

COMMISSION ON POLICE PRACTICES

TRAINING AND CONTINUING EDUCATION STANDING COMMITTEE AGENDA Thursday, December 5, 2024 4:30pm-6:00pm

**Procopio Towers
525 B St.
17th Floor, Suite 1725
San Diego, CA 92101**

The Commission on Police Practices (Commission) meetings will be conducted pursuant to the provisions of California Government Code Section 54953 (a), as amended by Assembly Bill 2249.

The Commission business meetings will be in person and the meeting will be open for in-person testimony. Additionally, we are continuing to provide alternatives to in-person attendance for participating in our meetings. In lieu of in-person attendance, members of the public may also participate via telephone/Zoom.

The link to join the meeting by computer, tablet, or smartphone at 4:30pm is:

<https://sandiego.zoomgov.com/j/1610051325>

161 005 1325

In-Person Public Comment on an Agenda Item: If you wish to address the CPP Standing Committee on an item on today's agenda, please complete and submit a speaker slip before the Committee hears the agenda item. You will be called at the time the item is heard. Each speaker must file a speaker slip with the CPP staff at the meeting at which the speaker wishes to speak indicating which item they wish to speak on. Speaker slips may not be turned in prior to the day of the meeting or after completion of in-person testimony. In-person public comment will conclude before virtual testimony begins. Each speaker who wishes to address the Commission must state who they are representing if they represent an organization or another person.

For discussion and information items each speaker may speak up to three (3) minutes, subject to the Committee Chair's determination of the time available for meeting management purposes, in addition to any time ceded by other members of the public who are present at the meeting and have submitted a speaker slip ceding their time. These speaker slips should be submitted together at one time to

the designated CPP staff. The Committee Chair may also limit organized group presentations of five or more people to 15 minutes or less.

In-Person Public Comment on Matters Not on the Agenda: You may address the Standing Committee on any matter not listed on today's agenda. Please complete and submit a speaker slip. However, California's open meeting laws do not permit the Standing Committee to discuss or take any action on the matter at today's meeting. At its discretion, the Standing Committee may add the item to a future meeting agenda or refer the matter to the CPP. Public comments are limited to three minutes per speaker. At the discretion of the Committee Chair, if a large number of people wish to speak on the same item, comments may be limited to a set period of time per item to appropriately manage the meeting and ensure the Standing Committee has time to consider all the agenda items. A member of the public may only provide one comment per agenda item. In-person public comment on items not on the agenda will conclude before virtual testimony begins.

Virtual Platform Public Comment to a Particular Item or Matters Not on the Agenda: When the Committee Chair introduces the item you would like to comment on (or indicates it is time for Non-Agenda Public Comment), raise your hand by either tapping the "Raise Your Hand" button on your computer, tablet, or Smartphone, or by dialing *9 on your phone. You will be taken in the order in which you raised your hand. You may only speak once on a particular item. When the Committee Chair indicates it is your turn to speak, click the unmute prompt that will appear on your computer, tablet or Smartphone, or dial *6 on your phone.

Written Comment through Webform: Comment on agenda items and non-agenda public comment may also be submitted using the [webform](#). If using the webform, indicate the agenda item number you wish to submit a comment for. All webform comments are limited to 200 words. On the [webform](#), members of the public should select Commission on Police Practices (even if the public comment is for a Commission on Police Practices Committee meeting).

The public may attend a meeting when scheduled by following the attendee meeting link provided above. To view a meeting archive video, click [here](#). Video footage of each Commission meeting is posted online [here](#) within 24-48 hours of the conclusion of the meeting.

Comments received no later than 11 am the day of the meeting will be distributed to the Commission on Police Practices. Comments received after the deadline described above but before the item is called will be submitted into the written record for the relevant item.

Written Materials: You may alternatively submit via U.S. Mail to Attn: Office of the Commission on Police Practices, 525 B Street, Suite 1725, San Diego, CA 92101. Materials submitted via U.S. Mail must be received the business day prior to the meeting to be distributed to the Standing Committee.

If you attach any documents to your comment, they will be distributed to the

Standing Committee in accordance with the deadlines described above.

- I. CALL TO ORDER/WELCOME (Committee Chair Darlanne Hoctor Mulmat)
- II. ROLL CALL (Executive Director Paul Parker)
- III. NON-AGENDA PUBLIC COMMENT (Executive Director Paul Parker)
- IV. NEW BUSINESS (DISCUSSION/ACTION ITEMS)
 - A. Goal of Committee
 - B. CPP Handbook
 - C. Training Methods
 - D. Update on outstanding issues from former Training Ad Hoc Committee
- V. ADJOURNMENT

Materials Provided: CPP Handbook

Access for People with Disabilities: As required by the Americans with Disabilities Act (ADA), requests for agenda information to be made available in alternative formats, and any requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for alternatives to observing meetings and offering public comment as noted above, may be made by contacting the Commission at (619) 236-6296 or commissiononpolicepractices@sandiego.gov.

Requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for auxiliary aids, services, or interpreters, require different lead times, ranging from five business days to two weeks. Please keep this in mind and provide as much advance notice as possible to ensure availability. The city is committed to resolving accessibility requests swiftly.

Commission on Police Practices Handbook

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SECTION 6. SDPD POLICY MANUAL (COMPLETE)

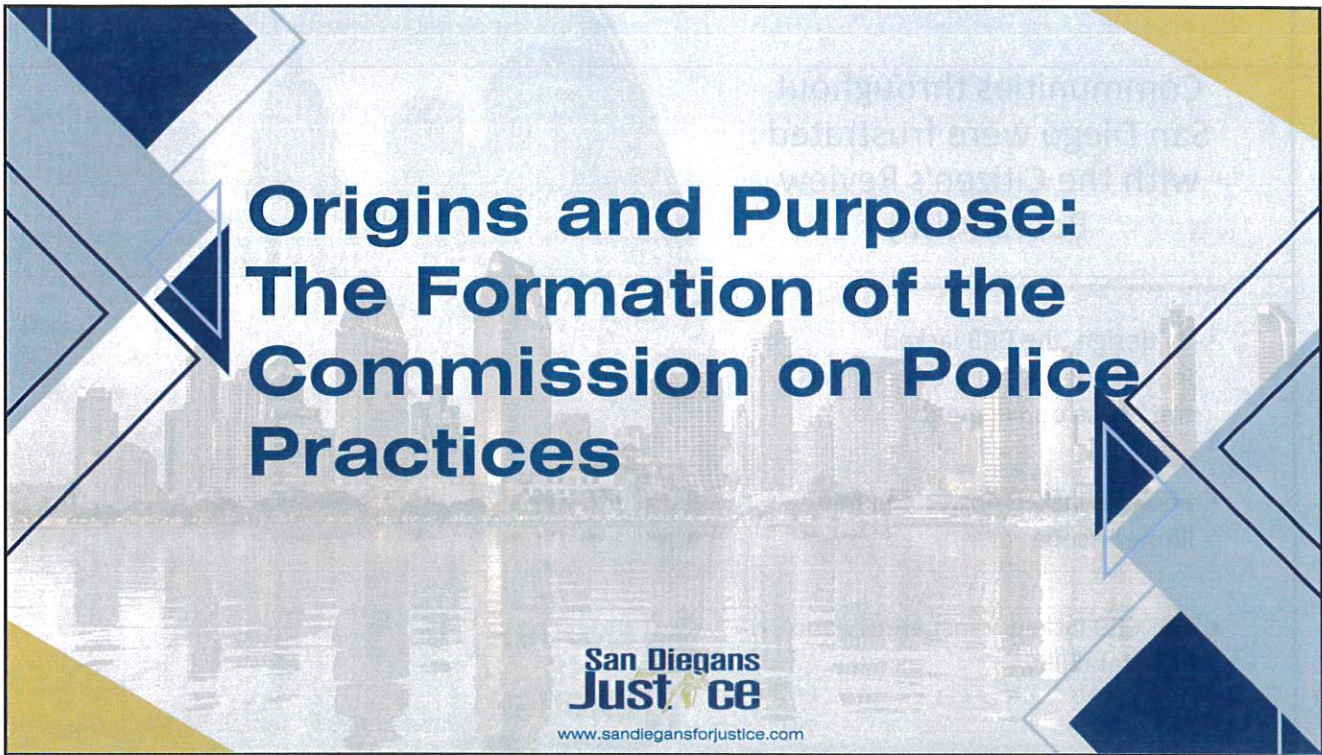
NOTE: The following policies do not have stand-alone procedures

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- C. 9.02 – Obedience to Rules
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- S. 6.34 – Police Interaction with Transgender and Non-Binary Individuals (No Policy Statement)



1

The initiative to create the Commission on Police Practices was a grassroots effort

- Community dissatisfaction with Citizen’s Review Board (CRB)
- Community input created the CPP
- The input is documented at <https://patrick.ucsd.edu/tracking-measure-b>

A circular inset image on the right side of the slide shows the shadows of several people standing on a grassy field, suggesting a community gathering or protest.

2

Communities throughout San Diego were frustrated with the Citizen's Review Board (CRB)

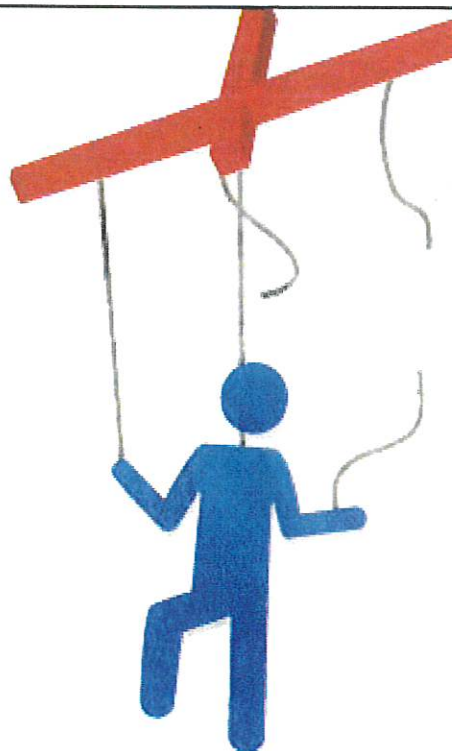
- By design, the CRB lacked independence from the City and the police department
- The CRB lacked power and had limited scope
- The CRB lacked transparency and accountability



3

The community wanted the Commission to be independent from the City

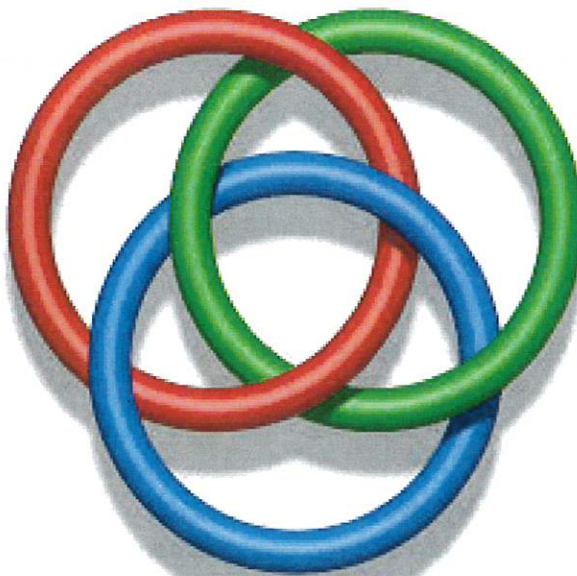
- The CRB was created by the police
- There were concerns that the City protected police from genuine community oversight
- There were concerns that the City Attorney had conflicts representing both the police and the CRB



4

As a hybrid body, the Commission's scope is expanded

- The Commission reviews the investigations of the police
- The Commission independently investigates complaints
- The Commission can audit/monitor the police



5

The Commission must now look at the bigger picture

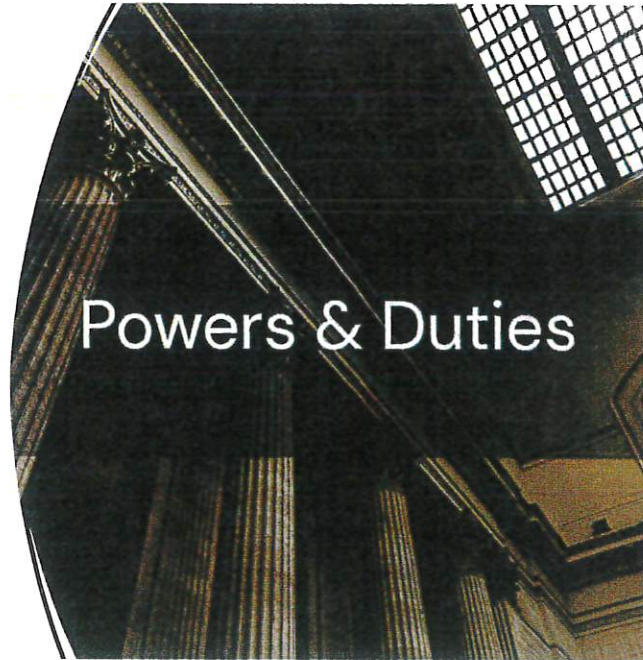
- Review is important, but it can't be allowed to divert the Commission from its other functions
- Independently investigates are necessary
- Auditing/monitoring and the analysis of patterns and practices is most important



6

The Commission must embrace its full powers and duties

- Full investigations, mandatory and discretionary
- SDPD's compliance with federal, state, and local reporting laws and requirements
- Analysis of SDPD data and trends, policy review and recommendations



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Everything that can be made public should be made public

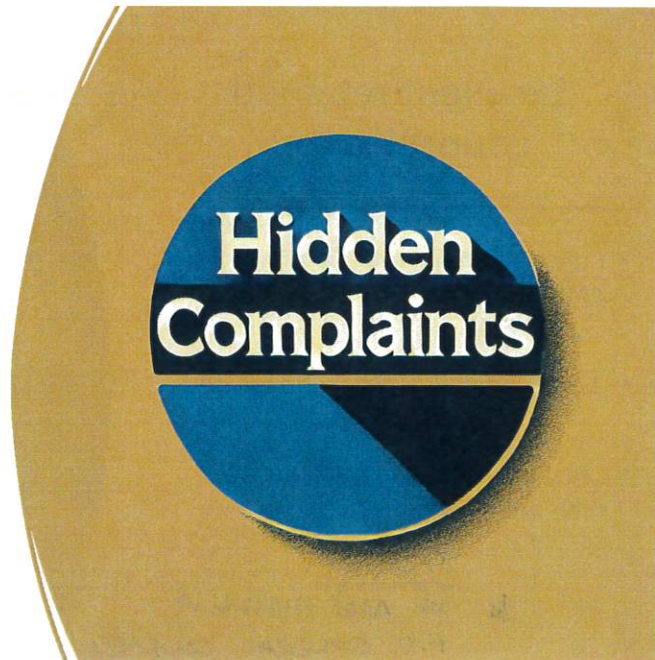
- CPP meetings
- Each finding made during the complaint evaluation and adjudication process
- Timely communications with complainant and public



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The Commission must obtain all SDPD complaints

- Complaints where complainant requested no investigation
- Complaints with no specific allegations
- Complaints where no police officer can be identified



9

Staffing is one key to effectiveness

- Avoidance of commissioner burnout
- Knowledge and credibility that experts bring
- Independent counsel



10

Excellent retained counsel is key

- Commissioners' relationships with CPP attorney
- Legal counsel is also an advocate
- Legal counsel need not be a full-time position



8-20-24:
 WE ARE HIRING A
 F.T. GENERAL COUNSEL.

- Paul Parker

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The commissioners direct the commission

- The Commission directs staff
- The Commission must know what staff is doing
- Don't allow the Commission to have gatekeepers
- Be careful of the City's subtle efforts to control the Commission

You are
 in
 Control

8-26-24: THE COMMISSION DIRECTS THE EXECUTIVE DIRECTOR (ED).
 THE ED DIRECTS STAFF. - Paul Parker
 8-20-24: AGREE, BUT HAVING DEFINED POINTS OF CONTACT IS NOT GATEKEEPING.

- Paul Parker

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Partnering with the community is another key to effectiveness

- The Commission must gain the community's trust
- Once trust is gained, the community will work with the Commission to ensure that the police department will implement the recommendations made by the Commission



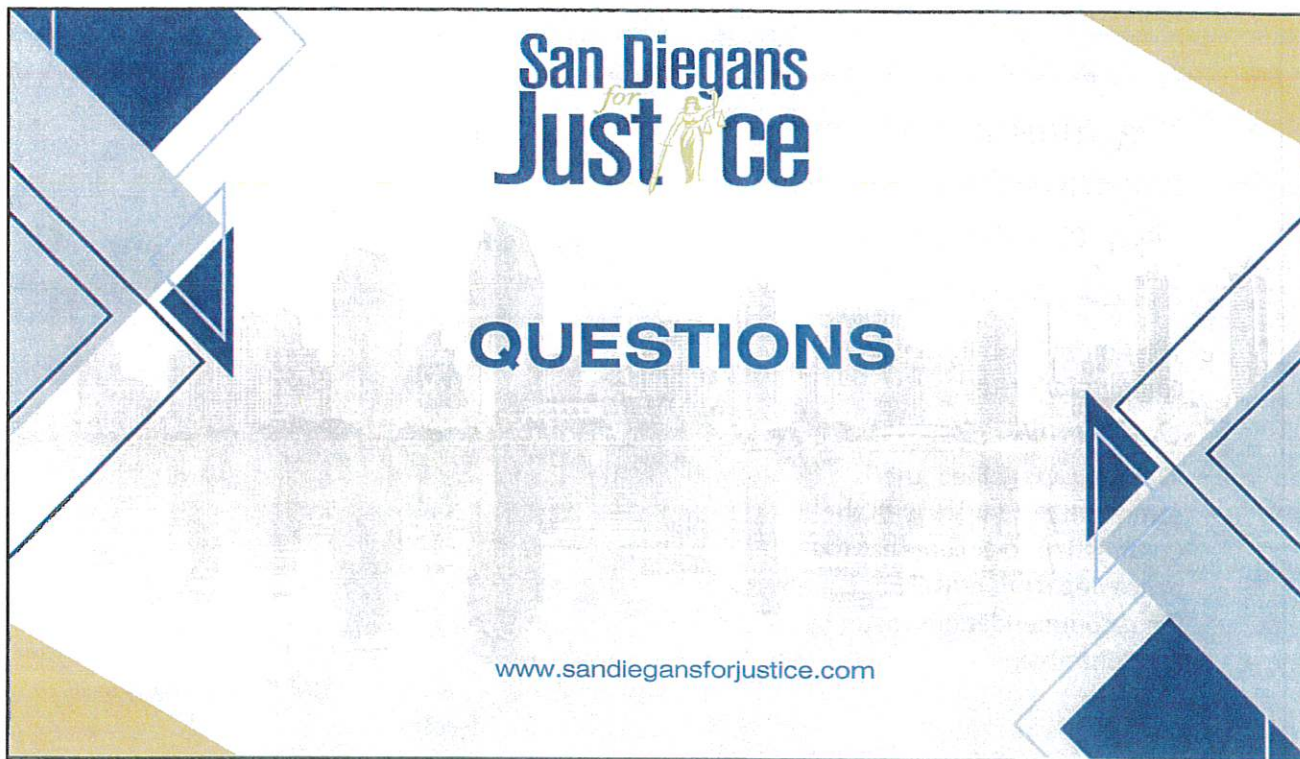
13

Create the Commission the community needs

- Consult the community
- Consult the voter's ordinance
- Lobby city counsel to expand CPP powers and duties



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Additional History of the Struggle for Measure B

The struggle to reform the Community Review Board started with the experiences of many people during Occupy San Diego in 2011. The Occupiers were subjected to numerous incidents of police brutality and misconduct. As a consequence, the Occupy Legal Team/National Lawyers Guild collected 17 complaints from Occupiers and presented them to the CRB. To our surprise, we learned at a subsequent CRB meeting that these complaints had never been seen by the CRB and apparently simply discarded by the SDPD. Subsequent civil lawsuits from a number of the complainants resulted in substantial monetary settlements from the City, so clearly the complaints were not frivolous.

Upon learning of this, the NLG and Women Occupy San Diego joined forces to investigate how to make the CRB truly accountable to the community. We met with numerous people, including former CRB members and other community members, to collect ideas. Together with Jude Litzenberger, an attorney and former CRB member, and an attorney member of the Earl B. Gilliam Bar Association, I drafted our first proposal to reform the CRB.

We took this proposal to numerous community organizations for discussion and support. We met with those City Councilmembers who would meet with us (several would not). We met with then Chief of Police Zimmerman. We made numerous revisions to our proposal, which was lengthy and detailed.

At one of the community meetings, I met Andrea St. Julian who was interested in our project. She joined with us and proposed to revise our proposal. She conducted substantial research including legislation from numerous other jurisdictions and information from NACOLE and drafted what eventually became Measure B. It was significantly better than what we had written and did include our main points about independence and transparency. She taught us about the difference between a Board (subject to the Mayor) and an independent Commission. She also advised us to remove many of the details we had provided, leaving that to the implementation Ordinance. It is a brilliant piece of work.

We took this new proposal again to many community organizations, eventually enlisting over 50 groups to sign on in support of it. We met with all of the City Councilmembers. We met with then-chief Nisleit. We made a presentation to the then-CRB. Once Myrtle Cole was replaced by Monica Montgomery Steppe, we had a strong advocate on the City Council. In addition, the Youth Council of Mid-City CAN, led by Yasmeen Obeid, took on CRB reform as their project. Their participation was essential to the success of Measure B.

Finally, after many City Council meetings and dealing with political shenanigans, the Council voted to place Measure B on the November 2020 ballot. At that time, Andrea proposed that we form a PAC to be able to fundraise and do political work on behalf of Measure B. In 2019, San Diegans for Justice was formed as that PAC. Following the election, SDJ has transformed into a non-profit organization engaged in work involving criminal justice and other issues, led by Andrea and Marisa Talbert.

As you know, Measure B was passed with about 75% of the vote. Interestingly, the SDPD and Police Union chose not to overtly oppose Measure B. Their opposition came later.

After Measure B was passed, the struggle continued in drafting and passing the Implementation Ordinance. This task was given to the City Attorney's office, who took 7 months to present their first draft. This draft was to be skewed toward protecting the City and the SDPD (whom the City Attorney represents) that it was rejected. WOSD, NLG, SDJ, Mid-City CAN and other groups actively opposed the ordinance as written and presented numerous issues with the ordinance. Andrea wrote her own

proposed Ordinance, which was significantly better. We held a press conference at which she presented her Ordinance and we also raised the issue of the conflict at the City Attorney's office. Andrea's Ordinance was not adopted by the City. However, based on our vocal opposition to the City Attorney and the obvious conflict of interest, the City Attorney withdrew and the City Council obtained outside counsel to revise the proposed ordinance.

The CPP set up an ad hoc Transition Committee that also went through the proposed ordinance and made suggestions to the City Council, many of which were taken from Andrea's proposal. I was part of that Transition Committee, not as a voting member but as a representative of SDJ/WOSD and able to provide comment. The Committee was chaired by Doug Case and included Brandon Hilpert and three other members and met basically every Friday.

Patrick Anderson, a former CRB member and also on the Transition Committee, conducted numerous community forums and provided community input to the process.

The revised Implementation Ordinance was eventually presented to the City Council. Community members, organized by SDJ and WOSD, submitted comments. Some Councilmembers made changes in the Ordinance also, with which we disagreed.

After substantial unnecessary delay, the Implementation Ordinance was finally adopted by the City Council and the new CPP could be implemented with new members. During this lengthy transition period, as you know, many former CRB members resigned and those remaining did not have the capacity to handle all of the complaints that continued to be submitted. There was also a lengthy meet and confer process with the police union that created more delay and resulted in no changes to the ordinance.

All of this struggle was grassroots based, coming from the community, with the organizing done by a handful of committed activists. We are looking to you to carry forward our vision, as set out brilliantly by Andrea at your last meeting.

Presented by Kate Yavenditti
Member Women Occupy San Diego and San Diego Chapter National Lawyers Guild.

**Bylaws
City of San Diego
Commission on Police Practices**

Preamble

On November 3, 2020, the voters of San Diego approved Measure B creating a new independent Commission on Police Practices (CPP) replacing the Community Review Board on Police Practices (CRB). Per the City Charter amendment, the members of the CRB at the time of its dissolution became the initial CPP members. On October 3, 2022, the City Council, adopted an implementation ordinance specifying the number of Commissioners, term length, qualifications, and selection process. These Bylaws are the operating procedures for the Commission’s governance.

Article I. Name and Authority

Section 1. Name

The name of this Commission is the Commission on Police Practices, herein referred to as “the Commission.” The Commission was established by Measure B, approved by the voters in November 2020. The Commission on Police Practices is also known by the acronym “CPP.”

Section 2. Authority

The Commission operates in accordance with the following documents, listed in hierarchical order:

United States Constitution

California Constitution

California Statutes and Codes, including but not limited to the Government Code (Ralph M. Brown Act, Section 54950 et seq.; and Public Safety Officers Procedural Bill of Rights, Sections 3300-3311, Chapter 9.7, Division 4, Title 1), Penal Code (PC), Health and Safety Code, and Vehicle Code (VC)

San Diego City Charter, including but not limited to Article V, Section 41.2 - Commission on Police Practices

San Diego Municipal Code, including but not limited to Chapter 2, Article 2, Division 55 – Office of the Commission on Police Practices, and Chapter 2, Article 6, Division 11 – Commission on Police Practices

CPP Standard Operating Procedures (“rules and regulations” referenced in the charter)

San Diego City Council Policies

City of San Diego Administrative Regulations

Memorandum of Understanding (MOU) between City of San Diego and San Diego

Police Officers Association

CPP Bylaws

CPP Special Rules of Order

CPP Operational Standing Rules

CPP Administrative Standing Rules

Robert's Rules of Order, Newly Revised

National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics (Attached hereto as Exhibit A)

Parliamentary procedures of this Commission will be in accordance with these Bylaws and any Special Rules of Order adopted by the Commission. The default parliamentary authority for procedures that are not covered in these Bylaws or the CPP Special Rules of Order shall be the current edition of Robert's Rules of Order, Newly Revised.

Article II. Purpose, Mission, Duties, Powers, and Objectives

Section 1. Purpose and Mission

The purpose of the Commission on Police Practices is to provide an independent investigation of officer-involved shootings and in-custody deaths, and an unbiased evaluation of all complaints against the San Diego Police Department (SDPD) and its personnel, in a process that will be transparent and accountable to the community. The Commission will also evaluate and review SDPD policies, practices, training, and protocols and represent the community in making recommendations for changes. The mission of the Commission is to hold law enforcement accountable to the community and to increase community trust in law enforcement, resulting in increased safety for both the community and law enforcement.

Section 2. Duties

Per the City Charter, the Commission shall have the following mandatory duties:

- A. To establish operating procedures for its governance and the Commission's investigatory proceedings consistent with all applicable laws including the Charter, the Ralph M. Brown Act, the California Public Records Act, and all laws, rules, regulations, and collective bargaining agreements between the City and its recognized employee organizations that provide rights to City employees.
- B. Independently investigate and evaluate all deaths occurring while a person is in custody of the SDPD, all deaths resulting from the interaction with an officer of the SDPD, and all SDPD officer-related shootings.
- C. Prepare operating procedures for Commission investigators and/or Commissioners to have immediate access to the scene or area of: (1) An SDPD police officer-involved shooting; (2) Death or deaths resulting from an interaction with one or more SDPD police officer(s); (3) Death or deaths that occur while a person was in the custody of the SDPD; and (4) Investigations by SDPD of the events listed in items 1-3 of this section.

- D. Make findings upon the completion of any investigation, complaint review or evaluation.
- E. Receive, register, review, and evaluate all complaints against SDPD officers, except that the Commission will not review and evaluate complaints where the complainant has requested that the matter be handled without investigation, or where no specific allegation or police officer can be identified.
- F. Review and evaluate all factual findings and evidentiary conclusions of the SDPD arising from investigations of police misconduct, including internal investigations not resulting from a complaint, and all disciplinary decisions resulting from sustained findings.
- G. Review and evaluate SDPD's compliance with federal, state, and local reporting laws and requirements.
- H. Comply with all applicable federal, state, and local laws and regulations, including the City's Civil Service Rules, Personnel Regulations, Administrative Regulations, and collective bargaining agreements between the city and its recognized employee organizations in any interaction with City employees.
- I. Maintain a training program for individuals interested in appointment to the Commission. Upon appointment, Commissioners must also complete training to ensure their working knowledge of applicable laws and rules.
- J. Forward to SDPD a copy of any complaint received by the Commission that identifies an employee of the Department within five calendar days of the Commission's receipt of the complaint.
- K. Retain complaints and any reports or findings relating to complaints for at least five years or any longer period required by state law.
- L. Engage in outreach to address community groups and inform the public on the duties and responsibilities, policies, and ongoing operations of the Commission, including a roundtable in a community location to solicit public input on Commission function(s).
- M. Establish operating procedures for: (1) the preparation and submission of a semi-annual report to the Mayor and City Council regarding the exercise of the Commission's duties and powers; (2) the community to evaluate the commission's processes and performance; (3) the development, data collection, tracking, and reporting of community policing standards; (4) the Commission's communications with complainants regarding the status of their complaints; (5) public communications on the Commission's internet website, including providing to the public, as soon as practicable, as much information as permitted by law, on the status of the Commission's investigation of each complaint, the list of all complaints received, the Commission's findings on the

complaints it investigated, and all of the Commission's recommendations.

Section 3. Discretionary Powers

The Commission shall have the discretion to:

- A. Conduct independent investigatory proceedings, subpoena witnesses, and authorize enforcement of the subpoena.
- B. Investigate complaints against SDPD officers (in addition to the required investigations stated above), unless the complainant has requested that the matter be handled without an investigation, provided that the Commission determines that the complaint arises from any one of the following:
 - (1) an incident in which the use of force by a SDPD officer resulted in great bodily injury.
 - (2) dishonesty by a SDPD officer including an allegation of perjury, filing false reports, and destruction, falsifying or concealing evidence.
 - (3) an incident that has generated substantial public interest or concern.
 - (4) an incident where the data shows a pattern of misconduct by a SDPD officer.
 - (5) an incident where data shows a pattern of inappropriate policies, procedures, or practices of the Police Department or its member.
- C. Review, evaluate and investigate allegations of inappropriate sexual conduct, physical assault, or domestic violence by SDPD officers.
- D. Make recommendations to the Chief of Police on the discipline of individual officers about whom complaints have been made or about whom the Commission has conducted an investigation.
- E. Review and evaluate the Police Department's administration of discipline of police officers arising from other matters not involving alleged misconduct.
- F. Review and evaluate the policies, procedures, practices, and actions of the SDPD.
- G. Make specific recommendations to the Chief of Police, the Mayor and the City Council on any policies, procedures, practices, and actions of the SDPD.
- H. Develop and implement a mediation program that enables complainants to resolve their issues with a police officer who is a subject of a complaint, through face-to-face alternative dispute resolution involving a trained mediator.
- I. Establish an operating procedure to directly receive and investigate complaints by members of the public against SDPD employees who are not police officers.

Section 4. Outreach and Education

It is the objective of the Commission to operate transparently, to keep the community informed about the activities of the Commission, and to provide opportunities to receive public input on the Commission's operations. It is the further objective of the Commission to encourage persons with complaints about the actions of SDPD sworn personnel to file a complaint, to widely publicize the procedures for filing complaints and to make the process as simple as possible, and to enact mechanisms to ensure that persons filing complaints and witnesses will be able to do so without fear of retaliation or adverse consequences.

Section 5. Independence

The Commission on Police Practices maintains and defends an independent posture within which objective, balanced review, investigations, and evaluation processes will be assured. The ultimate usefulness of the Commission depends on independence from political pressure, independence from community pressure, and independence from influence or control by SDPD. In this regard, actual independence and perceived independence are equally important. Any action or activity that could present an appearance of compromised independence should be avoided. Commission independence is essential to earn the trust of the community and fulfill the mandate from the initial creation of the Commission by citizen initiative.

Article III. Membership

Section 1. Selection and Appointment

- A. There will be up to 25 Commissioners who must reside within the City of San Diego with the following categories:
 - (1) Nine Commissioners, one from each Council District
 - (2) Two Commissioners aged 18 to 24 at the time of appointment
 - (3) Five Commissioners residing in low-to-moderate income neighborhoods
 - (4) Nine Commissioners at large without additional age or residence restriction
- B. Effective June 30th, 2024, appointment to the CPP will be to a specific seat within a category for a 2-year term, with re-appointment for up to 3 additional consecutive 2-year terms. Only half of the Commissioners will be eligible for reappointment in any one year.
- C. The process for appointment to the CPP will be determined by the San Diego City Council. The primary concern for appointment of Commissioners will be to maintain full membership of the Commission. Recruiting to fill vacancies will focus on candidates for the specific seats that are vacant.
- D. Commissioners shall serve without compensation, but shall be reimbursed for authorized, reasonable and necessary expenses incurred in the performance of their official duties. Prior to assuming the duties of office, Commissioners must subscribe to the Oath of Office administered by the City Clerk's Office and sign the oath card. All Commissioners who are reappointed to the

Commission must retake the Oath of Office and sign a new oath card. Once Commissioners take the Oath of Office and sign the oath card, they are considered voting members of the Commission.

Section 2. Responsibilities

Commissioners have the following responsibilities:

A. Meeting Attendance

The substantive work of the Commission cannot be accomplished in the absence of a quorum. To accomplish the work of the Commission, Commissioners are expected to be in attendance and participate in meetings. Meeting attendance shall be in accordance with the Brown Act. Any Commissioner with an unexcused absence from at least three (3) consecutive meetings of the full Commission may be removed from the Commission per Article III, Section 3.B. of these bylaws. Commissioners may request to be excused from a meeting by contacting the Chair and Executive Director no later than 12 noon on the day of the meeting. An excused absence can be granted by the Chair for the following reasons:

- (1) Illness or health
- (2) Out of Town
- (3) Work/School, but not on a regular basis
- (4) Religious observance
- (5) Extraordinary Circumstances

B. Case Review

Commissioners may be assigned by the Chair, or their designee, to review and evaluate complaints and investigations of misconduct in accordance with the current Operational Standing Rule for Case Review. Commissioners must sign a confidentiality agreement. Commissioners cannot take part in Closed Session meetings or review cases without signing the confidentiality agreement.

C. Committee Participation

Commissioners are required to participate on at least one of the standing committees of the Commission.

D. Training

Commissioners are required to pursue and complete educational opportunities as determined by the Training and Continuing Education Committee.

E. Community Outreach

Commissioners shall participate in community outreach activities as determined by the Community Outreach Committee.

Commissioners can speak in public about the role of the Commission to provide education for the community. Only the Commission Chair is the

spokesperson for the Commission on issues that require public comment.

F. Ethical Conduct

To promote public trust, integrity, and transparency, members are expected to adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics. The NACOLE Code of Ethics includes Personal Integrity, Independent and Thorough Oversight, Transparency and Confidentiality, Respectful and Unbiased Treatment, Outreach and Relationship with Stakeholders, Agency Self-examination and Commitment to Policy Review, and Primary Obligation to the Community. The complete NACOLE Code of Ethics is attached as Exhibit A of these bylaws.

Any actual or perceived conflict of interest during case review shall be avoided. Conflict of interest exists when a member has an outside financial interest or a personal relationship with someone involved in the case or has intimate knowledge of the facts of the case. Commissioners shall avoid any situation where they have a conflict of interest by immediately notifying the Chair or Executive Director requesting either to be excused from review of the case or to have the case reassigned. Active involvement in other boards, committees or organizations could pose an actual or perceived conflict of interest with membership on the Commission. Commissioners shall disclose all potential conflicts to the Chair or Executive Director immediately. The complete Conflict of Interest Policy and Form is attached as Exhibit B of these bylaws.

Section 3. Removal

A. Voluntary Resignation

Any Commissioner can voluntarily resign by sending a letter or email of resignation to the Commission Chair and the Executive Director. A Commissioner's written notice of resignation is required by the City Clerk and becomes a matter of public record. Once the letter has been received, the position shall be considered vacant.

B. Removal for Cause

A Commissioner may also be removed for cause including but not limited to the following reasons: (1) misuse of position as a Commissioner; (2) misuse of police-issued documents; (3) violation of state laws of confidentiality; (4) misconduct or conviction of a crime that impedes the member's ability to serve as an effective and impartial Commissioner; (5) unexcused absences from at least three consecutive meetings or by failure to complete case review as assigned; (6) violation of the NACOLE Code of Ethics; or (7) an undisclosed conflict of interest.

Upon receiving information that a Commissioner has engaged in behavior that may subject the member to the removal for cause action, the Cabinet shall investigate or arrange for an investigation of the situation. If after the investigation, it appears that cause exists for removal, the Commissioner shall be invited to meet with the Executive Director and the Cabinet. After that meeting, the Cabinet shall determine whether to proceed with removal

proceedings. If it is determined to proceed, the matter will be placed on the next regular Commission Open Meeting agenda. The Commissioner will have an opportunity to present a defense and answer questions. By a two-thirds vote, the Commission may recommend to the City Council that the member be removed. The affected Commissioner shall not be entitled to cast a vote in the matter. A hearing by the City Council shall occur within sixty (60) days of the receipt of the recommendation.

Article IV. Officers

Section 1. Officers of the Commission

The officers of this organization shall be Chair, First Vice Chair, and Second Vice Chair. These elected officers shall be referred to collectively as the Cabinet.

No individual shall hold more than one office at any time. An individual may serve no more than two consecutive terms in the same office and becomes eligible again to serve in that office after a period of two years commencing at the conclusion of their second term.

Section 2. Election and Succession

A. Election

Officers are elected at the last Open Meeting of the fiscal year to serve a one-year term in conjunction with the next fiscal year. The Nominating Committee (see Article VI, Section 3.A.) will present at least one nomination for each office. Prior to the vote for each office, additional nominations will be taken from the floor. Officers will be elected individually in order of precedence, starting with the Chair.

Officers must receive a majority vote of the Commission. If no candidate receives a majority, then a runoff will be held between the candidates with the two highest numbers of votes.

If the last scheduled Open Meeting of a fiscal year is not held, officers shall continue to serve until their successors are elected and assume office.

B. Vacancies

If the office of Chair becomes vacant, the First Vice Chair becomes Chair for the unexpired term. If the office of First Vice Chair becomes vacant, the Second Vice Chair becomes First Vice Chair for the unexpired term. If the office of Second Vice Chair becomes vacant, an election, with nominations taken from the floor, will be held at the next Open Meeting of the Commission to fill the office for the remainder of the unexpired term.

If the offices of Chair, First Vice Chair and Second Vice Chair all become vacant at the same time, the Executive Committee shall appoint a Commissioner to serve as Acting Chair for a period of sixty days, during which time elections will be held to fill the vacancies for the unexpired term. Such elections will take nominations from the floor and elect officers individually in order of precedence by roll call vote. Notice of such elections

shall be given thirty days ahead of the election date.

Section 3. Powers and Duties

The officers of this organization shall fulfill the duties of office while always acting for the good of the entire Commission.

A. Chair

The Chair shall have the following powers and duties:

- (1) To serve as Chair for all meetings, Closed and Open, of the Commission.
- (2) To serve as Chair for all meetings of the Executive Committee.
- (3) To serve as a member of the Cabinet.
- (4) To set the agenda for all Commission, Executive Committee, and Cabinet meetings in consultation with the Executive Director.
- (5) To act as the spokesperson for the Commission, to make official statements for the Commission, or to delegate this responsibility to another Commissioner.
- (6) To coordinate with the Executive Director on communication between the Commission and the Mayor, the San Diego City Council, and the Chief of Police.
- (7) To appoint Chairs and members for all Committees of the Commission.
- (8) To be an ex officio member and ensure effective functioning of all committees of the Commission.
- (9) To perform such other duties as may be conferred by vote of the Commission.

B. First Vice Chair

The First Vice Chair shall have the following powers and duties:

- (1) To fulfill the duties of the Chair in the absence of the Chair.
- (2) To serve as a member of the Executive Committee.
- (3) To serve as a member of the Cabinet.
- (4) To oversee training of new members with the Training and Continuing Education Committee.
- (5) To perform such other duties as may be conferred by vote of the Commission or requested by the Chair.

C. Second Vice Chair

The Second Vice Chair shall have the following powers and duties:

- (1) To fulfill the duties of the Chair in the absence of the Chair and 1st Vice Chair.
- (2) To serve as Chair for the Executive Committee Meeting in the absence of the Chair and First Vice Chair.
- (3) To serve as a member of the Executive Committee.

- (4) To serve as a member of the Cabinet.
- (5) To act as or designate a Parliamentarian for the Commission. The proposed parliamentarian is subject to approval by a majority vote of the Commission.
- (6) To perform such other duties as may be conferred by vote of the Commission or requested by the Chair.

D. Cabinet

The Cabinet shall:

- 1) Investigate allegations of impropriety against any Commissioner and make recommendations resulting from such investigations.
- 2) Provide supervision of and consultation with the Executive Director to ensure the Commission fulfills its purpose, mission, duties, powers, and objectives.

Article V. Meetings

Section 1. General

Meetings of the Commission shall be held regularly in order to carry out the objectives and purposes of the organization. Notice of time, place and agenda shall be provided to the Commission and the public at least 72 hours before the scheduled time of every meeting in accordance with the Ralph M. Brown Act.

Section 2. Regular Meetings

Regular Meetings are normally held at least once per month to transact business and to hear presentations. Regular Meetings provide a forum in which to communicate with the public, to advise the community on the business of the Commission, and to hear public testimony on issues under the Commission's purview. Individual cases are not discussed in open meetings.

Section 3. Closed Sessions

Closed Sessions are held pursuant to California Government Code Section 54957 to provide a confidential environment in which (1) to review complaints and investigations regarding SDPD Officers in accordance with California Penal Code Section 832.7 or (2) to discuss personnel or other information that is specifically exempt from public disclosure by law. Attendance by anyone other than Commissioners and staff is by invitation.

Section 4. Special Meetings

Special Meetings can be held as needed. A Special Meeting may be called by the Chair, the Cabinet, or by a majority vote of Commissioners. Notice of a Special Meeting shall state the topic(s) to be discussed, and no other business may be considered during the Special Meeting.

Section 5. Voting and Quorum

Only Commissioners can vote on issues before the Commission and are counted to determine the presence of a quorum. The Chair is not required to vote; however, the

Chair may vote whenever their vote will affect the result.

No formal action can be taken without a quorum. The requirement for a quorum shall be a majority of filled seats on the Commission.

Article VI. Committees

Section 1. General

Committees of the Commission shall be formed to carry out the primary objectives of the Commission and to maintain functions necessary to sustain the Commission. Committees shall limit their business to the purpose identified in this document or the purpose identified at their inception. Committees shall conduct their business in a manner consistent with these Bylaws and the Standing Rules of the Commission. Committees shall not take any final action on behalf of the Commission or issue any official communication. The Chair may appoint community members as advisors to a committee.

Committees fall into two categories: Standing Committees and Ad Hoc Committees. Standing Committees require a constant presence to carry out long-term ongoing functions of the Commission. Ad Hoc Committees either support periodic functions of the Commission that do not require a constant presence for service or are formed to accomplish specific, short-term tasks that are not within the assigned function of any Standing Committee or any other Ad Hoc Committee.

Committee Chairs of all committees shall be Commissioners. Unless otherwise specified herein, Standing Committee Chairs shall be appointed by the Commission Chair to serve a one-year term. Ad Hoc Committee Chairs shall be selected by a majority vote of the Ad Hoc Committee members and can serve until their committee is disbanded.

Standing Committee Chairs have the following tasks:

- A. Conduct Committee meetings at least quarterly or more often as needed.
- B. Support the Brown Act requirement for public notice with an agenda in advance and opportunities for public comment.
- C. Report on Committee activities at Open Meetings and make recommendations for Commission action.
- D. Contribute a summary of Committee activities and accomplishments for the CPP Semi-Annual Reports.
- E. Serve as a member of the Executive Committee.

Section 2. Standing Committees

Notice of Standing Committee meeting time, place and agenda shall be provided to Committee members and the public at least 72 hours before the scheduled meeting time. Except for the Executive Committee, Standing Committees are limited to no more than seven (7) Commissioner members.

A. Executive Committee

The Executive Committee has continuing jurisdiction over the effective and ethical functioning of the Commission. The Chair of this Committee is the Commission Chair. Members of the Executive Committee are the elected officers of the Commission and Standing Committee Chairs. Regular meetings of the Executive Committee shall be held monthly, or at the discretion of the Chair. The Executive Committee shall have the responsibility for facilitating the annual performance review of the Executive Director. The Executive Committee may advise the Executive Director on finance and budget issues.

B. Policy Committee

The Policy Committee shall evaluate recommendations from Commissioners and members of the community for improvements to SDPD policy, procedure, training or administration of discipline of police officers. The result of the evaluation shall be presented to the Commission. The Policy Committee may recommend Commission action to forward suggested improvements to the Chief of Police.

C. Training and Continuing Education Committee

The Training and Continuing Education Committee shall develop and implement a training program for new Commissioners. The Committee will arrange presentations on subjects of interest at the Regular Business Meetings of the Commission. The Committee also arranges additional training opportunities and field trips for the Commission.

D. Community Outreach Committee

The Community Outreach Committee shall support the Commission's outreach and education objectives to inform the public and seek feedback regarding the Commission's work.

E. Rules Committee

The Rules Committee shall evaluate recommendations from Commissioners for amendments to these Bylaws, to Special Rules of Order, to Standing Rules and to other operational procedures. The Rules Committee is responsible to ensure that a proposed amendment does not violate or conflict with any existing provision in these Bylaws or any other rules that govern the Commission. The result of the evaluation shall be presented to the Commission.

F. Recruitment Committee

The Recruitment Committee shall engage in activities to recruit new members for the Commission, inform interested individuals about the Commission, interview prospective members, and select nominees to recommend to the City Council.

Section 3. Ad Hoc Committees

Ad Hoc Committees may be formed as needed by the Commission Chair or by a majority vote of the Commission for an assigned specific task. Unless extended by a vote of the Commission, each Ad Hoc Committee is disbanded at the completion of the assigned task. Ad Hoc Committees are limited to no more than seven Commission members.

A. Nominating Committee

The Nominating Committee is a recurring ad hoc committee that shall be formed annually to facilitate election of officers. Three Commissioner of the Nominating Committee shall be elected by the Commission with nominations taken from the floor. The Nominating Committee shall recruit Commissioners who are willing and qualified as candidates for each office. The Nominating Committee shall present to the Commission at least one nomination for each office prior to the last scheduled Open Meeting of the fiscal year. The Nominating Committee shall be disbanded following the election of Commission officers.

Article VII. Administration

Section 1. Executive Director

The Executive Director is appointed by the City Council and serves at the will and direction of the Commission. The Executive Director or their designee is responsible for facilitating the work of the Commission, including, but not limited to, the following tasks:

- A. Interface with community members, respond to inquiries and receive complaints.
- B. Direct the day-to-day operations of the Commission.
- C. Liaison between the Commission and City departments, in particular SDPD and the City Attorney's Office.
- D. Maintain records and prepare of reports, including semi-annual reports to the Mayor and City Council.
- E. Hire and supervise Commission staff, independent contractors, and consultants.
- F. Arrange for the preparation of and dissemination of all meeting notices for the CPP and committee meetings as required by the Ralph M. Brown Act.
- G. Attend all CPP meetings and provide staff support for committee meetings.
- H. Serve as custodian of the Commission's records, in compliance with all applicable laws related to records retention, protection, confidentiality and disclosure.
- I. Arrange for the preparation of and dissemination of the minutes of all CPP and committee meetings.

The Commission shall conduct a formal performance evaluation of the Executive Director on an annual basis in a manner consistent with the evaluation process used by the City's Human Resources Department.

Section 2: Independent Legal Counsel

The Commission shall retain its own Legal Counsel, who is independent of the City Attorney for legal support and advice in carrying out the Commission's duties and actions. The Legal Counsel may be a Commission employee or independent contractor hired by the Executive Director, with the approval of the Cabinet.

Article VIII. Amendment

Section 1. CPP Bylaws

Bylaws describe organizational structure, eligibility requirements of the Commissioners, the terms, responsibilities and powers of the officers, types of meetings, specification of a quorum, identity of standing and ad hoc committees, the duties and responsibilities of each committee, and identity of a parliamentary authority. Amendment of these Bylaws requires a two-thirds vote of Commissioners at a regularly scheduled Open Commission meeting. Proposed amendments must be submitted by a Commissioner as defined in and reviewed by the Rules Committee. The proposed content and the Rules Committee evaluation must be submitted in writing to all Commissioners at least ten days before the meeting where the vote will be taken.

Section 2. CPP Special Rules of Order

Special Rules of Order define and clarify parliamentary procedures that are different from the specifications of the identified parliamentary authority. Special Rules of Order may be adopted, amended, or deleted by a two-thirds vote of Commissioners at a regularly scheduled Open Commission meeting. Proposed amendments must be submitted by a Commissioner and reviewed by the Rules Committee. The proposed content and the Rules Committee evaluation must be submitted in writing to all Commissioners at least ten days before the meeting where the vote will be taken.

Section 3. CPP Operational Standing Rules

Operational Standing Rules define and clarify operational procedures for any interface between this organization and all other City Departments. Operational Standing Rules may be adopted, amended, or deleted by a majority vote of Commissioners at a regularly scheduled open Commission meeting. Proposed amendments must be submitted by a Commissioner and reviewed by the Rules Committee. The proposed content and the Rules Committee evaluation must be submitted in writing to all Commissioners at least ten days before the meeting where the vote will be taken. Commission-approved Operational Standing Rules become effective when reviewed and approved by the City Council.

Section 4: CPP Administrative Standing Rules

Administrative Standing Rules define and clarify internal procedures for this organization. Administrative Standing Rules may be adopted, amended, or deleted by a majority vote of Commissioners at a regularly scheduled Open Commission meeting.

Proposed amendments must be submitted by a Commissioner and reviewed by the Rules Committee. The proposed content and the Rules Committee evaluation must be submitted in writing to all Commissioners at least ten days before the meeting where the vote will be taken.

Approved by vote of the Commission on Police Practices on March 6, 2024

Attachments:

- A. NACOLE Code of Ethics
- B. CPP Conflict of Interest Policy and Disclosure Form



National Association for Civilian Oversight of Law Enforcement

Code of Ethics

PREAMBLE

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

PERSONAL INTEGRITY

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when a significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

INDEPENDENT AND THOROUGH OVERSIGHT

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional, or political consequences.

TRANSPARENCY AND CONFIDENTIALITY

Conduct oversight activities openly and transparently, providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

RESPECTFUL AND UNBIASED TREATMENT

Treat all individuals with dignity and respect, and without preference or discrimination including, but not limited to: age, ethnicity, citizenship, color, culture, race, disability, gender, gender identity, gender expression, housing status, marriage, mental health, nationality, religion, sexual orientation, socioeconomic status, or political beliefs, and all other protected classes.

OUTREACH AND RELATIONSHIPS WITH STAKEHOLDERS

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialogue with your stakeholders. Educate and learn from the community.

AGENCY SELF-EXAMINATION AND COMMITMENT TO POLICY REVIEW

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

PROFESSIONAL EXCELLENCE

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

PRIMARY OBLIGATION TO THE COMMUNITY

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

The following oversight agencies have adopted the NACOLE Code of Ethics:

- Citizen Oversight Board, City & County of Denver, CO
- Citizens' Law Enforcement Review Board, San Diego County, CA
- Citizens' Review Board on Police Practices, San Diego, CA
- Civilian Review Board, Eugene, OR
- Independent Review Panel, Miami, FL
- Milwaukee Fire and Police Commission, Milwaukee, WI
- Office of Citizen Complaints, San Francisco, CA
- Office of Community Complaints, Kansas City, MO
- Office of Police Complaints, Washington, D.C.
- Office of Professional Accountability, Seattle, WA
- Office of the Community Ombudsman, Boise, ID
- Office of the Independent Monitor, City & County of Denver, CO
- Office of the Independent Police Auditor, Bay Area Rapid Transit District, San Francisco, CA
- Office of the Independent Police Auditor, San Jose, CA
- Office of the Police Auditor, Eugene, OR
- Office of the Police Ombudsman, Spokane, WA
- Richmond Police Commission, Richmond, CA

The Commission on Police Practices adopts this Conflict-of-Interest Policy (“Policy”) to ensure the proper independence and impartiality of the Commission, and to foster unquestioned public confidence in the Commission’s independence and institutional integrity as a properly administered civilian oversight agency for purposes of due process, transparency, and accountability.

As a body that may potentially influence personnel decisions and public safety policies or procedures, it is recognized that Commissioners must be seen to be fair, independent, impartial, and objective in regard to decisions made. To the extent that this function is compromised, the Commission will not be able to function in an oversight role effectively or as a matter of law.

It is the Policy of the Commission on Police Practices that real or perceived conflicts of interest must be reported at the earliest opportunity. It is also the Policy of the Commission that real or perceived conflicts of interest shall be publicly disclosed by Commissioners in furtherance of the mission and purpose of the Commission to be fair, independent and impartial, transparent and accountable to the public.

SCOPE

1. This Policy provides an independent framework for the proper conduct of Commission affairs. It should not be relied upon as an exclusive or comprehensive list of applicable legal or fiduciary requirements of conduct. It does not attempt to specify possible activity that might be inappropriate or prohibited under applicable conflict of interest laws and regulations.
2. Nothing in this Policy exempts any person from any other applicable City law, Conflict-of-Interest Code, or regulation. The standards of conduct set forth in this Policy are in addition to all other applicable City of San Diego conflict of interest policies, laws, and regulations.
3. This Policy is in addition to the California Political Reform Act and City of San Diego Code of Ethics. The Political Reform Act requires state and local government agencies to adopt conflict of interest codes. The Fair Political Practices Commission has adopted a regulation that may be incorporated by reference in an agency’s code. The terms of this regulation (Cal. Code Regs., tit. 2, § 18730) and any duly adopted amendments are hereby referenced by this Policy.

ADDRESSING CONFLICTS OF INTERESTS

1. A Commissioner who becomes aware of a personal conflict of interest or the appearance of a personal conflict of interest that affects their duty as a Commissioner has an immediate obligation to disclose that conflict to the Executive Director and Chair by filing a **Conflict-of-Interest Disclosure Form** incorporated into, and attached to, this Policy.
2. Any Commissioner who has a personal interest in a complaint, investigation, or matter before, or likely to come before, the Commission who will or is expected to participate in that decision must file a **Conflict-of-Interest Disclosure Form** with the Executive Director and Chair at the earliest opportunity.
3. The Commissioner must recuse themselves from any participation, whether direct or indirect, in any Commission action or decision that may reasonably be expected to affect their interest consistent with this Policy, City of San Diego Code of Ethics and San Diego Municipal Code section 26.1106.

DUTY TO DISCLOSE AT MEETING

1. Any Commissioner who has a personal interest in a complaint, investigation, or matter before, or likely to come before, the Commission who will or is expected to participate in that decision must, following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences, do the following:
 - a. Publicly identify the personal interest giving rise to the conflict and request that this disclosure be made part of the record of the proceedings;
 - b. Recuse themselves from discussing, voting, or attempting to use their influence to affect the outcome of this matter;
 - c. Leave the room until after the discussion and vote on the item in question;
 - d. In the event the discussion or vote is to occur in Closed Session, the public identification may be made orally during the Open Session before the body goes into Closed Session and may be limited to a declaration that their recusal is because of a conflict of interest on a particular closed session item, and that the Commissioner is recused from any participation on the Closed Session item.

DISCLOSURE AND PUBLIC RECORDS

Any disclosures made by Commissioners on a Conflict-of-Interest Disclosure Form shall be maintained by the Commission and subject to public disclosure under the requirements of the California Public Records Act, Government Code sections 6250 et seq.

Commission on Police Practices Conflict-of-Interest Disclosure Form

A potential or actual conflict of interest exists when involvement or participation of Commissioners in complaints, actions, or activities regarding the San Diego Police Department (SDPD) could compromise the independence, impartiality, and due process required by the Commission on Police Practices to fulfill its mission and purpose.

Under San Diego City Charter section 41.2, the Commission on Police Practices is an investigatory body of the City, independent of the Mayor, Police Chief, and Police Department. The Commission's purpose is:

- (1) To provide independent community oversight of the Police Department, directed at increasing community trust in the Police Department and increasing safety for both community members and police officers;
- (2) To perform independent investigations of police officer-involved shootings, in-custody deaths, and other significant incidents involving the Police Department, and independent evaluations of complaints against the SDPD and its personnel, in a process that is transparent and accountable to the community; and
- (3) To evaluate and review Police Department policies, practices, training, and protocols, and represent the community in making recommendations for changes.

Under San Diego Municipal Code section 26.1106, grounds for removal of a Commissioner may include, but are not limited to: misuse of their position for personal interests; misuse of records; conduct that impedes a Commissioner's ability to serve impartially and independently; violation of the Code of Ethics for Civilian Oversight of Law Enforcement (NACOLE); or any other cause that impacts the Commission's effective operations, standing, or independence.

Any conduct by a Commissioner that could cause an actual or perceived conflict of interest regarding the independence or impartiality of the Commissioner or the Commission must be publicly disclosed. Depending on the nature of the disclosure or conflict, the Commissioner may be recused from involvement or participation in actions by the Commission regarding a particular agenda item, action, or recommendation.

This Conflict-of-Interest Disclosure Form must be filed with the Executive Director and Chair and indicate:

- Whether a commissioner has any actual or perceived interest, involvement, or participation in any complaint or actions coming before the Commission.
- A Commissioner should disclose any personal, business, or volunteer affiliations that may give rise to a real or perceived conflict of interest.
- Any actions or interests that would reasonably appear to affect the independence and impartiality of the Commissioner, or potentially compromise the independence and impartiality of the Commission should be disclosed on this form.

Commissioners with a conflict of interest should refrain from any participation in affected complaint(s), matters, or actions involving the Commission. The Commission's General Counsel or Outside Legal Counsel may be consulted regarding this disclosure and/or mandatory recusal.

Please use the form on the next page.

**Commission on Police Practices
Conflict-of-Interest Disclosure Form**

Please describe below any relationships, involvement, transactions, interests or circumstances that you believe could contribute to a conflict of interest.

Agenda Item or Commission Action: _____

_____ I have the following conflict of interest to report involving a family member, or personal, business, volunteer, or professional relationship:

1. _____
2. _____
3. _____

_____ I have the following conflict of interest to report involving my personal interest, or involvement in a complaint, action, or matter before the Commission:

1. _____

2. _____

3. _____

I acknowledge that this Conflict-of-Interest Form constitutes a public record under the California Public Records Act or Government Code sections 6250 et seq.

I hereby certify that the information set forth above is true and complete to the best of my knowledge.

Signature: _____ Date: _____

Print Name: _____

Please submit this form to the Commission on Police Practices Executive Director and Chair.

Commission on Police Practices

Interim Standard Operating Procedures

The Commission on Police Practices (Commission) has several functions, including conducting independent investigations, beyond those of its predecessor, the Community Review Board on Police Practices (CRB). The purpose of these Interim Standard Operating Procedures is to allow the case review and policy recommendation functions of the Commission to continue uninterrupted while new Standard Operating Procedures are being developed and adopted. Interim Standard Operating Procedures shall be subject to the statutory timelines and other requirements of the California Public Safety Officers Procedural Bill of Rights (“POBOR”), including any legislative or case law changes to POBOR, as well as applicable state and federal laws.

The responsibility of responding to complaints against the San Diego Police Department (SDPD) is shared between SDPD, primarily the Internal Affairs (IA) Department, and the Commission. The collaborative relationship between the two is important for a fair and objective process that gives serious consideration to community members and SDPD officers equally. The process is improved by both organizations working together. While cooperation is key, independence of each organization is crucial.

1. Complaint Process

Complaints are submitted either through the Commission or at multiple locations with SDPD. The Commission must receive, register, review and evaluate all complaints. Complaints submitted via the SDPD shall be transmitted to the Commission in a timely manner.

SDPD Role

Coordination between SDPD and the Commission is required throughout the process, starting with complaint intake, through preparation of the case file, discussion during Commission review (including any Team requests for additional allegations or additional investigation as well as any disagreement), and, finally, preparation for presentation at a Closed Meeting of the full Commission.

SDPD Complaint Investigations

Each complaint regarding an officer, whether generated through the Commission or an alternate process, is investigated by SDPD. Complaints involving any allegations of unlawful arrest or detention, excessive force, discrimination, slur, search and seizure violations, or criminal conduct are investigated by Internal Affairs (IA). Less serious complaints that involve only allegations of courtesy, procedure, conduct and service are investigated by the subject officer’s SDPD Division. The investigating officer is responsible for completing a thorough investigation and writing an investigative report that is fair to both the complainant(s) and subject officer(s). Results of investigations are documented in the Investigator's Report. A complaint may contain more than one allegation. At the conclusion of the investigation IA makes one of the following findings for each allegation:

- I. Sustained – the Department member committed all or part of the alleged acts of misconduct;
- II. Not Sustained – the investigation produced insufficient information to

clearly prove or disprove the allegations;

- III. Exonerated – the alleged act occurred was justified, legal and proper, or was within policy; or
- IV. Unfounded – the alleged act did not occur.

The Investigator’s Report, including the finding(s), and all related material in the SDPD investigation file are forwarded to the Commission, via the Executive Director, for their review. The Executive Director shall implement procedures to ensure compliance with all legal confidentiality requirements.

2. Commission Case Review

The Commission currently reviews the IA Investigator’s Report and all related material including the finding(s) by IA and conducts its review. (In the future, if a case is referred for an independent investigation, the Commission will also review the Commission Investigator’s Report.)

For less serious cases (allegations of courtesy, procedure, service or conduct), the Commission may elect to conduct an audit in lieu of a detailed review, utilizing the audit procedures adopted by the former CRB.

Cases are assigned to teams by the Commission. The Case Review Team (Team) reviews the Investigator’s Report and all related materials and develops a Case Review Team report (Report). That Report includes a review of the finding(s) by IA with the Team making one of the following conclusions:

- I. Agree – The finding(s) by IA is correct;
- II. Agree with Comment – The finding(s) by IA is correct and additional information from the case review should be noted (comments may include, but are not limited to, the appropriateness of the tactics employed by the subject officer);
- III. Disagree with Comment – The finding(s) by IA is incorrect; or
- IV. Refer for Commission Investigation – If the complaint meets one or more of the criteria stipulated in Charter section 41.2 for a discretionary investigation, the Commission may elect to keep its case open until an independent investigation can be conducted.

Upon conclusion of the case review, the Team presents the Report, including the conclusion, to the full Commission in Closed session. The Commission hears the case and takes action regarding the final disposition of the case. The results of the Commission action are provided to the complainant and the case is then closed.

A summary of each case, with personally identifiable information redacted as required by law, shall be included in the Commission’s semiannual report to the Mayor and City Council. Within one month after a summary is completed and approved by Commission’s legal counsel, it will be posted on the Commission website.

In the event that the Commission considers every possible finding and is unsuccessful in reaching the required majority vote to indicate a position on one or more findings, the Commission may close the case by vote of the Commission as a failure to achieve consensus.

Charter section 41.2 states that the Commission “is authorized to refer any matter before the Commission to the grand jury, district attorney, or any other governmental agency that is authorized by law to investigate the activities of a law enforcement agency.” Other governmental agencies could include the Department of Justice or Federal Bureau of Investigation.

In all cases where there is disagreement with an IA finding, disagreements are recorded and highlighted in semiannual reports to the Mayor and City Council.

Charter section 41.2 gives the Commission the discretion to independently investigate complaints that meet specified criteria. These Interim Standard Operating Procedures are not intended to restrict the Commission from conducting such investigations once procedures for conducting investigations have been adopted.

3. Shooting Review and In-Custody Death Cases

Charter section 41.2 states that the “Commission must independently investigate all deaths occurring while a person is in the custody of the Police Department; all deaths resulting from interaction with an officer of the Police Department; and all City police officer-related shootings. The Commission has this duty whether or not a complaint has been made against a police officer or the Police Department. These investigations must be conducted by Commission staff or contractors who are independent of the Police Department, and in accordance with the officer’s federal and state law rights.” While the Commission is developing procedures to conduct such investigations, it may continue to review the investigations of the Police Department as specified below; however an independent investigation by the Commission, as required by the City Charter, shall be subsequently conducted.

An Officer Involved Shooting (OIS) case is initiated automatically by an incident in which an SDPD officer fires a gun at a person. An In-Custody Death (ICD) case is initiated automatically by the death of a subject in the custody of SDPD.

There is extensive investigation into an OIS or an ICD by the SDPD Homicide Unit and by the District Attorney. Upon the conclusion of those investigations IA prepares a report that is reviewed by the Commission. Generally speaking the OIS and ICD cases are handled by Teams in the same manner as complaints within the Commission jurisdiction.

4. Review of SDPD Discipline by the Commission

When disciplinary action is taken against an officer by the Chief of Police as a result of a sustained finding of misconduct, the Chief of Police or designee will notify the Commission. The

original Case Review Team will be assigned to review the discipline. If any member of the original Case Review Team is no longer serving on the Commission, the Commission Chair will assign a replacement with priority given to members who attended the original case presentation.

The Team will evaluate the disciplinary action and decide by majority vote whether to agree or

disagree on the following:

- I. Agree or Disagree that the reported discipline is consistent with the SDPD Discipline Matrix; and
- II. Agree or Disagree that the discipline imposed was appropriate.

Charter section 41.2 gives the Commission the discretion to make recommendations to the Police Department regarding the discipline of individual officers in specific situations. These Interim Operating Procedures are not intended to restrict the Commission from making such recommendations once procedures for making discipline recommendations have been adopted.

5. Commission Referral to Chief of Police or Mayor

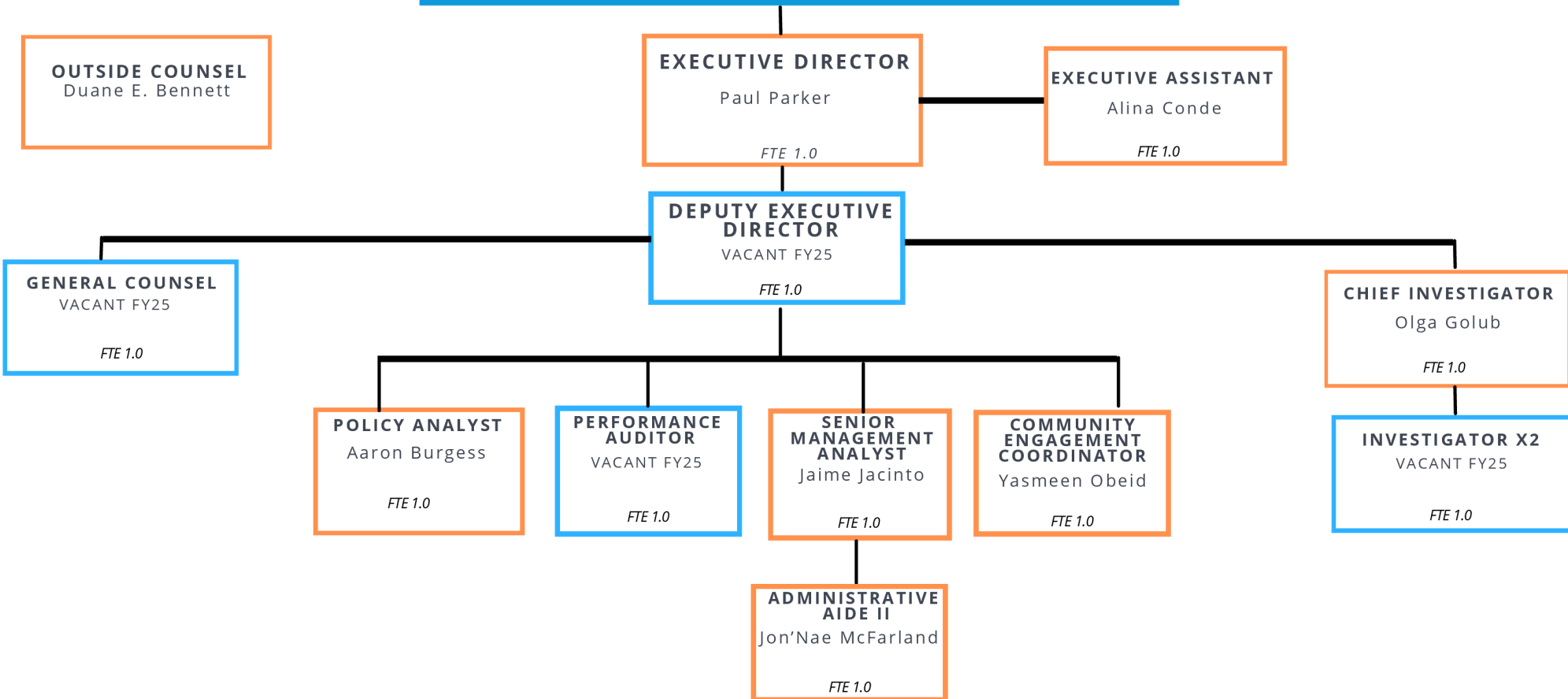
The Commission, by majority vote, may request that the Chief of Police or the Mayor review and evaluate a case or discipline.

6. Policy Recommendations

It is the objective of the Commission to advocate for policies which promote fair and humane policing and also ensure the safety of both community members and police officers. The Commission may, by majority vote, make specific recommendations to the Police Department, the Mayor, and the City Council on any policies, procedures, practices or actions of the Police Department.

▶ The Commission on Police Practices provides independent investigation of officer-involved shootings, in-custody deaths, and other significant incidents, and an unbiased evaluation of all allegations of misconduct against the San Diego Police Department and its personnel.

Office of the Commission on Police Practices





National Association for Civilian Oversight of Law Enforcement

Code of Ethics

PREAMBLE

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

PERSONAL INTEGRITY

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when a significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

INDEPENDENT AND THOROUGH OVERSIGHT

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional, or political consequences.

TRANSPARENCY AND CONFIDENTIALITY

Conduct oversight activities openly and transparently, providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

RESPECTFUL AND UNBIASED TREATMENT

Treat all individuals with dignity and respect, and without preference or discrimination including, but not limited to: age, ethnicity, citizenship, color, culture, race, disability, gender, gender identity, gender expression, housing status, marriage, mental health, nationality, religion, sexual orientation, socioeconomic status, or political beliefs, and all other protected classes.

OUTREACH AND RELATIONSHIPS WITH STAKEHOLDERS

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialogue with your stakeholders. Educate and learn from the community.

AGENCY SELF-EXAMINATION AND COMMITMENT TO POLICY REVIEW

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

PROFESSIONAL EXCELLENCE

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

PRIMARY OBLIGATION TO THE COMMUNITY

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

The following oversight agencies have adopted the NACOLE Code of Ethics:

- Citizen Oversight Board, City & County of Denver, CO
- Citizens' Law Enforcement Review Board, San Diego County, CA
- Citizens' Review Board on Police Practices, San Diego, CA
- Civilian Review Board, Eugene, OR
- Independent Review Panel, Miami, FL
- Milwaukee Fire and Police Commission, Milwaukee, WI
- Office of Citizen Complaints, San Francisco, CA
- Office of Community Complaints, Kansas City, MO
- Office of Police Complaints, Washington, D.C.
- Office of Professional Accountability, Seattle, WA
- Office of the Community Ombudsman, Boise, ID
- Office of the Independent Monitor, City & County of Denver, CO
- Office of the Independent Police Auditor, Bay Area Rapid Transit District, San Francisco, CA
- Office of the Independent Police Auditor, San Jose, CA
- Office of the Police Auditor, Eugene, OR
- Office of the Police Ombudsman, Spokane, WA
- Richmond Police Commission, Richmond, CA

Commission. The Commission may, in accordance with complaint and investigation procedures approved by ordinance of the Council, subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers. The Ethics Commission shall be authorized to retain its own legal counsel, independent of the City Attorney, for legal support and guidance in carrying out its responsibilities and duties.

(Amendment voted 09-17-1963; effective 02-11-1964.)

(Amendment voted 11-04-1969; effective 01-29-1970.)

(Amendment voted 03-05-2002; effective 04-24-2002.)

(Amendment voted 11-02-2004; effective 01-21-2005.)

(Amendment voted 11-03-2020; effective 12-18-2020.)

[Prior Language](#)

Section 41.1: Salary Setting Commission

(Addition voted 11-06-1973; effective 12-07-1973.)

(Repeal voted 11-06-2018; effective 12-24-2018)

[Prior Language](#)

Section 41.2: Commission on Police Practices

A Commission on Police Practices is established, which supersedes the Community Review Board on Police Practices. The Commission on Police Practices is referred to in this section as the "Commission," the Police Department of the City of San Diego is referred to as the "Police Department," and an officer of the Police Department is referred to as an "officer" or "police officer."

The Commission is an investigatory body of the City of San Diego, independent of the Mayor and the Police Department.

The Commission has certain mandatory duties and discretionary powers, as described in this section. The City Council may, by ordinance, mandate additional duties and authorize additional powers for the Commission, consistent with this section and applicable federal and state law. The City Council may also establish rules and procedures to implement this section. Subject to any limitations set forth in governing federal or state law, the Commission is authorized to refer any matter before the Commission to the grand jury, district attorney, or other governmental agency that is authorized by law to investigate the activities of a law enforcement agency.

The City Council must appoint the members of the Commission. The City Council may remove members of the Commission for cause by a vote of a majority of the members of the City Council. The City Council must, by ordinance, establish the number, term length, qualifications, and method for appointing members of the Commission, and define the circumstances and process under which the City Council determines there is cause for removal of a member of the Commission.

The Commission will be composed of members of the Community Review Board on Police Practices serving at the time this section takes effect, until the City Council has formally appointed members to the Commission, in accordance with the ordinance described in this section.

The City Council must appoint and establish the initial annual compensation for the Commission's Executive Director, who serves at the direction and will of the Commission. The Commission must conduct the annual performance review of the Executive Director, and may modify the Executive Director's annual compensation, consistent with the compensation schedules established by the City Council in adopting the annual salary ordinance. The Executive Director serves as the appointing authority for additional employees assisting the Commission, who must be appointed and serve in accordance with this Charter. The Executive Director is authorized to employ outside experts or consultants to assist with the Commission's work on a contractual basis, consistent with the City's contracting rules. The Commission must retain its own legal counsel, who is independent of the City Attorney, for legal support and advice in carrying out the Commission's duties and actions.

The Executive Director serves as custodian of the Commission's records and must comply with all applicable laws related to records retention, protection, confidentiality, and disclosure. The Police Department must make available its records, relating to any matter under investigation, review, or evaluation by the Commission, subject to the restrictions of applicable federal and state law.

The Commission has the power to conduct investigatory proceedings, subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers, subject to the restrictions of and in accordance with this section and applicable federal and state law. The Commission may enforce its administrative subpoenas by initiating contempt procedures, upon a majority vote of the Commission and in the manner provided by applicable state law.

The Commission must independently investigate all deaths occurring while a person is in the custody of the Police Department; all deaths resulting from interaction with an officer of the Police Department; and all City police officer-related shootings. The Commission has this duty whether or not a complaint has been made against a police officer or the Police Department. These investigations must be conducted by Commission staff or contractors who are independent of the Police Department, and in accordance with the officer's federal and state law rights.

The Commission may, but is not required to, investigate complaints against officers of the Police Department, which do not involve in-custody deaths, deaths resulting from an interaction with a police officer, or police officer-related shootings. However, the Commission must not investigate a complaint where the complainant has requested that the complaint be handled without investigation or where no specific allegation or police officer can be identified.

In determining whether to investigate a complaint that the Commission has the discretionary power, but not the mandatory duty, to investigate, the Commission must consider whether the complaint arises from any of the following: (1) an incident in which the use of force by a City police officer against a person resulted in great bodily injury; (2) dishonesty by a City police officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including an allegation of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence; (3) an incident that has generated substantial public interest or concern; (4) an incident in which data shows a pattern of misconduct by any Police Department officer; or (5) an incident in which data shows a pattern of inappropriate policies, procedures, or practices of the Police Department or its members.

The Commission must receive, register, review, and evaluate all complaints against officers of the Police Department, except the Commission must not review or evaluate a complaint where the complainant has requested that the complaint be handled without investigation or where no specific allegation or police officer can be identified.

The Commission may, but is not required to, review, evaluate, and investigate allegations of inappropriate sexual conduct, physical assault, or domestic violence by officers of the Police Department, whether or not a written complaint has been submitted to the Commission or the Police Department.

The Commission must review and evaluate all factual findings and evidentiary conclusions of the Police Department arising from investigations of police

misconduct and all disciplinary decisions proposed by the Chief of Police or designee following sustained findings of police misconduct, with the terms “police misconduct” and “police officer misconduct,” to be defined by the City Council by ordinance. The Commission may, but is not required to, review and evaluate the Police Department’s administration of discipline arising from sustained complaints, which do not involve allegations of police misconduct, and from matters investigated by the Commission. The Commission may, but is not required to, make recommendations to the Police Department on the discipline of individual officers against whom complaints have been made or about whom the Commission has conducted an investigation.

The Commission must review and evaluate the Police Department’s compliance with federal, state, and local reporting laws and requirements. The Commission must also prepare and submit semi-annual reports to the Mayor and City Council regarding the exercise of the Commission’s duties and powers. These reports must be public, but must not disclose any information required to be kept confidential by controlling federal or state law.

The Commission may, but is not required to, review and evaluate the policies, procedures, practices, and actions of the Police Department. The Commission may make specific recommendations to the Police Department, the Mayor, and the City Council on any policies, procedures, practices, and actions of the Police Department.

The Chief of Police must consider the Commission’s evaluation of proposed police officer discipline, prior to imposition of the discipline, to the extent permitted within applicable federal and state law, and only if the evaluation is completed before the statutory timelines, set forth in the California Public Safety Officers Procedural Bill of Rights or subsequent, applicable state laws, for the Police Department to act on the evaluation. The Chief of Police retains authority and discretion to discipline subordinate employees in the Police Department, in accordance with Section 57 of this Charter.

Any sustained findings of police officer misconduct by the Commission are subject to appeal, as required by California law. These sustained findings may be appealed to the City’s Civil Service Commission.

(Addition voted 11-03-2020; effective 12-18-2020.)

Section 42: Membership Selection

The appointing authority in selecting appointees to commissions, boards, committees or panels shall take into consideration sex, race and geographical area so the membership of such commissions, boards, committees or panels shall reflect the entire community.

(Amendment voted 04-15-1947; effective 05-01-1947.)

(Amendment voted 09-17-1963; effective 02-11-1964.)

(Repeal voted 11-04-1969; effective 01-29-1970.)

(Addition voted 11-6-1973; effective 12-7-1973.)

[Prior Language](#)

Section 43: Advisory Boards and Committees

- (a) The City Council may by ordinance create and establish advisory boards. Such boards shall be advisory to the Mayor, Council or City Manager as may be designated by ordinance. All members of such boards shall be appointed by the Mayor with Council confirmation, and the terms of office of such members may extend beyond the elective term of the appointing Mayor. The members of such boards shall serve without compensation and it shall be their duty to consult and advise with the Mayor, Council or City Manager, as the case may be, but not to direct the conduct of any Department or Division. Members of such advisory boards shall be limited to a maximum of eight (8) consecutive years in office and an interval of four (4) years must pass before such persons can be reappointed.
- (b) The Mayor, City Council or City Manager may create and establish citizens' committees. Such committees shall be created and established only for the purpose of advising on questions with clearly defined objectives, and shall be temporary in nature, and shall be dissolved upon the completion of the objectives for which they were created. Committee members shall serve without compensation.
- (c) Whenever under the provisions of this Charter or ordinance the Mayor is vested with authority to appoint the members of boards or committees and does not take such action within forty-five (45) days after the board or committee has been established or a vacancy occurs, then the Council shall make such appointments. The Council may remove committee and board members by vote of a majority of the members of the Council.

(Amendment voted 09-17-1963; effective 02-11-1964.)

(Amendment voted 11-04-1969; effective 01-29-1970.)

(Amendment voted 11-08-1988; effective 04-03-1989.)

(Amendment voted 11-08-2016; effective 12-19-2016.)

(Amendment voted 11-03-2020; effective 12-18-2020.)

[Prior Language](#)

Section 43.1: Commissions, Boards, Committees - Appointments

(Addition voted 09-17-1963; effective 02-11-1964.)

(Repeal voted 11-04-1969; effective 01-29-1970.)

[Prior Language](#)

Section 44: Directors of Departments

(Repeal voted 09-17-1963; effective 02-11-1964.)

[Prior Language](#)

Section 45: City Treasurer

The Manager shall appoint the Treasurer. He or she shall perform duties imposed upon City Treasurers by general law, the City Charter, or ordinances of the Council. The office of the Treasurer shall consist of the Treasurer and such subordinate officers and employees as shall be authorized by ordinance.

The Treasurer shall receive, have the custody of, and disburse City moneys upon the warrant or check-warrant of the Chief Financial Officer under the provisions of section 53911 of the Government Code of the State of California. He or she shall keep such books and records as are necessary for the recording of all receipts and expenditures, together with a record of money in City depositories. Every Department officer, or institution which receives money directly from the public, shall deposit the same daily with the Treasurer, unless otherwise authorized by ordinance. The Treasurer shall demand and receive from the County Tax Collector moneys collected by him or her for use of the City. And it shall be the duty of such County official to deposit such money monthly with the City Treasurer.

The Treasurer shall determine pursuant to the general law of the state, the selection of depositories for City funds. All interest collected on City funds shall be accounted for monthly by the Treasurer.

Whenever any person is indebted to the City in any manner and the means of collection of such debt is not otherwise provided for by law or ordinance, the Treasurer shall be authorized to demand and receive the same. When any claim shall not be collectible by other methods, he or she shall report the same to the City Manager and the City Attorney for prosecution. When payment of a claim or any judgment thereon is made, he or she shall receive and receipt therefor in the name of the City.

The Treasurer shall issue notices for and collect special assessments previous to certification to the County Auditor, charges for permits for private use of public streets,

and such other miscellaneous taxes, fees, assessments, licenses and privilege charges as may from time to time be assigned to him or her. He or she shall maintain a continuous inspection of the records and accounts of such taxes, licenses and privilege charges in order to effectuate their collection.

The Treasurer shall issue all permits and licenses except departmental permits and licenses which are by ordinance assigned to the particular Departments. Such permits and licenses shall be issued either directly by the Treasurer or upon specific authorization of the appropriate Department as may be required by ordinances, but all revenues derived therefrom shall be deposited with the Treasurer.

(Amendment voted 09-17-1963; effective 02-11-1964.)

(Amendment voted 06-03-2008; effective 07-08-2008.)

[Prior Language](#)

Section 46: Department of Public Works. Street Superintendent

(Amendment voted 04-21-1953; effective 05-29-1953.)

(Repeal voted 09-17-1963; effective 02-11-1964.)

[Prior Language](#)

Section 47: Division of Streets

(Repeal voted 04-21-1953; effective 05-29-1953.)

[Prior Language](#)

Section 48: Division of Sewers

(Repeal voted 04-21-1953; effective 05-29-1953.)

[Prior Language](#)

Section 49: Division of Refuse Collection and Disposal

(Repeal voted 04-21-1953; effective 05-29-1953.)

[Prior Language](#)

Section 50: Division of Public Buildings

(Repeal voted 04-21-1953; effective 05-29-1953.)

[Prior Language](#)

Section 51: Division of Shops

(Repeal voted 04-21-1953; effective 05-29-1953.)

[Prior Language](#)

Section 52: Division of Pueblo Lands and Unimproved City Property

(Repeal voted 04-21-1953; effective 05-29-1953.)

[Prior Language](#)

Section 53: Water Utility

There shall be included in the administrative organization of the City a separate utility to be known as the Water Utility. The financial information and records on which the accounts are to be kept shall be established and maintained by the City, in accordance with methods set forth in Section 109 of the City Charter.

All revenues of the Water Utility shall be deposited in a Water Utility Fund. The Manager shall include in the annual budget the estimated expenditure and reserve requirements of the Water Utility Fund. The City Council using such estimates as a basis shall include in the annual appropriation ordinance for the Water Utility Fund provision for operating and maintenance costs; replacements, betterments, and expansion of facilities; payments necessary for obtaining water from the Colorado River; any other contractual obligations; reserves for future expansion of water utility plant; reserves for future water purchases. In addition, thereto, the Council shall levy annually a tax sufficient to provide for the redemption of municipal bonds heretofore or hereafter issued for water purposes; together with a sum sufficient to pay the interest thereon. The amount of money necessary to be raised each year for the redemption of water bonds and the payment of interest thereon and for the retirement of any other funded or contractual indebtedness incurred by purchase or otherwise for the development, conservation or distribution of water shall be charged annually against the Water Utility on the accounts of the City. Only after providing the requirements for Water Utility purposes as set forth above may the City Council in the annual appropriation ordinance provide for the transfer to the General Fund of the City any excess revenues accruing to the Water Utility Fund. Such revenue transferred to the General Fund shall be available thereafter for use for any legal City purpose. All such surplus funds so transferred shall be credited on the accounts of the City as a reimbursement credit for the monies paid by the City each year for the redemption of Water Bonds and the payment of interest thereon, costs of services and facilities furnished to the water Utility by other City departments and funds, and an amount equal to the estimated loss in taxation which would be paid to the City by the Water Utility if it were not municipally owned, together with a reasonable profit on the City's investment in the water system.

The Council shall have power to employ special counsel for the purpose of advising and representing the City in all matters, proceedings and things relating to or concerning the development, impounding and distribution of water.

(Amendment voted 04-22-1941; effective 05-08-1941.)

(Amendment voted 03-11-1947; effective 03-24-1947.)

(Amendment voted 09-17-1963; effective 02-11-1964.)

[Prior Language](#)

Section 54: Harbor Department

(Amendment voted 03-23-1937; effective 04-14-1937.)

(Amendment voted 04-22-1941; effective 05-08-1941.)

(Amendment voted 06-08-1954; effective 01-10-1955.)

(Amendment voted 06-07-1960; effective 01-09-1961.)

(Amendment voted 06-05-1962; effective 06-29-1962.)

(Repeal voted 09-17-1963; effective 02-11-1964.)

Prior Language

Section 55: Park and Recreation

The City Manager shall have the control and management of parks, parkways, plazas, beaches, cemeteries, street trees, landscaping of City-owned property, golf courses, playgrounds, recreation centers, recreation camps, and recreation activities held on any City playgrounds, parks, beaches, and piers, which may be owned, controlled, or operated by the City. The Council shall by ordinance adopt regulations for the proper use and protection of said park property, cemeteries, playgrounds, and recreation facilities, and provide penalties for violations thereof. The Manager is charged with the enforcement of such regulations.

All real property owned in fee by the City heretofore or hereafter formally dedicated in perpetuity by ordinance of the Council or by statute of the State Legislature for park, recreation, or cemetery purposes shall not be used for any but park, recreation, or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose. However, real property which has been heretofore or which may hereafter be set aside without the formality of an ordinance or statute dedicating such lands for park, recreation, or cemetery purposes may be used for any public purpose deemed necessary by the Council.

Whenever the City Manager recommends it, and the Council finds that the public interest demands it, the Council may, without a vote of the people, authorize the opening and maintenance of streets and highways over, through, and across City fee-owned land which has heretofore or hereafter been formally dedicated in perpetuity by ordinance or statute for park, recreation, and cemetery purposes.

The Council may, without a vote of the people, authorize a lease of the property occupied by San Diego High School to the San Diego Unified School District for educational, cultural, recreational, and civic programs and activities, provided that the property is used for a public high school. The property occupied by San Diego High School means the area used by the San Diego Unified School District for San Diego High School as of the date this amendment is effective, and further described in the legal description on file with the City Clerk as Document No. OO-20721.

The City Manager may, without a vote of the people, authorize childcare at recreation facilities and buildings on real property owned in fee by the City heretofore or hereafter formally dedicated in perpetuity by ordinance of the Council or by statute of the State

Legislature for park or recreation purposes. For purposes of this section, childcare means any State-licensed childcare facility, other than in-home family day care, in which nonmedical care and supervision is provided for children under age 18 in a group setting for less than 24 hours per day, excluding educational or instructional use provided by public, private, home, or charter schools.

The City Manager shall also have charge of the management, control, preservation, regulation, improvement, and embellishment of all public burial grounds and cemeteries belonging to the City, and the sale of lots therein. At least twenty percent of the net proceeds from the sale of all cemetery lots shall be deposited with the City Treasurer and be kept in a fund to be known as the Cemetery Perpetuity Fund. This fund shall be administered by the Funds Commission and shall be invested in such income-producing securities as the Funds Commission may decide. The principal of the perpetuity fund (subject to such accretion or diminution as may result from investing the same) shall not be available for meeting expenses for maintenance or upkeep of the cemeteries in any manner whatsoever. All income derived from the investment of the moneys in said perpetuity fund, together with the balance of the sale price of said lots not placed in the perpetuity fund, shall be expended in the maintenance and upkeep of the cemeteries and the perpetual care and upkeep of all graves and lots in said cemeteries; provided, however, that if in any one year such income is more than needed for the purpose of such maintenance, upkeep, and perpetual care, the Council may direct that the excess over and above that needed as above provided may be used for any other municipal purpose. If the income from said investments of said perpetuity fund and the balance of the sale price of said lots each year are not sufficient to maintain the cemeteries and to provide perpetual care and upkeep of all graves and lots in said cemeteries, the Council shall annually appropriate from other revenues an amount sufficient to enable the City to provide perpetual care and upkeep of all graves and lots in the cemeteries.

(Amendment voted 04-22-1941; effective 05-08-1941.)

(Amendment voted 03-11-1947; effective 03-24-1947.)

(Amendment voted 04-21-1953; effective 05-29-1953.)

(Amendment voted 09-17-1963; effective 02-11-1964.)

(Amendment voted 11-04-1975; effective 12-01-1975.)

(Amendment voted 11-08-2016; effective 12-19-2016.)

(Amendment voted 11-08-2022; effective 01-09-2023.)

[Prior Language](#)

Section 55.1: Mission Bay Park - Restrictions upon Commercial Development

Notwithstanding any other provision of this Charter to the contrary, the total land and water area of all leases in Mission Bay Park shall not exceed twenty-five percent (25%) of the total dedicated land area or six and one-half percent (6.5%) of the total dedicated water area respectively of the park without such lease being authorized or later ratified by vote of 2/3's of the qualified electors of the City voting at an election for such purpose.

(Amendment voted 11-03-1987; effective 12-17-1987.)

Section 55.2: Mission Bay Park and Regional Parks Improvement Funds

- (a) For the purpose of this Section, the following definitions shall apply and the words shall appear in italics:
- (1) *Capital Improvement* means physical assets, constructed or purchased, or the restoration of some aspect of a physical or natural asset that will increase its useful life by one year or more or which constitutes an environmental improvement of a natural asset.
 - (2) *Mission Bay Baseline Chart* shall be defined as the Mission Bay dredging plans on file with the City Clerk as Document No. OO-19776. It shall serve as the baseline for depths for navigable waters within Mission Bay. Depths may be increased or decreased for specific areas within Mission Bay only if, after review of these areas by the San Diego Fire Department or the *Mission Bay Park Improvement Fund Oversight Committee*, it is found that either the original depth no longer supports or ensures safe navigation, is inconsistent with the *Mission Bay Park Master Plan*, or needs to be modified in order to create sustainable shorelines. Any changes must be adopted by ordinance of the City Council and shall act as amendments to the original dredging plans.
 - (3) *Mission Bay Park* means the area described in the Mission Bay Park Record of Survey 16891, filed on February 28, 2001, in the Office of the County Recorder as File No. 2001-0113422, and any City-owned property heretofore or hereafter dedicated for park purposes that is contiguous to *Mission Bay Park* and has been determined by ordinance of the City Council to be part of *Mission Bay Park* for purposes of this Charter section 55.2.
 - (4) *Mission Bay Park Improvement Zone* means those areas encompassed within the boundaries of *Mission Bay Park*, Oceanfront Walk from the Mission Bay jetty to Crystal Pier and the adjoining seawall, coastal parks and ocean beaches contiguous thereto, Rose Creek from its terminus in Mission Bay to the southern end of the Santa Fe Road flood control channel, Tecolote Creek from its terminus in Mission Bay to the western end of the Tecolote Creek flood control channel and the San Diego River as it passes through the boundaries of *Mission Bay Park* as described herein. The boundaries of the San Diego River, Rose Creek and Tecolote Creek shall be the width of those waterways to the nearest property line.
 - (5) *Mission Bay Park Improvement Fund* means a separate interest bearing monetary fund maintained by the City of San Diego to receive and spend the

Mission Bay Park Lease Revenues identified herein for the benefit of the *Mission Bay Park Improvement Zone*.

- (6) *Mission Bay Park Improvement Fund Oversight Committee* means the committee determined by ordinance of the City Council to carry out the oversight responsibilities described herein.
- (7) *Mission Bay Park Lease Revenues* means all revenues collected by the City of San Diego from commercial and non-profit sources within *Mission Bay Park*, including but not limited to all monetary consideration received under leases of city owned property within *Mission Bay Park*, as well as revenue collected from contracts for concessions or any other revenues collected for the use of city owned property within *Mission Bay Park*. The term does not include revenue from the Mission Bay Golf Course, unless privately leased; mooring fees; any revenues from taxes including but not limited to Transient Occupancy Taxes, sales taxes, possessory interest taxes, property taxes; or permit fees such as park and recreation fees or special event fees to the extent those fees are levied to recover actual costs incurred by the City of San Diego.
- (8) *Mission Bay Park Master Plan* means the Master Plan adopted by the City Council for Mission Bay Park in 1994, the Natural Resources Management Plan, and any amendments or updates that are subsequently adopted by the City Council or any such similar replacement plan that may be subsequently adopted by the City Council. For purposes of this Section, the definition shall also include adopted plans for areas located within the *Mission Bay Park Improvement Zone*.
- (9) *San Diego Regional Parks* means those parks that serve regional residents and/or visitor populations as determined by ordinance of the City Council. *San Diego Regional Parks* shall initially include Chollas Lake Park, Balboa Park, Mission Trails Regional Park, Otay River Valley Park, Presidio Park, San Diego River Park, open space parks, and coastal beaches along with coastal parks contiguous thereto. For the purposes of this Section, this definition shall specifically exclude the *Mission Bay Park Improvement Zone*.
- (10) *San Diego Regional Parks Improvement Fund* means a separate interest bearing monetary fund maintained by the City of San Diego to receive and spend the *Mission Bay Park Lease Revenues* identified herein for the benefit of the *San Diego Regional Parks*.

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- (11) *San Diego Regional Parks Improvement Fund Oversight Committee* means the committee determined by ordinance of the City Council to carry out the oversight responsibilities described herein.
- (b) Subject to the City of San Diego’s State law obligations as a trustee of tidelands within *Mission Bay Park*, *Mission Bay Park Lease Revenues* up to the threshold amount in each fiscal year shall be deposited into the San Diego General Fund and may be used for any municipal purpose, including but not limited to, police, fire, streets, sewers, water delivery, roads, bridges, and operation of parks. All *Mission Bay Park Lease Revenues* in excess of the threshold amount shall be allocated in the City of San Diego budget to two distinct funds. Thirty-five percent (35%) of the *Mission Bay Park Lease Revenues* in excess of the threshold amount, or three million five hundred thousand dollars (\$3,500,000) whichever is greater, shall be allocated to the *San Diego Regional Parks Improvement Fund* that solely benefits the *San Diego Regional Parks* and sixty-five percent (65%) of the *Mission Bay Park Lease Revenues* over the threshold amount, or the remainder of those revenues if less than 65% is available after the allocation to the *San Diego Regional Parks Improvement Fund*, shall be allocated to the *Mission Bay Park Improvement Fund* that solely benefits the *Mission Bay Park Improvement Zone*. The threshold amount shall be \$23 million beginning fiscal year 2010 and ending fiscal year 2014. The threshold amount shall be \$20 million beginning fiscal year 2015 and shall remain \$20 million thereafter.
- (c) Funds in the *Mission Bay Park Improvement Fund* may be expended only in the *Mission Bay Park Improvement Zone*, to restore wetlands, wildlife habitat, and other environmental assets within the *Mission Bay Park Improvement Zone*; to preserve the beneficial uses of the *Mission Bay Park Improvement Zone* including, but not limited to, water quality, boating, swimming, fishing, and picnicking by maintaining navigable waters and eliminating navigational hazards; to restore embankments and other erosion control features; and to improve the conditions of the *Mission Bay Park Improvement Zone* for the benefit and enjoyment of residents and visitors, consistent with the *Mission Bay Park Master Plan*.
- (1) To achieve these goals, all of the following identified priorities are intended to be authorized, have a funding plan adopted by City Council, and proceed to completion in the order provided below, subject to section (c)(2) below authorizing projects to proceed concurrently:
- (A) Restoration of navigable waters within *Mission Bay Park* and elimination of navigational hazards. When depth conditions no longer support and ensure safe navigation, those areas that pose a danger or

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- impede the passage of watercraft shall be dredged in accordance with the *Mission Bay Baseline Chart*.
- (B) Wetland expansion and water quality improvements and the protection and expansion of eelgrass beds as identified in the *Mission Bay Park Master Plan*.
 - (C) Restoration of shoreline treatments within the *Mission Bay Park Improvement Zone* including restoration of beach sand and stabilization of erosion control features.
 - (D) Expansion of endangered or threatened species preserves and upland habitats on North Fiesta Island and along the levee of the San Diego River floodway as identified in the *Mission Bay Park Master Plan*.
 - (E) Deferred maintenance projects that are also *Capital Improvements* within the *Mission Bay Park Improvement Zone* as may be recommended by the *Mission Bay Park Improvement Fund Oversight Committee* and approved by the City Council such as, but not limited to, completion of bicycle and pedestrian paths and bridges as identified in the *Mission Bay Park Master Plan*, installation of sustainable lighting in the *Mission Bay Park Improvement Zone*, installation of signage and landscaping at points of entry to *Mission Bay Park* and the South Shores, the repair, resurfacing and restriping of parking lots within the *Mission Bay Park Improvement Zone*, the repair of playgrounds and comfort stations, and the restoration of the seawall and bulkhead on Oceanfront Walk to a condition no less than the quality of restoration previously performed in 1998 from Thomas Street to Pacific Beach Drive or to conditions as may be required by historic standards.
- (2) After a priority project identified in (c)(1)(A-E) above has been authorized and has a funding plan adopted for it by City Council, funds may be committed to and expended on a subsequent project of a lesser priority and construction of a subsequent project may proceed concurrently with a greater priority project provided construction of a lesser priority project does not preclude completion of a greater priority project. The City Council shall be required to make findings that completion of a greater priority project will not be precluded by expending funds on a lesser priority project before approving said expenditure.
 - (3) Once the projects identified in (c)(1)(A-E) have completed, additional projects shall be prioritized and funded only for *Capital Improvements* as

identified in the *Mission Bay Park Master Plan*, recommended by the *Mission Bay Park Improvement Fund Oversight Committee*, and approved by the City Council.

- (4) To the extent items (c)(1)(A-E) require additional funding or are later in need of additional *Capital Improvements*, then those items shall again have priority over other *Capital Improvements* only if approved by the City Council.
- (5) Except as may be specifically authorized above in this subsection, funds in the *Mission Bay Park Improvement Fund* may not be expended for commercial enterprises or improvements of leasehold interests; for any costs associated with utilities, including, but not limited to, water and sewage; or for roads, vehicle bridges, or vehicular ramps; or on costs that cannot be capitalized; or on daily, weekly, monthly, or annual upkeep of the *Mission Bay Park Improvement Zone* and there shall be no expenditure for contracted labor or services or for city employee salaries, pensions or benefits unless those expenses can be capitalized, and only then at the then-standard rates used by the City of San Diego for all other capital improvement projects.
- (d) Funds in the *San Diego Regional Parks Improvement Fund* may be expended only for non-commercial public *Capital Improvements* for the *San Diego Regional Parks* and only for park uses. Funds in the *San Diego Regional Parks Improvement Fund* may not be expended for commercial enterprises or improvements of leasehold interests; for any costs associated with utilities, including, but not limited to, water and sewage; or for roads, vehicle bridges, or vehicular ramps; or on daily, weekly, monthly, or annual upkeep of the *San Diego Regional Parks*.
- Priority for *Capital Improvements* hereunder shall be recommended by the *San Diego Regional Parks Improvement Fund Oversight Committee*, in accordance with the master plans for each of the *San Diego Regional Parks*, and approved by the City Council.
- (e) The *Mission Bay Park Improvement Fund Oversight Committee* and the *San Diego Regional Parks Improvement Fund Oversight Committee* shall meet at least quarterly to audit and review the implementation of this Charter Section, to recommend priorities for expenditures and *Capital Improvements* hereunder in accordance with the master plans for each of the *San Diego Regional Parks* or with the *Mission Bay Park Master Plan* or within the priorities identified in (c)(1)(A-E), as applicable; and to verify that the appropriate funds are collected, segregated, retained and allocated according to the intent of this Section, and spent as prioritized in this Section and consistent herewith.

The San Diego City Auditor, in cooperation with each committee, shall establish and oversee a mechanism to ensure public accountability by effectively reporting and communicating the extent and nature of revenues, expenses and improvements generated hereunder and compliance with the requirements outlined herein. This shall include, at a minimum, an annual audit report to the Mayor, City Council and public. Each report shall, at a minimum, contain a complete accounting of all revenues received, the amount and nature of all expenditures, a report as to whether in each committee's view the expenditures have been consistent with the priorities and provisions hereof, whether the City of San Diego has complied with sections (c), (d), (f), (g) and (h). In the event that either committee finds that there has been a violation of this Charter Section by the City of San Diego, it should set forth the alleged violation in a written communication to the City Manager and members of the San Diego City Council. If the alleged violation is not resolved to the satisfaction of the aggrieved committee within 30 days, the San Diego City Council shall docket an action item for a public meeting of the San Diego City Council within 60 days. If evidence presented to the San Diego City Council by the aggrieved committee establishes a violation of this Section, the San Diego City Council shall forthwith cure the violation including but not limited to the restoration of inappropriately expended funds.

- (f) The City of San Diego shall take all steps necessary to ensure the collection and retention of all *Mission Bay Park Lease Revenues* for purposes described herein and to utilize those revenues only for the purposes described herein and consistent with the priorities and intentions described herein. The City of San Diego may issue bonds, notes or other obligations to expedite the *Capital Improvements* contemplated herein, utilizing the revenue stream from *Mission Bay Park Lease Revenues* designated herein.
- (g) The annual budgets allocated for park operations and maintenance in the *Mission Bay Park Improvement Zone* and the *San Diego Regional Parks* shall not be reduced at a greater rate or increased at a lesser rate relative to the overall annual budget of park and recreation as a result of monies available hereunder.
- (h) The City of San Diego is encouraged to seek other sources of funding for the purposes of improving the *Mission Bay Park Improvement Zone* and the *San Diego Regional Parks*, including but not limited to grant funding from other governmental agencies, private individuals, or foundations. In the event the City of San Diego receives any such additional funds, they shall be in addition to, and shall not offset or reduce funds dedicated to the *Mission Bay Park Improvement Fund* or *San Diego Regional Parks Fund* under this Section.

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- (i) Nothing contained herein shall prevent the City of San Diego from spending funds in excess of the *Mission Bay Park Improvement Fund* or *San Diego Regional Parks Fund* for the purposes of improving the *Mission Bay Park Improvement Zone* or the *San Diego Regional Parks*.
- (j) This Section shall take effect and be in force on July 1, 2009, and will expire on June 30, 2069. Before the expiration of this Section, the City Council shall place on the ballot no later than the last regularly scheduled election prior to June 30, 2069 a measure to amend the Charter to extend the effect of this Section for an additional 30 years.
- (k) In the event of a conflict between any provision of Section 55.2 and any other provision of this Charter or the Municipal Code, Section 55.2 shall govern.
(Addition voted 11-04-2008; effective 12-16-2008.)
(Amendment voted 11-08-2016; effective 12-19-2016.)
[Prior Language](#)

Section 56: Bureau of Safety

(Repeal voted 04-21-1953; effective 05-29-1953.)

[Prior Language](#)

Section 57: Police Department

The Police Department shall consist of a Chief of Police and such other officers, members and employees as the Council may from time to time prescribe by ordinance.

The Chief of Police shall be appointed by the City Manager and the appointment shall be confirmed by a majority of the Council, provided, however, that the Chief of Police may be removed by the City Manager at any time in the manner provided for in Section 30 of Article V of this Charter.

The Chief of Police, with the approval of the City Manager, shall appoint, direct and supervise the personnel, subject to Civil Service regulation, have charge of the property and equipment of the department and exercise all powers and duties provided by general laws or by ordinance of the Council. The Chief of Police shall have all power and authority necessary for the operation and control of the Police Department.

(Amendment voted 11-06-1956; effective 01-10-1957.)

(Amendment voted 09-17-1963; effective 02-11-1964.)

(Section 57 is modified by contrary language in section 265(b) effective 01-01-2006.)

[Prior Language](#)

Section 58: Fire Department

The Fire Department shall consist of a Chief of the Fire Department and such other officers, members and employees as the Council may from time to time prescribe by ordinance.

The Chief of the Fire Department shall be appointed by the City Manager and the appointment shall be confirmed by a majority of the Council, provided, however, that the Chief of the Fire Department may be removed by the City Manager at any time in the manner provided for in Section 30 of Article V of this Charter. The Chief of the Fire Department shall have all power and authority necessary for the operation and control of the Fire Department and the protection of the lives and property of the people of the City from fire.

The Chief of the Fire Department, with the approval of the City Manager, shall direct and supervise the personnel. Members of the Fire Department shall be subject to all the Civil Service provisions of this Charter contained in Article VIII. This section shall not become effective until July 1, 1974.

(Amendment voted 11-06-1956; effective 01-10-1957.)

(Amendment voted 09-17-1963; effective 02-11-1964.)

(Amendment voted 11-06-1973; effective 12-07-1973.)

(Section 58 is modified by contrary language in section 265(b) effective 01-01-2006.)

[Prior Language](#)

Section 59: Department of Inspection

(Amendment voted 04-17-1951; effective 05-03-1951.)

(Amendment voted 04-21-1953; effective 05-29-1953.)

(Amendment voted 06-08-1954; effective 01-10-1955.)

(Repeal voted 09-17-1963; effective 02-11-1964.)

[Prior Language](#)

Section 60: Department of Public Health

(Repeal voted 09-17-1963; effective 02-11-1964.)

[Prior Language](#)

Section 60.1: Plumbing Permits and Inspections Regulated by Council

(Addition voted 04-19-1949; effective 05-20-1949.)

(Repeal voted 09-17-1963; effective 02-11-1964.)

[Prior Language](#)

Section 60.2: Authority to Consolidate Department of Public Health with the County of San Diego

(Addition voted 11-04-1952; effective 01-17-1953.)

(Repeal voted 09-17-1963; effective 02-11-1964.)

[Prior Language](#)

Section 61: Social Service Department

(Amendment voted 04-21-1953; effective 05-29-1953.)

(Repeal voted 09-17-1963; effective 02-11-1964.)

[Prior Language](#)

Section 62: Playground and Recreation Department

(Repeal voted 03-11-1947; effective 03-24-1947.)

[Prior Language](#)

Section 63: Library Department

(Repeal voted 09-17-1963; effective 02-11-1964.)

[Prior Language](#)

Section 64: Support of Educational and Cultural Institutions

The Council shall annually make appropriations for the support of all institutions of an educational, scientific, historical and cultural character, and which have a tendency to promote the welfare of the City and its inhabitants, which are now or which may hereafter be controlled by The City of San Diego and partially or wholly operated and maintained by said City for the benefit of its inhabitants.

Article 6: Board and Commissions

Division 11: Commission on Police Practices

(“Community Review Board on Police Practices” added 7-20-2018 by O-20961 N.S.; effective 8-19-2018.)

(Retitled from “Community Review Board on Police Practices” to “Commission on Police Practices” on 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1101 Establishment and Purpose of the Commission on Police Practices

Effective December 18, 2020, City Charter section 41.2 established the Commission on Police Practices, which supersedes and replaces the Community Review Board on Police Practices. The *Commission* is an investigatory body of the City, independent of the Mayor, Police Chief, and *Police Department*.

The *Commission’s* purpose is: (1) to provide independent community oversight of the *Police Department*, directed at increasing community trust in the *Police Department* and increasing safety for both members of the community and *police officers*; (2) to perform independent *investigations* of *police officer*-involved shootings, in-custody deaths, and other significant incidents involving the *Police Department*, and independent *evaluations* of *complaints* against the *Police Department* and its personnel, in a process that is transparent and accountable to the community; and (3) to *evaluate* and *review* *Police Department* policies, practices, training, and protocols, and represent the community in making recommendations for changes. The *Commission* has *investigatory*, *review*, and *auditing* powers, including the power to make factual determinations about matters that are *investigated* and to make advisory recommendations regarding the actions of *police officers* and the procedures, policies, and practices of the *Police Department*.

(“Purpose and Intent” added 7-20-2018 by O-20961 N.S.; effective 8-19-2018.)
(Retitled from “Purpose and Intent” to “Establishment and Purpose of the Commission on Police Practices” and amended 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1102 Definitions

In the interpretation and implementation of City Charter section 41.2 and this Code, the following definitions apply to the terms set forth in italics:

Audit means to examine a matter in compliance with an established set of standards.

Commission means the Commission on Police Practices.

Complaint means any communication to the *Commission, Police Department, or City* that alleges *misconduct* by a *police officer*, including, but not limited to, complaints submitted under California Penal Code section 832.5.

Complainant means a person who files a *complaint*.

Evaluate means to determine the significance or condition of a matter.

Executive Director means the City employee appointed to serve as the director of the Office of the Commission on Police Practices, and having the duties set forth in City Charter section 41.2.

Finding means the determination of the *Commission* after it has *reviewed, investigated, or audited* a matter within its authority. *Findings* must be based on provable facts applying California evidentiary rules applicable to *administrative proceedings*, based on the preponderance of the evidence standard, which is defined as more likely than not. *Findings* must be in accordance with California law, including California Penal Code sections 832.5 through 832.8, or any successor California law, binding on the City as a public agency employer of *police officers*. The possible *findings* are as follows:

- (a) *Sustained* means the *police officer* committed all or part of the alleged acts of *misconduct*;
- (b) *Not Sustained* means the *investigation* produced insufficient information to clearly prove or disprove the allegations;
- (c) *Exonerated* means the alleged act occurred, but was justified, legal, and proper, or was within policy;
- (d) *Unfounded* means the alleged act did not occur.

Investigation means a gathering of actionable information, including from *original sources*, regarding a *complaint* against a *police officer* or an incident involving a *police officer*, which is conducted in compliance with applicable laws. Any *investigation* of a *police officer* must comply with the California Public Safety Officers Procedural Bill of Rights Act, as set forth in the California Government Code, and other applicable laws. When conducting an *investigation*, the *Commission* must gather and consider factual information from *original sources*, including documents or copies originating from material gathered and generated by the *Police Department*, witness interviews obtained by the *Commission* or its staff, and documents or copies gathered or prepared by the *Commission* or its staff.

Investigatory proceeding means any process, formally set forth in the *Commission's* operating procedures and approved by the Council, to *investigate*, *review*, or *audit* a matter, including interviewing witnesses, *receiving* and *reviewing* documents, engaging a fact-finding panel, and conducting hearings.

Member means a person appointed to serve on the *Commission*.

Misconduct means conduct that causes risk or harm to the health and safety of the public, impairs the operation and efficiency of the *Police Department*, or brings the *Police Department* into disrepute. *Misconduct* may involve a violation of any law, including a federal or state statute or local ordinance, a regulation, including a City Administrative Regulation, or a *Police Department* policy or procedure. *Misconduct* may also involve a willful act of moral turpitude or an ethical violation. On-duty or off-duty conduct may constitute *misconduct*.

Original sources mean firsthand testimony or direct evidence concerning a matter under *investigation*, *review*, or *audit*.

Personnel records mean records maintained by the City, including records within the City's Personnel Department, Risk Management Department, and *Police Department*, specific to each *police officer's* employment, including, but not limited to, performance evaluations, assignments, status changes, imposed discipline, and personal information.

Police Department means the City's *Police Department*, including *police officers* and other City employees.

Police officer means a peace officer, as defined by and with the authority set forth in the California Penal Code, who is employed by the *Police Department*.

Police misconduct means *misconduct* alleged in a *complaint* against a *police officer*. *Police officer misconduct*, as used in City Charter section 41.2, has the same meaning as *police misconduct*.

Receive means to gain knowledge of information from a written or verbal communication or to take physical possession of a document.

Register means to record in writing and maintain the record.

Review means to inspect, consider, and reexamine a matter and reach a conclusion regarding the matter. When *reviewing a complaint*, the *Commission* must consider information and documents or copies, originating from material gathered and generated by the *Police Department*, witness interviews by the *Commission* or its staff, and information and documents or copies, gathered or prepared by the *Commission* or its staff.

(“*Community Review Board on Police Practices*” added 7-20-2018 by O-20961 N.S.; effective 8-19-2018.)

(Retitled from “*Community Review Board on Police Practices*” to “*Definitions*” and amended 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1103 Commission Composition and Member Qualifications

- (a) The *Commission* will be composed of members of the Community Review Board on Police Practices serving on December 18, 2020, until the Council has formally appointed *members* to the *Commission*, in accordance with the provisions and process set forth in this Code.
- (b) The Council will not consider citizenship status in appointing *members* to the *Commission*.
- (c) All *members* must reside in the City at the time of their appointment or reappointment and throughout their service on the *Commission*. The Council cannot waive this requirement.
- (d) The Council must appoint *members* to the *Commission*, who reflect the diversity of the City, by including *members* who represent the City’s diverse geographic areas and socio-economic, cultural, racial, ethnic, gender, gender identity, sexual orientation, and age differences, and who have differing personal backgrounds, education, occupations, and life experiences. The Council must make appointments to specific designated seats, as follows:
 - (1) There must be at least one *member* who resides in each of the nine Council districts appointed to serve in a designated seat for each Council district. Any vacancy in these designated seats, created by a *member* moving out of the Council district or a change in Council district boundaries, must be addressed by the Council at the end of the *member’s* term.

- (2) There must be two *members* in the age range of 18 to 24 at the time of appointment, who are appointed to serve in two designated youth seats. Once these *members* reach the age of 25, they are no longer eligible for reappointment to these designated seats. Any vacancy in these designated seats must be addressed by the Council at the end of the *member's* term.
 - (3) The Council must appoint five *members* who reside in and represent those City residents living in low- and moderate-income United States Census tracts. Any vacancy in these designated seats, created by a *member* moving out of a low- or moderate-income United States Census tract, must be addressed by the Council at the end of the *member's* term.
 - (4) The Council must appoint nine at large *members*, prioritizing the appointment of individuals who have had prior contact or interactions with law enforcement; individuals with experience or expertise in substance abuse addiction treatment; individuals involved or with expertise in services for or directed towards the unhoused; individuals involved or with expertise in immigration or migrant services; individuals who were or are criminal justice system impacted; individuals involved or with expertise in mental health, restorative justice, social work, or law enforcement practices and oversight; and individuals with experience or expertise in civil rights advocacy.
- (e) To ensure the *Commission's* independence from the *Police Department* and other law enforcement agencies in San Diego County, no current or former employee of the *Police Department* or other law enforcement agency working within the geographic boundaries of the County of San Diego may serve on the *Commission*. In addition, no immediate family or household member, defined as the parent, spouse, domestic partner, sibling, child, or cohabitant, of a law enforcement officer, who works or worked for a law enforcement agency within the geographic boundaries of the County of San Diego, may serve on the *Commission*. For purposes of this prohibition, law enforcement agencies include police departments in all cities in the County of San Diego, as well as local agency, county, state, and federal law enforcement officers and City, county, state, and federal prosecutors. This prohibition does not apply to former employees of law enforcement agencies outside of the County of San Diego, who have been separated from their law enforcement employment for at least five years.
- (f) No City employee, who is on active payroll, may serve on the *Commission*.

- (g) All prospective or nominated *members* of the *Commission* are subject to a criminal history background review prior to appointment, to be conducted in cooperation with the City’s Personnel Department. The consideration of an applicant’s or nominee’s criminal history may only take place during the final stage of the appointment process. An applicant or nominee shall not be excluded from participation on the *Commission* based on their criminal history background, at time of appointment, except for any of the following reasons:
- (1) they have been convicted of malfeasance in office, and their civil rights have not been restored;
 - (2) they have been convicted of a felony and are on parole, post-release community supervision, felony probation, or mandated supervision for the conviction of a felony;
 - (3) they are required to register as a sex offender pursuant to California Penal Code section 290 based on a felony conviction;
 - (4) they are incarcerated in any prison or jail;
 - (5) they have been found in violation, by a state or local judicial or administrative body, of any of the following: (i) misuse of a public position for personal interests; (ii) misuse of City records; or (iii) violation of federal or state laws relating to confidentiality or City employee privacy; or
 - (6) they have been convicted of a violent crime against a government employee or official. For purposes of this subsection, government employee or official means a person who is employed by the United States government, the State of California, or any city, county, city and county, special district, or political subdivision of the State of California.
- (h) No person shall be excluded from eligibility or disqualified to serve on the *Commission* for any reason other than those reasons set forth in this section. If an applicant or nominee is disqualified from appointment for any reason under this section, the City must provide a written explanation of the reason or reasons to the disqualified applicant or nominee.

*(“Appointment” added 7-20-2018 by O-20961 N.S.; effective 8-19-2018.)
(Retitled from “Appointment” to “Commission Composition and Member Qualifications” and amended 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)*

§26.1104 Terms of Commission Members

- (a) *Members* serve two-year terms and until a successor is appointed, except that 12 of the 25 *members* first appointed will initially serve a one-year term, so that the terms of no more than 13 *members* expire in any year. Following the first Council appointments to the *Commission*, the City Clerk will administer a random drawing to determine which of the 25 *members* will initially serve a one-year term.
- (b) All terms begin upon appointment and end on June 30 of the applicable year.
- (c) The City Clerk must maintain a record of the *members* and their terms and regularly make this information available to the Council and the public.
- (d) The Council President, with the assistance of the *Executive Director*, will timely schedule Council consideration of new appointments to ensure that the *Commission* positions remain filled.
- (e) *Members* can serve no more than four two-year terms consecutively. However, *members* whose terms of service have expired must continue to serve until their successor is appointed, even if the total time served extends beyond the maximum permissible length of service. If for any reason a *member* serves a partial term in excess of one-half of a full term, that partial term will be considered a full term for the purpose of the *member's* term limitation of four consecutive terms.

(“Terms” added 7-20-2018 by O-20961 N.S.; effective 8-19-2018.)
(Retitled from “Terms” to “Terms of Commission Members” and amended 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1105 Appointment of Commission Members

- (a) *Members* are appointed by the Council in accordance with the approved Council rules and policies. In making appointments, the Council may consider written nominations made by the public and community-based organizations, as long as nominees accept their nomination in writing prior to Council consideration. The Council may also consider nominations from the *Commission*. The *Commission* may prepare an operating procedure for its nomination process.
- (b) As part of their appointment process, prospective *members* are subject to a review of their qualifications to serve, which will be conducted by the Council President or designee, in accordance with applicable laws. This *review* includes an *investigation* into any record of criminal convictions, as set forth in Section 26.1103 of this Code.

- (c) The *Commission* will work with the Chair of the Council’s Public Safety and Livable Neighborhoods Committee to have an annual special meeting of the Committee where community stakeholders may advocate and promote community members as potential nominees to the *Commission*.

(“Resignation and Removal of Board Members” added 7-20-2018 by O-20961 N.S.; effective 8-19-2018.)

(Retitled from “Resignation and Removal of Board Members” to “Appointment of Commission Members” and amended 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1106 Removal of Commission Members

- (a) A *member* may resign prior to the expiration of their term with written notice to the Council President. Upon this notification, the Council President must consider the position vacant and eligible for the Council to appoint a new *member* to serve for the remainder of the vacating *member’s* term. If a *member* resigns from a designated seat, the Council must appoint a new *member* who meets the qualifications to serve in that designated seat.
- (b) A *member* must immediately notify the Council President and cease any further participation on the *Commission*, pending a vote by the Council to formally remove and replace the *member*, if any of the following circumstances occur during the *member’s* term: (1) the member is incarcerated in any jail or prison and unable to serve or (2) the member is convicted during the *member’s* term of (i) malfeasance in office and their civil rights have not been restored; (ii) a felony; (iii) a felony or misdemeanor where they are required to register as a sex offender pursuant to California Penal Code section 290; (iv) criminal violation of state or local conflict of interest laws; or (v) a violent crime against a government employee or official. For purposes of this subsection, government employee or official means a person who is employed by the United States government, the State of California, or any city, county, city and county, special district, or political subdivision of the State of California. The Council’s consideration of the removal and replacement of the *member* must occur within 60 days following the Council President’s receipt of notice under this subsection. The *member* may waive a Council hearing on removal, but the Council must consider replacement of the *member* within the 60 days following the Council President’s notice of the conviction.
- (c) The *Commission*, by a two-thirds vote of its *members*, may recommend to the Council, by written notice to the Council President, that a *member* be removed for good cause other than a criminal conviction, for the following reasons:

- (1) misuse of their position for personal interests;
 - (2) misuse of records, including *Police Department* or *Commission* records;
 - (3) violation of federal or state laws relating to confidentiality or City employee privacy;
 - (4) conduct that impedes a *member's* ability to serve impartially and independently;
 - (5) unexcused absences from at least three consecutive meetings of the full *Commission*. Prior notification to the *Commission's* chairperson of a *member's* absence from a meeting of the full *Commission* is considered an excused absence;
 - (6) failure to complete case *review* as assigned by the *Executive Director*;
 - (7) violation of the Code of Ethics of the National Association for Civilian Oversight of Law Enforcement (NACOLE) or the *Commission's* adopted code of ethics; or
 - (8) any other cause that impacts the *Commission's* effective operations, standing, or independence.
- (d) Upon receipt of a written recommendation by the *Commission* to remove a *member* for good cause other than a criminal conviction, as specified in subsection (c) of this section, the Council President must schedule a public hearing of the Council to occur within 60 days following receipt of the recommendation.
- (e) If a *member* voluntarily resigns before a required public hearing of the Council on removal, the *member* waives their right to the hearing on removal. The Council President may suspend a *member's* participation on the *Commission* by written notice to the *member*, pending a Council hearing on removal.
- (f) The Council President may notice a public hearing for Council determination on removal of a *member* for good cause other than a criminal conviction, as specified in subsection (c) of this section, regardless of whether a recommendation is made by the *Commission*.
- (g) The Council must act, by majority vote, to remove a *member* if the *member* does not voluntarily resign.

(“Duties and Functions” added 7-20-2018 by O-20961 N.S.; effective 8-19-2018.)
(Retitled from “Duties and Functions” to “Removal of Commission Members” and amended 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1107 Duties and Powers of the Commission

- (a) The *Commission* has the following duties and powers, as mandated by the Charter and by the authority of the Council:
 - (1) Once *members* are formally appointed by the Council, the *Commission* must establish operating procedures for its governance and the *Commission's investigatory proceedings*. All operating procedures prepared by the *Commission* must be consistent with all applicable laws, including the Charter, the Ralph M. Brown Act, the California Public Records Act, and all laws, rules, regulations, and collective bargaining agreements between the City and its recognized employee organizations that provide rights to City employees. The *Commission's* initial operating procedures and any amendments must be approved by the Council, by resolution, before the operating procedures take effect.
 - (2) The *Commission* is an *investigatory* body of the City, independent of the Mayor and the *Police Department*. The *Commission* must independently *investigate* and *evaluate* all deaths occurring while a person is in the custody of the *Police Department*, all deaths resulting from interaction with a *police officer*, and all *police officer*-involved shootings, regardless of whether a *complaint* has been made against a *police officer* or the *Police Department*. These *investigations* must be conducted by *Commission* staff or contractors who are independent of the *Police Department*. In accordance with the *Commission's* duties and powers, the *Commission* must prepare operating procedures for *Commission* investigators to have immediate access to the scene or area of a *police officer*-involved shooting, the scene or area where a death or deaths occurred resulting from interaction with a *police officer*, the scene or area where a death or deaths occurred while a person was in the custody of the *Police Department*, and *Police Department* investigations of *police officer*-involved shootings, deaths resulting from interaction with *police officers*, and deaths occurring while a person is in the custody of the *Police Department*. Upon completion of any *investigation*, the *Commission* must make *findings*. The Chief of Police must provide a written substantive response to the *Commission's findings* within 30 days of receipt of the *findings*.

- (3) The *Commission* may, but is not required to, *investigate* and *evaluate* a *complaint* against a *police officer* that does not involve an in-custody death, a death resulting from an interaction with a *police officer*, or a *police officer*-related shooting. Upon completion of any *investigation*, the *Commission* must make *findings*. The *Commission* is prohibited from *investigating* and *evaluating* a *complaint* where the *complainant* has requested that the *complaint* be handled without an *investigation* by the *Commission* or where no specific allegation or *police officer* can be identified. The *Commission* may *investigate* any allegations of *misconduct* that become known to the *Commission* during an *investigation* of a *complaint*. In exercising its discretionary power to *investigate* and *evaluate* a *complaint*, the *Commission* must determine that the *complaint* involves any of the following:
- (A) an incident in which the use of force by a *police officer* against a person resulted in great bodily injury;
 - (B) dishonesty by a *police officer* directly relating to the reporting, *investigation*, or prosecution of a crime, or directly relating to the reporting or *investigation* of *misconduct* by another *police officer*, peace officer, or custodial officer, including an allegation of perjury, making a false statement, filing a false report, or destroying, falsifying, or concealing evidence;
 - (C) an incident that has generated substantial public interest or concern;
 - (D) an incident where data shows a pattern of *misconduct* by a *police officer*; or
 - (E) an incident where data shows a pattern of inappropriate policies, procedures, or practices of the *Police Department* or its members.
- (4) The *Commission* must *receive*, *register*, *review*, and *evaluate* all *complaints* against *police officers*, except the *Commission* must not *review* or *evaluate* a *complaint* where the *complainant* has requested that the *complaint* be handled without *investigation* by the *Commission* or where no specific allegation or *police officer* can be identified. Upon completion of any *complaint review* or *evaluation*, the *Commission* must make *findings*. The Chief of Police must provide a written substantive response to the *Commission's findings* within 30 days of receipt of the *findings*.

- (5) The *Commission* may, but is not required to, *review, investigate, and evaluate* allegations of inappropriate sexual conduct, physical assault, or domestic violence by a *police officer*, whether or not a *complaint* has been submitted to the *Commission* or the *Police Department*. Upon completion of any *review, investigation, or evaluation*, the *Commission* must make *findings*. The Chief of Police must provide a written substantive response to the *Commission's findings* within 30 days of receipt of the *findings*.
- (6) The *Commission* must *review and evaluate* all factual *findings* and evidentiary conclusions of the *Police Department* arising from *Police Department investigations* of alleged *misconduct* by *police officers*, including internal *investigations* not resulting from a *complaint*, and all disciplinary decisions proposed by the Chief of Police or designee following *sustained findings of police officer misconduct*. The *Commission* may provide advisory recommendations to the Chief of Police, but must act promptly, timely, and in accordance with applicable laws, including the California Public Safety Officers Procedural Bill of Rights Act. In providing advisory recommendations on the discipline of officers to the Chief of Police, the *Commission* may consider all information, agreements, and documents of prior discipline imposed, including agreements for reduced discipline or last chance agreements, and prior *sustained findings of misconduct* against the *police officer*, including prior *sustained findings of misconduct* made by the *Commission* or the *Police Department*, in a manner consistent with state law and the City's established disciplinary process. In order to execute its powers and duties under this section, every 30 days after the *Police Department* has commenced an *investigation* of alleged *misconduct* by *police officers*, the *Police Department* must provide to the *Commission* a written status report on the progress of the *investigation*, until the *investigation* concludes. Upon the *Commission's* written request, the *Police Department* must provide all *records* pertaining to the *investigation*, subject to Section 26.1109 of this Code. The *Police Department* must either provide to the *Commission* its factual *findings* and evidentiary conclusions within six months after commencement of its *investigation*, or a written explanation as to why it cannot provide such information. If, after six months, the factual *findings* and evidentiary conclusions are not available, the *Police Department* must provide a written report to the *Commission* on the status of the *investigation* every two weeks thereafter, until the *investigation* concludes. Unless expressly permitted under the California Public Safety Officers Procedural Bill of Rights Act, there are no circumstances, express or implied, for the *Police Department* to delay or toll completion of its *investigation*.

- (7) The *Commission* may, but is not required to, *review and evaluate* the *Police Department's* administration of discipline of *police officers* arising from other matters not involving alleged *misconduct*. The *Commission* may provide advisory recommendations to the Chief of Police, but must act promptly, timely, and in accordance with applicable laws, including the California Public Safety Officers Procedural Bill of Rights Act. In providing advisory recommendations on the discipline of officers to the Chief of Police, the *Commission* may consider all prior discipline imposed, including agreements for reduced discipline or last chance agreements, and *sustained findings of misconduct* against the *police officer*, including prior *sustained findings of misconduct* made by the *Commission* or the *Police Department*, in a manner consistent with state law and the City's established disciplinary process. The Chief of Police must provide a written substantive response to the *Commission's* advisory recommendations within 30 days of receipt of the recommendations.
- (8) The *Commission* must *review and evaluate* the *Police Department's* compliance with federal, state, and local reporting laws and requirements.
- (9) The *Commission* may, but is not required to, *review and evaluate* the policies, procedures, practices, and actions of the *Police Department*. The *Commission* may make advisory recommendations to the Chief of Police, the Mayor, and the Council on any policies, procedures, practices, and actions of the *Police Department*. The Chief of Police must provide a written substantive response to the *Commission's* recommendations within 60 days of receipt of the recommendations.
- (10) The *Commission* may request that the Mayor review any *Commission findings* or advisory recommendations that the Chief of Police does not accept, implement, execute, or apply.
- (11) The *Commission* may develop and implement a mediation program that enables *complainants* to resolve their issues with a *police officer* who is a subject of a *complaint*, through face-to-face alternative dispute resolution involving a trained mediator. Participation in a mediation program must be voluntary and mutually agreed upon by both the *complainant* and the *police officer*. Mediation must be limited to eligible cases as determined by the *Commission*. A case successfully resolved through mediation, as determined by the *Commission*, is not considered a disciplinary proceeding or punitive action under the California Public Safety Officers Procedural Bill of Rights Act. However, the *complaint* may be subject to discovery in a criminal or civil action in accordance with applicable federal or state laws.

- (12) The *Commission* must interact with all City employees, including *police officers* and other employees of the *Police Department*, in accordance with all applicable federal, state, and local laws and regulations, including the City’s Civil Service Rules, Personnel Regulations, Administrative Regulations, and collective bargaining agreements between the City and its recognized employee organizations.
 - (13) The *Commission* may establish an operating procedure to directly *receive* and *investigate complaints* by members of the public against *Police Department* employees who are not *police officers*, in accordance with the City Charter and this Code. Any procedure to *investigate* the *complaints* must be made available in writing and accessible to the public. A copy of any *complaint received* by the *Commission* that identifies an employee of the *Police Department* must be forwarded to the *Police Department* within five calendar days of the *Commission’s* receipt of the *complaint*. The *Commission* is not authorized to *investigate* a *complaint* against an employee of the *Police Department* who is not a *police officer* unless the *complaint* also alleges *police officer misconduct*.
 - (14) The *Commission* must maintain a training program for individuals interested in appointment to the *Commission*. *Members* must also complete training upon their appointment to ensure their working knowledge of applicable laws and rules. The training program must include instruction in civil or human rights and criminal justice as well as the impacts of racial and identity profiling.
 - (15) Subject to any limitations set forth in governing federal or state laws, the *Commission* may refer any matter before the *Commission* to the grand jury, district attorney, or other governmental agency authorized by law to *investigate* the activities of a law enforcement agency.
- (b) The Chief of Police must consider any *evaluation* or recommendation by the *Commission* of proposed *police officer* discipline, prior to *Police Department* imposition of the discipline, but only if the *evaluation* or recommendation is completed before the statutory timelines set forth in the California Public Safety Officers Procedural Bill of Rights Act or other applicable law. The Chief of Police retains authority and discretion to discipline subordinate employees in the *Police Department*. The exercise of the *Commission’s* duties and powers, as set forth in the City Charter and this Code, including its *investigatory* duties and powers, is not intended to obstruct, abrogate, or supersede the duties of the Chief of Police, as set forth in the City Charter.

(“*Duties and Powers of the Commission*” added 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1108 Cooperation of City Employees in Commission Activities

- (a) It is the policy of the City that all officers and employees of the City cooperate promptly and fully with the *Commission* to ensure the *Commission* can timely and properly perform its duties as required by the Charter, the Council by ordinance, and state and federal laws. A City employee who fails or refuses to comply with this section is subject to discipline, up to and including termination. This requirement to cooperate includes participation in any *investigatory proceeding* set forth in the *Commission's* operating procedures approved by the Council.
- (b) If the *Commission* seeks to interview any City employee, including an employee who is the subject of a *complaint*, as part of an *investigatory proceeding*, the *Commission* must provide timely advance written notice to the employee. The *Commission* must also provide timely advance written notice to the City employee's appointing authority. The written notice must specify the date and time of the interview and provide the employee with reasonably sufficient time to secure union or legal representation by the employee's personal attorney, as applicable, and to make any legal objections to the interview, either before or at the time of the interview.

(“Cooperation of City Employees in Commission Activities” added 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1109 Records

- (a) The *Police Department* must make available to the *Commission* its records, within ten calendar days after a written request from the *Commission*, relating to any matter under *investigation, review, or evaluation* by the *Commission*. The *Police Department* must provide to the *Commission* all *complaints received* by the *Police Department* within five calendar days of receipt regardless of whether there is a written request from the *Commission* for the *complaints*. The *Commission* and the *Police Department* may develop an operating procedure for the disclosure of *Police Department* records to the *Commission*. However, any disclosure of *personnel records* to the *Commission* by any City department must be in accordance with all applicable federal and state laws and regulations, including all laws and regulations pertaining to confidential medical information and *personnel records*. The *Commission* is required to maintain the confidentiality of all *Police Department* records and *City personnel records*, in accordance with applicable laws, and to respond to requests by members of the public for records in the possession of the *Commission* in a manner consistent with the California Public Records Act and applicable constitutional, statutory, and case law that protects *personnel records*.

- (b) In accordance with City Charter section 57, the Chief of Police retains authority over the records of the *Police Department*. The Chief of Police must provide records to the *Commission* in whole and with all information unredacted unless, in the opinion of the Chief of Police, to do so will hinder a criminal investigation or will infringe upon the exercise of the Chief of Police’s right to deliberative process and confidential communications with other law enforcement agencies, the Mayor, or with the subordinate employees of the *Police Department* regarding matters within the authority of the Chief of Police. Within ten calendar days after a written request from the *Commission*, the Chief of Police must provide the *Commission* with *Police Department* records as specified in this section or a written explanation, setting forth the specific records or reasonably segregable portions of the records being withheld, the reason for the withholding or redactions, and the legal justification supporting the withholding or redactions. If the *Commission* disagrees with the Chief of Police’s decision to withhold records or redact information, the *Commission* may seek disclosure through its subpoena power, as defined by the Charter and this Code.

- (c) *The Commission* must retain *complaints* and any reports or *findings* relating to *complaints* for at least five years or any longer period required by state law. These *Commission* records are considered *personnel records* and must be managed in accordance with the California Public Records Act, the California Penal Code, the California Public Safety Officers Procedural Bill of Rights Act, California Evidence Code section 1043, and other applicable laws and collective bargaining agreements. The *Commission* is responsible for compliance with discovery requests for *Commission* records in a manner consistent with controlling law.

(“Records” added 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1110 Subpoenas

- (a) The *Commission* has the power to subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other items whenever material to the performance of the *Commission*’s duties or exercise of its powers.

- (b) A subpoena issued under this section must be issued and signed by the *Executive Director* or their designee.

- (c) If a witness fails to appear before the *Commission* at the time and date set by subpoena, or in the case of a subpoena duces tecum, if a record is not produced as required, the *Commission* may, by majority vote, authorize its chairperson or the *Executive Director* to certify the facts to the Superior Court for an order to show cause why the subpoena recipient should not be ordered to comply with the subpoena.

(“Subpoenas” added 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1111 Conflict of Interest Code

The Council must adopt a conflict of interest code for the *members*, *Executive Director*, and City employees in the Office of the *Commission*. All *members* must be required to complete and file statements of economic interests in accordance with the conflict of interest code.

(“Conflict of Interest Code” added 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1112 Reimbursement for Expenses

The *Executive Director* is authorized to purchase goods and arrange services needed by *members* in the performance of their official duties and to reimburse *members* for reasonable expenses incurred in the performance of their official duties, in accordance with the City’s approved procurement procedures, the approved budget and appropriations for the Office of the *Commission*, and the concurrence of the City’s Chief Financial Officer. *Members* must use and return goods, in accordance with the City’s approved policies and Administrative Regulations.

(“Reimbursement for Expenses” added 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1113 Whistleblower Protection

The City is prohibited from taking an adverse employment action against a City employee that is directly related to the filing of a *complaint* with the *Commission* or to the lawful participation in an *investigatory proceeding* conducted by the *Commission*. A City officer or employee who takes an adverse employment action against a City employee that is directly related to the filing of a *complaint* with the *Commission* or to the lawful participation in an *investigatory proceeding* conducted by the *Commission* is subject to discipline up to and including termination. This protection is in addition to all whistleblower and other protections afforded to City employees under federal and state laws.

(“Whistleblower Protection” added 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§ 26.1114 Outreach and Communications

- (a) The *Commission* must engage in outreach to address community groups and inform the public on the duties and responsibilities, policies, and ongoing operations of the *Commission*. This outreach must include a process for obtaining input from the community as to the functioning of the *Commission*. All public input regarding the *Commission's* functions, including *complaints* about the *Commission*, must be made publicly available on the *Commission's* website.
- (b) At least twice each year, the *Commission* must have a roundtable in a community location to solicit public testimony and other input regarding community policing, building trust between the community and the *Police Department*, and other similar and relevant subjects as determined by the *Commission* in accordance with the *Commission's* powers and duties.
- (c) The *Commission* must establish an operating procedure for the preparation and submission of a semi-annual report to the Mayor and Council regarding the exercise of the *Commission's* powers and duties. The *Commission* must publish its semi-annual report no later than 60 days after the end of the preceding reporting period. The public disclosure of the report and all information within the report must be in accordance with controlling federal and state laws. The report must, at a minimum, describe:
 - (1) the number and types of *complaints received* by the *Commission*, categorized by description as well as by City Council district, police division, and police beat;
 - (2) the number of *complaint reviews* and *investigations* initiated by the *Commission* during the prior six months;
 - (3) the number of *complaint reviews* and *investigations* completed by the *Commission* during the prior six months, and the number of *investigations* that took more than six months to complete and an explanation as to why those *investigations* took more than six months to complete;
 - (4) the number of *complaint reviews* and *investigations* pending with the *Commission* as of the last day of the prior six months;
 - (5) a tabulation of the results of *complaint reviews* and *investigations* by the *Commission* by category of *findings* and recommendations as well as by City Council district, police division, and police beat;

- (6) a description of any *complaints* that resulted in a referral by the *Commission* to other agencies and the names of those agencies;
 - (7) a description and summary of all *evaluations*, *complaint reviews*, and *investigations* undertaken by the *Commission* regarding the practices, policies, procedures, and actions of the *Police Department* as well as any recommendations made by the *Commission* and the responses to the recommendations;
 - (8) the results of the *Commission's evaluations* and *audits* of the *Police Department's* compliance with reporting laws;
 - (9) a description of each instance where the *Police Department*, any other City department, or City employee refused to provide the *Commission* with records or information requested as well as all instances where the *Police Department* took longer than mandated when complying with records requests;
 - (10) a description of the *Commission's* community outreach efforts; and
 - (11) a description of any other significant activity undertaken by the *Commission*.
- (d) The *Commission* must establish an operating procedure for allowing the community to *evaluate* the *Commission's* processes and performance.
 - (e) The *Commission* must establish an operating procedure for the development, data collection, tracking, and reporting of community policing standards. These standards may include de-escalation techniques, strategies, and practices; use of distraction blows; acts of intimidation; detentions; and other standards the *Commission* determines to develop, track, and report. The operating procedure must, at a minimum, include processes for community input and *Police Department* discussion facilitated by the *Commission* regarding the community policing standards.
 - (f) The *Commission* must establish an operating procedure that describes the *Commission's* communications with *complainants* regarding the status of their *complaints*. At a minimum, the operating procedure must describe the *Commission's* process for *receiving* and acknowledging *complaints* and for providing *complainants* with the status and outcomes of the *Commission's* *reviews* and *investigations*. The *Commission* must provide a notice to *complainants* on the status of their *complaints* no less than every 45 days.

- (g) The *Commission* must establish an operating procedure covering public communications on the *Commission's* Internet website, including providing to the public, as soon as practicable, as much information as permitted by law, on the status of the *Commission's investigation* of each *complaint*, the list of all *complaints received*, the *Commission's findings* of the *complaints investigated*, and all of the *Commission's* recommendations.
(“*Outreach and Communications*” added 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

§26.1115 Ballot Measures and Federal, State, and Local Legislation

The Council recognizes the expertise of the *Commission* in matters related to law enforcement and public safety. The Council authorizes the *Commission* to make recommendations to the Mayor and Council on proposed City ballot measures, in accordance with the Council’s policies, and on proposed federal, state, and local legislation, in accordance with the Council's process to establish the City's legislative platform. The Council also authorizes the *Commission* to provide information to the public about the possible effects of any proposed ballot measure or legislation related to the activities, operations, or policies of the *Commission* or the City involving law enforcement or public safety. In exercising this authority, the *Commission* must ensure that the use of City resources for this purpose, including budgeted funds and staff time, is otherwise legally authorized, and the information provided to the public constitutes a fair and impartial presentation of relevant facts to aid the public in reaching an informed judgment regarding the proposed ballot measure or legislation. The *Commission* must ensure compliance with all laws related to the required separation between the use of City resources and campaign activities. The *Commission* may consult with its counsel or appropriate local or state regulatory agencies for guidance in complying with this section.

(“*Ballot Measures and Federal, State, and Local Legislation*” added 10-20-2022 by O-21557 N.S.; effective 11-19-2022.)

Open Meetings and Transparency under the Brown Act

1

BROWN ACT AND OPEN MEETING REQUIREMENTS

The City Implementation Ordinance and the Brown Act requires that the meetings of the CPP be conducted in public:


- The CPP is a "Legislative body." A legislative body includes any congregation of a majority of the body.
- A legislative body also includes a standing committee of less than a quorum, i.e. an Executive Committee that regularly meets to conduct CPP business.
- Ad hoc committees consisting solely of less than a quorum for specific tasks are not legislative bodies, i.e. Ad Hoc governance committee created for a limited purpose.

2

Agenda Requirements Under the Brown Act

- Notice and Agenda Requirements include posting within 72 hours
- Special meetings may be held with 24 hour notice
- Emergency meetings may be held with 1 hour notice only under extraordinary emergency circumstances


3



Agenda Governs Meetings

- Only items placed on the agenda may be discussed
- The Act requires a brief description of items to be discussed
- Some slight latitude is afforded for brief questions or direction to staff regarding items not on the agenda
- There is an exception where a need to take action arose after agenda posting


4



Brown Act Requirements

Every meeting governed by the Brown Act must afford an opportunity for public comment

5



When Does a "Meeting" Occur?

- A meeting occurs whenever a quorum meets to *hear, discuss* or *deliberate* on an item under subject matter jurisdiction
- By nature e-mail communications can cause for illegal meetings, i.e. where members meet in a "chat room" to discuss agency business

6



Serial Meetings Are Prohibited

- A serial meeting occurs where there is a series of communications by individual members of less than a quorum, but ultimately involving a majority of the body
- Example, on a 7 member commission- Member A to B; B to C; C to D

7



Serial Meetings

- The purpose of serial meeting prohibition is to prevent public bodies from circumventing the requirement for open and public deliberation of issues

8



Serial Meetings

- Any person, including unwary staff, can violate the law by becoming involved in a serial meeting
- Where a person becomes a "wheel of deliberation" among commissioners, a serial meeting occurs

9

Example of an Illegal Serial Meeting Scenario

- Staff talks to Commissioner 1 about a police investigation;
- Commissioner 1 calls commissioners 2-12, informing them about what the Commissioner thinks regarding the police investigation and what should happen.
- Once a quorum of commissioners has discussed the matter outside of a public meeting, there is a Brown Act violation.

10

Brown Act Warnings as to E-Mail Communications

- Never send e-mails to members, copied to all, inviting a response back
- Avoid using e-mail to have ongoing conversations where other legislative members are copied
- Employees should not send e-mails having ongoing subject matter conversations with a majority of the entire body
- Avoid "reply to all" responses

11

Commissioner Teleconferencing

A commissioner may appear remotely at a meeting only under limited circumstances:

Traditional Brown Act Requirements:

1. Must post notice on the agenda with a quorum at the meeting location;
2. The remote location must allow for public attendance
3. The remote location must afford public participation at the remote location

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Commissioner Teleconferencing

AB 2449 created new options for teleconferencing in response to Covid:

1. *Just Cause:*

- (a) Caregiving for family;
 - (b) Contagious illness;
 - (c) Physical or mental disability;
 - (d) Travelling for official business for a public agency.
- Commissioners must give a "general description" of circumstances
 - Not allowed more than two times per year

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Commissioner Teleconferencing

2. *Emergency:*

- Emergency circumstances means a physical or family medical emergency that prevents attendance in-person.
 - The member must generally describe the circumstances but does not need to disclose any personal medical information.
 - If the request is made too late to include it on the posted agenda, the body may still consider it. (Gov't. Code § 54954.2(b)(4)).
 - A majority of the legislative body must approve the request.
- "In general, a commissioner may not request remote attendance for more than 3 consecutive months and a quorum must attend the meeting in person. Must give notice if anyone over 18 is in the room and the relationship."*

14

Closed Sessions and the Duty/Requirement of Confidentiality



15

Closed Sessions are Exceptions to Open Meeting Requirements

- Personnel Matters: appointment, evaluation, discipline, dismissal (unless requested by employee to be done in public)
- Existing Litigation, threatened litigation or anticipated litigation
- Labor Negotiations: salaries, benefits...
- Public Security: imminent threats to public safety

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Police Officer Personnel Files Are Confidential

Penal Code sections 832.5 and 832.8: Complaints against officers and personal information

Penal Code sec. 835.7:

(a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers...

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Penal Code section 832.7

... the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection...

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.


(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

(iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.

(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

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Penal Code section 832.7 (Cont.)

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

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Police Officer Confidentiality (Penal Code 832.7)

6) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.


(B) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers.

(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 peace officer, custodial officer, or another person.

(7) Notwithstanding paragraph (6), an agency may redact a record disclosed pursuant to this section, including 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 disclosure of the information.

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Government Code Section 54957(b)(2)

"As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void."

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Confidentiality Under the Brown Act

- Government Code section 54963 was enacted to penalize "leaks" of confidential information from closed sessions
- Unauthorized communications may constitute misdemeanor violations as determined by the grand jury

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Government Code Section 54963

"(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized...to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information."


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ILLEGAL PUBLIC DISCLOSURE

- Since the legislative body holds a privilege of non-disclosure, only the body (Board) may authorize public disclosure of closed session discussions where "reportable action" has not occurred


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Brown Act Sanctions

- Misdemeanor against each member of a legislative body who:
 1. Attends a meeting of that body
 2. Where action is taken in violation
 3. Where the member intended to deprive the public of information which the member knew the public had a right to receive


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Misdemeanor Penalty

1. Confined to meetings where "actions" are taken in violation of the Act, as opposed to where only "deliberation" occurs.
2. Violations may invalidate actions of the commission, investigative findings, disciplinary recommendations, etc.
3. The District Attorney or public may also file a civil action to enjoin violations.

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EMAIL as a Public Record

- In general, City and CPP email constitutes public records;
- It is advisable to separate personal and official email;
- Email communicated from a personal email address may become a public record;
- Exceptional care should be taken when using email;
- Confidential information (closed session information, police records, complaints, personnel files, internal investigation information, etc.) should not be communicated through City or personal email.

Rule of thumb: Do not put anything in email that you would not want to see on the front page of the newspaper.

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Understanding Parliamentary Procedure

Prepared by Doug Case

What is parliamentary procedure?

Parliamentary procedure is a organized system for conducting a business meeting. Most organizations use Robert's Rules of Order as their parliamentary authority, named after Henry M. Robert who created the rules in 1876. The rules have been revised and enhanced over the years, with the most recent version being *Robert's Rules of Order, Newly Revised*, 12th Edition, 2020, upon which this chapter is based.

In addition to Robert's Rules of Order, business must be conducted consistent with the organization's governing documents, such as bylaws and standing rules, the policies of a parent organization or host institution, and any applicable laws. The organization's governing documents supersede Robert's Rules in the event of a conflict.

Purposes of parliamentary procedure

- Ensures that the majority rules
- Protects the rights of the minority, individual members, and those absent
- Provides order, fairness and decorum
- Facilitates the transaction of business and expedites meetings

Basic Principles of Parliamentary Procedure

- All members have equal rights, privileges and obligations.
- A **quorum** must be *present* for the group to transact business – if the bylaws of the organization do not establish a quorum, the general rule is that a majority of the entire voting membership must be present in order to transact business.
- Full and free discussion of every motion is a basic right.
- Only one question at a time may be considered, and only one person may have the floor at any one time.
- No person can speak until recognized by the chair. (Exception: There are a few motions, such as making a Point of Order, where a member does not have to wait to be recognized.)
- Personal remarks are always out of order.
- A **majority** decides a question except when basic rights of members are involved.
- A **two-thirds vote** is required for any motion that deprives a member of rights in any way (e.g., cutting off debate).
- Silence equals consent. Those who do not vote allow the decision to be made by those who do vote.
- The chair should always remain impartial.

Role of the Presiding Officer (Chair)

- Remain impartial during debate – the presiding officer must relinquish the chair in order to debate the merits of a motion
- Vote only to create or break a tie (or 2/3 for matters requiring a 2/3 vote) – Exception: the presiding officer may vote on any vote by ballot.
Examples: If there is a 20-20 tie, and the chair is in favor of the motion, the chair should cast an affirmative vote so that the motion passes. The chair should not vote if opposed to the motion, since a motion with a tie vote fails for lack of a majority. If a motion passes by a vote of 20-19 and the chair is opposed, the chair can cast a vote in opposition to create a tie, thus causing the motion to fail. In other words, the chair only votes when casting a vote will change the outcome.
- Determine that a quorum is present before transacting business
- Introduce business in proper order
- Recognize speakers
- Determine if a motion is in order
- Keep discussion germane to the pending motion
- Maintain order
- Put motions to a vote and announce results
- Employ unanimous consent (general consent) when appropriate

Without Objection

The most important phrase that a presiding officer can use to expedite meetings is: “If there is no objection ...” When it seems clear that everyone agrees, there is no reason to go through the routine of making and voting on a motion. For example, if there are no corrections to the minutes, the chair can say: “Is there any objection to approving the minutes as distributed? (Short pause) Hearing no objection, the minutes stand approved.”

Order of Business

The following is a typical order of business, which can be modified as needed to fit the needs of the organization.

- **Call to order** – The presiding officer (chair) starts the meeting. Some organizations have opening ceremonies or traditions, such as an invocation or reading the organization’s purpose.
- **Roll call** – Before any business can be transacted, the secretary should take attendance and verify that a quorum is present. If a quorum is not present, the group cannot take any action except for hearing reports and adjourning.
- **Adoption of the agenda** – the chair usually is in charge of preparing the agenda, but it can be modified by the group. Items can be added, deleted or deferred, or arranged in a different order. Once approved, the agenda can only be modified by unanimous consent or by a two-thirds vote.

- **Approval of the minutes** – The secretary should distribute the draft minutes of the previous meeting in advance. After accepting any corrections, the group should vote to approve the minutes so that the minutes become part of the organization’s official records.
- **Officer reports** – Officer reports are given in the order that officers are listed in the bylaws. If the report includes recommendations, a motion can be made to consider the recommendations. (Note: Some organizations prefer to defer action items to New Business rather than after immediately after reports.)
- **Committee reports** – The chairs of standing (permanent) committees, followed by reports from ad hoc (temporary) or special committees. Motions arising from a committee do not require a second.
- **Special orders of business** – This is important business previously designated for consideration at this meeting. Sometimes special orders are assigned a “time certain” to be considered.
- **Unfinished business** (not “old business”) – Items from previous agendas that still require action.
- **New business** – This is where any member can bring up a new topic for consideration.
- **Announcements** – Any member can inform the group of subjects or events. Some organizations also have closing ceremonies or traditions, such recognition of members for outstanding contributions.
- **Adjournment** – A meeting ends when there is no further business or the group votes to end the meeting. If a specific adjournment time was included when the agenda was adopted, no motion is required for the chair to declare the meeting adjourned at that time.

General Procedure for Handling a Motion

Making a motion is how you bring an item of business before the organization for action. It is important to follow all of these steps:

1. **Obtain the Floor.** A member normally must obtain the floor by being recognized by the chair. (Exception: Some motions, such as a Point of Order, can be made without waiting to be recognized.)
2. **Make the Motion.** The member makes a motion by saying “I *move* that ...” The member, however, should not give arguments in support of the motion until debate begins.
3. **Motion Must Be Seconded.** The *only* purpose of seconding a motion is to assure that at least one other person wants to consider it. It should not be inferred that the member who seconds the motion supports it, only that the member wants it discussed. Motions stemming from a committee do not require a second. The name of the person who seconded the motion should *not* be included in the minutes. (Some types of motions do not require a second. Refer to the chart below.)
4. **Chair Restates the Motion.** If the motion is in order, the chair repeats it. This often-neglected but essential step is important for three reasons: (1) It allows the secretary to correctly record the exact wording of the motion, (2) It allows the chair to clarify the intent of the motion, (3) It allows the members to know precisely what they will be considering. Before the motion is restated by the chair, any member can, without waiting

to be recognized, suggest a modification of the wording to clarify the motion. The maker of the motion can choose to accept or reject the rephrasing (does not require a second).

5. **Debate Begins.** The maker of a motion has the right to speak first in debate. See below for the rules of debate. Once debate begins, “ownership” of the motion belongs to the group, not the maker. The motion can only be withdrawn or modified (see amendment procedures below) by a vote of the group or with unanimous consent.
6. **Debate is Closed.** Debate ends when: (1) no one else is seeking recognition to speak, (2) a motion to end debate (“previous question”) carries by a two-thirds vote, or (3) the amount of time the group agreed to allot for consideration of the motion has expired.
7. **Chair Restates the Motion.** This important step is also often forgotten, but it is especially important if the motion is complex or as been amended. If necessary, the chair should also clarify the consequences of affirmative and negative votes.
8. **Voting Occurs.** The chair asks first for those in favor, then for those opposed. The chair does *not* ask for abstentions, although a member who abstains because of a specific reason (such as a conflict of interest) can request that their abstention be recorded. Refer to the section below for additional details on voting procedures.
9. **Result is Announced.** The chair declares whether the motion passes and the number of affirmative and negative votes if there was a count. If there was not a count, any member may challenge the chair’s determination by calling for a **Division of the Assembly** which then automatically requires a count.

Rules of Debate

- No member may speak until recognized by the chair.
- All discussion must be relevant to the immediately pending question.
- No member may speak a second time until every member who wishes to speak has had the opportunity to do so.
- No member can speak more than twice to each motion.
- No member can speak more than ten minutes. [Ten minutes allowed by Robert’s Rules is a long time for a single individual to speak on a routine business item. Organizations might consider incorporating a shorter time limit in their standing rules.]
- All remarks must be addressed to the chair. Cross-debate is not allowed.
- It is not permissible to speak against one’s own motion (but one can vote against one’s own motion).
- Debate must address issues not personalities. No one is permitted to make personal attacks or question the motives of other speakers.
- The presiding officer must relinquish the chair in order to participate in debate and cannot reassume the chair until the pending main question is disposed of.
- When possible, the chair should let the floor alternate between those speaking in support and those speaking in opposition to the motion.
- When a large number of people wish to speak to a motion it may be advisable for the chair to make a speakers’ list.
- Members may not disrupt the assembly.

- Rules of debate can be changed by a two-thirds vote or unanimous consent. For example, the group might impose a time limit for consideration of the motion, allow a specific number of pro and con arguments, or allow each member to speak only once.

Modified Procedures for Small Boards or Committees

Robert's Rules provides for less formal rules for small boards and committees (12 or less members):

- Members don't have to be recognized in order to speak
- The chair can participate in discussions
- Subject to rule or custom, the chair can make motions and vote
- Motions need not be seconded
- Informal discussion is permitted when there is no motion pending.
- There are no limits on how many times a member may speak

Motions in Ascending Order of Precedence

Only one main motion may be on the floor at a time, but more than one secondary motion may be on the floor. When any of the motions on the following list is the immediately pending motion (i.e., the last motion made), any motion listed below it on the list can be made at that time and any motion above it on the list cannot be made at that time. Pending motions must be disposed of in descending order of precedence (i.e., the main most is voted on last).

- A. **Main Motion** - introduces business to the assembly for its consideration. A main motion can only be made when no other motion is pending.

- B. **Subsidiary Motions** - change or affect how the main motion is handled (voted on before the main motion)
 1. **Postpone Indefinitely** - made when the assembly does not want to take a position on the main question. Its adoption kills the main motion for the duration of the session and avoids a direct vote on the question. It is useful in disposing of a poor motion that cannot be either adopted or expressly rejected without possibly undesirable consequences. Unlike other subsidiary motions, debate on the motion to postpone indefinitely can go into the merits of the main motion.

 2. **Amend** - changes the wording of the main motion before it is voted upon. An amendment must be germane to the main motion. Its acceptance does not adopt the motion thereby amended; that motion remains pending in its modified form. Rejection of an amendment leaves the pending motion worded as it was before the amendment was offered. An amendment can: delete words, phrases, sentences or paragraphs; strike out words, phrases or sentences and insert new ones; add words, phrases, sentences or paragraphs; or substitute entire paragraph(s) or the entire text of the motion and insert another.

When there is a vote to amend, debate on the main motion stops and debate begins on the amendment. If the motion to amend fails, debate resumes on the original motion. If the motion to amend carries, the motion on the floor for debate becomes the main motion as amended.

When one proposes to have an entirely reworded motion to replace the existing motion on the floor, the chair must first call for a vote on the **Motion to Substitute** to determine the advisability of substituting a new motion. If the Motion to Substitute passes, the chair then throws the Substitute Motion open to debate. The **Substitute Motion** in turn must be voted upon, and is subject to amendment.

Friendly Amendments

Contrary to popular belief, there is no provision in Robert's Rules for a "friendly amendment". Remember that once debate begins, the motion belongs to the body not the maker; therefore, the maker cannot unilaterally agree to modify the motion. When someone attempts to make a "friendly amendment" the chair should inquire if any members have an objection. If not, the motion can be amended by unanimous consent without a vote; otherwise, a motion to amend must be made and voted upon.

3. **Secondary Amendment** - An amendment can be offered to an amendment (amendment of the second order). Amendments of the third order are not permitted.
4. **Refer (Commit)** - sends a pending motion to a standing committee, or to an ad hoc (special) committee to be appointed or elected, for consideration. The motion to refer may include instructions to investigate, recommend, or take action, and may specify the composition of the committee.
5. **Postpone Definitely (Postpone to a Certain Time)** - delays action until a certain time specified in the motion (not beyond the next regular business meeting).
6. **Limit or Extend Debate** - is used (1) to reduce or increase the number or length of speeches permitted or (2) to require that debate be closed at a specified time. It requires a two-thirds vote.
7. **Previous Question (Close Debate)** - immediately closes debate if passed. (Many people use the colloquial term "call the question" instead of using the proper wording to "move the previous question."). You can also simply "move to end debate." Requires a second and a two-thirds vote.

8. **Lay on the Table** - enables the group to lay the pending question aside *temporarily when something else of immediate urgency has arisen*. It is not debatable. *A motion to lay on the table is out of order if the evident intent is to avoid further consideration of the motion*. Frequently when one indicates a desire “to table” a motion, the correct motion is either to Postpone Indefinitely or Postpone Definitely.
- C. **Privileged Motions** - do not relate to the pending business but have to deal with urgent matters which, without debate, must be considered immediately.
1. **Call for the Orders of the Day** - requires the assembly to conform to the agenda or to take up a general or special order that is due to come up at the time (“time certain”), unless two-thirds of those voting wish to do otherwise. If a member “moves the agenda” it should be treated as a call for the orders of the day. A member can interrupt a speaker to call for the orders of the day.
 2. **Raise a Question of Privilege** - permits a request or main motion relating to the rights and privileges of the assembly or any of its members. Examples include requests relating to members’ ability to hear a speaker or a request to go into “executive session” (closed session). A member may interrupt a speaker to raise a question of privilege.
 3. **Recess** - used to request an intermission which does not close the meeting.
 4. **Adjourn** - used to close the meeting immediately. Not debatable.
 5. **Fix the Time to Which to Adjourn** - sets the time, and sometimes the place, for another meeting (“adjourned meeting”) before the next regular business meeting to continue business of the session.

Incidental Motions

Incidental motions are questions of procedure that arise out of other motions and must be considered before the other motion.

- **Point of Order** - used when a member believes that the rules of the assembly are being violated, thereby calling on the chair for a ruling and enforcement of the rules. A member can interrupt a speaker to raise a point of order.
- **Appeal** - used to challenge the chair’s ruling on a question of parliamentary procedure. A member can interrupt a speaker to appeal from the decision of the chair.
- **Suspend the Rules** - used to make a parliamentary rule or special rule of an organization temporarily inoperative. The motion cannot be applied to the constitution and bylaws unless those documents include specific provisions for suspension. Normally requires a two-thirds vote.
- **Withdraw** - permits the maker of a motion to remove it from deliberation after the motion has been stated by the chair. If there is not unanimous consent, the motion to withdraw is debated and voted upon.

- **Request for Information (Point of Information)** - requests to the chair, or through the chair to another officer or member, to provide information relevant to the business at hand. *A point of information must be in the form of a question.* The purpose of the motion is to request information not provide information. A point of information regarding parliamentary procedure or the organization's rules bearing on the business at hand is referred to as a **Parliamentary Inquiry**.
- **Objection to the Consideration of a Question** - suppresses business that is irrelevant or inappropriate and undesirable to be discussed. The objection must be made immediately (acceptable to interrupt a speaker). Does not require a second, is not debatable, and requires a two-thirds vote opposed to consideration in order to pass.
- **Division of a Question** - divides a motion containing two or more provisions that can stand alone so that each provision can be considered and voted upon separately. Not debatable.
- **Division of the Assembly** - used to demand a hand vote or rising vote to verify the vote count. The motion can be made without obtaining the floor, does not require a second, is not debatable, and does not require a vote.

Main Motions That Bring Back a Question Previously Voted Upon

- **Take from the Table** - resumes consideration of a motion laid on the table earlier in the same session or in the previous session/meeting. Not debatable.
- **Reconsider** - reopens a motion to debate that has already been voted upon in the same session/meeting. The motion to reconsider can only be made by a member who voted on the prevailing side. It suspends action on the motion to which it is applied until it has been decided. Cannot be postponed beyond the next regular business session.
- **Rescind (Repeal) or Amend Something Previously Adopted** - repeals or amends a motion for which it is too late to reconsider. Normally requires a two-thirds vote of those present or a majority vote of the entire membership; however, if previous notice has been given then only a majority vote of those present is required. A motion to rescind cannot be applied to action that cannot be reversed.

Voting

- **Majority vote** - defined as more than half of the votes cast by those present and voting (i.e., *excluding abstentions*) unless the organization's rules specify otherwise (e.g., majority of those present or majority of the entire membership).
- **Two-thirds vote** - defined as at least two-thirds of those present and voting, unless otherwise specified by the organization's rules. Examples of motions that require a two-thirds vote: to close, limit, or extend debate; to suspend the rules; to amend the constitution and bylaws; to close nominations; to remove an officer or expel a member; or to object to the consideration of a motion.

- **Voting by the Chair** - except when there is a ballot vote, the chair only votes when his/her vote would affect the result.
- **Methods of Voting**
 1. **Voice vote** - method normally used. “Aye” is a vote in favor, “nay” is a vote in opposition.
 2. **Show of hands or rising vote** - used to verify an inconclusive voice vote or on motions requiring a two-thirds vote
 3. **Ballot** - normally used for election of officers and when ordered by a majority vote
 4. **Roll call vote** - used when it is desired to have a record of how each member voted. Can be ordered by a majority vote unless the organization’s bylaws specify otherwise.

Proxy voting (voting for someone else) is prohibited unless specifically provided for in the organization’s charter or bylaws.

Recommended Books

Robert’s Rules of Order, Newly Revised, 12th Edition, 2020
Robert’s Rules of Order, Newly Revised, In Brief, 3rd Edition, 2020
The Complete Idiot’s Guide to Robert’s Rules, Nancy Sylvester, 2004
Robert’s Rules for Dummies, C. Alan Jennings, 2004

Recommended Web Sites

www.robertsrules.com
parliamentarians.org
www.rulesonline.com
www.parlipro.org

SUMMARY OF SELECTED MOTIONS

	<u>May Interrupt</u>	<u>Requires a Second</u>	<u>Debatable</u>	<u>Amendable</u>	<u>Vote Required</u>	<u>May Be Reconsidered</u>
Adjourn	No	Yes	No	No	Majority	No
Amend/Substitute	No	Yes	1	Yes	Majority	Yes
Amend an Amendment	No	Yes	1	No	Majority	Yes
Appeal	Yes	Yes	Yes	No	Majority	Yes
Call for the Orders of the Day	Yes	No	No	No	4	No
Close Nominations	No	Yes	No	Yes	Two-thirds	No
Division of the Assembly	Yes	No	No	No	5	No
Division of a Question	No	Yes	No	Yes	Majority	No
Lay on the Table	No	Yes	No	No	Majority	No
Limit or Extend Debate	No	Yes	No	Yes	Two-thirds	Yes
Main Motion	No	Yes	Yes	Yes	Majority	Yes
Nominate	No	No	Yes	No	Majority	No
Object to the Consideration	Yes	No	No	No	Two-thirds	3
Parliamentary Inquiry	Yes	No	No	No		
Point of/Request Informat.	Yes	No	No	No		
Point of Order	Yes	No	No	No	6	No
Postpone Indefinitely	No	Yes	Yes	No	Majority	7
Postpone Definitely	No	Yes	Yes	Yes	Majority-8	Yes
Previous Question	No	Yes	No	No	Two-thirds	Yes-9
Question of Privilege	Yes	10	Yes	Yes	Majority	Yes
Recess	No	Yes	Yes	Yes	Majority	No
Reconsider	Yes	Yes	1	No	Majority	No
Refer to Committee	No	Yes	Yes	Yes	Majority	Yes
Rescind (Repeal)	No	Yes	Yes	Yes	2	3
Suspend the Rules	No	Yes	No	No	Two-thirds	No
Take from the Table	No	Yes	No	No	Majority	No
Withdraw	No	Yes	No	No	Majority	3

Notes

1. If motion to which it relates is debatable.
2. (a) Majority with notice or (b) two-thirds; or (c) majority of entire membership.
3. Negative vote only.
4. Must be enforced upon demand unless set aside by a two-thirds vote.
5. Demand of a single member compels Division
6. Ruled upon by the chair.
7. Affirmative vote only.
8. Requires a two-thirds vote to create a Special Order.
9. Cannot be reconsidered after voting.
10. A second is not required to raise a Question of Privilege, but a motion arising out of the Question of Privilege



Commission on Police Practices

LEGAL SOURCE GUIDE

Legal Disclaimer: This guide is for informational purposes only and may not be relied upon for legal advice. The guide does not represent or provide legal advice as to any given complaint, investigation or situation. Each case, investigation and/or disciplinary matter must be evaluated independently on a case-by-case basis and/or separately discussed with an attorney if legal advice is desired.

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INTRODUCTION

Amendment IV

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

It is axiomatic that the Fourth Amendment serves as the predicate for appropriate law enforcement arrests, searches and uses of force. The Fourth Amendment generally proscribes unreasonable “searches and seizures”. In this context the Fourth Amendment’s proscriptions have been expanded to prohibit police conduct amounting to illegal searches of persons, residences and buildings, as well uses of unreasonable or excessive force.

In relationship to law enforcement uses of force, the Fourth Amendment analyzes use of force as a “seizure”. Cases of excessive force violate the Fourth Amendment in that such incidents constitute “unreasonable seizures” as a matter of law. Moreover, such seizures may also occur in the context of illegal arrests, vehicle pursuits, roadblocks or other law enforcement conduct deemed to result in a “seizing” of a person. Particular issues related to arrests, searches, detentions, uses of force and officer-involved shootings are separately analyzed below for reference.

By City ordinance, the CPP is required to investigate and make findings regarding various police conduct. The predicate for these investigations involve Departmental policies and procedures. However, these procedures are based on laws that undergird the criminal and civil justice systems.

This abbreviated legal guide may be used in CPP investigations for reference in conjunction with the City’s implementation ordinance and SDPD policies, orders, directives and guidelines. The guide is by no means legally exhaustive.

SECTION 1: FALSE ARRESTS

It is well established that arrests are governed under the premise of the Fourth Amendment's references to "seizures". In order to survive scrutiny under the Fourth Amendment, and in order to avoid complaints of misconduct, arrests must be based on legal standards of probable cause.

Probable cause or reasonable cause consists of a belief that the person to be arrested has committed a crime, whether or not a crime in fact, has been committed.

Probable cause in this context has been defined to be such a state of facts as would lead a person of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that a person is guilty of a crime. It is not limited to evidence that would be admissible at the trial on the issue of guilt. The test is not whether the evidence upon which the officer acts in making the arrest is sufficient to convict, but only whether the person should stand trial. (*People v. Ingle* (1960) 53 Cal.2d 407, 412-413.)

Although the Fourth Amendment states that "no warrants shall issue, but upon probable cause", it does not specify what "probable cause" actually means. The Supreme Court has attempted to clarify the meaning of the term on several occasions, while recognizing that probable cause is a concept that is imprecise, fluid and very dependent on context. In *Illinois v. Gates*, the Court favored a flexible approach, viewing probable cause as a "practical, non-technical" standard that calls upon the "factual and practical considerations of everyday life on which reasonable and prudent men [...] act". Courts often adopt a broader, more flexible view of probable cause when the alleged offenses are serious.

a) Probable Cause and Application to Arrests

The Fourth Amendment requires that any arrest be based on probable cause, even when the arrest is made pursuant to an arrest warrant. Whether or not there is probable cause typically depends on the totality of the circumstances, meaning everything that the arresting officers know or reasonably believe at the time the arrest is made. (*United States v. Humphries* (4th Cir. 2004) 372 F.3d 653, 657.) However, probable cause remains a flexible concept, and what constitutes the

“totality of the circumstances” often depends on how the court interprets the reasonableness standard.

It is imperative that law enforcement arrests be predicated upon probable cause and sufficient factual data to satisfy legal requirements. Arrests that are not premised on probable cause jeopardize criminal actions or prosecutions under relevant criminal procedures (i.e., California Penal Code section 1538.5), but also heighten the risks of public complaints of misconduct.

The United States Supreme Court has held that the arrest of the wrong man under a facially valid arrest warrant is not a Fourth Amendment deprivation (*Baker v. McCollan* (1979) 443 U.S. 137). In such a scenario, courts place validity of the arresting officers on arrest warrants, even where the warrants are later invalidated. This holding is qualified, however. In *Baker v. McCollan*, the Supreme Court stated that mere detention [in jail] pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of “liberty” without due process of law.

Similarly, where a person is arrested and kept in jail an extra day because of a time keeping mistake, no action for deprivation of civil rights may occur. (*Williams v. Anderson* (10th Cir.1979) 599 F.2 923.) However, if officials knew or should have known of the mistaken incarceration or illegality of the imprisonment, law enforcement conduct is not condoned by courts. (e.g., *Sullivan v. Los Angeles* (1974) 12 Cal.3d 710.)

If no probable cause exists for an arrest, then a constitutional violation under the Fourth Amendment will occur where a person is confined in jail. In *Reeves v. City of Jackson* (5th Cir. 1979) 608 F.2d 644, the Court held that the arrest of a motorist believed to be drunk and passed out in his car lacked probable cause and therefore supported a violation for false imprisonment. The court’s analysis in this matter underscored the need for probable cause where arrests occur in order to avoid problems under the Fourth Amendment.

b) Probable Cause Determinations

Courts analyze numerous factors in determining whether probable cause exists for an arrest. In *Ortega v. Christian* (11th Cir. 1996) 85 F.3d 1521, the court

found that no probable cause existed for the arrest of a suspect based upon information supplied by an informant. In this case the court believed that a

reasonable officer would not have relied on the information supplied. In *Sandul v. Larion* (6th Cir. 1997) 119 F.3d 1250, the Court held that no probable cause existed to arrest a plaintiff who shouted “f--- you” at a group of abortion protesters, finding that the conduct constituted protected speech under the First Amendment.

In *Washington v. Lambert* (9th Cir. 1996) 98 F.3d 1181, the Court held that the detention of black men at gunpoint on the basis that they fit the racial description of wanted suspects constituted an illegal arrest lacking probable cause in violation of the Fourth Amendment. In such scenarios, courts have required that sufficient objective facts exist in making a probable cause determination.

On the other hand, in *Brodnicki v. City of Omaha* (8th Cir. 1996) 75 F.3d 1261, the Court found that probable cause existed for a plaintiff’s arrest when the plaintiff was identified in a show-up and that officers had no duty to investigate the plaintiff’s alibi. In *Orsatti v. New Jersey State Police* (3rd Cir. 1995) 71 F.3d 480, the Court held that probable cause existed for the arrest of the plaintiff despite claims that the information that police relied upon was the result of a negligent investigation.

Similarly, the Court found that probable cause existed for the arrest of the suspect in *Garcia v. City of Chicago* (7th Cir. 1994) 24 F.3d 966. In this case, the Court determined that there was no constitutional violation for officers’ actions in arresting a suspect found with a bag containing a white powdery substance when officers waited 10 to 20 days to have the substance tested by a crime lab and the substance turned out not to be a controlled substance.

The key in these probable cause determinations was the “objective reasonableness” of law enforcement conduct. Police officers must be able to specifically articulate facts sufficient to constitute probable cause. This means that the determination of probable cause should be present at or before the time of the contact with a suspect, and should not be developed in hindsight or after the fact. Moreover, the facts relied upon must be deemed reasonable from the standpoint of a “reasonable officer” seeking to determine whether evidence exists to effectuate an arrest. A sound probable cause determination is the first step in proper law enforcement conduct:

1. **PROBABLE CAUSE**: A reasonable ground for belief in the existence of facts warranting an arrest or search.
2. **PROBABLE CAUSE** exists where the facts and circumstances would warrant a person of reasonable caution to believe that an offense was or is being committed.
3. **PROBABLE CAUSE** is the existence of circumstances which would lead a reasonably prudent person to believe in the guilt of the arrested party.

c) Arrests and Detentions Based Upon Mistaken Identities

Where arrests or detentions occur based upon mistaken identities, the probable cause determinations are critical in evaluating appropriate law enforcement conduct. Where mistaken arrests or detentions occur, careful analysis of the basis for the detentions and/or arrests must occur. Even then, courts will analyze the probable cause determination from the standpoint of objective reasonableness. In other words, would a reasonable officer presented with the same facts and circumstances believe that reasonable suspicion or probable cause existed in the detention or arrest of the mistaken suspect?

Courts may justify mistaken arrests based on facially valid warrants where a suspect and arrestee have the same name. (*White v. Olig* (7th Cir. 1995) 56 F.3d 817.) The U.S. Supreme Court reached a similar conclusion in *Baker v. McCollan* (1979) 443 U.S. 137, holding that the arrest of the wrong man under a facially valid warrant is not a Fourth Amendment violation. In these situations the Courts have deemed the conduct of officers relying on the accuracy of warrants objectively reasonable.

However, where negligence or unreasonable conduct results in the mistaken arrest of a person, courts have found that the arrest may be improper. (See *Bibart v. Stachowiak* (N.D. Ill. 1995) 888 F.Supp. 864 [where a dispatcher's conduct was deemed plainly incompetent in the arrest of a suspect].) Similarly, gross negligence or recklessness that results in a false arrest is problematic. (See *Estelle v. Gamble* (1976) 429 U.S. 97.)

For a detention to be reasonable, it must only be for a brief period of time and comply with the requirements of Penal Code § 833.5.

Section 833.5 - Detention to determine whether crime relating to firearms or deadly weapons has been committed

(a) In addition to any other detention permitted by law, if a peace officer has reasonable cause to believe that a person has a firearm or other deadly weapon with him or her in violation of any provision of law relating to firearms or deadly weapons the peace officer may detain that person to determine whether a crime relating to firearms or deadly weapons has been committed.

For purposes of this section, "reasonable cause to detain" requires that the circumstances known or apparent to the officer must include specific and articulable facts causing him or her to suspect that some offense relating to firearms or deadly weapons has taken place or is occurring or is about to occur and that the person he or she intends to detain is involved in that offense. The circumstances must be such as would cause any reasonable peace officer in like position, drawing when appropriate on his or her training and experience, to suspect the same offense and the same involvement by the person in question.

(b) Incident to any detention permitted pursuant to subdivision (a), a peace officer may conduct a limited search of the person for firearms or weapons if the peace officer reasonably concludes that the person detained may be armed and presently dangerous to the peace officer or others. Any firearm or weapon seized pursuant to a valid detention or search pursuant to this section shall be admissible in evidence in any proceeding for any purpose permitted by law.**(c)** This section shall not be construed to otherwise limit the authority of a peace officer to detain any person or to make an arrest based on reasonable cause.**(d)** This section shall not be construed to permit a peace officer to conduct a detention or search of any person at the person's residence or place of business absent a search warrant or other reasonable cause to detain or search.**(e)** If a firearm or weapon is seized pursuant to this section and the person from whom it was seized owned the firearm or weapon and is convicted of a violation of any offense relating to the possession of such firearm or weapon, the court shall order the firearm or weapon to be deemed a nuisance and disposed of in the manner provided by Sections 18000 and 18005.

In *People v. Souza* (Cal.1994) 9 Cal.4th 224, the California Supreme Court stated, "the lawfulness of a temporary detention depends not on any one circumstance viewed in isolation, but upon the totality of the circumstances known to the detaining officer. We decline to establish a 'bright-line' rule that flight without more provides cause to detain. We recognize, however, that flight in response to the appearance of a uniformed officer or a marked patrol car ordinarily is behavior that police may legitimately regard as suspicious, and therefore also can be a key factor in establishing reasonable cause to detain in a particular case." (*People v. Souza* (Cal. 1994) 9 Cal.4th 224, 227.)

The Fourth Amendment to the United States Constitution prohibits seizures of persons, including brief investigative stops, when they are "unreasonable."

(*Terry v. Ohio* (1968) 392 U.S. 1, 19 fn. 16 [20 L.Ed.2d 889, 904-905, 88 S.Ct. 1868]; *United States v. Sharpe*(1985) 470 U.S. 675, 682 [84 L.Ed.2d 605, 613, 105 S.Ct. 1568].) Our state Constitution has a similar provision. (Cal. Const., art. I, § 13.) A seizure occurs whenever a police officer "by means of physical force or show of authority" restrains the liberty of a person to walk away. (*Terry v. Ohio, supra*,392 U.S. 1, 19, fn. 16 [20 L.Ed.2d 889, 904-905].) (*People v. Souza supra*, 9 Cal.4th at p. 229.)

SECTION 2: SEARCHES OF AUTOMOBILES, RESIDENCES AND PERSONS

The law is clearly established that searches of residences are *per se* unreasonable absent a search warrant, or an established exception to the warrant requirement i.e., consent, “plain view” discovery or existence of exigent circumstances.

Both the federal and state Constitutions prohibit unreasonable searches and seizures. (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13.) "In California, issues relating to the suppression of evidence derived from governmental searches and seizures are reviewed under federal constitutional standards." (*People v. Troyer* (2011) 51 Cal.4th 599, 605, 120 Cal.Rptr.3d 770, 246 P.3d 901 (*Troyer*).) " [T]he ultimate touchstone of the Fourth Amendment is "reasonableness." ' " (*Riley v. California* (2014) 573 U.S. 373, 381, 134 S.Ct. 2473, 189 L.Ed.2d 430 ; *People v. Macabeo* (2016) 1 Cal.5th 1206, 1213, 211 Cal.Rptr.3d 34, 384 P.3d 1189.) "[T]he ‘physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.’ " (*Payton v. New York* (1980) 445 U.S. 573, 585, 100 S.Ct. 1371, 63 L.Ed.2d 639 (*Payton*); see *People v. Schmitz* (2012) 55 Cal.4th 909, 919, 149 Cal.Rptr.3d 640, 288 P.3d 1259.) "[I]t is a cardinal principle that ‘searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions.’ " (*Mincey v. Arizona* (1978) 437 U.S. 385, 390, 98 S.Ct. 2408, 57 L.Ed.2d 290 (*Mincey*); see *Riley* , at p. 382, 134 S.Ct. 2473.) "The burden is on the People to establish an exception applies." (*Macabeo*, at p. 1213, 211 Cal.Rptr.3d 34, 384 P.3d 1189.) " ‘ ‘We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.’ " ' " (*Id.* at p. 1212, 211 Cal.Rptr.3d 34, 384 P.3d 1189.)

In *Monroe v. Pape* (1961) 365 U.S. 167, the U.S. Supreme Court held that a violation may result where a house is searched without existence of a warrant. In *Lankford v. Gelston* (4th Cir 1966) 364 F.2d 197, the Court held that the indiscriminate search of a residence without a warrant or probable cause is actionable. Similarly, courts have held that repeated visits to a business may constitute harassment and an illegal search. (*Benigni v. City of Hemet* (9th Cir. 1988) 879 F.2d 473 (repeated and harassing “bar checks of a tavern” constitute illegal searches).)

In *Fisher v. Volz* (3rd Cir. 1974) 496 F.2d 333, 341, the court stressed the significance of the Fourth Amendment's protections as to searches of residences:

High on the list of constitutional rights is the right of an innocent citizen to be free from unreasonable intrusion into the privacy of his home. A warrant for the arrest of a suspect may indicate that the police officer has probable cause to believe that the suspect is in some stranger's home. Permitting reliance by the officer solely on exigent circumstances offers too many opportunities for abuse, provides little comfort to a citizen peacefully in his home, and affords insufficient protection against invasions of his privacy.

Courts have held that a requirement that an officer must also have probable cause to believe that a suspect is in a dwelling does not unduly restrict the effectiveness of police action but will reduce the obvious risks of abuse. It offers police considerable latitude but also requires a necessary element of restraint. The probable cause requirement enables the police to act reasonably but not oppressively, promptly but not recklessly, lawfully but not offensively. Law observance by the police cannot be divorced from law enforcement. When official conduct leads to a sense of injustice, heightened barriers between the department and segments of the community, and breeds disrespect for the law, the difficulties of law enforcement are multiplied. (*Lankford v. Gelston* (4th Cir 1966) 364 F.2d 204.)

Search and seizure problems regarding buildings or residences are presented in a wide variety of circumstances. (See, e.g., *Hummel-Jones v. Strobe* (8th Cir. 1994) 25 F.3d 647 (search by officers with a warrant of a birthing clinic at 2:00 a.m. was patently unreasonable.) In *Bonds v. Cox* (6th Cir. 1994) 20 F.3d 697, the court discussed a Fourth Amendment action in connection with the "seizure" of a home caused by damage done during a search. Despite the existence of a warrant, police searches must be conducted properly and not in a manner that indiscriminately damages property.

a) Pretextual Searches and Detentions

Penal Code §4 states: The rule of the common law, that penal statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

Under some circumstances, a “pretextual” search, which officers attempt to justify on a ground which does not correspond to true motive or their actual purpose as to being at a location, may constitute a violation.

Many times pretextual searches involve personal or automobile searches. At a threshold level, such searches must commence with an analysis of *Terry v. Ohio* (1968) 392 U.S. 1, 16-17. The U.S. Supreme Court stated in regards to detentions:

Our first task is to establish at what point in this encounter the Fourth Amendment becomes relevant. That is, we must decide whether and when Officer McFadden "seized" Terry and whether and when he conducted a "search." There is some suggestion in the use of such terms as "stop" and "frisk" that such police conduct is outside the purview of the Fourth Amendment because neither action rises to the level of a "search" or "seizure" within the meaning of the Constitution. We emphatically reject this notion. It is quite plain that the Fourth Amendment governs "seizures" of the person which do not eventuate in a trip to the station house and prosecution for crime — "arrests" in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a "search." Moreover, it is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a "petty indignity." It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.

The Court went on to say the following in terms of justifying and discussing the limits of searches under the Fourth Amendment:

This Court has held in the past that a search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope. *Kremen v. United States*, 353 U.S. 346 (1957); *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 356-358 (1931); see *United States v. Di Re*, 332 U.S. 581, 586-587 (1948). The scope of the search must be ‘strictly tied to and justified by’ the circumstances which rendered its initiation permissible. [Citations.] (*Terry v. Ohio*, supra at 392 U.S. at 17-19.)

In this regard, the Court held that the “distinctions of classical ‘stop and-frisk’ theory thus serve to divert attention from the central inquiry under the Fourth Amendment — the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security. ‘Search’ and ‘seizure’ are not talismans. We therefore reject the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of

something called a ‘technical arrest’ or a ‘full-blown search.’” (*Terry v. Ohio*, supra at 392 U.S. at 19.)

In essence, the law requires articulable facts prior to stopping, detaining or searching an individual. It is required that such facts not be generalized or based on general stereotypes if claims of harassment, racial profiling and discrimination are to be avoided. In particular, automobile pretext searches are extremely controversial for reasons that have included complaints of racial profiling, discrimination and violation of equal protection under law.

Although it is generally recognized that pretextual stops and searches are permissible, they are not without controversy or complaints of abuse and racial profiling. In *People v. McKay* (Cal. 2002) 27 Cal.4th 601, the Supreme Court discussed pretextual stops and issues related thereto. In particular, Justice Brown in dissent discussed the problems with arbitrary and potentially discriminatory pretextual stops. In her dissenting opinion, she stated in part:

Every court that has approved sweeping search powers in conjunction with broad authority to arrest for minor offenses has acknowledged the *potential* for abuse. Of course, everyone who has not spent the last 20 years sealed in an ivory tower knows the problem is *real*. (But see *Atwater*, supra, 532 U.S. at pp. 351, 353 fn. 12.) A Gallup Poll released in December 1999 indicated more than half of the Americans polled believed police actively engage in racial profiling, and 81 percent of them said they disapprove of the practice. (U.S. Dept. of Justice, A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned (Nov. 2000) p. 4 (DOJ).) Anecdotal evidence and empirical studies confirm that what most people suspect and what many people of color know from experience is a reality: there is an undeniable correlation between law enforcement stop-and-search practices and the racial characteristics of the driver. (See DOJ, supra, at p. 5; Brazil Berry, *Color of Driver is Key to Stops in I-95 Videos*, Orlando Sentinel Tribune (Aug. 23, 1992) p. A1; Harris, *The Stories, The Statistics and the Law: Why ‘Driving While Black’ Matters* (1999) 84 Minn. L.R. 265, 279, 280-281, 295.)

Empirical data on stop-and-search practices in Maryland, New Jersey and New York also confirm statistically significant disparities between the rates at which people of color are stopped and searched and the rates for Whites in similar circumstances. (DOJ, supra, at pp. 7-9.) Nor has California been immune. Questions have been raised about the disparate impact of stop-and-search procedures of the California Highway Patrol. (McCormick et al., *Racial Bias in CHP Searches*, S.F. Chronicle (July 15, 2001) p. A-1.) The practice is so prevalent, it has a name: "Driving while Black."

Both the *Atwater* majority and the majority here suggest pretextual stops can be adequately remedied by challenging them as "being based on invalid criteria, such as race, religion, or other arbitrary classification." (Maj. opn, ante, at pp. 26-27.) Such a suggestion overlooks the fact that most victims of pretextual stops will barely have enough money to pay the traffic citation, much

less be able to afford an attorney. Even if a pretextual stop victim is able to convince an attorney to handle the case pro bono, the defendant's chances of even obtaining discovery are slight, for he must first make 'a credible showing of different treatment of similarly situated persons [of other races]' (*United States v. Armstrong* (1996) 517 U.S. 456, 470) — a hurdle that has proved to be higher in the lower courts than one would initially suspect. (See, e.g., *United States v. Bell* (8th Cir. 1996) 86 F.3d 820, 823 [holding that the defendant did not meet the *Armstrong* standard because he did not present evidence about the number of White bicyclists who ride their bicycles between sunset and sunrise, although he did show that (1) all persons arrested for riding their bicycle without a headlamp that month were Black and that (2) 98 percent of all bicycles in the Des Moines, Iowa, area, populated predominantly by White people, did not have headlamps].) Such evidence will be hard to come by, *not* because there is 'a dearth of horrible demanding redress,' but because, logically, such incidents are rarely reported. (*Atwater, supra*, 532 U.S. at p. 353.) Most pretextual stops and searches will prove fruitless for the police; they will have no evidence to justify an arrest and will simply release the victim. Although a cognizable injury has occurred, the victim will have little incentive to spend the time, money, and energy required to pursue such a claim. Additionally, the victim of such an incident may not be entitled to relief 'beyond barring prosecution of the *traffic* charge.' (1 LaFave, *Search and Seizure* (2002 supp.) § 1.4, p. 25.) Quite simply, the equal protection clause is of little help to victims of pretextual stops and searches.

'The insult remains.' (*State v. Overby* (N.D. 1999) 590 N.W.2d 703, 708 (conc. opn. of Vande Walle, C.J.)) To dismiss people who have suffered real constitutional harms with remedies that are illusory or nonexistent allows courts to be complacent about bigotry while claiming compassion for its victims. Judges go along with questionable police conduct, proclaiming that their hands are tied. (*United States v. Herring* (D.Or. 1999) 35 F. Supp.2d 1253, 1258.) If our hands really are tied, it behooves us to gnaw through the ropes. (*People v. McKay* (Cal. 2002) 27 Cal.4th 601, 639-41.)

Investigations into complaints involving pretextual searches must be mindful of evolving standards and caselaw related to arbitrary and discriminatory searches. Such pretextual stops and searches are not necessarily sanctioned under every circumstance, particularly where an invidious motive, empirical data and/or a discriminatory animus are involved.

As referenced under Penal Code §4, there is the letter of the law and the spirit of the law. The purpose of the law is to promote justice. Pretextual stops and searches may serve as impediments to justice when used indiscriminately against various ethnic groups, genders, nationalities, etc. Under such circumstances, these searches may violate the spirit of the law, equal protection and the Fourteenth Amendment's Due Process clause.

CPP investigations into pretextual searches need not ignore the effects of such searches where complaints are generated and predicated on equal protection,

theories of racial profiling or discrimination. Any such invidious practices should be addressed consistent within the framework of the law.

b) Exceptions to the Warrant Requirement

In order to avoid problematic searches of residences, or suppression of evidence, it is imperative that officers enter a residence only upon the existence of a valid search warrant. In the absence of a warrant entries should only be made where:

- There is express and unequivocal consent;
- Exigent or emergency circumstances exist justifying an immediate entry [even then the exigency should clearly exist and be articulated *prior* to the entry];
- Criminal conduct or evidence is in plain view and witnessed by an officer from a location where the officer has authority to be.

Exigent circumstances are often used to justify warrantless searches. However, all such searches have not been deemed to be justified or appropriate by courts where facts justifying an emergency are not clearly present or articulated.

In *People v. Ovieda* (2019) 7 Cal.5th1034, 1051-52, the California Supreme Court stated:

Outside of the inventory search context, the high court has taken a dim view of warrantless entries in the absence of exigency. In *Mincey*, the court rejected a blanket murder scene exception to the warrant requirement. It acknowledged that "when the police come upon the scene of a homicide, they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises." (*Mincey, supra*, 437 U.S. at p. 392, 98 S.Ct. 2408.) Yet, *Mincey* reasoned that "a warrantless search must be 'strictly circumscribed by the exigencies which justify its initiation,' [citation] and it simply cannot be contended that this search was justified by any emergency threatening life or limb. All the persons in Mincey's apartment had been located before the investigating homicide officers arrived there and began their search. And a four-day search that included opening dresser drawers and ripping up carpets can hardly be rationalized in terms of the legitimate concerns that justify an emergency search." (*Id.* at p. 393, 98 S.Ct. 2408 ; see *Flippo v. West Virginia* (1999) 528 U.S. 11, 14, 120 S.Ct. 7, 145 L.Ed.2d 16.) Similarly, the court has observed

that "[a] burning building of course creates an exigency that justifies a warrantless entry by fire officials to fight the blaze. Moreover, ... once in the building, officials need no warrant to *remain* for 'a reasonable time to investigate the cause of a blaze after it has been extinguished.' [Citation.] Where, however, reasonable expectations of privacy remain in the fire-damaged property, additional investigations begun after the fire has been extinguished and fire and police officials have left the scene, generally must be made pursuant to a warrant or the identification of some new exigency." (*Clifford, supra*, 464 U.S. at p. 293, 104 S.Ct. 641, fn. omitted.) These cases establish that an emergency might initially justify a warrantless entry or search. But once that exigency has abated and the premises vacated, a subsequent warrantless entry or search is not justified. This approach is consistent with the high court's well-established principle "that searches and seizures inside a man's house without warrant are *per se* unreasonable in the absence of some one of a number of well defined 'exigent circumstances.'" (*Coolidge, supra*, 403 U.S. at pp. 477-478, 91 S.Ct. 2022.) In *Payton, supra*, 445 U.S. 573, 100 S.Ct. 1371, the court noted: "In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." (*Id.* at p. 590, 100 S.Ct. 1371.) High court decisions "have emphasized that exceptions to the warrant requirement are 'few in number and carefully delineated,' [citation] and that the police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests. Indeed, the Court has recognized only a few such emergency conditions" (*Welsh v. Wisconsin* (1984) 466 U.S. 740, 749-750, 104 S.Ct. 2091, 80 L.Ed.2d 732.)

c) Execution of Search Warrants

Issues may also arise as to proper execution of search warrants. In California, there is no statutory or constitutional requirement that a search warrant be shown to occupants prior to executing it. (*People v. Rodrigues-Fernandez* (1991) 235 Cal.App.3d 543, 553.) On the other hand, federal law enforcement officers are governed under Federal Rules of Criminal Procedure Rule 41, requiring that a search warrant be provided to a resident prior to search, if present and absent exigent circumstances. (*U.S. v. Gantt* (9th Cir. 1999) 194 F.3d 987, 994.)

Under California law, police officers need to show the search warrant face sheet when executing warrants. The face sheet may depend or rely on either an attachment or the incorporated affidavit to specify the nature of the crime, locations to be searched and items seized. However, unless the attachment or

affidavit accompanies the search warrant and is served on the resident occupant at the beginning of the search, the federal courts will deem the execution of the search warrant defective, in which event the search could be deemed to violate the Fourth Amendment. (*U.S. v. McGrew* (9th Cir. 1997) 122 F.3d 847, 850.)

d) *Welfare Checks or Community Caretaking Exception*

May officers enter residences without a warrant to check the welfare of a citizen? Is there a community caretaker's exception to the requirement that officers have a warrant to enter a dwelling?

Difficulties may be involved interpreting exigent circumstances for purposes of unwarranted searches. Police entry into a residence to check on the welfare of individuals is not appropriate as a subterfuge to search. To the contrary, such entries are only justified where exigent circumstances exist, and can be properly articulated prior to, or at, the time of the entry or search. In the absence of exigency, the exception to the warrant requirement is not recognized by the United States Supreme Court. To date, that court has only recognized community caretaking searches in the context of vehicle impound procedures.

Welfare checks are recognized in California under the exigent circumstances exception. In *People v. Ovieda*, (2019) 7 Cal.5th 1034, 1043, the Supreme Court stated:

“ ‘A long-recognized exception to the warrant requirement exists when “exigent circumstances” make necessary the conduct of a warrantless search.’ ” (*People v. Panah* (2005) 35 Cal.4th 395, 465, 25 Cal.Rptr.3d 672, 107 P.3d 790.) The term "exigent circumstances" describes " ‘an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence. There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers.’ ” (*Ibid.*) The high court has recognized that exigent circumstances may exist where there is probable cause to believe a crime has been committed but "an emergency leaves police insufficient time to seek a warrant." (*Birchfield v. North Dakota* (2016) — U.S. —, [136 S.Ct. 2160, 2173], 195 L.Ed.2d 560.) It has also found exigency when an entry or search appears reasonably necessary to render emergency aid, whether or not a crime might be involved. "We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. ... ‘The need to protect or preserve life or avoid serious injury is justification for what would

be otherwise illegal absent an exigency or emergency.’ [Citation.] And the police may seize any evidence that is in plain view during the course of their legitimate emergency activities." (*Mincey, supra*, 437 U.S. at pp. 392-393, 98 S.Ct. 2408, fns. omitted.) "Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." (*Brigham City v. Stuart* (2006) 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (*Brigham City*).)

Thus, the exigent circumstances exception applies to situations requiring prompt police action. These situations may arise when officers are responding to or investigating criminal activity and when there is a need for emergency aid, even if unrelated to criminal conduct. Examples of exigent circumstances in prior cases include " 'hot pursuit' " of a fleeing suspect (*United States v. Santana* (1976) 427 U.S. 38, 42-43, 96 S.Ct. 2406, 49 L.Ed.2d 300); preventing the imminent destruction of evidence (see *Kentucky v. King* (2011) 563 U.S. 452, 460, 131 S.Ct. 1849, 179 L.Ed.2d 865); fighting a fire (*Michigan v. Tyler* (1978) 436 U.S. 499, 509, 98 S.Ct. 1942, 56 L.Ed.2d 486); intervening in a physical altercation or crime in progress, or providing emergency help (see *Brigham City, supra*, 547 U.S. at pp. 406-407, 126 S.Ct. 1943 ; see also *Michigan v. Fisher* (2009) 558 U.S. 45, 48-49, 130 S.Ct. 546, 175 L.Ed.2d 410). Lower federal courts have also recognized that a warrantless entry in response to an actively suicidal person may be justified to prevent injury. "[T]he threat an individual poses to himself may create an exigency that makes the needs of law enforcement so compelling that a warrantless entry is objectively reasonable under the Fourth Amendment." (*Rice v. ReliaStar Life Ins. Co.* (5th Cir. 2014) 770 F.3d 1122, 1131 ; see also *Fitzgerald v. Santoro* (7th Cir. 2013) 707 F.3d 725, 732 ; *Roberts v. Spielman* (11th Cir. 2011) 643 F.3d 899, 905-906 ; *Hancock v. Dodson* (6th Cir. 1992) 958 F.2d 1367, 1375-1376.)

‘As a general rule, the reasonableness of an officer’s conduct is dependent upon the existence of facts available to him at the moment of the search or seizure which would warrant a man of reasonable caution in the belief that the action taken was appropriate. [Citation.] And in determining whether the officer acted reasonably, due weight must be given not to his unparticularized suspicions or "hunches," but to the reasonable inferences which he is entitled to draw from the facts in the light of his experience; in other words, he must be able to point to specific and articulable facts from which he concluded that his action was necessary.’ " [Citation.] (*People v. Oviedo*, (2019) 7 Cal.5th 1034, 1043)

This case law authority stands for the proposition that the exigent circumstances exception applicable in welfare checks, or other entries based on exigent circumstances apply to situations requiring prompt police action. These situations may arise when officers are responding to or investigating criminal activity and when there is a need for emergency aid, even if unrelated to criminal conduct. Examples of exigent circumstances in prior cases include " 'hot pursuit' " of a fleeing suspect (*United States v. Santana* (1976) 427 U.S. 38, 42-43, 96 S.Ct. 2406, 49 L.Ed.2d 300); preventing the imminent destruction of evidence (see *Kentucky v. King* (2011) 563 U.S. 452, 460, 131 S.Ct. 1849, 179 L.Ed.2d 865); fighting a fire (*Michigan v. Tyler* (1978) 436 U.S. 499, 509, 98 S.Ct. 1942, 56 L.Ed.2d 486); intervening in a physical altercation or crime in progress, or providing emergency help (see *Brigham City, supra*, 547 U.S. at pp. 406-407, 126 S.Ct. 1943 ; see also *Michigan v. Fisher* (2009) 558 U.S. 45, 48-49, 130 S.Ct. 546, 175 L.Ed.2d 410). Lower federal courts have also recognized that a warrantless entry in response to an

actively suicidal person may be justified to prevent injury. "[T]he threat an individual poses to himself may create an exigency that makes the needs of law enforcement so compelling that a warrantless entry is objectively reasonable under the Fourth Amendment." (*Rice v. ReliaStar Life Ins. Co.* (5th Cir. 2014) 770 F.3d 1122, 1131 ; see also *Fitzgerald v. Santoro* (7th Cir. 2013) 707 F.3d 725, 732 ; *Roberts v. Spielman* (11th Cir. 2011) 643 F.3d 899, 905-906 ; *Hancock v. Dodson* (6th Cir. 1992) 958 F.2d 1367, 1375-1376.)

Moreover, "As a general rule, the reasonableness of an officer's conduct is dependent upon the existence of facts available to him at the moment of the search or seizure which would warrant a man of reasonable caution in the belief that the action taken was appropriate. [Citation.] And in determining whether the officer acted reasonably, due weight must be given not to his unparticularized suspicions or 'hunches,' but to the reasonable inferences which he is entitled to draw from the facts in the light of his experience; in other words, he must be able to point to specific and articulable facts from which he concluded that his action was necessary. [Citation.]" (*People v. Ovieda*, (2019) 7 Cal.5th 1034, 1043.)

The Court in *Ovieda* was instructive in alerting police and law enforcement to the requirements of emergency searches and entries into a residence. "The line between a mere hunch and a reasonable suspicion based on articulable facts can be a fine one, but such a line does exist. If all that is required is the possibility that someone in some house might require aid, any officer on patrol might urge that people in homes often need help and the officer entered to make sure assistance was not required. As Justice Perren observed in his dissent below: 'Ignorance of a fact, without more, does not raise a suspicion of its existence.'" (*People v. Ovieda*, *supra* at 7 Cal.5th at p. 1047)

Therefore, the need to render emergency aid is a well-recognized part of the exigent circumstances search exception. A valid welfare check must fit within the definition of a search based on exigent circumstances, not a mere hunch. It is required that articulable facts support a reasonable belief that a true emergency exists.

In a contrasted opinion reached by the federal courts, the Ninth Circuit Court of Appeals in *United States v. Erickson* (9th Cir. 1993) 991 F.2d 529, recognized that police officers have broad responsibilities and that a police officer is a "jack of all emergencies". However, the court held that the fact that a police officer is performing a community caretaking function cannot itself justify a warrantless search of a private residence.

The court stated that the important responsibilities of police officers to investigate crimes must be balanced against the serious invasions of privacy that such searches entail.

The Ninth Circuit concluded that the exigent circumstances exception to the warrant requirement adequately addresses the interests of law enforcement to enter dwellings where emergencies exist. On balance, this analysis appears to be controlling in its applicable to welfare checks or caretaking issues.

The safest course of action for law enforcement prior to entering a dwelling to check welfare, without a warrant or express consent by one authorized to give consent, would be to analyze any exigent circumstances justifying entry. A clear exigency should exist, and officers should be in a sound position to properly articulate exigent circumstances prior to entry. In the absence of an exigency justifying entry, unequivocal consent to enter should be obtained prior to entry, or a warrant should be obtained to avoid complaints of a Fourth Amendment violation.

e) *Fourth Amendment Waivers and Search Terms*

Many times criminal defendants will be placed on probation containing “Fourth Waivers” or search terms. In theory such terms of probation authorize warrantless searches of convicted suspects as a matter of course even where probable cause may not exist.

Reliance on search terms for entry into a residence may be problematic and must be analyzed on a case-by-case basis. Consent to search a person does not necessarily permit a search of every location, room, building or residence that the person frequents.

In *Rugguro v. Krzeminski* (2d Cir. 1991) 928 F.2d 555, the court held that the plaintiff had the burden of proving that a search was unreasonable under the Fourth Amendment. The court stated that although there is a presumption that warrantless searches are unreasonable, this presumption only places upon the law enforcement the duty of producing evidence of an exception (such as consent to search through existence of search terms) to the warrant requirement.

However, in *Tarter v. Raybuck* (6th Cir. 1984) 742 F.2d 977, the court placed on law enforcement the burden of proving that the plaintiff had search terms

or had voluntarily relinquished his constitutional rights by consenting to search. Similarly in *Florida v. Royer* (1983) 460 U.S. 491, the Supreme Court stated that the burden of proving consent is on the government in criminal cases.

In effect, search terms should be clearly determined, and not be relied upon to conduct a broad range of sweeping searches under ordinary circumstances. Similarly, to avoid problems such terms should not be routinely relied upon as a ruse or subterfuge to search residences or locations where a criminal suspect may be located.

f) Searches Incident to Arrest

It is axiomatic that a suspect is subject to search incident to arrest. That is, that officers may search to person and curtilage of the subject for weapons or contraband. The search may extend to anything or place within arms-reach of the suspect.

In *Chimel v. California* (1969) 395 U.S. 764, 765, the standard by which the scope of searches pursuant to arrest could be ascertained was set out. “When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer’s safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of someone who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee’s person and the area ‘within his immediate control’—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.”

“There is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs—or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant.

In addition, the U.S. Supreme Court has clarified the extent of vehicle searches incident to arrest. In *Arizona v. Gant* (2009) 556 U.S. 322, the court held that, Police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

In this regard, the Court held:

(a) Warrantless searches “are *per se* unreasonable,” “subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576. The exception for a search incident to a lawful arrest applies only to “ the area from within which [an arrestee] might gain possession of a weapon or destructible evidence.” *Chimel*, 395 U.S., at 763, 89 S.Ct. 2034. This Court applied that exception to the automobile context in *Belton*, the holding of which rested in large part on the assumption that articles inside a vehicle's passenger compartment are “generally ... within ‘the area into which an arrestee might reach.’ ” 453 U.S., at 460, 101 S.Ct. 2860 .Pp. 1716 – 1718.

(b) This Court rejects a broad reading of *Belton* that would permit a vehicle search incident to a recent occupant's arrest even if there were no possibility the arrestee could gain access to the vehicle at the time of the search. The safety and evidentiary justifications underlying *Chimel* 's exception authorize a vehicle search only when there is a reasonable possibility of such access. Although it does not follow from *Chimel*, circumstances unique to the automobile context also justify a search incident to a lawful arrest when it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.” *Thornton v. United States*, 541 U.S. 615, 632, 124 S.Ct. 2127, 158 L.Ed.2d 905 (SCALIA, J., concurring in judgment).

SECTION 3: USE OF FORCE

a) *Graham v. Connor Factors of Objective Reasonableness*

The use of force during an arrest, an investigatory stop, or any other “seizure” of a person’s liberty is analyzed under the Fourth Amendment. The Supreme Court held in *Graham v. Connor* (1989) 490 U.S. 386, that uses of force should be evaluated from the standpoint of “objective reasonableness”. In *Graham* the Court held that as to evaluating uses of force there is no one generic standard for analyzing use of force under the Fourth Amendment.

In *Graham*, the Court enunciated several factors to be considered in evaluating whether an application of force violates the Fourth Amendment as being excessive or unreasonable. The *Graham* factors extended the Supreme Court’s holding in *Tennessee v. Garner* (1985) 471 U.S. 1, where the court held that the use of deadly force to apprehend a fleeing suspect who did not appear to be armed or otherwise dangerous violated the suspect’s Fourth Amendment rights as being an unreasonable seizure under the Fourth Amendment.

The Supreme Court settled in *Graham* the question of what analysis should be employed to determine whether a given application of force is unconstitutionally excessive. Determining whether the force used in a given instance was “reasonable” under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the suspect’s Fourth Amendment interests versus the governmental interests at stake. Noting that there was no precise definition or mechanical application possible for this test of reasonableness, the Court indicated several factors that should be analyzed including careful attention to the facts and circumstances of each particular case, the severity of the crime at issue, whether the suspect posed an immediate threat to the safety of the officers or others, and whether the suspect was actively resisting arrest or attempting to evade arrest by flight.

The Court noted that reasonableness must be judged from the perspective of a reasonable police officer on the scene, not based on hindsight, and should take into account the fact that police officers are often forced to make split-second judgments about the amount of force that is necessary in a particular situation.

The Court left no doubt that the test for reasonableness was an objective one that does not depend upon and cannot be influenced by the officer's underlying intent or motivation for employing force. The Court concluded, "An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." (109 S.Ct. at 1872.) Whether force was used in "good faith" or "maliciously and sadistically for the very purpose of causing harm" was deemed to be irrelevant according to the analysis enunciated by the Supreme Court in *Graham*. The *Graham* Court overruled cases that had formerly held that malice by officers was a necessary element of an excessive force claim or action. (See e.g., *Hendrix v. Matlock* (5th Cir. 1986) 782 F.2d 1273.)

Courts analyze use of force cases from the standpoint of objectively reasonable conduct as demonstrated by the following case scenarios:

- *Nelson v. Jashurek* (3rd Cir. 1997) 109 F.3d 142 (court held that one violent poke and push was sufficient to state a claim for excessive force).
- *Jag v. City of Warren* (1996) 944 F.Supp. 606 (use of handcuffs was not excessive force).
- *Mayard v. Hopwood* (8th Cir. 1997) 105 F.3d 1226 (court deemed officer action objectively reasonable where suspect was placed in handcuffs and leg restraints and laid face down in a squad car).
- *Roy v. Inhabitants of City of Lewiston* (1st Cir 1994) 42 F.3d 691 (officer's shooting of man with two knives was objectively reasonable).

Courts have included in the definition of use of force the drawing of a firearm. In *Robinson v. Solana County*, the Ninth Circuit held that drawing a firearm and pointing it at a suspect may constitute a seizure of the person subject to Fourth Amendment scrutiny. Where the exhibition of the firearm is deemed unwarranted or unreasonable under the *Graham* use of force analysis, police conduct may be problematic.

Indeed, under more extreme circumstances the pointing of a gun has been held to violate even the more rigorous standard applicable before *Graham*, when plaintiffs were required to establish conduct so excessive that it "shocked the conscience." In *McKenzie v. Lamb*, 738 F.2d 1005, 1010 (9th Cir. 1984), we held that a raid not supported by probable cause involved excessive conduct that shocked the conscience where, among other things, police officers "pressed the barrels of their guns against appellants' heads." In so holding, we relied upon *Black v. Stephens*, 662 F.2d 181 (3d Cir. 1981). In *Black* the Third Circuit affirmed a jury verdict against an officer for excessive force under the "shocks the conscience" standard where the officer, in the

course of arresting a plaintiff, pointed a gun at his head with his wife directly in the line of fire. *Id.* at 188-89. *See also McDonald v. Haskins*, 966 F.2d 292 (7th Cir. 1992) (pointing gun at the head of a nine-year-old boy and threatening to shoot during a search of the boy's parents' apartment is excessive force). (*Robinson v. Solano County* (9th Cir. 2000) 278 F.3d 1007, 1014.)

In *Estate of Bryant by Bryant v. Buchanan* (1995) 883 F.Supp. 1222, 1227, the Court analyzed a use of force scenario involving officers who employed CS Gas. The court's analysis illustrates the type of analysis that court's employ in deciding use of force cases.

When read in a light favorable to the Plaintiff, the evidence in this case suggest that the officers' conduct was patently violative of the Fourth Amendment. For example, although Bryant's legs had been shackled and he posed no physical threat to either the police or the congregation, the officers sprayed large amounts of CS gas into Bryant's face.

Ultimately, the spray caused Bryant to lose consciousness as a spit-like foam bubbled out of his nose and mouth. Despite Bryant's apparent difficulty in breathing and the fact that CS fumes were impairing the breathing of some of the arresting officers, however, the officers rolled Bryant onto his stomach, cuffed his hands behind his chest and exerted enough pressure on his back with their knees to cause his death. In short, given the alleged absence of danger, it should have been obvious that the officers' use of deadly force was objectively unreasonable.

b) Penal Code Section 835a

Assembly Bill 392 sought to address the use of excessive and deadly force by requiring that peace officers only use deadly force when objectively reasonable and necessary, in defense of life. Under AB 392, officers must evaluate the particular circumstances of each case, and use other available resources and techniques if reasonably safe and feasible. The bill amended the language in Penal Code §§192 and 835a regarding use of force.

In particular, Penal Code §835a states:

(a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and

dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(c) (1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

(B) 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, a peace 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.

(2) A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

(d) A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, “retreat” does not mean tactical repositioning or other de-escalation tactics.

(e) For purposes of this section, the following definitions shall apply:

(1) “Deadly force” means 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.

(2) A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(3) “Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.

c) Objective Reasonableness of Force

The Supreme Court held in *Graham v. Connor, supra*, that uses of force should be evaluated from the standpoint of “objective reasonableness.” The use of force during an arrest, an investigatory stop, or any other “seizure” of a person’s liberty is analyzed under the Fourth Amendment. In *Graham*, the Court held that as to evaluating uses of force, there is no one generic standard for all Fourth Amendment claims.

Courts continue to define use of force in the context of *Graham v. Connor*. According to *Graham*, “determining whether the force used to affect a particular seizure is ‘reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.”

Graham enunciated several factors to be considered in evaluating whether an application of force violates the Fourth Amendment as being excessive or unreasonable. These factors include, *inter alia*:

- Degree of threat or harm to officers;
- Degree of threat or harm to the public;
- Resistance by the suspect;
- Flight of the suspect;
- Weapons involved;
- Necessity of officers to make split second decisions.

The Court noted that reasonableness must be judged from the perspective of a reasonable police officer on the scene, not based on hindsight, and should take into account the fact that police officers are often forced to make split-second judgments about the amount of force that is necessary in a particular situation.

The Supreme Court left no doubt that the test for reasonableness was an objective one that does not depend upon, and cannot be influenced by, the officer's underlying intent or motivation for employing force. The Court concluded, "An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." Whether force was used in "good faith" or "maliciously and sadistically for the very purpose of causing harm" was deemed to be irrelevant according to the analysis enunciated by the Supreme Court in *Graham*.

d) P.O.S.T. Standard 3 for Use of Force Situations

STANDARD #3: Officers may only use a level of force they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.

5) Officers shall be guided by the principle of reverence for human life in all decision-making. Therefore, the officer's use of force must be proportionate given the totality of the circumstances. As such, an agency's policy shall require that an officer may only use a level of force they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance. When determining whether to apply force and evaluating whether an officer has used reasonable and/or necessary force, factors to consider include, but are not limited to:

- a. Whether there is a legal basis for the use of force;
- b. Whether the individual posed an imminent threat to the public ,other officers, and themselves;
- c. The nature and severity of the threat;
- d. The nature and severity of the situation;
- e. Whether the individual was attempting to evade arrest by flight;
- f. The level of resistance by the individual;
- g. The conduct of the individual involved in the confrontation, as perceived by the officer at the time of the incident;
- h. The number of officers on scene;
- i. The conduct of the involved officer(s);
- j. Medical conditions, mental impairment, substance interaction, developmental disabilities, and other physical and mental characteristics;
- k. The risk of harm to the officer, bystanders, and the individual by using force;
- l. Prior knowledge or contact with the individual or awareness of any propensity for violence;
- m. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others;
- n. The apparent need for immediate control of the individual or prompt resolution of the situation;
- o. The environmental factors and/or other exigent circumstances;
- p. The training and experience of the officer(s).

6) Officers should continuously assess a situation and consider various options as circumstances change. If a force option proves ineffective, officers should continue to seek the most effective and safest response that is proportional to the threat. This may involve using a force alternative of similar level, de-escalation, or in some cases an escalation of force options, but the level of force used should still be proportional to the threat.

7) Officers should use caution when applying force to lawfully seize and/or prevent the destruction of evidence.

8) An officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. In this circumstance, retreat does not mean tactical repositioning or other de-escalation techniques.

9) An officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with Penal Code section 835a to effect an arrest, to prevent escape, or to overcome resistance.

SECTION 4: Officer-Involved Shootings

The CPP must independently investigate and analyze officer-involved shootings. Although the San Diego Police Department may rely on findings by the District Attorney and the Shooting Review Board to assess the propriety of such incidents, the CPP must independently investigate such incidents and reach its own findings.

The CPP may rely on investigative aspects and determinations reached. However, by ordinance, its findings must be independently determined. The CPP may not merely adopt findings from other agencies, such as the District Attorney, San Diego County Sheriff, Chula Vista Police Department or San Diego Police Department.

Moreover, the legal standards for reviewing these incidents is the same for all investigative and evaluative agencies, although the application of law to facts might vary.

a) Deadly Force Under Penal Code Section 835a

In *Tennessee v. Garner, supra*, the Court held that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment, and that its use to prevent the escape of all felony suspects was constitutionally impermissible. The proper rule, as the Court suggests, would allow the use of deadly force only when a suspect poses a substantial risk of serious physical harm.

Penal Code §835a states that use of deadly force is only appropriate when objectively reasonable and necessary, in defense of life. Under the Penal Code, officers must evaluate the particular circumstances of each case, and use other available resources and techniques if reasonably safe and feasible.

The preamble to the code section is instructive regarding the need for the requirements:

(a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and

dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

It is important to note that the law includes an assessment of mental illness and the role that mental conditions might play in the deployment of the use of deadly force. It is anticipated that officers consider the mental state of individuals, if possible, in officer-involved shooting situations. Likewise, there is a requirement that officers warn of deadly force, where feasible.

Under California law, deadly force is only justified when objectively reasonable and necessary under the totality of circumstances. The “totality of circumstances” means all facts known to the officer at the time, including the conduct of the officer and subject leading up to the use of deadly force. Such force should only be used to address an imminent threat that the suspect has the present ability, opportunity and apparent intent to immediately cause death or serious injury to the officer or another person. The use of force must be evaluated from the perspective of a reasonable officer under like circumstances based on the totality of circumstances perceived by the officer at the time.¹ In this regard, AB 392 is

¹ Penal Code §835a(c)(1)(2)(e).

similar to the standard enunciated in *Graham v. Connor*, 490 U.S. 386 (1989) and *Tennessee v. Garner*, *supra*.

The Supreme Court's holding in *Graham v. Connor*, *supra*, that uses of force should be evaluated from the standpoint of "objective reasonableness" is incorporated into California law under Penal Code §835a.

It is important to note that the *Graham* factors extended the Supreme Court's holding in *Tennessee v. Garner*, *supra*, where the Court held that the use of deadly force to apprehend a fleeing suspect who did not appear to be armed or otherwise dangerous violated the suspect's Fourth Amendment rights as being an unreasonable seizure.

Because the Supreme Court left no doubt that the test for reasonableness was an objective one and that an officer's subjective intentions cannot be used to influence the evaluation of the use of deadly force. Use of such force does not depend upon, and cannot be influenced by, the officer's underlying good intentions or motivation for employing force. As discussed above, "An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." Whether force was used in "good faith" or "maliciously and sadistically for the very purpose of causing harm" was deemed irrelevant and should not be used to evaluate the propriety of the use of deadly force.

b) Necessity of the Use of Deadly Force

The language of A.B. 392 and Penal Code § 835a infers that there is a difference between use of force and deadly force that is necessary, and therefore reasonable, and deadly force that an objective officer may perceive to be reasonable, and yet is unnecessary in light of all of the circumstances surrounding the particular use of force. If an officer's particular use of deadly force is found not to be necessary, then that use of force was unreasonable and thus considered unjustified. In this regard, it is inferred that although some lesser amount of force may have been reasonable, the use of force or deadly force was not.

The new Penal Code standard effectively creates a paradigm that divides deadly force by police into segments: (1) deadly force that is unreasonable, (2) deadly force that may have been objectively reasonable, but not necessary, and (3) deadly force that is reasonably necessary based on the totality of the circumstances under the A.B. 392 standard. The law does not clearly define “necessary” in this vein, and the interpretation is evolving through case law and applications.

California courts will have to decide how to address the definition of necessary. Within Penal Code § 835a, the Legislature made known its intent that officers shall use other resources and techniques where reasonably safe and feasible, and that this should be a consideration in determining whether deadly force is necessary. Therefore, in order to determine whether a particular use of deadly force is necessary, officers must first determine that other resources or de-escalation techniques were unavailable or not reasonably safe or feasible.

Under this analysis, section 835a(a)(2) operates similarly to the standard that requires that an objectively reasonable peace officer in the same situation, given the totality of the circumstances, to conclude that there was no reasonable alternative to the use of deadly force

c) *Court Treatment of Graham Factors to Officer-Involved Shootings*

In *Nehad v. Browder, City of San Diego, Shelly Zimmerman* (9th Cir. 2019) 929 F.3d 1125, the court stated, “In Fourth Amendment excessive force cases, we examine whether police officers’ actions are objectively reasonable given the totality of the circumstances. *Byrd v. Phoenix Police Dep’t*, 885 F.3d 639, 642 (9th Cir. 2018); *Bryan v. MacPherson*, 630 F.3d 805, 823 (9th Cir. 2010). Our analysis must balance the nature of the intrusion upon an individual’s rights against the countervailing government interests at stake, without regard for the officers’ underlying intent or motivations. *Graham v. Connor*, 490 U.S. 386, 396–97 (1989). Whether a use of force was reasonable will depend on the facts of the particular case, including, but not limited to, whether the suspect posed an immediate threat to anyone, whether the suspect resisted or attempted to evade arrest, and the severity of the crime at issue.”

In analyzing the Graham factors of objective reasonableness, the court provided a roadmap as to considerations in officer-involved shooting incidents. The court discussed and assessed:

1. The suspect posed a danger to the officer's safety;
2. The officer's credibility regarding his statements and perceptions;
3. The reasonableness of the officer's beliefs of possessing a weapon. The court noted that a suspect may be armed does not end the reasonableness inquiry;
4. The officer's role in creating a dangerous situation, stating that officers sometimes "unnecessarily create their own sense of urgency (citing *Porter v. Osborn* (9th Cir. 2008) 546F.3d 1131, 1141);
5. Whether the suspect was resisting or seeking to evade arrest;
6. Whether the officer issued an adequate warning before using deadly force;
7. Whether the officer identified himself as an officer;
8. Whether there was a failure to use less intrusive or less lethal alternatives.

The court acknowledged that an officer's conduct in using force must not be viewed with 20/20 hindsight. The court recognized another factor, that officers are often forced to make split second decisions in tense and rapidly evolving situations. The court stated, "We recognize, as we have often done before, that officers must act 'without the benefit of 20/20 hindsight,' and must often make 'split- second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.' [Citation] (quoting *Graham*, 490 U.S. at 396–97); see also *Deorle v. Rutherford*, 272 F.3d 1272, 1283 (9th Cir. 2001)."

The discussion of the above factors is not an exhaustive list. However, such factors should be considered in evaluating deadly force in the context of objective reasonableness and the necessity for officers to use such force.

SECTION 5: Complaints of Police Discrimination

Title VI, 42 U.S.C. § 2000d et seq., was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. In 1963, President John F. Kennedy said in 1963:

“Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.”

Police departments continue to receive complaints of racial or ethnic discrimination in detentions, arrests, searches and uses of force.

A recent survey by the Public Policy Institute of California found that 62 percent of Californians believe that the criminal justice system is biased against African Americans. Among African Americans, 88 percent hold this view. In addition, while 54 percent of adults in California say police treat all racial and ethnic minorities fairly “almost always” or “most of the time,” only 18 percent of African Americans share that same view.²

In regards to the need for data and research on law enforcement stops, the California legislature passed the Racial and Identity Profiling Act (RIPA) in 2015. The legislation requires all law enforcement agencies in California to collect officer-perceived demographic and other detailed data for all pedestrian and traffic stops by 2023.

a) Racial and Identity Profiling Act (“RIPA”)

The California state legislature passed the Racial and Identity Profiling Act (RIPA) in 2015, which requires all law enforcement agencies in California to collect perceived demographic and other detailed data regarding all pedestrian and

² <https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/>

traffic stops by 2023. “Stop” is defined as any detention by a peace officer of a person, or any peace officer interaction with a person in which the officer conducts a search.

The data elements mandated by statute include individual and stop-level/detention information. Regarding personal traits, officers are required to record their perception of the identity characteristics for each individual stopped, including:

- race or ethnicity
- gender
- approximate age
- lesbian, gay, bisexual, or transgender (LGBT) status
- English fluency
- disability (including behavioral health status)

Officers are prohibited from asking the person stopped to self-identify in regards to these characteristics.

Detention/Stop elements include:

- reasons for stop (including a traffic violation, reasonable suspicion, parole/probation/mandatory supervision, knowledge of outstanding arrest warrant/wanted person, and consensual encounter resulting in search)
- actions taken by officer during stop (i.e., suspect removed from vehicle, physical contact, curbside detention, handcuffed, search, use of electronic device, chemical spray, or use of firearm)
- reasons for search (probable cause, consent, search warrant, plain view, odor of contraband, etc.)
- contraband or evidence discovered (guns, drugs, drug paraphernalia, alcohol, money, stolen property)
- enforcement result of stop (including no action, warning, citation, release, and booking)

The data does not require corroborating the accuracy of the reported information, including the race and identity of the individual stopped and the specific actions taken by the officer. Nor do the requirements include information on the race and ethnicity of the officer.

California passed RIPA based on concerns about implicit/explicit bias in policing that causes different ethnic groups to have different experiences with law

enforcement. Beyond mandating collection of stop data, the legislation expanded and clarified the definition of racial and identity profiling. The determination of profiling includes protected group status, such as race and ethnicity, in “... deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop...”

Research has consistently demonstrated evidence of racial bias, explicit and/or implicit, in society (for example, see Bertrand and Mullainathan 2004; Bayer et al. 2017; Rothstein 2017; Avenancio-Leon and Howard 2019; Chetty et al. 2020; Kline, Rose, and Walters 2021). The below caselaw and research have also found racial discrimination within the criminal justice system in jury, judge, and prosecutor decisions (See Anwar, Bayer, and Hjalmarsson 2012; Arnold, Dobbie, Yang 2018; Sloan 2019).³

It is axiomatic that many factors contribute to whether an officer stops someone and the officer’s subsequent actions. While RIPA data may point toward the differences in stop outcomes across race and ethnicity, it is important to recognize that these differences may also reflect circumstances that do not represent an individual officer’s bias. The reason and context for a stop might be based on a legal basis or legitimate circumstances, regardless of an individual’s race or ethnicity. Investigations in to complaints of discrimination must seek to discern these aspects based on the totality of circumstances. On the other hand, departmental practices that evidence patterns or practices of invidious racial profiling cannot be ignored or justified consistent with equal protection of the law.

b) *Murgia v. Municipal Court and Equal Protection*

Perhaps the seminal California case on discriminatory law enforcement practices and selective prosecution is *Murgia v. Municipal Court* (1975) 15 Cal.3d 286. In this case, the Supreme Court addressed the issue of discovery in a criminal prosecution where members of the United Farm Workers Union alleged that law enforcement authorities of an entire county engaged in a deliberate, systematic practice of discriminatory enforcement of the criminal law against UFW members and supporters.

³ <https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/>

In deciding this matter, the Court made several critical pronouncements in regards to discriminatory law enforcement. In reciting the history of the U.S. Supreme Court on the subject, the California Supreme Court stated:

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. . . . It is . . . clear that mere errors of judgment by officials will not support a claim of discrimination. *There must be something more — something which in effect amounts to an intentional violation of the essential principle of practical uniformity.*" (Italics added.) (*Sunday Lake Iron Co. v. Wakefield* (1918) 247 U.S. 350, 352-353 [62 L.Ed. 1154, 1155-1156, 38 S.Ct. 495].) The Supreme Court reiterated this doctrinal precept in *Snowden v. Hughes* (1944) 321 U.S. 1, 8 [88 L.Ed. 497, 503, 64 S.Ct. 397]: "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection *unless there is shown to be present in it an element of intentional or purposeful discrimination.*" (Italics added.)

As these authorities teach, an equal protection violation does not arise whenever officials "prosecute one and not [another] for the same act" (cf. *People v. Montgomery, supra*, 47 Cal.App.2d 1, 13); instead, the equal protection guarantee simply prohibits prosecuting officials from purposefully and intentionally singling out individuals for disparate treatment on an invidiously discriminatory basis. As the Court of Appeal succinctly stated in *City of Banning v. Desert Outdoor Advertising, Inc.* (1962) 209 Cal.App.2d 152, 156 [25 Cal.Rptr. 621] : "The protection afforded is against unlawful discrimination which uses law enforcement as its vehicle." As such, the doctrine imposes absolutely no impediment to legitimate law enforcement operations, for it does not insulate particular lawbreakers from prosecution, but simply requires that the authorities enforce the laws evenhandedly. (*Murgia v. Municipal Court* (Cal.1975) 15 Cal.3d 286, 297.)

To establish a claim of discriminatory enforcement, "a defendant must demonstrate that he has been deliberately singled out for prosecution on the basis of some invidious criterion. Because the particular defendant, unlike similarly situated individuals, suffers prosecution simply as the subject of invidious discrimination, such defendant is very much the direct victim of the discriminatory enforcement practice. Under these circumstances, discriminatory prosecution becomes a compelling ground for dismissal of the criminal charge, since the prosecution would not have been pursued except for the discriminatory design of the prosecuting authorities." (*Murgia v. Municipal Court, supra* at 15 Cal.3d , p. 298.)

The Court concluded that a criminal defendant may defend a criminal prosecution on the ground that s/he has been the subject of "intentional and purposeful" invidious discrimination.

c) *Murgia Motion for Selective or Discriminatory Prosecution*

A *Murgia* motion is a court motion challenging a criminal offense and seeking discovery of police discrimination or selective enforcement. Generally, the defendant must obtain records relating to other arrests or prosecutions for the same offense, or complaints and records that would prove that the government is acting in an impermissibly discriminatory manner. (See, e.g., *Griffin v. Municipal Court* (1977) 20 Cal.3d 300, 306 (where a white defendant claimed he would not have been prosecuted if he had acted alone or if his codefendant had not been black was considered to have made a proper showing for discovery).

In essence, a *Murgia* motion challenges the constitutionality of police conduct in a criminal prosecution based on race, ethnicity or protected status. As such, such motions may be analyzed consistent with discovery obligations of the prosecution under *Brady v. Maryland* (1963) 373 U.S. 83.

The burden of proof to obtain to discovery in motions arguing selective prosecution is high. A defendant must produce, “some evidence tending to show the existence of the essential elements of the defense, discriminatory effect and discriminatory intent.” (*People v. Superior Court* (Baez) (2000) 79 Cal.App.4th 1177, 1189, quoting *People v. Armstrong* (1996) 517 U.S. 456, 468.) The moving party must make a credible showing of different treatment of a similarly situated person. (*Armstrong*, at 470.) This burden is generally met if the defendant can show that similarly situated individuals of different ethnic or racial backgrounds were not prosecuted. (*Baez*, at 1191.)

Once a *Murgia* motion is granted, then the defense must show by a preponderance of the evidence that there was discriminatory prosecution. (*Miller v. Superior Court* (2002) 101 Cal.App.4th 728; *People v. Smith* (1984) 155 Cal.App.3d 1103, 1129.) This means that the defendant was singled out for prosecution based on an invidious criterion. Typically, the defendant must show that defendant would not have been prosecuted but for race or ethnicity, and that the prosecution would not have occurred but for the discriminatory design of the prosecution or police. (*People v. Superior Court* (Hartway) (1977) 19 Cal.3d 338, 348.)

Interestingly, a defendant does not have to demonstrate that police or prosecutors had the specific intent to punish the defendant for his or her membership in the group. To the contrary, the intent is just to “single out the group

or a member of the group on the basis of that membership for prosecution that would not otherwise have taken place.” (*Baluyut v. Superior Court* (1996) 12 Cal.4th 826, 835, 50.)

Defendants often seek statistical data (similar to RIPA data) on the prosecution of certain offenses in juxtaposition to ethnic groups as the evidence that has the most common application. Defendants also often seek police body-cam evidence for admissions of discriminatory conduct, singling out or improper law enforcement conduct.

SECTION 6: Discovery Of Police-Officer Personnel Files

For many years this discovery process was allowed only in cases where a defendant alleges that he acted in self-defense against an officer who used excessive force against him. Over the years, the courts have expanded on the scope of alleged police misconduct that would justify intrusion into the confidential personnel files of peace officers. Potentially acceptable allegations in support of *Pitchess* discovery may now include lying and falsifying police reports, planting and fabricating evidence, ethnic, racial, and sexual orientation bias, coerced confession, “code of silence” and others. Such discovery is based on the Supreme Court’s holding in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

The most common *Pitchess* motion seen today occurs in criminal cases, and challenges what the officer has reported in his official police report, or that the officer lied, planted or fabricated evidence, prepared a false police report or engaged in a pattern of misconduct. Defendants may seek complaints against *any* officer who was involved in, present during or investigated his arrest, or who prepared a report relating to the arrest/investigation.

Requests are made to the court to search an officer’s confidential personnel files for prior complaints against the officer for unlawful arrest, excessive force, false testimony, fabrication of evidence, planting evidence, false police reports and the like. Defendants seek greater access to officer files and, over objections, may seek the internal investigation reports from the Department and the CPP, including witness statements, compelled statements of the officers provided to investigators, photographs, audio- and videotapes, and sometimes psychological testing results. Other related reports and documents prepared, or maintained, by the CPP may also be subject to discovery motions in a criminal or civil context.

The majority of law in this area focuses on criminal discovery; however, the *Pitchess* process is equally applicable in civil cases – most commonly police misconduct litigation. By ordinance, the CPP must handle and litigate subpoenas and *Pitchess* motions seeking discovery.

Discovery of confidential police personnel records maintained by the CPP may be sought to prove a pattern and practice of police misconduct, or that the Department was made aware of a problem officer and failed to act on the information or recommendation by the CPP.

Most importantly, police-officer personnel files are often sought in high profile cases and officer involved shootings in federal criminal and civil rights cases. State law privileges of confidentiality are not recognized in cases in which federal rights or federal civil rights are litigated. The federal courts afford these state law privileges some weight, and federal common law may be applied. The role of the CPP General Council, or outside counsel, in these matters should be to represent that the Legislature and courts have provided laws to ensure that courts engage in a fair, balanced, and thorough review of the need for this discovery, while balancing an officers' rights to confidentiality in their personnel records.

a) *The Background for Police Discovery or Pitchess Motions*

Police officer personnel discovery and the "Pitchess Motion" process is codified under various California Statutes.

Evidence Code §§1043-1047 enumerate the discovery process. Evidence Code §1043 states:

(a) In any case in which discovery or disclosure is sought of peace or custodial officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code or information from those records, the party seeking the discovery or disclosure shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency which has custody and control of the records. The written notice shall be given at the times prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure. Upon receipt of the notice the governmental agency served shall immediately notify the individual whose records are sought.

(b) The motion shall include all of the following:

(1) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the peace or custodial officer whose records are sought, the governmental agency which has custody and control of the records, and the time and place at which the motion for discovery or disclosure shall be heard.

(2) A description of the type of records or information sought.

(3) Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that the governmental agency identified has the records or information from the records.

(c) No hearing upon a motion for discovery or disclosure shall be held without full compliance with the notice provisions of this section except upon a showing by the moving party of good cause for noncompliance, or upon a waiver of the hearing by the governmental agency identified as having the records.

Evidence Code § 1045 states:

(a) Nothing in this article shall be construed to affect the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of those investigations, concerning an event or transaction in which the peace officer or custodial officer, as defined in Section 831.5 of the Penal Code, participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties, provided that information is relevant to the subject matter involved in the pending litigation.

(b) In determining relevance, the court shall examine the information in chambers in conformity with Section 915, and shall exclude from disclosure:

(1) Information consisting of complaints concerning conduct occurring more than five years before the event or transaction that is the subject of the litigation in aid of which discovery or disclosure is sought.

(2) In any criminal proceeding the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code.

(3) Facts sought to be disclosed that are so remote as to make disclosure of little or no practical benefit.

(c) In determining relevance where the issue in litigation concerns the policies or pattern of conduct of the employing agency, the court shall consider whether the information sought may be obtained from other records maintained by the employing agency in the regular course of agency business which would not necessitate the disclosure of individual personnel records.

(d) Upon motion seasonably made by the governmental agency which has custody or control of the records to be examined or by the officer whose records are sought, and upon good cause showing the necessity thereof, the court may make any order which justice requires to protect the officer or agency from unnecessary annoyance, embarrassment or oppression.

(e) The court shall, in any case or proceeding permitting the disclosure or discovery of any peace or custodial officer records requested pursuant to Section 1043, order that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law.

Evidence Code § 1046 provides:

In any case, otherwise authorized by law, in which the party seeking disclosure is alleging excessive force by a peace officer or custodial officer, as defined in Section 831.5 of the Penal Code, in connection with the arrest of that party, or for conduct alleged to have occurred within a jail facility, the motion shall include a copy of the police report setting forth the circumstances under which the party was stopped and arrested, or a copy of the crime report setting forth the circumstances under which the conduct is alleged to have occurred within a jail facility.

Evidence Code § 1047 provides:

(a) Records of peace officers or custodial officers, as defined in Section 831.5 of the Penal Code, including supervisory officers, who either were not present during the arrest or had no contact with the party seeking disclosure from the time of the arrest until the time of booking, or who were not present at the time the conduct at issue is alleged to have occurred within a jail facility, shall not be subject to disclosure. **(b)** Notwithstanding subdivision (a), if a supervisory officer whose records are being sought had direct oversight of a peace officer or a custodial officer, as defined in Section 831.5 of the Penal Code and issued command directives or had command influence over the circumstances at issue, the supervisory officer's records shall be subject to disclosure pursuant to Section 1045 if the peace officer or custodial officer under supervision was present during the arrest, had contact with the party seeking disclosure from the time of the arrest until the time of booking, or was present at the time the conduct at issue is alleged to have occurred within a jail facility.

The California legislature has codified the balancing doctrine created in the *Pitchess* decision by enacting Penal Code §§ 832.7, 832.8 and Evidence Code §§ 1043 and 1045, all of which established an “exclusive” procedure for the discovery of peace officer personnel records or information contained in them. Penal Code §832.5 was also amended in 1978 to include a requirement that police complaints be maintained for a period of five years. The purpose of these bills was to both require retention of police personnel investigation files and records, but also to protect them from “random discovery” and dissemination. (*San Francisco Police Officers' Assn. v. Superior Court* (1988) 202 Cal.App.3d 183, 189-190, referencing the analysis of Senate Bill No. 1436 prepared for the Assembly Committee on Criminal Justice.) “In enacting [Evidence Code] sections 1043 and 1045, the Legislature clearly intended to place specific limitations and procedural safeguards on the disclosure of peace officer personnel files which had not previously been found in judicial decisions.” (*California Highway Patrol v. Superior Court* (2000) 84 Cal. App. 4th 1022.)

b) Bringing a Pitchess Motion

Penal Code § 832.7 states the basic premise that peace officer personnel records and records of citizen complaints, “. . . or information obtained from these records . . .” are confidential and “*shall not*” be disclosed in any criminal or civil proceeding except by discovery pursuant to Evidence Code §§ 1043 and 1046. Penal Code §832.8 defines “personnel records” to include personal data, medical history, appraisals and discipline, complaints and investigations relating to an event an officer perceived and/or relating to the manner in which his or her duties were performed, and any other information the disclosure of which would constitute an unwarranted invasion of privacy. In essence, any file maintained by the CPP under an officer’s name becomes a part of that officer’s personnel file subject to the confidentiality and discovery provisions of the above provisions.

Evidence Code §1043 sets out the basic requirements for a discovery motion seeking personnel files or records. The motion must be a court written motion noticed according to the requirements of CCP §1005. The notice requirements are mandatory. “No hearing upon a motion for discovery or disclosure shall be held without full compliance with the notice provisions of this section, except upon a showing by the moving party of good cause for non-compliance, or upon a waiver of the hearing by the government agency identified as having the records.” (Evidence Code §1043(c).) If there are allegations of the use of excessive force by the officers, the motion must also include a copy of the police report per Evidence Code §1046. The motion must be served on the agency having custody and control of the records, whether the CPP or SDPD and the officer must be given notice of the motion by the CPP or SDPD, even if s/he no longer works for the agency. (*Abatti v. Superior Court* (203) 112 Cal.App.4th 39.)

Assembly Bill (AB) 1600 took effect on January 1, 2020, and shortens the filing timelines for *Pitchess* motions in criminal matters. In addition, the personnel records of supervisory officers are potentially discoverable. Prior to the passage of AB 1600, Evidence Code §1403 required that a criminal defendant file written notice of a *Pitchess* motion at least 16 court days before hearing. AB 1600 amended this provision to allow a *Pitchess* motion in a criminal matter to be filed as little as 10 court days before the hearing.

Moreover, *Pitchess* motion opposition by the CPP must now be filed no less than five court days before hearing, and reply papers must be filed no less than two court days before hearing. Court holidays and weekends do not count as "days" for the purposes of these timelines. The timelines for *Pitchess* motions in civil matters

remain unchanged.

An important change made by AB 1600 is in regards to discovery of personnel records of supervisory officers. Before the enactment of AB 1600, Evidence Code § 1047(a) prohibited the disclosure of personnel records of supervisory officers or other peace officers or custodial officers who were not present during the arrest, had no contact with the party seeking disclosure from the time of arrest until the time of booking, or who were not present at the time the conduct at issue occurred within a jail facility. In efforts to expand accountability, AB 1600 added an exception to this rule. The personnel records of a supervisory officer who had direct oversight of a peace officer or custodial officer and who issued command directives or had command regarding the circumstances at issue are discoverable if the supervisory officer was supervising a peace officer or custodial officer who: (1) was present during the arrest, (2) had contact with the party seeking disclosure from the time of arrest until booking, or (3) was present at the time the alleged conduct occurred within a jail facility.

Senate Bill 1421, effective on January 1, 2019, rendered personnel records related to officer misconduct disclosable pursuant to the California Public Records Act. (See below.)

c) Senate Bill 1421

Senate Bill 1421 makes a *Pitchess* motion unnecessary for some types of information requests.

Under SB 1421, four types of police records are now open for **public inspection**. In general, these records pertain to:

1. Officer-involved shootings;
2. Use of force resulting in great bodily injury;
3. Where an officer commits sexual assault;
4. Where an officer commits an act of dishonesty, perjury, destroys evidence or files a false report.

In the four scenarios above, SB 1421 authorizes the public inspection of “records” found in an officer’s personnel file.

Such “records” may include such items and information as:

- Investigative reports;
- Photographic, audio and video evidence;
- Transcripts or recordings of interviews;
- Autopsy reports;
- Documents setting forth findings or recommended findings; and copies of disciplinary records.

Even after Senate Bill 1421, *Pitchess* motions are still necessary if a defendant seeks information from an officer’s personnel file; and the information is not authorized for inspection under SB 1421.

Examples of information a defendant may seek through a discovery motion that is not covered within SB 1421 may include:

1. Records that show that an officer racially profiled an individual; or,
2. Records that show that an officer used excessive force;
3. Records that show that an officer coerced a confession; or
4. Records show other prejudicial acts, or the falsification of evidence/testimony.

Defense attorneys often argue that police records – in particular an officer’s personnel file – serve a very important source for relevant evidence. In particular, criminal defendants desire to ascertain whether an arresting officer committed some type of misconduct in past cases. A showing of any pattern or practice of misconduct is arguably critical to build an effective defense.

Even where certain records are subject to disclosure, Senate Bill 1421 states that some information must get redacted, or edited, to protect the identity of certain parties and witnesses.

The information that gets redacted includes, but is not limited to:

- Personal information (e.g., addresses, telephone numbers, and names of family members);
- Confidential medical or financial information;
- Information protected from disclosure under federal law;
- Information the disclosure of which would create a danger to an officer’s safety; and,

- Information where the public interest served by not disclosing it outweighs the public interest served by disclosing it.

d) The Pitchess Motion Procedure

California Evidence Code §§1043 and 1045 outline the process for filing a Pitchess motion. The process essentially includes three important elements. These are:

1. Procedural steps for filing the written motion as outlined under Evidence Code § 1043;
2. A showing of “good cause;” and,
3. An “*in camera*” or in chambers private hearing with the judge, CPP custodian of records and a court reporter.

Under Evidence Code §1043, a Pitchess motion **must include**:

1. **Identification** of the criminal court case, the defendant, or the officer(s) whose records are being sought, and the governmental agency that has custody of the records;
2. A **description** of the type of records that are being sought;
3. **Proof** that the defendant has notified the agency that holds the records of the motion and proof of service upon the CPP and subject officer; and
4. **An affidavit or declaration** establishing good cause for discovery or invasion into the police officer’s personnel file.

The affidavit or declaration demonstrating “good cause” is the most important part of a California Pitchess motion.

A showing of “good cause” exists if the affidavit sets forth both:

- a. A specific factual scenario demonstrating the relevance and need for discovery in juxtaposition to the defendants case; and
- b. The reasons why the subject discovery would be relevant in the defendant’s case.

e) The In Camera Hearing

If the above procedural requirements are met, and good cause is demonstrated, then a Pitchess motion moves onto an “*in camera*” or private hearing conducted by a judge.

“*In camera*” means that the hearing is private or in the judge’s chambers rather than in open court. The only individuals that usually attend are the attorney for the CPP, custodian of records (Executive Director) and a court reporter.

During the *in camera* review hearing, the trial court judge reviews the personnel file and determines whether or not the information in the officer’s personnel files is relevant to the defendant’s defense. Only information that the judge determines is relevant will be disclosed to the defendant. The judge does not serve as a trier of fact, and consequently does not decide credibility or weigh the evidence.

There are certain types of information that the judge does not disclose to the defendant who files a Pitchess motion (unless the information is clearly exculpatory under *Brady v. Maryland, supra*). Records that should not be disclosed as a matter of law include:

1. Information about complaints against the officer(s) that occurred more than five (5) years (or the corresponding statutory period for various types of misconduct) before the alleged police misconduct in the defendant’s case;
2. The investigative conclusions of internal investigator.

Generally, in state courts, only the names and addresses of witnesses are disclosed. Moreover, if there is good cause, the CPP should request a protective order by the court to keep the information confidential.


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TITLE 1. GENERAL [100 - 7931.000] (Title 1 enacted by Stats. 1943, Ch. 134.)

DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES [1000 - 3599.84] (Division 4 enacted by Stats. 1943, Ch. 134.)

CHAPTER 9.7. Public Safety Officers [3300 - 3313]

(Chapter 9.7 added by Stats. 1976, Ch. 465.)

3300. This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

(Added by Stats. 1976, Ch. 465.)

3301. For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

(Amended by Stats. 1990, Ch. 675, Sec. 1.)

3302. (a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

(Amended by Stats. 1978, Ch. 1173.)

3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal

physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

(Amended by Stats. 1994, Ch. 1259, Sec. 1. Effective January 1, 1995.)

3304. (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons."

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d) (1) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed discipline by a Letter of Intent or Notice of Adverse Action articulating the discipline that year, except as provided in paragraph (2). The public agency shall not be required to impose the discipline within that one-year period.

(2) (A) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(B) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(C) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(D) If the investigation involves more than one employee and requires a reasonable extension.

(E) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(F) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(G) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(H) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

(e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exist:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the public safety officer's predisciplinary response or procedure.

(h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (f) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

(Amended by Stats. 2009, Ch. 494, Sec. 1. (AB 955) Effective January 1, 2010.)

3304.5. An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

(Added by Stats. 1998, Ch. 263, Sec. 1. Effective January 1, 1999.)

3305. No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

(Added by Stats. 1976, Ch. 465.)

3305.5. (a) A punitive action, or denial of promotion on grounds other than merit, shall not be undertaken by any public agency against any public safety officer solely because that officer's name has been placed on a Brady list, or that the officer's name may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83.

(b) This section shall not prohibit a public agency from taking punitive action, denying promotion on grounds other than merit, or taking other personnel action against a public safety officer based on the underlying acts or omissions for which that officer's name was placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, if the actions taken by the public agency otherwise conform to this chapter and to the rules and procedures adopted by the local agency.

(c) Evidence that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, shall not be introduced for any purpose in any administrative appeal of a punitive action, except as provided in subdivision (d).

(d) Evidence that a public safety officer's name was placed on a Brady list may only be introduced if, during the administrative appeal of a punitive action against an officer, the underlying act or omission for which that officer's name was placed on a Brady list is proven and the officer is found to be subject to some form of punitive action. If the hearing officer or other administrative appeal tribunal finds or determines that a public safety officer has committed the underlying acts or omissions that will result in a punitive action, denial of a promotion on grounds other than merit, or any other adverse personnel action, and evidence exists that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83, then the evidence shall be introduced for the sole purpose of determining the type or level of punitive action to be imposed.

(e) For purposes of this section, "Brady list" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in Brady v. Maryland (1963) 373 U.S. 83.

(Added by Stats. 2013, Ch. 779, Sec. 1. (SB 313) Effective January 1, 2014.)

3306. A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

(Added by Stats. 1976, Ch. 465.)

3306.5. (a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefor by the officer.

(c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion

be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.

(Added by Stats. 2000, Ch. 209, Sec. 1. Effective January 1, 2001.)

3307. (a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.

(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(Amended by Stats. 1998, Ch. 112, Sec. 1. Effective January 1, 1999.)

3307.5. (a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.

(Added by Stats. 1999, Ch. 338, Sec. 1. Effective January 1, 2000.)

3308. No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

(Added by Stats. 1976, Ch. 465.)

3309. No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

(Added by Stats. 1976, Ch. 465.)

3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(b) Nothing in subdivision (h) of Section 11181 shall be construed to affect the rights and protections afforded to state public safety officers under this chapter or under Section 832.5 of the Penal Code.

(c) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(d) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the party's attorney, or both, pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(e) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages. Notwithstanding these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a "hold harmless" or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.

(Amended by Stats. 2005, Ch. 22, Sec. 70. Effective January 1, 2006.)

3310. Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

(Added by Stats. 1976, Ch. 465.)

3311. Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

(Amended by Stats. 1977, Ch. 579.)

3312. Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:

(a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.

(b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.

(c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

(Added by Stats. 2002, Ch. 170, Sec. 2. Effective January 1, 2003.)

3313. In the 2005–06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court

Decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 and other applicable court decisions. If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Officer Procedural Bill of Rights activities occurring after the date the revised decision is adopted.

(Added by Stats. 2005, Ch. 72, Sec. 6. Effective July 19, 2005.)

City of San Diego Commission on Police Practices

COMPLAINT ADMINISTRATION PROCEDURE

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The following shall provide a framework for the receipt, screening, review, investigation, reporting on, and disposition of complaints regarding alleged conduct by members of the San Diego Police Department (the Police Department).

It is the policy of the Commission on Police Practices (Commission) to encourage persons who have complaints concerning the conduct of police officers employed by the Police Department to bring complaints to the attention of the Commission. The Commission will attempt to assist and accommodate Complainants regarding the Complaint filing process consistent with the California Penal Code sections 832.5 and 832.7. Complaints shall include complaints received from any person without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant.

Complaints will be screened, reviewed, and investigated (where appropriate), and disposed of in accordance with the procedures set forth in this procedure. The Commission will make every effort to consider and to respond to Complaints against police officers and investigate, when necessary.

The right of a complainant to bring a complaint shall be absolute and unconditional. The reluctance of the complainant to prepare a complaint form shall not impair the right to lodge a complaint.

Lodging and Filing of Complaints

A complaint can be filed by an impacted party¹, a parent or legal guardian if the impacted party is a minor, a witness to an incident, any person with knowledge of an incident, or a third-party representative for an impacted party. The Commission will accept complaints from anonymous complainants, however, the extent of Commission screening and action on such complaints may be limited.

Complaints may be lodged with the Commission online, in writing, in person, by telephone, email, or any other means deemed appropriate by the Commission. The Commission will also receive complaints filed with the Police Department, which must be transmitted to the Commission within five (5) days of receipt. Conversely, within five (5) days from receipt, Complaints received by Commission shall be forwarded to the Police Department.

The Police Department will provide a response as to the classification of each complaint forwarded to the Police Department by the Commission within seven (7) days of receipt. The Police Department will also provide a monthly status update on all complaints forwarded to the Police Department by the Commission and all Police Department investigations of alleged police misconduct, including internal investigations not resulting from a complaint, as well as officer involved shooting incidents, deaths in-custody, and deaths resulting from interactions with a police officer. According to the City of San Diego Municipal Code §26.1107(a)(6), if the Police

¹ Impacted party is a person directly affected by at least one or more allegation(s) or instances of police misconduct.

Department investigation is not concluded within six months, the Police Department must provide a written report to the Commission on the status of the investigation every two weeks thereafter, until the investigation concludes. The Commission and Police Department must establish an efficient and transparent joint system allowing the two entities to mutually track complaints and matters referenced herein.

Upon receipt of the complaint, Commission staff shall screen the complaint for relevant information and make a jurisdictional assessment. Irrespective of the mode of filing of the complaint, Commission staff will make every effort to obtain a signed attestation form from the complainant or impacted party. If such form is not obtained within five (5) days and the complaint is or may be within the Police Department jurisdiction, the complaint will be forwarded to the Police Department for further assessment and action. Commission staff will make best effort to refer complainants to appropriate agencies/jurisdictions if the complaints are not within the Police Department or Commission jurisdiction.

As part of the screening process, staff will bring complaints to the attention of the Chief Investigator and/or Executive Director, who will then follow the procedure outlined in the Investigations Operating Procedure to properly classify and determine whether to initiate an independent Commission investigation. If a complaint is deemed appropriate for Commission's investigation but a complainant or impacted party does not provide a signed attestation form, Commission's action on such complaint may be limited and it may elect not to move forward with an investigation, pursuant to provisions outlined in the Investigations Operating Procedure.

Forms

The Commission shall establish standard forms related to the complaint administration process, including but not limited to complaint form, attestation form, verification form, medical records release form, unsealing orders, and other to be signed by parties who file complaints or are parties to the Commission's investigation. The attestation form shall be in compliance with the California Penal Code section 148.6, as required by law. All forms shall be available in other languages as deemed appropriate by the Commission. Complaint form shall be available on the Commission's website, at the Commission's office, and at public meetings or outreach events of the Commission.

Recording of Complaints

The Commission will maintain a central register of all complaints filed with it. The central register shall record actions taken on each complaint. Disclosure of information from the central register shall be in compliance with applicable law. The central register shall contain the following:

1. name of the complainant, impacted party, witnesses, and subject and witness officers;
2. Commission assigned complaint number;
3. the Police Department assigned case number (if applicable);

4. date the complaint was filed;
5. a brief description of the subject matter of the complaint;
6. date the complaint was transmitted to the Police Department;
7. classification of the complaint;
8. date the investigation commenced, if applicable;
9. investigative actions taken by Commission investigators;
10. date of the completion of the investigative report and the investigation findings;
11. date and content of the final disposition of the complaint.

Withdrawal of Complaints

A complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant, indicating that they do not want to proceed with a formal investigation. In cases where multiple complainants exist, and one or more do not withdraw, the Commission may proceed with the investigation.

Notification of Parties

Within ten (10) business days of the receipt of a complaint, the Commission will notify a complainant by telephone, email, or mail using the information provided when the complaint is filed that the Commission has received the complaint and its status.

If the Commission decides to investigate the complaint, the Commission must identify the case number and Commission staff assigned to investigate the case and provide this information to the complainant and/or impacted party.

The complainant, impacted party, or subject officer, may check on the status of the case at any time. However, the Commission must provide a notice to complainants and/or impacted parties on the status of their investigations no less than every 45 days.

After the Commission makes its final finding, the Commission will notify the complainant, impacted party, and the subject officer of the outcome within seven (7) days of the Commission vote on the case or other Commission action.

Third-party complainants shall not be provided with confidential information pertaining to the impacted party or as otherwise prohibited by law.

Approved by the CPP on May 15, 2024

City of San Diego Commission on Police Practices

SUBPOENA AND NOTICE PROCEDURES

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Power to Subpoena

The Commission on Police Practices (Commission) may issue subpoenas. Subpoenas may be issued to secure the personal appearance of a witness to testify or provide testimony in connection with a Commission investigation or hearing.

Under San Diego Municipal Code section 26.1110:

(a) The *Commission* has the power to subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other items whenever material to the performance of the *Commission's* duties or exercise of its powers.

(b) A subpoena issued under this section must be issued and signed by the *Executive Director* or their designee.

(c) If a witness fails to appear before the *Commission* at the time and date set by subpoena, or in the case of a subpoena duces tecum, if a record is not produced as required, the *Commission* may, by majority vote, authorize its chairperson or the *Executive Director* to certify the facts to the Superior Court for an order to show cause why the subpoena recipient should not be ordered to comply with the subpoena.

Types of Subpoenas

A *personal subpoena* may be issued and signed by the Executive Director or their designee. In order to be effective, the subpoena must be signed and dated by the Executive Director or their designee and personally served on the witness by a legal process server, certified mail service, or electronically, as afforded by law. A sample subpoena for personal appearance is appended as Appendix A. The proof of service must be attached when the subpoena is served by mail or electronically.

A *subpoena duces tecum* seeks the production of documents as described in the subpoena. It must be signed and dated by the Executive Director or their designee and personally served on the person in possession of the documents by certified mail service or electronically, as afforded by law. This type of subpoena seeks production of records or documents as opposed to live testimony. A sample subpoena duces tecum is appended as Appendix B. The proof of service must be attached when the subpoena is served by mail or electronically.

Receipt of Subpoenas

As a custodian of various police information or records, the Commission may also be subpoenaed for records in conjunction with various court proceedings. Because many records maintained by the Commission will be confidential and privileged, the General Counsel or legal counsel should be immediately contacted for assistance where a subpoena is served.

A designated Commission staff member should be selected to receive and handle subpoenas to avoid confusion. Once a subpoena is received, it should be promptly reviewed with the General Counsel in the event that the subpoena is overbroad or a motion to quash the subpoena is necessary (refer to the *Pitchess* motion procedures regarding discovery and motions to quash).

Strict attendance should be paid to the timeframe for complying with the subpoena. If the subpoena does not afford the statutory time for compliance, or seeks confidential information not subject to subpoena, an objection may be made or motion to quash filed.

A subpoena is not required to be filed for information maintained by the Commission that is publicly accessible or easily accessible through other means.

Noticing of City Employees to Testify in Proceedings

There will be occasions where police officers or City employees will be necessary for testimony in conjunction with investigations or Commission proceedings.

Under San Diego Municipal Code section 26.1108, City employees are required to cooperate in Commission activities. Section 26.1108 states:

(a) It is the policy of the City that all officers and employees of the City cooperate promptly and fully with the *Commission* to ensure the *Commission* can timely and properly perform its duties as required by the Charter, the Council by ordinance, and state and federal laws. A City employee who fails or refuses to comply with this section is subject to discipline, up to and including termination. This requirement to cooperate includes participation in any *investigatory proceeding* set forth in the *Commission's* operating procedures approved by the Council. If the *Commission* seeks to interview any City employee, including an employee who is the subject of a *complaint*, as part of an *investigatory proceeding*, the *Commission* must provide timely advance written notice to the employee. The *Commission* must also provide timely advance written notice to the City employee's appointing authority. The written notice must specify the date and time of the interview and provide the employee with reasonably sufficient time to secure union or legal representation by the employee's personal attorney, as applicable, and to make any legal objections to the interview, either before or at the time of the interview.

Notice to interview City employees must be issued in writing and in a timely manner such that the employee may confer with a representative of legal counsel. The notice must specify the date and time of the interview. The employee may object to the interview at or before the time of the interview by code.

A sample notice to interview a City employee is appended as Appendix C. Personal service on employees should be requested through the Department head or respective supervisor. It should be noted that by ordinance, all City employees are required to cooperate in Commission activities, which would include the interview process.

Appendix A

BEFORE THE COMMISSION ON POLICE PRACTICES FOR THE CITY OF SAN DIEGO

SUBPOENA FOR PERSONAL APPEARANCE

To: _____

Pursuant to California Code of Civil Procedure §§1985-1985.4, San Diego Municipal Code §26.1110, and in furtherance of an investigation, the Commission on Police Practices hereby commands you to appear at the following location:

Commission on Police Practices
[Address]
[Date and Time]

You are being subpoenaed in regards to an investigation of various conduct, related to California Penal Code §§ 832.5 – 832.8. You have been identified as a person with information, documents, or who might be able to offer information or evidence in this matter deemed to be relevant to the investigation in this matter.

If you have any questions regarding compliance with this Subpoena, contact: [Commission Staff Name, Title, Contact Information].

Please be advised that willful disobedience, destruction, or concealment of any items requested could result in a referral to law enforcement for criminal prosecution pursuant to California Penal Code §135.

Failure to comply with the commands of this Subpoena may subject you to an action for contempt or other penalties before the Superior Court of the State of California.

Dated:

Commission on Police Practices
Executive Director

Proof of Service

I am employed in the County of San Diego, State of California. I am a citizen of the United States, residing in the county of San Diego, State of California. I am over the age of 18 and am not a party to nor interested in the within action. My business address is _____.

On _____, I served the attached subpoena described as follows:

By placing the true copy enclosed in a sealed certified mail envelope addressed as follows:

___ (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses specified above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

___ (By Mail) I enclosed the documents in a sealed and certified envelope or package addressed to the persons at the addresses specified above and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. I placed the envelope for collection and mailing, following ordinary business practices. I am readily familiar with business practices for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I placed the envelope or package in the mail at San Diego, California.

(Electronically) I sent the document to (NAME) at the (ELECTRONIC ADDRESS or other means) as mutually agreed upon, on (DATE AND TIME).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ at San Diego, California.

[Commission Staff Name and Signature]

Appendix B

BEFORE THE COMMISSION ON POLICE PRACTICES FOR THE CITY OF SAN DIEGO

SUBPOENA DUCES TECUM

To: _____

Pursuant to California Code of Civil Procedure §§1985-1985.4, San Diego Municipal Code §26.1110, and in furtherance of an investigation, the Commission on Police Practices hereby commands you, within fifteen (15) days after service, to produce and permit inspection and copying of all documents, records, and other materials described in Exhibit A, by mailing or providing such materials via other mutually agreed upon means, together with a certification from you, dated and signed under penalty of perjury under the laws of the State of California that the documents provided are true, correct and complete copies of all documents responsive to this Administrative Subpoena, to the following location or :

Commission on Police Practices
[Address]

The subpoenaed items are relevant to an investigation of various conduct, related to California Penal Code §§ 832.5 – 832.8. You have been identified as a person with information, documents, or who might be able to offer evidence in this matter and the documents requested are believed to contain evidence relevant to the investigation in this matter.

If you have any questions regarding compliance with this Subpoena, contact: [Commission Staff Name, Title, Contact Information].

Please be advised that willful disobedience, destruction or concealment of any items requested could result in a referral to law enforcement for criminal prosecution pursuant to California Penal Code §135.

Failure to comply with the commands of this Subpoena may subject you to an action for contempt or other penalties before the Superior Court of the State of California.

Dated:

Commission on Police Practices
Executive Director

Proof of Service

I am employed in the County of San Diego, State of California. I am a citizen of the United States, residing in the county of San Diego, State of California. I am over the age of 18 and am not a party to nor interested in the within action. My business address is _____.

On _____, I served the attached subpoena described as follows:

By placing the true copy enclosed in a sealed certified mail envelope addressed as follows:

____ (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses specified above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

(By Mail) I enclosed the documents in a sealed and certified envelope or package addressed to the persons at the addresses specified above and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. I placed the envelope for collection and mailing, following ordinary business practices. I am readily familiar with business practices for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I placed the envelope or package in the mail at San Diego, California.

(Electronically) I sent the document to (NAME) at the (ELECTRONIC ADDRESS or other means) as mutually agreed upon, on (DATE AND TIME).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ at San Diego, California.

[Commission Staff Name and Signature]

Appendix C

COMMISSION ON POLICE PRACTICES NOTICE OF INTERVIEW

CONFIDENTIAL

RE: Notice of Interview on _____, 202_

TO: [Name of Employee]:

This is to advise you that you are being scheduled to participate in an interview in connection with an investigation conducted by the San Diego Commission on Police Practices. Under San Diego Municipal Code section 26.1108, City employees are required to cooperate in Commission activities. Section 26.1108 states:

- (a) It is the policy of the City that all officers and employees of the City cooperate promptly and fully with the *Commission* to ensure the *Commission* can timely and properly perform its duties as required by the Charter, the Council by ordinance, and state and federal laws. A City employee who fails or refuses to comply with this section is subject to discipline, up to and including termination. This requirement to cooperate includes participation in any *investigatory proceeding* set forth in the *Commission's* operating procedures approved by the Council.

The interview is to be conducted as follows:

Date:

Time:

Location:

[For police interviews] The interview is being conducted at a reasonable time and place. By law, you may be accompanied to the interview by a representative or attorney of your choice. The interview will be conducted in full compliance with the Public Safety Officers' Procedural Bill of Rights (Government Code sections 3300 et seq.).

Please feel free to contact [Commission Staff Name, Title, Contact Information].
Your supervisor or department head is also copied on the notice.

Date:

Commission on Police Practices
Executive Director

Cc: Supervisor/Department Head

Approved by the CPP on June 5, 2024

City of San Diego Commission on Police Practices

DISCIPLINARY REVIEW PROCEDURES

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Departmental discipline that stems from complaints pertaining to alleged misconduct must be reviewed and evaluated by the Commission where there are sustained findings. Similarly, internal investigations into police misconduct resulting in sustained findings must be reviewed and evaluated by the Commission. Commission review into internal disciplinary matters is required regardless of whether a complaint has been filed.

In either situation, the Commission may exercise discretion in providing advisory recommendations or findings on discipline to the Chief of Police. Although the Commission must review and evaluate the discipline in these matters, the Commission is not required to make recommendations nor findings regarding disciplinary actions.

The Commission also has discretion whether to review or evaluate discipline of police officers arising from other matters not involving alleged misconduct. Such instances would not normally involve complaints, but might relate to performance related matters such as attention to duty, etc. In these situations, there is no requirement for the Commission to review the discipline, nor make recommendations or findings in the matters.

The Commission may establish a Discipline Review Panel, to be composed of Commission members and/or staff, to make recommendations to be considered by the full Commission.

I. Mandatory Review of Disciplinary Actions

- A. The Commission *must* review and evaluate *all* factual findings and evidentiary conclusions of the Police Department arising from Police Department investigations of alleged misconduct by police officers, including internal investigations not resulting from a complaint, and all disciplinary decisions proposed by the Chief of Police or designee following sustained findings of police officer misconduct.
- B. In order to fulfill this duty on a timely basis, within ten (10) calendar days after disciplinary decision by the Chief of Police or designee, the Department shall notify the Executive Director of the Commission and provide all supporting documentation including but not limited to the discipline imposed, a record of discipline for all previous offenses of the same misconduct type (as specified in the Department's Discipline Matrix) and documentation of any mitigating or aggravating circumstances considered by the Department. The Department will thoroughly explain and document any deviations from the Department's guidelines, as specified in the Department's Discipline Matrix (see Appendix A).
- C. The Commission's Discipline Review Panel shall evaluate the documentation provided by the Department and make a recommendation to the full Commission. The evaluation shall include, *but is not limited to*, a determination of whether the Commission concurs with the discipline imposed by the Department.

- D. Within ten (10) calendar days after the Commission votes on the recommendation from the Discipline Review Panel, the Executive Director shall notify the Chief of Police of the Commission's actions.
- E. All Commission action shall be completed within the one year statute of limitations under the California Public Safety Officers Procedural Bill of Rights Act ("POBOR"; Reference Government Code §3304(d)).

II. Discretionary Advisory Recommendations Regarding Discipline for Sustained Findings of Officer Misconduct

- A. The Commission may, but is not required to, provide advisory recommendations or findings on discipline for sustained findings of officer misconduct to the Chief of Police, but must act promptly and in accordance with applicable laws, including the one year statute of limitations under the California Public Safety Officers Procedural Bill of Rights Act ("POBOR"; Reference Government Code §3304(d)).
- B. In providing advisory recommendations on the discipline of officers to the Chief of Police, the Commission shall consider all information, agreements, and documents of prior discipline imposed, including agreements for reduced discipline or last chance agreements, and prior sustained findings of misconduct against the police officer, including prior sustained findings of misconduct made by the Commission or the Police Department, in a manner consistent with state law and the City's established disciplinary process.
- C. In order to fulfill this authority on a timely basis, the Department must notify the Executive Director within ten (10) calendar days that the Department has concluded an investigation resulting in one or more sustained findings against a police officer and provide the investigation report and related documents
- D. The Commission's Discipline Review Panel will review the finding(s) and determine whether the Commission should consider making an advisory disciplinary recommendation to the Chief of Police. If so, the Executive Director will submit a written request that the Department provide all relevant records described in II. B. above.
- E. Within ten (10) calendar days after a written request from the Commission, the Chief of Police must provide the Commission with unredacted records requested or a written explanation, setting forth the specific records or reasonably segregable portions of the records being withheld, the reason for the withholding or redactions, and the legal justification supporting the withholding or redactions. If the Commission disagrees with the Police Chief's decision, it may seek disclosure of the records through its subpoena power.
- F. The Commission's Discipline Review Panel shall evaluate the documentation provided by the Department and determine whether to make a recommendation to the full

Commission. If the Discipline Review Panel determines to make a recommendation, it will present the recommendation to the entire Commission to vote on.

- G. Within ten (10) calendar days after the Commission votes on the recommendation from the Discipline Review Panel, the Executive Director shall notify the Chief of Police of the Commission's actions.
- H. The Chief of Police must provide a written substantive response within thirty (30) days after receiving the advisory disciplinary recommendation.
- I. When the Commission conducts its own independent investigation of a case, per San Diego Municipal Code §26.1107 (a) (2&3), and makes a determination of sustained findings of misconduct by an officer, the Commission may also make an advisory disciplinary recommendation. The Chief of Police is not obligated to respond to the advisory disciplinary recommendation unless the Department concurs with the sustained finding(s).

III. Discretionary Review of Discipline for Actions Not Involving Misconduct

- A. The Commission may, but is not required to, review and evaluate the Police Department's administration of discipline of police officers arising from matters not involving misconduct, i.e. job related or performance based issues.
- B. The Commission may provide advisory recommendations or findings on discipline consistent with POBOR and the aforementioned time limitations.
- C. If the Commission's Discipline Review Panel decides to evaluate a matter involving performance-based discipline, the Executive Director will submit a written request that the Department provide all relevant records.
- D. Within ten (10) calendar days after a written request from the Commission, the Chief of Police must provide the Commission with the records per the procedure indicated in II. E. above.
- E. The Commission's Discipline Review Panel shall evaluate the documentation provided by the Department and make a recommendation to the full Commission.
- F. Within ten (10) calendar days after the Commission votes on the recommendation from the Discipline Review Panel, the Executive Director shall notify the Chief of Police of the Commission's actions.
- G. The Chief of Police must provide a written substantive response within thirty (30) days after receiving a recommendation.

IV. Confidentiality of Commission Records Related to Discipline

- A. Any records obtained by the Commission are subject to strict confidentiality under the POBOR (Government Code §§3300 et seq.), Penal Code §§832.5-832.8, Evidence Code §§1040, 1043-1047 and related state and federal laws; and shall not be saved, stored, retained or maintained by Commissioners in any form, or on any personal computer, cellphone or other electronic device of any Commission member. Any disclosure of personnel records to the Commission by any City department must be in accordance with all applicable federal and state laws and regulations, including all laws and regulations pertaining to confidential medical information and personnel records.

V. Factors to Consider in Evaluating Discipline

- A. In rendering disciplinary findings, the Commission must consider the Police Department's general orders, standards of conduct and the Discipline Matrix included in Appendix A below. Including and in addition to the above factors, the Commission may also consider:

- Prior discipline imposed;
- Agreements for reduced discipline and last chance agreements;
- The seriousness of the offense;
- Recency and frequency of prior poor conduct, misbehavior or poor performance, which is similar in nature;
- Whether the behavior or performance was deliberate or negligent;
- The effect of the behavior on the public, other employees or the Department;
- Whether the behavior caused danger to the officer, other officers or the public;
- Whether the officer's ability to perform their duties was affected;
- Whether other officers were involved;
- How the discipline compared to the discipline imposed against others involved;
- Legal considerations/MOU provisions;
- Post-incident rehabilitation efforts;
- Nexus of officer conduct to employment;
- Prior sustained findings of misconduct against the police officer, including prior sustained findings of misconduct made by the Commission or the Police Department, in a manner consistent with state law and the City's established disciplinary process.

Appendix A SDPD Discipline Matrix

The following guidelines are generally followed by the Department. Commanding Officers are instructed to consider mitigating or aggravating circumstances of any given case and previous discipline, in determining whether a lower or higher level of discipline is more appropriate than that called for in these guidelines (isolated one time incident versus multiple violations). The Department instructs that deviations from the guidelines must be thoroughly documented and approved by the Assistant Chief of the command. These guidelines are subject to change.

The Matrix below is from the June 2019 SDPD Discipline Manual. The Commission must ensure that it is utilizing the most up-to-date publicly available version of the matrix by referring to the current version SDPD Discipline Manual.

Misconduct Type	1 st Offense	2 nd Offense	3 rd Offense	4 th Offense
Tardiness Minor Grooming Violations Minor Uniform Violations Failure to Answer Radio Lacking All Equipment Discourteous Remarks (Not profanity or violation of EEO) Minor Traffic Infractions	Verbal Counseling (With no pattern or history of misconduct)	Note of Counseling	Written Warning	
Minor Policy Violation (With Previous Verbal Counseling or Note of Counseling) Misuse of Department Equipment (Including Non-EEO MCT/CAD messages) Unintentional Discharge of a Taser (No injury) Improper Impounds Discourtesy Unauthorized Outside Employment	Written Warning	Reprimand		
Missed Court	Written Warning	Reprimand (IF within two (2) years of first missed Court)	Suspension (IF within three (3) years of first missed Court)	
Missed Department Proficiency and/or Training Shoot (Missed Dept. Qualification Shoot must be made up)	Written Warning	Reprimand (IF within two (2) years of first missed Shoot)	Suspension (IF within three (3) years of first missed Shoot)	
Police Equipment Collisions (See DP 1.14 & AR 75.12 for definitions of Collision categories and time frames for progressive discipline. Discipline at right is for <i>CATEGORY 1 PREVENTABLE</i> Collisions only)	Written Warning OR Two (2) hour Driver Training Class through Fleet Safety Sergeant	Reprimand OR Written Warning (IF attended two (2) hour Driver Training Class for first Collision)	Suspension OR Reprimand (IF attended two (2) hour Driver Training Class for first Collision)	Termination OR Suspension (IF attended two (2) hour Driver Training Class for first Collision)

Unintentional Discharge of a Firearm, including less lethal Munitions (On or Off-Duty)	Two (2) Day Suspension	Four (4) Day Suspension	Termination (IF within three (3) years of the first offense)	
Driving While Under the Influence (DUI – Alcohol/Prescription Medications)	Termination OR Four (4) Day Suspension with a Last Chance Agreement for five (5) years Any aggravating circumstances (DUI in a City vehicle, resistive behavior during arrest, collision with injuries, etc., may result in a more severe response) *Valid CDL required to return to work	Termination (However, possible mitigating factor if the 1 st Offense was more than ten (10) years prior to the 2 nd Offense) *Valid CDL required to return to work	Termination	
Accessing Criminal History for Personal Use (Criminal Conduct)	Reprimand, Up to Termination	Suspension, Up to Termination	Termination	
Violation of AXON Body Worn Camera Procedures (DP 1.49)	Written Warning, Up to Termination	Reprimand, Up to Termination	Suspension, Up to Termination	Termination
Violating Established Informant Procedures	Reprimand, Up to Termination	Suspension, Up to Termination	Termination	
Sustained Excessive Force (Low Level/Non-Injury to Suspect)	Reprimand, Up to Termination	Suspension, Up to Termination	Termination	
Violation of Search and Seizure Procedures	Reprimand, Up to Termination	Suspension, Up to Termination	Termination	
Threats in the Workplace Violation (AR 97.10)	Written Warning, Up to Termination	Suspension, Up to Termination	Termination	
Violation of EEO Procedures	Written Warning, Up to Termination	Suspension, Up to Termination	Termination	
Criminal Conviction of Offenses Involving Moral Turpitude, Theft, Aggravated Assault, etc.	Suspension, Up to Termination	Termination		

Misconduct Type	1 st Offense	2 nd Offense	3 rd Offense	4 th Offense
Unbecoming Conduct Policy (DP 9.06) which may also include Obedience to Laws Policy (DP 9.03) (e.g.: Minor Offenses Involving Parking Violations, Traffic Infractions, etc.)	Verbal Warning, Up to Suspension	Reprimand, Up to Termination		
Unbecoming Conduct Policy (DP 9.06) and Obedience to Laws Policy (DP 9.03) (e.g.: Offenses Involving Moral Turpitude, Theft, Aggravated Assault, etc.)	Suspension, Up to Termination	Termination		
Loss of Ability to Perform Functions of an Employee’s Position Through Misconduct (e.g.: Right to Possess Firearm, Government Code 1031, etc.)	Termination			

*Untruthfulness (e.g.: Falsification of Termination any Official Document or Report)	Termination			
Unjustifiable Missed Random Drug Test (RDT)	Reprimand & Scheduled for RDT on their next working day after the missed test	Termination (IF within two (2) years of 1st missed test. AFTER two (2) years of 1st missed test, Reprimand)	Termination	
Illegal Drug Use (Including Positive RDT for Non- Prescribed Medication)	Reprimand, Up to Termination	Termination		
RDT Alcohol Result of 0.02% or Above	Termination OR Reprimand, Mandatory (FOCUS) Referral & Last Chance Agreement for five (5) years	Termination		
Refusal to Comply with RDT Termination	Termination			

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Approved by the CPP on January 17, 2024

City of San Diego Commission on Police Practices

INVESTIGATIONS PROCEDURES

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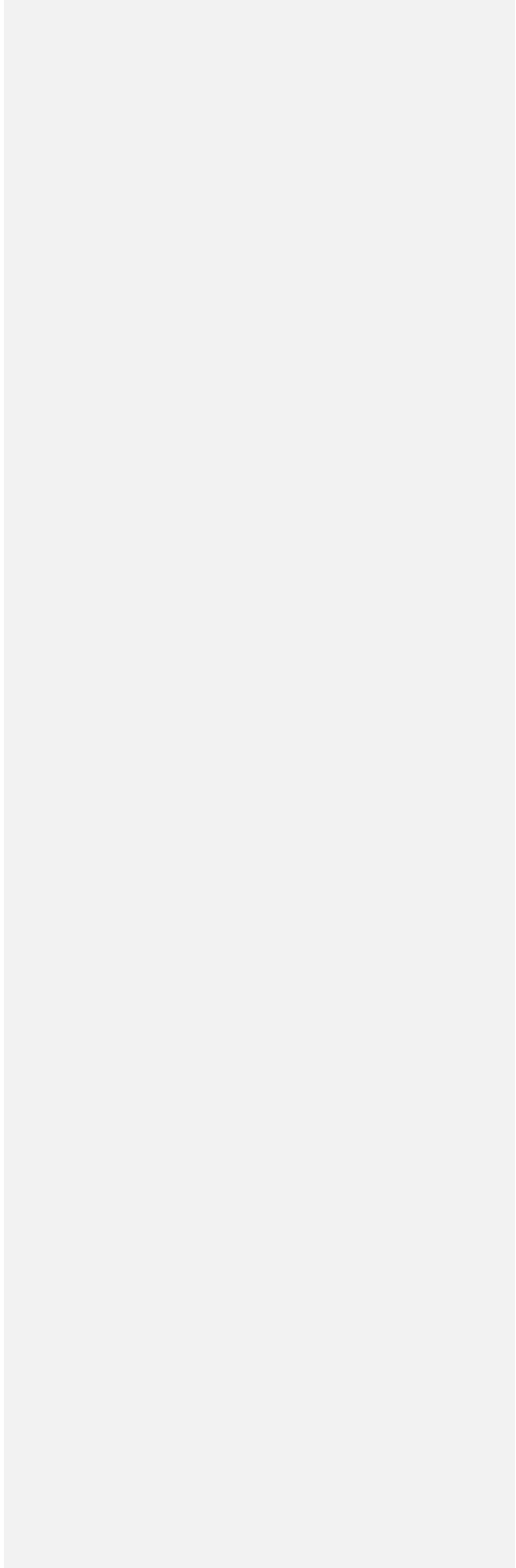


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The City's implementation ordinance directs the Commission to perform independent investigations of all deaths while the person was in custody of the San Diego Police Department (Police Department) (hereinafter referred to as in-custody deaths), all deaths resulting from interactions with a police officer, all police officer-involved shootings, and other significant incidents as defined further in this procedure involving the Police Department, as well as independent evaluations of complaints against the Police Department and its personnel, in a process that is transparent and accountable to the community.

These procedures set forth guidelines for Commission investigations.

I. Jurisdiction

The Commission has the following jurisdiction over incidents and complaints.

A. Type One Incidents

The Commission must independently investigate the following incidents, regardless of whether a complaint has been filed:

1. all deaths that occurred while a person was in custody of the Police Department;
2. all deaths that resulted from interaction with a police officer;
3. all officer-involved shootings.¹

B. Type Two Incidents

The Commission may, but is not required to, investigate a complaint against a police officer that does not involve an in-custody death, a death resulting from an interaction with a police officer, or a police officer-involved shooting (Type One incidents).

The Chief Investigator and Executive Director will advise members of the Cabinet whether a matter merits an investigation. The Cabinet will have the authority to initiate an investigation after consultation with the Executive Director and Chief Investigator. The Commission will be provided a list of received complaints and complaints selected for investigation by the Cabinet and may provide feedback to the Cabinet.

In exercising its discretionary power to investigate a complaint, the Commission must determine that a complaint involves any of the following:

1. an incident in which the use of force by a police officer against a person resulted in great bodily injury;

¹ An officer-involved shooting includes all discharges of a firearm whether a person is hit or not, excluding discharges that are deemed unintentional, training related, or conducted during the euthanization of an animal.

2. dishonesty by a police officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting or investigation of misconduct by another police officer, peace officer, or custodial officer, including an allegation of perjury, making a false statement, filing a false report, or destroying, falsifying, or concealing evidence;
3. an incident that has generated substantial public interest or concern;
4. an incident where data shows a pattern of misconduct by a police officer; or
5. an incident where data shows a pattern of inappropriate policies, procedures, or practices of the Police Department or its members.

In deciding whether to investigate or consider such discretionary cases, the Commission shall consider such factors as: a) the nature of the case and public interest; b) resource allocation; c) the number of pending cases/investigations; d) any foreseeable delays in processing ongoing cases and investigations; e) the time commitments required of investigators and Commissioners; f) availability of evidence; g) cooperation of complainants/impacted parties/witnesses, among other factors.²

C. Type Three Incidents

The Commission may, but is not required to, investigate allegations of inappropriate sexual conduct, physical assault, or domestic violence by a police officer, whether or not a complaint has been submitted to the Police Department or the Commission.

The Commission will use the same criteria outlined for Type Two incidents in determining whether to investigate Type Three matters.

D. Additional Jurisdictional Considerations

As related to Type Two and Type Three investigations, the Commission may investigate any allegations of misconduct that become known to the Commission during an investigation. The Commission will not investigate a complaint where the complainant has requested that the complaint be handled without an investigation by the Commission or where no specific allegation or police officer can be identified or discerned. The Commission may also take into consideration the impacted party's desire to proceed or not to proceed with an investigation.

The Commission is also not authorized to investigate a complaint against an employee of the Police Department who is not a police officer unless the complaint also alleges police officer misconduct.

² Impacted party is a person directly affected by at least one or more allegation(s) or instances of police misconduct.

II. Complaints by the Public

Complaints shall include complaints received from any person without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant.

Excluding Type One incidents, in order for the Commission to open an investigation, a complaint must be presented as afforded by law. Complaints may be submitted in-person or by fax, phone, mail, email, or through any other electronic or physical means available and accessible to the Commission and/or recognized by law.

Complaints are submitted either through the Commission or at multiple locations with the Police Department. Complaints submitted with the Police Department must be transmitted to the Commission within five (5) days of receipt by the Police Department.

III. Cooperation between the Commission, the Police Department, and Other City Departments

The responsibility of responding to complaints against the Police Department is shared between the Police Department, primarily but not exclusively limited to Internal Affairs (IA), and the Commission. The collaborative relationship between the two is important for a fair and objective process that gives serious consideration to community members and the Police Department officers equally. The process is improved by both organizations working together. While cooperation is key, independence of each organization is crucial.

The Department will provide to the Commission all the necessary reference documents, including but not limited to current division maps, command rosters, officer identifying information, radio codes list, surveillance camera locations, and other information to aid the Commission in the investigation process. Additionally, pursuant to the Commission's implementation ordinance, the Police Department must make available to the Commission its records within ten (10) calendar days after a written request from the Commission, relating to any matter under investigation by the Commission. The Commission is required to maintain the confidentiality of all Police Department records and City personnel records, as well as the confidentiality of the case file, in accordance with applicable laws, and to respond to requests by members of the public for records in the possession of the Commission in a manner consistent with the California Public Records Act and applicable constitutional, statutory, and case law that protects personnel records.

As per the implementation ordinance, it is the policy of the City that all officers and employees of the City cooperate promptly and fully with the Commission to ensure the Commission can timely and properly perform its duties as required by the Charter, the Council by ordinance, and state and federal laws. This requirement to cooperate includes participation in any investigatory proceeding set forth in the Commission's operating procedures approved by the Council. Any city employee who fails or refuses to comply with this section is subject to discipline, up to and including termination.

If the Commission seeks to interview any City employee, including an employee who is the subject of a complaint, as part of an investigatory proceeding, the Commission must provide timely advance written notice to the employee. The Commission must also provide timely advance written notice to the City employee's appointing authority. The written notice must specify the date and time of the interview and provide the employee with reasonably sufficient time to secure union or legal representation by the employee's personal attorney, as applicable, and to make any legal objections to the interview, either before or at the time of the interview. Further guidance related to the interview process is found in the appropriate section of the set forth procedures.

IV. Investigation Guidelines

A. General Provisions

1. The Commission may develop internal investigation process manuals, processes, training materials, and other reference documents to aid investigators and Commissioners with case investigations. Commission investigators must follow all internal protocols and manuals pertaining to investigation procedures.
2. Commission investigations must be in compliance with all the required statutory regulations, including but not limited to Public Safety Officer Procedural Bill of Rights (POBOR).
3. Where notified of a critical incident by the Police Department, the Chief Investigator should notify the Executive Director and/or General Counsel as soon as practical to discuss the incident and appropriate approach to the Commission's investigation.
4. The Commission will notify the subject officer and their commanding officer when the officer becomes subject to an investigation.
5. Commission investigators may conduct field visits for the purposes of examining sites of misconduct or locating/interviewing witnesses. Section IV. B provides guidance regarding Type One Incidents and related investigations.
6. Commission investigators should obtain all evidence relevant to the investigation, including but not limited to Police Department documentation, records and body-worn camera footage, surveillance footage, and other types of evidence. Investigators should not obstruct or interfere with criminal investigations but should seek early access to investigation files of agencies conducting these investigations. Investigators should seek access to any public records/reports related to the investigation.
7. Commission investigators should seek to coordinate investigations with those of Internal Affairs and/or the outside agency investigating the incident, when appropriate.

8. Commission investigators must seek to interview all relevant parties to the investigation, including complainants, impacted parties, witnesses, subject and witness officers, and other identified individuals deemed pertinent to the investigation.
9. The Commission may issue subpoenas to compel parties and/or witnesses to participate or provide evidence.
10. Commission investigators should carefully review, analyze, and summarize all pertinent evidence to the investigation.
11. Commission investigators will accurately document their investigative actions in a clear and chronological manner.
12. Commission investigators should review and understand the Police Department's procedures, general orders, and standard operating guidelines. Investigators should also identify, review, and understand relevant local, state, and federal codes and laws relevant to legal precedents as pertinent to the investigation.
13. After thoroughly analyzing facts and evidence discovered in the investigation, Commission investigators will prepare a report that discusses the facts of the investigation and compares them to the Police Departmental orders, standard operating guidelines, or relevant local, state, and federal codes and case law. Investigators must utilize the preponderance of the evidence standard when making factual and disposition conclusions, which should be supported by facts as opposed to mere simple conclusory statements. Investigators must be impartial, fair, and objective.
14. Pursuant to POBOR, police investigations must generally be completed within one (1) year from the date someone authorized to initiate an investigation discovers the incident giving rise to the investigation. In general, complaints directly received and/or initiated by the Commission must be completed within one year of receipt. The time period may be tolled if criminal prosecution or investigation is involved, or civil litigation in which the officer is a party exists. The officer may also waive the time period in writing. Other waivers exist where: a) a multijurisdictional investigation is involved; b) numerous employees are involved requiring an extension; c) an officer is unavailable or incapacitated; d) the investigation involves workers compensation fraud by the officer.
15. An investigation may be reopened after the one-year statute of limitation period if both of the following exist: a) significant new evidence has been discovered affecting the outcome of the investigation; and b) the evidence could not have been discovered in the normal course of the investigation or the evidence resulted from the officer's pre-disciplinary response or procedure. Request to reopen a case must be submitted in writing to the Commission. The Executive Director and/or Chief Investigator will make a determination as to whether to reopen the case and notify the submitting party in writing as well as notify the Commission. The Commission may also initiate an inquiry regarding reopening of a closed investigation.

16. Where possible criminal allegations exist, it is recommended that the Commission's investigation trail the criminal investigation and await a determination from the district attorney or grand jury.

B. Guidelines Related to Type One Incident Investigations

The cooperation of the Police Department in making scenes of officer-involved shootings and crime scenes related to deaths in custody or deaths resulting from interaction with the Police Department as well as related evidence is imperative in furtherance of the City implementation ordinance.

The Commission and Police Department will establish liaisons for communication regarding Type One incidents. The Department will work with the Commission's liaison to provide timely information related to Type One incidents. The Commission will provide liaison's or on-call investigator contact information to the Police Department for immediate notifications of Type One incidents. Once a Type One incident occurs, the Police Department will notify the identified on-call liaison or investigator and coordinate Commission's investigator(s) access to the incident scene. In situations when the Police Department determines that a death is likely, the Police Department may also make a notification to the Commission liaison.

The Commission liaison and/or investigator(s) will receive a preliminary incident briefing from the Police Department and may be privy to updates while on scene.

The Police Department liaison will escort Commission investigator(s) into, around, and out of the area or facility or designated perimeter areas of Type One incidents. The Commission investigator(s) will log their presence on scene as required by the Police Department or other investigating agency. The Commission investigator(s) will not seek access to areas that may obstruct a criminal investigation, including crime scenes themselves or areas containing physical evidence.

In Type One investigations, it is important for the Commission to have access to the same information provided to the Police Department consistent with the criminal investigative protocol and briefings. The Police Department will provide all relevant evidence and documentation to the Commission as soon as it becomes available to the Police Department and within the established time frame in this procedure. The City implementation ordinance also requires that the Police Department provide periodic information to the Commission every 30 days after the commencement of an investigation into allegations of misconduct.

Nothing in this section supersedes the Department's and/or other investigating agency authority to conduct a proper criminal investigation without interference. Commission investigators will not interfere with criminal investigations and when on scene will always work under the parameters agreed to by the Commission, Police Department, or other investigating agency.

C. Interviews

When interviewing complainants, impacted parties, and witnesses, investigators must advise them as to the necessity of absolute truthfulness and confidentiality.

All parties interviewed may be accompanied by no more than two representatives/advisors. Advisors/representatives may advise the party as appropriate but may not participate in the interview or provide answers for the party. Advisor/representative may not be party to the investigation.

All interviews will be audio recorded and accurately summarized. In case any party to the investigation refuses for the interview to be recorded, the investigator will make best effort to take detailed notes and accurately summarize the interview.

Interviews of police officers must strictly comply with the requirements of POBOR and follow the following principles:

1. The investigator must conduct the interview at a reasonable hour, preferably when the officer is on duty or during the officer's normal waking hours, unless the seriousness of the investigation requires otherwise.
2. The investigator must inform the officer of the position, name, and command of the person in charge of the investigation, the investigators, and other persons to be present during the interview.
3. All questions directed to the officer shall be asked by and through no more than two investigators at one time.
4. The investigator must inform the officer of the general nature of the investigation prior to any interview.
5. The investigator must allow the officer to attend to their own personal physical needs.
6. The investigator must provide the subject officer access to any recording made of an interview prior to any subsequent interview.
7. The investigator must advise the officer of their Constitutional rights (*Miranda* Rights) as soon as it appears that the officer may be charged with a criminal offense.
8. The investigator may inform the officer that failure to answer questions directly related to the investigation may result in punitive action.
9. The investigator may record the entire interview.
10. The subject officer may record the entire interview.

11. The subject officer may be represented by a person of their choice who may be present during the entire interview. However, the representative may not be a person who is subject to the same investigation. The representative cannot be required to disclose any information obtained from the employee in non-criminal matters.
12. The investigator cannot use offensive language.
13. The investigator cannot use threats of punitive action, other than informing the officer that failure to answer questions related to the investigation may result in disciplinary action up to and including termination.
14. The investigator cannot promise any rewards.
15. The officer's assertion of their rights will not be held against the officer by the investigator.

V. Investigation Findings

Upon conclusion of the investigation, the Commission must make findings. Upon a careful analysis of the totality of facts in an investigation, a finding based on the preponderance of evidence and totality of facts, must be made by the Commission investigator or a supervisor reviewing the investigation. Findings must be supported by the clear facts and circumstances present in the investigation. Findings will generally fall into one of six categories:

1. *Sustained*: meaning that the police officer committed all or parts of the alleged acts of misconduct.
2. *Not Sustained*: meaning that the investigation produced insufficient information to clearly prove or disprove the allegations.
3. *Exonerated*: meaning that the alleged conduct occurred, but was justified, legal, and proper, or was within policy.
4. *Unfounded*: meaning that the alleged conduct did not occur.
5. *No Finding*: where the complainant or impacted party failed to produce information to further the investigation, could not be reached for an interview, or refused to cooperate with the investigation and the complainant's or impacted party's participation is necessary to conduct the investigation or where the complainant or impacted party withdrew the complaint.
6. *Referral or No Jurisdiction*: where the investigation revealed that another agency was responsible and the complaint and/or complainant has been referred to that agency.

The Commission may either adopt one of the noted above findings or take further action as follows:

1. Agree with the investigator(s)' findings or recommend one of the above noted findings.
2. Summarily dismiss the complaint, in whole or in part (as noted in the section below).
3. Refer the complaint back to the investigator for further investigation.
4. Defer further action on the complaint.
5. Conduct an Investigative Hearing.
6. Propose disciplinary action at the conclusion of the investigation.
7. Take any other appropriate action, or disposition, or make recommendations; or the Commission may refer any matter before the Commission to the grand jury, district attorney, or other governmental agency authorized by law to investigate the activities of a law enforcement agency.

After reviewing the investigation or case report, the Commission may *summarily dismiss* a case, upon recommendation of the Executive Director or Chief Investigator, on its own motion, or that of the subject officer or the complainant/impacted party. Parties to the complaint shall be notified of a proposed summary dismissal and may appear to argue for or against summary dismissal. Summary dismissal may be appropriate in the following circumstances:

1. The complaint was not filed in a timely manner.
2. The Subject Officer is no longer employed by the Department and the Commission determines the investigation is not necessary.
3. The complaint is frivolous or clearly devoid of merit such that no reasonable person could sustain a finding based on the facts.
4. The case investigation is not completed within one year, not including any applicable tolling exemptions.

The Chief of Police must consider any findings or recommendation by the Commission of proposed police officer discipline, prior to Police Department imposition of the discipline. The Commission's findings, evaluation or recommendation must be completed before the statutory timelines set forth in POBOR or other applicable law. The Chief of Police retains authority and discretion to discipline subordinate employees in the Police Department. After the Commission makes findings, the Chief of Police must provide a written substantive response to the Commission's findings within 30 days of receipt of the findings.

VI. Notification of Parties

Commented [1]: needs to be removed from this procedure bc of Complaint Administration Procedure

At the conclusion of the investigation, the Commission will notify the complainant, impacted party, and the subject officer of the outcome of the investigation within seven (7) days of the Commission vote on the case. The subject officer may appeal any adverse finding of the Commission.

Third-party complainants shall not be provided with confidential information pertaining to the impacted party or as otherwise prohibited by law. Where a third-party complaint is not investigated because the impacted party does not choose to file a complaint, the third-party complainant should be notified as such.

Commented [2]: Recommend removal of this sentence if there is an opportunity to clean up some policies per Committee discussion on 5.8

The complainant, impacted party, or subject officer, may check on the status of the case at any time. However, the Commission must provide a notice to complainants on the status of their complaints no less than every 45 days.

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Appendix A

Complainant, Impacted Party, Witness Admonition.

Today's date and time is [ENTER DATE] and [ENTER TIME]. This is Investigator [ENTER NAME] and I am conducting an official investigation into the Commission on Police Practices (CPP) case number [ENTER CASE NUMBER]. The case involves an allegation of misconduct against a member of the San Diego Police Department.

This interview is taking place at [LOCATION] and is being recorded.

For the record, please state your name, address, date of birth.

Also present is/are [ENTER RECORD]

Mr./Ms./Mx. [ENTER NAME], you are being asked to provide a statement pursuant to an official CPP investigation under the authority granted the CPP pursuant to Chapter 2, Article 6, Division 11 of the San Diego Municipal Code. All statements made become part of the official investigative file and may be disclosed pursuant to subpoena or other document request to the extent permitted by law and in furtherance of criminal, administrative, or civil litigation.

Please be advised that you will be asked to sign a verification statement at the conclusion of this interview verifying that all of the statements you have provided in connection with this investigation are true to your knowledge.

Mr./Ms./Mx. [ENTER NAME], do you understand what I have just told you?

At conclusion of interview:

Is there anything that I haven't asked you about that you wish to add to the record?

I am now going to present for your signature the verification form I mentioned earlier. This form requires your signature and reflects the fact that you have verified that the statements you have made in connection with this case are true to your knowledge.

[Have the person sign the form].

The time is now [ENTER TIME] and the interview is now concluded.

Appendix B

Officer Admonition.

Prior to the commencement of the interviewing of a police officer, the following statement, containing a *Garrity/Lybarger*³ admonition will be read to such officer:

"You are being questioned as a SUBJECT/WITNESS in this matter.

You are being questioned as part of an official investigation of the Commission on Police Practices. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of California, the Constitution of this State, and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

While you have the right to remain silent with regard to any criminal investigation, you do not have a right to refuse to provide a statement or answer my questions in this administrative investigation. Your refusal to cooperate in this matter or your silence can be deemed insubordination and could result in disciplinary action, up to and including termination. Any statement that you make under compulsion of the threat of discipline is for purposes of this internal or administrative investigation only and cannot be used against you in a criminal prosecution. However, statements made here may be used against you in relation to subsequent Police Department charges. Also be reminded that under the San Diego Police Department Policy 9.29, "members shall be truthful in all matters relating to their duties." Do you understand this admonition?"

Where police officer misconduct could involve an allegation of criminal conduct, the officer must be provided with a *Miranda* admonition. If the officer invokes *Miranda*, the officer may be ordered to provide a statement.

Miranda Warning

Due to the nature of this administrative or internal investigation, I am required to advise you of your constitutional rights. Therefore, it is important that you are aware of the following:

- You have the right to remain silent;
- Anything that you say may be used against you in court;

³ *Garrity v. New Jersey* (1967) 385 U.S. 493, involved police officers who were questioned about illegal activities and answered questions after a warning that they were entitled to silence, but could be terminated if they refused to answer questions. The Supreme Court held that the protection of the Fourteenth Amendment prohibits use in subsequent criminal proceedings of statements obtained under threat of termination. The Court stated that such statements are involuntary and coerced.

In *Lybarger v. City of Los Angeles* (1985) 40 Cal. 3d 822, the California Supreme Court held that an officer who refuses to cooperate in an investigation involving his or her potential criminal conduct may be administratively disciplined; however, such discipline imposed pursuant to a threat of insubordination for refusal to answer questions involving potential criminal conduct is invalid unless a *Miranda* warning is first provided.

- You have the right to an attorney before and during questioning;
- If you cannot afford an attorney, one may be appointed by law.

Miranda Waiver

Do you understand each of these rights as I have explained them to you?

Yes/No

With these rights in mind, do you wish to speak to me about this matter?

Yes/No

(Where rights to silence are invoked, the investigator will compel the officer to provide the statement using the following script).

I am now ordering you to provide a statement in this matter and to answer all of my questions truthfully and honestly. Your refusal to cooperate in this matter or your silence can be deemed insubordination and could result in disciplinary action, up to and including termination.

****(If the officer still refuses to provide a statement, a separate ground for insubordination or discipline may exist.)*

Approved by the CPP on April 17, 2024

City of San Diego Commission on Police Practices

INVESTIGATIVE HEARING PROCEDURES

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The complainant, impacted party, subject officer, Executive Director, or a member of the Commission may request an Investigative Hearing for some or all of the allegations of a case. An Investigative Hearing will be conducted, in accordance with the procedures for such hearings, when the Commission determines that such a hearing may facilitate the fact-finding process.

An Investigative Hearing may be deemed to facilitate the fact-finding process when:

1. There has been an undue lapse of time since the occurrence of the incident that is the subject of the complaint;
2. There are additional witnesses, evidence, or information that contradicts or supplements, or is not disclosed by the investigative report;
3. There is reason to question the conclusion of the investigative report;
4. The case has garnered heightened public attention and an Investigative Hearing would advance public confidence in the complaint and investigation process of the Commission; or
5. An appearance in person by the parties would facilitate the fact-finding process.

I. Scope of the Investigative Hearing

The scope of an Investigative Hearing may vary. It may consist of a single, narrowly drawn issue, multiple issues, or the entire complaint. The scope should be determined by the Commission when authorizing an Investigative Hearing, and all interested parties to the complaint shall be informed of any limitation in scope when notified of the Investigative Hearing.

II. Admission or No Contest Response by Officer

A subject officer may admit or enter a written response of “no contest” at any time prior to an Investigative Hearing. A response of “no contest” indicates that the subject officer accepts the allegations of the complaint as substantially true in fact and interpretation. The subject officer shall be bound by the terms of the “no contest” response in any further consideration of the complaint.

III. Hearings in General

The Investigative Hearing Process must be conducted consistent with the Brown Act, California Penal Code sections 832.5-832.7, California Evidence Code sections 1040-1047, and California Government Code sections 6250 et seq.

The Investigative Hearing Panel of the Commission shall consist of *five* members of the Commission, as selected by the Chair, with one member designated by the Chair as the Presiding Member. If there is an Investigative Hearing involving an officer-involved shooting or in-custody death, the Commission will sit as a whole with a quorum of the members present.

A. Challenges of Commission members

1. *Challenge for conflicts of interest or bias.* A Commission member sitting on an Investigative Hearing Panel must consider all complaints in a fair and impartial manner. A member who has a personal bias or prejudice, or the appearance thereof, in the outcome of a complaint shall not sit on the Investigative Hearing Panel deciding that complaint. Personal interest in the outcome of a complaint does not include holding or manifesting any political or social attitude or belief, where such belief or attitude does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to:

- a. Familial relationship, or close friendship, with parties material to the inquiry;
- b. Witnessing events material to the inquiry from a non-neutral perspective;
- c. Being a party to the inquiry;
- d. Having a financial interest in the outcome of the inquiry; and/or
- e. Holding a bias against a particular party that is sufficient to impair the Commission member's impartiality.

2. *Procedure for challenges.* Within five calendar days after the date on which Commission furnishes notice of an Investigative Hearing, including the names of the Commission members constituting the Investigative Hearing Panel, any party to the complaint may file a challenge for cause. Challenges for conflict of interest or bias must substantiate the challenge.

When a challenge for cause is filed, the Chair shall notify the challenged member as soon as possible, and if the member agrees that the challenge is for good cause, or otherwise agrees, the Chair shall ask another member to serve. If the challenged member does not agree that the challenge is for good cause, the Chair may poll the other members of the Investigative Hearing Panel. If the other members of the Investigative Hearing Panel agree that the challenge is for good cause, the Chair shall so notify the challenged Commission member and ask another to serve.

B. Public Comments

Commission members shall avoid public comment on the substance of particular pending complaints and investigations and shall preserve the confidentiality of closed session meetings in accordance with the Brown Act and applicable law.

IV. Investigative Hearing Procedures

Investigative Hearings may be scheduled by the Chair for any regular or special meeting of the Commission consistent with notice requirements under the Brown Act.

Fourteen-day notice requirement. Fourteen-calendar days' notice of an Investigative Hearing shall be given to the complainant, impacted party, each subject officer, and any other person whose attendance the Commission deems appropriate. The notice shall state the date, time, and place of the Investigative Hearing, and the names of the Investigative Hearing Panel members.

Hearings are generally closed to the public. The nature of Investigative Hearings, open or closed, will be in closed session consistent with the Brown Act and peace officer confidentiality protections existing at the time of the Investigative Hearing, unless the subject officer requests an open Investigative Hearing.

Where an incident has been or is highly known to the public, there is nothing that prevents the Commission from holding open public hearings to receive community input or comments concerning the incident. The Commission may consider community input or information in conjunction with any investigation underway but shall not form any conclusions or hold deliberations regarding the outcome of the investigation solely based on public opinion or community input.

Authority to compel appearance. The authority of the Commission to subpoena witnesses may be used to compel the appearance of witnesses, including subject officers, and/or the production of documents.

Conduct of the Investigative Hearing. Investigative Hearings should be informal and should be conducted in the following manner unless the Chair orders otherwise:

1. The Presiding Member or Chair, as applicable, will conduct the Investigative Hearing subject to being overruled by a majority of the Investigative Hearing Panel or the Commission, as applicable. Members of the Investigative Hearing Panel shall be primarily responsible for obtaining testimony. One Investigative Hearing Panel member may be assigned by the Presiding Member or the Chair to perform the initial questioning of witnesses during an Investigative Hearing convened for a case. Additional questions may be asked by any Investigative Hearing Panel member or by a subject officer or their representative.
2. At the discretion of the Commission or the Investigative Hearing Panel, opening statement(s) may be made on behalf of the complainant, impacted party, and subject officer(s) involved.
3. In the event that the subject officer is compelled to cooperate in an Investigative Hearing, Police Department personnel or Commission investigator shall provide the subject officer with the “*Garrity/Lybarger* warning” when required under the appropriate circumstances. After the Investigative Hearing Panel has taken all relevant evidence, each party may, at the discretion of the Presiding Member or the Chair, be given an opportunity to make a closing statement.
4. At the conclusion of any witness testimony, either the complainant, impacted party, or subject officer may request that the Commission or the Investigative Hearing Panel consider any

additional areas of inquiry they feel need to be covered. The Presiding Member shall determine whether any further questions will be asked.

5. To the extent possible, the entire Investigative Hearing on a given complaint should be conducted in one meeting. However, if the Commission or the Investigative Hearing Panel determines that additional evidence is necessary to reach its findings, it will continue the Investigative Hearing to a future date unless the parties agree to allow the Investigative Hearing Panel to receive such material in writing without reconvening.

Deliberation. After obtaining evidence, the Investigative Hearing Panel will deliberate in closed session. The Investigative Hearing Panel shall not consider any information not received as part of the Investigative Hearing. The Investigative Hearing Panel may reconvene in the presence of all parties to ask further questions, and each party shall have the opportunity to respond to any such questions.

Finding and report by the five-member Investigative Hearing Panel. At the conclusion of an Investigative Hearing before an Investigative Hearing Panel, the Panel members shall, by majority vote, adopt a recommended finding with respect to the complaint. The Investigative Hearing Panel shall not consider evidence or information obtained outside of the Investigative Hearing. The Investigative Hearing Panel shall then prepare a written report summarizing the evidence, the recommended finding, the reasons for the recommended finding, any dissenting opinion, and any other information that may be useful to the full Commission in its consideration of the case.

Submission to Commission. A written Confidential Investigative Hearing Panel Report shall be forwarded to all members of the Commission, and the matter calendared as soon as possible at a scheduled regular or special meeting.

The Presiding Member will be responsible for drafting the Investigative Hearing Panel Report, a copy of which shall be forwarded, to the extent afforded by law, to each complainant, impacted party, and subject officer, together with a notice of the time and place of the Commission meeting at which the complaint will be considered. All complainants, impacted parties, and subject officers shall be notified that the Commission may accept written objections to the report within 10 days of the date of the submission of the report.

Upon consideration by the Commission, it may:

1. Vote to conclude the matter without further investigation, review, or hearings.
2. Request further information or review by staff, by the Investigative Hearing Panel, or through other appropriate means.
3. Vote to conduct further proceedings on the matter before the entire Commission.

4. Take such other or additional action as it deems necessary and appropriate, such as the making of recommendations regarding policy or rule changes, referral to appropriate agencies, or other appropriate action.
5. Accept the Confidential Investigative Hearing Panel Report as the Final Report of the Commission.

Record of Investigative Hearing. All Investigative Hearings shall be transcribed or recorded by a court or stenographic reporter.

V. Evidence at Investigative Hearings

Investigative Hearings do not need to be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence. However, hearsay shall not be sufficient in and of itself to establish facts unless of the nature generally relied upon in civil actions.

Evidence shall be taken in accordance with the following provisions:

1. Each party and the Investigative Hearing Panel shall have the following rights:
 - a. To call and examine witnesses;
 - b. To introduce exhibits;
 - c. To examine and cross-examine witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
 - d. To impeach any witness regardless of which party first called the witness to testify.
2. If the subject officer does not testify on their own behalf, they may be called and examined as if under cross-examination.
3. Oral evidence shall be taken only under oath or affirmation.
4. Upon the request of either party, a witness may be excluded from the Investigative Hearing until they are called to testify.
5. Irrelevant and unduly repetitious evidence shall be excluded as determined by the Presiding Member.

6. The rules governing privileged communications shall be effective to the extent that they are otherwise required by constitution or statute.
7. Each party, including the Commission and any witness, shall have the right to have an attorney or representative of their choice present at all times during their own fact-finding interview or at the Investigative Hearing. The representative shall not be a witness or a person involved in the same investigation.
8. The Commission shall have the ability to have in attendance executive staff, investigators, and legal counsel for purposes of questioning and/or legal guidance.
9. The Chair shall have discretionary authority to provisionally qualify and utilize interpreters. Each party in need of an interpreter shall give notice to the Chair within seven days of receipt of the notice of hearing so that appropriate arrangements can be made.
10. The authority of a Commission subpoena may be used to compel the production of documents and/or the appearance of witnesses, including the subject officer.
11. When either the complainant, impacted party, or the subject officer fails to appear, the Investigative Hearing Panel may receive statements from those persons present and relying on the evidence received, continue with the Investigative Hearing.
12. The Commission shall not disclose to the general public any reports, statements, files, records, documents, tapes, or other items of which the confidentiality is protected by law. This confidentiality may only be waived in accordance with applicable law, statute, ordinance, or legal proceedings. Evidence contained in Commission's file may only be disclosed to the complainant, impacted party, and subject officer to the extent afforded by law.
13. No finding with respect to an allegation of a complaint shall be sustained unless it is proven by a preponderance of the evidence or totality of facts presented at the Investigative Hearing or otherwise contained in the investigative record.

Approved by the CPP on April 17, 2024

City of San Diego Commission on Police Practices

**STANDARD OPERATING PROCEDURE ON REQUIRED REVIEW
OF INTERNAL AFFAIRS INVESTIGATIONS OF POLICE OFFICER
MISCONDUCT**

San Diego Municipal Section 26.1107 spells out the duties and powers of the Commission on Police Practices (Commission). Subsection (a) (6) states, in part, “The Commission must review and evaluate all factual findings and evidentiary conclusions of the Police Department arising from Police Department investigations of alleged misconduct by police officers, including internal investigations not resulting from a complaint ...” Subsection (3) also gives the Commission the discretion to independently investigate complaints that meet specified criteria.

San Diego Police Department Investigations

All allegations of police misconduct, including complaints generated through the Commission or an alternate process, are investigated by the San Diego Police Department (Police Department). Allegations of unlawful arrest or detention, excessive force, discrimination, slur, search and seizure violations, or criminal conduct are investigated by Internal Affairs (IA). Less serious complaints that involve only allegations of courtesy, procedure, conduct, and service are investigated by the subject officer’s Division. Allegations of criminal misconduct are investigated by the Police Department Professional Standards Unit. The investigating officer is responsible for completing a thorough investigation and writing an investigative report that is fair to both the complainant(s) and subject officer(s). Results of investigations are documented in the Investigator's Report. A complaint may contain more than one allegation. At the conclusion of the investigation, IA makes one of the following findings for each allegation:

1. Sustained – the Department member committed all or part of the alleged acts of misconduct;
2. Not Sustained – the investigation produced insufficient information to clearly prove or disprove the allegations;
3. Exonerated – the alleged act occurred was justified, legal and proper, or was within policy; or
4. Unfounded – the alleged act did not occur.

The Investigator’s Report, including the finding(s), and all related material in the Police Department investigation file are forwarded to the Commission, via the Executive Director, for their review. The Executive Director shall implement procedures to ensure compliance with all legal confidentiality requirements.

Commission Case Review

The Commission’s Executive Director and Chief Investigator will review the IA case file and advise members of the Cabinet whether a matter merits an independent investigation instead of a review. The Cabinet will have the authority to initiate an investigation after consultation with the Executive Director and Chief Investigator. The Commission will be provided a list of received complaints and complaints selected for investigation by the Cabinet and may provide feedback to

the Cabinet.

The Executive Director, in consultation with the Cabinet, will assign each case to be reviewed to (1) a group of Commissioners, (2) Commission staff, or (3) a combination of Commission staff and one or more Commissioners, hereinafter referred to as “Reviewers.” The Reviewers will review and analyze the IA case file and prepare a report with recommendations for consideration by the Commission. All final determinations will be made by a vote of the entire Commission. The Reviewers are responsible for reviewing the Investigator’s Report and all related materials (reports, body worn camera and other videos, audio recordings of interviews, etc.). The Reviewers shall have access to all materials used by IA in the course of their investigation. If during the course of their review, the Reviewers determine that an independent Commission investigation of one or more of the allegations that the Commission has discretion to investigate (in accordance with the City of San Diego Municipal Code §26.1107) may be warranted, a recommendation for an independent investigation shall be sent to the Executive Director and Chief Investigator. If the Cabinet, in consultation with the Executive Director and Chief Investigator, determines that an independent investigation is not warranted or that there is insufficient time to complete an investigation within the time restrictions specified in the California Peace Officers’ Bill of Rights, the case will be returned to the Reviewers for findings.

The Reviewers may contact the IA investigator if they need clarification or additional information regarding a case and the findings, if they believe the allegations listed in the Investigator’s Report do not accurately capture all those asserted by the complainant, if they believe that an additional finding is warranted, or if there are other issues regarding a case. Questions may be sent via a form developed by the Office of the Commission on Police Practices, or the Reviewer can contact the IA investigator directly. If the Reviewers desire additional communication, they may request a meeting with the IA Lieutenant supervising the investigator. If issues remain after meeting with the Lieutenant, the Reviewers can ask the Executive Director to set up a meeting with the IA Captain, which may be attended by Reviewers, appropriate Commission and IA staff, and the Commission Chair. The goal of these communications is to resolve questions, issues, and disagreements before the Reviewers finalize their report.

The Reviewers will indicate whether they determine that the Internal Affairs investigation was thorough and complete and reflects the issues raised by the complainant. For each allegation, the Reviewers will indicate their findings:

1. Agree – The finding(s) by IA is correct;
2. Agree with Comment – The finding(s) by IA is correct and additional information from the case review should be noted (comments may include, but are not limited to, the appropriateness of the tactics employed by the subject officer and the potential impact of the subject officer’s actions);
3. Disagree with Comment – The finding(s) by IA is incorrect (comments should explain the disagreement and note the appropriate finding for IA).

1.

Upon conclusion of the case review, the Reviewers will present a summary of the case, including the conclusions and list of evidence and documentation reviewed, to the full Commission in closed session. If the Reviewers do not have consensus on all issues, a minority report can also be submitted. The Commission will hear the case and take action regarding the final disposition of the case.

In the event that the Commission considers every possible finding and is unsuccessful in reaching the required majority vote to indicate a position on one or more findings, the Commission may close the case by vote of the Commission as a failure to achieve consensus.

The results of the Commission action are provided to IA with a detailed written explanation of any Commission concerns or disagreements. IA retains the option to amend its report based upon Commission action, in which case the amended report will be returned to the Commission for a final vote. IA does not close its case until after the Commission takes final action, unless it is necessary to do so in order to comply with time restrictions specified by the California Peace Officers' Bill of Rights. The Commission shall send a letter to the complainant and/or impacted party briefly summarizing the Commission's findings.

In all cases where there is disagreement with an IA finding, disagreements are recorded and highlighted as part of the semiannual reports to the Mayor and City Council.

A summary of each case, with personally identifiable information redacted as required by law, shall be included in the Commission's semiannual report to the Mayor and City Council. Within one month after a summary is completed and approved by Commission's legal counsel, the redacted summary will be posted on the Commission website. A draft of the summary shall be sent to IA prior to publication so that any concerns can be reviewed by the Commission's legal counsel.

Per City Charter section 41.2, the Commission "is authorized to refer any matter before the Commission to the grand jury, district attorney, or any other governmental agency that is authorized by law to investigate the activities of a law enforcement agency" by a majority vote.

Approved by the CPP on June 5, 2024

SAN DIEGO POLICE DEPARTMENT

POLICY MANUAL



– AMERICA'S FINEST CITY –

Revised 03/10/2022

EXECUTIVE ORDER

The San Diego Police Department serves the people of San Diego by performing our law enforcement function in a professional manner. We are ultimately responsible to the people we serve. To provide quality service to the community, we must rely on sound leadership, guidance and support. To this end, this Policy Manual is adopted for all members of the Department.

Policy consists of principles, values and philosophies, which guide the performance of members. It is based on police ethics and experience, the desires of the community and legal mandates. Policy is broad in scope so that it will encompass most situations. It is stated in general terms.

Methods of procedures will be disseminated in the form of Department Procedures. The Policy Manual and Department Procedures are available to all members via computer on-line. Policies and Procedures convey the same authority and require compliance by all members.

Each member must be familiar with the contents of the Policy Manual and the Department Procedures. Additions or changes will be made from time to time. Violations of any portion of the Policy and Procedures Manual may result in disciplinary action.

Commanding officers have the authority to issue special orders which may deviate from the Policy Manual as may be necessary for temporary or emergency purposes.

The Policy Manual cannot encompass all possible situations encountered in the general discharge of police duties. Because of this, members should use good judgment and common sense in determining their course of conduct and action while fulfilling their responsibilities as members of the Department.

The Policy Manual will not apply in such a way as to violate state or federal laws or abridge the constitutional rights of members of this Department. If, for any reason, any portion of the Policy Manual is held to be invalid, the remainder of the Policy manual shall not be affected.

David Nisleit
Chief of Police

SAN DIEGO POLICE DEPARTMENT POLICY MANUAL

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DEFINITIONS

- Member** - Includes all employees of the Police Department, sworn and non-sworn.
- Officer** - Includes all sworn personnel.
- Superior** - A supervisor, a person higher in the chain of command or an officer of higher rank.

1.00 – ADMINISTRATION POLICIES

1.01 DEPARTMENT POLICIES, PROCEDURES, ORDERS, COMMUNICATIONS AND CORRESPONDENCE (Revised 11/04/08)

Department directives (i.e., Legal Updates, Orders, Policies, Procedures and Training Bulletins) are written directives that convey the same authority. All members of the Department will be held responsible for abiding by the information contained in Legal Updates, Orders, Policies, Procedures and Training Bulletins.

All members shall access Department directives via the Resource Library on the LAN or Automated Field Reporting (AFR) systems in accordance with Department Procedure 1.01.

1.02 DEPARTMENT ORGANIZATION TITLES

Titles shall be used to identify particular ranks and groups under the charge of those ranks. (Refer to Department Procedure 1.02.)

1.03 PURSUIT POLICY

Law violators shall be apprehended whenever feasible. A violator shall not be pursued to the point where the life of the officer, the violator or others is placed in jeopardy.

Officers shall be prepared to discontinue the pursuit if it becomes unreasonable under the circumstances. (Refer to Department Procedure 1.03.)

1.04 USE OF FORCE POLICY (Revised 12/28/21)

Members shall only use force in accordance with law and established Department procedures. Members shall not use more force than is reasonably necessary under the circumstances.

Members shall not mistreat persons who are in custody. Members shall handle such persons in accordance with all laws and established Department Procedures. (Refer to Department Procedure 1.04, Use of Force.)

Department policy places a greater value on the preservation of life than on the apprehension of criminal offenders. Deadly force shall be used only when reasonable alternatives are not feasible.

Firearms shall be considered defensive weapons, to be used only when necessary to protect human life, to prevent serious bodily injury, or in accordance with Department Procedure 6.09 (Handling of Injured Animals).

Members shall not draw, ~~or~~ display, or point a firearm at a person in the performance of duty except in situations known, or reasonably believed to be dangerous. (Refer to Department Procedure 1.04, Use of Force.)

1.05 FIREARMS POLICY (Revised 12/28/21)

Members authorized to carry firearms and ammunition shall do so in accordance with law and established Department procedures. (Refer to Department Procedure 1.05, Firearms Procedure.)

1.06 USE OF LIQUID CHEMICAL AGENT POLICY (Revised 01/26/04)

Liquid chemical agent shall only be used under circumstances when it is necessary to overcome violent physical force or resistance likely to result in injury to either the suspect, officer(s), or others present (Refer to Department Procedure 1.06, Use of Liquid Chemical Agent).

1.07 USE OF TASERS POLICY (Revised 03/05/04)

Any officer trained in its use shall be authorized to use a taser.

A taser may be used when lethal force is not justifiable or necessary; and attempts to subdue the suspect have been or will be ineffective; or it will be unsafe for officers to approach within contact range of the suspect. (Refer to Department Procedure 1.07.)

1.09 CARRYING WEAPONS ON AIRLINES POLICY (Revised 01/26/04)

Officers shall comply with regulations of the U.S. Department of Transportation and the Federal Aviation Agency for carrying firearms while on board aircraft.

Officers shall limit requests for carrying weapons aboard aircraft to situations in which safe completion of the mission requires the officer to be armed during flight (Refer to Department Procedure 1.09, Carrying Weapons on Airlines).

1.10 CITIZEN COMPLAINT RECEPTION AND INVESTIGATION POLICY

Members shall encourage citizens to bring forward legitimate grievances regarding inadequate police service or misconduct by members; and those complaints shall be received courteously and without delay.

Members shall assist and cooperate in the expeditious and impartial processing of citizen complaints within established procedures.

Members shall be informed of the nature of citizen complaints made against them and the disposition of those complaints. (Refer to Department Procedure 1.10.)

1.11 COURT AND SUBPOENA POLICY (Revised 01/26/04)

The San Diego Police Department shall generally accept for service all criminal, civil,

and Civil Service Commission subpoenas if received a minimum of five court days prior to the court appearance date.

Officers may be individually served up to the court appearance date and may not refuse service due to short notice.

Members of the Department shall be required to accept personal service of summons in civil cases related to the performance of their duties. (Refer to Department Procedure 1.11, Court Procedures and Subpoenas.)

**1.12 OPERATION OF POLICE DEPARTMENT VEHICLES POLICY
(Revised 10/22/08)**

Members shall comply with the rules of the road as outlined in the California Vehicle Code. Members shall not violate traffic laws without good and justifiable cause.

Members shall operate official vehicles in a careful and prudent manner. All members required to drive shall have a valid California driver's license. Loss, expiration, or suspension of their driver's license shall be immediately reported to their supervisor.

Members shall not use their personal vehicle for any assignment while on duty unless authorized to do so by their commanding officer.

Members shall not permit persons to ride in Department vehicles except in accordance with Department procedures.

Seat belts shall be used at all times by all Department employees, sworn and non-sworn either driving or riding in the front seats of any Department vehicle.

Members involved in a police equipment accident, shall notify the radio dispatcher, render first aid as necessary and assist at the scene until additional police units arrive. No statements concerning the accident or possible civil liability shall be made.

Members shall park police vehicles in non-emergency situations, according to all laws and parking regulations. (Refer to Department Procedure 1.12.)

1.13 EMERGENCY VEHICLE OPERATION POLICY

An emergency response shall be made when the officer reasonably believes there exists a serious danger to human life.

While responding to emergency calls, officers shall drive with DUE REGARD FOR THE SAFETY OF ALL PERSONS using the highway. (Refer to Department Procedure 1.13.)

1.14 POLICY FOR REVIEWING POLICE EQUIPMENT ACCIDENTS (Revised 10/16/08)

Commanding Officers shall be responsible for addressing inadequate or poor driving

habits of their subordinates.

All police equipment accidents shall be investigated by Traffic Units and processed by the Traffic Division. A field supervisor shall be dispatched to oversee all police equipment accident investigations and will make a written report. (Refer to Department Procedure 1.14.)

1.15 CONFIDENTIALITY OF SECURITY POLICY

Security procedures are confidential and shall not be disclosed to any member of the public or the news media. (Refer to Department Procedure 1.15, Confidentiality of Security Procedures.)

1.16 CITY OWNED TAKE-HOME VEHICLES POLICY

City owned vehicles shall not be taken home or used outside of normal working hours unless specifically authorized by a commanding officer or higher authority. (Refer to Department Procedure 1.16, Off-duty Use of Department Take Home Vehicles.)

1.18 PAYROLL POLICY

Official timekeeping for the Police Department shall be administered by the Payroll Section of Fiscal Management. (Refer to Department Procedure 1.18.)

1.19 BI-WEEKLY LABOR CARDS POLICY

Members shall use bi-weekly labor cards on which daily entries are made.

Area Commanders shall be responsible for the security of employees' payroll checks. (Refer to Department Procedure 1.19.)

1.20 OVERTIME COMPENSATION POLICY

The Chief of Police shall follow City regulations to administer overtime in a manner consistent with fiscal responsibility and sound management.

Authority shall be delegated to each supervisor and manager in the department to manage overtime. (Refer to Department Procedure 1.20.)

1.21 PURCHASING POLICY

Members shall follow city administrative rules for processing requests for materials and services for the Police Department. (Refer to Department Procedure 1.21, Purchasing Procedures.)

1.22 PETTY CASH FUND POLICY

Petty cash funds shall be used for official City business and purposes for which authorized. Petty cash funds shall not be used for private gain. (Refer to Department

Procedure 1.22, Petty Cash Fund Procedures.)

1.23 DEPARTMENT EQUIPMENT ACCOUNTABILITY POLICY

Members shall utilize Department equipment only for its intended purpose, in accordance with established Department procedures, and shall not abuse, damage, or, through negligence, lose Department equipment.

All Department equipment issued to members shall be maintained in proper order. Loss or damage to such equipment shall be promptly reported to the member's supervisor.

Equipment supplied by the Department, must be surrendered immediately, in good condition before an extended leave of absence, suspension, resignation, discharge or retirement. (Refer to Department Procedure 1.23, Department Equipment Accountability Procedures.)

1.24 PROCESSING REQUESTS FOR COUNCIL ACTION / INTERFACE WITH CITY COUNCIL POLICY

Information and support shall be lent to the City Council to facilitate the cooperative and efficient administration of the City within the rules set forth in the City Charter.

All inquiries to the City Manager's Office, Mayor and Council shall be handled by the Chief of Police or designee. (Refer to Department Procedure 1.24.)

1.25 INSPECTIONS AND AUDITS POLICY

Every commanding officer, in furtherance of Department goals and priorities, shall maintain accountability through the conduct of required inspections or audits of all personnel, equipment and functions assigned to the command. (Refer to Department Procedure 1.25, Inspections and Audits Protocol.)

1.26 RELEASE OF CRIMINAL HISTORY, ARREST AND CRIME REPORTS, AND OTHER POLICE RECORDS POLICY (Revised 01/26/04)

The Department shall control the release of and access to criminal history, crime and arrest reports and other police records; prevent the misuse of information contained in these reports; safeguard the privacy of individual citizens; and provide essential law enforcement information needs.

Members shall treat the official business of the Department as confidential. Any information regarding official business shall be disseminated in accordance with the law and established Department procedures.

Members may remove or copy official records or reports from a police installation only in accordance with established Department procedures. Members shall not divulge the identity of persons giving confidential information except as authorized by the proper authority in performance of police duties. (Refer to Department Procedure 1.26,

Access and Release of Criminal Records.)

1.29 DEPARTMENT MAIL MESSENGER SERVICE POLICY (Revised 11/05/08)

All mail shall be packaged and clearly addressed to the appropriate division or unit with the correct mail station number. All small items of mail and loose forms shall be placed in inter-office envelopes. All items of a confidential nature shall be placed in an envelope. Multiple items to be sent to the same mail station number shall be bundled together. (Refer to Department Procedure 1.29, Department Mail Service.)

1.30 PRESS RELEASE AND MEDIA RELATIONS POLICY

Members shall provide factual, accurate and timely information to all news media on a fair and equal basis without jeopardizing the rights of crime victims or of persons accused of crime, and without compromising the security of any investigation or breaching any confidential relationship. (Refer to Department Procedure 1.30.)

1.31 PRESS IDENTIFICATION CARD POLICY

Press identification cards shall be issued by the San Diego Police Department only to qualified news media representatives. (Refer to Department Procedure 1.31.)

1.45 USE OF CITY/DEPARTMENT COMPUTER SYSTEMS POLICY

The use of Department computer equipment, electronic systems, and electronic data, including E-mail and the Internet, is subject to the City's Administrative Regulation 90.62. Under this regulation, all computer use is limited to Department business purposes only. E-mail and the Internet may not be used to transmit confidential, sensitive, or privileged City or Department information to unauthorized persons or organizations. Information sent over these systems, or stored on these systems, are Department property. There shall be no expectation of privacy in relation to information stored in or sent through these systems.

2.00 – COMMUNICATION POLICIES

2.01 ASSIGNMENT OF RADIO TALKGROUPS AND PROPER RADIO POLICY

Operational frequencies shall be assigned by the area command they cover. The Inquiry Frequency shall be used for special requests, queries in computer systems, and checking for wants/warrants on persons.

Special frequencies shall be used only in the manner outlined under proper radio procedures. (Department Procedure 2.01.)

2.02 COMMUNICATIONS UNIT DESIGNATOR POLICY

The Commanding Officer of Communications shall be responsible for the administration and coordination of unit designators. (Refer to Department Procedure 2.02.)

2.06 TARASOFF DECISION POLICY

Officers shall ensure the safety of potential victims and try to locate the suspect when psychotherapists contact the Department regarding one of their patients who may seriously injure another person. (Refer to Department Procedure 2.06.)

2.07 SIGALERT BULLETIN POLICY

Sigalert bulletins shall be used as a means of advising the general public of emergency conditions that may exist within the county. (Refer to Department Procedure 2.07.)

2.08 AIR AMBULANCE POLICY (Revised 01/26/04)

San Diego Police Department requests for air ambulances are generally channeled through Communications Division to the San Diego Fire and Life Safety Services (F&LSS) Department. However, if F&LSS Department personnel are on the scene, the requesting police unit should contact them directly. (Refer to Department Procedure 2.08, Air Ambulance Emergency Care Service.)

2.10 LANDLINE AND CELLULAR PHONE DEVICES POLICY

Department land lines, telephones, wireless cellular devices, and fax machines are for business use. Personal use is discouraged.

Commanding officers shall be responsible for verification of all long distance calls charged to phones under their command. The Department Cellular Coordinator shall be responsible for auditing all Department cellular devices on a monthly basis. (Refer to Department Procedure 2.10.)

3.00 – INVESTIGATIONS POLICIES

3.01 ORGANIZATION AND RESPONSIBILITIES OF CENTRALIZED, AREA, AND TRAFFIC INVESTIGATIONS POLICY

Centralized units shall be classified as either "proactive" or "reactive." They shall have City-wide investigative or service responsibilities.

Any Area Command follow-up into offenses where specific investigative responsibility has been assigned to Centralized Units shall be with the knowledge of, and in coordination with, the Unit/Section having primary responsibility. (Refer to Department Procedure 3.01, Organization and Responsibilities of Centralized, Area, and Traffic Investigations.)

3.02 IMPOUNDING PROPERTY AND USE OF PROPERTY TAGS POLICY

All property determined to be of some evidentiary or monetary value shall be impounded in the Property Room.

Property or other evidence, which has been discovered, gathered, or received in connection with Departmental responsibilities, shall be processed promptly in accordance with established Department procedures. Members shall not convert to their own use, conceal, falsify, destroy, remove, tamper with or withhold any property or other evidence found in connection with an investigation or other police action. Release or destruction of property shall conform with established Department procedures. (Refer to Department Procedure 3.02, Impound, Release, and Disposal of Property, Evidence, and Articles Missing Identification Marks.)

3.03 RELEASE AND DISPOSAL OF IMPOUNDED PROPERTY POLICY

It shall be the responsibility of Police Personnel to establish the ownership of property impounded by the Police Department. (Refer to Department Procedure 3.03.)

3.04 MARKING PHYSICAL EVIDENCE POLICY

Officers shall mark physical evidence taking care not to damage or reduce the evidentiary and monetary value. (Refer to Department Procedure 3.04, Marking of Physical Evidence.)

3.05 POLICY FOR DISPOSITION OF ARTICLES MISSING IDENTIFICATION MARKS

Impounded property, which has the original identification marks or numbers removed, changed, covered, or defaced, shall be marked before being released to the owner(s).

Any pistol, revolver or other firearm which has had the name of the maker, model, or the manufacturer's number or other mark of identification removed shall be assigned a new identification number by the San Diego County Sheriff's Licensing Section before being released to the lawful owner. (Refer to Department Procedure 3.02, Impound, Release, and Disposal of Property, Evidence, and Articles Missing Identification Marks.)

3.06 DISPOSAL OF ALCOHOLIC BEVERAGE CONTAINERS POLICY

Alcoholic beverages required as evidence in felony cases, DWI cases, and, suspected stolen alcoholic beverages shall be impounded in accordance with impound procedures.

Confiscated alcohol beverage containers not required as evidence shall be poured out in front of the person arrested or cited or held for disposal at an area station. (Refer to Department Procedure 3.06, Disposal of Alcoholic Beverage Containers.)

3.07 INVESTIGATIONS POLICY (NEW 10/04/04)

All Department members assigned to investigative teams or units shall abide by established Department Procedures as set forth in the Investigative Procedure Manual.

Investigative supervisors, lieutenants and captains shall comply with approved crime case management procedures and review of case procedures as defined in the Investigative Procedures Manual and in Department Procedure 1.25.

3.08 JUVENILE POLICY (Revised 11/20/08)

Arrested juveniles shall be placed in detention (confinement) if it is compatible with the best interest of the juvenile and the community. Permission for detention shall first be obtained from the Field Lieutenant or Watch Commander. (Refer to Department Procedure 3.08, Juvenile Procedures.)

3.11 SCHOOL TRUANT POLICY (Revised 01/26/04)

Truant juveniles shall be turned over to school authorities or parents/ guardians. (Refer to Department Procedure 3.11.)

3.13 NARCOTIC ENFORCEMENT POLICY

All narcotics coming into the possession of members shall be impounded without exception.

An investigation shall be made of all reported or suspected violations of City, State and Federal narcotic laws. (Refer to Department Procedure 3.13.)

3.16 INFORMANT POLICY

Informant contacts shall be of a strictly professional nature. Off-duty social and personal business contacts shall be expressly prohibited. (Refer to Department Procedure 3.16.)

3.17 MISSING PERSONS (Revised 11/19/08)

Missing person reports shall be taken on all persons who have disappeared under other-than-normal circumstances. There is no waiting period before a missing person report can be filed. (Refer to Department Procedures 3.09, "At-Risk" Missing/Runaway Juveniles; 3.10, Not "At-Risk" Missing/Runaway Juveniles; 3.17, Missing Adults.)

3.18 EXTRADITION POLICY

The Department shall participate in the extradition of fugitives arrested in other states. (Refer to Department Procedure 3.18.)

3.21 FIELD RELEASE AND/OR DROP/CHANGE OF CHARGE POLICY [849(b)(1) P.C.]

Investigators shall prepare "Change of Charge" forms when they release specific charges due to insufficient grounds to obtain a criminal complaint or they change or add charges. (Refer to Department Procedure 3.21, Field Release and/or Drop/Change of Charge Form PD-1136-LA [849(b)(1) PC])

4.00 – LEGAL POLICIES

4.02 EYEWITNESS IDENTIFICATION POLICY

Officers shall avoid eyewitness identification procedures that suggest the guilt of a suspect to a victim or an eyewitness. (Refer to Department Procedure 4.02.)

4.05 PROTECTIVE ORDERS POLICY

Officers shall enforce Domestic Violence Orders. (Refer to Department Procedure 4.05.)

4.10 REPOSSESSION POLICY

Officers shall keep the peace, enforce any violations of criminal law, and avoid taking sides with either party in repossession matters. (Refer to Department Procedure 4.10.)

4.12 SUBSTANCE ABUSE TREATMENT FACILITIES POLICY (Revised 04/09/07)

Officers generally shall not arrest a subject for being under the influence of drugs or alcohol when that subject is currently admitted, or en route, to an emergency facility or other authorized treatment center, and when that person has not violated any other laws. This also applies when relatives or friends call the police on behalf of the subject.

4.13 NON-OFFICIAL OR PERSONAL CUSTODY OF RECORDS/FILES/ RECORDINGS POLICY

Members shall not maintain case files, records, photographs or recordings of investigations, contacts, or arrests of individuals for their own use, or as a private or personal file separate from the official police file or record which shall be stored and maintained at the San Diego Police Department. (Refer to Department Procedure 4.13.)

4.15 PROBATION, PAROLE, KNOCK AND TALK SEARCHES INCLUDING HIGH RISK ENTRIES AND OUTSIDE ASSISTANCE

Members who conduct probation, parole, Fourth Amendment waiver, knock and talk or high-risk searches/sweeps shall do so in a lawful manner. Such searches/sweeps shall not be arbitrary, capricious or harassing. To ensure the lawfulness of the search/sweep, a supervisor is to be present and actively involved anytime a residence or building is searched pursuant to a parole or probation condition. Acting sergeants are not acceptable for this task.

An Operation Plan shall be completed prior to any pre-planned knock and talk search, parole or probation search, high-risk entry or search warrant service. Prior to the execution of the search, all personnel involved shall be briefed on the details of the search.

In the event that a search takes place within another agency's jurisdiction, the sergeant supervising the operation shall notify the appropriate law enforcement agency where the search is taking place prior to arriving at the search location.

If the execution of a warrant requires the involvement of SWAT, the SWAT Unit commander shall be notified at the earliest opportunity.

All team members making tactical entries shall wear Department-approved body armor and appropriate visible identification so they are easily recognized as peace officers. If forced entry is required, the supervisor shall decide if the entry should be attempted. Entry shall be made in accordance with Knock and Notice as outlined in 844PC. When a forced entry is anticipated, mission planners shall use the Regional High-Risk Entry Checklist as a guideline. (Refer to Department Procedure 4.15, (Probation, Parole, and Knock and Talk Searches Including High- Risk Entries and Outside Assistance.)

5.00 – PERSONNEL POLICIES

5.01 INJURY, ASSAULT AND MEDICAL BENEFITS POLICY

Members shall immediately report any on-duty injury or illness to their supervisor. Off-duty members who are unable to report for duty due to illness or injury, shall report the fact immediately to their command or, if unavailable to the Watch Commander, no later than one hour prior to going on duty. Members shall report the nature of their illness or injury, whether attended by a physician, and the address and phone number where they may be contacted.

The member's command shall be contacted each subsequent workday unless the commanding officer indicates that less frequent contacts are satisfactory.

Members shall not feign or falsely report illness or injury, or attempt to deceive any supervisor of the Department as to the condition of their health.

If abuse is suspected, supervisors may visit a member who is off-duty with a reported illness or injury. Unless the attending physician recommends otherwise, supervisors shall be granted access to the member at any reasonable hour.

Members having any contagious disease in their families shall immediately notify their command for approval to report for duty. (Refer to Department Procedure 5.01.)

5.03 EQUAL EMPLOYMENT POLICY

Members shall be permitted a work atmosphere free from discrimination and sexual harassment. Members shall not discriminate against, nor sexually harass other members. It shall be the responsibility of all supervisors to assure a non-discriminatory work environment. (Refer to Department Procedure 5.03.)

5.04 GRIEVANCE POLICY (Revised 10/21/08)

The Human Resources Captain shall administer the grievance process and shall establish and maintain a routing and control procedure for all grievances originating within the Department. (Refer to Department Procedure 5.04.)

5.05 SMOKING POLICY (Revised 10/21/08)

All members shall be provided with a smoke-free environment.

While on duty, members shall not smoke or use smokeless tobacco while conducting an investigation or interview or under other circumstances when it could be offensive to other individuals or where smoking and the use of smokeless tobacco is prohibited. (Refer to Department Procedure 5.05, Use of Tobacco Products.)

5.06 OFFICER DEATHS POLICY

The Department shall afford every consideration to the decedent's family. The family shall receive the maximum amount of assistance and support from the Department during this time. (Refer to Department Procedure 5.06.)

5.07 TRANSFERS WITHIN THE DEPARTMENT POLICY

The Chief of Police or designee shall have the responsibility of assigning and transferring personnel within the organization and will reserve the right to make any transfers deemed appropriate. (Refer to Department Procedure 5.07, Transfers Within The Department.)

5.08 DIVISIONAL AND PERSONNEL FILES POLICY (Revised 09/10/07)

The division personnel file is a working file for the short-term retention of informal documents pertaining to an employee's performance. The Department personnel file is a permanent repository for the retention of all formal and/or official documents pertaining to an employee's job performance and/or employment history. (Refer to Department Procedure 5.08, Divisional and Personnel Files.)

5.09 EMPLOYMENT INTERVIEWS POLICY

Employment interviews for the purpose of selecting sworn personnel for investigative and specialized assignments or new hires and promotions shall be conducted by supervisors who have completed the formal Appointing Authority Interview Training (AAIT) through the City Personnel Department. (Refer to Department Procedure 5.09, Employment Interviews.)

5.10 UNIFORM, EQUIPMENT AND WEAPONS POLICY (Revised 03/10/22)

Members on duty shall wear uniforms or other clothing and be provided with equipment in accordance with established Department and city requirements.

Members on duty shall maintain a neat, well-groomed appearance, except when acting under proper and specific orders from a superior. (Refer to Department Procedure 5.10, Uniforms, Equipment, and Weapons.)

Members who possess a Reasonable Accommodation shall adhere to Department Procedure 5.10, Uniforms, Equipment, and Weapons and the Uniform Specifications Manual, Appearance and Grooming.

5.11 REPAIR OR PLACEMENT OF EMPLOYEE'S PERSONAL PROPERTY POLICY

Members shall follow city regulations for reimbursement of personal property damaged in the performance of their duties. (Refer to Department Procedure 5.11.)

5.12 OUTSIDE EMPLOYMENT POLICY

Employees shall not accept employment outside City service or participate actively in the management or operation of a business that would result in conflict of interest or reflect criticism or discredit on the employee or the city or that would affect the employees' efficiency in the performance of their regular duties.

Members seeking outside employment shall first obtain approval from their commanding officers. (Refer to Department Procedure 5.12.)

5.13 EDUCATIONAL INCENTIVE

All San Diego Police Officers of classified rank, who become qualified for an Intermediate or Advanced POST Certificate, shall be eligible for Educational Incentive Pay benefits. (Refer to Department Procedure 5.13.)

5.14 TUITION REIMBURSEMENT PROGRAM POLICY (Revised 11/04/08)

Eligible employees (sworn and non-sworn) shall be reimbursed, under certain conditions, 100% of tuition, textbooks and supplies up to a specified amount per fiscal year. (Refer to Department Procedure 5.14.)

5.15 RECRUITMENT INCENTIVE PROGRAM POLICY (Revised 09/16/2008)

Discretionary Leave shall be awarded to Department members who recruit employees that successfully complete specified training and/or probation. (Refer to Department Procedure 5.15, Recruitment Incentive Program.)

5.16 EXCEPTIONAL MERIT PAY PLAN POLICY

Non-sworn employees shall qualify for a cash award on the basis of exceptional sustained performance and/or exceptional performance on a project or assignment. (Refer to Department Procedure 5.16.)

5.17 SERVICE AWARDS POLICY

The Department shall have a Service Awards Program designed to give official recognition to heroic, meritorious or outstanding actions by sworn and non-sworn employees or Police Reserve officers. (Refer to Department Procedure 5.17.)

5.18 DISCRETIONARY LEAVE POLICY

Members shall be eligible for discretionary leave with pay for exceptional performance in their class of employment. (Refer to Department Procedure 5.18.)

6.00 – PATROL POLICIES

6.01 HANDCUFFING, SEARCHING AND TRANSPORTING POLICY

Members shall not mistreat persons who are in custody. Members shall handle such persons in accordance with all laws and established Department procedures.

Officers shall handcuff all prisoners with their hands behind them. Prisoners shall remain handcuffed whenever they are outside the confines of any jail, unless such handcuff procedure would hamper the conduct of any investigation or the physical condition of the prisoner would preclude such use.

The cord-cuff leg restrainer shall be used as a safety device to eliminate or reduce physical hazards in the restraining of violent or potentially violent prisoners.

Officers shall not apply the cord-cuff leg restraint to the head or neck of a suspect. (Refer to Department Procedure 6.01.)

6.02 BOOKING PROCEDURES POLICY (Revised 01/26/04)

Officers shall thoroughly search prisoners prior to placing them in detention or correction facilities. (Refer to Department Procedure 6.02, Booking Procedures.)

6.04 CRIME REPORT POLICY

The Chief of Police shall be responsible for furnishing a report of all felony and specified misdemeanor sex crimes to the State. The Chief's legal responsibility is delegated to all officers who have the legal duty to report any crimes that come to their attention.

Crime Analysis shall be the official repository for crime and arrest statistics generated by the Department. (Refer to Department Procedure 6.04, Crime Report Form.)

6.06 CRIME SCENE PROTECTION AND PRELIMINARY INVESTIGATION POLICY

In most major crime cases the first uniformed officer to arrive at the scene shall be responsible for making the preliminary investigation.

The Department shall direct investigative efforts towards those areas that will be most productive in identifying criminal suspects and recovering stolen property. (Refer to Department Procedure 6.06, Crime Scene Protection and Preliminary Investigation Reporting.)

6.09 HANDLING OF INJURED ANIMALS POLICY (Revised 01/26/04)

Officers may destroy injured animals with a service weapon, if it can be done with complete safety and it would be more humane to do so based on the severity of the injuries. (Refer to Department Procedure 6.09, Handling of Injured Animals.)

6.11 PHYSICAL EXAMINATION POLICY

All victims and suspects of sex crimes shall be examined if the nature of the case indicates that evidence may be present. (Refer to Department Procedure 6.11, Physical Examination of Sex Crime Victims and Suspects.)

6.12 PARAMEDIC AND EMERGENCY TREATMENT POLICY (Revised 02/11/11)

Officers at the scene of a medical emergency shall administer first aid to the extent of their abilities until the Fire-Rescue Department personnel or paramedics arrive and assume medical control.

Officers transporting persons in need of emergency medical treatment shall take them to the nearest primary emergency facility. (Refer to Department Procedure 6.12, Paramedic Procedures and Emergency Treatment.)

6.14 CODE SEVEN/COFFEE BREAK POLICY (Revised 12/24/08)

Officers and uniformed non-sworn members shall take meals only for such period of time, and at such time and place as established by Department Procedures.

At no time shall officers and uniformed non-sworn members accept free meals or drinks, reduced prices, or any other consideration that is not regularly enjoyed by the public. (Refer to Department Procedure 6.14, Code Seven, Coffee Break.)

6.15 RIDE-ALONG POLICY

The Department encourages citizen ride-alongs as part of the community oriented approach to policing. (Refer to Department Procedure 6.15, Ride-Along Program.)

6.16 POLICE SERVICE DOGS POLICY

When a police service dog is used to affect an arrest, or in some other law enforcement capacity and a bite occurs, it shall be considered a utilization of force. (Refer to Department Procedures 6.16, Police Service Dogs and 1.04, Use of Force.)

6.18 UNDOCUMENTED PERSONS POLICY

All people shall be treated equally, without regard to their nationality.

Officers shall not initiate police contact solely because a person is suspected of being in violation of immigration laws. (Refer to Department Procedure 6.18, Adult Undocumented Persons and 3.08, Juvenile Procedures.)

6.19 PUBLIC INEBRIATE POLICY (NEW 01/26/04)

Officers shall employ protective custody for public inebriates through a voluntary non-criminal detoxification process, when possible. Chronic inebriates shall be referred to the Serial Inebriate Program for prosecution and subsequent incarceration. (Refer to Department Procedure 6.19, Public Inebriates.)

6.22 POLICY FOR RELEASING MILITARY PERSONNEL ON A VOLUNTARY PROTECTIVE CUSTODY TURNOVER

Officers arresting military personnel for minor misdemeanors shall, at their discretion and with the consent of those arrested, release them to the custody of military authorities.

When arrested service personnel decline a protective custody turnover, they shall be handled the same as civilian arrests. (Refer to Department Procedure 6.22, Procedures for Releasing Military Personnel on a Voluntary Protective Custody Turnover.)

6.26 HATE CRIME POLICY (NEW 01/26/04)

Department members are to take investigative and/or enforcement actions associated with any and all reported or observed incidents of violence or threats directed at an individual, institution, or business, motivated, all or in part, because of race, religion, national origin, ethnicity, sexual orientation, disability or gender. Department members will place special emphasis on victim assistance and community cooperation in order to reduce victim/community trauma or fear.

The proper investigation of reported crimes motivated by race, religion, national origin, ethnicity, sexual orientation, disability or gender is the responsibility of all San Diego Police Department members. Each member must be sensitive to the feelings, needs, and fears that may be present in the victim and the community as a result of incidents of this nature.

In addition to our existing procedures for reporting and investigating matters of this nature, the Chief of Police may conduct inquiries into any incident brought to his/her attention. Therefore, field supervisors apprised of such an incident will ensure notification as soon as practical to their chain of command and/or to the Watch Commander's Office. (Refer to Department Procedure 6.26, Hate crimes.)

7.00 – TRAFFIC POLICIES

7.01 TRAFFIC ENFORCEMENT POLICY

The enforcement of all traffic laws shall be administered equally and fairly, regardless of the persons involved, and based solely on the nature of the offense. (Refer to Department Procedure 7.01.)

7.02 TRAFFIC COLLISION INVESTIGATION POLICY

Officers shall investigate all collisions which come to their attention that occur on a public street or highway, and all collisions that occur off-road on public or private property that involve a death, injury, drinking driver, hit and run or extensive property damage. (Refer to Department Procedure 7.02.)

7.05 ASSISTING STRANDED MOTORISTS POLICY

Officers shall stop and offer assistance to stranded motorists on freeways and to motorists stranded on surface streets when it appears assistance can be rendered safely. (Refer to Department Procedure 7.05, Assisting Stranded Motorists.)

7.09 POLICE PROTECTIVE DETAILS POLICY (Revised 12/03/07)

Police protective details are generally limited to the President or Vice President of the United States, or other dignitaries with prior approval of the Traffic Division Captain.

The San Diego Police Department Motorcycle Unit will have the primary responsibility for protective details. All pre-planning for protective details will be coordinated through this unit, which is a component of Traffic Division. (Refer to Department Procedure 7.09, Police Protective Details).

8.00 – CRITICAL INCIDENT POLICIES

8.02 INCIDENT COMMAND SYSTEM (ICS) (New 01/26/04)

The Department shall have the responsibility of providing protection for the lives and property of the citizens of San Diego and the continuation of essential services during periods of emergency.

Every effort shall be made in the management of critical incidents to restore order, prevent injuries or loss of life and reduce the potential of property damage utilizing the Incident Command System (ICS). (Refer to Department Procedure 8.02, Incident Command System.)

8.05 SWAT UNIT, PRIMARY RESPONSE TEAM AND SPECIAL RESPONSE TEAM POLICIES (Revised 01/26/04)

The SWAT unit shall always be used in support of the Incident Commander and given its mission from that ranking officer. The SWAT team leader decides upon the method of accomplishing the mission. (Refer to Department Procedure 8.05, SWAT Unit, Primary Response Team and Special Response Team.)

8.07 POLICY FOR RECALLING OFF-DUTY PERSONNEL (Revised 05/04/09)

The Department shall follow a "call-back" system of contacting off-duty personnel through a descending chain of command. "Test call-backs" shall be used to keep personnel familiar with the call-back procedure.

Off-duty sworn officers and civilian personnel who become aware of a large scale disaster or critical incident shall report for duty to their assigned duty station. (Refer to Department Procedure 8.07.)

8.09 MEDIA RELATIONS AT CRITICAL INCIDENTS POLICY

The ranking Department member in command at a critical incident is responsible for providing appropriate information to the news media. (Refer to Department Procedure 8.09.)

8.10 MUTUAL AID POLICY

The Chief of Police shall be responsible for requesting Mutual Aid when the Department is involved in a critical incident which may become or is already beyond the control of the Department's resources. (Refer to Department Procedure 8.10.)

8.11 INCIDENT REPORT POLICY

An incident report shall be prepared by the ranking field officer on all major incidents. (Refer to Department Procedure 8.11, Incident Report Procedures.)

8.13 SWAT ARMORY AND SPECIAL EQUIPMENT POLICY

No person, regardless of rank, shall be permitted to enter the Department SWAT armory without being accompanied by a member of SWAT. (Refer to Department Procedure 8.13.)

8.14 INCIDENTS INVOLVING HOSTAGES POLICY (Revised 01/26/04)

The preservation of life and prevention of injury shall be the determining factors when deciding the tactics to be utilized during incidents involving hostages. (Refer to Department Procedure 8.14, Incidents Involving Hostages/Emergency Negotiations.)

8.15 ARSON INVESTIGATIONS, BOMB THREATS, BOMBINGS, EXPLOSIVES, AND PYROTECHNIC MATERIALS POLICY (Revised 01/26/04)

Metro Arson Strike Team (MAST) investigators shall make the preliminary investigation at the scene of any suspected arson fire or bombing.

The Homicide Unit, with assistance from MAST, shall investigate arson death cases.

Area command investigators shall be responsible for bomb threats within their jurisdiction. (Refer to Department Procedure 8.15, Arson Investigation, Bomb Threats, Bombings, Explosives, and Pyrotechnic Materials.)

8.18 RIVER RESCUE POLICY

Officers shall be prohibited from making in-water rescues unless there is an immediate threat to the life of the victim. (Refer to Department Procedure 8.18, River Rescue Procedures.)

9.00 – PERSONAL CONDUCT POLICIES

9.01 GENERAL DUTIES POLICY (Revised 09/10/07)

Officers on duty shall at all times, lawfully protect life and property, detect and arrest violators of the law, prevent crime, preserve the public peace and enforce the laws of the state of California and the ordinances of the City of San Diego. Prior to taking law enforcement action when off duty, officers who observe or who are told of criminal activity shall first consider contacting the appropriate law enforcement agency and have on duty officers respond.

In determining whether or not to intervene, the off-duty officer should consider the totality of the situation. In a case where action is necessary to prevent death, the possibility of death or serious bodily injury, significant property damage or loss, the off duty officer should consider the offense involved, the difficulty that being off duty tactically and operationally presents, and/or other factors as articulated and observed by the officer.

When within the State of California, officers shall assist any law enforcement officer who appears to be in need of immediate assistance and shall assist in the prevention of the commission of any felony or in the apprehension of any felon. Officers shall also take appropriate action where a serious threat to life or property exists.

If an off-duty officer intervenes in the criminal conduct, he/she must, if reasonably possible, identify themselves, their agency and their intent to stop the criminal conduct. Any law enforcement action taken will be governed by Department policies and procedures that apply to on duty personnel.

Officers outside the boundaries of California do not have peace officer status and therefore have only the rights and obligations of private citizens.

9.02 OBEDIENCE TO RULES POLICY (Revised 01/26/04)

Members shall not commit any acts nor fail to perform any acts that constitute a violation of the policies, procedures, directives or orders of the Department, the City of San Diego Administrative Regulations, the Personnel Regulations Manual, the Civil Service Rules, or the City Charter.

9.03 OBEDIENCE TO LAWS POLICY (Revised 7/10/2015)

Members shall obey all federal, state, county, and municipal laws. If any member is arrested, charged, indicted, or is knowingly under investigation for a criminal offense, excluding traffic infractions and parking violations, that member shall immediately report the incident to his or her supervisor or the Watch Commander, in person or by telephone. To report the incident, the member must actually speak with the supervisor or Watch Commander. Text messages and voice messages are not acceptable.

9.04 OBEDIENCE TO LAWFUL ORDERS POLICY

Members shall promptly obey any lawful orders of superiors. This includes orders relayed from a supervisor by someone of the same or lesser rank. While on duty and in the presence of others, members shall address superior officers by their titles.

9.05 CONFLICTING ORDERS POLICY (Revised 01/26/04)

Members who are given an otherwise proper order which is in conflict with a previous order, policy, procedure or directive shall respectfully inform the superior issuing the order of the conflict. If the superior issuing the conflicting order does not alter or retract it, the order shall stand, and the superior shall be responsible for the conflicting order and members shall not be held responsible for disobedience of the order, policy, procedure or directive previously issued.

9.06 UNBECOMING CONDUCT POLICY (Revised 01/26/04)

Officers shall conduct themselves, both on and off duty, in such a manner as to reflect favorably on the Department. Officers shall not conduct themselves in any manner that could bring the Department into disrepute or reflects discredit upon the officer as a member of the Department, or impairs the operation and efficiency of the Department or officer.

Members shall not engage in any conduct that is unbecoming an employee of the Department, nor which impairs the operation of the Department.

9.07 IMMORAL CONDUCT POLICY

Officers shall maintain a level of moral conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers shall not participate in any activity or incident involving moral turpitude that impairs their ability to perform as members of the Department or causes the Department to be brought into disrepute.

9.08 GIFTS OR GRATUITIES POLICY (Revised 10/15/08)

"Gift" or "Gratuity" as used herein, includes, but is not limited to, meals, beverages, money, property, loan, promise, service, or entertainment.

Members shall not solicit nor accept any gift or gratuity from any police-regulated business or person employed by, or having an interest in, a police-regulated business.

Members shall not solicit nor accept from any person, business or organization, any gift or gratuity for the benefit of the member or others if it may be reasonably inferred

that the person, business or organization:

1. Seeks to influence action of an official nature or seeks to affect the performance or non-performance of an official duty; or
2. Has an interest that may be affected directly or indirectly by the performance of an official duty.

While on duty, members shall pay full price for any goods, products or services obtained.

9.09 ABUSE OF POSITION POLICY (Revised 01/26/04)

A. Use of official position or identification

Members shall not use their official position, official identification cards or badges for: (1) Personal or financial gain; (2) Obtaining privileges not otherwise available to them except in the performance of duty; or (3) Avoiding consequences of illegal acts. Members shall not lend their identification cards or badges to other persons nor permit their identification cards to be reproduced.

B. Use of name, photograph or title

Members shall not permit or authorize the use of their names, photographs or official titles in connection with testimonials or advertisements of any commodity or commercial enterprise if such use identifies the person as a member of the San Diego Police Department without the prior approval of the Chief of Police.

C. Except as authorized, members shall not enter into official Department correspondence. (See DP 1.17, Department Correspondence)

D. Members shall not use the Department's name or address, nor the address of any area station, for other than official purposes. Members shall not authorize the use of the Department's name, any Department address or their official titles on any personal correspondence, including, personal checks, credit cards and other items to be deemed for personal use without the prior approval of the Chief of Police.

9.10 ENDORSEMENTS AND REFERRALS POLICY

Members in an official capacity shall not recommend or suggest, in any manner, the employment or procurement of a particular product, or private professional or commercial service (such as attorney, ambulance service, towing service,

bondsman, crime prevention materials, private investigator firms, etc.).

9.11 ASSOCIATING POLICY (Revised 12/28/21)

Members shall not maintain associations or dealings with persons, whom they know or should know, are felons or suspected felons; registered sex offenders, involved in illicit narcotic activity; involved in violent crimes; or persons under criminal investigation or indictment.

Members shall not knowingly maintain associations or dealings with any organization or body, the constitution of which could in any way prevent, conflict with, or hinder performing departmental duties (e.g. outlaw motorcycle gangs, criminal street gangs, etc.).

Members shall not knowingly maintain associations or dealings with any person or organization that advocates hatred, prejudice, or oppression of any person or group or which disseminates such material, such that the association or dealing would impair the operation and efficiency of the Department or bring disrepute or discredit to the member and/or the Department.

Members shall not knowingly maintain associations or dealings with any organization, association, movement, or group which advocates the commission of acts of force or violence to deny others their rights under the Constitution of the United States or the State of California, or which seeks to alter the form of government of the United States or the State of California by unconstitutional means.

Pursuant to Assembly Bill 958, members shall not participate in a law enforcement gang. Law enforcement gangs are defined as a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, excluding, harassing, or discriminating against any individual based on a protected category under federal or state antidiscrimination laws, engaging in or promoting conduct that violates the rights of other employees or members of the public, violating agency policy, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating or destroying evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group. See California Penal Code section 13670.

Participation in a law enforcement gang, or other violation of this policy, is subject to discipline up to and including termination.

Associations described in this policy are only permissible in the performance of authorized official duties. This policy does not apply to associations based on

kinship/familial relationships.

9.12 VISITING PROHIBITED ESTABLISHMENTS POLICY (Revised 04/21/04)

Members shall not knowingly visit, enter or frequent a house of prostitution, unlawful gambling house, or establishment maintained for the purpose of conducting illegal activity, except in the performance of duty or while acting under proper and specific orders from a supervisor.

While on duty, members shall not visit any adult entertainment establishments unless for authorized official duties.

9.13 PUBLIC STATEMENTS AND APPEARANCES POLICY (Revised 01/26/04)

Members shall not publicly criticize or ridicule the Department, its policies or others by speech, writing or other expression, where this is defamatory, obscene, unlawful, undermines the effectiveness of the Department, interferes with the maintenance of discipline or is made with reckless disregard for truth or known to be false.

Members shall not address public gatherings, appear on radio or television, lecture, prepare any articles for publication, act as correspondents to a newspaper or periodical, or release or divulge investigative information regarding police matters without the prior approval of the Chief of Police.

9.14 POLITICAL ACTIVITY POLICY (Revised 01/26/04)

Members shall not:

1. Use their official capacity to influence, interfere with, or affect the results of any election for political office;
2. Use or give the appearance of using their official status at any time or place for the purpose of soliciting contributions or attempting to exert influence in respect to any election for political office. This includes the use of title, wearing of the uniform or other apparel or badge or posing for campaign photographs in uniform;
3. Engage in any political activity during working hours or in any City work area; or,
4. Permit entry into any place under their control occupied for any purpose of the municipal government of any person for the purpose of therein making, collecting or receiving any subscription or contribution or giving any notice of political activity.

9.15 PERFORMANCE OF DUTY POLICY (Revised 01/26/04)

Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Members shall perform their duties in a manner that will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Unsatisfactory performance may be demonstrated by, but is not limited to, a lack of knowledge of the application of laws required to be enforced, an unwillingness or inability to perform assigned tasks, or the failure to conform to work standards established for the member's rank, grade or position.

Officers shall not fail to take appropriate action on the occasion of a crime disorder or other condition deserving police attention or be absent without leave or be unnecessarily absent from their assigned area during a tour of duty.

The following will be considered prima facie evidence of unsatisfactory performance for all members: repeated poor performance evaluations or a written record of repeated infractions of the Department's policies, procedures, directives or orders.

9.16 ARREST POLICY

Members shall not make any arrest that they know is not in accordance with law and established Department procedures.

9.17 REPORTING FOR DUTY POLICY

Members shall report for duty at the time and place required by assignment or orders and shall be physically and mentally fit to perform their duties. They shall be properly equipped and cognizant of information required for the proper performance of duty so that they may immediately assume their duties. Off-duty members shall be subject to recall as needed and shall report for duty as directed by any superior. Judicial or other lawfully issued subpoenas shall constitute an order to appear under this section.

Absence from duty without leave for a period of three days shall be considered a resignation and may be processed as such.

9.18 NEGLECT OF DUTY POLICY (Revised 01/26/04)

Members shall not engage in activities or personal business that would cause them to neglect or be inattentive to their duty.

Members shall remain awake on duty. If unable to do so, they shall advise their superior who shall determine the proper course of action.

9.19 IDENTIFICATION POLICY (Revised 11/07/2020)

Whether on or off duty, officers and reserve officers shall carry or have in their immediate possession their Department identification card, except when impractical, dangerous for their safety, or when the act would hamper an investigation. The carrying of a badge or firearm while off duty shall be at the option of the officer. If an officer chooses to carry a badge, the Department identification card shall also be carried. If an officer chooses to carry a firearm, both the Department identification card and badge shall be carried.

Officers shall furnish their names and Department member identification numbers to any person requesting this information when they are on duty or while representing the Department in an official capacity, except when the withholding of such information is necessary for the performance of police duties or is authorized by the proper authority.

When a Mobile Field Force (MFF) activation takes place, the Incident Commander may authorize the use of ID only name tags. When this occurs, officers will only be required to furnish their Department identification number to any person requesting their name, ID number and/or badge number.

9.20 COURTESY POLICY (Revised 03/27/15)

Members shall be courteous to all persons. Members shall be tactful in the performance of their duties, shall control their tempers, exercise the utmost patience and discretion and shall not engage in argumentative discussion even in the face of extreme provocation. Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language. Members shall not use insolent language or gestures in the performance of his or her duties. Members shall not make derogatory comments about or express any prejudice concerning race, religion, politics, national origin, gender (to include gender identity and gender expression), sexual orientation, or similar personal characteristics.

9.21 REQUESTS FOR ASSISTANCE POLICY

When any person requests assistance or advice, or makes complaints or reports, either by telephone or in person, all pertinent information shall be obtained in a professional and courteous manner and shall be properly and judiciously acted upon, consistent with established Department procedures.

9.22 PATRIOTIC COURTESY POLICY (Revised 01/26/04)

Patriotic courtesy and respect for the American flag is symbolic of the oath to support and uphold the U.S. Constitution. During the playing of the National Anthem and when the Pledge of Allegiance is being recited, officers shall render

one of the following salutes to the American flag:

- 1) During the playing of the National Anthem, members in uniform shall stand at attention and render a military salute;
- 2) During the Pledge of Allegiance, members in uniform shall stand at attention and place their right hand over their heart;
- 3) During the Pledge of Allegiance indoors, members in uniform and wearing a hat, shall remove their hat and hold it in their right hand, over their heart;
- 4) During the Pledge of Allegiance outdoors, members in uniform and wearing a hat, shall leave their hat on; and,
- 5) Members in civilian attire shall stand at attention and place their right hand over their heart during either the National Anthem or the Pledge of Allegiance.

9.23 ALCOHOLIC BEVERAGES AND DRUGS IN POLICE INSTALLATIONS POLICY

Members shall not bring into, nor store, alcoholic beverages, non-prescribed controlled substances, narcotics or hallucinogens in any police facility or vehicle, except in the performance of duties or as authorized by the Chief of Police. Such items shall be processed in accordance with Department procedures.

9.24 SUBSTANCE ABUSE POLICY (Revised 05/05/15)

Illegal drug use or possessing, selling, furnishing, administering, transporting, cultivating, and/or processing illegal drugs will not be tolerated. This includes “street” drugs, anabolic steroids, and misuse of prescription medication.

Unjustifiable positive test results for alcohol will also subject employees to discipline. Members shall not drink intoxicating beverages while on duty except in the performance of duty and while acting under proper and specific orders from a superior. Members shall not appear for duty, nor be on duty, while under the influence of illegal drugs or intoxicants or with an odor of intoxicants on their breath. Unjustifiable positive test results for illegal drugs or a blood alcohol level of 0.02%, or above, for alcohol shall be considered a violation of this policy.

Members, while off duty, shall refrain from consuming intoxicating beverages within eight hours of the beginning of a scheduled shift or overtime assignment, or to the extent that it results in a level of impairment, intoxication, or obnoxious or offensive behavior which would discredit them or the Department, or render them unfit to report for their next regular shift.

9.25 PAYMENT OF DEBTS POLICY (Revised 01/26/04)

Members shall not undertake any financial obligations that they know or should know they will be unable to meet. Repeat instances of financial difficulty may be cause for disciplinary action when the employee's job performance is adversely affected, or Department operations are impaired.

Non-payment of debts in dispute between members and creditors shall not be the subject of disciplinary action. Financial difficulties stemming from unforeseen medical expenses or personal disaster shall not be cause for discipline, provided that a good- faith effort to settle all accounts is undertaken.

9.26 RESIDENCE AND TELEPHONE POLICY (Revised 12/06/17)

Members shall reside within the state of California and maintain the ability to respond for duty within 90 minutes. All members shall maintain a telephone that is accessible in their residence and must keep their command informed of their correct residential address and telephone number. Members shall report any address or telephone number changes to their command within twenty-four hours of making the change.

A change of address or telephone number will be promptly reported on the Personal Data Form (CS-1502) and submitted to the Human Resources Unit at MS 710.

Employees shall also update their information through the OneSD self-services tab – personal profile section.

Newly appointed members to the Department who reside outside the residential location requirement shall take up residence within the required distance no later than the completion of their probationary period.

9.27 INVESTIGATIONS POLICY (Revised 01/26/04)

Members shall not conduct any investigation, or other official action not part of their regular duties, without first obtaining permission from their superior, unless the urgency of the situation requires immediate police action. In those situations, the member must notify their superior of their actions as soon as possible.

9.28 DEPARTMENT REPORTS POLICY

Members shall submit all necessary reports on time and in accordance with established Department Procedures. Reports submitted by members shall be truthful and no member shall knowingly enter, or cause to be entered, any inaccurate, false or improper information.

9.29 TRUTHFULNESS POLICY

Members shall be truthful in all matters relating to their duties.

Upon the order of a superior, or any officer appointed by the Chief of Police to conduct internal investigations, and in accordance with Constitutional and contractual guarantees, including a right to representation, members shall truthfully answer all questions specifically directed and narrowly related to their scope of employment and operations of the Department.

9.30 MEDICAL EXAMINATIONS, PHOTOGRAPHS, AND LINEUPS POLICY

Upon the order of the Chief of Police or his designee, and in accordance with Constitutional and contractual guarantees, officers shall submit to any psychological, medical, ballistics, chemical or other tests, photographs or lineups that are specifically directed and narrowly related to a particular internal investigation being conducted by the Department.

9.31 NON-BIAS BASED POLICING POLICY (Revised 02/19/20)

The Department does not tolerate bias based policing and requires all members to adhere to courtesy expectations described in Department Policy 9.20. Bias-based policing occurs when law enforcement inappropriately considers factors such as race, color, ethnicity, religion, national origin, age, disability, gender (to include gender identity and gender expression), lifestyle, sexual orientation, or similar personal characteristics in deciding with whom and how to intervene in an enforcement capacity.

The Department's commitment to non-bias-based policing includes providing all members with ongoing training related to biases, including implicit, overt, and bias by proxy, and all members are expected to understand their negative impacts on policing.

Non bias-based policing requires officers conducting investigative detentions, traffic stops, arrests, searches, and seizures to comply with standards of reasonable suspicion and probable cause in accordance with United States and California constitutional standards and Department procedures. Officers shall clearly document the specific facts and circumstances they relied upon in performing these actions.

This documentation shall, in part, be completed by officers as required by the Racial and Identity Profiling Act of 2015, which requires data collection related to stops, as well as explanatory narratives for the stop and any subsequent searches. Inspections, as detailed by Department policies, procedures, and training bulletins, shall be conducted by supervisors to review stop data collection compliance. The review of digital evidence from body-worn cameras will be guided by Department

Procedure 1.49. If deficiencies are found, supervisors shall take appropriate action. The Department will conduct regular internal reviews of stop data collected, and work collaboratively with external experts to identify trends, unexplained disparities, and to develop changes to Department operations as necessary to maintain equity in policing.

Members shall not base any enforcement action, in whole or in part, on race, color, ethnicity, religion, national origin, age, disability, gender (to include gender identity and gender expression), lifestyle, sexual orientation, or similar personal characteristics, while conducting any law enforcement activity, including stops and detentions, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group. Members seeking one or more specific persons who have been identified or described in part by their race, color, ethnicity, religion, national origin, age, disability, gender identity, gender expression, or sexual orientation may rely, in part, on the specified identifier or description only in combination with other appropriate identifying factors and may not give the specified identifier or description undue weight.

Every effort shall be made by all members to prevent and report instances of discrimination or bias by fellow members using established Department complaint procedures. Those who engage in, ignore, or condone discrimination or bias shall be subject to discipline in accordance with all applicable statutes, regulations, and Department procedures. Members reporting instances of discrimination shall not be retaliated against.

This policy shall be readily available online, and upon request at all Front Counters.

9.32 CONFLICT OF INTEREST POLICY

A Department member who, in his or her official capacity, becomes involved in any incident or investigation where a potential conflict of interest exists shall immediately inform his or her supervisor of such involvement. The decision as to whether the member may continue to be involved with the incident or investigation will be at the discretion of the member's supervisor or another ranking member of the Department.

9.33 DUTY TO REPORT MISCONDUCT POLICY (Revised: 12/28/21)

Members shall immediately report misconduct by another member.

For the purpose of this policy misconduct means conduct that causes risk to the health and safety of the public, impairs the operation and efficiency of the Department or member, or brings into disrepute the reputation of the member or the Department. The conduct could involve a violation of any law, statute, ordinance, City Administrative Regulation, Department policy or procedure, act of moral turpitude, ethical violations, or **association in a group in violation of a Department policy pursuant to**

Assembly Bill 958. In this context misconduct involves a willful act done with a wrong intention and is more than mere negligence, error of judgment or innocent mistake.

If any member has credible knowledge of another member's misconduct, they shall take immediate, reasonable action to stop the misconduct, and the member shall report the misconduct to a supervisor as soon as possible.

Pursuant to Assembly Bill 26, supervisors shall assess the validity of any allegation of misconduct by a Department member. If there is evidence of misconduct, or the allegation appears credible, then the supervisor shall immediately notify their chain of command and/or the Watch Commander's office.

The supervisor who receives the report of misconduct shall monitor the workplace to ensure no retaliation is made against the Department member(s) who reported the misconduct. The supervisor shall follow-up with the reporting member in 30 days to ensure no retaliation has occurred.

9.34 BACKGROUNDS AND RECRUITING STANDARDS (New 05/05/15)

All Department members assigned to the Background Investigations Unit shall abide by established POST standards and guidelines in addition to the Backgrounds and Recruiting Operations Manual.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: MARCH 12, 2020
NUMBER: 1.03 – TRAFFIC
SUBJECT: PURSUIT PROCEDURES
RELATED POLICY: 1.03
ORIGINATING DIVISION: TRAFFIC
NEW PROCEDURE:
PROCEDURAL CHANGE: **MINOR CHANGES**
SUPERSEDES: DP 1.03 – MAY 28, 2019

I. PURPOSE

This Department procedure establishes guidelines to enhance the effectiveness of a pursuit and reduce the likelihood of incidents that could lead to potential liability.

II. SCOPE

This procedure applies to all sworn and Communications Division members of the Department.

III. BACKGROUND

- A. A police vehicle pursuit exposes the officers, fleeing violators, pedestrians, and occupants of other motor vehicles to the potential risk of death, serious injury, or damage to personal property. Officers may be subject to administrative action for negligent emergency vehicle operation and the City may be found liable in civil actions. Should improper emergency vehicle operations rise to the level of criminal negligence, officers could be subject to criminal prosecution.
- B. During a pursuit, the violator frequently refuses to give up and the officer feels an obligation to succeed in the pursuit. This psychological phenomenon can cloud one's judgment and may cause the officer to continue the chase beyond the point where common sense and good judgment would require the pursuit to be terminated.

- C. When engaged in a pursuit, officers must balance the seriousness of the violator's suspected crime against the inherent risks of engaging in a pursuit, including potential for death or injury, and the potential for damage to personal or City property if the chase is continued. Officers should not assume that all persons who flee from the police and refuse to yield are serious criminal suspects. Frequently, termination of a pursuit in the interest of safety is most appropriate.

IV. **DEFINITION**

- A. Vehicle Pursuit – an event involving one or more law enforcement officers, who are operating an authorized emergency vehicle, attempting to apprehend a suspected or actual violator of the law in a motor vehicle while the driver is using evasive tactics to avoid arrest, such as high speed driving, driving off a highway, turning suddenly, or driving in a legal manner but willfully failing to yield to the officer's signal to stop (emergency lights and siren).

V. **PROCEDURES**

- A. Initiating a Pursuit
 - 1. An officer may initiate a pursuit when a vehicle fails to yield to a police vehicle operating with emergency lights and siren activated. The officer must have probable cause to believe the driver, or occupants of the vehicle have committed an infraction or misdemeanor in his/her presence, or have probable cause to believe a felony has been, or is being, committed.
 - 2. The decision to initiate a pursuit should take into account the need to protect the public, and balance the known or suspected offense and the apparent need to immediately capture the suspect against the risks to peace officers, innocent motorists, and others. Factors to consider include: pedestrian and vehicular traffic patterns and volume; location/familiarity of pursuing officers with the area of the pursuit; time of day; speed of fleeing suspect; capabilities and condition of the vehicles involved; quality of radio communication; safety of occupant(s) of pursued vehicle; capabilities/conditions of involved personnel; weather and visibility; road conditions; and whether the identity of the suspect is known and can be apprehended at a later time.
 - 3. When a motorcycle unit initiates a pursuit, it shall be relieved when the first marked four-wheel police vehicle can assume the pursuit.

B. Participating in a Pursuit

1. A police vehicle shall not be used in a pursuit unless the vehicle is equipped with emergency lights that are activated to position three, and has a siren sounding as reasonably necessary (21055 CVC).
2. Officers engaged in a pursuit have a duty to drive with due regard for the safety of all persons using the highway (21056 CVC).
3. Only two units shall be actively involved in a pursuit unless a field supervisor, Field Lieutenant, or the Watch Commander approves additional units.
4. Uninvolved units shall remain alert to the location of the pursuit, but shall not join the pursuit unless requested by the primary pursuit unit, or if authorized by a field supervisor.
5. Officers driving vans, trucks and non-pursuit-rated sport utility vehicles should be aware that the vehicles may not handle as well as pursuit-rated vehicles. They should consider turning over the pursuit to the first available unit driving a pursuit-rated vehicle, or terminating the pursuit.
6. Officers with prisoners or non-law enforcement passengers should not engage in a pursuit unless the offender poses an immediate life threatening risk to public safety.

C. Communications Procedures and Responsibilities

When a pursuit begins, the following radio procedures will apply:

1. Communications Dispatch will announce “Emergency Traffic Only”, which will be repeated every 30-60 seconds (or as often as reasonably needed), and assign a field supervisor as the supervisor of record to assume control and monitor the pursuit. Any field supervisor may cancel unnecessary “Code 3” cover units or terminate the pursuit, when circumstances require it.
2. Communications Lead Dispatcher will notify the Field Lieutenant, and the Watch Commander; each will monitor every pursuit. The Field Lieutenant will monitor pursuits under most circumstances, when available. The Field Lieutenant and Watch Commander may order termination, if warranted.

3. The pursuing officer(s) shall remain on the original radio talk group unless directed otherwise. The second assisting unit behind the primary unit should “call the pursuit.” Whenever possible, passenger officers should operate the radio allowing the driver to concentrate on driving tactics and officer safety.
4. Once a pursued vehicle is overtaken by a law enforcement helicopter, the aircraft can assist by broadcasting ongoing radio updates along the route of travel. If a canine unit is involved in the pursuit, the radio dispatcher shall broadcast that information for officer safety purposes.
5. If an officer is requested to deploy spike strips or stop sticks, Communications must be advised of the deployment location. The dispatcher shall immediately rebroadcast this location to pursuing units accompanied by “Alert Tone 2.” This allows for pursuing units to tactically prepare for the apprehension of the suspect(s) while avoiding the tire deflation devices placed in the roadway. Communications will re-broadcast any spike strip/stop stick location updates accompanied by “Alert Tone 2.”
6. Officers not actively engaged in the pursuit should remain off the air, giving priority radio traffic to pursuing units.
7. If a field supervisor orders a pursuit to be terminated, it shall be terminated immediately. The Communications dispatcher will rebroadcast that the pursuit has been terminated.

VI. PURSuing OFFICER'S RESPONSIBILITY

- A. The initiating pursuit unit or ABLE shall state, on the radio, specific information identifying the location, direction, suspect(s), involved vehicle, what the vehicle is wanted for, the pursued vehicle’s speed, and a description of the area through which the pursued vehicle is traveling.
- B. Speed

Many pursuits begin after an officer observes a vehicle traveling at an excessive speed, while others stem from suspects attempting to evade capture for criminal activity. Pursuits frequently involve high-speed driving maneuvers as suspects attempt to evade officers. The majority of these pursuits involve one or more additional police vehicles, and result in several vehicles traveling at a speed near or greater than the speed the initiating officer identified as hazardous, or at a speed that becomes hazardous during the course of the pursuit.

Prior to pursuing a violator at high speeds, officers must evaluate the risks associated with operating the police vehicle(s), and the fleeing vehicle at high speeds. Officers must consider environmental factors when making their assessment as to whether to begin, continue, or terminate a high-speed pursuit. This assessment should include present, and potential surrounding and adjacent areas the pursuit might reach, and the hazards that multiple vehicles traveling at high speeds through the areas might pose. These areas may include, but are not limited to, nearby school zones, high pedestrian traffic areas, shopping center parking lots, public parks, street fairs, and sporting events. Officers must continually evaluate whether they should begin, continue, or terminate pursuits involving high speeds in these and all other areas in order to ensure public safety, officer safety, safety of occupants in the fleeing vehicle, and effective pursuit tactics. Officers responding to assist in a pursuit shall drive with due regard for public safety (21056 CVC).

VII. TACTICS

- A. Driving on the wrong side of a divided roadway is generally prohibited, except in the most grievous circumstances when imminent danger to life exists. Driving the wrong way on freeways is strictly prohibited. Officers shall not pursue in opposing lanes of traffic on any freeway or divided highway separated by a raised island and/or center divider. Emergency vehicle operators may not be immune from prosecution if involved in a wrong-way collision that results in injury or death (21651 CVC).
- B. Due to the extreme hazards and potential risks for serious injury, police vehicles, generally, may not be used to “box in”, “ram” or “bump” suspect vehicles in any pursuit situation. A supervisor's approval shall be obtained prior to implementing any such action.
- C. Officers shall not use a police vehicle to perform a Pursuit Intervention Technique (PIT) Maneuver under any circumstances.
- D. Only one cover unit may follow the primary pursuing unit unless additional cover units are authorized by a supervisor. The cover unit(s) shall use emergency lights and siren in compliance with 21055 CVC and 21056 CVC.
- E. When appropriate, a better-positioned unit may become the cover (second) unit. When the primary pursuit and cover unit(s) are in position, all others shall drop out of the pursuit and cease “Code 3” operation, unless directed otherwise by a supervisor.

- F. Additional units should be prepared to:
 - 1. Provide adequate cover for a pursuing unit for purposes of officer safety, keeping radio traffic to a minimum;
 - 2. Become the primary unit if the original pursuing unit loses the suspect vehicle or becomes disabled, notifying Communications that they are the primary pursuit unit; and,
 - 3. Attempt to station themselves at strategic points when the suspect is stopped.
- G. The pursuit unit(s) shall not be passed by other units unless the supervisor authorizes the maneuver. The primary pursuit unit should remain in position until the status is relinquished to another unit, either by the primary pursuit unit or as directed by a supervisor.
- H. Pursuit Conclusion and Tactics
 - 1. Pursuits are inherently dangerous for officers and the public. In order to ensure officer safety and public safety and help ensure an appropriate outcome, high-risk vehicle stop tactics (as outlined by P.O.S.T. guidelines and taught by law enforcement academies and agency-specific training) should be utilized at the end of most vehicle pursuits.
 - 2. Having sufficient personnel for a high-risk vehicle stop involved in the pursuit will allow for a safe and smooth transition from the actual pursuit into the high-risk vehicle stop tactic in an effort to safely arrest or detain the occupants of the pursued vehicle, while also maximizing officer and public safety. Depending on the circumstances, supervisors or officers at the scene should determine who will be the contact, cover, and coordinating officers when engaging in a high-risk vehicle stop.

VIII. TERMINATING THE PURSUIT

- A. Officers involved in a pursuit have the responsibility to terminate the pursuit when the benefits of immediate apprehension are outweighed by the hazards of continuing the pursuit.
- B. Officers must continually evaluate whether the seriousness of the offense and the benefits of immediate apprehension are outweighed by the risk to pursuing officers and public safety in continuing the pursuit. In determining when to terminate or discontinue a pursuit, factors to consider include:
 - 1. The seriousness of the offense for which the suspect is wanted;

2. Vehicular or pedestrian traffic safety and volume, weather conditions, traffic conditions, roadway limitations, environmental conditions, time of day, and speed;
 3. Suspect is known to be a juvenile;
 4. Suspect whose identity is known and apprehension can be accomplished at a later time, or when location of the pursuit vehicle is no longer known;
 5. Availability of air support;
 6. Results of ongoing evaluation of risk to the public or pursuing officer(s); and,
 7. The protection of the public, given the known or reasonably suspected offense and apparent need for immediate capture against the risks to the public and peace officers.
- C. Officers ordered to terminate the pursuit shall immediately discontinue “Code 3” operation and fully abandon the pursuit. Officers shall not “trail” or follow the suspect after being ordered to terminate the pursuit. Officers will return to their assigned service area while obeying all traffic laws (21052 CVC). The Communications dispatcher will rebroadcast that the pursuit has been terminated.
- D. Officers are prohibited from pursuing vehicles across the International Border into Mexico under any circumstances. Pursuits shall be terminated before reaching the Border. In order to terminate the pursuit safely before crossing the Border, the pursuit should be terminated before the last U.S. exit, (Siempre Viva for I-905 or Camino de la Plaza for I-5). Southern Division and the appropriate Border agencies will be notified by Communications of any approaching pursuits.

IX. SUPERVISORY RESPONSIBILITY

- A. Upon notification of a pursuit in progress, the field supervisor, Field Lieutenant, or Watch Commander shall verify the following:
1. Upon initiation of a pursuit, a supervisor shall proceed to the vicinity of the pursuit without becoming actively involved in it. That supervisor will assume responsibility as supervisor of record. The supervisor of record will periodically request specific information necessary to evaluate the pursuit.

2. Supervisors should respond to the location at the end of the pursuit to ensure compliance with post-pursuit reporting requirements. Supervisors should debrief officers and ensure injuries, vehicle and property damage, and any use of force are properly documented.
3. Verify the speed of the pursuit, and make a determination as to whether it is safe to continue the pursuit given the same factors used to initiate the pursuit, and any other changing factors necessary to ensure public safety, officer safety, safety of the fleeing violator(s), and effective pursuit tactics.
4. Verify that no more units than necessary are involved. The primary pursuit unit and a cover unit are usually sufficient for the actual pursuit. Additional units may be added to the pursuit only upon the supervisor's authorization. The supervisor of record must state on the air that he or she is authorizing additional units to become involved in the pursuit, and the specific number authorized. Supervisors should cancel any units operating Code 3 that have not been authorized. The additional authorized units shall identify themselves over the radio.
5. Factors to be considered by the supervisor in deciding whether to add units include the number and type of vehicles being pursued, the seriousness of the offense, the number of occupants in the vehicle being pursued and the danger occupants of the vehicle(s) being pursued continue to pose to others.
6. When more than two units are permitted to participate in a pursuit, the supervisor shall direct the additional units to discontinue the pursuit as soon as possible, based upon tactical requirements and safety aspects.
7. All field supervisors, the Field Lieutenant, the Watch Commander and the initiating/pursuing officers have the authority to terminate a pursuit when the potential safety risks outweigh the need for apprehension. If a situation arises where supervisors do not agree over whether to terminate a pursuit, the Field Lieutenant or Watch Commander shall make the final determination on whether to terminate the pursuit. Lacking a response from the Field Lieutenant or Watch Commander, the supervisor of record shall make the final determination on whether to continue or terminate the pursuit.

X. JOINT AGENCY AND INTER-JURISDICTIONAL PURSUITS

- A. County-wide pursuit protocols have been established for inter-agency pursuits within the County of San Diego (See DP 2.01 Communications, Assignment of Talkgroups and Proper Radio Procedures.) The initiating agency should generally retain jurisdiction and responsibility for a pursuit in progress, in the event the pursuit enters another agency's jurisdiction.
- B. San Diego Police Department (SDPD) units shall not join in an active pursuit initiated by another agency unless specifically requested and then only with the approval of a field supervisor, Field Lieutenant, or Watch Commander.
- C. The Communication Centers of the other agencies shall be promptly notified of any pursuit approaching their jurisdiction by the SDPD Communications Lead Dispatcher, but such notification shall not constitute a request for assistance. The primary unit or the field supervisor shall be responsible for determining if assistance is needed from another agency and shall specify what is needed to accomplish the task.
- D. The SDPD Communications Lead Dispatcher shall promptly direct pursuit assistance requests to the respective agency. Pursuing units and supervisors shall consider relinquishing the pursuit to that agency when their units are in position to assume control.
 - 1. If the primary pursuit unit wishes to relinquish the pursuit to another agency, that agency must be willing to accept it. Such acknowledgment shall be announced on the radio talkgroup in use.
 - 2. If the pursuit is actually turned over to another agency, the initiating officer shall abandon the pursuit totally, but must remain available to coordinate with the arresting units if the suspect is arrested.
- E. Except when the Canine Unit's assistance is specifically requested by the California Highway Patrol (CHP), when a pursuit enters another law enforcement jurisdiction (including military facilities), personnel of this Department shall immediately abandon the pursuit when a supervisor of that agency orders termination of the pursuit. Officers shall cease Code 3 operation and return to their service area. This includes pursuits on the freeway assumed by the CHP.
- F. In joint agency pursuits, there shall be no more than two pursuing units directly involved, including vehicles from other agencies.
 - 1. A field supervisor of this Department shall assume command of such pursuits to assess safety considerations, ensure compliance with Department policy, and coordinate with supervisors of other involved agencies.

2. The field supervisor shall direct operations for all officers involved, or transfer that responsibility to the supervisor of the agency taking over responsibility for the pursuit.
3. Whenever possible, communication between different agencies should be established car-to-car. The appropriate talkgroup will be determined by SDPD Communications. Pursuits initiated by SDPD will primarily remain on the radio talkgroup of the unit who initiated the pursuit, or any available frequency as directed by the Communications Dispatcher.
4. Pursuits initiated by other agencies, utilizing a non-SDPD dispatcher, will remain under the jurisdiction of that agency even upon entering San Diego City limits. Upon notification, the Lead Dispatcher shall select and patch an appropriate SDPD tactical talkgroup with the controlling dispatcher's agency.
5. Field supervisors, the Field Lieutenant, and the Watch Commander may order a pursuit entering San Diego City limits terminated if they recognize a condition that constitutes an immediate and life-threatening danger to the officers or public. The Lead Dispatcher shall communicate any such directive to the dispatcher of the other agency.
6. The Lead Dispatcher will format an incident for the nearest area command for which the pursuit is approaching. The incident will initially be aired on the SDPD primary talkgroup for informational purposes only. Once aired, field personnel shall monitor the appropriate SDPD tactical frequency for any and all updates, keeping the primary talkgroup and dispatcher clear for normal operations.
7. The assigned SDPD talkgroup for inter-agency incidents, when SDPD is the assisting and not the controlling agency, will be PATCH. PATCH is located in the new Standard Supervisor, Investigation, and Patrol Fleet Map Primary Zone in Mode 14.

XI. AIR SUPPORT UNIT ASSISTANCE

- A. When units become involved in pursuits, Communications shall request aerial assistance from ABLE. If ABLE cannot respond, a request should be made via radio on the LAWAIR frequency or intercom for Sheriff's ASTREA. The Communications dispatcher is responsible for notifying the Air Support Unit of all vehicle pursuits.

- B. ABLE aircrews provide valuable information to ground units concerning direction of travel, suspect actions, suspect descriptions and apprehension strategies. Aircrews should alert responding units to upcoming traffic congestion, hazards, or other factors which might endanger the safety of ground officer(s) or the public. Overall control of the pursuit shall remain with the primary ground unit and field supervisor.
- C. ABLE crews shall assist in coordinating ground resources, report on the progress of the pursuit, and provide information to assist in determining whether or not to continue the pursuit, etc. In some cases, it may be prudent to discontinue the pursuit by ground units and allow the aircraft to continue in a “tracking mode” until the suspect can be taken into custody under more favorable conditions. The aircrew shall never assume the role of the primary pursuit unit, as it is not considered an authorized emergency vehicle as defined by Section 165 CVC.
- D. The aircrew shall videotape all pursuits while on scene unless prohibited by other operations and/or safety procedures. If the pursuit supervisor determines there is a need, he or she may make arrangements with an Air Support Unit sergeant to obtain a DVD video copy of the pursuit for training, evidentiary, and/or administrative review purposes. These DVDs remain the property of the San Diego Police Department and shall not be copied or released to members of the public or media without the approval of the Chief of Police. Original video tapes of incidents recorded by ABLE are impounded at ABLE Base for evidentiary purposes.

XII. SHOOTING AT VEHICLES

Shooting at or from moving vehicles is prohibited, except when reasonably necessary to protect persons from death or serious bodily injury (DP 1.05, Firearms Procedure).

XIII. TIRE DEFLATION DEVICES/SPIKE STRIPS

- A. Any officer or supervisor actively involved in a pursuit may request a spike strip/ stop stick deployment. The Communications dispatcher will simulcast for “any available spike strip unit.” Any officer trained in the deployment of tire deflation devices should switch to the pursuit frequency and coordinate with the field supervisor in charge of the pursuit. Once the deployment location is selected, the dispatcher will advise all pursuing units of this location, accompanied by “Alert Tone 2.” Pursuing units should prepare for apprehension of suspects after the suspect vehicle has been disabled. A high-risk traffic stop should then be completed.

- B. Tire deflation devices shall not be used to stop motorcycles, mopeds, or other similar types of vehicles. In addition, they should generally not be used on any vehicle transporting hazardous materials (2402.7 CVC), any passenger or school bus transporting passengers, or any vehicle that, by design, may pose an unusual hazard to innocent parties. However, in exceptional cases, spike strips/stop stick may be justified based upon the specific circumstances involved (i.e., hijackings, kidnapping, etc.). In such cases, tire deflation devices should be considered a last resort when all other reasonable pursuit termination tactics have been exhausted.

XIV. BARRICADING ROADWAYS

- A. Barricading a roadway must be considered a use of force likely to result in death or serious bodily injury. This method may be used only as a last resort to apprehend a dangerous known felon who poses an immediate serious threat to the safety of the public.
- B. Barricading a roadway is strictly prohibited unless approved by a field supervisor, Field Lieutenant, or the Watch Commander. In the case of joint agency pursuits, barricading a roadway is prohibited unless specifically authorized by the agency having jurisdiction over the pursuit.
- C. Under no circumstances may a roadway be barricaded by occupied vehicles or vehicles belonging to private citizens. If barricading is deemed necessary, police vehicles or more suitable equipment may be used. The Communications dispatcher must notify all officers by radio broadcast of the barricaded roadway location. "Alert Tone 2" shall be used during this broadcast to alert officers of the potential hazard.

XV. GENERAL PRECAUTIONS

- A. If a police vehicle "bottomed out" during a pursuit, the driver shall inspect it for possible damage and notify a supervisor. If damage occurred, the supervisor shall direct the preparation of the appropriate documentation (i.e., Vehicle Damage and/or Collision Report). The supervisor should consider having a damage and safety inspection conducted at the police garage prior to allowing the vehicle to return to the field. Any questions regarding such incidents and reporting requirements should be directed to the Fleet Safety Sergeant.

- B. Apprehension of Suspect(s)
 - 1. At the conclusion of a pursuit, officers should use caution when attempting to apprehend an offender or their passenger(s). Safety of the public and peace officers during the effort to capture an offender are important factors. Officers must exercise self-control, and adhere to existing Department Procedures regarding the Use of Force (DP 1.04), Handcuffing, Restraining, Searching and Transporting (DP 6.01), and Crime Scene Protection and Preliminary Investigation Reporting (DP 6.06).

XVI. PURSUIT REPORTING AND ANALYSIS REQUIREMENTS

- A. Vehicle Code Section 14602.1 requires that all police pursuits, including non-collision pursuits, be reported on a California Highway Patrol Pursuit Report CHP-187A (12-05). An SDPD Pursuit Data Sheet must also be completed. A combined CHP-187A/SDPD Pursuit Data Sheet form is available on the LAN system at F:\Templates\Patrol Based Forms\Traffic Reports\CHP187 Pursuit Report.dot. A PDF version, entitled NewCHP187a.pdf. The CHP-187A/ SDPD Pursuit Data Sheet form, that can be printed and completed by hand, is available at the same location and shall be prepared on all pursuits initiated or assumed by officers of this Department.
 - 1. The driver of the unit who initiated the pursuit, or assumed the pursuit from another agency, is responsible for filling out the top half of form CHP-187A. This form shall be submitted to the driver's immediate supervisor for approval prior to the end of the officer's workday. The supervisor shall ensure the entire incident history number is entered in the box designated for "Vehicle Pursuit Number" at the top right of the form.
 - a. Identification numbers of San Diego Police Department drivers involved in the pursuit shall be included on the form (line "15"). Officers' names shall not be used. Information on officers of other law enforcement agencies shall not be listed, since other involved agencies will submit their own forms.
 - b. The reporting officer shall list up to five violations (section 25) for which the suspect/driver was arrested or cited, listing the most serious violation first. In multi-agency pursuits, this may require contacting the agency that made the actual apprehension to obtain the charge information.

2. The pursuing officer's immediate supervisor shall complete the CHP-187A/SDPD Pursuit Data Sheet form and include a brief synopsis of the event and a factual evaluation concerning compliance with the Department's pursuit policy. Violations shall be identified and listed in the report narrative. The report should be forwarded to the Commanding Officer for his/her approval and signature within three days of the incident. The original report shall be forwarded to the Fleet Safety Sergeant, Traffic Division, MS 732, within five days. Commands are not required to retain a copy of the completed report. The reporting supervisor shall complete a Blue Team entry for the incident.
 3. The Fleet Safety Sergeant is the collection point for statistical data and the repository for Department-wide pursuit reports. The Fleet Safety Sergeant conducts a post-pursuit review and analysis of each Pursuit Report, and provides feedback to area station Captains when needed. The Fleet Safety Sergeant shall provide statistical pursuit data on a quarterly basis, and shall compare current data to the prior year's activity. The Fleet Safety Sergeant coordinates with each command on pursuit report discrepancies and directs the mailing of collected CHP-187A/SDPD Pursuit Data Sheet forms to: California Highway Patrol, Production Controls, P.O. Box 942898, Sacramento, CA 94298-0001, within 30-days of the pursuit occurrence.
- B. The Communications Division shall electronically maintain a pursuit incident log (via the Computer Aided Dispatch [CAD] system).
- C. Pursuit Collision Reporting

An SDPD Traffic unit shall conduct the collision investigation of record on all injury, and non-injury traffic collisions resulting from pursuits that occur within the City of San Diego. This includes pursuits initiated by SDPD units, other law enforcement agencies, and pursuits resulting in collisions initiated by other law enforcement agencies that SDPD becomes involved in. If the collision involves serious injury or death, a Traffic Division supervisor will respond to the scene and notify the TIU Sergeant and the Fleet Safety Sergeant. The Traffic Supervisor will ensure proper resources are present for a thorough investigation and provide necessary information to the pursuit unit's supervisor for completion of a detailed Pursuit Report (CHP-187A/SDPD Pursuit Data Sheet). Traffic collisions occurring outside City of San Diego jurisdiction (freeway, other city) shall be investigated by the agency having jurisdiction unless they request SDPD to complete the official investigation.

The investigation of a traffic collision(s) in other jurisdictions resulting from a pursuit initiated by SDPD units shall be the responsibility of the agency within whose jurisdiction the collision occurs. If the other agency is unable to take the report, an SDPD Traffic Unit shall be dispatched to complete the report of record (within San Diego County only). In addition, if the collision involves an SDPD unit outside of our jurisdiction, a Traffic Unit and Traffic Supervisor will respond to complete an Administrative Investigation on a CHP-555 form.

The county-wide protocol for initiating pursuing units is for the initiating agency to handle arrests related to the pursuit, and the agency of jurisdiction to handle the collision investigation. The Commanding Officer of Traffic Division may assign Traffic Division personnel to conduct a concurrent investigation if jurisdictional issues hinder a thorough collision investigation.

XVII. MANDATORY TRAINING REQUIREMENTS

NEW

- A. Section 17004.7(b) (1) of the California Vehicle Code mandates annual vehicle pursuit training for all sworn employees. The In-Service Training Division shall ensure that every sworn employee receives pursuit training annually. The training enables the Department to maintain immunity from liability for civil **damages due to the injury or death of any person, or the damage of any property** resulting from the collision of a vehicle being pursued by an officer of this agency.

NEW

- B. Pursuant to CVC 17004.7(b) (2), Officers of a public agency must certify in writing that they have received, read and understood the Department's vehicle pursuit policies and are required annually to complete an "SB 719 Pursuit Policy Training Attestation" form. The Training Attestation Form, attesting the Officer has completed the training, shall be scanned and emailed to the In-Service Training Division.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JULY 8, 2020
NUMBER: 1.04 - ADMINISTRATION
SUBJECT: USE OF FORCE
RELATED POLICY: [1.04](#), [1.05](#), [1.06](#), [1.07](#)
ORIGINATING DIVISION: INTERNAL AFFAIRS
NEW PROCEDURE:
PROCEDURAL CHANGE: **EXTENSIVE CHANGES**
SUPERSEDES: DP 1.04 – 02/28/2020

I. PURPOSE

This Department procedure establishes guidelines on the use of force options available to Department personnel.

NEW

This procedure should be read and applied in context with Department Procedures 1.55 and 1.56.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

The San Diego Police Department recognizes and respects the value of human life, having this as its highest priority. It is the policy and practice of the Department to train its officers to perform their duties to the highest standards. Our officers perform their duties with integrity, and make decisions that are fair, respectful, lawful, and based on good judgment. However, in the performance of their duties, officers may encounter situations where the use of force is reasonable to effect a detention or arrest, to overcome resistance, or to protect themselves or others. This protection of human life recognizes that the innocent victim and uninvolved citizen are the least able to control a dangerous situation and thus must be our highest priority. Our next priority is to the officers protecting others as well as themselves.

NEW

The San Diego Police Department is committed to achieving a safe resolution to conflict whenever possible. To this end, the Department trains its officers in tactics, techniques, and strategies to control these types of incidents using time, distance, communications, and other available resources in an effort to de-escalate encounters and gain voluntary compliance. Refer to Department Procedure 1.55 De-escalation for established requirements and guidelines on the use of de-escalation techniques, crisis intervention tactics, and other alternatives to force.

NEW

Successful resolution of an encounter requires the cooperation of a subject to provide officers with the time and opportunity to employ these de-escalation techniques. While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this procedure requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

Penal Code 834a creates a duty to submit to an arrest by a peace officer. Penal Code 834a states, "If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he/she is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest."

Penal Code 148(a)(1) makes it illegal to resist, delay, or obstruct an officer's attempt to carry out his or her duties. Penal Code 148(a)(1) states, "Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge of attempt to discharge any duty of his or her officer or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment."

Penal Code 69(a) is a wobbler and may be charged as a felony or a misdemeanor, and says: "Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment."

Penal Code section 835a(b) authorizes an officer to use reasonable force to make a lawful arrest, prevent an escape, or to overcome resistance. Officers are not required to retreat or desist from their efforts by reason of resistance or threatened resistance of the person being arrested. The decision to use deadly force in response to a perceived imminent threat of death or serious bodily injury to the officer or another person is one of the most critical decisions an officer will ever be called upon to make. Only force that is reasonable to overcome resistance may be used to effect a detention or an arrest, or take a person meeting the requirements of Welfare and Institutions Code section 5150 into protective custody. Additionally, officers shall not use deadly force against a person

based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

Assembly Bill 392 amends Penal Code sections 196 and 835a. This bill states that an officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that deadly force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person, or to apprehend a fleeing person for a 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 the person is immediately apprehended.

AB392 also addresses an officer's decision making, leading up to their use of force, when given the time and opportunity to do so. When feasible, officers shall take reasonable steps in the pre-planning of responses to critical incidents, taking into consideration the need for additional officers, force options and other available resources.

The U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), acknowledged that the "reasonableness" test in analyzing the use of force is "not capable of precise definition or mechanical application." For that reason, in determining whether an officer's use of force is reasonable in a particular case, it is necessary to evaluate the facts and circumstances confronting the officer at the time that force was used. All of the surrounding circumstances will be considered, including whether the subject posed an imminent threat to the safety of the officer or others, the severity of the crime at issue, and whether the suspect actively resisted arrest or attempted to flee.

The evaluation of an officer's use of force will be undertaken from the perspective of a reasonable officer on the scene, not through the 20/20 vision of hindsight. The central inquiry in every use of force case is whether the amount of force used by the officer was objectively reasonable in light of the particular circumstances faced by the officer. When evaluating an officer's use of force, it must be understood that the officer's decision to use force is based on the totality of the circumstances known to or perceived by the officer at the time the force is used.

NEW

The Department and the community expect officers to perform their duties with integrity, and make decisions that are fair, respectful, lawful, and based on good judgment. The expectation that officers will use reasonable force also carries the responsibility for other officers to verbally and/or physically intervene if the force necessary to overcome resistance has been achieved, as required by Department Procedure 1.56 Intervention Duties.

IV. **DEFINITIONS**

A. Active Resistance – Physically evasive movements to defeat an officer's

attempt at control, including bracing, tensing, running away or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

- B. Assaultive Behavior - behavior that consists of aggressive physical opposition to being physically controlled and conveys a threat of injury to the officer; or, behavior that consists of a threat of attack conveyed through aggressive physical actions or aggressive physical actions coupled with verbal threats. Verbal threats alone do not constitute assaultive behavior. Assaultive behavior can be directed at the officer or others.
- C. Compliant Behavior - behavior that complies with the officer's verbal commands.
- D. Crowd Control and Mobile Field Force Techniques - levels of force that include close range strikes with an impact weapon. These strikes are designed to redirect or move a subject who fails to follow verbal commands. The amount of force used in delivering the strike should be reasonable given the circumstances. The intent of the technique is to move a subject backwards or to the side.
- E. Deadly Force - force that creates a substantial risk of causing death or serious bodily injury.
- F. De-escalation - encompasses a variety of strategies and/or techniques designed to reduce the immediacy of a threat, minimize the need for force, and gain voluntary compliance from a subject. Refer to Department Procedure 1.55 De-escalation for established requirements and guidelines on the use of de-escalation techniques, crisis intervention tactics, and other alternatives to force.
- G. Defending Force - the force needed to stop assaultive behavior against an officer or another person. This level of force generally involves impact strikes by the officer. Impact strikes can be delivered either by personal body weapons (e.g., hands, feet, knees, etc.) or impact weapons (e.g., PR-24, OPN, Baton, Flashlight). Due to the potential for serious injury, intentional strikes with an impact weapon are prohibited from being directed at the head, face or throat of the subject unless the subject's actions and behavior pose an imminent threat of death or serious bodily injury to the officer or others.
- H. Distraction Techniques - acts used to divert or redirect a subject's focus away from resistive behavior in order to assist the officer in gaining control of the individual. Distraction techniques may include an open-handed strike and/or knee strikes that specifically target the lower body, such as the buttock or thigh area. These are controlled strikes, using a lower level of force. These lower level types of strikes are not intended, nor likely to cause serious injury.

NEW

Personal body weapons may be used under these constraints, when lesser controlling force has not been effective, or the officer reasonably believes lesser controlling force will not be effective. If a distraction technique proves ineffective, a different distraction technique or force option should be considered.

- I. Force - the act of gaining and/or maintaining control of a subject or situation.
- J. Intervention - the act of attempting to prevent or attempting to stop the unreasonable use of force by another member. Intervene means to come between so as to prevent or alter a result or outcome. Refer to Department Procedure 1.56 Intervention Duties for established requirements and guidelines on members who observe or become aware of another member's use of unreasonable force.
- K. Life-threatening Behavior - behavior likely to cause serious bodily injury or death.
- L. Passive Resistance - behavior that consists of a refusal to comply with verbal commands and does not convey a threat of physical resistance to the officer or another person.
- M. Verbal Control - a tactic used when encountering compliant behavior. Such control consists of the officer's mere presence, requests, explanations and orders.

NEW

V. **PROCEDURES**

- A. Force, as defined above, may be used to effect an investigative detention or arrest; control a subject who is in lawful custody; prevent an escape; or, protect the officer, the subject, or another person from injury or death. Any time force is used, the officer shall apply a level of force that is reasonable for the situation.
- B. Before approaching a subject, when given the time and opportunity, and based on the totality of circumstances, officers shall use de-escalation strategies or techniques consistent with Department Procedure 1.55, De-escalation, to persuade the subject to voluntarily comply or to reduce the need to use a higher level of force. When officers encounter subjects that do not voluntarily comply, reasonable levels of force may be used to achieve a successful resolution consistent with this procedure
- C. Officers should use caution when using a takedown technique on a handcuffed prisoner. There is potential for injury since the prisoner's hands are behind his or her back, and they have no way of breaking his or her fall. If possible, when the person is handcuffed, officers should consider other controlling methods prior to a

NEW

takedown.

NEW

- D. The use of canines, Tasers, extended range impact weapons, and standard impact weapon techniques may be used to control an actively resisting subject reasonably believed to possess, or have immediate access to, a deadly weapon.
- E. Officers should maintain control of enforcement situations. Officers who are not readily identifiable as police officers, whether on or off-duty, shall identify themselves as police officers, when it is safe to do so or if identification would not jeopardize the safety of the officer or others. Additionally, where feasible, when apprehending a fleeing person for a felony that threatened or resulted in death or serious bodily injury, where the Officer reasonably believes the person will cause death or serious bodily injury to another unless immediately apprehended, Officers shall make reasonable efforts to identify themselves as peace officers and warn that deadly force may be used, prior to the use of force. Subjects should not be allowed to gain the advantage in a physical confrontation. Officers may need to use a force option which is greater than the subject's force level and which is reasonable under the circumstances.
- F. The use of force by an officer can be viewed as a matrix of force options that can be used in response to a subject's actions and behavior. It is the totality of the circumstances that an officer considers when using force. The matrix is a guide designed to assist officers in understanding how force can fluctuate and can assist officers in documenting the subsequent force used. The force matrix illustrates the relationship between a subject's actions and the officer's response.
- G. An officer's decision to use force is based upon the totality of the circumstances and various factors that pertain to officers and/or subjects. These factors include, but are not limited to, the following:
 - 1. Age;
 - 2. Availability of other options;
 - 3. Ground fighting
 - 4. Confined spaces
 - 5. Distance between subject(s) and officer(s)
 - 6. Whether the subject is under the influence of alcohol or drugs;
 - 7. Whether the subject has a physical, mental, developmental, or intellectual disability;

NEW

8. Prior contacts with the subject or awareness of any propensity for violence;
9. Whether the subject appears to be resisting, attempting to evade arrest by flight, or is attacking the officer(s);
10. Environmental factors such as location/terrain/lighting conditions;
11. Number of subjects/officers;
12. Nature of offense;
13. Opportunity/Time, provided by subject, to allow for de-escalation;
14. Proximity to weapons;
15. Size;
16. Skill;
17. Strength/endurance;
18. Language barriers;
19. Training and experience of the officer;
20. Whether the subject is armed or perceived to be armed;
21. Crowd control situations; and
22. Any other exigent circumstances.

H. Use of Firearms

1. Officers shall not discharge any firearm in the performance of their duties, except as authorized by this Department procedure.
2. No officer shall discharge a firearm in the performance of duty except:
 - a. During authorized training at a target range;
 - b. When the officer has a reasonable belief that a subject (or animal) poses an imminent threat of death or serious bodily

injury to the officer or another person;

NEW

c. When necessary to apprehend a fleeing suspect if there is probable cause to believe the suspect has committed a felony involving the infliction or threatened infliction of death or serious bodily injury, and the officer reasonably believes the suspect is armed with a deadly weapon and the suspect will cause death or serious bodily injury to another unless immediately apprehended; or,

d. As permitted by Department Procedure 6.09, Handling of Injured Animals.

3. A verbal warning to submit to the authority of the officer shall be given prior to the use of a firearm, if feasible, and if doing so would not increase the danger to the officer or other persons.

4. Officers shall exercise the utmost care in their handling and use of firearms while engaged in the performance of their duties and while exercising their option to carry a loaded and concealed weapon while off- duty. Factors that should be considered before an officer discharges a firearm include, but are not limited to, the following:

a. The life-threatening behavior perceived by the officer;

b. Immediacy of the threat;

c. Suspect(s) age, size, skill, injury, or disability;

d. Environment (field of fire);

e. The presence of and perceived capabilities of the suspect's weapon;

f. Officer's current level of training and capability with their weapon;

g. Type of crime.

NEW

5. Firearms are found to be generally ineffective in stopping vehicles. Firearms shall not be discharged at a vehicle solely in an attempt to disable the vehicle, without Incident Commander approval. Officers shall consider the ramifications when shooting at moving vehicles, such as:

a. Moving vehicles present a rapidly changing field of fire;

b. If the driver is incapacitated, the vehicle would be uncontrolled; or,

- c. The action could create a danger to the public that outweighs the need to use deadly force.
- d. Shooting through barriers such as auto glass consisting of several layers of laminated safety glass, can affect the trajectory and effectiveness of a projectile. The glass fragmentation created by the projectile travelling through auto glass exposes the officer, civilian bystanders and others inside the vehicle to the potential of serious eye, inhalation and laceration injuries.

NEW

- 6. Officers shall not discharge a firearm from a moving vehicle or at an occupant of a vehicle unless:
 - a. The officer has probable cause to believe that the subject or the vehicle poses an **immediate threat of death or serious physical harm to the officer and there is no reasonable alternative for the officer to avoid the harm**; or,
 - b. The officer has probable cause to believe that the subject or the vehicle poses an **immediate threat of death or serious physical harm to other persons**.

NEW

- 7. Officers shall not knowingly position themselves in the path of a moving vehicle and will make reasonable efforts to move out of the path of a moving vehicle when time and opportunity permit.
- 8. Warning shots present a danger to the officer and other persons. They are prohibited, except under exigent circumstances when:
 - a. The officer has a reasonable belief that a subject (or animal) poses an imminent threat of death or serious bodily injury to the officer or another person; or
 - b. The warning shot is necessary to apprehend a fleeing suspect if there is probable cause to believe the suspect has committed a felony involving the infliction or threatened infliction of death or serious bodily injury, and the officer reasonably believes the suspect is armed with a deadly weapon and the suspect will cause death or serious bodily injury to another unless immediately apprehended.
- 9. Firearms are not designed or intended for use as impact weapons and shall not be used to strike another person, except when necessary to protect the officer or another person from death or serious bodily injury.

VI. REPORTING THE USE OF FORCE

A. Officers who use force shall ensure that detailed, accurate reports (arrest, detention, or ARJIS-9) describing the force used and all the circumstances and facts surrounding the use of that force are prepared, including, but not limited to, factors listed in the Force Matrix section of this procedure. In addition, force effectiveness statistical data is also collected whenever force is used. To facilitate this, officers will complete a Use of Force, BlueTeam entry.

B. Reportable Force

For reporting purposes, the following are considered use of force incidents requiring a report:

1. Any force option, control hold, or weaponless defense technique applied to a person, or any force that causes injury or complaint of injury to either the officer or the subject being restrained;
2. Discharge of a firearm in an official capacity;
3. Discharge of a Taser;
4. Use of the baton, police nunchaku (OPN), or other impact weapons where the suspect has been struck;
5. Use of any type of chemical agent (mace, OC, etc.);
6. Use of a police service dog, when a bite or other injury occurs;
7. Use of any restraint device, to include a cord cuff, WRAP restraint device, safety control chair or restraint car seats, as outlined in Department Procedure 6.01;
8. When the officer overcomes physical resistance to applying the handcuffs;
9. Use of "specialty munitions," as defined in Department Procedure 1.36, Use of Specialty Munitions; and,
10. The pointing of a firearm at a person to gain compliance.

C. Officers who use a force option shall personally prepare the appropriate report (arrest, detention, ARJIS-9) documenting their use of force, except when an SDPD investigator interviews the officer and his/her statements (regarding the force used) are documented in the investigator's report.

- D. In the event San Diego Police Department officers are involved in a situation with an outside agency, the SDPD officer responsible for writing the report shall request documentation describing the outside agency officers/deputies use of force options.
- E. Whenever physical force used by an officer results in an injury that necessitates medical treatment of any person, the officer shall immediately contact a field supervisor (Refer to Department Procedure 6.01, Handcuffing, Restraining, Searching, and Transporting Procedures).
1. The field supervisor shall evaluate the circumstances surrounding the incident.
 2. The field supervisor shall notify the Watch Commander and/or field lieutenant.
 3. If the Watch Commander or field lieutenant deems the incident to be of significant magnitude, including but not limited to, a use of force resulting in great bodily injury, Internal Affairs shall respond and conduct an on-scene investigation.
 4. If Internal Affairs responds to the scene, the Watch Commander shall immediately telephone the Police Officers' Association and report the general nature of the incident.
 5. All statements made by the subject regarding his/her alleged or apparent injury should be documented.
 6. Photographs shall be taken to document the existence or absence of injury to the subject, officers, or other persons. Photographs shall also be taken of any damage to the clothing or personal property of the subject, officers, or other persons at the scene. The photographs shall be impounded as evidence.

VII. ASSEMBLY BILL 953

Assembly Bill 953 (AB 953), also known as the Racial and Identity Profiling Act (RIPA) of 2015, requires law enforcement agencies to collect data on all stops, detentions, and searches. This includes consensual searches and instances where force was utilized. In order to capture this data, a new application will be available for every event generated through the Department's MPS and Intranet systems beginning July 1, 2018. There is a template to collect the required data in the F: Drive under Templates/Patrol Based Forms/PD-953, if the database application is temporarily unavailable. The data documented on this form shall be entered into the electronic application prior to the end of officer's shift unless exigent circumstances exist.

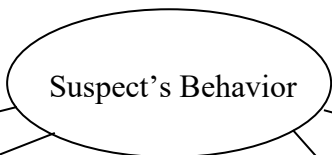
Under this mandate, the data collected will include the date, time, and duration of the stop, the location, perceived race or ethnicity, perceived gender, perceived LGBT, perceived or known disability, English fluency, perceived age, and the reason for the stop, detention, or search. The reason for the stop may be generated from a call for service, a traffic violation, reasonable suspicion or knowledge that the person was engaged, or about to engage in criminal activity and conclude with the actions taken by the officer. These actions will describe the basis of the search, whether or not contraband or other evidence is discovered, the reason for and type of property seized and the results of the stop or detention. The data collected under RIPA replaces the data previously collected from vehicle stop data cards.

- A. When completing a detention and/or arrest report, officers will ensure the narrative includes that a RIPA entry was submitted for every person being arrested or detained.
- B. Supervisors will verify officers have documented the RIPA entry in their narrative prior to approval.

SAN DIEGO POLICE DEPARTMENT GUIDELINE

Use of Force Matrix

NEW



Compliant Behavior	Passive Resistance Behavior	Active Resistance Behavior	Assaultive Behavior	Life Threatening Behavior
<p>Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p>Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p style="text-align: center;">Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p>Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.)</p> <p>Canine, Taser, Extended Range Impact (ERI) and Impact Weapons may be used as defined in section V.D. of this procedure</p> <p>Impact Weapons –Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p style="text-align: center;">Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p>Hard Impact Weapons (PR-24, OPN, ASP, flashlight) Personal Body Weapons (head, hands, elbow, knees and feet)</p> <p>Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.), Canine, Taser, Extended Range Impact (ERI) and Impact Weapons</p> <p>Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p style="text-align: center;">Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p style="text-align: center;">Firearms Hard Impact Weapons (Blows to the head, face, neck and throat are prohibited unless defending against life-threatening behavior as defined in this procedure.)</p> <p style="text-align: center;">Hard Impact Weapons (PR-24, OPN, ASP, flashlight) Personal Body Weapons (head, hands, elbow, knees and feet)</p> <p>Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.), Canine, Taser, Extended Range Impact (ERI) and Impact Weapons</p> <p>Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p style="text-align: center;">Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>

Reasonable Force Under the Totality of the Circumstances



SAN DIEGO POLICE DEPARTMENT PROCEDURE

DATE: JANUARY 2, 2018

NUMBER: 1.06 - ADMINISTRATION

SUBJECT: USE OF LIQUID CHEMICAL AGENT

RELATED POLICY: 1.04, 1.06

ORIGINATING DIVISION: TRAINING AND VOLUNTEER SERVICES

NEW PROCEDURE:

PROCEDURAL CHANGE: **EXTENSIVE CHANGES**

SUPERSEDES: DP 1.06 – 04/11/2014

I. PURPOSE

This Department procedure establishes guidelines on the use of liquid chemical agents.

II. SCOPE

This procedure applies to all members of the Department.

III. PROCEDURES

A. Guidelines for Use:

1. Oleoresin Capsicum (OC) shall be carried by all uniformed personnel who are authorized to use liquid chemical agents in the performance of their duties.
2. OC may only be used on a person who is engaged in active resistance, assaultive behavior, or life threatening behavior. Department Procedure 1.04, Use of Force, describes the various levels of resistance and assaultive behaviors.
3. OC may only be used on handcuffed prisoners who are violent, are about to cause or are causing injury to themselves or others, or are causing damage to property.

4. OC should not be used on a person who is completely restrained in a safety control chair.
5. Generally, OC should not be used to disperse a crowd without the approval of the on-scene field supervisor or the incident commander. In a crowd control situation, it is imperative that officers respond in a coordinated manner.
6. OC may be used on a spitting person in order to gain control and/or when applying a spit-sock.

B. Directions for Use of the First Defense Liquid Chemical Agent

1. The Def-Tec Mark – 4 (3 oz. canister), can be used with accuracy and effectiveness from three to twelve feet in calm, still air. The Mark IX (12 oz. canister) is generally limited for use in crowd control situations requiring larger amounts of liquid chemical agent.
2. To be effective, the OC stream should be directed across the brow of the subject's face. The spray will cause involuntary closing of the eyes, as well as swelling of the mucous membranes. Effects generally last 20 to 30 minutes.
3. The OC is mixed with a liquid carrier and deployed from a pressurized container. The agent is discharged from the container in a stream and can cause damage to soft tissues of the eye. Generally, officers using OC should not spray the liquid chemical agent at a subject's face from a distance of less than three feet.

C. Reporting the Use of a Liquid Chemical Agent

1. Any officer who uses a liquid chemical agent shall complete a detailed and accurate report concerning the circumstances of its use. In the event an on-scene supervisor authorizes the use of liquid chemical agents, that supervisor shall be responsible for ensuring that appropriate reports are submitted. This information shall be contained in an Arrest Report (ARJIS-8) if an arrest is made, or in an Officer's Report (ARJIS-9) if an arrest is not made. In addition, officers will document the incident as a use of force in BlueTeam and send it up the chain of command. Refer to Department Procedure 1.04, Use of Force, for further details on reporting procedures.

D. Medical Treatment

1. Any Department member who uses a liquid chemical agent shall ensure that appropriate treatment is administered.
2. Any member who uses a liquid chemical agent shall render first aid according to the following manufacturer's guidelines:
 - a. Flush the subject's eyes with large amounts of cool water;
 - b. Expose the subject's face and eyes to fresh air;
 - c. If contact lenses are worn, have the subject or qualified medical personnel remove them. Contacts may be contaminated and require discarding;
 - d. Avoid rubbing the contaminated area; and,
 - e. Do not apply creams, salves, oils, or lotions as they may trap the agent on the skin.
3. First aid treatment should be rendered as soon as possible. It must be done within 30 minutes of applying the chemical agent unless exigent circumstances make the treatment impractical. If the subject voices objection or physically resists, the officer shall make a reasonable attempt to persuade the subject to allow decontamination prior to transporting from the scene.
4. Officers shall document, in the appropriate report, the type of first aid given (and/or attempted) and the time aid was rendered.
5. The arresting or transporting officer shall inform receiving personnel at County Jail, Juvenile Hall, or the San Diego County Psychiatric Hospital whenever a liquid chemical agent has been used on a subject being admitted. The officer shall also advise whether first aid was administered.

E. Control and Issuance of Liquid Chemical Agents

1. Department members are responsible for the liquid chemical agent equipment issued to them and shall not loan or give this restricted equipment to persons outside the Department.
2. Department members will go to Operational Support to obtain a replacement for empty or expired OC spray. Commanding Officer approval is not necessary.

NEW

3. Department members who need to replace a liquid chemical agent shall do the following:
 - a. Return empty or damaged canisters to Operational Support for proper disposal and a replacement canister. After business hours, return empty or damaged canisters to the Watch Commander's Office and, if available, a replacement canister will be issued.
 - b. Report any theft or loss of issued liquid chemical agent on a Crime Report (ARJIS-2). A copy of the report will be forwarded to the Records Division.
4. Commanding Officers are responsible for quarterly inspections of issued safety equipment. All liquid chemical agents shall be checked at least once during each of the scheduled inspections.
5. As required by law, serial numbers and other marks of identification must remain on liquid chemical agent canisters. Personnel shall not remove any label or marks of identification from any chemical agent container.

NEW

IV. CIVILIAN MEMBER OLEORESIN CAPSICUM (OC) PROCEDURES

- A. Civilian members of the Department may be authorized to carry Oleoresin Capsicum (OC) during the course of their duties and within the scope of their City employment at the discretion of the Chief of Police. State legislation allows any person to purchase, possess, and use OC without prior authorization or training. However, the City of San Diego must ensure that any City employee who carries OC in the course of his or her work with the City does so in a safe and responsible manner.
 1. No civilian member may carry OC during the course of his or her duties and while employed by the Department unless directly approved by the Chief of Police and only after successful completion of the In-Service Training Unit OC certification course for civilian employees.
 2. Civilian members shall not be issued Department OC unless directly approved by the Chief of Police.
- B. Civilian members of the Department who receive approval from the Chief of Police to carry OC during the course of their duties shall conform to the following procedures:
 1. Civilian members assigned to specific duties shall conform to all OC qualification standards as outlined in the In-Service OC Training certification course.

2. Civilian members authorized by the Chief of Police to carry OC shall carry only Department-approved and issued OC while on duty.
 3. The authorization to carry OC during the course of City employment shall only be for the duration of the specific assignment and/or duties that justify the approval of the original authorization.
- C. Civilian members of the Department authorized to carry OC shall not discharge OC in the performance of their duties except under the following circumstances:
1. During OC training at a location approved by the In-Service Training Unit.
 2. Self-defense: When the civilian employee has a reasonable belief that a subject (or animal) poses an imminent threat of death or serious bodily injury to them or another person.
 3. To counter assaultive or life-threatening behavior.
- D. Civilian members are responsible to maintain the security of all Department-issued equipment. Civilian employees shall follow the guidelines below when possessing or securing their OC spray:
1. Department lockers and desk drawers containing OC shall be kept securely locked.
 2. Civilian members shall not leave OC canisters unattended at any time.
 3. Off-duty civilian members shall store their OC in accordance with any applicable state and/or federal laws.
 4. When not being used on-duty or transported off-duty, civilian members shall ensure their Department-issued OC is in a secured area to prevent unauthorized use or misuse.

SAN DIEGO POLICE DEPARTMENT PROCEDURE

DATE: APRIL 10, 2020

NUMBER: 1.07 – ADMINISTRATION

SUBJECT: USE OF TASERS

RELATED POLICY: [1.04](#), [1.07](#)

ORIGINATING DIVISION: TRAINING/VOLUNTEER SERVICES

NEW PROCEDURE:

PROCEDURAL CHANGE: **MINOR CHANGES**

SUPERSEDES: DP 1.07 - FEBRUARY 18, 2016

I. PURPOSE

This Department procedure establishes guidelines for the proper use of Tasers.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

The Taser is a force option that is intended to temporarily incapacitate subjects to enable officers to gain control over them. The Taser is an electronic conducted energy device that affects a person's sensory and motor nervous systems.

The Taser fires two probes from a replaceable cartridge. A compressed nitrogen capsule located inside the cartridge propels both cartridge probes. These probes are connected to the Taser by thin insulated copper-clad steel wires. When the probes make contact with the target, approximately 1200-2500 volts of electricity pass between the probes affecting the person's sensory and motor nervous systems, capable of causing temporary incapacitation. The Taser is equipped with a laser sight to allow for greater accuracy in both daylight and darkness.

IV. DEFINITIONS

A. Taser Use

1. Probes Fired - probes are fired at a subject while being discharged.
2. Drive Stun - the device is placed in contact with the subject.

B. A subject is considered “Tasered” when electricity from the Taser, however slight, is delivered into their person via probes or drive stun. A single Taser probe penetrating skin, however slightly, is considered “Tasered” and the subject is to receive medical care as described in section VI., B.

C. Full Cycle - A full cycle of Taser deployment is five seconds.

NEW

V. APPROVED TASERS

The following Tasers have been approved for Department use:

A. The Taser International Model X-26 and X-26P - hand-held remote stun systems that are operated by digital power magazines.

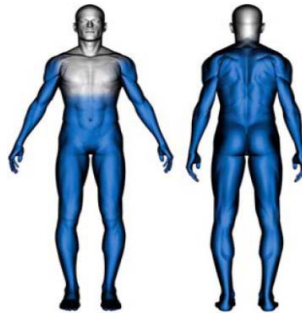
Both the X-26 and X-26P use a silver cartridge, which is effective from point blank to 21 feet, with the optimal range being 7-15 feet.

VI. PROCEDURES

A. Taser use includes either drive stun mode or probes fired. Generally, the cartridge should remain on the Taser when delivering a drive stun. A drive stun is more effective after deploying the probes onto a subject. The following are guidelines for the use of the Taser:

1. **The Taser may be used on subjects exhibiting assaultive behavior or life-threatening behavior, as defined in Department Procedure 1.04, Use of Force. The Taser may also be used to control actively resisting subjects reasonably believed to possess or have immediate access to a deadly weapon.** Commands and warnings should normally be given, if feasible, prior to using the Taser.
2. Officers should evaluate whether the use of the Taser is reasonable based upon all the circumstances, including the subject’s age or physical condition. In some cases, other control techniques may be more appropriate, as determined by the subject’s threat level to others.

3. The Taser may be used more than once on a subject if reasonable to gain control over the subject. If the officer is unable to gain and maintain control of the subject after two cycles, officers should consider other appropriate force options to respond to the threat level presented. Repeated, prolonged, and/or continuous exposure(s) should generally be avoided.
4. Cover officers should be prepared to take control of the subject while the Taser is cycling. Officers may make contact with the subject while the Taser is activated, as long as caution is taken not to touch the subject between the locations of the two probes.
5. The Taser shall not be used on a handcuffed subject, unless the subject displays life-threatening behavior.
6. The Taser should not be used when the subject is in danger of falling from a significant height, unless the subject displays life-threatening behavior.
7. When possible, the Taser should be aimed at the lower center mass of a subject during frontal deployments. Back shots are still very effective and should be targeted when available. The device may be aimed at any part of the body if the subject displays life-threatening behavior. The following silhouette depicts the shaded, preferred targeting area.



8. The spark from a Taser can ignite flammable liquids, vapors, or sensitive explosives. For fire safety reasons, officers should consider the immediate environment when choosing to use the Taser. The Taser should not be fired at anyone sprayed with an alcohol-based chemical spray, including alcohol-based pepper sprays, as the fumes could ignite. The San Diego Police Department only issues water based OC Spray that will not be ignited by the Taser. The Taser will not ignite standard solids or black gunpowder.
9. Uniformed officers issued a Model X-26 or X-26P Taser shall carry it on their duty belt in a Department-approved holster at all times while on duty. Tasers will be carried on the opposite side from the firearm.
10. Non-uniformed officers carrying a Model X-26 or X-26P Taser will carry it in a Department-approved holster on the opposite side from the firearm.

11. When used in drive stun mode, the unit shall not intentionally be placed on the subject's face, neck, head, or groin, unless the subject displays life-threatening behavior. Caution should be exercised by the officer when using the "drive-stun" mode, as the unit could be used to incapacitate the officer if the subject were to gain control of the unit.
12. Although the Taser will normally immobilize a subject within two to three seconds, officers should allow the Taser to activate for a full cycle unless it appears the subject is in medical distress.
13. Only officers who have successfully completed Department-approved Taser training are authorized to carry and use a Taser.

B. Medical Treatment and Transportation

NEW

1. As soon as the subject stops resisting and is handcuffed, and when safe to do so, an officer shall immediately monitor the subject's vital signs. The following first aid should normally be administered to subjects who have been tasered:
 - a. Roll the subject onto his/her side or into a sitting position;
 - b. Monitor breathing, and if necessary, establish an airway;
 - c. Check the pulse at the wrist;
 - d. Check the subject's facial skin color (gray or blue tint is a sign of severe medical distress); and,
 - e. Determine if the subject is functionally conscious (exhibiting voluntary movement, ability to converse and awareness of place, time and date).

Officers should make every effort to avoid contacting the probes when administering first aid to a person who has been tasered.

2. Tasered subjects, whether by probes or drive-stun, shall be transported to a contract hospital for a medical examination prior to booking or final disposition. The decision to transport a subject by police vehicle or to request paramedics should be based on the officer's judgment as to which option will provide the fastest access to professional medical care, based on the circumstances. A subject tasered more than once, whether by probes or drive stun, shall be transported by paramedics.

3. After the subject has been handcuffed and is secure, officers should sever the wires and leave the probes imbedded in the skin. Only qualified medical personnel may remove probes imbedded in the skin.
4. If paramedics transport the subject, at least one officer shall accompany the paramedics during transport to assist in the event the subject becomes violent.
5. Tasered subjects who are also suspected of being under the influence of any drug shall be transported to a contract hospital in the following manner:
 - a. Two officers shall make the transport with the passenger officer continually monitoring the subject's respiration, skin tone, and level of consciousness.
 - b. If, during transport, a medical problem arises, officers shall either request paramedics and administer appropriate first aid until they arrive, or administer appropriate first aid and transport the subject to the nearest emergency medical facility.

VII. REPORTS

- A. Officers shall document the circumstances surrounding the use of the Taser in accordance with Department Procedure 1.04, Use of Force (VI., A). Reports shall include the serial numbers of the Taser and the cartridge used.

VIII. IMPOUND PROCEDURE

NEW

- A. After a discharge of the taser probes, officers shall impound the taser cartridge, the two probes, and the wires. The blast doors and some of the Anti-Felon Identification tags (confetti) may be impounded if recoverable. Officers shall place the probes back inside the cartridge with the barbs facing inward prior to impounding. Bundle the wires and place everything inside a property bag. If there are any bodily contaminants on the probes, treat them as a biohazard and follow proper impounding procedures in Department Procedure 3.02.

IX. MAINTENANCE/ACCOUNTABILITY

- A. The Operational Support Administration will maintain Tasers.
- B. All requests for repairs or replacement of inoperative or damaged units shall be forwarded to the Operational Support Administration.

- C. Officers needing a replacement for an expended Taser cartridge shall bring a copy of all reports relating to the discharge (e.g. arrest report or ARJIS-9) to the Operational Support Administration. The Operational Support staff will ensure all required information is listed prior to issuing a new cartridge. Officers needing to replace a defective or expired cartridge must bring the cartridge to the Operational Support staff in order to get a replacement.
 - 1. In the case of an officer needing a replacement Taser cartridge as a result of an unintentional discharge, a supervisor must bring the expended cartridge to the Operational Support Administration. The Operational Support staff will ensure all required information is listed prior to issuing a new cartridge.
- D. Lost Tasers or cartridges will require an ARJIS-9 signed and reviewed by the officer's supervisor in order to receive replacement. Employees who lose or damage equipment through abuse or negligence will be held financially responsible for the replacement or repair costs of the item.
- E. All Tasers shall be inspected pursuant to the Police Department Inspections Guide.

X. FUNCTION TESTING

- A. Officers shall conduct a daily spark test prior to their shift to ensure the devices are in proper operating condition.
 - 1. The following is the procedure for conducting a spark test on the Taser Model X-26 and X-26P:
 - a. Prior to performing the spark test remove the Taser cartridge from the cartridge bay (the cartridge needs to be more than 2 inches from the Taser to avoid the possibility of static discharge inadvertently firing the cartridge). Point the Taser in a safe direction, then pull the trigger and let it cycle for a full five seconds. Each subsequent spark test conducted during the officer's remaining work week can be one second or less.
 - b. Prior to reloading the Taser for duty use, ensure the safety is in the on position.
 - c. Officers should note if there is a delay between the trigger pull and the first spark. If the spark does not occur immediately upon full compression of the trigger, the device may be unreliable. In those circumstances, officers shall take the device to Operational Support Administration and exchange it at the earliest possible time.

XI. TRAINING

- A. The Training Division is responsible for all aspects of Taser training and certification. The Training Division will maintain a list of certified Taser instructors and certified Taser operators.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JUNE 06, 2021

NUMBER: 1.10 - ADMINISTRATION

SUBJECT: CITIZEN COMPLAINTS, OFFICER-INVOLVED SHOOTINGS, AND IN-CUSTODY DEATHS; RECEIPT, INVESTIGATION, AND ROUTING

RELATED POLICY: 1.10

ORIGINATING DIVISION: INTERNAL AFFAIRS UNIT

NEW PROCEDURE:

PROCEDURAL CHANGE: **EXTENSIVE CHANGES**

SUPERSEDES: DP 1.10 – 6/05/2015

I. PURPOSE

This Department procedure establishes guidelines for receiving citizen complaints and identifies the assigned responsibilities in investigating citizen complaints, officer-involved shootings, and in-custody deaths. Information on how to conduct investigations and interviews is in the Internal Affairs Unit Operations Manual.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

A. The community must have confidence in the integrity of the Department, particularly in the exercise of police powers. Allegations of misconduct against members of the Department and complaints of inadequate service are taken seriously and are investigated thoroughly and expeditiously.

B. Department members are often subjected to intense pressures while performing their duties. Members frequently are required to remain neutral under circumstances that are likely to generate considerable tension, excitement, and emotion. In such situations, words, actions, and events occasionally result in misunderstandings and confusion. A sound internal procedure for thorough and impartial investigations of allegations arising out of such circumstances is

NEW

important to each member of the Department. Resolving complaints in a fair, impartial, and expeditious manner will ensure the consistent high level of integrity and efficiency maintained by the Department.

IV. **DEFINITIONS**

A. Category I complaints - all citizen complaints or allegations lodged against Department members, including volunteers, which involve one or more of the following:

NEW

1. Arrest - an allegation that a Department member knew, or should have known, that there was insufficient probable cause for an arrest. Included is an allegation that a Department member knew, or should have known, that there was insufficient information for a detention. .

2. Criminal conduct - an allegation of Federal, State, County, or Municipal law violation(s).

NEW

3. Discrimination - an allegation of unequal treatment due to a subject's protected classification, such as gender (including gender identity and gender expression), race, color, ethnicity, national origin, ancestry, religion, physical or mental disability, medical condition (including cancer, HIV, and AIDS), age, political beliefs or affiliation, marital status, sexual orientation, lifestyle, or similar personal characteristics.

4. Force - an allegation that more force was used than reasonably necessary. Threats of force are not included.

5. Slur - an allegation of a derogatory term that a reasonable person would recognize as an inherent insult or degradation of another, based upon the subject's gender (including gender identity and gender expression), race, color, national origin, ancestry, religion, physical or mental disability, medical condition (including cancer, HIV, and AIDS), age, political beliefs or affiliation, marital status, sexual orientation, lifestyle, or similar personal characteristics.

NEW

6. Search - an allegation a Department member made a search of a person, home vehicle or property without proper justification. Included are allegations of bad faith Fourth Amendment searches.

B. Category II complaints - allegations limited to one or more of the following:

1. Service;

2. Courtesy;
3. Procedure;
4. Conduct; or,
5. Other (specify).

NEW

C. BlueTeam - computer application used to route sworn members': use of force incidents, pursuits, complaints, employee involved collisions, firearms discharge, missed court, missed Department shoots, as well as complaints of misconduct for all Department members. Blue Team is a routing software platform and does not store information or investigations. Any data within Blue Team related to the EHS program is governed by Department Procedure 5.24 and only involves sworn members.

NEW

D. IAPRO - computer application where information routed through BlueTeam is stored. (Refer to Section X Central Complaint Index.)

NEW

E. Informal Resolution - complainant has agreed to have their complaint handled informally with an identified Department member. The complainant is aware no formal investigation will be conducted. Complaints that are resolved informally are not forwarded to the Commission on Police Practices, for review.

NEW

F. Miscellaneous - a complaint where no allegation is specified, no Department member is specified, or the complainant is questioning police procedure(s).

NEW

G. Subject Department members - personnel, sworn or civilian, against whom a complaint is made, who is the subject of an investigation.

NEW

H. Withdrawal - resolution where the complainant withdraws the complaint - and acknowledges no further investigation is warranted, wanted, or necessary.

NEW

I. Witness Department members - personnel not suspected of wrongdoing in a complaint but are witnesses or potential witnesses to an incident involving a complaint.

V. CITIZEN COMPLAINT PROCEDURES

A. BlueTeam

NEW

NEW

NEW

NEW

1. When the Department receives a citizen's complaint, it will be entered into the BlueTeam system. This will facilitate the accurate maintenance of all complaint investigations and ensure accurate statistical data.

2. Upon receiving the BlueTeam entry, the Internal Affairs Unit will notify the complainant in writing, that the complaint has been received.

a. It is essential that the information obtained from the complainant is complete and accurate regarding the specific complaint and allegation(s). The information should include:

i. The full name, address (including zip code), and telephone numbers (home and/or cell, and work) of the complainant, as well as any additional information, including an email address, indicating where the complainant may be contacted in the future. Complete military addresses are required from military personnel.

ii. The specifics of the allegation, including the date, time, and location of the incident.

iii. The names, addresses, and telephone numbers of all known witnesses.

iv. The police personnel involved should be identified by name, unit, and ID number, if possible. If the Department member(s) is not identified on the original complaint, the investigating supervisor will immediately notify the Internal Affairs Unit of the involved Department member(s) once his or her identity is determined.

NEW

b. Obtain evidence produced by the complainant, request the complainant preserve evidence, or identify the location of potential evidence.

NEW

B. Accepting Citizen Complaints

1. The following offices receive citizen complaints:

a. Office of the Chief of Police;

b. Internal Affairs Unit;

- c. Area Commands;
- d. Mayor's Office; and,
- e. Commission on Police Practices.

NEW

- 2. Any citizen complaint, regardless of category, may be lodged at any police facility, at any storefront, at the City Administration Building (Mayor's Office), at several community-based organizations, or with any member of the Department. Complaints will be accepted in writing (by letter, fax, or email), in person, or by telephone.
- 3. If a citizen requesting to lodge a complaint confronts a Department member, that member will contact a supervisor. The supervisor will immediately contact and interview the complainant and record the specific complaint(s). Officers assigned as a liaison with community-based groups have the authority to record complaints and are required to document complaints brought to their attention in the same manner as supervisors.

NEW

- 4. When a citizen calls Communications Division expressing concerns regarding the actions of a Department member or the service delivered by the Department, Communications personnel will format the call as a Citizen Complaint. A field supervisor will make contact with the citizen and determine if an explanation or clarification of a policy will resolve the citizen's concerns.

NEW

- a. If the responding supervisor cannot satisfy the citizen's concerns, the supervisor must complete a BlueTeam entry prior to the end of the shift, attach all necessary documents, and route it via the chain-of-command to the commanding officer. The commanding officer will review the complaint and forward it to the Internal Affairs Unit.

NEW

- b. If the responding supervisor satisfies the citizen's concerns at that time, the supervisor must complete a BlueTeam entry prior to the end of shift. The supervisor shall write a memorandum to his or her commanding officer regarding the incident and route it through the chain-of-command. The memorandum should include sufficient detail to document the citizen's concern(s) and resolution.

NEW

- i. If there are named officer(s) in a complaint of alleged misconduct and the complainant agrees to an Informal Resolution, the memorandum should be identified as an Informal Memorandum.

NEW

- ii. Officers named in an Informal Memorandum shall be made aware of the existence of the Memorandum and afforded the opportunity to initial or sign the Memorandum acknowledging its existence, pursuant to Government Code section 3305. If the officer refuses to sign the Informal Memorandum, that fact shall be noted on the Memorandum and signed or initialed by such officer.

Non-sworn Department members are not required to sign any informal memorandums involving complaints.

NEW

- iii. If no officers are identified, there are no specific allegations of misconduct, or the complainant is questioning Department Policies or Procedures, the memorandum will be identified as a Miscellaneous Memorandum. No officers will be identified and consequently no initials or officer signature(s) are required.

NEW

- c. The commanding officer will review the completed memorandum and shall sign or initial the memorandum thereby approving the handling of the complaint informally or as a Miscellaneous. The memorandum will be returned to the completing supervisor to be attached electronically to the BlueTeam entry. The assigned supervisor will attach all relevant documents to the BlueTeam entry. The BlueTeam entry will be forwarded electronically to the commanding officer via the chain-of-command for forwarding to the Internal Affairs Unit.

NEW

- d. Relevant Body Worn Camera (BWC) files are often too large to be attached in BlueTeam. In those cases, the relevant BWC files shall be copied to a CD and hand carried to Internal Affairs for the command's Internal Affairs liaison to attach.

NEW

- e. If a supervisor chooses to refer a citizen to another supervisor who may have more information regarding the complaint, the citizen must agree to this referral. If the citizen agrees, the original supervisor shall add the following comments to the CAD incident:

- i. The name and ID number of the second supervisor;

NEW

- ii. That the complainant was referred to the second supervisor; and,
 - iii. The second supervisor was notified of the incident via email.

NEW

iv. The second supervisor shall reopen the CAD incident and complete the BlueTeam entry process outlined previously in this procedure.

5. When a citizen comes to the Headquarters building to file a complaint during the hours of 0800 to 1700 on weekdays, a supervisor from the Internal Affairs Unit will meet with the citizen and record the complaint. On weekends and holidays and during the hours of 1700 to 0800 on weekdays, the procedures outlined previously in this section will be followed.

C. The Means by Which Citizen Complaints are Made

1. Complaints Made in Person

a. The authorized Department member will take the information and determine the specific nature of the allegation(s).

b. The member will repeat the allegation(s) to the complainant.

c. The member will complete the BlueTeam entry.

d. The member will route the BlueTeam entry electronically to the commanding officer via the member's chain-of-command.

e. The commanding officer will forward the BlueTeam entry electronically to the Internal Affairs Unit.

f. The Internal Affairs Unit will send an acknowledgment letter, and a self-addressed, postage-paid return envelope to the complainant.

g. The complaint will be assigned for investigation in accordance with existing procedures.

2. Complaints Made in Writing (by letter, by fax, or by email)

Written documentation (letters, faxes, email, route slips, civil summons, claims, etc.) that allege Department member misconduct will be handled in the following manner:

a. The assigned supervisor will enter all available information into BlueTeam and attach the written correspondence to the BlueTeam entry. The narrative portion should read, "See attached correspondence." The BlueTeam entry will be routed to Internal Affairs via the chain of command.

NEW

NEW

NEW

NEW

NEW

NEW

- b. The Department member will forward the original letter (copy of the route slip, civil summons, etc.) to the Internal Affairs Unit.
- c. The Internal Affairs Unit will send an acknowledgment letter, and a self-addressed, postage-paid return envelope to the complainant, when necessary.
- d. The complaint will be assigned for investigation in accordance with existing procedures.

NEW

3. Complaints Made by Telephone

- a. The authorized Department member will take the information and determine the specific nature of the allegation(s).
- b. The member will repeat the allegation(s) to the complainant.
- c. The member will complete the BlueTeam entry and forward it to the Internal Affairs Unit via the chain-of-command.
- d. The Internal Affairs Unit will send an acknowledgment letter, and a self-addressed, postage-paid return envelope to the complainant.
- e. The complaint will be assigned for investigation in accordance with existing procedures.

NEW

NEW

4. Third Party Complaints Accepted by the Department

- a. Complaints made on behalf of another person will be accepted by the Department.
- b. Complaints can be made in person, in writing, or by telephone.
- c. Applicable procedures discussed in this procedure must be followed when receiving third party complaints.

NEW

D. Department Initiated Internal Investigations

- 1. Department Initiated Internal investigations are those investigations conducted when someone other than a citizen alleges misconduct by a Department member (e.g., another Department member or another law enforcement agency).
- 2. A Department member who suspects criminal conduct by another member normally makes the complaint through his/her chain-of-command.

NEW

However, the Department member may contact a Lieutenant from the Internal Affairs Unit directly.

NEW

3. BlueTeam entries are not used for command internal investigations. Depending on the nature of the allegation(s), internal investigations may be conducted by the subject member's command or by the Internal Affairs Unit.

VI. INFORMAL COMPLAINT ROUTING VIA BLUETEAM

NEW

Depending on the seriousness of the allegation, often times when all parties involved have had a chance to reflect on the incident, a complaint can be resolved after the fact, often times by the subject Department member's direct supervisor.

NEW

- A. Most Category II complaints entered into BlueTeam are generally routed to the subject Department member's(s') command for review and an opportunity to contact the complainant to determine a formal or informal resolution.

NEW

- B. Assigned supervisors shall contact the complainant, and depending on the nature of the allegations, in light of the evidence shown on BWC, or any other evidence available, explain the formal and informal process as well as offer the complainant an opportunity to withdraw the complaint. (Supervisors are authorized to show complainants BWC in order to resolve a complaint pursuant to Department Procedure 1.49-Axon Body Worn Cameras.)

NEW

- C. If the assigned supervisor is able to resolve the complaint informally, the assigned supervisor shall complete an Informal Memorandum as noted in Section V. (B) (4) (b) (i). If the complainant chooses to withdraw the complaint, the assigned supervisor shall complete a memorandum stating the desire to withdraw the complaint.

NEW

- D. The decision to handle a complaint informally or withdraw the complaint will rest with the complainant and should be recorded whenever possible. The complainant shall be told there will be no further investigation and should acknowledge their understanding as such. The assigned supervisor will have 30-days to resolve the complaint and complete the memorandum.

If the complaint involves a non-sworn Department member and is resolved informally, the supervisor shall write a memorandum to his or her commanding officer regarding the incident and route it through the chain-of-command. The memorandum should include sufficient detail to document the citizen's concern(s) and resolution. Once routed to the Internal Affairs Unit, via the Commanding Officer or their designee, the complainant information and resolution will be retained, but the non-sworn Department member's information, such as name, ID number, and other identifying information/etc., will be redacted.

NEW

E. If the complainant desires a formal investigation, the assigned supervisor shall contact the Internal Affairs Unit.

NEW

1. Category II allegations will be assigned a new due date, 60 days from the date the complaint was received.

NEW

a) The assigned supervisor will notify their chain-of-command the complaint will be handled as a formal investigation.

NEW

b) Generally, the assigned supervisor will retain responsibility to complete the investigation, unless it is reassigned by the commanding officer.

NEW

2. Category I allegations will be routed through the chain-of-command via BlueTeam to Internal Affairs.

NEW

a) An Internal Affairs supervisor will be assigned the formal investigation unless approved to be investigated at the command by an Internal Affairs Lieutenant.

NEW

b) A new due date will be assigned by Internal Affairs, 90 days from the date the complaint was received.

VII. INVESTIGATION PROCEDURES

A. Investigation of Complaints

1. The Internal Affairs Unit is responsible for investigating Category I complaints, as well as reviewing all officer-involved shootings and in-custody deaths.

NEW

2. In most cases, when a Category I complaint is initiated, the Internal Affairs Unit will notify the subject Department member's commanding officer through a memorandum.

3. Investigations of Category II complaints will be the primary responsibility of the command involved. However, the Internal Affairs Unit may choose to conduct investigations of Category II complaints when personnel from more than one division are involved and/or the investigation would be too time-consuming for field supervisors. An Internal Affairs Unit Lieutenant should be contacted prior to forwarding such a complaint to the Internal Affairs Unit. Category II allegations, which accompany Category I complaints, will be investigated by the Internal Affairs Unit.

NEW

4. Once a Department member is identified as the subject of a complaint and an administrative investigation has begun, the supervisor assigned to the investigation and the command will follow the investigation through to a logical conclusion, even if the subject member or the supervisor is transferred to another command during the investigation.
5. A supervisor will promptly investigate complaints against Department members. Personnel working out-of-class assignments should not investigate complaints without the approval of their commanding officer.
6. Category II investigations conducted by a command shall be completed within 60 calendar days from the date the complaint was received by the Department.

NEW

7. If it is not possible to complete the investigation within 60 days, the investigating supervisor shall notify an Internal Affairs Unit Lieutenant of the delay. Extensions may only be granted by an Internal Affairs Unit Lieutenant. A new due date will be assigned if the need for the extension is reasonable and justified. If more than one extension is sought, an Internal Affairs Unit Lieutenant shall be notified of the reason for the delay and will grant a new extension only if appropriate. Commanding officers will be contacted by the Internal Affairs Unit and advised about late investigations.
8. Category I complaints shall be completed within 90 days. Only an Internal Affairs Unit Lieutenant may grant extensions.

NEW

9. All recognized investigative methods for determining the facts surrounding a complaint may be used. These methods may include, but are not limited to:
 - a. Canvassing by the investigator to find all witnesses;
 - b. Obtaining photos or videos, as appropriate, of the scene;
 - c. Obtaining photos of injuries, or lack thereof, when appropriate; and,
 - d. Recording other physical evidence.

NEW

10. Every attempt will be made to interview the complainant, witnesses, and all Department members involved in the incident. The complainant may be accompanied by a support person of his or her choice (excluding other parties or witnesses to the complaint) during interviews. All interviews of sworn personnel shall be recorded. All interviews of civilians should be audio-recorded whenever possible. If the interview is not audio-recorded,

the investigating supervisor shall document the reason in the report. The exceptions are:

- a. Civilian complainants and witnesses may decline to be recorded.
- b. Municipal Employees Association (MEA) represented employees may decline to be recorded.

NEW

11. If interviewees do not wish to be audio-recorded, the handwritten notes of the interview must be included with the completed investigation. Basic interviewing practices will be utilized. These practices are outlined in the Internal Affairs Unit Operations Manual.

NEW

Prior to conducting a telephone interview, the Department supervisor must obtain consent from the person being interviewed to have the conversation audio-recorded.

12. If a complainant is reluctant or difficult to find, repeated attempts must be made to conduct a thorough interview of the complainant throughout the investigation. Obtaining voluntary, not compelled, participation in the investigative process from a complainant who is hesitant to be involved is the goal. Therefore, investigating supervisors shall consider and engage in all reasonable measures to contact and/or interview complainants. Such methods may include:

- a. An interview conducted by telephone.
- b. An interview conducted at the complainant's residence, place of employment, or at a neutral location;
- c. An interview arranged at a time convenient to the complainant;
- d. Notification to the complainant by certified letter (with return receipt) that an interview is requested; and/or,
- e. Utilization of the ARJIS Officer Notification System (ONS) to facilitate contact with the complainant.

Should these measures fail, the investigating supervisor shall proceed with the investigation without the complainant's statement. When practical, witness and officer interviews will be conducted. If it is possible to reach a factual conclusion, an appropriate disposition shall be rendered.

If an allegation is not clear and cannot be clarified, and there is insufficient information to conduct an investigation, it will be filed in Internal Affairs in the miscellaneous file for a period of five years.

NEW

13. Completed investigations will be forwarded to the Internal Affairs Unit. The findings for Department members will be classified as follows:
 - a. Sustained – the Department member committed all or part of the alleged acts of misconduct;
 - b. Not Sustained – the investigation produced insufficient information to clearly prove or disprove the allegations;
 - c. Exonerated – the alleged act occurred but was justified, legal and proper, or was within policy;
 - d. Unfounded – the alleged act did not occur; or,
 - e. Other Finding – the investigation revealed violations of Department policies/procedures not alleged in the complaint.
14. The complainant will be notified of the results of the investigation in a letter sent by the Internal Affairs Unit. The letter will contain the name and telephone number of the investigator, should the complainant have any questions.

B. Investigation of Officer-Involved Shootings and In-Custody Deaths

1. The Homicide Unit will conduct criminal investigations of all incidents in which a Department member intentionally shoots at a person, including such incidents resulting in no injuries (misses). The Homicide Unit will submit its completed investigation to the Internal Affairs Unit. The Internal Affairs Unit will then conduct an administrative investigation to determine if the officer-involved shooting was within policy.
2. The Homicide Unit will also investigate officer-involved shooting incidents that result in unintentional injuries or death, and all in-custody deaths. The Homicide Unit will forward its completed investigation to the Internal Affairs Unit as soon as possible so an administrative investigation can be conducted.
3. Field supervisors are responsible for completing a thorough Supervisor's Investigation into all shootings involving animals or accidental weapon discharges not resulting in injury. The investigation, along with a copy of the Shooting Incident Report (PD-128), shall be forwarded to the Internal Affairs Unit as soon as possible so an administrative investigation can be conducted.

NEW

NEW

- C. The Role of the Internal Affairs Unit in Investigations of Criminal Conduct and Corruption

The Internal Affairs Unit will have primary responsibility for conducting follow-up administrative internal investigations regarding allegations of criminal conduct and corruption by Department members.

VIII. PROCEDURES FOR INTERVIEWING SUBJECT DEPARTMENT MEMBERS

- A. In criminal investigations conducted by the investigating unit, a “Miranda Warning” will be given to Department members who are in custody.

NEW

- B. Prior to beginning an interview, Department supervisors conducting administrative investigations, whether Category I or II, will read either the Sworn personnel the "Administrative Admonishment" or the Non-Sworn Fact Finding admonishment to Department members who are under investigation (see Attachment A and B).

NEW

- C. If a supervisor determines during a "witness Department member" interview that the interviewee is actually a subject Department member, the supervisor must immediately advise the member of the change in status (regarding the investigation) and inform the member of their right to representation. The supervisor will end the interview and schedule an interview at a later date where the member has the opportunity to meet with their employee or legal representative if they wish to do so.

NEW

- D. Subject Department members are to be given the Administrative Admonishment and interviewed only if it has been determined the case will not go forward for criminal prosecution. If during an interview, the interviewing supervisor believes criminal conduct may be involved, the interview will be stopped, and the subject member shall immediately be re-advised of his or her constitutional rights via the Administrative Admonishment. If the interview was being conducted by supervisor outside Internal Affairs, the Internal Affairs Unit shall be immediately contacted. No further questioning shall occur at that time. Consult the Internal Affairs Unit on all matters that appear to be criminal in nature.

NEW

- E. To protect the integrity of the involved Department members and the investigation, all subject and witness members will be admonished that the City of San Diego has a strong interest in protecting the integrity of its fact-finding investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. Each subject and witness member will be directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone, and advised not to interfere with the investigation in any way. This admonishment does not prevent such members from discussing the matter with his/her employee representative or attorney, professionals in the field of psychological therapy, or clergy members. This

admonishment should be given to all involved personnel when the investigating supervisor believes it is appropriate, usually at the onset of the investigation or during the interview with the subject/witness member.

IX. ROUTING OF COMPLETED INVESTIGATIONS

NEW

A. Commission on Police Practices Routing

Complaints involving sworn Department members that contain at least one Category I allegation (with the exception of “City claim” cases or internal investigations), officer-involved shootings of a person, and in-custody death investigations will be routed to the Commission on Police Practices for review. This is after the Chief of Police or his or her designee has approved the investigation and before it is forwarded to the subject member's command for review and/or disciplinary follow-up (See the Commission on Police Practices section of this Procedure for more details).

B. Forwarding of Completed Investigations

NEW

1. Prior to serving a completed Category II investigation upon a subject Department member, the subject member’s commanding officer will forward the completed investigation to the Internal Affairs Unit for a thorough review and approval.

NEW

2. All Category II complaints will be reviewed by the Internal Affairs Unit for completeness, proper format, and appropriate findings. They will be returned to the commanding officer for further review if they are not consistent with Department procedures and expectations. If the investigation is complete and in the proper format, it will be returned to the commanding officer for service upon the subject member(s).

NEW

C. Routing of Identified Misconduct

When the Internal Affairs Unit identifies misconduct through sustained findings, the investigation will be routed to the Assistant Chief of the concerned division, via the Chief of Police, who will forward the investigation to the appropriate commanding officer. The commanding officer or designee will review the investigation and personnel files of the involved Department member(s) and determine what disciplinary action, if any, is to be taken.

NEW

1. Investigations involving non-sworn members resulting in sustained findings will only be retained by Human Resources for the length of the final discipline and once all appeal options have been exhausted.

NEW

D. Review of Investigation by Department Member

For all investigations resulting in a sustained finding, the subject Department member(s) will be provided the completed investigation, including any supporting materials related to the investigation by the commanding officer or designee at the time discipline or advance notice of discipline is served. For completed investigations which involve no sustained findings or will not result in any discipline to the department member, the subject Department member will be provided a copy of the completed investigation by the commanding officer or designee, but no supporting documents, unless requested. In those cases, the subject Department member, or their legal designee, may request and receive a copy of any supporting materials related to the investigation from the Internal Affairs Unit.

Subject members are entitled to any reports or complaints made by investigators or other persons pursuant to California Government Code Sec. 3303(g). Subject members may review their Internal Affairs Unit file(s) by appointment in the Internal Affairs Unit. If the disposition of the complaint investigation is sustained, or “other findings” noted, the command will retain a copy of the investigation until discipline, if any, is completed. At that point, the command will return the copy, with the subject employee's original signature, to the Internal Affairs Unit.

NEW

E. Disagreement by Department Member of the Findings

If a Department member disagrees with the disposition of an investigation with sustained findings that result in discipline being served on the department member, the department member will be informed in writing that they may file a written rebuttal within 30 days from the date the actual order of discipline is served.. If the investigation does not result in a sustained finding, or any discipline being imposed on the department member, the department member will be informed in writing that they may file a written rebuttal within 30 days from the date the department member is served with the findings of the completed investigation, or the date they are notified no discipline will be imposed, whichever is later. Written rebuttals will be filed with the investigation. If a written rebuttal to a complaint investigation is received in the Internal Affairs Unit after the 30-day time period, the rebuttal will be refused and returned to the Department member. Rebuttals will not be accepted in the Internal Affairs Unit if the report indicates that the member’s supervisor wrote it. Supervisors are not to act as advocates for Department members in the writing of such reports.

NEW

Sworn Department members may also appeal sustained findings pursuant to Article 41 of the Police Officers Association Memorandum of Understanding.

NEW

F. Discipline

Commanding officers shall prepare a memorandum memorializing the discipline imposed on all sustained findings resulting from a Category I or Category II complaint investigation reviewed by the Community Review Board. The memorandum shall state what discipline was imposed along with the rationale behind it. The Internal Affairs Unit will provide the memorandum to the Commission on Police Practices after the actual order of discipline has been imposed.

A complete process flow for discipline and the appeal process can be found in the Discipline Manual, or Dimensions in Discipline Manual for civilian employees, within the Resource Library. The reason for the discipline (misconduct versus performance) and the discipline imposed will determine the depth and breadth of the appeal process.

G. Removal of Complaint Investigation from Discipline Package

After discipline is imposed, the complaint investigation will be removed from the discipline package prior to filing it in the member's Department personnel file.

NEW

H. Retaining Complaint Investigation by the Internal Affairs Unit

Complaints and any reports or findings involving sworn members shall be retained for a period of at least five years in accordance with California Penal Code Section 832.5. A citizen's complaint investigation will only be retained in the Internal Affairs Unit. The copy of the investigation, which was attached to the discipline, must be returned to the Internal Affairs Unit.

Complaints and reports involving non-sworn Department members shall be retained per the Memorandum of Understanding (MOU) between the City of San Diego and the San Diego Municipal Employee's Association (MEA), Article 10 section (F) and Article 37.

NEW

I. Retaining Documentation

All material upon which the outcome of an investigation is based, such as recordings, tapes, photographs, and other documentation related to a complaint, City Claim, or internal investigation, must be retained and filed with the completed investigation.

1. Complaints that do not result in a sustained finding for non-sworn members will be purged from the Internal Affairs Unit upon completion of the investigation, after the subject employee has been notified of the findings and had the opportunity to review the investigation.

X. CENTRAL COMPLAINT INDEX

The Internal Affairs Unit is responsible for maintaining a comprehensive central index of all citizen complaints received by the Department. The responsibilities of the Internal Affairs Unit, in relation to the Central Complaint Index, include the following:

NEW

- A. Maintain a numerical file of all citizen complaints recorded in IAPRO.
- B. Maintain a numerical file of all internal investigations filed in the Internal Affairs Unit.

NEW

- C. Maintain personnel investigations completed by individual units that contain serious allegations of misconduct (safety issues, or those matters that would be Category I complaints if brought to the Department's attention by a citizen). The subject Department member's commanding officer will contact an Internal Affairs Unit Lieutenant prior to conducting such a filing. If necessary, the Chief of Police will make the final determination concerning reports being filed in the Internal Affairs Unit.

- D. Maintain a file of investigations as they relate to claims against Department members.

NEW

- E. Complaints and investigations of non-sworn members shall be retained or purged consistent with Section IX of this procedure, to include the IAPRO database.

NEW

- F. The Internal Affairs Unit does not store any reports of recommended or imposed discipline.

XI. PITCHESS MOTIONS

The Internal Affairs Unit handles Pitchess motions where a party to litigation alleges misconduct on the part of an officer and seeks a Court hearing for discovery of confidential officer personnel records.

- A. Upon receipt of a Pitchess motion, the Internal Affairs Unit will notify the officer named in the motion that his or her personnel records are being sought.
- B. The City Attorney's Office responds to the motion on behalf of the officer and the Department.
- C. The City Attorney accompanies the Custodian of Records to the court hearing. At the hearing, a judge will decide whether the motion establishes good cause to conduct an in-camera review of the officer's personnel records.

NEW

- D. If an in-camera review is granted, the judge may review the officer's personnel records and order the release of the contact information for complainants and witnesses (listed in prior investigations) contained in the officer's records.
- E. If the judge orders information released from an officer's personnel file, the Internal Affairs Unit will notify the officer of what information was ordered released, and the officer will be given the opportunity to review the information that was released.

XII. COMMISSION ON POLICE PRACTICES

NEW

The Commission on Police Practices (CPP) is comprised of community members who are appointed by the Mayor. The CPP has the responsibility to review and evaluate complaints brought by the public against the San Diego Police Department and its sworn members. The CPP also reviews officer-involved shootings (of a person) and in-custody death cases. Additional information can be found in a pamphlet, "Commission on Police Practices", which is available in the Internal Affairs Unit or via the Internet at www.sandiego.gov/cpp.

NEW



**SWORN PERSONNEL ADMONISHMENT
(WITH LYBARGER/GARRITY WARNING)
SUBJECT**

This is a confidential sworn personnel investigation.

You may be subject to discipline as a result of this confidential sworn personnel investigation, should the findings indicate that such action is warranted. Therefore, you have the right to have a representative present at this time.

The purpose of this confidential sworn personnel investigation is to obtain information to assist the City of San Diego in determining whether administrative disciplinary action is warranted against you. The City is not questioning you for the purpose of bringing or substantiating any criminal charge against you.

You are directed to answer all of the questions posed to you completely, truthfully, and to the best of your knowledge. You may consult with your representative before answering any question, but your representative may not answer the question for you. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

If information indicates that you may be or have been charged with a criminal offense, you have the right to remain silent and the right to the presence and assistance of counsel. However, you do not have the right to refuse to answer any question during this confidential sworn personnel investigation, including on self-incrimination grounds. While you have the right to remain silent and not incriminate yourself generally, your silence or refusal to answer during this administrative confidential sworn personnel investigation will be considered insubordination and may lead to administrative discipline, up to and including termination.

Therefore, any statement made by you during this confidential sworn personnel investigation, compelled by the threat of discipline, as well as any fruits of those statements, cannot be used against you in any criminal proceeding.

The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.

[INSERT SUBJECT EMPLOYEE NAME, TITLE]

Date

[INSERT FACT-FINDER NAME, TITLE]

Date



NEW

**FACT-FINDING ADMONISHMENT FOR NON-SWORN PERSONNEL
(WITH LYBARGER/GARRITY WARNING)
SUBJECT**

This is a confidential administrative fact-finding investigation.

You may be subject to discipline as a result of this fact-finding investigation, should the findings indicate that such action is warranted. Therefore, you have the right to have a representative present at this time.

The purpose of this fact-finding investigation is to obtain information to assist the City of San Diego in determining whether administrative disciplinary action is warranted against you. The City is not questioning you for the purpose of bringing or substantiating any criminal charge against you.

You are directed to answer all of the questions posed to you completely, truthfully, and to the best of your knowledge. You may consult with your representative before answering any question, but your representative may not answer the question for you. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

If information indicates that you may be or have been charged with a criminal offense, you have the right to remain silent and the right to the presence and assistance of counsel. However, you do not have the right to refuse to answer any question during this fact-finding investigation, including on self-incrimination grounds. While you have the right to remain silent and not incriminate yourself generally, your silence or refusal to answer during this administrative fact-finding investigation will be considered insubordination and may lead to administrative discipline, up to and including termination.

Therefore, any statement made by you during this fact-finding investigation, compelled by the threat of discipline, as well as any fruits of those statements, cannot be used against you in any criminal proceeding.

The City of San Diego has a strong interest in protecting the integrity of its fact-finding investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.

[INSERT SUBJECT EMPLOYEE NAME, TITLE]

Date

[INSERT FACT-FINDER NAME, TITLE]

Date



NEW

SWORN PERSONNEL ADMONISHMENT WITNESS

This is a confidential sworn personnel investigation. You are considered a witness.

It is not anticipated that you will be subject to any discipline as a result of this confidential sworn personnel investigation. However, if during your interview, information comes to light indicating that you may be subject to discipline, we will stop the interview, let you know that you may be subject to discipline, and you will have the right to representation at that time.

You are directed to answer all questions completely, truthfully, and to the best of your knowledge. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.

[INSERT WITNESS EMPLOYEE NAME, TITLE]

Date

[INSERT FACT-FINDER NAME, TITLE]

Date



NEW

FACT-FINDING ADMONISHMENT FOR NON-SWORN PERSONNEL WITNESS

This is a confidential fact-finding investigation. You are considered a witness.

It is not anticipated that you will be subject to any discipline as a result of this fact-finding investigation. However, if during your interview, information comes to light indicating that you may be subject to discipline, we will stop the interview, let you know that you may be subject to discipline, and you will have the right to representation at that time.

You are directed to answer all questions completely, truthfully, and to the best of your knowledge. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

The City of San Diego has a strong interest in protecting the integrity of its fact-finding investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.

[INSERT WITNESS EMPLOYEE NAME, TITLE]

Date

[INSERT FACT-FINDER NAME, TITLE]

Date

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JANUARY 5, 2022

NUMBER: 1.13 - ADMINISTRATION

SUBJECT: EMERGENCY VEHICLE OPERATION

RELATED POLICY: [1.03](#), [1.13](#)

ORIGINATING DIVISION: TRAFFIC

NEW PROCEDURE:

PROCEDURAL CHANGE: **MINOR CHANGES**

SUPERSEDES: DP 1.13 – 12/07/2017

I. PURPOSE

This Department procedure complies with existing law to reduce the potential for death or injury arising from emergency vehicle operation. When driving in the emergency mode, officers must continually weigh the seriousness of the situation versus the risk to innocent persons.

II. SCOPE

This procedure applies to all sworn and Communications Division members of the Department.

III. DEFINITIONS

- A. Emergency Vehicle – a distinctively marked police vehicle equipped with a red light and siren operated by a police officer.
- B. Response Codes – Code 3 (Emergency Response) is the operation of an emergency vehicle using emergency lights and siren, as reasonably necessary, under the following conditions:
 - 1. When necessary to facilitate an immediate response to another officer's request for urgent assistance.

2. When in pursuit of an actual or suspected law violator.
3. When responding to a radio call (or other notification) involving an immediate life-threatening emergency.

C. Response Types

1. Code 11-99, Code 3 (Officer Needs Assistance)

A call for 11-99 shall be requested and broadcast ONLY when an officer is in immediate danger and backup assistance is urgently needed. Code 3 vehicle operation is normally limited to units assigned to the same radio talk group or within a reasonable distance, such as adjoining divisions.

2. Code COVER, Code 3 (Cover Now or Emergency Button Activation)

- a. This type of response is authorized only under controlled circumstances. "Cover Now" is police officer terminology requesting Code 3 cover. Only two units will be permitted to respond Code 3 unless a supervisor specifically authorizes additional units. Radio Dispatchers will broadcast the location of the responding unit(s).

- b. The Radio Dispatcher shall notify the Communications Division Supervisor and a field supervisor shall be assigned to the incident.

3. Code NONU (Request for Cover – Non Urgent)

This is a NON-URGENT response to an officer's request for back-up or cover. A Code 3 response is not authorized.

- a. When "Non-Urgent" cover is requested, it is the requesting officer's responsibility to define why "Non-Urgent" cover is needed (i.e., the subject is becoming agitated).

- b. Defining the reasons for "Non-Urgent" cover request informs the responding officers and field supervisors of the reason for the request thereby reducing any ambiguity in the request.

- c. Based on the circumstances the officer or a field supervisor may upgrade the request for cover to "Cover Now" at any time.

4. Code 10-87 (Informational Exchange)

Code 10-87 is a routine response used when supervisors or officers wish to meet in the field for non-urgent matters.

IV. LEGAL CONSIDERATIONS

- A. 21052 CVC – all employees, except as authorized by 21055 CVC, are required to operate their vehicles in accordance with all state laws.
- B. 21055 CVC – provides that the driver of an authorized emergency vehicle is exempt from Division 11, Chapters 2 through 10; and Division 16.5, Chapter 5, Articles 3 and 4, of the Vehicle Code. This limited exemption is only in effect when the following conditions are met:

NEW

- 1. The vehicle is being driven in response to an emergency call, or while engaged in rescue operations, or is being used in the immediate pursuit of an actual or suspected violator of the law.

NEW

- 2. If the driver of the vehicle sounds a siren as may be reasonably necessary and the vehicle displays a lighted red lamp visible from the front as a warning to other drivers and pedestrians. A siren shall not be sounded by an authorized emergency vehicle except when required under this section.

- C. Drivers operating emergency vehicles Code 3 shall continually sound the siren AND utilize all emergency lights when disregarding traffic control devices or other vehicle code regulations. At no time shall an officer use only their overhead emergency lights while proceeding through or clearing an intersection.

- D. Driver/officers operating Code 3 shall exercise caution when proceeding through red lights and stop signs. In certain situations, such as congested intersections, during inclement weather, hours of darkness, and in areas with decreased, obscured, or limited visibility, it may be necessary to clear each traffic lane one by one and/or come to a complete stop before proceeding.

- E. 21056 CVC – states that the exemption of Section 21055 CVC does not relieve the driver of an emergency vehicle from the duty to DRIVE WITH DUE REGARD FOR THE SAFETY OF ALL PERSONS using the highway.

- 1. The effect of 21056 CVC is to establish that emergency vehicle operators are NOT protected when their unreasonable or negligent acts of driving imperil others.
- 2. Officers can be held liable in criminal or civil actions for deaths, injuries or damages caused by negligent emergency vehicle operation.

V. OFFICER'S RESPONSIBILITIES

Officers responding to an emergency call (Code 3) shall comply with the following:

A. Code 3 Responses

1. Drive defensively in anticipation of traffic hazards.
2. Maintain self-control, exercise good judgment, and drive with due regard for the safety of others.
3. Advise the dispatcher of the location from which they are responding and monitor the radio closely.

B. Code 11-99, Code 3 (Officer Needs Assistance) Response

1. Upon receiving an 11-99 call, field units shall use sound discretion in responding. An officer must consider:
 - a. The distance to the 11-99 location;
 - b. Traffic and pedestrian congestion;
 - c. Time of day and weather conditions; and,
 - d. The number of units already responding.
2. Only units within a reasonable distance, considering the above factors, shall respond to an 11-99 location in the Code 3 mode. Units that are an excessive distance from the 11-99 may respond only while obeying all the traffic laws.

C. Code COVER, Code 3 (Cover Now) Response

1. Only two units are authorized to respond Code 3 unless a field supervisor assigns additional units. The assigned unit's location will be broadcast by the radio dispatcher.
2. Other responding officers shall advise Communications Division of their location and approximate time of arrival.
3. Use of South Bay Expressway (SBE) toll road for emergencies

Marked police units may use the SBE during emergency situations.

Officers shall notify Communications of the SBE use and Communications will enter that information into the CAD incident report. In addition, the driver officer shall notify Operational Support within four days after SBE use so the Department can rectify invalid violations and associated fees.

- D. Code NONU (Request for Cover)
 - 1. Responding units will discontinue routine activity and proceed to the location.
 - 2. The officers will obey ALL traffic laws and NOT use emergency lights, siren, or flashing lights.
- E. 10-87 (Informational Exchange)
 - 1. Responding officers will advise their approximate time of arrival.
 - 2. They will obey ALL driving rules and perform their normal functions en route to the meet (F.I.s, arrests, citations, etc.).

VI. SUPERVISOR'S RESPONSIBILITIES

- A. Sworn supervisors may AUTHORIZE a Code 3 response to incidents they are responding to or monitoring. Supervisors shall exercise control in their evaluation and limit the number of field units responding Code 3 to those actually required at the scene.
- B. All sworn supervisors have the responsibility to TERMINATE Code 3 vehicle operation, particularly in pursuits, when safety risks or lack of urgency warrant it. This is a requirement of Public Agency Immunity, which protects the Department and individual officers from civil liability (Section 17004.7 CVC).
- C. Upon being assigned to a pursuit, the supervisor shall proceed to the general vicinity of the incident to insure adequate supervision is in place. The supervisor is responsible for ensuring proper resources are deployed (Air Support, Canine Unit, tire deflation devices, etc.) and that only two police units along with a Canine are involved in the pursuit. Supervisors should be proactive in monitoring the pursuit and can authorize additional police units if deemed necessary for safety, but should not become actively involved in it.
- D. Once a sergeant has assumed supervision of a pursuit, they should maintain supervisory control from the beginning until the end of the incident. Supervisors shall proceed to the termination point of the pursuit to ensure all aspects of the investigation are completed and coordinate any jurisdictional issues that may arise. This includes completing and submitting the Pursuit Report CHP 187A (Rev 05-16).

VII. COMMUNICATIONS DIVISION RESPONSIBILITIES

- A. When an 11-99 is broadcast, the 11-99 shall be simulcast immediately on all talkgroups.
- B. The radio dispatcher will notify the Communications Division Supervisor, a field supervisor, and the Watch Commander of any Code 3 incidents.
- C. The radio dispatcher will repeat the location and the fact that the unit is responding Code 3 to minimize conflict with other responding units.
- D. The radio dispatcher shall locate and assign a field supervisor to every pursuit. The sergeant assigned should be the supervisor of the primary pursuit unit or a supervisor from the primary pursuit unit's service area.

SAN DIEGO POLICE DEPARTMENT PROCEDURE

DATE: SEPTEMBER 2, 2021
NUMBER: 1.49 - ADMINISTRATION
SUBJECT: AXON BODY WORN CAMERAS
RELATED POLICY: N/A
ORIGINATING DIVISION: OPERATIONAL SUPPORT
NEW PROCEDURE:
PROCEDURAL CHANGE: **EXTENSIVE CHANGES**
SUPERSEDES: DP 1.49 06/03/2020

I. PURPOSE

This Department procedure establishes guidelines for Department members using body worn cameras and procedures for preserving the digital media in Evidence.com.

II. SCOPE

NEW

This procedure applies to all sworn members of the Department.

III. BACKGROUND

Law enforcement's use of body worn cameras has proven effective in reducing violent confrontations and complaints against officers. Cameras provide additional documentation of police/public encounters and may be an important tool for collecting evidence and maintaining public trust. There is also a learning curve that comes with using body-worn cameras. Video cannot always show the full story nor does it capture an entire scene. The use of cameras does not reduce the requirement to provide thorough written documentation. Persons reviewing recordings must also be cautious before conclusions are reached about what the video shows.

The Body Worn Camera system operates on rechargeable battery power for up to twelve hours of continuous buffering and records up to ten hours of continuous video and audio media. The user can view recordings and add metadata from monitors, computers, and smart phones by downloading a specific software application.

This Procedure was reviewed in consideration of Penal Code section 832.18.

IV. **DEFINITIONS**

NEW

Body Worn Camera (BWC) – A camera worn by sworn personnel that records and stores audio and video.

Buffering Mode or Standby Mode – The BWC is on but has not been activated to record both sound and video. While in the buffering mode, the camera will continuously record only video in two-minute loops.

BWC Program Administrator (Operational Support) – Police Department program administrator for Evidence.com and TASER Axon camera system with full access to user rights and sets user access and parameters.

Digital Evidence – BWC files, including photographs, audio recordings and video footage, captured by a BWC and stored digitally.

Event Mode – When the “Event” button on the BWC is activated and the camera is recording both audio and video. The buffered video (not audio) captured directly before the event will be saved and attached to the event in permanent memory. Repeated pressing of the Event button turns the recordings on and off and creates separate media segments.

Evidence.com – A digital evidence management service contracted for the city and accessed at Sdspd.evidence.com. The service stores digitally encrypted data in a highly secure environment accessible to personnel based on security clearance.

Metadata – Case numbers, Incident numbers, and other descriptors used to identify digital evidence. There are 12 searchable fields into which this metadata can be entered.

NEW

Sworn Personnel - All peace officers below the rank of lieutenant.

Taser’s Evidence Docking Station (EDS) – A portable multi-ported docking station installed at area commands. The EDS simultaneously recharges the BWC while uploading all digitally encrypted data from the device. The docking station then transfers the digitally encrypted data to Evidence.com.

V. **PROCEDURE**

NEW

- A. Officer safety and public safety take precedence over recording events.
- B. Sworn personnel shall follow existing officer safety policies when conducting enforcement stops as outlined in Department policies and procedures. Officer safety and the safety of the public shall be the primary considerations when

contacting citizens or conducting vehicle stops, not the ability to record an event.

C. Body Worn Cameras shall be used to capture audio and visual evidence for investigations and enforcement encounters. Sworn personnel shall not provide narration or dictate their actions to the camera. Detailed police reports are still required and are the appropriate place to document the totality of the circumstances for the incident.

D. General

1. Only authorized personnel shall use or be in possession of a BWC device.

NEW

2. All sworn personnel are required to wear and use their BWC while working in any uniformed assignment. This applies to overtime assignments, out of class assignments and special details (11-86).

3. BWC equipment is for official use only and shall not be utilized for personal use.

NEW

4. Sworn personnel shall not tamper with or dismantle any hardware or software component of any BWC device.

5. The use of any other personal recording device for the same purpose is not authorized without permission of the Chief of Police or designee.

6. All digital evidence collected using the BWC is considered an investigative record for the San Diego Police Department and is for official use only.

7. Accessing, copying, forwarding or releasing any digital evidence for other than official law enforcement use and contrary to this procedure is strictly prohibited. Public release of digital evidence is prohibited unless approved by the Chief of Police or designee.

8. Personal computer equipment and software programs shall not be utilized when making copies of digital evidence. Using a secondary recording device such as a video camera, cell phone or other device to record or capture digital evidence from Sdpd.evidence.com is strictly prohibited.

NEW

E. Storage

When not in use, the BWC devices shall be stored in the designated EDS. Sworn personnel shall ensure the BWC is properly seated into the EDS to allow for proper downloading, charging, and updating.

NEW

F. Pre-shift inspection

1. Patrol personnel shall inspect their assigned BWC device daily to ensure there is no visual damage and the device is in working order. When feasible, investigative personnel shall inspect their assigned BWC device prior to use.
2. Visible damage shall be logged on to the officer's MPS (Mobile for Public Safety) as a journal entry. Investigative personnel shall notify their supervisor and Operational Support of visible damage.
3. Inoperable equipment shall be tagged and returned to Operational Support immediately. If Operational Support is closed, the equipment shall be returned to the Watch Commander's Office for an immediate replacement.

NEW

G. Camera Position

1. Sworn personnel shall wear the BWC above the midline of their torso. Sworn personnel shall utilize their viewers to ensure the BWC is in a position where the field of view provides for effective recording.
2. Sworn personnel shall not intentionally obscure the view of their body worn camera.

NEW

H. Equipment Repair, Replacement, and Maintenance

1. When a BWC malfunctions, sworn personnel will notify their supervisor and Operational Support.
2. Patrol personnel will note the nature of the malfunction in their journals. For all sworn personnel, if a report is written for the incident during which the malfunction occurred, the malfunction will be documented in the report.

The inoperable equipment will be taken to Operational Support for repair immediately. If Operational Support is closed, the equipment shall be returned to the Watch Commander's Office for an immediate replacement.

3. If Operational Support cannot repair the unit, the manufacturer will be contacted to facilitate the repair. Repair and replacement of damaged or nonfunctional BWC equipment is coordinated through Operational Support and performed through an authorized service provider.

4. This procedure shall be followed for all BWC related equipment and accessories.

NEW

I. Privacy Concerns and Advisements

1. Private citizens do not have a reasonable expectation of privacy when talking with sworn personnel during the scope of their official duties, even when the contact is in a private residence. When sworn personnel are lawfully present in a home (warrant, consent, or exigent circumstances) in the course of official duties, there is no reasonable expectation of privacy. Therefore, sworn personnel are not required to give notice they are recording. However, if asked, citizens shall be advised they are being recorded.
2. Sworn personnel are not required to initiate or cease recording an event, situation, or circumstance solely at the demand of a citizen. However, sworn personnel are strongly encouraged to inform citizens they are being recorded in an effort to de-escalate potential conflicts.
3. Sworn personnel involved in the investigation of a complaint against a member of the police department must inform complainants and complaint witnesses they are being recorded.

J. Mandated Recordings for Sworn personnel:

NEW

1. Enforcement Related Contacts
 - a. All sworn personnel who are issued a BWC shall keep their BWC on Buffering Mode/Stand-by Mode while on duty, except during instances listed in this procedure under Prohibited Recordings. Keeping the BWC on Buffering/Stand-by Mode allows officers to capture pre-event recordings when the Event Mode is activated.
 - b. Sworn personnel shall use the Event Mode to record enforcement related contacts. The Event Mode shall be activated prior to actual contact with the citizen, or as soon as safely possible thereafter, and continue recording until the contact is concluded or the contact transitions from an enforcement contact to intelligence gathering.
 - c. Sworn personnel shall begin recording in the Event Mode while driving to a call that has the potential to involve an enforcement contact.
 - d. Enforcement related contacts include the following: traffic stops, field interviews, detentions, arrests, persons present at radio calls who are accused of crimes, and consensual encounters in which the

officer is attempting to develop reasonable suspicion on the subject of the encounter. Consensual searches will be recorded in accordance with DP 4.01 – Stop/Detention and Pat Down Procedures.

- e. Sworn personnel shall begin recording in the Event Mode while covering another City employee or law enforcement officer during an enforcement contact, including, but not limited to, PISOs, Parking Controllers, etc.
- f. Sworn personnel shall begin recording in Event Mode when responding to traffic collisions.

NEW

2. Arrests

- a. Sworn personnel may stop recording in the Event Mode when the arrestee is cooperative and safely secured inside a law enforcement facility. If an arrestee becomes uncooperative, or if there is some evidentiary purpose, officers should resume recording in the event mode.
- b. If an officer resumes recording in the Event Mode, the camera shall remain in Event Mode until the officer no longer has contact with the subject.

NEW

3. Searches

- a. When searching a prisoner and without sacrificing officer safety, it is advantageous to position the search so that it is captured on camera. This starts the chain of custody by allowing any contraband or weapons found to be documented on the BWC recording.
- b. Patrol personnel shall record during the execution of a search warrant, an arrest warrant, a Fourth Amendment waiver search, a parole search, a knock and talk, or a consent search in which the officer is looking for a suspect, evidence or contraband.
- c. During searches of commercial buildings or residential dwellings, when there is a strong indication of encountering a suspect, while keeping officer safety as the primary concern, sworn personnel shall activate their body worn cameras prior to making entry into the building. The recording of a suspect confrontation normally outweighs tactics potentially shown in the recording.

NEW

4. Transporting Prisoners for Sworn Personnel

- a. Sworn personnel shall record all prisoner or passenger transports, regardless of the gender of the prisoner or passenger. The entire transport will be recorded. Two person units will be required to record with at least one BWC during transports.
- b. Sworn personnel may transport a female passenger and/or prisoner without the required second officer if the body worn camera is recording during the entire transport.
- c. In addition to recording with their BWC, sworn personnel transporting female passengers and prisoners shall notify the radio dispatcher of their beginning mileage and ending mileage.

NEW

5. Transporting Prisoners for Detectives

- a. Detectives shall record all prisoner transports, and all others deemed necessary by a supervisor, regardless of the gender of the prisoner and whether transported in a vehicle equipped with a cage or not. The entire transport will be recorded.
- b. Detectives may transport a prisoner in a vehicle equipped with a cage, without a second officer/detective, as long as their body worn camera is recording during the entire transport (Refer to 6.01 DP).
- c. In addition to recording with their BWC, detectives transporting female prisoners shall notify the radio dispatcher of their beginning mileage and ending mileage.

NEW

6. Suspect Interviews

- a. Sworn personnel are encouraged to fully record suspect interviews. Sworn personnel shall not stop and start the recording during a suspect interview.
 - (1) The only exception to recording a suspect interview would be if the suspect declines to make a statement due to the body worn camera being activated.
- b. When recording interviews, officers shall ensure they record any admonishments prior to the start of an interview.

NEW

7. Special Events

When directed to work a special event, sworn personnel shall retrieve and use their BWCs. Sworn personnel shall comply with the provisions of this Department Procedure.

NEW

8. Deactivation of BWC

- a. Sworn personnel assigned BWCs will occasionally assist specialized investigative units and agencies in sensitive operations where confidentiality is imperative to the operation. If there is a specific reason in the interest of the investigation for officers involved in the operation to not activate their BWCs, the supervisor in charge must give his or her approval.
- b. Absent any specific reason to not activate the BWC, previously approved by the supervisor in charge, sworn personnel shall record any instances mandated by this procedure.
- c. If a supervisor orders any sworn personnel to turn off their camera during an enforcement contact, that officer will document that order on a Case Report or Officer's Report explaining the specific reason why the BWC was not activated.
- d. Additionally, a supervisor who gives an order to any sworn personnel to turn off their BWC during an enforcement contact will also be responsible for documenting the reason on a Case Report, or Officer's Report, or Investigative Follow-up.
- e. All sworn personnel will always document why the BWC was intentionally deactivated during an enforcement contact.

NEW

K. Mandated Recordings for Investigative Personnel:

1. All sworn investigative personnel whose role in an operation is to make entry, to contact a suspect for an arrest, or take a perimeter position shall wear a Body Worn Camera. BWC's shall be worn by these sworn investigative personnel during the execution of any knock and talks, search warrants, probation/parole searches, consensual searches, and for any pre-planned arrest operations.
 - a. Sworn investigative personnel shall start recording in the Event Mode prior to making contact at any location or with a suspect. The supervisor at the scene is encouraged to give a verbal reminder to all personnel to begin recording.

- b. BWCs shall remain recording in the Event Mode during the clearing of any location where a search will take place and/or where a suspect may be found.
2. No recording is necessary while searching for evidence at a location. The BWC's may be turned off when a supervisor determines the scene is secure and a suspect is compliant. The BWCs shall not be turned off by investigative personnel until directed to do so by the supervisor on scene. However, the BWCs may remain on at the supervisor's discretion.
3. Uniformed officers assisting investigative personnel during a search shall, when feasible, consult with the scene supervisor to determine when their BWC may be turned off, in accordance with the guidelines set forth in this section.

NEW

L. Recommended Recordings

1. Victim and Witness Interviews
 - a. Victim and witness interviews will generally not be recorded, subject to the exceptions below.
 - b. Domestic violence victims often recant their statements as early as the following morning after a crime. Some victims go so far as to testify that the officer fabricated their statement. Victims may also make their children unavailable for investigators or court to avoid them from providing statements. For these reasons, all domestic violence victims and witnesses should be recorded. Officers should also record the statements of children of domestic violence victims who are witnesses in these types of cases.
 - c. Victims of sexual assault experience psychological, emotional, and physical trauma. Some sexual assault victims are victimized while under the influence of intoxicating substances. Video evidence of victims who are under the influence can be powerful evidence used to further an investigation. Furthermore, victims of sexual assault are often first contacted while in a heightened emotional state due to the trauma of the assault. Officers responding to the initial call for service are asked to conduct thorough fact-finding interviews. As a result, video documentation of the victim's first disclosure, ensuring the investigative questions were not leading, would be invaluable. Video of the victim's and witnesses' emotional and physical state can also be powerful evidence. For these reasons, all victims and witnesses of sexual assault should be recorded.

- d. Child abuse victims experience psychological, emotional, and physical trauma. These victims are often incapable of articulating detailed, accurate statements and resort to gesturing or pantomime to convey their thoughts. Those gestures are sometimes not adequately described in the written report, causing them to lose their meaning and power. At times, the parent(s) or guardian(s) of the victims will not cooperate with a forensic interview, making the initial disclosure of utmost importance. Officers responding to the initial call for service are asked to conduct minimal fact-finding interviews in compliance with DP 3.13. As a result, video documentation of the victim's first disclosure, ensuring the investigative questions were not leading, would be invaluable. Video evidence of the emotional state and reaction of the victim, witnesses, and other parties involved is an important piece of evidence. With cases involving child neglect, or dangerous living environments, video of the scene at the time of the initial contact can be critical for successful prosecution. For these reasons, all victims and witnesses of child abuse should be recorded.
- e. When necessary to obtain cooperation, officers may position the BWC so it captures only audio, and not video, of the person making the statement.
- f. Elder Abuse victims will sometimes recant or change their statements. The most common reasons are because the victims may feel embarrassed, or desire to protect the alleged abuser who is often a family member or caregiver, or may suffer from a memory-related illness which hinders the ability to recall portions of or most of what was told to officers initially. For these reasons it is highly recommended and encouraged to record all victim and witness statements whenever possible.

2. Scene Documentation

Officers occasionally respond to dynamic and chaotic crime scenes. The initial encounters with the victim, and witnesses, including their location and any spontaneous statements made, can be important to the overall investigation. Therefore, officers may use their BWCs to record these types of scenes for evidentiary purposes.

NEW

M. Prohibited Recordings

- 1. BWCs shall not be used to record non-work-related activity.
- 2. BWCs shall not be used to record in areas or activities such as pre-shift conferences, Department locker rooms, break rooms, restrooms, or other

activities not related to an enforcement contact or a criminal investigation.

3. BWCs shall not be used during Department administrative investigations.
4. BWCs shall not be used during line-ups or briefings.
5. BWCs shall not be used during major crime briefings, homicide briefings, or during a homicide walk-through.
6. BWCs shall not be used during contact with confidential informants.
7. Patient Privacy
 - a. Sworn personnel shall not record patients during medical or psychological evaluations by a clinician or similar professional, or during treatment. This includes during PERT clinician interviews. Sworn personnel shall be aware of patients' rights to privacy when in hospital settings. When recording in hospitals and other medical facilities, sworn personnel shall be careful to avoid recording persons other than the suspect.
 - b. Sworn personnel shall not record while in a facility whose primary purpose is to provide psychiatric or medical services unless responding to a radio call involving a suspect or taking a suspect statement.
 - c. Sworn personnel shall not regularly record with their BWC while inside jail facilities.
 - d. However, in any setting, if confronting a violent or assaultive suspect, or in an anticipated use of force, sworn personnel shall, when reasonably able to do so, activate their BWCs to record the encounter. BWC should be kept in Buffering/Stand-by Mode prior to the event.
8. Demonstrations
 - a. As a general policy sworn personnel should refrain from video recording or photographing peaceful demonstrations, per DP 3.26.
 - b. When there is reason to believe that a planned event has the potential for unlawful activity, Commanding Officers should make the determination whether visual recording or photographing is appropriate.

- c. During demonstrations, sworn personnel should operate cameras in the buffering/Stand-by mode. If sworn personnel witness crimes occurring among the demonstrators and/or believe an arrest is likely, they should begin recording in the Event mode. Refer to DP 4.17 for further details regarding First Amendment Activity and BWC usage.
9. Sworn personnel shall not record informal or casual encounters with members of the public. It should be considered that recording people in some circumstances may inhibit sharing neighborhood information or developing strong ties between members of the community and law enforcement. During these contacts, the BWC should be kept in Buffering/Stand-by Mode.

NEW

N. Entering Metadata

1. Each recorded segment requires metadata be entered, even if the segments are of the same event. All sworn personnel are required to add metadata at the conclusion of the event with two exceptions:
 - a. For officer safety reasons, at which time metadata should be added as soon as possible.
 - b. For investigative personnel, metadata may be added on their next scheduled workday, with approval of their supervisor.
2. Metadata consists of an identification field, retention category, and recording title. If an event number exists, the complete event number shall be entered into the identification field. Absent an event number, a citation number, or field interview number may be used. Sworn personnel shall select the retention category that most accurately fits the recording. Recording titles may vary and include the location or suspect's name.
3. Viewing or adding metadata will not alter the video recording as it is protected with multiple layers of encryption on the BWC itself and at Evidence.com.

NEW

O. Documentation of Recorded Events

All recordings shall be documented in a Case Report, Officer's Report, citation, Field Interview, Traffic Warning, CAD incident history, officer's daily journal, or in the Investigator's Follow-up Report. Supervisors reviewing and approving reports shall ensure sworn personnel properly document and record events.

1. Case Reports – Officers shall document the existence of BWC evidence as well as a short description of what the recording depicts in the narrative of

the report. Additionally, “BWC Recording” shall be recorded in the Evidence section of the report.

2. Officer’s Report – Officers shall document the existence of BWC evidence as well as a short description of what the recording depicts in the narrative of the report. Additionally, “BWC Recording” shall be recorded in the Property Tag section of the report.
3. Field Interviews and Traffic Warnings – “BWC Recording” shall be recorded in the narrative.
4. Traffic Citations – “BWC Recording” shall be recorded in the case number box near the top of all citations and by marking the BWC box on the reverse side of the pink copy of the citation.
5. Other Reports – “BWC Recording” shall be recorded in the narrative.
6. Other Recordings – Non-evidentiary recordings, such as inadvertent recordings, recordings initiated for training, or recordings with no associated report shall be documented on the Officer’s Daily Journal.
 - a. Unless writing their own report, cover officers shall notate in their Officer’s Daily Journal, and the CAD incident report that their BWC was recording during an event. Additionally, they will notify the case agent of an incident that BWC evidence exists and provide a short description of what the recording depicts.

NEW

P. Impounding Procedures

After verifying the required metadata has been added to all recorded events, officers shall place the BWC into a slot on the EDS and ensure it is properly seated at the end of their shift. (Investigative personnel may place their BWCs on the EDS on their next scheduled work day with permission from their supervisor). This will allow for the battery to recharge. The data will automatically be transferred from the BWC through the EDS to Evidence.com. The data is considered impounded at this point.

NEW

Q. Retention of Digital Evidence

All recordings related to any criminal proceeding, claim filed, pending litigation, or a personnel complaint, shall be preserved until that matter is resolved and/or in accordance with the law. Sworn personnel are required to ensure that the BWC evidence is properly categorized for the necessary retention period.

NEW

R. Accessing Impounded Digital Evidence

1. All those given permission associated with Evidence.com may review digital evidence.
2. Using a Department computer, enter Sdpc.evidence.com in the browser.
3. Enter assigned username and password. For help with problems, contact the Department Program Administrator in Operational Support Administration.
4. Digital Evidence can be viewed and/or copied from this location.

NEW

S. Reviewing Impounded Digital Evidence

1. Sworn personnel may review their own digital evidence. Digital evidence can provide a cue to one's priming memory to recall more facts and greater detail of an incident.
2. Detectives are responsible for reviewing, updating and tracking digital evidence associated with their assigned cases.
3. Detectives and personnel assigned to investigative assignments (e.g., NRC Desk) are responsible for forwarding BWC video evidence to either the District Attorney or City Attorney Evidence.com accounts. Digital evidence will be submitted at the same time the case file is submitted for prosecutorial review.
4. BWCs have a field of vision of either 75 degrees for the Flex or 130 degrees for the Axon. While human beings have a field of vision of 180 degrees, the human brain has a field of attention of 50-60 degrees. Under stress, this field can narrow down to a ½ degree. Stress also induces auditory exclusion and prevents the brain from analyzing and remembering all the stimuli it takes in through the senses.
 - a. Sworn personnel make decisions based on the totality of the human senses. Recollection of specific details may be different than what is captured in digital evidence since BWCs only capture audio and video.
 - b. Sworn personnel should review digital evidence prior to completing reports to assist in priming their recollection. Sworn personnel shall write their reports to what they remember and notate any discrepancies from what the recording shows. Sworn personnel shall not write their reports based solely on what they viewed from the BWC recording.

5. Sworn personnel shall review digital evidence prior to providing testimony at hearings, trial, or depositions.
6. It is NOT the intent of the Department to review digital evidence for the purpose of general performance review, for normal preparation of performance reports, or to discover policy violations.
7. Digital evidence may be viewed for administrative purposes limited to the following:
 - a. Any incident in which a member of the Department is injured or killed during the performance of their duties.
 - b. Any incident involving the use of force by a member of the Department, including canines, which results in injury or death.
 - c. Any in-custody death.
 - d. Any police pursuit.
 - e. When any member of the Department intentionally or unintentionally discharges a firearm at a person regardless of whether an individual is struck.
 - f. When any member of the Department not involved in training intentionally or unintentionally discharges an Extended Range Impact Weapon (ERIW) at a person regardless of whether an individual is struck.
 - g. When any member of the Department not involved in training intentionally or unintentionally discharges a Conductive Energy Weapon at a person, including the application of a drive stun.
 - h. Traffic collisions involving department members.
 - i. Prior to the release of recordings in response to a proper legal request (e.g., in response to a subpoena or other court order).
 - j. In preparation for a civil deposition or responding to an interrogatory where the incident arises from the employee's official duties.
 - k. When preparing to testify in a criminal, civil, or administrative proceeding arising from the employee's official duties.

- l. For investigations undertaken by the Department, for the purpose of proving or disproving specific allegations of misconduct.
 - m. For administrative proceedings, when digital evidence is used by the Department for the purpose of proving or disproving allegations of misconduct, only digital evidence relevant to the investigative scope shall be viewed and retained by investigators. Information relevant to the recordings viewed and seized as evidence by investigators shall be documented as part of the chronological summary of any investigation undertaken by the Department.
 - n. Supervisors should review BWC recordings to assist citizen's complaints. Supervisors have discretion to show BWC recordings to a complainant when it relates to his or her complaint, to assist in clarifying the complaint, resolving the complaint, or having the complaint withdrawn.
8. In situations where there is a need to review digital evidence not covered by this procedure, a Captain or higher must approve the request. Each situation will be evaluated on a case by case basis.

VI. DISCOVERY OF MISCONDUCT

NEW

Employees reviewing event recordings should remain focused on the incident or incidents in question and review only those recordings relevant to their investigative scope. If improper conduct is suspected during any review of digital evidence, the person who discovered the conduct in question shall immediately notify a supervisor. The supervisor will report the conduct to the Department member's commanding officer through the chain-of-command as per Department Policy 9.33. Nothing in this procedure prohibits addressing policy violations.

VII. COPYING AND RELEASING DIGITAL EVIDENCE

NEW

Digital evidence captured by BWC shall be treated as an investigative record and handled pursuant to existing Department policies and procedures.

VIII. USE OF DIGITAL EVIDENCE FOR TRAINING PURPOSES

NEW

Sworn personnel may find it useful, and are encouraged, to review recordings of incidents in which they were involved when beneficial for the purpose of conducting a tactical debrief. When an incident is recorded which may be of value as a training aid for a broad section of the Department, sworn personnel or their supervisor should receive approval from their commanding officer to contact the Training Captain who will

review the digital evidence to determine the value of the incident for training. If the Training Captain determines the incident would be an appropriate training aid, the Training Captain shall obtain approval from the Department Legal Advisor and from the Assistant Chief of Training and Employee Development.

IX. SUPERVISORS RESPONSIBILITIES

NEW

A. Sergeant's Responsibilities

1. Sergeants and Detective Sergeants who have personnel assigned to them who wear a BWC are required to conduct monthly inspections. The inspections will ensure that the BWC is being used to record enforcement related contacts and other incidents set forth in this procedure. Inspection results will be entered and forwarded to the respective Lieutenant of the division for review and approval.
2. Sergeants and Detective Sergeants will randomly select at least two dates each month that their employees were working to inspect the proper use of their BWCs. Detective Sergeants will select days in which the BWCs were operationally used by their personnel. (It is possible the detectives will have no BWC recordings for that particular monthly inspection). The supervisor will confirm that the number of enforcement contacts match up to the number of videos submitted. If the supervisor identifies a discrepancy, they will follow-up with the officer/detective to determine the reason the videos submitted did not match up with the number of contacts. If the supervisor is satisfied with the reason, no further action is required. If the supervisor feels a violation of this procedure occurred, appropriate action will be taken.
3. Sergeants and Detective Sergeants will make sure that all BWC videos were uploaded and categorized with the appropriate metadata. All videos that are uncategorized will be immediately corrected by the officer/detective. The supervisor will then re-inspect the BWC video to confirm the corrections were made.
4. Patrol Sergeants will select one video per day to inspect and verify the officer is in compliance with DP 1.49 (I) (1) (c) which states, "Officers shall begin recording in the Event Mode while driving to a call that has the potential to involve an enforcement contact". While viewing the video, Sergeants are reminded to use the "Post a note" function located below the video. Under the "Post a note" heading, Sergeants should enter "monthly inspection."
5. If during the inspection, the Sergeant or Detective Sergeant determines that the BWC of the officer/detective is not functioning properly, the

BWC will be immediately returned to Operational Support Administration for repair and/or replacement.

NEW

B. Lieutenant's Responsibilities

1. Lieutenants will complete a BWC Divisional Monthly Inspection. The inspection form will be completely filled out to include all of the squads who work directly for the Lieutenant.
2. Lieutenants will ensure the Sergeant/Detective Sergeant's inspection forms are completed correctly. If a supervisor identifies a discrepancy, the Lieutenant will follow up with the supervisor to ensure the discrepancy is corrected.
3. Inspection results will be entered and forwarded to the Captain of the division for review and approval.

C. Captain's Responsibilities

1. Captains will review their divisions BWC Monthly Inspection to ensure compliance of this policy.
2. The Captain will forward the BWC Inspection to their respective Assistant Chief.
3. Captains will be responsible for making sure that personnel who return to their command from an extended absence are re-issued a BWC and attend any needed BWC training.

X. BWC PROGRAM ADMINISTRATOR RESPONSIBILITIES

BWC Program Administrators shall be sworn members assigned to Operational Support. BWC Program Administrators are responsible for performing the following duties:

- A. Maintain and troubleshoot the BWC units.
- B. Maintain a record of assigned BWC and related equipment.
- C. Be proactive and able to complete minor repairs.
- D. Arrange for the warranty and non-warranty repair of the BWC units.
- E. Repair or replace BWC components (cameras, docking stations, etc.).
- F. Maintain BWC equipment repair and maintenance records.

- G. Update software and system settings as necessary.
- H. Train sworn personnel on current policy and the proper use of BWC units.
- I. Provide official copies of any recording audit trail when properly requested.
- J. Provide official copies of digital media when properly subpoenaed.

NEW

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JANUARY 23, 2018

NUMBER: 1.53 – ADMINISTRATION

SUBJECT: USE OF NALOXONE

RELATED POLICY: N/A

ORIGINATING DIVISION: TRAINING/EMPLOYEE DEVELOPMENT

NEW PROCEDURE:

PROCEDURAL CHANGE: **MINOR CHANGE**

SUPERSEDES: DP 1.53 – 9/14/2017

I. PURPOSE

This Department procedure establishes guidelines for the proper use of intranasal Naloxone Hydrochloride by sworn and certain non-sworn personnel. The primary use of intranasal Naloxone shall be to provide immediate medical assistance where appropriate.

II. SCOPE

This procedure applies to all sworn members of the Narcotics Task Force and Narcotics Unit, as well as permanently assigned Field Lieutenants and non-sworn Crime lab personnel who have been issued Naloxone.

III. BACKGROUND

Fentanyl is a potent synthetic opioid that is 30-50 times stronger than heroin and poses a great medical risk to the public, as well as law enforcement and lab personnel who may come in contact with it during the course of their duties. Even a small amount of Fentanyl that is ingested or comes in contact with a person's skin can lead to death. Recently, illicit sales of Fentanyl have greatly increased in the United States and there is an increasing likelihood of the public and officers encountering the drug in San Diego.

NEW

Naloxone (trade name “Narcan”) is a medication used for decades as an antidote to reverse the effects of opiate overdoses. California legislation allows private persons and first responders to possess Naloxone and administer the antidote medication in cases of opiate overdoses.

IV. TRAINING

- A. Those selected to carry Naloxone will attend the mandatory training course and annual refresher training designated by the In-Service Training/First Aid/CPR CORE Instructor.

V. PROCEDURES

A. Guidelines For Use

1. Naloxone Hydrochloride will be initially issued to sworn personnel in the Narcotics Task Force and Narcotics Unit, as well as permanently assigned Field Lieutenants and non-sworn personnel in the crime lab.
2. Officers/personnel carrying Naloxone Hydrochloride will perform a basic assessment to determine unresponsiveness, absence of breathing and/or pulse and perform CPR/First Aid as required.
3. If officers/personnel determine the patient is likely suffering a medical emergency as a result of an opiate overdose, officers will notify Communications the patient is a potential overdose and request EMS respond to the scene.
4. Officers/personnel shall follow the administration protocol as outlined in their training.

B. Medical Treatment and Transportation

1. Officers/personnel will inform responding EMS/Paramedics that they have administered Naloxone and the number of doses used.
2. Additional medical treatment and transportation to a hospital will be at the discretion of paramedics. If the subject is transported to a hospital for treatment, officers will respond to the hospital to brief medical personnel and gather the necessary information to properly document the incident.

VI. REPORTS

- A. Officers shall document the circumstances surrounding the use of Naloxone Hydrochloride on Department members or the public. The report shall include the amount of Naloxone Hydrochloride used as well as all identifying information available for the assisted person.

VII. MAINTENANCE/ACCOUNTABILITY

NEW

- A. Naloxone is a medication and, as such, must be monitored.
- B. The Operational Support Administration will issue and track doses of Naloxone Hydrochloride. Tracking will include the serial number for each dose as well as the expiration date.
- C. Naloxone must be stored in a climate controlled environment. All Department members issued Naloxone will store the medication in the Pelican case provided.
- D. Department members needing a replacement dose of Naloxone will go to Operational Support:
 - 1. In the case of a Department member who has lost their assigned medication, the Department member must bring an Arjis-9 signed and reviewed by their supervisor in order to receive a replacement.
 - 2. In the case of a Department member who administered Naloxone during the course of their duties, a copy of the report associated with the administration of the medication must be turned in to Operational Support in order to have a replacement dose issued.
 - 3. In the case of an expired dosage, the Department member will exchange the expired dosage for a current dose. No report will be required.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JUNE 25, 2020
NUMBER: 1.55 - ADMINISTRATION
SUBJECT: DE-ESCALATION
RELATED POLICY: [1.04](#), [1.56](#)
ORIGINATING DIVISION: INTERNAL AFFAIRS
NEW PROCEDURE:
PROCEDURAL CHANGE:
SUPERSEDES: **NEW DEPARTMENT PROCEDURE**

I. PURPOSE

This Department procedure establishes guidelines on the use of de-escalation techniques, crisis intervention tactics, and other alternatives to force.

This procedure should be read and applied in context with Department Procedures 1.04 and 1.56. Nothing in this procedure is meant to modify Procedure 1.04 Use of Force.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

- A. The San Diego Police Department recognizes and respects the value of human life, having this as its highest priority. It is the policy and practice of the Department to train its officers to perform their duties to the highest standards, with integrity, and to make decisions that are fair, respectful, lawful, and based on good judgment.

- B. The law takes into account that police must make split-second decisions in tense, uncertain, and rapidly evolving circumstances. *Graham v. Connor*, 490 US 386 (1989). Some such circumstances can be stabilized through the use of de-escalation tactics. Safe de-escalation tactics should be the ultimate goal of every officer responding to potentially violent incidents.

- C. Officers may be called upon to detain or arrest a subject who is uncooperative, is actively resisting, may attempt to flee, poses a danger to others, or poses a danger to him or herself. When safe and reasonable to do so, based on the totality of circumstances, officers shall use de-escalation tactics consistent with Department training to attempt to persuade the subject to voluntarily comply or to reduce the need to use a higher level of force.
- D. The San Diego Police Department is committed to achieving a safe resolution to conflict whenever possible. To this end, the Department trains its officers in tactics, techniques, and strategies to control these types of incidents using time, distance, communications, and other available resources in an effort to de-escalate encounters and gain voluntary compliance.
- E. De-escalation can provide effective tools for officers during interactions with the public and result in improved decision making, reduction in situational intensity and increase the likelihood of outcomes with greater voluntary compliance. Gaining voluntary compliance enhances officer and public safety, helps officers to defuse a situation, mitigates unintended consequences, and establishes police legitimacy and community trust.
- F. Successful resolution of an encounter requires the cooperation of a subject to provide officers with the time and opportunity to employ these de-escalation techniques. While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this procedure requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.
- G. The process of incident management and de-escalation includes, but is not limited to, the following:
 - 1. Utilizing pre-engagement techniques
 - 2. Assessing the overall scene
 - 3. Establishing effective lines of communication
 - 4. Using appropriate levels of reasonable force, based on the totality of the circumstances
 - 5. Intervening whenever force being used appears unreasonable
 - 6. Rendering aid and evaluating the need for medical assistance
 - 7. Reporting of all force used during the incident
 - 8. Reviewing the incident to ensure adherence to department procedures

IV. DEFINITIONS

- A. De-Escalation – encompasses a variety of strategies and/or techniques designed to reduce the immediacy of a threat, minimize the need for force, and gain voluntary compliance from a subject.
- B. Voluntary Compliance – The act of submitting for investigation, detention, or arrest cooperatively, without verbal or physical resistance requiring force.
- C. Totality of Circumstances – means all facts known to an officer at the time. Considerations applying to both the officer and the subject include, but are not limited to:
 - 1. Age;
 - 2. Availability of other options;
 - 3. Ground fighting
 - 4. Confined spaces
 - 5. Distance between subject(s) and officer(s)
 - 6. Whether the subject is under the influence of alcohol or drugs;
 - 7. Whether the subject has a physical, mental, developmental, or intellectual disability;
 - 8. Prior contacts with the subject or awareness of any propensity for violence;
 - 9. Whether the subject appears to be resisting, attempting to evade arrest by flight, or is attacking the officer(s);
 - 10. Environmental factors such as location/terrain/lighting conditions;
 - 11. Number of subjects/officers;
 - 12. Nature of offense;
 - 13. Opportunity/Time, provided by subject, to allow for de-escalation;
 - 14. Proximity to weapons;
 - 15. Size;
 - 16. Skill;
 - 17. Strength/endurance;
 - 18. Language barriers;

19. Training and experience of the officer;
20. Whether the subject is armed or perceived to be armed;
21. Crowd control situations; and
22. Any other exigent circumstances.

V. PROCEDURES/REQUIRED ACTIONS

- A. When given the time and opportunity, before approaching a subject, officers shall use all available information known at the time of the incident to help assess the situation. This assessment may include, but is not limited to the following:
 1. Obtaining relevant information regarding the incident.
 2. Conducting a threat/risk assessment of the incident.
 3. Considering other available resources and techniques including specialized units, PERT clinicians, and negotiators to resolve the incident.
- B. When given the time and opportunity during an encounter, officers shall create distance by seeking cover and selecting positions that place physical barriers between the officer and the subject, creating a buffer zone. The creation of the buffer zone helps to reduce situational intensity by decreasing perceived pressure while continuing to control the operational space. Officers can move to a position that is tactically advantageous or allows greater distance in order to de-escalate a situation or deploy a greater variety of force options, including lesser force or no force at all.
- C. Officer(s) shall try to establish an effective line of communication with the subject. Some factors affecting communication may include:
 1. The subject's age.
 2. Possible medical or physical conditions.
 3. Level of intoxication due to drugs or alcohol.
 4. Any known or perceived disabilities, including mental illness.
 5. Potential language barriers.
- D. When time and circumstances reasonably permit, officers shall take into consideration that a subject with a diminished capacity may not have the ability to understand or communicate effectively.
- E. Officers shall present lawful orders, request cooperation, and provide clear, concise direction to achieve voluntary compliance.

- F. Officers shall attempt to establish trust, in order to gain compliance with subjects and cooperatively de-escalate situational conflict.
- G. When officers encounter subjects that do not voluntarily comply, reasonable levels of force may be used to achieve a successful resolution. Consistent with Department Procedure 1.04 Use of Force, officers may use force to effect an investigative detention or arrest; control a subject who is in lawful custody; prevent an escape; or, protect the officer, the subject, or another person from injury or death. Any time force is used, the officer shall:
 - 1. Maintain control of enforcement situations.
 - 2. Use a force option which is reasonable under the totality of circumstances
- H. Anytime unreasonable force is used, officers shall intervene, as required and defined in Department Procedure 1.56.
- I. Once a subject is safely in custody, officers shall assess the subject for any potential injuries or medical issues. If the subject has difficulty breathing, is not at a functional level of consciousness, exhibits symptoms of medical distress, is injured, or if the officer has any concern regarding the subject's medical condition, the officer shall request the Fire-Rescue Department personnel or paramedics and render first aid to the extent of their abilities until the Fire-Rescue Department personnel or paramedics arrive.
- J. Whenever physical force used by an officer results in an injury that necessitates medical treatment of any person, the officer shall immediately contact a field supervisor (Refer to Department Procedure 6.01, Handcuffing, Restraining, Searching, and Transporting Procedures).
- K. Officers who use force shall personally prepare the appropriate report (arrest, detention, officer's report, Blue Team entry) documenting their use of force, except when an SDPD investigator interviews the officer and his/her statements (regarding the force used) are documented in the investigator's report.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JUNE 25, 2020
NUMBER: 1.56 - ADMINISTRATION
SUBJECT: INTERVENTION DUTIES
RELATED POLICY: [1.04](#), [1.55](#), [9.33](#)
ORIGINATING DIVISION: INTERNAL AFFAIRS
NEW PROCEDURE:
PROCEDURAL CHANGE:
SUPERSEDES: **NEW DEPARTMENT PROCEDURE**

I. PURPOSE

This Department procedure establishes guidelines for members who observe or become aware of another member's use of unreasonable force.

This procedure should be read and applied in context with Department Procedures 1.04 and 1.55. Nothing in this procedure is meant to modify Procedure 1.04 Use of Force.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

San Diego Police Department officers are entrusted with extraordinary authority over their fellow citizens in order to enable them to effectively enforce the law. Officers must exercise this authority in a fair, impartial and respectful manner. The community and the Department expect that officers will not use force which is unreasonable under the totality of the circumstances known to the officer, and that officers will intervene to stop the use of excessive force by another officer. Failure to intervene can harm partnerships with the community, erode trust, and diminish police legitimacy.

The Department recognizes the importance of the conduct of its officers and understands acts of misconduct, including unreasonable force, can result in loss of public support with the Department and the law enforcement profession as a whole.

The Department has an established Department Policy to address appropriate and inappropriate conduct in the Department Policy Manual, Section 9.00 Personal Conduct Policies. The Department has also defined what it recognizes as reasonable force in Department Procedure 1.04 Use of Force.

Department Policy 9.33 Duty to Report Misconduct and the Department Procedure 1.55 De-Escalation also contain directives to officers regarding their duty to intervene when they observe or are made aware of misconduct, including unreasonable force.

IV. DEFINITION

- A. Intervention - the act of attempting to prevent or attempting to stop the unreasonable use of force by another member. Intervene means to come between so as to prevent or alter a result or outcome.

V. PROCEDURES

- A. Any officer who is present and observes another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that the other officers may have additional information regarding the threat posed by the subject, shall, when in a position to do so, intervene to prevent the use of unreasonable force.
- B. An officer shall intervene by taking one or more of the following actions:
 - 1. Verbally advising another officer.
 - 2. Touching another officer to make their presence known.
 - 3. Physical restraint of another officer to prevent and or stop an escalation of force.
- C. When safe to do so, the officer shall report the intervention to a supervisor as soon as possible, but no later than the end of the officer's shift.
- D. When an officer reports an intervention involving force to a supervisor, the supervisor shall immediately notify their chain of command and/or the watch commander's office and the appropriate unit shall immediately begin an investigation.
- E. Appropriate disciplinary action consistent with Department Policy and applicable law will be taken against an officer who failed to intervene when required.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: AUGUST 27, 2021
NUMBER: 4.01 – LEGAL
SUBJECT: STOP/DETENTION AND PAT DOWN PROCEDURES
RELATED POLICY: 1.04
ORIGINATING DIVISION: TRAINING & EMPLOYEE DEVELOPMENT
NEW PROCEDURE:
PROCEDURAL CHANGE: **MINOR CHANGES**
SUPERSEDES: DP 4.01 – 09/16/2019

I. PURPOSE

This Department procedure establishes guidelines for officers when contacting subjects for the purpose of investigating criminal activity.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

NEW

The Department understands that direct contact with officers is, to the vast majority of the public, a rare and infrequent event. As a consequence, such contact can often be uncomfortable, awkward, or unnerving for citizens when they do not know why they are being contacted. A way to alleviate this is to provide citizens being contacted with the reasons for the interaction. Officers should communicate the reasons for the necessity of contact with citizens to the extent this is possible, in light of investigatory and safety concerns. Interactions with citizens must be consistent with Fourth Amendment search and seizure principles. Interactions that exceed the scope of the Fourth Amendment may lead to negative impacts in criminal and civil cases.

IV. PROCEDURES FOR CONSENSUAL CONTACTS, CONSENSUAL SEARCHES, STOPS, PAT DOWNS

A. Consensual Contact

Officers are encouraged to initiate consensual contacts with individuals in the community in order to gain a more thorough knowledge of their beats and the community.

Consensual contacts are different from detentions or arrests, in that they do not involve the "seizure" of persons within the meaning of the Fourth Amendment. Officers do not need "reasonable suspicion," "probable cause," or any other specific indication of criminal activity in order to initiate this type of contact.

During the course of citizen contacts, officers should not ask about a person's probation or parole status, or other legally documented status, unless the officer has independent knowledge of the person's criminal history or the totality of the circumstances would necessitate the information be immediately ascertained.

1. Initiation of a Consensual Contact

Officers may find it necessary to investigate the activities of a person when they do not possess sufficient information to make a detention or arrest. In such a case, the officers may initiate a contact with the person in any place in which the officer has a right to be. Unless an officer concludes that an arrest should be made or that a detention is reasonable, communications with a private person should begin with a consensual conversation that does not imply detention or arrest.

2. The Reasonable Person Test

The test: Would a reasonable person under the same or similar circumstances believe that he or she is free to leave?

It is not what the person contacted believes or should believe. It is what a reasonable person in the same circumstances would believe.

If a reasonable person would not believe they have a choice under the circumstances, then the person contacted is being detained, and absent sufficient legal cause to detain the person, it is an illegal detention.

3. Conduct During Consensual Contacts

Although no legal cause need be present for the officer to initiate a "contact," the persons contacted may not be halted, detained, or frisked against their will. They may not be required to answer questions or to

cooperate in any way, if they do not wish to do so. If they refuse to cooperate, they must be permitted to go on their way, unless the officer has developed reasonable suspicion to detain or probable cause to arrest. If it seems appropriate under the circumstances, however, the person may be kept under surveillance. Since a consensual contact is not a stop or an arrest, and those persons contacted may be innocent of wrongdoing of any kind, officers should take special care to act in a restrained and courteous manner.

Note: Except in situations that would jeopardize an investigation, officers shall ensure that all persons contacted are advised of the officer's affiliation with the Police Department, if it is not apparent by the officer's appearance.

4. Reporting Consensual Contacts

Officers are expected to make a variety of contacts with members of the community throughout each work shift. Contacts that do not lead to enforcement action may be documented on the Officer's Daily Journal, at the officer's discretion. If enforcement action results from a consensual contact, the resulting citation, warning, field interview, juvenile contact report, arrest or detention report shall be documented on the Officer's Daily Journal.

5. Consensual Searches

NEW

- a. Absent a search warrant, officers may conduct a search of a person or a person's property under limited circumstances. This includes incidents when a subject gives their consent for a search.
- b. Consent may be express or implied.
 - (1) Express Consent: When a person responds in the affirmative to an officer's request for permission to search, specifically any word(s) that reasonably indicates the person is agreeing to the specific request. Express consent may be verbal or written.
 - (2) Implied Consent: When a person's actions or responses effectively communicate permission to search; for example an individual handing an officer his or her car keys after the officer requests to search the vehicle. A failure to object to a search or a request to search does not constitute implied consent.

- (3) Consensual searches shall be conducted within the following legal parameters. Failure to adhere to these parameters may cause negative impacts in criminal or civil cases:
 - (a) Express or implied consent is given by the subject;
 - (b) Consent is freely and voluntarily given by the subject;
 - (c) The search shall not exceed the scope of consent given by the subject;
 - (d) The search is not unduly intensive or intrusive;
 - (i.) For example, consent to search does not authorize officers to destroy or damage the property or location during the search.
 - (e) The search is not unreasonable in its duration.
- (4) When verbal consent is obtained, the entire interaction shall be captured on BWC. Each of the following shall be included in the BWC recording:
 - (1) For instance, an officer may request to search any of the following: a house, vehicle, person, cellphone, computer, other mobile device, or purse/backpack.
 - (2) A request to search one's person may include fingerprints, DNA, or other identifying biological samples. A request for a biological sample should include an explanation of the method of analysis or comparison, such as running the sample through a comparison database.
 - (3) Members shall follow all applicable Department procedures and forms when obtaining biological samples.
- c. Officers shall make a clear request for consent to search the premise, person, personal property, or vehicle.
 - (1) For instance, an officer may request to search any of the following: a house, vehicle, person, cellphone, computer, other mobile device, or purse/backpack.
 - (2) A request to search one's person may include fingerprints, DNA, or other identifying biological samples. A request for a biological sample should include an explanation of the method of analysis or comparison, such as running the sample through a comparison database.
 - (3) Members shall follow all applicable Department procedures and forms when obtaining biological samples.
- d. The officer shall explain to the person they have the right to refuse, modify, or withdraw consent to search at any time, even after consent was given and the search has begun.

6. If a person's actions indicate implied consent, the officer shall confirm the consent verbally and ensure the confirmation is captured on BWC.
7. In the absence of a BWC recording of the subject's consent, members shall obtain written consent for a search using applicable Department forms.

NEW

B. Written Consent to Search

1. Consent to Search forms are available in the F: Drive under Templates/Patrol Based Forms/Consent to Search – Person and Personal Items.
2. These forms were translated into many of the languages spoken in our communities, and shall be used to facilitate communication and clearly document consent searches as circumstances dictate.
3. In addition to forms, officers are encouraged to continue to use qualified bilingual officer and civilian translators, as well as interpretation services contracted by the Department to enhance communication efforts as detailed by DP 1.47 – Limited English Speakers.

C. Detention

A detention, also referred to as a “stop”, occurs when officers use their authority to compel a person to halt, to remain in a certain place, or to perform some act, such as walking to a nearby location. Courts have used the terminology “investigative stop” for a detention. A detention is allowed so an officer may have a reasonable amount of time to investigate a person's possible involvement in actual or perceived criminal activity, allowing the officer to make an informed decision whether to arrest, or to release, the subject.

If the persons have been told they are not free to leave the officer's presence, a detention has occurred. When conducting a detention, the officer shall notify the subject contacted that he or she is no longer free to leave. However, officers are not required to make such a notification if it would hamper an investigation or jeopardize the officer's safety.

1. If an officer reasonably suspects that a person has committed, is committing, or is about to commit any crime, the authority to detain that person exists. Courts have used the terminology “Criminal activity is afoot” to describe these circumstances. The officer may exercise this authority in any place that the officer has the right to be. Both pedestrians and persons in vehicles may be detained. A detention is warranted if there is a reasonable suspicion by the officer that:

- a. Some activity relating to crime has taken place, is presently taking place, or is about to occur; and,
 - b. The person to be stopped or detained is involved in that activity.
2. “Reasonable suspicion” is a term that is not capable of precise definition; it is more than a hunch or mere speculation on the part of an officer, but less than the probable cause necessary for arrest. It may arise out of a contact, or it may exist prior to a contact. The following list contains some, but certainly not all, factors that should be considered in determining whether reasonable suspicion exists for a detention.

Note: A single factor listed below, or a combination of factors, may or may not individually justify a detention. An officer shall consider the totality of the circumstances present when deciding whether a detention is reasonable.

- a. Factors to Consider Regarding a Person's Appearance:
 - (1) The detainee fits the description of a person wanted for a known offense;
 - (2) The person appears to be suffering from a recent injury; or,
 - (3) The person appears to be under the influence of alcohol, drugs or other intoxicants.
- b. Factors to Consider Regarding a Person's Behavior/Actions:
 - (1) The person is fleeing from an actual or possible crime scene;
 - (2) The person is behaving in a manner indicating possible criminal conduct;
 - (3) The person was overheard making incriminating statements; or,
 - (4) The person is associating himself/herself with someone the officer determined to be reasonably suspicious.

- c. Factors to Consider Regarding Prior Knowledge of the Person:
 - (1) The person has an arrest or conviction record; or,
 - (2) The person is known to have committed an offense similar to the one that just occurred or is about to occur.

- d. Factors to Consider Regarding Demeanor
 - (1) The person's answers are evasive, suspicious, or incriminating; or,
 - (2) The person is excessively nervous during the consensual contact.

- e. Factors to Consider Regarding the Location of the Detention:
 - (1) The person is near the location of a known offense soon after its commission; or,
 - (2) The person is in an area known for a particular criminal activity and it is that type of activity that the person is thought to have committed, is committing, or is about to commit.

Note: Officers are cautioned that the courts find no credence in the term "high crime area", and that the term should be avoided. If reference is to be made to the area of the detention, officers should be able to articulate specific facts concerning that area (i.e., four commercial burglaries in the past week within several blocks of the location of the stop; 25 acts of vandalism within the past month at San Diego High School, etc.).

- f. Factors to Consider Regarding the Time of Day:
 - (1) It may be unusual for people to be in that area at that particular time; or,
 - (2) It is the time of day or night during which the suspected criminal activity usually occurs.

g. Police Training and Experience

The person's conduct is similar to the pattern followed in particular criminal offenses based on the investigating officer's training

and/or experience in dealing with that particular kind of criminal activity.

h. Emergency Circumstances

Public safety may be endangered if investigative action is not taken.

i. Factors to Consider Regarding the Source of Information:

If the basis of the officer's reasonable suspicion is in whole, or in part, based upon information supplied by another person, the officer should consider the reliability of the source of the information. The reliability of the information includes such things as:

- (1) Whether the officer knows the informant(s);
- (2) Whether they have supplied accurate information in the past;
- (3) How they came by this information; and,
- (4) Whether this information has been corroborated in any way, prior to making the detention.

3. Every officer who conducts a detention, as opposed to a consensual contact, must be prepared to document all of those specific factors that led the officer to believe the detention was reasonable.

4. Detention vs. Arrest

- a. If not handled properly, a "detention" could become an "arrest" which, if not supported by "probable cause" to arrest, would be illegal.
- b. General Rule: The least intrusive means should be used during a detention.
- c. The following list contains some factors that could cause a detention to turn into an arrest:
 - (1) Numerous officers involved;
 - (2) Display of weapons;
 - (3) Use of handcuffs;

- (4) Person is placed in back of a patrol car;
- (5) Encounter is in non-public setting;
- (6) The officer's authoritative manner and actions imply that compliance is compelled; and,
- (7) The officer did not advise the detainee of his right to terminate the encounter.

Note: The use of handcuffs or weapons or placing someone in a patrol car do not automatically make the contact an arrest if the actions are seen as reasonably necessary under the circumstances (person attempts to flee, officer safety concerns) and the person is told that they are only being detained, as opposed to arrested.

5. Proper justification for a detention does not permit unreasonable conduct during the detention. All police activity during a detention shall be done in a reasonable manner. The courts, in determining whether the detention was reasonable and lawful, will consider every phase of a detention.

a. Duration of the Detention

A person stopped pursuant to this procedure may be detained for a reasonable amount of time under the circumstances. Officers should detain a person only for the length of time necessary to determine if the person should be arrested or released.

b. Scope of the Detention

A reasonable on-the-scene investigation is all that is authorized by law during a detention. Therefore, an officer shall not move a detainee unless:

- (1) The officer obtains the detainee's consent to be moved;
- (2) The officer has probable cause to arrest the detainee;
- (3) A victim cannot, for valid reasons, be brought to the scene of the detention;
- (4) The movement is for a reasonable distance and facilitates the completion of the investigation (i.e., securing the

detainee in a patrol car while completing an investigation);
or,

(5) The movement is for the safety of the officer or the detainee.

c. Explanation to a Detained Person

Officers shall act with as much restraint and courtesy towards the detained person as is possible under the circumstances. Plain-clothes officers making a detention shall identify themselves as law enforcement officers as soon as it is appropriate. At some point during the detention, the officer should give the detainee an explanation of the purpose of the stop, unless such an explanation would jeopardize officer safety or hamper an investigation.

d. Questioning of a Detained Person

The officer may direct questions to detained persons for the purpose of obtaining their name, address, and an explanation of their presence and conduct. The detained person may not be compelled to answer these questions, even that of identity. During this questioning, it is not necessary to advise the person of their Constitutional rights under Miranda until such time as the person is placed under arrest, or the questioning has become coercive, rather than brief and casual.

e. Effect of Refusal to Cooperate

Refusal to answer questions does not, by itself, establish probable cause to arrest, but such refusal may be considered along with other facts as an element in determining whether the investigation should be continued. However, a person who flees during a lawful detention may be arrested for a violation of Penal Code Section 148 (a)(1), provided that such flight delayed or obstructed the investigation and there is sufficient proof to show that the person knew he/she was being detained by a police officer.

f. Tactical Options

Officers should strive to maintain a position of advantage (POA) and place the subject(s) contacted at a disadvantage whenever possible. Three techniques are: placing a subject on the curb, on the patrol vehicle's push bumper, or in the back seat of a patrol vehicle. While officer safety is of primary concern, curb sitting was not designed to

be a standard practice in all situations and officers recognize that community members find this tactic disrespectful.

If a situation justifies having a subject sit on the curb, the subject should be removed from that position once the threat has been mitigated (i.e., additional officers arrive on scene). This technique is only appropriate under circumstances where officer safety is threatened.

- g. Use of Force to Detain Officers shall comply with Department Procedure 1.04 - Use of Force, when deciding how much force, if any, should be used in effecting a detention.

6. Reporting Detentions

- a. In cases where a subject is detained and released at the scene, without being transported away from that scene, the “contact officer” shall complete a Field Interview (FI) form (ARJIS-1). The contact officer shall document in the FI those facts that led to the reasonable suspicion required to detain the subject. The contact officer shall log the FI on his/her Officer’s Daily Journal.
- b. In cases where a subject is detained, transported away from the scene and later released without booking, the contact officer shall prepare a “detention only” arrest report that properly documents the probable cause, special circumstances, or consent that was required for the detention and movement of the subject.
- c. If the need for photographs and/or fingerprints arises during the course of a detention, the person may be detained until a camera and/or fingerprinting equipment can be obtained, provided the detention does not become unreasonably long. Moving a subject to another location for photographs and/or prints requires either consent from the subject, probable cause to arrest, or special circumstances such as an injured victim, etc. Absent those exceptions, officers shall not transport a subject away from the scene for photographs and/or fingerprints. In cases where the suspect is a juvenile, the officer shall notify parents that he/she is taking photographs of the juvenile and the circumstances surrounding the incident.

D. Pat Downs

A “pat down” is a limited search for the purpose of finding weapons or other instruments that could be used against an officer. A pat down is not a search for

evidence or contraband, and, absent consent, officers shall not use a pat down as a pretext to conduct an evidentiary search.

1. An officer may pat down any person who has been detained when the officer reasonably suspects that the person is carrying a concealed weapon or dangerous instrument and that a pat down is reasonable to protect the officer or others. The pat down may be conducted immediately upon making the stop or at any time during the stop whenever a "reasonable suspicion to pat down" appears.
2. "Reasonable suspicion for a valid pat down" is more than a vague hunch and less than probable cause. If a reasonably prudent officer, under the circumstances, would believe the officer's safety or that of other persons in the vicinity is in danger because a particular person might be carrying a weapon or dangerous instrument, a pat down is justified. The following list (which is not all inclusive) contains some factors that should be considered in determining whether reasonable suspicion exists for a pat down.

Note: A single factor listed below, or even a cluster of factors, may or may not individually justify a pat down. An officer shall consider the totality of the circumstances present when deciding whether or not a pat down is reasonable.

- a. The person's appearance – their clothes may contain a bulge that suggests the presence of an object capable of inflicting injury.
- b. The person's actions - he/she may have made a furtive movement, as if to hide a weapon. The subject may be excessively nervous during the detention. The subject may be exhibiting threatening actions or words.
- c. Prior knowledge – the officer may know that the subject has a prior record for weapons violations or assaultive behavior.
- d. Location – the area may be sufficiently isolated so as to limit immediate police assistance, if needed.
- e. Time of day – darkness may inhibit visibility.
- f. Police purpose – the officer's detention of the subject may be for an armed, serious, or violent offense.
- g. Companions – the officer may have detained multiple subjects. If a weapon is found on one person, it may indicate a greater likelihood that a weapon may be found on others being detained.

3. Every officer who conducts a pat down must be prepared to document those specific factors which led the officer to conclude that "reasonable suspicion" existed before the pat down began. A mere statement that the officer feared for his/her safety is not sufficient. Instead, the officer shall cite specific factors listed above.
4. Pat downs that reveal items reasonably believed to be weapons or other dangerous objects vary slightly from those that reveal items that are reasonably believed to be an otherwise seizable item.
 - a. Weapon or dangerous instrument - if, when conducting a pat down, the officer feels an object which the officer reasonably believes is a weapon or dangerous instrument or is a hard object which may contain such an item, the officer may reach into the area of the person's clothing where the object is located (i.e., a pocket, waistband, or sleeve) and remove the object.
 - b. Other seizable item - if, while conducting a pat down, an officer feels an object which the officer does not reasonably believe to be a weapon or dangerous instrument, but which he immediately recognizes as an item of contraband, based on the nature of the object felt, along with or in combination with other factors, the officer has probable cause to believe that a crime is being committed in the officer's presence, and the officer should tell the person he/she is under arrest for that crime. The officer may then conduct a full custody search incidental to arrest but must not take any step to examine the object before making the arrest. If a seizable item is not found, the person should be released.

E. Photographing Guidelines

1. The taking of a field photograph must be connected to an investigation of a crime or an arrest. All photographs taken in connection with the investigation of a crime or an arrest must be attached to the appropriate reports or forwarded to the appropriate investigative unit. Refer to Department Procedure 3.26, Media Evidence Recovery and Impounding/Preserving Procedures, for further instruction.
2. An officer may, with the individual's consent, take a photograph in conjunction with a Field Interview (FI). That photograph must be attached to the yellow copy of the FI, which is forwarded to the appropriate investigative section.

3. When an officer takes a photograph of a juvenile, parental notification will be made. Refer to Department Procedure 3.08, Juvenile Procedures, for guidelines for photographing juveniles and making parental notification.
8. Officers are not to keep field photographs for the purpose of personal intelligence files or for personal use.

V. ASSEMBLY BILL 953

Assembly Bill 953 (AB 953), also known as the Racial and Identity Profiling Act (RIPA) of 2015, requires law enforcement agencies to collect data on all stops, detentions, and searches. This includes consensual searches and instances where force was utilized. In order to capture this data, a new application became available for every event generated through the Department's MPS and Intranet systems beginning July 1, 2018. There is a template to collect the required data in the F: Drive under Templates/Patrol Based Forms/PD-953, if the database application is temporarily unavailable. The data documented on this form shall be entered into the electronic application prior to the end of officer's shift unless exigent circumstances exist.

Under this mandate, the data collected will include the date, time, and duration of the stop, the location, perceived race or ethnicity, perceived gender, perceived LGBT, perceived or known disability, English fluency, perceived age, and the reason for the stop, detention, or search. The reason for the stop may be generated from a call for service, a traffic violation, reasonable suspicion or knowledge that the person was engaged, or about to engage in criminal activity and conclude with the actions taken by the officer. These actions will describe the basis of the search, whether or not contraband or other evidence is discovered, the reason for and type of property seized and the results of the stop or detention. The data collected under RIPA replaces the data previously collected from vehicle stop data cards.

- A. When completing a detention and/or arrest report, officers will ensure the narrative includes that a RIPA entry was submitted for every person being arrested or detained.
- B. Supervisors will verify officers have documented the RIPA entry in their narrative prior to approval.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: MARCH 14, 2017

NUMBER: 4.15 - LEGAL

SUBJECT: PROBATION, PAROLE, AND KNOCK AND TALK
SEARCHES INCLUDING HIGH-RISK ENTRIES AND
OUTSIDE ASSISTANCE

RELATED POLICY: [4.15](#)

ORIGINATING DIVISION: OPERATIONAL SUPPORT

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: DP 4.15 – 11/08/2013

I. PURPOSE

This Department procedure establishes standardized practices for conducting probation, parole and “knock and talk” searches, search warrants, and high-risk entries.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. DEFINITIONS

- A. Case Agent – the police officer, regardless of rank, who is responsible for the coordination of the operation.
- B. High-Risk Search – a search of a vehicle or house where the propensity for danger is so high that a tactical, dynamic entry is required to secure the area to be searched to minimize the danger to law enforcement officials.
- C. Knock and Notice – a verbal demand made by a peace officer to inform the occupants of a residence or other building of the officer’s intent to enter the building for the purpose of conducting a search or arrest.

- D. Knock and Talk Search – this type of search is an investigative tool that originates from a consensual contact wherein police officers go to a residence or other location where they suspect illegal activity is taking place. The officers knock, introduce themselves as police officers and ask to enter to talk to the residents. If the resident agrees, the officers enter the location, gather information, and look for signs of illegal activity. If illegal activity is still suspected, the officers seek the resident’s permission to search the location. In all cases, the entry and any search should be within legal parameters and must be consensual. A knock and talk search may be conducted when all other investigative methods (e.g., search warrant, parole or probation search) have been utilized and/or deemed inappropriate. The knock and talk search is not meant to supplant the use of search warrants. The knock and talk search should not be confused with contact made for the purpose of an investigative follow-up.
- E. Parole/Probation Search – the search of a parolee’s or a probationer’s person, vehicle or house where the subject’s Fourth Amendment rights have been waived as a condition of his/her parole or probation status.
- F. Search Warrant – a written order issued by a judge or magistrate, which directs police officers to conduct a search of a person, vehicle, or location for evidence of a criminal offense or to aid in an official investigation.

IV. **BACKGROUND**

Parole and probation searches have become a standard police tool used by law enforcement agencies throughout California. San Diego police officers have used this tool effectively to aid in investigations, arrests, and in neighborhood policing projects.

The management and control of probationers and parolees is salient to the safety and security of our neighborhoods. The law governing searches that result from parole conditions and Fourth Amendment waivers seeks to balance the diminished rights of probationers and parolees with the public’s expectation that probationers and parolees will not commit new crimes.

The U.S. Supreme Court has held that a suspicionless search of a parolee does not violate the Fourth Amendment, *Samson v. California*, 126 S. Ct. 2193 (2006). Although the *Samson* case involved a parolee, a fair reading of the case indicates that a suspicionless search of a probationer is also valid. *Id.* at 2197-2198, see also *People v. Bravo*, 43 Cal. 3d 600, 610 (1987).

A probation or parole search may not be arbitrary, capricious, or harassing, *People v. Reyes*, 19 Cal. 4th 743, 753-754 (1998), Cal. Penal Code §3067(d). The search condition must be known to the officer prior to the search, *People v. Sanders*, 31 Cal. 4th 318, 331-332 (2003), *Moreno v. Baca*, 431 F.3d 633, 641 (9th Cir. 2005).

When searching a parolee's or probationer's residence, officers must have probable cause to believe that the subject is a resident of the house to be searched. *Motley v. Parks*, 432 F.3d 1072, 1074 (9th Cir. 2005), other grounds overruled by *U.S. v. King*, 687 F.3d 1189 (9th Cir. 2012). See also *U.S. v. Franklin*, 603 F.3d 652, 656 (9th Cir. 2010) (quoting *Motley*).

To ensure the lawfulness of the search, supervisors are to be actively involved anytime a building is searched pursuant to a parole or probation condition.

V. **GENERAL PROCEDURES**

A. Operational Planning

Prior to any knock and talk searches, search warrants, parole or probation Fourth Amendment waiver searches that involve building entry and searches, or high-risk entries, the case agent or patrol officer shall contact a sergeant (acting sergeants are not acceptable). The case agent or patrol officer and the sergeant will ensure that adequate personnel and resources are utilized and will ensure the suspect(s) name and address are cleared through the San Diego Law Enforcement Coordination Center (SDLECC) via the Watch Commander.

An Operation Plan (PD-1195) will be completed prior to any pre-planned knock and talk search, parole or probation search, high-risk entry, or search warrant service. A sample Operation Plan can be found on the Department LAN system at F:\Templates\Investigative Reports\Operation Plan Sample.pdf. The sergeant will make the final determination as to whether the search will be conducted.

1. Prior to the execution of any knock and talk search, probation or parole search, search warrant service, or high-risk entry, the case agent or sergeant will generally ensure the following:
 - a. Clear suspect(s) name and address through SDLECC;
 - b. Obtain the most recent copy of probation/parole conditions to include discharge date and Fourth Amendment waiver expiration date;
 - c. Conduct warrant and ONS checks; and,
 - d. Check SD Law for custody status.

2. Additionally, the case agent or patrol officer should utilize:
 - a. ARJIS;
 - b. E-SUN;
 - c. DMV;
 - d. Cal Photo;
 - e. Mapping systems; and,
 - f. Other available sources of information.
3. Upon receiving plan approval, a team briefing will be conducted with all personnel involved. Each team member must fully understand the planned search and their role in the search.
4. All personnel should familiarize themselves with the building/suspect's residence and surrounding area (photographs of the residence are often useful, although not required).
5. Search Considerations

Once a search has been authorized and all briefings have taken place, personnel will:

- a. Tactically approach and contain the building;
- b. Give knock and notice;
- c. Tactically enter the building and conduct a security sweep;
- d. Identify and confirm the suspect's identity and determine the scope of the search;
- e. Explain the reason for the officers' presence;
- f. Conduct a legal search with courtesy and professionalism;
- g. Obtain Field Interviews on additional persons as potential witnesses in the event of an arrest or crime report;
- h. If no arrest is made, remind the suspect to notify his or her parole/probation officer of the police contact;

- i. Document any damage caused by officers;
- j. Secure the building as desired by the suspect (if arrested); and,
- k. Notify Probation/Parole Department of the results of your search.

B. Knock and Talk Searches

- 1. The assigned sergeant (acting sergeants are not acceptable) must be present throughout the duration of all knock and talk searches to provide supervision. On occasion, the assigned sergeant may be unavailable due to meetings, sick leave or vacation. In this event, another sergeant may assume command of the operation.

In the event the search takes place within another agency's jurisdiction, the sergeant will notify the appropriate law enforcement agency where the search is taking place prior to arriving at the location of the search.

- 2. A sergeant shall be present at all knock and talk searches and shall ensure that a minimum of two officers are present. All detectives shall carry a minimum of the following equipment: handcuffs, a portable radio, duty handgun and their Department badge and identification. Additional equipment should be utilized, when needed.
- 3. After contacting the occupants of a dwelling, officers or detectives should identify the person or persons who have control over the premises. A knock and talk search should not proceed without proper consent or warrant. Officers or detectives should obtain written consent in all cases where it is possible. A Consent to Search form (PD -257) for premises or vehicle shall be used unless another method of consent is utilized (e.g., recording, video tape, handwritten consent). After obtaining consent, the rest of the search team should be directed to enter the dwelling. Personnel should include details in their reports relating to the initial contact between the officers and the occupants as to how entry was gained.

In filing a complaint, the District Attorney's Office will look at the voluntariness of the consent. They will also consider the following facts:

- a. Number of detectives/officers present;
- b. Detective's attire;
- c. Language barrier; and,
- d. Subject's state of mind.

4. A Receipt and Inventory form should be completed as the search progresses and a copy should be left at the site. All seized items shall be impounded as outlined in Department Procedure 3.02, Impound, Release, and Disposal of Property, Evidence, and Articles Missing Identification Marks, before the case agent secures from shift.

C. Parole/Probation Searches

1. Probation and parole searches are generally conducted between 0700 hours and 2200 hours unless:
 - a. Suspected criminal activity is occurring;
 - b. Suspects are determined to be present and awake;
 - c. Information obtained indicates that a parole/probation violation is taking place; or,
 - d. A specific law enforcement goal is being served (gang sweep, 290 PC registration sweep, area specific or crime specific sweep).
2. The assigned sergeant (acting sergeants are not acceptable) must be present throughout the duration of all probation and parole searches of residences and buildings to provide supervision. On occasion, the assigned sergeant may be unavailable due to meetings, sick leave or vacation. In this event, another sergeant may assume command of the operation.

In the event the search takes place within another agency's jurisdiction, the sergeant will notify the appropriate law enforcement agency where the search is taking place prior to arriving at the location of the search.
3. As with knock and talk searches, the case agent will complete a written operational plan, which the sergeant must approve prior to the search. Upon receiving approval, a team briefing will be conducted with all personnel involved. Each team member must fully understand the planned search and their role in the search.
4. Prior to conducting a parole search, the case agent or patrol officer will make every reasonable effort to contact State Parole officials. However, current case law does not require State Parole authorization prior to conducting this type of search. If State Parole is not contacted, the case agent or patrol officer must have a valid reason and inform the unit supervisor of the reason. This reason must also be articulated in written reports.

Reports generated by the arrest or contact of probationers and parolees will be made available to probation and parole agents as soon as possible after the contact.

5. On rare occasions, officer safety, public safety or time constraints may cause an exception to this procedure. Any exception requires the approval of a supervisor.

6. **Scope of the Search**

- a. Case agents and supervisors must carefully monitor the search to prevent exceeding the legal scope of the search. Generally, probation and parole searches allow the search of the subject's personal property, property under the subject's control and common areas of the subject's residence.
- b. The search of a probationer or parolee while they are visiting another person's residence is limited to his or her person, his or her personal property and immediate area of control. Police cannot enter the residence of a non-probationer for the sole purpose of conducting a Fourth Amendment waiver search without a warrant, exigent circumstances or permission.

7. **Field Contacts**

Probationers or parolees are often contacted in public places. Officers and detectives should take into consideration the circumstances of the contact before deciding if a probation or parole search is appropriate. Before carrying out a probation or parole search of an individual contacted in the field, the patrol officer must verify the current status and expiration date of the individual's search condition. The officer must determine whether there are any special conditions or restrictions placed on the search condition. This verification can take place via the Inquiry frequency. The officer may search the person and his or her belongings as authorized in the search condition. The search may not be arbitrary, capricious or harassing.

- D. **Search Warrants**

1. The case agent will present the signed search warrant to the supervisor who will check it for accuracy and ensure the warrant is valid. The supervisor in charge will read the entire search warrant before approving the written operational plan.

2. If the warrant execution requires involvement from SWAT, the SWAT Unit Commander shall be notified at the earliest opportunity. Personnel shall then follow the guidelines as stated in this procedure under “High-Risk Entries and Searches.”
3. The assigned sergeant (acting sergeants are not acceptable) shall assume overall responsibility for the warrant service and shall be present during its execution. On occasion, the assigned sergeant may be unavailable due to meetings, sick leave or vacation. In this event, another sergeant may assume command of the operation.

In the event the warrant service takes place within another agency’s jurisdiction, the sergeant will notify the appropriate law enforcement agency where the service is taking place prior to arriving at the location of the search warrant service.

4. The case agent will complete a written operational plan, which the sergeant must approve prior to the warrant’s execution. The plan will include an emergency contingency plan and identify a command post location in the event the warrant service becomes a critical incident.
5. Upon receiving approval, a team briefing will be conducted with all personnel involved. Each team member must fully understand the planned search and their role in the search. It will be the responsibility of the unit supervisor to brief the unit lieutenant regarding the operation.
6. During the briefing, the case agent shall:
 - a. Give a complete description of the place to be searched and the items to be seized;
 - b. Present a background on the suspect(s) and give all personnel participating in the warrant service information about the warrant location and the surrounding area, if available;
 - c. Ensure that each person involved in executing the warrant has read the warrant;
 - d. Give specific assignments to all personnel involved in the operation;
 - e. Establish a fall-back position in the event violent resistance is encountered during the search warrant service. This enables the on-scene supervisor to account for all involved police personnel and plan a response to the suspect(s) actions;

- f. Identify all special equipment necessary to execute the warrant and ensure those assigned are qualified to use it; and,
 - g. Designate trauma hospitals for officers and suspects.
7. All team members making tactical entries shall wear body armor approved by the Department, as stated in Department Procedure 5.10, Uniform, Equipment, and Weapons. Personnel involved in the warrant service shall wear sufficient identification to be easily recognized as peace officers. A displayed badge is not sufficient if the situation requires forced entry.
 8. If forced entry is required, the supervisor shall decide if the entry should be attempted. The entry will be made when the supervisor gives the order to enter unless an emergency situation develops requiring immediate action. Personnel making entry pursuant to a warrant will comply with §1531 PC, Knock and Notice.
 9. If the person in control of the premises is present, he or she must be allowed to read the warrant. The case agent may read the warrant to them, if it is more expedient. A copy of the warrant will be left at the premises. The person in control of the premises will be allowed to remain present during the search, if safe and practical, and if that is his or her desire.
 10. The case agent shall be responsible for coordinating the search and the disposition of all seized items. The sergeant shall ensure that at least two officers are present in each room as it is searched. A floor plan sketch facilitates documenting which personnel performed the search of each room. Photographs record the discovered items as well as the pre-existing and final conditions of the building relative to the search.
 11. A Receipt and Inventory form should be completed as the search progresses and a copy should be left at the site. The case agent is responsible for the chain of custody of all seized evidence until it is impounded in the Property Room, as outlined in Department Procedure 3.02, Impound, Release, and Disposal of Property, Evidence, and Articles Missing Identification Marks. All seized items shall be impounded as soon as possible and before the case agent secures from his shift. A copy of the Receipt and Inventory form shall be attached to the property tag when evidence is impounded. If a firearm or money is seized, a Receipt for Weapons/Currency (PD-1072) will not be necessary if the Receipt and Inventory form is attached to the property tag.
 12. Due to the varying conditions under which search warrants are executed, the necessity to modify procedures may arise. The supervisor may alter these procedures when appropriate and will assume responsibility for doing so. Exigent circumstances should be documented in all reports.

E. High-Risk Entries and Searches

Planned forced entries provide an added level of risk to law enforcement officers. In an effort to mitigate this risk, a standardized assessment of each operation is necessary to ensure safety for all involved as outlined in the San Diego County Regional High-Risk Entry Checklist. This checklist is to be used anytime a high-risk entry is anticipated.

A Memorandum of Understanding by all law enforcement agencies in San Diego County was approved on January 5, 2005, establishing protocol while operating in the jurisdiction of another agency, for assistance in serving search/arrest warrants, conducting Fourth Amendment waiver searches, and parole searches when forced entry is anticipated.

1. When serving a search/arrest warrant or conducting a Fourth Amendment waiver search or parole search wherein forced entry is anticipated, the supervisor will review the search warrant and written operational plan to ensure that all high-risk issues have been appropriately addressed as set forth in the Regional High-Risk Entry Checklist. The Regional High-Risk Entry Checklist will be attached to the operational plan.
2. When a request is made to the San Diego Police Department for assistance in serving a search/arrest warrant, conducting a Fourth Amendment waiver search or parole search wherein forced entry is anticipated, a supervisor (or representative) from the requesting agency shall meet with an SDPD supervisor to discuss the proposed mission prior to any enforcement action.

The SDPD supervisor will review the written operational plan prepared by the requesting agency to ensure that all "high-risk" issues have been appropriately addressed as set forth in the Regional High-Risk Entry Checklist.

3. A sergeant (acting sergeants are not acceptable) must be present at high-risk violator arrests, high-risk warrant arrests, search warrants, and high-risk entries of residences and/or buildings. It will be the responsibility of the supervisor to brief the lieutenant regarding the operation, including suspect and site assessment. A lieutenant or above will be responsible for approving any operation which includes the utilization of SWAT on pre-planned high-risk entries.
4. Prior to each high-risk entry, the training and expertise of the entry team and the potential for a violent confrontation with the suspect(s) must be considered. To facilitate tactical planning, SWAT should be contacted as early as possible in the investigative process. All requests for SWAT assistance shall be made through the SWAT Commanding Officer, except

in emergency situations warranting a Code 11. The following situations should normally warrant the involvement of SWAT:

- a. The target location is fortified to the point it would be difficult for detectives to gain entry in a safe manner;
 - b. The suspects are known to be, or suspected of being, armed with weapons superior to the weapons of the detectives, or when the suspects have the ability to defeat the armor and the tactics normally employed by detectives;
 - c. The suspects have a past criminal history involving substantial violence and are likely to violently resist the police contact;
 - d. When the layout of the target location would require sophisticated planning, tactics, or exhaust the resources of the investigative unit;
 - e. There is a high probability that a hostage situation could occur;
 - f. Vicious animals are used to protect the target location;
 - g. The suspects are members of a paramilitary or extremist organization;
 - h. Intelligence information indicates a violent confrontation is imminent; or,
 - i. Situations where the unit supervisor or lieutenant believes the assistance of SWAT is necessary to safely carry out the mission.
5. On occasion, personnel may be requested to assist other law enforcement agencies during situations of such exigency that strict compliance to this procedure could adversely impact a safe and timely resolution. Under such circumstances, personnel will not be expected to comply if doing so would delay or hamper their ability to prevent the loss of human life or injury. The same protocol would apply if SDPD were the requesting agency seeking assistance of the jurisdictional agency in whose jurisdiction the warrant is to be served.
6. Routine requests to assist outside agencies will be handled via a field supervisor. The supervisor will review the request to determine the scope of assistance needed and our current ability to provide the assistance based on staffing, availability and officer safety.

7. Planned probation and parole sweeps must be approved by the respective commanding officers of each involved agency or division. An SDPD sergeant will be present during any probation or parole search of a residence or building if SDPD personnel are involved in the actual search.

F. Reporting Requirements

The following items need to be considered and included in the appropriate documentation after the knock and talk search, probation/parole search, Fourth Amendment waiver search or search warrant execution:

1. How was the scope of the search determined? How common areas were differentiated from areas under the control of the subject of the search;
2. The time delay between the Knock and Notice and the actual breach, as well as the name of the officer giving the Knock and Notice;
3. The names of all persons detained during the search, the length of their detention and the reason for their presence at the search location;
4. The name of the sergeant and all other persons present during the course of the search;
5. Any damage caused by police personnel during the search; and
6. Any use of force.

G. Documentation Resources

Many of the documents necessary to fulfill the reporting requirements of this Procedure can be found on the Department LAN, on the F drive:

Operation Plan - F:\Templates\Investigative Reports\Operation Plan (PD-1195)

Consent To Search Form (PD-257) - F:\Templates\Investigative Reports\ Consent to Search Form

High-Risk Entry Checklist - F:\Templates\Investigative Reports\High-Risk Entry Checklist

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: AUGUST 17, 2022

NUMBER: 4.17 – LEGAL

SUBJECT: FIRST AMENDMENT ACTIVITY FACILITATION AND
MANAGEMENT

RELATED POLICY: N/A

ORIGINATING DIVISION: CRITICAL INCIDENT MANAGEMENT UNIT

NEW PROCEDURE:

PROCEDURAL CHANGE: **MAJOR CHANGES**

SUPERSEDES: DP 4.17 - 02/17/2021

I. PURPOSE

This Department procedure establishes guidelines for the coordination, facilitation and management of First Amendment Activities.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

The First Amendment to the Constitution of the United States of America states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

Article 1, sections 1 through 3, of the California Constitution also guarantees the rights to life, liberty, acquiring and possessing property, pursuing safety, happiness, and privacy, as well as the rights to speak freely, to freedom of the press, to petition the government for redress of grievances, and to assemble freely to consult for the common good.

The San Diego Police Department supports all people's fundamental right to peaceably assemble and their right to freedom of speech and expression.

The goal of police involvement at peaceful First Amendment Activities is to preserve the peace, prevent criminal activity, control traffic, and facilitate the safe exercise of an individual or group's First Amendment rights.

In furtherance of these rights, and to facilitate the safe and peaceful exercise of an individual or group's First Amendment rights, the Department will act swiftly and with resolve to protect human life, property, and maintain peace when confronted with violence, threats of violence, assaults, or other criminal acts.

IV. DEFINITIONS

- A. Authorized News Media – representatives are those persons possessing current, valid credentials issued by SDPD or any bona fide law enforcement agency, or other identification establishing regular news media affiliation or employment. (DP 1.30 & 8.09)
 - 1. "Freelance" reporters or photographers possessing a valid San Diego Police Department media credential will be deemed as authorized news media representatives, or other identification establishing regular news media affiliation or employment. (DP 8.09)
- B. Crowd Control - Crowd control is defined as those techniques used to address unlawful public assemblies, including crowd containment or movement, dispersal tactics, and arrests.
- C. Crowd Management - Techniques used to manage public assemblies before, during, and after an event, to maintain public safety, preserve the peace, prevent criminal activity, and facilitate the event's lawful status.
- D. Designee - A Designee is a Department member designated by the Incident Commander to carry out a specific task. The Incident Commanders may delegate their authority, but not their responsibility.
- E. First Amendment Activity/Activities - First Amendment Activities include all forms of speech and expressive conduct used to convey ideas or information, express grievances, or otherwise communicate with others, including verbal and non-verbal expression. First Amendment Activities may include public displays of a group's or individual's feeling(s) toward a person(s), idea, or cause, and includes, but is not limited to, marches, protests, student walkouts, assemblies, and sit-ins. Such events and activities usually attract a crowd of persons, including participants, onlookers, observers, media, and other persons who may agree or disagree with the activity's point of view.
 - 1. Common First Amendment Activities include, but are not limited to, speeches, demonstrations, vigils, picketing, distribution of literature, displaying banners or signs, using puppets to convey a message, and other artistic forms of expression. These activities involve the freedom of

speech, association, assembly, and the right to petition the government, as guaranteed by the United States Constitution and the California Constitution.

2. All persons have the right to peacefully march, demonstrate, protest, rally, or perform the other activities protected by the First Amendment of the United States Constitution and California Constitution.
 3. The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are content-neutral, without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.
- F. Incident Commander - The Incident Commander is responsible for all incident/event activities. The Incident Commander should be of the rank appropriate for the event. The Incident Commander may change throughout an evolving incident.
- G. Lawful Assembly - A First Amendment Activity, involving two or more persons, which abides by relevant statutory laws and does not involve violence or criminal acts.
- H. Riot - Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by the immediate power of execution, by two or more persons acting together, and without the authority of law, is a Riot. (404 PC)
- I. Rout - Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a Rout. (406 PC)
- J. Supplemental Video Team (SVT) – The Supplemental Video Team is a resource available to the Incident Commander during First Amendment Activity covered under this procedure. The SVT will consist of personnel from the Media Services Unit. The objective will be to use video cameras to capture images, video and audio recordings to supplement information captured from officers’ Body Worn Cameras (BWCs). The SVT will adhere to Department Procedure 3.26 - Media Evidence Recovery and Impounding/Preserving Procedures.
- K. Unified Command - Unified Command is a procedure that allows all agencies with the significant geographical, legal or functional responsibility over an incident to avoid operational conflicts, economize resources by collocating at a single Incident Command Post or communicate their operational goals and strategies to each other during structured planning meetings.
- L. Unlawful Assembly - Whenever two or more persons assemble to do an unlawful act or do a lawful act in a violent, boisterous, or tumultuous manner, such

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assembly is an Unlawful Assembly. (407 PC) This section applies to assemblies which are violent, or which pose a clear and present danger of imminent violence. Because the assembly must in fact be violent or pose an immediate threat of violence, an assembly that is “boisterous or tumultuous” does not establish a violation of the statute.

V. PLANNING FOR FIRST AMENDMENT ACTIVITIES:

A. Pre-planned events

1. When appropriate, and consistent with Department Procedure, 8.04, the Incident Commander shall be responsible for developing a written contingency or incident action plan, consistent with the Department’s goals and objectives to minimize harm, honor constitutional rights, communicate with the event participants, and facilitate First Amendment Activity. This plan may be in a Department Memorandum format or the ICS 201 format. All or parts of the contingency or incident action plan may be exempt from public disclosure pursuant to the California Public Records Act. Each plan shall be marked accordingly.
2. The Incident Command System shall be appropriately used when managing First Amendment events.
3. The Incident Commander or designee shall immediately notify the affected Service Area Lieutenant and Division Captain of potential First Amendment Activities.
4. Consider engaging allied agencies (CHP, SDSO, Fire-Rescue etc.) if the First Amendment Activity could likely affect other jurisdictions or if assistance may become necessary.
5. Stakeholder involvement is essential to the overall success of managing First Amendment Activities. When knowledge exists that a First Amendment Activity may occur, the Incident Commander or designee shall proactively make reasonable attempts to establish and maintain communication and cooperation with representatives or the First Amendment Activity leaders.
6. If communication is established, the Incident Commander or designee shall make reasonable efforts to identify the event's representatives or leaders and identify a primary police liaison. The primary police liaison should be requested to be in continuous contact with an assigned police representative designated by the Incident Commander.
7. In planning for First Amendment Activity, Incident Commanders, or their designees, should consider the following factors in determining the appropriate resources and level of preparation necessary:

- a. What type of First Amendment Activity is expected to occur? (Press conference, demonstration, protests, static event, labor strike, picket line, march, caravan, sit-in/dine-in, etc.)
- b. What is the goal of the First Amendment Activity? (Raise awareness, disrupt a target location, counter another demonstration, engage in criminal activity, etc.)
- c. When will the First Amendment Activity occur? (Day of the week, holiday, time of day/traffic patterns, daytime/nighttime, conflict with other events at the same time.)
- d. Will there be an organizing individual/group, or will this be a crowd without identified leadership?
- e. Has the Department previously worked with the organizers? Have prior First Amendment Activities been lawful ?
- f. Where will the First Amendment Activity likely occur? Will the event affect critical infrastructure like police stations, jails, courthouses, freeways, government buildings, etc.? Will the effect be deliberate or collateral?
- g. If the group intends to be mobile, what will the predicted or planned route(s) be? (First Amendment Activity participants may not provide their own traffic control.)
- h. What will be the projected size of the First Amendment Activity event?
- i. What will the composition of the group be? (Juvenciles, students, labor unions, known local groups, known groups from outside the area, unified as to a single cause, or diverse causes and points of view within the group, etc.)
- j. Will the hosting group provide its own marshals or monitors?
- k. Will an opposing group attend the First Amendment Activity event?
- l. Is there a likelihood of improvised or conventional weapons?
- m. Are arrests likely? Will prisoner processing be necessary?
- n. Is civil disobedience planned or likely?
- o. Is unlawful assembly planned or likely?
- p. Is riot planned or likely?

8. The operations plan created to address a First Amendment Activity event should anticipate various scenarios and devise a police contingency plan. All plans shall include de-escalation considerations in compliance with Department Procedure 1.55.
9. The Incident Commander shall balance any anticipated level of disruption to traffic against the goal of facilitating First Amendment Activity, including the practicality of relegating the crowd to sidewalks or an alternate route, the expected duration of the disruption, and the traffic disruption expected in making a mass arrest if demonstrators refuse to leave the street. This balancing does not mean First Amendment Activity participants will be allowed to disrupt commuter traffic and bridge approaches deliberately.
10. Department-Issued ID Only Name Tags
 - a. ID only name tags may only be worn during a Mobile Field Force (MFF) event with Incident Commander approval, consistent with Department Procedure 5.10.

B. Spontaneous Events

1. Spontaneous First Amendment Activities, which occur without prior planning or prior notice to the police, present less opportunity for planning and mitigation efforts. The same policies and procedures concerning crowd management, crowd control, and police responses to criminal activity described below apply to a spontaneous First Amendment Activity.
2. Unless unavailable, a supervisor shall respond to the scene of spontaneous events and assume the role of Incident Commander until relieved by a ranking officer.
3. The Incident Commander shall notify the Watch Commander and, if appropriate, the Service Area Lieutenant.
4. An immediate assessment of the situation is essential for an effective police response. The Incident Commander should evaluate the spontaneous First Amendment Activity using the factors listed above for planned events.

VI. LAWFUL ASSEMBLY, DEMONSTRATION OR PROTEST

- A. The goal of police involvement at peaceful First Amendment Activities is to preserve the peace, prevent criminal activity, control traffic, and facilitate the safe exercise of an individual or group's First Amendment rights.

- B. Officers shall remain professional when exposed to the content of the opinions being expressed regardless of the race, gender, sexual orientation, physical disabilities, appearances, or affiliation of anyone exercising their lawful rights. Officers shall be courteous in compliance with Department Policy 9.20.
- C. During peaceful First Amendment Activity, officers may find the occasional individual who engages in criminal conduct that is not reflective of the larger group. In these cases, when feasible, officers should address the individual offender in compliance with other Department procedures while minimally disrupting the larger assembly.

VII. UNLAWFUL ASSEMBLY

- A. An unlawful assembly is defined by California Penal Code 407 as "Whenever two or more persons assemble together to do an unlawful act or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly."
- B. When First Amendment Activity results in unlawful acts or violence, the Incident Commander shall consider the following in determining whether to declare the assembly unlawful:
 - 1. The threat to people or property.
 - 2. The number and nature of unlawful acts within the crowd.
 - 3. The number and nature of violent acts within the crowd.
 - 4. Whether the unlawful or violent acts result from one or two individuals or the larger crowd in general.
 - 5. Whether separate crowds have merged and now the group has internal conflict between participants.
 - 6. Whether contact with the police liaisons/event leaders to negotiate a resolution of the situation is appropriate and effective.
 - 7. Evaluation of whether arresting individuals will be more appropriate than dispersing the entire crowd.
 - 8. Determination if sufficient police resources are available on-scene to manage the incident effectively.
 - 9. The mere failure to obtain a permit, such as a parade permit or sound permit, is not a sufficient basis to declare an unlawful assembly.

10. The sole fact that some of the demonstrators or organizing groups have previously engaged in violent or unlawful acts is not grounds for declaring an assembly unlawful.

C. Declaration of Unlawful Assembly

1. If the Incident Commander deems it is appropriate to declare an unlawful assembly, dispersal orders must be given.
2. For a dispersal order to be valid, a public officer must direct the persons assembled to immediately disperse in the name of the People of the State. (726 PC) The officer is not required to use any particular words. However, the terms used must be sufficient to inform a reasonable person that the officer is acting in an official capacity and ordering people to leave the area. Additionally, the officer must communicate the order in a reasonable way that ensures that the order is heard. (Judicial Council of California Criminal Jury Instructions 2020, Instruction Number 2686).
3. Dispersal orders should not be given until officers are in a position to support/direct crowd movement. Members of the crowd should be given ample means of egress. The Incident Commander should consider persons with mobility issues when evaluating ample means of egress. The dispersal order shall be given at least three (3) times, and when safe, with audible confirmation from officers behind the crowd.
4. The dispersal order shall be given in English and Spanish.
5. The Incident Commander should ensure video recording occurs during unlawful assemblies, consistent with Department Procedures 1.49 and 3.26.
6. Officers shall activate their Body Worn Cameras before dispersal orders begin, consistent with Department Procedure 1.49.
7. Officers shall use the following dispersal order:

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I am (your name and rank), a Police Officer of the City of San Diego. I hereby declare this to be an unlawful assembly, and in the name of the People of the State of California, I command all those assembled at (give specific location) to immediately disperse. You may move to (give a suitable location for crowd destination). If you do not do so, you will be arrested. If you refuse to move, (describe force, e.g. chemical agents and other weapons will be used. Provide the chemical agent/projectile warning only if their use is anticipated.)

Yo soy (name and rank) un oficial del departamento de policia de San Diego. Por Medio de la presente declaro que esta es una asamblea ilegal y en el nombre del gobierno del estado de California, les ordeno a todos aquellos reunidos (give specific location) que se retiren inmediatamente. Usted puede moverse (give specific locations and best route). Sino hacen eso, ustedes seran arrestados. Si usted rehusa moverse se usara gas lacrimojeno y otras armas. (Provide the chemical agent/projectile warning only if their use is anticipated.)

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8. Incidents commanders shall consider the following methods that may be used to deliver and document dispersal orders (not in priority order):
 - a. Loud speech
 - b. Amplified sound
 - c. Ensuring that the order is heard in remote areas
 - d. Using unmanned aircraft equipped with amplified sound flown to inaccessible areas
 - e. Pre-recorded unlawful assembly messages in multiple languages as appropriate
 - f. Display of signage, including electronic signage and billboards, indicating unlawful assembly, dispersal and clearly identified routes of egress
 - g. Gaining the attention of the crowd and documenting affirmative responses of crowd members prior to the declaration of unlawful assembly
 - h. Positioning law enforcement personnel to the rear of a crowd to confirm and document hearing the transmission of the dispersal order
 - i. Acquiring multiple-language capability
 - j. Community alert system(s)
 - k. Provide easy to understand directions that help the crowd disperse so that they clearly understand the desired response
 - l. Using video/audio recording equipment for documentation of the dispersal order, the crowd response and their ability to hear
 - m. Use of social media platforms to send out alerts to specific areas

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9. Emergency Medical Services personnel should be staged before the use of crowd dispersal techniques defined below unless exigent circumstances exist. While SDPD does not have jurisdiction over San Diego Fire-Rescue personnel, officers may suggest EMS have proper materials on-site for the situation. For example, officers may suggest ample water be available for decontamination if the use of chemical agents is anticipated.
10. Unless exigent circumstances exist, crowd dispersal techniques shall not be initiated until the Incident Commander has ensured dispersal announcements have been made to the crowd.
11. These dispersal announcements must be made using adequate sound amplification equipment to ensure that they are audible over a sufficient area. The dispersal orders should be repeated after the commencement of the dispersal operation so that persons not present at the original broadcast will understand that they must leave the area. Consider using a bullhorn, vehicle Public Address (PA) system, Long-Range Acoustical Device (LRAD), or ABLE.
12. The Incident Commander should ensure that the name of the individual making the dispersal order and the date, time(s), and location(s) each order was given is recorded.
13. Officers shall document the details of the dispersal order in their probable cause declarations and arrest reports when charging 407/408 PC - Unlawful Assembly or 409 PC - Failure to Disperse.
14. Unless an immediate risk to public safety exists or significant property damage occurs, a reasonable time will be allowed for a crowd to comply with police commands before taking action.
15. The Incident Commander should note if all or part of the crowd responds to the dispersal order and attempts to leave, or whether there is an unwillingness to comply or willful defiance of the dispersal order.
16. If orders to disperse do not result in voluntary movement/compliance by the crowd, the Incident Commander may elect to use crowd dispersal techniques described in section IX of this procedure.
17. When a command decision is made to employ crowd dispersal techniques, continue attempts to obtain voluntary compliance and cooperation through announcements and negotiation. The Incident Commander shall suspend crowd dispersal techniques when a crowd reasonably appears to be dispersing. Crowd dispersal techniques may be re-employed if compliance ceases.
18. When a crowd disperses pursuant to a declaration of unlawful assembly, and the participants subsequently assemble at a different geographic location outside the dispersal area, and are engaged in non-violent and

lawful First Amendment Activity, the new assembly cannot be dispersed until the Incident Commander has determined that a new unlawful assembly is occurring. At such time, the Incident Commander will follow the steps outlined above for declaring an unlawful assembly.

19. If unlawful or violent activity continues as the crowd moves, the event should be treated as a continuous unlawful assembly.

VIII. RIOT

- A. California Penal Code section 404(a) states, "Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by the immediate power of execution, by two or more persons acting together, and without the authority of law, is a riot."
- B. California Penal Code section 404.6(a) states, "Every person who with the intent to cause a riot does an act or engages in conduct that urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, and at a time and place and under circumstances that produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of incitement to riot."
- C. California Penal Code section 410 states, "If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this Chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor."
- D. In order to reasonably comply with P.C. 410, it is imperative that the Incident Commander assesses the situation on an ongoing basis to determine if the level of behavior of the crowd rises to the level of a riot. If the Incident Commander determines the elements of a riot have been met, the Incident Commander shall, as reasonable circumstances permit, implement strategies as described in Section VII- Unlawful Assembly, as well as Section IX- Crowd Dispersal Strategies, Objectives and Techniques.

Some factors to consider when responding to a riot include, but are not limited to: the size of the riotous crowd versus available officers, weapons being used by those involved in the riot as compared to those possessed by officers, and capable defensive measures officers may be able to use while interacting with the riotous crowd.

IX. CROWD DISPERSAL STRATEGIES, OBJECTIVES AND TECHNIQUES

- A. Crowd dispersal strategies and techniques shall be consistent with the Department's objectives to minimize harm, honor constitutional rights,

communicate with the event participants, and facilitate peaceful First Amendment Activity.

- B. Should negotiation and verbal announcements to disperse not result in the crowd's voluntary movement, officers may employ additional crowd dispersal techniques, but only after orders from the Incident Commander or their designees.
- C. Reasonable force under the totality of the circumstances will be used consistent with DP 1.04.
- D. Some of the permissible techniques to disperse or control a non-compliant crowd includes the following (not in any specific order of use):
 - 1. Display of police officers
 - a. A police formation may be moved as a unit to an area within the crowd's view to assist with crowd management. If a display of police officers, motorcycles, police vehicles, and mobile field forces, combined with a dispersal order, is ineffective, other techniques may be employed.
 - b. Generally, officers should be assigned to teams of sufficient size to be effective.
 - 2. Containment and Arrest for Violent Criminal Activity
 - a. If violent criminal activity is occurring, and the crowd has failed to disperse after the required announcements, officers may contain the crowd or a portion of the crowd for purposes of making multiple, simultaneous arrests.
 - (1) As described below, this technique shall not be used in response to non-violent civil disobedience.
 - (2) This technique shall not be used simply to disperse a crowd after an unlawful assembly declaration.
 - b. Officers should not be sent into a hostile crowd solely to communicate with them. Officers should not penetrate a crowd for an individual arrest unless the targeted individual is involved in criminal conduct which endangers persons or property. The decision to move into the crowd should generally be under the direction of the Incident Commander or designee.
 - c. Persons who make it clear that they seek to be arrested (e.g., sitting down, locking arms) shall be arrested and not subjected to other dispersal techniques.

- d. Arrests of non-violent persons shall be accomplished by verbal commands and persuasion, handcuffing, lifting, carrying, or the use of lesser controlling force, such as control holds, pressure point techniques, and the bent-wrist control hold or the use of OPNs, consistent with Department Procedure 1.04 - Use of Force.
 - e. Where remaining demonstrators have been advised that they will be subject to arrest if they choose to remain and still refuse to disperse, a member of the arrest team shall individually advise each demonstrator that he or she is under arrest before the application of any force to remove locking devices or to move the demonstrators.
 - f. In the event control holds are necessary, precautions should be taken to assure that arrestees are not injured or subjected to unnecessary or excessive pain, consistent with Department Procedure 1.04.
 - g. The decision to use control holds, and the reasons for applying force shall be documented on all appropriate forms and in Blue Team, consistent with Department Procedure 1.04.
 - h. On occasion, persons involved in a riot or unlawful assembly go mobile and commit criminal acts such as assault, vandalism, theft, etc., while actively fleeing or avoiding law enforcement. In these dynamic situations, officers may use techniques that are reasonable and compliant with existing policy, procedure, and law to encircle/contain such groups and affect the appropriate arrests.
3. Police Formations and Use of Batons
- a. If a crowd refuses to disperse after the required announcements, mobile field force formations may be used to move or disperse the crowd.
 - b. Batons may be visibly displayed and held in a ready position during formations.
 - c. Batons shall only be used as specified in DP 1.04 – Use of Force.
4. Use of Munitions
- a. **See Section X of this Procedure for limitations on the use of munitions.**
 - b. Unlawful assemblies are created when some or all involved in the assembly begin to violate local, state, or federal laws. It poses a unique situation for law enforcement to potentially control or arrest a large group of people, acting in concert.

NEW

- c. In these situations, less lethal tools may be a force multiplier, making it safer for all involved following the declaration of an unlawful assembly in moving/dispersing the riotous crowd and/or making arrests.
- d. Use of Specialty Munitions (DP 1.36) – Use of specialty munitions shall comply with Department Procedure 1.36. Generally, munitions 1-4, listed below, may be used while on the line and should be a coordinated effort directed by an Incident Commander. Munitions 1-4 may generally be used in coordination with the SWAT Munitions Team.

Authorization for munitions 5 and 6, listed below, shall be obtained by an Assistant Chief level officer and carried out by the SWAT munitions Team Leader

- (1) OC spray (Oleoresin Capsicum)
- (2) 40 mm foam baton rounds
- (3) Pepperballs (OC)
- (4) Flashbangs
- (5) CS gas grenades
- (6) Rubber Sting Balls- defensive maneuver for law enforcement personnel when faced with overwhelming aggression placing officers in immediate physical risk of serious bodily injury or death.

5. Arrests

- a. The Prisoner Processing Unit should be consulted before the event should mass arrests be anticipated.
- b. All arrests shall be based upon probable cause and conducted in compliance with existing Department Procedure 6.02 – Booking Procedures.
- c. All persons subject to arrest during a demonstration or crowd event shall be handcuffed per Department Procedure 6.01 – Handcuffing, Restraining, Searching, and Transporting Procedures.
- d. Officers should be cognizant that flex-cuffs may tighten when arrestees' hands swell or move, sometimes merely in response to pain from the cuffs themselves.

- e. Each unit involved in detention or transportation of arrestees with flex-cuffs should have a flex-cuff cutter and adequate supplies of extra flex-cuffs readily available. When arrestees complain of pain from overly tight flex-cuffs, members shall examine the cuffs to ensure proper fit.
6. Video Recording by Department Members
- a. The goal of police involvement at peaceful First Amendment activities is to preserve the peace, prevent criminal activity, control traffic, and facilitate the safe exercise of an individual or group's First Amendment rights.
 - b. Consistent with Department Procedures 1.49 and 3.26, Department members should refrain from video recording or photographing lawful First Amendment Activity. During lawful First Amendment Activity, officers should operate Body-Worn Cameras (BWCs) in the buffering/Stand-by mode. If officers witness crimes occurring among the demonstrators or believe an arrest is likely, they should begin recording in the Event mode, consistent with Department Procedure 1.49.
 - c. When there is a reason to believe that a planned event has the potential for unlawful activity, the Incident Commander should contact the Media Services Unit to coordinate with the Supplemental Video Team (SVT), consistent with Department Procedure 3.26
 - d. Refer to the Media Services Unit Operations Manual for further details regarding the use of the Supplemental Video Team.
 - e. If the Incident Commander or designee determines that a lawful assembly has turned into an unlawful assembly, officers should be directed to place BWCs in Event mode to begin recording the unlawful activity. Additionally, the Incident Commander or designee should coordinate with the Supplemental Video Team (SVT) to provide supplemental video documentation of the event.
 - f. Any video captured by either Body Worn Camera or the Supplemental Video Team will be properly preserved per Department Procedures 1.49 and 3.26.

NEW X. **USE OF ENERGY PROJECTILES AND CHEMICAL AGENTS TO DISPERSE A CROWD (ASSEMBLY BILL 48)**

- A. Use of kinetic energy projectiles and chemical agents shall not be used to disperse an assembly, protest, or demonstration, except as authorized by AB 48, which added Section 13652 to the Penal Code. **All sworn members of the Department**

shall comply with the requirements and standards set forth in Penal Code section 13652.

B. Penal Code section 13652 reads as follows:

- (a) Except as otherwise provided in subdivision (b), kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to **disperse** any assembly, protest, or demonstration.
- (b) Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:
 - (1) De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
 - (2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
 - (3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.
 - (4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
 - (5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
 - (6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.
 - (7) An objectively reasonable effort has been made to extract individuals in distress.
 - (8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

- (9) **Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.**
- (10) **Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:**
 - (A) **A violation of an imposed curfew.**
 - (B) **A verbal threat.**
 - (C) **Noncompliance with a law enforcement directive.**
- (11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.
- (c) This section does not prevent a law enforcement agency from adopting more stringent policies.
- (d) For the purposes of this section, the following terms have the following meanings:
 - (1) “Kinetic energy projectiles” means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.
 - (2) “Chemical agents” means any chemical that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.
- (e) This section does not apply within any county detention facility or any correctional facility of the Department of Corrections and Rehabilitation.

NOTE: This directive does not prohibit officers’ abilities to use appropriate force options to defend themselves or others as defined in Department Procedure 1.04.

XI. RESOURCES

- A. Appropriately managing First Amendment Activity can be resource intensive. Several units within the San Diego Police Department can lend special skills and equipment to facilitate safe First Amendment Activities and a safe resolution to unlawful assemblies and riot scenarios. Each unit abides by Department Directives and the Unit's Operations Manual. Some of these resources include:
1. Air Support Unit
 2. Bicycle Teams
 3. Criminal Intelligence Unit
 4. Emergency Medical Services (Fire-Rescue)
 5. Homeland Security / Critical Incident Management Unit
 6. Information Services and Data Systems
 7. In-Service Training Unit
 8. Legal Advisors
 9. Media Services Unit
 10. Mobile Field Force-Bravo and Delta Platoons
 11. Mobile Field Force "Alpha" deployments
 12. Mobile Field Force Wave deployments
 13. Motors Unit
 14. Operational Support Administration
 15. Prisoner Processing Unit
 16. Special Event Traffic Controllers (SETCs)
 17. SWAT
 18. SWAT Munitions
 19. Traffic Division
 20. Unmanned Aerial Systems (UAS) Unit
 21. Volunteer Services

XII. PUBLIC INFORMATION AND THE MEDIA (DPs 1.30, 1.31 and 8.09)

- A. The media have a right to cover First Amendment Activity, including the right to record the event on video, film, photographs, and other mediums.
- NEW** B. The media shall never be targeted for dispersal or enforcement action because of their media status. Officers shall not request nor require media or other members of the public to stop, pause, or discontinue audio or video recording.
- NEW** C. Police Department members shall accommodate the media, to the extent possible and reasonable. When the immediate area surrounding a command post, police line, or rolling closure at the site of First Amendment Activity has been closed, California Penal Code section 409.7 allows duly authorized members of the media access to the closed area. This access applies to a “duly authorized representative” of any news service, online news service, newspaper, or radio or television station, or network.
1. If access is granted to closed areas, members of the media are still not permitted entry into a command post or allowed to move through police lines and interfere with police actions. These violations may be cause for removing a journalist from a closed area or charging an offense not precluded by 409.7 PC. **Refer to DP 1.30 for further details regarding classification as a duly authorized media representative and PC 409.7.**
 - a. Even after a dispersal order has been given, clearly identified members of the media shall be permitted to carry out their professional duties unless their presence would unduly interfere with enforcement action. A member of the media shall not be cited for the failure to disperse, a violation of a curfew, or a violation of Penal Code section 148(a)(1) for gathering, receiving, or processing information.
 - b. Persons with a known history of participating and coordinating activities at events, interfering with police operations, or engaging in criminal conduct should be referred to a supervisor if they identify themselves as a journalist or member of the media and request access to closed areas.
- NEW** D. Members of the media may not interfere with arrests, assault officers, or commit criminal acts under local, state, or federal law. Any criminal offenses by a media member shall be thoroughly documented, detailing specific facts, witnesses, and evidence.

XIII. MUTUAL AID REQUESTS

Refer to Department Procedure 8.10, Critical Incidents - Mutual Aid.

XIV. AFTER ACTION REPORTS

Refer to Department Procedure 8.11, Incident Report Procedures.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: OCTOBER 7, 2020

NUMBER: 6.01 – PATROL

SUBJECT: HANDCUFFING, RESTRAINING, SEARCHING AND TRANSPORTING PROCEDURES

RELATED POLICY: 6.01

ORIGINATING DIVISION: INTERNAL AFFAIRS

NEW PROCEDURE:

PROCEDURAL CHANGE: **MINOR CHANGES**

SUPERSEDES: DP 6.01 – 01/23/2019

I. PURPOSE

NEW

This Department procedure establishes guidelines for handcuffing, restraining, searching and transporting subjects.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

Officers are responsible for the safety and wellbeing of all subjects who are taken into custody. It is an officer's duty to keep prisoners safe from harm and prevent their escape, while also protecting others and preserving evidence.

Handcuffs are an effective security tool that officers should use to their full advantage. Refer to Department Procedure 3.08, Juvenile Procedures, for guidelines on transporting juveniles.

IV. DEFINITIONS

- A. Strip search – any search that requires a person to remove or arrange some or all of his/her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person.
- B. Body cavity – the stomach, vagina or rectal cavity.
- C. Visual body cavity search – a visual inspection of a body cavity.
- D. Physical body cavity search – a physical intrusion into a body cavity for the purpose of discovering any object concealed within the body cavity.

V. HANDCUFFING PROCEDURES

NEW

- A. All persons taken into custody **who are 13 years of age or older** shall be handcuffed. Persons who are detained during a police investigation may be handcuffed when that procedure reasonably appears necessary to ensure the safety of the officer and others. All persons shall be handcuffed with their hands behind them and with the backs of the hands together, unless this technique would hamper an investigation or the prisoner has a physical condition or injury that precludes this technique. If exceptions are made, officers should use caution and good judgment.

NEW

- B. **Juveniles under 13 years of age shall not be handcuffed unless:**
 - 1. **The officer has a reasonable suspicion the juvenile may actively resist;**
 - 2. **The officer has a reasonable suspicion the juvenile may attempt to escape from custody;**
 - 3. **The juvenile is suspected of a violent felony, or;**
 - 4. **The juvenile threatens the officer, himself/herself, or others with harm.**
- C. Officers shall apply handcuffs tightly enough to control the subject and shall double lock the handcuffs as soon as practical. Over-tightening the handcuffs shall be avoided. Inserting a fingertip between the handcuffs and the prisoner's wrist will ensure sufficient space and reduce the risk of injury.
- D. Officers shall not permit unattended prisoners to walk or stand behind them, whether or not handcuffed.

- E. Handcuffing a suspect in the high-risk kneeling or prone position should not be attempted by one officer. If practical, the officer should wait for a cover officer prior to handcuffing.

VI. SEARCHING PROCEDURES

- A. All prisoners shall be carefully checked for weapons.
- B. All prisoners shall be searched prior to being placed in a police car and transported, unless exigent circumstances make the search impractical. If the arresting or transporting officer is equipped with a body worn camera, the BWC shall be recording in the event mode during the search. If money is discovered during the search, officers shall count the money in front of the prisoner with their BWC recording in the event mode prior to moving or transporting from the scene. Exceptions to this requirement can be made if such action either compromises safety, an investigation or an organized enforcement detail. It is recommended that a witness officer observe the counting of the money. The counting of money and names of subjects present during the counting shall be documented. Officers should use extreme caution and good judgment while searching suspects as soon as practical. Searches are conducted to recover:
 - 1. Instruments used to commit the crime;
 - 2. Fruits of the crime; and,
 - 3. Weapons.
- C. A subject arrested for non-custodial misdemeanors may only be searched if the officer has probable cause to believe there may be evidence of the crime concealed on that subject.
- D. Generally, officers shall handcuff prisoners prior to searching them. Officers should be thorough in their search, maintaining balance and control.

Male officers should make every effort to have a female officer search a female prisoner. If it is obvious that a female prisoner has a concealed weapon, a male officer may retrieve it if no female officer is immediately available. If a female officer is unavailable, a male officer may search a female prisoner provided a witness officer is present. The searching technique will incorporate the back and edge of the male officer's hand when searching the chest and groin areas.
- E. If a search of a wallet or purse of a suspect is conducted, a witness officer should be present. If the officer conducting the search or the witness officer is equipped with a body worn camera, the BWC shall be recording in the event mode.

- F. If the searches involve the handling of money, weapons, or jewelry, the nature and content of the property shall be documented in the appropriate report.

VII. STRIP SEARCHES OR VISUAL BODY CAVITY SEARCHES

- A. California Penal Code Section 4030 (f) states, in part, that no strip search or visual body cavity search may be conducted without the prior written authorization of the supervisor on duty. There must be reasonable suspicion, based on specific and articulate facts, to believe the person is concealing a weapon or contraband, and a strip search will result in the discovery of the weapon or contraband.
- B. The following requirements, applying to both juvenile and adult searches, must be met prior to conducting a strip search:
 - 1. The arresting officer must receive written authorization to conduct the search from a supervisor on duty. A “Strip Search/Visual Cavity Search Authorization” form (PD-2581) must be filled out, with the specific facts, which formed the officer’s reasonable suspicion to conduct the search, and approved prior to the search;
 - 2. The subject to be searched must be lawfully arrested for a felony or misdemeanor involving weapons, controlled substances, or an act of violence. With the exception of physicians or licensed medical personnel, persons conducting or present during the search must be of the same gender as the subject searched;
 - 3. The search must be conducted in an area of privacy to ensure the search is not observed by anyone not participating in the search;
 - 4. The person(s) conducting the strip search or visual body cavity search shall not intentionally touch the breasts, buttocks, or genitalia of the subject; and,
 - 5. The completed authorization form (PD-2581) must be submitted with all arrest reports and placed in the agency’s records. It must be made available, upon request, to the person searched or their authorized representative.

VIII. PHYSICAL BODY CAVITY SEARCH

To conduct a physical body cavity search the officer must:

- A. Obtain a search warrant (consent to search by the arrested person will not justify or authorize a physical body cavity search); and,

- B. Have the search conducted under sanitary conditions and then only by a physician, registered nurse, nurse practitioner, licensed vocational nurse, or emergency medical technician level II.
- C. Generally, body cavity search warrants should be limited to dangerous weapons suspected to be secreted in a body cavity. If contraband is suspected, medical clearance shall be obtained and jail staff notified to institute a contraband watch.
- D. After obtaining a body cavity search warrant, the prisoner shall be transferred to a local hospital, e.g., UCSD, Scripps Mercy, Alvarado, or Sharp Grossmont to have the warrant executed. Note: hospitals are not an extension of law enforcement and there is no requirement they execute any search warrant obtained.

IX. EXIGENT CIRCUMSTANCES – WEAPONS

An exception to the strip search rules would arise in the case of exigent circumstances; such as when the officer, pursuant to a lawful pat down search for weapons, has felt what he or she believes to be a weapon. A person hiding a weapon in their undergarments would constitute an exigent circumstance, justifying a strip search for the weapon. Keep in mind that the courts view strip searches, particularly body cavity searches, as invasive and offensive. Any deviance from the strip search rules will need substantial documented justification.

X. ASSEMBLY BILL 953 – RACIAL IDENTITY AND PROFILING ACT

Assembly Bill 953 (AB 953), also known as the Racial and Identity Profiling Act (RIPA) of 2015, requires law enforcement agencies to collect data on all stops, detentions, and searches. This includes consensual searches and instances where force was utilized. In order to capture this data, a new application became available for every event generated through the Department's MPS and Intranet systems beginning July 1, 2018. There is a template to collect the required data in the F: Drive under Templates/Patrol Based Forms/PD-953, if the database application is temporarily unavailable. The data documented on this form shall be entered into the electronic application prior to the end of officer's shift unless exigent circumstances exist.

Under this mandate, the data collected will include the date, time, and duration of the stop, the location, perceived race or ethnicity, perceived gender, perceived LGBT, perceived or known disability, English fluency, perceived age, and the reason for the stop, detention, or search. The reason for the stop may be generated from a call for service, a traffic violation, reasonable suspicion or knowledge that the person was engaged, or about to engage in criminal activity and conclude with the actions taken by the officer. These actions will describe the basis of the search, whether or not contraband or other evidence is discovered, the reason for and type of property seized and the results

of the stop or detention. The data collected under RIPA replaces the data previously collected from vehicle stop data cards.

- A. When completing a detention and/or arrest report, officers will ensure the narrative includes that a RIPA entry was submitted for every person being arrested or detained.
- B. Supervisors will verify officers have documented the RIPA entry in their narrative prior to approval.

XI. TRANSPORTING

- A. An officer shall not transport an unattended prisoner in the back seat of any vehicle not equipped with a prisoner cage
 - 1. When it is necessary to transport a prisoner in a vehicle not equipped with a prisoner cage, the prisoner shall be placed immediately to the rear of the driver officer and kept under constant observation by another officer riding in the rear seat to the immediate right of the prisoner.
 - 2. The decision to transport without the benefit of a prisoner cage will be made only after careful consideration of the type of crime and number of prisoners.
- B. When transporting prisoners in a vehicle equipped with a prisoner cage, officers will position the prisoner(s) in the middle or right-hand rear seat where the prisoner can be observed through the rearview mirror.
- C. Transporting females as passengers in Department vehicles will require two officers.
 - 1. Female passengers shall be transported with a second officer in the vehicle.
 - 2. The female passenger shall be placed in the back seat.
 - 3. This pertains to all females contacted during the course of official duties including but not limited to suspects, victims, witnesses and stranded motorists.
 - 4. Exemptions to this policy are listed below. Any exemption to this policy must be articulated in the report or on the incident history in cases where no report is taken.

5. Exemptions:
 - a. Transporting civilian Department employees, Police Cadets, PERT clinicians, or Ride-A-Longs in the course of official duties; however, a second officer shall follow when the transporting officer is also transporting prisoners, suspects, witnesses or stranded motorists.
 - b. Transporting family members or females known to the officer (e.g., friend, acquaintance), during authorized off-duty use of Department vehicles. No documentation is required in these circumstances.
 - c. On limited situations that require immediate assistance in response to danger or public safety, including rare situations where it may be more practical for a second officer to follow the transporting officer in a separate vehicle, the second officer shall remain with the transporting officer until the person transported is released, custody is transferred to a third party, or the contact is otherwise concluded. All other transporting related to Department procedures still apply.
 - d. Officers equipped with a body worn camera may transport a female passenger or prisoner without the required second officer if the body worn camera is recording during the entire transport.
6. Police Chaplains may be counted as the second required officer.
7. Officers transporting female passengers shall notify the radio dispatcher of departure time and beginning mileage, as well as arrival time and ending mileage.
- D. Prisoners of opposite sexes should generally not be transported together, unless arrested together and not combative. Juveniles should not be transported with adults or other combative juveniles.
- E. After placing the subject in the police vehicle, officers shall lock the rear doors of the patrol car.
- F. When suspects are detained in the back seat of a patrol vehicle, officers should dim their MPS terminals or change the screen to prevent the suspect(s) from viewing confidential information about reporting parties or witnesses.

- G. When the prisoner is in the back seat of a patrol vehicle, it is the responsibility of the arresting officer to ensure that the prisoner is monitored at all times. When it is necessary for an officer to conduct business away from their prisoner, the officer shall have another officer watch the prisoner and remove the ignition key. When prisoners are left in cars during hot weather, either the front windows shall be rolled completely down or the air conditioning will be left on for ventilation. The back windows shall not be rolled down.
- H. When equipped with seatbelts, officers should not transport more prisoners than the vehicle has seatbelts. All transported persons shall be restrained with seatbelts, unless the officer determines doing so would pose a safety risk to the officer. Officers who do not secure a prisoner with a seatbelt should be prepared to clearly and specifically justify their actions.
- I. Prisoner van officers shall secure prisoners with seatbelts unless the officer determines doing so would pose a safety risk to the officer. Officers who do not secure prisoners with seatbelts in a prisoner van shall document the reason for not doing so. Officers may document the reason in the Computer Aided Dispatch (CAD) system.
- J. When the transporting officer believes the prisoner's health or safety would not allow for the prisoner's safe transport in the van without being secured with a seatbelt, the prisoner shall not be transported in the van.
- K. Officers transporting persons shall use good judgment in deciding whether to respond to emergency calls or undertaking vehicular pursuits. If an officer decides to pursue with a prisoner(s) in the vehicle, they must abandon their approved position in the pursuit to the first available alternate patrol vehicle without any prisoners.
- L. If an officer is transporting a wheelchair user, the primary consideration should be the health and safety of the arrestee. Having the arrestee transfer to the back of the police car may be the easiest option. However, if the arrestee is not able to transfer to the police car, if the arrestee is using an electric wheelchair, or if the arrestee's medical condition dictates they should be transported in their chair, then officers should utilize a wheelchair transportation service. Communications retains the name and phone number of the contracted transportation service. In all cases of prisoners or 5150 detainees utilizing a wheelchair transportation service, at least one officer shall ride with the arrestee in the transport van.
- M. Prisoner van officers shall not unduly delay the transport and processing of prisoners. Officers experiencing transport and processing delays of three or more hours shall notify Communications and request additional assistance. In addition, officers must notify their on-duty supervisor about the delay. If no assistance is available, the on-duty supervisor shall notify the Field Lieutenant.

- N. Prisoner van officers who transport both males and females to the Sobering Center and have both male and female prisoners rejected shall make reasonable efforts to arrange for the separate transportation of the female(s) to Las Colinas. Officers shall document their attempts on their journal. If unable to locate a transport unit, officers must notify their on-duty supervisor.

XII. PRISONER CONTROL IN A POLICE FACILITY

- A. Officers escorting prisoners in the Headquarters building should use unoccupied elevators.
- B. The escorting officer should notify other persons entering the elevator that prisoners are present.
- C. Adult prisoners shall remain handcuffed when in all common areas of any police facility, including the elevators.
- D. Prisoners shall be made to face the walls while being escorted in the elevators.
- E. In accordance with California Penal Code Section 851.5, any person who is arrested and held for more than three hours without being booked has the right to make at least three telephone calls. The arrested person shall be entitled to make the telephone calls at no expense, if calling within a local area. The telephone calls shall be facilitated immediately upon request or as soon as practical.
- F. Officers processing prisoners shall honor a suspect's request to use a restroom facility whenever reasonable and practical. Officers' priorities are to maintain officer safety, preserve evidence, avoid escape attempts and monitor the suspect's health and welfare. Officers shall process this request in a timely manner, requesting assistance as needed, to ensure proper security and officer safety standards are maintained at all times.

If a prisoner needs to use a restroom, an officer of the same sex shall keep the prisoner under observation during that time. If an officer of the same sex is not available within a reasonable amount of time, the responsible officer shall allow the prisoner to use a restroom after the officer has visibly inspected the restroom and can secure it from any potential safety and security hazards. The officer shall discreetly monitor the prisoner in a manner that ensures contraband/evidence is not destroyed, while still respecting his or her privacy by not unnecessarily observing the prisoner (e.g., leaving the bathroom or stall door slightly ajar).

XIII. CONTROLLING UNRULY PRISONERS

- A. Officers transporting persons suspected of being mentally disturbed, under the influence of any hallucinogen, or under the influence of a drug-induced psychosis shall have a second officer monitor the prisoner.
- B. A “spit sock” may be used to deter spitting and to prevent contamination to a person or property. It shall not be modified for any other purpose. Under no circumstances will any other type of restraint be placed over the mouth or around the subject’s neck to control spitting.
- C. OC spray may be used on a handcuffed prisoner to prevent injury to the officer, the prisoner, or other people and/or property (such as a police vehicle.) (Refer to Department Procedure 1.06, Use of Liquid Chemical Agent, for specifics regarding the use of OC spray.)

XIV. MAXIMUM RESTRAINT

“Maximum Restraint” techniques should be used to control handcuffed subjects who are violent and continue to resist or kick. There are two methods of maximum restraint. The cord-cuff maximum restraint and the WRAP maximum restraint system.

A field supervisor shall be called to all incidents involving a suspect being maximally restrained.

Officers shall not transport any subject in a prone position.

- A. Officers may utilize the cord-cuff leg restraint if the subject's hands are handcuffed behind his/her back and the handcuffs are double locked. Officers must not apply the cord-cuff leg restraint to the head or neck of a subject.
- B. When applying the cord-cuff restraint, one officer should be responsible for the application and another officer should be responsible for controlling the subject.
- C. The following techniques may be used to apply the cord-cuff leg restraint:
 - 1. The “waist/handcuff restraint” technique is used to prevent a subject from slipping their handcuffs under their legs to the front position.
 - a. The restraint is looped around the subject's waist and clipped to the double locked handcuffs.
 - b. To make the restraint taut, the restraint can be wrapped around the handcuff chain.

- c. When a large subject is involved, two restraints may be joined together.
 2. The “leg hobble restraint” technique controls movement of the feet, yet allows the subject to walk.
 - a. The restraint is looped once around the subject’s leg, just above the ankle, and pulled taut.
 - b. The restraint is then wrapped twice around the other leg, above the ankle, and snapped onto the cross member formed by the restraint. The subject can then walk, but with limited mobility.
- D. The cord-cuff maximum restraint technique incorporates two or more cord-cuffs. The subject is placed in the prone handcuffed position, with hands behind the back, and the handcuffs double locked. One cord-cuff is used to restrain the feet and is attached to another cord-cuff that is wrapped around the subject’s waist.
 1. As soon as the subject is maximally restrained with the cord-cuff technique, immediately roll the subject onto his/her side and monitor consciousness and breathing.
 2. The preferred method for lifting and carrying a subject in the maximum restraint position is to sit that subject up. An officer will be positioned on each side of the subject.

If the subject continues to struggle, bite, or spit, officers can lift and carry the subject in the prone position. At least three officers should be involved with this lift. Two officers will be on either side and the third will be on the legs. As soon as possible, the subject should be placed on his/her side or in the sitting position. Officers should simultaneously lift to minimize the potential for injury.
 3. Subjects who have been maximally restrained shall be transported lying sideways across the back seat facing toward the front of the vehicle; this will allow the passenger officer the ability to monitor the restrained subject’s condition. The subject will be seat-belted.
 4. If a subject becomes compliant and passive after being placed into a cord-cuff maximum restraint, officers have the option of releasing the subject from the maximum restraint position. If the subject is released, the cord-cuff(s) should be kept in place in case he/she again turns violent. Also, if a subject continues to kick, shoes/boots can be removed to limit the damage that can be done.

- E. The WRAP maximum restraint system incorporates one standard size WRAP safe restraint device.

The WRAP maximum restraint system should be applied to a subject who is in the prone position with hands cuffed behind the subject's back and the following steps should be applied:

1. Apply the ankle strap;
 2. Position the leg wrap;
 3. Secure the leg bands;
 4. Apply and secure the harness; and,
 5. Attach the harness tether.
 6. To properly lift and move a person who has been restrained with the WRAP maximum restraint device, a minimum of three officers are needed. Two officers shall lift the subject's upper body by utilizing the lift straps located on the WRAP near the thigh area of person being restrained. A third officer will lift the restrained person from the strap that was placed around the restrained person's ankles.
 7. Officers shall not transport any subject in a prone position. Subjects who have been restrained utilizing the WRAP device shall be transported in an upright seated position and seat belted in the back seat of the transport unit behind the driver's seat. The seat belt shall be placed underneath the WRAP harness straps to minimize the potential for injury.
 8. Two officers are required to transport any person restrained with the WRAP device when the transportation is provided via police vehicle. This will allow one officer **to** constantly monitor the WRAP restrained subject while the subject is in police custody. One WRAP certified officer shall accompany the subject with medics if the subject is transported by ambulance.
- F. An ambulance should be called to the scene and transport any subject who is in the maximum restraint position when that subject is:
1. Unconscious;
 2. Not at a functional level of consciousness (does not know who he/she is, where he/she is, what the time and date is, or what is happening);
 3. Having difficulty breathing;

4. Convulsing;
5. Having a seizure; or,
6. Complaining of pain or injury.

At least one officer shall ride in the ambulance during the transport of a subject in maximum restraint.

- G. Whenever a maximally restrained subject needs to be evaluated at the San Diego County Psychiatric Hospital and one or more of the previously mentioned six circumstances exist that mandate ambulance transportation, the subject must first be transported to a hospital by paramedics and evaluated by a physician. Subjects who do not meet these requirements and cannot be transported safely in a police vehicle can be transported to the San Diego County Psychiatric Hospital by private ambulance.
- H. Maximally restrained people shall not be left unattended and shall be monitored at all times. Two officers should transport in the police car, with the passenger officer monitoring the restrained person.
- I. Officers should not remove the maximum restraint system if it compromises officer safety.

XV. PROCESSING

- A. In-custody prisoners shall be processed and booked as promptly as possible, consistent with proper investigative procedures. Unreasonable delays shall be avoided.
- B. All prisoners processed for petty theft or misdemeanor weapon charges will be fingerprinted. CAL-ID is mandatory regardless of any identification found in possession of the prisoner.

XVI. "AT-RISK" PRISONERS

- A. Some prisoners may be at risk of sudden death. Such prisoners may be suffering from a drug-induced psychosis, genetic psychosis, or excited delirium. These prisoners may exhibit one or more of the following symptoms and may be considered "at-risk":
 1. Tremors;
 2. Convulsions;

3. Seizures;
 4. Delirium;
 5. Hallucinations – visual (seeing things), tactile (feeling bugs on skin), auditory (hearing voices);
 6. Violent, aggressive behavior;
 7. “Superhuman” strength;
 8. Dilated pupils;
 9. Paranoia;
 10. Non-purposeful behavior, meaningless acts (e.g., licking windows);
 11. Rapid, slow, or irregular pulse rate;
 12. Hyperthermia (high body temperature, sweating);
 13. Yelling or screaming;
 14. Confusion; or,
 15. Thrashing after being restrained.
- B. A prisoner who exhibits symptoms of drug-induced psychosis or excited delirium shall be evaluated by a physician at an approved hospital prior to being transported to a police facility.
- C. The decision whether to transport a prisoner by police vehicle or to call paramedics should be based on the officer's judgment as to which option will provide the fastest access to advanced life support and professional medical care. If paramedics transport the prisoner, an officer shall ride in the ambulance. If officers make the transport, two officers shall ride in the police vehicle, with the passenger officer monitoring the prisoner.
- D. "At-risk" prisoners shall be kept under constant observation by Department personnel while in police custody.

XVII. RESTRAINT CAR SEATS

Vehicles equipped with rear restraint seats should be used to transport people who are violent, maximally restrained with the cord-cuff, or “at-risk” medically. Whenever the

seats are used, officers shall document the use of the seat in their reports, articulating the reason the seats were used.

XVIII. SAFETY CONTROL CHAIR

A safety control chair is located in the sally port area. The control chair should only be used to secure passive or active resistive prisoners who require a “non-consensual” blood draw or decontamination from OC spray. At no time will a prisoner be left unattended while confined to the safety control chair. The chair does not meet State requirements for a secured restraint-type chair and is not intended to control violent or assaultive prisoners.

XIX. PRISONER DETENTION ROOM PROCEDURE

- A. Prisoners within a police facility shall not be locked into any room. Additionally, prisoners may not be handcuffed to any fixed object or furniture within a police facility.
- B. Prisoners shall be under constant observation and supervision by an officer. Observation by television monitor alone is not sufficient; constant observation is required. Officers must be in close enough proximity to intervene if necessary to ensure safety.
- C. There is zero tolerance for prisoner on prisoner violence or intimidation. Acts of violence will be stopped, documented, and investigated.
- D. First aid kits must be available for use in all Department holding rooms. The location of the first aid kits must be posted at each holding room. These kits must contain first aid supplies for use on prisoners, as well as infectious disease control items for use by employees.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JANUARY 23, 2019
NUMBER: 6.03 - PATROL
SUBJECT: FIELD INTERVIEW REPORT
RELATED POLICY: N/A
ORIGINATING DIVISION: PATROL OPERATIONS
NEW PROCEDURE:
PROCEDURAL CHANGE: **MINOR CHANGES**
SUPERSEDES: DP 6.03 – 05/10/2018

I. PURPOSE

This Department procedure establishes guidelines for the use and processing of Field Interview (FI) Reports.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

Court decisions have held that police officers, under certain circumstances, may contact or stop citizens to conduct an inquiry. Many inquiries reveal that an individual may be involved in some type of criminal activity. It is then important for the Department, and all concerned police personnel, to have a record of the contact available on file. See Department Procedure 4.01, Stop/Detention and Pat-Down Procedures for further details.

Just as for any private citizen, a legal cause is not needed for an officer to initiate a “contact” and officers may lawfully ask for information needed to fill out a Field Interview Report (ARJIS-1). However, the persons contacted may not be halted, detained, or patted-down against their will. They may not be required to answer questions, provide identification, or to cooperate in any way if they do not wish to do so voluntarily (*Gomez v. Turner*, 672 F.2d 134 (1982)). If they refuse to cooperate, they must be permitted to go on their way, unless the officer has developed reasonable suspicion to detain or probable cause to arrest.

If the officer has reasonable suspicion to detain a person, the officer may require the detained individual to identify himself /herself, and to provide identification. *People v. Loudermilk*, 195 Cal. App. 3d 996, 1002-3 (1987); *People v. Vibanco*, 151 Cal. App. 4th 1, 10 (2007). However, a suspect's refusal to identify himself/herself or provide identification does not justify a detention and search based solely on that basis. *Loudermilk* at 1004; *People v. Garcia*, 145 Cal.App.4th 782, 787-88 (2006).

IV. DEFINITION

A Field Interview (FI) is any contact or stop in which an officer reasonably suspects that a person has committed, is committing, or is about to commit a crime. Reasonable suspicion establishes the authority to detain a person. The officer may exercise this authority in any place that the officer has the right to be. Both pedestrians and persons in vehicles may be detained for an FI. A detention is warranted if there is a reasonable suspicion by the officer that:

- A. Some activity relating to crime has taken place, is presently taking place, or is about to occur; and,
- B. The person to be stopped or detained is involved in that activity, but there is insufficient evidence to make an arrest.

A Field Interview (FI) report is used to document the contact.

V. PROCEDURE

- A. Enforcement action (e.g., stop, detention, pat-down) resulting in a Field Interview Report shall be documented in the officer's Daily Journal. The Field Interview Report control number must be included in the journal entry and the report submitted for processing.
- B. The FI should capture the information specifically labeled on the FI form, with the "Remarks" area used to show the reason for contact or to elaborate on the crime potential.
- C. The white copy of the FI form should not be used when taking notes during victim, witness, or suspect interviews. All information written on an FI (including everything written on the back of the white copy) is discoverable. Officers shall use a PD-145, or other suitable notepad, when taking notes. Refer to Department Procedure 4.13, III, B (Retention of Officer's Notes).

D. Distribution

1. Completed forms will be turned in at end of shift.
2. Original (white) – routed to Records Division for data entry and filing.
3. Yellow copy – routed to the appropriate investigative unit/section.
4. Gold copy – may be retained by interviewing officer while conducting an investigation. Officers are not permitted to maintain personal files of Field Interviews and unneeded gold copies should be placed in shred bins for disposal.

E. Information Retrieval

1. All the information on an FI, including the information written in the remark area or on the back, is entered into ARJIS (See V. C.).
2. Procedures on how to retrieve this information from ARJIS can be found in the Resource Library, using any Department LAN computer, by selecting User Resource Guides and then ARJIS Users Guide.
3. This information will remain in the ARJIS system for one year, at which time it will be purged. The information is retained in CRMS for five years.
4. The original Field Interview Report is held on file in Records Division for five years.

F. Other Field Interview Uses

1. The form may also be used for an FI of a vehicle only.
2. Enter vehicle information, as well as all other pertinent information.
3. Records Division personnel will enter the FI into ARJIS as a "Vehicle FI."

G. Field Interviews Involving City Schools

Officers are to forward the gold copy or a photocopy of any Field Interview conducted on individuals found or contacted on school campuses to School Police at MS 726A. Distribute the original and yellow copy as outlined above in this procedure. If the youth/juvenile is involved in high-risk behavior (refer to DP 3.08, Juvenile Procedures, for criteria), a copy of the Field Interview Report needs to be sent to the Juvenile Services Team Sergeant in the command where the juvenile was contacted.

H. Procedure for Completing the Form

Complete instructions on how to properly prepare the Field Interview Report are contained on the Resource Library in the User Resource Guides on the LAN system under the file entitled "FI Instruction Guide for 603DP."

NEW

VI. **ASSEMBLY BILL 953**

Assembly Bill 953 (AB 953), also known as the Racial and Identity Profiling Act (RIPA) of 2015, requires law enforcement agencies to collect data on all stops, detentions, and searches. This includes consensual searches and instances where force was utilized. In order to capture this data, a new application became available for every event generated through the Department's MPS and Intranet systems beginning July 1, 2018. There is a template to collect the required data in the F: Drive under Templates/Patrol Based Forms/PD-953, if the database application is temporarily unavailable. The data documented on this form shall be entered into the electronic application prior to the end of officer's shift unless exigent circumstances exist.

Under this mandate, the data collected will include the date, time, and duration of the stop, the location, perceived race or ethnicity, perceived gender, perceived LGBT, perceived or known disability, English fluency, perceived age, and the reason for the stop, detention, or search. The reason for the stop may be generated from a call for service, a traffic violation, reasonable suspicion or knowledge that the person was engaged, or about to engage in criminal activity and conclude with the actions taken by the officer. These actions will describe the basis of the search, whether or not contraband or other evidence is discovered, the reason for and type of property seized and the results of the stop or detention. The data collected under RIPA replaces the data previously collected from vehicle stop data cards.

NEW

To ensure compliance with the Racial Identity Profiling Act, a RIPA entry must be completed for every individual listed in a Field Interview report or ARJIS-1 submitted by an officer.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: NOVEMBER 14, 2017
NUMBER: 6.16 – PATROL
SUBJECT: POLICE SERVICE DOGS
RELATED POLICY: [6.16](#)
ORIGINATING DIVISION: OPERATIONAL SUPPORT
NEW PROCEDURE:
PROCEDURAL CHANGE: **MINOR CHANGE**
SUPERSEDES: DP 6.16 –06/10/2016

I. PURPOSE

This Department procedure establishes guidelines for use, deployment, and authority of Police Service Dogs.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

The Canine Unit is a centralized unit of the Operational Support Division. The handler and Police Service Dog (PSD) can offer valuable assistance in conducting searches, apprehending suspects, narcotic detection, explosives detection, and provide a psychological deterrence to aggressive acts against officers or other persons. The canine teams are responsible for City-wide coverage and are under the direct supervision of the Canine Unit supervisors.

IV. DEFINITIONS

- A. Deployment - the removal of the Police Service Dog (PSD) from the police car for any legitimate law enforcement purpose.

- B. Dog Bite - any gripping of a person's body or clothing by the PSD's mouth, irrespective of injury or damage. It is also defined as any injury to a person or damage to clothing caused by any contact with the PSD's teeth.
- C. Non-bite Injuries - any injury caused by a PSD that is not associated with a bite.
- D. Operational Bite - the PSD is directed to bite a person for any legitimate law enforcement purpose. Operational bites will be classified as "within policy" or "not within policy."
- E. Unintentional Bite - the PSD bites a person without specific direction from the handler. Unintentional bites will be classified as "preventable" or "not preventable."
- F. Intervention - Any use of a PSD where the apprehension or surrender of a suspect is directly attributed, either through statements or obvious facts, to the presence of the PSD.

V. PROCEDURES

- A. The canine handler has responsibility for the PSD and its actions. The handler shall exercise control over his/her PSD at all times. Prior to deployment, the handler must consider:
 - 1. The severity of the crime;
 - 2. The immediacy of the threat; and,
 - 3. If the subject is actively resisting arrest (*Graham v. Connor*).
- B. A police service dog may be deployed for any of the following circumstances, in accordance with Department Procedure 1.04, Use of Force:
 - 1. For the protection and/or safety of the handler, other Department personnel or other persons.
 - 2. To locate, apprehend or control subjects reasonably believed to be assaultive, violent or dangerous.
 - 3. To apprehend fleeing criminal suspects when the canine handler reasonably believes probable cause exists to arrest the person for a felony.
 - 4. To locate and apprehend concealed felony suspects when it would be unsafe for officers to proceed into the area and conduct the search.

5. To control an actively resistive subject reasonably believed to possess or have immediate access to a deadly weapon.
6. To search for evidence, narcotics, explosives, or other contraband.

C. Guidelines for Use of the PSD in Field Situations

1. During searches, the canine handler will function as the contact officer. Once at the scene, the handler should assume control of the search and direct cover units to support positions, as needed.
2. During field contacts with other officers, the canine handler should function as a cover unit. The handler and PSD should be used to prevent and/or control violent or aggressive acts directed at the handler, officers or other persons.
3. During contacts involving high-risk persons or vehicle stops, the canine handler and PSD should generally function as a cover unit. In the event the handler has assumed the contact officer position, the handler should relinquish this role to the first uniformed unit arriving at the scene. The canine handler will remain at the scene as a cover unit until the incident is under control.
4. The canine handler or canine supervisor shall make the final decision regarding the deployment of the PSD.

D. Apprehension

Police service dogs are trained to locate and control persons on command. When the PSD is used in this manner, each handler will adhere to the following guidelines:

1. Prior to releasing the PSD, the handler must take reasonable steps to ensure the person to be apprehended is the suspect.
2. The handler shall verbally warn the suspect that the PSD is going to be released, unless the handler has specific and articulable facts to indicate making canine announcements would put officers or the public in additional and unnecessary danger. If possible, the handler will give at least two warnings in a loud and clear manner. If the search area is extensive, the handler will give additional verbal warnings at different locations throughout the search area.
3. When practical, the handler will notify Communications Division of the deployment.

4. The handler will not knowingly deploy the PSD to apprehend a subject being pursued on foot by other officers.

E. On-duty Restrictions on Use of a PSD

It is important that each handler understand the civil liability potential incurred by the Department when a PSD is deployed. When a PSD is used to gain control of a subject, it represents a utilization of force as defined in Department Procedure 1.04, Use of Force. To limit liability, the following restrictions apply:

1. Handlers will not allow the PSD to urinate or defecate in or around any inhabited building;
2. Police Department personnel shall not tease or agitate a PSD, nor allow others to do so;
3. Generally, PSDs will not be allowed inside a police facility;
4. Handlers should generally park their vehicles in such a way as to limit public access to the PSD;
5. Generally, a PSD should only be taken into a private residence for officer safety reasons or to conduct a search;
6. Generally, a PSD should not be taken into crowded public places;
7. When the handler is out of sight, or away from the canine vehicle for an extended period of time, the remote receiver door release mechanism shall be in the locked position and all doors locked. The rear windows shall be opened at least halfway and the vehicle heat sensor on;
8. All non-emergency, out-of-county travel utilizing the PSD and/or Department vehicle must have prior approval of the Captain of Operational Support Division;
9. Unless prior approval is obtained from a Canine supervisor, PSDs will only be transported in a marked canine vehicle; and,
10. Except during breaks, or if off-lead deployment is appropriate, PSDs should be on-lead.

F. Off-duty Restrictions on Use of a PSD

1. All restrictions and guidelines outlined previously apply to off-duty use of a PSD.

2. Police service dogs will be housed in a secure, Department-approved kennel.
3. For medical reasons, a PSD may be housed in an enclosed area approved by a canine supervisor.
4. A PSD should not be allowed to move unsupervised in any area that is accessible to the public.
5. When the handler is unable to provide the daily care required for the PSD, the animal will be cared for by either an SDPD canine handler, canine supervisor or taken to the Canine facility and placed in the kennels.
6. While off-duty, handlers may use their PSDs for any legitimate law enforcement purpose in accordance with this procedure and Department Procedure 1.04, Use of Force.
7. Police service dogs are not to be considered as pets and should not be used for the following:
 - a. As a jogging partner in heavily traveled areas (crowded beach, parks, etc.);
 - b. To play with non-immediate family members (neighbors, friends, relatives);
 - c. To play unsupervised with immediate family members;
 - d. Play or associate with other dogs, including family pets;
 - e. Any outside business or enterprise (guard dog, detection dog); and,
 - f. Breeding purposes.

G. Unattended Police Service Dogs

1. As a general rule, while on-duty, a PSD should not be left unattended for an extended period of time. When not under the immediate control of the respective handler, the PSD should be secured in a Department approved kennel or inside a properly equipped canine vehicle.
2. When outside of the canine vehicle, and not in an approved kennel, the PSD should be secured to a solid, fixed object. The handler should take steps to ensure the PSD will not injure itself or someone else. If secured in this manner, the handler must remain in visual contact with the animal at all times.

3. Occasionally, it may be necessary to leave a PSD in a canine vehicle for a short period of time. If the animal is left unattended, the following precautions shall be taken:
 - a. Ensure the PSD has sufficient shade during warm weather;
 - b. Ensure the PSD has an adequate supply of water inside the vehicle;
 - c. The PSD shall be checked at least once every hour to ensure it is not in distress; and,
 - d. When secured in the canine vehicle during warm weather, the vehicle's air conditioning unit shall be on, the rear windows shall be at least halfway down, and the Heat Sensor Alarm System must be active.

H. Training Responsibilities

1. Training is crucial to the overall effectiveness of the Canine Unit and ensures field readiness of the handlers and their PSDs. Canine teams will be continuously evaluated on their performance during training and actual field situations.
2. Attendance at all scheduled training is mandatory. Since training is conducted on a "10-10" in-service basis, handlers will respond to all radio calls that require the use of a canine team.
3. It is the handlers' responsibility to participate in all scheduled training and ensure his/her PSD meets the necessary performance standards. Any handler having a performance or training related problem shall contact their supervisor and a member of the training staff immediately.
4. Any problems that develop between a handler and a training officer will be reported to the training sergeant and squad supervisor as soon as possible.
5. No person shall train a PSD without prior approval of the Canine Unit training sergeant or a member of the training staff.
6. All members of the training staff will participate in academies and all training activities. In an effort to promote development and enhance skill levels, training officers may be required to rotate squads. At the direction of the training sergeant or the Canine Unit Lieutenant, training officers will rotate squads in conjunction with scheduled shift changes.

7. All personnel selected for the position of Training Officer must complete a one-year probationary period.
8. All sergeants and officers selected for the Canine Unit must complete a basic canine academy. Prior to the successful completion of the academy, the member is not entitled to canine specialty pay or a uniform allowance.

I. Reporting Dog Bites

1. In the event of a dog bite or other injury caused by a PSD, on-duty or off-duty, the handler shall notify a Canine Unit supervisor as soon as possible. The handler shall also report the incident to the Department of Animal Control within 24 hours.
2. If necessary, the canine supervisor shall notify the Watch Commander's Office in accordance with Department Procedure 1.04, Use of Force. In addition, the supervisor will document the incident as a use of force with a BlueTeam entry and forward it to the next chain of command. Except for training bites, the handler shall prepare a detailed and accurate report on all bites in accordance with Department Procedure 1.04, Use of Force and Section 4.5 of the Canine Unit Operations Manual.
 - a. In-custody suspects who have been injured shall be examined and treated for their injuries at a designated treatment facility.
 - b. In-custody juvenile suspects shall be examined and treated at a designated treatment facility prior to final disposition. Officers shall attempt to contact a parent or legal guardian to obtain authorization for medical treatment.
 - c. Non-criminal subjects who have been injured shall be offered transportation to the nearest medical facility for treatment. The injured person may seek private transportation to a medical facility.

NEW

J. Emergency Call-out

1. Canine units are available in the field on a 24-hour, 7-day a week basis. When called to a scene, the first canine unit to arrive will determine if additional canine units are required. If there are insufficient on-duty canine units available, a Canine Unit supervisor and the Canine Unit Lieutenant shall be contacted before a call-out is initiated for additional units.
2. The Canine Lieutenant and Special Response Canine (SRC) Supervisor shall be notified anytime a canine unit is requested at any SWAT incident.

K. Detection Dogs

1. Article and explosive detection dogs are available for service or call-outs on a 24-hour basis. Requests for call-outs shall be initiated through a Canine Unit supervisor and the Canine Unit Lieutenant.
2. Requests for detection dogs by outside agencies shall be routed through a Canine Unit supervisor and the Canine Unit Lieutenant.

L. Use of Dog Catch Pole

Each canine handler is issued a dog catch pole, and has received training in its use. Although the County of San Diego Department of Animal Services is the primary responder for calls of aggressive dogs and should be called first, a canine unit can provide assistance and respond to calls involving aggressive dogs if there is a delay in Animal Services' response, or if they are unable to respond.

1. A canine officer, with catch pole, should be requested to assist officers when:
 - a. An aggressive dog has been or will be encountered;
 - b. Communications Division has received a call of an aggressive dog and the San Diego Police Department is responding to the call; or
 - c. Personnel have prior knowledge of an aggressive dog and Animal Services officers are unable to respond.
2. There may be situations where the catch pole will not be appropriate, such as when the animal is engaging or attacking a victim and the use of another force option (e.g., baton, pepper spray (OC), Taser, or firearm) would be more effective. If possible, officers should utilize the time the dog is temporarily incapacitated by the Taser or OC to capture the dog with the catch pole. Additionally, dogs are similar to humans in that OC does not work on all dogs.
3. Officers on scene may be asked to provide cover for the canine handler attempting to capture the dog. They shall stay with the canine handler until the dog has been safely secured.
4. Once the dog has been captured with the pole, it will be placed in a secured location such as:
 - a. Enclosed area, such as a shed, garage, etc.;

- b. Fenced yard;
 - c. Secured room/closet;
 - d. In the back of a police vehicle; or,
 - e. As a last resort, secured by collar and leash to a fixed object.
5. A smaller containment area is preferred, as that would aid in the recapturing of the dog by Animal Services personnel. The dog will remain in the secured location until the arrival of Animal Services to take custody of the animal, if warranted.
 6. In some instances, a non-aggressive dog may be captured with the pole to facilitate a non-dynamic tactical or investigative operation. Examples would be non-high-risk search warrants, arrest warrants, vehicle searches or building searches where the capturing of the dog would prevent the dog from becoming aggressive as officers move through the location conducting a search. The dog should be released at the conclusion of the operation or when it can be moved to a secure location or, if appropriate, controlled by the owner.
 7. If a dog is injured when snaring it, the canine handler should contact his or her supervisor, and have Communications Division contact Animal Services to respond to the scene and take custody of the dog.
 8. Officers need to use caution in dealing with multiple dogs. When capturing one dog, the others may develop a “pack mentality” and attack the officer in defense of the captured dog.

M. Injured Handler Procedures

If a canine handler is injured and unable to move, the PSD will probably remain with the handler. The animal may be confused and possibly feel threatened by anyone attempting to approach the handler. All officers shall consider the following course of action in the event the handler is down and unable to control the PSD:

1. Do not move toward the handler or PSD. Call to the handler. Determine if the handler is injured and capable of taking control of the PSD;
2. Immediately request the assistance of another canine handler or canine supervisor; and,
3. If the handler is unable to assist, or additional canine personnel are unavailable, move the handler’s vehicle or another marked vehicle to a position near the handler and the PSD. Perform the following:

- a. Open the left rear door of the vehicle Drive the vehicle close to the PSD with the open door facing the animal. If using a canine vehicle, make sure the interior sliding screen is closed prior to moving toward the PSD;
 - b. Remain in the car and call to the PSD. In an authoritative voice, tell the PSD, “In Vaggen” (In Wagon) or say, “In the car.” Most PSDs will comply with the command;
 - c. After the PSD has entered the car, quickly exit the car and close the door, trapping the dog in the car. Await the arrival of Canine Unit personnel;
 - d. Once the PSD is secured, do not attempt to re-enter or operate the vehicle; and,
 - e. Only a canine handler or canine supervisor should transport or remove the PSD from the car.
4. The PSD may be destroyed only if the handler’s injuries appear life threatening and/or to prevent injury to other officers or persons.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: FEBRUARY 14, 2019

NUMBER: 6.20 – PATROL

SUBJECT: MENTAL HEALTH PROCEDURES

RELATED POLICY: N/A

ORIGINATING DIVISION: NEIGHBORHOOD POLICING

NEW PROCEDURE:

PROCEDURAL CHANGE: **EXTENSIVE CHANGES**

SUPERSEDES: DP 6.20 – 05/17/2015

I. PURPOSE

This Department procedure establishes guidelines for handling persons experiencing mental health emergencies and to acquaint officers with filing applications for 72-hour detentions for evaluation and treatment.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

Welfare and Institutions Code (W&I) section 5150 (5150) provides that a peace officer may take people into custody and transport them to a designated facility for evaluation if the officer has probable cause to believe that as a result of a mental health disorder an individual is a danger to others, or to himself or herself, or gravely disabled.

IV. DEFINITIONS

NEW

- A. Credible Third-Party Statements – These are statements that may be considered by an evaluating officer in determining if an individual meets 5150 criteria. Credible third parties may include family members, mental health treatment providers and social media posts made by the individual being evaluated or persons who have provided or are providing mental health or related support services. Statements may include relevant information about the historical course of the person’s mental disorder (W&I § 5150.05.)
- B. Emergency Detentions – individuals who meet 5150 criteria; they are exhibiting behaviors or are reported to have exhibited behaviors establishing probable cause that, as a result of a mental health disorder, the person is a danger to others, or to himself or herself, or gravely disabled.
- C. Gravely Disabled – a condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter. (W&I Code § 5008.)
- D. Jail Clearance - needed when a jail nurse has rejected an arrestee due to the offender’s failure to adequately answer mental health questions during booking.
- E. Lanterman-Petris-Short (LPS) Act of 1967 – provides guidelines for involuntary civil commitments of individuals to mental health facilities in the State of California. (Cal. W&I Code, § 5000 et seq.) It expanded the evaluative power of psychiatrists and created provisions and criteria for holds.
- F. LPS Conservatorship - a process in which the court appoints a conservator to make certain legal decisions for an individual. The conservator can make decisions, such as whether the individual can start or stop taking psychiatric medications, accept other medical treatment, manage his/her money, and decide where to live. While the individual is on conservatorship, the court may limit his/her right to vote, to enter into contracts, to drive, or to own a firearm (W&I Code § 5357.) The LPS conservatorship can last for a maximum of one year at a time and can be renewed in court at the end of the year (W&I Code § 5361.)
- G. LPS Facility - hospitals designated by the County of San Diego and approved by the California Department of Health Care Services, Mental Health Services Division for involuntary 72-hour treatment and evaluation.

Such a facility shall require an application in writing stating the circumstances under which the person’s condition was called to the attention of the officer, and stating the officer has probable cause to believe that the person is, as a result of a mental illness, a danger to others, or to himself or herself, or is gravely disabled.

A listing of all San Diego County LPS facilities can be found in the Resource Library under User Resource Guides.

H. Non-Emergency Cases – individuals who do not meet 5150 criteria but are experiencing mental health issues.

NEW

Voluntary Non-Emergency – these individuals do not meet the criteria for a detention under 5150 W&I but recognize, on their own, a mental health evaluation and treatment may be of benefit to them.

I. Public Conservator - a public conservator is an individual who has been appointed by the court to manage the affairs of a person (designated a conservatee) who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism. (W&I Code § 5350.)

J. Public Conservatee - a person who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism and the subject of a conservatorship. (W&I Code §§ 5350 – 5372.)

K. Welfare and Institutions Code section 5150 Criteria – when a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled.

V. **PROCEDURES**

A. Probable Cause Determination

1. When a person, as a result of a mental health disorder, is:
 - a. Demonstrating behaviors which are causing him or her to be potentially dangerous to self and/or others; or,
 - b. Appears gravely disabled due to an inability to provide for his or her basic needs of food, clothing, or shelter,

An officer may, upon probable cause, detain the person for mental evaluation. (W&I Code § 5150.)

2. When determining if probable cause exists to take a person into custody officers shall consider all available relevant information about the historical course of the person's mental disorder. (W&I Code § 5150.05.)

NEW

- a. Information is relevant if the authorized person determines that the information has a reasonable bearing on the determination as to whether the person is a danger to others, or to himself or herself, or is gravely disabled as a result of the mental disorder.
 - b. Information about the “historical course of the person’s mental disorder” includes evidence presented by the person who has provided or is providing mental health or related support services to the person, evidence presented by one or more members of the family of that person, and evidence presented by the person himself or herself to include social media post that would support a detention under 5150 W&I.
3. Other information to consider is:
- a. Any physical evidence;
 - b. A police officer’s own observations;
 - c. Other witness statements; and,
 - d. Recent similar incidents.

B. Types of Determinations

1. Non-emergency Cases

If an officer determines that an individual does not meet 5150 criteria, the officer is not to detain the person or transport them anywhere. If the person, although not 5150, is experiencing mental health issues, he or she may voluntarily accept to be evaluated and treated. However, the individual is not required to seek treatment if unwilling.

NEW

If the individual does not meet the criteria for 5150 W&I detention and is uncooperative, family members and other concerned parties may petition for a court order for a psychiatric evaluation. Welfare and Institutions Code section 5201 provides that anyone may apply for a petition alleging there is a person with a mental illness in need of evaluation. To initiate a petition, a concerned party must contact the Office of the Public Conservator at (858) 694-3500.

- a. In Voluntary Non-emergency cases, an officer may transport the individual to any LPS facility in the County. See below for more information about voluntary admittance of the individual to a facility.

NEW

2. Emergency Detentions

a. A person shall be detained and transported for an evaluation by a mental health professional if the officer determines that the person meets the criteria for detention under 5150 W&I.

b. Confiscation of Weapons

Whenever a person is detained for examination of his or her mental condition, law enforcement shall confiscate any firearms or other deadly weapons that the person owns, has in his or her possession, or under his or her control, and shall retain custody of the weapons. (W&I 8102.)

Officers must still comply with the 4th Amendment. They must have consent, or the facts must justify exigent circumstances or the community caretaking function to enter and search a home and remove weapons. A call regarding a possible 5150 by itself, with no other information, does not meet the legal requirements of exigent circumstances or community caretaking.

c. Entry into Private Residence

Private residences have, perhaps, the highest expectation of privacy of all places subject to a search. (*People v. Ramey*, 16 Cal.3rd 263, 273-74 (1976).) Warrantless entries by police into a residence are presumed illegal unless justified by consent, a warrant, or exigent circumstances. (*Payton v. New York*, 445 U.S. 573, 586 (1980).)

In answering calls on private property regarding persons with an alleged mental illness, an officer may enter if:

- (1) There is a warrant establishing probable cause to do so; or,
- (2) Consent may be given by either the occupants of the house, or by relatives of the person who have legal access to the house; or,

- (3) There are exigent circumstances. A call regarding a possible 5150 by itself, with no other information, does not meet the legal requirements of exigent circumstances. Exigent circumstances include situations where a person is placed in imminent harm or danger, requires immediate medical attention, or to forestall the imminent escape of a suspect or the destruction of evidence or property. (*People v. Ramey.*)

Therefore, if the person experiencing a mental health crisis is contacted outside the home and the firearms are inside the home, officers must have consent or exigent circumstances to enter the home to search for weapons (e.g. unsupervised child inside the home; initial 911 call stated that suspect threatening to harm others in the house; etc.) Alternatively, officers may obtain a search warrant per Penal Code section 1524(a)(10).

d. Verbal Advisement

Each person detained pursuant to W&I Section 5150 must be given the following verbal advisement prior to admittance into an appropriate LPS facility.

- (1) The advisement is located in the upper right corner of the form entitled "Application for 72-Hour Detention or Evaluation and Treatment."

"My name is _____. I am a police officer with the San Diego Police Department. You are not under criminal arrest. I am taking you to a psychiatric hospital for an examination by mental health professionals at (name of facility). You will be told of your rights by the mental health staff." (W&I Code § 5150(g)(1).)

- (2) If taken into custody at their residence, the person shall also be told the following information in substantially the following form:

"You may bring a few personal items with you, which I will have to approve. Please inform me if you need assistance turning off any appliance or water. You may make a phone call and leave a note to tell your friends or family where you have been taken." (W&I Code § 5150(g)(2).)

NEW

- (3) If these advisements are incomplete, the detaining officer must write a brief statement of "good cause" for the incomplete advisement in the appropriate place on the application for 72-hour evaluation. (W&I Code § 5150(h) (6).)

C. Transportation

1. In handling persons having a mental health crisis, if restraint is necessary, officers should use proper police techniques. Physical restraint should be applied only when disturbance is evident or anticipated.
2. Officers should be observant of apparent medical needs of detained individuals. Any signs of medical distress should be considered in the decision to require medical transport. If a detained individual requires medical transport the officer will follow the transport and ensure appropriate placement.
3. When transporting in a police vehicle, handcuffs shall be used and double locked.
4. Officers must search the patient for weapons, drugs, and alcohol.
5. Whenever possible patients being transported for an emergency mental health evaluation shall be transported with a second officer in the vehicle. The patient should be placed on the left side of the back seat, directly behind the driver, so the second officer can monitor the patient. An exception to this would be when a civilian Department employee, Police Cadet, PERT clinician or ride-along is riding with the transport officer.
6. When a civilian Department employee, Police Cadet, or Ride-Along is riding with the transport officer, a second officer shall follow the transporting officer. In this instance, the subject should be placed on the right side of the back seat, directly behind the front passenger seat, so the transporting officer can monitor the patient.
7. Officers will transport persons in mental health crisis to the most appropriate LPS facility.

NEW

D. Facility

1. Adults may be transported to any LPS facility in the County. In determining the most appropriate LPS facility, officers should take the following into consideration:

- a. Medical Necessity - if the person has obvious medical needs (i.e., suicide attempt or overdose, documented medical condition) they can only be treated at a hospital with an emergency department. (Refer to the Resource Library, User Resource Guides, for listings of San Diego County LPS facilities with emergency departments.)
 - b. Clinical Appropriateness - the person states to the officer that he or she wishes to go to a particular hospital or has past history at a specific LPS facility.
 - c. Financial Ability - the person has medical insurance.
 - d. In cases where the adult detainee is uninsured, or the officer is unable to determine financial ability and the detainee does not have an obvious medical need, the best facility to transport to is the San Diego County Psychiatric Hospital (SDCPH), at 3853 Rosecrans Street, San Diego, 92110.
 - e. Whether the person is under arrest and a jail clearance is requested by jail intake staff, SDCPH is the only facility that can provide jail clearance.
2. Juveniles may be transported to any appropriate LPS facility. However, officers should attempt to transport to a children's facility. These facilities are:
- a. Emergency Screening Unit - Located at 4309 3rd Avenue, San Diego, Ca. 92103. This is a non LPS facility without an emergency room. It is a screening unit only for uninsured and Medi-Cal patients only. The Emergency Screening Unit may refuse a client. It is suggested officers call this facility prior to transport to determine patient eligibility. The phone number is (619) 876-4502.
 - b. Rady Children's Hospital - This is an LPS facility with an emergency room located at 3020 Children's Way, San Diego CA 92123. Their phone number is (619) 229-3700. There is no need to call prior to arrival.
 - c. Sharp Mesa Vista Hospital - This is an LPS facility without an emergency room located at 7850 Vista Hill Avenue, San Diego, CA. 92123. It is suggested officers call this facility prior to transport to determine patient eligibility. Their phone number is (858) 836-8434.

- d. Aurora Hospital - This is an LPS facility without an emergency room located at 11878 Avenue of Industry, San Diego, CA. 92128. It is suggested officers call this facility prior to transport to determine patient eligibility. Their phone number is (858) 675-4228.

If officers are unable to gain entrance into any of these hospitals, they should divert to the nearest LPS facility with an emergency room. (Refer to the Resource Library, User Resource Guides, for listings of San Diego County LPS facilities with emergency departments.)

E. Admittance of Patient into County of San Diego LPS Facilities

1. Once at the hospital, the officer will secure all weapons, to include firearms, Taser, baton, OPN, O.C. and knives. The officer may then escort the person into the facility.
2. Emergency Detentions
 - a. The officer shall remain at the facility no longer than the time necessary to complete documentation of the factual basis of the detention under W&I Section 5150 and the safe and orderly transfer of physical custody of the person.
 - b. Prior to the hospital staff accepting a patient from law enforcement, the officer must:
 - (1) Prepare and sign the 72-hour (W&I Section 5150 hold) evaluation paperwork; this form will be supplied to the officer at the LPS facility. Officers may also find a copy of this form on the F: Drive under Templates\Patrol Based Forms. This form will be given to hospital staff.
 - (2) Prepare and sign the San Diego County Sheriff Admittance Request. This form is located at all area stations and on the F: Drive under Templates\Patrol Based Forms, Mental Health Transport Sheet.
 - i. If officers are making a placement into County Mental Health, the transport form stays at the hospital.

ii. If officers are placing a subject into any other LPS facility, this law enforcement transport form will not be accepted by the hospital. Prior to the end of the detaining officer's shift this completed form must be submitted to the Sheriff's Department:

(a) Fax: (858) 467-4511 or

(b) Email:
property.investigations@sdsheriff.org.

iii. Once the transport form has been faxed or emailed to the Sheriff's Department it shall be placed into the appropriate report room bin.

(3) Suicide Attempts

Along with the above forms, the officer shall prepare and submit all of the following:

i. An ARJIS-8 (San Diego Regional Arrest/Juvenile Contact Report) "Detention Only" with a Mental Health Supplemental and a narrative to describe the circumstances and actions taken;

ii. An ARJIS-2 (San Diego Regional Crime/Incident Report) for the suicide attempt, with a case number, showing ZZ930000, SUICIDE ATTEMPT, as the code section and description; and

iii. The Sheriff's Department Property Investigation Law Enforcement Transfer Form must be completed and sent to the San Diego County Sheriff's Department Property Unit by the detaining officer by the end of his/her shift.

(a) Faxed to (858) 467-4511; or

(b) Emailed:
property.investigations@sdsheriff.org

iv. The W&I Section 5150 Emergency Hold Form.

- c. Once these documents are completed, the patient will be registered by the hospital clerk, and all property received will be inventoried by hospital staff. Officers should verify that the inventory is correct. Officers shall remain no longer than the time necessary to complete documentation of the factual basis of the detention under W&I Section 5150 and a safe and orderly transfer of physical custody of the person.
- d. Officers shall maintain control of the individual for hospital staff until an orderly transfer has been completed. For the most part, an orderly transfer occurs once the 72-hour evaluation paper work and San Diego County Sheriff Transport Form are completed and verbally explained to hospital staff, and the detainee's property is properly inventoried. Once this orderly transfer has occurred, the officer is free to leave the hospital and return to service.
- e. Prior to the end of shift, the officer shall prepare and submit An ARJIS-8 (San Diego Regional Arrest/Juvenile Contact Report) "Detention Only" with a Mental Health Supplemental as this is the only permanent record of our handling of the patient. This report shall include:
 - (1) A statement as to how the officer's attention was directed to the patient;
 - (2) Any necessary witness information and statements;
 - (3) Any credible third-party statements; and,
 - (4) Any use of force.
- f. Non-Admissions
 - (1) Once this orderly transfer is completed, it is not the responsibility of the transporting officer to remain at the hospital for determination of whether the designated facility will accept the patient, nor is it the responsibility of the transporting officer to transport persons not admitted to the facility.

- (2) If there is some sort of disagreement pertaining to the patient's admission into the hospital, officers shall complete a detention report. The detention report (ARJIS-8) must be filed by the officer who last contacted the patient. A copy of this report should be directed to the Neighborhood Policing Administration Office at MS 776, and should contain the following:
 - i. Reasons why the officer believes the patient should have been admitted. This can usually be obtained from forms the committing officer completed at the Psychiatric Unit;
 - ii. Name of doctor;
 - iii. The reason for non-admission; and,
 - iv. Final disposition of patient (i.e., home, halfway house, etc.).
 - v. Incident number on the report.

3. Voluntary Non-emergency Cases

NEW

- a. The officer will enter the facility with the patient through the non-voluntary entrance located at the rear of the facility off of Pacific Highway.
- b. Verbally communicate to hospital staff the circumstances of why the individual is a voluntary admittance and that there is no request for a W&I Section 5150 hold.
- c. Maintain control of the individual for hospital staff until a safe and orderly transfer has been completed.
- d. Document the voluntary transport on their daily journal. The officer is not responsible for completing any admitting paperwork.

F. Impounding of Firearms per W&I Section 8102

1. All firearms shall be impounded per Department Policy 3.02, Section VIII (C). No further paperwork is required at the time of impounds.
2. The firearm will be returned upon release of the person from a professional care facility unless:

NEW

- a. A petition is filed with the court for the law enforcement agency to retain and destroy the weapon.
 - b. The person has been prohibited by Department of Justice to possess a firearm.
 - c. The firearm is determined to be illegal to possess in the State of California.
3. All firearm impounds will be routed to the Property Room Gun Desk. The Gun Desk will process the initial impound and send the impounding officer an e-mail with instructions and a request to complete a petition to retain firearms.

G. Criminal Acts

1. Criminal acts committed by individuals take precedent regardless of their mental health condition. It is not the responsibility of the arresting officer to release criminal charges in lieu of being admitted into any LPS facility.
2. Every person who commits a felony shall be booked for appropriate violation(s). If the nature of the offense or the prisoner's demeanor indicates the possibility of a mental illness, transporting officers shall inform jail personnel.
3. If jail personnel refuse to take custody of the prisoner due to a mental illness, the person shall be transported to SDCPH for a "jail clearance."
 - a. If SDCPH staff clears the prisoner, the officers should book him/her into jail.
 - b. If the custody of the prisoner requires a request for relief from a Sheriff's intake deputy, follow the procedures established in Department Procedure 6.02, Booking Procedures.
4. On misdemeanor cases, when a prisoner displays symptoms of serious mental illness, and the officer believes that jail detention cannot be humanely affected, the officer may, prior to booking, transport the suspect directly to the SDCPH.
 - a. Once at SDCPH, the officer must fill out all W&I Section 5150 paperwork as if they were making an involuntary commitment.
 - b. The officer should explain the criminal circumstances and ask the SDCPH staff to evaluate for jail clearance.

c. If SDCPH staff clears the prisoner for jail, the officers should book him/her into jail.

5. If a suspect is arrested for a misdemeanor offense, and subsequently admitted to SDCPH, the officer shall submit the proper paperwork to initiate a Notify Warrant.
6. Should the detaining officer or investigating officer want/need to be notified of the client's release from the LPS facility the detaining officer should indicate this on the original W&I Section 5150 hold. There is a box on this form which should be checked requesting the hospital call law enforcement prior to the release of the individual.
7. Under the new San Diego Police Department Satellite Booking Procedure implemented on November 9, 2017, if during the booking procedure an arrestee states he/she is suicidal, the arrestee will be accepted at jail with or without CMH clearance and referred for further assessment by a registered nurse or health care provider at the jail. The exemption to this will be individuals who are clearly displaying delusional or psychotic behavior. In these cases, the officer will be required to obtain CMH clearance. For further information refer to Department Order 17-30.

NEW

H. Jail Clearance

1. If the person has been arrested and a "jail clearance" is necessary, the officer must transport the prisoner to the San Diego County Psychiatric Hospital. Officers shall explain the criminal charges to hospital staff and stand by for the decision of the admitting psychiatrist.
2. Once the appropriate paperwork is received from the hospital staff, the prisoner shall be booked into County Jail. Officers should bring all hospital paperwork and give it to the booking deputies when booking the prisoner into County Jail.
3. If Jail clearance is not authorized and the transporting officer(s) intends to book the person into jail following release, the officer should fill out the section at the bottom of the 5150 Application Form DHCS 1802 which says, "NOTIFICATION TO BE PROVIDED TO LAW ENFORCEMENT AGENCY. Notify (officer/unit & telephone#)". The phone number that CMH should call is (619) 531-2205, the Watch Commander's number.
 - a. The officers should take the paperwork for jail (declaration, booking slip, etc.) back to the Watch Commander's office;
 - b. The Watch Commander keeps the paperwork and indicates which division or unit made the arrest;

NEW

- c. When the Watch Commander is notified of the pending release of the prisoner in custody, they notify the indicated division or unit, who dispatches an officer to CMH;
- d. After picking up the prisoner in custody, the officer(s) then pick up the paperwork from the Watch Commander and book the person into jail.

I. Other Types of Requests for Assistance

1. Professional Referrals

- a. Officers who receive a call from a medical/mental health professional to transport a person, who is not a public conservatee, to an LPS designated facility, should ensure that at least one of the following criteria is met before assuming custody:
 - (1) The committing medical professional has telephoned the admitting hospital and obtained approval for the evaluation; this professional may provide supportive, written documentation to accompany the patient at the time of evaluation.
 - (2) The officer observes sufficient conduct on the part of the patient to meet commitment criteria established by W&I Section 5150.
 - (3) "Probable cause" can be established jointly between the professional, or a reliable third party who gives a credible third-party statement, and the officer. This can be based on joint observations, case history, and other supportive information and should be part of the written 5150 W&I detention report. (W&I Section 5150.05.)
- b. Officers are not required to complete a mental health supplemental report when the LPS facility is receiving the patient from a medical professional, and prior arrangements have been made. However, officers shall complete a San Diego Police "Detention Only" Arrest Report, which should include the name and address of the professional making the commitment.

2. Community and Family Referrals

- a. To determine whether to involuntarily transport an individual because of a community or family referral, officers should ensure at least one of the following criteria is met;

- (1) “Probable cause” can be established jointly between a reliable third party and the officer. This can be based on joint observations, case history and other supportive information and should be part of the officers written 5150 W&I detention report. This situation is considered “third party statements” (W&I Section 5150.05.)
 - (2) The officer observes sufficient conduct on the part of the patient to meet commitment criteria established by W&I Section 5150.
 - b. If an officer detains a community or family referral and transports to a hospital the officer is required to complete all necessary W&I Section 5150 reports including the Law Enforcement Transfer Form.
3. Public Conservatees
- a. The conservator is responsible for assuring the conservatee receives adequate mental health care.
 - b. A public conservator has authority to hospitalize a public conservatee based upon W&I Section 5358 but does not have the authority of a peace officer to physically restrain a conservatee.
 - c. A public conservator has the authority to request police assistance to detain, return, or transfer a conservatee, per W&I Section 5358.5. Such requests shall be in writing.
 - d. Law enforcement assistance may be requested when a conservatee is uncooperative, volatile, and/or threatening. When a request is made for police assistance, a public conservator shall provide:
 - (1) Written request for police assistance;
 - (2) Copy of the letters and order of conservatorship; and,
 - (3) Official picture identification.
 - e. Officers will assist in taking the conservatee into custody and seeing that he/she is properly restrained.
 - f. Normally, transportation will be provided by ambulance, but occasionally, officers may be requested to physically transport public conservatees. Officers will do so in accordance with accepted transportation practices.

4. Requests for Assistance from Private Institutions
 - a. Officers will be dispatched on walk-a-ways from private institutions.
 - b. Unless the person requires an emergency detention under W&I Section 5150, officers shall not transport the person involuntarily.
 - c. Officers will not assist private ambulance companies with taking a person into physical custody unless the person requires an emergency detention under W&I Section 5150.
 - d. If an emergency 5150 W&I detention for evaluation is warranted, officers will take the person into custody and transport to a designated facility.
 - e. If an emergency 5150 W&I detention for evaluation is not warranted, the officer should advise the ambulance company that no police intervention is required and clear the scene.

NEW

VI. ASSEMBLY BILL 953

Assembly Bill 953 (AB 953), also known as the Racial and Identity Profiling Act (RIPA) of 2015, requires law enforcement agencies to collect data on all stops, detentions, and searches. This includes consensual searches and instances where force was utilized. In order to capture this data, a new application became available for every event generated through the Department's MPS and Intranet systems beginning July 1, 2018. There is a template to collect the required data in the F: Drive under Templates/Patrol Based Forms/PD-953, if the database application is temporarily unavailable. The data documented on this form shall be entered into the electronic application prior to the end of officer's shift unless exigent circumstances exist.

Under this mandate, the data collected will include the date, time, and duration of the stop, the location, perceived race or ethnicity, perceived gender, perceived LGBT, perceived or known disability, English fluency, perceived age, and the reason for the stop, detention, or search. The reason for the stop may be generated from a call for service, a traffic violation, reasonable suspicion or knowledge that the person was engaged, or about to engage in criminal activity and conclude with the actions taken by the officer. These actions will describe the basis of the search, whether or not contraband or other evidence is discovered, the reason for and type of property seized and the results of the stop or detention. The data collected under RIPA replaces the data previously collected from vehicle stop data cards.

- A. When completing a detention and/or arrest report, officers will ensure the narrative includes that a RIPA entry was submitted for every person being arrested or detained.
- B. Supervisors will verify officers have documented the RIPA entry in their narrative prior to approval.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JUNE 6, 2019

NUMBER: 6.28 – PATROL

SUBJECT: PSYCHIATRIC EMERGENCY RESPONSE TEAM
(PERT)

RELATED POLICY: N/A

ORIGINATING DIVISION: NEIGHBORHOOD POLICING

NEW PROCEDURE:

PROCEDURAL CHANGE: **EXTENSIVE CHANGES**

SUPERSEDES: DP 6.28 – 06/06/2017

I. PURPOSE

This Department procedure establishes guidelines related to the San Diego Police Department’s Psychiatric Emergency Response Team (PERT) and Tarasoff reporting procedures.

II. SCOPE

This procedure applies to all sworn members of the Department and, by agreement, all PERT employees assigned to the Department.

III. DEFINITIONS

NEW

Lanterman-Petris-Short (LPS) Act of 1967 - provides guidelines for involuntary civil commitments of individuals to mental health facilities in the State of California. (Cal. W&I Code, § 5000 et seq.) It expanded the evaluative power of psychiatrists and created provisions and criteria for holds.

NEW

LPS Facility - a hospital designated by the County of San Diego and approved by the California Department of Health Care Services, Mental Health Services Division to accept psychiatric patients.

NEW

PERT Clinicians - licensed mental health clinicians who have the legal authority to place subjects on a 5150 W&I hold. Clinicians are employees of the Community Research Foundation, commonly known as PERT.

NEW

PERT (Community Research Foundation) - a private non-profit organization funded by the County of San Diego. PERT provides mental health crisis response in collaboration with the San Diego Police Department. The objective of this partnership is to provide a more efficient delivery of both police and community mental health crisis services, and to provide a safer and more efficient outcome to individuals experiencing a mental health crisis.

PERT Lieutenant – a Department lieutenant responsible for monitoring the PERT program for the Department. The lieutenant will act as liaison with the PERT Executive Director and the PERT Police Liaison to ensure all programs are being fulfilled. The PERT Lieutenant will supervise the PERT Sergeants and coordinate all supervisor meetings. The PERT Lieutenant will keep all PERT Sergeants informed of current legal and ethical issues related to mental illness and law enforcement. The PERT Lieutenant is responsible for keeping command staff informed on the PERT program.

PERT Sergeants- sworn Department supervisors who have completed the PERT Academy and have been designated by their commanding officer. These supervisors monitor the program at the divisional level. They are responsible for supervising their division's PERT officers. This includes monitoring productivity and staffing within their divisions. These supervisors also act as liaisons with the PERT Lieutenant, other PERT supervisors, officers, and clinicians assigned throughout the San Diego Region. These supervisors must attend announced PERT Supervisor meetings.

NEW

PERT Officers (PT1) - SDPD Officers who have completed the minimum requirement of a one-day P.O.S.T. approved (eight hour) PERT training class or P.O.S.T. approved one-day (eight hour) Crisis Response Training (CRT) course. These officers will have a PT1 skill code on the daily schedule to identify them. The one-day PERT training class or Crisis Response Training will also serve as a refresher for officers who have attended the 24-hour PERT Academy but have not been active in the program (see below).

NEW

PERT Officers (PT2) - San Diego Police Officers who have completed the 24-hour P.O.S.T. approved PERT Academy. These PERT trained officers are authorized to ride with PERT clinicians and make up the law enforcement component of the PERT team. When not riding with a clinician, PT2 officers are expected to utilize the resources and knowledge developed within the PERT program. These officers will be identified on the daily schedule with a PT2 skill code. PT2 officers who have not ridden with a PERT clinician at least once during a shift will be considered inactive. PT2 officers who become inactive will be required to attend the one-day PERT training class or Crisis Response Training to be reinstated into the PERT program as a PT2 officer.

NEW

PERT Referral Form - a form used by officers to refer citizens to the PERT clinicians. The form should be used when an officer concludes that a person or situation does not meet the requirements for an immediate response, but based on the assessment, the officer recognizes the situation or an individual could benefit from working with a PERT clinician. The PERT clinician will conduct follow-up on all referrals. The original submitting officer will be advised of this follow-up within the guidelines of confidentiality laws.

IV. **BACKGROUND**

- A. The PERT program combines the resources of a uniformed police officer with a licensed mental health clinician in responding to incidents involving persons experiencing a mental health crisis. PERT clinicians advise patrol officers on psychiatric issues and assist in the transportation and processing of individuals in need of psychiatric treatment.
- B. PERT is intended to provide humane and beneficial outcomes for persons with mental illness who have come to the attention of law enforcement. PERT provides rapid response to sworn officer and community requests for assistance with persons in apparent mental health crisis.
- C. The PERT program is designed to return uniformed officers to patrol duties as quickly as possible while providing improved service with greater access to community mental health resources.
- D. PERT will complete an initial evaluation and assessment of persons experiencing a mental health crisis, and as appropriate, make a referral and/or transport to a community-based resource or treatment facility.
- E. PERT operations are implemented under a proactive philosophy throughout the San Diego region. To provide City-wide coverage, the San Diego Police Department has PERT teams in all divisions. PERT units may, upon request, cross divisional and City lines to assist patrol officers on incidents involving the mentally ill.
- F. PERT Clinicians have a duty to warn of and document any Tarasoff-related threats.

In 1976, the California Supreme Court ruled that psychotherapists have a duty to warn potential victims of serious threats of violence by one of their patients. *Tarasoff v. Regents of the University of California*, 17 Cal. 3d 425 (1976). The Court found that a psychotherapist incurred an obligation to take reasonable care to prevent any physical harm to another person. In most cases, the appropriate “reasonable care” would be to warn the intended victim and/or advise the police. In 2004, two cases decided by the California Court of Appeal extended the

Tarasoff rule to include threats disclosed by family members. *Ewing v. Goldstein*, 120 Cal. App. 4th 807 (2004), and *Ewing v. Northridge Hospital Medical Center*, 120 Cal. App. 4th 1289 (2004). The court saw no difference between threats conveyed directly by the patient and those related by an immediate family member of the patient.

In 2008, the Tarasoff rule was codified in California law (Cal. Civil Code § 56.10(c) (19)). The statute allows for patient information to be disclosed when a Psychotherapist, in good faith, believes that such disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

V. PROCEDURES

- A. The criteria related to emergency detentions for PERT units are identical to those outlined in Department Procedure 6.20, Mental Health Procedures, Section V.B.2, Emergency Detentions. However, PERT units have additional resources available, which may assist in determining the proper medical care for the subject.
- B. Safety Issues Related to PERT Field Contacts
 1. PERT units should be aware of the possibility of unpredictable behavior by individuals experiencing a mental health crisis. Consequently, the team will handle all situations with tact and professionalism.
 2. PERT officers shall make the initial client contact. Clinicians will remain a safe distance from the scene. Once the officer determines the contact is safe and contained, the officer will allow the clinician to approach the individual for evaluation.
 3. Safety of the team is of primary concern. At all times, the officer should remain on scene as a cover officer with the clinician. The clinician should avoid physical confrontation with individuals during field contacts. If restraint is necessary, officers shall use proper Department-approved police techniques and/or equipment.
 4. In addition to remaining on scene with the PERT clinician, for safety reasons, the officers are expected to be involved with the final disposition of the contact.
- C. PERT units may be used under the following circumstances:

1. To provide assistance to field units on calls or interactions with people in need of mental health assessment or intervention.
 - a. Under some circumstances, PERT may be called to assist other county jurisdictions. In these cases, a field supervisor and Communications shall be advised of the request from the other agency.
 - b. Field supervisors shall use good judgment when evaluating such requests while considering the PERT objectives to improve service to those in crisis and allow for non-PERT units to return to service as soon as possible. When practical, the field supervisor should approve these requests.
2. To provide appropriate follow-up for previous PERT interactions with clients and/or officer referrals;
3. To allow non-PERT officers to remain in service by providing transport, when necessary, to the appropriate agency/facility;
4. Officers may request PERT assistance and use their resources without PERT clinicians being on-site. In addition to PERT units answering these patrol requests, it is expected that PT1 and PT2 officers utilize their additional training to assist fellow officers. For instance, any officer may telephone a PERT clinician or PERT trained officer (PT2) asking for assistance with appropriate client disposition;
5. To work in collaboration with the Department's Special Weapons and Tactics Team (SWAT) or Emergency Negotiations Team (ENT) as directed in Department Procedure 8.14, Instances Involving Hostages/Emergency Negotiations. PERT clinicians shall not be used as negotiators. However, PERT clinicians should be used, when appropriate, as a resource to provide information to law enforcement that may help bring a situation involving someone in a mental health crisis to a peaceful resolution and,
6. To provide collaboration for appropriate problem solving projects.

NEW

D. The following are responsibilities of PERT (PT1 and PT2) Officers:

1. To provide safety for the community, clinician, clients, and potential clients.
2. To provide the necessary transportation of individuals;
3. To be responsible for all prisoner control/safety issues;

4. To evaluate the scene for criminal behavior;
5. To remain informed of current legal and ethical issues related to mental illness and law enforcement;
6. PT2 trained officers may be dispatched to or become involved with incidents/radio calls related to mental health when a PERT team is not available. These officers are expected to utilize the same resources which would be available if they were riding with a clinician. For example, PT2 officers should utilize their training and expertise to divert mental health clients to any appropriate facility.
7. To ensure the Department's requirements for detention and transportation pursuant to 5150 W&I are met. This includes completion of all appropriate reports.
8. To perform the typical duties of a patrol officer when not performing PERT related duties;
9. To participate in various PERT training sessions and meetings as staffing permits (i.e. monthly PERT sponsored training);
10. The officer is responsible for the clinician's safety and shall not utilize the clinician for non-PERT related activities.
11. To present the PERT program in a positive professional manner and provide additional mental health training and expertise to other patrol officers.

E. The following are responsibilities of PERT clinicians:

1. To conduct mental health evaluations and assessments of individuals;
2. To assist in determining the appropriate disposition supporting individuals' needs and safety;
3. To consult with PERT officers regarding disposition of individuals and law enforcement issues;
4. To maintain knowledge of the criteria for psychiatric disorders according to the Diagnostic Statistic Manual of Mental Disorders V;
5. To maintain knowledge of current legal and ethical issues as they relate to mental illness;
6. To maintain required licensing of PERT clinicians;

7. To ensure requirements for detention and transportation pursuant to 5150 W&I are met;
8. To provide documentation to the PERT officer supporting the decision to detain and transport the individual pursuant to 5150 W&I;
9. To maintain law enforcement security clearance;
10. To present the PERT program in a positive professional manner and provide additional mental health training and expertise to other patrol officers (i.e. line-up training); and,
11. The clinician generally should not engage in non-PERT related law enforcement activities.

F. Tarasoff Warnings and Tarasoff Reporting Procedures

1. If a PERT clinician receives information during a mental health evaluation that would warrant warning a threatened individual or location (i.e., school, business) in compliance with the Tarasoff decision, the following procedures will apply:

NEW

- a. The PERT clinician will notify his or her PERT officer of the threat, as required by PERT procedures. The PERT clinician will advise the officer of the obligation to report under the Tarasoff decision. Note: The Tarasoff decision applies to situations when a threat is made toward a specific person or persons and / or potential victims at a specific location such as a school or a place of business.

NEW

- b. The PERT clinician will make every reasonable effort to notify the threatened individual or location of the threat(s) made and the nature of the threat(s), as required by PERT procedures.

- c. The officer who was notified of the threat will obtain all the necessary information from the PERT clinician and complete a Tarasoff report. Although not required by law, the reporting officer will make reasonable attempts to locate the suspect. If the person threatened resides or is located outside the City of San Diego, the reporting officer will make reasonable attempts to notify the law enforcement agency having jurisdiction of the location where the victim lives or is located.

NEW

- d. If the suspect resides or is located outside the City of San Diego, the reporting officer will make reasonable attempts to notify the

law enforcement agency having jurisdiction of the location where the suspect lives or is located.

NEW

- e. The officer will use the Tarasoff report template in the F drive, at [F:\ Patrol Report Templates](#) and select the Tarasoff template, to report the incident. The officer will use the 981153ZZ code to obtain a case number for the Tarasoff report. The Tarasoff report should include all notifications made or attempted to make to the person / location threatened or to the law enforcement agency having jurisdiction where the victim and / or suspect live or are located.

NEW

- f. The officer shall evaluate the need to notify the Criminal Intelligence Unit of the threat.

- g. The officer will submit the Tarasoff report into NetRMS before the end of shift.

NEW

- h. The officer will add comments to the MPS event so a Special Situation (SS) File can be created in the Computer Aided Dispatch (CAD) System. The information for the SS File shall include all available victim(s) and suspect information. A SS File should not be requested if the victim or suspect resides outside of the City of San Diego, if the threatened location is outside the City of San Diego, or if the address for the suspect or victim is unknown, as this information is needed to create the SS File entry. Once the notes are added to the event, the officer will notify the lead dispatcher of the Tarasoff incident and the added comments, so Communications Division can create the SS File in a timely manner. Below is a typical format for an SS File for a Tarasoff warning:

NEW

****START SS*** "Tom Jones" 052580, WM 5f10 180#, Brn/Brn, made threats to shoot roommate "Jon Thomas" who also resides at this location. There are no known firearms at this residence. Event E18030012345.***END SS****

(See related Department Procedure 2.15 for further details regarding Special Situation (SS) File entries.)

NEW

- i. The investigative sergeant of the command where the Tarasoff report was generated will receive the report in his or her NetRMS queue. The investigative sergeant will forward the report to the Missing Persons Unit in Homicide for further routing and entry into the appropriate DOJ system. The Missing Persons Unit will complete the required State of California BOF 4074 form

(attachment A) and follow the instructions on the form for submittal. The State of California BOF 4074 form can be found on the F drive in the PERT folder.

G. Admittance to LPS Facilities

1. Adult and Juvenile Admittance procedures remain the same as outlined in Department Procedure 6.20, Mental Health Procedures, Section V.E, Admittance of Patient to County of San Diego LPS Facilities.
2. PERT clinicians or PERT officers (PT2) will make the necessary notifications to the facility prior to transporting the patient.
3. If a PERT unit transports the patient, the police officer will be responsible for completing the appropriate law enforcement paperwork. This paperwork will be submitted by the end of shift.

H. PERT Follow-ups

1. As part of the proactive philosophy of the PERT program, police officers may request follow-up on certain individuals who require additional help and resources. PERT referral forms will usually be completed to initiate clinician follow-ups. These circumstances may include, but are not limited to:
 - a. An individual who does not meet the criteria for a 72-hour evaluation but whom officers believe would benefit from the expertise of a PERT clinician;
 - b. An individual who has been hospitalized in a psychiatric facility multiple times without PERT, whom patrol officers familiar with the person believe may be assisted by PERT to prevent future incidents of unnecessary hospitalization; and,
 - c. An individual who has requested non-emergency information on psychiatric issues that PERT may be able to provide.
2. Prior to a follow-up, the PERT clinician and PERT officer should complete thorough background checks of the individual to identify safety concerns. This check should include ARJIS and County/SUN searches. The PERT unit will request additional resources if needed before contacting the individual.
3. Communications will be advised of the follow-up via an "out-of-service" request.

4. Patrol supervisors should be aware of the importance of maintaining the proactive philosophy of PERT and be knowledgeable of PERT units' responsibility to conduct these follow-ups.

I. Referral Forms

1. Officers should complete a "PERT Referral Form" to request a PERT follow-up. The information on this form is confidential and will only be disseminated to team members and those specifically assigned to the incident. The forms are available at all area stations. Upon completion, the referral form should be placed in the PERT bin at each area command.
2. Once the PERT unit completes the follow-up, the activity will be documented on the referral form and, whenever possible, the referring party will be informed that the follow-up has taken place, within the confines of confidentiality laws.

J. Confidentiality

1. PERT clinicians are responsible for maintaining clinical records. Accordingly, all information and records created in the course of providing services, to either voluntary or involuntary recipients of services, shall be kept confidential in accordance with 5328 W&I.
2. Independent observations of the subject made by the PERT officer are not included in clinical files and are not confidential. As a general rule, information on a detention report or on a Mental Health Supplemental is also not considered confidential.
3. Observations by the PERT officer and clinician, specific to the decision to take the subject into protective custody and transport to a mental health facility, which are specific and limited to the requirements of 5150 W&I, are not confidential and may be included with the officer's detention reports.

K. Transportation

1. In most cases, PERT units will transport detained mental health individuals. The officer will be responsible for all safety issues as outlined in Department Procedure 6.20, Mental Health Procedures, Section V.C, and the clinician will maintain observation of the detained individual.
2. Officers and clinicians should be observant of the apparent medical needs of detained individuals. Any signs of medical distress should be considered in the decision to require medical transport. If a detained

individual requires medical transport, the PERT unit will follow the medical transport and ensure appropriate placement.

3. The following safety precautions are necessary for the protection of the individual, officer, and clinician:
 - a. Clinicians are not responsible for searching anyone. Officers must always search for weapons, drugs, and other contraband prior to placing detained individuals into a police vehicle.
 - b. Patients shall be transported with a second officer in the same patrol vehicle whenever possible. In this case the patient shall be placed on the left side of the back seat, directly behind the driver so the passenger officer can monitor the patient.
 - c. If the officer transporting the patient has a civilian ride-along, civilian Department employee, Police Cadet, or PERT clinician in the vehicle, the patient shall be placed on the right side of the back seat, directly behind the passenger, so the officer can monitor the patient.
 - d. When a civilian Department employee, Police Cadet, PERT clinician or civilian ride-along is riding with the transport officer, a second officer shall follow the transporting officer.
 - e. In this instance, the patient should be placed on the right side of the back seat, directly behind the front passenger seat, so the transporting officer can monitor the patient.
 - f. Officers will transport persons in mental health crisis to the most appropriate LPS facility.

NEW

NEW

Attachment A

STATE OF CALIFORNIA
BOF 4074 (Rev. 01/2014)

DEPARTMENT OF JUSTICE
PAGE 1 of 1



CALIFORNIA DEPARTMENT OF JUSTICE
BUREAU OF FIREARMS
Law Enforcement Report of Firearm Prohibition



* Required Information

** Recommended Information

Subject Information					
Last Name:*		First Name:*		Middle Name:	
Alias Last Name (if any):		Alias First Name:		Alias Middle Name:	
Subject's Mailing Address:*			City:*	State:*	Zip Code:*
Date of Birth (mm/dd/yyyy):*		Approx. Age:*	Social Security Number:**		Drivers License/ID Number:**
Sex:	Race:	Height:	Weight:	Eye Color:	Hair Color:
Law Enforcement Agency Information					
Date Threat Reported to Law Enforcement (mm/dd/yyyy):*			Agency Report Number:*		Agency ORI Number:
Law Enforcement Agency:*				Agency Telephone No.:	
Agency Contact Person and Title:*					Date:*
Instructions					
<p>Pursuant to Welfare and Institutions Code section 8100, subdivision (b)(1), any person who communicates to a licensed psychotherapist, a serious threat of physical violence against a reasonably identifiable victim or victims, is prohibited from possessing, having under custody or control, purchasing, receiving, or attempting to purchase or receive any firearms or other deadly weapon for five years.</p> <p>Pursuant to Welfare and Institutions Code section 8105, subdivision (c), licensed psychotherapists shall, within 24 hours, report the identity of persons subject to this prohibition to local law enforcement. The firearms prohibition begins on the date the licensed psychotherapist reports the identity of the prohibited person to the local law enforcement agency. Upon receipt of the report from the licensed psychotherapist, the local law enforcement agency must, within 24 hours, complete and submit this report to the Department of Justice, Bureau of Firearms.</p> <p>The subject's complete name, date of birth or approximate age, sex, race and complete address is required on this report. The date the threat was reported to law enforcement, agency report number, law enforcement agency, agency contact person, agency telephone number, and the current date are also required.</p> <p>The Department of Justice is required to notify the individual of the firearms prohibition by certified mail. This form must include the subject's complete mailing address.</p> <p>If you have any questions or would like to request training regarding firearms prohibition reporting requirements please contact the Bureau of Firearms at (916) 227-7527. SUBMIT COMPLETED FORM TO:</p> <p style="text-align: center;">Bureau of Firearms - Prohibition Reporting Unit P.O. Box 168048 Sacramento, CA 95816-8048 Fax: (916) 227-1021</p>					

PLEASE RETAIN A COPY FOR YOUR RECORDS

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JUNE 1, 2021

NUMBER: 6.34

SUBJECT: POLICE INTERACTION WITH TRANSGENDER
AND GENDER NON-BINARY INDIVIDUALS

RELATED POLICY: 6.01, 6.02, 6.03, 6.04

ORIGINATING DIVISION: PATROL OPERATIONS

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: **NEW PROCEDURE**

I. PURPOSE

This Department procedure establishes guidelines for interacting with transgender and gender non-binary individuals.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

The San Diego Police Department is committed to working with the diverse communities it serves. This Department Procedure is to establish procedures that create mutual understanding, prevent conflict, and ensure the appropriate interaction with transgender and gender non-binary individuals.

California State Senate Bill (SB 179), the Gender Recognition Act, passed and amended state law regarding gender identity. Superior Courts in California are, under certain circumstances, required to grant the petitions of California residents who have requested to change their legal gender from male to female, female to male, or to non-binary. The California Department of Motor Vehicles (DMV) issues Driver's Licenses with the gender category of either "*male, female, or non-binary*" to better match a person's gender identity and gender expression. (Cal. Veh Code §12800(a)(2)).

IV. DEFINITIONS

Biological Sex - Refers to the objectively measurable organs (internal or external), gonadal, hormonal characteristics and chromosomal make-up of an individual.

Cisgender - Refers to a person whose gender identity corresponds with the sex the person had or was identified as having at birth.

Gender binary - The gender binary, also referred to as gender binarism, is the classification of sex and gender into two distinct, opposite and disconnected forms of masculine and feminine. This is the idea that a person who is male is masculine and a person who is female is feminine.

Gender non-binary - A term used to refer to a person who is not exclusively masculine or feminine and whose gender identities are thus outside of the gender binary. A gender non-binary individual may not identify as male or female and may not abide by the social constructs of masculine or feminine. Often but not always, gender non-binary individuals prefer pronouns such as they, them, and theirs.

Gender expression - The manner in which a person represents or expresses one's gender identity to others; for example, external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns, and social interactions. Social or cultural norms can vary widely and some characteristics that may be accepted as masculine, feminine, both, or neutral in one culture may not be assessed similarly in another.

Gender identity - A person's sense of being a man, a woman, both, or neither.

Intersex - A person who has both male and female sex organs, gonadal or other sex characteristics.

LGBT - Lesbian, Gay, Bisexual and Transgender

Sexual Orientation - A term describing a person's physical and/or emotional attraction to members of the same sex or gender and/or a different sex or gender.

Transgender - An umbrella term used to refer to a person who is born with the genetic traits and anatomy of one gender (i.e., male or female) but self-identifies as another gender (i.e., feminine or masculine). A transgender person can be pre-operative, post-operative, non-operative, or a person who is engaged in any degree of gender expression as the opposite gender.

V. PROCEDURES

- A. The following procedures shall apply during interactions with transgender and gender non-binary individuals:
1. When referring to or talking about a transgender individual's status, the terms "Transvestite" and "Transsexual" are outdated terms and should not be used. The correct term to be used is "Transgender".
 2. Address transgender individuals by their preferred name and use their preferred gender binary or gender non-binary pronouns appropriate to the individual's gender self-identity and expression.
- B. Any training for Department members on the subject of LGBT diversity shall be consistent with California State Assembly Bill (AB 2504).
- C. Department members shall not assume a person's transgender status or sexual orientation based solely on their appearance. Department members may receive visual or verbal cues about a person's gender identity during their interaction with transgender or gender non-binary individuals.
- D. If a Department member obtains any of the following visual or verbal cues and becomes aware of an individual's transgender or gender non-binary status, the following shall apply:
1. When a person identifies himself/herself as transgender, the Department member shall accept their expressed gender identity and shall not question it.
 2. When a person identifies themselves as gender non-binary, the Department member shall accept their expressed gender identity and shall not question it.
 3. When a person identifies as transgender, refer to them by the pronoun that matches their gender identity or by which they would like to be referred (she / her / hers or he / him / his).
 4. When a person identifies as gender non-binary, refer to them by the pronouns that match their gender identity or by which they would like to be referred (they, them, and theirs).
 5. A DMV identification or any other government-issued form of identification (such as a passport), shall not be acceptable as an initial proof of an individual's gender identity as it can often reflect the gender from which the individual is transitioning (as part of the transition process) and not the biological gender or gender identity the individual possesses.

6. Government-issued forms of identification may only be acceptable as initial proof of gender identity in the absence of self-identification by the individual or in the absence of some other obvious visual cues of expression of gender identity.
7. Any government-issued forms of identification shall only be acceptable as proof of identity, regardless of gender identity in the case of reporting, such as completing a Field Interview, Case Report, Officer's Report, Citation, CHP 555 Collision Report and any other San Diego Police report requesting to list one's legal name and legal gender or sex.
8. Any information obtained about an individual's transgender status or gender non-binary status (e.g., preferred name and pronoun) should be documented and provided to relevant Department members for the purpose of ensuring continuity of appropriate treatment (e.g., in the narrative of any police report). The officer shall not refer to the person's legal gender or legal name in the narrative of the report if the individual requests a preferred name and gender be used. The officer shall document the preference in the narrative (e.g., "The Victim Smith identifies as a transgender female and will be referred to as her preferred name, Smith and as female throughout this report.>").
9. The mention of the transgender status should be noted in the narrative of the report to avoid confusion if the individual's presentation may differ when appearing in court, or if their legal name and gender differs from their gender identity or gender expression, and;
10. Under no circumstances shall Department members disclose to non-involved persons an individual's transgender or gender non-binary status. A "need to know" basis shall guide decisions about the disclosure to other Department personnel.
11. Non-traditional gender identities and gender expressions do not constitute reasonable suspicion or *prima facie* evidence that an individual is attempting to conceal their identity. They simply do not conform to the social constructs of masculine or feminine gender standards.
12. Non-traditional gender identities and gender expressions do not constitute reasonable suspicion or *prima facie* evidence that an individual is engaging in or has engaged in prostitution or any other crime.

- E. A transgender individual's use of the restroom, bathroom, locker room or any other kind of facility whatsoever shall be governed by the following guidelines:
1. All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. Cal. Civ. Code §51(b).
 2. California Civil Code section 51(e)(5) defines "Sex" to include, but not be limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. "Sex" also includes, but is not limited to, a person's gender. "Gender" means sex, and includes a person's gender identity and 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.
 3. All Department members are required to follow Civil Code Section §51(b) during their regular duties. No criminal enforcement shall take place where any persons within the jurisdiction of this state are being denied services or accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever based on their sex (including a person's gender identity and gender expression), race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.
 4. California Civil Code section 51(b) also applies to all persons who are within any city facility.
 5. Non-traditional gender identities and gender expressions do not constitute reasonable suspicion or *prima facie* evidence that an individual is engaged in trespassing, loitering or voyeurism while within a public restroom or locker room.
- F. In addition to the requirements of Department Procedures 4.01 and 6.01, during pat downs and searches of transgender or gender non-binary individuals, the following shall apply:
1. A search or pat down shall not be performed for the sole purpose of determining an individual's anatomical gender.

2. Transgender and gender non-binary individuals shall not be subject to more invasive search or frisk procedures than non-transgender or cisgender individuals based solely on transgender or gender non-binary status.
 3. Officers shall not inquire about an individual's sex anatomy or surgical status when determination of an individual's gender status and knowledge of an individual's genitalia is unnecessary for an investigation. Such inquiries are generally prohibited. An inquiry of an individual's anatomy or surgical status may be made for purposes of, but not limited to, sex crime investigations (where the victim's anatomy was involved) or criminal investigation resulting in injury to the victim's genitalia.
 4. Requests to remove appearance-related items, such as prosthetics, clothing that conveys gender identity, wigs, and cosmetics, shall be consistent with requirements for the removal of similar items for non-transgender or cisgender individuals, or at the request of the transgender or gender non-binary individual.
 5. When an arresting officer has reason to believe the arrestee is a transgender person or gender non-binary person, the officer shall specifically inform the arrestee that, as with any other arrestee, he/she/they must be searched. The officer shall ask the arrestee if there is a preference to be searched by a male or female officer. If the arrestee's gender request can be reasonably and expeditiously accommodated without risk to officer safety, the request should be granted.
 6. If an arrestee has stated that he/she/they is intersex, the officer shall ask the arrestee if there is a preference to be searched by a male or female officer. If the arrestee's gender request can be reasonably and expeditiously accommodated without risk to officer safety, the request should be granted.
- G. When transporting transgender persons or gender non-binary individuals, the following shall apply:
1. When transporting a transgender individual whose gender identity is female, all procedures in Department Procedures 6.01 section XI and 1.49 section I apply.
 2. In addition to recording the transport with their BWC, officers transporting transgender or gender non-binary individuals as passengers or prisoners shall notify the radio dispatcher of their beginning mileage and ending mileage. The exceptions to this

requirement are the procedures listed in Department Procedure 6.01 section X. C. 5.

- H. When booking transgender persons or gender non-binary individuals into a jail facility, the following shall apply:
1. Officers shall confirm the transgender or gender non-binary arrestee's gender identity and ask the arrestee into which jail facility they prefer to be booked. The officer shall then transport the arrestee to the preferred jail facility and document this in their report. An inquiry on an arrestee's gender identity is only required when the officer reasonably believes the person is transgender or gender non-binary.
 - a. When an arrestee is uncooperative, an arresting officer may rely on other factors in making a determination as to the appropriate booking facility, including the arrestee's gender expression (such as appearance, dress, mannerisms and speech) or gender listed on a government ID.
 - b. After arrival at the preferred jail facility, the San Diego County Sheriff's Department Jail Population Management Unit (JPMU) will screen all transgender or gender non-binary arrestees. During the screening process, JPMU will make the ultimate determination of in which jail facility the transgender or gender non-binary arrestee will be housed, and will facilitate the transport to a different facility if necessary.
 2. Often transgender individuals take medications as part of their transition. Missing doses or coming off those medications can be life threatening to the individual.
 - c. The officer should make every reasonable attempt to recover medications for the individual and take those medications to the jail facility with their personal property.
 - d. If the officer cannot retrieve the medications, a list of current medications should be gathered and given to the nurse at the jail facility.

VI. RESOURCES

For more information, please contact the San Diego Police Department Transgender Community Liaison Officer or the LGBT Community Liaison Officer.

Please visit;

<https://www.sandiego.gov/police/contact/chiefs-advisory-board-liasons>