OUTSIDE EMPLOYMENT PERMITS

Any outside employment permit may be revoked or suspended under the following circumstances:

- (a) Should an employee's performance at this department decline to a point where it is evaluated by a supervisor as needing improvement to reach an overall level of competency, the Chief of Police may, at his or her discretion, revoke any previously approved outside employment permit(s). That revocation will stand until the employee's performance has been reestablished at a satisfactory level and his/her supervisor recommends reinstatement of the outside employment permit
- (b) Suspension or revocation of a previously approved outside employment permit may be included as a term or condition of sustained discipline
- (c) If, at any time during the term of a valid outside employment permit, an employee's conduct or outside employment conflicts with the provisions of department policy, the permit may be suspended or revoked
- (d) When an employee is unable to perform at a full duty capacity due to an injury or other condition, any previously approved outside employment permit may be subject to similar restrictions as those applicable to the employee's full time duties until the employee has returned to a full duty status

1040.3 PROHIBITED OUTSIDE EMPLOYMENT

Consistent with the provisions of Government Code § 1126, the Department expressly reserves the right to deny any Outside Employment Application submitted by an employee seeking to engage in any activity which:

- (a) Involves the employee's use of department time, facilities, equipment or supplies, the use of the Department badge, uniform, prestige or influence for private gain or advantage.
- (b) Involves the employee's receipt or acceptance of any money or other consideration from anyone other than this department for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course or hours of employment or as a part of the employee's duties as a member of this department.

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- (c) Involves the performance of an act in other than the employee's capacity as a member of this department that may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other employee of this department.
- (d) Involves time demands that would render performance of the employee's duties for this department less efficient.

1040.3.1 OUTSIDE SECURITY AND PEACE OFFICER EMPLOYMENT

Consistent with the provisions of Penal Code § 70, and because it would further create a potential conflict of interest, no member of this department may engage in any outside or secondary employment as a private security guard, private investigator or other similar private security position.

Any private organization, entity or individual seeking special services for security or traffic control from members of this department must submit a written request to the Chief of Police in advance of the desired service. Such outside extra duty overtime assignments will be assigned, monitored and paid through the Department.

- (a) The applicant will be required to enter into an indemnification agreement prior to approval.
- (b) The applicant will further be required to provide for the compensation and full benefits of all employees requested for such outside security services.
- (c) Should such a request be approved, any employee working outside overtime shall be subject to the following conditions:
 1. The officer(s) shall wear the department uniform/identification.
 2. The officer(s) shall be subject to the rules and regulations of this department.
 3. No officer may engage in such outside employment during or at the site of a strike, lockout, picket, or other physical demonstration of a labor dispute.
 4. Compensation for such approved outside security services shall be pursuant to normal overtime procedures.
 5. Outside security services shall not be subject to the collective bargaining process.
 6. No officer may engage in outside employment as a peace officer for any other public agency without prior written authorization of the Chief of Police.

1040.3.2 OUTSIDE OVERTIME ARREST AND REPORTING PROCEDURE

Any employee making an arrest or taking other official police action while working in an approved outside overtime assignment shall be required to complete all related reports in a timely manner pursuant to department policy. Time spent on the completion of such reports shall be considered incidental to the outside overtime assignment.

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1040.4 DEPARTMENT RESOURCES

Employees are prohibited from using any department equipment or resources in the course of or for the benefit of any outside employment. This shall include the prohibition of access to official records or databases of this department or other agencies through the use of the employee's position with this department.

1040.4.1 REVIEW OF FINANCIAL RECORDS

Employees approved for outside employment expressly agree that their personal financial records may be requested and reviewed/audited for potential conflict of interest (Government Code § 3308; Government Code § 1126). Prior to providing written approval for an outside employment position, the Department may request that an employee provide his/her personal financial records for review/audit in order to determine whether a conflict of interest exists. Failure of the employee to provide the requested personal financial records could result in denial of the off-duty work permit. If, after approving a request for an outside employment position, the Department becomes concerned that a conflict of interest exists based on a financial reason, the Department may request that the employee provide his/her personal financial records for review/audit. If the employee elects not to provide the requested records, his/her off-duty work permit may be revoked pursuant to the Revocation/Suspension of Outside Employment Permits section of this policy.

1040.5 CHANGES IN OUTSIDE EMPLOYMENT STATUS

If an employee terminates his or her outside employment during the period of a valid permit, the employee shall promptly submit written notification of such termination to the Chief of Police through channels. Any subsequent request for renewal or continued outside employment must thereafter be processed and approved through normal procedures set forth in this policy.

Employees shall also promptly submit in writing to the Chief of Police any material changes in outside employment including any change in the number of hours, type of duties, or demands of any approved outside employment. Employees who are uncertain whether a change in outside employment is material are advised to report the change.

1040.6 OUTSIDE EMPLOYMENT WHILE ON DISABILITY

Department members engaged in outside employment who are placed on disability leave or modified/light-duty shall inform their immediate supervisor in writing within five days whether or not they intend to continue to engage in such outside employment while on such leave or light-duty status. The immediate supervisor shall review the duties of the outside employment along with any related doctor's orders, and make a recommendation to the Chief of Police whether such outside employment should continue.

In the event the Chief of Police determines that the outside employment should be discontinued or if the employee fails to promptly notify his/her supervisor of his/her intentions regarding their work permit, a notice of revocation of the member's permit will be forwarded to the involved employee, and a copy attached to the original work permit.

Criteria for revoking the outside employment permit include, but are not limited to, the following:

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- (a) The outside employment is medically detrimental to the total recovery of the disabled member, as indicated by the District's professional medical advisors.
- (b) The outside employment performed requires the same or similar physical ability, as would be required of an on-duty member.
- (c) The employee's failure to make timely notice of their intentions to their supervisor.

When the disabled member returns to full duty with the Bay Area Rapid Transit Police Department, a request (in writing) may be made to the Chief of Police to restore the permit.

Occupational Disease and Work-Related Injury Reporting

1042.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance regarding the timely reporting of occupational diseases, mental health issues, and work-related injuries.

1042.1.1 DEFINITIONS

Definitions related to this policy include:

Occupational disease or work-related injury - An injury, disease, or mental health issue arising out of employment (Labor Code § 3208; Labor Code § 3208.3; Labor Code § 3212 et seq.).

1042.2 POLICY

The Bay Area Rapid Transit Police Department will address occupational diseases and work-related injuries appropriately, and will comply with applicable state workers' compensation requirements (Labor Code § 3200 et seq.).

1042.2.1 INJURIES REQUIRING MEDICAL CARE

All work related injuries and work related illnesses requiring medical care must be reported to a supervisor. Form 0030, Supervisor's Report of Injury/Illness and form DWC-1, Employees Claim for Workers Compensation Benefits form shall be provided to the injured employee within 24 hours from the time the injury was discovered, excluding weekends and holidays.

1042.3 RESPONSIBILITIES

1042.3.1 MEMBER RESPONSIBILITIES

Any member sustaining any occupational disease or work-related injury shall report such event as soon as practicable, but within 24 hours, to a supervisor, and shall seek medical care when appropriate (8 CCR 14300.35).

1042.3.2 SUPERVISOR RESPONSIBILITIES

A supervisor learning of any occupational disease or work-related injury should ensure the member receives medical care as appropriate.

Supervisors shall ensure that required documents regarding workers' compensation are completed and forwarded promptly. Any related Districtwide disease- or injury-reporting protocol shall also be followed.

Supervisors shall determine whether the Major Incident Notification and Illness and Injury Prevention policies apply and take additional action as required.

1042.3.3 DIVISION COMMANDER RESPONSIBILITIES

The supervisor who receives a report of an occupational disease or work-related injury should review the report for accuracy and determine what additional action should be taken. The report

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shall then be faxed to the Civilian Supervisor of Records (extension 7089), Athens Administrators (925-609-5475), BART Safety (extension 7552), and BART Human Resources (extension 7511) to ensure any required Division of Occupational Health and Safety Administration (Cal/OSHA) reporting is made as required in the illness and injury prevention plan identified in the Illness and Injury Prevention Policy. The original signed forms shall be sent to the Civilian Supervisor of Records.

1042.3.4 CHIEF OF POLICE RESPONSIBILITIES

The Chief of Police, or his/her designee, shall review and forward copies of the report to the Human Resources Department. Copies of the report and related documents retained by the Department shall be filed in the member's confidential medical file.

1042.4 OTHER DISEASE OR INJURY

Diseases and injuries caused or occurring on-duty that do not qualify for workers' compensation reporting shall be documented on the designated report of injury form, which shall be signed by a supervisor. A copy of the completed form shall be forwarded to the Civilian Supervisor of Records.

Unless the injury is extremely minor, this report shall be signed by the affected member, indicating that he/she desired no medical attention at the time of the report. By signing, the member does not preclude his/her ability to later seek medical attention.

1042.5 SETTLEMENT OFFERS

When a member sustains an occupational disease or work-related injury that is caused by another person and is subsequently contacted by that person, his/her agent, insurance company or attorney and offered a settlement, the member shall take no action other than to submit a written report of this contact to his/her supervisor as soon as possible.

1042.5.1 NO SETTLEMENT WITHOUT PRIOR APPROVAL

No less than 10 days prior to accepting and finalizing the settlement of any third-party claim arising out of or related to an occupational disease or work-related injury, the member shall provide the Chief of Police with written notice of the proposed terms of such settlement. In no case shall the member accept a settlement without first providing written notice to the Chief of Police. The purpose of such notice is to permit the District to determine whether the offered settlement will affect any claim the District may have regarding payment for damage to equipment or reimbursement for wages against the person who caused the disease or injury, and to protect the District's right of subrogation, while ensuring that the member's right to receive compensation is not affected.

Personnel Inspections

1043.1 PURPOSE

The purpose of this policy is to establish procedures for the inspection of personnel and their assigned equipment.

1043.2 POLICY

Line Inspections are the function and responsibility of supervisors and command staff personnel to ensure uniforms and equipment are properly maintained. Zone Commanders will ensure inspections are completed on a quarterly basis. Inspections will be completed by the sergeant, reviewed by their Zone Commander, and turned into the Operations Bureau Deputy Chief during each quarter of the calendar year (March, June, September and December).

1043.3 PROCEDURE

All sworn personnel shall be inspected to determine if the following conform to Department standards:

- (a) Uniforms:
 - 1. Long/Short Sleeve Shirts
 - 2. Pants
 - 3. Black Smooth Toe Shoes
 - 4. Black Short/Long Sleeve Undershirt (T-Shirt)
 - 5. Duty Badge
 - 6. Name Plate
 - 7. Ballistic Vest
- (b) Duty Belt:
 - (a) Duty Firearm and Holster
 - (b) Three (3) Loaded Magazines and Case
 - (c) Oleoresin Capsicum (OC) Spray and Case
 - (d) Baton and Baton Ring
 - (e) Handcuffs, Case (s) and Key
 - (f) Flashlight and Holder
 - (g) Four (4) Keeper Straps
 - (h) Portable Police Radio and Holster
 - (i) Taser and Holster
- (c) Personal Equipment:

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- (a) Valid Driver's License
- (b) Police and District ID Cards
- (c) Work Keys
- (d) Field Identification Cards
- (e) Riot Helmet w/Face Shield
- (f) Citation Book
- (g) Business Cards
- (h) Bail Schedule/Info. Handbook
- (i) Body Worn Camera
- (j) Department issued cellular phone
- (k) Naloxone and issued holster
- (d) Patrol Bag Equipment:
 - 1. BART Orange Book
 - 2. Report Forms Requiring Signature (e.g. CHP 180, Certificate of Release-849 (b) P.C., ETC.)
 - 3. Extra Flashlight Batteries**
 - 4. Latex Gloves
 - 5. Vehicle Code Book**
 - 6. Digital Camera**
 - 7. Audio Recorder**
 - 8. Flex Cuffs**
 - 9. Lexipol Policies**
 - 10. Safety Vest
- (e) Personal Appearance:
 - 1. Hair
 - 2. Mustache
 - 3. Sideburns
 - 4. Facial Hair
 - 5. Fingernails

**Denotes optional equipment

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Personnel Inspections

1043.4 FREQUENCY OF INSPECTIONS

Quarterly, patrol sergeants shall perform inspections of each member of their assigned uniformed patrol team. Employees assigned to non-patrol job functions shall be inspected by their respective unit supervisor, or at the discretion of their respective Deputy Chief.

1043.5 SUPERVISORY RESPONSIBILITIES

Sergeants shall adhere to the following responsibilities:

1. Observe assigned personnel's appearance during each tour of duty, and address any discrepancies immediately.
2. Document each quarterly inspection on the Personnel Inspection Form, and include the following:
 - (a) Date
 - (b) Name and signature of personnel inspected
 - (c) Equipment inspected
 - (d) Discrepancies noted
 - (e) Corrective action taken
3. Forward the completed Personnel Inspection Form to the appropriate Deputy Chief, via the chain of command. Upon its return, place the form in each employee's respective Employee Development Record (EDR) file located in the ISRC.

1043.6 DEFICIENCIES AND CORRECTIVE ACTION

In the Operations Division, when a deficiency is noted and is not correctable within a reasonable amount of time, a plan of action to correct the deficiency shall be prepared by the supervisor. It shall be the initiating supervisor's responsibility to ensure the deficiency has been corrected within thirty (30) days of the original inspection date. If the deficiency is in another Division, the follow up responsibility for corrective action shifts to that Division Deputy Chief, who should then delegate the deficiency to the appropriate supervisor for follow up and resolution.

1043.7 RATINGS

Superior: Uniform is neat, clean, tailored, leather gear and shoes are shined.

Acceptable: Clean leather, shined shoes, good hygiene.

Unacceptable: Dirty shoes, soiled uniform, poor hygiene.

Personal Appearance Standards

1044.1 PURPOSE AND SCOPE

In order to project uniformity and neutrality toward the public and other members of the department, employees shall maintain their personal hygiene and appearance to project a professional image appropriate for this department and for their assignment.

1044.2 GROOMING STANDARDS

Unless otherwise stated and because deviations from these standards could present officer safety issues, the following appearance standards shall apply to all employees, except those whose current assignment would deem them not appropriate, and where the Chief of Police has granted exception.

1044.2.1 HAIR

Hairstyles of all members shall be neat in appearance. For male sworn members, hair must not extend below the top edge of the uniform collar while assuming a normal stance.

For female sworn members, hair must be no longer than the horizontal level of the bottom of the uniform patch when the employee is standing erect, worn up or in a tightly wrapped braid or ponytail.

1044.2.2 MUSTACHES

A short and neatly trimmed mustache may be worn. Mustaches shall not extend below the corners of the mouth or beyond the natural hairline of the upper lip.

1044.2.3 SIDEBURNS

Sideburns shall not extend below the bottom of the outer ear opening (the top of the earlobes) and shall be trimmed and neat.

1044.2.4 FACIAL HAIR

Facial hair other than sideburns, mustaches and eyebrows shall not be worn, unless authorized by the Chief of Police or his/her designee.

Employees who have been granted an exemption from shaving will maintain a full beard that does not exceed 1/8 inch in length while on duty. Employees will not wear a goatee or other customized beard creations.

1044.2.5 FINGERNAILS

Fingernails extending beyond the tip of the finger can pose a safety hazard to officers or others. For this reason, fingernails shall be trimmed so that no point of the nail extends beyond the tip of the finger.

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1044.2.6 JEWELRY AND ACCESSORIES

No jewelry or personal ornaments shall be worn by officers on any part of the uniform or equipment, except those authorized within this manual. Jewelry, if worn around the neck, shall not be visible above the shirt collar.

Earrings shall not be worn without permission of the Chief of Police. Stud earrings will be the only earrings considered for approval. Only one earring per ear and one ring may be worn on each hand of the employee while on-duty.

1044.3 TATTOOS

While on duty or representing the Department in any official capacity, tattoos or other body art will not be visible. Acceptable coverings for visible tattoos are: department uniforms, bandaids, skin colored sleeves, ace bandages.

1044.4 BODY PIERCING OR ALTERATION

Body piercing or alteration to any area of the body visible in any authorized uniform or attire that is a deviation from normal anatomical features and which is not medically required is prohibited. Such body alteration includes, but is not limited to:

- (a) Tongue splitting or piercing.
- (b) The complete or transdermal implantation of any material other than hair replacement.
- (c) Abnormal shaping of the ears, eyes, nose or teeth
- (d) Branding or scarification.

1044.5 EXEMPTIONS

Members who seek cultural (e.g., culturally protected hairstyles) or other exemptions to this policy that are protected by law should generally be accommodated (Government Code § 12926). A member with an exemption may be ineligible for an assignment if the individual accommodation presents a security or safety risk. The Chief of Police should be advised any time a request for such an accommodation is denied or when a member with a cultural or other exemption is denied an assignment based on a safety or security risk.

Uniform Regulations

1046.1 PURPOSE AND SCOPE

The uniform policy of the Bay Area Rapid Transit Police Department is established to ensure that uniformed officers will be readily identifiable to the public through the proper use and wearing of department uniforms. Employees should also refer to the following associated policies:

Department Owned and Personal Property

Body Armor

Personal Appearance Standards

The Uniform and Equipment Specifications manual is maintained and periodically updated by the Chief of Police or his/her designee. That manual should be consulted regarding authorized equipment and uniform specifications.

The Bay Area Rapid Transit Police Department will provide uniforms for all employees required to wear them in the manner, quantity and frequency agreed upon in the respective employee group's collective bargaining agreement.

1046.2 WEARING AND CONDITION OF UNIFORM AND EQUIPMENT

Police employees wear the uniform to be identified as the law enforcement authority in society. The uniform also serves an equally important purpose to identify the wearer as a source of assistance in an emergency, crisis or other time of need.

- (a) Uniform and equipment shall be maintained in a serviceable condition and shall be ready at all times for immediate use. Uniforms shall be neat, clean, and appear professionally pressed.
- (b) All employees of this department who are issued uniforms shall possess and maintain at all times, a serviceable uniform and the necessary equipment to perform uniformed field duty.
- (c) Personnel shall wear only the uniform specified for their rank and assignment (Penal Code § 13655).
- (d) The uniform is to be worn in compliance with the specifications set forth in the department's uniform specifications that are maintained separately from this policy.
- (e) All supervisors will perform periodic inspections of their personnel to ensure conformance to these regulations.
- (f) Civilian attire shall not be worn in combination with any distinguishable part of the uniform.
- (g) Uniforms are only to be worn while on duty, while in transit to or from work, for court, or at other official department functions or events.
- (h) If the uniform is worn while in transit, an outer garment shall be worn over the uniform shirt so as not to bring attention to the employee while he/she is off-duty.

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- (i) Employees are not to purchase or drink alcoholic beverages while wearing any part of the department uniform, including the uniform pants.

1046.2.1 DEPARTMENT ISSUED IDENTIFICATION

The Department issues each employee an official department identification card bearing the employee's name, identifying information and photo likeness. All employees shall be in possession of their department issued identification card at all times while on duty or when carrying a concealed weapon.

- (a) Whenever on duty or acting in an official capacity representing the department, employees shall display their department issued identification in a courteous manner to any person upon request and as soon as practical. Officers in full uniform may present their business card as a form of department identification.
- (b) Officers working specialized assignments may be excused from the possession and display requirements when directed by the Chief of Police or his/her designee.

1046.3 UNIFORM CLASSES

1046.3.1 CLASS A UNIFORM

The Class A uniform is to be worn on special occasions such as funerals, graduations, ceremonies, or as directed. The Class A uniform is required for all sworn personnel. The Class A uniform includes the standard issue uniform with:

- (a) Long sleeve shirt with tie
- (b) Shoes shall be black with plain toes and constructed of highly polished leather or similar material, such as corfam or patent leather. Footwear with wedge-type soles, pointed toes, or squared or cowboy-type heels shall not be worn. Ornamental stitching, straps, or buckles are prohibited. Boots shall be constructed of black leather or leather-like material with a breathable black fabric panel. The boots are approximately 6-8" in height, waterproof, and have a lug sole.

1046.3.2 CLASS B UNIFORM

The Class B uniform will consist of the same garments and equipment as the Class A uniform with the following exceptions:

- (a) The long or short sleeve shirt may be worn with the collar open. No tie is required
- (b) A black crew neck t-shirt must be worn with the uniform
- (c) All shirt buttons must remain buttoned except for the last button at the neck

1046.3.3 CLASS C UNIFORM

The Class C uniform may be established to allow field personnel cooler clothing during the summer months or special duty. The Chief of Police will establish the regulations and conditions for wearing the Class C Uniform and the specifications for the Class C Uniform.

1046.4 INSIGNIA AND PATCHES

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- (a) **Shoulder Patches** - The authorized shoulder patch supplied by the Department shall be machine stitched to the sleeves of all uniform shirts and jackets, three-quarters of an inch below the shoulder seam of the shirt and be bisected by the crease in the sleeve.
- (b) **Service stripes, stars, etc.** - Service stripes and other indicators for length of service may be worn on long sleeved shirts and jackets. They are to be machine stitched onto the uniform. The bottom of the service stripe shall be sewn the width of one and one-half inches above the cuff seam with the rear of the service stripes sewn on the dress of the sleeve. The stripes are to be worn on the left sleeve only.
- (c) **The regulation nameplate, or an authorized sewn on cloth nameplate,** shall be worn at all times while in uniform. The nameplate shall display the employee's first and last name. If an employee's first and last names are too long to fit on the nameplate, then the initial of the first name will accompany the last name. If the employee desires other than the legal first name, the employee must receive approval from the Chief of Police. The nameplate shall be worn and placed above the right pocket located in the middle, bisected by the pressed shirt seam, with equal distance from both sides of the nameplate to the outer edge of the pocket.
- (d) **When a jacket is worn,** the nameplate or an authorized sewn on cloth nameplate shall be affixed to the jacket in the same manner as the uniform.
- (e) **Assignment Insignias** - Assignment insignias, (SWAT, FTO, etc.) may be worn as designated by the Chief of Police.
- (f) **Flag Pin** - A flag pin may be worn, centered above the nameplate.
- (g) **Badge** - The department issued badge, or an authorized sewn on cloth replica, must be worn and visible at all times while in uniform.
- (h) **Rank Insignia** - The designated insignia indicating the employee's rank must be worn at all times while in uniform. The Chief of Police may authorize exceptions.

1046.5 CIVILIAN ATTIRE

There are assignments within the Department that do not require the wearing of a uniform because recognition and authority are not essential to their function. There are also assignments in which the wearing of civilian attire is necessary.

- (a) All employees shall wear clothing that fits properly, is clean and free of stains, and not damaged or excessively worn.
- (b) All male administrative, investigative and support personnel who elect to wear civilian clothing to work shall wear button style shirts with a collar, slacks or suits that are moderate in style.
- (c) All female administrative, investigative, and support personnel who elect to wear civilian clothes to work shall wear dresses, slacks, shirts, blouses, or suits which are moderate in style.
- (d) The following items shall not be worn on duty:
 - 1. T-shirt alone

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2. Open toed sandals or thongs
 3. Swimsuit, tube tops, or halter-tops
 4. Spandex type pants or see-through clothing
 5. Distasteful printed slogans, buttons or pins
- (e) Variations from this order are allowed at the discretion of the Chief of Police or designee when the employee's assignment or current task is not conducive to the wearing of such clothing.
- (f) No item of civilian attire may be worn on duty that would adversely affect the reputation of the Bay Area Rapid Transit Police Department or the morale of the employees.

1046.6 POLITICAL ACTIVITIES, ENDORSEMENTS, AND ADVERTISEMENTS

Unless specifically authorized by the Chief of Police, Bay Area Rapid Transit Police Department employees may not wear any part of the uniform, be photographed wearing any part of the uniform, utilize a department badge, patch or other official insignia, or cause to be posted, published, or displayed, the image of another employee, or identify himself/herself as an employee of the Bay Area Rapid Transit Police Department to do any of the following (Government Code §§ 3206 and 3302):

- (a) Endorse, support, oppose, or contradict any political campaign or initiative.
- (b) Endorse, support, oppose, or contradict any social issue, cause, or religion.
- (c) Endorse, support, or oppose, any product, service, company or other commercial entity.
- (d) Appear in any commercial, social, or non-profit publication, or any motion picture, film, video, public broadcast, or any website.

1046.7 OPTIONAL EQUIPMENT - MAINTENANCE, AND REPLACEMENT

- (a) Any of the items listed in the Uniform and Equipment Specifications as optional shall be purchased totally at the expense of the employee. No part of the purchase cost shall be offset by the Department for the cost of providing the Department issued item.
- (b) Maintenance of optional items shall be the financial responsibility of the purchasing employee. For example, repairs due to normal wear and tear.
- (c) Replacement of items listed in this order as optional shall be done as follows:
 1. When the item is no longer functional because of normal wear and tear, the employee bears the full cost of replacement.
 2. When the item is no longer functional because of damage in the course of the employee's duties, it shall be replaced following the procedures for the replacement of damaged personal property (see the Department Owned and Personal Property Policy).

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Uniform Regulations

1046.8 UNAUTHORIZED UNIFORMS, EQUIPMENT AND ACCESSORIES

Bay Area Rapid Transit Police Department employees may not wear any uniform item, accessory or attachment unless specifically authorized in the Uniform and Equipment Specifications or by the Chief of Police or designee.

Bay Area Rapid Transit Police Department employees may not use or carry any safety item, tool or other piece of equipment unless specifically authorized in the Uniform and Equipment Specifications or by the Chief of Police or designee.

1046.9 UNIFORM REPLACEMENT

Replacement or repair of uniforms and equipment authorized by the Department, damaged in the line of duty, will be replaced or reimbursed in accordance with department policy or collective bargaining agreement. An examination of the equipment and the facts surrounding the incident will be made by supervisory personnel. A recommendation will then be forwarded to the appropriate Deputy Chief. When it is determined that an employee's negligence has caused the damage to the uniform or equipment, reimbursement for loss will not be granted.

To file a claim for articles damaged in the line of duty, employees are required to complete a BART Police Department Uniform/Equipment/Personal Property Replacement form, including a report of the circumstances surrounding the damage. To qualify for reimbursement under this program, the circumstances must be those that are related to the employee's scope of employment and beyond his/her control. This would include those situations requiring emergency action, as opposed to those situations of a routine task in which the employee has the time and the opportunity to exercise reasonable and prudent care. Items not required by reason of the job, such as jewelry or other adornments, would not qualify for reimbursement. Other items not specifically listed above will be evaluated on the individual merits of the circumstances leading to the damage or loss.

Explorer Post Program

1048.1 PURPOSE AND SCOPE

The Law Enforcement Explorer Post sponsored by the BART Police Department has been authorized by Learning for Life and will be known as BART Police Explorer Post 413.

The purpose of the BART Police Explorer Post is to provide hands-on training, education and involvement of young men and women, ages 14 through 20 years, in the administration of justice and related fields. Explorers participate under direct supervision, perform a variety of routine and progressively more advanced tasks in an apprenticeship program in preparation for a career in law enforcement. Explorers will observe and assist police department employees in the performance of their duties, but will not perform any work that is covered by a BART District collective bargaining agreement in lieu of an employee who is a member of the collective bargaining unit.

The BART Police Explorer program will provide the following:

- Enhance the overall education goals of the explorer participants.
- Involve youth in performing voluntary, rewarding and productive services to the community.
- Encourage preparation for future roles as good citizens and community members.
- Educate young men and women in the role that the BART Police Department plays in providing services to the BART District and the communities we serve.

1048.1.1 DEFINITIONS

Explorer Program Committee – The committee serves as the oversight body for the operation of the program. The Explorer Program Committee is comprised of a Chairperson and two (2) Members.

Committee Chairperson – Management-level personnel appointed by the Chief of Police to chair the Explorer Program Committee and act as the liaison between the Department and Learning for Life.

Committee Member – Personnel selected to serve on the Explorer Program Committee and assist the Committee Chairperson with operation of the committee. The two members will be selected from personnel who are not involved in the daily operation of the Explorer Post. When possible, the members will be selected with one member from each police association (BPOA and BPMA). The Committee Members are selected by the Committee Chairperson.

Advisor – Personnel selected by the Explorer Program Committee to coordinate the daily operation of the Explorer Post. This position will normally be selected from the officer or sergeant ranks.

Assistant Advisor – Personnel selected by the Explorer Program Committee to assist the Advisor(s). Any non-probationary employee may be selected as an Assistant Advisor.

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Explorer Post Program

1048.2 ELIGIBILITY

Membership in the BART Police Explorer program is open to all interested young men and women who meet the following requirements:

- Age between 14 (and has completed the eighth grade) or 15 and up to 20 years old.
- If a student, maintain a minimum grade point average of 2.0 for each course taken, and a minimum of 2.5 GPA overall.
- Have parental approval if a minor.
- If in possession of a driver's license, maintain a good driving record.
- Be willing to be active and participate in explorer activities (including, but not limited to, training, public service, department services and social activities).

Explorer applicants with physical disabilities shall be advised of the physical requirements to become a BART police officer. They shall also be informed that if they are unable to meet these physical requirements, the Explorer Program will offer them an opportunity to become exposed to other career opportunities with the BART Police Department such as community service officer, police dispatcher or police administrative specialist.

Explorers agree to follow all relevant rules and regulations of the BART Police Department, Explorer Post and Learning for Life.

1048.2.1 MEMBERSHIP / PARTICIPATION

Appointment to the BART Police Department Explorer Post will be contingent upon successful completion of the Explorer selection process.

Prospective explorers will be required to complete a BART Police Explorer application. Prospective explorers will appear before an oral interview board. The board will consist of at least two (2) members of the Police Department and one police explorer. One member of the board will be an Explorer Liaison, Associate Advisor or Explorer Committee member. The police explorer on the interview board may be a member of another explorer post if necessary.

Prospective explorers will be required to pass a thorough background investigation. The purpose of such an investigation is to ensure the good moral character of the applicant. Candidates having a history of criminal violations or other serious anti-social behavior will not be accepted as Explorers. The background investigation will be conducted by a background investigator from the Personnel and Training Section.

Prospective explorers will be required to submit to fingerprinting and photographing. This must be approved by parents if the candidate is less than 18 years of age.

Final candidates will be interviewed by the Chief of Police who will make the decision to accept or reject the candidate as a member of the Explorer Post.

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Upon acceptance, explorers will be required to file an application with Learning for Life. The Department will cover the expense of membership in Learning for Life and provide all necessary uniforms and equipment except for shoes, which are the responsibility of the individual Explorers.

1048.2.2 LEAVE OF ABSENCE

A explorer may be granted a leave of absence for academic or other approved reasons based on the following:

The explorer must be off probationary status. However, a leave of absence may be granted during the probationary period if special circumstances exist and approval is made by the advisory committee.

The explorer must be in good standing with the post and have received an average evaluation from the advisory committee.

The request for leave of absence must be in writing through the chain of command and must be approved by the Chief of Police. The request should detail the reason for the leave of absence and the length of time requested.

If the leave is granted, the explorer shall hold their rank up to 3 months. If not returning after 3 months, they must relinquish any rank attained within the Explorer Post.

1048.2.3 DENIAL OF MEMBERSHIP / TERMINATION FROM EXPLORER PROGRAM

As a non-compensated volunteer, the agreement of continued participation and/or service can be severed at any time by the Department or the explorer.

Each explorer will be required to meet the standards of the BART Police Department and Learning for Life of America, National Exploring Program.

Any prospective explorer who intentionally conceals, falsifies or makes any statement which is untrue in the applications, or during the oral interview may be subject to termination or denial of acceptance as a explorer, as decided by the Chief of Police.

All explorers will be required to maintain eligibility requirements and provide current school transcripts at the end of each quarter if the explorer is enrolled in secondary school. If the requirements are not met, then the Advisory Committee will take action on an individual basis.

Upon termination of a explorer for any reason, the explorer will return all department property. Such property includes, but is not limited to, patches, badges, uniforms, equipment, identification cards and documents / manuals of the Department or post.

1048.3 RULES AND REGULATIONS

Explorers shall:

- (a) Abide by all laws, ordinances, rules, regulations or orders, verbal or written.
- (b) Explorers shall be responsible to update and maintain post rules and regulations, and be knowledgeable of such changes.

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Violations of these rules or regulations could result in termination. Dismissal or demotion will occur at the direction of the Chief of Police.

1048.3.1 ACCESS TO POLICE FACILITIES

Explorers must wear their polo shirt or uniform while in the police building, they must check in with the Watch Commander to receive permission to enter any police facilities. No Explorer should be in a police facility after 10 pm unless approved by the Watch Commander.

Police facilities will not be used as a meeting place or for social gatherings and shall only be used for approved activities. Explorers will not bring unauthorized persons into police facilities at any time unless an advisor or police officer is present and has approved the person to enter. This includes, but is not limited to, friends and/or family members.

1048.4 EXPLORER POST OPERATION

1048.4.1 PROGRAM COORDINATOR

The Explorer Program Committee Chairperson will serve as the Program Coordinator. The Program Coordinator is responsible for the overall operation of the Explorer Post and all major decisions regarding the Explorer Post. The Program Coordinator will act as the communications liaison between the Chief of Police and Learning for Life and will participate in the annual evaluation of the Explorer Post by Learning for Life.

The program coordinator will ensure that all personnel selected to participate in the activities of the Explorer Post successfully complete the Learning for Life Youth Protection Training.

1048.4.2 ADVISORS

The Advisor(s) will serve as mentors for each Explorer and are responsible for the daily operation of the Explorer Post. The Advisor(s) will lead scheduled meetings and schedule training appropriate for the development of the Explorers. The Advisor(s) will monitor each Explorer's progress through the program and ensure that each Explorer is maintaining standards to remain active within the Explorer Post. The Advisor(s) will delegate appropriate tasks to the Assistant Advisors as necessary.

1048.4.3 COMMITTEE MEETINGS

The Explorer Program Committee will meet quarterly, or more frequently if deemed necessary by the Committee Chairperson, in order to monitor the operation of the Explorer Post.

1048.4.4 EXPLORER POST CHAIN OF COMMAND

Program Coordinator

Program Advisor

Assistant Advisor

Explorer Captain

Explorer Sergeant

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Explorer

1048.5 ORIENTATION AND TRAINING

Newly appointed Explorers will receive an orientation of the Police Department and District before participating in Post activities. Training sessions will be scheduled as needed to develop and prepare the Explorers for a career in law enforcement including preparation for the selection process and academy training.

Explorers shall attend and complete a Basic Explorer Academy and other training as required. Based on availability, the training will be completed during the first year of membership in the Explorer Post. Training may be provided in-house or through an outside agency. Attendance at training provided by an outside agency must be pre-approved by the Program Coordinator for each participant.

1048.6 UNIFORMS

All uniforms will be worn and maintained in compliance with Policy §1046.

All equipment issued by the Police Department will remain the property of the Police Department. Lost or stolen items will be reported as soon as practical and the Explorer may be required to replace the item(s) at his or her own expense. Uniforms and polo shirts shall only be worn in the Police Department, while participating in official Explorer Post activities or as directed by the Post Advisor(s). Explorers shall not purchase uniform items without the authorization of the Program Coordinator.

1048.7 VEHICLE OPERATIONS

Explorers should not operate District or civilian vehicles during Post activities.

1048.8 RIDE-ALONG PROGRAM

The purpose of the Ride-Along program is to give the Explorer an opportunity to understand the Patrol function of law enforcement and to broaden the Explorer's knowledge of field operations.

The Ride-Along program exposes Explorers to realistic work situations that police officers confront while on duty. This program may include classroom instruction and practical training.

1048.8.1 MINIMUM REQUIREMENTS

The following minimum requirements have been established, in accordance with the policies of the Police Department and Learning for Life, for participation in the Explorer Ride-Along program:

- The Explorer must be at least 15 years of age (or 14 with an Advisor's approval).
- Each Explorer must have the following forms in their personnel file:

1. Release of Liability €š" Must be signed by the Explorer's parent or guardian (for minors) and the Advisor.

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2. Medical Release €š" Authorizes any BART Police Officer and/or Explorer Advisor to consent to emergency medical treatment for Explorers.

- Explorers must have passed their Field Training examination.

Explorers will meet the 20-hour per month service requirement, without exceptions.

1048.8.2 ESCORTING OFFICER

Officers assigned an Explorer as a ride-along must meet the following requirements:

- An Escorting Officer must have at least one year of experience with the BART Police Department as a Patrol Officer. Time spent as a probationary officer in the Field Training Officer Program time is not applicable towards this one year.
- The Escorting Officer has no active formal discipline on file.
- Successfully completed the Learning for Life Youth Protection Training.

The Escorting Officer should be furnished with a copy of the Explorer Ride-Along manual for future reference. Any questions and/or concerns about the program or a specific Explorer will be referred to the Post Advisor.

1048.8.3 HIGH RISK CALL PROCEDURE

Law enforcement, by its very nature, has moments of extreme danger. Situations will arise where the officer will have to terminate the Ride-a-Long for the Explorer's own safety. In such situations, the Explorer shall be dropped off at the nearest BART Station. The escorting officer shall notify dispatch that the Explorer has been dropped off. The Explorer shall be directed to the agent's booth and allowed to phone the Watch Commander to receive further instructions.

If a call for service is deemed high risk and a drop off is not feasible, the Explorer shall stay in the patrol car during the call unless it is unsafe to do so.

1048.9 GROOMING

Explorers will conform to the Department's grooming standards as per Policy §1044.

1048.9.1 COURTESY

Explorers will treat all citizens, members of the Police Department and other Explorers with courtesy and respect. Explorers, even in the face of great provocation, will refrain from using profane, coarse, offensive or insolent language or gestures. Explorers, in or out of uniform, on or off duty, will conduct themselves in such a manner that will reflect favorably upon the Post, Police Department and BART District.

1048.9.2 CONFIDENTIAL INFORMATION/RECORDS

The official business of the Police Department and the Explorer Post is to remain confidential. Official information shall not be removed from the Police Department or copied. Explorers shall only discuss or give confidential information as directed by a sworn member of the Police Department or other legal authority.

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1048.9.3 OBEDIENCE TO LAWS

Explorers shall obey all laws. Any explorer who is the subject of enforcement action must notify the Program Coordinator via the chain of command immediately. This requirement includes traffic offenses.

1048.9.4 FRATERNIZATION

The Police Department and Learning for Life do not condone and will not permit fraternization between Explorers and their adult leaders or other affiliated adults. This applies to all youth members regardless of local or state laws related to age of consent. Fraternization is not morally appropriate, nor is it in keeping with the relationship between youth members and adult leaders prescribed in the programs of this department and those of the Learning for Life. Dating between Explorers is permitted, however the relationship will not be brought into the exploring program: Displays of affection will not be tolerated while Explorers are on duty in an official capacity. If a dating relationship occurs, the parties may not be in the same squad. A higher-ranking Explorer may not be the direct supervisor of one they are dating. Dating or other non-business related contact between Explorers and their adult leaders or other affiliated adults is not permitted.

1048.9.5 FORBIDDEN ARTICLES

Explorers will not use, possess or carry a firearm, sap, judo sticks, knife, nightstick, TASER or any other article or items unless directed to do so by the Program Coordinator or Advisor in conjunction with an official Post function.

Handcuffs will be used for training purposes only and never carried as part of the uniform equipment.

For the purposes of training only, Explorers may be authorized to participate in designated firearms training under the strict supervision of the Advisor(s) and Department Firearms Instructors. The ratio of instructors to Explorers should be no more than one to one while the Explorer is in possession of a firearm. Explorers shall not handle firearms outside of approved training at the range. The Explorer Coordinator must individually approve each Explorer's participation in firearms training. The Explorer must also sign a release of liability, including Parental, or guardian, approval for minors.

Department Badges

1052.1 PURPOSE AND SCOPE

The department badge and uniform patch as well as the likeness of these items and the name of the Bay Area Rapid Transit Police Department are property of the Department and their use shall be restricted as set forth in this policy.

1052.2 POLICY

The uniform badge shall be issued to department members as a symbol of authority and the use and display of departmental badges shall be in strict compliance with this policy. Only authorized badges issued by this department shall be displayed, carried or worn by members while on duty or otherwise acting in an official or authorized capacity.

1052.2.1 FLAT BADGE

All ranks above officer will be provided a Department flat badge reflecting their current position within the department. These flat badges are the property of the police department and must be turned in upon retirement, resignation, reclassification to a non-sworn position, or termination from the District. Sergeants, Lieutenants, and Deputy Chiefs who are promoted must exchange their flat badges for their new position within the department along with their duty badge.

Officers may purchase a flat badge bearing the number within the sequential series for the rank of police officer at their own expense. These flat badges are the property of the individual officer and may be retained upon retirement from the District. Officers who are terminated or reclassified to a non-sworn position must turn in their flat badges, however the cost will be reimbursed by the Department. Officers must contact the Support Services lieutenant to obtain an authorization form in order to purchase their flat badge.

The use of the flat badge is subject to all of the same provisions of the departmental policy as the uniform badge.

- (a) Should the flat badge become lost, damaged, or otherwise removed from the officer's control, he/she shall make the proper notifications as outlined in the Policy Manual 700.
- (b) Upon retirement and with the written approval of the Chief of Police, sworn members who honorably retire from the department will be provided a retirement flat badge at no expense.
- (c) Sworn members who retired when the shield badges were issued may obtain a retirement star flat badge once they have completed a department range qualification. The retirement star flat badge will be provided at no expense. If a retired officer does not complete the range qualification they will not be issued or allowed to purchase a retirement star flat badge, unless approved by the Chief of Police.
- (d) The purchase, carrying or display of a flat badge is not authorized for non-sworn personnel.

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Department Badges

1052.2.2 CUSTOM BADGES

Ranks of Lieutenant and above have the option to purchase custom duty badges made of gold, with custom etching, and their initials in place of a badge number. Rank of Sergeant will have the option to purchase a custom duty badge made of gold, with custom etching, and their badge number. These badges must be purchased through the Ed Jones Company. The complete cost of this badge will be paid for by the individual. These badges will remain the property of the employee upon retirement.

1052.2.3 NON - SWORN IDENTIFICATION CARDS AND BADGES

Badges and departmental identification cards issued to non-sworn personnel shall be clearly marked to reflect the position of the assigned employee (i.e., Revenue Protection Guard, Community Service Officer, Dispatcher).

- (a) Non-sworn personnel shall not display any department badge except as a part of his/her uniform and while on duty, or otherwise acting in an official and authorized capacity.
- (b) Non-sworn personnel shall not display any department badge or represent him/herself, on or off duty, in such a manner which would cause a reasonable person to believe that he/she is a sworn peace officer.

1052.2.4 RETIREE UNIFORM BADGE

Upon honorable retirement, all sworn employees will be provided their assigned duty badge with the option of having the badge attached to a plaque or incased in Lucite. The badge is provided to commemorate their service with the BART Police Department. It is intended that the duty badge attached to the plaque or placed in Lucite be used only as private memorabilia as other uses of the badge may be unlawful or in violation of this policy.

1052.3 UNAUTHORIZED USE

Except as required for on-duty use by current employees, no badge designed for carry or display in a wallet, badge case or similar holder shall be issued to anyone other than a current or honorably retired peace officer in accordance with Policy 1055.

Department badges are issued to all sworn employees and civilian uniformed employees for official use only. The department badge, shoulder patch or the likeness thereof, or the department name shall not be used for personal or private reasons including, but not limited to, letters, memoranda, and electronic communications such as electronic mail or web sites and web pages.

The use of the badge, uniform patch and department name for all material (printed matter, products or other items) developed for department use shall be subject to approval by the Chief of Police.

Employees shall not loan their department badge or identification card to others and shall not permit their badge or identification card to be reproduced or duplicated.

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Department Badges

1052.4 PERMITTED USE BY EMPLOYEE GROUPS

The likeness of the department badge shall not be used without the expressed authorization of the Chief of Police and shall be subject to the following:

- (a) The employee associations may use the likeness of the department badge for merchandise and official association business provided they are used in a clear representation of the association and not this department. The following modifications shall be included:
 - 1. The text on the upper and lower ribbons is replaced with the name of the employee association.
 - 2. The badge number portion displays the acronym of the employee association.
- (b) The likeness of the department badge for endorsement of political candidates shall not be used without the expressed approval of the Chief of Police.

Business Cards and Trading Cards

1053.1 PURPOSE AND SCOPE

To establish a procedure for the issuance and distribution of business and trading cards for and by police personnel.

1053.2 DEFINITIONS

Business Card - A card intended for distribution by police personnel to the public, which identifies the distributing person as a BART Police Department representative and bears the distributing person's name, and rank.

Trading Card - A card given to others that bears a person or group's name and photo. The color photo selected for the card must be department-approved.

1053.3 BUSINESS CARDS

The design of BART Police Department business cards must be approved by the Chief of Police. Business cards shall be issued by the Support Services Division.

- (a) **Personalized Business Cards** - Personalized business cards shall be issued to all BPD personnel at no personal expense. Such personalized business cards shall be issued to BPD personnel as soon as practicable upon employment by the Department. BPD personnel whose supply of personalized business cards is exhausted shall notify the Support Services Division Deputy Chief, who shall facilitate the issuance of additional personalized business cards. Additional information with regard to BPD personnel assigned to special units, such as K-9 and SWAT, may be included on those personalized business cards at the discretion of the Chief of Police.
- (b) **Non-Personalized Business Cards** - Non-personalized business cards shall be issued at no personal expense to BPD personnel pending the delivery of personalized business cards as described in subsection (a). Such non-personalized cards shall be issued to BPD personnel by their respective supervisor.

1053.3.1 DISTRIBUTION OF BUSINESS CARDS

On-duty BPD personnel should carry Department-issued business cards at all times, and BPD personnel should distribute a Department-issued business card to any person upon request, providing the action does not interfere with the performance of official duties. Personnel who deplete their supply of business cards in their normal course of duty, may provide their contact information via alternate means (verbal, written or electronic) as needed.

BPD personnel shall write their name, rank, and badge number on non-personalized business cards when distributing them.

BPD personnel are not required to immediately provide a business card if:

- (a) Doing so presents a concern with regard to the safety of the officers or others

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- (b) An Investigation may be jeopardized
- (c) A police function may be materially hindered

BPD personnel should be prepared to articulate a sufficient and reasonable explanation for any refusal to provide a Department-issued business card upon request.

Business cards are intended for distribution in the normal course of business. They shall not be used, directly or indirectly, in an effort to gain favor or special treatment for the recipient, or for BPD personnel.

1053.4 TRADING CARDS

Photo trading cards are issued to personnel as approved by Command Staff.

1053.4.1 DISTRIBUTION OF TRADING CARDS

Employees distribute their trading cards to children and members of the public to promote goodwill and positive community relations. As with business cards, the trading cards shall not be used, directly or indirectly, in an effort to gain favor or special treatment for the recipient.

Temporary Modified-Duty Assignments

1054.1 PURPOSE AND SCOPE

This policy establishes procedures for providing temporary modified-duty assignments. This policy is not intended to affect the rights or benefits of employees under federal or state law, District rules, current memorandums of understanding or collective bargaining agreements. For example, nothing in this policy affects the obligation of the Department to engage in a good faith, interactive process to consider reasonable accommodations for any employee with a temporary or permanent disability that is protected under federal or state law.

1054.2 POLICY

Subject to operational considerations, the Bay Area Rapid Transit Police Department may identify temporary modified-duty assignments for employees who have an injury or medical condition resulting in temporary work limitations or restrictions. A temporary assignment allows the employee to work, while providing the Department with a productive employee during the temporary period.

1054.3 GENERAL CONSIDERATIONS

Priority consideration for temporary modified-duty assignments will be given to employees with work-related injuries or illnesses that are temporary in nature. Employees having disabilities covered under the Americans with Disabilities Act (ADA) or the California Fair Employment and Housing Act (Government Code § 12940 et seq.) shall be treated equally, without regard to any preference for a work-related injury.

No position in the Bay Area Rapid Transit Police Department shall be created or maintained as a temporary modified-duty assignment.

Temporary modified-duty assignments are a management prerogative and not an employee right. The availability of temporary modified-duty assignments will be determined on a case-by-case basis, consistent with the operational needs of the Department. Temporary modified-duty assignments are subject to continuous reassessment, with consideration given to operational needs and the employee's ability to perform in a modified-duty assignment.

The Chief of Police or the authorized designee may restrict employees working in temporary modified-duty assignments from wearing a uniform, displaying a badge, carrying a firearm, operating an emergency vehicle, engaging in outside employment, or being otherwise limited in employing their peace officer powers.

Temporary modified-duty assignments shall generally not exceed a cumulative total of 1,040 hours in any one-year period.

1054.4 PROCEDURE

Employees may request a temporary modified-duty assignment for short-term injuries or illnesses.

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Temporary Modified-Duty Assignments

Employees seeking a temporary modified-duty assignment should contact the designated administrative supervisor to make the request.. The request should, as applicable, include a certification from the treating medical professional containing:

- (a) An assessment of the nature and probable duration of the illness or injury.
- (b) The prognosis for recovery.
- (c) The nature and scope of limitations and/or work restrictions.
- (d) A statement regarding any required workplace accommodations, mobility aids or medical devices.
- (e) A statement that the employee can safely perform the duties of the temporary modified-duty assignment.

The administrative supervisor will make a recommendation through the chain of command to the Chief of Police regarding temporary modified-duty assignments that may be available based on the needs of the Department and the limitations of the employee. The Chief of Police or the authorized designee shall confer with the Human Resources Department or the General Counsel as appropriate.

Requests for a temporary modified-duty assignment of 20 hours or less per week may be approved and facilitated by the administrative supervisor, with notice to the Chief of Police.

1054.4.1 TEMPORARY MODIFIED-DUTY SCHEDULES

The schedules of employees assigned to modified duty may be adjusted to suit medical appointments or Department needs at the discretion of the Support Services Bureau Deputy Chief. Generally, TMD personnel will staff ISRC for CCTV monitoring or be assigned to the police service window in the MET lobby. Personnel may be re-assigned to fill a different assignments based on the approval by the Chief of Police or his/her designee. TMD personnel are not authorized to work overtime.

1054.5 ACCOUNTABILITY

Written notification of assignments, work schedules and any restrictions should be provided to employees assigned to temporary modified-duty assignments and their supervisors. Those assignments and schedules may be adjusted to accommodate department operations and the employee's medical appointments, as mutually agreed upon with the administrative supervisor.

1054.5.1 EMPLOYEE RESPONSIBILITIES

The responsibilities of employees assigned to temporary modified duty shall include, but not be limited to:

- (a) Communicating and coordinating any required medical and physical therapy appointments in advance with their supervisors.
- (b) Promptly notifying their supervisors of any change in restrictions or limitations after each appointment with their treating medical professionals.

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- (c) Communicating a status update to their supervisors no less than once every 30 days while assigned to temporary modified duty.
- (d) Submitting a written status report to the administrative supervisor that contains a status update and anticipated date of return to full-duty when a temporary modified-duty assignment extends beyond 60 days.

1054.5.2 SUPERVISOR RESPONSIBILITIES

The employee's immediate supervisor shall monitor and manage the work schedule of those assigned to temporary modified duty.

The responsibilities of supervisors shall include, but not be limited to:

- (a) Periodically apprising the Division Commander of the status and performance of employees assigned to temporary modified duty.
- (b) Notifying the Division Commander and ensuring that the required documentation facilitating a return to full duty is received from the employee.
- (c) Ensuring that employees returning to full duty have completed any required training and certification.

1054.6 MEDICAL EXAMINATIONS

Prior to returning to full-duty status, employees shall be required to provide certification from their treating medical professionals stating that they are medically cleared to perform the essential functions of their jobs without restrictions or limitations.

The Department may require a fitness-for-duty examination prior to returning an employee to full-duty status, in accordance with the Fitness for Duty Policy.

1054.7 PREGNANCY

If an employee is temporarily unable to perform regular duties due to a pregnancy, childbirth, or a related medical condition, the employee will be treated the same as any other temporarily disabled employee (42 USC § 2000e(k)). A pregnant employee shall not be involuntarily transferred to a temporary modified-duty assignment. Nothing in this policy limits a pregnant employee's right to a temporary modified-duty assignment if required under Government Code § 12945.

1054.7.1 NOTIFICATION

Pregnant employees should notify their immediate supervisors as soon as practicable and provide a statement from their medical providers identifying any pregnancy-related job restrictions or limitations. If at any point during the pregnancy it becomes necessary for the employee to take a leave of absence, such leave shall be granted in accordance with the District's personnel rules and regulations regarding family and medical care leave.

1054.8 PROBATIONARY EMPLOYEES

Probationary employees who are assigned to a temporary modified-duty assignment shall have their probation extended by a period of time equal to their assignment to temporary modified duty.

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Temporary Modified-Duty Assignments

1054.9 MAINTENANCE OF CERTIFICATION AND TRAINING

Employees assigned to temporary modified duty shall maintain all certification, training and qualifications appropriate to both their regular and temporary duties, provided that the certification, training or qualifications are not in conflict with any medical limitations or restrictions. Employees who are assigned to temporary modified duty shall inform their supervisors of any inability to maintain any certification, training or qualifications.

Departure From Employment

1055.1 PURPOSE AND SCOPE

To provide guidelines for the recognition of members who have honorably ended their service with the San Francisco Bay Area Rapid Transit Police Department.

1055.2 DEFINITIONS

A. Retirement Badge: A flat replica of the department badge with the word "RETIRED" used in lieu of the number.

B. Department Retirement Plaque: A suitable plaque with affixed/imbedded replica badge(s) for each rank commemorating the years of service of an employee of the department.

C. Recognition Documents: Recognition of retirement documents include the following:

- San Francisco Bay Area Rapid Transit District letter signed by the General Manager (after 5 years of service with the District)
- Congressional Letter (after 20 years of service with the District)
- Flag (Flown over the nation's capitol (after 20 years of service-sworn personnel only)
- Joint Resolution from the Senate and Assembly (after 25 years of service with the District)

D. "Law Enforcement Officers' Safety Act" (H.R.218): Exempts qualified active and retired law enforcement officers from local and State prohibitions on the carrying of concealed firearms.

1055.3 GUIDELINES FOR RETIREE IDENTIFICATION CARD ELIGIBILITY

A. Retirees may be eligible for a Retired identification card with "CCW" endorsement including H.R. 218 language unless one of the following exclusions applies (sworn personnel should also review Policy 220 for more details regarding the "CCW" endorsement):

- Employee retired with less than 5 years of service, unless it was a disability retirement
- Employee received a psychological retirement
- Employee retired in lieu of termination
- Employee did not complete probationary period

B. Retiree identification cards with a "CCW" endorsement, but no H.R. 218 language may be issued to qualified sworn retirees unless one of the following exclusions apply:

- Employee received a psychological retirement
- Employee retired in lieu of termination
- Employee did not complete probationary period

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Departure From Employment

C. Retiree identification card with no CCW endorsement may be issued to all sworn retirees who have been excluded from the above types of retirement identification card endorsements. The request shall be made through the Chief of Police.

1055.4 GUIDELINES FOR ELIGIBILITY - PERS RETIREMENT

All department classifications with five (5) years of service to the department may be eligible for recognition from the department for their years of service and upon their honorable retirement:

Sworn members with five (5) or more years of service at the date of retirement may be eligible to receive:

- Retiree Identification Card
- Retiree Flat Badge (Per Policy 1052.2.1 Department Badges)
- San Francisco Bay Area Rapid Transit District letter signed by the General Manager

Sworn or civilian personnel who retire after five (5) or more years of service may be eligible to receive:

- Sworn employees may elect to have their duty badge encased in Lucite or mounted on a departmental plaque (Per Policy 1052.2.4 Department Badges)
- A departmental plaque
- Name plate on the department retirement plaque (after 5 years of service with the District)

Sworn and civilian personnel who retire after twenty (20) or more years of service may be eligible to receive:

- Congressional Letter (after 20 years of service with the District)
- Flag (Flown over the nation's capital (after 20 years of service-sworn personnel only)
- Name plate on the department retirement plaque (after 20 years of service with the District)

Sworn and civilian personnel who retire after twenty-five (25) years of service may be eligible to receive:

- Joint Resolution from the Senate and Assembly

Personnel who do not meet the above requirements, or who retire as a result of a medical disability, may be eligible to receive the appropriate recognition depending on the circumstances that led to the end of service with the department. The Chief of Police or his/ her designee will evaluate each circumstance and make the final determination.

All requests for recognition documents should be directed to the chairperson of the Awards Committee.

Employee Speech, Expression and Social Networking

1058.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

1058.1.1 APPLICABILITY

This policy applies to all forms of communication including but not limited to film, video, print media, public or private speech, use of all internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video, and other file-sharing sites.

1058.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Bay Area Rapid Transit Police Department will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

1058.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the internet. Speech and expression that may negatively affect the safety of the Bay Area Rapid Transit Police Department employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's family, or

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Employee Speech, Expression and Social Networking

associates. Examples of the type of information that could reasonably be expected to compromise safety include:

- Disclosing a photograph and name or address of an officer who is working undercover.
- Disclosing the address of a fellow officer.
- Otherwise disclosing where another officer can be located off-duty.

1058.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

To meet the department's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, on a matter of public concern):

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Bay Area Rapid Transit Police Department or its employees.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Bay Area Rapid Transit Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the Bay Area Rapid Transit Police Department or its employees. Examples may include:
 1. Statements that indicate disregard for the law or the state or U.S. Constitution.
 2. Expression that demonstrates support for criminal activity.
 3. Participating in sexually explicit photographs or videos for compensation or distribution.
- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.
- (d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Department. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.
- (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Bay Area Rapid Transit Police Department.
- (f) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department

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for financial or personal gain, or any disclosure of such materials without the express authorization of the Chief of Police or the authorized designee.

- (g) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the Bay Area Rapid Transit Police Department on any personal or social networking or other website or web page, without the express authorization of the Chief of Police.
- (h) Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or department-owned, for personal purposes while on-duty, except in the following circumstances:
 1. When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).
 2. During authorized breaks such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Employees must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

1058.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or officer associations, employees may not represent the Bay Area Rapid Transit Police Department or identify themselves in any way that could be reasonably perceived as representing the Bay Area Rapid Transit Police Department in order to do any of the following, unless specifically authorized by the Chief of Police (Government Code § 3206; Government Code § 3302):

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group or officer associations), is affiliated with this department, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Bay Area Rapid Transit Police Department.

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Employee Speech, Expression and Social Networking

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or officer associations, on political subjects and candidates at all times while off-duty.

However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

1058.5 PRIVACY EXPECTATION

Employees forfeit any expectation of privacy with regard to e-mails, texts, or anything published or maintained through file-sharing software or any internet site (e.g., Facebook) that is accessed, transmitted, received, or reviewed on any department technology system (see the Information Technology Use Policy for additional guidance).

The Department shall not require an employee to disclose a personal user name or password for accessing personal social media or to open a personal social website; however, the Department may request access when it is reasonably believed to be relevant to the investigation of allegations of work-related misconduct (Labor Code § 980).

1058.6 CONSIDERATIONS

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Chief of Police or authorized designee should consider include:

- (a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.
- (b) Whether the speech or conduct would be contrary to the good order of the Department or the efficiency or morale of its members.
- (c) Whether the speech or conduct would reflect unfavorably upon the Department.
- (d) Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.
- (e) Whether similar speech or conduct has been previously authorized.
- (f) Whether the speech or conduct may be protected and outweighs any interest of the Department.

1058.7 TRAINING

Subject to available resources, the Department should provide training regarding employee speech and the use of social networking to all members of the Department.

District Cell Service Interruption Policy

1059.1 PURPOSE AND SCOPE

The primary mission of the San Francisco Bay Area Rapid Transit District (the "District" is providing safe, efficient and reliable public transit services. The District recognizes that the availability of equipment inside the District's system facilitation cellular communications in its stations and trains (the "System Cellular Equipment") is a valuable and important service to District passengers, that should be interrupted only in the most extraordinary circumstances that threaten the safety of District passengers, employees and other members of public, the destruction of District property, or the substantial disruption of public transit service.

The District also recognizes that any interruption of cellular service poses serious risks to public safety and that available open communications networks are critical to our economy and democracy and should be preserved to the fullest extent possible. The District is also fully committed to its existing long standing policy of allowing the exercise of First Amendment rights of expression in the areas of its stations where it can be done safely, legally and without interference with the District's primary mission. The District is also committed to full compliance with all state and federal regulatory laws applicable to a temporary interruption of operation of the System Cellular Equipment.

1059.2 POLICY

In accordance with these principles, it shall be the policy of the District that the District may implement a temporary interruption of operation of the System Cellular Equipment only when it determines that there is strong evidence of imminent unlawful activity that threatens the safety of District passengers, employees and other members of the public, the destruction of District property, or the substantial disruption of public transit services; that the interruption will substantially reduce the likelihood of such unlawful activity; that such interruption is essential to protect the safety of District passengers, employees and other members of the public, to protect District property or to avoid substantial disruption of public transit services; and that such interruption is narrowly tailored to those areas and time periods necessary to protect against the unlawful activity. Any such interruption shall include measures to ensure the rights of the disabled to information and assistance and shall be promptly reported to first responders and the Board of Directors. Any decision to implement a temporary interruption must be pursuant to a determination that the public safety benefits outweigh the public safety risks of an interruption. The decision to implement a temporary interruption of operation of the System Cellular Equipment requires the establishment of an operational procedure approved by the General Manager (i).

- (i) Nothing herein is intended to restrict the District's ability to implement a temporary interruption of the operation of the System Cellular Equipment for maintenance or other operational reasons.

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District Cell Service Interruption Policy

- For all pre-planned events, cell service interruption will be determined by the Chief of Police in collaboration with the General Manager and/or Assistant General Manager of Operations.
- Eminent danger, where the potential for loss of life is involved, which requires immediate cell service interruption must be cleared by the Watch Commander.

1059.2.1 EXAMPLES OF EXTRAORDINARY CIRCUMSTANCES, EMINENT DANGER

Illustrative examples of extraordinary circumstances, eminent danger include, but are not limited to, strong evidence of use of cell phones

- (i) as instrumentalities in explosives;
- (II) to facilitate violent criminal activity or endanger District passengers, employees or other members of the public, such as hostage situations;
- (iii) to facilitate specific plans or attempts to destroy District property or substantially disrupt public transit services. Such circumstances may justify a narrowly tailored interruption of service only if they meet the principles listed above.

Nepotism and Conflicting Relationships

1060.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure equal opportunity and effective employment practices by avoiding actual or perceived favoritism, discrimination or actual or potential conflicts of interest by or between members of this department. These employment practices include: recruiting, testing, hiring, compensation, assignment, use of facilities, access to training opportunities, supervision, performance appraisal, discipline and workplace safety and security.

1060.1.1 DEFINITIONS

Business relationship - Serving as an employee, independent contractor, compensated consultant, owner, board member, shareholder, or investor in an outside business, company, partnership, corporation, venture or other transaction, where the Department employee's annual interest, compensation, investment or obligation is greater than \$250.

Conflict of interest - Any actual, perceived or potential conflict of interest in which it reasonably appears that a department employee's action, inaction or decisions are or may be influenced by the employee's personal or business relationship.

Nepotism - The practice of showing favoritism to relatives over others in appointment, employment, promotion or advancement by any public official in a position to influence these personnel decisions.

Personal relationship - Includes marriage, cohabitation, dating or any other intimate relationship beyond mere friendship.

Public official - A supervisor, officer or employee vested with authority by law, rule or regulation or to whom authority has been delegated.

Relative - An employee's parent, stepparent, spouse, domestic partner, significant other, child (natural, adopted or step), sibling or grandparent.

Subordinate - An employee who is subject to the temporary or ongoing direct or indirect authority of a supervisor.

Supervisor - An employee who has temporary or ongoing direct or indirect authority over the actions, decisions, evaluation and/or performance of a subordinate employee.

1060.2 RESTRICTED DUTIES AND ASSIGNMENTS

The Department will not prohibit all personal or business relationships between employees. However, in order to avoid nepotism or other inappropriate conflicts, the following reasonable restrictions shall apply (Government Code § 12940):

- (a) Employees are prohibited from directly supervising, occupying a position in the line of supervision or being directly supervised by any other employee who is a relative or with whom they are involved in a personal or business relationship.

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Nepotism and Conflicting Relationships

1. If circumstances require that such a supervisor/subordinate relationship exist temporarily, the supervisor shall make every reasonable effort to defer matters pertaining to the involved employee to an uninvolved supervisor.
 2. When personnel and circumstances permit, the Department will attempt to make every reasonable effort to avoid placing employees in such supervisor/subordinate situations. The Department, however, reserves the right to transfer or reassign any employee to another position within the same classification in order to avoid conflicts with any provision of this policy.
- (b) Employees are prohibited from participating in, contributing to or recommending promotions, assignments, performance evaluations, transfers or other personnel decisions affecting an employee who is a relative or with whom they are involved in a personal or business relationship.
 - (c) Whenever possible, FTOs and other trainers will not be assigned to train relatives. FTOs and other trainers are prohibited from entering into or maintaining personal or business relationships with any employee they are assigned to train until such time as the training has been successfully completed and the employee is off probation.
 - (d) To avoid actual or perceived conflicts of interest, members of this department shall refrain from developing or maintaining personal or financial relationships with victims, witnesses or other individuals during the course of or as a direct result of any official contact.
 - (e) Except as required in the performance of official duties or, in the case of immediate relatives, employees shall not develop or maintain personal or financial relationships with any individual they know or reasonably should know is under criminal investigation, is a convicted felon, parolee, fugitive or registered sex offender or who engages in serious violations of state or federal laws.

1060.2.1 EMPLOYEE RESPONSIBILITY

Prior to entering into any personal or business relationship or other circumstance which the employee knows or reasonably should know could create a conflict of interest or other violation of this policy, the employee shall promptly notify his/her uninvolved, next highest level of supervisor.

Whenever any employee is placed in circumstances that would require the employee to take enforcement action or provide official information or services to any relative or individual with whom the employee is involved in a personal or business relationship, the employee shall promptly notify his/her uninvolved, immediate supervisor. In the event that no uninvolved supervisor is immediately available, the employee shall promptly notify dispatch to have another uninvolved employee either relieve the involved employee or minimally remain present to witness the action.

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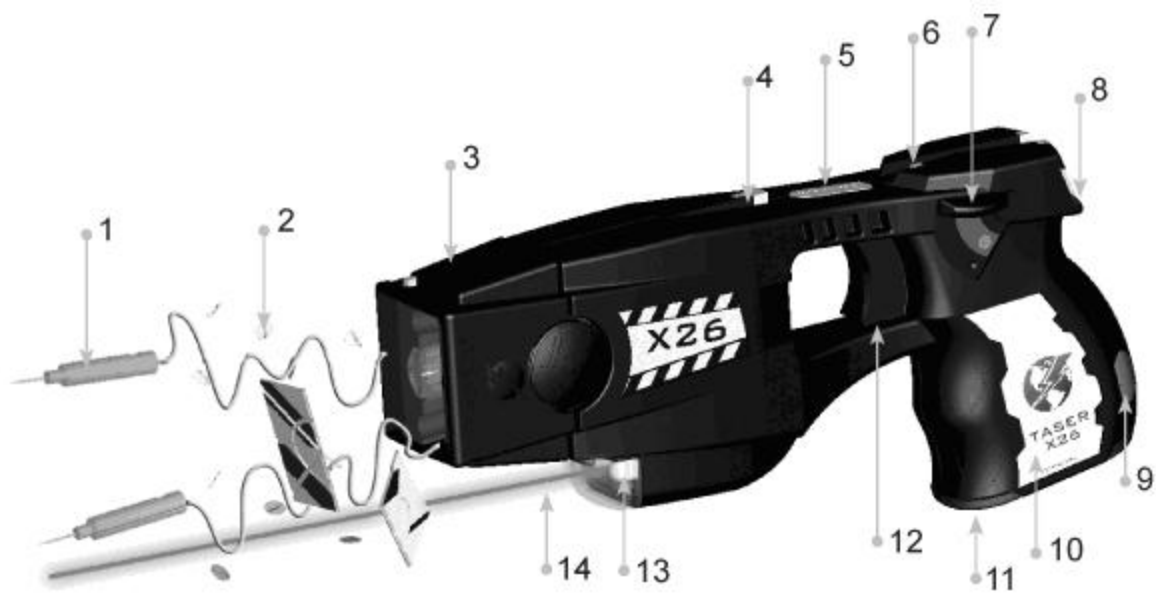
Nepotism and Conflicting Relationships

1060.2.2 SUPERVISOR'S RESPONSIBILITY

Upon being notified of, or otherwise becoming aware of any circumstance that could result in or constitute an actual or potential violation of this policy, a supervisor shall take all reasonable steps to promptly mitigate or avoid such violations whenever possible. Supervisors shall also promptly notify the Chief of Police of such actual or potential violations through the chain of command.

Attachments

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BART HR Policy - Police Promotions.pdf



POLICY AND PROCEDURE- POLICE DEPARTMENT PROMOTIONS

GENERAL

BART encourages promotional opportunities for all employees. Candidates, whether internal or external, will participate in a selection process as outlined below. For internal only promotions: If no internal candidates are deemed qualified, external candidates will follow the same selection process as outlined below. In all cases, external candidates will be required to meet the same minimum qualifications as internal candidates. District employees will be given first priority where practical or required by a Collective Bargaining Agreement.

II. PURPOSE

This procedure describes District practices and promotional processes for the career ladders on sworn and non-sworn classifications within BART Police Department.

III. OBJECTIVE

To meet the hiring needs of the BART Police Department and to promote the most qualified candidates through the career ladder. District employees will be given first priority of any position over external candidates in accordance with the governing MOU. Human Resources has the discretion to utilize executive search firms for the execution of recruitment efforts. It shall be the policy of the BART Police Department to maintain a fair and consistent promotional process which identifies the most qualified candidates consistent with the goals of balance, fairness and operational efficiency of the police department.

IV. DEPARTMENTS AFFECTED

Police Department

The Chief of Police will make the final determination of any promotion within the BART Police Department.

Office of Administration, Human Resources, Talent Acquisition

The Human Resources Talent Acquisition Analyst assigned will oversee and administer the promotional process, from position posting until the selection of a candidate by the Chief of Police. For the position of Chief of Police, the selection will be made by the General Manager.

V. IMPLEMENTATION

A. Procedure

The promotional process may include but is not limited to any of the following elements as described in each of the classifications below.

1. Sergeant

- a. Job Announcement posted identifying job requirements.

- b. All applications are screened to ensure minimum qualifications are met.
- c. All candidates meeting minimum qualifications are invited to a standardized written assessment test. A minimum score of 70% must be achieved during the testing phase to move forward to the oral boards (May include multiple panels).
- d. Candidates who successfully pass the standardized Oral Board examination with a minimum score of 70% will be ranked in the order of their Oral Board score and their names will be placed on an eligibility list. The top five candidates will be invited to an interview with the Chief of Police or his/her designee.
- e. The Police Chief will administer a rule of five (5) process when selecting candidates for vacancies after the Chiefs Interview. (The rule of 5 allows the Chief of Police to select any candidate for promotion scoring within the top 5 of the Oral Board interview). As such, the order of placement in the pool does not establish the order of selection. District employees will be given first priority where practical or required by a Collective Bargaining Agreement.

2. Lieutenant

- a. Job Announcement posted identifying job requirements.
- b. All applications are screened to ensure minimum qualifications are met.
- c. All candidates meeting minimum qualifications are invited to a standardized Oral Board interview (May include multiple panels). A minimum combined score of 70% must be achieved during the oral interview to move forward to the eligibility list.
- d. Candidates who successfully pass the Oral Board examination phase with a minimum score of 70% will be ranked in the order of their Oral Board score and their names will be placed on an eligibility list. The top five candidates will be invited to an interview with the Chief of Police or his/her designee.
- e. The Police Chief will administer a rule of five (5) process when selecting candidates for vacancies after the Chiefs Interview. (The rule of 5 allows the Chief of Police to select any candidate for promotion scoring within the top 5 of the Oral Board interview). As such, the order of placement in the pool does not establish the order of selection. District employees will be given first priority where practical.

3. Civilian Supervisory positions

- a. Job Announcement posted identifying job requirements.
- b. All applications are screened to ensure minimum qualifications are met.
- c. All candidates meeting minimum qualifications are invited to a standardized written assessment test. A minimum score of 70% must be achieved during the testing phase to move forward to the oral boards (Human Resources and Police Department has the discretion to omit and/or change the written test assessment.)
- d. All candidates passing the standardized written assessment test are invited to a standardized Oral Board interview (May include multiple panels). A minimum combined score of 70% must be achieved during the oral interview to move forward to the eligibility list.
- e. Candidates who successfully pass the Oral Board examination with a minimum score of 70% will be ranked in the order of their Oral Board score and their names will be placed on an eligibility list. The top five candidates will be invited to an interview with the Chief of Police or his/her designee.
- f. The Police Chief will administer a rule of five (5) process when selecting candidates for vacancies after the Chiefs Interview. (The rule of 5 allows the Chief of Police to select any candidate for promotion scoring within the top 5 of the Oral Board interview). As

such, the order of placement in the pool does not establish the order of selection. District employees will be given first priority where practical or required by a Collective Bargaining Agreement.

4. Deputy Chief

- a. Job Announcement posted identifying job requirements.
- b. All applicants are screened to ensure minimum qualifications are met. All candidates meeting minimum qualifications are invited to a standardized Oral Board interview (May include multiple panels). A minimum combined score of 70% must be achieved.
- c. Candidates who successfully pass oral/written assessment will be invited to 2nd round interview with the Chief of Police or his/her designee.
- d. The Police Chief will administer a rule of five (5) process when selecting candidates for vacancies. As such, the order of placement in the pool does not establish the order of selection. District employees will be given first priority where practical.

5. Chief

- a. Job Announcement posted identifying job requirements.
- b. All applicants are screened to ensure minimum qualifications are met. Human Resources has the discretion to utilize executive search firms for the sourcing and screening of applicants.
- c. The most qualified candidates will be invited to interview with designated executive search firm. The executive search firm will make recommendations on candidates to move forward to the General Manager's standardized panel interviews.
- d. The General Manager will make the decision on appointment. District employees will be given first priority where practical.

Candidates who are unsuccessful in the promotional process may reapply once the recruitment is reopened.

VI. Compliance

The Human Resources Department in conjunction with the Office of Civil Rights shall ensure that all selection processes are in accordance with the applicable collective bargaining agreement. All phases of the selection process are reviewed by Human Resources and the Office of Civil Rights for compliance. Employees who are unsuccessful in the selection process will have the right to a briefing of their final interview assessment with Human Resources and if applicable a right to a formal grievance process in accordance with applicable MOU. Provisions of collective bargaining agreements shall supersede any provision of this policy when in conflict.

The Human Resources Department shall have responsibility for ensuring that this policy is properly implemented. The Human resources Talent Acquisition Analyst directly assigned to a particular promotional process will ensure that all materials are kept under their control when not directly in use during an assessment. After hours, all materials will be secured within a locked file on the secure floor of the Human Resources Department.

BART_Records Retention Schedule_2019.21.18.pdf

**BART POLICE DEPARTMENT
RECORDS/INFORMATION RETENTION AND DISPOSITION SCHEDULE**

Record Series Identifier	Record Series Name	
1.0	Support Services Bureau	
1.1	Arrest Reports	
1.2	Citations	
1.3	Crime/Cases/Sup Reports	
1.4	Sealed Records	
1.5	Dispatch	
1.6	Investigations	
1.7	Evidence	
1.8	General Records	
2.0	Personnel & Training Bureau	
2.1	Internal Affairs	
2.2	Background & Hiring	
2.3	Training	
3.0	Operations Bureau	
4.0	Office of the Chief	

**BART POLICE DEPARTMENT
RECORDS/INFORMATION RETENTION AND DISPOSITION SCHEDULE**

Record Identifier	Record	Custodian of Records	Record Value:					Retention Source Authority	Retention Period
			O - Operational	F - Fiscal	L - Legal	H - Historical	V - Vital		
1.0	SUPPORT SERVICES BUREAU								
1.1	ARREST REPORTS Arrest/conviction H&S Sections 11357 (b),(c),(d),(e), or H&S Section 11360 (b) violations	Chief of Police	X		X		H&S 11361.5	2 years after date of conviction or arrest if not convicted	
	Arrest/conviction H&S section 11357€ by a juvenile	Chief of Police	X		X		H&S 11361.5	Record is destroyed when the juvenile attains the age of 18 years old	
	Arrests-647(f) Drunk	Chief of Police	X		X		BART PD Practice	2 Years	
	Arrests later determined "detention only" under 849(b)	Chief of Police	X		X		BART PD Practice	5 Years	
	Arrests – violation of local ordinances	Chief of Police	X		X		BART PD Practice	2 Years	
	Felony Arrest Reports – no disposition, no conviction	Chief of Police	X		X		BART PD Practice	7 Years	
	Felony Arrest Reports reduced to misdemeanors	Chief of Police	X		X		BART PD Practice	7 Years	
	Misdemeanor Arrests – no disposition, no conviction	Chief of Police	X		X		BART PD Practice	5 Years	
	Misdemeanor Arrests sex and narcotics violation	Chief of Police	X		X		BART PD Practice	7 Years	

**BART POLICE DEPARTMENT
RECORDS/INFORMATION RETENTION AND DISPOSITION SCHEDULE**

1.1	ARREST REPORTS (CONT)												
	Misdemeanor arrests with conviction	Chief of Police	X	X						BART PD Practice			7 Years
1.2	CITATIONS												
	Hard Copy Traffic/Infraction / Misdemeanor Adult and Juvenile	Chief of Police	X	X						BART PD Practice			3 Years Originals are forwarded to the court
1.3	CRIME/CASE/SUPPLEMENTAL REPORT												
	Child abuse & Neglect Reports	Chief of Police	X	X						PC 1170(a)(3)			10 Years from date of last incident
	Field Interview Records (FI)	Chief of Police	X	X						BART PD Practice			10 Years
	Felony Crime report w/out an arrest- PC Sections 799, 800, 801, 801.5	Chief of Police	X	X						PC 799,800,801,801.5,801.6, 802(a),802(b), and 802(c)			Retention per Statute of Limitation.
	Felony Crime reports	Chief of Police	X	X						BART PD Practice			10 years
	Felony Crime reports – murder, embezzlement of public monies; Kidnapping for ransom, falsification of public records	Chief of Police	X	X						PC 799			Permanent
	Misdemeanor Crime reports	Chief of Police	X	X						BART PD Practice			10 years
	Misdemeanor Crime reports w/out arrest- PC 799, 800,801,801.5	Chief of Police	X	X						PC 799, 800, 801, 801.5, 801.6, 802(a), 802(b), and 802(c)			Retention per Statute of Limitation
	Incident Reports – Non Criminal, found or lost property reports	Chief of Police	X	X						BART PD Practice			2 years

**BART POLICE DEPARTMENT
RECORDS/INFORMATION RETENTION AND DISPOSITION SCHEDULE**

	District Property Injury Report / Sick Patron	Chief of Police	X	X				BART PD Practice	5 years
	Stored / Impounded Vehicle Reports (Non-Arrest)	Chief of Police	X	X				BART PD Practice	2 years
	Train accident reports	Chief of Police	X	X				BART PD Practice	25 Years
	Train/ traffic accident reports fatal	Chief of Police	X	X				BART PD Practice	50 Years
	Traffic accident report involving felony	Chief of Police	X	X				BART PD Practice	10 years
	Traffic accident reports -- all others	Chief of Police	X	X				CHP Recommendation	2 years
	Officer Involved Shooting reports	Chief of Police	X	X				PC 832.5	Permanent
	Unattended Death / Suicide Reports	Chief of Police	X	X				BART PD Practice	10 Years
1.4	SEALED RECORDS								
	Adult found factually innocent	Chief of Police	X	X				PC 851.8	Mandatory destruction upon and pursuant to Court Order
	Adult Completion of Program	Chief of Police	X	X				PC 1203.45	Mandatory destruction upon and pursuant to Court Order
	Juvenile	Chief of Police	X	X				WIC 826(a) 7 (b) WIC 781 (A)	Mandatory destruction upon and pursuant to Court Order
1.5	DISPATCH								

**BART POLICE DEPARTMENT
RECORDS/INFORMATION RETENTION AND DISPOSITION SCHEDULE**

	911 Call Recordings	Chief of Police	X	X				BART PD Practice	30 days active / 2 years inactive
	Non-Emergency Incoming Call Recordings	Chief of Police	X	X				BART PD Practice	120 Days
	CAD Event Logs / Calls for Service	Chief of Police	X	X				BART PD Practice	3 Years
	CLETS / CORI Logs	Chief of Police	X	X				BART PD Practice	Destroyed after annual CLETS audit
1.6	INVESTIGATIONS								
	Criminal History Inquiry Log	Chief of Police	X	X				BART PD Practice	3 Years or Upon DOJ Audit
	District Video Surveillance	Chief of Police	X	X				BART PD Practice	3 to 120 Days based on system
	Crime Statistics	Chief of Police	X	X				BART PD Practice	10 Years
	Uniform Crime Reporting	Chief of Police	X	X				BART PD Practice	5 Years after reporting to FBI and DOJ.

**BART POLICE DEPARTMENT
RECORDS/INFORMATION RETENTION AND DISPOSITION SCHEDULE**

1.7	EVIDENCE												
	Evidence Room Log	Chief of Police	X	X	X					BART PD Practice		10 Years	
	Evidence Disposal Log	Chief of Police	X	X	X					BART PD Practice		10 Years	
	Property / Evidence Release Records	Chief of Police	X	X	X					BART PD Practice		Upon Purging of Case File	
	Evidence Audit Reports	Chief of Police	X	X	X					BART PD Practice		25 Years	
	Body Worn Camera Footage	Chief of Police	X	X	X					BART PD Practice		Per Department Policy, but no longer than 10 years.	
1.8	GENERAL RECORDS												
	Department Policies	Chief of Police	X	X	X					BART PD Practice		Permanent	
	Department Bulletins / Orders	Chief of Police	X	X	X					BART PD Practice		Permanent	
	Personnel Files Current Employees	Chief of Police	X	X	X					BART PD Practice		Permanent	
	Personnel Files Former Employees	Chief of Police	X	X	X					BART PD Practice		10 Years from Resignation	

**BART POLICE DEPARTMENT
RECORDS/INFORMATION RETENTION AND DISPOSITION SCHEDULE**

	Daily Adult Arrest Logs	Chief of Police	X	X				BART PD Practice	3 Weeks
	Daily Event Logs	Chief of Police	X	X				BART PD Practice	30 Days
	Department Weapon Records	Chief of Police	X	X				BART PD Practice	5 years after firearm retired.
	Department Email	Chief of Police	X	X				BART District Practice	90 Days to 2 Years
	CPRA Responses	Chief of Police	X	X				BART PD Practice	2 Years
	Subpoena Responses for Records	Chief of Police	X	X				BART PD Practice	2 Years
	Juvenile Detention Logs and Reporting	Chief of Police	X	X				BART PD Practice	3 Years
2.0	PERSONNEL & TRAINING BUREAU								
2.1	Internal Affairs								
	Internal Affairs Records of Complaints and Findings	Chief of Police	X	X				PC 832.5	5 Years
	Internal Affairs Public Reports	Chief of Police	X	X				BART PD Practice	5 Years
	Internal Affairs Statistics	Chief of Police	X	X				BART PD Practice	5 Years
2.2	Background & Hiring								

**BART POLICE DEPARTMENT
RECORDS/INFORMATION RETENTION AND DISPOSITION SCHEDULE**

	Background Files – Current Employees	Chief of Police	X	X				BART PD Practice	Permanent
	Background Files – Former Employees	Chief of Police	X	X				BART PD Practice	5 Years after termination of employment
	Background Files – Non Hires	Chief of Police	X	X				BART PD Practice	2 Years
	Psych Exams – Current Employees	Chief of Police	X	X				BART PD Practice	Permanent
	Psych Exams – Former Employees	Chief of Police	X	X				BART PD Practice	5 Years
	Psych Exams – Non Hires	Chief of Police	X	X				BART PD Practice	2 Years
	Recruitment Process Records	Chief of Police	X	X				BART PD Practice	2 Years
	Live Scan	Chief of Police	X	X				BART PD Practice	3 Years
	Ride Along	Chief of Police	X	X				BART PD Practice	2 Years
2.3	Training								
	Training Files – Current Employees (Including) POST Training	Chief of Police	X	X				BART PD Practice	Permanent
	Training Files – Former Employees (Including) POST Training	Chief of Police	X	X				BART PD Practice	5 Years after termination

**BART POLICE DEPARTMENT
RECORDS/INFORMATION RETENTION AND DISPOSITION SCHEDULE**

	Training Lesson Plans	Chief of Police	X	X					BART PD Practice	Until Superseded by Revision or revoked
	Training – Range Records	Chief of Police	X	X					BART PD Practice	Permanent for current employees. 5 Years for Former employees.
3.0	Operations									
	Daily Activity Logs	Chief of Police	X	X					BART PD Practice	2 Years
	Misc. Events / Presentations	Chief of Police	X	X					BART PD Practice	2 Years
	Administrative Reviews	Chief of Police	X	X					BART PD Practice	2 Years
	Parking Citations	Chief of Police	X	X					BART PD Practice	5 Years
	POP Citation Issuance	Chief of Police	X	X					BART PD Practice	5 Years
4.0	Office of the Chief of Police									
	MOU's - Current	Chief of Police	X	X					BART PD Practice	Permanent
	MOU's - Expired	Chief of Police	X	X					BART PD Practice	5 Years from Expirations

**Commission on Peace Officer Standards and
Training Hate Crimes Model Policy 2019.pdf**

BART HR Policy - Police Eligibility List.pdf



GENERAL

BART creates hiring efficiency and improves candidate experience by using eligibility lists.

II. PURPOSE

This procedure describes District practices around eligibility lists specifically for positions in the BART Police Department, both sworn and non-sworn. The purpose of an examination/selection process is to provide a list of qualified candidates to be considered for promotional opportunities.

III. OBJECTIVE

Eligibility Lists are the most efficient and cost-effective method to hire for positions that are vacant and/or will become vacant within a 12-month period.

IV. DEPARTMENTS AFFECTED

Police Department

V. IMPLEMENTATION

A. Procedure

1. Successful candidates who pass the selection process will be added to the eligibility list in the order of the final assessment score. The assessment score is based off of the results of the standardized interview, on a scale of 100, with a minimum passing score of 70%.
2. The top five candidates will be placed into a pool for selection. All five candidates have an equal ranking within the pool and order of placement in the pool does not establish the order of selection. The Chief of Police may select from any one of the five candidates within the pool. Once a candidate is selected, a new candidate will be added to the pool from the eligibility list, until the list is exhausted.
3. Eligibility lists are effective for 12-months from the date the list was established and in accordance with any applicable MOU. The Chief of Police or his/her designee may cancel or extend the eligibility list at their discretion.

COMPLIANCE

The Human Resources Department in conjunction with the Office of Civil Rights shall ensure that all eligibility lists adhere to the expiration date and/or extensions. All vacancies are filled based on the needs of the Police Department and in accordance with the established collective bargaining agreement. Time in grade/time in rank eligibility requirements are part of the minimum qualifications of a position and are not part of the eligibility list formation.

VI. RESPONSIBILITY

The Human Resources Department shall have responsibility for ensuring that this procedure is properly implemented.

VII. CROSS REFERENCE

N/A

Statutes and Legal Requirements.pdf

Statutes and Legal Requirements

Items listed in this section include sections from the California Penal Code (CPC), Welfare and Institutions Code (WI) and Government Code (GC).

Definitions

CPC 422.55 - Provides general definition of hate crimes in California.

CPC 422.56- Provides definitions of terms included in hate crimes statutes.

GC 12926- Disability-related definitions applicable to some hate crime statutes.

Felonies

Hate Crimes

CPC 422.7 - Commission of a crime for the purpose of interfering with another's exercise of civil rights.

Related Crimes

CPC 190.2(a)(16) - Homicide penalties related to certain hate crime related acts.

CPC 190.03(a) - Homicide penalties related to certain hate crime related acts.

CPC 288(b)(2) - Sexual assault of dependent person by caretaker

CPC 368(b) - Dependent adult abuse generally - may apply as disability-related hate crime.

CPC 594.3 - Vandalism of places of worship.

CPC 11412 - Causing or attempting to cause other to refrain from exercising religion by threat.

CPC 11413 - Arson or destructive device at place of worship.

Misdemeanors

Hate Crimes

CPC 422.6 - Use of force, threats, or destruction of property to interfere with another's exercise of civil rights.

CPC 422.77 - Violation of civil order (Bane Act) protecting the exercise of civil rights

Related Crimes

CPC 302 - Disorderly conduct during an assemblage of people gathered for religious worship at a tax-exempt place of worship.

CPC 538(c) - Unauthorized insertion of advertisements in newspapers and redistribution to the public.

CPC 640.2 - Placing handbill, notice of advertisement on a consumer product or product packaged without authorization.

CPC 11411 - Terrorism of owner or occupant of real property. Placement or display of sign, symbol, or other physical impression without authorization, engagement in pattern of conduct, or burning or desecration of religious symbols.

Enhancements

CPC 190.2(a)(16) - Special circumstances imposing the Death Penalty or Life Without Possibility of Parole, if the victim was intentionally killed because of sexual orientation, gender, or disability.

CPC 190.3 - Special circumstances imposing LWOP if the victim was intentionally killed because of sexual orientation, gender, or disability.

CPC 422.75 - Penalty for felony committed because of victim's race, color, religion, nationality, country or origin, ancestry, disability, or sexual orientation shall be enhanced one, two, or three years in prison, if the person acts alone; and two, three, or four years if the person commits the act with another.

CPC 1170.8 - Enhancement for robbery or assault at a place of worship.

CPC 1170.85(b) - Felony assault or battery enhancement due to age or disability.

Reporting

CPC 13023- Requirement for law enforcement agencies to report hate crime data to DOJ.

WI 15630 – Elder and Dependent Adult Abuse Mandated Reporting (may apply in disability-related hate crimes).

Training and Policy Requirements

CPC 422.87 - Hate crimes policy adoption and update requirements (AB 1985, Effective January 1, 2019).

CPC 13519.6 - Defines hate crime training requirements for peace officers.

CPC 13519.41 - Training requirements on sexual orientation and gender identity-related hate crimes for peace officers and dispatchers (AB 2504, Effective January 1, 2019).

Miscellaneous Provisions

CPC 422.78 - Responsibility for prosecution of stay away order violations.

CPC 422.86 - Public policy regarding hate crimes.

CPC 422.89 - Legislative intent regarding violations of civil rights and hate crimes

CPC 422.92 - Hate crimes victims brochure requirement for law enforcement agencies.

CPC 422.93 - Protection of victims and witnesses from being reported to immigration authorities.

GC 6254 - Victim confidentiality.

Hate Crime Checklist.pdf

HATE CRIME CHECKLIST

Page _____ of _____

VICTIM	<p style="text-align: center;"><u>Victim Type:</u></p> <p><input type="checkbox"/> Individual Legal name (Last, First): _____ Other Names used (AKA): _____</p> <p><input type="checkbox"/> School, business or organization Name: _____ Type: _____ <i>(e.g., non-profit, private, public school)</i> Address: _____</p> <p><input type="checkbox"/> Faith-based organization Name: _____ Faith: _____ Address: _____</p>	<p style="text-align: center;"><u>Target of Crime (Check all that apply):</u></p> <p><input type="checkbox"/> Person <input type="checkbox"/> Private property <input type="checkbox"/> Public property</p> <p><input type="checkbox"/> Other _____</p> <p style="text-align: center;"><u>Nature of Crime (Check all that apply):</u></p> <p><input type="checkbox"/> Bodily injury <input type="checkbox"/> Threat of violence</p> <p><input type="checkbox"/> Property damage</p> <p><input type="checkbox"/> Other crime: _____</p> <p>Property damage - estimated value _____</p>
---------------	---	--

BIAS	<p style="text-align: center;"><u>Type of Bias</u> (Check all characteristics that apply):</p> <p><input type="checkbox"/> Disability</p> <p><input type="checkbox"/> Gender</p> <p><input type="checkbox"/> Gender identity/expression</p> <p><input type="checkbox"/> Sexual orientation</p> <p><input type="checkbox"/> Race</p> <p><input type="checkbox"/> Ethnicity</p> <p><input type="checkbox"/> Nationality</p> <p><input type="checkbox"/> Religion</p> <p><input type="checkbox"/> Significant day of offense <i>(e.g., 9/11, holy days)</i></p> <p><input type="checkbox"/> Other: _____</p> <p>Specify disability (be specific): _____ _____</p>	<p style="text-align: center;"><u>Actual or Perceived Bias – Victim’s Statement:</u></p> <p><input type="checkbox"/> Actual bias [Victim actually has the indicated characteristic(s)].</p> <p><input type="checkbox"/> Perceived bias [Suspect believed victim had the indicated characteristic(s)]. <i>If perceived, explain the circumstances in narrative portion of Report.</i></p> <p style="text-align: center;"><u>Reason for Bias:</u></p> <p>Do you feel you were targeted based on one of these characteristics? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Explain in narrative portion of Report.</i></p> <p>Do you know what motivated the suspect to commit this crime? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Explain in narrative portion of Report.</i></p> <p>Do you feel you were targeted because you associated yourself with an individual or a group? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Explain in narrative portion of Report.</i></p> <p>Are there indicators the suspect is affiliated with a Hate Group (i.e., literature/tattoos)? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Describe in narrative portion of Report.</i></p> <p>Are there Indicators the suspect is affiliated with a criminal street gang? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Describe in narrative portion of Report.</i></p>
-------------	--	---

	<p style="text-align: center;"><u>Bias Indicators (Check all that apply):</u></p> <p><input type="checkbox"/> Hate speech <input type="checkbox"/> Acts/gestures <input type="checkbox"/> Property damage <input type="checkbox"/> Symbol used</p> <p><input type="checkbox"/> Written/electronic communication <input type="checkbox"/> Graffiti/spray paint <input type="checkbox"/> Other: _____</p> <p><i>Describe with exact detail in narrative portion of Report.</i></p>
--	--

HISTORY	<p style="text-align: center;"><u>Relationship Between Suspect & Victim:</u></p> <p>Suspect known to victim? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Nature of relationship: _____</p> <p>Length of relationship: _____</p> <p><i>If Yes, describe in narrative portion of Report</i></p>	<p><input type="checkbox"/> Prior reported incidents with suspect? Total # _____</p> <p><input type="checkbox"/> Prior unreported incidents with suspect? Total # _____</p> <p>Restraining orders? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><i>If Yes, describe in narrative portion of Report</i></p> <p>Type of order: _____ Order/Case# _____</p>
----------------	--	--

WEAPONS	<p>Weapon(s) used during incident? <input type="checkbox"/> Yes <input type="checkbox"/> No Type: _____</p> <p>Weapon(s) booked as evidence? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Automated Firearms System (AFS) Inquiry attached to Report? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
----------------	--

HATE CRIME CHECKLIST

Page ____ of ____

EVIDENCE	Witnesses present during incident? <input type="checkbox"/> Yes <input type="checkbox"/> No	Statements taken? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Evidence collected? <input type="checkbox"/> Yes <input type="checkbox"/> No	Recordings: <input type="checkbox"/> Video <input type="checkbox"/> Audio <input type="checkbox"/> Booked
	Photos taken? <input type="checkbox"/> Yes <input type="checkbox"/> No	Suspect identified: <input type="checkbox"/> Field ID <input type="checkbox"/> By photo
	Total # of photos: _____ D#: _____ Taken by: _____ Serial #: _____	<input type="checkbox"/> Known to victim

OBSERVATIONS	<u>VICTIM</u>	<u>SUSPECT</u>
	<input type="checkbox"/> Tattoos <input type="checkbox"/> Shaking <input type="checkbox"/> Unresponsive <input type="checkbox"/> Crying <input type="checkbox"/> Scared <input type="checkbox"/> Angry <input type="checkbox"/> Fearful <input type="checkbox"/> Calm <input type="checkbox"/> Agitated <input type="checkbox"/> Nervous <input type="checkbox"/> Threatening <input type="checkbox"/> Apologetic <input type="checkbox"/> Other observations: _____	<input type="checkbox"/> Tattoos <input type="checkbox"/> Shaking <input type="checkbox"/> Unresponsive <input type="checkbox"/> Crying <input type="checkbox"/> Scared <input type="checkbox"/> Angry <input type="checkbox"/> Fearful <input type="checkbox"/> Calm <input type="checkbox"/> Agitated <input type="checkbox"/> Nervous <input type="checkbox"/> Threatening <input type="checkbox"/> Apologetic <input type="checkbox"/> Other observations: _____

ADDITIONAL QUESTIONS (Explain all boxes marked "Yes" in narrative portion of report):

Has suspect ever threatened you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has suspect ever harmed you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does suspect possess or have access to a firearm?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are you afraid for your safety?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you have any other information that may be helpful?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Resources offered at scene: Yes No Type: _____

MEDICAL	<u>Victim</u>	<u>Suspect</u>	Paramedics at scene? <input type="checkbox"/> Yes <input type="checkbox"/> No Unit # _____
	<input type="checkbox"/>	<input type="checkbox"/>	Declined medical treatment
	<input type="checkbox"/>	<input type="checkbox"/>	Will seek own medical treatment
	<input type="checkbox"/>	<input type="checkbox"/>	Received medical treatment
Authorization to Release Medical Information, Form 05.03.00, signed? <input type="checkbox"/> Yes <input type="checkbox"/> No			Name(s)/ID #: _____
			Hospital: _____
			Jail Dispensary: _____
			Physician/Doctor: _____
			Patient #: _____

Officer (Name/Rank)	Date
Officer (Name/Rank)	Date
Supervisor Approving (Name/Rank)	Date

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