

# Charleston Police Department Policy & Procedures Manual

*“Please note that this public version has been redacted to remove portions of the policy which deal with the detection and investigation of crime and which are maintained to prevent, mitigate, and respond to dangerous situations and potential terrorist acts or the threat of terrorist acts, in order to maintain officer safety and public safety”*



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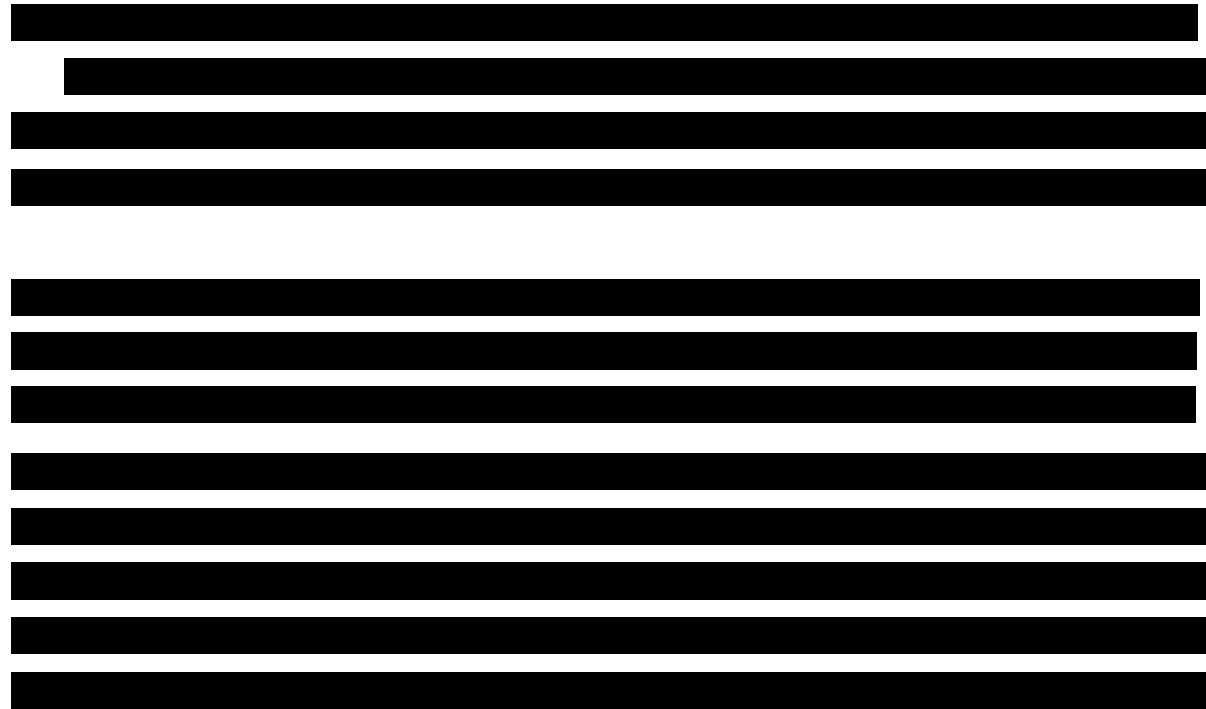
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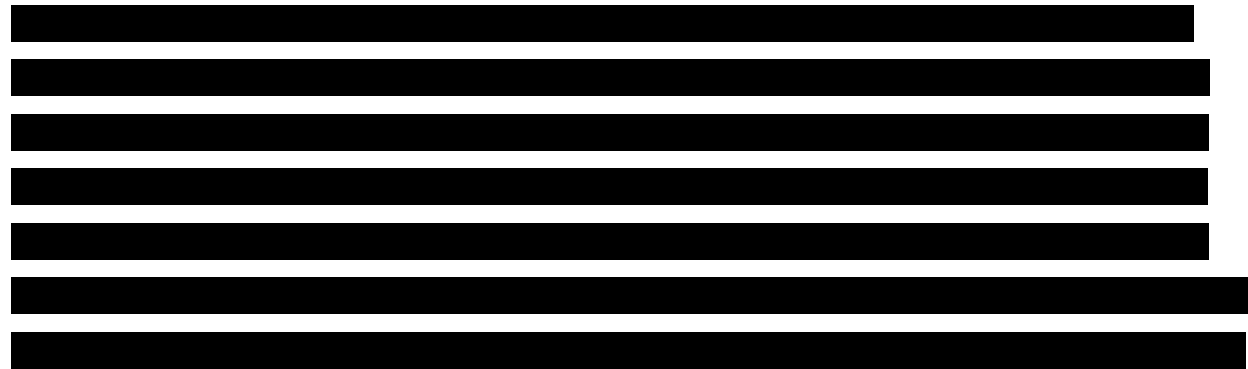
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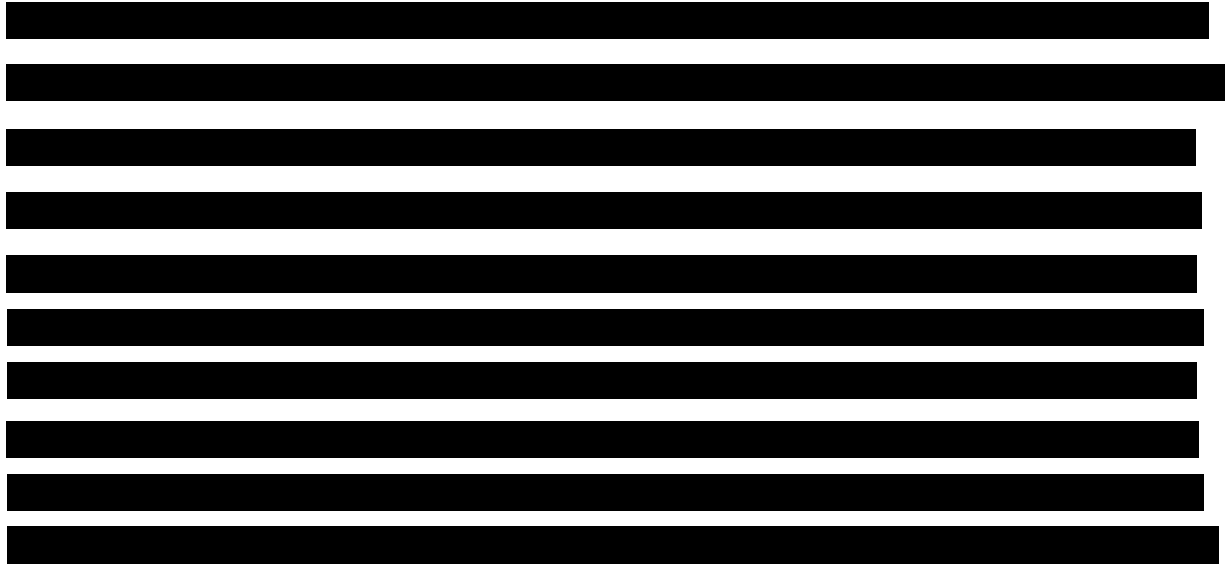
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**CHIEF’S COMMENTS**

Whether you are a new member or have been with the Charleston Police Department for a period of time, I welcome this opportunity to share this manual with you. The Charleston Police Department believes that the best way to serve the needs of our citizens is through dedicated and informed members. You can do this in part by reading and becoming familiar with the contents of this manual. You will find it a valuable resource concerning policies, and responsibilities. This manual is subject to periodic change.

You will find answers to many of the common questions you may have concerning your job in this manual. However, it cannot provide answers to all questions. Unanswered questions should be directed to your immediate supervisor who has the responsibility to provide you with a proper answer. This manual represents the first major review and revision of the Department’s policies in several years. You will notice that the format has changed and that there are new areas covered and some items have been deleted. Some policies remain unchanged but have a new look. This manual remains a dynamic work-in-progress. You are encouraged to offer suggestions for improvements in this manual (whether content, policy or style) or in other job-related areas or subjects. The suggestions of our members are important and offer an excellent way to contribute to the growth and development of the Charleston Police Department. Please submit any suggestions in writing to the Chief’s Office. I anticipate periodic supplements to this policy as we gain experience with this new format.

As changes are made you will be sent pages with instructions to add them to the manual or to replace pages in the manual. The three ring binder format will make it easier for you to keep the manual current with any updates or changes.

I look forward to working with you as we face future challenges in meeting the needs of those in our community.

Sincerely,




Jerry Riffe, Chief of Police Charleston Police Department

Approved and adopted for use this 5th day of February, 2002.


NOTE: This policy is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

REVIEW AND APPROVAL


Recommended for adoption by the mayor:

  
\_\_\_\_\_  
Jerry E. Riffe, Chief of Police      5 FEB 02  
Date

Approved for use:

  
\_\_\_\_\_  
Jay Goldman, Mayor      2/5/02  
Date

Filed with the City Clerk:

  
\_\_\_\_\_  
Frances M. Resnikin, City Clerk      2/5/02  
Date

**1.0 INTRODUCTION AND PURPOSE**

The contents of this manual do not contain all the administrative directives or the legitimate expectations that the Charleston Police Department has of its members; no manual

can, nor should it attempt, to do so. As members become acclimated to their jobs and work environments, they are expected to learn, know, and comply with the customs, practices, policies, or procedures (written as well as unwritten) by which the Police Department conducts its daily business. Should members have questions about their responsibilities, the information in the manual, changes in this manual (or any other administrative directive), they are directed to present them to their immediate supervisor or to the attention of the designated commanding officer.

The purpose of this manual is to:

- Communicate to members what is expected of them as members of the Police Department.
- Establish public accountability for the use of community resources.
- Provide members with information concerning what to expect of the Police Department as their employer.

This manual supersedes all other previous manuals for the Charleston Police Department as of the date of adoption shown on the "Review and Approval" page of this manual. Should any provision in this manual be found to be unenforceable and invalid, in conflict with federal, state or local laws, such finding does not invalidate the entire manual, but only the specific provision. Should such conflicts exist, the prevailing law shall control.

1.1 No Contract of Employment The policies and standards in this manual do not establish an implied or written contract nor change existing contracts or relationships with members or applicants for a job or position or continued job or position within the Police Department. The Chief of Police reserves the right to enforce and change these policies as deemed necessary. When changes occur, reasonable efforts will be made to keep members and their representatives informed.

1.2 Responsibility All members are responsible for reading, understanding, and keeping up to date on the information presented in this manual. Each member issued a copy of this manual is directly responsible for its safekeeping and will be held accountable in the event of its loss, damage or destruction. All copies of this manual must be returned to the Chief of Police upon demand and in good order.

1.3 The Mission of the Charleston Police Department: The Charleston Police Department, in partnership with the community, will strive to provide the best customer service to our citizenry by implementing 21st Century policing efforts towards law enforcement strategies, community policing, and education; while respecting individual rights, human dignity, and community values.

1.4 The Law Enforcement Code of Ethics As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional Rights of all persons to liberty, equality, and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be

exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime, I will enforce the law courteously and appropriately without fear or favor, malice, or violence and never accepting gratuities.

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

1.5 Nondiscrimination In implementing and enforcing its policies and standards, the Charleston Police Department does not intend to:

- Discriminate against any member.
- Violate employment laws or public standards.

1.6 Workplace Violence, Harassment & Discrimination Policy While this policy sets forth the goal of promoting a workplace that is free of violence, harassment and discrimination in any form, this policy is not designed nor intended to limit the Charleston Police Department's authority to discipline or take remedial action for workplace conduct which it deems unacceptable, regardless of whether that conduct satisfies the legal definitions of harassment or discrimination. Furthermore, by establishing this policy, the Charleston Police Department does not assume any liability for individuals who commit acts of violence, discriminate or in any way harass another member or any citizen. Individuals who do these things may be personally liable for such actions and their consequences.

The Charleston Police Department strives to provide a work environment that is free from fear, violence, intimidation, hostility or other offenses which might interfere with work performance. Violence, harassment and discrimination of any sort (e.g., verbal, physical, visual) or of any type (e.g., sexual, sexual orientation, gender, racial, ethnic, national origin, age, and disabilities) will not be tolerated, and violators are subject to severe disciplinary action up to and including discharge. Violence should be self-explanatory. Discrimination and harassment can take many forms. While it is not possible to list all behaviors that may constitute harassment and discrimination, the following are examples of conduct, which may constitute harassment and/or discrimination depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

#### 1.6.1 Examples of Prohibited Conduct

- Unwelcome sexual advances whether they involve physical touching or not.
- Requiring or suggesting that submission to unwelcome sexual advances is either explicitly or implicitly a term or condition of an individual's employment.

- Using submission or rejection of unwelcome sexual advances by an individual as the basis for employment decisions affecting such individuals.
- Using conduct that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- Displaying sexually suggestive or racially offensive objects, pictures, computer graphics or cartoons.
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments.
- Inquiries into one's sexual experiences, or discussion of one's sexual activities.
- Asking a member or employee for dates once that person has expressed no interest in starting or continuing a personal relationship.
- Failing to, or inability to, demonstrate positive efforts to get along with a member of the opposite race, sex, religion, national origin, or disability; or refusing to work with such persons because of these reasons.
- Making slurs or jokes based on sex, race, religion, national origin, age, physical disabilities, or ethnic background to or about members.
- Posting derogatory graffiti, cartoons, or script on bulletin boards, computer screens, chalkboards, walls, locker rooms, or in vehicles or failing to remove or arrange for the removal of such prohibited graffiti, cartoons, script or illustrations.
- Threatening or intimidating a subordinate member on or off-duty at any time for any purpose.
- A member observing or condoning, through actions or inactions, prohibited discrimination/harassment by failing to properly report it to designated management authorities. This is particularly serious if a supervisor is found in violation.
- A supervisor denying or granting a member with whom he or she currently has or has had a personal relationship an atypical amount of preferential job assignments or work conditions.

1.6.2 Reporting Requirement All employees, and particularly supervisors and managers, have a responsibility for keeping work environments free of harassment, intimidation and hostility. If any employee believes that he or she has been subjected to harassment, the employee should file a complaint, either in writing or orally, with any supervisor, any officer in the Professional Standards Division, any Bureau Chief, Deputy Chief, the Chief of Police, the City Human Resources Director or the City Manager. This does not preclude the member from contacting the City or State Human Rights Commission and filing a complaint.

Employees who become aware of sexual harassment, or any other form of intimidation or threatening actions by another, whether by witnessing the incident or being told of it, have an affirmative responsibility to report it immediately to the Professional Standards Division. The Professional Standards Division will determine in each instance if immediate action is necessary to defuse any situation and will direct what, if any, immediate steps are to be

taken. In addition, the Professional Standards Division will notify the City Human Resources Director of all claims of harassment and discrimination.

1.6.3 Retaliation Prohibited Any retaliation against an employee who has made an effort to report or complains about harassment or retaliation and/or who is cooperating with an investigation will not be tolerated. The recommended discipline for retaliation will be severe and may include termination of employment.

1.6.4 Response to Violence, Discrimination or Harassment All reported allegations will be promptly investigated in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. The investigation will include a private interview with the person filing the complaint and with witnesses. The person alleged to have committed the offense will be interviewed. When the investigation is completed, to the extent appropriate, the person filing the complaint and the person alleged to have committed the conduct will be notified of the results of that investigation. If it is determined that inappropriate conduct has been committed by an employee, the degree and extent of action taken will be commensurate with the seriousness of the offense, the deterrent effect on other employees, the employee's complete work history, and seniority. Corrective action can include remedial training and counseling in addition to disciplinary action up to termination.

1.6.5 Patterns of Discrimination in the Performance of Duties In words, deeds, gestures, performance of jobs, duties, tasks and delivery of services to the public, members shall not discriminate; nor shall they establish a pattern of adverse impact in the delivery of services when such discrimination has a basis in such areas as a person's sex, ethnic background, race, color, national origin, sexual orientation, lifestyle, religion, criminal history, age, disability or social status.

1.7 Respect Members shall display courtesy and respect in words, deeds, gestures, and actions towards personnel holding higher levels of authority as well as all co-workers, citizens and governmental employees.

1.7.1 Supervisors to Respect Subordinates Members who are treated with respect and concern are typically better performers and have higher morale. Supervisors who respect subordinates and limit criticisms to unsatisfactory work performances obtain greater member cooperation than those who direct their criticisms at the member's persona. Because supervisors are management's representatives, they will be held to a higher standard in this area; and, they are expected to set a positive example for others to follow. Supervisors shall treat subordinates with the same courtesy and respect that is required of subordinates toward supervisors. Criticisms of a member or of a member's performances will be made directly to the subordinate and, when practicable, in a private setting. A supervisor should not:

- Discuss a private conversation with another individual who has no legitimate need to know about the conversation. (NOTE: The supervisor is required to inform the

member prior to engaging in such a conversation whether or not the conversation will be relayed to other parties as well as the reasons for such actions.)

- Criticize the member instead of the member's performance or performance results (e.g., "there is no place here for your kind," and the like).
- Neglect to take advantage of opportunities to speak with a member about performance problems or constructively criticize the member's performance in private.
- Gossip, or condone gossip by others, about a member to other members or supervisors.
- Having a problem with a subordinate and not coming to the member to deal with it directly, using another person to convey dissatisfaction with the subordinate's performance.
- Admonish a subordinate without full knowledge of the situation or circumstances of the situation or problem.
- Use group meetings to criticize other members. (NOTE: This does not prohibit discussing important information of a performance nature when others at the meeting need to know the information to perform their jobs.)
- Threaten or intimidate a subordinate member on or off-duty at any time for any purpose.

1.7.2 Respect Towards Supervisors and Co-workers The purpose of supervisory positions is to ensure that the mission, goals, and directives are carried out in an efficient, effective, and safe manner as well as to provide accountability for the performance of the work unit. Management requires subordinates to display respect and courtesy to superior officers and co-workers because it provides a sense of order as well as serves as a tangible indication that subordinates are willing to subordinate personal priorities, goals, and objectives to the needs and mission of the Police Department. Violations of this standard include, but are not limited to:

Failing to address a superior-ranked member by his or her title, particularly while in public.

- Failing to keep an immediate supervisor informed of pertinent information that affects or has the probability of affecting the effectiveness, efficiency or safety of the work unit.
- Using abusive language or gestures at, towards, or about a member. This is particularly serious if committed in the presence of other Members or made known to other Members or members of the public.
- Threatening or intimidating a Member on or off-duty at any time for any purpose.

1.7.3 Courtesy to Citizens Members shall be courteous to citizens at all times. Members shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion. In the performance of their duties, Members shall not use profane or insolent language or gestures, and shall not express any prejudice concerning race, religion, politics, national origin, lifestyle, or similar personal characteristics. Members must treat citizens



with the same courtesy and respect that they would demand and expect in their own personal dealings with the public and other Members.

1.8 Expectations from Members All Members of the Police Department are expected to give their best work efforts, achieve the standards set for their jobs, and to contribute to and improve the quality of services to the community. Members are expected to support and affirmatively promote the mission, goals, objectives (written as well as verbal), and other lawful expectations of the Police Department, to affirmatively promote means to actively seek ways to respond to the lawful directives of supervisors and management in a positive manner and to be responsive to the reasonable requests of the citizens served.

Additionally, Members have the responsibility to know their duties and to perform them efficiently, effectively, safely, correctly, and pleasantly. They are expected to cooperate with management to achieve the legitimate objectives of the Police Department, to strive to get along with other Members, to treat others with the dignity and respect they deserve as fellow human beings, to maintain a positive work attitude, and to adhere to all standards and policies (verbal and written) as well as customs and practices that are legitimately established.

All Members are expected to adjust to the changes that often occur in their jobs and to advance their knowledge and professional development by keeping abreast of changes in their current jobs as well as new jobs if assigned.

1.9 Expectations from Management In return for Members' service, the Police Department will strive to accomplish the following for its Members:

- Select and assign people on the basis of skill, training, ability, attitude, and character without discrimination with regard to age, sex, color, race, creed, national origin, religious persuasion, marital status, political belief, or disability that does not prohibit performance of essential job functions. Seniority will also be considered but will not be a controlling consideration.
- 
- Provide adequate entry, regular in-service, advanced and special training to meet the needs of the Police Department as well as the development needs of the Member.
- Develop competent people who understand and meet the needs of the citizenry and who accept with open minds the ideas, suggestions and constructive criticisms of others.
- Assure Members [who have talked with their supervisors when practicable] an opportunity to discuss any problem with upper management personnel.
- Make prompt and fair reviews, evaluations, or investigations of complaints.
- Respect Members' individual rights, treating them with courtesy and consideration.
- Provide a comfortable, orderly and safe work environment.
- Strive to keep Members informed of the progress of the Police Department and of reasons for changes; to seek their input into decisions that affect them (without forfeiting any of management's prerogatives to make such changes unilaterally); and

to treat them, as much as practicable or legally permissible, with individual consideration in decisions concerning their training, merit, promotion, discipline or dismissal.

## **2.0 ORGANIZATION**

### **2.1 Executive Office of the Chief of Police** (Revised August 6, 2006)

The Executive Office of the Chief of Police provides Departmental leadership and administration and is comprised of functional units designated by the Chief of Police to provide assistance to, and ensure cooperation with, subdivisions of the Department, other agencies, members of the community, and the City administration. The Executive Office of the Chief of Police includes the Chief of Police, Deputy Chief(s) of Police, Professional Standards, and such other staff and functions as the Chief shall, from time- to-time, designate. The Executive Office of the Chief of Police:

- Plans, directs and coordinates all activities of the Police Department, and structures and outlines the basic overall operation of the Department.
  - Consults with the Mayor and the City Manager in formulating policies and regulations for the Charleston Police Department affecting the City of Charleston.
  - Determines the needs of the Police Department and develops both long and short range plans for meeting those needs.
  - Establishes communication between the Police Department and other law enforcement related agencies and attempts to establish coordinated programs.
  - Establishes policies, procedures and rules for the efficient and effective operation of the Police Department.
  - The Chief and/or his designee(s) will screen reports of use of force, Department vehicle crashes, pursuits and other officer complaints on a daily basis (work day) for compliance with policy, or for referral to Professional Standards or another unit for further investigation.
  - Meets with the Members of the Police Department and various levels of professional agencies and citizens' groups in an attempt to resolve problems of a law enforcement nature.
  - Plans, coordinates and justifies budgeting needs of the Police Department and has final authority over budget expenditures.
  - Ensures the enforcement of laws and local ordinances as well as Department rules, policy, and procedures.
  - Attends area and state criminal justice conferences and meetings to enhance local law enforcement programs.
  - Promotes public cooperation and goodwill by speaking to civic, fraternal, and other organizations and by making regular reports to the news media.
  - Maintains and records assignment and duty status of all Members within the Department.
    - Ensures appropriate injury reports are compiled and forwarded to the City Compensation Director.
- Maintains a personnel jacket on each Member which includes biographical data,

commendations and awards, promotions, assignments and transfers. Ensures that the Training Division maintains training records of each member, and that the Professional Standards Division maintains records of disciplinary actions against each member.

- Maintains payroll records which include the computation of individual variables such as educational incentive pay, step advances and overtime.

#### 2.1.1 Chief of Police

Appointed by the Mayor and is the Chief Executive Officer of the Police Department; reports directly to the Mayor.

#### 2.1.2 Deputy Chief(s) of Police

Appointed by the Chief of Police and assists the Chief in the administration and management of the Department and functions of the Executive Office of the Chief of Police; assumes duties of Chief of Police in the absence of the Chief of Police.

#### 2.1.3 Professional Standards Division

Conducts investigations of complaints against Department personnel as directed by the Chief of Police pursuant to the policy/procedures which govern this unit as set out later in this manual. Reports directly to the Chief of Police.

#### 2.1.4 Special Events Coordinator (Added August 6, 2006)

- Conducts site survey of facilities for special events and ceremonies.
- Recommends and schedules manpower for security of events.
- Advises the Chief and City officials on events affecting traffic flow.
- Signs special events permits as the Chief's designee.
- Ensures insurance and other event requirements are met, i.e., manpower, indemnity agreements, etc.
- Maintains "Indemnity Defense and Save Harmless Agreements" for off duty employment.

#### 2.1.5 Strategic Planning Officer (Added July 30, 2008)

The SPO is to research current best practices in policing and provide the Chief of Police with innovative ideas which will make the department more efficient and effective and the city of Charleston safer.

- Some strategies and plans of the SPO include, but are not limited to the following:
- Continuing efforts for minority recruitment
- Serve as a liaison for community/civic groups
- Develop an emergency civilian/police coalition
- Develop a new, more effective hiring process

- Develop a CPD community outreach card to promote “positive contacts”
- Develop community crime surveys for the community
- Develop departmental press release strategies
- Develop departmental chaplaincy program
- Identify morale boosting strategies for police officers
- Develop racial profiling training
- Provide statistical crime analysis to officers and the community Serve as minority police officer liaison

The Strategic Planning Officer will answer directly to the Deputy Chief of Police

#### 2.1.6 Highway Safety Unit

- Responsible for community education regarding highway safety issues; including but not limited to DUI, seat belt usage and child restraint.
- Seeks and administers highway safety grants.
- Tracks officer attendance at DUI administrative hearings.

#### 2.1.7 Director of Executive Projects / Chaplain

- Appointed by the Chief of Police
- Coordinates and Directs Executive Projects and associated grants for the Chiefs office
- Oversees the Department Handle with Care Notification Process
- Serves as liaison for community groups
- Department Chaplain
  1. Develop relationship between community and department
  2. Morale Officer
  3. Point of contact for officers in crisis both on and off the job
  4. Death Notifications
  5. Coordinates Funerals and Memorial Services related to Police officers between families and Honor Guard.

#### 2.1.8 Risk Management Officer (Revised June 13, 2013)

Reviews all reports/incidents/complaints which have the potential to create liability for the Department regarding training, policy, supervision and discipline.

#### 2.2 Order of Succession

In the absence of the Chief of Police, a Deputy Chief of Police will serve as the Acting Chief of Police. The order of succession and/or order of notification in the event of an emergency will coincide with the chain of command and is as follows:

- Chief of Police
- Deputy Chief(s) of Police - (by Unit number)
- Other Captains (by Unit number)

## 2.3 **BUREAUS AND ORGANIZATIONAL CHART** (Revised June 4, 2013)

The Charleston Police Department is divided into Bureaus to aid in the achievement of its goals. In addition, the Department maintains an organization chart depicting the functional relationship of the Chief of Police to the bureaus and their subdivisions. The following bureaus are hereby established and will consist of the respective Bureau Chief and Department Members assigned to that bureau.

- Patrol
- Community Policing
- Investigative Services
- Records, Research & Technology

The established organizational chart of the Department by functional subdivisions is found in the Appendix at the end of this Policy Manual. □

### 2.3.1 **PATROL BUREAU** (Revised June 12, 2013)

The Patrol Bureau is subdivided into Patrol Division Shifts, A Shift, B Shift, C Shift, D Shift, Canine Commander, Canine Handlers and the Boat/River Patrol. Ultimate responsibility for the Bureau rests with the Bureau Chief.

#### 2.3.1.1 **Patrol Division** (Revised August 6, 2006)

- Patrol Division is comprised of four shifts; A Shift, B Shift, C Shift and D Shift □  
Performs continuous patrol in vehicles and, when necessary, on foot or other means.
- Responds to calls for service.
- Generates and reviews police reports.
- Gathers and initially processes evidence and property.
- Investigates and reports vehicle crashes.
- Conducts field training of police recruits.
- Ensures public safety and well-being by assisting citizens as needed.
- Investigates crimes discovered or reported to the Department.
- Maintains high visibility and presence while patrolling in marked vehicles.
- Recognizes that the citizens and general public are essentially customers of the police.
- Therefore, service, protection and courtesy will be priorities when interaction occurs.

#### 2.3.1.2 **Canine Commander and Canine Handlers**

Performs duties consistent with Section 31 of this manual.

#### 2.3.2.3 **Boat/River Patrol** (when operational) (Added August 6, 2006)

## 2.3.2 COMMUNITY POLICING BUREAU (Revised June 3, 2013)

The Community Policing Bureau is subdivided into the Bicycle Division, Public Services Division, Traffic Division and Warrant/Housing Division. Each division is responsible for specific functions assigned to the individual units which comprise that division. Ultimate responsibility for the Bureau rests with the Bureau Chief.

### 2.3.2.1 Hybrid Unit

- Provide the greatest opportunity for close day-to-day interactions between the public and the members of the department and is valuable for its versatility. The unit provides stealth, mobility and high visibility, depending on the situation or need.

### 2.3.2.2 Public Services Division

- The Public Services Division works closely with the Charleston Public Safety Council, Neighborhood Watch and other community groups to reduce the opportunity for criminal activity and victimization. This is accomplished through community meetings, school programs, property surveys and other activities as needed or requested. The Public Services Division is also responsible for the Citizen's Police Academy.
- Provides training for and manages the Neighborhood Assistance Officers.

#### 2.3.2.2.1 Humane Officers

The Department's animal control officers are part of the Public Services Division. Animal control officers are under the direct supervision of the Public Services Division Commander. Primary duties of the Department's animal control officers include, but are not limited to, the pick-up, transportation, and impoundment of stray dogs and cats, and the investigation of animal cruelty cases.

#### 2.3.2.2.2 Neighborhood Assistance Officer Unit

- The NAO is an auxiliary unit that consists of volunteers that provide non-enforcement services to the community that would otherwise be handled by sworn officers.

#### 2.3.2.2.3 Prevention Resource Officers (PRO)

- The PRO Program is a cooperative effort between schools and law enforcement to: Improve student's attitudes and knowledge of criminal justice and law enforcement; to prevent juvenile delinquency; to mentor youth; to provide a safer school environment and; to combine safety and child advocacy assuring a better school experience for all Charleston's youth.

#### 2.3.2.2.4 Safety City

- Officers assigned to this Unit partner with the Fire Department and private industry to provide training about pedestrian, traffic, fire, home, bicycle and “stranger” safety issues.

#### 2.3.2.3 Traffic Division

- Responsible for keeping abandoned, junk and improperly licensed vehicles from the public right-of-way.
- Responsible for traffic direction and control.
- Conducts bicycle and motorized patrols in downtown and other designated areas, and issues citations for violations.
- Identifies and isolates traffic enforcement in dangerous and high crash areas.
- Investigates complaints of traffic law violations.
- Augments Patrol Division for traffic control at major public events and disaster scenes.
- Provides escorts for parades, funerals and other events.
- Provides training for and manages school crossing guards.
- Provides traffic control at school crossings in the absence of School Crossing Guards.
- Responsible for enforcing the Traffic Code throughout the City.

#### 2.3.2.3.1 Crash Investigation Unit

- Assigned to the Traffic Division.
- Investigates and assists in investigations of fatal crashes.
- Does follow-up investigations of hit and run crashes, and reports not cleared by the original investigating officer.
- Investigates and maintains a copy of all traffic crash reports, and photos involving City owned vehicles.
- Maintains copies of CPD131 Departmental Crash Reports.

#### 2.3.2.3.2 Crossing Guard Unit

- Assigned to the Traffic Division.
- Civilian employees who ensure the safe passage of school children at designated school crossings.

#### 2.3.2.3.4 Motorcycle Unit

- Assigned to the Traffic Division, the Motorcycle Unit is a high profile public relations assignment as well as an important enforcement arm of the Department. Therefore, Members assigned to the Motorcycle Unit are responsible to assist in the scheduled, preventative maintenance for the motorcycles. Members are responsible for keeping the motorcycles cleaned and polished, uniforms clean and pressed and boots shined to present a positive public image.
- The Motorcycle Unit is part of the Traffic Division. In order to be eligible for assignment to the Motorcycle Unit, a Member must have a valid West Virginia operator's license with a valid motorcycle endorsement. A Member must also successfully complete the Department's 40 hr. motorcycle safety certification course before being authorized to operate any Department motorcycle. Officers must maintain a valid West Virginia driver's license and valid motorcycle endorsement to operate any Department motorcycle.

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#### 2.3.2.4 Warrants/Housing Division

- Serves criminal, traffic and parking warrants and capiases.
- Issues/revokes loading zone permits as the designee of the Chief of Police. Maintains permit files.
- Maintains false alarm files.
- Responsible for Municipal Court security
- Works as a liaison with the city's public housing complexes.

### 2.3.3 **INVESTIGATIVE SERVICES BUREAU**

The Investigative Services Bureau is subdivided into the Criminal Investigations Division, Drug Enforcement Division and the Special Enforcement Division. Each division is responsible for specific functions assigned to the individual units that comprise that Division. Ultimate responsibility for the Bureau rests with the Bureau Chief.

#### 2.3.3.1 Criminal Investigation Division

##### 2.3.3.1.1 Crime Scene Unit

- Examines or causes to be examined all items of evidentiary value that come into the possession of the Department in an adequate and appropriate manner.
- Maintains and supplies photographic materials and services for the Department. □ Processes and preserves evidence from major crime and crash scenes.



- Supports the Medical Examiner's Office and other law enforcement agencies when requested with expertise and services.

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- Records fingerprints for Criminal History Files and governmental agencies.

#### 2.3.3.1.2 Dive Team Unit

#### 2.3.3.1.3 Domestic Violence Unit

#### 2.3.3.1.4 General Investigation Unit

- Investigates all deaths other than traffic fatalities and natural deaths.
- Assists in the investigation of traffic fatalities if homicide is a possibility.
- Investigates arson if it is a suspected homicide, or to assist Fire Department as requested.
- Investigates cases of missing persons that may be criminal in nature.
- Investigates sex offenses, robberies, assaults, burglaries, breaking and entering, embezzlements, forgeries, and larcenies including fraudulent use of credit devices □  
Conducts extensive preparation for court presentation.
- Establishes field contacts and informants to keep abreast of “street” situations. □  
Investigates cases with a significant criminal pattern or method operation.
- Investigates crimes of stolen motor vehicles.
- Maintains a close working relationship with other police agencies concerning investigations and organized theft rings.
- Conducts polygraph and voice stress examinations when deemed necessary.
- Enforces ordinances regulating pawnbrokers.
- Monitors all lost/stolen property.

#### 2.3.3.2 Drug Enforcement Division (METRO Drug Enforcement Network Team or M-DENT)

- Investigates drug offenses with special emphasis on offenses involving systematic crime.
- Monitors and maintains records of drug arrests and reports of drug related offenses as well as reporting all other criminal activity to the proper investigative unit, such as special enforcement, etc.
- Maintains a working relationship with federal, state, and other local law enforcement agencies.
- Maintains and operates surveillance and other equipment and assists other units in the use of such equipment.
- Coordinates investigations of drug related offenses when other units of the Department are involved.  
Works with K-9 Units to detect drugs.

#### 2.3.3.2.1 DEA Task Force (Added August 6, 2006)

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- Is a cooperative effort between the department and the federal agency and works closely with M-DENT. The department's contribution to the task force is dictated by the City Council and the Chief of Police.

#### 2.3.3.3 Special Enforcement Division (added April 29, 2009)(Revised June 13, 2013)

The Special Enforcement Division conducts overt and covert operations as prescribed by the Investigative Services Bureau Chief or the Chief of Police.

#### 2.3.4 RECORDS, RESEARCH and TECHNOLOGY BUREAU (Updated November 2013)

##### 2.3.4.1 Information Services Division (Revised August 6, 2006)

- Responsible for the acquisition and maintenance of equipment, software and services necessary to provide, operate and maintain the department's mobile data system.
- Maintains the department's Automated Vehicle Location system.
- Maintains the digital booking system (automated fingerprinting system, digital camera, etc.)
- Oversees curriculum, training and use of the mobile data system and its components (basic mobile functions, Field Based Reporting, WEAPON, Automated Vehicle Location, etc.)
- Responsible for the security of all computer software (media and licenses) purchased by the department for its computers.
- Works closely with the Records Division Commander to oversee proper function of the interface between the Field Based Reporting system and the Records Management System.
- Provides the Department's NCIC Local Agency Security Officer (LASO).
- The Information Services Commander serves as a System Administrator of the department's Records Management System (RMS).

##### 2.3.4.2 Property and Evidence Division

- Records and maintains custody records of all Department property.
- Records and maintains all property found, recovered and of evidential value, which is received by the Department and shall maintain the chain of custody.
- Maintains records and inventory of property for purposes of disposal or public auction.
- Is responsible for ordering and maintaining day to day supplies for the department.

2.3.4.2.1. Fleet Management Unit Coordinates vehicle maintenance and the repair of damaged vehicles.

- Assists in the preparation of budgets and specifications.

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#### 2.3.4.3. Records Division (Revised August 6, 2006)

- Performs duties consistent with the Records Division Operations Procedures manual.
- The Records Commander is responsible for keeping the manual current and up to date with amendments, additions and/or deletions.  
Oversees the re-certification of officers for use of WEAPON inquiries provided by the mobile data system.
- Responsible for consistent, accurate and timely reporting of National Incident Based Reporting (NIBR) data to the State.

#### 2.3.4.4 Training Division

- Coordinates and schedules in-service and specialized training.
- Maintain training files for each officer.
- Maintains the police library, film library and coordinates use of training classroom.
- Prepares and distributes training bulletins as well as maintaining a sufficient supply of general and special orders for distribution.
- Supervises and maintains the police firing range through the Department's Chief Range Officer.

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#### 2.3.4.4.1 Academy Liaison (Added August 6, 2006)

- Assigned to the State Police Academy to assist with the training of the department's new recruits.
- The Academy Liaison Officer's duties include writing course curriculum for this training.
  - This assignment will be filled on an as need basis.

### **2.4 ROTATING ASSIGNMENTS FOR THE RANKS OF PATROLMAN, SENIOR PATROLMAN AND CORPORAL** (Added January 1, 2006)

The Charleston Police Department shall utilize a system of rotation in the assignments of Patrolmen, Senior Patrolmen and Corporals to specialized units. Supervisory positions or the ranks of Sergeants and above are not included in this policy. The system shall apply to officers who have spent the maximum, predetermined amount of consecutive time in any one specialized unit.

The following objectives can be met with the Rotation System:

- Development of officers with a broadened base of experience and skill
- Career growth by providing opportunities to develop technical skills
- Exposing personnel to the greatest possible variations of police operations

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- - Encouraging personnel to take more interest in promotional exams since their tenure in specialized units will be limited

#### 2.4.1 Procedure for Rotations (Added January 1, 2006)

Rotations will occur continuously as individual officers reach the maximum, predetermined amount of consecutive time served in a specialized unit. The Chief of Police or his designee and the division/unit commanders will have joint responsibility in monitoring officers' tenure in specialized

units. Each assignment, the maximum consecutive time allowed in each unit and any special criterion will be listed in Section 2.4.3 of this policy.

The Chief of Police may grant exceptions to the time limitations set in Section 2.4.3 of this policy. Extensions beyond the maximum tenure will be made only when a reasonable need has been demonstrated and the Division/Unit Commander, Bureau Commander and the Chief of Police or his designee agree that such an extension is necessary. Extensions must be reviewed on a six month basis.

Prior to rotating the tenured officer(s), the Police Chief's office will post the specific assignment(s) and the number of vacancies for a period of ten (10) working days. The posting shall set forth a description of job duties and responsibilities. It will also include those qualifications, skills and experience necessary to be considered for the position(s). Officers who desire a specialized assignment are to make application through the Police Chief's office during this period.

#### 2.4.2 Selection of Officers for Specialized Units (Added January 1, 2006)

An officer must have served two (2) years in the Patrol Division from his or her date of hire in order to be considered and selected for a position in a specialized unit. An officer rotating out of a specialized unit will be reassigned in the Patrol Division for a minimum period of one (1) year. After this time, he or she may re-apply for an opening in a specialized unit as it becomes available.

The selection of an officer into a specialized unit will generally be conducted by the concerned division/unit commander. The commander will invite input from his or her Bureau Chief regarding the prospective candidate(s). The commander shall consider the following areas or attributes when deciding upon an applicant for a vacancy: *past job performance, level of training and experience, seniority, sick leave record, evaluations, special skills, education or certifications, if any, and the ability to get along with others or work in a team.*

The Chief of Police will have the ultimate decision on the selection of any officer into a specialized unit.

#### 2.4.3 Rotation Schedules (Revised 06 July 2018)

<b><u>Position</u></b>	<b><u>Tenure/Criteria</u></b>
Traffic Officer	5 Years
Accident Investigator	8 Years (may be extended 1 year for training/mentoring needs)
Hybrid Unit	5 Years
Housing Officers	5 Years
Information Services Officer	5 Years
Warrants Officer	5 Years

Records Supervisor (If Corporal)	5 Years
Community Policing Officers	5 Years
Training Officers	5 Years
Property & Evidence Officers	5 Years
CID-Criminal Investigator	8 Years
CID-Domestic Violence Inv.	8 Years
SEU-Officer	8 years
Investigator Crime Scene Years	9 Years (may be extended 1 year for training/mentoring needs)
Technicians	
Polygraph/CVSA Examiners	9 Years (may be extended 1 year for training/mentoring needs)
MDENT-Narcotics Investigator	8 Years
Canine (K-9) officers	Life of Dog*

\*If dog is retired or deceased before 3rd year of tenure is completed, current handler may be considered for additional K-9 assignment

Officers with specialized assignments not listed above such as Task Forces (other than MDENT) or positions which require special attention, skills or sensitivity shall serve in those positions at the discretion of the Chief of Police (e.g. SWAT Team Members, Hostage Negotiators and Range Officers will fit this category). However, an officer interested in becoming a SWAT Team Member, Hostage Negotiator or Range Officer will be required to have served a minimum of three (3) years in the Patrol Division from his or her date of hire to be considered for selection.

#### 2.4.4 General Rules (Added January 1, 2006)

If there are no applicants for a particular specialized assignment, the officer currently holding that position may stay for an additional year at the Police Chief's discretion. If there are no applicants and the officer currently assigned desires to leave, a replacement shall be named by the Chief.

Previous experience may be a consideration for reassignment to a specialized unit. An officer who is currently serving in a specialized unit may, at the discretion of the Chief of Police, be removed at any time and for any reason that results in the overall betterment of the department. Although the Chief should usually act upon both the concerned Bureau Chief and the Unit/Division Commander's recommendation for early removal, he should consider at least one of the following factors regarding the officer's performance or the position he is holding: *poor attitude, poor work performance, sick leave abuse, philosophical differences with supervision, disciplinary reasons, promotion to higher rank or for overall betterment of the department.*

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An officer who desires to leave a specialized assignment before his or her tenure is complete must show sufficient reason through the chain of command to the Chief of Police prior to his or her removal. The chief will consider morale of the officer, training and experience needs of the position and other departmental concerns before honoring the request. If the chief grants the request, the officer will be assigned to the Patrol Division for a minimum period of one (1) year before he or she can apply for another specialized unit. This will discourage “unit hopping”.

3.0 **MAINTAINING ORGANIZATION**

In order to achieve goals and objectives in an orderly and efficient manner, the organizational structure and integrity must be maintained. Thus, functional units have been established with specifically defined responsibilities with the goal of accomplishing objectives as efficiently as possible. Coordination of this effort is accomplished by requiring that division Members pursue their tasks within the official organizational structure and utilize the chain of command.

3.1 Unity of Command To facilitate management of an organization, the principle of “unity of command” is employed so that an employee receives orders from only one superior. To ensure unity of the command and maintain efficient management of the Police Department, clearly defined lines of authority are established enabling a structural relationship between each employee and the Chief of Police to exist.

3.2 General Responsibility Immediate supervisors and subordinates will keep each informed of the other’s activities. Additionally, Department Members will keep themselves aware of their relative position in the organization to whom they are accountable and who are accountable to them.

3.3 Authority within the Chain of Command Sound management practice demands that each command or supervisory person issue specific orders only to immediate subordinate personal. The subordinate person will then issue the orders in the same manner until the point of implementation is reached. A deviation of the normal practice can be made when believed justified by the superior issuing the order.

3.4 Authority Outside the Chain of Command Department Members will strive to issue directives and orders only to an echelon which immediately follows within the chain of command. When a violation of normal practice is believed justified, a senior Member outside a subordinate’s chain of command may issue an order to a subordinate, but will notify the subordinate’s supervisor of the order if the order issued interfered with or alters the functions assigned to the subordinate.



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Immediate supervisors are the Members' first line of authority. Supervisors are responsible for providing proper guidance regarding work assignments and the progress Members are making on their jobs. Supervisors are there to teach and to encourage Members to achieve their best, recognize and report achievements as well as problems to appropriate management personnel, and to properly handle disciplinary problems within their lines of authority.

Members who need help or have questions, complaints, problems or suggestions are normally expected to contact their immediate supervisor first. If this is not feasible due to extenuating circumstances Members are encouraged to report their problems to the next higher level supervisor. Disagreements with an immediate supervisor may be directed to the next higher level supervisor after discussing the issue with his/her immediate supervisor and/or obtaining the supervisor's authorization to go to the next higher supervisor. Complaints of improper harassment may be made to any supervisor without regard for the chain of command.

Members will not be permitted to use a supervisor's actions/inactions or improper orders/directions as an excuse for their improper conduct or behavior if another Member exercising ordinary common sense would have behaved differently. However, evidence of a supervisor's improper actions, directions, or decisions will be considered as a mitigating factor in disciplinary decisions.

3.5 Organization and Chain of Command for the Department The chain of command of the Department will be as follows: Chief of Police, Deputy Chief(s) of Police, Captain, Lieutenant, Sergeant, Corporal, and Patrolman.

3.5.1 Exceptions A Department Member, regardless of classification, assigned to a position of command, will report to the immediate higher authority within the chain of command of the organizational component affected, and will exercise authority over all subordinate personnel, whether sworn or civilian, within the command assigned.

3.6 Coordination Members of the Department will coordinate their functions so as to maintain a high standard of efficiency and maintain unity of command. Department Members will perform their tasks and duties within the official organizational structure and use the chain of command.

3.7 Establishment of Temporary Subdivisions With approval of the Chief of Police, establishment of details, units or task forces may be initiated by a commanding officer. Establishment of such details, units or task forces will be made for a specific purpose and be subject to review by the Chief of Police.

3.8 Determining Official Duties Members of the Department will seek information concerning their official duties from this Operations Manual and from their immediate superior officer.

3.9 Correspondence with Outside Agencies A Department Member will not make any request for equipment or services to agencies outside the Department unless authorized to do so by the

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Chief of Police. With the approval of their commanding officer, Members of any subdivision may communicate with those outside the Department to gain information, but may not commit the Department to any type of action without proper authorization. NOTE: This does not apply to immediate operational needs such as mutual aid, canine or helicopter assistance as needed. These immediate need issues are requested through and approved by on duty shift supervisors.

3.10 Procurement of Departmental Equipment or Services Department Members will submit requests for equipment or services of a special nature to the Chief of Police via the chain of command of their respective bureau by utilization of the proper forms.

3.11 Memorandums Memorandums are utilized for written communications primarily as a device to inform or inquire. They may be originated by any Member and directed to any Member but must follow the chain of command. Examples of usage: • Documentation of a situation or incident

- Recommendations and suggestions
- Grievances
- Required notifications
- Initiation of commendation
- Bureau, division, section, unit commanders and supervisors may utilize the memorandum for issuing orders, directives and notices pertaining to the operations of their respective command after first determining that such written directives do not conflict with or alter the direction of established Department policies and procedures as contained in the written directive system.

3.11.1 Index Numbers Index numbers for all General Orders and Special Orders will be issued by the Executive Office of the Chief of Police.

3.12 Operations Manual

3.12.1 Master Copies A master copy of the Charleston Police Department's Operations Manual will be kept on file in the office of the Chief of Police. In addition, the Office of the Chief of Police will maintain an up-to-date file of all Special Orders.

3.12.2 Bureau Copy Each Bureau Chief will ensure that an up-to-date copy of the Operations Manual and all Special Orders are maintained within each bureau by requiring that the Bureau Copy periodically be checked against a master copy. This copy, to be known as the Bureau Copy, will help serve as the standard for the bureau.

3.12.3 Member's Copy Members will ensure that an up-to-date copy of the Operation's Manual and all special orders are maintained within.

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## 4.0 COMMAND AND SUPERVISION

A command officer will exercise authority over a division, section, unit or detail in the interest of the Department. A Department Member assigned to a position of command will carry out the policies and procedures of the Department and orders of superiors in a manner so as to enhance the accomplishment of the Department's mission, goals and objectives. The following procedures for command are hereby established.

4.1 Assignment of Command The Chief of Police has final authority to select and approve assignments of Department Members whom he feels have the required qualifications to command positions. Although rank is usually considered as a prerequisite, rank or seniority alone does not necessarily qualify one for a command position. Assignments will be determined on the basis of a combination of factors including, but not limited to, rank, seniority in service and rank, level of experience, extent of training, past performance, and capability for performing the assignment.

4.1.1 Decision Responsibility The responsibility of making decisions is inherent with the authority of command. Commanders shall not shirk from the responsibility of making decisions which are appropriate and affect that level of command.

4.1.2 Accomplishment of Command Assignments Command personnel of all echelons will take all reasonable steps to accomplish their assignments. In the case of difficult or complicated assignments which cannot be accomplished immediately, command personnel will make frequent progress reports to their superiors. Reports will be either oral or written depending upon the desire of the superior. Command officers will assist subordinates by furnishing direction and will coordinate the work of their subordinates to best accomplish goals and objectives.

4.2 Multi-bureau Assignments When responsibility for an assignment is entirely within a single Bureau, but requires assistance of subdivisions from other Bureaus/Divisions/Sections/Units, a command officer attached to the responsible Bureau/Division/Section/Unit and present for duty will have authority over an officer detailed from another Bureau/Division/Section/Unit.

4.3 Delegation - Duties - Responsibilities Unless specific orders prohibit it, command Members of any echelon may delegate any duty assigned to them to their subordinates. They may accept any available aid from other subdivisions of the Department in the discharge of their duties. Department Members assigned to positions of command retain the position's responsibilities until relieved of them by higher authority. Ultimate responsibility for the command rests with the assigned commander.

4.4 Absence of Commanding Officer In the absence of the commanding officer of any subdivision of the Department, the senior Member of the next echelon within the subdivision will assume command unless an alternate has been designated by the commanding officer or by

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a higher authority in the direct chain of command, or unless higher authority has indicated that the position should remain temporarily vacant.

4.5 Assumption of Command by Higher Authority Subdivisions of the Department are ordinarily commanded by an officer who has been assigned to take actual charge of the unit by the Chief of Police. However, the commanding officer of each higher echelon within the direct chain of command may assume command of the subdivision if it is believed necessary to do so.

4.6 Directing and Controlling Subdivisions Commanding officers may develop rules for directing and controlling specific functions of their subdivisions, subject to the approval of the Chief of Police. When approved, these rules will apply only to the Members of that particular subdivision. In any emergency, special orders deviating from the rules and regulations may be issued, lasting only for the duration of the emergency.

4.6.1 Appointing an Acting District Sergeant - Procedure (Added January 6, 2003) Whenever it is necessary to use a Corporal as an Acting District Sergeant in the Patrol Division, the following procedure will be used;

- The two senior Corporals assigned to the shift will be the primary officers designated to work as an Acting District Sergeant.
- The position will be offered to the two senior Corporals on a rotating basis. If only one of the two designated Corporals is working that day that Corporal would be selected as the Acting District Sergeant. If neither Corporal is working, the position is to be offered to the next lower ranking Corporal by seniority. Seniority will be based on time in rank first, and ties broken by time on the department.
- If a previously designated Corporal turns down the opportunity to work as an Acting District Sergeant, it must be noted on the override slip of the Corporal that does work.
- This is without regard to the district which the Corporal is assigned or the district to which the Acting District Sergeant is needed.
- Any deviation from this procedure must be approved by the Chief's Office.

This procedure will apply in the appointment of Acting District Sergeants in the Patrol Division only.

4.7 Seniority as a Factor in Command When two or more Department Members of equal rank are working together on the same assignment or detail and an emergency develops requiring a command decision, and no one has been assigned command by competent authority, the senior officer will assume command. Seniority will be determined first by rank and second by continuous service in the rank. Seniority will not be used to determine command except in an emergency.

4.8 Chain of Command During Emergencies Command of all police personnel assigned to the scene of an emergency will be assumed by Members in the regular command structure of the geographic area in which the operation occurs, i.e., Patrolman, Corporal, Sergeant, Lieutenant, Captain, Deputy Chief, and Chief. In situations lacking the regular command structure, the

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ranking officer will supervise until the arrival of any personnel activating the chain of command. Any superior officer assuming command at the scene of an emergency will inform the Member being relieved of the superior officer's intent to assume command and then notify METRO Communications of the fact that command has been assumed.

4.9 Transfer of Command Upon assuming a new assignment and continually thereafter, a Command Officer should critically evaluate all aspects of the command; newly assigned Command Officers will review existing policies, procedures, and programs to determine if the need for which they were enacted remains unchanged. Existing budget requests should be reviewed to ensure that any changes made or contemplated have not rendered the requests obsolete.

Upon change of command, the Command Officer being replaced has a duty to lend full assistance in making the command transition as smoothly and orderly as possible. Orientation of a new Command Officer should include information concerning unique problems of the command and assistance in continuing community and professional contacts relating to the command.

4.10 Morale Command Officers will take positive steps to create and maintain high morale and spirit of cooperation and service among subordinates.

4.11 Problem Resolution Process (Grievance Procedure) Each employee is an important member of the Department. Management is concerned about your on-the-job problems and you should make management aware of them. Many problems tend to arise out of a misunderstanding or a lack of complete information. If problems are kept hidden, they tend to fester and to grow out of proportion to their seriousness. If you feel that anything has occurred that is in any way unfair to you, or if you have any complaints, requests, or constructive criticism, the best way to eliminate the problem is to talk it over.

Since your supervisor is responsible for seeing that you receive fair treatment, all problems should be taken to your supervisor first and discussed. If you have any ideas for doing things a better way or encounter a problem about practices discussed herein or if any problems arise in the course of your work, talk to your supervisor. In most instances, the problem can be immediately solved after this first step is taken.

If, after talking to your supervisor, you have not received a satisfactory explanation or decision, you should notify your supervisor within 7 days that you wish to present your problem to your Unit/Division Commander. To do this, please write a memo to the Unit/Division Commander stating:

- (1) Your name,
- (2) What your problem is,
- (3) When you discussed it with your supervisor,
- (4) What your supervisor's response was,
- (5) Why you disagree, and

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(6) What you suggest as the proper response to the problem. The Unit/Division Commander will investigate and, to the extent necessary, will discuss the problem with you. If an immediate decision is possible, it will be given to you; if not, you will be informed of a time when an answer will be available. Generally, you can expect an answer within 10 working days.

Finally, if you are dissatisfied with the response of your Unit/Division Commander, you should write a note to your Bureau Chief who may, as necessary, consult with the Chief, Deputy Chief and/or other Bureau Chiefs, before providing a response to you. The decision of your Bureau Chief will be a final decision with no right of further appeal unless the grievance deals with disciplinary or civil service matters, in which case the provisions of West Virginia Code will apply.

We urge that you report all problems or complaints because your complaint may be the only way that management may learn of a problem that needs to be resolved.

**5.0 SUPERVISORY PRINCIPLES**

Supervisory officers are appointed by higher authority to be in charge of one or more Members of the Department. Responsibilities of supervisory officers include the supervision, direction, coordination of effort, leadership, inspection and evaluation of individual subordinates, in addition to other tasks assigned by competent authority. Supervisory officers will organize subordinates, equipment, and tasks in a manner that ensures achievement of organizational goals and objectives with maximum efficiency and minimum expenditure of personnel and resources.

5.1 General Responsibilities Regardless of rank or classification, a supervisor is responsible for the following basic functions:

5.1.1 Administration Those activities concerned with planning, organizing, directing, coordinating, recording, and public relations.

5.1.2 Supervision Techniques used to achieve goals and objectives by reviewing results and determining the causes of success, failure or mediocrity. Supervision also includes the control, development and maintenance of harmonious relationships among all Department Members and the inspection, review and evaluation of work performed by subordinates.

5.1.3 Training Includes instruction in the development of efficient working habits and good attitudes; practical instruction in how, what, where and why tasks are to be done; and development of potential in subordinates.

5.2 Knowledge of Conditions Supervisory Members of every echelon has the duty of familiarizing themselves with the conditions which affect the work of their subordinates. Supervisors will inform their superiors concerning such conditions in as much detail as the superior indicates is required.

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5.3 Knowledge of Relevant Information Supervisors of every echelon shall be knowledgeable of current departmental and legal information which is relevant to their assigned function.

5.4 Availability Supervisors of every echelon while on duty shall make themselves available to subordinates when their assistance or expertise is requested.

5.5 Professional Bearing Supervisors of all echelons shall be exemplary in displaying professional bearing and commitment to work.

5.6 Information to Subordinates Supervisors of every echelon will inform their subordinates of decisions by higher authority which affects them unless such information is confidential. They will disseminate Department information concerning policies, procedures and rules.

5.7 Training and Assistance Supervisors of all echelons will ensure that their subordinates are given all necessary practical assistance and training in the discharge of their duties.

5.8 Knowledge of Subordinates Supervisors of all echelons will closely observe the work of their immediate subordinates and be prepared to evaluate it accurately for their supervisors in as much detail as the superior wishes. Supervisors will make a written report to their superior of any misconduct or unfitness or outstanding work of a subordinate. They will complete performance evaluation forms appropriately.

5.9 Detailed Orders and Instructions Supervisors of all echelons will issue any order to their subordinates necessary to implement orders from their superiors and will carry out their assigned function within the framework created by orders from their superiors.

5.10 Report Review The responsibility for review of reports is common to all supervisors regardless of rank or classification. Initial responsibility will begin with a Department Member's immediate supervisor. However, all supervisors will strive to maintain a high level of quality in reports generated by subordinates.

5.11 Immediate Supervisor's Failure to Take Action: Every supervisor and every Member acting in a supervisory capacity is subject to disciplinary action if that supervisor fails to:

- Properly supervise subordinates in compliance with all rules, regulations, directives, orders, or policies of the Department.
- Initiate a Departmental Complaint when such action is appropriate and in accordance with the rules, regulations, directives, orders or policies of the Department.
- Take other appropriate action authorized and in accordance with the rules, regulations, directives, orders, or policies of the Department.

5.12 Supervisor Response to Scene of Injury The District Commander will respond to any scene where any Member is injured in the line of duty or a citizen is injured in any police action and ensure that all Departmental policies relating to the situation are followed and that all required reports and forms are completed in a timely manner.

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**6.0 RANK STRUCTURE** (Amended August 24, 2004)

The organizational structure of the Department is designed to assure the efficient and effective performance of functions and tasks that are necessary to achieve the Department’s mission. The Chief of Police is responsible for the overall performance of the Department, but cannot personally plan, direct, coordinate and supervise every function and task. Functions and tasks must be assigned to subordinates who are responsible for their achievement. Therefore, the Department has established a formal rank structure consisting of Chief of Police, Major (Deputy Chief), Captain, Lieutenant, Sergeant, Corporal, Senior Patrolman and Patrolman. Members who hold a specific position may delegate their position’s authority or duties to subordinates but not the ultimate responsibility. Consistent with the formal rank structure, the Department informally classifies rank into administrative components consisting of bureau chiefs, commanders and supervisors. These components do not necessarily indicate a specific rank.

**6.1 Chief of Police - Duties and Responsibilities** The Chief of Police is the chief executive officer of the Charleston Police Department, and in the exercise of his powers and duties as such shall be subject to such orders, rules and regulations as may, from time to time, be issued by the Mayor.

The Chief of Police has final authority regarding all matters of policy and operations. Responsibilities of the Chief of Police include the enforcement of laws and ordinances and providing for the efficient operation of the Department. He shall be responsible to the Mayor for the proper and efficient conduct, control and discipline of the Department. Except as prohibited by state law, i.e., Civil Service requirements, the Chief of Police shall have power to place any Member of the Department on Administrative Leave for any reason, and shall report such action, together with the facts of the case, to the Mayor as appropriate.

**6.2 Deputy Chief - Duties and Responsibilities** The position of Deputy Chief is the second highest ranking position in the Department and generally holds the appointed rank of Major. The Deputy Chief is appointed by the Chief. The responsibilities of Deputy Chief include serving as Acting Chief of Police when so designated by the Chief of Police; and the performance of other tasks assigned by the Chief.

**6.3 Captain** The rank of Captain is the highest ranking Command (Civil Service) position in the Department. Responsibilities of a Captain may include assuming responsibility of a Bureau, with the title of Bureau Chief. A Captain is responsible for the execution of policies or directives emanating from the Chief of Police or other component authority.

**6.3.1 Examples of Duties**

- Responsible for the administration of a bureau and the supervision of personnel assigned.
- Coordinates collection and preparation of operating reports.



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- Studies management methods in order to improve work flow, simplify reporting procedures, implement cost reductions or improve work measurements and performance standards.
- Analyzes unit operating practices such as record keeping systems, forms control, office layout, and suggestions and develops improved systems or revises established procedures to insure greater efficiency.  
Formulates and assists in establishing standard operating procedures.
- Ensures the enforcement of laws and local ordinances as well as Department rules, policies and procedures.
- Assists in the development of rules, policies and procedures.

6.4 Lieutenant The rank Lieutenant is the second highest Command (Civil Service) position in the Department. Responsibilities of a lieutenant may include assuming the responsibility of a Division. A Lieutenant is responsible for the execution of policies or directives emanating from the Bureau commander or other competent authority.

#### 6.4.1 Examples of Duties

- Administers, plans, and coordinates functions in his Division.
- Ensures the enforcement of laws and local ordinances as well as Department rules, policies and procedures.
- Assists Bureau Chiefs in the development of rules, policies and procedures.
- Assigns functions and tasks to subordinate Members within his command.
- Maintains division records.

6.5 Sergeant The rank of Sergeant may serve in a command or supervisory capacity. Responsibilities of a Sergeant include the management of assigned programs or functions and the supervision of assigned subordinate personnel.

#### 6.5.1 Examples of Duties

- Plans, assigns, reviews, and supervises the work of Members in the assigned command.
- Ensures the enforcement of laws and local ordinance as well as Department rules, policies and procedures.
- Interprets orders and directives to direct subordinates.
- Advises and assists subordinates in the proper disposition of complex or difficult assignments or situations.
- Ensures the development, implementation and completion of assigned programs or functions.
- Reviews reports for completeness and content.
- Ensures that necessary reports are completed and submitted in a timely manner.
- Responds to critical incidents and directs operations as needed.
- May assume general responsibility of a division in the absence of the division commander.

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6.6 Corporal A corporal it is the direct link between management and non-management personnel. Corporals supervise and evaluate assigned Members and are responsible for the efficient and effective accomplishment of function and tasks assigned to them.

6.6.1 Example of Duties:

- Supervises and participates in the enforcement of laws and local ordinances.
- Supervises and participates in criminal investigations. Assigns tasks to Members that are subordinate.
- Provides direct supervision in complex cases or situations.
- Responsible for supervision of Members assigned.
- Resolves or, if required, submits to higher authority for resolution, conflicts, problems or disciplinary matters arising from assigned Members.
- Submits to higher authority suggestions from subordinates that enhance Department operations, programs, or functions.
- Represents the interest and well-being of non-management Members to higher authority and transmits management concerns and directives to non-management Members.

6.7.0 Senior Patrolman (Added August 24, 2004) A Senior Patrolman is a non-civil service rank with no increase of pay or benefits, that recognizes officers who have held the rank of patrolman for more than five continuous years as a Charleston police officer. A Senior Patrolman will perform law enforcement duties in the same manner as a patrolman as listed in sections 6.7 and 6.71 of this manual.

6.7 Patrolman A Patrolman performs law enforcement duties to protect life and property and has the greatest influence over the achievement of the Department's mission. The Patrolman is the most visible Member of the Department and of the City Government. Conduct displayed by Patrolmen set the tone for the public response to all other Department Members and programs. Success or failure of the Department's mission is directly depending upon the Patrolmen's professional conduct, knowledge and sense of duty.

6.7.1 Examples of Duties

- Enforces laws and local ordinances.
- Responds to calls for service and investigate complaints of disorder or criminal conduct.
- Makes arrests of persons who have violated laws and local ordinances.
- Reports all criminal activity assigned or observed to higher authority for proper disposition in the criminal justice system.
- Collect and preserves evidence pertaining to criminal activity for presentation to appropriate prosecuting authorities.
- Investigates conditions hazardous to life or property and takes appropriate actions to remedy the conditions.
- Participates in the prosecution of law violators by appearing in court to testify to situations observed and actions taken.
- Performs other tasks serving the public interest and well-being.

- Ensures the continual enhancement of the Department image by displaying professional conduct at all times.

6.8 Civilian Employees Department personnel who are civilian employees perform duties and tasks which support Department goals and objectives.

#### 6.8.1 Examples of Duties

- Analyzes portions of department operations and suggest methods of improvement. Provides clerical support in processing correspondence, reports, arrests, and division records.
- Provides information to and from automated systems.
- Performs other tasks, as assigned, to accomplish the Department's mission.

## 7.0 ADMINISTRATIVE REQUIREMENTS

7.1 Distance of Residence Members will reside within a distance of thirty (30) miles measured from the intersection of Court and Virginia Streets, Charleston, by the shortest route available by automobile. All persons will move into these boundaries within one year of employment. Requests for a variance from this requirement should be directed through the chain of command to the Chief of Police.

7.2 Change of Address or Telephone Number Members of the Department will, via their immediate supervisor, keep the Office of the Chief of Police notified of their current address of residence and telephone number and will report any change of the same in writing within 48 hours after making such change. No Member shall use a post office box number as a residence address. While a Member may choose to use a Post Office Box for personal mail, all official correspondence will be mailed to the Member's street address of record.

7.2.1 Cellular Telephones as Home Number (Added December 3, 2002) Members of the Department, with approval of the Chief of Police, can list a cellular telephone number as their residence contact number, provided that cellular service is available to provide a clear transmission signal from their place of residence. In addition, the cellular phone must be left on at all times while at the residence. If a land based line is also at the residence, both numbers must be made available to the Chief's Office. Any change of cellular telephone numbers must be reported to the Chief's Office within 48 hours after making such change, if said number is to be considered the primary contact number. This section shall not be used to circumvent sick leave procedures as stated in sections 13.3.5 to 13.3.5.10 of this manual relative to location and verification procedures.

7.3 Citizen Complaints Members shall courteously and promptly accept or refer any complaint made by a citizen against any Members or any citizen complaint that concerns Department policy or procedure to the proper authority as set forth in the Complaint Handling Policy. Members shall never attempt to dissuade any citizen from lodging a complaint against any Member or making a complaint about any Department policy or procedure.

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7.4 Dissemination of Information Members shall treat the official business of the Department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended. Members may remove or copy official records or reports only in the performance of duty. Members may not release or provide access to administrative or public information or documents or records without complying with established administrative procedures or laws governing the proper release or controlled release of such information. Members shall not divulge the identity of persons giving confidential information except as authorized by proper authority in the performance of police duties, such as in response to court orders, subpoenas and interagency investigations.

7.5 Department Reports Members shall submit all necessary reports in accordance with established Departmental policy and as specially directed by a superior officer.

7.6 Civil Cases and Processes Members will not serve civil processes while on duty as a Charleston Police Officer, nor will they render assistance in civil court cases, except when the City of Charleston is a party or they have been subpoenaed in the proper manner. This does not prohibit a Member from serving civil process off-duty, or acting as an expert witness provided that the Member does not use Department equipment or personnel services while on duty.

7.7 Assignment Record Each Member is responsible for notifying Communications of the following:

- Arrival on any scene.
- Completion of an assignment.
- Disposition information.
- Location and nature of self-initiated activity.

7.8 Drug Testing Members and other Police Department employees are subject to the City Wide Drug Testing Policy that is incorporated into this Policy Manual by reference.

7.9 Driver's License Loss or suspension of a member's driving license shall be reported to the Chief's Office, via immediate supervisor, immediately.

7.10 Internet Policy Use of the Internet by Departmental employees is permitted and encouraged in cases where such use is both suitable for business purposes and supports the goals and objectives of the Department. In such cases, the Internet is to be used in a manner that is consistent with the City of Charleston and Departmental standards of conduct and as a part of the normal execution of an employee's job responsibilities. Using the City's facilities or equipment to make abusive, unethical or "inappropriate" use of the Internet will not be tolerated and shall be considered just cause for discipline, up to and including termination. Use of the City's computers and/or networks is subject to auditing, inspection and monitoring as deemed appropriate. The City of Charleston and or this Department may maintain an audit log of every Internet access transaction as deemed necessary or appropriate. Examples of inappropriate employee Internet use include, but not limited to, the following:

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- Conducting illegal activities.
- Accessing or downloading pornographic material, sites and chat rooms.
- Gambling.
- Soliciting for personal gain or profit.
- Revealing or publicizing proprietary or confidential information.
- Representing personal opinions as those of the Department.
- Making or posting indecent remarks or proposals.
- Uploading or downloading commercial software in violation of its copyright.
- Downloading any software or electronic files without reasonable virus protection measures in place.
- Intentionally interfering with the normal operation of any City of Charleston Internet gateway.
- No export-controlled information or technical data that is not the public domain shall be posted to public groups on the Internet.
- Confidential, classified, or proprietary information shall not be transmitted over the Internet without prior management approval and reasonable security measures in place.

7.11 E-Mail Policy This policy applies to access and disclosure of electronic mail messages created, sent or received by City of Charleston/Department employees using the City's electronic mail system or computers.

7.12 Ownership of Equipment and Messages The E-mail system and computer hardware are City property. Additionally, all messages composed, sent or received on the electronic mail system are and remain the property of the City, not the private property of any employee. The E-mail system is reserved solely for the conduct of official business and may not be used for personal business. The electronic mail system may not be used to solicit or persuade for commercial ventures, religious or political causes, outside organizations, or other non-job-related solicitations.

7.11.2 Audit/Access- The City/Department reserves and intends to exercise the right to review, audit, intercept, access and disclose all messages created, received or sent over the electronic mail system for any purpose. The contents of electronic mail properly obtained for legitimate business purposes may not be disclosed without the permission of the employee. Notwithstanding Management's right to retrieve and read any electronic mail messages, such messages should be treated as confidential by other employees and accessed only by the intended recipient.

Employees are not authorized to retrieve or read any E-Mail messages that are not sent to them. Any exception to this policy must receive prior approval. Employees shall not use a code, access a file, or retrieve any stored information, unless authorized to do so. Employees should not attempt to gain access to another employee's messages without the latter's permission. Members shall not permit unauthorized persons to use this agency's electronic mail system. To avoid breaches of security, Members shall log off any personal computer that has access to the

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agency's computer network, electronic mail system, the Internet, or sensitive information whenever they leave their work station.

7.11.3 Improper Usage The E-mail system is not to be used to create, transmit or download any offensive or disruptive messages. Among those which are considered offensive, are any messages which contain sexual implications, racial slurs, gender-specific comments, or any other comment that offensively addresses someone's age, sexual orientation, religious or political beliefs, national origin, or disability. The electronic mail system shall not be used to send (upload) or receive (download) copyrighted materials, trade secrets, proprietary financial information, or similar materials without prior authorization. Any employee who discovers a violation of this policy must immediately notify his/her Supervisor. Any employee who violates this policy or uses the E-Mail system for improper purposes is subject to discipline, up to and including termination.

7.12 Authorized Passengers in Departmental Vehicles The purpose of this policy is to establish guidelines which Members of this Department are required to follow when transporting passengers in Department vehicles. It is the policy of the Charleston Police Department that all persons transported in Department vehicles are authorized and such transportation is in connection with official Department business.

7.12.1 General Rule Members will not transport persons in Department vehicles unless such transportation is in connection with official business. Blanket permits authorizing persons to ride in Department vehicles are prohibited. Except for emergency transportation or transportation in conjunction with official Department business, passengers under the age of 18 years are not permitted in Department vehicles.

7.12.2 Exceptions Circumstances not requiring approval of higher authority to transport persons in Department vehicles:

- When transporting prisoners.
- When providing search, rescue, and public service.
- When necessary in the performance of duty.
- Members of the Department who have an interest in and a legitimate reason for being in a Department vehicle.
- Neighborhood Assistance Officers while on duty.
- When assigned to a special detail authorized by the Chief of Police, a sergeant or higher may authorize someone to ride in a Patrol vehicle when such action is in keeping with the nature of the detail. (For example, parades, manhunts and natural disasters).

7.12.3 Family Members Spouses or family members may be authorized to travel in Patrol vehicles when the Member is attending an official function on Department business and spouses or family members are included as part of the official function; and when such attendance will enhance the image of the Department.

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7.12.4 Civilian Employees Employees of the Department who are not normally passengers in Department vehicles, such as, secretaries, duty officers, and maintenance personnel when required to attend a Department function upon approval of the Shift Commander or Unit Supervisor.

7.12.5 All Others Any person not covered above who wishes to ride in a Department vehicle must comply with the following:

- A request to ride in a Department vehicle must be completed and submitted to the Chief's Office at least 3 days in advance of the date the person is requesting to ride.
- Any person who receives approval to ride in a Department vehicle may do so only as specified on the Waiver of Liability Agreement form.

7.12.6 Restrictions on Activities Passengers riding with Members may not participate in certain activities and Members who have ride-along passengers must not engage in certain police activities to maintain the integrity and purpose of the ride-along program and to limit liability for Members and the City.

- **Members will not engage in felony stops, high speed pursuits, emergency driving or any other high risk activity with a ride-along passenger in a Department vehicle.**
- Members will not permit ride-along passengers to exit the vehicle at high risk locations or activities such as fights, crimes in progress, building searches, felony arrests or undercover activities.
- The United States Supreme Court has determined that criminal suspects continue to have a limited right of privacy in their homes and person during police operations, even though the fact of the suspect's arrest, etc., may be public. In particular, citizens have a recognized constitutional right not to have members of the media or the public intrude into their home during the execution of a search or arrest warrant and have a right to prevent the filming (for news or entertainment purposes - filming for official purposes is still acceptable) or broadcast of such activities to the public at large. Therefore, ride-along passengers may not carry or use cameras, video cameras, tape recorders or any other recording device while riding with a Member.
- Ride-along passengers will not exit the police cruiser except as directed or authorized by the Member. Ride-along passengers will not be permitted to participate in any interrogation, crime scene search, arrest or other police action as the authorization to ride is limited to observation purposes.
- Members are responsible for immediately notifying a Supervisor if any violation of these rules. The Supervisor may immediately revoke the authorization to ride along and shall notify the Chief's Office of their reason.

7.13 Smoking Smoking affects Members' safety, health, and work efficiency. The Charleston Police Department discourages, but does not prohibit, in all instances, applicants and Members from smoking or using other forms of tobacco while at work. However, Members who do smoke will not smoke in any area posted as non-smoking, or in public buildings or any other area where smoking is not permitted by law. Members will not smoke or use other tobacco products in

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Department vehicles, in citizen's homes or businesses or during contact with members of the public. Use of tobacco products in public areas without direct public contact, such as eating a meal in a restaurant area designated for smoking does not constitute a violation of this policy.

All supervisors are required to enforce the tobacco use rules in this policy and any City-wide tobacco use policy through counseling, and if appropriate, progressive discipline.

7.14 Performance Evaluation To achieve departmental objectives, the public and the Charleston Police Department must be able to depend upon satisfactory work performance from all employees.

Performance evaluation is the measurement of the employee's work performance of assigned duties. The objectives of the evaluation system, which serves both management and employee needs, include:

- Allow fair and impartial personnel decisions.
- Maintain and improve performance.
- Provide a mechanism for regular personnel development.
- Supplement Field Training evaluations to facilitate proper decisions regarding probationary employees.
- Provide an objective and fair means for recognition and measurement of individual performance.
- Identify training needs.
- Demonstrate prior performance, both positive and negative, in consideration of disciplinary matters.

This evaluation is designed as an aid to help the employee achieve his/her full potential through constructive input. This evaluation is a tool for the employee to recognize his/her strengths and weaknesses and to improve on them to aid in his/her future advancement in the Department. Evaluations become a part of a Member's permanent employee record but, pursuant to West Virginia Code, are not considered for promotion purposes. Evaluations may be considered when making transfers within the Department that do not constitute a promotion under civil service rules. The Personnel Evaluation Form is found in the Appendix at the end of this policy manual.

7.15 Employee Assistance Program – Policy (Added June 30, 2003)

The Charleston Police Department recognizes that stress is an expected part of police work and normally is managed effectively by law enforcement personnel on a day- to-day basis. However, stress from critical incidents or stress in an employee's personal life can produce reactions that may interfere with or overwhelm an employee's ability to function or cope. Preventive stress education and direct support intervention, such as individual counseling, are instrumental in helping personnel deal effectively with critical incidents or other stress producing incidents.

The Charleston Police Department has contracted a company to provide an Employee Assistance Program (EAP or REACH) for all employees of the department, sworn and civilian. The program provides training for the department members and counseling sessions for members and their immediate families.



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In the event of a critical incident involving employees of the Department, the Chief of Police, at his discretion, may direct or authorize individual employees to use administrative leave or Critical Incident Leave pending psychological counseling and evaluation, and may schedule a mandatory critical incident stress debriefing session for all affected employees.

#### 7.15.1 Obtaining Assistance (Added June 30, 2003)

There are three ways to schedule a counseling session.

- Self-Referral: Employees or their immediate family can contact the company and schedule an appointment.
- Direct Referral: Your supervisor may refer you to the EAP if your job seems to be affected by personal or job-related problems. Supervisor referrals must be approved by the Chief of Police.
- Mandatory Counseling: Employees involved in a critical incident (described in section 13.3.22) must attend counseling session(s) if mandatory or directed by the Chief of Police or his or her designee.

#### 7.15.2 Individual Counseling (Added June 30, 2003)

An employee shall first seek psychological counseling and evaluation services through the Department EAP. The use of the EAP will be at no cost to the employee. If no services are readily available through the EAP, then an alternative counseling service, mutually agreed upon by the employee and the Department, will be utilized. If the EAP is not used, the initial psychological counseling and evaluation session by the alternative service shall be paid for by the Department.

#### 7.15.3 Critical Incident Stress Debriefing (CISD) (Added June 30, 2003)

Any time multiple employees of the Department are involved in a critical incident, the Chief of Police shall, upon review of the circumstances, determine if a Critical Incident Stress Debriefing (CISD) will be held.

If the Chief of Police determines that a CISD is necessary, arrangements will be made to hold the debriefing within 24 to 72 hours after the critical incident.

- The purpose of this is to allow the officer to express his/her feelings and to deal with the moral ethical and/or psychological after-effects of the incident.
- The debriefing shall not be related to any departmental investigation of the incident and nothing discussed in the briefing will be reported to the department. The debriefing session will be protected by the privileged physician-patient relationship.
- If the officer was relieved of his/her weapon and no replacement was provided, the EAP professional should also include a recommendation as to whether the weapon should be returned to the officer.
- The officer will re-qualify with his/her weapon prior to reassuming active duty to provide psychological reassurance to the member as well as to document that the officer maintains on acceptable degree of proficiency.

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All employees involved in the critical incident may, at the discretion of the Chief of Police or his or her designee, be required to attend the CISD. An employee may, at the direction of the Chief of Police, or upon the employee's request and with the approval of the Chief of Police, be placed on administrative leave or Critical Incident Leave, without loss of pay or benefits, pending attendance at the scheduled CISD. The EAP professional will be required to furnish a recommendation to the Chief regarding the involved officer(s) ability to resume active duty or remain on Administrative Leave or Critical Incident Leave and undergo further counseling.

If, after the debriefing, an employee or EAP professional believes that the employee needs additional individual counseling services before returning to work, the employee will kept on administrative leave or critical incident leave and offered assistance in accordance with the Individual Counseling and Evaluation provisions of this policy. The employee's administrative leave or critical incident leave will terminate when the assigned psychologist/counselor determines that the employee is able to return to work. Otherwise, upon completion of the CISD, the administrative leave or critical incident leave of all employees shall terminate and all employees shall return to work.

If, after the debriefing, an employee or the EAP professional believes that the employee, while able to return to work, needs additional individual counseling services, the employee will be offered assistance in accordance with the Individual Counseling and Evaluation provisions of this directive.

7.15.4 Confidentiality (Added June 30, 2003)

EAP services are provided in a professional and confidential manner at locations away from the workplace. The program is designed so that you and your family members can seek help on your own without the department knowing details about your participation. An exception to this would be when the department refers you to the program. The department must be notified that you attended but not the specifics of the visit.

The Department will strive to keep all information received from EAP as confidential as possible.

The Department will disclose information in its possession ONLY in the following circumstances;

- When authorized to release, in writing, by the officer;
- When required by law or legal process such as a court order;
- When the Department is a party adverse to the officer in any litigation, claim or other dispute wherein the information is material to the proceedings.

**8.0 COURT APPEARANCES**

The success of a criminal prosecution is determined not solely by the quality and quantity of evidence but by the manner in which it is presented by law enforcement officers in a court of law. An officer's appearance, demeanor, attitude, and ability to accurately convey evidence in a fair and professional manner are essential in efforts to bring a criminal prosecution to a just

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conclusion. Therefore, it is the policy of this agency that officers adhere to court scheduling, preparation, appearance, and testimonial guidelines provided herein.

8.1 Subpoenas: This Department will establish a system of accountability for subpoenas from point of receipt from the court to point of officer testimony. This includes but is not limited to:

- Recording the receipt of subpoenas to include date received, court date and time, defendant's name, officer's name, and date executed and returned to the court;
- Recording the service of subpoenas to named officers by shift supervisors or other designated personnel noting dates received, served, and returned to the court authority; and
- Ensuring that notification is made as soon as possible to the designated court authority when officers cannot be served in accordance with established time frames or cannot appear on the designated court date.
- Officers responsible for serving subpoenas shall ensure that this is performed in a timely manner.
- Officers shall accept subpoenas and shall appear in the designated place at the time required.
- Avoidance of service is strictly prohibited, and offending officers are subject to disciplinary action.
- Officers served subpoenas or given other official notice to appear before a court by means other than the foregoing are responsible for complying with the directive and for providing agency notification as soon as possible of the need for appearance. Such notice shall be recorded in a manner consistent with this policy.

8.2 Preparation for Trial

- Officers shall fully cooperate with requests from the prosecutor in preparation of cases for trial and may seek pre-trial conferences whenever the seriousness of charges or complexity of cases dictates.
- Officers shall be familiar with the basic rules of evidence and shall seek clarification of any legal issues that may arise during the trial prior to court appearance.
- Prior to trial, arresting or other officers designated for court appearance shall review case documentation to ensure that they are completely familiar with the facts involved. In addition, officers shall provide all reasonable assistance necessary to, or requested by the prosecutor to ensure that:
  - Necessary evidence will be available at trial;
  - Witnesses have been notified of the date, time, and place of trial and have adequate means of transportation;
  - Witnesses have been adequately informed of what is, and can be expected of them during testimony, that they have been advised not to offer personal opinions or conjecture, and to respond to all questions accurately and truthfully; and
  - That any legal questions of witnesses are referred to the prosecutor for clarification when appropriate.

- In pretrial conferences with the prosecutor, officers are responsible for providing all information relevant to the case even though it may appear beneficial to the defendant. No detail should be considered too inconsequential to reveal or discuss.

8.3 Communications with Defense Counsel The prosecutor's office should be notified prior to communication between officers and defense attorneys with regard to pending criminal cases.

8.4 Defense Subpoenas Officers shall not testify for a defendant in any criminal case without being legally summoned to appear. If summoned by the defense, a Member will immediately notify the prosecutor's office. Officers' physical appearance, personal conduct, and manner shall conform to the highest professional police standards.

#### 8.5 Appearance in Court

Officers who are late for or unable to appear on a court date shall notify the appropriate court authority and his/her commander as soon as possible, providing name, defendant's name, court designation, and reason for absence or tardiness. The reason for absence or tardiness shall be reviewed by the officer's commander and may be referred for disciplinary review.

8.6 Testimony When testifying, officers shall:

- Restrict remarks to that which is known or believed to be the truth;
- Respond directly but only to questions asked and avoid volunteering information or going beyond the scope of the question;
- Speak naturally and calmly in a clearly audible tone of voice;
- Use plain, clearly understood language and avoid using police terminology, slang, or technical terms; and
- Display a courteous attitude and maintain self-control and composure at all times.

## **9.0 PHYSICAL FITNESS POLICY**

The central purpose of the Physical Fitness Evaluation system is to identify performance deficiencies and help Department Members improve before they have a detrimental effect on the quality of services provided to members of the community and the Department.

9.1 Expectations Members are expected to maintain a sufficient level of physical fitness to ensure an ability to provide a quality and quantity of services to the community in return for the compensation and benefits they receive. Members are required to support and affirmatively promote the mission, goals, objectives, and lawful physical fitness expectations of the Department. Willful refusal to comply with this policy is an act of insubordination and will result in disciplinary action up to and including termination. Failure to comply due to the Member's lack of effort will subject the Member to remedial development and/or disciplinary action.

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**9.2 How the System Works** The evaluation scale is such that all Members should be able to achieve a satisfactory performance rating in their age category. The required fitness test for all officers shall be based upon age normed standards for police officers. A portion of this standard is already being used for hiring purposes. The standards require Members to demonstrate a level of aerobic efficiency, flexibility and upper body strength adequate to successfully render aid to citizens or fellow officers and affect an arrest of combative individuals utilizing the Use of Force Policies of the Department.

- All Officers are required to submit to a Physical Fitness Evaluation as directed, at least on an annual basis.
- Any portion of the test not passed due to a lack of fitness must be repeated periodically until a sufficient level of fitness is demonstrated.
- The Department will offer training assistance to any Officer unable to achieve required fitness levels.
- Members who do not meet standards are expected to demonstrate improvement and progress toward meeting the standard.
- Members who do not achieve a satisfactory level of Physical Fitness after remedial assistance has been provided due to lack of effort on the part of the Member will face disciplinary action up to and including termination.
- In the event of permanent injury documented by medical evidence precluding Members from performing all or any part of the designated Physical Fitness Evaluation, a task specific alternative test will be offered. Failure to pass the task specific test designated by the Chief of Police may result in the Member being subjected to medical evaluation for disability retirement.

**10.0 TEMPORARY LIGHT DUTY**

It is the purpose of this policy to establish the authority for temporary light-duty assignments and procedures for granting temporary light-duty to eligible officers and civilian employees. Use of temporary light duty can provide employees with an opportunity to remain productive while convalescing, as well as provide a work option for employees who may otherwise risk their health and safety, or the safety of others, by remaining on duty when physically or mentally unfit for their regular assignment.

**10.1 Definitions**

Eligible Personnel: For purposes of this policy, any full-time sworn or civilian Member of the Department suffering from a medically certified illness, injury, or disability requiring treatment of a licensed health care provider and who, because of injury, illness, or disability, is temporarily unable to perform their regular assignment but is capable of performing alternative assignments.

Family and Medical Leave Act (FMLA): Federal law providing for up to 12 weeks of annual leave for workers, in addition to leave provided by the Department, due to illness, injury or certain other family conditions, situations.

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10.2 Policy It is the policy of this Department that eligible personnel be given a reasonable opportunity to working temporary light-duty assignments **when available** and consistent with this policy. Temporary light duty assignments, **when available**, are for officers and other eligible personnel in this agency who, because of injury, illness, or disability, are **temporarily** unable to perform their regular assignments, but who are capable of performing alternative duty assignments.

Temporary light-duty positions are limited in number and variety.

- Personnel injured or otherwise disabled in the line of duty shall be given preference in initial assignment to light duty.
- Assignments may be changed at any time, upon the approval of the City’s evaluating physician, if deemed in the best interest of the employee and the Department.
- Assignment to temporary light duty shall not affect an employee’s pay classification, pay increases, promotions, retirement benefits, or other employee benefits, except most temporary light duty assignments are forty (40) hour per week assignments.
- Light-duty assignments are strictly temporary and normally should not exceed 3 months in duration.
- After 3 months, personnel on temporary light duty who are not capable of returning to their original duty assignments shall present a request for extension of temporary light duty, with supporting documentation, to the Chief of Police or his designate, or they may pursue other options as provided by employment provisions of the Department or federal or state law.
- No specific position within the Department shall be established for use as a temporary light duty assignment, nor shall any existing position be designated or utilized exclusively for personnel on temporary light duty.
- Temporary light-duty assignments may be drawn from a range of technical and administrative areas that include but are not limited to the following: administrative functions (e.g. report review, special projects); clerical functions (e.g. filing); desk assignment (e.g. booking officer, bookkeeping); report taking (e.g. tel-serve).
- The Office of the Chief of Police will determine the number and types of available job assignments that may be used for temporary light duty.
- Eligible persons may suggest alternative light duty assignments; however, the decision to accept or reject the suggested assignment remains with the Office of the Chief of Police.
- Officers on temporary light duty are prohibited from engaging in outside employment in which they may reasonably be expected to perform law enforcement functions for which they have been determined physically or mentally unable to perform on behalf of the Department and that form the basis for their temporary light duty assignment.
- Depending upon the nature and extent of the disability, an officer on temporary light duty may be prohibited or restricted from wearing the Departmental uniform, carrying the service weapon or otherwise limited in employing police powers as determined by the Chief of Police or his designate, so long as such limitation is consistent with the provisions of this policy.
- Officers may not refuse temporary light duty assignments that are supported by and consistent with the recommendations of the City’s evaluating physician or other certified

health-care provider (consulted at the employee's expense), although officers may appeal the decision to the Chief of Police.

- Light duty assignments shall not be made for disciplinary purposes.
- This policy in no way affects the privileges of employees under provisions of the Family and Medical Leave Act, Fair Labor Standards Act, or other federal or state law.
- In addition to considerations above, decisions on temporary light duty assignments shall be made upon the availability of light duty assignments; and the physical limitations imposed on the officer.
- Every effort shall be made to assign officers to positions consistent with their rank and pay classification; however, where deemed appropriate, personnel may be assigned to positions designated for personnel of lower rank or pay classification. Officers thus assigned shall retain the privileges of their rank but shall answer to the supervisory officer of the unit to which they are assigned with regard to work responsibilities and performance; and retain the pay classification and related benefits of the position held prior to their assignment to temporary light duty.
  - \* Requests for temporary light-duty assignments shall be submitted to the employee's immediate supervisor.
  - \* Requests must be accompanied by a statement of medical certification (Certificate of Illness – CPD 155) to support a requested reassignment that must be signed either by the treating physician or other licensed health-care provider.
  - \* The certificate must include an assessment of the nature and probable duration of the disability, prognosis for recovery, nature of work restrictions, and an acknowledgment by the health care provider of familiarity with the light duty assignment and the fact that the employee can physically assume the duties involved.
  - \* The request for temporary light duty and the physician's statement shall be forwarded to the Office of the Chief of Police for determination of the employee's light duty assignment.
  - \* The Department may require the employee to submit to an independent medical examination by a health provider of the Department's choosing. In the event the opinion of this second health provider differs from the foregoing health provider, the employee may request a third opinion at the employee's expense.
  - \* The employee and the Department shall cooperate and act in good faith in selecting any independent health-care provider, and both parties shall be bound by that medical decision.
- An employee who has not requested temporary light duty may be recommended for such assignment by submission of a request from the employee's immediate supervisor or unit commander. Such a request must be accompanied by an evaluation of the employee conducted by a competent medical authority expressing the need for temporary light duty or by a request/order for a medical or psychological fitness-for-duty examination.
- As a rare condition of continued assignment to temporary light duty, employees may be required to submit to monthly physical assessments of their condition as directed by the Chief of Police.

- Pregnant officers are eligible for temporary light duty assignments as available and as appropriate to their physical capabilities and well-being. Where appropriate temporary light duty assignments are unavailable, pregnant officers may pursue other forms of medical, disability, or family leave (FMLA) as provided by the Department and state and/or federal law. Pregnant officers shall be permitted to continue working on regular duty or temporary light duty assignments until such time as a physician recommends that work be curtailed. •

## **11.0 OFF-DUTY POWERS OF ARREST AND FIREARMS POLICY**

Off-duty officers are often faced with situations involving criminal conduct that they are neither equipped nor prepared to handle in the same manner as if they were on duty. This may lead to unnecessary injuries to off-duty officers, by-standers, or suspects and confusion for those on duty officers arriving at the scene trying to correctly assess the facts. In order to promote safety and efficiency, it is the policy of this Department to determine and regulate those situations and locations within which a sworn Member is permitted to make an arrest while off- duty. The purpose of this policy is to provide guidelines to police officers regarding acceptable criteria for affecting an offduty arrest.

### **11.1 Off-Duty Responsibilities**

- While off-duty, the police officer is responsible for immediately reporting any suspected or observed criminal activities to on duty authorities.
- Except as allowed by this policy, off-duty officers should not enforce minor violations such as harassment, disorderly conduct, or other nuisance offenses. On duty personnel shall be contacted to respond to the situation where an off-duty officer becomes aware of such violations.
- When an arrest is necessary, the off-duty arresting officer shall abide by all Departmental policies and procedures.
- Off-duty officers shall complete a CPD 102 to be turned in with the responding officer's original report before the on duty officer completes his shift.

11.2 Liability Protection Officers of this agency have liability protection for the on and off-duty performance of official duties. This protection does not extend to acts intended to cause injury or damage, or to those actions that the police officer knew, or reasonably should have known, were in conflict with the Constitution, clearly established law or the established policies of this Department. In other words, Members are covered for acts and omissions in the good faith performance of their duties but are individually liable for intentional, malicious or reckless misconduct.

11.3 Personally Involved An officer is deemed personally involved where the off-duty officer, a family member, or a friend becomes engaged in a dispute or incident involving a personal matter with the person to be arrested or any other person connected with the incident. This does not apply to situations where the police officer is a victim of crime.



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11.4 Permitted Off-Duty Arrests When off-duty and only if within the legal jurisdiction of this law enforcement agency, an officer may make an arrest only when:

- The arresting officer is not personally involved in the incident underlying the arrest; and
- There is an immediate need to prevent a crime or apprehend a suspect; and
- The crime would require a full custodial arrest; and
- The arresting officer possesses appropriate police identification.

11.5 Prohibited Off-Duty Arrests Officers of this agency should not make an arrest off-duty:

When the arresting officer is personally involved in the incident underlying the arrest; or   
When the arrest is made solely as enforcement of a minor traffic regulation.

- When the Officer is off-duty and outside of his jurisdiction. The Officer has only the same authority to arrest that every other citizen possesses.

11.6 Off-Duty Employment The nature of law enforcement requires Department Members to work irregular duty schedules which are subject to change in meeting Department needs. Additionally, it is necessary that Members have adequate rest to be alert during his/her tour of duty. For these reasons, and because certain occupations inherently conflict with Member's primary responsibility to the Department, the Department may impose conditions on Off-Duty or outside employment or may prohibit it altogether. Determination of the degree of limitation will be based upon the interest of the Department in ensuring that the Department receives full and faithful service in return for employment.

The Department allows Members who have completed their probationary periods to engage in outside employment so long as such outside employment does not interfere in any way with the performance of their duties and responsibilities. In addition, the outside employment shall not involve Members in any conflict of interest between employment with the Department and outside employment. It is the purpose of this procedure to set forth guidelines, conditions and restrictions relating to outside employment.

11.6.1 Approval - An outside employment application form must be submitted for outside employment. All outside employment is subject to investigation. All requests for outside employment must be approved by the Chief of Police or his designee. Applications for outside employment that do not meet the requirements of these regulations will be denied. If a Member's application for outside employment is denied, the reasons for the denial will be given to the employee in writing. If an application is denied or is later revoked, the officer's or employee's supervisor will be notified immediately. The Chief retains the authority to approve or disapprove, or require the discontinuance of previously approved applications for outside employment.

11.6.2 Hold Harmless Agreements - The outside employer must execute and the Member must present to the Chief of Police a City approved hold harmless agreement if the Member is expected to exercise any police powers or to wear the police uniform. These agreements will be maintained by the Special Events Officer.

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11.6.3 Revocation - Any supervisor may recommend that a Member's outside employment authorization be revoked if it is found that the outside employment is interfering with the employee's regular duties. The Chief of Police will act upon any such recommendation and will provide his reasons in writing regarding any request for revocation.

11.6.4 Conduct - Any employee engaged in outside employment shall conduct him/herself in an appropriate manner. Any conduct during outside employment which, if it occurred during duty status hours would result in disciplinary action, may result in termination of the approved outside employment and disciplinary action.

11.6.5 Hours - The number of hours Members may engage in outside employment are subject to review and approval by the Chief. The Department reserves the right to establish and modify maximum weekly and monthly hours an employee may work in outside employment. No Member will use sick leave so they can work an off-duty detail.

## **12.0 PETTY CASH FUNDS**

The purpose of this policy is to establish accounting and control procedures for the Petty Cash Funds. It is the policy of this Department to maintain stringent control over all Petty Cash Funds monies used by the Department and to ensure that the funds are used only for authorized purposes.

### **12.1 Definitions**

Petty Cash Funds: The accounting and banking system that provides officers with confidential investigative expense monies and other approved expenses.

Petty Cash Funds Custodian: The employee(s) or unit responsible for dispensing and monitoring the use of Petty Cash Funds by officers.

12.2 Authorization The Petty Cash Fund custodian shall have the following responsibilities with respect to the Department's confidential fund:

- Maintenance of the fund in accordance with all appropriate laws and procedures;
- Proper disbursements and deposits;
- Bookkeeping and banking procedures;
- Maintenance of a file containing copies of all relevant fund transaction documents; and
- Purging of the confidential fund records in accordance with state records retention provisions.

12.3 Disbursements The Petty Cash Fund custodian shall make disbursements from the fund only to authorized personnel for the following purposes:

- Payments that are to be made directly to confidential informants;
- Investigative funds for the purchase of illegal drugs, contraband and other criminal evidence;

- Purchases of food and beverages for a confidential informant;  Expenditures for authorized undercover operations; and  Flash and front money.
- Any authorized purchase as defined by the Budget Officer.
- The Petty Cash Fund custodian shall not be permitted to make disbursements from the confidential fund to himself.
- Petty Cash Fund transaction records shall be stored in a secured location, and access shall be restricted in accordance with applicable laws, ordinances and agency procedures.

#### 12.4 Withdrawals and Expenditures from Fund

- Prior to the issuance of any money from the Petty Cash Fund, an officer shall complete and submit to the fund custodian a written and approved request for funds.
- The Petty Cash Fund custodian shall issue the requesting officer a copy of the receipt acknowledging that funds were requested and received by the officer.

12.5 Accounting for Expended Funds All officers receiving Petty Cash Fund monies shall prepare a written expense report accounting for all monies withdrawn from the fund, as soon as practical. The report should include:

- Item or informant control number on which the monies were expended; Date and place of the expenditure;
- Copies of receipts; Type of investigation; and
- Case number, where applicable.

The written expense report with all supporting documents and receipts shall be submitted to the appropriate supervisor for review and approval. For all funds expended, the officer issuing payment shall ensure that an appropriate receipt is obtained, unless such an action would jeopardize a transaction or operation. All unexpended funds shall be returned to the Petty Cash Fund custodian by the officer as soon as practical. The fund custodian shall issue the officer a receipt acknowledging that such funds were redeposited as unexpended. Each officer may maintain a personal file containing a record of all Petty Cash Fund transactions, and copies of all relevant receipts and agency funds. Misuse of funds and/or falsification of fund records/receipts are subject to disciplinary action, including discharge.

12.6 Annual Audit An annual audit of the Petty Cash Funds shall be performed by an independent accounting authority appointed by the City Manager.

### **13.0 STANDARDS OF CONDUCT**

Those who wish to hold the honor of a public position and enjoy the privileges of public trust share a responsibility to conduct themselves (on duty as well as off duty) in a manner that does not bring public image or trust into question. Members shall exercise ordinary common sense and strive to find ways in every contact with the public to promote the Police Department's values as expressed in its standards (such as the mission, code of ethics, goals and objectives, these standards of conduct, and other lawful directives and legitimate expectations).

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The following standards are directed at specific areas of conduct, behavior and productivity. These directives do not form an exhaustive list of all directives, standards, expectations or situations that create cause for disciplinary action or termination. Others exist in this manual. Additionally, not all directives or expectations are in written form. A supervisor's order is an example of a verbal directive. Members are required at all times to exercise ordinary common sense in situations not governed by specific directives and behave in an acceptable manner. The goal is to promote a harmonious work relationship with other Members, a positive public image for the Police Department, and to ensure our mission, goals and objectives are achieved.

Members are responsible for contacting a supervisor for clarification on standards they do not understand. It will not be an acceptable defense to claim ignorance of a standard.

**13.1 Chain of Command** The specific chain of command for various situations is discussed in more detail in the Chapter on Organization. Members are reminded that they are responsible for knowing and following the appropriate chain of command in all circumstances. Failure to adhere to the established chain of command may lead to disciplinary action.

Each Member is expected and required to follow the established chain of command. "Endrunning" a supervisor is a serious action. However, the Chief of Police recognizes that such action is sometimes appropriate; and, it may be the only alternative for a Member faced with a difficult supervisory situation (e.g., supervisory harassment, serious personality conflicts, dishonesty and the like). Members who do not follow the normal chain of command will be required to justify any deviation. Members who use this exception as a subterfuge for ignoring the chain of command or taunting a supervisor's authority will be subject to disciplinary action up to and including termination. Any Member who retaliates against another Member for reporting a supervisory problem can expect to be severely disciplined up to and including termination.

**13.2 Obedience to Laws and Established Policies** All Members of the Department will become thoroughly familiar with these rules and regulations and will observe and obey all:

- Federal, state and local laws.
- General, Special and Personnel Orders of the Department and of the Bureau to which they are assigned.
- Provisions of this Operations Manual.
- Other lawful orders of their superiors.

Upon observing or otherwise becoming aware of a violation of the rules, procedures, or policies as set forth in this manual, each Department Member is obligated to stop such action (when practicable) and to report such violation to a superior officer. Violation of any law, rule, regulation, Departmental policy, procedure, standard or order, whether included in this manual or not, by a Member or a Supervisor, constitutes a violation of Departmental policy and constitutes good cause for discipline, up to and including termination of employment.

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13.2.1 Knowing, Observing, and Following Standards and Expectations Members shall make affirmative and consistent efforts to observe and comply with the lawful standards and expectations (e.g., laws, work rules, policies, procedures, practices, traditions) established for the effective, efficient, and safe operations of the Police Department. The term “affirmative effort” means to selfinitiate acceptable ways to comply with a lawful standard. In other words, the Member is expected to actively seek and find proper ways to comply with each standard/policy and not dwell on reasons why the standard should not or cannot be followed. Deviation from a particular standard may be justified and subsequent administrative action mitigated if the Member can provide substantial evidence that the deviation provided a greater assurance of safety for others or promoted greater efficiency or effectiveness than possible by complying with the standard.

13.2.2 Lawful Orders Members will obey all lawful orders. Members who are given an otherwise proper order which is in conflict with a previous order, regulation, directive or manual, shall respectfully inform the superior issuing the order of the conflict. If the superior issuing the order does not alter or retract the conflicting order, the last order shall stand. Under these circumstances, the responsibility shall be upon the superior. Members shall obey the conflicting order and shall not be held responsible for disobedience of the order previously issued. Members shall not obey any order that they reasonably believe would require them to commit any illegal act. If in doubt as to the legality of the order, Members shall request the issuing Member to clarify the order before requesting permission to confer with higher authority.

13.3. Reporting for Duty Members shall report to work and while working remain drug free and medically, psychologically, and physically ready to assume and perform all their assigned or assumed responsibilities, duties, and tasks, and essential functions competently. Light duty assignments may be available pursuant to the Department’s Temporary Light Duty Policy.

13.3.1 Use of Medications Members shall not consume or use drugs or medications on duty if the medication is likely to impair the officer’s performance or ability to drive a vehicle. Members shall not consume any unauthorized drug or medication in proximate time to his or her reporting time for duty, nor shall he or she report to duty with evidence of having consumed such drugs or medication. Members must inform their immediate supervisor of each medication taken by the Member if the medication has the potential to influence the performance of the Member’s assigned duty.

13.3.2 Maintaining Acceptable Attendance and Availability for Work The purpose of this policy is not to eliminate all forms of absenteeism. A certain amount of sickness, injuries and absences for personal needs is to be expected. The purpose of this policy is to prevent and to establish accountability for those members who are repeatedly and excessively absent or tardy or abusively or fraudulently using leave privileges.

Regular and predictable attendance is considered to be the first essential function of the job of members working for the Charleston Police Department. Members who cannot or will not

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fulfill their responsibilities, regardless of fault, will be subject to disciplinary action up to and including termination.

Absenteeism creates numerous problems, especially unscheduled absences. Problems include pay for absent workers, costs for replacements and morale problems for those who must compensate for the absent member. The quality of service to the community suffers as well.

Violations of this standard include, but are not limited to:

- Reporting for duty late without prior approval of your immediate supervisor.
- Scheduling personal appointments that coincide with scheduled duty time without the prior approval of your immediate supervisor.
- Reporting to duty unfit or not ready for duty. This includes physical, psychological, and medical fitness, and the failure to bring necessary equipment or wear necessary or appropriate uniforms or dress.
- Sleeping, loafing or watching television while working except during authorized breaks and out of public view.
- Conducting personal business that interferes with duties. Occasionally it may be necessary to conduct personal business during duty hours; however reasonable efforts should be made to conduct personal business on personal time. The conduct of personal business must not interfere with calls for service or assigned duties.

13.3.3 Abusive Use of Leave Abusive absenteeism is taking leave in a manner for which it was not intended. For example, using sick leave in direct proportion to the amount of time earned, or using it as soon as it is earned or using it in a predictable pattern is substantial evidence of abusive use. Consistently extending lunch breaks or malingering is additional examples. Member fault may or may not be a necessary element of cause in proving this offense.

Members shall not establish patterns of excessive absenteeism. Establishing a pattern of absenteeism is a violation regardless of whether any part of the absenteeism within the pattern has been approved or disapproved or scheduled by management. Indicators of an absentee's pattern include, but are not limited to:

- Absences of short duration (less than three days) that are attached to scheduled days off or other scheduled absenteeism.
- Consistently using sick leave or personal days within the short period of time in which they are earned.
- Establishing a pattern of scheduling doctor's appointments and the like during busy or critical work times without displaying substantial written evidence that other times could not have been more appropriately arranged.
- Use of sick leave at a rate that consistently leaves the Member's balance at or near zero.

The following events are not considered when evaluating a pattern or excessive absenteeism:

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- Absenteeism due to restricted or light duty work because of job-related injuries provided the associated time off does not establish an attachment pattern with regularly scheduled time off.
- Annual pre-planned vacation time.
- Attendance at training or special details that is prearranged and approved.
- Observance of scheduled days off.
- Sick time used by Members who have a serious (life-threatening) illness or injury to self or immediate member of the family shall not be calculated into any pattern as long as such illness or injury is properly documented, the nature of the injury or illness is certified by a licensed physician and such use is approved by the Chief. (NOTE: all such approvals are subject to audit.)

13.3.4 Fraudulent Use Misrepresenting the need for leave or claiming illness under false pretenses is fraud. Fraudulent use of leave privileges is theft of time and services. Member fault is a necessary element of proof for cause to be established. Fraud in any form is a dismissible offense and carries the possibility of being charged criminally.

13.3.5 Notification Requirements Members are required to notify their supervisor, or designated person if they are going to be tardy or cannot report for work at the designated time or place. They are expected to explain or verify all absences. Furthermore, members must report unscheduled absences personally to their supervisors with as much advanced notice (usually a minimum of two hours prior to start time) as possible. Members may not rely on another person to make this report. An exception would be where an emergency has occurred and the member cannot personally report the absence. In such cases, the member is expected to make a good faith effort, taking advantage of all opportunities, to report as soon as possible.

Members are expected to schedule elective absenteeism (e.g., sick leave, vacation days, and the like) as far in advance as possible, in order that scheduling and work priorities might be adjusted accordingly.

13.3.5.1 Sick Leave Each sworn member of the Police Department shall be entitled to and granted sick leave, when and if needed with full pay. Such leave is to be computed on the basis of 8 hours for each completed calendar month of service, or major portion thereof.

13.3.5.2 Advanced Sick Leave In cases of emergency, the Chief of Police may, at his discretion, grant advanced sick leave up to thirty working days beyond that accumulated; provided that all regularly earned sick and vacation leave has been used.

13.3.5.3 Reasons for Granting Sick Leave Sick leave shall only be granted for:

- Illness on the part of, or injury to, the member, incapacitating him/her for duty.
- Illness in the immediate family; example: husband, wife, child, father, mother, sister, brother, father-in-law and mother-in-law, of such a critical nature as to require the presence of the member. Nowise shall this provision be construed as to cover absences for

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- the purpose of nursing or caring for immediate family members not declared by the attending physician to be critically ill.

Exposure to a contagious disease and subsequent determination by competent medical authority that the member's presence on duty might jeopardize the health of others.

13.3.5.4 Investigating Sick Leave The Chief of Police shall otherwise have the right to investigate or cause to be investigated the alleged illness of any member and, for good cause shown, to not only deny sick leave but also to take proper disciplinary action against any feigner or abuser, Section 2213 Sick Leave, Code of the City of Charleston.

13.3.5.5 Certificate of Illness If a sickness or injury prohibits a member from reporting to work for a fourth consecutive working day, it shall be the duty of the member to furnish to the Chief of Police on the fourth day of illness, a certificate from his attending physician as required by City Code Section 22-13(d). Members may obtain the "Certification of Illness" form (CPD-155) from the Chief's Office.

After having furnished the physician's certificate of illness to the Chief of Police, a member will not be required to report as outlined in this section on "reporting sickness or injury". Whenever a member is hospitalized and an initial sickness or injury report has been properly made, no further reports, except physician's certification will be necessary until member is released from the hospital.

13.3.5.6 Reporting Off Sick (Amended March 10, 2011) To report a sickness or injury, a member shall:

- Telephone the Records Division at least two hours before the start of a scheduled tour of duty unless a severe or unseen medical condition occurs during this period.
- Have a responsible person make the telephone call if the member is unable to.
- Inform the person taking the report of any scheduled appearance in court which the member does not feel he/she will be able to attend.
- When reporting sick, give location and any anticipated change in location; e. g. doctor's appointment.
- During assigned duty hours, obtain permission of the on-duty Shift Commander for any change in location.
- During assigned duty hours, remain at his/her residence or other authorized location.

13.3.5.7 Duty of Records Clerk

- Record information required of a member reporting sick on a sick report.
- Notify the member's Division or Unit Commander that the member has reported sick and advise them of scheduled appearances in court
- Forward a copy of the sick report to the member's Division/Unit Commander and to the Chief's Office.

13.3.5.8 Duty of Division/Unit Commander



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  - Make a return telephone call to verify the member is at the stated location.
  - Make periodic checks to ascertain if the member reporting sick is at his authorized location.
  - Notify the proper court of any scheduled court appearance that the member will not be able to attend. Notify the member as to when the case was rescheduled.
- The on-duty Shift Commander may authorize changes in location by the member reporting which he/she believes to be in the best interest of the sick member and the goals of the Department.

13.3.5.9 Notification of Ability to Return to Duty When a member is able to return to duty, he/she shall do the following:

- Notify his/her commander by telephone of the effective time and date when he/she can report for duty and provide to the Chief of Police a release from the attending physician which shall include the release date and limitations, if any, on the type of duty the member can perform.
- Report for duty at scheduled time and place.

13.3.5.10 Prohibited from Working Other Jobs Members are expressly prohibited from performing any work for any other employer between the time he/she reports off sick and the time of his/her return to duty with the police department.

### 13.3.6 Accumulated Leave

13.3.6.1 Vacation Leave Each sworn member of the Police Department shall be given a monthly vacation leave credit of ten hours during the first fifteen years of service; thereafter, they shall be credited on the basis of 13.334 hours per month.

### 13.3.6.2 Holiday Compensation Time

- If a member's day allowed is on a holiday they will receive credit for Holiday Compensation Time.
- If a member works on a holiday and elects to add to leave, they are paid at their hourly rate for hours worked and are given the amount of hours worked for Holiday Compensation Time.
- If a member works on a holiday and elects to take pay, they are paid double their hourly rate for hours worked.

13.3.6.3 Worked Compensation Time An member who works overtime has the choice of receiving pay for the time worked or being credited compensation time for the time worked. The compensation time will be at the same rate as the pay (1½ times hours worked if the officer would have received 1½ times his/her pay rate).

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- 13.3.6.4 Maximum Accumulation of Leave (Amended November 12, 2002)

Members cannot accumulate more than 240 hours of Vacation Leave.

- Members may not accumulate more than 48 hours of Holiday Compensation Time. •  
Members may not accumulate more than 24 hours of Worked Compensation Time.

13.3.6.5 Requesting Leave Leave must be arranged to meet work requirements. The member will notify their supervisor as far in advance as practical. Whenever possible, seniority and employee's preference should be considered. Three days or less of requested leave can be approved by the officer's Division/Unit Commander. More than three days of requested leave must be approved by

the Bureau Chief. For more than three days of leave the officer must fill out a Vacation Request form, CPD119, in triplicate and submit it to their supervisor. The supervisor will forward the CPD119, with his/her recommendation of approval or denial, to their Bureau Chief. After the Bureau Chief approves or denies the request, one copy will be returned to the officer, one copy returned to the supervisor and one copy will be forwarded to the Chief's Office.

An officer has three types of accumulated leave: Vacation Leave, Holiday Compensation Time and Worked Compensation Time. Whenever an officer uses their accumulated leave it will first be deducted from their Worked Compensation Time, second from their Holiday Compensation Time and thirdly from their Vacation Leave.

13.3.7 Family Medical Leave Act (FMLA) As a government employer, the Charleston Police Department is required by law to follow the provisions of the Family Medical Leave Act. This law provides 12 weeks unpaid leave during any 12 month period for all members employed by the CPD for at least 12 months and that have worked at least 1,250 hours during the 12 months immediately preceding the commencement of leave.

- The leave can be taken because of the birth of a child and to care for the newborn child, ○  
Because of the placement of a child with the employee for adoption or foster care ○  
Because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or Because the employee's own serious health condition make the employee unable to perform the functions of his or her job.
- The member must use all of their accumulated sick leave and vacation leave prior to taking unpaid FMLA.
- The member will accumulate sick leave but not vacation leave while on unpaid FMLA.
- Health benefits will be maintained as if the employee was working. The employee is required to continue to pay their share of the premium.
- Contact the Chief's Office or Human Resources for more information on FMLA.

13.3.8 Military Leave: All CPD members who are members of the national guard or any military reserve unit of the United States armed services, shall be entitled to leave of absence without loss of pay, status or efficiency rating, on the days during which they shall be engaged in drills, parades or other duty, ordered by proper authority, or for field training or active service of the state, for a maximum period of 240 hours in any one calendar year. An additional 240 hours is provided if the member is called to active duty by the President of the United States.

After a member has used their 240 hours of military leave, or additional 240 hours if called to active duty by the President of the United States, they will be placed on unpaid leave of absence. The member will not accumulate sick leave or vacation leave while on Leave of Absence.

Any member that is on military orders and is not readily available to work their normal assignment for the Department is not authorized to work any private pay jobs or work any

available city overtime assignments until they are no longer on military orders, unless they receive the specific approval of the Chief.

13.3.9 Leave of Absence Leaves of Absence have a significant impact on the operation of the department. Leaves of Absence without pay will be evaluated for approval or denial by the Chief of Police. Requests should be submitted to the member's supervisor. The supervisor will forward the request, via chain of command, to the Chief of Police. The supervisor and Division/Unit Commander will make a recommendation to the Chief to approve or deny the request. The Chief may grant a Leave of Absence for up to thirty days. Any requests for more than thirty days must be approved by the Chief and the City Personnel Director. The member will not accumulate sick leave or vacation leave while on Leave of Absence.

13.3.10 Administrative Leave (Amended April 6, 2008) An employee of the Department may be removed from duty and placed on Administrative Leave when conditions exist that warrant such action be taken for the benefit of the community and/or the Department. The following conditions apply to a member placed on Administrative Leave:

- Your duty hours will be 0800 to 1600 hours Monday through Friday. During this time you are assigned to your residence or other location approved by the Chief of Police or Deputy Chief. You will remain available by telephone during your duty hours to the Police Department until you are released to return to duty. You must contact the Chief's Office if you wish to leave your authorized location during your duty hours. Nothing in this letter is intended to inhibit you from consulting with legal counsel, doctor or dental appointments, etc. You simply need to advise us of your location during duty hours.
- You will take no law enforcement actions while on Administrative Duty, nor will you be permitted to work as a police officer or security for a private employer.
- You will immediately turn in your weapon, magazines, badges and identification cards.
- Immediately upon placing an individual on administrative leave the Chief of Police will request of the City's Information Systems director and the department's Information Services commander to completely deny access to the individual on leave from all the networks, programs and electronic files owned and/or operated by the City of Charleston and/or the Charleston Police Department.

13.3.11 Voluntary Resignations Absence without appropriate notice for three consecutive workdays is considered to be a voluntary resignation. Giving notice includes the concept of ensuring that management receives the notice within the three-day time period.

13.3.12 Giving a Full Day's Work for a Full Day's Pay- The concept of expecting a full day's work for a full day's pay is central in American labor management. Although police work is typically reactive in nature, a large portion of non-responsive work time can be spent performing self-initiated work. It is during self-initiated work periods that the Police Department's mission, goals and objectives are achieved and provides the greatest opportunities to effectively and efficiently deliver services.

The concept of a full day's work for a full day's pay does not mean Members are expected to have identical levels of work from one day to the next. However, work patterns do

exist and an analysis of data on a monthly, quarterly, semiannual, or annual basis provides a descriptive picture of the amount and quality of work that can be reasonably expected from Members who are truly giving a full effort. Members shall give a full day's work for a full day's pay and not establish patterns of nonproductive work time. Violations of this standard include but are not limited to:

- Acting or behaving in such a manner that unnecessarily disrupts the performances of other members of the work force.
- Arriving for duty late.
- Failing to promptly respond to assigned duties.
- Failing to answer the police radio.
- Consistently taking a longer than normal time on a task or job assignment which results in others having to handle the extra workload (i.e., "milking" the job to avoid carrying a fair share of the workload).
- Failing to commence productive work at the beginning of the shift or stopping productive work prior to the end of the shift.
- Failing to immediately resume normal duties (e.g., continuing to hang around for an additional period of time) after completing a call, normal break or other assigned detail.
- Consistently failing to self-initiate work designated as priority during times the Member is not committed to assigned tasks (e.g., dispatched calls, assignments and the like).
- Initiating a nonproductive work period grouped around the beginning or ending of a shift or a pay day; the last day of the work week; the first day back from normal weekly time off; days proceeding, following or in between holidays.
- Parking or hiding in out-of-the-way locations to avoid performing one's job duties.
- Spending an excessive amount of time on low priority duties, forcing others to do more than their share of priority assignments.

13.3.13 Recall to Duty Department Members are subject to recall to duty at any time as the needs of the Department dictate. If recalled or called to duty, each Member will respond without delay and report prepared for duty as assigned. This section applies to on call assignments (i.e.

detective, crash investigator) as well as all Members on an emergency/unscheduled (i.e. riot, natural disaster) call out basis. A Member who is unfit for the duty required may be excused from responding to duty only by a Command rank officer.

13.3.14 AWOL Being absent without leave is grounds for discipline up to and including termination. Any Member who is absent without leaving for three (3) consecutive working days will be deemed to have voluntarily resigned from the Department.

13.3.15 Incentives As part of the Charleston Police Department's attendance and absenteeism control plan, various incentives exist to acknowledge and reward those who maintain good attendance records. Members who maintain good attendance records are assured that it will be taken into consideration when such things as transfer to a more favorable shift or position, advanced training and the like are requested.

13.3.16 Proof of Illness or Injury Whenever substantial evidence suggests that a member's reason for sick leave is suspect, the member can expect to provide upon request of the Chief of Police (or designee) a licensed health care provider's certification of illness or injury at the member's expense. A secondary opinion may be requested at the expense of the Police Department. The opinion that appears most credible to the Chief of Police will govern. Failure to provide the certification required, or to provide it within the designated time period, will result in the loss of sick leave pay being granted. If sick leave pay is denied and as a result the member has been overpaid, such overpayment shall be deducted from that member's next pay.

13.3.17 Fitness for Duty All members are required to be sufficiently fit to perform the essential functions of their positions in a safe, effective and efficient manner always. Should reasonable cause exist to question a member's fitness for duty (for example injury, extensive use of sick leave), policy is to temporarily remove an active member from duty, or to temporarily prohibit an inactive member from returning to duty, until such fitness is evaluated. Only those members who successfully complete prescribed fitness evaluations will be eligible to remain in their positions. This policy does not intend to illegally discriminate against members or potential members of the Charleston Police Department on sex, race, ethnic background, religion, age, or known disabilities.

13.3.18 Definition of Sufficiently Fit Sufficiently fit means employees are physically, mentally, and psychologically prepared and can perform the essential functions of their positions. An essential function is one that the job exists to perform, or a function that only few employees are available to share, or a function that is central to a highly specialized position. Management has the responsibility and authority under law to decide and define the essential functions of the positions in the department. It does this by drawing on its knowledge of the job, written job descriptions, knowing the time required to do the function, the criticality of doing the function or not doing the function properly.

Without creating an exclusive listing of all possible essential functions for each position in the Police Department, the following illustrate the essential functions inherent in all positions:

- Have regular and predictable attendance.
- Meet production standards established by management for the position.
- Meet efficiency standards established for doing a function.
- Perform a responsibility, duty, or task efficiently and safely.
- Behave in a socially acceptable manner.

13.3.19 Definition of Reasonable Cause Reasonable cause means those facts that would lead an ordinary member concerned about this organization's mission, public image, and public or member safety to question another member's fitness for duty. Reasonable cause does not mean that members concerned about another member's fitness for duty must have proof beyond a doubt or even a preponderance of evidence to support action. However, it does require more than personal opinion or mere suspicion, or suspicion based on hearsay. Reasonable cause is based on substantial evidence.

Reasonable cause is a subjective standard based on objective facts. Personal opinions that are unsupported by facts will not establish reasonable cause. Reasonable cause does not coexist with malice. Any member who is shown through the investigatory process to have used this policy as a subterfuge to maliciously damage another will be subject to disciplinary action up to and including termination and face the possibility of a civil action being initiated against him/her by the member.

#### 13.3.20 Type of Evaluation Required (Amended July 11, 2003)

The nature and circumstances surrounding the fitness claim will decide the types of fitness evaluation required and the necessary documentation required from the member. For example, a sworn member who fails to display adequate knowledge of laws might be deemed unfit for duty based on technical competency. The fitness evaluation might entail a comprehensive testing of the member's knowledge and understanding of relevant laws. Another who wishes to return from extended leave for a medical reason and may be taking prescription drugs can expect to be physically and medically evaluated and tested for drugs. Members claiming or diagnosed as having a stress problem or disorder can expect to be psychologically evaluated or directed to attend counseling sessions as specified in section 7.15 of this manual as it pertains to our Employee Assistance Program. Perhaps this member might be evaluated for physical fitness, medical fitness and tested for drugs. Each situation must be judged on a case-by-case basis.

13.3.21 Requests for a Reasonable Accommodation Should a member request a reasonable accommodation for an illness, injury or disability, the Police Department will make an individual analysis of the feasibility of such request and approve or deny it accordingly. Members are expected to cooperate in this analysis and have the burden to show that their requested accommodation is reasonable for the Police Department. Cooperation includes, but is not limited to, providing a release for all medical records for examination by the Police Department if requested. Failure to establish that a request for accommodation is reasonable or the lack of cooperation in the analysis of an accommodation will result in the request being denied. No Discrimination This policy does not intend to illegally discriminate against members or potential members of the Department.

However, not all discrimination is illegal per se. Poor performance, inability to perform competently the essential functions of the job, or inability or unwillingness to perform to the satisfactory performance levels established by management for positions are well-recognized legal grounds upon which management is allowed to discriminate both for and against members. The purpose of this clause is to ensure members that it is their fitness for duty and ability to perform the essential functions of their jobs that will be considered in decisions affecting their employment.

#### 13.3.22 Critical Incident Leave: (Added 27 February 2019)

NOTE: This policy is for internal use only and does not affect a member's civil or criminal liability in any way. It should not be construed as creating a higher standard of safety or care in an evidentiary sense, with respect to third party claims.

**PURPOSE:** The purpose of this policy and procedure is to describe under what circumstances a member may be placed on Critical Incident Leave (CIL) and to define the responsibilities of and limitations upon members while on CIL.

**DEFINITIONS:**

Critical Incident is an occurrence that is unusually stressful or distracting and may have the potential to overwhelm a member, the consequences of which may be improved by appropriate support, intervention and/or productive time away from active duty.

Critical Incident Stress is an acute or delayed stress reaction resulting from exposure to a Critical Incident. These stressful reactions can include physical, emotional, cognitive, and/or behavioral symptoms.

Following a Critical Incident, counseling, whether mandatory, at the direction of the Chief or his or her designee, or by member request, is available to members experiencing Critical Incident Stress.

Critical Incidents include, but are not limited to:

- Use of Force situation in which there is serious injury or death. (Mandatory counseling)
- Fatality investigation conducted or assisted by a member. (Counseling if directed by the Chief or his or her designee or if requested by the member).
- Vehicle pursuit with serious injury or death to any person. (Mandatory counseling)
- Accidental discharge of a firearm with injury. (Mandatory counseling)
- Serious illness, serious injury or death of a member. (Counseling if directed by the Chief or his or her designee or if requested by the member).
- Any incident which involves a large number of victims. (Counseling if directed by the Chief or his or her designee or if requested by the member).
- Any incident which involves victims known to or with special relationship to a member. (Counseling if directed by the Chief or his or her designee or if requested by the member).
- Any incident experienced by a member that would shock or cause excessive stress/emotional distress to a reasonable person. (Counseling if directed by the Chief or his or her designee or if requested by the member)

**PROCEDURE:**

Members may be placed on CIL at the discretionary order of the Chief of Police, or his or her designee, or upon the member's request and subsequent approval by the Chief for a duration that shall be determined by the Chief or his or her designee, with a minimum of 3 calendar days (including day allowed) being given.

The following duties and responsibilities apply to all members on CIL:



- Any member placed on CIL shall comply with all provisions set forth in the order placing them on CIL.
- Duty hours shall be 0800-1600 hours Monday through Friday. During this time the member will be assigned to his or her residence or other location approved by the Chief or his or her designee.
- Any member placed on CIL shall remain available by telephone during their duty hours and until he or she is released to return to duty. The member must contact the Chief's Office if he or she wishes to leave their authorized location during duty hours. Nothing in policy is intended to prohibit the member from attending appointments (i.e. doctor, dental, legal); however, the member must advise the Chief's Office of their location during duty hours.
- Any member placed on CIL shall attend any scheduled Critical Incident Stress Debriefing or counseling sessions scheduled by the Chief or his or her designee.
- Any member placed on CIL shall take no direct law enforcement action unless such action is required to protect the member or some other person from an immediate threat of harm, injury or death.
- Any member on CIL shall appear for all judicial or administrative proceedings, or with the permission of the Chief or his or her designee, shall ensure that such proceedings are continued if the member is unable to attend as a result of the reason(s) for being placed on CIL.

Any member placed on CIL will remain on CIL until all requirements in the order placing him or her on CIL are met, which includes, in certain circumstances, the therapist recommending his or her return to work.

Any members on CIL shall receive compensation at their regular hourly rate and shall continue to accrue vacation and sick leave.

If a member placed on CIL has his or her weapon taken for purposes of an investigation, the member, at the discretion of the Chief of Police or his or her designee, may be given a replacement weapon until his or her weapon is returned.

Any member placed on CIL will retain his or her badge or police department identification cards while on CIL and will not lose access to police department locations regularly available to all members (i.e. gym, roll call or the Police Department Office (PDO)). Members will also retain any computer network access given to them in the general performance of their duties

**13.4 Dishonesty or Untruthfulness** Members shall not lie, give misleading information or half-truths, or falsify written or verbal communications in official reports or in their statements or actions with supervisors, another person, or organization when it is reasonable to expect that such information may be relied upon because of the Member's position or affiliation with the Police Department.

Violations of this standard include but are not limited to:

- Conducting a performance evaluation in a manner that does not comply with the policies governing performance evaluations or does not comply with the spirit or intent of the evaluation process.
- Falsifying a job application, activity reports, attendance records, certification records, public documents, and the like.
- Falsifying a sick leave report, workers compensation or accident claim.
- Falsifying any report, in part or whole, or failing to provide a complete and accurate report or account when it is evident to a reasonable and prudent person that a complete report would lead to a different conclusion.
- Giving untruthful or misleading statements or partial truths during a legal proceeding, internal investigation, or administrative proceeding.
- Making untruthful or misleading statements or partial truths about any Member, supervisor, command staff or their operations.
- Providing citizens with misleading or false information to avoid performance of duties or delivery of an expected service.

13.5 Incompetence Members expected to apply his or her knowledge, skill, and a positive attitude on a continuous basis to achieve the goals and objectives of the Department. These attributes are useless to the Department, however, if a Member is unwilling or unable to apply them in a productive manner. Members shall perform competently all assigned or assumed job responsibilities, duties and tasks. Evidence of incompetence includes, but is not limited to:

- A Member has to be repeatedly told how to do the routine tasks of the job.
- Accepting or reporting information related to duties as true or factual without taking reasonable steps to verify the correctness and accuracy of the information.
- Consistent failure to enter accurate report data on reports or into information storage files.
- Failure to pass qualifying exams or tests within the established time periods (e.g., firearms).
- Consistent inability to comprehend or understand supervisory instructions, explanations, or directions for work performance through normal communication channels.
- Failing to consistently produce a fair share of the work unit's productivity.
- Failing to satisfy performance standards on any assigned or assumed duty or task after receiving comparable training and experience as the typical Member.
- Habitually making the same types of mistakes and being defensive about accepting constructive criticism.
- Consistently failing to respond to calls or orders in a normal and timely manner.
- Demonstrated inability to drive safely in routine and/or emergency conditions. □ An unwillingness or inability to perform assigned tasks.
- The failure to conform to work standards established for the Member's rank or position.
- The failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention.

A supervisor is in violation of this standard when he or she fails to correct a subordinate's infraction when such infraction is first made known or when the supervisor could have been reasonably expected to be aware of the problem.

13.6 Report of Injury or Damage A Member will immediately notify or cause another to immediately notify his immediate supervisor and/or the on duty District Commander:

- Anytime a Member is injured in the line of duty.
- Anytime a citizen is injured in a police action.
- Anytime Department/City property is damaged in the line of duty.
- Anytime a Member destroys or damages the property of another during a police action.

13.7 Intervention Members shall not interfere with cases being handled by sworn Members of the Department or by any other agency or person unless:

- Ordered to intervene by a superior; or
- The intervening Member believes beyond a reasonable doubt that a manifest injustice would result from inaction.

13.8 Report of Arrest Any Member of the Department who is arrested, becomes aware that he is the target of a criminal investigation or is likely to be arrested shall immediately report this information to the Chief of Police via the Chain of Command.

13.9 Insubordination Members shall observe and obey the lawful verbal and written rules, duties, policies, procedures, and practices of the Police Department. Members shall also subordinate their personal preferences and work priorities to the lawful verbal and written rules, duties, policies, procedures and practices of the Police Department as well as to the lawful orders and directives of supervisory personnel. Insubordination occurs when a Member is capable of performing but willfully refuses to do a job or comply with a lawful verbal or written directive. Examples of insubordination include, but are not limited to:

- Being absent without leave (AWOL) for a scheduled reporting time or from an assigned duty.
- Deliberately defying management's legitimate exercise of its rights.
- Refusing or failing to cooperate fully in a complaint or administrative investigation.
- Inciting Members to react negatively to a lawful management directive, or criticizing management decisions creating a substantial risk of disrupting the work of another or affecting another's morale.
- Leaving an assignment or assigned duty area without permission of the supervisor in charge.
- Refusing to accept, directly or constructively, management's lawful directives or decisions. Note: This standard does not require that the Member agree with such directives.
- Refusing to perform assigned work duties or tasks for the position being held.
- Refusing to report to a place of duty at the designated time and location.
- Refusing to sign a required document (e.g., a mission statement, oath of Police

Department, medical release form, performance evaluation review, disciplinary report and the like.)

- Refusing to submit to a lawful examination of body fluids or a chemical test when lawfully directed to do so.
- Refusing a supervisor's lawful directives or work instructions.
- Refusing to work reasonable amounts of overtime or refusing to work overtime in an emergency situation.
- Being unavailable for call-out when "on call."
- Habitually asking for specific clarification of rules or directives that have the effect of slowing down work or frustrating supervisors or other Members of the work unit.

13.10 Cowardice Sworn Members will carry out their duties with courage and determination and will remain firm and steadfast in the face of opposition and resistance.

13.11 Aiding Other Members The nature of public work frequently requires the support and assistance of other Members. Knowing this support will be rendered in time of need promotes and maintains morale, a sense of well-being among all Members, and advances the mission, goals, and objectives of the Police Department. Members shall, during work hours, come to the aid of another Member when a legitimate request or need is made known or should have been known.

An off-duty Member shall also come to the aid of another Member when assistance reasonably appears to be needed providing the off-duty Member is capable of rendering assistance and can do so without unreasonable risk of injury to him/her or others.

13.12 Enforcement of All Laws The special delegation of certain laws to particular subdivisions of the Department does not relieve officers of the responsibility of taking prompt and proper police action relative to violations of other laws observed by them or coming to their attention.

13.13 Members to Accept Assignments Notwithstanding the assignment of specific duties and responsibilities to Members of the Department, Members will perform all other duties required of them by competent authority.

13.14 Dereliction of Duty Members, while on duty, shall at all times remain alert and in a sufficient state of readiness to quickly respond to any situation requiring police action. Members, while on duty, shall not sleep, or engage in any other activities that would cause them to neglect or be inattentive to duty. Members shall not leave their work assignments except when authorized by a superior.

13.15 Strike Members shall not engage in any strike. "Strike" includes the concerted failure to report for duty, willful absence from one's position, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purposes of inducing, influencing or coercing a change in conditions, compensation, rights, privileges, or obligations of employment

13.16 Equipment, Uniform and Appearance Management has the specific right and inherent interest in assuring the public that its equipment will be cared for and used in an effective, efficient and safe manner. Part of this responsibility includes designating what equipment will be used, how it will be used, who shall and shall not use such equipment or property, and how it shall be cared for while entrusted to a Member.

13.16.1 Care of Equipment Members are required to exercise reasonable care in the use and maintenance of assigned Police Department property. Property damaged or lost through neglect or carelessness subjects those responsible to reimbursement charges and disciplinary action up to and including termination. Should equipment or property become lost, damaged, and hazardous or otherwise unfit for service, those with knowledge of such condition are responsible for immediately reporting it to the supervisor in charge. Damaged property or equipment is to be removed from service and not returned to service until it is in a proper and safe working order. Violations of this standard include, but are not limited to:

- Purposefully damaging equipment (e.g., acts of sabotage).
- Causing equipment to be damaged through misuse, inattention, or other acts of negligence.
- Failing to report damaged or dysfunctional equipment.
- Purposefully disabling or damaging equipment or equipment used by another.

13.16.2 Unauthorized Equipment/Use Members may not carry or use any equipment that is not authorized for use by the Chief of Police or the Chief of Police's designee. This includes, but is not limited to, weapons, security devices, protective devices, communications devices, electronic devices and the like. Furthermore, no Member is permitted to use equipment in an unauthorized manner or for purposes other than for which the equipment was designed. And, no Member is permitted to use the premises for private or commercial purposes without specific knowledge and permission of the Chief of Police.

13.16.3 Locker Policy Lockers and storage areas assigned to Members and employees for the storage of personal possessions are the property of the Charleston Police Department. Members and employees are responsible for keeping assigned lockers and storage areas clean, sanitary and orderly. Food, alcohol, illegal or unauthorized drugs or contraband or offensive or harassing materials (e.g., nude pinups, racial cartoons, materials with a foul odor) shall not be kept in a locker or storage area. These lockers are public property and Members and employees have no interest in public lockers. Members and employees who choose to place a lock on an assigned locker must provide either a key or the combination to an immediate supervisor. Lockers are subject to random inspection at any time, with or without notice. This includes cutting off locks (if necessary) to gain entry into a locker for inspection or investigative purposes. The Charleston Police Department does not assume any responsibility for lost or damaged personal property stored in these lockers or storage areas.

13.16.4 Specialized Equipment Specialized equipment (including, but not limited to such as the Radar, Police Department copiers, computer equipment) is for Police Department use only and

may not be used for private or commercial purposes. Members who use or are assigned to any special equipment have the responsibility to study the applicable policies and/or operations manual and become proficient in their use. These responsibilities include, but are not limited to, the proper care, cleaning, calibration and storage of the equipment.

13.16.5 Equipment Registration Members are required to register the description and serial number of all serialized equipment that is assigned to them or carried by them on their jobs.

13.16.6 Grooming Standards (Amended July 01, 2019) Courts have ruled that grooming standards for police are appropriate and should be established to create clear grooming standards for police officers.

In order to maintain public respect, the Charleston Police Department establishes grooming standards for sworn Members. Head and facial hair of Members of the Department will be neat and well groomed, consistent with contemporary community standards. The spirit and purpose of this section is to prevent personal grooming from constituting an interference or distraction and to permit the evaluation of performance of duty on its own merit, independent of appearance. The following standards are established as a means of promoting discipline in the Department and the uniform, well-groomed appearance of its Members.

Members may groom themselves according to their own personal preference provided that such grooming conforms to these standards and does not interfere with nor detract from the proper wearing of authorizing uniform or equipment. Members out of uniform, improperly dressed, not properly groomed, or who evidence poor hygiene will be required to correct their problem before continuing work. Repeated failures will result in disciplinary action up to and including termination.

13.16.6.1 Hair These standards apply to all sworn Members of this Department except for those excluded by the Chief of Police due to a special assignment, and shall be strictly enforced by supervisory personnel. Any deviation or noncompliance shall be deemed a violation of Departmental policy. Hair shall be clean, neat and styled in a manner that will not interfere with the performance of duty or the safety of the officer. No designs shall be cut or braided into Member's hair.

Male Officers Hair will be neatly trimmed and tapered so as not to present a ragged, bushy or unkempt appearance. The hair shall not contain any bulk at the sides or back nor extend onto the shirt collar. Sideburns will be kept neatly trimmed and groomed. They will not extend below the lower portion of the opening of the ear. No flair to the sideburns. Sideburns shall be cut or shaved straight across at the bottom. Beards, whether full or goatees, are authorized; however they shall be worn with a mustache. Mustaches without a beard shall not extend more than ½ inch beyond the corner of the mouth or downward below the bottom of the lower lip. Beards and mustaches shall be kept clean and neatly trimmed, and present a conservative, professional appearance. Facial hair of any kind that presents any sort of faddish appearance is prohibited.

No portion of the beard may be exceptionally longer than the rest, and beard hair length will not exceed ¼ inch. The neck shall remain clean shaven. Any deviations to these standards must be authorized by the Chief of Police.

Female Officers While in uniform, hair may touch the collar, but cannot fall below the lower edge of the back collar, and long hair, including braids, must be pinned, fastened and secured to the head and not touch the lower edge of the collar. Hair fasteners should be of an inconspicuous color and nondistracting from the uniform. Hair nets are not authorized. Non-uniformed members' hair may fall below the lower edge of the back collar, but shall not extend beyond the middle of the shoulder blades. Wigs or hairpieces which meet all grooming standards are authorized. Hairstyles shall not be outrageously or faddishly multicolored. Hair must present a balanced appearance with no lopsided, extremely asymmetrical or extremely teased ("big") styles. Ponytails, pigtailed, widely spaced individual hanging locks, or braids which protrude from the head are not authorized. Multiple braids are authorized provided that they are tightly woven, ¼" or less in diameter, uniform in dimension and do not contain any beads or other decorative items. Braids in short hair should be symmetrical and minimize scalp exposure, with no protruding ends or conspicuous elastic hair bands.

13.16.6.2 Hygiene All Members are expected to practice good hygiene. This includes, but is not limited to, bathing regularly, using body and breath deodorant as needed. Fingernails shall be clean, and maintained at a length that does not interfere with the performance of assigned duties and tasks. All perfumes and colognes shall be used with propriety.

#### 13.16.6.3 Personal Appearance While On Duty (Amended July, 10, 2019)

The purpose of this regulation is to establish standards for the personal appearance of all employees of the Department while performing their duties, either in civilian attire or uniform.

Tattoos Members of this Department may not have tattoos, body markings or brands on the neck, tongue, lips, or any other part of the head. This would be any tattoo which can be visible above the officer's uniform or undershirt collar. Tattoos below the wrist, and on any part of the hands are prohibited with the exception of a wedding band tattoo on the left ring finger which is no wider than 1/3 of an inch.

Tattoos, body markings or brands anywhere on the body that promote racism, discrimination, indecency, extremism or supremacist philosophies, lawlessness, violence or contain sexually explicit material are prohibited. The Charleston Civil Service Commission shall be the final authority in determining if a tattoo, body markings or brand is authorized and whether or not to require officers to wear long sleeves to cover the tattoo, body marking or brand in question while on duty as part of the appointment process. A member wanting to get any additional tattoo(s) that will be seen in an approved uniform must obtain the approval of the Chief of Police. If the Chief of Police requires the tattoo be covered, the member may appeal the decision to the Police Civil Service Commission.

Members having tattoos, body markings or brands that are deemed by the Civil Service Commission to be in violation of this policy shall have said tattoo(s), body markings or brands removed at their expense, in a time period not to exceed twelve (12) months from the time such members are ordered to have said tattoos, decals or replicas removed by the Civil Service Commission. Any extension of this time period must be approved by the Civil Service Commission.

Body Piercing The below intentional body mutilation, piercing, or intentional scarring is prohibited: Body piercing jewelry (other than earrings worn on the ear and authorized below) shall not be worn while on duty unless the jewelry is not visible.

- A split or forked tongue
- Foreign objects inserted under the skin to create a design or pattern, visible in any of the uniforms or clothes that a Member will likely be required to wear as part of his or her service with the Charleston Police Department.
- Enlarged or stretched out holes in the ears (other than a normal piercing)
- Intentional scarring that appears on the arms, hands, neck, face or scalp while wearing any of the uniforms or clothes that a Member is required to wear as part of his or her service with the Charleston Police Department.

Dental Ornamentation The use of gold, platinum or other veneers or caps for purposes of ornamentation is prohibited. Teeth, whether natural, capped or veneer, will not be ornamented with designs, jewels, initials, etc.

Jewelry Male Members - The use of jewelry shall be restricted to one watch and two personal rings no larger than a graduation ring. Male members are prohibited from wearing earrings, nose rings and other visible body jewelry, to include the facial area and tongue. Religious medals, medallions, crosses, or chains may be worn but shall be concealed under the uniform shirt. Female Members - The use of jewelry shall be restricted to one watch, two personal rings no larger than a graduation ring (a set of wedding rings will be considered one ring) and one pair of small stud type earrings that do not extend past or around the ear lobe. Female members are prohibited from wearing earrings (other than authorized in this section), nose rings and other visible body jewelry, to include the facial area and tongue. Religious medals, medallions, crosses, and chains may be worn, but shall be concealed under the uniform shirt. Cosmetics (Uniformed and Non-Uniformed)

If used, cosmetics must be applied conservatively and in good taste using colors that blend with natural skin tone so as to avoid an artificial appearance. Exaggerated or faddish cosmetic styles are prohibited. False fingernails are acceptable only for on-duty plainclothes assignments. False or artificial fingernails, or natural fingernails that extend beyond ¼” from the fingertip are not authorized for uniformed Members. Fingernail polish should be conservative and not brightly colored.



Exceptions Officers who are assigned missions that require them to "blend in" to particular environments (such as drug work or other undercover assignments) may deviate from the above standards only with the approval of the Chief of Police.

13.16.7 Uniform and Dress The dress for uniform Members, as may be from time to time set by General Order and the Chief of Police shall be properly and completely worn while on duty. It is never proper to wear the uniform mixed with civilian clothing, or to wear non-authorized articles (e.g., patches, badges, insignias and the like) on or as part of the uniform. Officers will not wear a uniform, or parts of the uniform, when off-duty except when going to or coming from work or when working authorized off-duty employment. Non-uniform Members shall dress and groom in a manner that conforms to the requirements of their assignment.

All Members of the Department are required to maintain a complete Class A uniform in clean and serviceable condition and all articles of other clothing and/or equipment as is prescribed and authorized for the rank and for the duty to which they are assigned. In addition, all sworn Members of the Department are required to maintain a serviceable uniform regardless of assignment. When reporting for duty in uniform, each officer will report in a uniform that is clean and neatly pressed. This will include military creases in the shirt and creases front and back for trousers.

13.16.7.1 Uniform specifications Uniform specifications as to style, brand, size, and color are as authorized by the Chief of Police. Authorized uniform descriptions may be obtained from the Office of the Chief of Police. The material and style prescribed by uniforms will not be modified or otherwise changed unless authorized by the Chief of Police. The wearing of appropriate insignia of rank is required at all times while in uniform. Two (2) year increments of service with the Charleston Police Department will be identified by the wearing of service stripes on uniform jackets and longsleeved uniform shirts. Ten (10) year increments of service will be identified with a star. Wearing of service stripes is not optional.

Wearing of Hat Each sworn Member will have their hat available at all times when in uniform. The hat must be worn:

- While directing traffic
- Appearing in public
- Working a special event, such as, Regatta, Civic Center, etc. Exceptions:
- Eating
- In a vehicle
- Authorized by supervisor
- It is appropriate to wear a ball cap, helmet, etc.

The uniform hat shall fit squarely on the head so that the top is flat and not tipped back or to the side. The front brim shall rest on the forehead approximately 1½ inches above the eyebrows. Grommets shall not be shortened in circumference nor removed from the uniform hat.

Wearing of Duty Belt The duty belt will be worn in a manner that covers the trouser belt and will be secured to the trouser belt with an adequate number of keeper straps.

### 13.16.8 Authorized and Required Equipment Amended December 24th, 2013)

#### 13.16.8.1 Optional Authorized Equipment:

- Authorized ball cap and appropriate rank insignia (when authorized and when appropriate)
- Authorized BDU's with appropriate shoulder patches, seniority service stripes, insignia/chevron and badge patches (when authorized and when appropriate); an authorized ball cap will be worn with this type/style uniform
- Authorized jacket with shoulder patches, insignia, chevron, current seniority service stripes and name tag
- Authorized coat with shoulder patches, insignia, chevron, current seniority stripes and name tag
- Authorized rain coat
- Authorized hat cover (optional)
- Authorized shirt pins, such as Officer of the Year, SWAT, Diver, etc.
- Issued O.C. spray
- Approved O.C. spray carrier (Clarino/webbed) Authorized ASP
- Approved ASP carrier (Clarino/webbed/Kydex)
- Approved knife, four inch blade or smaller (optional)
- Plain black toboggan (optional and only during justifiably cold weather conditions)
- Black dickie with ½ inch monogram gold/silver CPD on the left side.
- Black mock turtle neck with ½ inch monogram gold/silver CPD on the left side.
- Black long sleeve Champion or any other HeatGear compression shirt authorized by the Chief of Police can be worn under the short sleeve class A uniform shirt to conceal any visible tattoo that is not already concealed by the short sleeve class A uniform shirt. This compression shirt must be worn at all times while wearing a short sleeve class A uniform shirt.

The aforementioned equipment and uniform will be worn (carried) by all personnel performing a uniformed function, including off-duty employment requiring the wearing of a uniform, unless exempted from doing so by a Command Officer or when performing a function which requires the use of a substitute item of equipment.

13.16.8.2 Required Equipment: Members will be issued and/or will purchase, or otherwise obtain, maintain and utilize the following authorized and minimum required equipment necessary to perform their assigned duties:

- Authorized hat and appropriate rank shield
- Authorized shirt with shoulder patches (either long or short sleeve); current insignia and chevron (appropriately sized for long and short sleeved shirt); current seniority service stripes on long sleeved shirt
- Authorized trousers
- Authorized tie with approved bar and chain tie clasp
- Approved tie clasp (bar and chain)
- Issued badge

- Authorized name tag
- Appropriate rank or assignment insignia (when applicable)
- Approved trouser belt (black Clarino/webbed/leather)

Approved gun belt (Clarino/webbed)

- Approved or issued holster
- Approved service weapon (Glock model 17 or 26)
- Issued ammunition
- Approved magazine carriers, minimum two (Clarino/webbed)
- Approved handcuffs
- Approved handcuff case(s) (Clarino/webbed)
- Handcuff key
- Issued radio/hand unit
- Black plain-toe shoes
- Approved flashlight with Approved flashlight carrier (Clarino/webbed)
- Whistle (Black/silver/gold)
- Issued/authorized protective body armor
- Department identification card
- Miranda card
- Writing instruments (blue ink)
- Valid West Virginia driver's license.
- Issued traffic vest
- Issued citation/ticket book
- Approved citation/ticket book holder
- Issued parking ticket book
- Approved gun belt keepers
- Issued shotgun rack key

13.16.9 Special Assignment - Additional Items Sworn personnel assigned to specialized units will maintain and utilize the uniform and equipment designated by the Chief of Police for the officer's function.

13.16.10 Minimum On duty Non-uniform Equipment and Attire Sworn personnel assigned to a nonuniformed function will maintain and utilize the following equipment and attire unless exempted by their immediate supervisor.

- Appropriate civilian attire
- Weapon (authorized)
- Holster (authorized)
- Badge and case
- Handcuffs (authorized type)
- Handcuff key
- Ammunition
- Department identification card
- Miranda card
- Valid West Virginia driver's license

13.16.11 Wearing of Badges When in Plainclothes Plain clothes officers at the scene of a search and arrest situation in progress will identify themselves by wearing their badge on the left breast of their outer garment or approved neck chain.

13.16.12 Requirements When Off Duty When off duty in the city limits, officers will carry or have in their immediate possession their issued identification card. Firearms may be carried by officers when off duty at their discretion. Whenever an officer carries his firearm, he must carry his badge.

13.16.12.1 Identification Sworn Members shall carry their badges and identification cards on their persons at all times, except when impractical or dangerous to their safety or to an investigation. They shall furnish name and employee number to any person requesting that information, except when withholding of such information is necessary for the performance of police duties or is authorized by proper authority.

13.16.12.2 Weapons (Amended August 24, 2004)

The service weapon is considered an essential component of a police officer's equipment and is to be carried by all Members while on duty, except when necessary to secure the weapon for safety reasons such as when processing a prisoner or pursuant to Court Order. Members assigned to the Charleston Police Department or M-Dent will carry approved weapons:

Issued and Approved Weapons

- Members will carry the Glock model 17, 9mm, unless approved in writing by the Chief Range officer and the Chief of Police. Members will carry the Hornady "Critical Duty" ammo approved by the Charleston Police Department for duty use.
- All Members of C.I.D., plain clothes officers and staff officers of Lieutenant and above will be permitted to carry the Glock 26, 9mm, with approved department ammo or a weapon approved by the Chief of Police. Officer with the rank of lieutenant and above are not required to wear their duty belt while in uniform.
- All Members will use the department issued holster. Other holsters may be carried if the Member has written permission from the Chief Range Officer and Chief of Police. The holster for the duty belt must be a level 2 or 3 only.

Upon issuance of a service weapon by the Department to a Member, the responsibility for proper care and maintenance of that weapon is assumed by the Member to whom it was issued. Repairs will be made by the Department Armorer only.

- Members shall not loan their Department-issued service weapon to any other person.
- Whenever a Department vehicle requires maintenance that requires the vehicle to be left unattended by Department Members, any weapon in that vehicle shall be removed and secured by the Member to whom the vehicle is assigned before the vehicle is left for service.

Secondary/Backup Firearms

- Officers, with authorization of the Chief of Police or his designee and after having qualified with the same in compliance with Section 25.0 of this manual, may carry a secondary/backup firearm during the qualification period.

- Secondary/backup firearms and ammunition must be approved by the Chief Range Officer or his designee and the Chief of Police or his designee.
- Secondary/backup weapons may be either semi-automatic or revolver with a minimum capacity of five rounds.
- Secondary/backup firearms will be concealed and carried securely in a holster or other means approved by the Chief of Police or his designee.

All officers carrying a secondary/backup firearm must register the make, model, caliber, barrel length, serial number and other pertinent characteristics of the firearm with the Chief of Police or his designee.

Only those secondary/backup firearms registered with and authorized by the Chief of Police or his designee and authorized ammunition will be carried by the Member.

- Members having been issued a .40 caliber Glock model 27 by the Department may use the same as a secondary/backup firearm provided they have properly qualified and carry the same in addition to their issued and approved service weapon.

#### 13.16.12.3 Non-Department Issued Weapons (Added February 3, 2003)

With the increasing sophistication of weaponry available to the general public, and consequently to those who choose to commit crimes with those weapons, the Charleston Police Department, with authorization by the Chief of Police, may allow qualified on-duty officers to carry non-department issued patrol rifles/carbines.

Any officer requesting to carry a non-department issued patrol rifle/carbine will have to abide by rules set forth within this section and all other CPD Policies and Procedures relative to the deployment, use and maintenance of firearms by this department. Any violation will result in the immediate revocation of permission to carry said firearm.

- The patrol rifle/carbine will be provided by the officer at his or her own expense.
- The officer shall submit to the Chief Range Officer, in writing, a description of the firearm including make, model, caliber, serial number and any other unique characteristics.
- The patrol rifle/carbine, which must be equipped with a sling and in the carrying case that will be used while on-duty, is to be presented to the Chief Range Officer or his designee for approval.
- The Chief Range Officer or his designee will inspect the firearm to insure that there have been no modifications to the firearm that could potentially cause the weapon to become unsafe or illegal.
- The patrol rifle/carbine is to be semi-automatic with a caliber deemed acceptable by the Chief Range Officer. No fully automatic weapons will be authorized.
- The officer will be required to be knowledgeable of and demonstrate proficiency in the use of the weapon.
- If the firearm is approved, the Chief Range Officer will determine what ammunition will be authorized while the weapon is carried on-duty.
- Ammunition, as specified by the Chief Range Officer, will be provided by the officer and will be replaced at appropriate intervals.

- The officer will be required to qualify with the firearm initially by successfully completing a Charleston Police Department “Police Tactical Rifle Course Qualification” and then annually thereafter.
- The Chief Range Officer will advise the Chief of Police, in writing, the results of qualification, a complete description of the firearm, and any recommendation he may have relative to fitness of the officer to carry said firearm while on-duty.
- The Chief of Police will review the written reports submitted, and at his discretion, authorize the officer to carry the firearm while on-duty. This authorization may be withdrawn by the Chief of Police at any time.

After receiving authorization from the Chief of Police to carry a non-department issued weapon, the officer will abide by the following rules in addition to any other policy of this department related to firearms;

This firearm will be handled in the same manner and subject to the same rules that it would be if it were a department issued firearm.

- Officers are to handle this firearm in a safe and responsible manner.
- Only ammunition authorized by the Chief Range Officer is to be carried with the firearm.
- The firearm is to be carried in an approved case with the chamber empty.
- The firearm must be secured in the trunk or cargo area of the vehicle and maintained out of the sight of the general public and removed from the vehicle when the officer is off duty.
- The officer will ensure that the firearm is maintained in a safe working order.
- Any upgrades or modifications made to the authorized firearm must be inspected and approved by the Chief Range Officer, and written notification made to the Chief of Police, prior to the firearm being carried on-duty after said modification(s).
- Patrol rifles/carbines will not be deployed unless proper notification is made to the District Sergeant or Shift Commander and authorization is granted, unless circumstances and safety concerns dictate that notification would be impractical.
- In the event a non-department issued weapon is deployed, a CPD 102 report detailing the circumstances under which it was deployed and the supervisor who authorized the deployment will be completed by the officer and forwarded to the Chief's Office.
- This firearm is not to be utilized by any other officer not authorized to carry the same.

If a District Sergeant or Shift Commander become aware of a violation of any firearms policy in this manual, or determine that the firearm has been handled in an unsafe or reckless manner, he or she may immediately suspend permission to carry this firearm, subject to a later review by the Chief Range Officer and Chief of Police.

13.17 Use of Official Position or Identification Members shall not lend their identification cards, badges or equipment to another person or permit them to be photographed or reproduced without the approval of the Chief of Police. Members shall not permit or authorize the use of their position as Members in connection with testimonials or advertisements of any commodity, commercial enterprise or political party/candidate. Members are prohibited from using their official position, official identification cards or badges to solicit personal or financial gain or to avoid consequences of illegal acts.

13.18 Conflicts of Interest Public service work requires that Members do not compromise the authority, integrity, trust, or confidence inherent in their positions. Members shall not create conflicts of interest or potential conflicts of interest with the duties and obligations of their positions. Violations of this standard include but are not limited to:



- Accepting gratuities from any business or person, especially when the giver has a personal service to gain from providing the gratuities or where there is the potential for gaining a personal service.

Failing to perform a duty because of personal interests (e.g., failing to investigate a case because of its incriminating effect on a friend or relative; performing a personal service for a friend or family member at public expense).

“Fixing” or attempting to have “fixed” a traffic citation or warrant. (NOTE: A supervisor who uses discretion to void a citation or an arrest which was made or issued contrary to policies or enforcement priorities does not violate this standard, provided the facts are properly documented and the Member violating the standard or priority is properly notified and counseled).

- Giving out unauthorized information to any person (e.g., leaking to the news media, private investigators, defense attorneys, bondsmen, parents, patients, and inmates).
- Having a financial interest in a business that conducts business with the City of Charleston.
- Incurring financial liability or obligations for the City of Charleston without job authority or written permission to do so.
- Owning a business in whole or part that provides a service or product that conflicts with or jeopardizes the mission, goals or objectives of the Police Department.
- Performing a secondary job or private work while on duty such as making business contacts, conducting follow-ups on outside work, delivering correspondence, selling, or using the Department’s computer equipment for personal use.
- Substandard performance while holding a secondary job thus giving substantial evidence that the secondary job is a conflict of interest in part or in whole.
- Providing a secondary employer or members of a secondary employer with special governmental services or treatment.
- Purchasing anything from or for an inmate/prisoner or giving or accepting gifts from or for an inmate/prisoner unless the inmate/prisoner is a member of the officer’s immediate family.
- Recommending or endorsing the private or professional services of an attorney, bondsman, wrecker driver, hospital, doctor, architect, engineer, contractor, builder, and the like to a citizen, victim or prisoner.
- Soliciting for any purpose on public premises or while on duty, or while wearing any part of the official uniform without prior authorization from the chief of Police.
- Soliciting or accepting rewards for performance of service.
- Incurring financial obligations between a supervisor and a subordinate.
- Using information gained from professional duties for personal gain. Using membership as a means to gain entrance into places of amusement, for free meals, drinks, or other gratuities.
- Working for an individual or establishment that has a reputation for violence, crime, vice, illegal drug trafficking, etc.
- Accepting money or favors from prisoners or persons in conflict with the law.
- Using the Police Department’s equipment or property for personal profit.

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13.19 Unbecoming Conduct Sworn Members shall conduct themselves at all times, both on and off duty, in such a manner as to not bring discredit to the Department or the Member. Conduct unbecoming of officer shall include that which tends to bring the Department into disrepute or reflects discredit upon the officer as a Member of the Department, or that which tends to impair the operation and efficiency of the Department or officer.

13.20 Processing Property Property or evidence which has been discovered, gathered, or received in connection with Departmental responsibilities will be processed in accordance with the Property and Evidence Policy contained herein. Members shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold any property or evidence found in connection with an investigation or other police action, except in accordance with established Departmental procedures.

13.21 Department Issued Awards and Commendations (Added March 3, 2003)

The Department expects a high level of professional conduct from all members. However, members frequently perform their duties in a manner exceeding the highest standards of the Department. When such conduct occurs, official commendations shall be made. Commendations may originate from citizens or within the Department and are intended to cite exemplary conduct and standards which all members of the Department should strive to attain. Additionally, the Department honors those citizens of the community who substantially assist the Department in an extraordinary manner beyond their normal civic responsibilities.

The Department recognizes the outstanding work of sworn members with three categories of awards; Professional Service Award, Professional Esteem Award and the Honor and Valor Award. Additionally, the Department recognizes civilians and citizens who provide commendable assistance to the Department or law enforcement in general with two categories of awards; Letter and/or Certificate of Appreciation, and the Honor and Valor Award.

13.21.1 Professional Service Award (Added March 3, 2003)

The Professional Service Award shall be awarded to sworn members or civilian employees in recognition of efforts performed in a professional manner. These efforts would include only those duties that a sworn member is normally expected to perform, or any unique situation brought to the attention of the sworn member's commander by citizens or other members.

This award shall be in the form of a letter and issued by the Bureau Chief. Supervisors or commanders desiring this letter to be given to a sworn member shall submit a memorandum through the chain of command to the appropriate Bureau Chief, and the final decision will be made by the Bureau Chief as to the issuing of this letter. Copies of the letter shall be forwarded to the sworn member performing those duties, his immediate supervisor, and a copy placed in his personnel file.

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13.21.2 Professional Esteem Award (Added March 3, 2003)

The Professional Esteem Award shall be awarded to sworn members or civilian employees who have performed duties in such a manner as to earn the esteem of both fellow members and the public. This category would include sworn members who put in more effort and time on a case than would normally be expected, does a thorough job in each given assignment, etc.

This award shall be in the form of a letter and certificate and issued by the Chief of Police and approved by the Mayor. Supervisors and commanders desiring this letter and certificate to be

given to a sworn member shall submit a memorandum through the chain of command to the appropriate Bureau Chief for his approval. If the Bureau Chief desires this letter and certificate to be presented by the Chief of Police, a memorandum shall be sent to the Chief of Police for his and the Mayor's approval. Copies of this letter and certificate shall be forwarded to the appropriate Bureau Chief for distribution. An additional copy shall be placed in the sworn member's personnel file. This award is an official commendation.

#### 13.21.3 Honor and Valor Award (Added March 3, 2003)

The Honor and Valor Award may be awarded to sworn members, civilian employee or citizens who have placed their own life in danger for the protection and safety of another, or has given his life in the performance of the action. This award shall be in the form of a certificate or plaque from the Mayor and presented in a special ceremony by the Mayor and/or the Chief of Police.

Commanders or supervisors desiring this award to be given to a sworn member, civilian employee or citizen shall submit a memorandum through the chain of command to the appropriate Bureau Chief. It shall be the Bureau Commander's responsibility to discuss this request with the Chief of Police. The Chief of Police and Mayor will make the final decision whether a sworn member, civilian employee or citizen's act deserves the Department's highest award. Copies of this certificate shall be placed in the member's personnel file and shall remain there for the duration of his tenure. This award is an official commendation.

#### 13.21.4 Letter and/or Certificate of Appreciation (Added March 3, 2003)

A Letter and/or Certificate of Appreciation shall be given to citizens for assisting the Department in investigations, rendering assistance to police officers, etc. This letter and/or certificate shall be issued by the Chief of Police.

A member desiring a citizen to receive this award shall submit a memorandum to his immediate supervisor and the request shall be passed through the chain of command to the appropriate Bureau Chief for his approval. If the Bureau Chief desires this letter and/or certificate to be issued by the Chief of Police, a memorandum shall be sent to the Chief of Police for his and the Mayor's approval.

A copy of this letter and/or certificate shall be mailed or presented to the citizen deserving recognition and to the member requesting the letter to be given.

#### 13.21.5 Jerry A. Jones Officer of the Year Award (Added March 3, 2003) *(Renamed in memory of Patrolman Jerry A. Jones starting with the 2009 award given June 18th 2010)*

Each calendar year a Patrolman or Corporal will be selected from a list of nominations as "Officer of the Year" for that year. Nominations will be made by commanders of the various divisions of the Department as specified by the Chief of Police or his designee during the month of February of the following year. A single officer will then be selected by majority vote of those

commanders making nominations and the Chief of Police or his designee. Commanders will not be allowed to vote for the officer they nominated. The following attributes should be considered in the nomination and selection of “Officer of the Year;”

- Ethics – Consistently behaves ethically, exemplifies moral courage and integrity.
- Dependability – Consistently arrives for work on time. Always accepts and carries out regular and special assignments. Does not abuse sick leave.
- Job Knowledge – Has a good understanding of the “ins and outs” of the job. Is constantly striving to stay current with the latest innovations and trends in the law enforcement fields.
- Appearance – Always projects a professional appearance, either in uniform or plain clothes assignments. Maintains good physical fitness.
- Case Preparation – Carefully and completely prepares cases for court. Completes paperwork in a thorough and detailed manner. Maintains good working relationship with Prosecuting Attorney’s Office.
- Attitude – Keeps positive mental outlook, high morale. Always strives to improve, able to accept criticism.
- Ability to Work with Others – This includes fellow workers and the community. Treats all persons with respect and dignity. Deals appropriately with all people, based on an understanding of the differences that exist in personal style, opinion, culture and perspective.
- Daily Practices – Consistently carries out assigned enforcement duties in a fair manner free of personal bias or emotion. Diligently answers calls, takes appropriate action and accurately completes all paperwork.
- Leadership – Leads by example, inspires others to do their best. Has moral courage, the willingness to do the right thing even if the action is unpopular.
- Awareness of Safety – Carries out duties in a safe and prudent manner. Uses restraint and good common sense in high-risk or potentially volatile situations – vehicle pursuits, arrests, domestic calls, etc.

A presentation ceremony will be held and each of the officers nominated will receive a medal indicative of the nomination which they may wear on their uniform for a period of one year. The officer selected as “Officer of the Year” will also receive a medal indicative of that honor, which he or she may wear on their uniform for the remainder of their career with the Department.

### 13.22 Social Networking Sites (added August 3, 2009)

“Social networking site” means any internet based website where members of that site can electronically gather to share personal profiles along with other information and photos with other members. Social networking sites include, but are not limited to Facebook.com,

Myspace.com, Flickr.com or any other site(s) that allow individuals to express themselves and/or communicate with others for personal relationships, friendships or to simply correspond. Members should be aware that information posted on social networking sites is not secure or private. The information may be viewed by any member of the public. Once information has been posted on the internet it is also considered to be accessible indefinitely.

Employees shall not reproduce, publish or post to the internet or other public forum, any image(s) depicting CPD equipment, logos, or other identifying property or represent themselves in a public forum as an employee of CPD with other information, opinion or posture that would depict law enforcement negatively or bring embarrassment to the department.

## **14. POLICE OPERATIONS**

The Department is responsible for: the protection of life, individual liberty and property; the preservation of peace; the prevention of crime and disorder; the detection and arrest of violators of the law; the enforcement of state laws and City ordinances within the Department's jurisdiction; and the provision of service to the community. The function of the Department must be broadly interpreted to include many tasks in addition to the enforcement of laws.

All Members are also charged with protecting the rights of all persons, regardless of race, color, ethnicity, sex, sexual orientation, physical handicap, religion or other belief system.

The Department is committed to uphold the Constitutional rights of all citizens and unequivocally states that racial and ethnic profiling in law enforcement is totally unacceptable. This Manual provides guidelines for officers to prevent such occurrences, and to protect our officers when they act within the dictates of the law and policy from unwarranted accusations. This method of operation is intended to assist law enforcement in accomplishing this total mission in a way that respects the dignity of all persons and yet sends a strong deterrent message to actual and potential lawbreakers that if they break the law, they are likely to encounter the police.

Racial profiling is the practice of a law enforcement officer relying, to any degree, on race, ethnicity, or national origin in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity.

Racial profiling does not include reliance on race, ethnicity, or national origin in combination with other identifying factors when the law enforcement officer is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect.

**14.1.1 Racial and Ethnic Profiling** Racial and ethnic profiling in law enforcement is totally unacceptable. The following procedures provide guidelines for officers to prevent such

occurrences, and to protect our officers when they act within the dictates of the law and policy from unwarranted accusations.

- A fundamental right guaranteed by the Constitution of the United States to all who live in this nation is the right to equal protection under the law. Along with this right to equal protection is the fundamental right to be free from unreasonable searches and seizures by government agents. Citizens are free to walk and drive our streets, highways, and other public places without police interference so long as they obey the law. They also are entitled to be free from crime, and from the depredations of criminals, and to drive and walk our public ways safe from the actions of reckless and careless drivers.
- The Charleston Police Department is charged with protecting these rights, for all, regardless of race, color, ethnicity, sex, sexual orientation, physical handicap, religion or other belief system.
- Because of the nature of their business, law enforcement officers are required to be observant, to identify unusual occurrences and law violations, and to act upon them. It is this proactive enforcement that keeps our citizens free from crime, our streets and highways safe to drive upon, and that detects and apprehends criminals.
- This policy is intended to assist law enforcement in accomplishing this total mission in a way that respects the dignity of all persons and yet sends a strong deterrent message to actual and potential lawbreakers that if they break the law, they are likely to encounter the police.

#### 14.1.2 Proactive Patrol

It is the policy of this department to patrol in a proactive manner, to aggressively investigate suspicious persons and circumstances, and to actively enforce the motor vehicle laws, while insisting that citizens will only be stopped or detained when there exists reasonable suspicion to believe they have committed, are committing, or are about to commit, an infraction of the law.

#### 14.1.3 Reasonable Suspicion

Also known as articulable suspicion. Suspicion that is more than a mere hunch, but is based on a set of articulable facts and circumstances that would warrant a person of reasonable caution in believing that an infraction of the law has been committed, is about to be committed, or is in the process of being committed, by the person or persons under suspicion. This can be based on the observations of a police officer combined with his or her training and experience, and/or reliable information received from credible outside sources.

#### 14.1.4 Complaints of Racial/Ethnic Profiling

Any person may file a complaint with the department if they feel they have been stopped or searched based on racial, ethnic, or gender-based profiling, and no person shall be discouraged, intimidated, or coerced from filing such a complaint, or discriminated against because they have filed such a complaint.

Any officer contacted by a person who wishes to file such a complaint, shall provide the citizen with a “How to Commend an employee, Make a Suggestion or Make a Complaint” form which may be mailed or delivered in person to the department, and shall record the person's name,

address, and telephone number, and report the contact to the officer's supervisor prior to the end of the shift. The officer will also direct the person wishing to make the complaint to the on-duty Shift Commander or the officer's immediate supervisor.

The supervisor taking the complaint shall forward it to the Professional Standards Division (PSD) and all such complaints shall be reviewed, the complaint acknowledged to the complainant in writing, and the complainant shall be informed of the results of the department's review within a reasonable period of time. The PSD shall immediately notify the Chief of Police of the complaint.

(Additional procedures from section 32.3 will be followed.)

Supervisors shall review profiling complaints, periodically review a sampling of in-car video tapes of stops, reports filed on stops by officers, and respond at random to back up officers on vehicle stops, and shall take appropriate action whenever it appears that this policy is being violated, being particularly alert to any pattern or practice of possible discriminatory treatment by individual officers or squads.

#### 14.2 Law Enforcement

Law Enforcement operations consist of many diverse activities which are directed toward the attainment of Department objectives. Activities such as patrolling, conducting field interviews, and issuing traffic citations are not objectives in themselves; rather, they are methods of achieving the objectives of preventing and deterring crime, and providing a safe community in which to live.

- The department's efforts will be directed toward assigning officers to those areas where there is the highest likelihood that crashes will be reduced and/or crimes prevented through proactive patrol.
- Officers will receive initial and ongoing training in proactive enforcement tactics, including training in officer safety, courtesy, cultural diversity, laws governing search and seizure, and interpersonal communications skills.
- Training programs will emphasize the need to respect the rights of all citizens to be free from unreasonable government intrusion or police action.
- Traffic enforcement will be accompanied by consistent, ongoing supervisory oversight to ensure that officers do not go beyond the parameters of reasonableness in conducting such activities.
- Motorists and pedestrians shall only be subjected to stops, seizures or detentions upon reasonable suspicion that they have committed, are committing, or are about to commit an infraction. Each time a motorist is stopped, the officer shall radio to the dispatcher the location of the stop and the description of the person or vehicle being detained.
- The department recognizes that with experience, individual officers may develop individualized approaches that they find work best for them in minimizing conflict during officer/violator contacts. Given some better approach, the following is recommended, in the order specified below:
  1. Give a greeting, such as "Good morning, ma'am", "Good evening, sir", etc.
  2. Identify yourself. Ex: "I am Officer Smith of the Charleston Police Department.
  3. State the reason why the person is being stopped or detained. Ex: "I stopped you because I saw your vehicle come through the stop sign at that last intersection



without coming to a complete stop." (Describing the actions of the vehicle rather than personalizing the action to the driver tends to reduce tension.)

4. It may defuse tension to ask a motorist if there was some reason for the violation. This gives them the opportunity to "have their say", often leads to an admission that the violator realized they were in violation, and precludes a defendant from offering a different excuse at trial. If you choose not to ask but the motorist wishes to give a reason or excuse, listen politely and give them ample opportunity to tell their story.
  5. Politely ask for identification and any required documents. Ex: "May I please see your license, registration, and proof of insurance?"
  6. After completing any necessary paperwork, inform the driver or pedestrian as to what action is being taken and what, if any, the person must do as a result, such as how to pay any fine involved, when to appear in court, etc.
  7. Give an appropriate closing. For example, if the motorist was cooperative, "Thank you for your cooperation" may be in order. Do not use the trite expression, "Have a nice day", which would be inappropriate in these circumstances. "Please drive carefully, your safety is important to us" is more appropriate.
  8. Make sure the driver is able to merge safely back into the traffic stream. Appropriate enforcement action should always be completed, generally in the form of a warning, citation or arrest. The proper form must be filled out by the officer, and shall include the gender, race or ethnicity of the person stopped, if this information can reasonably be ascertained by physical appearance or from the driver's license or other documents provided by the individual.
- No motorist, once cited or warned, shall be detained beyond the point where there exists no reasonable suspicion of further criminal activity, and no person or vehicle shall be searched in the absence of a warrant, a legally recognized exception to the warrant requirement, or the person's voluntary consent. In each case where a search is conducted, this information shall be recorded, including the legal basis for the search, and the results thereof. It is strongly recommended that consent searches only be conducted with written consent, using the proper department form. If the individual indicates that they will consent to a search but are refusing to sign the form, fill out the form anyway and indicate "consented to search but refused to sign", inserting initials and the signature of any witness in the signature block.
  - If the police cruiser is equipped with a video camera, the video and sound shall be activated prior to the stop, to record the behavior of the vehicle or person, and shall remain activated until the person is released and resume their journey.
  - In the absence of a specific, credible report containing a physical description, a person's race, ethnicity, gender or sexual orientation or any combination of these shall not be a factor in determining probable cause for an arrest or reasonable suspicion for a stop.
  - The deliberate recording of any misleading information related to the actual or perceived race, ethnicity, gender, or sexual orientation of a person stopped for investigative or enforcement purposes is prohibited and a cause for disciplinary action, up to and including dismissal.

### 14.3 Crime Prevention

An important, though often overlooked, function of the law enforcement is crime prevention. In many ways, crime prevention is a more worthwhile function than after-the-fact investigation and apprehension activities. In addition to suppressing crime through visible, aggressive patrol, officers can accomplish long term crime prevention objectives by informing citizens of ways to protect themselves and their property. By encouraging citizens to cooperate with other criminal justice and social agencies, officers can effectively support efforts of a system-wide approach to prevent crime.

#### 14.4 Maintenance of Order

Another broadly interpreted function of law enforcement might best be defined as management of social order. For example, this role includes such activities as preventing or settling family and neighborhood disputes, providing traffic escorts and directions, and assisting ill or injured persons.

#### 14.5 Knowledge of Area

Members shall know the physical characteristics of their assignments as well as the current crime problems in those areas. In addition, officers shall become acquainted with residents and business people in their area of assignment. Patrol officers should be skilled in the detection of criminal activities and assertively conduct their own preliminary investigations and relay this information to others within the Department.

#### 14.6 Preventive Action

Patrol officers should be alert to conditions which are conducive to crime (e.g., inoperative street lights, overgrown vacant lots, dead ends). Whenever possible, officers should take the steps necessary to prevent criminal activity such as advising a storekeeper of points of vulnerability, mediating a family dispute which could escalate into an assault or homicide, or managing intoxicated persons.

#### 14.7 Attitude Toward Providing Service

Department employees should recognize that service to citizens of the community is a major function of law enforcement, and must be rendered by every employee of the Department. Employees should try to assist citizens who are victims of a crime, need emergency help, need assistance or would otherwise be inconvenienced by the Department's failure to act. This kind of service can range from giving simple directions and advice to travelers, to providing victims of crime with reassurance and support, to referring individuals to applicable social service agencies.

#### 14.8 Accountability

Each police officer is the Department's representative within the area to which the officer is assigned. Each officer is accountable for crime and hazards that exist on the assigned beat and is responsible for preventing crime through effective police action. Members assigned to patrol a beat will become acquainted with the beat boundaries, crime-prone areas, businesses, possible targets for criminal activity, and any other condition which is detrimental to life or property.

Members will also continuously seek to prevent, detect, or anticipate criminal activity. To accomplish these functions, the following tasks will be performed as often as possible:

- Inspect premises for doors ajar, broken windows or other conditions conducive to crime or indicative of criminal activity.
  - Carefully observe and take notes of the action of persons who might be involved in crime and take appropriate action.
  - Stop and question suspicious persons under the guidelines presented regarding detention and arrest.
  - Obtain information on criminal activity through frequent contacts with residents, workers, merchants, and passers-by on the Member's assigned beat.
  - Inform the residents, workers and merchants on the beat of actions they can take to protect their persons or property from crime.
- Frequently patrol areas or places where criminal activity occurs.
- Carefully observe all premises that may be used to fence stolen goods. Take note of the identity of suspicious persons transacting business there and keep alert for property that has been reported stolen.
- Observe all places of business and note the location of sales, cash registers, night lights, alarm systems, habits of the staff, time of opening and closing, nature of business, number and location of exits, and means of securing, such as locking doors, windows, gratings and skylights or other barriers.
- Be aware of licensing laws and regulations and report to an immediate supervisor all cases where violations exist.
  - When traffic becomes congested and assistance is needed, take measures to direct the flow of traffic to ease the congestion. If more than a temporary absence from regular duties is required, notify the District Commander and proceed as directed.

#### 14.9 Preparation for Duty

Members are responsible for noting information supplied which pertains to suspects and/or probable events which may impact on the public's welfare and safety and remain familiar with the following:

- Special conditions existing in their assigned area such as patterns of criminal incidents, location of known criminals, and location of possible targets for criminal conduct.
- Descriptions of wanted and missing persons.
- Descriptions of stolen property.

#### 14.10 Vehicles

All Police Department vehicles are the property of the Charleston Police Department and subject to random inspection at any time by the Chief of Police or the Chief of Police's designee for any reason to include, but not limited to, ensuring cleanliness, ensuring good operating condition, and ensuring that there are no unauthorized modifications to the vehicle or contraband in the vehicle. The responsibilities of Members operating Police Department vehicles include but are not limited to, the following:

- To wear seat belts and insure all occupants wear required passenger restraints at all times while driving or occupying Department/City vehicles (applies to all marked and unmarked vehicles).
- To ensure the vehicle is returned in proper condition and that it is accessible to other Members for their official use. This includes, but is not limited to, ensuring that the vehicle is cleared of trash and reasonably clean and ready for use; all items, equipment and fuel are replaced or replenished; and keys are left in the designated location.

#### 14.10.1 Inspection of Vehicles

Members are responsible for ensuring that their assigned vehicles are in a safe and operational condition. The use of City vehicles will be limited to those operations which support the Department mission. At the beginning of each tour of duty, Department Members having an assignment that involves the use of a City vehicle will make a thorough inspection of the vehicle and its equipment. Items that will be visually inspected or checked include the following:

- Fuel, oil, and water levels.
- Condition of tires and wheels.
- Emergency equipment.
- Locking mechanisms and passenger restraint devices.
- Condition of other equipment (brakes, lights, radios, P.A. System, seat belts, locking devices, upholstery, video system, computer system).
- Vehicle or equipment damage. Trash and general cleanliness.
- As a required safety measure, all vehicles will be thoroughly searched for weapons and contraband.

In any event, Members will ensure that the vehicle to be used is in a condition which allows completion of the tour of duty without having to return to the police station for service unless otherwise scheduled.

#### 14.10.2 Damaged Vehicle or Inoperative Equipment

Officers will conduct an inspection of their assigned vehicle for any damage or inoperative equipment. If found, notify a supervisor and document on a CPD 175. When the safety of the vehicle is an issue, the Supervisor shall evaluate the vehicle and assign a replacement vehicle as appropriate.

#### 14.10.3 Failure to Report Damage

Any damage discovered during or after the Member's tour of duty which is not on a CPD 175 will be presumed to have occurred on the Member's tour of duty.

#### 14.10.4 Service in the Field

In the event a Department vehicle needs service as a result of a flat tire, mechanical failure, or crash, the vehicle operator will notify METRO Communications which will call for service through proper channels.

#### 14.10.5 Personal Use Forbidden

No Member of the Department will use a City owned vehicle for purely personal purposes. When Members have been granted the privilege of taking City vehicles home, as authorized by the Chief of Police; they shall not use such vehicles for other than police purposes, without authorization from the Chief of Police.

#### 14.10.6 Removal of Keys

Except when leaving vehicles at the City Garage, ignition keys will be removed from Department vehicles and vehicles will be locked when Members leave the immediate vicinity of the vehicle.

14.10.7 Electronic communication while operating a city vehicle (Added September 27, 2009) No sworn officer or civilian employee of the Charleston Police Department will use any city or personally owned device (cell phone, or any other electronic device) for the purpose of messaging, texting, emailing or browsing the internet while operating a city owned vehicle. This will be permitted only if the vehicle is parked safely out of the roadway of any government maintained street, road or highway.

#### 14.11 Vehicle Inventory / Impound

Officers may impound a motor vehicle under the following circumstances:

From a public highway when the motor vehicle poses a threat to the public health or safety; A vehicle that has been left unattended on a public street, road or highway, or other public property for at least five days unless it appears to the officer that the individual who left the vehicle unattended intends to return and remove the motor vehicle, (e.g. note on windshield);

- A vehicle that has been stolen or used in the commission of a crime (as evidence).
- If a vehicle is impoundable pursuant to a statute or ordinance.
- If the driver of a motor vehicle has been arrested, the vehicle may be impounded when:
  - There is no one present who is authorized and capable of removing the vehicle;
  - The driver has made no specific request about the disposition of the vehicle;
  - The driver of a vehicle has made a specific request for the disposition of the vehicle or has requested a specific towing service and the law enforcement officer has made a reasonable, but unsuccessful effort to comply with this request; or
- The driver of a vehicle has been removed from the scene and is either physically or mentally unable to make a request for the disposition of his/her vehicle. An officer may impound a vehicle for the protection of the vehicle and its contents under the provisions above.

- If the driver of a vehicle is arrested on private property, and the driver either owns, has control of, or permission from the owner of the property to be there, the vehicle should not be impounded except upon the request of the driver.
- When inventorying a vehicle before impoundment, the officer and Department are protecting three distinct needs. These needs are:
  - \* Protection of the owner's property while it remains in Department custody; \* The protection of the Department/Public from potential danger; and
  - \* The protection of the Department against false claims of stolen or lost property.
- If the officer is questioned concerning reasons for inventorying a vehicle which is being lawfully impounded, the officer should state that the vehicle is being inventoried for the above three reasons. The justification for an inventory of an impounded vehicle is based on the validity of the impoundment, not the arrest of the driver. If the impoundment was improper, any items seized during an inventory will not be admissible as evidence in court.

#### 14.11.1 Inventory Procedures (Policy updated October 14, 2002)

- When the driver/owner of a vehicle is arrested, and if the vehicle is subject to a lawful impound, the arresting officer will make an inventory of the vehicle for valuables. On the Tow-In/Vehicle Inventory Form (CPD 132), the officer shall list all personal property and vehicle accessories such as radios, tape / CD players and telephones. Further, the TowIn/Vehicle Inventory Form shall contain a description of the vehicle's condition.
- Upon completion, the Tow-In/Vehicle Inventory Form will be signed by the impounding officer.
- The original copy of the Tow-In/Vehicle Inventory Form and impound slip will be turned in to the Records Division upon completion. The duplicate copy will be given to the wrecker driver. Officers may request the wrecker driver to sign the Tow-In/Vehicle Inventory Form to verify the condition of the vehicle at the time of impound.  
In all cases where a vehicle is impounded, there will be a Tow-In/Vehicle Inventory Form completed except when a traffic crash report is made.

#### 14.11.2 Release of Vehicle

Once a vehicle is impounded, it will be necessary for the owner or authorized operator to secure a release slip at Records. It is the responsibility of the towing officer to identify the reason for any HOLD and the requirements which must be satisfied to release the HOLD. No releases will be made at the wrecker yard without first processing the release slip through Records Division.

#### 14.12 Requirements of Towing Companies to be Placed in Call Rotation (Added May 14, 2003)

Towing companies requesting to be placed in towing call rotation for the Charleston Police

Department must meet the following minimum requirements;

- Operation must be based within the city limits of Charleston,

- Company must be properly licensed through the City of Charleston, State of West Virginia, Public Service Commission, and any other agency regulating their use and operation,
  - Company must be current with Business and Occupation taxes,
  - Operation must be 24 hours a day, 7 days a week with a staffed impound lot located within the City of Charleston and adequate towing equipment stationed or based at that location,
  - Company will provide a storage lot in compliance with city ordinances and regulations pertaining to towing and vehicle storage lots,
  - Company shall maintain at the same location an inside storage facility for the safekeeping and storage of a minimum of five motor vehicles, which facility shall be covered and enclosed, and constructed in such a fashion as will prevent unauthorized entry. This area will be used for the purpose of storing impounded vehicles of evidentiary value,
  - Must be able to respond to calls from the Charleston Police Department within a reasonable amount of time. Response times may be evaluated by the Chief of Police and if found to be insufficient can, in his discretion, result in the suspension or revocation of the towing company from the call rotation list,
  - If appropriate towing equipment is not available at the time of the call, Metro must be advised of such and the towing service will not be used on that occasion but placed back on top of the rotation list for the next call,
  - Repeated incidents of theft, damage or destruction of vehicles impounded by CPD while in the control of the towing company may result in the suspension or revocation from the call rotation list,
  - Employees of the towing company will comply with state laws and city ordinances relative to the safe operation of towing vehicles and debris removal at accident scenes,
  - Release vehicles impounded by CPD only if presented with a release form issued by CPD (does not include vehicles towed from accident scenes unless a hold has been placed on the vehicle by the officer),
- Must demonstrate to the satisfaction of the Chief of Police that the above requirements have been or will be met.
- A list of authorized towing companies will be provided to Metro Communications.

## 15.0 PATROL OPERATIONS

- 15.1 Vehicle Use - Routine It is the policy of this Department that police vehicle operation shall be within the law at all times unless responding to an emergency call Each Member is to take reasonable account of all facets of public safety, and balance competing risks consistent with the broad mission to “Protect and Serve.” Police vehicles shall be operated in a defensive and reasonable manner and with due regard for the rights and safety of others. Irresponsible, careless and reckless driving is prohibited and will not be tolerated. Officers shall set a proper example for other persons by their operation of a vehicle.

West Virginia Code § 17C-2-5 provides a limited exception for emergency vehicle operators to disregard certain traffic laws, but only when responding to an emergency call. Emergency vehicle operation is discussed in greater detail in another section of this manual. Members are subject to the disciplinary process for operation of police vehicles contrary to the motor vehicle code in nonemergency situations and for irresponsible, careless or reckless driving at all times.

The patrol operation exists to provide 24 hour protection to the citizens; prevent the occurrence of street crimes through preventive patrol; respond rapidly to all requests for emergency law enforcement service; improve the criminal apprehension rate by conducting thorough preliminary on-the-scene investigations; reduce traffic congestion and crash hazards through systematic enforcement of traffic laws and ordinances; respond to and investigate motor vehicle crashes; aid victims of crashes; assist citizens in dealing with legal, medical, or social problems through direct crisis intervention and/or making correct referrals to agencies equipped to deal with such problems; and improve law enforcement/community relations by increasing the quality and quantity of contacts between citizens and law enforcement.

15.2 Preventive Patrol Although the patrol officer's work is often dictated by requests for service, a considerable portion of the officer's work day is normally consumed by preventive patrol. To make productive use of the available time, officers should plan their patrol to focus on specific problems within their area of assignment.

15.3 Frequency of Patrol Officers will patrol their assigned beats as often as possible. Officers will use the time available between radio assignments to observe conditions on the beat and take appropriate police action to correct and report any hazardous condition coming to their attention. In any event, Department Members will vary the sequence and schedule of their patrol so that potential criminals cannot anticipate the officer being in a given place at a given time.

15.4 Leaving the Beat Department Members may leave an assigned beat whenever any of the following conditions are met:

- When authorized by competent authority.
- To aid and assist another Member.
- When pursuing a suspect or performing an approved follow-up investigation.
- When ending a tour of duty.

15.5 Commitment of Resources As a public service Agency, the Department is mandated to protect the interests and safety of all citizens. Under ideal circumstances, the Department should provide equitable service delivery; however, this may be an unattainable goal. Consequently, requests from individual citizens for special services (e.g., increased patrol, the use of radar, premises checks) should be carefully evaluated in terms of total Department commitments before any promises are made. An officer's promise of a particular service may create an actionable private duty, resulting in civil liability if the promised service is not provided. If a



service is promised, the officer making the assurance shall take steps to ensure the service request is provided. When making an assurance that a service will be provided, the officer must also inform the citizen that other demands may make compliance difficult. Department policy dictates that officers may tell citizen that the Department will try to provide a service, but may not suggest or guarantee a specific result. For instance, if a citizen requests a house check while on vacation, the citizen should be told that the Department will try to check the house as circumstances permit, but not tell the citizen that the Department will take care of his house while he is gone.

15.6 District Commander's Responsibilities District Commander's responsibilities encompass and reinforce the subordinates' duties with additional supervision, direction and control and other tasks specified elsewhere in the manual or assigned by competent authority. District Commanders will meet with beat officers as often as necessary and practical to ensure that police services and the beat officers' tasks, are properly and efficiently performed.

At shift's end, each Commander will ensure that all reports, evidence, property and equipment are appropriately processed by those Members assigned. Reports will be checked for completeness and accuracy. If probable cause exists for an arrest and an arrest was not made or a warrant signed it must be explained why in the report. All arrest reports must be checked for completeness and accuracy. Special attention will be given that probable cause existed for the arrest and it was a legal arrest.

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## **17.0 ENFORCEMENT OF TRAFFIC LAWS**

Reducing traffic crashes and providing for the safe and expeditious flow of vehicular and pedestrian movement is the primary purpose of traffic law enforcement. The objective of the Department's traffic law enforcement effort is to reduce traffic crashes and injuries and to facilitate the safe and expeditious flow of vehicular and pedestrian traffic through the public's voluntary compliance with traffic regulations. The Department seeks to achieve this objective through a combination of education, enforcement and cooperation with the City's traffic engineers.

Traffic law enforcement must be continuous and consistent to be effective. Traffic law enforcement is subject to the same Constitutional limitations which apply to criminal law enforcement. Equal protection demands that decisions to stop motorists and enforcement decisions after a stop has been made do not depend, in any way, upon the race, sex, age or any other improper consideration. Traffic law enforcement decisions which are based upon race, gender or any other illegal consideration expose Members to civil and criminal liability as well as Departmental discipline, up to and including termination of employment. Enforcement drives that are not sustained have limited value. Consistent and continuous traffic law enforcement is an effective means of improving public safety, and officers shall strive for such effectiveness.

**17.1 Enforcement Action** The Department will take enforcement action upon the detection of an illegal and potentially hazardous act without regard for such factors as race, sex, age, national origin, ethnicity, sexual orientation, disability, attitude, intent, or frivolous excuse. Enforcement action may consist of a warning, citation, and application for complaint or physical arrest. Any tendency by motorists to knowingly violate traffic law is deterred by open and visible patrol. Normal enforcement will be conducted in such a manner.

**17.2 Violator Contact** Traffic violation enforcement is one of the many routine tasks performed by officers, but for violators it is frequently an emotional and traumatic experience. In many cases this is the only contact that a person has with our Department. Officers should be aware of these conditions and should strive to make each contact educational and to leave the violator with the impression that the officer has performed a necessary task in a professional and friendly manner.

**17.3 Traffic Safety Programs** The Department seeks to educate the public regarding traffic safety through educational programs aimed at exposing specific problems. Officers, in turn, will familiarize themselves with the causes of crashes and congestion in order to better inform the public and direct their own efforts towards eliminating such causes.

**17.4 Selective Enforcement** The Department conducts statistical and visual surveys to determine by location, time and day of the week which violations are occurring. Based upon this information, the Department will deploy its personnel to those specific areas to observe violations and take enforcement action. Additionally, when the Department receives complaints

of a specific problem, it may specifically assign personnel to investigate and take necessary enforcement action.

17.5 Warnings It is each officer's responsibility to recognize a violation when it is committed and to take enforcement action. Proper enforcement does not always involve a citation; however, deliberate violations of the traffic laws do not deserve lenience. When a verbal or written warning is given, it will be in a firm, efficient and courteous manner. Written warnings will be forwarded to the Records Division.

17.6 Traffic Control Devices - Adjustment Period When new signs or signals are installed, a driver adjustment period should be allowed and citation enforcement should be deferred. The length of the adjustment period is arbitrary and will be determined by what is reasonable for the type of installation, the location and the volume of traffic. During the adjustment period enforcement should be in the nature of assistance and orientation.

17.7 Apprehension of Speeders Excessive speed is a major cause of crashes. The speed vehicles are traveling at the time of impact is the principle factor that determines the severity of a crash. It follows that the proper enforcement of the speed laws can make a major contribution to the reduction of the number and severity of crashes. Therefore, officers will strive to enforce vehicle speed laws as often as possible.

17.7.1 Radar/Laser The use of radar and laser speed detection units devices by Members to measure and indicate or record the speed of moving vehicles is limited to those Members who have satisfactorily completed the training requirements promulgated by the Chief of Police and/or the State of West Virginia.

17.7.2 Radar Installation Any Member utilizing radar to measure and indicate or record the speed of motor vehicles shall, prior to installing the radar unit in his patrol vehicle, determine that all cords and control devices are properly and securely attached to the counting unit and antenna. Members will examine the external surface of the unit in order to determine if the radar unit has sustained any physical damage to its external surface. Any damage so noted shall be reported to the examining Member's immediate supervisor.

The radar unit shall be securely installed in the patrol vehicle in such a manner as not to interfere with the driver's vision or operation of the vehicle. The radar antenna will be mounted to the vehicle's windshield/window, dash board, or rear window-ledge or in accordance with the manufacturer's specifications. When not in actual use, the antenna shall be removed from direct sunlight. When hand held speed detection devices are being used by motorcycle officers the units will be kept in the saddle bags of the motorcycle when not in use. Mounts will be used in the manner instructed by the manufacturer.

When not installed in patrol vehicles, radar units owned or otherwise maintained by the Department shall be properly stored in transportation cases provided by the manufacturer. When not in actual use, the units shall be maintained in the off position.

17.7.3 Radar Calibration and Testing Tests performed upon radar units owned or otherwise maintained by the Department shall be performed in accordance with the manufacturer's operational manual. Tests can be performed by the officer to determine if the unit is operating properly. The unit must be sent to the manufacturer to be "calibrated".

Internal Calibration Testing

Test shall be conducted on each unit at the beginning of each shift and before securing the unit after taking enforcement action.

Incorrect Readings

In the event the automated internal calibration test results do not PRECISELY correspond to the results specified in the manufacturer's operational manual, the unit shall be removed from service.

External Calibration Testing

External calibration tests shall be conducted in the following manner:

The moving mode external calibration test shall be conducted with two (2) certified tuning forks. These forks shall be of appropriate band frequency and be certified for two (2) different speeds. The lower calibrated tuning fork shall be used first to determine low Doppler shift. The result displayed by the radar unit shall equal the speed indicated on the tuning fork utilized to determine low Doppler shift. The higher calibrated tuning fork shall be used second in conjunction with the lower calibrated tuning fork to determine high Doppler shift. The result displayed by the unit shall equal the relative motion between the two tuning forks utilized.

The stationary mode external calibration test shall be conducted with one (1) certified tuning fork. This fork shall be of appropriate band frequency and certified for one (1) speed. The result displayed by the radar unit shall equal the speed indicated on the specific tuning fork utilized.

When calibrating testing speed Detection Devices at the end of a shift and it is found that the tuning fork test is in error, another tuning fork will be used to perform the test a second time. Another unit will be used to test the tuning fork. If erroneous readings are still displayed, the unit and tuning fork will be removed from service. The officer experiencing difficulty with the testing sequence will notify the court of jurisdiction "IN WRITING" that the speed Detection Device was malfunctioning and list the tickets involved, by name and ticket number. A copy of the letter and the unit in question will be turned over to his or her immediate supervisor who will see that the unit is sent for repairs.

External Calibration Variance

In the event that the target speed or patrol speed indicated by the external calibration test varies from the specified reading, the unit shall be removed from service.

### External Calibration Record

An external calibration test shall be conducted on each unit intended for use prior to and at the end of each shift, and for Members not assigned to the Traffic Enforcement Unit; the results will be logged on a CPD-198 Daily Radar Log Sheet. This form will be retained for a period of one (1) year in the Traffic Division.

17.7.4 Laser Calibration and Testing Laser devices will be tested according to the manufacturer's manual. The distance calibration will be conducted before and after each day's use utilizing a known, measured distance. The aiming/target calibration will likewise be conducted according to the manufacturer's specifications utilizing a round target for testing purposes, before and after each day's use. Any unit that does not meet calibration specifications will be taken out of service until proper calibration is achieved.

17.7.5 Certification of Accuracy The speed Detection Devices used by the Charleston Police Department will be tested for measurement accuracy bi-annually. This testing will be done by the manufacture or a licensed technician. The records certifying accuracy verification of each device will be maintained in the Property and Evidence Division. These records will be available to verify the accuracy of each device when necessary.

17.7.6 Tracking History In order to determine the speed of a motor vehicle by use of Doppler Radar the operator shall establish a "tracking history" of the motor vehicle in question. Said "tracking history" shall consist of the following:

- Visual observation of the motor vehicle in question
- Visual estimation of the speed of the motor vehicle in question
- Audio tracking of the motor vehicle in question
- Target speed display
- Patrol speed verification (if in moving mode)

17.7.7 Traffic Citations The purpose of enforcing traffic laws is to affect the violator in such a manner that the violation will not occur again, and thereby produce a reduction in traffic crashes. Department Members will enforce vehicle laws in an impartial manner. Motorists will receive similar treatment regardless of where the violation occurs. Warning citations or a verbal warning may be used if appropriate. The following procedures will be adhered to by Members engaged in the enforcement of vehicle laws. The information needed to complete a citation is generally obvious.

However, the following need to be emphasized to prevent their being neglected.

- If a citation is issued for a vehicle defect the officer will explain that the violator has to make the repairs or adjustments immediately, have the repairs verified by the court and ascertain if a fine is associated with the violation.
- The violation number or State Code Section must be indicated on the citation along with the actual charge.
- Never attempt to tell a violator what the bail or fine is for any violation.



17.7.8 Notes on Citations The Member issuing a citation may use the back of the officer's copy for making notes about a violation. The notes should include:

- Road conditions: loose material, road work, width, surface conditions.
- The number, sex, and position of passengers in the vehicle.
- The address or location where the violator was stopped.
- Details of the violation itself.
- Pertinent remarks of the driver.
- Characteristics of the driver which may help you in identifying him in court.  Your own location when the violation was observed.
- Directions of travel of the officer's vehicle.
- Officers will record the facts present which prompted the issuance of the citation and use such records if court appearance becomes necessary.

17.7.9 Refusal of Violator to Accept Citation (Amended July 8, 2008) When a traffic violator refuses to accept a citation, the officer should make it as clear as possible that in accepting the driver is not admitting guilt but only promising to appear in court and that if they do not accept the citation they will be arrested. If the violator continues to refuse to accept the citation, the officer should call a supervisor. The violator's refusal to accept the citation may be an emotional reaction or a personality clash with the officer, and a supervisor may be able to persuade the violator to accept the citation. If, after talking to the supervisor or a supervisor is not available, the violator still refuses to accept the citation, the violator should be arrested for the violation and the arresting officer should follow the procedure outlined below.

- Prepare an "Arrest Report" which will include the details of arrest and a description of the violation or violations committed by the defendant.
- Note in the "Arrest Report" that copies of the unaccepted citation are to be forwarded to the appropriate court.

17.7.10 Turning in Citations (Amended May 13, 2007) Officers will turn in all issued citations, including warning citations, to the Secretary in the Warrants Division for entry into the Police Department's records management system within a reasonable time (not to exceed five calendar days) after issuance of a citation. Once issued to an alleged violator, no citation may be "voided" or otherwise disposed of, except as provided in section 17.7.11 herein. Upon entry, all citations, other than warning citations, shall be deposited with the court having jurisdiction over the alleged offense; warning citations shall be forwarded to Property and Evidence Division and retained per the applicable records retention policy.

17.7.11 Dismissal of Citations (Amended May 13, 2007) Department Members may request that citations be dismissed by the Court having jurisdiction over the citation whenever one or more of the following circumstances exist:

- The facts which prompted the issuance of a citation are later found to be incorrect;  The information on the citation is later found to be erroneous; or
- Justice would be better served by dismissal.

When dismissal is indicated, the following procedure will be adhered to:

- The issuing officer, or his/her authorized designee, shall request in writing and by motion on the appropriate court form that the Court having jurisdiction over the citation dismiss the citation for one or more of the above reasons.
- If applicable, the written request/motion will be provided the assigned prosecutor for signature prior to being filed with the Court having Jurisdiction over the citation.
- No member of the Charleston Police Department may dismiss a citation without the approval of the issuing officer and order of the Court having jurisdiction over the citation.

17.7.12 Concurrent Violations of Different Codes Citable violations from different statute codes will be listed on the same citation form whenever possible. Magistrate Court limits this to two charges per citation.

17.8 Enforcement of Parking Regulations Street parking is restricted in various areas of the City to ensure fair access to parking and to expedite the flow of vehicular traffic. Parking regulations will be enforced impartially throughout the City.

17.8.1 Blocking Driveways Vehicles parked in front of driveways will not be cited or towed unless a complaint is made by the property owner or property user. Exceptions to this require a supervisor's approval.

#### 17.9 Parking Ticket Warrants

- All parking ticket warrants will be entered in the computerized warrant files. Inquires of these warrants will be handled in the same manner as criminal warrants. If a warrant is found to be active in the computer files, Records personnel will advise the inquiring unit of this and will verify the validity of the warrant prior to an officer making an arrest.
- During the hours of 0800-1600, Monday thru Friday, Records personnel will contact the Warrants Division and ascertain that the warrant is still active. If the warrant is valid, personnel from the Warrants Division will so advise Records personnel of this and take the warrant to the Patrol Division Office for service of this warrant.
- The arresting officer will follow standard arrest procedures in transporting the arrestee to the Patrol Division Office. Upon arrival at the Patrol Division Office, Warrants Division personnel, if available, will assume custody of the arrestee for the duration of the booking process. If not available, the arresting officer will follow the standard procedures as in booking the prisoner. The arresting officer will ascertain if the arrestee is capable of posting the required bond at the completion of the booking process. If the arrestee can post bond, the arresting officer will take the warrant and the arrestee to Municipal Court for the purpose of posting such required bond. The warrant will be turned into Municipal Court at this time. After the bond has been posted the arresting officer will be relieved of custody of the arrestee. If the arrestee is unable to post the required bond, the warrant must be turned into the Municipal Court Clerk at the time the Commitment Order is obtained.
- When the Court is closed and/or if a warrant is found to be active in the computerized files but cannot be validated due to Municipal Court or Warrants Division personnel

being unable to locate the warrant, the individual being detained will be immediately released. Records personnel will then report this finding in writing to Warrants Division personnel for the purpose of updating or clearing the computerized files.

#### 18.0 **CRASH INVESTIGATION** (Amended October 2, 2006)

The following procedures will be adhered to in the course of the investigation of traffic crashes. Additional standards apply to the investigation of crashes involving Departmental vehicles and on duty personnel and are found in a separate policy.

##### 18.1 Immediate Steps

- Upon arrival at the scene of a crash a Member shall take all necessary actions to prevent the crash from becoming worse which includes determining the need for additional assistance, caring for injured persons, and protecting property.
- Determine classification of the crash.
  - \* Fatality
  - \* Incapacitating injury
  - \* Non-incapacitating injury
  - \* Non-Injury
  - \* Hit and Run
- Follow appropriate procedures for each classification of crash.
- If the Fire Department is called to assist and remains on the crash scene, the Fire Department will have command at the scene. When the Fire Department departs, the investigating Member of this Department at the scene shall be in charge.

18.2 Field Investigation The following steps should be taken in the course of a crash investigation to assure proper documentation and handling:

- Locate and identify all drivers involved in the crash.
- The first Member on the scene will, if possible, obtain driver licenses and registrations from the drivers involved.
- Locate all witnesses, if possible. Prior to the dispatched units arrival at the crash, the first Member at the scene will be responsible for having witnesses identified and obtaining witnesses' addresses and telephone numbers for the report.
- Observe driver's physical condition. If a driver appears to be under the influence of intoxicating liquor or drugs, the appropriate procedure shall be followed.
- Note all physical conditions at the crash scene. If the District Sergeant determines that accurate measurements are necessary for a scale drawing, he/she will notify the Crash Investigation Unit.
- Obtain all physical and photographic (including video) evidence necessary to clarify the chain of events which produced the crash.
- Complete all appropriate sections of the West Virginia Uniform Traffic Crash Report.
- Give each driver, occupant and witness the opportunity to complete a witness statement.
- Check the scene and area for hazards and defects in the road, lighting, signs, signals, and other such things which may affect traffic flow or driving conditions.

- The investigating Member has the responsibility to see that debris from the crash is cleared from the roadway.
- Most crashes are avoidable. Members are responsible for determining the cause of each crash whenever possible.
- Officers will use their discretion when issuing citations except under the following circumstances:
  - \* Insurance violations
  - \* Registration violations
  - \* Drivers/Operators violation (i.e. driving on revoked, suspended, etc.)
- If the driver and passengers of any vehicle involved were transported from the scene because of injuries, the investigating officer will follow up, obtaining all the information necessary to complete the investigation and report. Where injuries are minor and all of the needed information has been obtained at the scene, it is not normally necessary for the officer to conduct a follow-up investigation.
- If City property has been damaged in the crash, a supervisor will be immediately notified of the type and location of City property damaged so that prompt and proper notifications are made. In such cases, the investigating Member shall obtain liability insurance information from the responsible driver(s) including the name of the insurance company, policy number, and local agent, if known.
- The investigating Member shall notify METRO Communications personnel of any hazardous condition existing which requires immediate attention or repair.
- Vehicles involved in the crash should be checked for readily observable defects, mechanical or otherwise, which may have contributed to the crash. If a defect is found that would make the vehicle unsafe to drive, it will be towed from the scene.
- Investigating Members will fill out or have the involved drivers fill out and exchange the Department's Drivers Exchange of Information Sheet Form (CPD-146).
- In crashes involving unattended vehicles or property, it is the investigating Member's responsibility to properly notify the owner of the vehicle or property in person or in writing. Such notification shall include the date, time and location of the crash.

#### 18.2.1 Digital Photography (Crash Investigation)

Listed below is the procedure to be used when photographing vehicles, objects, persons or locations at the scene of motor vehicle crashes:

- Each District Commander and each officer assigned to the Traffic Division will have a digital camera assigned and on board their assigned vehicle at all times. Each officer shall ensure that the camera is in the vehicle and in good working order. Any defects with the camera will be described on a CPD 102 and sent to Property and Evidence Division.
- Each officer will ensure that the battery charger is in good working order and that batteries for the digital cameras are fully charged at all times.
- Photographs of motor vehicle crashes will require a CPD incident number.
- The first photograph of a crash scene should be of a completely filled out CPD 237 (envelope). The CPD 237 will hold the memory card when it is submitted as evidence. If

the situation does not allow for the CPD 237 to be photographed right away, it must be photographed as soon as possible.

- The second photograph to be taken at a crash scene should be a general view photograph that should incorporate the location and the vehicle(s) involved. This photograph(s) should include any skid marks, yaw marks, debris, fluid leakage and any other pertinent evidence.
- Photographs of each vehicle, property and person(s) involved should be taken with medium and close up views as described in section 20.2.5 of this manual.
- Close up views shall be utilized on specific damage to vehicles and any property damaged as a result of a motor vehicle crash.
- Photographs involving motor vehicle crashes **do not** require a photo log as described in section 20.2.5.1 of this manual.
- Fatality crashes will be photographed by the Crash Investigation Section of the Traffic Division.
- Once the officer has completed photographing, the card from the camera is to be removed and sealed in the CPD 237 (envelope). Officers completing the CPD 237 will note “**CRASH**” in the section labeled Incident Type.
- The envelope containing the photo card will be placed in the photo evidence box in the booking office and will be picked up by Crash Investigation personnel.
- A member of the Crash Investigation section will download the photographs from each card into the computer assigned to that section. That member shall create a CD of the pictures on the card. The officer who creates the CD shall write in ink on the CD label and the CD case the crash investigation incident number corresponding with the photographs on the disc.
- Officers assigned to the Traffic Division will not be required to complete a CPD 237. Traffic officers will report directly to the Traffic Division upon completion of a crash investigation to download photographs from their assigned digital cameras.
- The CD will be stored within the Crash Investigation section.
- Once the Crash Investigator has downloaded the memory card, the card shall be immediately formatted and placed in the envelope in which it arrived. The envelope and enclosed card will be returned as soon as possible to the Patrol Division shift from which it came.

#### 18.2.1.1 Request for Copies of Motor Vehicle Crash Photographs

Requests for photos or media containing images of vehicle accidents will be considered only from to the following persons:

- A driver of a vehicle whose name is listed on the accident report as being physically involved in the accident.
- A passenger whose name is listed on the accident report as being physically involved in the accident.
- A pedestrian whose name is listed on the accident report as being physically involved in the accident.

- The owner of a vehicle listed on the accident report as being physically involved in an accident. (Must present proof of ownership)
- Representatives of insurance companies whose policyholders have been physically involved in an accident. (Must present written permission by the policyholder)
- An Attorney representing those individuals listed above. (Must present written request evidencing representation of client)
- All other requests must be directed to the City's legal division including photos of, or media containing, images of juveniles that have been involved in accidents.

When photographs have been requested by a person or owner of a vehicle involved in a motor vehicle crash, their insurer, or their legal representative, the following procedure shall be followed:

- The person, their insurer, or their legal representative shall contact the Crash Investigation section and request a copy of the media. If the requesting person is an insurer or legal representative, written permission or evidence of representation shall be provided as required by this policy.
- A member of the Crash Investigation Section shall make a copy of the media and notify the person making the request of the date upon which the copy shall be ready.
- The Crash Investigation member shall forward the copy to the Records Division for pick up by the requesting person.
- The copy of the media shall contain the following information for Records personnel:
  - \* Name and phone number of person making request
  - \* Incident number
  - \* Crash Investigation number
  - \* Date of crash

The fee for the copy shall be \$10.00 which shall be paid at the Records Division

18.3 Fatal and Serious Injury Crashes The following procedures shall be adhered to in the investigation and processing of all fatal and serious injury crashes.

- In all fatal crashes or crashes where there are life threatening injuries, the investigating Member shall cause the Crash Investigation Unit to be notified.
- In all fatal and serious crashes, the Crash Investigation Unit shall proceed to the scene and shall be in complete charge of the investigation regardless of the rank of other Members present from other bureaus or divisions.
- Special care should be taken in preserving all physical evidence at the scene until it can be collected, measured, photographed, and statements taken.
- The first unit to arrive at the scene shall be responsible for preserving the scene until released by the Crash Investigation Unit (if dispatched). In addition, the first arriving unit shall notify METRO Communications if additional police, fire or medic assistance is needed.
- The body of a deceased at the scene of the crash shall not be moved or searched until a representative of the Crash Investigation Unit has arrived or determined the disposition of the body. When the body is released by the Crash Investigation Unit, it shall be placed on a sheet by EMS personnel. The sheet will remain with the body until it is released by the

Medical Examiner. The sheet will be of great importance when the crash is of a hit and run nature and, in all cases, should be treated with care in the preservation of evidence and shall remain with the body until released by the Medical Examiner.

- All uninjured drivers and passengers in the involved vehicles and any witnesses to the crash should be transported to police headquarters for interviews when possible.
- At the discretion of the investigating Member(s), the CID may be used to assist in the investigation of the crash whenever criminal activity surrounding the crash is suspected.
- The Crash Investigation Unit will determine which vehicles will be towed, and where they will be towed.
- All vehicles towed will be held as evidence until released by the Crash Investigation Unit.

18.4 Hit and Run Investigation If encountering a hit and run crash, the following procedures will be followed:

- At the scene:
  - \* Obtain and broadcast a description of the striking vehicle, its driver, and occupants as soon as possible.
  - \* Concentrate on witnesses who can identify the driver and vehicle.
  - \* Thoroughly check the scene for any physical evidence. Make note in the report of all evidence found and turned into the Property Section.
  - \* Conduct a neighborhood check for additional witnesses and information.
- When interviewing witnesses:
  - \* Location: Where were the witnesses in relation to the point of impact? Could the witness have seen what took place?
  - \* Observation: What and where was the first thing connected with the crash observed? Was there any conversation overheard or exchanged with the witness?

18.5 Vehicle Crash Reports Officers will complete a West Virginia Uniform Traffic Crash Report on every crash occurring on public highways, roads, streets and alleys within the city limits of Charleston. **A report will be completed regardless of property damage. This includes accidents where there is no apparent damage.** The only exception to not completing a crash report is if all involved parties agree not to have one prepared.

In order to assure uniformity in such documentation the following procedures will be adhered to:

- All such vehicle crashes will be recorded on the West Virginia Uniform Traffic Crash Report.
  - Diagrams will be drawn of the crash scene, even if the involved vehicles have been moved.
- If three or more vehicles are involved in the crash, additional West Virginia Uniform Traffic Crash Report Forms are to be used.
- The entire report, with supplementation shall be handwritten in blue ink unless the report is generated by computer.
- The vehicle which has been found to be the proximate cause of the crash will be listed as Vehicle #1.

- The investigating officer shall include all pertinent facts of the investigation in the narrative section of the report.
- Statements from the drivers and passengers of the vehicles will be taken. Statements from witnesses to the crash will be taken. The name, address and telephone number of drivers, passengers and witnesses will be included.

18.5.1 Private Property Crash Reports Private property crashes will be recorded on the West Virginia Uniform Traffic Crash Report when the following conditions are present:

- Fatality or serious injury
- Any crash involving an impaired driver
- Any crash involving excessive property damage or exigent circumstances

**A CPD exchange of information form (CPD 146) will be completed for all other private property accidents. Officers will ensure that all drivers involved in an accident will receive a completed CPD 146.**

18.6 Traffic Crashes Involving Department Members The nature of emergency services exposes public safety personnel to various hazards. One hazard which can be controlled is vehicle crashes. In an effort to minimize the frequency and severity of vehicle crashes involving Department personnel, the cause and circumstances surrounding all crashes must be determined. Therefore, the Department maintains procedures which ensure a thorough and proper investigation of all crashes involving Department vehicles or on duty Department personnel.

18.6.1 Fatal or Serious Injury Crashes Involving Department Members In crashes resulting in fatality or serious injury, the investigating member shall immediately notify the Professional Standards Division. Upon notification, the Professional Standards Division member responding to the call shall follow all appropriate procedures with regard to any investigation into the crash and the surrounding circumstances. In addition, the PSD member shall, as soon as is practicable, notify the City Attorney or Assistant City Attorney so that the City Attorney's Office can take appropriate measures to protect the City's, CPD's, and the involved member's interests.

18.6.2 Driver's Responsibilities for Crashes Inside The City The responsibilities of Department Members, both sworn and non-sworn, involved in any crash while driving a City vehicle, or involved in an on duty crash while driving any other vehicle, whether on a roadway, private property, or City property, include but are not limited to the following:

- To report all crashes, however minor, including but not limited to collisions with another vehicle, object, person or animal. This includes all single vehicle crashes with any damage, however minor, such as, but not limited to, striking fixed objects and running off the roadway.
- To notify METRO Communications without delay so that a line car can be dispatched to investigate the crash.
- To notify the District Commander of the district of occurrence without delay. If the District Commander is not available, the driver will notify the Shift Commander, or the Commander of an adjoining district.



- To make no oral or written statement concerning the cause of the crash at the scene except to the investigating officer, the crash investigator(s), the investigating commander, and the driver's supervisor.
- To complete a West Virginia Uniform Traffic Crash Report (when the conditions of Section 18.5 of the Policy & Procedures Manual are met), and a CPD-131 (Departmental Crash Report) and a CPD-102 detailing the occurrence, including his/her actions preceding the crash, the crash, and any actions taken after the crash and to submit those reports to the supervisor assigned to the incident as soon as practicable.
- When the conditions of Section 18.5 **are not met**, a CPD-131 (Departmental Crash Report) and a CPD-102 detailing the occurrence, including his/her actions preceding the crash, the crash, and any actions taken after the crash shall be completed and those reports shall be submitted to the supervisor assigned to the incident as soon as practicable.
- Not to investigate their own crashes, but to cooperate with the investigating officer.
- Note: If the driver is incapacitated as a result of the crash, the first Member to discover or become aware of the crash will notify METRO Communications and an appropriate Commander without delay.

#### 18.6.3 Responsibilities of District or Shift Commander for Crashes Inside The City The

responsibilities of the commander assigned to a crash, whether on a roadway, private property, or City property, include but are not limited to the following:

- In the event that a line car has not been dispatched by METRO Communications to investigate the crash, to assign a field officer to investigate and report the crash.
- To respond to the crash scene to assess the situation and to conduct his/her investigation.
- To determine whether anyone was injured and the severity of the crash.
- To notify a Crash Investigator without delay about any crash, no matter how minor. After being briefed by the Commander, the Crash Investigator will decide whether or not to respond to the scene, and will inform the Commander of his/her decision.
- Notify the Risk Management Officer and the on duty or on call PSD investigator without delay who will decide whether or not to respond to the scene.
- If anyone was injured in the crash, to notify the driver's Bureau Chief and the Community Policing Bureau Chief without delay. If the assigned Commander is unable to contact the driver's Bureau Chief, he/she will advise the Community Policing Bureau Chief of that fact. If the assigned Commander is unable to contact the Community Policing Bureau Chief, he/she will notify the Property and Evidence Commander.
- In the event that any Department personnel are injured in the crash, make sure a supervisor responds to the hospital to check on the injured Member, take care of any hospital administrative requirements, make any necessary family notifications and complete a Foreman's Report of Injury for each injured Member.
- In the event a Crash Investigator does not respond to the scene, to ensure that the crash scene, the vehicles involved, and any other damaged property is photographed.

- To complete a CPD-102 detailing his/her investigation and his/her conclusions as to the cause and whether or not it was preventable. A crash should be deemed preventable if the driver and/or other Department personnel involved failed to exercise reasonable caution to prevent the crash from occurring or failed to observe applicable Departmental policies, procedures, or training, including the misuse of, or failure to use, appropriate crash avoidance tactics.
- In the event the driver is incapacitated, to complete the CPD-131.
- To ensure that the West Virginia Uniform Traffic Crash Report and any attachments prepared by the investigating officer, the CPD-131 (Departmental Crash Report), the driver's CPD-102, and his/her CPD-102, are delivered to the Records Division for copying and distribution as soon as possible.
- To ensure that any photographs he/she has taken are submitted as photographic evidence to Crash Investigation (Traffic Division).

#### 18.6.4 Investigating Officer's Responsibilities For Crashes Inside The City The responsibilities of

Members assigned to investigate crashes involving Department personnel include but are not limited to:

- To conduct the investigation in the same manner as for any other motor vehicle crash.
- To indicate on the report whether the vehicle was being operated as an emergency vehicle, as defined by state law, and whether or not lights and/or siren were being used.
- To submit the West Virginia Uniform Traffic Crash Report and any other documents to the Commander assigned to the incident as soon as practicable. The preliminary investigation and reports must be completed before going off duty.

#### 18.6.5 Driver's Responsibilities for Crashes Outside The City In the event of a crash outside the city limits, the responsibilities of the driver include but are not limited to the following:

- To report the crash to the agency having jurisdiction.
- To notify his/her supervisor. If his/her supervisor is not available, to notify the on duty Shift Commander.
- To complete a CPD-131 (Departmental Crash Report) and a CPD-102.
- To submit the CPD-131 and CPD-102 to the Commander assigned to the incident as soon as practicable.
- To make arrangements for the investigating officer to forward a copy of the West Virginia Uniform Traffic Crash Report to his/her supervisor.

#### 18.6.6 Responsibilities of Driver's Supervisor for Crashes Outside The City In the event of a motor vehicle crash involving Department vehicles and/or on duty Department personnel outside the city limits, whether on a roadway, private or public property, the responsibilities of the driver's supervisor (or the on duty shift commander if the driver's supervisor is not available) include but are not limited to the following:

- Notify the Risk Management Officer and the on duty or on call PSD investigator without delay who will decide whether or not to respond to the scene.

- Decide whether or not to respond to the scene after being briefed by the driver. The supervisor should respond to the scene whenever practicable.
- If anyone was injured in the crash, to notify his/her Bureau Chief and the Community Policing Bureau Chief without delay. If he/she is unable to contact his/her Bureau Chief, he/she will advise the Community Policing Bureau Chief of that fact. If he/she is unable to contact the Community Policing Bureau Chief, he/she will notify the Property and Evidence Commander.
- If a Crash Investigator does not respond to the scene, to determine whether photographs of the crash scene, the vehicles involved, and any other damaged property can be taken.
- To complete a CPD-102 detailing his/her investigation and his/her conclusions as to the cause and whether or not it was preventable.
- If driver is incapacitated, to complete the CPD-131.
- If any Department personnel are injured in the crash, to complete a Foreman's Report of Injury for each injured Member.
- To ensure that the West Virginia Uniform Traffic Crash Report and any attachments prepared by the investigating officer, the CPD-131 (Departmental Crash Report), the driver's CPD102, and his/her CPD-102, are delivered to the Records Division for copying and distribution as soon as possible.
- To ensure that any photographs he/she has taken are submitted as photographic evidence to Crash Investigation (Traffic Division).

18.6.7 Other Involved Members The responsibilities of Department Members riding as passengers in Department vehicles involved in crashes include but are not limited to:

- If the driver is incapacitated, to request medical assistance and to notify the agency having jurisdiction to investigate the crash.
- If the crash was inside the city, to notify the District Commander of the district of occurrence without delay. If the District Commander is not available, to notify the Shift Commander or the Commander of an adjoining district.
- To make no oral or written statement concerning the cause of the crash at the scene except to the investigating officer, the investigating commander, the crash investigator(s), and the driver's supervisor.
- Not to investigate that crash, but to cooperate with the investigating officer.

18.6.8 Crash Investigator's Responsibilities The responsibilities of the Crash Investigator include but are not limited to the following:

- After being briefed, to decide whether to respond to the scene.
- To notify the individual on call for the City's insurance carrier as soon as possible for those crashes involving Department vehicles and/or on duty personnel which have resulted in loss of life, severe injury, or where the degree of damage to vehicles and property make such a notification appropriate.
- To conduct follow-up investigations on all crashes involving Department vehicles and/or on duty personnel.
- To send original reports generated for traffic crashes that do not involve Department vehicles or on duty Department personnel to the Records Division.

- To send the original of any reports not normally generated for crashes that do not involve Department vehicles or on duty Department personnel (reports completed only because a Member or City vehicle is involved) to the Professional Standards Division.
- Photograph and video all vehicles, damages, and the surrounding scene.
- To maintain any videotapes as evidence.
- To submit all other physical evidence to Property & Evidence.
- To provide for the security and confidentiality of crash report files and evidence. •  
  - To submit copies of his/her investigative file to the Office of the Chief of Police.

18.7 Maintenance of Crash Files The Records Division will maintain and provide security and confidentiality for the following original documents:

- West Virginia Uniform Crash Report.
- All attachments which are routinely generated for traffic crashes. Special forms and attachments which are not routinely generated and are applicable only to Departmental crashes are maintained by the Professional Standards Division.
- The Professional Standards Division will maintain and provide security and confidentiality for a copy of the West Virginia Uniform Crash Report and the following original documents:
  - \* CPD-131 (Departmental Crash Report)
  - \* The driver's CPD-102
  - \* The investigating supervisor's CPD-102
  - \* All other reports which are generated only for traffic crashes involving Department vehicles or on duty Department personnel.

18.7.1 Distribution of Reports (Amended May 1, 2006)

Completed West Virginia Uniform Traffic Crash Reports, investigating supervisor's CPD 102's, driver's CPD 102's, any other supplemental reports and CPD 131's (Departmental Crash Reports) are to be submitted to the Records Division as soon as possible. It shall be the responsibility of the Records Division Shift Supervisor to copy and distribute reports as follows;

Records

Original West Virginia Uniform Traffic Crash Report

Professional Standards

Copy of Uniform Traffic Crash Report

Original investigating supervisor's CPD 102 report Original driver's CPD 102 report

Originals of any other supplemental reports and/or diagrams Original CPD 131

(Departmental

Crash Report) Chief's Office

Two (2) copies of the Uniform Traffic Crash Report, investigating supervisor's CPD 102, driver's CPD 102, any other supplemental reports and/or diagrams and CPD 131 report,

Crash Investigation

Copies of Uniform Traffic Crash Report, investigating supervisor's CPD 102, driver's CPD

102, any other supplemental reports and/or diagrams and CPD 131 report,

Property and Evidence Commander

Copies of Uniform Traffic Crash Report, investigating supervisor's CPD 102, driver's CPD

102, any other supplemental reports and/or diagrams and CPD 131 report,

Community Policing Bureau Chief

Copies of Uniform Traffic Crash Report, investigating supervisor's CPD 102, driver's CPD 102, any other supplemental reports and/or diagrams and CPD 131 report,

Driver's Bureau Chief

Copies of Uniform Traffic Crash Report, investigating supervisor's CPD 102, driver's CPD 102, any other supplemental reports and/or diagrams and CPD 131 report,

City's Insurance Carrier

Fax a copy of the West Virginia Uniform Traffic Crash Report as soon as possible for all crashes involving Department vehicles and/or on duty personnel.

18.8 Vehicle Crash Review The Office of Chief of Police will conduct an administrative review of each Department-involved crash and attempt to identify the cause or causes of the crash. The Chief may assign the investigation of any crash to PSD or other division/unit for further investigation. Disciplinary action following a crash will be handled as any other disciplinary matter.

- A crash will be deemed preventable if the driver and/or other Department personnel involved failed to exercise reasonable caution to prevent the crash from occurring or failed to observe applicable Departmental policies, procedures, or training, including the misuse of, or failure to use, appropriate crash avoidance tactics.
- A crash should be deemed non-preventable if the driver and/or other Department personnel involved exercised reasonable caution to prevent the crash from occurring and observed applicable Departmental policies, procedures, or training, including the misuse of, or failure to use, appropriate crash avoidance tactics
- Recommendations may include, but are not limited to the following:
  - \* Refresher training for the driver.
  - \* Review or modification of Departmental driver training or tactics
  - \* Modification or reevaluation of Departmental vehicles or other equipment.
  - \* Review or modification of Departmental policy or procedures.
  - \* Evaluation of officers involved in the incident for vision defects, stress-related problems, or other conditions affecting fitness for duty.

18.9 Professional Standards Division Responsibilities As soon as is practicable after the completion of any internal administrative investigation of a crash, Professional Standards will forward a written report to the Chief of Police. The written report will include, but is not limited to the following:

- A summary of the crash investigation report.
- A list of the witnesses who were interviewed or who submitted written reports to Professional Standards and a summary of such interview or reports.

- The driver's vehicle crash history for the last 3 years.
- A recap of the driver's disciplinary history.
- Any complaints about his/her driving received in the last 3 years

18.9.1 Disposition The Chief of Police will review written reports, from the Professional Standards Division, and take action, including but not limited to:

- Referral to the Division Commander or Bureau Chief to whom the driver's immediate supervisor reports for appropriate action.
- Referral to Professional Standards for further investigation.
- Final disposition, which includes, but is not limited to, training, counseling or referral to the Conduct Review Board for disciplinary action.
- Provide for prompt notification (normally 60 days or less) to the driver of the disposition of each investigation.

## **19.0 ENFORCEMENT OF CRIMINAL LAWS**

The primary purpose of enforcing the law is to enable citizens to be free from criminal attack - to enjoy freedom of movement and conduct within the framework of the state and federal constitution as well as existing laws. Law enforcement necessarily restricts the liberty and freedom of movement of those persons who, by engaging in criminal activity, interfere with the rights of others. To arrest such a person is not a denial of the criminal's civil rights, for no one has the right to violate the law. However, it is critical not to base enforcement decisions on illegal factors such as race, sex, age, ethnicity, national orientation or sexual orientation. Enforcement decisions must be based on objectively reasonable and neutral factors such as complaints, probable cause and prior criminal history. Enforcement decisions which are based upon race, gender or any other illegal consideration expose Members to civil and criminal liability as well as Departmental discipline, up to and including termination of employment.

19.1 Risks During Enforcement Action The purpose of assigning officers to the scene of a crime is to arrest the perpetrator of the attempted or consummated crime; however, since that objective is subordinate to the protection of life, officers should not subject themselves or other innocent persons to unreasonable risks.

19.2 Discretionary Enforcement The Department must necessarily exercise discretion in the enforcement of laws. Any enforcement action should take into consideration the number of acceptable and effective ways of accomplishing the purpose of the law. Department Members will take enforcement action when the criminal act is or has the potential to endanger the lives, safety, property and well-being of the public. However, nonuniformed officers should consider utilizing other appropriate Department resources such as uniformed officers when possible. Revealing the identification of Department undercover officers and unmarked vehicles is a risk that should be considered before taking immediate enforcement action.

19.3 Selective Enforcement- Enforcement must be selective to be most effective in decreasing the number of crimes. It must be selective as to time and place (at locations and during the hours of the day, day of the week, and season of the year of greatest frequency). It must also be selective as to the relative importance of crimes. Enforcement must also be directed at those

categories of crimes that are most susceptible to prevention by patrol, such as crimes committed on the public ways or by trespass from public ways onto private property as well as narcotics and liquor law violations that may foster aggressive assaults and other crimes of violence.

19.4 On duty Non-uniformed Enforcement In the interest of officer safety, non-uniformed officers should utilize uniformed officers for back up during car stops whenever possible. This will eliminate unnecessary escalation of the enforcement action due to undercover police identity being challenged or ignored.

Indiscriminate enforcement actions by undercover officers require more frequent reassignment of officers as a result of their undercover capability being reduced.

19.5 Enforcement of Narcotics Laws Through a combination of aggressive enforcement and public education, the Department seeks to prevent and deter the use and possession of, and traffic in all such substances within the City. Department Members will enforce all local, state and federal statutes which prohibit the possession, use, or traffic in narcotics, dangerous drugs, and other restricted or prohibited substances.

19.6 Enforcement of Vice Laws The Department is charged with the enforcement of all criminal statutes including those defining vice offenses. Department Members will take enforcement action against all commercialized vice activities, against those vice activities which have been complained of, and against conspicuous vice conditions which appear on the streets and in the public places of the City.

19.7 Laws Pertaining to School Facilities When an officer receives an assignment concerning a person loitering on or about a school ground, or other disturbance, such officer will contact the school principal or other authorized school official and determine the details of the situation and what action is desired. When the officer assigned observed the violation firsthand, an arrest may be made. If the offense did not occur in the presence of the officer, appropriate reports should be filed and a criminal complaint sought. Officers should cooperate with school officials when enforcement action is anticipated on the school grounds when possible.

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**21.0 CONSTITUTIONAL AND STATUTORY LIMITATIONS ON SEARCH, SEIZURE AND ARREST**

The Fourth Amendment to the United States Constitution, made applicable to the states and their subdivisions through the Due Process Clause of the Fourteenth Amendment and Article III Section 6 of the Constitution of West Virginia provides that citizens shall not be subject to unreasonable searches and seizures and that no warrant shall issue except upon probable cause supported by oath or affirmation and particularly

describing the place to be searched or the person to be seized. The Constitutions and the laws of the United States also guarantee all citizens the equal protection of the laws and prohibit discrimination.

As a police officer, you have the responsibility, duty and authority to protect the rights of the citizenry. Not only must police officers protect citizens from their neighbors and others, police officers must not, intentionally, negligently or otherwise, on duty or off, deprive any citizen of any of his civil rights. Both the federal and state governments have provided civil and criminal remedies for the violation of Civil Rights.

This policy manual attempts to provide Members with the tools and knowledge to protect a free society from the criminal element without infringing on the rights of any citizen. The ends do not justify the means. Simply stated, the violation of any individual's rights for the sake of effective law enforcement puts the rights of all citizens at risk.

Every contact between citizen and police officer has the potential for Constitutional concern, but not every contact actually has Constitutional implications. For example, the Constitution prohibits unreasonable searches and seizures, not all searches and seizures. The Courts and Constitution prefer warrants, but there are numerous exceptions to the warrant requirement. Consensual encounters do not have Constitutional implications so long as the encounter is and remains truly voluntary.

Members are expected and required to know and scrupulously conform their conduct to the requirements of the Constitution and the laws of the land. Allegations of violation of anyone's Civil Rights will be taken very seriously and proven instances of violation of Civil Rights subject each Member to discipline up to and including termination. Decisions which are based upon race, gender or any other illegal consideration expose Members to civil and criminal liability as well as Departmental discipline, up to and including termination of employment.

#### 21.1 Field Interviews (Amended September 24, 2003)

The Department expects and encourages officers to conduct field interviews. A field interview is a lawful and consensual stop of a citizen for investigative purposes. Field interviews, being consensual and voluntary in nature, do not involve 4th Amendment concerns unless consent is withdrawn or coercion is found. Officers may document field interviews for the purposes of identifying a suspect, witness, or victim, or for crime prevention, intelligence gathering, or community relations at the discretion of the police officer. Field interviews shall be reported using the Field Interrogation Report (CPD-104) if a citizen is searched or seized unless other departmental documentation of the search or seizure is made. The Department further expects officers to gather information with proper observance of constitutional safeguards. Strict constitutional guidelines exist that protect both the civil rights of citizens and the rights of officers to obtain information crucial to the reduction and prevention of crime. Further, field

interviews may contribute to the building of a reasonable suspicion or even probable cause to arrest or conduct a search.

A field interview, therefore, requires voluntary cooperation from the citizen. In the absence of probable cause to arrest or reasonable suspicion that criminal activity is afoot, the citizen may refuse or discontinue the field interview at any time and leave. The citizen may also refuse to produce identification or otherwise identify himself. A distinction is drawn herein between a field interview (which is made to resolve an ambiguous situation) and a stop (a brief detention of a person based upon reasonable suspicion that criminal activity is afoot).

Some points to remember about field interviews are the following;

- Field interviews and field interview cards serve as a source of information. The field interview is based on the principle that the opportunity to apprehend criminals and to prevent crime increases with the number and frequency of persons interviewed. One way an officer can increase his skill as an observer is to obtain information from persons living or working within his patrol area.
- A means of identifying the suspect. An on-view arrest is not always based upon the immediate recognition of a wanted criminal. Frequently, it is the outgrowth of the action taken by a police officer who stops to question a person who has aroused his suspicions. Information obtained during a field interview may also be used at a later date to identify a criminal.
- A means of obtaining suspects or witnesses. The value of reported field inquiries becomes very pronounced when a crime is committed and there are but a few investigative leads. The investigator must then rely on the field interview reports to sift out useful information. A review of these reports will show if anyone had been questioned in the vicinity at the approximate time of the crime.

#### 21.1.2 Conduct of Field Interviews (Amended September 24, 2003)

As noted above, a person may refuse or may discontinue the interview at any time. Further restraints on the person's response may not be justified. During a routine field interview, persons shall not be detained in any manner against their will, nor shall they be required to answer questions or respond in any manner if they choose not to do so. The fine line drawn between a field interview and a stop and frisk must be strictly observed to avoid accusations of harassment. Since the distinction between a "interview" and a "stop" depends to a great extent on whether, under the circumstances, the citizen perceives that he is free to leave, officers shall comply with the following guidelines:

- All requests during the interview should be phrased with neutral or optional words, such as "may," "would you mind," etc.
- Abrupt, short responses which could be misunderstood and requests which could be misinterpreted as commands must be avoided.
- The duration of an interview should be as brief as possible.

The success or failure in obtaining information beneficial to crime analysis and criminal investigation will depend upon an officer's ability to put citizens at ease and establish a rapport. However, during a field interview, if the person should ask whether he must respond, or indicate that he feels compelled to respond, the officer shall immediately inform him (or her) of the right to refuse, as well as the right to leave. Where citizens refuse or cease to cooperate during an interview, the refusal itself cannot be used as the basis for escalating the encounter into a stop and frisk.

#### 21.2 Investigative Detention (Terry Stops) (Amended September 24, 2003)

Officers may detain citizens when they reasonably believe that some investigative inquiry is warranted. The Supreme Court stated, in *Terry v. Ohio*, that an officer "may in appropriate circumstances and in an appropriate manner approach a person for the purposes of investigating possible criminal behavior even though there is not probable cause to make an arrest" if there is "reasonable suspicion that criminal activity is afoot."

Officers must be able to articulate the circumstances that warranted the stop of the citizen. The circumstances constitute the officers' reasonable suspicion. In court, should a field stop result in an arrest, an officer must justify his intrusion by describing "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Articulable circumstances derive from:

- Firsthand observations;
- Hearsay, as from informants;
- "Collective knowledge" or information shared by several officers (example: An officer may make an arrest or conduct a search at the request of another agency without knowledge of all of the facts which prompted the request); and,
- Totality of facts and circumstances. The Department encourages officers to question persons whose behavior or conduct may indicate that criminal activity is afoot.

Investigative detentions (Terry Stops) as defined in this section must be reported using the Field Interrogation Report (CPD-104) unless other departmental documentation of the investigative detention is made.

21.2.1 Place of the interview As a general rule, field interviews may be conducted anywhere the officer has the right to be, including:

- City-owned or controlled property normally available to members of the public;
- Areas intended for public use or normally exposed to public view;
- Places to which an officer has been admitted with the consent of the person empowered to give such consent;
- Places where circumstances require an immediate law enforcement presence to protect life, wellbeing or property;
- Areas where an officer may be admitted pursuant to a lawful arrest or search warrant; and,  Any other area in which an officer may affect a warrantless arrest.

- Field contacts shall not be done to coerce a person to leave an area or place where he or she has a legitimate right to be and no violation of law has occurred.

#### 21.2.2 Conduct of Interviews (Deleted September 24, 2003)

21.3 Stop and Frisk As described above, a temporary detention of a person to investigate suspected criminal activity is controlled by the Fourth Amendment. Investigative detention involves two distinct acts:

- (1) The stop and
- (2) The frisk.

21.3.1 Stop - the detention of a subject for a brief period of time. In order to make the stop, the officer must have reasonable suspicion to believe that criminal activity is afoot and that the person to be stopped is involved. The courts have ruled that the following factors may be considered in building a reasonable suspicion.

- Officer has knowledge that person has a felony record.
- A person fits the description of a wanted notice.
- A person has exhibited furtive conduct, such as fleeing from the presence of an officer or attempting to conceal an object from the officer's view.
- Clothing worn by a person is similar to description given in a lookout for a known offense.
- The officer observes a vehicle that is similar to that of a broadcast description for a known offense.
- A person exhibits unusual behavior, such as staggering or appearing to be in need of medical attention.
- The area and time of day, such as a person observed in a public area with a history of recurring crime during the same time as that of the stop.
- Hearsay information is acceptable. In order for the information to be credible, the officer must have some means to gauge the reliability of the informant's knowledge.

Race, gender, religion, sexual orientation or age do not provide any basis for suspicion, let alone reasonable suspicion unless one or more of those factor(s) is part of a witness description.

21.3.2 Frisk Should the officer reasonably believe that the person stopped intends to do him bodily harm or is carrying a concealed weapon, the officer may conduct a limited search of the person's outer clothing for weapons. The courts have held that, in the case where the subject was wearing a heavy overcoat, the officer was proper in having the subject remove the coat so that he may be patted down.

21.3.2.1 Protective Sweep Under some conditions, the protective search, the search for weapons, may be extended beyond the person detained. Such a search occurs most often involving vehicles. A lawful protective search for weapons, which extends to an area beyond the person in the absence of probable cause to arrest, must have all of the following elements present:



- A lawful investigative stop as defined herein or a lawful vehicle stop.
- A reasonable belief that the suspect poses a danger.
- The search must be limited to those areas in which a weapon may be placed or hidden.
- The search must be limited to an area which would ensure that there are no weapons within the subject's immediate grasp.

21.3.3 Vehicle Stops Because a “seizure” occurs whenever a vehicle is stopped, there must be reasonable suspicion to justify an investigatory stop of a vehicle. During a vehicle stop, an officer may take reasonable steps to protect him/herself. At the officer’s discretion, the officer may direct the driver and passengers to step out of the vehicle. If the officer has reasonable belief that the person is armed and dangerous, the officer may conduct a frisk.

21.3.3.1 Vehicle Roadblocks Vehicles may also be stopped at roadblocks which serve legitimate law enforcement purposes. Recognized purposes include DUI enforcement, vehicle equipment and driver’s license checks, and seat belt checkpoints. Checkpoints for general criminal law enforcement are not constitutional. Roadblocks will not be conducted except pursuant to an approved written plan or upon the authorization of the Shift Commander or other Commander in an emergency situation. If evidence of a crime is observed, an officer has the right to take reasonable investigative steps and make arrests as circumstances warrant.

21.3.3.2 Sobriety Checkpoints (added May 02,2011) Members of the Charleston Police Department, in cooperation with other law enforcement agencies may initiate and establish sobriety checkpoints to deter and detect alcohol and/or drug impaired drivers; and to reduce the number of drunk and/or drugged driver related motor vehicle crashes, fatalities, and injuries.

All sobriety checkpoints will be conducted in such a manner as to minimize any intrusion or inconvenience upon the motoring public and to maximize the program effectiveness, enforcement uniformity, and officer/civilian safety.

Sobriety checkpoints will not be used as a subterfuge to search for other crimes; however, members may initiate appropriate enforcement action for any violation detected while conducting a sobriety checkpoint.

#### Procedure for Sobriety Checkpoints

- Initiation, establishment, and operational supervision of sobriety checkpoints shall be the responsibility of the department's Highway Safety Director or the Traffic Division Commander or their designee.
- Prior to initiation of a sobriety checkpoint the Kanawha County Prosecutor's Office will be contacted for the inclusion of the checkpoint planning.

- The location of the sobriety checkpoint shall be based upon alcohol/drug related statistics, D.U.I.
  - arrest numbers, and/or motor vehicle traffic crashes occurring within a localized area.
- The selected site will be inspected to assure maximum safety and visibility for officers and the motoring public, and must include at a minimum:
- Adequate lighting at the checkpoint location will be utilized to ensure good visibility and safety.
- Availability of sufficient space to ensure the safety of motorists and officers, and to provide parking for police vehicles and vehicles of any persons taken into custody;
- An alternate route for any driver that chooses to avoid driving through the checkpoint operation.
- Location of an alternate checkpoint site shall be identified for use in the event the primary site becomes unsafe due to traffic congestion. This alternate checkpoint will be used only if a hazardous or otherwise unsafe condition exists as determined by the checkpoint coordinator.
- A detailed sketch of the primary and alternate checkpoint locations will be made for distribution to all members and other officials working the checkpoint.
- Upon determination of the location and date of the checkpoint the local media will be advised of the checkpoint location, date and times so as to provide the public with advance notice of the checkpoint operation and to serve as a deterrent to potentially intoxicated drivers.
- Sufficient uniformed personnel and marked vehicles shall be assigned to the sobriety checkpoints to display a legitimate police purpose of the stop and to minimize any fear, surprise or apprehension of the motoring public.
- Uniformed personnel shall consist at a minimum of the checkpoint coordinator and three (3) law enforcement officers.
- Marked police patrol vehicles will be assigned to the checkpoint with emergency lighting. Blue lights and/or hazard warning lights will be activated during checkpoint operations.
- The Commission on Drunk Driving Prevention - Breath Alcohol Testing Mobile or the Charleston Police Department Mobile Booking Trailer may be included into the checkpoint operation and used to process DUI arrests and other arrests.
- The checkpoint coordinator shall designate personnel to observation posts for any vehicles turning or otherwise avoiding the checkpoint. Such vehicles may be followed but may not be stopped unless a traffic violation or other probable cause is observed that would indicate a need for enforcement action.
- Sworn officers conducting sobriety checkpoints will use all necessary safety equipment during checkpoint operations to alert oncoming motorists, designate traffic lanes and provide safety areas for officers, equipment and field sobriety testing. Such equipment may include but is not limited to:
  - \* Barricades
  - \* Traffic Cones

- \* Flares
  - \* Arrow Boards
  - \* Safety Vests
  - \* Flashlights with Extra Batteries
  - \* Reflective Signs
- Sobriety checkpoints will be operated for a minimum period of one (1) hour and shall not exceed eight (8) hours unless the checkpoint coordinator has granted prior approval.
  - Prior to conducting a checkpoint all involved personnel will be briefed as to the site location, checkpoint operation procedures, individual officer assignments, and the placement and utilization of safety equipment.
  - The checkpoint coordinator shall terminate the sobriety checkpoint when inclement weather, emergency situations, or other factors that would require the reassignment of checkpoint personnel to other duties dictate such action. The safety of the motorists and the officers involved will be the primary factor in considering the continuance or stoppage of the checkpoint.
  - The checkpoint coordinator shall establish a pre-designated system for the stoppage of vehicles entering the checkpoint areas:
    - If traffic conditions permit, each vehicle should be momentarily stopped;
    - As traffic volume increases, the checkpoint coordinator shall stipulate specific vehicles to be stopped in accordance with the pre- designated system, (i.e. every 2nd, 3rd, 4th, etc.).
  - Should all personnel become involved in positive impaired driver contacts or be otherwise occupied with checkpoint operations or should traffic become unduly delayed, the checkpoint coordinator may suspend the checkpoint and allow normal traffic flow to resume until officers become available or congestion is relieved.
  - The duration of each stop shall be only that time required to determine if any further inquiry or investigation is warranted to identify if the driver is alcohol and/or drugged impaired.
  - Officers involved in checkpoint related stops will identify themselves as members of their respective departments and advise the driver of the purpose of the checkpoint.
  - Officers involved in stops will make general inquiries of the driver that require a response and will visually observe the driver for indications of impairment.
  - If no impairment is detected and no other violation requiring action is observed, the vehicle and driver will be released as quickly as possible.
  - Should driver impairment be detected, the driver shall be removed from the vehicle and escorted to the designated testing area.
  - If some other violation requiring action is observed, the driver shall be instructed to move his vehicle to a safe location for implementation of appropriate officer action.
  - Drivers displaying signs of impairment shall be administered a Field Sobriety Test and/or a Preliminary Breath Test when appropriate.
  - Any driver deemed, as "not impaired" will be returned to his vehicle and immediately released.

- Any driver deemed "impaired" will be placed under arrest for the appropriate 17C-5-2 related charge, escorted to either the BAT mobile, mobile traffic trailer or police station for processing and the administration of a secondary chemical breath test.
- Following the completion of a Sobriety Checkpoint operation, the checkpoint coordinator shall see that all applicable reporting requirements are completed.
- This policy is deemed to be only for the purpose of guidance in the operation of a sobriety checkpoint and shall not be strictly construed. The department recognizes that the operation of a sobriety checkpoint is governed by federal and state judicial rulings. Failure to follow specific recommendations herein shall not invalidate the operation of any checkpoint.

#### 23.3.3.3 Roadside Safety Checkpoints (added May 02, 2011)

It is recognized that certain traffic violations and criminal behavior is a contributor to traffic crashes and their related deaths and injuries. Roadside safety checkpoints are an effective law enforcement tool involving the stopping of vehicles, or a specific sequence of vehicles, at predetermined fixed locations to detect drivers operating vehicles while involved in these types of activities.

The operation of a roadside safety checkpoint serves not only as a specific deterrent by arresting drivers who operate vehicles while involved in this activity, but more importantly, as a general deterrent to persons who have knowledge of a checkpoint. Roadside safety checkpoints increase the perception of the risk of arrest when they are adequately publicized and highly visible to the public.

They are only one part of a continuing, systematic and aggressive overall program to reduce the number of traffic crashes and their resulting deaths, injuries and property damage within the community. This overall program must include vigorous and ongoing enforcement and public information and education components targeting the contributing causes of traffic crashes.

- The purpose of this policy is to provide guidelines for the operation of a roadside safety checkpoint in order to maximize the deterrent effect and increase the perception of "risk of apprehension" of motorists who would operate a vehicle while involved in this activity.
- All roadside safety checkpoints shall be conducted in such a manner as to minimize any intrusion or inconvenience upon the motoring public and to maximize program effectiveness, enforcement uniformity and, above all else, safety.
- All roadside safety checkpoints will be set and carried out in accord with all applicable statutes and court decisions addressing such operations.
- Roadside safety checkpoints shall not be used as a subterfuge to search for evidence of other crimes. However, law enforcement officers may initiate appropriate enforcement action for any violations of law detected while conducting a roadside safety checkpoint.
- Sites for roadside safety checkpoints shall be selected on the basis of the following:

- Incidents of certain criminal behavior and or related motor vehicle crashes.
- Incidents of arrests or citations for certain types of criminal behavior.
- Any other documented types of crime, vehicular incidents or citizen complaints.
- The following criteria may also be considered when selecting sites for roadside safety checkpoints:
  - Ability to conduct a checkpoint safely and with minimum inconvenience to the public
  - Presence of adequate lighting, or the ability to provide sufficient supplemental lighting
  - Sufficient adjoining space to pull vehicles off of the traveled portion of the roadway
  - The availability of an alternative route for drivers choosing to avoid the checkpoint operation
  - The posted speed limits, traffic volume and visibility to motorists as they approach the checkpoint in line with the number of uniformed officers and others available
  - Adequate adjoining space for support vehicles, media, data collection and other ancillary personnel.
- Approval of sites:
  - Prior approval: All roadside safety checkpoint sites shall be approved prior to use by the Traffic Division. The Chief of Police should be notified during the planning of any checkpoint operation.
    - The prosecutor's office should be extended an invitation to participate in the planning of any checkpoint operation.
    - Approval Review: Any site having received prior approval as outlined above shall be considered to be "pre-approved" and may be used for conducting a roadside safety checkpoint unless such approval shall have been revoked. All approved sites shall be subject to periodic review, but in any case no less often than yearly.
    - Site drawing: A site drawing or sketch of each approved site shall be made and kept as a part of the records of each
    - roadside safety checkpoint conducted. Such drawing or sketch shall indicate the location of the following:
      - Warning signs

- Support vehicles
  - Field testing area
  - Alternative routes
- Date/time/duration: The date, time and duration of any checkpoint shall be determined by Traffic Division and Chief of Police, upon consultation with the Prosecuting Attorney.
- Officer in Charge
- There shall be an officer in charge of the roadside safety checkpoint at all times during the operation (Shift Commander, Traffic Supervisor or Highway Safety Director).
- The officer in charge will ensure that proper operational procedures are followed and that all pertinent records regarding the checkpoint are maintained.
- Prior to conducting a checkpoint, the officer in charge shall conduct a briefing of all personnel as to:
  - Site location
  - Checkpoint operational procedures
  - Personnel assignments as to setup, operation and breakdown of the roadside safety checkpoint
  - Placement and utilization of safety equipment and support vehicles
  - Site drawing
  - Any other pertinent matters
- The officer in charge should take such measures deemed prudent and necessary for maintaining a smooth flow of traffic and to provide a safe environment for the motoring public and the officers working the checkpoint. The officer in charge shall modify, interrupt or terminate checkpoint operation should staffing or conditions present a safety hazard to the motoring public or officers if the checkpoint were to continue. Any modification, interruption or termination of the checkpoint shall be noted by the officer in charge.
- Participating Officers
  - A sufficient number of uniformed personnel and marked police vehicles shall be assigned to roadside safety checkpoints to reassure motorists that the stop is legitimate and orderly and to minimize any fear, surprise or apprehension of the motoring public.
  - In order to assure safe and efficient operation, a minimum of two (2) uniformed officers, including the officer in charge, shall be assigned to each checkpoint.
  - Traffic volume, roadway setup, posted speed limits are the factors which will be examined when determining the number of uniformed officers to be present.
  - The checkpoint shall be suspended or terminated when the officer in charge deems it necessary for the safety of the officer and the public.

- Public Safety / Traffic Control
  - The following safety devices and procedures shall be used during the operation of the roadside safety checkpoint:
    - Prior to the checkpoint location, a sign indicating that a roadside safety checkpoint is ahead shall be posted. Such sign shall be posted at a distance sufficient to give notice so as to allow a motorist to safely avoid the checkpoint.
    - Signage, traffic cones and/or flashing or reflective barricades and/or personnel (whether they be uniformed officers or others) shall be used beginning at a distance that will allow sufficient warning of the impending stop. Sufficient traffic cones, flashing or reflective barricades and/or other similar devices shall be used to adequately direct the flow of traffic through the checkpoint.
    - (21.3.3.3 continued)
    - An adequate number of marked police vehicles with operating emergency lights will be used directly at the checkpoint and at point leading into and out of the checkpoint.
    - At the location of driver contact with the screening officers, a sign directing drivers to stop for the checkpoint shall be posted.
    - All personnel working the checkpoint shall wear an appropriate reflective safety vest.
      - All signage shall be of sufficient size and reflectivity to allow them to be seen and read.
- Traffic through the checkpoint
  - Unless traffic conditions and staffing requires otherwise, each and every vehicle should be momentarily stopped.
    - Should traffic conditions or other circumstances warrant, the officer in charge shall stipulate specific vehicles to be stopped in accordance with a pre-designated system (i.e., every 2nd, 3rd, 4th, etc.). Such modifications to vehicle contact will be noted by the officer in charge.
      - The duration of each stop shall be only that time required to determine if any further inquiry or investigation is warranted to
      - identify if the driver is operating the vehicle while in violation of the law.
- Screening Officers
  - Greet all drivers of stopped vehicles, giving the reason for the stop.
  - Make general inquiries of the driver that require a response and will observe the subject for signs of any traffic and or criminal violations.

- Allow the driver to continue if no crime is detected and no other violation requiring action is observed.
- In the event traffic violation or other criminal violation is detected, the driver of the vehicle shall be directed to the designated testing area. ○ In the event some other violation requiring action is observed, the driver shall be directed to a previously designated area for further action.
- Traffic or Criminal Violation Detected ○ In the event a traffic or criminal violation is detected and the driver has been directed to the designated testing area, the testing officer shall conduct further investigation.
  - Drivers deemed not to be involved in any traffic or criminal violation will be returned to his or her vehicle and released.
  - Drivers determined to be involved with a traffic or criminal violation shall be placed under arrest or cited for the appropriate criminal charge.
- Vehicles avoiding the Roadside Safety Checkpoint ○ Vehicles observed avoiding the roadside safety checkpoint shall not be stopped unless there exists a reasonable, articulable suspicion for such stop.
- Media Relations ○ The existence and use of roadside safety checkpoints must be publicized. Local media shall be notified of the date, time and general location of any roadside safety checkpoint site, if applicable.
  - Media coverage on the scene of a roadside safety checkpoint site will be monitored and controlled by the Officer in Charge.
- Miscellaneous ○ Alternate Sites ○ In the event that a checkpoint site selected and approved for a particular date and time becomes unsafe due to traffic congestion or impracticable for other reasons, the officer in charge may move the checkpoint site to an alternate site.
- Disposition of Passengers and Vehicles ○ Vehicles of persons arrested at the roadside safety checkpoint shall be disposed of in accordance with the policies of the department.
  - Officers at the roadside safety checkpoint will permit passengers in vehicles of persons arrested at the roadside safety checkpoint to obtain or arrange alternative transportation.



- Other Notifications
  - The Prosecuting Attorney shall be notified of the date, time and location of any roadside safety checkpoint.
  - All police agencies and emergency dispatch centers within the area shall be notified prior to the beginning and at the termination of any roadside safety checkpoint.
- Others Present at Checkpoint
  - Data collectors: Persons present at a roadside safety checkpoint for the purpose of collecting and gathering information and data shall do so in an area designated for such and shall be subject to the directions of the Officer in Charge.
  - Such persons shall wear appropriate reflective safety vests and will carry a flashlight during darkness.
  - Other law enforcement and traffic safety professionals: Law enforcement officers not actively engaged in the checkpoint operation, prosecuting attorneys and their assistants, judicial officers and other traffic safety professionals may be present at a roadside safety checkpoint, and shall be subject to the directions of the Officer in Charge.
- Severability; Guidance
  - If any provision of this policy shall, for any reason and to any extent, be declared to be invalid, or is modified by the order of a court of law of competent jurisdiction, the remainder of this policy shall not be affected thereby but rather shall remain in full force and effect until and unless modified or replaced.
  - This policy is deemed to be only for the purpose of guidance in the operation of a roadside safety checkpoint and shall not be strictly construed. The department recognizes that the operation of roadside safety checkpoints is governed by federal and state judicial rulings. Failure to follow specific recommendations herein shall not invalidate the operation of any checkpoint.

21.3.4 Time Period Investigative detention - as with non-criminal field interviews - must be conducted as briefly as possible. Once the detaining officer determines that his basis for reasonable suspicion no longer exists, the person detained shall be immediately released. Should the suspicion be reinforced with additional information or the officer develops probable cause, the period of detention should be lengthened. The courts generally permit up to 20 minutes to constitute a reasonable period of time for the interview.

21.3.5 Recording the Stop (Deleted September 24, 2003)

21.4 Interrogations and Confessions Custodial interrogations of suspects and the statements and confessions that are elicited are vitally important in the preparation of criminal cases. However, to be admissible as evidence, statements and confessions must be given freely and voluntarily and with due consideration for the suspect's right to silence and right to counsel. Therefore, it is

the policy of this Department that all officers understand and follow this agency policy in order to observe the due process rights of suspects and to guard against any charges of police coercion or intimidation during interrogation.

### Definitions

Custody- A custodial situation exists when an officer tells a suspect that he is under arrest. A functionally equivalent situation exists when a “reasonable person” in the suspect’s position would feel that his freedom of action has been restricted to the same degree as a formal arrest.

Interrogation- Interrogation includes direct questioning of a suspect about a crime or suspected crime, as well as any words, statements or actions by officers that the officers should know are reasonably likely to elicit an incriminating response from the suspect.

21.4.2 Custodial Statements and Confessions Miranda warnings are required and shall be administered prior to “custodial interrogation,” as defined above. The following represent examples of situations that are not “custodial” and do not require issuance of Miranda warnings.

- Investigatory stop and frisk.
- Questioning during a routine traffic stop or for a minor violation; to include driving while intoxicated (DUI/DWI) stops until a custodial interrogation begins.
- During routine questioning at the scene of an incident or crime when the questions are not intended to elicit incriminating responses.
- During voluntary appearances at the police facility.
- When information or statements are made spontaneously, voluntarily and without prompting by police. (Note: Follow-up questions that exceed simple requests for clarification of initial statements may require Miranda warnings.)

### 21.4.3 Administering Miranda (Amended August 24, 2004)

Miranda warnings shall be read by officers from the card containing this information to all persons subjected to custodial interrogation. Freelancing, recitation from memory or paraphrasing the warnings is prohibited as it precludes officers from testifying in court as to the precise wording used.

- Officers shall ensure that suspects understand their right to remain silent and their right to an attorney. Suspects may be interrogated only when they have knowingly and intelligently waived their rights. Threats, false promises or coercion to induce suspect statements are prohibited
  - Waivers of one or both of the Miranda rights must be performed affirmatively.
    - Oral waivers are often sufficient but **written waivers, particularly in felony charges, are preferred** and should be obtained whenever possible on the appropriate Departmental form.

- Officers arresting suspects who do not speak the English language shall notify their immediate supervisor and make arrangements to procure the assistance of an interpreter in accordance with this agency's policy and state and federal law.
- Officers arresting deaf suspects should communicate to him or her, in the form of a written message in simple language explaining what is transpiring or will transpire.
- An officer seeking to interrogate an arrestee with a hearing impairment must obtain the services of a qualified interpreter prior to any interrogation. A list of qualified interpreters is available in the Shift Commander's Office and the Criminal Investigation Division.
- A qualified interpreter means an interpreter certified by the National Association of the Deaf (NAD) or Registry of Interpreters for the Deaf (RID), or, in the event an interpreter so certified is not available, an interpreter whose qualifications are otherwise determined.
- An oral interpreter means a person who interprets language through facial and lip movements.
- The arresting officer's Miranda warning should be communicated to the arrestee on a printed CPD Miranda Rights form where there is no qualified interpreter immediately available.
- The arresting officer should advise the arrestee that the Charleston Police Department has an obligation under Federal law to offer an interpreter to the arrestee without cost and that interrogation will be deferred pending the appearance of an interpreter.
- West Virginia State Code 5-14A-4 also provides the following;
  - a) In the event a person who is deaf is arrested and taken into custody for any alleged violation of a criminal law of this state, the arresting officer or his or her superiors shall procure a qualified interpreter in order to interrogate properly such deaf person and to interpret such person's statements. No statement taken from the deaf person before an interpreter is present may be admissible in court.
  - b) An oral interpreter shall be provided upon the request of a deaf person entitled to an interpreter under this article, but who does not communicate in sign language. The right of a deaf person to an interpreter may not be waived except by a deaf person who does not use sign language and who initiates the request for waiver in writing. The waiver is subject to approval of legal counsel for the deaf person, if any, and is subject to approval of the appointing authority (Charleston Police Department).
- If an interpreter is called, upon their arrival use him/her to facilitate communication. Speak directly to the deaf person. Do not ask advice of the interpreter or say things you do not want communicated to the deaf person. Interpreters are bound by West Virginia Code 5-14A-8 to make a true interpretation in an understandable manner to the deaf person for whom he or she is appointed and to interpret through sign language everything said in the presence of the deaf person. This protects not only the deaf person but also the law enforcement agency and its personnel.
- Under no circumstances are family members, friends or other individuals to be used as interpreters. The name, address, home phone number and work phone number of the interpreter are to be included in the incident report. Any notes or written communication

between the officer and hearing impaired person are to also be attached or otherwise included in the report.

- It is essential that officers take extra measures to protect the rights of suspects who are deaf and hard of hearing, as well as others who may not have educational or communications comprehension levels sufficient to fully understand the basic Miranda rights. Simply reading the rights to someone with a hearing disability and having the individual acknowledge that they are understood is insufficient. The Miranda Rights should be reiterated in the presence of the interpreter to insure that the arrestee clearly understands them.

At the conclusion of the advisement and interrogation, if the deaf person is to be placed in jail, the interpreter should also go to the jail and stay to interpret the booking procedure.

#### 21.4.3.1 Invoking the Right to Silence

- When a suspect invokes his right to remain silent, all interrogation shall terminate immediately.
- Officers may interrogate a suspect who has previously invoked his right to silence, if, after the passage of time, the suspect initiates communication with officers. However, prior to questioning Miranda Warnings shall be re-administered and a waiver obtained.

#### 21.4.3.2 Invoking the Right to Counsel

- If a suspect waives his right to counsel, a waiver shall be obtained prior to questioning. When a suspect makes reference to counsel but his intentions are unclear, officers may question the suspect further to clarify his intentions.
- When a suspect invokes his right to counsel, all interrogation shall cease immediately. The suspect may not again be interrogated about the crime for which he is charged, other crimes, or by other officers (from this or other agencies) unless
  - The suspect's attorney is present at the questioning; or
  - The suspect initiates new contact with the police. In this later case, Miranda rights must again be administered and a waiver obtained before any questioning may take place. Officers shall also document and, if possible, obtain written verification that the suspect initiated the communication.
- Officers shall cooperate in any reasonable way with efforts by counsel to contact or meet with suspects in custody.

#### 21.4.4 Documenting Statements and Confessions

- The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented. This includes but is not necessarily limited to:
  - Location, date, time of day and duration of interrogation;
  - The identities of officers or others present;
  - *Miranda* warnings given, suspect responses and waivers provided, if any; and
  - The nature and duration of breaks in questioning

provided the suspect for food, drink, and use of lavatories or for other purposes.

- Investigative officers are encouraged to use this agency's video and audio taping capabilities for purposes of recording statements and confessions in an overt or covert manner consistent with state law.
- The lead investigative officer may decide in which cases audio or video tape recordings may be appropriate and whether covert or overt procedures may be used. Tape recordings designated as evidence shall be handled in the following manner.
  - Original tape recordings shall be duplicated if possible and each copy stored separately.
  - The tab on the tape housing of both the original and duplicate copies shall be removed to preclude the possibility of erasure or tampering.
  - Tape recordings shall be treated as evidence and handled accordingly to the Department's property and evidence control policy.

21.5 Search And Seizure Search and seizure situations can present sensitive Constitutional rights issues. Police officers take an oath to uphold the Constitutions of the United States and West Virginia. Search and seizure is an ever changing and vital part of professional law enforcement. This policy provides basic guidelines on the Constitutional limitations applicable to search and seizure issues. Specialized enforcement units may have or need more detailed information. Each Member is expected to be well versed in these Constitutional law issues and remain up to date with new developments in the law. This policy:

- Establishes guidelines controlling search and seizure of property and persons consistent with existing law.
- Establishes a standard operating procedure for the execution of search warrants against property (For seizures of persons, see Arrest Policy).
- Establishes a standard operating procedure for male officers searching female suspects and prisoners.

21.5.1 Search Warrants - A search warrant is a judicial command to "search the place or person particularly described in the warrant and to seize the instruments, articles, or things particularly described in the warrant." Contents of a valid search warrant include:

- (a) Time and date of issuance;
- (b) Person who is to execute the warrant (generally its execution is directed to all peace officers of the state);
- (c) A command to search the place or person particularly described in the warrant; (d) A command to seize the instruments, articles, or things described in the warrant; and (e) The signature of the issuing judicial official.

21.5.1.1 Obtaining a Search Warrant A search warrant may only be issued by a neutral and detached judicial officer. The judicial officer must find probable cause that a crime is being, or

has been committed, or that contraband or evidence exists in a specific place, and it must particularly describe who or what is to be searched and what is to be seized.

A warrant may be issued based on an affidavit containing only hearsay where:

- The information is current;
- Under the totality of the circumstances, the information is deemed reliable. “Totality of the circumstances” normally includes facts about the reliability of the informant as well as facts about the reliability of the information. The less that is known and shown about the informant’s reliability, the more that must be shown about the reliability of the information itself;
- The information must be detailed enough that the magistrate will know it is not based on mere rumors, and the officer should independently verify as much of the informant’s statement as possible. The officer should include the results of the investigation in the affidavit as well as, in general terms, the circumstances under which the informant obtained the information; and
- The identity of the informant should not be listed in the affidavit for a search warrant.

#### 21.5.1.2 Executing a Search Warrant

- When conducting the search, an officer may seize any items specifically named in the warrant. The officer may also seize any stolen or embezzled property, contraband or tangible evidence of another crime (other than private papers) if he/she comes across such items unexpectedly while making the search required by the warrant. NOTE: Private papers mean “privileged papers” (e.g., attorney client).
- For the protection of the officer and to prevent the destruction or concealment of evidence, individuals may be restrained during the execution of the warrant.
- Unless there is independent justification, a person not named in a warrant shall not be searched.

#### 21.5.2 Exceptions to the Search Warrant Requirement

21.5.2.1 Consent Search The right against unreasonable search and seizure may be waived by an individual who voluntarily consents, either orally or in writing, to a search. In addition, a consent search may be authorized by a third party who shares common control or authority of the premises or items to be searched. However, the prosecutor has the burden of proving that the defendant’s consent to a warrantless search was given freely and voluntarily. The voluntary nature of a person’s consent will be determined by an examination of the totality of circumstances at the time of search. A person may withdraw consent at any time and the search must cease. A written consent is preferred.

21.5.2.2 Plain View Doctrine Mere observation of contraband by an officer does not constitute a search within the scope of the Fourth Amendment. However, the seizure of such contraband is governed by Fourth Amendment principles, and for the evidence to be admissible under the Plain View Doctrine:

- The officer must have the right to be at the location from which the items were viewed;

- No action can be taken by the officer to bring the items into plain view;
- The incriminating nature of the seized object(s) must be apparent from their appearance; and

21.5.2.3 The Open Field Doctrine Fourth Amendment protection does not extend to the “open fields” surrounding the curtilage and the home. Generally speaking, curtilage has been held to include all buildings in close proximity to a dwelling, which are continually used for carrying on domestic employment, or such places as are necessary and convenient to a dwelling, and are habitually used for family purposes (including a patio). Curtilage is afforded the same Fourth Amendment protection as is the home. The determination of whether Fourth Amendment protection will be extended to items seized from the curtilage or open fields focuses on whether the person challenging the search has a legitimate expectation of privacy in the place which was searched.

NOTE: There is no reasonable expectation of privacy for trash deposited in a public place for collection. No Fourth Amendment violation occurs when such trash is searched/seized.

21.5.2.4 Exigent Circumstances Exigent circumstances are defined as those circumstances under which a suspect is fleeing or instrumentalities of a crime are being destroyed. Under these circumstances, if an officer has probable cause to believe that an instrumentality or evidence of a crime will be found and it is not practical for the officer to obtain a warrant, the officer may conduct a warrantless search. NOTE: Officers cannot create the exigency which would justify the warrant exception.

### 21.5.3 Warrantless Searches of Persons

21.5.3.1 Search of a Person Incident to Arrest The search incident to arrest may be conducted to:

- Protect the officer from attack;
- Prevent the arrested person from escaping;
- Discover/seize fruits of a crime for which the person has been arrested; or
- Discover and seize any instruments, articles, or things which may have been used in the commission of the crime for which the person has been arrested.

Once the arrest has occurred the officer may conduct a search without additional cause. For the search incident to arrest to be legal, the arrest must be legal. The search must be conducted at the time of arrest and be limited to the arrestee’s person and the area “within his immediate control.” A search of an arrested individual at a detention facility, such as the Booking Room, may be justified as a search incident to arrest.

21.5.3.2 Searches of the Body’s Surface Intrusions on the body’s surface (swabbing, taking hair samples, retrieving of evidence from the mouth, etc.) are governed by the Fourth Amendment and can only be made pursuant to a search warrant.

21.5.3.3 Searches of Bodily Fluids and Organs Intrusions into the body (blood tests, stomach pumping, surgery, etc.) are permitted by the Fourth Amendment if they are conducted pursuant to a warrant, or if exigent circumstances exist and there is a clear indication the desired evidence will be found. This is limited to those intrusions that are “reasonable” and safe for the suspect.

21.5.3.4 Strip and Body Cavity Searches A strip search is to be conducted only if it is reasonable in light of the circumstances. This Department recognizes that the use of strip searches and body cavity searches may, under certain conditions, be necessary to protect the safety of officers, civilians and other prisoners; to detect and secure evidence of criminal activity; and to safeguard the security, safety and related interests of this agency’s prisoner detention and holding facilities.

Recognizing the intrusiveness of these searches on individual privacy, however, it is the policy of this Department that such searches shall be conducted only with proper authority and justification, with due recognition and deference for the human dignity of those being searched and in accordance with the procedural guidelines for conducting such searches as set forth in this policy. The purpose of this policy is to provide officers with guidelines for determining if and under what conditions the use of strip searches and body cavity searches are legally permissible and to establish guidelines for the appropriate conduct of such searches. 21.5.3.4.1

Definitions

Strip Search: Any search of an individual requiring the removal or rearrangement of some or all clothing to permit the visual inspection of any or all skin surfaces including genital areas, breasts and buttocks.

Body Cavity Search: Any search involving not only visual inspection of skin surfaces but the internal physical examination of body cavities and, in some instances, organs such as the stomach cavity.

21.5.3.4.2 Strip Searches Supervisory approval is required before any individual is subject to a strip search for a traffic violation of nonviolent misdemeanor offense. Individuals arrested for traffic violations and other misdemeanor offenses of a nonviolent nature shall not be subject to strip searches unless the arresting officer has articulable, reasonable suspicion to believe that the individual is concealing contraband or weapons. Reasonable suspicion may be based upon, but is not limited to the following:  The nature of the offense charged.

- The arrestee’s appearance and demeanor.
- The circumstances surrounding the arrest.
- The arrestee’s criminal record, particularly past crimes of violence and narcotics offenses.
- The discovery of evidence of a major offense in plain view or in the course of a search incident to the arrest.
- Detection of suspicious objects beneath the suspect’s clothing during a field search incident to arrest.

When authorized by the supervising authority, strip searches may be conducted only:

- By specially trained and designated personnel.



- In conformance with approved hygienic procedures and professional practices.
- In a room specifically authorized for this purpose.
- By the fewest number of personnel necessary and only by those of the same sex.
- Under conditions that provide privacy from all but those authorized to conduct the search. Following a strip search, the officer performing the search shall submit a written report to the supervisory authority that details, at a minimum, the following:
  - Date and place of the search.
  - Identity of the officer conducting the search.
  - Identity of the individual searched.
  - Those present during the search.
  - A detailed description of the nature and extent of the search.
  - Any weapons, evidence or contraband found during the search.

Following a strip search, the officer requesting the strip search shall submit a written report that details, at a minimum, the following:

- The nature of the offense charged.
- The articulable suspicion to justify the strip search.
- Whether a written consent to the strip search was sought and/or obtained.
- The supervisor who authorized the search.

Field strip searches of prisoners shall be conducted only in the rarest of circumstances under exigent circumstances where the life of officers or others may be placed at risk, and only in privacy with the explicit approval of a supervisory officer.

21.5.3.4.3 Body Cavity Searches Should visual examination of a suspect during a strip search and/or other information lead an officer to believe that the suspect is concealing a weapon, evidence or contraband within a body cavity, the following procedures shall be followed:

- The suspect shall be kept under constant visual surveillance until a body cavity search is conducted or an alternative course of action taken.
- The officer shall consult with his immediate supervisor to determine whether probable cause exists to seek a search warrant for a body cavity search. The decision to seek a search warrant shall recognize that a body cavity search is highly invasive of personal privacy and is reasonable only where the suspected offense is of a serious nature and/or poses a threat to the safety of officers or others and/or the security of the Department's detention operations.
- If probable cause exists for a body cavity search, an affidavit for a search warrant shall be prepared that clearly defines the nature of the alleged offense and the basis for the officer's probable cause.  On the basis of a search warrant, a body cavity search shall be performed only by an authorized physician or by other medically trained personnel at the physician's direction.
- For safety and security reasons, the search shall be conducted at the medical facility or other authorized facility and in the room designated for this purpose and an officer of the same sex shall witness the search.
- Body cavity searches shall be performed with due recognition of privacy and hygienic concerns previously addressed in this policy.

- The witnessing law enforcement officer shall make a detailed written report and comply with information requirements specified in this policy. The authorized individual conducting the search shall be asked to co-sign the report.

21.6 Vehicle Searches The mobility of motor vehicles often constitutes exigent circumstances authorizing a warrantless search. The “automobile exception” to the warrant requirement demonstrates a willingness of courts to excuse the absence of a warrant when spontaneous searches are required of a vehicle. To conduct a warrantless search, the officer must have probable cause to believe the vehicle contains contraband or other seizable items and that the vehicle will be moved if time is taken to obtain a warrant. A warrant is needed to search a vehicle that the officers can legally control without fear of it being moved.

21.6.1 Arrest of Occupant If a person is arrested after a vehicle stop, the interior portions of the vehicle within the driver’s immediate control may be searched incident to the arrest.

21.6.2 Container and Luggage Searches When there is probable cause that contraband will be found somewhere inside of a vehicle, combined with exigent circumstances such that it is not possible to obtain a warrant, officers may open containers in the vehicle to seek the contraband. However, the automobile exception normally will not justify a warrantless search of specific containers. Where there is probable cause as to specific containers, the containers should be secured until a search warrant is obtained to open them.

21.6.3 Exceptions The Search Incident to Arrest and Plain View Doctrines may make unnecessary the need to secure a warrant to search containers. When a lawful arrest has been made, the officer may examine the contents of any container found within the arrestee’s immediate area of control; i.e., the passenger compartment.

21.6.4 Inventory For an inventory of a vehicle to be valid, the law enforcement custody of the vehicle must be lawful and conducted as part of this Department’s standard operating procedure regarding impounded/towed vehicles and to protect the contents of the vehicle. The inventory does not extend to the contents of locked luggage or locked containers inside the vehicle.

21.6.5 Booking Searches A custodial search of the arrestee’s personal effects may be justified as either a delayed search incident to arrest or as an inventory procedure. Once an officer has taken the property into his/her control, a further search is no longer incidental to the arrest.

21.6.6 Abandonment Abandonment is a voluntary relinquishment of control of property (e.g. disposing of or denying ownership). An individual who abandons property does not retain any expectation of privacy.

21.6.7 Consent Searches of Motor Vehicles (Added 25Oct 2010)

A City of Charleston law enforcement officer who stops a motor vehicle for an alleged violation of a traffic misdemeanor law or ordinance may conduct consensual search of that vehicle if the person in control of the vehicle voluntarily gives consent for such a search. The

officer should not coerce consent by threat or force, either direct or implied. Moreover, if the party refuses the consensual search and there is no other reason to continue the encounter, the refusing party must be allowed to leave. The person or persons in custody in control of the vehicle must be told that they may refuse to give the officer consent. Furthermore, the person or persons in custody and control of the vehicle must also be told that they can withdraw their consent at any time during the search.

21.6.7.1 Who may provide consent? Any person with apparent equal right to use or occupy the property may consent to a search, and any evidence found may be used against the other owners or occupants.

21.6.7.2 Scope of the Search The scope of the search is limited by the scope of the consent.

21.6.7.3 Establishing that the consent was free and voluntarily obtained When possible, consent must be obtained through the use of the City of Charleston's Consent to Search Form which is attached below

21.6.7.4 Information to be included when obtaining consent In the event that the attached consent form is unavailable, the audio recorded consent or the handwritten consent should reflect the following:

- The person in custody and/or control of the motor vehicle understands that the person in custody or control of the motor vehicle may refuse to give the officer consent to search the motor vehicle;
- The person in custody and/or control of the motor vehicle is voluntarily giving the law enforcement officer consent to search the motor vehicle; and
- The person in custody and/or control of the motor vehicle was informed that he or she may withdraw the consent at any time during the search.

21.6.7.5 If the search form is not available The officer may obtain oral consent and evidence the same through an audio recording. If neither the consent to search form or an audio recording device is available, the officer may obtain consent through a handwritten document executed by a person in custody or control of the vehicle. Nothing in this Policy should cause an officer to subject him or herself to danger should that officer have reasonable suspicion that the occupant(s) or person(s) in custody or control of the vehicle may pose a danger to the officer. Failure to comply with the provisions of this Section shall not, standing alone constitute proof that any consent to search was involuntary.

## CONSENT TO SEARCH FORM

On \_\_\_\_\_ (date) at \_\_\_\_\_ (time) I, \_\_\_\_\_, being of the age of \_\_\_\_\_, own, have custody or control over the following vehicle, premise, property or thing described below:

Make of Vehicle:

Registration #:

After being informed of my Constitutional Right to not have a search made of the vehicle, premises, property or thing described above without a search warrant and of my absolute right to refuse to consent to such a search, knowing that if any incriminating material is found it can be used against me in Court, do hereby voluntarily authorize \_\_\_\_\_ (Officer), member of the Charleston Police Department, to conduct a search of the vehicle, premises, property or things described above. The above named officer(s) is/are authorized by me to take from my \_\_\_\_\_ vehicle, premises, property or thing any letters, papers, materials, contraband or other property which he/she may desire.

This written permission is given by me to the above officer(s) voluntarily and without threats or promises of any kind. I understand that I may refuse to give the officer(s) consent to search. I further understand that I may withdraw my consent at any time during the search.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Date and time)

WITNESSES:

\_\_\_\_\_  
(Name, Title, Date and Location)

\_\_\_\_\_  
(Name, Title, Date and Location)

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## 21.7 Arrest

### 21.7.1 Definitions

Arrest - The restraint of the liberty of a person to come or go as he pleases, no matter how slight. An individual has been arrested when he is not free to go, regardless of whether formal words of arrest are used.

Arrest Warrant A written judicial command to arrest a particular individual and to bring the arrestee promptly before the magistrate issuing the warrant or other appropriate judicial officer. Oral or telephone warrants do not exist.

Probable Cause Those facts and circumstances which would lead a reasonable and prudent person to believe that a crime has been committed, and that the suspected person has committed an offense.

Within the Officer's Presence When, by seeing, hearing, or using any of the other senses, the officer has personal knowledge of the commission of a crime. This excludes reporting of a crime by any third party other than another law enforcement officer who is reporting his own personal knowledge or sensory impressions.

21.7.2 Rules and Regulations No officer shall arrest any person without a warrant when he/she knows that he/she does not have reasonable cause to arrest such person.

21.7.3 Arrest Without a Warrant- Officers may make an arrest without a warrant only in the following instances:  When an offense is committed in the officer's presence or within his/her immediate knowledge;

- When an officer has probable cause to believe an act of family violence has been committed as specified in Departmental Policy;
- When there is probable cause to believe that the suspect has committed a felony and the suspect is found in a public place.
- To prevent the commission of a felony (This exception should only be utilized when the criminal act is imminent.);
- Upon receiving information from a law enforcement officer who observed an offense being committed, provided such information would constitute the basis for arrest had it been committed in the arresting officer's presence; and
- An officer has limited power to arrest without a warrant when the officer is in hot pursuit that is continuous and uninterrupted (an officer may temporarily lose sight of the suspect).

21.7.4 Arrest With a Warrant- No officer shall arrest any person under color of a warrant unless he/she reasonably believes a valid warrant exists and that the person described in the warrant is before him/her. A valid arrest warrant must contain specific information as required by statute and court decisions. Such information includes:

- The authority under which the warrant is issued;
- Identification of the person who is to execute the warrant, generally addressed: "To any sheriff, deputy sheriff, coroner, constable, marshal, or police officer";
- Identification of the person to be arrested;
- The name of the offense committed;
- The date and place of occurrence of the offense, including the county in which it was committed;
- Identification of the victim; and
- A description of the offense, including all of the elements of the offense. In addition, when the offense charged is a theft, the warrant must contain:

- A description of the property alleged to have been stolen;
- Identification of the owner of the stolen property;
- The value of the stolen property; and
- The person from whose possession it was taken.

NOTE: Without strict compliance with the above, the warrant may not be valid.

#### 21.7.5 Procedure When Making an Arrest

- When a lawful arrest cannot be made except with a warrant, the arresting officer should have the warrant in his/her physical possession at the time of the arrest, or have confirmation that the warrant is valid and that the confirming authority actually has possession of the warrant.
- An officer making a lawful arrest has the right to use whatever force is reasonably necessary to accomplish the arrest, but no more than is necessary to take the suspect into custody.
- Prisoners shall be searched, restrained, transported, and processed in compliance with established booking procedures.

21.7.6 Alternatives to Physical Arrest What is reasonable in terms of appropriate police action or what constitutes probable cause varies with each situation. The particular facts and circumstances may justify an investigation, a detention, a search, an arrest, or no action at all. In some cases, when the offense is of a minor nature, a criminal summons may be issued, a verbal warning given or other action may be taken. The requirement that legal justification be present imposes a limitation on an officer's action. In every case, an officer must act reasonably within the limits of his/her authority as defined by statute and judicial interpretation.

21.7.7 Immunity From Arrest- Federal and state laws provide that under certain circumstances, individuals may be immune from arrest. With the limited exception of certain diplomatic officials, immunity from arrest does not preclude prosecution of the individual for the offense for which immunity from arrest is claimed.

- Members of Congress U.S. Senators and Representatives are free from arrest during their attendance at Congress and in going to and from sessions of Congress except for "treason, felony, or breach of the peace."
- Members of the General Assembly The Members of the General Assembly are free from arrest during their attendance at the General Assembly and in going to and from sessions except for "treason, felony, or breach of the peace."
- National Guard Members of the National Guard are privileged from arrest, except in cases of treason, felony, or breach of the peace, under the following circumstances:
  - (1) While attending drill; ○ (2) During parades; ○ (3) When attending meetings, encampments, and election of officers; and ○ (4) While going to, during and returning from the performance of active duty.

- In any incident in which a person asserts immunity based on membership in the National Guard, a full report of the incident will be submitted. It is the policy of this Agency that all incidents in which a member of the National Guard asserts immunity from arrest will be reported to the Adjutant General of the West Virginia National Guard for appropriate investigation and action by The National Guard.

Poll Officers Registrars and deputy registrars appointed by the board of registrars or board of elections of the county or the Secretary of State are immune from arrest on primary and election days, except for fraudulent misconduct of duty, felonies or breach of the peace.

- Voters Citizens are immune from arrest on Election Day while voting.
- Witnesses A person who has been subpoenaed as a witness is immune from arrest on civil process while going to or returning from court. A person asserting immunity as a witness should be able produce either the subpoena or a court order in the case of witnesses appearing under the Uniform Act to Secure the attendance of Witnesses as proof of his/her status. Verification may be requested from the Clerk of the Court that issued the subpoena.

NOTE: Supervisors should be immediately advised of the arrest of or the need to arrest any person identified in this section.

21.8 Transportation of Prisoners

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21.10. Incarceration Procedures Officers, when presenting a prisoner for incarceration at the Regional Jail, will adhere to the following procedures:

- Once warrants and commitments have been obtained, the prisoner will be taken forthwith to the Regional Jail for incarceration.
- In addition, officers will abide by other rules pertaining to prisoner processing that have been established by the Regional Jail.

21.10.1 Male Adults Males 18 years and older will normally be incarcerated in the Regional Jail. However circumstances may require locating the prisoner at a different facility (separating suspects for investigative purposes). Such needs will be communicated to the Chief Jailer who will then determine the most appropriate facility.

21.10.2 Female Adults Females 18 years and older will normally be incarcerated in the Regional Jail unless other arrangements necessary.

21.10.3 Sick or Injured Suspects in Custody Sick and injured suspects will be transported to Charleston General Hospital and medical treatment obtained. An ambulance or police vehicle may be used for transporting depending on the prisoner's condition. In extreme emergencies the nearest hospital will be used. Upon arrival at a medical facility, the officer transporting the prisoner will adhere to the following preliminary procedures:

- Advise hospital emergency room of the prisoner's presence.
- Complete all appropriate hospital forms in accordance with hospital procedures.
- Ensure that the prisoner remains under control during the medical evaluation.
- Determine as soon as possible if the suspect is going to be admitted or treated and released.
- Advise the district commander of the circumstances.

- When the preliminary tasks have been completed, the officer having custody of the prisoner will ensure that one of the following appropriate procedures is employed:

#### Misdemeanor Crime - Suspect Not Admitted

The officer having custody of the suspect will gather sufficient information to accurately identify the suspect. The officer shall remain with the suspect until completion of medical treatment unless otherwise authorized by his district commander. In the event of such authorization, the officer will advise the hospital personnel to contact the Police Department prior to the suspect's release. Upon notification, the suspect shall be picked up for processing, as outlined in of this manual.

#### Misdemeanor Crime - Suspect Admitted

The officer having custody of a suspect will gather sufficient information to accurately identify the suspect for the purpose of obtaining a complaint at a later time. The officer shall advise the hospital personnel to notify the Police Department prior to the suspect's release. Upon notification, the suspect shall be picked up for processing as outlined in this manual.

#### Felony Crime and Violent Suspects - Suspect Not Admitted

The officer having custody of the suspect will stand by until completion of medical treatment and then process the suspect in accordance with this manual.

#### Felony Crime and Violent Suspects - Suspect Admitted

Members having custody of a felony suspect who will be admitted to the hospital, will immediately notify the Shift Commander, who will determine, based on the nature of the crime, if a 24 hour guard is necessary. The officer having custody will stand by with the suspect until relieved by competent authority. Upon admittance to and prior to the release from the hospital, of a felony suspect, the Criminal Investigation Division personnel shall be notified.

21.10.4 Officer's Responsibility at Hospital The officer having custody of the suspect will perform the following tasks prior to leaving the hospital:

- Obtain as much of the pre-booking information as possible.
- Ensure that physical evidence from the suspect's person or belongings are collected, property marked, and packaged as evidence.
- Perform other necessary tasks as required or directed.

In the event a guard is not placed on the suspect, the officer having custody will advise the hospital personnel that felony charges are pending against the subject and they are requested to notify the Police Department (on duty Shift Commander/METRO Communications), prior to the suspect's release. Upon notification, the suspect will be picked up for processing as outlined in of this manual.

## **22.0 Response to Resistance/Aggression** (Review or Updated September 24, 2020)

The use of force, in response to resistance/aggression, by a police officer in the performance of his or her duty, especially the use of deadly physical force, has traditionally been one of the most controversial aspects of police work. National and statewide attention has again recently focused on the issues of Police Response to Resistance/Aggression. It is incumbent upon all professional Police Officers and agencies to have a clear understanding of the permissible Response to Resistance/Aggression by officers in the performance of their duties.

### **22.1 Policy** (Amended September 24, 2020)

Law enforcement officers are authorized to use force in pursuit of legitimate law enforcement objectives. Those objectives include making lawful stops and arrests and defending themselves and others.

It is the policy of the Charleston Police Department that its officers use only the amount of force that is objectively reasonable to achieve legitimate law enforcement objectives. Excessive or unreasonable force shall not be used. Any force used must be consistent with federal and State laws, city ordinances, and the policies and procedures of the Department.

When police officers are confronted with situations where it is objectively reasonable to use force to achieve a legitimate law enforcement objective, they should use only the force that is objectively reasonable. It is important to note that an officer need not attempt to begin using force at the lowest level of force on the continuum, when reason dictates, and the officer can articulate that a higher level of force is reasonable. Likewise, the skipping of steps may be appropriate given the resistance encountered. Simply put, this continuum should be viewed as a ladder—an officer may go directly to any level or “rung” of the continuum provided that the force selected is objectively reasonable.

### **22.2 Definitions** (Amended September 24, 2020)

- **De-Escalate**: An officer’s actions to attempt to calm a situation or to prevent a situation from escalating into a physical confrontation or injury, by using verbal and non-verbal techniques, including active listening skills, tone of voice, announcement of actions, body posture, personal space, eye contact, and empathy and compassion to promote officer and individual safety.
- **Imminent Threat**: A situation that may escalate to a direct threat.
- **Pain compliance**: is the use of painful stimulus to control or direct a person. Once control or compliance is established the painful stimulus is taken away.
- **Deadly Force**: Any Response to Resistance/Aggression which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.
- **Non-Deadly Force**: Any Response to Resistance/Aggression that is not deadly force.



- Objectively Reasonable: Reasonableness of a particular Response to Resistance/Aggression must be judged from the perspective of a reasonable officer on the scene in light of the facts and circumstances confronting the officer without regard to the officer's underlying intent or motivation.
- Reportable Force: Any physical contact beyond unresisted handcuffing or escorting.
- Serious Response to Resistance/Aggression: Lethal and less-than-lethal actions by officers including:
  - \* All firearm discharges by a Member with the exception of range and training incidents,
  - \* All responses to resistance/aggression by an officer resulting in a serious injury such as a broken bone or an injury requiring hospitalization,
  - \* All head strikes with an impact weapon,
  - \* All responses to resistance/aggression by an officer resulting in loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ,
  - \* All other responses to resistances/aggression by an officer resulting in a death.
  - \* All uses of vascular neck restraints and (or) chokes and
  - \* All incidents where a person receives a bite or other injury from a Department canine.
- Response to Resistance/Aggression Continuum: A training model/philosophy that supports the progressive and reasonable escalation and de-escalation of Member-applied force in proportional response to the actions and level of resistance offered by a subject. The level of response is based upon the situation encountered at the scene and the actions of the subject in response to the Member's commands. Such response may progress from the Member's actual physical presence at the scene to the application of deadly force.
- Member: Any officer of the Charleston Police Department who has taken the Oath of Office and who possesses police powers.

## 22.3 Appropriate and Authorized Degrees of Force (Reviewed or updated September 24, 2020)

### 22.3.1 Verbal Persuasion as a Means of Effecting Custody / De-escalation (Amended September 24, 2003)

The practice of courtesy in all public contact encourages understanding and cooperation; lack of courtesy arouses resentment and often-physical resistance. Simple directions, which are complied with while you merely accompany the subject, are by far the most desirable method of dealing with an arrest situation. Custody may be achieved through advice, persuasion and warnings before resorting to actual physical force.

The above should not be construed to suggest that you should ever relax and lose control of a situation, thus endangering your personal safety or the safety of others. Officers are permitted to use that force which is objectively reasonable.

### 22.3.2 Non-Deadly Force (Reviewed or updated September 24, 2020)

Officers are authorized to use department-approved, non-deadly force techniques and issued equipment to;

- protect the officer or others from physical harm,
- effect a lawful stop and arrest and/or,
- prevent a person from injuring himself/herself.

### 22.3.3 Deadly Force (Reviewed or updated September 24, 2020)

Officers are authorized to use deadly force when;

- In defense of him/herself or others from an objectively reasonable belief of an immediate threat of death or serious physical injury,
- Officers should be aware of the effects and that it may become objectively reasonable to protect him/herself from the use or threatened use of OC spray when he/she has an objectively reasonable belief that deadly force will be used against him/her if he/she becomes incapacitated,
- Preventing the escape of a fleeing felon whom the officer has an objectively reasonable belief poses an immediate threat of death or serious physical injury to the officer or others. Where practicable prior to discharge of the firearm, officers shall identify themselves as law enforcement officers and state their intent to shoot.
- Officers may use deadly force to destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured when the officer reasonably believes that deadly force can be used without harm to the officer or others.

### 22.3.4 Unnecessary Force (Reviewed or updated September 24, 2020)

Unnecessary force occurs when it is apparent that the type or degree of force employed was not objectively reasonable. When any degree of force is utilized as summary punishment or for vengeance, it is clearly improper and unlawful.

Any officer who witnesses unnecessary force used by another officer will intervene and report this unnecessary force to his/her supervisor.

When the Response to Resistance/Aggression is applied indiscriminately, the officer will be exposed to civil and criminal liability and Department disciplinary action.

Justification for the Response to Resistance/Aggression is limited to what is reasonably known or perceived by the officer at the time. Facts discovered after the event, no matter how compelling, cannot be considered in determining whether the force was justified.

### 22.3.5 Use of Chemical Agent (Oleoresin Capsicum) (Reviewed or updated September 24, 2020)

The use of OC Spray constitutes a non-deadly Response to Resistance/Aggression. Oleoresin Capsicum is an inflammatory agent and is naturally derived from oils and resins of the cayenne pepper plant. OC is considered a less than-lethal weapon system that causes an intense burning sensation of the skin and mucous membranes. OC Spray has a near-immediate effect on the individual sprayed. Once sprayed, an individual's eyes will

reflexively close because of the burning, tearing and swelling of the eyes due to dilation of the capillaries. The subject usually becomes disoriented and is likely to lose their balance. When inhaled, the respiratory tract is inflamed, resulting in a swelling of the mucous membranes lining the breathing passages and temporarily restricting breathing to short, shallow breaths. The subject may experience choking, gagging or gasping for breath. Other effects include burning sensation of the skin. While temporary incapacitation occurs rapidly, the effects of OC Spray subside after about 30 minutes.

Because of its debilitating effects, officers should never spray OC into the wind where they could be sprayed by blowback.

Because of OC's effects on their respiratory systems and their susceptibility to breathing difficulties, care should be taken to ensure infants, children and the elderly are not sprayed.

#### 22.3.5.1 Officer's Responsibilities When Utilizing OC Spray (Reviewed or updated September 24, 2020)

First aid care and decontamination of subjects sprayed by OC;

- Before attempting to administer any first aid assistance or initiating decontamination to a subject sprayed with OC who is to be arrested or taken into custody, officers will ensure that the subject is safely secured by use of handcuffs.
- If the sprayed subject is lying on their stomach, immediately after handcuffing turn them on their side or place them in a seated position, whichever facilitates ease of breathing for them.
- If the struggle continues after they have been restrained, **do not sit or kneel on their back**. Hold their legs down or secure them with ankle restraints. DO NOT tie the handcuffs to any leg or ankle restraints.
- Calm the subject down; reassure him/her that the effects of the spray are temporary.
- Expose the subject to fresh air and if available at the scene of the arrest, flush the contaminated area with large amounts of water.
- **Do not lay the subject on their stomach during transport. Attempt to always transport them in a seated position.**
- Monitor the subject at the scene, during transportation and while in the booking office for any sign of respiratory distress.
- If a struggle occurred during the arrest of the subject, officers should be even more cautious if they suspect the subject has used drugs or alcohol or if the subject has displayed any psychological problems.
- If needed, get the subject immediate medical attention.
- Once at the booking office, have the subject wash the contaminated area with soap and water to remove any resin remaining on the skin and continue to flush their eyes and/or contaminated areas with water until the effects of the OC Spray have subsided, prior to any booking.
- If the effects of the OC Spray do not subside within a reasonable amount of time (approximately 30 minutes) or if the subject becomes unconscious or unresponsive, arrange for the immediate transportation of the subject to a hospital. **The subject should be transported lying on his/her side**. Make sure that hospital personnel are made aware of the OC contamination in addition to any other injuries.

- **Subjects wearing contact lenses should remove and properly wash them. Serious or permanent eye damage can result if contacts are not removed within four to six hours after exposure. Do not replace contact lenses back into the eyes until they have been properly cleaned.**
- To decontaminate premises indoors, ventilate by opening doors and windows. OC Spray should dissipate in about one hour.
- Use of OC Spray and subsequent first aid administered to the subject must be reported in a CPD “Response to Resistance/Aggression Report.”

#### 22.3.6 Use of Firearms (Reviewed or updated September 24, 2020)

- An officer may discharge a firearm under the following circumstances:
  - At an approved range,
  - When killing seriously wounded or dangerous animals when other disposition is impractical,
  - When it is objectively reasonable in the defense of an officer’s own life or when other reasonable means have failed or would be clearly ineffective,
  - When objectively reasonable in the defense of another person’s life or when other reasonable means have failed or would be clearly ineffective,
  - Preventing the escape of a fleeing felon whom the officer has an objectively reasonable belief poses an immediate threat of death or serious physical injury to the officer or others. Where practicable prior to discharge of the firearm, officers shall identify themselves as law enforcement officers and state their intent to shoot.
  - In all cases where firearms are discharged, officers must make every effort to ensure that innocent persons are not harmed.
- An officer shall not discharge a firearm under the following circumstances:
  - As a warning,
  - Into a crowd,
  - At persons accused/suspected of committing misdemeanors,
  - Solely to protect property interests,
  - To stop an individual on mere suspicion of a crime simply because the individual runs away,
  - At or from a moving vehicle, absent exigent circumstances which prevent an officer from removing him/herself from the path of the vehicle.

### 22.3.7 Conducted Electrical Weapons (CEW) (Reviewed or updated September 24, 2020)

The use of Conducted Electrical Weapons, or CEW, are not a substitute for deadly force, and, under normal deployment circumstances, are a LEVEL 3 use of force option, as stated in Section 22.4 “Response to Resistance/Aggression Options and Continuum”.

CEWs are deployed as an additional tool and are not intended to replace firearms. CEWs may be used to control dangerous or violent subjects when deadly physical force does not appear to be justified and/or necessary or other attempts to subdue the subject by other conventional tactics have been, or likely will be, ineffective in the situation, or there is reasonable expectation that it will be unsafe for officers to approach within contact range of the subject.

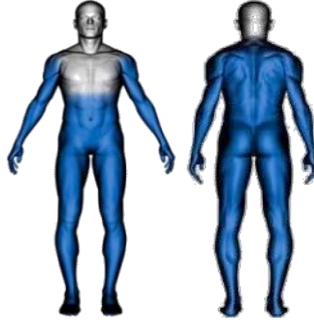
CEWs are designed to use propelled wires and probes, known as Probe Mode, from a replaceable cartridge, or direct contact, known as Drive Stun Mode, to conduct energy to affect the sensory and/or motor functions of the nervous system.

When used in “Probe Mode” and the probes make contact with the target, the CEW transmits electrical pulses along the wires and into the target. The pulses send electrical signals to temporarily override the sensory and/or motor functions of the nervous system. One objective for this force option is to achieve Neuro Muscular Incapacitation, or NMI. When CEWs are deployed in the “Probe Mode”, it is designed to stimulate motor nerves temporarily causing uncontrollable muscle contractions that inhibit the subject from being able to perform coordinated movement.

The CEW may also be used in Drive Stun Mode by deploying the probes at close or point-blank range, and/or using a spent cartridge or no cartridge on the front of the CEW, to make physical contact with a subject and deliver energy. CEWs shall be issued to and used only by officers who have completed the CEW training program. Those officers must also attend and pass the annual CEW recertification course.

The following directives and considerations must be adhered to;

- Officers shall not use personally owned CEWs for official CPD duty.
- Officers carrying the CEW shall carry the device in an issued holster on their support side.
- Officers carrying the CEW on duty are responsible for ensuring the device has sufficient battery strength and is properly functioning by conducting a “Spark Test” before the start of every tour of duty.
- If a person is not an immediate threat of harm/injury or flight risk from a serious offense crime; do not immediately resort to the CEW without first attempting to use negotiation, commands, or physical skills
- When feasible, before discharging the CEW, officers should make every reasonable effort to give a verbal warning to the subject.
- Avoid intentionally targeting the CEW on sensitive areas of the body such as the (eyes, head, face, neck, genitals, breasts, chest or area of the heart, or known pre-existing injury areas without legal justification.
- The preferred target areas are below the neck area for back shots and the lower center mass (below chest or heart area) for front shots. The preferred target areas are highlighted in blue in the following illustrations.



- The CEW should not be utilized on a person who is actually or perceived to be mentally ill, elderly subjects, young children or females who the officer knows or has reason to believe is pregnant if other practical alternatives are available to the officer under the circumstances.
- The CEW may be deployed by delivering multiple cycles, extended cycles (longer than 5 seconds), or more than one CEW on the same subject if the officer(s) has an objectively reasonable belief the use is necessary to take the suspect into custody.

Officers should make every effort to gain control of the subject during the first 5 second cycle. This is especially true when there are other officers present to assist with cuffing. Multiple or extended CEW applications cannot be justified solely on the grounds that a suspect fails to comply with a command, absent other indications that the suspect is an immediate threat or about to flee from a serious crime.
- The CEW has the ability to ignite flammable liquids. The device is not to be deployed on subjects who have come into contact with flammable liquids or in environments where flammable liquids are obviously present. Caution should be used when deploying the CEW on a subject who has been pepper sprayed. Some defense sprays are flammable, and CEWs should only be used in conjunction with defense sprays that have been tested and proven to not have an adverse reaction with the use of a CEW.
- Officers are to be aware of foreseeable primary risks and risks of secondary injury, especially falls from heights or on hard surfaces or effects of intermittent clothing disconnect.

#### 22.3.7.1 Officer's Responsibility When Utilizing the CEW Medical Attention (Reviewed or updated September 24, 2020)

Upon deployment of the CEW, the appropriate medical attention shall be immediately provided to the subject at the scene, if necessary, with follow up medical treatment at an appropriate medical facility.

#### Removal of Probes

After securing the subject in handcuffs and/or other appropriate restraints, an officer may remove the probes using prescribed methods taught in the annual recertification course. However, in the event the probes strike a sensitive region of the body (eyes, head, face, neck, groin, or breasts), the probes become deeply embedded in the subject, or upon removal of the probe(s), there are parts of the probe missing, transportation to a medical facility shall be provided by ambulance to have the probe(s) and/or parts removed by qualified medical personnel.

Officers shall wear latex gloves when removing and handling probes that have been used on a subject, and when treating the probe contact site. The probe contact site shall be wiped with a sterile alcohol swab and an adhesive bandage applied to the site.

Alcohol swabs, gloves and bandage packaging shall be disposed of in a biohazard bag or receptacle.

Officers shall photograph and document all probe contact sites and any area where the CEW was used in the Drive Stun mode. This shall be completed even if there are no visible injuries. The photograph(s) will be preserved as evidence utilizing the Departments current authorized photographic evidence system.

#### Reporting, Investigation and Downloads of the CEW

Each CEW has a data port that stores the date, time and duration of each deployment. The Professional Standards Division will maintain the computer interface necessary to download the stored data on department issued CEW's and will maintain files on all CEW uses and downloads. In an effort to reduce repeated and overlapping download information from being stored, the following will highlight the procedure for downloading the CEW.

- All CEW download information may be stored via hard file or electronically.

- The CEW will be downloaded on a quarterly basis on a schedule determined by the Professional Standards Division. The quarterly download information will include all data stored on the CEW from the last quarterly download to the current quarterly download.

- The CEW will be downloaded for every accidental and actual field deployment. This information shall only include the day before, day of, and day after the deployment.

- The CEW shall be downloaded before it is turned in for repair. This information will include all data stored on the CEW.

- Any attempt to intentionally alter, destroy, or erase any information stored on the CEW will be considered a serious violation of the department policy, and is grounds for termination and prosecution.

Each deployment, including accidental discharges, of a CEW shall be investigated and documented.

Each deployment of a CEW shall be documented in a CPD "Response to Resistance/Aggression Report" and a "Taser Use Report." A supervisor shall be notified as soon as practical.

The officer(s) that deployed the CEW shall be responsible for the evidence collection. This should be done using the following as a guideline and as taught in the annual CEW recertification:

-Once the probes are removed, the officer will push them into the spent cartridge so the barbs are not exposed and cannot easily fall out.

-The officer will gather the loose wires, being careful not to stretch them.

-The officer will gather several Anti-Felon Identification Devices (AFID's). Provided, that the AFID's can be located due to environmental conditions. If none can be located, documentation shall be provided in the Response to Resistance/Aggression report.

-The officer will secure the cartridge, probes, wires, and AFID's in a department approved evidence bag and apply a biohazard warning to the exterior of the bag.

-Officers will treat this evidence as a biohazard and take all necessary precautions to limit accidental exposure.

-The evidence will be submitted to the Property and Evidence section.

-This evidence will be stored for a period of two years. After two years Property and Evidence may dispose of it after checking to ensure there is no pending litigation or investigation.

#### 22.4 Response to Resistance/Aggression Options and Continuum (Reviewed or updated September 24, 2020)

A Response to Resistance/Aggression Continuum is progression of force options available to an officer to control a situation when the officer encounters resistance/aggression. The control/force options available to Charleston Police Officers are as follows:

- LEVEL 1 Officer Presence, verbal direction and/or escort.
- LEVEL 2 Soft empty hand controlling techniques. Any personal physical contact used to control a resisting subject other than strikes or kicks, including but not limited to; [REDACTED]
- LEVEL 3 Issued OC spray, issued conducted electrical weapon (CEW) and/or Hard Empty Hand Controlling Techniques that have a higher probability of injury, such as; [REDACTED]
- LEVEL 4 Impact weapons, including batons, ASP, and night sticks. These weapons can be used as soft intermediate weapons [REDACTED]



██████████ A canine may be used subject to the CPD Canine Policy (Section 31 of this manual).

- LEVEL 5 Deadly force

It is expected that an officer will almost always first try to establish and maintain control of a subject or situation through use of presence and verbal dialogue or commands before progressing to use of higher levels of force. However, **it is permissible for an officer to escalate quickly through the force options or skip steps, depending on a tactical evaluation of the situation.** In other words, this continuum can be viewed as a ladder, and an officer may go directly to any level or “rung” of force on the continuum, providing that the force option(s) selected is objectively reasonable.

An officer also has the option to disengage from physical contact with the subject, deescalate and/or escalate to a higher level in the Use of Force Continuum in order to employ the proper level of force as the encounter continues. An officer may decide to disengage either temporarily or entirely, depending on the circumstances. In fact, it may sometimes be necessary to disengage in order to escalate and gain control.

Also, keep in mind that proper police action need not always consist of some form of physical engagement, even if the subject’s actions would justify it. OFFICER SAFETY IS ALWAYS A KEY PRIORITY. Use of movement, cover and concealment are keys to officer safety during confrontations or potential confrontations – particularly those in which a subject has or may have a firearm or other potentially dangerous weapon.

Once custody of a subject or subjects has been established, an officer should de-escalate to a force level sufficient to maintain that custody. Once custody is achieved, an officer has a responsibility to ensure the safety of all persons involved in the encounter and to provide appropriate custodial care for any subject(s) involved in the incident.

Selection of an objectively reasonable force option under pressure is one of the most difficult aspects of a police officer’s job. The Department and the law recognize that officers are expected to make split-second decisions in rapidly evolving circumstances and that the amount of time available to escalate and respond to a situation may impact on the officer’s decision. The Department also recognizes that there is no one hard and fast formula or equation to determine objectively reasonable Response to Resistance/Aggression. However, a graphic version of the Response to Resistance/Aggression Continuum is included in this policy as a training tool to provide guidance to officers making Response to Resistance/Aggression decisions. The continuum shows types of subject actions commonly encountered by Police,

categorized as “Compliant/Cooperative”, “Passive/Verbal Resistance”, “Active Resistance”, “Physical Resistance”, and “Deadly Resistance”, coupled with force level options.

While the Response to Resistance/Aggression Continuum chart focuses on the subject’s actions to select a force option, a number of other factors should be taken into consideration as a part of the “totality of the circumstances.” These factors are not necessarily reflected in the chart but may legitimately affect the officer’s selection of a force level option, either up or down the continuum. These Escalation/De-escalation factors include, but are not limited to:

- Officer/Subject Factors (relative age, size, strength or skill level injury/exhaustion, number of officers versus number of subjects)
- Influence of drugs or alcohol
- Presence/proximity of weapons
- Other tactical factors (position of advantage, cover, time for decision)
- Availability of other options

In the final analysis, no graph or chart can substitute or eliminate the need for an officer’s reasoned decision about the Response to Resistance/Aggression based on training, experience, common sense and good judgment. Each officer has an individual legal responsibility to ensure that the force used is objectively reasonable and justified under current law and should act accordingly.

<p><b>LEVEL 1</b>  <b>Compliant / Cooperative</b>  Subject is cooperative and complies with officer requests or commands.</p>	<p><b>OFFICER PRESENCE, VERBAL DIRECTION AND/OR ESCORT</b>  Usually there are not many response to resistance/aggression concerns if a subject complies with the officer's commands. Routine arrest and handcuffing procedures are to be followed.</p>
<p><b>LEVEL 2</b>  <b>PASSIVE/VERBAL RESISTANCE</b>  Subject does not physically resist the officer but refuses to comply with the officer's verbal commands.</p>	<p><b>SOFT EMPTY HAND CONTROL</b>  Once verbal techniques have been attempted and no voluntary compliance is forthcoming, the officer is authorized to use Soft Empty Hand Control Techniques that have a minimal probability of injury, such as [REDACTED]  [REDACTED]  [REDACTED]</p> <p><b>RESPONSE TO RESISTANCE / AGGRESSION REPORT REQUIRED</b></p>
<p><b>LEVEL 3</b>  <b>ACTIVE RESISTANCE</b>  Subject is making physically evasive movements (e.g. bracing, tensing or moving away) to defeat the officer's attempt to control the subject or subject is verbally threatening to cause imminent physical harm to the officer or another or the subject verbally signals an intention not to be taken into or retained in custody, provided the subject's intention to physically resist the officer is clear.</p>	<p><b>HARD EMPTY HAND CONTROL, OC SPRAY, Conducted Electrical Weapon</b>  The officer is authorized to use the amount of force objectively reasonable to overcome this behavior by using department issued OC Spray, department issued conducted electrical weapon and/or Hard Empty Hand Controlling Techniques that have a higher probability of injury, such as [REDACTED]  [REDACTED]</p> <p><b>RESPONSE TO RESISTANCE / AGGRESSION REPORT REQUIRED</b></p>
<p><b>LEVEL 4</b>  <b>PHYSICAL RESISTANCE</b>  Subject engages, or is about to engage, in behavior beyond active resistance, such as grabbing, pushing, punching, kicking, biting, and throwing objects or any other behavior in which the officer, or another, becomes the object of the subject's resistance or aggression.</p>	<p><b>AUTHORIZED IMPACT WEAPONS, DEPLOYMENT OF CANINE</b>  The officer is authorized to use the amount of force objectively reasonable to overcome this resistance or aggression by use of authorized impact weapons, including batons, ASP, and night sticks. These weapons can be used as soft intermediate [REDACTED]  [REDACTED]  [REDACTED]</p> <p>A canine may be used subject to the CPD Canine Policy (Section 31 of this manual).</p> <p><b>RESPONSE TO RESISTANCE / AGGRESSION REPORT REQUIRED</b></p>
<p><b>Level 5</b>  <b>DEADLY RESISTANCE</b>  Subject engages or is about to engage in actions that the officer reasonably believes to be an immediate threat of death or serious bodily injury to the officer or another. This includes attempts to render the officer unconscious, grabbing for the officer's firearm, blows to vital organs, stabbing, shooting or any other action that would create a likelihood of causing the officer or another serious injury or death.</p>	<p><b>FIREARMS, OTHER AUTHORIZED WEAPONS , VASCULAR NECK RESTRAINT / CHOKES</b>  The officer is authorized to use the amount of force objectively reasonable to preserve the officer's or another's life or to prevent serious physical injury, up to and including force that would reasonably be expected to cause serious injury or death, such as; use of firearm, blows to the head using impact weapons, vascular neck restraints and (or) chokes, etc.</p> <p><b>RESPONSE TO RESISTANCE / AGGRESSION REPORT REQUIRED</b></p>

**22.5 Injury or Complaint of Injury (Reviewed or updated September 24, 2020)**

When an officer uses reportable force that results in an injury or complaint of injury to a person, the officer will ensure that an on duty supervisor from his/her assigned bureau (with the

rank of Sergeant or higher or Corporal if he/she is acting as Sergeant for the date and time in question) is notified immediately. A supervisor must respond to the scene of the injured person (including injured officer) and investigate by conducting interviews of all officer and civilian witnesses and the subject, taking photographs or other electronic imaging of injuries or alleged injuries and whatever else the supervisor deems necessary to complete a thorough investigation. The on-scene supervisor must notify the chief of police and professional standards of incident. The Chief and professional standards will evaluate to determine what further investigative actions are warranted based upon the severity of the injury and the nature of the reportable force.

- If an officer of the required rank is not on duty in the officer's assigned bureau, the Member will ensure that the Shift Commander on duty is notified.
- When an officer's Response to Resistance/Aggression results in injury or complaint of injury, immediate steps will be taken to request medical attention by the first officer who becomes aware of such injury or complaint of injury.
- Anytime police officers use serious physical force or his/her action results in serious physical injury, the Criminal Investigation Commander and a Member of Professional Standards shall be notified as soon as possible, and a Member of each unit will be required to respond to the scene.
- When the Response to Resistance/Aggression requires that an Investigator from the Criminal Investigation Division respond to the scene, that Investigator will assume command of the investigation, consistent with investigative procedures and law specifically, but not limited to Section 20.0 Criminal Investigations, of this policy and procedures manual.
- The Member will document the incident in detail on the appropriate Departmental forms and submit the original to the responding supervisor. All Members witnessing or having knowledge regarding the incident will submit appropriate reports prior to going off duty.
- The supervisor shall submit a report to the Chief with a recommendation as to 1) whether the force used was within the policy, and, 2) whether the incident involves training or tactical issues.
- The Chief of Police will be notified and will review the reports will determine if further investigation or documentation is needed at that time.

#### 22.6 Auxiliary Weapons are Prohibited Unless Authorized by the Chief of Police (Reviewed or updated September 24, 2020)

Examples of auxiliary weapons are: a firearm carried in addition to the service pistol or its equivalent (unless previously authorized by the Chief of Police or his designee), sap gloves, claw handcuffs, fixed blade knives and/or folding blade knives with a blade length of more than five inches. Any weapon issued by the Department to aid in the performance of specific duties (i.e. shotguns and rifles) shall not be considered an auxiliary weapon for purposes of these provisions.

#### 22.7 Member Not to Surrender Weapon (Reviewed or updated September 24, 2020)

A Member of the Department may be at the mercy of an armed suspect who has an advantage, but experience has shown that the danger to a Member is not necessarily reduced by that Member giving up his/her firearm upon demand.

- Surrendering a firearm might mean giving away that Member's or another Member's only chance for survival.
- A Member of the Department should use every tactical tool available to avoid surrendering a firearm.

#### 22.8 Display of Weapon (Reviewed or updated September 24, 2020)

No provisions of this manual shall prevent the drawing or displaying of an authorized firearm during the course of an arrest or an investigation when it is objectively reasonable by the Member for the safety of that Member or of other persons. No firearms will be unnecessarily drawn or displayed nor shall they be handled in a careless manner. Members shall not draw, display, load, or unload a firearm except:  Whenever objectively reasonable in the proper performance of their duties, or  When so ordered by a superior officer.

- When directed to do so by an authorized Department Armorer or Range Officer.
- When loading or unloading any firearm, the officer shall direct the barrel of the weapon into a sand-filled safety barrel as a safety measure should the weapon discharge.

#### 22.9 Response to Resistance/Aggression Reporting (Reviewed or updated September 24, 2020)

A Response to Resistance/Aggression Report (CPD 167) shall be completed when any reportable force is used or if one of the following conditions is met;

- Oleoresin Capsicum (OC, Cap-Stun) spray is used,
- Taser or other conducted electrical weapon is used,
- Pointing of a firearm directly at any person,
- Any intentional discharge of a firearm at a person.

Note: Any discharge of a firearm, with the exception of when at an approved firing range, will require an incident report documenting all relevant information related to the discharge. Furthermore, if the firearm is used on a domestic animal, the report shall include the identity of the owner of the animal, if known and whether the owner of the animal has been notified.

- The subject complains of abuse or excessive response to resistance/aggression.
  - A PSD complaint will also be initiated.
- Reporting is required under the Canine Policy provisions in Section 31 of this policy and procedures manual.
- Any use of deadly force.
- The completed Response to Resistance/Aggression Report (CPD 167) will immediately be sent to the Professional Standards Division along with any photographs and/or digital photographic camera cards associated with the CPD 167. The photographic material sent to PSD will be handled in accordance with section 20.2.5.2

#### 22.10 Response to Resistance/Aggression Review (Reviewed or updated September 24, 2020)

The Office of the Chief of Police will conduct an administrative review of each reportable use of force to ensure compliance with policy and existing law. This does not, however, preclude review of any matter by the Professional Standards Division for investigation of violation of policy and disciplinary recommendation.

The Office of the Chief of Police will evaluate this policy, training procedures and equipment issued to the officers annually to determine compliance with this policy and the law and make all necessary changes.

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## 24.0 IN-CAR AUDIO/VIDEO RECORDING EQUIPMENT POLICY

(Amended December 07, 2016)

This policy provides guidelines for the proper use, care and maintenance of Charleston Police Department in-car recording equipment, establishes security measures regarding in-car audio/video recordings and review thereof, and sets forth a uniform method of recording and storing in-car audio/video media.

24.1 General Use and Operations Guidelines Officers shall activate the in-car recording equipment whenever there is potential for citizen contact during performance of law enforcement duties including, but not limited to, traffic stops, pursuits, crash scenes, reports taken in residences, and any unusual situations or circumstances. **Armed encounters, acts of physical violence, felonious activity and pursuits shall be recorded at all times**, except that when an immediate threat to the officer's life or safety or the life or safety of others makes activating the camera impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to do so.

### **Mandatory Testing - At the beginning of each shift:**

1. Officers will record by voice the time, date, officer's name, unit number and payroll number;
2. Officers will record audio with the in-car mic and the remote mic to ensure that both are working properly;
3. Officers will play back the media with the above information recorded to ensure that it is recording properly. During the playback, officers will check the on-screen information to make sure it is correct. (Date, time, car number, "Siren Icon" for siren, "Brake Icon" for brakes, "Mic Icon" for mic and "Light Icon" for lights); and
4. Officers will check the position of the camera to make sure it is properly aimed to capture video directly in front of the vehicle.

### **General Guidelines:**

- Officers will not cease recording an event, situation, or circumstance at the demand of anyone other than his/her supervisor.

- Officers shall inform anyone who asks that audio/video recording equipment is in use.
- Officers/supervisors shall not alter or attempt to delete audio/video media.
- Back up officers who arrive on the scene to assist another officer and who also have in-car audio/video recording capabilities will ensure that the audio/video equipment in their car is activated, operating properly and recording events in accordance with the requirements of this policy.
- Officers will utilize the remote audio recording capabilities of the audio/video equipment to record law enforcement related calls such as domestic calls or disturbance calls, and whenever a prisoner is in or near the vehicle.
- Officers should, when practical, keep prisoners in audio/video recording range.
- The audio/video equipment is not to be deactivated until the contact that necessitated the recording has concluded.
- Officers will be trained in the operation of the audio/video system(s) by qualified Departmental personnel or a representative of the system's vendor or manufacturer before engaging in the use of in-car audio/video system.

Transmitters for the in-car video recording systems will be placed in the charger at the end of the shift by the assigned officer. The microphone is generally to be worn by the driver of the patrol vehicle.

- Vehicles should not be used as patrol vehicles unless the audio/video recording equipment is in proper working order. Officers should contact their Shift Commander to make arrangements for another vehicle in the event the audio/video recording equipment is not working properly.
- Failure to test or activate the video and/or audio recording equipment as outlined in this policy or the abuse or misuse of the audio/video recording equipment shall be deemed dereliction of duty and subject to disciplinary action.

## 24.2 Definitions

Master System Administrator (MSA) – Supervisor(s) authorized by the Chief of Police and assigned to the Information Services Division with full access to user rights.

Record After the Fact- A manufacturer's software feature that allows creation of new video up to several days after the event actually occurred, depending on available internal memory of each in-car recording equipment. An authorized user can create a video that can be used as evidence from the temporary memory of the in car recording equipment.

System Administrator (SA) – Supervisor authorized by the Chief of Police and assigned to the Support Services Division who is responsible for inventory, control, and operational maintenance of in-car recording equipment.

## 24.3 Ownership and Review of In-Car Audio/Video Recordings

- It is the policy of the Charleston Police Department that *all* recordings generated on/with the Department's equipment are the sole property of the Department. Copying or reproduction of any media segment, removing such media from the Department or failing to follow media control procedures without authorization of the Chief of Police is prohibited.
- Review of Recordings
  - An officer may review his or her own in-car video/audio recording for official law enforcement purposes.
  - A supervisor investigating a specific act of officer conduct, such as use of force, or evaluating a specific encounter by an officer to assess officer performance may view in-car audio/video recordings.
  - In-car audio/video recordings may be viewed by court or legal personnel through proper legal process or with permission of the City Attorney, Chief of Police or an authorized designee.
  - In-car audio/video recordings may be viewed by the media through proper process, or with permission of the Chief of Police or an authorized designee, or by providing access to public, non-exempt data in compliance with a Freedom of Information Act request
  - In-car audio/video recordings may be used for department training purposes with permission of the Chief of Police or his or her designee (excluding where the audio/video recording is being used as evidence, unless the case has been fully adjudicated).
  - Field training officers and supervisors may use audio/video captured by in-car recordings to provide training to recruits and to assist with the completion of the Daily Observation Report (DOR).
  - While reviewing in-car audio/video recordings, authorized users shall do so in a manner that restricts unauthorized users from viewing any recording.
  - Under no circumstances shall members with access to in-car audio/video recordings be allowed to use, show, reproduce or release recordings for the purpose of ridicule or embarrassment of any officer or individual or for any non-law enforcement related purposes. This includes submission of any portion of an in-car audio/video recording to a media organization unless release has been approved in advance by the Chief of Police or an authorized designee. Any officer who violates this policy is subject to discipline, up to and including termination.

#### 24.4 Complaints Received/Media Preservation Policy (Added April 6, 2008)

Any time a complaint is made to a supervisor alleging misconduct which involves an officer who is assigned an in-car audio/video recording device, the supervisor shall make every effort to preserve the video by ensuring it has been uploaded and has the appropriate retention tag. In the event the in-car audio/video recording equipment was not initiated, the supervisor will attempt to create an event with the Record after the Fact feature.

Supervisors will make the appropriate notifications to the Professional Standards Division and specialized units if necessary.

#### 24.5 Inspection, Maintenance, and Repair

- Proper care and maintenance of all in-car recording equipment shall be in compliance with the manufacturer's recommendations.
- Video/audio equipment are sensitive pieces of electronics and should be treated as such. Fluids, dirt or foreign material will affect the functionality of the equipment. It shall be the responsibility of the officer who is assigned in-car recording equipment to ensure that the area around the unit is free of any material which may cause damage.
- Equipment failure shall be reported to the officer's supervisor immediately. Equipment failure is any condition which interferes with video and/or audio recording capability, this includes but is not limited to loose connectors or the camera's inability to focus straight ahead. The supervisor shall ensure the assigned officer completes vehicle maintenance form CPD-175.
- Officers shall not attempt to remove any audio/video equipment from the police vehicle.
- Officers shall not attempt to make any repairs or modifications to the in-car recording equipment.

#### 24.6 Copies of Media

- Every effort will be made by the requesting officer to give Property and Evidence personnel at least 24 hours' notice to produce copies of media.
- An officer requesting a copy of media for court will sign out the copy with his/her signature on the CPD 115 before the copy may leave Property & Evidence. Once the copy has been used in court it shall immediately be returned to Property & Evidence and signed back in by the requesting officer. The copy will be destroyed by Property & Evidence personnel.  
Officer requests for copies of media for any use other than court appearances must be authorized by the Chief of Police.
- All requests for copies of recorded video media from persons or agencies outside of the Charleston Police Department shall be directed, in writing, to the Chief of Police or his designee.
- Requests made by attorneys shall be made through the Kanawha County Prosecutor's Office or City Attorney's Office in criminal cases. Requests for media on civil cases shall be made through the City Attorney's Office.
- A fee set by the Chief of Police may be charged for the reproduction of a video or any segment thereof.

#### 24.7 Pre-Event Recording

The pre-event setting on each recording device will be 60 seconds in duration.

The pre-event setting shall be changed only by those officers assigned to Information Services Division with approval from the Chief of Police.

#### 24.8 Data Security and Access Control

Master System Administrator (MSA) The Information Services Commander will serve as the Master System Administrator (MSA) for the in-car video system. The MSA will have full access to user rights; control passwords and end-user security access rights; coordinate with SAs; and serve as liaison to the in-car recording equipment manufacturer's representatives on operational and equipment related matters.

System Administrators (SA) Support Services Commander and Assistant Support Services Commander will serve as the Authorized System Administrators (SA) and will have access to the in-car audio/video recordings for the purpose of system maintenance and the production of DVDs for evidentiary or training purposes. The System Administrators will assign and track inventory of in-car recording equipment and are responsible for quality checks of video and audio sound quality;

All in-car audio/video files will be maintained by the MSA on a secured departmental server.

Officers are authorized access to the server via designated network computer.

1. In-car audio/video files cannot be accessed without a valid username and password;
2. Patrol Officers are authorized to review videos of their own actions for official law enforcement purposes, including but not limited to, the purposes of preparing reports and court preparation;
3. After completing review of an in-car audio/video, the officer will immediately log off of the system so that no unauthorized person may access the system under the officer's username/password.

#### 24.8.1 Event Tags / Retention Time

At the conclusion of a video recording the officer shall classify the recorded incident, enforcement action or encounter by selecting the proper category or Event Tag from the menu on the monitor. Event tags can be defined for a DVR configuration. Once a recording is stopped (i.e. "Stop/Quit" button is pressed) the DVR prompts the configured event tags and allows the officer to enter an answer for the tag. Answers provided by the officer are stored along with the video data for the recorded event.

Event Retention times are as follows:

## **24.9 Body Worn Camera**

### **24.9.1 PURPOSE AND SCOPE**

Category	Retain (Days)	Action
Assault	180	Purge
D.U.I.	365	Purge
Domestic	180	Purge
Drug Charge/Seizure	180	Purge
Field Investigation	90	Purge
Motorist Assist	90	Purge
Pursuit	180	Purge
Suspicious Vehicle/Behavior	90	Purge
Test Recording	90	Purge
Traffic Accident	180	Purge
Traffic Citation	90	Purge
Traffic Warning	90	Purge
Use of Force	731	Purge

The use of Body-Worn Cameras (hereinafter BWC or BWCs) is being implemented by the Charleston Police Department (CPD) to provide records of events and assist officers in the performance of their duties. Selected uniformed law enforcement officers will be equipped with BWCs. Video and audio recordings of enforcement or investigative actions are evidence and, therefore, subject to rules of evidence and laws of disclosure. It is in the best interest of justice that the CPD regulate and control all forms of evidence collection and storage in accordance with all applicable laws and rules of evidence including the retention and dissemination of information. This policy provides guidance on the use of BWCs.

It is the policy of the CPD that officers equipped with a BWC will activate the BWC when such use is appropriate to the proper performance of his or her official duties, consistent with applicable law and this policy. This policy does not govern the use of surreptitious recording devices used in undercover operations.

Once captured, BWC recordings are protected with multiple layers of encryption and cannot be altered. The CPD has adopted the use of BWC technology to accomplish the following objectives:

To promote professionalism and accountability of members of the Charleston Police Department.

- To preserve visual and audio information for use in investigations.
- To provide a record and documentation of interactions between officers and members of the public.
- To provide protection for officers against false, frivolous, and/or malicious claims.
- To identify officer and public safety concerns arising from enforcement practices and to implement necessary training measures to reduce danger to officers and the public.
- To enhance an officer's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation. To enhance the public trust by preserving factual representations of officer-citizen interactions in the form of video and audio recordings.
- To provide an objective measurement for self-critique and field evaluation during officer training.

Officers are encouraged to inform their supervisor of any recordings that may be of value for training purposes.

A copy of this policy will be available to the public on the Charleston Police Department's website.

### **24.9.2 DEFINITIONS**

Activate - Any process that causes the BWC to record video or audio.

Audio Recording – The electronic recording of conversation, spoken words, or other sounds.

Body Worn Camera (BWC) - A device authorized by the CPD that can be worn on the officer's body to capture recorded media in both audio and visual formats.

Ethernet Transfer Station (ETS) – A router with built-in docking stations physically installed at various CPD work sites. The ETS simultaneously recharges the BWC while downloading all digitally encrypted data to the server.

Master System Administrator (MSA) – Supervisor(s) authorized by the Chief of Police and assigned to the Information Services Division with full access to user rights.

Media or Data – For the purposes of this policy, references to media or data include photographs, audio recordings, metadata and video and audio footage captured by a BWC. BWC media shall be stored digitally and encrypted.

Subject shall refer to any individual who appears on video footage recorded by a BWC, except those who appear only incidentally.

System Administrator (SA) – Supervisor authorized by the Chief of Police and assigned to the Support Services Division who is responsible for inventory, control, and operational maintenance of the BWC system equipment.

Video Recording – The electronic recording of visual images with or without an audio component.

### **24.9.3 TRAINING**

Prior to use of a BWC officers must successfully complete mandatory training approved by the Chief on the use of the BWC to familiarize themselves with the BWC and applicable laws and CPD policies and procedures.

Only officers who have successfully completed the mandatory training shall be authorized to use BWCs in an operational setting.

### **24.9.4 OFFICER RESPONSIBILITIES**

Officers who have been issued a BWC are responsible for operating the BWC according to the manufacturer's recommendations with respect to placement and activation of the device and as outlined in this policy.

The BWC must be secured to the outermost garment worn by uniformed officers. It shall be secured to the uniform using the uniform mount/clip supplied by the manufacturer as part of the BWC equipment. The BWC will be positioned on the chest or on the belt with the camera tilted at the proper angle to capture video directly in front of the officer.

At the beginning of each shift, it shall be the officer's responsibility to inspect and confirm that their BWC is fully charged and functional. At that time, if the officer discovers any problems with the BWC, the officer shall immediately notify his or her supervisor of the problem(s).

Officers equipped with a BWC shall correctly label each completed audio/video file with a proper event tag at the conclusion of each incident/interaction.



At the end of each shift, the officers shall turn the BWC in to a supervisor. Officers in specialized units shall return BWCs to their respective individualized docking stations. If a BWC recording is made of an arrest or other incident, the officer shall document the use of a BWC in his/her incident, arrest, and related reports.

#### **24.9.5 Required to Wear BWC**

To the extent BWCs are available, all uniformed officers with the rank of Sergeant and below shall complete the mandatory training and will be required to wear BWCs in accordance with this policy. No uniformed Sergeant or uniformed officer below the rank of Sergeant will be excused from wearing a BWC unless specifically authorized by the Chief of Police. Every officer wearing a BWC will be responsible for utilizing the techniques taught to them during BWC training and will make all reasonable and necessary efforts to ensure that the BWC is operating properly at all times.

#### **24.9.6 Required Activation of BWC**

Both the Video and Audio Recording functions of the BWC shall be Activated whenever an officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between an officer and a member of the public. When an immediate threat to the

officer's life or safety, or the life or safety of others, makes activating the BWC impossible, the officer shall Activate the BWC at the first reasonable opportunity to do so. The BWC shall not be deactivated until the encounter has fully concluded and the officer leaves the scene (this includes recording of statements). Officers in additional arriving units to a scene will activate their BWCs as soon as practical (if so equipped), and will continue to record until either the completion of the incident, or after they have left the scene (this also includes recording of statements).

Officers shall Activate the BWC to record all field contacts involving actual or potential criminal conduct within video and/or audio range. This includes, but is not limited to:

- a) Traffic stops (including, but not limited to traffic violations, stranded motorist assistance and all crime interdiction stops);
- b) Emergency responses;
- c) Vehicle pursuits;
- d) Suspicious vehicles;
- e) Arrests and transports;
- f) Vehicle searches;
- g) Consent to Search;
- h) Physical or verbal confrontations;
- i) Pedestrian checks / Terry Stops;
- j) DUI investigations, including field sobriety tests;
- k) Domestic violence calls / child abuse or neglect;

- l) Statements made by individuals in the course of an investigation or complaint;
- m) Advisements of Miranda rights;
- n) Seizure of evidence;
- o) Execution of Warrants;
- p) All calls for service upon arrival to the scene; or
- q.) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

Additionally, an officer may Activate the BWC any other time the officer believes its use would be appropriate and/or valuable to document an incident or encounter. For the purpose of preserving the integrity of the recording, the BWC will remain activated until an incident is completed, unless the contact transitions into an area restricted by this policy.

As close to the inception of the encounter as is reasonably and safely possible, an officer who is wearing a BWC should notify the Subject(s) that they are being recorded by a BWC. Whenever possible, officers will inform other officers and/or other criminal justice personnel, including prosecutors, judges, and attorneys acting within the scope of their employment, that an officer's BWC is recording.

Before entering a private residence on a non-emergency call, an officer shall ask the occupant if the occupant wants the officer to discontinue use of the officer's BWC. If the occupant responds affirmatively, the officer shall discontinue use of the BWC. Provided, the officer shall have the discretion to reactive the BWC in the event the officer determines use of the BWC is necessary after a change of circumstances following the initial deactivation.

When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, an officer shall, as soon as practicable, ask the person seeking to remain anonymous if he or she wants the officer to discontinue use of the officer's BWC. If the person seeking to remain anonymous responds affirmatively, the officer shall discontinue use of the BWC.

#### **24.9.7 Damaged or Lost BWC**

If a BWC is not functioning properly or is physically damaged, the officer shall report the malfunction or damage to his/her supervisor as soon as reasonably possible, and will make arrangements to turn the unit over to his or her supervisor, and will complete and provide his or her supervisor with a CPD 102 describing the malfunction and how it was discovered. The supervisor will issue the officer another functioning BWC, if available. The supervisor will deliver the damaged unit to Information Services or the Support Services Division.

If a BWC is lost, the assigned officer will notify his or her supervisor as soon as practicable and document the incident in a report. Upon notification, the supervisor will immediately notify the Unit/Shift Commander. The Unit/Shift Commander will then notify the Bureau Chief.

#### **24.9.8 BODY WORN CAMERA OPERATION**

Officers will only use BWCs issued by the CPD. BWC equipment and all Media and Data captured, recorded, or otherwise produced by the equipment is the sole property of the CPD. Officers assigned a BWC shall not alter, modify, destroy, abuse, or tamper with BWC Audio or Video Recordings or the device itself. Any officer who violates this policy is subject to discipline, up to and including termination.

Officers shall not use other electronic devices or other means for the purpose of intentionally interfering with or otherwise altering the capability or operation of BWCs.

#### **24.9.9 SUPERVISOR RESPONSIBILITIES**

At the beginning of each shift, Supervisors shall issue BWCs at roll call or before officers go into the field for duty. The supervisor is responsible for downloading any video from the previous shift as outlined in the "Video Media Storage and Integrity" section of this policy. Supervisors will collect BWS from the previous shift and place them in docking stations for download and charge. Supervisors shall verify that all officers in their command are appropriately trained in the use and operation of BWCs and in the policies and procedures set forth herein.

Upon notification of an incident that requires immediate retrieval of BWC recorded video and/or audio due to the nature or severity of the incident, a supervisor shall retrieve and download the BWC video/audio as soon as reasonable practicable. If available, replacement BWCs for those collected in the field will be issued by the supervisor.

#### **24.9.10 CESSATION OF RECORDING**

Once Activated, the BWC should remain in record mode until the incident or encounter has concluded. For purposes of this section, conclusion of an incident or encounter has occurred when all arrests have been made, arrestees have been transported and all witnesses and victims have been interviewed. Prior to deactivation, officers must document on the BWC the date, time and basis for deactivation of the recording.

If an unintentional interruption of a BWC video occurs, the officer will document any unintentional interruption (by audibly stating once the BWC is reactivated) the reason for the interruption or termination of recording. The officer shall also document any unintentional interruption in a written report. If an officer believes it is necessary to stop recording (e.g., talking to victim of a sexual assault, a juvenile, a confidential informant, or similar interaction), the officer will verbally indicate his or her intent to stop recording

before deactivating the BWC, and upon reactivation of the BWC, the officer will state that the BWC was reactivated after a period of intentional deactivation.

An on-scene incident commander may authorize officers to stop recording prior to the conclusion of an incident when:

- (a) The crime scene investigation is likely to continue for an extended period of time;
- and (b) There is no evidentiary value for continuing the recording.

For motor vehicle stops, the incident is considered concluded when the violator has been cited or warned and the officer has returned to his or her vehicle.

Officers may stop the recording during non-emergency activities with no evidentiary value such as traffic control at major wrecks, fires, or incidental citizen contacts, including, but not limited to, providing assistance, routine traffic control, parades, stand-by for wreckers, and similar activities or citizen contacts.

#### **24.9.11 PROHIBITED AUDIO/VIDEO RECORDINGS**

BWCs shall not be used to record non-work related personal activity.

BWCs shall not be intentionally activated to record conversations of other officers or employees, without notice to the officers/employees, during routine, non-law enforcement related activities, during rest or break periods, or in designated rest or break areas.

BWCs shall not be activated in places where an individual has a reasonable expectation of privacy, such as locker rooms, dressing rooms or restrooms, unless the recording is required for a specific law enforcement activity. In any such case, every precaution shall be taken to respect the dignity of those individuals who are present by avoiding recording video and audio of persons who are nude or when sensitive areas are exposed.

Officers shall not record confidential informants or undercover officers unless the recording is conducted specifically for the authorized purpose of documenting a sting, drug purchase/sale or other undercover operation in furtherance of a criminal investigation and the confidential informant or undercover officer consents to the recording.

BWCs shall not be used for the purpose of conducting CPD internal administrative investigations; however, this requirement does not restrict internal investigators' access to, or review of, BWC recordings when investigating complaints of misconduct.

When handling calls for service or incidents involving the treatment of individuals at a medical facility, officers may be required to restrict use of a BWC in accordance with facility privacy protocols and state/federal law. Where facility protocols or state/federal law do not allow for the recording of an event for which recording would otherwise be required,

an officer must notify his or her supervisor as soon as reasonably practical, and shall document the reasons for deactivation of the BWC in the incident report.

Violation of this section is subject to discipline up to and including termination and may also constitute a crime under WV law.

#### **24.9.12 REVIEW OF BWC RECORDINGS**

BWC Audio/Video Recordings may be reviewed in any of the following circumstances:

- (a) By any officer reviewing his or her own video or audio for official law enforcement purposes;
- (b) By a supervisor investigating a specific act of officer conduct, such as use of force, or evaluating a specific encounter by an officer to assess officer performance;
- (c) By a CPD investigator who is participating in an official investigation, such as a personnel complaint, administrative inquiry or a criminal investigation;
- (d) By court or legal personnel through proper legal process or with permission of the City Attorney, Chief of Police or an authorized designee;
- (e) By the media through proper process, or with permission of the Chief of Police or an authorized designee, or by providing access to public, non-exempt data in compliance with a Freedom Of Information Act request; and
- (f) For department training purposes. If an involved officer objects to the use of a recording for training purposes, the Chief will determine if the training value outweighs the officer's objection.

General access to digital recordings shall be granted to CPD authorized users only. It is the responsibility of authorized users to keep their user name and password confidential. Accessing, copying, or releasing any recordings for other than official law enforcement purposes is strictly prohibited, except as required by law or permitted by this policy.

While reviewing video files, authorized users shall do so in a manner that restricts unauthorized users from viewing recordings.

To help ensure accuracy and consistency of accounts, an officer will be permitted to review his or her own BWC recording before making an initial or supplemental report of an incident that does not involve serious use of force and/or is not a critical incident causing injuries.

An officer involved in any serious use of force incident or critical incident causing injuries must request and receive the permission of the Chief of Police or an authorized designee to review his or her own BWC video prior to providing a written or recorded statement.

Field training officers and supervisors may use Media captured by a BWC to provide immediate training to recruits and to assist with the completion of the Daily Observation Report (DOR).

Under no circumstances shall members with access to BWC video and/or audio be allowed to use, show, reproduce or release recordings for the purpose of ridicule or embarrassment of any officer or individual or for any other non-law enforcement related purposes. This includes submission of any portion of a BWC recording to a media organization unless release has been approved in advance by the Chief of Police or an authorized designee. Any officer who violates this policy is subject to discipline, up to and including termination.

#### **24.9.13 VIDEO MEDIA STORAGE AND INTEGRITY**

All video files shall be tagged for retention with the proper event tag. When a video file is marked as evidence or a complaint is received in which the incident was recorded, that video will be stored and maintained in accordance with the CPD record retention requirements set forth in this policy.

Video files will not be reviewed, copied or removed from BWCs or the digital video storage system for any purpose other than an official law enforcement purpose. Recordings from BWCs are considered evidence and will be treated as such.

Nothing in this policy shall be interpreted to contravene any laws and/or CPD policies governing the maintenance and destruction of evidence in criminal investigations and prosecutions.

#### **24.9.14 MASTER SYSTEM ADMINISTRATOR (MSA)**

**Master System Administrator** (MSA) is a supervisor authorized by the Chief and assigned to the Information Support Section who assigns and tracks master inventory of equipment; controls passwords and end-user security access rights; is responsible for quality checks of video and audio quality; coordinates with the System Administrators; and serves as liaison to the BWC manufacturer with respect to operational and equipment related matters. The MSA is responsible for:

- a) Assigning and tracking inventory of equipment;
- b) Password control;
- c) End-user security access rights;
- d) Quality checks of video and audio and sound quality;
- e) Coordinating with the System Administrators; and
- f) Serving as liaison to manufacturer's representatives on operational equipment related matters.

The MSA shall not edit or in any manner alter video or audio files without prior authorization from the Chief of Police.

#### **24.9.15 DELETION OF UNINTENTIONAL RECORDINGS**

An officer may request deletion of a recording in the following situations: recording of an unintentional activation of a BWC during non-law enforcement activities; recording of interactions with persons requesting to remain anonymous as outlined in this policy; or recording of interactions with confidential informants and/or undercover officers without their consent. Requests for deletion of unintentional recordings or portions thereof must be submitted in writing to the officer's direct supervisor, who will facilitate the request through the required chain of command, to obtain approval or denial by the Chief of Police or his or her authorized designee. All requests and final decisions shall be kept on file by the MSA.

#### **24.9.16 RELEASE OF BODY WORN CAMERA RECORDINGS**

All requests for copies of video files made by representatives of the media, private attorneys, or other members of the public will be processed by the City Attorney's Office. Department employees shall refer all requests for copies of video files, including, but not limited to, FOIA requests and subpoenas, to the City Attorney's Office no later than the next business day after receipt of any such request. The City Attorney, upon consultation with and consent from the Chief or his or her designee, will authorize the System Administrator to make copies and will facilitate any required disclosure.

An officer requesting a copy of BWC video for use in any court of law will sign out the copy with his or her signature on the CPD 115 before the copy may leave the Property and Evidence Division. After the copy has been used in court it shall promptly be returned to Property and Evidence and signed back in by the requesting officer. The copy will then be destroyed by Property and Evidence personnel. Officer requests for copies of BWC video for any use other than in a court of law must be authorized by the Chief of Police or an authorized designee.

#### **24.9.17 STORAGE AND RETENTION**

The procedures for downloading files from the BWC to the server are as follows:

- a. Place the BWC in the Ethernet Transfer Station or USB Docking Base; and
- b. Ensure that the video is downloading and the unit is charging; and
- c. Contact the MSA if there is a problem.

Files are securely stored in accordance with CPD BWC video retention rules and will be retained no longer than useful for use in an investigation or prosecution or for training purposes.

Category	Retain (Days)	Action	Status
Arrest/Transport	90	Purge	
Assault/Battery	180	Purge	
Code-3 Response	180	Purge	
Critical Incident	Indefinitely		
D.U.I.	731	Purge	
Domestic	180	Purge	
Field Investigation	90	Purge	
General Investigation	90	Purge	
Search/Seizure	180	Purge	
Suspicious Vehicle/Behavior	90	Purge	
Test Recording	30	Purge	Retired for VISTA
Traffic Accident	180	Purge	
Traffic Stop	60	Purge	
Use of Force	731	Purge	
Warrant/DVP	90	Purge	

#### 24.10 LICENSE PLATE READERS (LPR)

- In its mission to reduce crime and the threat of crime, the City of Charleston Police Department will utilize various innovative methods and strategies, including, but not limited to, the implementation of License Plate Readers (LPR).
- The use of LPR equipment is intended to provide law enforcement personnel with the ability to identify vehicles, license plates, registered owners, and to obtain digital photographic images of vehicle operators, all without any direct intervention by the officer. Locating vehicles identified as having a specific law enforcement interest is consistent with the mission of this Police Department in delivering the greatest measure of safety and highest level of service to the citizens of the City of Charleston.
- The LPR is an automated system that uses imaging equipment to scan vehicle license plates. The LPR can scan license plates while the LPR imaging equipment is either moving or stationary. Likewise, the LPR is able to scan license plates on both moving and parked vehicles. When a license plate is scanned, it is processed through a proprietary computer program that has been uploaded with current license plate information provided by the National Crime Information Center (NCIC) database or other law enforcement information sharing systems. Criminal justice information such as warrants or wants, persons of interest, officer safety precautions, stolen property, missing persons, terrorist threats, etc., are loaded into a “hot list”. Once a license plate is scanned and matched to a license plate in the hot list, the LPR operator is notified that there is a “hit.” The LPR operator will then take the necessary actions to review the information and verify the validity of the “hit” prior to arrest or seizure of any person or property.

##### 24.10.1 Definitions:

**License Plate Reader** (LPR) system: Equipment consisting of imaging devices and a computer software and hardware system used to automatically scan and interpret the



characters on vehicle license plates. This data is then compared to a list of license plates of interest to law enforcement.

**Hot List:** A database populated with items of specific concern to the investigative and/or enforcement interests of law enforcement. This database may include, but is not limited to, the following information: Terrorist Screening Center Watch Lists; lists containing the identification of stolen/wanted vehicles and license plates; wanted or missing person's lists; cautions; AMBER Alerts; Silver Alerts; lists of known sexual predators; and other watch lists that may be used for public safety and/or law enforcement purposes.

**Download:** Transfer of data from the Hot List to the LPR system.

**Alarm/Hit:** A positive indication, confirmed either visually or audibly, of a potential match between data on the Hot List and a license plate scanned by the LPR system. Additional reasonable and necessary actions should be taken to review the information and verify the validity of the Alarm/Hit prior to arrest or seizure of any person or property.

**LPR Generated Data:** All information, including location, date and time of a license plate encounter and any digital photographic image(s) of the license plate and vehicle generated entirely through the use of the LPR equipment.

**Historical Data:** Information collected by the LPR system and stored on the terminal's hard drive or command center server(s).

#### 24.10.2 Procedure:

- Upon receiving an Alarm/Hit, the LPR operator should use whatever information is available to determine the accuracy of the Alarm/Hit. The LPR operator should visually verify that the subject license plate is the same as the actual image on the LPR screen (i.e. same state, same number). The LPR operator should confirm the validity of the Alarm/Hit by verifying the information through Metro Communications or Records Division using protocols already in place.
- Only authorized personnel trained in the use of the LPR are permitted to operate the system.
- The LPR imaging equipment is not adjustable, and no attempt to move or reposition it is permitted.
- **No other agency/entity will be permitted to connect to the Charleston Police Department's LPR system without a memorandum of understanding, approved by the City/Chief of Police.**
- The LPR equipment shall be used in a manner consistent with the goal of assisting this Police Department in its public-safety related missions, which includes, but is not

limited to, such areas of interest as homeland security, suspect interdiction, stolen property recovery, detection of crime, enforcement of State and municipal laws, identification of stolen vehicles, identification of stolen license plates, wanted and missing persons, AMBER Alert assistance, and other trafficrelated matters.

The LPR equipment shall be used for law enforcement purposes only and in a manner consistent with the manufacturer's recommendations and this Policy. Individuals who misuse LPR equipment and associated data may be subject to disciplinary action.

#### 24.10.3 Maintenance:

- Under no circumstances should a LPR operator attempt to modify the LPR equipment or software operating system.
- LPR imaging lenses may be cleaned with glass cleaner or with mild soap and water and a soft nonabrasive cloth.
- Vehicles equipped with LPRs must not be taken through any automatic car washing facility.
- Damage to LPR equipment shall be immediately reported to your supervisor and a CPD 175 will be completed and sent to the Property and Evidence Division Commander.
- The Information Services Commander shall be sent a copy of the CPD 175 for any LPR equipment needing maintenance or repair.

#### 24.10.4 Data Handling and Storage:

- Data stored by this agency will only be shared with those agencies that have legitimate law enforcement /public safety need for such information.
- In certain instances, such as where there is a threat to the general public, there may be a need to release images of vehicles and /or occupants to the general public. The release of such information is to be determined on a case-by-case basis by the Chief of Police or his designee, either of whom may authorize the release of this information to the public through the media or other means.
- Care shall be taken to protect the privacy of the citizens we make contact with. Data collected using the LPR shall be safeguarded against inappropriate or unauthorized disclosure or access.

### **25.0 FIREARMS QUALIFICATION/TRAINING POLICY** (Amended August 24, 2004)

The Department provides specialized training in areas of continuing need as well as where a need develops. Such training has, as its goals, the development of specialized skills and knowledge within the framework of police generalists. Such training may occur within the Department or at selected schools.

The Training Division will provide firearms training in accordance with the following procedures.

- The Training Division will ensure that a suitable range facility is secured for mandatory training and qualification.
- Participation at scheduled firearms training and successful qualification are mandatory for all sworn Members. At least one qualification per year will be under low light conditions, and at least one qualification per year will be in daylight conditions.
- The Training Division will maintain scores and records of all firearms qualifications or attempts to qualify for each member of the Department. Additionally, the Training

Division will maintain records of officers failing to qualify and/or those requiring remedial training.

Firearm Qualifications will be as follows:

- Personnel will qualify during each specified period with issued and approved service weapons. Shotguns and rifles will be covered in a separate order.
- Officers must qualify with non-issued/personal weapons before authorization to carry off- duty.
  - Members must re-qualify with off duty weapons annually and in a time period of not more than 365 days from prior qualification.
  - Officers who fail to qualify with off-duty/personal weapons will not be subject to disciplinary action; however, they will be restricted from carrying those weapons.
  - The Chief Range Officer or his designee may modify the qualification course for off-duty weapons as necessary to compensate for design variations (i.e. revolver vs. semiautomatic). The course will still reflect the officer's proficiency with the weapon and will require at least one reload during the course.
  - The training/qualification program consists of the following: orientation, safety, familiarization drills, combat-shooting techniques, shooting for qualification and remedial training for those who fail to qualify.
  - The shooting courses for mandatory qualifications for sworn Members will be designated by the Chief Range Officer and approved by the Chief of Police.
- Officers must qualify with secondary/backup firearms before authorization to carry while on duty.
  - Members must qualify with secondary/backup firearms annually and in a time period of not more than 365 days from prior qualification.
    - Officers will provide ammunition for personally owned secondary/backup firearm qualification.
    - Authorization to carry a secondary/backup firearm will extend for the length of the qualification period.
    - Secondary/backup firearms must meet requirements as set forth within Section 13.16.12.2 of this manual.
  - It will be the responsibility of the officer to register the make, model, caliber, barrel length, serial number and other pertinent characteristics of the secondary/backup firearm with the Chief of Police or his designee prior to carrying the same while on duty.

- The Chief Range Officer or his designee may modify the qualification course for secondary/backup firearms as necessary to compensate for design variations (i.e. revolver vs. semiautomatic). The course will still reflect the officer's proficiency with the weapon and will require at least one reload during the course.
- The shooting courses for mandatory secondary/backup firearm qualifications for sworn Members will be designated by the Chief Range Officer and approved by the Chief of Police.
- Officers who fail to qualify with secondary/backup firearms will not be subject to disciplinary action; however, they will be restricted from carrying those firearms. ○ The Chief Range Officer or his designee will notify the Chief of Police or his designee, in writing, that the Member has successfully qualified with his/her secondary/backup firearm. In addition, the Training Division will also be notified in the same manner as issued and approved service weapons.
- The approved course and passing score for Department qualifications will be set by the Chief Range Officer and approved by the Chief of Police. All Members will have (3) three attempts to qualify. Members who fail to receive a qualifying score with their primary/issued weapon(s) after two attempts will be permitted to leave and return at the next available date and time for his/her third attempt. This will be a mutual time agreed to by the Member and the range officer. (Qualifications will be good until the end of that qualifying period).
  - Members who fail to qualify will be required to return on the next available remedial date and must successfully complete the remedial course. (Remedial courses will be held at the discretion of the Chief Range Officer).
  - After reasonable efforts have been made through remedial training to correct the Member's shooting ability the Member will then fire the qualification course and must receive a passing score.
  - Failure of the Member to obtain a qualifying score on the remedial course will result in the Member being reassigned to a non-enforcement position until the next remedial course.
 

The Member will then be required to attend and also qualify.
  - Failure of the Member to qualify during the second remedial course will result in a Conduct Review Board recommendation of suspension without pay. The Member will be encouraged to seek further training, or assistance during that time. Any cost associated with this training will be at the Member's own expense.
  - Upon completion of any suspension or corrective action the Member will then be afforded the opportunity to qualify again. If the Member fails to qualify, the Member will report to the Chief of Police who, at his discretion, may

- recommend additional corrective action or schedule a Conduct Review Board and may recommend termination for failure to maintain required certifications.
- The Training Division will notify all divisions at least twenty (20) days prior to each mandatory training and qualification period.
    - \* Training courses will be scheduled at the discretion of the Chief of Police. The training courses will be similar to and may include the com-stock course of fire. Training courses will allow the range officers and Members time to correct problems without necessarily adding to the stress of qualifying at the same time.
    - \* Each supervisor is responsible for ensuring that his/her subordinate personnel attend scheduled training and qualifications.
    - \* Range Officers will advise the appropriate Bureau Chief and the Chief of Police of any officer who fails to attend training and qualifications, fails to successfully achieve a passing qualifying shooting score, or whom they believe lacks the ability to safely handle a firearm. Each instance will be documented with the necessary supporting information.
  - Members may be allowed to practice with personal weapons at the discretion of the Range Officer, during qualification, and if permitted to practice the Member must supply his/her own ammunition.
  - All personnel using Department sponsored range will wear eye and ear protection. No Member will be allowed on the range without adequate eye and ear protection. Eye and ear protection will be available to each Member of the Department during training and qualification periods.

## **26.0 RESPONSE TO DOMESTIC INCIDENTS INVOLVING LAW ENFORCEMENT EMPLOYEES** (Amended May 17, 2010)

The Charleston Police Department will adhere to a zero tolerance policy towards law enforcement employees involved in domestic violence. The purpose of this policy is to establish the procedure to be followed when a domestic call involves a law enforcement employee, whether the employee is a sworn Member or a civilian employee. This policy applies to any law enforcement employee from this Department or any other city, county, state or federal law enforcement agency.

26.1 Responsibility All Members of this Department are responsible for enforcing, the laws that pertain to domestic violence contained in West Virginia Code §48-2A-1 et seq. §48-1-101 et seq. and Title 149 of the West Virginia Code of State Regulations. This Department will use the definitions of family violence as outlined in West Virginia Code §48-2A-1 et seq. §48-1-101 et seq. and Title 149 of the West Virginia Code of State Regulations. Title 149 of the Code of Regulations is the “Protocol for Law Enforcement Response to Domestic Violence” and carries the same force of law as any other provisions of the West Virginia Code. Failure to comply with the requirements and provisions of this policy will result in disciplinary action.

## 26.2 Incident Response Protocols (Amended)

- The employees and Members of this Department shall accept, document and preserve all calls or reports, including those made anonymously, involving possible incidents of domestic violence involving any law enforcement employee as they would for calls involving citizens. A CPD 101 report shall be completed including details on date, time, location, incident circumstances, names, officials notified, and actions taken.
- A copy of the report shall be sent to the Professional Standards Division. The Professional Standards Division will determine if the Prosecutor's Office needs to be contacted within one working day of receiving the report.
- The primary responsibility for criminal investigation of any domestic incident occurring in the City of Charleston that involves a law enforcement employee shall be that of the Domestic

Violence Unit of the Criminal Investigation Division. Depending upon circumstances, the Chief of Police may assign additional investigators or supervisors to the Domestic Violence Unit. Other agencies, such as the Office of the Prosecuting Attorney, may also conduct criminal investigations and, if so, the Domestic Violence Unit will cooperate in any such investigation.

### 26.2.1 Patrol Response

- Upon arrival at a violence call involving a law enforcement employee, the responding officer shall notify dispatch and request a supervisor be sent to the scene. The officer should continue to follow the response protocol as outlined in Title 149 of the Code of State Regulations.
- A supervisor shall report to the scene of all law enforcement employee involved domestic violence situations regardless of the employee's jurisdiction. The on-scene supervisor shall assume command, ensure that the crime scene is secured and that all evidence is collected including, but not limited to, written statements from the victim and witnesses, photographs, trace evidence and any tools or weapons used or threatened to be used, consistent with Constitutional limitations and requirements. The on-scene supervisor shall ensure that a thorough investigation is conducted. Generally the investigating officer should identify and, when possible, arrest the primary aggressor. In all cases where probable cause exists, the on-scene supervisor shall ensure that an arrest is made if the offender is at the scene. If the offender has left the scene the on-scene supervisor shall make sure than an attempt is made to locate the suspect and ensure that a signed criminal complaint is presented to a Magistrate.
- Arrest of both parties involved in a domestic incident should be limited to circumstances where each person was an active aggressor. In the event that an arrest is not made or if both parties are arrested, the investigative report shall explain any and all reasons for those decisions.
- Whenever a Charleston police officer is arrested, the supervisor shall relieve the accused officer of his/her service weapon. State law provides that additional weapons may be confiscated for safety purposes if in plain view or permission is given. All

weapons seized shall be entered appropriately into property and evidence and a General Information Report completed.

- The on scene supervisor shall ensure that the victim is informed of all services available as required by West Virginia Code §48-27-702 and State Regulation §149-3-10.

#### 26.2.2 Additional Considerations

- When responding to a domestic violence call involving a law enforcement employee from another jurisdiction, all responding officers shall follow the same procedures that they would follow if the employee was from their own Department. The on-scene supervisor shall notify the Professional Standards Division and provide them with a copy of the report. A Member of the Professional Standards Division will notify the chief law enforcement officer, or his designee, of the accused employee's jurisdiction as soon as possible and in writing within 24 hours.
- In the event that the reported incident involves the chief law enforcement officer or commissioner, the Professional Standards Division shall notify the individual in government who has oversight of that individual.
- In responding to a domestic violence incident where the parties involved are both law enforcement employees, the standard domestic violence procedures set forth in this policy should be followed.
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#### 26.3 Action to Be Taken with Employees Involved in Domestic Situations

26.3.1 Emergency Protective Order Issued Against an Employee. When an employee of this Department is subject to an Emergency Protective Order, the employee shall notify his/her immediate supervisor and provide him with a copy of the Emergency Protective Order. The supervisor will notify and provide a copy of the order to the Professional Standards Division and to the Division

Commander. In accordance with Chapter §48-27-403 the sworn officer will relinquish his/her service weapon and other items issued by the department and be placed on administrative duty until after the Final Hearing.

- *The Chief of Police, in consultation with the City Human Resources Department, shall determine in his/her discretion whether to place a civilian employee on administrative leave and/or to take any other action related to that employee deemed necessary and appropriate by the Chief of Police.*

26.3.2 Final Order Is Issued Against an Employee When an employee of the this Department is subject to a Final Order arising from any final family violence petition the employee shall provide a copy of the Final Order to the Professional Standards Division. In accordance with Federal Law the employee shall relinquish all personal weapons but, at the discretion of the Chief of Police, a sworn Member may maintain his/her service weapon.



26.3.3 Criminal Charges Filed Against an Employee When a sworn officer of the Department is charged with any domestic crime, the officer shall at a minimum be placed on administrative duty and the sworn officer shall relinquish his/her service weapon. The officer shall remain on such duty until the charge has been adjudicated.

- *The Chief of Police, in consultation with the City Human Resources Department, shall determine in his/her discretion whether to place a civilian employee on administrative leave and/or to take any other action related to that employee deemed necessary and appropriate by the Chief of Police.*

26.3.4 Employee Is Found Guilty on Domestic Charges Federal Law prohibits an officer convicted of any felony and any misdemeanor domestic violence charge from carrying a firearm. The Department shall ensure compliance with all Federal Laws regarding the use and possession of firearms and, if required by federal law, the Department will act to have the officer's police powers revoked and employment with the Department terminated.

26.3.5 Discretion of Chief of Police Nothing in this policy prohibits the Chief of Police from taking additional steps concerning the duty status of any employee should the facts of the situation warrant it.

## **27.0 PROTOCOL FOR LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE**

(Amended May 17,2010 )

### **§ 149-3-1. General**

1.1 Scope. -- This legislative rule establishes law enforcement response to domestic violence.

1.2 Authority. -- W. Va. Code § 48-27-1102

1.3 Filing Date. -- May 11, 2005

1.4. Effective Date. July 1, 2005

### **§ 149-3-2. Purposes.**

2.1 The principal purpose of this rule is to establish guidelines and procedures in compliance with state and federal law to be followed by law enforcement officers and other personnel involved in police response to domestic calls.

2.2 Other purposes and goals of this rule are:

To reduce the incidence and severity of domestic violence by establishing arrest and prosecution, rather than mediation, as the preferred means of police response to domestic violence;

2.2.2 To afford maximum protection and support to victims of domestic violence through a coordinated program of law enforcement and victim assistance;

2.2.3 To ensure that law enforcement services are as available in domestic violence cases as they are in other criminal cases;

2.2.4 To promote law enforcement officer safety by ensuring that law enforcement officers are as fully prepared as possible to respond to domestic calls; and

2.2.5 To help reduce police resources consumed in responding to domestic violence by reducing the number of police interventions required for any particular household.

### **§ 149-3-3. Definitions.**

3.1 For the purposes of this rule, unless specifically stated otherwise, the terms “officer,” “law enforcement officer,” or “police officer” refer to law enforcement officers and officials as defined in this subdivision. Nothing in this rule should be construed to extend

the authority of any law enforcement officer beyond the law enforcement officer's statutory jurisdiction.

3.1.1 County” means any one of the fifty-five major political subdivisions of the state.

“Law enforcement agency” means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality of this state.

3.1.3 “Law enforcement officer” means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality of this state, other than parking ordinances, and includes those persons employed as security officers at state institutions of higher education and those persons employed as rangers by the Hatfield-McCoy Regional Recreation Authority.

3.1.4 “Law enforcement official” means the duly appointed chief administrator of a designated law- enforcement agency or a duly authorized designee.

3.1.5. “Municipality” means any incorporated village, town or city whose boundaries lie within the geographic boundaries of the state.

3.2 As used in this rule unless the context clearly requires otherwise:

3.2.1 Credible corroborative evidence means evidence that is worthy of belief and corresponds with the allegations of one or more elements of the offense and may include, but is not limited to, the condition of the victim, the accused, and the scene.

3.2.1.a Credible evidence of the victim's condition may include, but is not limited to, one or more contusions, scratches, cuts, abrasions, swellings, or other signs of physical injury; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

3.2.1.b Credible evidence of the condition of the accused may include, but is not limited to, physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.

3.2.1.c Credible evidence of the condition of the scene may include, but is not limited to, damaged premises or furnishings or disarray or misplaced objects consistent with the effects of a struggle.

3.2.1.d Other credible evidence may include, but is not limited to, statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of a law enforcement officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; or written statements by witnesses.

3.2.2 “Deadly weapon” means an instrument that is designed to be used to produce serious bodily injury or death, or is readily adaptable to that use. The term “deadly weapon” includes, but is not limited to, a blackjack, a gravity knife, a knife, a switchblade knife, a nunchuka, metallic or false knuckles, a pistol, or a revolver, as defined in W. Va. Code §61-7-2.

3.2.3 “Domestic assault” means the unlawful attempt to commit a violent injury of another family or household member or unlawfully committing an act which places another family or household member in reasonable apprehension of immediately receiving a violent injury.

3.2.4 “Domestic battery” means the unlawful and intentional physical contact of an insulting or provoking nature with another family or household member or unlawfully and intentionally causing physical harm to another family or household member.

3.2.5 “Family or household members” means persons who:

3.2.5.a Are or were married to each other;

3.2.5.b Are or were living together as spouses;

3.2.5.c Are or were sexual or intimate partners;

3.2.5.d Are or were dating: Provided, That a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship;

3.2.5.e Are or were residing together in the same household;

3.2.5.f Have a child in common regardless of whether they have ever married or lived together;

3.2.5.g Have the following relationship to another person:

3.2.5.g. 1 Parent;

3.2.5.g. 2 Stepparent;

3.2.5.g.3 Brother or sister;

3.2.5.g.4 Half-brother or half-sister;

3.2.5.g.5 stepbrother or stepsister;

3.2.5.g.6 Father-in-law or mother-in-law;

3.2.5.g.7 Stepfather-in-law or stepmother-in-law;

3.2.5.g.8 Child or Stepchild;

3.2.5.g.9 Daughter-in-law or son-in-law;

3.2.5.g.10. Stepdaughter-in-law or stepson-in-law;

3.2.5.g.11. Grandparent;

3.2.5.g.12 Step grandparent;

3.2.5.g.13 Aunt, aunt-in-law or step aunt;

3.2.5.g.14. Uncle, uncle-in-law or step uncle;

3.2.5.g.15. Niece or nephew;

3.2.5.g.16. First or second cousin; or,

3.2.5.h. Have the relationships set forth in 3.2.5.g.1. through 3.2.5.g.16., of this subsection, to a family or household member, as defined in subsections 3.2.5.a. through 3.2.5.f. of this section.

3.2.6 "Family violence," "domestic violence," or "abuse" means the occurrence of one or more of the following acts between family or household members:

3.2.6.a Attempting to cause or intentionally, knowingly, or recklessly causing physical harm to another person with or without dangerous or deadly weapons;

3.2.6.b Placing another person in reasonable apprehension of physical harm;

3.2.6.c Creating fear of physical harm by harassment, psychological abuse, or threatening acts;

3.2.6d Committing either sexual assault or sexual abuse as those terms are defined in W. Va. Code §§61-8B-1 et. seq. and 61-8D-1 et seq.; or,

3.2.6.e Holding, confining, detaining, or abducting another person against that person's will.

3.2.7 "Firearm" means any weapon that will expel a projectile by action of an explosion.

#### **149-3-4. Protective Orders**

4.1. Domestic violence protective orders are to be considered criminal in nature. Any and all law enforcement officers who are sworn law enforcement officers in the state of West Virginia are responsible for the initial service of all protective orders in order to ensure the most prompt service of the protective order. Service may be performed on any day including Sundays and holidays. No law enforcement officer shall refuse to serve pleadings or orders in domestic violence protective order actions.

4.1.1. Protective orders include, but are not limited to, Emergency Protective Orders,

Temporary Emergency Protective Orders, Domestic Violence Protective Orders, Temporary or Final Protective Orders issued as a part of Temporary or Final Divorce Orders, or any other terms or orders that have a similar purpose.

4.1.2. Domestic violence protective orders are considered criminal in nature. Law enforcement officers who are sworn law enforcement officers in the state of West Virginia are responsible for the initial service of all protective orders in order to ensure the most prompt service of the protective order. Service may be performed on any day including Sundays and holidays. No law enforcement officer shall refuse to serve pleadings or orders in domestic violence protective order actions.

4.2. A protective order *generally* remains in effect for the period of time stated in the order.

A protective order remains in effect longer than the period of time stated in the order if:

4.2.1.a. *The protected person has filed for and received an extension of the protective order;*

4.2.1.b. The protective order was automatically extended by the filing or reopening of a court case between the same parties after the protective order was entered; or,

4.2.1.c. The protective order was extended by an order entered in another court case between the same parties.

4.2.2 A protective order does not remain in effect for the period of time stated in the order if:

4.2.2.a. order was entered by the court dismissing the protective order; or,

4.2.2.b. In a case between the same parties which extended the protective order as a matter of law, a temporary or final order was entered, and the temporary or final order did not extend the protective order.

4.3. An order issued in any county in West Virginia is in effect in all counties in West Virginia.

4.4. A protection order issued by a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States, or an Indian tribe or band that has jurisdiction to issue protection orders shall be accorded full faith and credit and enforced as if it were an order of this state, whether or not the relief ordered is available in this state, if there is probable cause to believe that it is a valid foreign protection order.

4.4.1. There is probable cause to believe that a protection order is valid if it identifies both the protected individual and the respondent, and the order appears, on its face, to be authentic and currently in effect.

4.4.1.a. In circumstances whereby a written protection order is not presented, law enforcement officers may consider other credible information in determining whether there is probable cause to believe that the order exists and is currently in effect.

4.4.2. Presentation of a certified copy of a protection order is not required for enforcement.

4.4.3. For the purposes of this section, the protection order may be inscribed on any tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form.

4.4.4. A protection order, temporary or final, from another jurisdiction may be enforced even if the order is not registered, filed or entered into the state law enforcement information system.

4.5. If a law-enforcement officer determines that an otherwise valid protective order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall inform the respondent of the order. The officer shall make a reasonable effort to serve the order upon the respondent. The officer shall allow the respondent a reasonable opportunity to comply with the order. The officer shall then enforce the order.

### **§ 149-3-5. Dispatcher Responsibilities**

5.1. Dispatchers under the supervision of a police Department and communications and emergency operations centers which dispatch law enforcement officers shall dispatch domestic calls in the same manner as any other call for police assistance, in accordance with the priority criteria prescribed by generally applicable department procedures. Whenever possible, the dispatcher should assign a backup unit.

5.2. The dispatcher receiving a domestic call should attempt to elicit from the caller, and should communicate to the responding law enforcement officers, as much of the following information, in the following order of importance, as time and exigencies of the reported incident allow:

5.2.1. The nature of the incident;

5.2.2. The address of the incident, including the apartment number or the name of the business, as appropriate;

5.2.3. A telephone number where the caller can be called back;

5.2.4. Whether weapons are involved;

5.2.5. Whether or not there are any injuries and whether or not an ambulance is needed.

5.2.6. A description of the accused and whether or not the accused is present and, if not, the most likely location, direction of flight, and mode of travel of the accused;

5.2.7. Whether children are at the scene;

5.2.8. Whether any party is using or is under the influence of alcohol or drugs;

5.2.9. Whether a protective order is in effect;



5.2.10. Whether an affidavit to enter the premises exists;

5.2.11. If the caller is the victim and in the house, would they consent to entry and how the caller may indicate the premises;

5.2.12. Whether a criminal warrant is outstanding on the accused; and,

5.2.13. Whether the accused has been released on bail on a charge of a crime against a family or household member, including a family or household member who is a child, with any conditions on bail regarding contact with the victim or complainant.

5.3. If the caller is the victim, or if the caller is a witness to a domestic incident in progress, the dispatcher should keep the caller on the telephone and should relay ongoing information provided by the caller to the responding law enforcement officers. The dispatcher should tell the caller that help is on the way and when the caller can expect the police to arrive.

5.4. If the dispatcher has ready access to police Department records that indicate whether the parties involved in the incident have been involved previously in domestic incidents or that indicate whether there is a protective order involving the parties in effect, the dispatcher should consult the records and radio any relevant information to the responding law enforcement officers.

5.5. If the dispatcher has reason to believe that the subject is on bail for a crime against a family or household member, including a family or household member who is a child, and if the dispatcher has ready access to magistrate court records that show whether there are conditions of bail, the dispatcher should consult the records and radio any relevant information to the responding law enforcement officers; including a protective order prohibiting the possession of firearms.

**§ 149-3-6. Initial Law Enforcement Officer Response.**

6.1 A law enforcement agency, under WV Code §48-27-601, shall immediately follow its procedures for investigating a missing person if the agency:

6.1.a. as possession of a valid protective order, or has notice of the existence of a protective order which is in effect, or has been expired for a period of less than thirty (30) days, and receives a report that a person protected by the order has been reported to be missing; or,

6.1.b. Receives a missing person report accompanied by a sworn affidavit that the person at the time of the alleged disappearance was being subjected to treatment, which constitutes domestic battery or assault as defined in subdivisions 3.2.4 and 3.2.5 of this rule.

6.1.2. An agency or department shall not have a policy delaying the beginning of an investigation of a missing person, which meets the criteria outlined in this subsection.

## 6.2. Approaching the scene.

6.2.1. Whenever possible, two law enforcement officers shall respond to a domestic call. The responding law enforcement officers should approach the scene of a domestic incident as one of high risk.

6.2.2. The law enforcement officers should obtain all available information from the dispatcher before arriving at the scene and should notify the dispatcher upon arrival.

6.2.3. Approach the scene inconspicuously. The law enforcement officers should not use sirens or lights in the immediate area of the scene of the incident;

6.2.3.a. Approach the scene inconspicuously. The law enforcement officers should not use sirens or lights in the immediate area of the scene of the incident;

6.2.3.b. Park away from the immediate scene of the incident;

6.2.3.c. keep a safe exit route in mind;

6.2.3.d. Be alert for the employment of weapons from doors, windows, or nearby vehicles;

6.2.3.e. alert for persons moving away from the immediate scene of the incident;  
and,

6.2.3.f. Employ other standard precautionary measures for approaching high risk incident scenes.

## 6.3. Initial contact.

6.3.1. The responding law enforcement officers should identify themselves, explain the law enforcement presence, and request entry into the home or business. The law enforcement officers should ask to see the person who is the subject of the call. The law enforcement officers should not reveal the caller's name.

6.3.2. The law enforcement officers may enter and conduct a search of the premises relevant to the incident if written or verbal consent has been given to do so. If a domestic relations protective order is in effect, written consent to enter may have

been given by the victim and be on file. The law enforcement officers shall limit the search to a search for other suspects, victims, witnesses, or evidence connected with the alleged domestic incident.

6.3.3. If refused entry, the law enforcement officers should be persistent about seeing and speaking alone with subject of the call. If access to the subject is refused, the law enforcement officers should request the dispatcher to contact the caller if the caller is the subject of the call and communicate between the law enforcement officers and the caller. If the law enforcement officers leave the scene, the law enforcement officers should drive by premises and observe it frequently. If the law enforcement officers remain to observe premises, the law enforcement officers should move to public property (the street) and observe the premises.

6.3.4. In some circumstances, forced entry is necessary and appropriate. Forced entry may be appropriate when the residence area shows signs of a fight or scuffle; or when a person from inside the residence calls for assistance or is yelling; or when a person from inside is visible and the law enforcement officers observe that the person is wounded, injured, or is otherwise in need of assistance.

#### 6.4. Establishing control of scene.

6.4.1. Once at the immediate scene of the incident, the responding law enforcement officers should establish control by:

6.4.1.a. Identifying and securing potential weapons in the surroundings;

6.4.1.b. Separating the victim and the accused when circumstances are appropriate;

6.4.1.c. Assessing injuries (including inquiry about possible internal injuries), administering first aid, and/or notifying emergency medical services;

6.4.1.d. Identifying all occupants and witnesses on the premises; and,

6.4.1.e. Separating occupants and witnesses from the victim and accused and keeping them out of hearing range (to avoid compromising their witness status).

#### 6.5 On-scene investigation.

6.5.1. The law enforcement officers should conduct an investigation using the same procedures that the law enforcement officers would use in any other on-scene criminal investigation. While conducting the investigation the law enforcement

officers should attempt to establish the existence of credible corroborative evidence. The law enforcement officers should make specific note of and document all statements made by the victim, accused and all witnesses, particularly those statements that may be admissible as evidence as exceptions to the hearsay rule such as excited utterances, present sense impression and statements made for medical treatment. The law enforcement officers should also determine if such statements were made to the dispatcher and take appropriate measures to secure and preserve such evidence.

6.5.2. The law enforcement officers should ensure the victim's safety and privacy by interviewing the victim in an area apart from the accused, witnesses, and bystanders if possible.

6.5.3. In questioning the victim, the law enforcement officers should use supportive interview techniques. The law enforcement officers should ask the victim about previous domestic incidents and their frequency and severity. The law enforcement officers should not tell the victim what action the law enforcement officers intend to take until all available information has been collected.

6.5.4. The law enforcement officers should interview the victim and/or any witnesses (including all child witnesses) as fully and as soon as circumstances allow, taking down names, addresses, and other relevant information. When interviewing the victim and/or any witnesses (including all child witnesses) law enforcement officers should determine whether the victim and/or any witnesses (including all child witnesses) allege facts that constitute all of the elements of assault or battery. If so, the law enforcement officers should inquire whether the victim and/or any witnesses are willing to sign a statement containing those facts. The law enforcement officers should also inquire about past abuse or other crimes to aid the law enforcement officers in evaluating the dangerousness of the accused. The law enforcement officers should proceed with the investigation even in the absence of a statement from either a victim and/or any witnesses (including child witnesses).

6.5.5. The responding law enforcement officers should interview the accused as fully as circumstances allow inquiring about the nature of the dispute. The law enforcement officers should be alert to possible incriminating statements.

6.5.6. In the collection of evidence and taking of statements, the law enforcement officers shall protect the constitutional rights of the accused in accordance with current laws and statutes of the state of West Virginia and of the United States.

6.5.7. Children should be interviewed in a manner appropriate to the child's age. Signs of trauma and any apparent healing wounds on the child should be noted by the law enforcement officers.

6.5.8. If the accused has fled the scene, the law enforcement officers should solicit information as to the possible whereabouts of the accused (place of employment, relatives, friends, etc.). The law enforcement officers should make reasonable efforts to locate and interview the accused as to any statements or evidence they may wish to provide prior to arrest or the obtaining of a warrant.

#### 6.6. Enforcing any protective order.

6.6.1. If the dispatcher has not advised the law enforcement officers of the existence of a protective order or conditions of release on bail set in a crime against a family or household member, including children, or the existence of a protective order prohibiting the use or possession of a firearm or deadly weapon, the law enforcement officers should ask the victim whether there is an order or bail conditions. If so, the law enforcement officers should ask the victim if he or she can produce a copy of the protective order or bail document or identify the county and court or magistrate from which the order or document was issued. The law enforcement officers should attempt to contact the local law enforcement department specified by the victim to verify the existence of a valid protective order or contact the magistrate court to verify the conditions of release on bail. The law enforcement officers shall enforce all orders from the magistrate court or any court regardless of certification. Where the accused has been served with the protective order or has actual notice of the protective order, then the law enforcement officers shall follow the arrest authorization provisions as set forth in subdivisions 7.2.3. through 7.2.5. of this rule.

6.6.2. Where the accused has not been served and has not had actual notice of the order, if the law enforcement officers have a copy to serve upon the accused, they shall serve it. If the law enforcement officers do not have a copy to serve, then the law enforcement officers shall give the accused actual notice of the provisions of the order by stating the provisions of the order to the accused. If the accused, after having been served with or given actual notice of the order, then refuses to comply with the order, the law enforcement officers shall follow the arrest provisions as set forth in subdivisions 7.2.3 through 7.2.5 of this rule

6.6.3. When the law enforcement officers observe any violations of a known bail condition in cases of crimes between family or household members, including family or household members who are children, the law enforcement officers shall arrest the accused for violations of the bail conditions; which may include the presence of the accused at the home of the victim.

6.6.4. The law enforcement officers shall enforce all protective or similar type orders that have been issued by a circuit judge, family court judge or magistrate of this state, and from courts of another state, territory, or tribe.

#### 6.7. Further on-scene investigation.

6.7.1. The law enforcement officers shall collect and preserve all physical evidence reasonably necessary to support prosecution, including evidence substantiating the victim's injuries, evidentiary articles that substantiate the attack (weapons, torn clothing, etc.), and evidence *recording* the crime scene. The law enforcement officers should ensure that photographs are taken of visible injuries on the victim and of the crime scene. All physical evidence shall be collected, noted in reports, and vouchered as in other criminal investigations. Sections 3 through 12 of this rule contain requirements for reporting and data collection.

6.7.2. The law enforcement officers should encourage the victim to seek medical attention for injuries that do not require emergency treatment at the scene. The law enforcement officers should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent. The law enforcement officers should advise the victim to have photographs taken if injuries appear later.

### **§ 149-3-7. The Arrest Decision**

7.1. In most circumstances, the responding law enforcement officers shall arrest the accused whenever arrest is authorized. If no arrest is made, the law enforcement officers shall include in the report of the incident an explanation of the reasons why an arrest was not made.

7.2. Arrest is authorized in the following circumstances:

7.2.1. When the law enforcement officers have probable cause to believe that the accused has committed a felony;

7.2.2. When the law enforcement officers observe the commission of a felony or a misdemeanor;

7.2.3. Law enforcement officers observing the violation of a valid protective order including the presence of the accused at a location prohibited by the protective order; issued by a circuit judge, family court judge or magistrate of this state and from courts of another state, territory, or tribe; the officer shall arrest the accused provided the accused was served with the order or had actual notice of the order and its contents;

7.2.4. When the law enforcement officers observe any violation of a ~~bail~~-condition including of bail, probation or parole, including the presence the presence of the

accused at the home of the victim in violation of the condition set in cases of crimes between family members, including family or household members who are children;

7.2.5. When the accused is alleged to have committed domestic assault and/or domestic battery or the violation of a valid protective order; issued by a circuit judge, family court judge or magistrate of this state or from another state, territory, or tribe; law enforcement officers have authority to arrest the alleged perpetrator when:

7.2.5.a. The law enforcement officers have observed credible corroborative evidence that the offense has occurred and; either:

7.2.5.a.1. The law enforcement officers have received, from the victim or a witness, a verbal or written allegation of facts constituting a violation of a domestic assault or domestic battery or violation of a valid protective order; or

7.2.5.a.2. The law enforcement officers have observed credible evidence that the accused committed the offense;

7.2.6. When a misdemeanor or felony not included among those specified in subdivisions 7.2.2 through 7.2.5 of this rule has been committed and the law enforcement officers or another person obtains or has previously obtained an arrest warrant; or

7.2.7. When a *capias* has been issued, or when a circuit judge has signed an attachment order.

7.3. The law enforcement officers should not consider the following factors in making the arrest decision:

7.3.1. The marital status of the parties;

7.3.2. 2. The ownership or tenancy rights of either party;

7.3.3. Verbal assurances that the violence will stop;

7.3.4. A claim by the accused that the victim provoked or perpetuated the violence;

7.3.5. Speculation that the victim will not follow through or cooperate with criminal prosecution (whether based on prior incidents involving the same victim, the victim's hesitancy about pursuing prosecution, or any other factor);

7.3.6. The disposition of any previous police calls involving the same victim or accused;

7.3.7. Speculation that the arrest may not lead to a conviction;

7.3.8. The existence or nonexistence of a current protective order (except insofar as the violation of the order requires arrest);

7.3.9. Concern about reprisals against the victim;

7.3.10. Adverse financial consequences that might result from the arrest;

7.3.11. That the incident occurred in a private place; or

7.3.12. The racial, cultural, social, political, or professional position, or sexual orientation of either the victim or the accused.

7.4. It is the law enforcement officers' and/or prosecuting attorney's responsibility to decide whether an arrest should be made unless law enforcement officers are required to make an arrest for violation of a valid protective order and/or a violation of the terms and conditions of bail on charge of a crime against a family or household member. The law enforcement officers, therefore, should not consider the victim's opposition to arrest and should emphasize to the victim, and to the accused as well, that the criminal action thus initiated is the state's action, not the victim's action.

7.5. If law enforcement officers receive complaints of domestic or family violence from two or more opposing persons, the law enforcement officers shall evaluate each complaint separately to determine who was the primary aggressor ~~was~~. If the law enforcement officers determine that one person was the primary aggressor, the law enforcement officers shall arrest the primary aggressor only. In determining whether a person is the primary aggressor the law enforcement officers should consider, among other things:

7.5.1. Prior complaints of domestic or family violence;

7.5.2. The relative severity of the injuries inflicted on each person;

7.5.3. The likelihood of future injury to each person; and

7.5.4. Whether one of the persons acted in self-defense.

7.6. Law enforcement officers shall not:

7.6.1. Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party; or



7.6.2. Base the decision to arrest on:

7.6.2.a. specific consent or request of the victim; or

7.6.2.b. The law enforcement officers' perception of the willingness of a victim of or witness to domestic or family violence to testify or otherwise participate in a judicial proceeding.

7.7. In addition to any other report required, law enforcement officers who do not make an arrest after investigating a complaint of domestic or family violence or who arrest two or more persons for a crime involving domestic or family violence, shall submit a written report setting forth the grounds for not arresting or for arresting both parties.

7.8. The law enforcement officers shall arrest for the commission of a crime of domestic or family violence.

7.8.1. The law enforcement officers shall seize all deadly weapons that are alleged to have been involved or threatened to be used in the commission of domestic or family violence, including those firearms held in violation of a protective order prohibiting possession of a firearm; and,

7.8.2. May seize a weapon that is in plain view of the officers or was discovered pursuant to a consensual search, as necessary for the protection of the officers or other persons.

7.9. Notwithstanding the issue of violation of the West Virginia Code §61-7-7, the possession of a firearm by a person subject to a valid protective order is a violation of federal law and should be referred to federal authorities.

7.10. Notwithstanding the issue of violation of the state law, the crossing or causing the crossing of a state line or territory or tribal boundary to violate a valid protective order is a violation of federal law and should be referred to federal authorities.

7.11. Notwithstanding the issue of violation of the state law, the crossing or causing the crossing of a state line or territory or tribal boundary to commit domestic violence is a violation of federal law and should be referred to federal authorities.

**§ 149-3-8. Effectuating the Arrest.**

8.1. Persons arrested pursuant to subdivision 7.2. of this rule, shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

8.2. The risk is high in domestic violence cases that the accused will return to the victim's residence or the scene of the violence. If the accused has fled the scene, the law enforcement officers should initiate procedures to pursue and apprehend the accused as promptly as possible if the presence of the accused in the vicinity represents a continuous threat to the safety of the victim and/or other members in the household. If a warrant is necessary, the law enforcement officers should obtain and execute the warrant as soon as practical.

8.3. When the accused is a minor (under 18 years of age), the provisions of this rule are fully applicable, except that the law enforcement officers should arrest and process the juvenile pursuant to W. Va. Code §49-5-1 et. seq.

**§ 149-3-9. Procedure when Arrest is not Authorized or, if Authorized, is not Made.**

9.1. If an arrest is not authorized because of the absence of probable cause to believe that a crime was committed, or if arrest is authorized but not made (for reasons to be detailed in the incident report), the law enforcement officers should:

9.1.1. Explain to the victim the reasons that an arrest is not being made;

9.1.2. Advise the victim of the applicability of criminal laws, procedures for filing a criminal complaint, the availability of a petition for a protective order, the procedures for filing a petition, and the remedies an order may contain;

9.1.3. Encourage the victim to contact the nearest available domestic violence program for information regarding services available to victims of domestic violence;

9.1.4. Advise the victim that the law enforcement officers will provide transportation for or facilitate transportation of the victim to a shelter or the appropriate court when reasonable cause exists to believe that the victim suffered or is likely to suffer physical injury.

9.1.5. Provide transportation for or facilitate transportation of the victim upon the request of the victim to a shelter or the appropriate court when reasonable cause exists to believe the victim has suffered or is likely to suffer physical injury.

9.2. The law enforcement officers should not become involved in the disposition of personal property, the ownership of which is in dispute except as provided in subdivision 9.3. of this section. In the absence of an arrest, the law enforcement officers should remain neutral and be concerned primarily with maintaining the peace and safety of those persons present.

9.3. The law enforcement officers shall provide for the safety of the parties when they are ordered to accompany one or both of the parties to obtain personal property

or other items from a location, including temporary possession of motor vehicles owned by either or both of the parties. **§ 149-310. Other On-Scene Assistance to Victims and Dependents.**

10.1. Whether or not an arrest is made, the responding law enforcement officers should not leave the scene of the incident until the situation is under control and the likelihood of immediate violence has been eliminated. The law enforcement officers should stand by while victims or other persons desiring to leave gather necessities for short-term absences from home, such as clothing, medication, and necessary documents.

10.2. Whether or not an arrest is made, the responding law enforcement officers are required by W. Va. Code §48-27-702 to notify the victim orally or in writing of the availability of a shelter, including its telephone number, or other services in the community, and of civil and criminal remedies.

10.3. If an arrest is made or an arrest warrant obtained, the law enforcement officers should:

10.3.1. Advise the victim of what procedure will happen next, including the probability that the accused will be in custody for only a short period of time; and

10.3.2. Obtain from the victim information to be included in the arrest report indicating any special conditions of bail that should be requested at the initial appearance before the magistrate (i.e., places where the accused should be specifically prohibited from appearing).

10.4. Law enforcement officers responding to an alleged incident of abuse shall inform the parties to the incident of the availability of the possible remedies provided by the Prevention of Domestic Violence Act (W. Va. Code §48-27-101 et. seq.) and the possible applicability of criminal laws.

10.5. Law enforcement officers responding to an alleged incident of abuse shall, in addition to providing the information required in subdivision 10.4. of this rule, provide transportation for or facilitate transportation of the victim, upon the request of the victim, to a shelter or the magistrate court when there is reasonable cause to believe that the victim has suffered or is likely to suffer physical injury.

10.6. Elder victims or physically dependent victims.

10.6.1. When a victim of domestic violence is elderly or physically dependent, the accused is the sole caretaker and an arrest is indicated, or when the victim of domestic violence is the sole caretaker of an elderly or of a physically dependent person, and the victim can no longer provide care (as, for example, when the victim

is hospitalized), the responding law enforcement officers should determine whether the elderly or physically dependent person is physically endangered, either as a result of the abuse, a pre-existing medical condition, or the absence of a caretaker. If the elder or physically dependent person is physically endangered and mentally alert, the law enforcement officers should ask the elder or physically dependent person for the name of a relative or friend who can be contacted immediately to assist the elder physically dependent person. The law enforcement officers shall facilitate transportation of the elder or physically dependent person to a relative or friend, if one can be found.

10.6.2. If there is no one available to assist the elder or physically dependent person, or if the elder or physically dependent person appears not to be mentally alert, the law enforcement officers should make an emergency referral to Adult Protective Services. The law enforcement officers should remain at the residence until the Adult Protective Services worker arrives, or should transport the elder or physically dependent person to a medical facility, or other appropriate place where the elder or physically dependent person can wait for the worker.

10.6.3. In addition to providing the notification required by other provisions of this rule, the law enforcement officers should advise the elder or physically dependent person of the availability of protective services through Adult Protective Services.

#### 10.7. Child victims and dependents.

10.7.1. When the victim of abuse is a minor child, the law enforcement officers should arrest the accused if the law enforcement officers observe the commission of a crime and shall report to Child Protective Services, as required by W. Va. Code § 49-6A-2 et seq. If the child is physically injured, the law enforcement officers should facilitate the transportation of the child to the nearest hospital for treatment. The law enforcement officers should provide the victim notification, as described in this rule, to an adult caretaker of the child who is not the perpetrator of the abuse.

10.7.2. If the accused is arrested and was the sole caretaker of a child, and/or if the victim is the sole caretaker of a child and can no longer provide care (as, for example, when the victim is hospitalized), or if both caretakers are arrested, the law enforcement officers may determine whether there is a responsible relative who can care for the child and, if so, may contact that relative and await the relative's arrival, or the law enforcement officers may contact Child Protective Services and remain at the residence until a protective services worker arrives or take the child into custody pursuant to the Child Welfare Law (W. Va. Code §49-5-8 and 496-9). If no responsible relative is available, the law enforcement officers should contact

Child Protective Services and remain at the residence until a protective services worker arrives or should take the child into custody pursuant to the Child Welfare Law (W. Va. Code §§49-5-8 and 49-

6-9).

**§ 149-3-11. Processing the Accused.**

11.1. A person arrested for violation of a protective order shall be charged with any crimes properly charged as a result of the incident in which the violation occurred.

11.2. The accused shall be taken before a magistrate in the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia for initial appearances in criminal cases.

11.3. The arresting law enforcement officers may inform the magistrate or court of any circumstances surrounding the arrest of the accused which would have an effect on conditions of bail, provided that the amount and conditions of bail are a judicial decision that rests solely with the magistrate or court.

**§ 149-3-12. Reporting.**

12.1. A Domestic Violence Incident Report, as required by W. Va. Code §48-27-801, shall be completed by the law enforcement officers responding to any call covered by this rule.

12.2. Data collection.

12.2.1. All written reports on the same person shall be kept together or cross-referenced so that repeat domestic violence can be monitored.

12.2.2. The written report, or another document (such as an index card) or computer entry generated from the written report, shall become a domestic violence tracking report.

12.2.3. To the extent possible, the domestic violence tracking report shall be accessible to dispatchers and law enforcement officers.

**27.1 PROTOCOL FOR SERVICE OF PLEADINGS AND PROTECTIVE ORDERS**

*(Amended May 17, 2010)*

§48-27-701. Service of pleadings and orders by law-enforcement officers. Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer shall refuse to serve any pleadings or orders entered pursuant to this article. Law enforcement shall attempt to serve all protective orders without delay: Provided, That service of process shall be attempted within seventy-two hours of law enforcement's receipt of the order. If service is not made, law enforcement shall continue to attempt service on the respondent until proper service is made.

§48-27-502. Mandatory provisions in protective order.

(a) A protective order must order the respondent to refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner or the minor children, or engaging in other conduct that would place the petitioner or the minor children in reasonable fear of bodily injury.

(b) The protective order must inform the respondent that he or she is prohibited from possessing any firearm or ammunition, notwithstanding the fact that the respondent may have a valid license to possess a firearm, and that possession of a firearm or ammunition while subject to the court's protective order is a criminal offense under federal law.

(c) The protective order must inform the respondent that the order is in full force and effect in every county of this state.

(d)The protective order must contain on its face the following statement, printed in boldfaced type or in capital letters:

**"VIOLATION OF THIS ORDER MAY BE PUNISHED BY CONFINEMENT IN A REGIONAL OR COUNTY JAIL FOR AS LONG AS ONE YEAR AND BY A FINE OF AS MUCH AS TWO THOUSAND DOLLARS".**

48-27-1002. Arrest in domestic violence matters; conditions.

(a) Notwithstanding any provision of this code to the contrary, if a person is alleged to have committed a violation of the provisions of subsection (a) or (b), section twenty-eight, article two, chapter sixty-one of this code against a family or household member, in addition to any other authority to arrest granted

by this code, a law-enforcement officer has authority to arrest that person without first obtaining a warrant if:

- (1) The law-enforcement officer has observed credible corroborative evidence that an offense has occurred; and either:
- (2) The law-enforcement officer has received, from the victim or a witness, an oral or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of this code; or
- (3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(b) For purposes of this section, credible corroborative evidence means evidence that is worthy of belief and corresponds to the allegations of one or more elements of the offense and may include, but is not limited to, the following:

- (1) Condition of the alleged victim. -- One or more contusions, scratches, cuts, abrasions, or swellings; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.
- (2) Condition of the accused. -- Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.
- (3) Condition of the scene. -- Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle.
- (4) Other conditions. -- Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; written statements by witnesses.

(c) Whenever any person is arrested pursuant to subsection (a) of this section, the arrested person shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

(d) If an arrest for a violation of subsection (c), section twenty-eight, article two, chapter sixty-one of this code is authorized pursuant to this section, that fact constitutes prima facie evidence that the accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeen c, article one-c, chapter sixty-two of this code.

(e) ) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant article five, section five hundred nine, the arresting officer, subject to the requirements of the Constitutions of this State and of the United States:

- (1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence;
- (2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons; and
- (3) May seize all weapons that are possessed in violation of a valid protective order.

## **27.2 PROTOCOL FOR ARREST IN DOMESTIC VIOLENCE INCIDENTS**

*(Amended May 17, 2010)*

### **§48-27-1002. Arrest in domestic violence matters; conditions.**

(a) Notwithstanding any provision of this code to the contrary, if a person is alleged to have committed a violation of the provisions of subsection (a) or (b), section twentyeight, article two, chapter sixty-one of this code against a family or household member, in addition to any other authority to arrest granted by this code, a law-enforcement officer has authority to arrest that person without first obtaining a warrant if:

- (1) The law-enforcement officer has observed credible corroborative evidence that an offense has occurred; and either:
- (2) The law-enforcement officer has received, from the victim or a witness, an oral or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of this code; or
- (3) The law-enforcement officer has observed credible evidence that the accused committed the offense.



(b) For purposes of this section, credible corroborative evidence means evidence that is worthy of belief and corresponds to the allegations of one or more elements of the offense and may include, but is not limited to, the following:

- (1) Condition of the alleged victim. -- One or more contusions, scratches, cuts, abrasions, or swellings; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.
- (2) Condition of the accused. -- Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.
- (3) Condition of the scene. -- Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle.
- (4) Other conditions. -- Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; written statements by witnesses.

(c) ) Whenever any person is arrested pursuant to subsection (a) of this section, the arrested person shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

(d) If an arrest for a violation of subsection (c), section twenty-eight, article two, chapter sixty-one of this code is authorized pursuant to this section, that fact constitutes prima facie evidence that the accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeenc, article one-c, chapter sixty-two of this code.

(e) ) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant article five, section five hundred nine, the arresting officer, subject to the requirements of the Constitutions of this State and of the United States:

- (1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence;

- (2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons; and
- (3) May seize all weapons that are possessed in violation of a valid protective order.

### **27.3 Seizing Firearms (Protective Order)** *(Amended May 17, 2010)*

§48-27-502b (b) reads: The protective order must inform the respondent that he or she is prohibited from possessing any firearm or ammunition, notwithstanding the fact that the respondent may have a valid license to possess a firearm, and that possession of a firearm or ammunition while subject to the court's protective order is a criminal offense under federal law.

- It is the responsibility of any CPD officer serving a protective order to seize all firearms and ammunition in the possession of the respondent. If the respondent will not voluntarily turn over the firearm(s) and ammunition to law enforcement, a search warrant will be obtained and executed in the manner as any other search warrant.
- When a firearm(s) and ammunition are seized, the officer shall complete a General Investigative Report (CPD 101) under the title of General Information. A Property Report (CPD 115) and Firearms Trace Form (CPD 227) shall be completed, as well.
- Every effort will be made to reference any incident number from domestic violence reports associated with the protective order being served.

## **28.0 PROPERTY AND EVIDENCE CONTROL**

A goal of the Department is the safeguarding and proper disposal of all property coming into its custody. The Department strives to maintain property in the same condition as received and, when appropriate, to preserve the evidentiary integrity of property that is contraband or held for presentation in court. Every reasonable effort will be made to return property to its rightful owner.

### **28.1 General Rules**

- All property booked into the property and evidence section will be properly packed for storage by the booking officer.
- Packages **will be taped** shut **no staples** will be used.
- The item(s) will be reduced to the smallest package that can contain the item(s).
- Any sharp object(s) will be placed into the proper sharp container and so labeled.
- Any item(s) that may be contaminated with body fluids or any other biohazard or like material will be plainly marked on the outermost package with the international

biohazard stickers. □ The package will be properly identified with a completed CPD-115 attached.

- Officers are responsible for making reasonable attempts to locate owners of “found” or noncriminal property and returning property to the owner before turning property into the Evidence Unit.
- Officers are responsible for making reasonable decisions related to property and evidence storage. Items of no evidentiary value should not be stored as evidence.
- Whenever appropriate, items should be photographed and returned to victims/owners consistent with prosecution guidelines and common sense.
- “Found” or non-criminal property having no value should not be stored. If an item appears to be abandoned or trash, it should not be stored in evidence.
- Officers who place property into storage are responsible for informing the Property and Evidence Unit when items may be released, returned to the owner, or disposed of or discarded.
- Officers who place a hold on items are responsible for releasing the hold.

28.2 Responsibility of the Booking Officer Officers placing items into evidence, referred to as booking officers in this Policy, are responsible for properly documenting and presenting evidence for processing and storage according to Policy. The following General Rules apply to all evidence. Certain evidence is also subject to the Special Rules noted in this Policy for those types of evidence.

28.3 Responsibilities of the Property Room Custodian The position of custodian is one of responsibility and trust. At no time should anyone abuse this position and at no time should any items be removed from the Property Room for personal use. It is imperative that strict and accurate records be kept for use now and in the future. The priorities of the Property Room personnel are to ensure the safe keeping and secure storage of property and evidence, and to ensure the integrity of the chain of custody.

28.4 Refusal to Accept Property/Evidence In order to ensure that the proper procedures for the booking of property into the Property and Evidence Section are followed, Section personnel have the right to refuse any property. If the property refused is evidence it may be returned to the booking officer via the evidence locker system and the key for that locker will be placed with the booking officer’s commander along with a refusal form that will indicate why the property is refused. It is the booking officer’s duty to correct the condition which caused the refusal and to resubmit the property or take any other action indicated on the refusal form.

28.5 Property Requiring Special Processing Certain categories of property and evidence must be processed in a special manner so as to ensure that its evidentiary value is not jeopardized. Officers or other Members of the Department will adhere to the following appropriate procedures when taking possession of such property or evidence.

28.5.1 Property With Possible Latent Fingerprints Property being held for fingerprints will be clearly marked “hold for prints.” The Incident Report (CPD-101) and “Property Report” (CPD- 115) will indicate that property has been booked which should be checked for latent prints. In addition, a completed Case Submission Report (CPD-182) will be attached to the top of the CPD-115.

28.5.2 Wet Property Property that is wet at the time of booking will be marked “wet.” If the evidence contains wet body fluids or a contaminated biohazard, the evidence will be turned over to the I.D. Section for drying. In all cases, wet property will be placed into an open paper bag which will then be placed into an open plastic bag or container before placement in the evidence locker.

28.5.3 Alcoholic Beverage Evidence Officers investigating incidents (including but not limited to DUI cases) which require the processing of alcoholic beverages will book such evidence by following appropriate procedures for handling of evidence. Open containers found which have some residue of alcoholic beverage present will be sealed with plastic material and tape, and booked into the Property and Evidence Section. For DUI cases, unopened containers and empty containers found within the vehicle will not be booked but left in the vehicle. However, the number, brand, and condition of such containers will be referred to in the report pertaining to the incident. Officers will complete a “Property Report” and other reports as necessary when booking alcoholic beverage evidence.

28.5.4 Drug Evidence All narcotics and/or controlled substances will be booked into the Drug Enforcement Unit. If unavailable, drug evidence will be stored in the evidence locker, marked “drug evidence,” with the Property Report attached. Drug evidence will be listed on a “Property Report,” stating the suspected substance. A copy of all related arrest/suspect reports will also be attached and a picture of suspect(s) will also be attached.

Drug Paraphernalia Items which have been used in the taking or preparation of drugs are PARAPHERNALIA and should be booked the same as other drug evidence.

Identification and Testing Officers requiring assistance in the identification of their evidence prior to booking may call upon the Drug Enforcement Unit for assistance.

Dangerous Drugs, Evidence Booking Procedure When an officer has made a drug seizure, the drug seized will be placed in an appropriate evidence bag. Each of the following categories of drugs will be bagged separately from each other.

- Marijuana
- Heroin
- Cocaine
- All other drugs

At this time the officers will fill in the information required in the Property Report (CPD-115) which is affixed to the evidence.

#### Transportation of Drug Evidence to Police Laboratory

- The evidence will be transported or mailed to the lab by Drug Enforcement Unit officers.

Transportation of Drug Evidence to Court When evidence is removed for transportation to court, the following procedure will be followed:

- The evidence will be recorded, and logged out by the officer.
- The officer will take the evidence to court along with a “Property Report” form (CPD-115). If any portion of the evidence is retained by the court as an exhibit, the officer will have the receipt form signed by the Court Clerk and will return the receipt to the Drug Enforcement Unit (D.E.U.).
- When returned from court, all drug evidence will be recorded and logged in by a D.E.U. officer, the bag placed in the evidence locker at the D.E.U. Office.

28.5.5 Biological Specimens Evidence which is biological in nature requires special handling to ensure minimal decomposition during collection, storage, and testing. Officers will, when necessary, process biological specimens in accordance with the following procedures.

28.5.6 Semen or Blood Stains When possible, the I.D. Section will be called. If I.D. does not respond, clothing or other materials stained with moist semen or blood will be placed on clean paper and allowed to dry before packaging. When time or circumstances does not permit drying prior to packaging, specimens will be packaged according to Wet Property protocol above. I.D. Section will be responsible for arranging lab work.

28.5.7 Vaginal Specimens The officer receiving custody of a vaginal specimen will book the specimen into the Property Room. I.D. Section personnel will then be responsible for transporting the specimen to the Police Crime Laboratory and follow-up regarding laboratory findings.

28.5.8 Explosives and Flammables The following procedures will be strictly adhered to by officers handling explosives and/or flammable materials seized as evidence or contraband.

- Explosive Materials When an incident involves the presence of an explosive material other than fireworks, firecrackers, and fixed small arms ammunition, the officer assigned to investigate the incident will immediately notify the Alcohol, Tobacco, Firearms (ATF) Bureau, who will assist in determining what disposition will be made concerning disposal or storage method. If additional assistance is needed, contact the West Virginia State Fire Marshall’s Office. No officer will examine, transport or

otherwise handle explosives other than those mentioned in this section, without proper authorization.

- Flammable Materials Officers receiving flammable liquid evidence will tag flammable liquid evidence, and complete and process reports in the same manner as other evidence. Flammable materials will not be stored in Property and Evidence but will be stored with the State Fire Marshall's Office. The investigating officer is responsible for contacting the Fire Marshall.

28.5.9 Firearms (Amended January 27, 2004) Confiscated firearms will be booked into the Property and Evidence Section, as outlined in this manual. When booking firearms, for any reason, the booking officer will complete the Firearm Trace Form (CPD-227), the Property Report (CPD-115) and include the following additional information on the (CPD-101) or (CPD-as appropriate):  The name of the person who had possession of the firearm.

- The possessor's date of birth.
- The possessor's physical description.
- One additional identifier such as a driver's license number.

When the person possessing the firearm is not the owner, the officer confiscating the firearm will include the same identifying information about the owner as determined about the possessor and include both descriptions in the report.

Under no circumstances are firearms and/or ammunition to be left in an unsecured area or container, accessible by persons other than those intended for receipt. Firearms and/or ammunition that are taken as evidence, safekeeping, found property or for any other reason are to be turned over to Property and Evidence Section personnel or stored in a locked evidence locker. If no evidence lockers are available after normal business hours, personnel from Property and Evidence are to be notified so that the lockers can be emptied and the firearm properly secured.

28.6 Non-criminal Property Any physical object which comes into the possession of the

Department and which is not an instrument of a crime, contraband, or evidence is considered to be "non-criminal property." Such property includes found items and items taken into custody for safekeeping. Officers will make a reasonable attempt to contact and return property to its owner before booking property. When such efforts fail, booking officers will adhere to the procedures of this manual. Booking officers continue to be responsible for locating the owner and returning the property.

28.7 Booking Property for Safekeeping -- Justification Officers are authorized to take property into custody and book it into an appropriate storage area whenever:

- There is a reasonable indication that a crime may be committed if the property is not taken into custody.
- The circumstances reasonably indicate that the owner is incapable of taking care of the property.

Taking of Ammunition for Safekeeping Officers will **not** take ammunition for safekeeping when removal of the weapon(s) alone will abate the threatened danger. Officers will exercise reasonable judgment in determining that all weapons have been removed before leaving the ammunition with the owner. When an officer reasonably believes that a weapon is being withheld by a person, all ammunition located may be taken into custody and booked for safekeeping.

28.8 Release of Property The Property and Evidence Section is responsible for the physical release of property once the Booking Officer has authorized the release. Normal hours for release are Monday through Friday, 0900 to 1500 hours. Persons wanting a release should call and request an appointment to ensure that someone will be available. Release of property at other than during normal hours will be limited to hardship cases and must be arranged by contacting the Property and Evidence Section Supervisor. (Example of hardship: someone traveling a great distance to pick up property.) Property will be released only to owners, authorized agents of owners, or for official use as authorized by the Office of the Chief of Police.

Authority to Release Property Property which was taken into custody pursuant to a search warrant or which was presented in court as evidence will be released only at the direction of the courts or the Prosecuting Attorney. Other property booked as contraband or evidence will be authorized for release by the investigator assigned to the case after determining that such release will not jeopardize an investigation or otherwise interfere with a Department function. Authorization will be in writing and directed to the Property and Evidence Section with the following information: the name and address of the person(s) to whom the specific items are to be released and the name and address of the person from whom the property was taken. All documents will be submitted to the Property and Evidence Section Commander.

Found or Abandoned Property Personnel assigned to the Property and Evidence Section may refuse to accept found or abandoned property having no evidentiary value.

Release for Official Use Property and Evidence Section personnel are authorized to release impounded property or evidence to officers and to the courts for purposes of presentation in court or for purposes of transporting to a crime laboratory. In all cases, release of impounded property or evidence will be approved by the investigating officer or such officer's supervisor.

Release of Property When Owner Is Deceased In the event the property owner is deceased, a document from the County from which the deceased resided will have to be produced upon request of the property officer. The bearer of this document must be named herein as the Executor, Executrix, Administrator or Administratrix of the deceased's estate and have appropriate identification.

Responsibility of Member Releasing Property When releasing property, the bottom section of the "Property Report" (CPD-115) will be signed by the recipient, who will be required to supply the following information:

- Proof of identity and, if appropriate, ownership.
- A current address and telephone number.

The Property and Evidence Section personnel will attempt to notify, by mail (First Class), the person from whom the property was taken. If the letter is returned undelivered and the assigned officer has no leads as to the subject's location, the returned letter will be filed in the Property and Evidence Section. After six (6) months, the property may be disposed of.

28.10 "Releasing Weapons and Ammunition Booked for "Safekeeping" The Property and Evidence Unit will release weapons and ammunition booked for safekeeping to owner whenever the weapon is released, but not at the same time. Normally, ammunition will be held until the weapon is no longer present to ensure officer safety. It is the booking officer's responsibility to authorize release of any weapon/ammunition.

28.11 Recording Evidence Retained by the Court Officers intending to appear in court with evidence will obtain such evidence from the Property and Evidence Section. In the event any property is retained by the court as evidence, the officer will have the Court Clerk sign a copy of the "Property Report" (CPD-115) and return the Report to the Property and Evidence Section.

28.12 Release of Impounded Vehicles Officers assigned to investigate cases involving impounded vehicles' which have "HOLDS" placed on them, are responsible for authorizing the final release of such vehicles. When the assigned investigator is not available, authorization may be obtained from the investigator's commanding officer. The authorization will be recorded on the bottom of the (CPD132).

28.13 Disposal of Property All property booked as contraband or evidence which has been presented in court will be held until released for disposal by a Court Order. Disposal will be conducted in accordance with appropriate laws, codes and regulations. All other unclaimed property, for which no owner can be located within six (6) months of the date of booking, will be disposed of after first obtaining approval of the officer assigned to investigate the case related to such property.

Disposition of Firearms All "firearms" which no longer have evidentiary value and which are not to be retained for Departmental use by order of the Chief of Police will be reported to the State Treasurer as required by W.Va. Code § 36-8A-5.

- Verification of Serial Numbers The Property and Evidence Commander will verify the firearms to be delivered to the State Treasurer by physically comparing each weapon's



serial number against the list of numbers compiled. Upon completion of comparison, the Bureau Chief will indicate verification by signing the serial numbers list.

- Procedure After Disposition The assigned Property Officer will retain a list of the serial numbers of all weapons delivered to the State Treasurer to be kept on file in the Property and Evidence Section, and a copy will be forwarded to the Chief of Police.

Destruction of Nuisance Weapons/Devices The commanding officer of the Property and Evidence Section is responsible for the destruction of “nuisance weapons.”

- Definition Nuisance weapons are defined as any illegal weapon or device (sap, switchblade, club, etc).

Nuisance weapons will be disposed of in adherence to the following procedures:

- \* Method of Destruction The method used to destroy the nuisance weapons/devices need only be of such a nature as to totally destroy the item beyond use.
- \* Procedure After Destruction The assigned Property Officer is responsible for indicating on the “Property Report” that the property was destroyed.
- \* Destruction of Drug Evidence Disposal of drug evidence will be conducted in the following manner:
  - \* A validated list will be prepared by the Drug Enforcement Unit Commander containing case number, quantity and description of drug material to be isolated for destruction. \* Immediately prior to the date of scheduled destruction a supervisor from the Drug Enforcement Unit and a member of the Kanawha County Prosecutor’s office and will jointly, from a validated list prepared by the Drug Enforcement Unit, check, weigh and seal the material to be destroyed consistent with appropriate laws, codes and regulations. \* Both Members will witness the destruction at the appropriate facility.
  - \* Immediately following the destruction, the “Controlled Substance Evidence Card” (Form 204-22) shall be completed and filed.
  - \* The appropriate case files will be updated by the Member of the Narcotics Division to reflect the current status of the evidence.

Disposition of Other Property

- Unclaimed property which has been held for at least 6 months will be regularly reported to the State Treasurer along with a proposed disposition (e.g., Trash, donate to charity, keep for Department use).
- Unclaimed property will be disposed of according to the agreement between the Property and Evidence Section Commander and the State Treasurer’s Office.
- The disposition of all property will be recorded in the Records of the Property and Evidence Section.

28.14 Maintaining Chain of Custody All evidence and property which leaves the Property Room for laboratory examination, court purposes or any other reason other than moving from one storage location to another, shall have an evidence tag attached with the “Chain of Possession” side in view. The custodian or the assistant must sign it

out. The person to whom the property or evidence is released must sign under the section titled “to” with the date and time; the custodian, or assistant, will sign under the section titled “from.” Thereafter, each person relinquishing and receiving the property shall sign the evidence card until the property is back in the possession of the custodian. The chain of possession will be kept as short as reasonably possible under the circumstances.

## **29.0 POLICE - MEDIA RELATIONS POLICY**

It is the policy of this Department to cooperate fully and impartially with authorized news media representatives in their efforts to gather factual, public information pertaining to activities of the Department, as long as these activities do not unduly interfere with Departmental operation, infringe upon individual rights or violate the law.

### **29.1 Definitions**

**Public Information:** Information that may be of interest to the general public regarding policy, procedures or events involving the Department or other newsworthy information that is not legally protected, does not unduly interfere with the mission of the Department, infringe upon the rights of a defendant or compromise the legitimate safety and privacy interests of officers, victims, witnesses or others.

**News Media Representatives:** Those individuals who are directly employed by agencies of the electronic or print media such as radio, television and newspapers. Freelance workers in this field are to be regarded as other members of the general public unless otherwise designated by the Chief or his designee.

**Public Information Officer (P.I.O.):** The Department’s P.I.O. serves as a central source of information for release by the Department and responds to requests for information by the news media and the community. The Chief may designate other officers to act in the role of the P.I.O. from time-to-time.

### **29.2 Duties of the P.I.O.** The Department’s P.I.O. is available to

- Assist news personnel in covering routine news stories, and at the scenes of incidents; • Assist the news media on an on-call basis;
- Prepare and distribute news releases;
- Arrange for, and assist at, news conferences;
- Coordinate and authorize the release of information about victims, witnesses and suspects;
- Assist in crisis situations within the Department; and
- Coordinate the release of authorized information concerning Departmental investigations and operations.

### 29.3 Cooperation with the Media

- Authorized news media representatives shall have reasonable access to the P.I.O., the chief or his designee and operations of the Department as governed by this policy. When information must be denied to a media representative, the basis for that denial shall be courteously explained.
- This Department recognizes authorized identification from all local, national and international news organizations. Failure of media personnel to present authorized identification may provide grounds for restricting access to requested information or to incident scenes.
- Public information shall be released to the media as promptly as circumstances allow, without partiality and in as objective a manner as possible.
- Public information may be provided to media representatives by telephone if the identity of the representative is known or can be authenticated.
- Command officers may release information of a factual nature to the media as governed by this policy or refer the inquiry to the P.I.O. Whenever the officer is unsure of the facts or the propriety of releasing information, he shall refer the inquiry to the P.I.O.
- Written press statements shall be released only following approval of the chief or his designee.
- All unit commanders shall be responsible for ensuring that the agency's P.I.O. or chief is informed of events that may have media interest.

29.4 Investigative Information Except as specifically provided in this Policy, from the initial stage of a criminal investigation until the completion of trial or disposition without trial, police personnel shall refer all requests for information to the P.I.O.

- Information that may be released in connection with an investigation of an event or crime includes
  - the type or nature of an event or crime;
  - the location, date and time, injuries sustained, damages and a general description of how the incident occurred;
  - type and quantity of property taken;
    - the identity and approximate address of a victim (with the exception of sex crime victims, and in other cases where reprisals or intimidation may be employed) after appropriate notification to family have been made;
    - requests for aid in locating evidence, a complainant or a suspect;
    - numbers of officers or people involved in an event or investigation, and the length of the investigation; and
    - Name of the officer in charge of a case, his supervisor and division or unit assignment

(exception: the name of any undercover officer will not be released.)
- Information that may not be released in connection with an investigation of an event or crime, unless authorized by the P.I.O., include
  - the identity of a suspect prior to arrest

unless such information would aid in apprehending the suspect or serve to warn the public of potential danger; ○ the identity of any victim of a sex crime or any related information which, if divulged, could lead to the victim's identity;

- the identity of victims or witnesses if such disclosure would prejudice an investigation to any significant degree, or if it would place the victim in personal danger;
- the identity of any juvenile who is a suspect or defendant in a case subject to the jurisdiction of the juvenile court;
- the identity of any critically injured or deceased person prior to notification of next of kin; ○ the results of any investigative procedure such as lineups, polygraph tests, fingerprint comparison, ballistics test or other procedures (the fact that these tests have been performed may be revealed without further comment);
- information which, if prematurely released, may interfere with the investigation or apprehension such as the nature of leads, specifics of an "M.O.," details of the crime known only to the perpetrator and the police, or information that may cause the suspect to flee or more effectively avoid apprehension;
- information that may be of evidentiary value in criminal proceedings; ○ specific cause of death unless officially determined by the medical examiner; and ○ The home address or telephone number of any Member of the Department.

#### 29.5 Arrest Information

- Following arrest, issuance of an arrest warrant or filing of an information or indictment, it is permissible to release
  - the accused's name, age, residence, occupation and family status unless the defendant is a minor; ○ the time and place of arrest, whether pursuit or resistance was encountered, whether weapons were used, charges placed against the suspect and description of contraband seized;
  - the identity of the arresting officers and the duration of the investigation unless the officers are engaged in undercover operations; and
  - the amount of bond, scheduled court dates and place of the suspect's detention.

- Following arrest and formal charging of a suspect, but prior to adjudication, the following types of information should not be released without express permission of the P.I.O.:
  - Prior criminal conviction record, character or reputation of a defendant;
  - Existence or contents of any confession, admission or statement of a defendant, or his failure or unwillingness to make a statement;
  - Performance or results of any tests, or a defendant's refusal or failure to submit to tests such as a polygraph or voice stress analysis;
  - Identity, statement or expected testimony of any witness or victim; ○ Any opinion about the guilt or innocence of a defendant or the merits of the case; ○ Any opinion or knowledge of the potential for a plea bargain or other pretrial action.

#### 29.6 Special Considerations -- Criminal Matters

- Departmental personnel shall extend every reasonable courtesy to news media representatives at crime scenes. This may include closer access of personnel and equipment than available to the general public to the degree that it does not interfere with the police mission or the movement of traffic.
- The news media shall not be allowed access to any area or scene of an incident or crime where there is a possibility that evidence may be damaged, altered, destroyed or otherwise prejudiced by its existence being published or portrayed. Once evidence has been processed, removed and secured by the Department, the media may be allowed to enter by permission of the commanding officer at the scene.
  - On private property, photography, film or videotape recording requires the permission of the owner or the owner's representative.
  - Suspects or accused persons in custody shall not be posed or arrangements made for photographs, telecasts or interviews, nor shall Departmental personnel pose with suspects or accused persons in custody.
- When an individual is charged with a criminal offense and is sought by law enforcement authorities, photographs or mug shots may be released to the media to help locate the individual. No Departmental photographs, mug shots, videotape, film or composites of subjects in custody shall otherwise be released to the media unless authorized by the chief or authorized designee
- At the scene of major crimes, such as hostage and barricade situations, the officer in charge shall designate a preliminary press area as early as possible and as close to the scene as safety and operational requirements allow.

- The fact that a suicide or suspected suicide has occurred may be reported to the media, along with factual information describing how it happened. The name, age, address, sex and occupation of the victim may also be released following notification of next of kin. The fact that a suicide note exists may also be acknowledged without further comment. The content of such notes is personal and confidential and shall not be released except as provided by law.

#### 29.7 Special Considerations -- Non-criminal Matters

- At the scene of significant crashes, man-made or natural catastrophes, the principles of media cooperation shall be maintained to the degree that they do not interfere with the mission of the police, fire, medical or other emergency relief workers.
- Media access to and movement within fire lines shall be controlled by the fire officer in charge. In consultation with the fire officer in charge, the ranking police officer at the scene shall establish an observation point from which the media may observe and photograph the incident. At the discretion of the officer in charge, an inner perimeter may be established for the media from which to record the event.
- News media representatives should not be prevented from access to any area solely because of the possibility of their injury or death. If this is the only consideration, the media representative should be advised of the danger and allowed to make the decision to enter on his own volition.
- Sensitive information relating to internal investigation of police officers shall not be released without the express permission of the Chief of Police.
- Statistical and Administrative reports of criminal activity will be made available on a routine basis to media representatives upon request.
- Media representatives shall be denied access to the contents of investigative or incident reports and records where release of the information would
  - interfere with law enforcement proceedings, including pending investigations;
  - deprive a person of the right to a fair trial or an impartial adjudication, or give one party to a controversy an undue advantage by exclusive access to such information;
  - constitute an unwarranted invasion of the personal privacy rights of
    - another person;
    - reveal the identity of an individual who has furnished information to the Department under confidential circumstances;
    - disclose investigative techniques and procedures, thereby impairing future effectiveness of the Department; or
    - Endanger the life or physical safety of any person.

#### 30.0 PREVENTION OF BLOODBORNE DISEASES

It is the purpose of this policy to provide officers with guidelines for preventing the contraction of the AIDS virus, hepatitis B and other blood borne pathogens. It is the responsibility of the

Department to take all reasonable measures to allow its Members to perform their duties in a safe and effective manner. The safe performance of daily operations is threatened by the AIDS and hepatitis B viruses that can be contracted through exposure to infected blood and several types of bodily secretions. Therefore, it is the policy of this Department to continuously provide employees with information and education on prevention of these diseases, provide up-to-date safety equipment and procedures that will minimize their risks of exposure and to institute post-exposure reporting, evaluation and treatment for all Members exposed to these diseases.

### 30.1 Definitions

Bodily Fluids: Blood, semen and vaginal fluids or other secretions that might contain these fluids such as saliva, vomit, urine or feces.

Personal Protective Equipment: Specialized clothing or equipment worn by Members for protection against the hazards of infection. This does not include standard issue uniforms and work clothes without special protective qualities.

Universal Precautions: Procedures promulgated by the Centers for Disease Control (CDC) that emphasize precautions based on the assumption that all blood and bodily fluids are potentially infectious of the AIDS (HIV) and hepatitis B (HBV) viruses.

### 30.2 Disease Prevention Guidelines

- The Department's exposure control plan shall provide the overall strategy for limiting exposure to HIV viruses and responding to potential exposure incidents. The plan is available for review by all Members through request of their immediate supervisor.
- The Department subscribes to the principles and practices for prevention of HIV and HBV exposure as detailed in the "universal precautions" prescribed by the CDC and the federal regulations of the Occupational Safety and Health Administration. Where otherwise not detailed in this policy, officers shall be guided by these practices and procedures.

### 30.3 Workplace Controls and Personal Protective Equipment

- In order to minimize potential exposure, officers should assume that all persons are potential carriers of HIV or HBV.
- When appropriate protective equipment is available, no Member shall refuse to arrest or otherwise physically handle any person who may carry the HIV or HBV virus.
- Members shall use protective gear under all appropriate circumstances unless the Member can demonstrate that in a specific instance, its use would have prevented the effective delivery of health care or public safety services or would have imposed an increased hazard to his safety or the safety of another co-worker. All such instances shall be reported by the Member and shall be investigated and appropriately documented to determine if changes could be instituted to prevent similar occurrences in the future.

- Disposable gloves shall be worn when handling any persons, clothing or equipment with bodily fluids on them.
- Masks in combination with eye protection devices, such as goggles or glasses with solid side shields or chin-length face shields, shall be worn whenever splashes, spray, spatter or droplets of potentially infectious materials may be generated and eye, nose or mouth contamination can be reasonably anticipated.
- Gowns, aprons, lab coats, clinic jackets or other outer garments shall be worn as determined by the degree of exposure anticipated.
- Plastic mouthpieces or other authorized barrier/resuscitation devices shall be used whenever an officer performs CPR or mouth-to-mouth resuscitation.
- All sharp instruments such as knives, scalpels and needles shall be handled with extraordinary care and should be considered contaminated items.
- Leather gloves or their protective equivalent shall be worn when searching persons or places or dealing in environments, such as crash scenes, where sharp objects and bodily fluids may be encountered.
  - Searches of automobiles or other places should be conducted using a flashlight, mirror or other devices where appropriate. Subsequent to a cautious frisk of outer garments, suspects should be required to empty their pockets or purses and to remove all sharp objects from their person when an officer has the right to conduct a full search of the person. In frisk only situations, suspects should be directed to remove sharp objects when the officer cannot remove the object without risk to himself.
  - Needles shall not be recapped, bent, broken, removed from a disposable syringe or otherwise manipulated by hand.
  - Needles shall be placed in Department provided, puncture-resistant, leak proof containers that are marked as biohazardous when being collected for evidence, disposal or transportation purposes.
- Officers shall not smoke, eat, drink or apply makeup around bodily fluid spills.
- Any evidence contaminated with bodily fluids shall be completely dried, double bagged and marked to identify potential or known communicable disease contamination.

#### 30.4 Custody and Transportation of Prisoners

- Officers shall not put their fingers in or near any person's mouth.
- Individuals with bodily fluids on their persons shall be transported in separate vehicles from other persons. The individual may be required to wear a suitable protective covering if he is bleeding or otherwise emitting bodily fluids.
- Officers have an obligation to notify relevant support personnel during a transfer of custody when the suspect has bodily fluids present on his person, or has stated that he has a communicable disease.
- Suspects taken into custody with bodily fluids on their persons shall be directly placed in the designated holding area for processing. The holding area shall be posted with an "Isolation Area -- Do Not Enter" sign.



- Officers shall document on the appropriate arrest or incident form when a suspect taken into custody has bodily fluids on his person, or has stated that he has a communicable disease.

### 30.5 Housekeeping

- Supervisors and their employees are responsible for the maintenance of a clean and sanitary workplace and shall conduct periodic inspections to ensure that these conditions are maintained.
- All supervisory personnel shall determine and implement written schedules as appropriate for cleaning and decontamination based on the location within the facility or work environment, the type of surface or equipment to be cleaned, the type of soil present and the tasks and procedures to be performed in the area.
- All equipment and environmental and work surfaces must be cleaned and decontaminated after contact with blood and other potentially infectious materials as provided in this policy.
- Any protective coverings used for covering surfaces or equipment shall be removed or replaced as soon as possible following actual or possible contamination.
- Bins, pails and similar receptacles used to hold actual or potentially contaminated items shall be labeled as biohazardous, decontaminated as soon as feasible following contamination as well as inspected and decontaminated on a regularly scheduled basis.
- Broken and potentially contaminated glassware, needles or other sharp instruments shall not be retrieved by hand but by other mechanical means and shall not be stored in a manner that requires that they be retrieved manually.
- Officers shall remove clothing that has been contaminated with bodily fluids as soon as practical and with as little handling as possible. Any contacted skin area shall be cleansed in the prescribed fashion.
- Contaminated laundry and personal protective equipment shall be bagged or containerized at the location where it is used in Department approved leak proof containers but shall not be sorted, rinsed or cleaned at that location.
- Only employees specifically designated by the Chief of Police shall discard actual or potentially contaminated waste materials. All such disposal shall conform to established federal, state and local regulations.

### 30.6 Disinfection

- Any unprotected skin surfaces that come into contact with bodily fluids shall be thoroughly washed as soon as possible with hot running water and soap for at least 15 seconds before rinsing and drying.
  - Alcohol or antiseptic may be used where soap and water are unavailable. ○ Disposable gloves should be rinsed before removal and hands and forearms should then be washed.
  - Skin surfaces shall be washed and mucous membranes flushed as soon as feasible following the removal of any personal protective equipment.

- Hand lotion should be applied after disinfection to prevent chapping and to seal cracks and cuts on the skin.
- All open cuts and abrasions shall be covered with waterproof bandages before reporting to duty.
- Disinfection procedures shall be initiated whenever a person with bodily fluids on his person is transported in a Department vehicle.
  - A supervisor shall be notified and the vehicle taken to the service center as soon as possible.
  - Affected vehicles shall be immediately designated with the posting of an “Infectious Disease Contamination” sign upon arrival at the service center and while awaiting disinfection.
  - Service personnel shall remove any excess bodily fluids from the vehicle with an absorbent cloth, paying special attention to any cracks, crevices or seams that may be holding fluids. ○ The affected areas should be disinfected using hot water and detergent or alcohol and allowed to air dry.
  - All police vehicles taken to a service center for scheduled washing and routine maintenance shall, as part of that routine, be cleaned in the interior with an approved disinfectant.
- Non-disposable equipment and areas upon which bodily fluids have been spilled shall be disinfected as follows:
  - Any excess bodily fluids should first be wiped up with approved disposable absorbent materials.
  - A freshly prepared solution of one part bleach to 10 parts water or a fungicidal/mycobactericidal disinfectant shall be used to clean the area or equipment.

### 30.7 Supplies

- Supervisors are responsible for continuously maintaining an adequate supply of disease control supplies in a convenient location for all affected personnel in their unit. This includes, but is not limited to, ensuring that:
  - Personal protective equipment in appropriate sizes, quantities and location are available; ○ Hypoallergenic gloves and other materials are available for those who are allergic to materials normally provided, and cleaning, laundering and disposal, as well as repair or replacement of these and other items is provided; and
  - First aid supplies and disinfecting materials are readily available at all times.

- All Department vehicles shall be continuously stocked with the following communicable disease control supplies.
  - Personal protective equipment in appropriate size and quantity for affected personnel to include face and eye protective devices, coveralls, disposable gloves and booties, leather gloves, puncture-resistant and leak proof containers for needles and other sharp objects, barrier resuscitation equipment and leak proof plastic bags.
  - Liquid germicidal cleaner.
  - Disposable towel (70 percent isopropyl alcohol).
  - Waterproof bandages.
  - Absorbent cleaning materials.
  - “Isolation Area -- Do Not Enter” signs.
- Officers using supplies stored in their vehicles are responsible for ensuring that they are replaced as soon as possible.
- Officers are required to keep disposable gloves in their possession while on either motor or foot patrol.

### 30.8 Vaccination, Exposure, Evaluation and Treatment

- All Members of this Department who have been determined to be at risk for occupational exposure to the hepatitis B virus shall be provided with the opportunity to take the HBV vaccination series at no cost within 10 working days of assignment to an occupationally exposed duty. The vaccination shall be provided if desired only after the Member has received required Department training, has not previously received the vaccination series and only if not there is no known medical reason not to provide the vaccination.
- Any person who has unprotected physical contact with blood or other bodily fluids of another person while in the line of duty shall be considered to have been potentially exposed to HBV and/or HIV.
- In cases of exposure, a supervisor shall be contacted who shall complete appropriate duty injury and medical forms and shall take appropriate steps to document the means and circumstances under which the exposure occurred.
- Immediately after exposure, the officer shall proceed to a health care facility for tests of evidence of infection and treatment of any injuries.
  - The Department shall ensure continued testing of the Member for evidence of infection and provide psychological counseling as determined necessary by the health care official.
  - The Members shall receive a copy of the health care provider’s written opinion within 15 days of the evaluation and information on any conditions resulting from the exposure that require further evaluation or treatment.

- Unless disclosure to an appropriate Department official is authorized by the officer or by the state law, officer's medical evaluation, test results and any follow-up procedures shall remain confidential.
- Any person responsible for potentially exposing a Member of the Department to a communicable disease shall be encouraged to undergo testing to determine if the person has a communicable disease.
- Criminal charges may be sought against any person who intentionally exposes a Member of the Department to a communicable disease.
- Officers who test positive for HIV or HBV may continue working as long as they maintain acceptable work performance and do not pose a safety and health threat to themselves, the public or other Members of the Department.
  - The Department shall make all decisions concerning the employee's work status solely on the medical opinions and advice of health care officials.
  - The Department may require an employee to be examined by the Department care officials to determine if he/she is able to perform his/her duties without hazard to him/herself or others.
- All Members of the Department shall treat employees who have contracted a communicable disease fairly, courteously and with dignity.

30.9 Needle Stick Injuries These injuries are much more serious than others as hypodermic needles are presumptively dangerous due to the nature of their use and the circumstances surrounding their probable discovery: Therefore needle stick injuries as opposed to other contamination will be handled as follows:

- Notify supervisor and immediately go to the nearest hospital emergency room for medical evaluation and treatment.
- Request an evaluation of the risk of infection by HIV, hepatitis, and other blood-borne pathogens.
- Request HIV prophylaxis treatment after consultation with treating physician.
- Request instruction on follow-up medical care.
- Prepare the Exposure Report Form (a copy of the form is found in the Appendix at the end of this manual).
- This procedure should be completed **WITHIN 2 HOURS** after the potential exposure occurs. Medical treatment is most effective when started within 2 hours.

### 30.10 Record Keeping

- The Department shall maintain an accurate record for each Member with occupational exposure that includes information on vaccination status; the results of all examinations, tests and followup procedures; the health care professional's written opinion; and any other relevant information provided by the health care professional.
- These health care records shall be retained in a secured area with limited access for the duration of the Member's employment plus 10 years and may not be disclosed or reported without the express written consent of the Member.

### 30.11 Training

- The Department's Training Division shall ensure that all Members of the Department with occupational exposure potential are provided with a course of instruction on prevention of blood borne diseases prior to their initial assignment.
- All affected employees shall receive annual refresher training and additional training whenever job tasks or procedures are modified in a manner that may alter their risk of exposure.
- All trainees shall have access to applicable federal and state regulations pertaining to the regulation of blood borne pathogens.
- The Training Division shall ensure that complete records are maintained on Member training to include information on the dates and content of training sessions, names and qualifications of persons conducting the training and the names and job titles of all persons attending the training sessions.

## 31.0 POLICE CANINE POLICY

### 31.1 Purpose

The City of Charleston and the Charleston Police Department are committed to serving the citizens, businesses and visitors of our community in the most proficient manner possible. In this endeavor, we strive to implement the most effective and efficient methods and tools available to us. One of the tools chosen by the City of Charleston is the Police Service Dog, or police canine. When properly utilized, the police canine can be a valuable asset in tasks such as criminal apprehension, evidence and contraband detection, crowd control, locating missing persons, and in public relations activities. In allowing the implementation of a Police Canine Unit, it is also necessary to set in place guidelines which: assist in the selection of personnel to staff the canine teams as handlers; establish training requirements for canine teams; establish an administrative protocol for the Canine Team Unit, and for intra-Departmental and interdepartmental use of the teams; in defining the parameters under which the police canine may be used; and instituting reporting requirements for incidents where the Canine Unit or elements of the Unit are employed.

### 31.2 Definitions (Amended September 24, 2003)

Canine Handler An officer assigned to the Canine Unit who has been trained and certified to work with a trained command dog.

Canine Team A trained officer working in tandem with a trained command dog.

Canine Team Supervisor The officer assigned to command the Canine Unit.

Head Canine Trainer The officer/handler responsible for the training and required certifications of canines selected for use in the Department's Canine Unit.

Command Dog A canine that has been trained to function primarily as a patrol dog, with possible secondary training in a specialized field such as bomb or narcotics detection, and has been certified to standards comparable to those established by the United States Police Canine Association (USPCA) or the North American Police Work Dog Association in those fields.

Deployment Use of a Department canine for a specific law enforcement objective including, but not limited to;

- Building searches,
- Tracking,
- Crime scene or area searches for items of evidence,
- Narcotic searches,
- Criminal apprehension (on or off leash),
- Protection of the handler, other officers or the canine,
- Crowd control during civil disorders, only upon the direction of the Shift Commander or higher authority,
- Educational or demonstration purposes.

### 31.3 Policy

Police canine teams are maintained by the Department as a valuable law enforcement tool for use in criminal apprehension, evidence detection, crowd control, and public relations activities. The effectiveness of the canine teams is dependent upon the intelligent application of their capabilities by all personnel. 31.3.1 Organization

The canine teams form a subunit assigned to the Patrol Division. The Shift Commander is responsible for the team assigned to his/her shift. The Canine Team Supervisor is responsible for scheduling of training, certification of the team and reports from the teams.

- Canine handlers will submit all required paperwork and requests to the Canine team Supervisor, who in turn, will forward these materials to the Patrol Bureau Chief.

#### 31.3.2 Deployment and Utilization

Canine teams will consist of trained officers to work in tandem with a trained command dog. These canine teams will patrol in modified, specially equipped vehicles designated for such duty and clearly marked "Police K-9."

##### 31.3.2.1 General Consideration (Amended September 24, 2003)

- Canine teams, when at all possible, shall not be assigned to a specific patrol area, but shall be allowed to patrol throughout the City and/or assigned district.
- The canine team should respond to all alarm calls when available and other radio calls at the discretion of the handler, or upon the request of a district commander or shift commander.

- The assigned patrol area should be centrally located to provide for the latitude of responding to calls for canine assistance.
- The following types of calls should be considered and evaluated for canine response by the canine handler:
  - All burglary in progress calls, intrusion and/or robbery alarms. ○ All felony or misdemeanor or crimes where the suspect has fled on foot and a possible tracking exercise could develop. ○ All alarms, unsecured premises or open door/window calls where the canine team will be the primary building search unit.
  - All major disturbances, large crowds, or parties where the canine team could standby should an unruly situation develop. In this type situation, canine teams should respond as backup resources and not deployed without the authorization of the shift commander or higher authority unless emergency circumstances would dictate immediate deployment and waiting for authorization from the shift commander would not be practical. When used in this capacity, the canine should remain leashed.
  - Crowd control during civil disorders only upon the direction of the shift commander or higher authority. When used in this capacity, the canine should remain leashed. ○ Locating lost children.
  - Locating discarded evidence or contraband. ○ Searching for narcotics or bombs if the teams are certified for use in these areas.
  - Any other call, where, in a canine supervisor's opinion, a canine team would be an asset as a backup or primary unit. The deployment of the canine unit on these calls is subject to the approval of the shift commander or a higher authority.
- Canine handlers shall notify METRO Communications of their intent to respond to any specific event.
- When requested to apply the police canine to a specific problem, the handler shall first evaluate the situation to determine if, in fact, the use of a canine is feasible.
  - The decision to deploy the police canine to a specific police operation is the responsibility of the canine team supervisor or shift commander.
  - All mutual aid requests shall be coordinated and approved through the on duty shift commander, however, subsequent to a review of the situation, the decision to physically apply the canine to a specific operation will remain with the handler.

- Canine units will not be used to transport prisoners. A handler making an arrest shall request a prisoner transport van for the purpose of transporting the prisoner(s).
- In order for the canine program to function properly, canine teams should not normally be assigned “report calls” unless absolutely necessary.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### 31.3.2.3 Tracking

Canines used for tracking persons should remain on a leash of sufficient length to provide a reasonable measure of safety to the subject of the search without compromising the canines’ tracking abilities. During tracking exercises, the perimeter will be secured by patrol units while the canine team proceeds with the track. The canine handler will keep the perimeter units updated with location and direction of the track by radio communications, to allow the perimeter units to move accordingly, in an effort to keep the perimeter secure. Patrol units will not enter the perimeter on foot, as this will cause contamination of the tracking area and give the suspect a greater opportunity to elude the canine team. If for some reason a patrol unit should enter the area, this information should be transmitted to the tracking canine team so that should the track of the suspect enter the contaminated area, the canine team can judge the canine’s reactions accordingly. The patrol unit should exit the area prior to the approach of the tracking canine team.

[REDACTED]



[REDACTED]

31.3.2.5 Criminal Apprehension (Amended September 24, 2003)

The use of canines during an apprehension will be classified as an application of force. The deployment of a police canine apprehension of a suspect is a use of force that must be consistent with this agency's principles of escalation and de-escalation of force

- Decisions to deploy a canine shall be based on the following:
  - The severity of the crime;
  - Whether the suspect poses an immediate threat to the safety of the officer and others: and
  - Whether the suspect is actively resisting arrest or attempting to evade arrest at the time.
- The handler will not use the canine in a bite situation for any misdemeanors unless the suspect is armed and dangerous or believed to be armed and dangerous. This prohibition does not include incidents of assault upon an officer at the time of apprehension.
- The canine handler will not use the canine in a bite situation for any summary offenses, such as a suspect refusing to cooperate after the suspect has been secured in restraints.
- In any instance where the handler encourages the canine to take any unjustified bite on any person or takes part in any activity in violation of this general order and/or any Departmental rule and regulation, that the handler will be subject to disciplinary action and/or elimination from the canine program.

31.3.2.6 Duties of Responding Patrol Units

In order to achieve maximum effective utilization of the police canine teams, patrol officers should observe the following procedures when working in conjunction with a canine.

- Officers should maintain a perimeter of any area or building to be searched by a canine team. Patrol units assigned to perimeter locations will be moved accordingly with the progress of the canine team's track.
- Officers should avoid contaminating the search area prior to the completion of the canine's search.

- If officers have entered a search area or building prior to the canine teams arrival, they should make sure that all personnel are out of the area prior to the canine's search, and that the area that has been contaminated be described to the canine handler.
- When a canine team enters a building or search area, at the discretion of the handler, another officer may be assigned to accompany the canine team. This officer's primary responsibility would be to provide cover for the canine team.

#### 31.3.2.7 Restrictions on Canine Interactions

To not interfere with the training phases of the police canine, it is important that patrol officers do not:

Reach into the canine cruiser while the canine is inside.

- Agitate the police canine at any time.
- Attempt to feed the police canine.

#### 31.3.3 Reports and Records (Amended September 24, 2003)

The activities and operations of the canine teams are reported through the use of the following forms and records:

- Canine Contact Report - The canine handler shall complete a "Canine Contact Report" whenever a police canine bites, attempts to bite, shows inappropriate aggressive behavior towards, makes physical contact with or injures any person, including suspects, citizens and officers. This report is in addition to any other required offense report.
- Report of Injury or Illness to Police Canine - The canine handler shall complete a "Report of Injury or Illness to a Police Canine" and submit to the Head Canine Trainer whenever the canine incurs any injury or illness.
- Health and Vaccination Records - The canine team supervisor shall keep health records and vaccination reports on all police canines. By authorization of the canine team supervisor, these reports may be made available to Health Department authorities or bite victims. The canine team supervisor shall maintain a duplicate file of these records at the Department's Administrative Office.
- Training and Certification Records - The canine team supervisor shall keep training and certification records on all police canines. By authorization of the canine team supervisor, these records may be made available to authorized receivers as defined in Section S 2213.20 of the Policies and Procedures Manual of the Charleston Police Department.

#### 31.3.4 Bite/Injury Procedure and Review (Amended September 24, 2003)

If a canine bites or injures any person (suspect, citizen or officer), the handler shall insure that the proper emergency medical personnel are immediately notified to provide medical attention to the injured person. Injuries are to be evaluated by medically qualified personnel and, if necessary, the injured person shall, as soon as practical, be transported to a medical facility for further treatment of those injuries.

All injuries shall also be examined by the canine handler and the canine team supervisor, or, if not available, the on duty shift commander. All injuries will be photographed (in color) regardless of the suspected nature of the injury.

- The first-line supervisory review of a canine bite or injury should be conducted by the canine team supervisor.
- Any injuries resulting from contact with a CPD canine will be immediately documented in writing on a Charleston Police Department “Canine Bite or Injury Report” and will be submitted with a copy of the incident report. It will be the reviewing supervisor’s responsibility to review this packet, attach a cover Memorandum (CPD 144) summarizing his findings, and submit it to the Patrol Bureau Chief for review. The reviewing supervisor shall ensure that photographs of the injuries are taken, and that the photographs are sufficient to identify the subject and injuries.
- The Patrol Bureau Chief will confer with the canine team supervisor and will submit his findings and recommendations for presentation to the Chief of Police or his designee to determine the justification or the use of force, pursuant to the Use of Force Review Policy.

### 31.3.5 Selection of Canine Handlers

Canine handlers shall be selected according to the following criteria:

#### 31.3.5.1 Minimum Standards (Amended April 6, 2008)

- Only officers who voluntarily apply for the handler position will be considered.
- The officer’s residence must be capable of housing the canine and/or have adequate space for the construction of a kennel, as the officer will be required to keep the canine at his residence. In the event that the officer does not own the property, the officer must obtain written permission from the property owner for the housing of the canine.
- Candidates must successfully complete a physical agility and aptitude exercise

#### 31.3.5.2 Selection

Officers will be advised of any opening(s) in the canine unit. Interested officers must then submit a written request, via the chain of command, to the Patrol Bureau Chief.

- The canine team supervisor will interview the candidate’s family (if applicable) at the officer’s residence. The canine team supervisor will also interview neighbors of the officer to determine if there are any objections to the presence of a police canine in the neighborhood.
- The canine team supervisor will make a written report of the overall findings and submit them to the Patrol Bureau Chief.
- The oral interview will be conducted, headed by a command officer of the Patrol Bureau, the canine team supervisor, and other supervisory personnel designated by the Chief of Police. The board will submit their recommendation to the Chief of Police who will make the final selection.

- Any officer selected for the position of canine handler will be required to commit to remaining in the canine unit, unless the officer is promoted to a rank that necessitates his transfer, or a transfer is deemed necessary for administrative purposes.

#### 31.3.5.3 Evaluation and Training (Amended September 24, 2003)

All department canines must meet established certification requirements as determined by the West Virginia Police Canine Association.

All canine team Members will receive a minimum of 12 hours canine training per month. There will be evaluations twice monthly of each canine team. The twice monthly evaluation process will consist of each canine team's activity (apprehensions and performance) on duty, and the evaluation of each team's training performance. Failure to pass an evaluation will be reviewed as to that canine team's suitability to perform in an on duty status, and will result in remedial training and review in that area deemed insufficient. If a substandard evaluation is received, the canine shall not be used in that duty area deemed insufficient. For example, If the substandard evaluation is in the area of obedience, the canine shall not be deployed in any building searches, criminal apprehension or tracking situations wherein contact with persons is likely.

- The evaluation test will consist of the following:
- Obedience off lead with distance control, walking control and heeling control. Agility, off lead, including hurdles, catwalk, 6' wall and broad jump. □ Search work, both article and box search.
- Criminal apprehension (attack work) both with and without gunfire and handler protection with controlled recall.
- Tracking evaluation and building searches.

#### 31.3.6 Responsibilities of Canine Handlers

Except as provided in this Policy, canine handlers shall assume all the duties and responsibilities of a patrol officer. In addition, canine handlers will assume the following specialized responsibilities:

- Take the necessary actions to insure the good health and welfare of their assigned canine, both on and off duty.
- Immediately report any canine non-emergency illness or injury to the canine team supervisor. The canine team supervisor will make the necessary arrangements for veterinary care, if necessary.
- In emergency situations, insure that the canine receives immediate medical attention. The handler will then notify the canine team supervisor as soon as possible.
- Complete and forward all necessary reports and records in a timely manner.
- Administer any medication as prescribed by a veterinarian.
- Maintain canine licenses in a current and valid status in accordance with state and local laws.
- Arrange for an annual medical examination of the canine and other examinations as may be necessary due to injury or illness.

- Conduct daily grooming and check of the assigned canine.
- The care and upkeep of all issued equipment used of the training and control of the canine.
- Any miscellaneous equipment such as leashes, collars, etc., must be approved by the canine team supervisor prior to use by a canine team. Maintain the assigned canine cruiser in good operating condition. The interior shall be regularly cleaned and disinfected. All Department procedures pertaining to the proper maintenance of City vehicles shall apply.
- Maintain training and handling equipment in a state of operational readiness in the trunk of the canine cruiser.
- Maintain continuous direct supervision of the canine and not allow the canine to roam at will in any area or be agitated unnecessarily by the handler or any other person.
- House the canine on property where the handler also resides. The housing of the canine at any other location must be authorized by the canine team supervisor.
- Prevent the use of the canine for breeding purposes without written authorization from the Chief of Police.
- Perform canine demonstrations for civic groups, special events and other occasions authorized by the Department. All demonstrations must be approved by the canine team supervisor.
- Participate in scheduled canine training exercises.
- Utilize continuous training techniques as recommended by the canine team supervisor and approved by the Department to keep the canine trained to its fullest abilities.
- Respond to all alarm calls and other calls for service which may require the use of a canine team.
- Make a continuous effort at every call for service to utilize the canine in the most efficient manner to achieve the desired results.
- Ensure that no untrained and/or unauthorized person is permitted to work with the canine.

### 31.3.7 Canine Team Supervisor

The canine team supervisor will be accountable for the overall operation of the CPD Canine Unit. The canine team supervisor reports to the Patrol Bureau Chief.

The canine team supervisor shall have all the duties and responsibilities of a district commander and additionally shall assume the following specialized duties:

- Supervision of the in-service training program to maintain the canine teams at a high rate of operational efficiency.
- Scheduling of canine teams to provide proper deployment during peak hours of canine activity.
- Budgeting and evaluation of all canine performance.
- Evaluation of canine teams regarding canine performance. □ Maintaining a high standard of canine training.
- Inspection of the canine team's issued equipment (cruiser, canine, leashes, and leather).

- Submission to the Chief of Police via the chain of command, a monthly report regarding all canine activities and progress reports on training.
- Coordination with the Patrol Bureau Chief of the assignment of canine teams for special details, stakeouts, public demonstrations, etc.
- Submission of completed Canine Bite forms directly to the Patrol Bureau Chief.
- Keeping the Patrol Bureau Chief updated on all canine activities and items that require changing or upgrading.
- Making recommendations after periods of training and evaluation concerning canine team suitability to continue within the canine program.
- Screening of police applicants interested in becoming a canine handler.
- Testing of canines to determine if they meet eligibility standards to train as police canines. □
- Maintenance of facilities used by the Department's Canine Unit for the training of police canines.

## **32.0 POLICY FOR INTERNAL INVESTIGATIONS**

32.1 Purpose To describe procedures for making complaints against Department personnel, for investigating complaints, and to list and define the dispositions of complaints.

32.2 Policy The image of the Department depends on the personal integrity and discipline of all Departmental employees. To a large degree, the public image of this Department is determined by the professional response of the Department to allegations of misconduct against it or its employees. The Department must competently and professionally investigate all allegations of misconduct, either by act or omission, by Members and employees.

The Department encourages citizens to bring forward legitimate grievances regarding misconduct by employees. Department Members shall receive complaints courteously and shall handle them efficiently. All officers are obligated to explain to inquiring citizens the complaint procedures set forth herein.

The Department recognizes that its personnel are often subject to intense pressures in the discharge of their duties. The employees must remain neutral under circumstances that are likely to generate tension, excitement, and emotion. In such situations, words, actions, and events frequently result in misunderstanding and confusion. It is to the advantage of all employees to have a procedure for the investigation of the more serious allegations and underlying circumstances so that complaints can be resolved in light of the complicated pressures of police work.

A copy of "How to Commend an Employee, Make a Suggestion, Make A Complaint" will be posted on the Department's internet web page, in public areas of the Police Department, provided to media representatives, and given to any citizen requesting information on how to make a complaint against the Department or an employee of the Department. A copy of "How to Commend an

Employee, Make a Suggestion, Make A Complaint” is found in the Appendix at the end of this manual.

**32.3 Receipt of Complaints** Complaints, regardless of nature, can be logged in person, by mail, e-mail or by phone at any time. Any Department Member receiving a citizen complaint through

U.S. mail shall place the correspondence and envelope in a sealed envelope and forward it to the Professional Standards Division. Complaints received by telephone will be courteously and promptly referred to the on duty Shift Commander. The employee shall attempt to transfer the caller to the on duty Shift Commander but if unavailable, record the name and telephone number of the complainant and inform the caller that the on duty Shift Commander will call back as soon as possible, and will immediately notify the Shift Commander of the complaint. Persons making complaints by mail or phone will normally be interviewed and a written complaint prepared.

**32.3.1 Initial Complaint** Normally, a citizen with a complaint will be referred to the on duty Shift Commander who will assist the citizen in recording pertinent information. The Shift Commander will initiate the complaint procedure by completing and forwarding the CPD-111, make any required notifications and, when appropriate, conduct a preliminary investigation.

**32.3.1.1 Complainant under the Influence** If the complainant is apparently under the influence of an intoxicant or drug, or suffers from an apparent mental disorder, or displays any other trait or condition bearing on his or her credibility, such conditions will be detailed in the initial complaint. Any visible marks or injuries relative to the allegations will be noted and photographed.

**32.3.1.2 Prisoners or Arrestees** Prisoners or Arrestees may also make complaints, although circumstances may require a Department representative to meet the complainant at a jail or prison for an interview. Photographs will be taken of any apparent injuries.

**32.3.1.3 Anonymous Complaints** Anonymous complaints shall be followed up to the extent possible.

**32.3.1.4 Interference with Complainant** Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of citizen complaints. An employee of the Department who interferes with, discourages or delays the making of such complaints shall be subject to disciplinary action up to and including termination.

## **32.4 Administrative Issues**

**32.4.1 Notification** Professional Standards will notify the complainant, in writing, as soon as possible, that the Department acknowledges receipt of the complaint, that it is under investigation, that the investigation will be completed expeditiously, and that the complainant will be advised of the outcome. If the investigation exceeds ninety days,

Professional Standards will write the complainant a letter explaining the circumstances of the delay.

32.4.1.1 Professional Standards will notify the Chief of Police of all complaints of officer misconduct as soon as possible. Immediate notification will be made in serious incidents, such as an officer is injured, suspect is injured by an officer, in custody death, etc. If the Chief of Police is not available the Deputy Chief or other officer designated as Acting Chief will be notified.

32.4.1.2 Professional Standards will notify the accused officer(s) of initial complaints and the results of the investigation unless the investigation will be compromised by such notification. The officer(s) should be notified regardless of whether Professional Standards or the line supervisor is conducting the investigation.

32.4.2 Logging Complaints Once the supervisor accepts a complaint, the original of the CPD 111 Complaint Form will be directed to the Professional Standards Division (PSD). If the complaint involves an employee under the supervisor's command, the supervisor will retain a copy of the complaint. If the employee complained against is assigned to another unit, the supervisor accepting the complaint will forward a copy to the supervisor in charge of the unit to which the employee is assigned. When the PSD receives the original CPD 111 Complaint Report:

- A complaint number will be assigned.
- A determination will be made by the Chief of Police whether the complaint will be investigated by the PSD or by the supervisor of the unit to which the involved Member is assigned.

32.4.3 Tracking Complaints PSD has the responsibility of monitoring all administrative investigations of Charleston Police Department employees. Complaint reviews will be assigned a 30 day due date, starting from the date the complaint is forwarded by PSD to the applicable supervisor. If the applicable supervisor anticipates the complaint review cannot be completed on time, a written request for extension shall be sent to the PSD Commander. The request for extension shall indicate what remains to be done and an estimated completion time. PSD will notify those involved in the investigation of that extension.

32.4.4 Withdrawal of Complaints A complainant may withdraw his/her complaint at any time during an investigation. All information collected up to that time shall be evaluated to determine whether to continue the investigation or not. Factors to consider include:

- Seriousness of the original allegation/complaint.
- Reason(s) why the complainant withdrew the allegation.
- Whether additional investigative leads exist.
- Impact to the complainant, employee, and Department.



The cooperation of the complainant is important. However, the investigation may continue even after a complaint has been withdrawn. The decision to end or continue an investigation shall be made by the Chief of Police.

32.5. Confidentiality Professional Standards will maintain complaint files separate from personnel files.

Professional Standards complaint files are not public records and are not subject to disclosure under the Freedom of Information Act Records relating to complaints and administrative investigations shall be maintained on file within the PSD office for not less than five (5) years after the conclusion of any investigation. Access to PSD files is limited to the Chief of Police or his designee, the Members of the Professional Standards Division and in response to lawful Court process but only after consultation with the City Attorney to determine whether the Court Order should be complied with or appealed.

Statistical information from the records maintained by the PSD may be released upon request. The release of specific details and records pertaining to information on file within the PSD may only be done with the approval of the Chief of Police or in response to a valid subpoena issued by a judicial entry or agency. Upon receipt of any such subpoena the Chief of Police or Deputy Chief of Police and the City Attorney will be contacted and provided with the details surrounding the service of the subpoena.

32.6 Investigations Two types of investigations may take place: administrative or criminal. The procedures depend on the nature of each case.

32.6.1 Criminal Investigations If it is determined that the complaint may result in criminal prosecution, the Chief of Police will assign the case to the Criminal Investigations Division (or an outside agency) as well as the Professional Standards Division.

32.6.1.1 Segregated Investigation Because an accused Member has constitutional rights in criminal investigations which are not available in administrative investigations, each criminal investigation will be independently conducted and segregated from any administrative investigation.

Investigators assigned to one investigation will not share information or discuss any aspect of the case with anyone assigned to the other case, i.e., PSD investigators will not share information with CID investigators on the same complaint.

32.6.1.2 Coordination With Prosecutor CID investigators will maintain a close liaison with the Prosecuting Attorney, whether State or Federal, when investigating a criminal complaint against a police officer.

32.6.1.3 Constitutional Rights Accused officers have the same constitutional rights and protections afforded to every other citizen, therefore, criminal investigations involving officers will be handled the same as every other criminal investigation.

32.6.1.4 Interviews for Criminal Investigative Purposes If the Chief of Police believes that criminal prosecutions are possible and the Prosecutor or Investigator believes that such statements may be used against the Member in a criminal proceeding, or to preserve the option of such use, the Investigator will:

- Advise the Member of his/her Miranda rights.
- Advise the Member that if he asserts his right not to answer questions, no adverse administrative action will be taken based upon the refusal. The law is clear that a public employee may not be fired for asserting his Fifth Amendment right not to incriminate himself in a criminal case. The governing case is Gardner v. Broderick, 392 U.S. 273, 88 S.Ct. 1913, 1916 (1968).
- If the Member decides to answer questions, the responses may be used in both criminal and disciplinary proceedings.

32.6.2 Administrative Investigations Less serious complaints of officer misconduct may be investigated by line supervisors. Some examples of less serious offenses include complaints about attitude, demeanor and speeding. Professional Standards will conduct other complaints including all complaints of excessive force. The Professional Standards Division and the line supervisors will conduct a thorough investigation using all standard investigative techniques. Because the need for public confidence in this Department, and the potential for public harm due to police misconduct, the Department is afforded the ability to conduct administrative investigations without some of the constitutional protections afforded all other citizens. Investigations will be conducted in accordance with all procedural protections afforded by West Virginia Code § 8-14A-1 et seq.

32.6.2.1 Interviews for Administrative Purposes Members subject to interview during an administrative investigation will be informed that:

- The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings.
- In an interview for administrative purpose, Miranda warnings are not required.
- All questions specifically related to employment must be fully and truthfully answered. Members will not lie, give misleading information or half-truths, fail to disclose relevant information, willfully depart from the truth or falsify written or verbal communications in official reports or in their statements, testimony or actions with investigators or supervisors.
- Refusal of a Member witness (other than an accused officer) to answer, or answering falsely or deceptively, may result in disciplinary action.

32.6.2.2 Interviews of Accused Member Generally, statements given during any administrative investigation may be used for any lawful purpose by the Department, including use as evidence in a criminal prosecution. If a Member under investigation

seeks to invoke his constitutional protections he may, nonetheless be required to answer all questions fully and truthfully if directed to answer over his/her objection. When the Chief of Police wishes to compel a Member to answer questions directly related to his or her official duties and the Chief is willing to forego the use of such answers in a criminal prosecution, the Chief or his designee will:

- Read the Internal Investigation Warning to the Member and have the Member sign the form.
- Inform the Member that he/she must answer all questions fully and truthfully and that refusal to answer questions is considered insubordination and subjects the Member to additional charges and discipline.
- Inform the Member that compelled answers and any information obtained by reason of such statements are not admissible against the employee in any criminal proceeding. The governing case is *Garrity v. New Jersey*, 385 U.S. 483 (1967).
- Inform the Member that as the interview does not serve criminal prosecution, the employee has no Sixth Amendment right to participation of counsel in the interview. Counsel may attend and the Member may consult with counsel from time to time, however, counsel has no right to object to questions, make statements, ask questions or otherwise participate in the interview. Advice of counsel not to answer any question does not prevent the Member from being subject to discipline/discharge for insubordination.

32.6.2.3 Investigative Tools and Resources In addition to interviews of the employee and witnesses, the Chief may require other activities in support of a complaint investigation or internal investigation, including:

32.6.2.4 Medical and Laboratory Examination The Chief, or any supervisor may, based on his observation, require a Department Member to submit to a test for alcohol or drug use while on duty. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the Member's dismissal.

- If the employee is believed to be under the influence of alcohol, a certified breathalyzer operator shall administer the test. The Chief or any supervisor will witness the test and sign the report.
- If the employee has a measurable amount of alcohol in his or her system, or there is other competent evidence of impaired abilities to perform duties, the Member may be immediately and temporarily relieved of duty by the Chief or any supervisor.
- If the employee is believed to be under the influence of self-administered drugs, he may be compelled to submit to a blood and/or urine test. The test shall be administered according to the City of Charleston's drug testing program.
- If an employee refuses to submit to a test, (alcohol or drugs) then the Chief or any supervisor may immediately and temporarily relieve the employee from duty for failure to cooperate in an administrative investigation.

32.6.2.5 Photograph and Lineup Identification Procedures Officers may be required to stand in a lineup for viewing by citizens or be photographed for the purpose

of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup or submit to a request for photograph is grounds for disciplinary action and may result in dismissal.

Photographs of Department employees may be maintained for the purpose of identification by citizens of an employee accused of misconduct.

Photographs or videotape pictures of employees, with or without an employee's consent, may be taken and maintained for the purpose of internal investigations as related to the employee's job when the employee is suspected of misconduct and when obtained in accordance with state law.

32.6.2.6 Financial Disclosure Statements A Member may be compelled to make financial disclosure statements when directly and narrowly related to allegations of misconduct involving any unlawful financial gain and will be in accordance with W. Va. Code § 8-14A-4. Any financial evidence gained involuntarily during the investigation of an administrative matter cannot be used in any criminal proceeding.

32.6.2.7 Polygraph and Voice Stress Analysis Use of polygraph examinations and or voice stress analysis in internal investigations shall be in accordance with the Departmental policy regarding such use.

Members do not have the right to refuse to submit to a polygraph examination or voice stress analysis. Failure to submit to any such examination as ordered is considered insubordination and constitutes grounds for additional discipline up to and including dismissal.

32.7 Adjudication of Complaints The Professional Standards Division will submit its investigative summary to the Chief of Police. Each summary report will include numbered findings of fact and a conclusion as to whether the stated misconduct has occurred based on those facts. Such summary will classify completed investigations as:

- Unfounded - no truth to allegations.
- Exonerated - allegations true, but result of adherence to proper and appropriate police procedures and techniques.
- Not sustained - unable to verify the truth of the matters under investigation.
- Sustained - allegations true.
- Policy Failure – allegations occurred despite the fact that employee was following policy, but there is a flaw in the policy. PDS will notify the Chief of Police that the policy needs to be reviewed.

32.8 Discipline: When the internal investigation results in a finding of sustained, the Chief of Police may Initiate disciplinary proceedings pursuant to West Virginia Code § 8-14A 1 et seq.

### 32.9 Records Retention

32.9.1- In order to provide for the various statutes of limitations pertaining to civil litigation, Professional Standards shall retain records and documents, whether written, electronic, or in

any other form, associated with complaints and their investigations, and investigations of pursuits, officer-involved crashes, use of force reports, and any other similar investigations (hereinafter collectively referred to as “Investigations”) for a period of four (4) years from the final disposition of the complaint or other investigation, that shall include, if applicable, imposition of disciplinary action, exhaustion of all appeals, and resolution of any civil action(s) related to the complaint, Provided that, for any investigations involving a juvenile, the records and associated documents shall be retained for four (4) years after the juvenile shall have attained the age of eighteen (18) year of age.

32.9.2- Professional Standards shall store case files in a secured environment, with access restricted to the Chief of Police, the City Attorney’s Office, and members and civilian employees of the Professional Standards Division. Investigators or any other employee working with the investigator and outside of the Professional Standards Division office shall store and handle documents, evidence, and other items related to the investigation or inquiry in a manner that shall ensure their confidentiality and integrity. Documents, evidence, and other items related to complaints, internal investigations, internal inquires, and/or contained in case files shall not to released, disseminated, or disclosed, except by the direction of the Chief of Police, or by order of a court with competent jurisdiction.

### **33.0 DISCIPLINARY GUIDELINES**

The Department has a responsibility to its Members and the community to seek out and discipline those whose conduct discredits the Department or impairs its effective operation. Discipline has as its immediate purpose the channeling of individual effort into effective and productive action. In that regard, the goals of the Department may be best served by corrective training, verbal counseling, discipline or any combination of those alternatives.

33.1 Disciplinary Actions West Virginia Code provides for disciplinary hearings before the Conduct Review Board. While management may recommend a particular level of discipline for violation of policy and/or standards, West Virginia law provides that the actual discipline to be imposed be determined by the Conduct Review Board after a Conduct Review Board Hearing subject to any appeal to the Civil Service Commission. These guidelines are intended to guide Members, the Conduct Review Board, and the Commission in the fair and consistent imposition of discipline when discipline is appropriate.

All discipline and termination actions shall be for cause only. The Conduct Review Board can order corrective training, retraining, counseling, the issuance of a written reprimand, probation, suspension, reduction in rank, termination, any combination of the above, or any other action in the spirit of the law and these recommendations for the good of the Department.

33.2 Cause Defined Cause is defined as any situation when a Member fails to comply with or satisfy the legitimate performance expectations of the Police Department --whether the expectations be written, verbal or established through customs, traditions or practices. Factors to be considered in determining whether cause exists to support a disciplinary action include but are not limited to:

- Advance notice (expressed verbally or in writing) of what conduct is required or prohibited.
- Notice that the consequences for failure to comply with such expectations may result in disciplinary action.
- A rational relationship between what is required and the efficient, effective, and safe operations of the Police Department. It is to be assumed that all directives of management are reasonable and rational until proven otherwise by the Member contesting them.
- A fair and objective investigation was conducted to determine the facts, and the Member was given an opportunity to be heard, represented, present evidence or challenge such facts.
- Substantial evidence exists to prove the Member is guilty as charged. (Substantial evidence means evidence that would lead a reasonable person to believe that it is true.) Should there be cause for discipline, the Factors of Equity will be taken into consideration in determining what level of disciplinary action will be taken or whether termination will occur. Each decision will be made on a case-by-case basis.

33.3 The Factors of Equity The seriousness of the offense as it relates to the nature and extent of damage or the potential damage or future liability to the City of Charleston as an employer.

- The deterrent effect (i.e., message) that needs to be conveyed to other Members to prevent similar infractions or to ensure those similar infractions will not occur or be tolerated.
- The degree of Member culpability (i.e., fault), if any, and the Member's attitude about acknowledging wrong doing and making a commitment to improve; this includes the Member's cooperation in the investigation and resolution processes.
- The Member's previous disciplinary and performance records to include, but not limited to time between other offenses, the nature of other offenses, work productivity, attendance rates, cost of supervision, types of performance errors and the like.
- The Member's training and seniority.
- Discipline imposed on other Members for similar offenses.
- Disciplinary actions may not be used to unlawfully discriminate against a Member.

33.4 Progressive Discipline Progressive discipline theory holds that the level of disciplinary action taken against a Member should be commensurate with the Standards of Equity as expressed above. Discipline can progress incrementally from the lowest to the highest level; be reversed if infractions show improvement over previous infractions; and, depending on circumstances, steps can be skipped, particularly if the offense creates a serious result or liability for the Police Department. Each case will be reviewed on a case-by-case analysis. The steps comprising the progressive discipline system consist of counseling, reprimand, suspension and termination. All steps related to progressive discipline must be documented on prescribed forms.

33.4.1 Counseling/Corrective Training This is the least intrusive step in the progressive discipline system; however, it may be skipped if warranted by the Standards of Equity. Counseling or assigned corrective training may occur verbally and be reduced to writing later for documentation purposes. Documenting a counseling session does not make it a reprimand.

33.4.2 Reprimand A reprimand is typically the second step in the progressive discipline system; however, it may be skipped if warranted by the Standards of Equity. Reprimands are serious events and are used to impress on the Member the need for change, before affecting the Member's economic situation in the Police Department.

33.4.3 Suspension Suspensions are very serious in nature and occur when a Member fails to respond positively to lesser forms of corrective action, or the nature of the violation is serious enough to justify skipping lower levels of discipline. This means the offense is serious enough that corrective counseling or a written reprimand would send the wrong message to others or is likely to have little or no effect on the offending Member's conduct or behavior.

A Member may be suspended without pay for any single offense or for multiple offenses arising out of the same incident. The length of suspension or extensions of such suspensions shall take into consideration the Factors of Equity.

33.4.4 Termination All Members are subject to termination for cause. Cause for disciplinary termination may include but are not limited to:

- Failure to maintain required certifications and proficiencies.
- Conduct serious or persistent enough in nature that future retention would impose an undue burden on the City, create a liability issue, or would effectively destroy the Member's credibility with peers, supervisors or members of the community.
- Chronic disciplinary problems including such things as being excessively absent from duty (particularly non-scheduled absenteeism), disgruntled or problematic work attitudes that promote discord and affect work place morale, or a consistent failure to meet productivity standards "soldiering" (i.e., loafing or a deliberate reduction of output, wasting time, only doing enough to get by).
- Termination may also result when there are, substantial impairment of the employment relationship, situations where performance is not reasonably expected to improve or where problems are not expected to be resolved in a reasonable time. Examples of substantial impairment of the employment relationship include unreasonable disruption to normal operations of the organization, endangering the organization's mission purpose, actions or inactions that contribute to an unnecessary risk to the public image, creating conflicts of interest, committing repeated offenses different in nature but when bundled together demonstrate irresponsible behavior, and acts of disloyalty that cause supervisory and command personnel to lose trust, faith and confidence in the Member's ability to work in a non-directly supervised manner.

- Misconduct of a substantial nature which might not ordinarily result in termination may be grounds for termination after consideration of the Member’s entire disciplinary history and in accordance with progressive discipline.
- Dishonesty, providing misleading information or half-truths, failing to disclose relevant information in an investigation, willfully departing from the truth or falsifying written or verbal communications in official reports or statements, testimony or actions.
- Refusal of a Member witness (other than an accused officer) to answer, or answering falsely or deceptively, may result in disciplinary action.
- Conviction of any crime or the loss of driving privileges.

33.5 Appeals Disciplinary actions imposed by a Conduct Review Board may be appealed by the Member and/or the Chief of Police to the Charleston Police Civil Service Commission. A written notice of appeal hearing must be filed with the City Clerk with a copy given to the Civil Service Commission.

33.6 Deactivation In the absence of any other specific agreement between the Police Department and its Members, the following discipline deactivation period is established.

- Counseling will be in effect for 6 months.
- Written Reprimands will be in effect for 12 months.
- Suspensions of 40 hours or less will be in effect for 24 months.
- Suspensions for more than 40 hours will be in effect for 36 months.

If no further performance problems occur during the active corrective period the discipline will be formally deactivated at the end of the prescribed time period. Deactivation does not result in the removal of documentation from the Member’s record, but it will not be considered for progressive disciplinary purposes. Notice: Deactivating a disciplinary record does not invalidate its use when a termination decision is involved. In termination decisions, the Member’s complete employment history will be taken into consideration.

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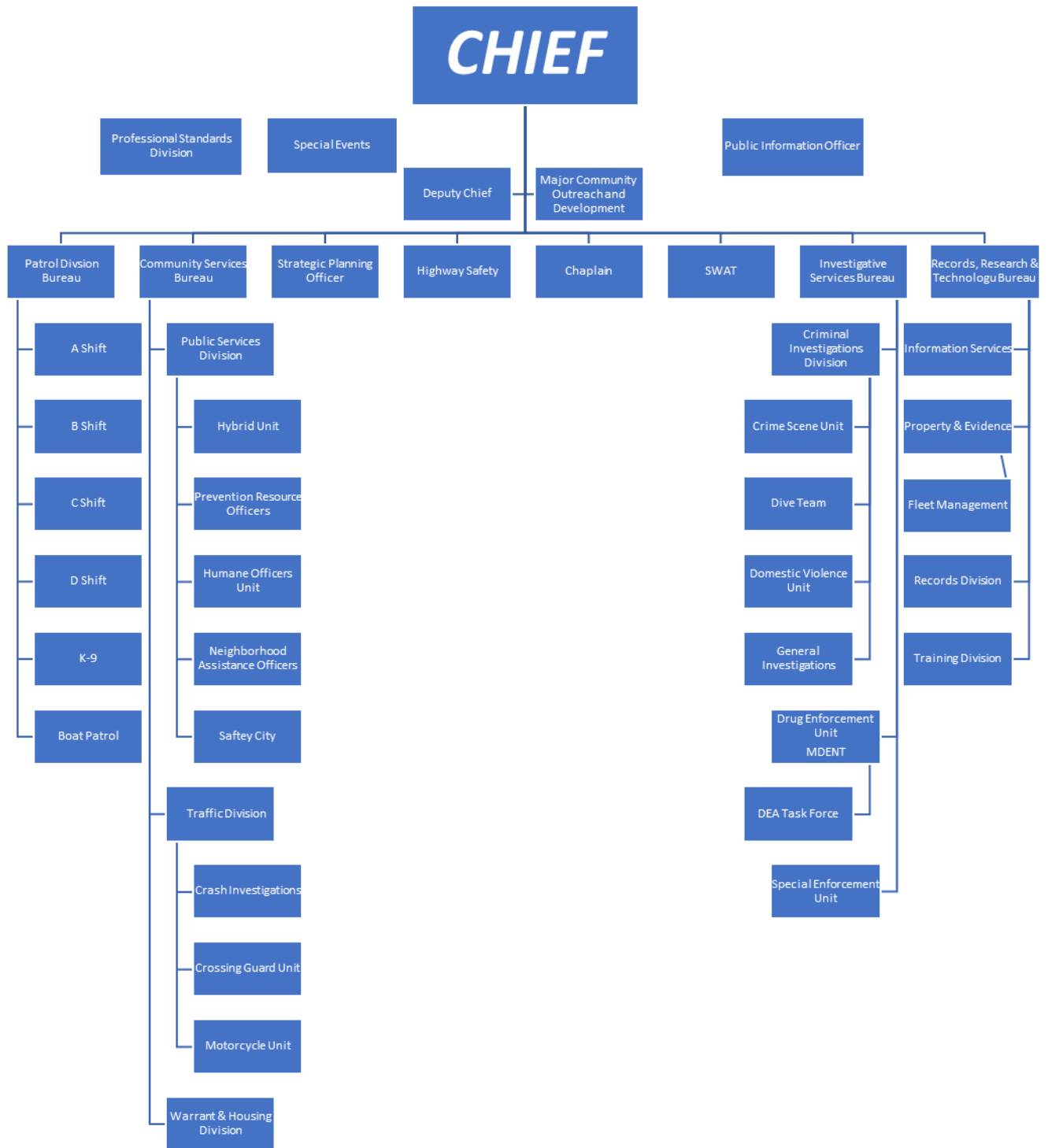
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## Charleston Police Department Organizational Chart



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