

**Discipline Trends:
Focus on Behavior Affecting the Integrity
and Effectiveness of the Agency**



Major Cities Chiefs

And

**Federal Bureau of Investigation
National Executive Institute**

June 2010

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SPECIAL DEDICATION

The Human Resources Committee of the Major Cities Chiefs (MCC) Association would like to honor one of its valuable and productive members by dedicating this report to Keith Forde, Deputy Chief, Human Resources Command, for the Toronto Police Service.

Deputy Chief Forde has served the Major Cities Chiefs on the Human Resources Committee since his appointment by the Chief of the Toronto Police Service, Bill Blair. Both of these men have commented that Chief Blair directed Deputy Chief Forde to rock his boat, but not sink it. Both men will agree that he has done that. Deputy Chief Forde's innovation, team building and leadership have helped to establish Toronto Police Service as one of the leading and cutting edge agencies, especially in human resources issues.

Deputy Chief Forde's participation on our projects and through the Major Cities Chiefs Human Resources Committee email network communication system has greatly enhanced the success and professionalism of the committee collectively and of its individual members.

Deputy Chief Forde has announced that he is retiring from the Major Cities Chiefs Human Resources Committee and from the Toronto Police Service this year. He tells us that he is looking forward to spending more time in community service and working on spiritual human resources issues by going to seminary. The Major Cities Chiefs Human Resources Committee would like to thank Keith Forde for all of his hard work and dedication to the Committee. We appreciate his leadership and commitment to excellence and we will miss his professional and tireless contributions. We also appreciate his friendship and wish him a happy and healthy retirement, but continued success in his new endeavors.

FOREWORD

The Major Cities Chiefs and the Major County Sheriffs are organizations consisting of Chief Executive Officers of the largest law enforcement organizations in North America. Membership includes departments from the United States and Canada. The Human Resources Committee of the Major Cities Chiefs with members from the Major County Sheriffs meets three times a year to research, discuss and formulate strategies for contemporary personnel and policy issues and incidences.

The Human Resources Committee is comprised of individuals, both sworn and civilian professionals, who have distinguished themselves during their careers. They are charged by their Chief Executive Officers with addressing Law Enforcement's challenges and providing strategic alternatives for implementing, resolving and mitigating human resource issues of today.

Readers of this work will realize how difficult it is for writers to state opinions or make suggestions that apply equally to local, state, urban, rural, suburban, or federal law enforcement agencies. However, the Human Resources Committee's experienced and wise practitioners are not just espousing theory, but they actually transform these ideas into performance on a daily basis. These professionals created this written document from their research, their experience, and from many discussions within the Committee.

While the Major Cities Chiefs and Major County Sheriffs do not specifically endorse every conclusion or recommendation of this report, they use its information to generate discussion and reasonable debate during their roundtable sessions. The result is better informed Chief Executive Officers who will continue to lead policy changes that will improve law enforcement services.

Companies or individuals identified or cited in this project are not endorsed by the Major Cities Chiefs or Major County Sheriffs, and they are provided for information purposes only.

ACKNOWLEDGEMENTS

The Human Resources Committee of the Major Cities Chiefs and the Major County Sheriffs would like to thank Phoenix Police Administrator Patti Moore for her continuing leadership as chairperson of the Human Resources Committee. Thank you to Patti and the Phoenix Police Department for their generous hospitality during the 2010 spring meeting. Thank you to Supervisory Special Agent Mike McAuliffe and Ms. Deborah Southard, Program Specialist, Leadership Development Institute, Federal Bureau of Investigation for their continuing dedication and support in accomplishing this project for the Human Resources Committee. Specials thanks are given this year to Miriam Bryant representing the Virginia Beach Police Department for her above and beyond commitment to multiple sections of this work. Finally, a grateful thank you to Martha Stonebrook for her tireless work, legal and otherwise, and her extra mile contributions to our project.

Recognition is given to the committee members who spent valuable time in travel, research, discussion, writing and editing of this report. While the entire Committee contributed to the project, the following list of Human Resources Committee members attended the sessions and specifically worked on the completion of this publication:

Jennifer Beidle	Pittsburgh Police Department
Joe Borger	Cincinnati Police Department
Dwight Bower	Fairfax County Police Department
Miriam Bryant	Virginia Beach Police Department
Joe Burris	Baltimore County Police Department
Jack Donohue	Las Vegas Metropolitan Police Department
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Fairfax County Police Department
San Francisco Police Department
Kansas City Police Department
St. Louis Metropolitan Police Department
Milwaukee Police Department

This publication will be available online at the Major Cities Chiefs /National Executive Institute's website: www.neiassociates.org

Hugh M. (Bud) McKinney
Administrator, MCC HRC

EXECUTIVE SUMMARY

Protecting the integrity of a law enforcement agency, using appropriate discipline, and promoting effectiveness are arguably the greatest challenges faced by its leaders. These challenges require a clear articulation of the organization's expectations for integrity, discipline among members to uphold this expectation, and a consistent application of the standard for effectiveness throughout all ranks.

Without integrity, public trust is lost and the capacity for an agency's effectiveness, in terms of the successful prosecution of criminal cases, is significantly diminished, perhaps even precluded. The impact of an individual member's inappropriate behavior, particularly when not addressed quickly and reasonably by the organization, poses a potentially severe threat to the effectiveness of the organization's operations

This project started out as a study on discipline and behavior modification. The Committee members soon recognized that there are a variety of behaviors, both on duty and off duty, which may impact the core values of a law enforcement organization. A decision was made to present these behaviors in more detail so agencies have a resource to assist them in identifying issues and addressing them in various ways, whether it is through discipline, policy development, training, or any other means.

The first section of the report covers the topic of **Social Media and Police Credibility**. With the increased popularity of websites such as Facebook and MySpace, agencies are faced with having to discipline and sometimes terminate law enforcement officers for comments and/or photos that have appeared on these sites.

The second section of the report is about **Domestic Violence** and the law enforcement community. Many agencies have seen an increase in domestic violence cases involving their employees and this section provides some suggestions for evaluating policies and practices in this area. This Committee's project in December 1998, titled *Domestic Violence within Police Agencies*, is another resource on this topic.

Another behavior that is on the rise is the use of **Anabolic Steroids**. The third section of the report discusses various aspects of the use of these steroids. A law enforcement officer's job is mentally and physically challenging. On a daily basis, newspapers report the violence that law enforcement officers face. Some law enforcement officers believe that anabolic steroids give them an advantage in performing their jobs. There are many negative physical and psychological side effects to taking these drugs. Agencies may want to consider drug testing policies and procedures that would identify anabolic steroid users. Once the

individuals are identified, rehabilitation and disciplinary actions may need to be considered.

The fourth section of the report discusses the issue of **Alcohol Abuse/ Driving Under The Influence**. While there is alcohol abuse in all professions, the law enforcement profession appears to receive more scrutiny because of an officer's responsibility to enforce the laws. There is also the issue of some law enforcement officers receiving special treatment after being arrested for drunk driving. This section discusses the need for effective policies and procedures relating to alcohol abuse, along with rehabilitation of employees and the administration of strong discipline.

The fifth section of the report is a detailed presentation on **Police Sexual Misconduct**. This section was written by David M. Corey, Ph.D., ABPP, Police & Forensic Psychologist, Portland, Oregon. Dr. Corey was highly recommended to the Human Resources Committee by Portland Chief Rosie Sizemore. According to Dr. Corey, police sexual misconduct has been occurring with alarming frequency. This part of the report is intended to draw more attention to the problem, provide an operational definition of police sexual misconduct, and summarize the primary causes presented in the literature to promote awareness and evidence of police sexual misconduct.

The sixth section of the report discusses various **Approaches To Discipline** and identifies a trend towards non-punitive methods of correcting employee behavior. Some law enforcement agencies are reporting successes with alternative approaches to discipline with an emphasis on prevention and training.

The next to last section of the report outlines some of the **Legal Considerations** recommended when establishing and implementing disciplinary policy. Legal counsel should be consulted when meting out more serious discipline, especially when termination is contemplated. Discipline policy may be seen as a threat by labor unions and careful research and planning may avoid some of the problems.

The last section of the work is a **SUMMARY and CONCLUSION** with some suggestions about potential root causes of misconduct.

Finally this report is not intended to be an in depth study of individual behaviors, misconduct, or criminal acts. Rather it is intended to provide resources for further study and in many instances recommendations for establishing or strengthening policies and procedures, and, in some cases, recommends additional training for law enforcement personnel.

SOCIAL MEDIA AND POLICE CREDIBILITY

In today's society, social media presents a new threat to the integrity, discipline, and effectiveness of law enforcement agencies and is further complicated by employee expectations for privacy and free speech.

Two recent news stories illustrate the impact of the threat to integrity, discipline, and effectiveness posed by social media:

Officer Vaughan Ettienne of the NYPD arrested Gary Waters for possession of a 9 millimeter Beretta and a bagful of ammunition along with resisting arrest. At the time of the arrest, Mr. Waters was on parole for a burglary conviction. Instead of the easy conviction that was expected, Mr. Waters was convicted solely of resisting arrest, a misdemeanor, rather than the felony charges related to the possession of the weapon. Officer Ettienne was described as a "diligent cop" who was also a bodybuilder. His record included discipline for using steroids (with a doctor's prescription, he claimed) but never for brutality.

On MySpaceⁱ, Officer Ettienne posted a comment that "Vaughan is watching 'Training Day' to brush up on proper police procedure," a reference to the 2001 movie starring Denzel Washington as a narcotics detective. On another occasion Ettienne labeled his mood as "devious." He also posted comments on various video clips of arrests, stating, "If you were going to hit a cuffed suspect, at least get your money's worth 'cause now he's going to get disciplined for [a relatively light punch]" and other similar comments. Essentially, Officer Ettienne unwittingly supplied the defense with sufficient information to cast doubt on his credibility as a police officer and to support Mr. Waters' conflicting description of the arrest.¹

In the second example, Indiana State Trooper Chris Pestow was the subject of an internal investigation and the stimulus for the Indiana State Police's first social media policy. Prior to the news story, Trooper Pestow's Facebookⁱⁱ page was available for public viewing. His questionable behavior included postings that boasted about his drinking and posting photos of his police vehicle after it was damaged in an accident. There were photos of himself with firearms displayed along with numerous postings describing his candid thoughts about policing, referring to his work as being more closely aligned to that of a "garbage man." All of these characterizations represented potential threats to his credibility in a court of law. In addition, he left a trail of postings that occurred while he was unquestionably on duty and indicated his unwillingness to perform his duties in

ⁱ MySpace is one of the oldest online communities. Its users are 14 years old or older and can customize their profiles including posting photographs, and create blogs for others to read (TecTerms.com).

ⁱⁱ Facebook is a social networking website whose users are 13 years old or older. In addition to customizable profiles, Facebook allows for a broad and varied range of privacy settings and provides its users with a wall on which others can post comments (TechTerms.com).

the weather conditions; this too presented a concern of misuse and abuse of state resources.²

Most agencies could add anecdotal incidents to this discussion. Recently within the Virginia Beach Police Department, there have been several disciplinary incidents involving social media, including the dismissal of a recruit who posted photos of police vehicles, lewd sketches of herself with departmental insignia, and sexually suggestive comments about her work as a police officer on her public MySpace account. There has also been the disciplining of several on duty officers who allowed a tourist to be photographed with them and their police vehicles in sexually suggestive poses that were posted on a public Internet site. Perhaps more troubling were the Facebook comments from an angry officer under investigation for a multitude of performance and conduct issues who threatened harm to members of the department should his employment be terminated.

Before the advent of the Internet, behavior of this nature might be likened to “locker room” talk or conduct that, even if inappropriate, was contained to a very small, like-minded audience, or preferably, kept within the employee's private thoughts. Social media has created an outlet for self-expression and a useful resource for maintaining connections with large numbers of people with minimal effort. However, when the representation of an individual through social media conflicts with either the individual's professional or public image, the damage to the credibility of the law enforcement officer or the law enforcement agency can be long lasting. In the words of Officer Ettienne, as reported by the New York Times, “. . . stupidity on the Internet is there for everyone to see for all times in perpetuity.”³

In her article entitled “The New Media Skills” published in the October 2008 issue of Fast Company magazine, Marcia Conner credits Denise Tayloe from Privo, an online privacy advocacy group, with the statement that “online we’re creating a permanent public record of ourselves and who amongst us wants to re-read (let alone share with others) the notes. . . we kept when we were young.” Ms. Conner suggests that there is a new skill that law enforcement agencies should be seeking in employees; it relates to the individual's “capacity to mindfully see one's self in the context of the larger world where people's interests are not always compatible with one's physical and emotional safety.”⁴

Physical self-awareness in terms of the use-of-force continuum and basic safety precautions are fundamental skills for law enforcement personnel. However, the agency must actively promote an expanded definition of self-awareness to include public representations of who the law enforcement personnel are as individuals.

Dr. Richard Weinblatt, Director of the Institute for Public Safety at Central Ohio Technical College, published “*Top 10 Social Networking Tips for Cops*” in

www.policeone.com in August 2009. Because his recommendations represent solid, common sense guidance, they are provided here in full.

1. No gun glorification. While this may upset Second Amendment supporters out there, the reality is that a significant number of the public does not like to see a glorification of firearms in pictures of law enforcers. Quite a few officers have lost their jobs after posing with weaponry in a way perceived as offensive or too “warrior oriented.”

While the depiction of guns in the course of their normal scope and use is not problematic, aiming the gun at the camera seems to trigger the pink slip. Shots of officers engaged in their normal course of fire at the gun range have not appeared to bring about a backlash. Posing with weaponry, involving either the officer or (worse yet) a civilian, has historically been problematic for the employee.

2. No alcohol. Officers have also found themselves in the hot seat after posting pictures of them partying and drinking alcohol. Many agencies view this to be contrary to a professional image. Of even more concern is that sometimes others identified in the pictures turn out to be minors in possession of alcohol which opens up another can of issues.
3. Watch your comments. This is an important one. Posted comments on social networking sites are being dragged into legal proceedings especially when use of force is involved. Comments that imply the officer enjoys using force on people, especially certain groups of people, are being seized on by criminal defense and civil plaintiffs' attorneys to show the officer had either a pre-disposition to acting in a physically inappropriate manner or has a documented bias against their client.

Be mindful that discussion boards and the like are a public written record of your communication. Like reports and radio dispatch conversations, they can be discovered and frame your actions in a context that you may not like. Much like reports, if you don't want it dragged into the legal arena, don't type it online.

4. Avoid bashing the department. Another area that has gotten some officers into trouble — the First Amendment freedom of speech notwithstanding — are comments which bash the agency. Depending on how it's framed, it could open you up to administrative charges and possibly civil liability. More and more bloggers and online posters are being held responsible for their critical speech online.

Especially if it is later proved that the postings lack a factual basis and are intended to damage the target of the criticism.

At the very least, launching such a site or contributing to an existing Web site that bashes the agency does not endear you to the powers that be or position you as a “team player” ripe for promotion.

5. Restrict personal information. Much like we can use Facebook and the like as a tool to find people and research information, so can the bad guys. Be judicious in the posting of information and pictures. For example, some officers will not use pictures of their family members or going even further, of themselves. Others withhold their cell phone number.
6. Picture Choice. Make sure that the pictures that you do choose to post don't have any of the aforementioned problem areas or have nudity. Many officers, including myself, have shirtless bodybuilding or fitness oriented photos online. That is not a problem. The topless woman drinking at the party with you exemplifies what is a problem.
7. Minimize status update complaints. In this year of economic contraction, there are many people waiting in line for your spot in the agency. Administrators know this. This goes back to number four above, but we've all seen the officers that post their status with complaints about the shift, their sergeant, or the job. Some supervisors, after reading such negatively tinged status updates, say, “OK, let so and so find another job if they are so unhappy here.”

While not every job is going to be great each and everyday, gripes should not be aired via status updates. The agency may be perfectly happy to find someone else that would appreciate them.

8. Highlight accomplishments. Many look to Facebook, LinkedInⁱ, and the like as electronic resumes. Take advantage of that and use it to highlight your professional accomplishments. Post pictures of you learning some new technique (being careful not to show scores or other information). Post status updates of that advanced training course you take.
9. Manage your privacy settings. While I have my online presence open to the public, many have privacy settings that restrict access to family and friends that you have predetermined. While not

ⁱLinkedIn is a social networking website which allows business professionals to share work-related information with one another and to organize their professional contacts (TechTerms.com).

foolproof, the settings should keep most interlopers locked out of your pages.

10. When in doubt, leave it out. I have long coached academy students and officers to pretend that I am perched on their shoulder and watching what they are doing. In the same vein, they could have their mother hovering overhead. If you wouldn't want us to see it or if either of us would be displeased with what is being contemplated to go online, it probably is not a good idea to upload it.⁵

Dr. Weinblatt's "Tips"⁶ are not written as a policy statement but rather as an educational tool with the intent of promoting a more global perspective and raising awareness for long-term potential impact. Interestingly, IBM's policy statement on social computing,⁷ often cited as a best practice example, is written with a similar theme of promoting awareness.

In response to various discipline situations and to clarify departmental expectations, the Virginia Beach Police Department has revised its wording of the "Conduct Unbecoming" rule violation to incorporate social media concerns:

Members shall conduct themselves at all times, in such a manner as to reflect most favorably on the department. Conduct unbecoming is any conduct that adversely affects the morale, operations or efficiency of the department or any conduct that adversely affects, lowers or destroys public respect and confidence in the department or the employee. Conduct unbecoming also includes any conduct that brings the department into disrepute, or brings discredit upon the officer, employee or department.

Members who interact on social networking sites, including but not limited to MySpace or Facebook, are subject to the standards outlined in section "a" above. No member shall knowingly post official photographs, video images, audio files or text documents that belong to the Department without the expressed written permission of the Commander of the Professional Standards Office. Members are also cautioned that the use of images depicting departmental property, equipment or personnel, if posted on the internet, in any manner that tends to tarnish or demean the Department's core values shall be subject to discipline.

Similar language appears in the Virginia Beach Police Department's signed statement regarding computer and network use and information security, required of all newly hired sworn and civilian employees:

I acknowledge that I have read and understand the City of Virginia Beach Administrative Directives that apply to computer and network use and information security. I have read and understand the Virginia Beach Police

Department's General Orders relative to Information Technology and Security.

I understand that as a result of my employment or volunteer status I may have access or exposure to confidential, sensitive, or privileged information. I understand that the use of official resources is intended for criminal justice purposes only, or for the purpose of supporting the City's objectives, and authorized employment related purposes. I understand that unauthorized access, use, or dissemination of information for purposes that exceed the scope of my duties is prohibited and could result in criminal, civil, or administrative proceedings.

Unauthorized dissemination includes the retention and or dissemination, in any format, of events or information that is confidential, sensitive, or privileged that you were a party or witness to, or that you gain as a result of your position with the Virginia Beach Police Department. This includes photographs, video images, audio files or text documents, regardless of format or ownership of recording tool, and is subsequently disseminated without Department authorization.

In addition, new employee orientation for City of Virginia Beach employees includes a two-hour training block on information security and privacy, and the City's expectations. The Virginia Beach Police Department's Professional Standards Office sends periodic department-wide email notices reminding employees to use discretion in information and images that are posted on the Internet and to use privacy settings to limit access to social media accounts. Sanitized disciplinary records without names are also posted on the departmental intranet site on a monthly basis. These measures are taken with the intent of reminding employees of the shared responsibility for protecting the integrity of the entire organization. The role of the leader is to minimize threats to integrity through training and re-training, clear policy language, including perhaps signed agreements, consistent administration of discipline and modeling of desirable behavior.

¹ Dwyer, Jim. "The Officer Who Posted Too Much on MySpace." New York Times, posted on www.nytimes.com on March 11, 2009.

² Segal, Bob. "Trooper in Trouble Over Facebook Photos." Indianapolis WTHR13, posted on www.wthr.com on March 25, 2009.

³ Dwyer, www.nytimes.com on March 11, 2009, *supra*.

⁴ Conner, Marcia, "The New Media Skills," Fast Company magazine, October 2008, with credit given to Denise Tayloe from Privo, an online privacy advocacy group

⁵ Weinblatt, Richard, "Top 10 Social Networking Tips for Cops," www.policeone.com, August 2009.

⁶ *Id.*

⁷ www.ibm.com/blogs/zz/en/guidelines.html.

DOMESTIC VIOLENCE

Domestic violence is a serious societal problem that crosses ethnic and cultural barriers worldwide. But, when the domestic violence batterer or the victim is a law enforcement officer, the problem becomes significantly more complex. This past year, many agencies have seen an increase in officer-involved domestic violence cases, a trend which may correlate to the increase in financial and other stressors related to the downturn in the economy. This section of our paper is written as an observational analysis of this behavioral trend and offers recommendations for agency leaders to consider in evaluating their existing policies and practices. This section is not intended to address the enforcement or legal aspects of domestic violence cases, other than to suggest that the approach utilized within the community should be consistently applied to cases involving law enforcement officers.

Psychologists disagree on the extent of the domestic violence problem within the law enforcement community. Dr. Lawrence Miller, author of “Domestic Violence in Police Families: Causes, Effects and Intervention Strategies,”¹ asserts that cases involving law enforcement are underreported and consequently cannot be effectively compared to cases involving other citizens. The Women and Policing website posts a “Police Family Violence Fact Sheet” based on research completed in the early 1990’s that suggests “at least 40% of police officer families experience domestic violence.”² Whatever the count, there is no dispute that the stakes for law enforcement officers involved in domestic violence are extremely high. Under federal law (18 U.S.C. 922 (g) (9)), a person who is convicted of a misdemeanor crime of domestic violence is prohibited from possessing a firearm or ammunition, obviously a key essential function for a law enforcement officer. Notwithstanding a criminal conviction, the seriousness of a domestic violence case, in which a law enforcement officer is the aggressor, may prompt severe disciplinary action. These actions, may include dismissal, based on “conformance to laws” or “conduct unbecoming” standards. This behavior raises concerns about the individual’s ability to perform appropriately as a law enforcement officer, particularly in terms of applying judgment in situations requiring use of force.³

Psychologists and law enforcement professionals recommend a holistic approach to addressing this problem. An approach applying sound management practices, such as ensuring a consistent message of disapproval from executive leadership; clear policy development and communication; vigilant pre-employment screening of applicants; training for new and tenured officers addressing all aspects of domestic violence, including the protocol for responding to a case involving a peer officer; effective and thorough investigation of cases; consistent disciplinary practices; proactive efforts to remind law enforcement officers and their families of counseling services and other programs available to promote overall mental and physical wellness; and training supervisors in how to

identify and address behavioral indicators of possible problems. Dr. Miller's above referenced article⁴ and Nicholas Valltos' article entitled "Dealing with Domestic Violence in Law Enforcement Relationships" published in the July 1, 2002 FBI Law Enforcement Bulletin⁵ are two helpful resources providing this holistic guidance.

Reviewing existing policies and practices is an appropriate starting point. The July 2003 IACP white paper entitled "Domestic Violence by Police Officers"ⁱ provides a blueprint for this kind of assessment, with the intent of promoting a policy of intolerance.⁶ This bulletin covers the operational aspects of incident response and victim safety, officer training needs, identification of problem behavior at the pre-hire (background investigation review), post-hire (psychological assessment) and employee intervention stages, as well as guidelines for administrative decisions.

Most agencies have a formal policy on responding to domestic violence calls, but many policies do not include specific protocols regarding responding to domestic violence situations involving law enforcement officers. The Toronto Police Service policyⁱⁱ includes a procedure for domestic situations involving its own officers as well as for situations involving law enforcement officers from other agencies. As part of its Community Mobilization Unit, the Toronto Police Service has also identified a domestic violence coordinator to serve in a liaison role for victims of abuse at the hands of law enforcement officers, providing support and resource information. Currently a domestic violence training program is being developed for senior officers in the service, specifically tailored to the concerns related to domestic violence in the workplace. While not directly related to the topic of this paper, Toronto's extensive outreach program is certainly noteworthy. Toronto is acting on its goal of reducing violence against women in the community by utilizing Facebook and Twitterⁱⁱⁱ for public education purposes and collaborating with graphic arts students to develop marketing materials targeting young people in their first relationship. Further, they are collaborating with other community partners to run the Toronto Recreational Outtripping Outreach Program (TROOP) for at-risk youth and promoting intervention for children through a campaign for witnesses of domestic situations along with other similar initiatives.

Due diligence in the careful review of pre-employment background investigations, polygraph exam admissions and post-offer psychological assessments is an essential preventative measure. Kruger and Valltos draw the comparison

ⁱThis document is found in its entirety in Appendix One.

ⁱⁱThis document is found in its entirety in Appendix Two.

ⁱⁱⁱTwitter is an online service that allows users to share brief updates with one another. Postings on Twitter are referred to as "tweets" and are limited to 140 characters. Twitter's simplicity allows for instant and constant contact with other users (TechTerms.com).

between the qualities of an ideal law enforcement officer and personality characteristics of a batterer, including the similar characteristics such as “the inclination to maintain control in emotional and tense circumstances, the tendency to establish a position of power and authority, and the physical presence to use weapons and other methods of physical control when needed.”⁷

Diane Wetendorf, victim advocate, reminds us that officers also pose greater threats as batterers because of their “professional training in the use of force and weapons, intimidation, interrogation and surveillance techniques along with the [organizational] climate [of silence].”⁸ Avoiding the hiring of potential batterers is the ideal situation. Realistically though, while the most thorough background investigation minimizes hiring risk, it never completely eliminates it. Human beings also change over time, particularly when exposed to a variety of unique and difficult occupational stressors.

Supervisors are in the most advantageous position to identify behavioral clues associated with domestic violence, but they must be trained in what to look for and how to address the concerns with the employee through problem-based counseling. Supervisors also need to be taught the parameters of the supervisor’s role in addressing the behavior and what resources to utilize, should additional intervention, such as counseling, be required. Dr. Miller writes in his 2007 article “Police families: Stresses, syndromes and solutions,” published in the American Journal of Family Therapy that

Many of the signals that a domestic violence problem may be brewing or ongoing in a officer’s family are generic stress-related symptoms, while others are more specific and may include increased isolativeness of the officer; signs of sleeplessness or alcohol abuse; emotional lability or Jekyll & Hyde personality; increased incidence of excessive force on the job; talking about the spouse in a particularly derogatory way; blaming the spouse for all the officer’s problems; or signs of physical injury that are attributed to ‘accidents,’ but may represent wounds received in physical altercations with the spouse.⁹

Dr. Miller also suggests in the same article that

The legitimate response to ‘What happens at home is my business’ is, ‘No, it’s not, because (a) if it escalates to an arrestable offense, we lose a good officer; (b) there are liability issues for the department of letting a potentially violent situation go unaddressed; and (c) any kind of family stress that affects our personnel concerns us.’¹⁰

The City of Virginia Beach has a Short-term and a Long-term Indicators Checklist to assist supervisors in identifying workplace behaviors that may be evidence of

substance abuse or other emotional/ physical health concerns that is a useful resource for supervisors.^{iv}

Proactive efforts to promote and maintain overall officer wellness, including combating the typical organizational culture of “silence,” are critical elements for reducing officer-involved domestic violence cases. Often after critical incidents occur, peers disclose that they were aware of “red flag” behaviors in the employee. Reminding employees of their responsibility to exert positive peer pressure in helping their peers seek assistance or report behavioral concerns is an important element of training and communication. In 2010, the Virginia Beach Police Department launched the HOPE campaign, which included development of a brochure^v and peer counselor training with this thought in mind. Similarly, the Washington DC Metro Police Department recently developed a series of eye-catching flyers^v to remind officers of the services available to them and to encourage them to seek assistance.

Law enforcement officers are repeatedly exposed to stress and trauma over extended periods of time that may result in what Lynn Atkinson Tovar identified as “vicarious traumatization.” In her article, “The Impact of Repeated Exposure to Trauma” published in *Law and Order*,¹¹ she describes a condition unique to officers and other crisis workers. In response to their “vicarious traumatization,” some officers may develop unhealthy coping skills. Law enforcement agencies should consider educating officers regarding the effects of trauma on themselves and their families, including providing officers with the opportunity to develop healthy coping skills through utilization of employee assistance program counseling, peer counseling and chaplain services.

Wellness and stress management as an in-service training topic is another proactive approach. Stress management training helps officers to identify stressors, psychological and physiological responses to stress, and the benefits of physical exercise, proper nutrition, and interpersonal communication methods. In addition to utilizing counseling services, effective personal coping strategies include taking time off work, developing a network of emotionally supportive relationships, taking time for self exploration, critical reflection, and attending to personal needs. Effective professional coping strategies include peer consultation, working in a professional setting with others rather than in isolation, and diversifying professional contacts.¹²

^{iv}This document is found in its entirety in Appendix Three.

^vThis document is found in its entirety in Appendix Four.

^{vi}This document is found in its entirety in Appendix Five.

In the article, "Impact of Traumatic Stress on Domestic Violence in Policing" by Wayman Mullins and Michael McMains,¹³ it is recommended that law enforcement agencies provide training in post-traumatic stress disorder (PTSD) prior to critical incidents and teach the relationship between PTSD and domestic violence to reduce the likelihood of domestic violence. Individuals who are used to taking charge and maintaining a command attitude, such as law enforcement officers, need to learn to change that attitude at home and accept mistakes, open dialogue and compromise. The article also recommends mandatory counseling for critical incidents.¹⁴

Law enforcement executives must demonstrate through words and actions their intolerance for domestic violence perpetrated by officers. Organizational policies and regulations must be clearly communicated and consistently administered, specifically defining expectations and repercussions for failing to meet those expectations. Training presented to all employees (from recruits to the most tenured officers) must reiterate organizational expectations as well as providing practical information for recognizing warning signs and preventing officer-involved incidents of domestic violence. Perhaps the most effective intervention strategy is for the agency to develop training and other communications with the intent of providing a recurring message to all employees. The same message should be given to officers and supervisors regarding the importance of healthy practices to manage stress and to promote the utilization of available resources when assistance is needed. It is only through this kind of holistic and purposeful approach that we can educate our workforce and preclude incidents of domestic violence.

¹ Miller, Laurence, PhD, "Domestic Violence in Police Families: Causes, Effects & Intervention Strategies", www.PoliceOne.com, August 31, 2007.

² "Police Family Violence Fact Sheet," www.womenandpolicing.org/violenceFS.asp

³ *Id.*

⁴ Miller, Laurence, PhD, "Domestic Violence in Police Families: Causes, Effects & Intervention Strategies", www.PoliceOne.com, August 31, 2007.

⁵ Kruger, Karen, J.D. and Valltos, Nicholas G., M.A., "Dealing with Domestic Violence in Law Enforcement Relationships," FBI Law Enforcement Bulletin, July 2002.

⁶ International Association of Chiefs of Police, "Domestic Violence by Police Officers: A Policy of the IACP Police Response to Violence Against Women Project," July 2003.

⁷ Kruger, Karen, J.D. and Valltos, Nicholas G., M.A., "Dealing with Domestic Violence in Law Enforcement Relationships," FBI Law Enforcement Bulletin, July 2002.

⁸ Wetendorf, Diane, "The Impact of Police-Perpetrated Domestic Violence," ed. D. C. Sheehan, U.S. Department of Justice, 2000.

⁹ Miller, Laurence, "Police Families: Stresses, syndromes, and solutions," American Journal of Family Therapy, volume 35, pages 21-40, 2007.

¹⁰ *Id.*

¹¹ Tovar, Lynn Atkinson, "The Impact of Repeated Exposure to Trauma," Law and Order, Sept 2003; 51, 9, pg. 118.

¹² *Id.*

¹³ Mullins, Wayman and McMains, Michael, "Impact of Traumatic Stress – Domestic Violence in Policing," in Sheehan, D. (Ed.), *Domestic Violence by Police Officers*, 2000, pp. 257-268.

¹⁴ *Id.*

ANABOLIC STEROID ABUSE

According to the U.S. Department of Justice Drug Enforcement Administration (USDOJ DEA), anabolic steroid use among law enforcement officers is a growing and dangerous problem. Information from the website for the USDOJ DEA, Office of Diversion Control, indicates anabolic steroid abuse is normally “associated with body builders...and professional athletes...”¹ Unfortunately, anabolic steroid use has infiltrated the law enforcement community. The FBI Law Enforcement Bulletin in August, 1991 reported “[a]nabolic steroid abuse by police officers is a serious problem that merits greater awareness by agencies across the country”.² Additionally, news stories report that police agencies across the country are investigating a growing number of incidents involving uniformed police officers who are using steroids.³ The use of steroids has been anecdotally associated with several excessive force cases, such as the one involving the brutal treatment of Haitian immigrant Abner Louima in New York City.

“Anabolic steroids are synthetically produced variants of the naturally occurring male hormone testosterone. Both males and females have testosterone that is produced [naturally] in their bodies. The full name for this class of drugs is androgenic (promoting masculine characteristics) anabolic (tissue building) steroids (the class of drugs).”⁴ Without a prescription, the use of anabolic steroids is illegal. Anabolic steroids are listed as a Schedule III controlled substance along with morphine, barbiturates, and opium and can be just as psychologically addictive and dangerous.⁵

The two major effects of testosterone are an androgenic effect and an anabolic effect. The term androgenic effect refers to the physical changes experienced by a male going through puberty. Androgenic would be similarly experienced by a female. This property is responsible for the majority of the side effects of steroid use. The term anabolic refers to promoting anabolism, the actual building of tissues, mainly muscle, accomplished by the promotion of protein synthesis.

The U.S. Department of Justice also relates that reasons cited by law enforcement personnel as to why they abuse anabolic steroids are for both physical and psychological reasons. Individuals who abuse steroids are trying to obtain enhanced physical strength and endurance. This gives them a sense of “the invincible mentality” when performing law enforcement duties.⁶

The law enforcement profession is both mentally and physically challenging. This causes some law enforcement personnel to look for remedies and solutions to enable them to cope with the pressures of their jobs. Unfortunately, anabolic steroids are a drug of choice because they are known to increase the size and strength of muscles more quickly and easily while also increasing one’s endurance while performing physical activities. Some law enforcement personnel

may believe that steroids give them a physical and psychological advantage while performing their jobs.

According to the U.S. Department of Justice, Drug Enforcement Administration, the following are possible physical and psychological side effects of anabolic steroid abuse:

- **Possible physical side effects include the following:**
 - High blood cholesterol levels which can lead to cardiovascular problems
 - Severe acne
 - Thinning of hair and baldness
 - Fluid retention
 - High blood pressure
 - Liver disorders (liver damage and jaundice)
 - Steroids can affect fetal development during pregnancy
 - Risk of contracting HIV and other blood-borne diseases from sharing infected needles
 - Sexual & reproductive disorders

- **Possible psychological disturbances include the following:**
 - Mood swings (including manic-like symptoms leading to violence)
 - Impaired judgment (stemming from feelings of invincibility)
 - Depression
 - Nervousness
 - Extreme irritability
 - Delusions
 - Hostility and aggression⁷

A search of news articles has shown that there was a rise in interest within the law enforcement community between the late 1980s through the late 1990s, regarding the topic of random drug testing. A review of agency policies reflects that this was also the time period when many agencies began instituting random drug screening and followed up with official policies governing drug testing and compliance.

The Fairfax County Police Department is one agency that recognized the need to address this issue because of an obligation to protect the public by ensuring that its employees are free from drug abuse and dependency. It felt compelled to ensure that its employee's fitness for employment was not impaired by drug abuse and wanted to provide a safe work environment for all members. Of

paramount concern was maintaining public confidence and trust. Today, most major law enforcement agencies have recognized the need to have policies in place addressing random drug screening.

A survey of drug testing costs was conducted among the Major Cities Chiefs' agencies and the range of costs was found to be as low as \$12.95 to as high as \$235.00. According to the collected data, on average, most tests cost approximately \$45.00. The cost is based on several different factors, to include the type and number of panels to be analyzed. Most agencies indicated that they currently do not routinely screen for steroids. This type of screening is normally conducted only when requested due to a criminal or administrative investigation.

Similar to policies which govern drug screening, most large agencies also have policies which incorporate the intervention, rehabilitation and discipline for offenders. In all of these cases, some level of investigation (informal or formal) is needed to obtain the facts of the case and to make a determination as to next steps.

Many agencies have a zero tolerance policy in regard to the illegal use of steroids and prescription medications. Zero tolerance means that this type of abuse is not tolerated but does not necessarily mean that it will result in automatic and immediate termination. Instead, agencies have the discretion to handle these cases based on local, state and federal laws, to include recommendations from their agency's general counsel. These cases are handled either in a criminal or administrative investigation that captures all the facts. The investigation is an important step in order to ensure that appropriate action is taken.

There may be instances where the abuse of these substances may not rise to the level of a criminal violation. An example would be if a person was involved in an on-duty accident and was legally prescribed medications to assist with pain management. This person may become addicted to this medication even though it is prescribed legally. In this circumstance, most agencies have opted to provide counseling and/or rehabilitative support to the employee in order to allow them to return to full duty. This option is usually outlined in agency disciplinary policies.

In certain cases, agencies may need to initiate a criminal or administrative investigation for reasons other than employee drug abuse. These investigations may be based on the use or distribution of steroids or other illegally obtained prescription drugs.

It is recommended that agencies consider enacting drug testing policies that specify agency standards, including both rehabilitation and disciplinary actions.

These policies must take into account various local, state and federal laws and applicable guidelines. In certain circumstances, employee contract language must also be taken into account with regards to enforcement of such testing.

The abuse of anabolic steroids by public safety employees appears to be an escalating issue facing agencies despite the fact that personnel are both aware of the illegal nature of the action as well as the dangers of anabolic steroid abuse. Concentrated educational efforts concerning the dangerous and harmful side effects of steroid abuse may be effective in curbing the abuse. These efforts should also focus on communicating that law enforcement personnel can perform their jobs and have a strong and resilient body without steroids. The emphasis should be in eating a proper diet, rest, and good overall mental and physical health. At the same time, it is highly recommended that law enforcement agencies conduct drug testing and have policies in place to properly handle positive test results. These policies help to ensure not only the safety of fellow law enforcement personnel but also safety for the members of the community.

¹ <http://www.deadiversion.usdoj.gov/pubs/brochures/steroids/lawenforcement/index.html>

² Charles Swanson, Larry Gaines, and Barbara Gore, "Abuse of Anabolic Steroids," *FBI Law Enforcement Bulletin* 60, no. 8 (August 1991): 19.

³ http://policechiefmagazine.org/magazine/index.cfm?fuseaction=print_display&article_id=1512&issue_id=62008

⁴ <http://www.deadiversion.usdoj.gov/pubs/brochures/steroids/lawenforcement/index.html>

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

ALCOHOL ABUSE/DRIVING UNDER THE INFLUENCE

Alcohol abuse is an issue in the public safety profession as it is in other professions. “While the social use of alcohol may be accepted in most professions, excessive use can impair an individual’s ability to function properly at work and at home. This can prove particularly dangerous for police officers.”¹ Like the use of illegal drugs, alcohol abuse can violate state and local laws as well as law enforcement agency policies. Therefore, the response by law enforcement agencies is not particularly flexible. This section discusses the issue, with a compilation from a survey of the Major Cities Chiefs, to use as a resource for establishing a comprehensive policy. It is meant to alert agencies’ leaders to ensure that a policy is crafted that communicates the mission, vision, and guiding principles of the agency, as it relates to abuse of alcohol.

The first significant data on alcohol consumption by law enforcement officers was published in 1971, finding that alcohol consumption ranged from 3.2 percent to 18.4 percent of on-duty officers. Two years later studies reported that law enforcement officers experienced cirrhosis of the liver more frequently than the general public. Law enforcement administrators rated alcohol abuse as one of the most serious problems confronting law enforcement, estimating that 20 percent of their personnel abused alcohol. Later studies (1988) indicate that consumption of alcohol increased with each year of employment, with a majority (55 percent) of officers being heavy drinkers after four years on the job.²

Intoxication while on-duty, absenteeism, citizens’ complaints, domestic violence, traffic accidents while on or off duty and a decrease in work performance are some of the problems associated with alcohol abuse. According to one article:

[A]lcohol abuse is defined as a pattern of drinking that results in one or more of the following circumstances in a twelve-month time frame:

- Drinking in situations that can result in physical injury such as operating machinery.
- Continued drinking in spite of ongoing relationship problems that are the result of drinking.
- Failure to attend to important responsibilities at home, work or school.
- Experiencing recurring alcohol-related legal problems. Examples include getting arrested for damaging someone’s property, receiving a DUI or for physically hurting someone while drunk.

An intelligent way of looking at the components that make up the definition of alcohol abuse is this: when a person exhibits

problems in any or all of these areas, consider this information as alcohol abuse signs. That is, the manifestation of any or all of these issues is often a red flag that the person is engaging in abusive drinking.³

In the police culture, stress, peer pressure and the feeling of isolation are some of the factors that can lead to alcohol abuse. "According to research, almost 90% of police officers consume alcohol to some degree."⁴ Many officers decompress with a few drinks after their shift is over and most do so without experiencing any harmful effects. It is often hard to distinguish between social drinking and problem drinking. Officers are reluctant to report their own dependency for fear of discipline or removal from assignment. Fellow officers are also reluctant to report another officer's abuses for fear of hurting the officer's future career. "Because alcohol use is often considered part of the police lifestyle, officers who have a problem seldom get approached by their peers."⁵

Employees with an alcohol problem may be difficult to identify. Obviously, not all changes in an employee's behavior are related to alcohol abuse. Difficulties at home, illness, sleep disorders and other stressors may be the reasons for an employee's changed behavior. "Accusing someone of having a substance use disorder without proper documentation of poor job performance could put you and your company at risk for a lawsuit."⁶

Alcohol use among law enforcement has received considerable media scrutiny. Although research has indicated that police officers' consumption of alcohol is not necessarily greater than the general population, media outlets focus on law enforcement as a source of great concern. Because law enforcement officers carry the responsibility of enforcing laws and possess arrest authority, alcohol misconduct by police officers is worrisome. Therefore, safeguards should be established to recognize factors and confront the problem to not only protect police employees but to safeguard citizens as well.

There are some documented cases where law enforcement officers arrested for drunk driving have received special treatment. A recent newspaper investigative report revealed that Washington State law enforcement officers arrested for drunk driving received special treatment and lighter punishment than the general public. According to the study, 92 police officers have been arrested for DUI in Washington State over the past seven years. They caused fourteen vehicular crashes, four of which involved state issued vehicles. Five officers who had registered blood alcohol content above the legal limit were never prosecuted. A nearly equal number did not lose their driver's licenses because fellow officers did not file necessary paperwork within the required time frame. Average citizens who took and failed a breath test were more than twice as likely to lose their driver's licenses as intoxicated law enforcement officers. Of those who refused a breath test, over 94% of motorists suspected of drunk driving had their licenses

suspended, compared with only 25% of law enforcement officers in the same situation. Favoritism between officers was discovered in several instances, including direct requests for breaks, professional courtesy, and even threats against officers who attempted to arrest a fellow officer.⁷

The Chicago Police Department reported that in 2008, thirteen police officers were charged with DUI. Five of these DUI's resulted in vehicular accidents, with two resulting in injuries. The thirteen officers charged in 2008 are still connected to the department, although all faced consequences for their actions.⁸ Although the number of officers arrested for DUI compared to the 13,000+ member police department is statistically low, the expectation to adhere to a law as potentially fatal as DUI is much higher.

The number of Los Angeles County Sheriff's Department employees arrested on alcohol related charges has risen sharply since 2004. Seventy Los Angeles County Sheriff's Department employees, sworn deputies and civilian staff members were arrested in 2008 on alcohol related charges, according to an annual report.⁹

A 19 year veteran of the Los Angeles police department was killed after several hours of drinking with other officers in a banquet room outfitted with a bar on the upper floor of the academy's main building. They had gathered for payday Wednesday, an unofficial but regular event held during payday. Since the accident, police executives have discontinued the practice.¹⁰

The above examples highlight the importance of identifying employees who are potentially abusing alcohol. In order to identify offenders, it is imperative that supervisors be trained to detect behaviors that may be indicative of alcohol abuse. Initiating an agency alcohol abuse program may help reduce the effects related to alcohol abuse. As no two agencies are the same, an alcohol abuse program should be tailored to the needs of the individual agency. "There are, however, five standard components of a comprehensive workplace substance abuse program, according to the U.S. Department of Labor:

- A written policy statement
- Supervisor training
- Employee education and awareness
- Employee assistance for providing help
- Drug and alcohol testing"¹¹

A written policy should be understood by all employees, supported by management, and fairly enforced with clear expectations and consequences for violations.

As stated above, training supervisors on the agency's policy and how to recognize employee problems is essential to a substance abuse program. The training, along with having the knowledge of where employees should be referred to for assistance to address performance-altering behaviors, are keys to a program's success. Employees also need to be trained in the agency's policies and need to be made aware of assistance available to them. If not already in place, agencies should have an Employee Assistance Program (EAP) to assist employees with personal problems affecting their performance. Finally, an agency should have an established drug and alcohol testing policy.

Immunity Statutes and Liability

Ultimately, the agency is liable for injuries or property damage caused by employees acting under the influence of alcohol. This can apply whether the employee is on or off duty though immunity statutes and liability issues vary from state to state.

Owners of emergency vehicles may not assert governmental immunity for property damage, personal injuries, etc. caused by the negligent or wrongful act or omission of such driver or owner. Operating a department owned vehicle while impaired, whether in an on or off-duty status (such as a take home car), falls into this area.

Some agencies do not have comprehensive policies that prohibit the consumption of alcohol while driving government owned vehicles. Policies only state in vague terms that personnel must obey the law. Some agencies' policies concerning the use of department vehicles do not specifically address driving under the influence of alcohol but state that vehicles should be operated in a safe manner and in compliance of the law.

Policy Review

The following agencies represented by the Major City Chiefs Human Resources Committee provided responses to the issue concerning police officer use of alcohol and driving under the influence:

- Baltimore County Police Department
- Chicago Police Department
- Cincinnati Police Department
- Kansas City Missouri Police Department
- Metropolitan Nashville Police Department
- Philadelphia Police Department
- San Diego Sheriff's Department
- San Francisco Police Department
- St. Louis Police Department

-
- Toronto Police Service
 - Virginia Beach Police Department

All of the responding agencies have policies related to alcohol use by members prior to or while on duty. Ninety-five percent of the respondents include a policy or reference that addresses a member using alcohol off duty. Driving under the influence of alcohol by members while off duty is handled in a variety of ways by the responding agencies. All of these instances deal with the use of alcohol in reference to misconduct that would constitute a violation of the rules of conduct that could pose a threat to the safety of the member and the community served, and brings embarrassment or discredit to the agency.

On Duty Use of Alcohol

If a member reports for work in a state of intoxication, or the odor of alcohol is on his or her breath, or the member is discovered to have been consuming alcohol while on duty without being authorized to do so in the performance of official duties, the member would be dealt with similarly by all the responding agencies. In these instances, the member may be immediately suspended from police duties pending an investigation of the incident. More than half of the agencies require a breathalyzer test or fitness for duty evaluation. Some form of administrative action, such as suspension with or without pay or being placed on desk duty, is taken pending an internal investigation and documentation of agency violations. If the internal investigation is sustained, disciplinary action varies from a reprimand to suspension without pay up to thirty days or in some cases, termination of employment.

Off Duty Use of Alcohol

A review of policy language addressing the use of alcohol by members while off duty is most clearly illustrated by the San Diego Sheriff's Rules of Conduct 2.14 which states: "Employees, while off duty, shall refrain from consuming intoxicating beverages to the extent that it results in unlawful impairment (such as driving under the influence or being unable to care for their own safety or the safety of others), public intoxication, or obnoxious or offensive behavior in public which would tend to discredit them or this Department, or render the employee unfit to report for their next regular tour of duty."

The policies of responding agencies reveal disciplinary actions similar to those involving on duty violations may be taken pending a complete internal investigation into the incident.

DUI

Most agencies consistently adhere to similar procedures when a member is initially arrested for DUI. The member is placed on immediate suspension of police related duties pending the outcome of any criminal or traffic related charges stemming from the arrest. Disciplinary actions are then taken, consistent with any other violations of agency policies in that the member may be suspended for a period of time up to and including termination of employment. Some agencies take a strict stance when it comes to a DUI conviction regardless of whether the employee was on or off duty. For those agencies, termination is the only option. Other agencies give consideration to alternatives other than termination, including a requirement for the member to seek assistance from EAP prior to disciplinary actions, the participation in out-patient or in-patient rehabilitation programs, and/or retraining in agency policies.

In some jurisdictions, a conviction for DUI results in the revocation of a driver's license for several days up to one year. In these instances, some agencies suspend the member from working for the agency in any capacity until such time as the member's driving privileges are reinstated. Some agencies allow the member to work in an administrative assignment pending judicial outcome, while others suspend the member with pay. One agency reported that members losing their driving privileges could be allowed to continue performing the duties of a police officer in the field as the passenger of a two officer patrol car but is not allowed to drive.

Most, if not all, agencies have recognized the debilitating effect of alcohol abuse within the public safety profession. In response, as noted above, many agencies have established policies that address alcohol abuse by requiring members to seek assistance through an EAP. Some of these agencies place this requirement ahead of pending disciplinary action. If the member agrees to seek alcohol counseling and/or attends a formal program to address it, the member may be able to retain his or her job as a police officer. If not, the member may be terminated in part because he or she was unwilling to seek assistance.

Identification of alcohol abuse among its employees, and how a supervisor handles the problem, is critical for the efficient operation and reputation of the agency. Rehabilitating an employee not only saves the agency the cost of recruiting, hiring and training a new employee, it also promotes the trust of the public in an organization that recognizes and addresses employee performance deficiencies in a timely and efficient manner. This does not eliminate the need for a strong disciplinary policy concerning alcohol abuse. Employees with multiple violations, those who refuse assistance and the specific circumstances surrounding the violation of policy may not allow the organization an opportunity to "save" an employee. "Bear in mind that the threat of being fired often provides a potent deterrent to substance abuse and will prompt many drug-and alcohol-

troubled workers to accept help when they had previously ignored the pleas of family and friends.”¹²

¹ <http://policestress.org/choir.htm> 11/18/09

² Lindsay, V., Alcohol and the police: an empirical examination of a widely held assumption 2008

³ <http://www.about-alcohol-abuse.com> 1/26/10

⁴ http://www.addictionsearch.com/treatment_articles/article/substance-abuse-among-healthcare-professionals_49..html
retrieved from Internet 11/20/09

⁵ Alcohol Abuse in Policing: Prevention Strategies – FBI Law Enforcement Bulletin, Jan. 1999, Violanti

⁶ <http://www.drugfree.org/Intervention/HelpingOthers/AdultEmployee/If You Are Concerned About an Employee>
retrieved from the Internet 1/26/10

⁷ <http://www.thenewspaper.com/news/19/1901.asp> Seattle Post-Intelligencer (WA) 8-6-2007 A broken system works in favor of cops busted for DUI. From the Internet 11/20/09

⁸ http://www.huffingtonpost.com/2009/04/26/cop-duis-13-chicago-polic_n_187692.html Chicago Tribune 4-16-09 Chicago Police and drunken driving.....From the Internet 11-20-09

⁹ <http://www.nytimes.com/2009/04/17/us/17alcohol.html> Cathcart R. New York Times 2009, retrieved from Internet 5/11/10.

¹⁰ <http://www.articles.latimes.com/2009/dec/09/local/la-me-payday-wednesday10-2009dec10> LA Times 10-9-09 LAPD officer killed in motorcycle crash.....From the Internet 11-19-09

¹¹ <http://www.dol.gov/asp/programs/drugs/workingpartners/dfworkplace/dfwp.asp> from Internet 5/11/10

¹² <http://www.acde.org/employer/DAwork.html> American Council for Drug Education from the Internet 2/3/10 2/3/10

POLICE SEXUAL MISCONDUCT

- ❖ A 30-year veteran police officer in Tacoma, Washington, was sentenced in 2008 to 19 years in prison for multiple counts of child rape that occurred both before and after he retired from the force six years earlier. At the time of his arrest, the officer was a Police Athletic League camp volunteer.
- ❖ An officer was sentenced to 94 years in prison in 2004 for using his police power to rape, sexually abuse, assault and/or harass a dozen women over five years as a Eugene, Oregon police officer.
- ❖ Six Jacksonville, Florida police recruits were fired in 2009 for sexual misconduct during their academy training, including inappropriate contact among recruits.
- ❖ A Charlotte-Mecklenburg, North Carolina police officer was fired in 2009 and charged with the assault and battery of six women. Five women alleged to have been victimized by the officer when he stopped them for traffic violations and the sixth woman alleged he assaulted her when he responded to a domestic violence incident.
- ❖ A Multnomah County (Oregon) Sheriff's Office deputy pleaded guilty in 2006 to one count of harassment after admitting to touching a woman's unclothed thigh during a DUI stop. The deputy was accused of asking women he stopped for traffic infractions to unfasten their bras or unzip their pants so he could examine them for a flower tattoo.
- ❖ In 1988, a former California Highway patrol officer was sentenced to 25 years in prison for the murder of Cara Knott after he pulled her over in a marked CHP patrol car on an isolated freeway off-ramp, bludgeoned her with his flashlight, strangled her with a rope, and then threw her body off an abandoned bridge. The officer was believed to have murdered Knott when she threatened to report him for sexual misconduct.
- ❖ A San Bernardino (California) Sheriff's Office deputy was convicted in April 2003 for the statutory rape of a 16-year-old Explorer Scout.
- ❖ A former Alexander, Arkansas police officer was convicted in December 2009 of two counts of child rape and one count of sexual assault against a child. He was sentenced to over 100 years in prison. His victims were as young as seven years old.

Police sexual misconduct encompasses a wide variety of both criminal behavior (e.g., rape, sexual assault, battery, sexual shakedowns, sex with minors) and non-criminal behavior (e.g., pulling over sexually attractive motorists for no law

enforcement purpose, engaging in consensual on-duty adult sex). These incidents occur in large and small agencies, by officers of all ages and races, and in all regions of the country, and their effect on community trust of police is devastating. Police sexual misconduct (PSM) also occurs with alarming frequency. This section is intended to (1) draw attention to the significance of PSM in American law enforcement, (2) provide an operational definition of PSM and describe its major classifications, and (3) summarize the primary causes hypothesized in the literature to promote or underlie PSM.

The Significance of the Problem

Estimating the true incidence of PSM is hampered by the absence of a uniform reporting system and by the reluctance of many victims to report the incidents for fear of retaliation, fear of being blamed for the incident, fear of not being believed, fear of being shamed, or because the victims did not believe they were victimized.¹

Although the base rate or true incidence of police sexual misconduct is unknown, it is described by police chiefs and police officers alike as a serious problem, with an estimated 19% to 36% of officers engaging in some form of sexual misconduct.² In a study of media reports of PSM in 2002 and 2003, Walker and Irlbeck found 72 cases of police officer sexual abuse of teenagers, with nearly half of these cases involving girls or boys in police Explorer programs. In the same period, they found 123 cases of police sexual abuse of women.³ In a study of 20 police chiefs' views of PSM in the St. Louis, Missouri area, Maher reported that "[t]he vast majority of chiefs in the sample stated they believed PSM was common and a serious problem for policing."⁴

Maher, himself a 22-year veteran police officer before turning to academia, also studied the extent of PSM from the perspective of police officers. He found that officers in his sample estimated a larger proportion of the force to be engaged in sexual misconduct (a range averaging between 31.8% and 36.5%), compared to the chiefs' average estimate of 18.6%.⁵ Either estimate, in combination with the nature and frequency of disturbing media reports of arrests, convictions, and decertification of police officers for sexual abuse, suggests that the problem is sufficiently common and serious to justify decisive efforts to address it.

Defining Police Sexual Misconduct

Without an operational definition of PSM that restricts the included acts of malfeasance to sexual acts with a reasonable risk of causing substantial harm to the victim and/or the community, the potential for inclusion of relatively innocuous acts (e.g., flirting on duty), or acts without apparent sexual motives (e.g., sexual discrimination) threatens to undermine its significance and meaning. Researchers of PSM have posited several definitions ranging from one limited to

criminal sexual violence⁶ to another that incorporates both serious and less-serious offenses.⁷ The following definition adapts elements of both:

Police sexual misconduct consists of any behavior by a police officer that exploits the role (including power, authority, access, or other explicit or attributed features of the position) to commit a sexually violent act, or to initiate or respond to a cue for the apparent purpose of personal sexual gratification, in which a victim would reasonably be expected to experience sexual degradation, exploitation, humiliation, fear, harm, or threat of harm. The behavior must include physical contact, verbal communication, or a sexually implicit or explicit gesture directed toward another person.

In an analysis of the types of misconduct reported in the PSM literature, as well as from a review of cases in their own files, Corey and Roberts⁸ classified PSM into the following categories:

Unnecessary stops.

Walker & Irlbeck⁹ reported on this “national problem . . . where police officers use their authority, often in traffic stops, to harass or assault women drivers, or to take advantage of women who have been stopped for legitimate violations.”¹⁰ Referring to the putative violation for which these women were stopped—“driving while female”—the authors cite abuses “in every part of the country, and the level of abuse runs the gamut from harassment to sexual assault and even murder.”¹¹ Most commonly, these unnecessary stops are carried out in order to meet an attractive motorist; obtain name and contact information for a subsequent rendezvous; and determine eligibility for, and interest in making, a sexual liaison. Walker & Irlbeck reported that 35% of the PSM cases they studied resulted from traffic stops.¹²

Sexual misconduct with minors.

This appears most frequently to involve underage Police Explorers. Walker & Irlbeck reported that 40% (72 cases) of the police sexual abuse cases they studied involved teenagers, and nearly half of these (31 cases) involved boys and girls in Police Explorer programs.¹³ Sexual misconduct with minors constituted the highest percentage of cases in the Walker & Irlbeck study.

Consensual adult sex on duty.

A number of PSM cases involve sex on duty in police cars, in private residences, and elsewhere. Sapp¹⁴ observed that police officers are often approached or responded to by lonely suitors and other willing participants who are attracted to their uniforms, weapons, or power. Citing a police chief from his study, Maher

wrote, “This is a male dominated profession where officers have a lot of power. This influences their behavior and the behavior of those who are attracted to them.’ He said, ‘There are a lot of groupies out there targeting officers to participate in sexual misconduct. Not many women follow construction workers around like they do police officers.’”¹⁵

Rape/Assault.

As with most police sexual misconduct, cases of rape and assault most often occur with victims who would least likely be believed were they to report the offense.^{16, 17} This category of offenses includes coercing sexual favors from prostitutes, the developmentally disabled, children and minors, and substance dependent adults, among others.

Unwarranted orders to undress or reveal covered areas of the body.

Whether as a result of “partialism” (i.e., exclusive sexual interest in only a part of the body), a variant of voyeurism, or some other paraphilia, many cases of police sexual misconduct involve police officers demanding that the subject disrobe, either partially or fully, in order to fulfill some kind of voyeuristic or other sexual fantasy.

Fondling or unwarranted touching.

A police officer’s legitimate duties often involve touching a subject, whether in connection with a lawful search or otherwise. Even in these cases, however, justified touching can become fondling by its duration, place, form, and nature. In other cases, a police officer may cross professional boundaries by making unwarranted, unwanted, and sexually oriented touches.

Prostitution.

Many of the cases of police sexual misconduct referenced in other categories involve prostitutes, but this classification pertains to police officers who pay for sex. Walker & Irlbeck report that this category represented 5% of the cases they studied.¹⁸

Voyeurism and improper photographing and videotaping.

Photography and videotaping are particularly ripe opportunities for voyeurism and privacy invasion, since the perpetrator is able to control the lens through zooming such that he or she may appear to be photographing or videotaping legitimate images while actually focusing on selected images (e.g., breasts, crotches, children, etc.) that are not subjects of official or legitimate interest. This may also occur with hidden cameras.

Exhibitionism.

Other cases of police exploitation involve officers exposing sexual body parts, objects or images to subjects without legitimate purposes, presumably for purposes of paraphilic gratification normally associated with exhibitionism or as a means of grooming a subject for additional exploitation.

Consensual sex with adult explorers.

Although sexual contact with an adult (i.e., 18 years or older) police volunteer, such as an Explorer, is not per se a criminal offense, it may well be exploitative in light of their differential power relationships, and other factors, such as coercion, may render the offense a criminal one. But even when the conduct is non-criminal, it can be particularly problematic if the relationship was groomed when the volunteer was a minor and sexual activity occurred upon the minor turning 18.

Domestic violence.

Domestic violence is especially egregious and exploitative when carried out by police officers because the victim's opportunity for help and rescue is frequently perceived to be absent or diminished. This perception is often reinforced by the abusive officer in order to reduce the likelihood that the victim will notify law enforcement authorities (e.g., "They'll never believe you. I'll tell them you're a drug user and a whore and they'll believe me over you any day").

Unwanted sexual advances.

In addition to the sexual harassment that occurs when police officers impose unwanted sexual advances on co-workers is the sexual harassment that occurs when an officer imposes such advances on an informant, victim, witness, complainant, or service provider (e.g., nurse, paramedic, firefighter, case worker, etc.). This misconduct is exploitative in nature when the offender relies on his/her power and authority as a police officer to ward off complaints or coerce acquiescence. This is often facilitated by choosing victims that have credibility problems of their own.

Factors Contributing to Police Sexual Misconduct

Maher hypothesized four factors affecting the incidence of PSM: lack of knowledge about PSM, police complaint systems, opportunity for sexual misconduct, and the police culture.¹⁹ Corey & Roberts²⁰ suggested that two other factors—the easy availability of high fidelity pornography through the Internet, including on cell phones, and risk factors associated with the police officer him/herself—may also contribute to the problem.

Lack of knowledge About PSM.

Maher contends that the incidence of PSM is influenced by a dearth of formal training or education about PSM, the absence in most police agencies of formal written policies addressing this issue, and the unwillingness of police chiefs to impose such policies and training unless they believe their department has a specific, identifiable problem with such behavior.²¹ Maher concludes, “Not until the secrecy surrounding PSM is removed and police personnel receive more formal training, both in-service and police academy, is it likely that such behavior will be better understood and more effort can be made to control it.”²²

Police complaint systems.

A common finding in the PSM literature is that police sexual offenders often choose victims that are least likely to be believed.²³ This fact is aggravated by elements of police complaint systems that prohibit anonymous or telephone reporting; that impose procedural demands on complainants that serve to discourage either the complaint itself or the follow-through necessary to support the complaint; or that permit broad discretion to the receiver of the complaint (e.g., desk sergeant) for disposition of the complaint, such that complaints are ignored or too readily dismissed as unfounded.

Opportunity for PSM.

Maher concludes that “[p]olice authority and power, an unsupervised work atmosphere, and the frequent isolated contact with the public and potential victims of sexual misconduct combine to create situations whereby officers have ample opportunity to participate in various forms of such behavior.”²⁴ Add to this the 24-hour schedule of police work, access to a vast array of private places, and citizens’ common predisposition to trust and comply with a police officer, and the opportunities for sexual misconduct by police officers become staggering. Indeed, for some, the unique opportunities for undetected sexual acts may become the primary motive for choosing law enforcement as a career.

The police culture.

The accepted practices, rules, and principles of conduct that are situationally applied, and the generalized rationales and beliefs associated with police work—that is, the police culture²⁵—is cited by the chiefs in Maher’s study²⁶ as the single most influential factor underlying PSM. Maher reported that they referenced the isolation from the public due to unique work schedules; the perception of policing as a male-dominated, masculine profession; and the willingness or commitment of officers to “stick together” and to “keep quiet” as key elements of that culture. They also observed that the police culture may affect officers’ decisions whether or not to report a fellow officer for an alleged, or observed, incident of PSM.

Indeed, chiefs and officers alike in Maher's two studies²⁷ reported that the likelihood of officers formally reporting the less serious types of PSM were far lower than for the serious offenses. Maher concluded that "the police culture may create an atmosphere wherein officers feel free to engage in PSM with little fear of being reported by other officers."²⁸

Even police agencies whose cultures do little to promote PSM may fail to abate it when they permit the hyper-sexuality and locker room antics common to many male-dominated workplaces. Police supervisors may be most effective in creating a culture resistant to PSM when they create a shared expectation that police work is not a proper context to discuss sexual topics, interests or jokes, or to act on sexual motives or impulses. In contrast, where such behavior is modeled or tolerated, PSM may be more likely to occur.

The Role of Pornography

The Internet has eclipsed magazines, adult bookstores and video parlors, and rented movies as a source of pornographic images because of three advantages it has over these other sources: access, affordability, and anonymity.²⁹ Its effects on off-line behavior are only beginning to be understood, but the mounting research suggests that compulsive viewing of pornography can have substantial adverse consequences, including reduced inhibitions against acting out prohibited sexual fantasies.³⁰ The facilitative effects of the high fidelity images and rich array of stimuli available on the Internet are especially profound with persons already suffering from deviant sexual attractions.³¹ Corey and Roberts have found from their nascent research on the psychological correlates of police officers who engage in sexual misconduct that offenders commonly cite their online viewing of pornography as a contributing factor in sustaining their sexual fantasies and reducing their inhibitions to act on them.³²

Psychological Risk Factors

A review of the literature on risk factors associated generally with adults who engage in sexual crimes and exploitation suggests that six features of an individual increase his or her risk of offending:

1. **Cognitive Distortions.** These include (a) narcissistic traits or beliefs about themselves which support victimization of others, such as entitlement, moral virtuosity, intellectual superiority, possessing strong sexual attractiveness, and owing no special duty to others, and (b) attitudes that support victimization, such as viewing the victim as enjoying, seeking, or not minding the act; viewing the victim as interested in or solicitous of the act; blaming the victim (e.g., by their provocative dress or behavior); regarding the victim as untrustworthy and unlikely to be believed; and lack of empathy for the victim.

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2. **Deviant Sexual Attractions.** These include sexual hyperactivity or obsession; sexualized violence; and paraphilias, such as exhibitionism, voyeurism, pedophilia, sexual sadism, etc.
 3. **Socioaffective Deficits.** This category encompasses aggressive thinking (such as paranoia, propensity for anger, suspiciousness, and being quick to hold themselves out as a victim), inadequacy (low self-esteem, assigning blame and responsibility to others), distorted balance of intimacy (i.e., emotional intimacy is easier with children or strangers than with familiar adults), callous and unemotional traits, and emotional loneliness (including lack of intimate relationships and difficulty or unwillingness to create intimate relationships).
 4. **Poor Self-Regulation.** This includes an impulsive lifestyle; use of sex as a coping strategy; poor problem solving (e.g., poor problem recognition, poor consequential thinking, rigidity in thinking); poor emotional control; and use of disinhibitors, such as drugs, excessive alcohol, and pornography.
 5. **Adverse Social Influences.** This category involves association with peers who share or reinforce attitudes supportive of sexual misconduct; association with peers who support or reinforce deviant sexual interests; and involvement in an organizational or community culture that permits or does not punish sexual impropriety or misconduct.
 6. **Decision Chain History.** This last category includes the age of the individual's first sexual offense; the nature of the person's offense path (e.g., active vs. passive); the prior history of antecedents, behaviors and consequences; and the history of offense progression.

The role that each of these factors plays, alone or in combination, in the incidence of PSM is unknown, but it warrants careful study. Over the past three years, Portland Police Bureau has terminated or accepted resignations from no less than four police officers who have sexually exploited adult and minor victims. In each of these cases, the Police Bureau analyzed the available data from the investigative files, and the pre-employment and employment records, to determine what might be done to improve the ability to screen out or otherwise detect those applicants or officers who are at elevated risk for engaging in PSM. These efforts include the review of the offending officer's pre-employment background and psychological evaluation records, both by the examining psychologist and by an outside panel of expert police psychologists. The Portland Police Bureau has also modified the background and pre-employment psychological evaluation methods and procedures in response to the preliminary information gained from case studies and from the studies of a limited number of cases from other agencies and jurisdictions.

As important and useful as these efforts have been, the small numbers of cases that have been studied over the past several years prevents an acceptable level of comprehension of the nature of this problem, the base rate of the behavior, and the factors that correspond with an elevated risk for sexual misconduct. A cooperative agreement among police agencies across the United States is needed in order to be able to gather a large enough number of cases, over a reasonably brief period of time, to enable a competent study of these issues.

¹Kraska, P.B., & Kappeler, V.E. (1995). To serve and pursue: Police sexual violence against women. *Justice Quarterly*, 12, 85-111; Maher, T.M. (2008). Police chiefs' views on police sexual misconduct. *Police Practice and Research*, 9(3), 239-250; McGurrin, D. & Kappeler, V.E. (2002). Media accounts of police sexual violence: Rotten apples or state-supported violence? In K.M. Lersch (Ed.), *Policing and misconduct*, pp. 121-142. Upper Saddle River, NJ: Pearson Education; Walker, S. & Irlbeck, D. (2003, June). Police sexual abuse of teenage girls: A 2003 Update on "Driving While Female." Police Professionalism Initiative, University of Nebraska.

² Maher, T.M. (2008). Police chiefs' views on police sexual misconduct. *Police Practice and Research*, 9(3), 239-250.

³ Walker, S. & Irlbeck, D. (2003, June). Police sexual abuse of teenage girls: A 2003 Update on "Driving While Female." Police Professionalism Initiative, University of Nebraska.

⁴ Maher, T.M., Police chiefs' views on police sexual misconduct at 243.

⁵ Maher, T.M. (2003). Police sexual misconduct: Officers' perceptions of its extent and causality. *Criminal Justice Review*, 28(2), 355-381.

⁶ Kraska, P.B., & Kappeler, V.E. (1995). To serve and pursue: Police sexual violence against women. *Justice Quarterly*, 12, 85-111.

⁷ Maher, T.M. Police sexual misconduct: Officers' perceptions of its extent and causality.

⁸ Corey, D.M. & Roberts, M.D. "Classifications of police sexual misconduct and exploitation." Paper presented at the meeting of the Johnson-Roberts Users Conference, Boston, Massachusetts, October 13, 2006.

⁹ Walker, S. & Irlbeck, D. (2003, June). Police sexual abuse of teenage girls: A 2003 Update on "Driving While Female." Police Professionalism Initiative, University of Nebraska; Walker, S. & Irlbeck, D. (2002, May). Driving while female: A national problem in police misconduct. Police Professionalism Initiative, University of Nebraska.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Walker, S. & Irlbeck, D. (2003, June). Police sexual abuse of teenage girls: A 2003 Update on "Driving While Female." Police Professionalism Initiative, University of Nebraska.

¹⁴ Sapp, A.D. (1998). The Seductions of sex. In J.P. Crank (Ed.), *Understanding police culture*, pp. 187-189. Cincinnati, OH: Anderson.

¹⁵ Maher, T.M. Police chiefs' views on police sexual misconduct at 246.

¹⁶ Maher, T.M. (2008). Police chiefs' views on police sexual misconduct. *Police Practice and Research*, 9(3), 239-250; Walker, S. & Irlbeck, D. (2003, June). Police sexual abuse of teenage girls: A 2003 Update on "Driving While Female." Police Professionalism Initiative, University of Nebraska.

¹⁷ Walker, S. & Irlbeck, D., Police sexual abuse of teenage girls: A 2003 Update on "Driving While Female."

¹⁸ Walker, S. & Irlbeck, D., Police sexual abuse of teenage girls: A 2003 Update on "Driving While Female."

¹⁹ Maher, T.M. Police chiefs' views on police sexual misconduct.

²⁰ Corey, D.M. & Roberts, M.D. "Classifications of police sexual misconduct and exploitation."

²¹ Maher, T.M. Police chiefs' views on police sexual misconduct.

²² Id. at 247.

²³ Maher, T.M. Police chiefs' views on police sexual misconduct; Walker, S. & Irlbeck, D. Police sexual abuse of teenage girls: A 2003 Update on "Driving While Female."

²⁴ Maher, T.M. Police chiefs' views on police sexual misconduct, at 246.

²⁵ Manning, P.K., (1989). Symbolic communication: signifying calls and the police response. Massachusetts Institute of Technology

²⁶ Maher, T.M. Police chiefs' views on police sexual misconduct.

²⁷ Maher, T.M. Police chiefs' views on police sexual misconduct; Maher, T.M. Police sexual misconduct: Officers' perceptions of its extent and causality.

²⁸ Maher, T.M. Police chiefs' views on police sexual misconduct at 248.

²⁹ Cooper, A and Sportolari, L, 'Romance and Cyberspace: Understanding Online Attraction', *Journal of Sex Education and Therapy*, 22 (1997), 7-14.

³⁰ Cooper, A., Galbreath, N., & Becker, M.A. Sex on the Internet: Furthering our understanding of men with online sexual problems. (2004). *Psychology of Addictive Behaviors*, 18(3), 223-230.

³¹ Galbreath, N.W., Berlin, F.S., & Sawyer, D. (2002). Paraphilias and the Internet. In A. Cooper (Ed.), *Sex and the Internet: A guidebook for clinicians*, pp. 187-205. New York, NY: Brunner-Routledge.

³² Corey, D.M. & Roberts, M.D. "Classifications of police sexual misconduct and exploitation."

APPROACHES TO DISCIPLINE

Discipline can be an effective management technique to correct poor employee performance and/or behavior. However, as noted by Karen N. King and Denise E. Wilcox in their article, *Employee-Proposed Discipline: How Well Is It Working*, “one of the most paralyzing tasks that managers face is disciplining employees.”¹ The authors note that managers find disciplining employees difficult for a variety of reasons including a lack of skills necessary to effectively administer discipline, unclear organizational guidelines for administering discipline, fear that employees may become abusive or defensive, as well as a belief that the decision to discipline an employee may not be supported by upper management. In any event, most managers would probably agree that preventing the need to discipline employees is preferable to administering corrective action.

Below the discussion will cover traditional policies and practices of discipline for context, but following that are some ideas that are being employed by some of the agencies in the Major Cities Chiefs. Some examples of misconduct requiring discipline, such as domestic violence, will illustrate different aspects of policies in practice. While not all employee behaviors such as domestic violence, sexual misconduct, and drug or alcohol abuse can be prevented, having positive proactive policies, procedures, and protocols in place can help to increase morale and decrease organizational liability.²

Whether traditional or something newer, when developing a proactive program to address undesirable behaviors, most experts agree that the first step is to develop and implement a clear organizational policy. While not a panacea for all misconduct, the International Association of Chiefs of Police (IACP) in the article *Domestic Violence by Police Officers* write an example of a clear policy. “[It] is imperative to the integrity of the profession of policing and the sense of trust communities have in their local law enforcement agencies that leaders, through the adoption of clear policies, make a definitive statement that domestic violence will not be tolerated.”³

The proactive organizational policy should also include a training aspect. It is recommended that comprehensive supervisory and employee training programs be developed and implemented. The training programs should include case studies and examples of incidents to highlight “individual and supervisory liability for failing to take appropriate action”⁴ after becoming aware of inappropriate behavior. The programs should also be evaluated to determine the effectiveness of the training in furthering the goals of the agency and in supporting the agency’s mission.

Other proactive steps include screening out law enforcement candidates with documented instances, or those who have self-identified as being associated with undesirable behaviors. This action and similar screening steps should move

the recruitment process towards a decrease in the number of employees who potentially have a propensity toward violence or addictive behaviors. Furthermore, a strict screening policy reinforces the agency's policy of zero tolerance for such behavior.

In the above cited IACP article and in "Understanding Domestic Violence," by Richard Davis,⁵ both recommend "partner wellness education programs." Partner wellness education programs are designed to alert law enforcement families to the many difficult issues of working in the criminal justice field. In addition, such programs introduce an agency's policy regarding inappropriate behaviors, identifies points of contact within the agency, and recognizes community based organizations if assistance is needed.

Obviously discipline is not a new subject matter for police agencies. In an article from the American Journal of Police Science published in 1951 about police discipline, law enforcement was examining new approaches to change the behavior of employees. Even at that time, discipline was viewed as negative as it "involve[d] force or external influence and...was based on the theory that compliance was obtained by the use of punishment or fear of penalties."⁶ Gourley identified "positive discipline" through "adherence to those rules which [are] best suited to protect the interests and welfare of the group."⁷ Similarly, counseling and coaching have been identified as the first steps that should be used by supervisors to address problematic employee behavior based on observation and feedback of an employee's work performance. "Good positive discipline is largely the result of proper training, and training is one of the basic responsibilities of the police supervisor..."⁸ This statement rings true even now.

The goal of discipline policies should be to change behavior, not to punish people. The question police agencies need to ask is, how well are our policies working toward that end? The traditional non-punitive methods applied in employee performance evaluations focus on counseling, coaching, and goal setting. After completion of this step in a progressive system, the next action is generally viewed as punitive in nature as it involves issuing written reprimands. Progressive discipline processes typically treat employees with increasingly severe actions until they alter their behavior or are discharged."⁹ In their research, King and Wilcox found that traditional forms and methods of established disciplinary processes were "ineffective in many situations."¹⁰ The traditional progressive method of discipline was viewed solely as punishment and not as a way to help an employee change or improve their behavior.

As stated above, generally, discipline is applied when behavior or performance needs to be corrected. Again, the traditional route for discipline usually involves progressive steps dependent on the nature of the problem / issue, starting with oral counseling, progressing to written reprimands and then to punitive outcomes involving suspensions and finally termination of employment. Based on the

transgression, the appropriate level of discipline is applied. Unfortunately, there is a strong argument that this traditional path does not effectively move employees toward remediation. Historically, the progression of the traditional course to get offenders on a productive path moves to the relational aspect. Coaching and counseling should be viewed as an opportunity for the employees to improve his/her performance by changing his/her behavior. The supervisor must continue to follow up with coaching and feedback to the employees over time. "Coaching...can happen through critique of performance, provision of skills training, exhortation to higher achievement and provision of rewards and sanctions."¹¹ (Notwithstanding the desirable outcomes of coaching and counseling, the application of progressive disciplinary processes may be better served through more recent alternative approaches to discipline which have been adopted by a number of law enforcement agencies.

The Los Angeles County Sheriffs Department (LASD) is the first national law enforcement agency we have found that utilizes an organized education plan as an alternative to punitive discipline. Education-Based Discipline (EBD) is an innovative option to traditional disciplinary suspensions. EBD reduces management-employee conflict and embitterment that results from tactics such as withholding employees' pay. Instead, offering optional behavior-focused education and training department-wide, enhances communication, character, competence and trust.

As communicated through the LASD website, "The Mission of EBD is to develop an individualized remedial plan with the involvement of the employee, that emphasizes education, training, and other creative interventions thereby promoting a more comprehensive and successful outcome."¹² As noted in his article, "Education Based Discipline,"¹³ Robert Zink, Ph.D. lauds the innovative LASD education based disciplinary program now serving as a model alternative discipline program that is being promoted and shared with other law enforcement agencies across the country and Canada. "The focus of discipline should be on creation of a corrective action plan rather than punishment for punishment's sake. The plan should emphasize training and remediation along with more creative interventions designed to correct deficits in performance and maximize the likelihood of the Department member and his or her peers responding appropriately in the future."¹⁴

The Houston Police Department has also worked to create a constructive alternative model. Rather than merely issuing the standard suspension-without-pay punishments, officers may be presented with the opportunity to do something constructive. One example is offering law enforcement personnel the opportunity to participate in community projects within the jurisdiction. They are offered opportunities such as doing free home repairs for persons who could not otherwise afford the labor costs in the open market. While the law enforcement member could decline the offer for the alternative activity, the system is

nevertheless designed to increase the number of ways employees' actions can be reoriented to the agency's standards.

The Madison Police Department in Wisconsin has also implemented an Alternative Discipline Program, which provides for alternatives to the traditional suspension without pay penalties. A long-standing problem with imposing suspensions as part of progressive discipline for excessive absences and/or tardiness only resulted in more time off for law enforcement personnel without addressing the potential underlying causes. One such example was the case of an officer who as the result of financial problems was excessively tardy due to the fact that he worked multiple jobs. In lieu of a suspension without pay, he was ordered to attend a financial management course at his own expense aided by a low cost referral from the agency's Employee Assistance Program.

Likewise, similar innovative education based and remedial focused disciplinary programs have been initiated within the Phoenix and Las Vegas Police Departments. Additionally reform initiatives are underway within the San Francisco Police Department.

While discipline should be administered equitably and fairly, one size does not fit all. A broad brush approach to remediating misconduct is not likely to result in improved performance or behavior modifications. Dr. Laurence Miller, police psychologist observes that law enforcement discipline rarely has to be all-or-nothing and most problem law enforcement members can be salvaged if treated correctly.¹⁵ Historically, the solution to the problem of proper discipline has been to "strike a balance" between doing little about reports of misconduct and being oppressively harsh. This creates a tension which, when properly managed, enforces compliance with agency rules without harming agency relations with law enforcement members.

Ultimately, the acceptance of and benefits from these alternative approaches to discipline rely heavily on an agency's organizational and cultural dynamics. Reform efforts directed at enhancing an agency's organizational culture will well serve to support implementation of such model programs within the law enforcement community. There are a number of definitions of discipline and two are pertinent to the above discussion. One is the traditional corrective definition synonymous to punishment. However, that punishment should be remedial. The other pertinent definition of discipline is that of training, or repetitive learning. We suggest that both are viable to modifying the behavior of those employees whose conduct is not up to standard. There are non-traditional alternatives of discipline, such Education Based Discipline that may prove to be a better way.

There are traditional and alternative approaches to discipline, but there is an old adage of unknown origin, "If you take care of your people, they will take care of

getting the job done.” Police leaders need to learn how to take care of their people by developing them through reward and discipline.

¹ Entrepreneur. Employee-proposed discipline: how well is it working? Karen N. King and Denise E. Wilcox. Summer, 2003. <http://www.entrepreneur.com/tradejournals/article/print/160713340.html>. Accessed 1/26/10.

² Understanding Domestic Violence with Richard Davis, ALM: Proactive domestic violence intervention in LE families. Richard Davis. 2/13/2006. http://www.policeone.com/pc_print.asp?vid=123264. Accessed 1/26/10.

³ International Association of Chiefs of Police. Domestic Violence by Police Officers: A Policy of the IACP Police Response to Violence Against Women Project. Effective Date: July 2003.

⁴ Public Agency Training Council. Handling Sexual Misconduct by Public Safety Officers is a Job for Us, not the Courts. Lou Reiter. <http://www.patc.com/weeklyarticles/job-for-us.shtml>. Accessed 1/26/10.

⁵ Understanding Domestic Violence with Richard Davis, ALM: Proactive domestic violence intervention in LE families. Richard Davis. 2/13/2006. http://www.policeone.com/pc_print.asp?vid=123264. Accessed 1/26/10...

⁶ Gourley, G. Douglas, “Police discipline,” *Journal of Criminal Law and Criminology*, Vol. 41, No. 1, May/June 1950, pp. 85-100, p. 85

⁷ *Id.* at 85..

⁸ *Id.* at 93.

⁹ Entrepreneur. Employee-proposed discipline: how well is it working? Karen N. King and Denise E. Wilcox. Summer, 2003. <http://www.entrepreneur.com/tradejournals/article/print/160713340.html>. Accessed 1/26/10.

¹⁰ *Id.*

¹¹ David J. Forrest, Ph.D. Successful Coaching and Counseling by Supervisors: A Key to Employee Retention, March 2000, <http://www.keepemployees.com/WhitePapers/coac-hing.pdf>.

¹² <http://www.lasd.org/divisions/leadership-training-div/bureaus/ebd/>.

¹³ <http://www.lasd.org/divisions/leadership-training-div/bureaus/ebd/assets/zink-eba-article.pdf>

¹⁴ <http://www.lasd.org/divisions/leadership-training-div/bureaus/ebd/>

¹⁵ <http://www.policeone.com/chiefs-sheriffs/articles/135070-Bad-cops-to-good-cops-The-continuation/>

LEGAL CONSIDERATIONS

It is important to recognize that there are legal considerations that must be factored into any agency's decisions regarding employee conduct, including misconduct that occurs when the employee is off duty. It is recommended that policies and practices dealing with the issues addressed in this paper be made in consultation with agency legal counsel whose advice can keep agency administrators from making well-intentioned, but legally unsound, decisions. The following discussion points out some of the laws and legal considerations that should be taken into account when dealing with misconduct that impacts the core values of law enforcement. Specifically, the legal considerations relevant to the growing use of social networking/media by employees and to the increased problem of domestic violence are given greater focus in this section.

Social media and police credibility

There is a developing area of the law implicating the use of social media and networking that concerns employees who are disciplined for expressing themselves on the Internet, while on-duty or off-duty. Some of the issues that arise include free speech rights, violations of conduct unbecoming policies, and the burgeoning area of e-discovery and the use of electronically stored information in litigation.

Free speech:

A public employee's free speech rights are more limited than the free speech rights enjoyed by the general public. Public employees are not protected from discipline at work when they speak on matters of purely private concern.¹ The key evaluation must be whether the public employee's speech touches on a matter of public concern. If it does, the courts must balance the public employer's legitimate interest in maintaining an efficient and effective provision of governmental services against the employee's interest in commenting on a matter of public concern.²

Although dealing with a police officer's use of video media rather than social networking, the case of *San Diego v. Roe*, 543 U.S. 77 (2004) is illustrative of the rationale that is applied when an employee, terminated for off-duty conduct that is released through various media forms, claims the termination of his employment violated his First Amendment rights. The case involved a San Diego police officer who made a video of himself stripping off his police uniform and engaging in sexual acts. He sold the videos on the Internet through eBay. When his supervisors discovered the video, the officer was terminated from his employment. In evaluating the public employee's free speech right, the United

States Supreme Court performed the balancing test and determined that the officer took “deliberate steps to link his videos to his police work in a way that was injurious to his employer, that his expression did not qualify as a matter of public concern under any view of the public concern test.”³ Thus, there was not a violation of the employee’s free speech rights.

In *Curran v. Cousins*, 509 F.3d 36 (1st Cir. 2007), a corrections officer sued the sheriff’s department alleging he was terminated in retaliation for exercising his First Amendment free speech rights by posting statements on the union Web site. The officer’s statements included comparing the sheriff to Hitler, the sheriff’s commanders to Hitler’s generals and the officers to Jews who were marched to death chambers. The court found that the sheriff’s department had adequate justification for terminating the officer and that the termination did not violate the officer’s speech rights, even though some other statements in the posting arguably touched on matters of public concern.⁴

The Tenth Circuit⁵ affirmed a judgment against a police officer who was suspended after refusing to remove a black band across his badge which he wore to express his grief after learning of the death of a policewoman who had been killed in the line of duty. The court rejected the officer’s contention that his suspension violated his right of free speech. While the death of an officer could conceivably be a topic of general interest to the public under certain circumstances, the officer’s personal expression of grief was not. In order for a public employee’s speech to be of public concern, it is not always enough that its subject matter could, in certain circumstances, be the topic of general interest to the public. What is said on the topic must itself be of public concern.⁶

A law enforcement agency does not violate the First Amendment by discharging an employee whose active participation in an organization with a history of violent activity (Ku Klux Klan), including statements made publicly, identifying the officer as both a member of the Klan and an employee of the sheriff’s office.⁷ The court held that the First Amendment does not protect personal behavior in the law enforcement context to the same extent that it does in other areas of government concern. Noting the need for high morale and internal discipline in a police force, the court observed that a reasonable likelihood of harm (created by adverse public reaction that could seriously threaten to cripple the ability of the law enforcement agency to perform public duties) effectively was enough to support full consideration of the sheriff’s department’s asserted interests in restricting its employees’ speech.⁸

The dismissal of an officer did not violate his First Amendment rights to send racist mailings to charitable organizations since the actual and potential

disruption of having a known racist police officer on the force and in the media spotlight outweighs the First Amendment value of the officer's speech.⁹

A court rejected a police officer's contention that his First Amendment free speech rights were violated when he was dismissed for discussing an ongoing criminal investigation with a television reporter.¹⁰ Observing that there could be no justification for discussion by a police officer of an ongoing criminal investigation with an individual not associated with the police department, the court reasoned that the police department could not perform in an efficient and productive manner if its individual officers were at liberty to freely discuss specific persons and matters under investigation with members of the public at large.

In another case, a municipality's interest in maintaining an effective and efficient operation of the police department outweighed a police officer's First Amendment interest in maintaining a sexually explicit website featuring himself and his wife. The officer's activities were detrimental to the mission and functions of the department by undermining the public's respect and confidence in its police force.¹¹

The fact that a public employee makes comments on a variety of social networking sites does not provide the public employee with a heightened free speech protection. The balancing test remains the same, only the media in which the expression is made has changed. The rationale established in the cases noted above can be applied with equal force to speech made on a public employee's social networking web site.

Conduct unbecoming policy violations and social media:

Virtually every law enforcement agency has one or more policies and/or core values that require officers to conduct themselves, whether on or off duty, in a manner that will not bring discredit to themselves, their department, or their fellow officers. These "conduct unbecoming" policies can be applied to a wide variety of misconduct. The explosive growth of social media and networking as a means of communication in our society has created new categories of employee misconduct that can constitute "conduct unbecoming." The case of *Marshall v. Mayor and Alderman of City of Savannah, et al.*, 2010 WL 537852 (C.A. 11, Ga.) offers insight into how courts may treat appeals of discipline imposed by employers when an employee's use of social media violates agency policies. Marshall, a female firefighter, posted a variety of photographs on her personal MySpace account, including pictures of the Savannah FD firefighters. She also posted two photos of her, one captioned "Fresh out of the shower" and one showing her bare backside. In both photos, it was difficult to tell what clothing, if any, she was wearing.¹²

Savannah Fire learned about Marshall's MySpace photographs from an anonymous caller who reported that the images "may conflict" with the way Savannah FD wanted to be portrayed.¹³ Initially, the fire chief issued Marshall an oral reprimand for posting pictures which brought "discredit to the City and Savannah Fire Department."¹⁴ The department then issued a General Order reiterating the department's policy that Savannah Fire's identity could not be used for personal, recreational, or fraternal endorsement without the permission of the fire chief. All employees were notified that they must remove any such identifiers from their web pages. Marshall did not remove all of the photos from her MySpace page and, as a result, she was terminated from her employment. The court upheld the termination.

Social networking sites as evidence and as e-discovery:

The growing use of social networking web sites gives attorneys the opportunity to gather evidence from these sites for both criminal and civil cases. The American Bar Association reported that discovery of evidence on social networking web sites is becoming much more common in civil and criminal trials.¹⁵ Law enforcement and prosecutors use social networking sites to identify suspects and build cases. Defense attorneys search for information on social networking sites that exculpate their clients, impeach a state's witness or provide a basis for a reduced sentence or post-conviction review.¹⁶

Defense attorneys are always looking for ways to impeach witnesses, particularly police officers who are witnesses for the prosecution. Finding an officer's personal social networking website may provide an opportunity for such impeachment if the officer has posted information that could be used to cast him (or his agency) in a negative light. Defense counsel will certainly attempt to use postings that show an officer's propensity for violence or punishment, intoxication, ethnic or racial slurs or jokes, and other such information as impeachment evidence. "Criminal defense is now virtual defense. And, unlike memories that fade with time or physical evidence that deteriorates, a Web site will continue communicating to a global audience for a long time."¹⁷

There are two ways to get information from social networking sites. The first is to simply search for it directly to see how much information can be obtained. It has been stated that "there's nothing wrong with obtaining information that is publicly available; if an adverse party, witness or custodian of data exposes elements of his or her personal universe for any and all to see on a social networking site, it is fair game."¹⁸

The second way is by traditional methods such as discovery requests, interrogatories or depositions. Questions regarding whether a person has a

social networking page and the specific web site address will become, or already are, standard discovery questions.

Electronic discovery places a huge burden on agencies. Rule 34(a) of the Federal Rules of Civil Procedure states, in part:

Any party may serve on any other party a request (1) to produce and permit the party making the request...to inspect, copy, test, or sample any designated documents or **electronically stored information** – including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations **stored in any medium from which information can be obtained**... . (Emphasis added).

Although Rule 34(a) does not specifically identify social networking sites, the wide reach of the rule has already captured relevant email and text messages whether the information is contained on government computers and phones, or on personally owned computers and phones used by government employees to communicate business-related matters. Agencies can anticipate that in the near future “litigation hold” notices will include social networking pages as data that an agency is required to preserve.

Domestic Violence

Police officers are involved in incidents of domestic violence at an alarming rate. Agencies must have policies and procedures in place to investigate, discipline and, if necessary, terminate officers who commit domestic violence offenses. As one court aptly stated:

Domestic violence, even if an isolated event, is not an innocent mistake of “poor judgment” or ordinary negligence, but rather a volitional act with consequences of which a law enforcement officer is, or should be, aware. It is reasonable and rational to conclude . . . that continued employment of a peace officer charged with a violent crime would jeopardize the department’s good will and other rightful interests . . . even though the conduct was outside of work time.¹⁹

Domestic violence as conduct unbecoming:

Agencies must act upon notification that an officer has been involved in a case of domestic violence. Initially, many agencies place the officer on paid

administrative leave and begin an Internal Affairs investigation. If the officer is charged criminally, some agencies make the policy decision to keep the officer on leave until such time as the criminal charges are resolved. Other agencies choose to move forward with the investigation without waiting for the criminal case to conclude. Often, criminal charges will not be filed against the officer because the domestic partner refuses to cooperate with the prosecutor. Agencies do not need to have a conviction in order to take disciplinary action against officers involved in acts of domestic violence. Agencies often proceed with disciplinary actions when the investigation reveals that an act of domestic violence did occur, on the basis that such conduct violates the agencies conduct unbecoming policy. The outcome of a criminal trial is irrelevant to the determination of whether the agency properly disciplined or terminated the officer's employment based upon a finding that he had violated the agency's policy by exhibiting conduct unbecoming of an officer.²⁰

The following cases reflect that courts will uphold discipline based upon a sustained finding of conduct unbecoming when domestic violence is established:

- In *Whitely v. Department of Justice*,²¹ the court upheld a finding that a former ATF officer had engaged in conduct unbecoming an ATF special agent where the officer threw his girlfriend against a column in their home, struck her with a pewter cross and caused her to suffer several bruises and cuts during a domestic dispute. The termination of the agent's employment was upheld.
- In *Chesser v. City of Hammond, Indiana*,²² the court held that the termination of a police officer was supported by findings that the officer used excessive force against his wife during a domestic violence dispute.
- In *Wahle v. City of St. Cloud*,²³ 1990 WL 125552 (Minn. Ct. App. 1990), the court held that the city acted reasonably in terminating a police officer's employment for conduct unbecoming an officer after the officer pleaded guilty to three counts of assault regarding physical abuse of his wife and children, finding that the officer's off-duty conduct fell far short of the standards required of police officers. The court found it persuasive that the officer used his position as a police officer to coerce and intimidate his wife and children. The court expressed concern as to how the officer would function if he returned to his position as a police officer, both with respect to the public, as well as his fellow officers.
- The court in *Gant v. Department of Police*²⁴ held that a police officer's battery upon his girlfriend warranted the disciplinary action of termination and that the Civil Service Commission abused its discretion in modifying the dismissal to a 30 day suspension. "The act of domestic violence at the hands of a commissioned police officer under any circumstances is particularly reprehensible and obviously prejudicial to the efficient operation of the police department."²⁵

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- In *State ex rel. Reedy v. Law Enforcement Disciplinary Committee*,²⁶ the court held that a municipal police officer's domestic violence against a former girlfriend was conduct unbecoming an officer that justified commencement of disciplinary proceedings against the officer.

An agency's repeated failure to discipline officers involved in domestic violence incidents can create municipal liability.

It is not uncommon for a police officer's spouse, partner or children to bring a civil rights action against the officer, the agency and the municipality based upon the contention that the city failed to take any action against the officer who had committed acts of domestic violence. A common allegation in such lawsuits is that the city had a custom or policy of condoning or failing to discipline police officers who commit domestic violence. A city can only be liable on such federal claims if plaintiff's injuries were the result of a municipal policy or custom.

An express city policy need not be shown in order to state a claim against a city. A pattern of conduct by municipal employees may rise to the level of a city policy, custom or usage thus giving rise to municipal liability. Plaintiff must show a pattern of conduct. A single incident of unconstitutional behavior by a municipal employee is insufficient to hold a city liable.²⁷ Where the pattern of conduct is widespread it may give rise to an inference of actual or constructive knowledge on the part of the city.²⁸ Once the city has knowledge and fails to act to curb the conduct, the pattern of conduct may be attributed to the city as a policy or custom if the city's failure to act rises to the level of deliberate indifference to the rights of those who are affected.²⁹ Finally, the plaintiff must prove that her injury was caused by the particular policy or custom shown.³⁰

A custom of failing to discipline police officers can be shown to be deliberately indifferent if the need for discipline is "so obvious and disciplinary procedures so inadequate as to be likely to result in the violation of constitutional rights such that a jury could attribute to the policy makers a deliberate indifference to the need to discipline the police force."³¹ A city can be found to be deliberately indifferent if there is evidence that it tacitly authorized or condoned the conduct that was occurring, that officers knew that it was very likely that they would not be punished for the conduct, or that the city failed to respond to complaints of domestic violence. Such findings could result in a determination that the city had a custom of not disciplining officers who commit domestic violence, leaving the plaintiff to then prove that there was a causal link between that custom and her injuries.³²

18 USC § 922 – restrictions on possessing a firearm may require action:

An officer who is convicted of the crime of domestic violence or who is the subject of a protective order may be prohibited by federal law from possessing a

firearm, thereby losing one of the fundamental job requirements of a police officer. 18 USC § 922(g) states, in pertinent part:

It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; ...

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

When an officer is being investigated for domestic violence, an agency must promptly inquire if the officer is subject to a protective order pending resolution of the case, or extending beyond the resolution. If such an order is in place, it may preclude the officer from possessing a firearm. This situation should be immediately discussed with legal counsel to aid in evaluating how to proceed in light of any restrictions place upon the officer's ability to possess a firearm.

Other legal considerations

Driving under the influence (DUI), driving while intoxicated (DWI), intoxication and drug use:

As discussed earlier in this paper, alcohol abuse and anabolic steroid use by officers are growing problems agencies face. Policies must be reviewed to make certain that the agency's expectations are clearly set forth. Policies must be implemented in a consistent manner.

The Americans with Disabilities Act (ADA) and the Rehabilitation Act do not preclude an agency from taking action in matters involving an officer's use of alcohol or drugs. While it is well established that the ADA considers alcoholism and drug addiction to be disabilities which warrant protection, a person who commits a criminal act as a result of a disability is not excused from the employment consequences of the criminal act because of the disability.³³

Each agency should be aware of relevant state laws governing their jurisdictions that impose social host or dram shop liability on those who provide alcohol to individuals who later are involved in accidents that injure others. Such laws and the potential for liability should always be a consideration when an agency hosts an event for its employees that includes providing alcoholic beverages.

An officer who is arrested for DUI/DWI will face the consequences imposed by state laws which may require a suspension or revocation of the officer's driver's license. Agencies must determine how the loss of a driver's license will impact the ability of an officer to perform the duties of his or her job. Officers may also be subject to suspension or revocation of their police certification by the state law enforcement certification authority (i.e. Police Officer Standards and Training (POST) council or similar bodies). Decisions concerning discipline and/or remediation and rehabilitation in cases involving alcohol and drug abuse must be made in conjunction with legal counsel and human resource professionals who can help agency administrators navigate through the numerous policies, issues and implications that arise in such cases.

¹ *Pickering v. Board of Education*, 391 U.S. 563 (1968).

² *Id.*

³ *San Diego v. Roe*, 543 U.S. 77 (2004).

⁴ *Curran v. Cousins*, 509 F.3d 36 (1st Cir. 2007).

⁵ *Wilson v. Littleton*, 732 F.2d 765 (10th Cir. 1984).

⁶ *Id.*

⁷ *McMullen v. Carson*, 754 F.2d 936 (11th Cir. 1985).

⁸ *Id.*

⁹ *Pappas v. Giuliani*, 118 F. Supp. 2d 433(S.D.N.Y. 2000).

¹⁰ *Ely v. Honaker*, 451 F. Supp. 16 (W.D.Va 1977), aff'd without op, 588 F. 2d 1348 (4th Cir).

¹¹ *Dible v. City of Chandler*, 515 F. 3d 918 (9th Cir. 2008).

¹² *Marshall v. Mayor and Alderman of City of Savannah*, 2010 WL 537852 (CA 11, Ga.),

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Stevenson, Karen L. "What's On Your Witness's MySpace Page?", LITIG.NEWS, Mar. 2008, available at http://www.abanet.org/litigation/litigationnews/2008/march/0308_article_myspace.html.

¹⁶ Strutin, Ken, "Evidence in an Age of Self-Surveillance," LTNLAW Technology News, 3/11/2009, <http://www.law.com/jsp/lawtechnologynews/PubArticleFriendlyLTN.jsp?id=1202428950936>

¹⁷ *Id.*

¹⁸ Shinier, Clifford F., "Friend or Foe? Social Networking and E-discovery," Inside Counsel, 2/18/2010 issue, <http://www.insidecounsel.com/Issues/2010/February-2010/Pages/Friend-or-Foe--Social-networking-and-EDiscovery.aspx?page=2#>

¹⁹ *Fieeiki v. Dept. of Workforce Services*, 122 P. 3d 706 , 709 (Utah App. 2005).

²⁰ *DeKalb County v. Bull*, 672 S. E. 2d 500, 503 (Ga. App. 2009).

²¹ *Whitely v. Department of Justice*, 137 Fed. Appx. 337 (Fed. Cir. 2005)

²² *Chesser v. City of Hammond, Indiana*, 725 N.E. 2d 926 (Ind. Ct. App. 2000)

²³ *Wahle v. City of St. Cloud*, 1990 WL 125552 (Minn. Ct. App. 1990)

²⁴ *Gant v. Dept. of Police*, 750 So.2d 382, 1999-1351 (La.App. 4Cir. 2000).

²⁵ *Id.*

²⁶ *State ex rel. Reedy v. Law Enforcement Disciplinary Committee*, 457 N.W. 2d 505 (Ct. App. 1990)

²⁷ *Strauss v. City of Chicago*, 760 F. 2d 765, 767 (7th Cir. 1985).

²⁸ *Williams v. City of Chicago*, 658 F. Supp. 147, 152 (N.D. Ill. 1987).

²⁹ *Canton v. Harris*, 489 U.S. 378 (1989).

³⁰ *Spell v. McDaniel*, 824 F. 2d 1380, 1390-91 (4th Cir. 1987).

³¹ *Czajkowski v. City of Chicago*, 810 F. Supp. 1428, 1439 (N. D. Ill.).

³² *Id.* at 1440.

³³ See, e.g. *Newland v. Dalton*, 81 F. 3d 904, 906 (9th Cir. 1996)(Rehabilitation Act not violated by terminating alcoholic who attempted to fire a weapon in a bar); *Williams v. Widnall*, 79 F. 3d 1003, 1006-07 (10th Cir. 1996)(Rehabilitation Act does not require employer to accept threatening behavior by alcoholic even if the behavior is related to alcoholism); *Maddox v. University of Tennessee*, 62 F. 3d 843 (6th Cir. 1995)(drunken driving linked to alcoholism may still be ground for termination under the ADA); *Little v. FBI*, 1 F.3d 255, 259 (4th Cir. 1993)(drunken driving and drinking on the job by alcoholic may be cause for termination under Rehabilitation Act).

SUMMARY AND CONCLUSIONS

Discipline is essential to the integrity of and the effective operation of law enforcement agencies for the benefit and best service to their community. There is a perception and a number of studies indicate a rising and troubling trend of misconduct in police behavior. We have included but a few categories of behavior that cannot be tolerated in law enforcement, in order for the agency to build strong, trusting relationships with the people served. However, the approaches in the policies that agencies address and accomplish this discipline have changed over time. While some early successes are evident, it will take the test of time to see if we are headed in a more effective path for discipline. Education and alternatives to punishment, such as community service may be a viable option of choice in order to remediate and/or modify behavior of the offenders.

This study would not be complete without some suggested considerations of root causes for the above-cited trends. The section by Dr. Corey cited some possibilities from the literature. The descriptions of categories are so vivid and apparent that they resonate with members of the Major Cities Chiefs Human Resources Committee. Below they are presented and/or adapted from Dr. Corey's section of this work. While his descriptions were focused on sexual misconduct, below additional comments are added to relate to other unacceptable behavior. These suggestions for possible root causes of misconduct are descriptive so that the chiefs and the human resource executives may have a starting point for further study.

1. Cognitive Distortions. These include (a) narcissistic traits or beliefs about themselves which support victimization of others, such as entitlement, moral virtuosity, intellectual superiority, possessing strong attractiveness (sexual or otherwise), and owing no special duty to others, and (b) attitudes that support victimization, such as viewing the victim as deserving, enjoying, seeking, or not minding the act; viewing the victim as interested in or solicitous of the act; blaming the victim (e.g., by their unlawful actions, by their provocative dress or behavior); regarding the victim as untrustworthy and unlikely to be believed; and lack of empathy for the victim.
2. Deviant Sexual Attractions. These include sexual hyperactivity or obsession; sexualized violence; and paraphilias, such as exhibitionism, voyeurism, pedophilia, sexual sadism, etc. While these apply directly to sexual misconduct, when the behaviors are present, other non-sexual misconduct may also be present.
3. Socioaffective Deficits. This category encompasses aggressive thinking (such as paranoia, propensity for anger, suspiciousness, and being quick to hold themselves out as a victim), inadequacy (low self-esteem, assigning blame and

responsibility to others), distorted balance of intimacy (i.e., emotional intimacy is easier with children or strangers than with familiar adults), callous and unemotional traits, and emotional loneliness (including lack of intimate relationships and difficulty or unwillingness to create intimate relationships). This description may apply to many instances of misconduct.

4. Poor Self-Regulation. This includes an impulsive lifestyle; use of sex as a coping strategy; poor problem solving (e.g., poor problem recognition, poor consequential thinking, rigidity in thinking); poor emotional control; and use of disinhibitors, such as drugs, excessive alcohol, and pornography. While this description may not be pronounced and perhaps not apparent during the recruiting and hiring of individuals, without appropriate supervision, the stresses of policing may cause poor self-regulation.

5. Adverse Social Influences. This category involves association with peers who share or reinforce attitudes supportive of misconduct (sexual, or otherwise); association with peers who support or reinforce misbehavior, including deviant sexual interests; and involvement in an organizational or community culture that permits or does not punish misconduct or sexual impropriety.

6. Decision Chain History. This last category includes the age of the individual's first sexual offense; the nature of the person's offense path (e.g., active vs. passive); the prior history of antecedents, behaviors and consequences; and the history of offense progression. While this category is in the context of sexual behavior, other misconduct may also have a progression.

Recognizing misconduct and addressing the offender are responsibilities of those in leadership positions, from executive levels through first line supervision. The vision of leadership, the mission of the agency, and the guiding principles of the organization must permeate throughout the process of growing a law enforcement agency with integrity. From recruitment, through hiring, training, educating, assignments, promotions, and to retirement, discipline must be designed to promote the growth of trust and service both within the agency and to the community served. As stated above, protecting the integrity of a law enforcement agency, using appropriate discipline, and promoting effectiveness are arguably the greatest challenges faced by its leaders. These challenges require a clear articulation of the organization's expectations for integrity, discipline among members to uphold this expectation, and a consistent application of the standard for effectiveness throughout all ranks.

APPENDIX ONE

International Association of Chiefs of Police

DOMESTIC VIOLENCE BY POLICE OFFICERS

A Policy of the IACP: Police Response to Violence Against Women Project

Effective Date: July 2003

DOMESTIC VIOLENCE BY POLICE OFFICERS

A Policy of the IACP *Police Response to Violence Against Women Project*

Effective Date: July 2003

I) PURPOSE

This policy recognizes that the profession of law enforcement is not immune from members committing domestic violence against their intimate partners. The purpose of this policy is to establish procedures for handling acts of domestic violence committed by police officers and for implementing prevention strategies. This policy will provide police executives, officers, and all department employees guidance in addressing incidents where one (or more) party to a reported domestic violence incident is an employee, whether sworn or civilian, of any rank in the department.

II) POLICY STATEMENT

This policy offers a comprehensive, pro-active approach to domestic violence by police department employees with an emphasis on victim safety. It delineates a position of zero tolerance by the department. It is imperative to the integrity of the profession of policing and the sense of trust communities have in their local law enforcement agencies that leaders, through the adoption of clear policies, make a definitive statement that domestic violence will not be tolerated. In the process of implementing this policy, the department should review the records of all employees to determine whether convictions for qualifying misdemeanor crimes of domestic violence (MCDV) or valid protection orders exist. If an employee is found to have a MCDV or is the subject of a qualifying protection order, department legal counsel and/or city/county attorney shall be consulted immediately regarding continued employment or duty assignment.

Federal law prohibits police officers convicted of qualifying misdemeanor domestic violence crimes from possessing firearms.

Officers found guilty of a qualifying domestic violence crime through criminal proceedings shall be terminated.

**For the definitions of qualifying misdemeanor crime of domestic violence and qualifying order of protection that trigger federal firearm provisions, see the Concepts and Issues Paper, page 1, section B, Definitions.*

III) DEFINITIONS

"Domestic violence" refers to an act or pattern of violence perpetrated by a police officer upon his or her intimate partner not done in defense of self or others, including but not limited to the following:

- Bodily injury or threat of imminent bodily injury
- Sexual battery
- Physical restraint
- Property crime directed at the victim
- Stalking
- Violation of a court order of protection or similar injunction
- Death threats or death

An "intimate partner" of a police officer is any person who meets one or more of the following criteria:

- Is or was legally married to the police officer
- Has a child in common with the police officer
- Has or had a dating relationship with the police officer
- Is specified as an intimate partner by state law
- Is cohabitating or has cohabitated romantically with the police officer

"Protection order" refers to any injunction or other order issued by a court, including criminal or civil orders of protection, regardless of form, content, length, layout, or name (such as stay away, restraining, criminal, and emergency or temporary protection orders or injunctions), issued for the purpose of preventing the following:

- Violent or threatening acts against another person
- Stalking or harassment of another person
- Contact or communication with another person
- Physical proximity to another person

IV) PROCEDURES

While prioritizing the safety of victims, this policy is designed to address prevention through hiring and training practices, provide direction to supervisors for intervention when warning signs of domestic violence are evident, institutionalize a structured response to reported incidents of domestic violence involving officers, and offer direction for conducting the subsequent administrative and criminal investigations. Components of the policy include: A) Prevention and Training B) Early Warning and Intervention C) Incident Response Protocols D) Victim Safety and Protection E) Post-Incident Administrative and Criminal Decisions.

A) PREVENTION AND TRAINING

The department will adhere to a zero-tolerance policy towards police officer domestic violence and will not tolerate violations of the policy. The department will provide ongoing training to every officer on domestic violence and the zero-tolerance policy throughout all phases of the police officer's career.

1) Prevention Through Collaboration

- (a) Through ongoing partnerships with local victim advocacy organizations the department shall develop domestic violence curricula and train officers in order to enhance the officers'/agency's response to victims.
- (b) The department shall provide local domestic violence victim advocacy organizations copies of all domestic violence training curricula, protocols and policies for review and possible revision.

2) Training Topics

Upon implementation of this policy, all officers shall receive comprehensive mandatory instruction covering the following topics:

- (a) Understanding Domestic Violence
- (b) Departmental Domestic Violence Response Protocol
- (c) Warning Signs of Domestic Violence by Officers
- (d) Victim Safety
- (e) Federal Domestic Violence Laws

(For details on these training topics, see Concepts and Issues Paper, section A) Prevention and Training, #2)

3) Ongoing Training

Departments shall use a variety of training techniques including in-service, roll-call, FTO, ride-alongs, and training bulletins to regularly

reinforce standards of effective response protocol.

4) Program Evaluation

To enhance the effectiveness of the training, departments should work with internal or external research resources to evaluate the training and its impact.

B) EARLY WARNING AND INTERVENTION

1) Pre-Hire Screening and Investigation

- (a) Certification agencies and/or departments shall conduct thorough background investigations of all potential new employees using address history, driver's record, protection order database and a search on IADLEST.
- (b) All candidates shall be asked if they have engaged in or been investigated for domestic violence and asked about any past arrests, suspended sentences, diversion programs, convictions, and protection orders related to elder abuse, child abuse, sexual assault, stalking, or domestic violence.
- (c) Those candidates with a history of perpetrating violence (to include: elder abuse, child abuse, sexual assault, stalking, or domestic violence) should be screened out at this point in the hiring process.
- (d) Candidates shall be clearly informed of the department's position of zero tolerance concerning domestic violence by officers.

2) Post Conditional Offer of Employment

- (a) The psychological screening of all viable candidates will focus on indicators of abusive tendencies in their background.
- (b) Departments should strongly consider a no-hire decision in the case of a candidate with tendencies indicative of abusive behavior.

3) Post-Hire Intervention

- (a) When new officers are hired, the department shall reach out to their intimate partners/family members to introduce this policy and other relevant department policies.
- (b) Departments should engage in periodic outreach to officers and their intimate partners/family members with information on this policy, the point of contact within the department and referrals for local support services.

4) **Department Responsibilities**

- (a) The department shall develop cross-jurisdictional MOUs to ensure timely notification of an incident involving an officer.
- (b) The department shall, either in response to observed warning signs or at the request of an officer, intimate partner, or other family member, provide non-punitive avenues of assistance before an act of domestic violence occurs.
- (c) The department shall inform officers of the procedure for seeking confidential referrals, either internally or externally, to confidential counseling services.
- (d) A disclosure on the part of any officer, intimate partner or family member to any member of the department that an officer has personally engaged in domestic violence will be treated as an admission or report of a crime and shall be investigated both administratively and criminally.

5) **Supervisor Responsibilities**

- (a) Supervisors shall be cognizant of and document any pattern of abusive behavior potentially indicative of domestic violence including but not limited to the following:
 - i. Aggressiveness
 - a. Excessive and/or increased use of force on the job
 - b. Stalking and inappropriate surveillance activities
 - c. Unusually high incidences of physical altercations and verbal disputes
 - d. Citizen and fellow officer complaints of unwarranted aggression and verbal abuse
 - e. Inappropriate treatment of animals
 - f. On- or off-duty officer injuries
 - ii. Domestic violence-related issues
 - a. Monitoring and controlling any family member or intimate partner through such means as excessive phone calling
 - b. Stalking any intimate partner or family member
 - c. Discrediting and/or disparaging an intimate partner
 - iii. Deteriorating work performance
 - a. Tardiness
 - b. Excessive absences

- c. Alcohol and drug abuse
- (b) When the supervisor notes a pattern of problematic behavior (as detailed above), the supervisor shall:
 - i. Address the behaviors through a review or other contact with the officer and document all contacts
 - ii. Forward written reports capturing the behaviors to the chief through the chain of command in a timely manner to determine discipline as warranted
 - iii. Prepare and submit to the chief a written request for a psychological exam/ counseling by a psychologist/psychiatrist who is knowledgeable about domestic violence.
 - iv. When warranted, request the chief order an officer to seek assistance from a certified program for batterers, and if such a program is not available, a counselor knowledgeable about domestic violence.

6) **Police Officer Responsibilities**

- (a) Officers are encouraged to take personal responsibility in seeking confidential referrals and assistance from the department to prevent a problem from escalating to the level of criminal conduct against an intimate partner.
- (b) Officers who engage in the following actions will be subject to severe discipline up to and including dismissal:
 - i. Failure to report knowledge of abuse or violence involving a fellow officer
 - ii. Failure to cooperate with the investigation of a police officer domestic violence case (except in the case where that officer is the victim)
 - iii. Interference with cases involving themselves or fellow officers
 - iv. Intimidation/coercion of witnesses or victims (i.e., surveillance, harassment, stalking, threatening, or falsely reporting)
- (c) Officers who learn they are the subject of a criminal investigation, regardless of jurisdiction, are required to immediately make a report to their supervisors and provide notice of the court dates, times, appearances, and proceedings. Failure to do so may result in severe discipline up to and including dismissal.

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- (d) Officers who learn they are the subject of any protective order proceeding, whether or not the order is issued and regardless of jurisdiction, shall immediately notify their supervisor and provide a copy of the order, if issued. If subject to a qualifying protection order, the officer shall surrender all firearms unless department policy allows for possession of the primary service weapon. Failure to do so may result in severe discipline up to and including dismissal.

C) INCIDENT RESPONSE PROTOCOLS

1) Department-wide Response

- (a) The department shall accept, document, and preserve all calls or reports, including those made anonymously, regarding domestic violence as on-the-record information.
- (b) All reports of possible criminal activity implicating police officers in domestic violence shall be documented in accordance with the policies governing the handling of reports of domestic violence involving civilians.
- (c) The on-scene supervisor shall forward a copy of the report alleging domestic violence by the officer to the chief through the chain of command.
- (d) All such incident reports shall be made available by the department to the victim without cost.

2) Communications Response

- (a) Communications officers/dispatchers shall be instructed to assign a high priority to all domestic violence calls, including those that involve or appear to involve a police officer of any department.
- (b) Communications officers/dispatchers shall immediately notify the supervisor on duty and the dispatch supervisor of any domestic violence call received that involves, or appears to involve, a police officer, regardless of the involved officer's jurisdiction.
- (c) Communications officers/dispatchers shall prepare and preserve documentation of the facts and circumstances of the call, including the 911 tape, for use in potential administrative or criminal investigations.
- (d) Communications officers/dispatchers shall have available current contact information

of local domestic violence victim advocacy organizations for on-scene supervisors to provide to victims.

3) Patrol Response

- (a) Upon arrival on the scene of a domestic violence call or incident involving a police officer, the primary patrol unit shall immediately notify dispatch and request a supervisor of higher rank than the involved officer report to the scene, regardless of the involved officer's jurisdiction.
- (b) The responding officers shall perform the following actions:
 - i. Obtain needed medical assistance
 - ii. Address the immediate safety of all parties involved
 - iii. Secure the scene and preserve evidence
 - iv. Note all excited utterances, admissions and/or incriminating statements
 - v. Make an arrest if probable cause exists

4) On-Scene Supervisor Response

- (a) A supervisor of higher rank shall report to the scene of all police officer domestic violence incidents including a police officer, regardless of the involved officer's jurisdiction.
- (b) The on-scene supervisor shall assume command and ensure that the crime scene is secured and that all evidence is collected. Photographic and/or video documentation of the parties involved and scene shall be recorded where such resources are available.
- (c) The supervisor shall inquire as to the safety of all children present at the time of the incident and all children in the household. As appropriate and necessary, the children should be interviewed separately from other parties.
- (d) In cases where probable cause exists, the on-scene supervisor shall ensure an arrest is made.
- (e) If the alleged offender has left the scene and probable cause exists, the supervisor shall perform the following actions:
 - i. Exhaust all reasonable means to locate the alleged offender
 - ii. Ensure that an arrest warrant is sought, if unable to locate the alleged offender
 - iii. Document all subsequent actions in a timely manner

- (f) In the event that the victim has left the scene, the supervisor shall make every effort to follow through on the investigation and attempt to locate the victim.
- (g) Arrest of both parties involved in a domestic violence incident should be avoided. The supervisor shall ensure that a thorough investigation is conducted and an arrest of the dominant aggressor is made in accordance with state law.
- (h) Whenever an officer is arrested, the supervisor shall relieve the accused officer of all service weapons regardless of whether the officer is a member of the responding department.
- (i) Where allowable under federal, state, or local ordinances, all other firearms owned or at the disposal of the accused officer shall be seized for safety reasons.
- (j) The command staff officer shall inquire whether the victim wants any firearms removed from the home for safekeeping by the department and make arrangements as necessary.
- (k) The on-scene supervisor shall ensure the victim is informed of the following:
 - i. The judicial process and victim rights
 - ii. The department's policy on police officer domestic violence, procedures and cross-jurisdictional responsibilities as they apply
 - iii. The standard of probable cause for arrest
 - iv. Procedures for obtaining protective orders
 - v. Victim compensation
 - vi. The availability of an on-scene advocate
 - vii. The availability of confidential transportation to a location that can provide improved victim safety
 - viii. Community resources and local domestic violence victim service
 - ix. The option to remove firearms for safekeeping
- (l) Whenever a police officer involved domestic violence call does not result in an arrest or a warrant is not sought, the on-scene supervisor shall explain in a written report.
- (m) The on-scene supervisor shall notify the chief and the accused officer's immediate

supervisor as soon as possible. In the event that the officer is from another jurisdiction, the supervisor shall ensure that the accused officer's chief is notified. All notifications, and attempts to notify, shall be fully documented.

5) Additional Critical Considerations

- (a) When responding to a domestic violence complaint involving a police officer from another jurisdiction, all responding officers, investigators, and supervisors shall follow the same procedures that are to be followed in responding to a domestic violence complaint involving an officer from their own department.
- (b) In the event that the reported incident involves the chief of police or commissioner, the supervisor shall immediately notify the district/state's attorney and the individual in government who has direct oversight for the chief, for example, the mayor.
- (c) In responding to domestic violence incidents where the victim is a police officer, standard domestic violence response and investigation procedures should be followed.
- (d) In responding to domestic violence incidents where the parties involved are both police officers, standard domestic violence response and investigation procedures should be followed. After probable cause and dominant aggressor are determined, an arrest should be made and all service weapons of the accused officer confiscated.

If a protective order is issued against an officer, additional firearm seizure may be required under state law.

6) Department Follow-Up

- (a) In a timely manner, the chief shall ensure that all officers who responded to a police officer domestic violence call are debriefed. The debriefing shall include the following:
 - i. A review of department confidentiality guidelines
 - ii. A direct order prohibiting discussion of the incident outside of the official inquiry
 - iii. A clear delineation of assignments
- (b) Follow-up investigators shall proactively seek out information on existing protective orders and, if found, shall enforce them

and any applicable state and federal firearms laws and determine whether the officer violated department policy by failing to report the protective order.

- (c) Arrest warrants charging police officers with domestic violence and protective orders issued at a later time shall be served by no fewer than two officers with at least one being of senior rank to the officer being served. In cases where firearms have not previously been seized, firearms shall be seized if allowed by the department and decisions about service weapons will be made.
- (d) In the event the protection order expires or the victim asks that it be discontinued, the department shall still conduct a thorough administrative investigation.
- (e) Following the reported incident, the department shall designate a member of the command staff to perform the following duties:
 - i. Conduct a danger assessment of the accused officer to determine the potential for further violence and inform the victim of the possibility of danger regardless of the outcome of the assessment
 - ii. Act as a principal point of contact to keep the victim apprised of all developments
 - iii. Ensure that safety planning and danger assessment is made available to the victim
 - iv. Report the findings of the danger assessment to the chief who will make decisions concerning appropriate sanctions, administrative actions, and referrals for the accused officer

D) VICTIM SAFETY AND PROTECTION

- 1) Departments shall work with community resources and advocacy agencies to connect victims and their children with appropriate services.
- 2) The command staff designated as principal contact for the victim, shall inform the victim of confidentiality policies and their limitations, and ensure that confidentiality is maintained throughout the case.
- 3) All officers shall be aware of possible victim/witness intimidation or coercion and the increased danger when the victim leaves an

abusive partner. The designated principal contact shall assist the victim and children in safety planning and caution the victim to be alert to stalking activities.

- 4) If an officer suspects intimidation or coercion of the victim/witness is occurring, the officer shall prepare a written report to be delivered immediately to the investigator in charge of the case through the chain of command.
 - (a) In order to determine whether the victim/witness is being intimidated or coerced, the investigator in charge shall seek out secondary sources of information.
 - (b) Given the possibility that a victim will recant or choose not to participate in court proceedings, supplemental evidence shall be sought out and preserved.

E) POST INCIDENT ADMINISTRATIVE AND CRIMINAL DECISIONS

Departments shall conduct separate parallel administrative and criminal investigations of alleged incidents of police officer domestic violence in a manner that maintains the integrity of both investigations and promotes zero tolerance. Regardless of the outcome of the criminal case, the department shall uphold all administrative decisions. If the facts of the case indicate that domestic violence has occurred or any department policies have been violated, administrative action shall be taken independent of any criminal proceedings as soon as practicable.

The department will adhere to and observe all necessary protocols to ensure an accused officer's departmental, union, and legal rights are upheld during the administrative and criminal investigations.

1) Administrative Investigations and Decisions

The responsibility to complete the administrative investigation of a police officer domestic violence incident shall rest with the Internal Affairs Division of the department, or in the event that no such unit exists, the chief shall appoint an experienced investigator. The chief may ask an outside law enforcement agency to conduct the administrative investigation.

- (a) Regardless of whether an arrest was made on scene, the investigating official shall conduct an independent, comprehensive administrative investigation using standard elements of criminal investigations. Victims and witnesses shall be re-interviewed and their statements recorded; crime scene evidence,

- photographs, and medical records accessed; and 911 tapes requested.
- (b) Where sufficient information/evidence exists, the department shall take immediate administrative action against the accused officer that may include removal of badge and service weapons, reassignment, sanctions, suspension, or termination.
 - (c) When an investigation of an incident uncovers officers who had knowledge of violence on the part of another officer but failed to notify the department or engaged in actions intended to interfere with the investigation, the department shall investigate those officers and take disciplinary action and criminally charge as warranted.
 - (d) The chief shall determine whether and when the accused officer should be issued an administrative order of protection. (See Concepts and Issues paper, section C Incident Response Protocols, #6 department follow-up)
 - (e) If administrative policies and/or administrative orders of protection are violated or sufficient concern exists regarding a violation, the department shall initiate an independent administrative investigation, seize firearms as allowed under department policy as soon as practicable, and take disciplinary action up to and including dismissal.
 - (f) In determining the proper course of administrative action, a department shall consider factors including the level of danger an officer poses as indicated by the outcome of the danger assessment of the officer, the officer's history of compliance with departmental rules, prior written or verbal threats, history of aggressive behaviors, and existence of an alcohol or substance abuse problem.
 - (g) If the accused officer is assigned enforcement duties while the administrative and/or criminal investigations are under way, those duties should not include response to domestic violence calls.
 - (h) If the department determines through an administrative investigation that the officer violated department policy, regardless of whether the officer plead *nolo contendere* in response to criminal charges, the

department may employ the full range of administrative sanctions. Any officer determined through an administrative investigation to have committed domestic violence shall be terminated from the department.

2) **Criminal Investigations and Decisions**

The responsibility to complete a criminal investigation of an incident of police officer domestic violence shall rest with the domestic violence unit of the department, or in the event that no such unit exists, the criminal investigations unit or detective division. The chief may ask an outside law enforcement agency to conduct the criminal investigation.

- (a) The investigating official shall conduct criminal investigations as would be the case for any other criminal violation.
- (b) In accordance with the officer's and victim's privacy rights, the investigating official or agency shall conduct sufficient interviews (taped) of family members, friends, neighbors, colleagues, and others who may have information regarding criminal charges.
- (c) Even though an initial report may already exist concerning a police officer, reports of any subsequent or additional criminal or non-criminal incidents, which may include fellow officers engaging in surveillance or intimidation of the victim, shall be documented in separate incident reports, assigned a case number, cross-referenced with the original case number and investigated thoroughly.
- (d) The department shall completely investigate the charges and where warranted seek prosecution even in cases where the victim recants.
- (e) The department shall establish a liaison to work with the prosecuting attorney for each case. This officer shall present all the information to the prosecuting attorney for action and ask that decisions about the adjudication of the case be made in a timely manner.
- (f) As with any other case for criminal prosecution, the investigating officer shall request filing of court papers/complaints.

- (g) Any officer convicted through criminal proceedings of a domestic violence crime shall be terminated from the department.
- 3) **Termination Procedures**
- (a) Upon the decision to terminate an officer, the chief shall do the following in accordance with department policy and state law:
 - i. Notify the officer, in writing, of the effective date of termination
 - ii. Inform the officer of available support services, to include counseling
 - iii. Ensure that the victim is notified in a timely manner and offered available assistance, to include safety planning
 - iv. Notify the state licensing body within 30 days and inform them of the reason for termination
 - (b) Federal law prohibits anyone convicted of a misdemeanor domestic violence crime from possessing firearms. The department shall ensure compliance with federal law.

Every effort has been made by the IACP Research Center Directorate and the Police Response to Violence Against Women Advisory Group to ensure that this policy incorporates the most current information and contemporary professional judgment on the issue. However, law enforcement administrators should be cautioned that no "model" policy can meet the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements, and each agency needs to tailor its policies to ensure compliance with all laws, regulations, and agreements.

This project was supported by Grant No.97-WT-VX-KOO3 awarded by the U.S. Department of Justice Office on Violence Against Women and the Office of Community Oriented Policing Services. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following offices and bureaus: the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office on Violence Against Women. Points of view or opinions in this document are those of the author and do not represent official position or policies of the U.S. Department of Justice.

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APPENDIX TWO

Toronto Police Service

Routine Order 2009.09. 10-1147
Criminal Investigation: Pending Amendment 05-04 Domestic Violence

Priority II

CRIMINAL INVESTIGATIONS

05 – 04 Domestic Violence

Amendment Pending

IMPORTANT NOTICE:

R.O. 2009.10.29–1391

A Routine Order has been issued to change a portion of the procedure that has yet to be incorporated into this version. In addition to the contents contained herein, members shall ensure they follow the direction(s)/amendment(s) contained in the above Routine Order.

New

Amended

Reviewed – No Amendments

Issued: R.O. 2009.09.10–1147

Replaces: R.O. 2007.12.28–1790

Rationale

The Toronto Police Service (Service) recognizes that domestic violence is a serious social problem, and is not limited or restricted by marital status, sexual orientation, occupation, vulnerability, age or gender. The Service also views domestic violence as a preventable crime.

The goals of the Service are to

- reduce the incidence of domestic violence and homicide in the community through education and enforcement
- thoroughly investigate all occurrences and bring offenders to justice wherever possible
- enhance the safety of victims through prompt action including referrals to other community partners

Supervision

Attendance

- Supervisory Officer
 - when attending or upon discovering a domestic situation

Mandatory Notification

- Domestic Violence Investigator (DVI) or Officer in Charge
 - when attending or upon discovering a domestic situation and a supervisor is unable to attend
- Divisional Investigative Office
 - where reasonable grounds exist and the suspect has left the scene

Governing Authorities

Federal

Criminal Code

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Youth Criminal Justice Act

Provincial	Child and Family Services Act
	Children's Law Reform Act
	Family Law Act
	Ontario Major Case Investigation Manual
	Police Services Act
	Police Services Act, O. Reg. 3/99, Adequacy and Effectiveness of Police Services
	Trespass to Property Act

Associated Service Governance

Number	Name
	Standards of Conduct
Chapter 1	Arrest and Release
02-01	Arrest Warrants
04-09	Interpreters
04-21	Gathering/Preserving Evidence
04-24	Victim Impact Statements
04-31	Victim Services Program
04-32	Taped Investigative Interviews
04-37	Witness Assistance and Relocation Program (WARP)
05-01	Preliminary Homicide Investigation
05-05	Sexual Assault
05-06	Child Abuse
05-08	Criminal Writings
05-10	Threatening/Harassing Telephone Calls
05-11	Fail to Comply/Fail to Appear
05-21	Firearms
05-22	Abuse of Elderly or Vulnerable Persons
05-27	Criminal Harassment
Chapter 6	Provincial Investigations
08-01	Employee and Family Assistance Program (EFAP)
08-10	External Threats Against Service Members
Chapter 12	Courts
13-02	Complaint Intake
13-08	Suspension from Duty – Police Officer
13-09	Civilian Discipline Process
13-10	Suspension from Duty – Civilian
13-16	Special Investigations Unit
13-17	Memorandum Books
17-04	Community Safety Notifications
17-08	Use of Special Address System
Board Policy	Victims and Witnesses Without Legal Status

Forms

Number	Name	Authorization Level
	CIPS report	Officer in Charge
	eCOPS report	Police Officer
TPS 100	Record of Arrest	Officer in Charge
TPS 101	Supplementary Record of Arrest	Officer in Charge
TPS 102	Domestic Violence Supplementary	Officer in Charge
TPS 201	General Occurrence	Officer in Charge

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TPS 205	Supplementary Report	Officer in Charge
TPS 227	Person/Vehicle for Investigation	Officer in Charge
TPS 228	Special Address System Report	Officer in Charge
TPS 426	Domestic Violence Quality Control Daily Log	Detective Sergeant
TPS 427	Domestic Violence Quality Control Report – Monthly Summary	Detective Sergeant
TPS 428	Domestic Violence Crown Brief Checklist	Case Manager
TPS 663	Domestic Violence Victim's Card	Attending Officer
TPS 901	Policy, Service or Conduct Report	Supervisor and/ Senior Officer

Definitions

Bona Fide Reasons	means <ul style="list-style-type: none">• a victim or witness who may possibly require or may seek admission into the Provincial Witness Protection Program• a Crown Attorney is requesting information for disclosure purposes• the information is necessary to prove essential elements of an offence• investigations where the circumstances make it clear that it is essential to public or officer safety and security to ascertain the immigration status of a victim or witness
Domestic Incident	means any incident between persons involved in an "intimate relationship" where, although no criminal offence has occurred, police have been called to the scene.
Domestic Occurrence	means an occurrence report created to detail criminal behaviour and/or a breach of any statute related to a domestic situation and includes an arrest report. (excludes a Domestic Incident Report).
Domestic Violence Investigator (DVI)	means an investigator qualified in the investigations of domestic violence as prescribed in the Adequacy Standards Regulation.
Domestic Violence	means any physical, sexual or psychological harm caused, or attempted, between persons involved in an "intimate relationship" including <ul style="list-style-type: none">• assault• murder• sexual assault• threatening• harassment• intimidation• unlawful interference with personal liberty• any other criminal offence• offences under other statutes (e.g. <i>Family Law Act</i>, <i>Children's Law Reform Act</i>, etc.) but does not include child abuse investigations.
Dominant Aggressor	means the individual who has been the principal abuser, and not necessarily the person who initiated the violence that resulted in the attendance of police.
Intimate Relationship	includes current or former relationships between opposite sex and same sex partners and include persons who <ul style="list-style-type: none">• are legally married to one another• were previously married to one another• are not married, but are currently in a family-type relationship

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- are not married, but were formerly in a family-type relationship
- have a child in common regardless of whether such persons have been married or lived together at one time
- are (or have ever been) involved in a dating relationship

Threshold Offences

include

- all homicides and attempts
- most sexual assaults and attempts
- all child sexual offences, non-familial abductions, missing persons occurrences where there exists a strong possibility of foul play and a major case linked to another major case

Victim

means any person who is the victim of domestic violence.

VWAP

means the Victim/Witness Assistance Program operated by the Province at Ontario Courts of Justice locations.

Calls for Service

Domestic violence calls for service shall be treated with the same priority as other life threatening calls. The safety of the victim and dependents requires prompt and efficient response to all calls and the Service shall respond even when the original call for service is cancelled. It is the responsibility of all police officers to inform the involved parties domestic violence is a crime that, without intervention, often escalates in frequency and severity. Officers shall also inform the involved parties that help is available to them.

Victims and witnesses of crime shall not be asked their immigration status, unless there are bona fide reasons to do so.

Charges

Officers shall fully document their response to every domestic call, regardless of whether or not a criminal offence has been committed or a charge laid/an arrest made. Charges shall be laid in all cases where reasonable grounds exist, and the decision to lay charges shall not be influenced by factors such as

- marital status of the parties
- disposition of previous calls for police service
- victim's unwillingness to attend court
- likelihood of obtaining a conviction
- denials of violence despite contrary evidence
- fear of reprisals by the accused
- occupation of the victim/accused
- immigration status of the parties

In instances where no criminal charges are laid/arrests made, officers shall document the incident, event number and reasons, on an eCOPS report.

In addition to investigating and taking action in relation to any new criminal offence, prompt enforcement action shall be taken in all cases in which there is any breach of

- a Bail condition
- a Probation Order, Parole or Conditional Sentence
- a Recognizance to Keep the Peace (s. 810)

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- a Restraining Order (*Family Law Act and Children's Law Reform Act*)
- an Exclusive Possession Order (*Family Law Act*)
- the *Trespass to Property Act*
- any other court order

Domestic violence investigators (DVI) shall take the lead role in all domestic violence investigations except in the following circumstances where

- the incident involves an allegation of sexual assault, a DVI shall be designated as the lead investigator, but shall work in consultation with an accredited sexual assault investigator
- the incident involves death, the investigation shall be assigned to the Homicide Squad
- cases involving threshold offences as defined in the Ontario Major Case Investigation Manual, the investigation shall be assigned to an accredited Major Case Manager
- the incident involves a young person; a DVI shall be designated as the lead investigator, but shall work in consultation with Youth Services.

Safety

Recognizing that the safety of victims, witnesses and police officers is a priority due to the high risk inherent in domestic situations, officers must use extreme caution when responding to domestic calls. A minimum of two officers shall be dispatched to all domestic related calls for service. Officers shall remain at the scene until satisfied that the safety risk to the victim is minimized. The first officer to arrive on scene should be prepared to act prior to the arrival of a backup officer in emergent circumstances.

Incidents Involving a Member of a Police Service

Members shall initially consider whether the domestic violence situation being investigated may fall within the mandate of the Special Investigations Unit (SIU). If so, responding members shall comply with the relevant sections of Procedure 13–16.

All allegations arising from a domestic situation in which the suspect/accused is a member of another Police Service, shall be reported in a timely manner to the Duty Officer of that Police Service by the unit commander of the Service division handling the investigation, or by the duty inspector.

Domestic occurrences within the City of Toronto where the suspect/accused is a member of this Service will be initially investigated by the responding division in compliance with this Procedure. The unit commander/duty inspector shall notify the Professional Standards (PRS) – Investigative Unit who will assume the role of case manager. Divisional personnel shall assist the PRS – Investigative Unit, as required.

The PRS – Investigative Unit is designated as the Service liaison with other police services regarding Service member-involved domestic occurrences outside the City of Toronto, and shall be responsible for submitting a TPS 901 in compliance with Procedure 13–02.

Occurrences of Service member-involved domestic violence outside of Canada shall be treated as allegations of discreditable conduct in accordance with the relevant sections of Chapter 13 of the Policy and Procedure Manual.

Procedure

Police Officer

The first police officer shall be responsible for the safety and well being of the victim, offender management and preservation of the evidence and the crime scene.

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1. When attending or upon discovering a domestic situation shall
 - ensure the safety of all persons at the scene
 - ensure medical attention is offered to all injured parties, as required
 - conduct a thorough investigation
 - request the attendance of a supervisor
 - if a supervisor is unable to attend, notify a DVI of all pertinent facts
 - if unable to notify a DVI, notify the officer in charge (OIC) of all pertinent facts
 - make every effort to determine the dominant aggressor
 - comply with relevant sections of Procedure 05–22 if elderly or vulnerable persons are involved
 - obtain the names, dates of birth and current school of all children present, or who normally reside in the home, and enter the details as supplementary information into the Criminal Information Processing System (CIPS) or Enterprise Case and Occurrence Processing System (eCOPS) as appropriate
 - ensure the appropriate Children's Aid Society is notified when there are reasonable grounds to suspect a child is at risk from physical or emotional harm as defined in s. 72 of the *CFSA*
 - apprehend any child in need of protection and comply with Procedure 05–06, as appropriate
 - if the victim requires or requests medical attention, offer to take the victim to the Domestic Violence Care Centre located at Sunnybrook and Women's College Health Sciences Centre or The Scarborough Hospital – Grace Division
 - interview all parties separately
 - when interpreting services are required contact the Multilingual Community Interpreter Services (MCIS) and comply with Procedure 04–09 where MCIS is unable to assist
- NOTE:** *MCIS will provide free interpretation services to the Service during the investigation of all sexual and domestic assault occurrences, irrespective of the age of the victim or the suspect/accused. MCIS interpreters will provide their services to all involved parties, including the accused up until the time that a formal charge has been laid. (an Information has been sworn to before a Justice).*
- consult with a DVI to determine the suitability of receiving the victim's statement electronically in compliance with Procedure 04–32
 - when instructed by the DVI, obtain a written statement from the victim in the memorandum book and request that the victim review and sign the statement
 - interview third party witnesses including children when practical, neighbours, other emergency services personnel responding to the scene and medical personnel who treated the victim
 - make detailed notes, including all observations and statements in the memorandum book

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- consult with a DVI or supervisor when considering arresting both parties, prior to bringing them into the station
- arrange to have the victim's injuries, scene and/or evidence photographed

NOTE: *Victims may sustain internal or external injuries, which are not apparent. Officers should always ask the victim if injuries have been sustained and note the response. Personal observations of injuries should also be noted.*

- collect all pertinent evidence in compliance with Procedure 04–21
- determine if the suspect/accused owns or has access to firearms, other weapons or any licence, permit, authorization or Firearms Acquisition Certificate (FAC) and comply with Procedure 05–21

NOTE: *The search and seizure provisions contained in s. 117 of the Criminal Code must be carefully considered in all cases in order to minimize any subsequent risk to the victim.*

- ensure that the victim is offered the assistance of Victim Services in compliance with Procedure 04–31
- ensure that the victim is given a completed TPS 663
- make every attempt to meet the special needs of the elderly or persons with disabilities, in compliance with Procedure 05–22, particularly when the offender is the sole caregiver
- arrange for, or provide transportation to the victim and dependents to a shelter or safe place, if necessary
- upon conclusion of the at scene investigation, notify the dispatcher of the
 - attending police officers badge numbers
 - the action taken
 - the status of the call
- complete and submit the applicable eCOPS report and TPS 102, ensuring to record all notifications and attendance or non-attendance (supervisor, DVI, OIC etc.) in the eCOPS report
- include the original event number in the synopsis portion of any domestic report
- forward a copy of the memorandum book notes to the OIC
- if the event situation varies from the original event type given, shall obtain a divisional supervisor's approval and badge number prior to requesting that the event text indicate that the call was not a domestic
- inform the dispatcher if the call should be reclassified to a domestic from its original categorization (i.e. –get belongings, unknown trouble, sexual assault, etc.)
- when attending a "domestic get belongings" call, officers will add supplementary information to the original domestic eCOPS report (if police were previously involved and an eCOPS report was submitted)

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2. Where reasonable grounds exist relative to a charge shall, in addition to complying with Item 1 of this Procedure
 - arrest and/or charge the suspect, taking into consideration all the circumstances when deciding to continue the arrest, including the safety of the victim and dependents, any previous history of domestic violence, threats made by the accused and the protection of the community
 - complete the appropriate sections of a TPS 102 and submit completed form to the DVI

NOTE: *The victim **shall not** be advised to lay a private Information where reasonable grounds exist.*

 - where the accused wishes to swear to an independent counter charge, advise the accused that an Information may be sworn before a Justice of the Peace
3. Where reasonable grounds exist, and the suspect has left the scene shall, in addition to complying with Item 1 of this Procedure
 - conduct a search of the immediate area and advise the Communications Centre of the suspect's description, mode of travel and the nature of the offence committed
 - obtain and document information as to the suspect's potential destination
 - notify the divisional investigative office, and obtain further instructions from a DVI
4. Where a Domestic Incident has taken place and/or there is some evidence of domestic violence but reasonable grounds do not exist relative to a charge, in addition to complying with Item 1 of this Procedure, shall
 - supply the victim with a completed TPS 663
 - complete and submit an eCOPS report entitled 'Domestic Incident'
 - refer to the TPS 102, asking all involved persons the relevant 'Risk Factor' questions and include details to positive responses on the eCOPS report and in their memorandum book
 - advise the involved persons that a report will be filed
 - advise the involved persons that a private Information may be sworn by attending before a Justice of the Peace, if applicable
5. Where there are safety concerns for officers attending an address, shall complete a TPS 228 to activate the Special Address System in compliance with Procedure 17-08.

Supervisory Officer

The supervisory officer shall be responsible for the quality and thoroughness of the uniform response.

6. When notified of a domestic situation shall
 - ensure all domestic violence investigations are undertaken with expediency
 - attend the scene whenever possible, to provide guidance and assistance in the course of

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the investigation

- ensure a Domestic Occurrence or Domestic Incident Occurrence is completed, as appropriate
- when an officer requests to change the event situation from the original event type (Domestic), ensure the criteria in this procedure has been met and approve the request if appropriate under the circumstances

7. When the suspect/accused or victim is a member of this Service shall

- attend the scene
- advise the OIC of the circumstances
- document the circumstances in the memorandum book, including if no arrest was made, why no arrest was made/charge laid, when applicable
- conduct a preliminary investigation into a conduct complaint in compliance with Procedures 13-02 and/or 13-09, as applicable
- ensure that the victim and dependents are offered the assistance of the EFAP, Victim Services, and other community agencies
- ensure that the suspect/accused is informed of the assistance available from the EFAP
- advise the victim that they will be contacted by the PRS – Investigative Unit

8. When the suspect/accused is a member of another Police Service shall

- attend the scene
- advise the OIC of the circumstances
- document all the circumstances in the memorandum book, including if no arrest was made, why no arrest was made/charge laid, when applicable
- ensure that the victim and dependents are offered the assistance of Victim Services and other community agencies

Domestic Violence Investigator

The domestic violence investigator shall be responsible for ensuring the needs of the victim are met, effective management of the crime scene, including the gathering of evidence and ensure that a thorough and comprehensive investigation is conducted.

9. When investigating a person who is in custody for an offence resulting from a domestic situation shall

- conduct a thorough and complete investigation
- ensure the services of the Domestic Violence Care Centre located at Sunnybrook and Women's College Health Sciences Centre or The Scarborough Hospital – Grace Division are offered to the victim

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- ensure the services of the MCIS are utilized, when required
- ensure 9–1–1 tapes are reviewed and consider preserving them as evidence, where applicable
- consider the use of search warrants to gather evidence, as appropriate
- in cases involving threshold offences as defined in the Ontario Major Case Investigation Manual, consult with the divisional detective sergeant concerning designation of the offence as a Major Case
- whenever possible, obtain an electronically recorded statement from the victim, using the R. vs. KGB guidelines and referring to Procedures 04–32 and 12–08, as applicable
- explain to the victim the charge and the nature of the proceedings against the accused
- ensure a charge is laid where reasonable grounds exist
- make every effort to determine a dominant aggressor before considering charging both parties
- when both parties are charged, cross reference the two cases on each confidential crown envelope (dope sheet)
- comply with Procedure 05–11 where there has been a breach of bail conditions or failure to appear at court, and notify the victim
- comply with Procedure 05–27 when conducting any domestic related criminal harassment investigations
- consider commencing show cause proceedings as appropriate, making particular note of any stalking behaviour shown by the accused
- consider requesting a non-communication order under s. 515(12) CC where a detention order is being sought
- whenever possible, consult with the victim when determining required bail conditions
- if the accused is granted bail, ensure that the conditions of release, or any change in conditions of release are communicated to the victim as soon as possible rather than delay until the accused is actually released
- ensure that a copy of the bail conditions are maintained in the case file
- consider all powers of search and seizure, with and without warrant, relating to weapons, firearms, ammunition, explosives and the related authorizations, licences and permits, including FACs
- consider contacting all persons known to police who may provide the accused access to firearms or related licences, authorizations, permits or FACs
- notify the Gun & Gang Task Force at Organized Crime Enforcement when firearms are or may be a factor

Priority II

- consider applying for a prohibition order where there are reasonable grounds to believe it is not desirable in the interests of safety for the offender to possess weapons
- where possible, ensure that injuries sustained by the victim are photographed a second time 48 to 72 hours after the initial incident
- complete the preliminary risk assessment found on the TPS 102, and where concerns are raised about the safety of the victim, consult with the Behavioural Assessment Section (BAS) of the Sex Crimes Unit to assist the victim in developing a personal safety plan
- insert a completed TPS 428 into the confidential crown envelope
- consider warning other known intimate partners of an abuser, of the potential for abuse in compliance with Procedure 17-04
- in high risk cases, consider placing both the victim and accused in the CPIC 'Special Interest to Police' (SIP) category by submitting a completed TPS 227 according to the instructions on the form

NOTE: *The SIP category exists in CPIC to capture a wide range of information, including "persons who are dangerous to themselves or others" including, but not restricted to domestic situations. All SIP entries must include the specific reason (e.g. Dangerous Person – Domestic Violence) and should contain a caution for "Family Violence".*

- in high risk situations, consider using the 'Domestic Violence Emergency Response System' (DVERS) available through the DVERS Co-ordinator at Victim Services
 - encourage the victim to complete a Victim Impact Statement at the appropriate stage of the court process in compliance with Procedure 04-24
 - where possible, notify the victim of any known court dates, with a follow-up call prior to the court appearance
 - direct a victim requesting that charge(s) be withdrawn to the Crown Attorney's Office
 - where possible, notify the victim and the original police officer once final disposition of the case is obtained
 - ensure
 - the box entitled 'Domestic' in the 'Incident Type' section of the crown envelope has been checked off
 - all charges are clearly noted in the brief as 'Domestic' in origin (i.e. Assault – Domestic), and the top border of the crown envelope is boldly marked in red
 - that in cases where the accused is a young person, the top border of the crown envelope is also boldly marked in blue
 - ensure that two copies of a TPS 102 are completed and included in the crown envelope for the first court appearance
10. When in receipt of a Domestic Occurrence or Domestic Incident report, or when informed of circumstances where the suspect has evaded arrest shall
- ensure that a further investigation is promptly conducted

Priority II

- lay charges where reasonable grounds are developed
- consider obtaining a warrant in compliance with Procedure 02–01 where reasonable grounds exist and the suspect has not been arrested/charged within 24 hours of the offence
- if no charges are laid, submit supplementary information to the original eCOPS report explaining the reasons for such a decision

Detective Sergeant

Detective sergeants are responsible for ensuring an appropriate investigative response, that domestic violence investigations are conducted by accredited domestic violence investigators and that a thorough and comprehensive investigation is conducted.

11. When in charge of a divisional detective office shall ensure that
 - a minimum of one detective is assigned to oversee all domestic violence investigations in the division
 - domestic violence investigations are assigned to a qualified DVI who will be able to initiate the investigation with expediency
 - a TPS 426 and TPS 427 are completed and forwarded to the Domestic Violence Co-ordinator
 - a regular review is conducted of all TPS 426's and TPS 427's to ensure domestic violence calls for service are investigated appropriately
 - appropriate follow up investigations occur on all domestic incident reports (call backs, Victim Services, etc.) and details documented as supplementary information to the original eCOPS report

Officer in Charge

The OIC is responsible for ensuring an appropriate uniform response, and in the absence of the detective sergeant, an appropriate investigative response.

12. Ensure all domestic violence investigations are undertaken with expediency.
13. When in receipt of Domestic Occurrences and Domestic Incident reports shall review to ensure accuracy and completeness.
14. When in receipt of memorandum book notes for a Domestic Occurrence shall ensure they are attached to a copy of the eCOPS report and forwarded to the divisional investigative office.
15. Where there are safety concerns for officers attending an address, shall ensure the appropriate information is added to the Special Address System in compliance with Procedure 17–08.
16. At the time of booking a prisoner and before considering release, shall ensure that all reasonable inquiries have been made into the possession by an accused of weapons, firearms, authorizations, permissions, FACs, etc., and that such items are surrendered before release to enhance the safety of the victim.

Priority II

17. Review the confidential crown envelope for completeness, ensuring that a TPS 428 has been submitted by the DVI.
18. Upon receipt of release documents, shall ensure that timely notification of bail conditions is provided to the victim in compliance with Procedure 01–15.
19. Where a Toronto Police Service member is a suspect/accused shall
 - notify the appropriate unit commander, or if absent, the duty inspector of the circumstances surrounding the incident
 - comply with Procedure 13–08 or 13–10 when considering suspension of the member
 - ensure that the assistance of the EFAP, Victim Services and other community agencies are offered to the victim
 - ensure that the suspect/accused is informed of the assistance available from the EFAP
20. Where a member of another Police Service is a suspect/accused, shall notify the Service divisional unit commander, or if absent, the duty inspector of the circumstances.

Unit Commander – Division

The unit commander of a division shall be responsible for ensuring that a sufficient number of investigators receive accreditation as domestic violence investigators.

21. When in charge of a division, shall ensure that sufficient qualified personnel are assigned as DVI's.

Unit Commander/Duty Inspector

The unit commander or in their absence, the duty inspector shall be responsible for ensuring that proper notifications are made when members of a police service is a suspect or an accused.

22. When notified that a member of this Service is a suspect/accused shall
 - immediately advise PRS – Investigative Unit of the circumstances
 - for a matter involving a police officer, ensure compliance with the requirements found in Chapter 13 of the Policy and Procedure Manual, regarding conduct complaints
 - for all members, comply with Procedure 13–08 or 13–10 when considering suspension
 - ensure that the assistance of the EFAP, Victim Services and other community agencies are offered to the victim
 - ensure that the suspect/accused is informed of the assistance available from the EFAP
 - where appropriate or requested, ensure that appropriate arrangements are made in the workplace to ensure that there is no direct contact between the victim and the suspect/accused

Priority II

23. When notified that a member of another police service is a suspect/accused shall ensure that
- the Duty Officer of the other Service is contacted as soon as practicable
 - information is provided about the matter including
 - details of the incident
 - condition and status of the victim
 - charges laid, if applicable
 - whether or not bail is being opposed
 - date, time and location of the first court appearance, if applicable

APPENDIX THREE

Virginia Beach, Virginia, Police Department

Long Term Indicator Checklist
(Reasonable Cause Observation Checklist)

Short Term Indicator Checklist
(Reasonable Cause Incident Checklist)

Long Term Indicator Checklist

(Reasonable Cause *Observation* Checklist)

Employee: _____ Budget Unit: _____ Period of evaluation: ____/____/____ to ____/____/____	
Supervisor: _____ Phone: _____	
(Print)	
Supervisor: _____ Phone: _____	
(Print)	
T	Use this check list when referring an employee for drug testing. Check all the items that apply and make any other notes which you believe are important. Place a “D” next to the T if there is written documentation of the behavior (TD).
Quality & Quantity of Work	
	Clear refusal to do assigned tasks
	Significant increase in errors
	Repeated errors in spite of increased guidance
	Reduced quantity of work
	Inconsistent (ups & downs) quantity or quality of work
	Behavior that disrupts work flow
	Procrastination on significant decisions or tasks
	More than usual supervision necessary
	Frequent, unsupported explanations for poor work performance
	Noticeable change in written or verbal communication
	Other _____
Interpersonal Work Relationships	
	Significant change in relationships with co-workers, supervisors, others
	Frequent or intense arguments
	Verbal abusiveness
	Physical Abusiveness
	Persistently withdrawn or less involved with people
	Intentional avoidance of supervisor
	Expressions of frustrations or discontent
	Changes in frequency or nature of complaints
	Complaints by co-workers or subordinates
	Cynical, “distrustful of human nature” comments
	Unusual sensitivity to advice or critique of work
	Unpredictable response to supervision
	Passive-aggressive attitude or behavior, “doing things behind your back”
General Job Performance	
	Excessive unauthorized absences, _____ in last 12 months
	Excessive authorized absences, _____ in last 12 months
	Excessive use of sick leave, _____ in last 12 months
	Frequent Monday/Friday - type absence pattern
	Frequent unexplained disappearances
	Excessive “extension” of breaks or lunch
	Frequently leaves work early, _____ days per month
	Increased concern, or actual incidents, of safety offenses involving employee
	Experiences or causes job accidents
	Major change in duties or responsibilities
	Interferes with or ignores established procedures

	Inability to follow through on job performance recommendation
Personal Issues	
	Changes in or unusual personal appearance (dress/hygiene)
	Changes in usual speech (incoherent, stuttering, loud)
	Changes in or unusual physical mannerisms (gesture, posture)
	Changes in or unusual facial expressions
	Changes in or unusual level of activity (more or less than usual)
	Changes in or unusual topics of conversation
	Engages in detailed discussions about death, suicide, or harming someone
	Increasingly irritable or tearful
	Persistently boisterous or rambunctious
	Unpredictable or out-of-context displays of emotion
	Unusual fears
	Lacks appropriate caution
	Engages in detailed discussion about obtaining or using drugs and/or alcohol
	Has personal relationship problems (spouse, girl/boy friend, children, parents, in-laws)
	Makes unfounded accusations against others, ie, has feelings of persecution
	Secretive or furtive
	Memory problems (difficulty recalling instructions, data, past behaviors)
	Frequent colds, flu or other illnesses
	Comes to work with alcohol on breath
	Excessive fatigue
	Makes unreliable or false statements
	Unrealistic self-appraisal or grandiose statements
	Temper tantrums or angry outbursts
	Demanding, rigid, inflexible
	Major change in physical health
	Concerns about sexual behavior or sexual harassment
Notes: any other information/ observations	

Supervisor Signature _____	Date _____ Time _____ am/pm _____
Supervisor Signature _____	Date _____ Time _____ am/pm _____

Short Term Indicator Checklist
(Reasonable Cause *Incident* Checklist)

Employee: _____ Budget Unit: _____ Date _____, Time _____ am/pm	
Supervisor: _____ Phone: _____ (Print)	
Supervisor: _____ Phone: _____ (Print)	
T	Use this check list for your documentation when an incident occurs which provides reasonable suspicion that an employee may be under the influence of a prohibited drug substance or alcohol. Check all the items that apply and make any other notes which you believe are important
What Happened ?	
	Observed/ reported possession or use of prohibited substance(s)
	Appears to be under the influence of drug and/or alcohol
	Observed abnormal or erratic behavior
	Arrest or conviction of drug-related offense
	Evidence of tampering on a previous drug test
	Other (eg, flagrant violation of safety or serious misconduct, accident or “near-miss”, fighting or argumentative/abusive language, refuse to follow supervisor instructions, unauthorized absence on the job.) _____
Behavior	
	Verbal Abusiveness
	Physical Abuse
	Extreme aggressiveness or agitation
	Withdrawal, depression, tearfulness, or unresponsiveness
	Other erratic or inappropriate behavior (eg, disorientation, confusion, excessive euphoria, hallucinations) _____ _____ _____ _____
Appearance	
	Possession, dispensing or using prohibited substance(s)
	Slurred or incoherent speech

Unsteady gait, poor coordination, other loss of physical control
Dilated (wide) or constricted (small) pupils, or unusual eye movement
Bloodshot or watery eyes
Extreme fatigue or sleeping on the job
Excessive sweating or clammy skin
Flushed or very pale face
Highly excited or nervous
Nausea or vomiting
Odor of alcohol
Odor of Marijuana
Disheveled appearance, or out of uniform
Dry mouth (frequent swallowing or wetting lips)
Dizziness or fainting
Shaky hands, body tremors/twitching
Irregular or difficult breathing
Runny nose, sores around nostrils
Wearing sunglasses inappropriately
Puncture marks or "Tracks"
Other: _____
Summary/Notes: Summary of facts and circumstances of incident, the employee's response, what actions were taken by the supervisor and any other information not previously noted. _____ _____ _____
Supervisor Signature _____ Date _____ Time _____ am/pm
Supervisor Signature _____ Date _____ Time _____ am/pm

APPENDIX FOUR

Virginia Beach, Virginia, Police Department
January 2010

SHEILD OF H.O.P.E.

Helping Officers Perform Everyday

In life and in the line of duty



**AT BON SECOURS, WE ARE YOUR
EMPLOYEE ASSISTANCE RESOURCE.**

Law enforcement is an exciting and rewarding career. There are times when the work is challenging and overwhelming. The unique demand on the profession can bring even the strongest first responders an emotional experience. Research and experience shows that repeated and single exposures to traumatic events, as well as general work stress, can take its toll on physical, mental, and spiritual health.

These resources are designed to encourage resilience, and the ability to adapt and cope, so that you can continue doing the job you are proud of. The goal of Critical Incident Stress Debriefing is to encourage peer support, promote your overall well-being and give you a chance in restoring to normalcy after a critical incident.



(757) 398.2374

www.bshr.org/eap

**BON SECOURS
EMPLOYEE ASSISTANCE PROGRAM**



ARE YOU EXPERIENCING?

- Anger
- Irritability
- Anxiety
- Burnout
- Depression
- Financial Stressors
- Addiction
- Hopelessness
- Nightmares
- Reduced Sleep
- Relationship Problems

CONTACT INFORMATION

CHAPLAINS

<i>Coordinator</i>	Paul Hardy	456-0093
<i>1st Precinct</i>	Susan Forehand	567-5615
<i>2nd Precinct</i>	Joe Paluszak	893-0000
<i>5th Precinct</i>	Mark Cary	474-0233
<i>4th Precinct</i>	Rod Sharpe	291-6674

PEER SUPPORT

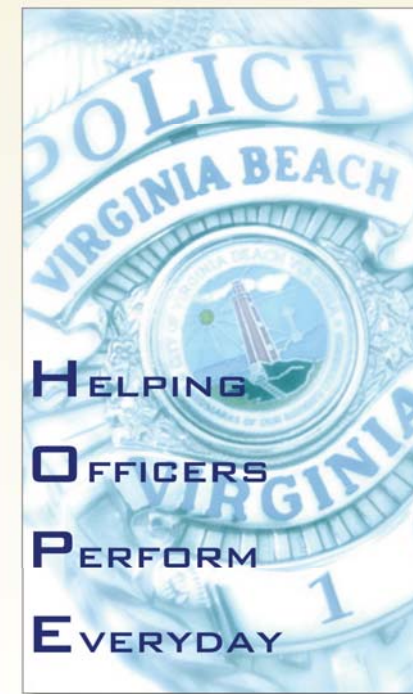
Scott Wichtendahl	503-3320
Bobby Winn	288-8348

OCCUPATIONAL HEALTH 385-4851

**COMMITTED TO YOU,
YOUR FAMILY,
& THE UNIFORM**

1/2010

**SHIELD
OF
H.O.P.E.**



**IN LIFE AND
IN THE LINE OF DUTY**



SHIELD OF HOPE

was developed to address the needs of Virginia Beach Police Officers with their personal and job related stressors. The focus is to communicate available resources and educate the department on how to utilize them. The SHIELD includes Peer Support, Chaplains, Employee Assistance Program (EAP) and Occupational Health Services (OHS).



H O P E

HOW TO RESPOND AS A PEER:

- Reassure them their symptoms in reaction to the trauma are normal.
- Share personal experience of coping skills.
- Assist them in talking with their family or support system about their reactions.
- Discourage using alcohol as an escape.
- Know your limitations as a peer and refer them to other appropriate resources.
- Respond to their immediate needs of food, water, and exercise.
- Encourage participation in a debriefing and encourage them to talk while you listen.
- Don't make promises and not follow-up. Be accessible.
- Watch for any serious physical responses to trauma and stress, like chest pain, hyperventilation, shock and rapid heart beat. Seek medical attention first, then refer to OHS .

"As police officers we pride ourselves in helping our citizens in every way possible. We all need to accept that we're not immune to life's stressors.

We need to help one another by recognizing and addressing the signs and symptoms of stress, anxiety, depression, and burnout."

-Chief A.M. Jacobs



YOU ARE NOT ALONE

PEER SUPPORT*	<i>VB Officers trained in assisting their fellow officers.</i>
CHAPLAIN*	<i>Community Pastoral representatives who provide spiritual guidance for officers and their families.</i>
EAP**	<i>Confidential professional counseling for emotional, family, and job concerns.</i>
OHS**	<i>Municipal program providing medical case management and intervention for health related concerns.</i>

**Chaplain and peer support follow departmental policy for privacy*

***EAP and OHS adhere to all state and federal mandates regarding privacy and protected health information.*

APPENDIX FIVE

Washington DC Metro Police Department
Domestic Violence and Alcohol Abuse Awareness Series

A split-second decision can change your life forever.

Spousal disputes and domestic conflicts often lead to unintended consequences.

Don't be a statistic.

This year, 18 percent of cases forwarded to the Disciplinary Review Branch involved domestic violence. In those cases, 80 percent resulted in the member's termination.

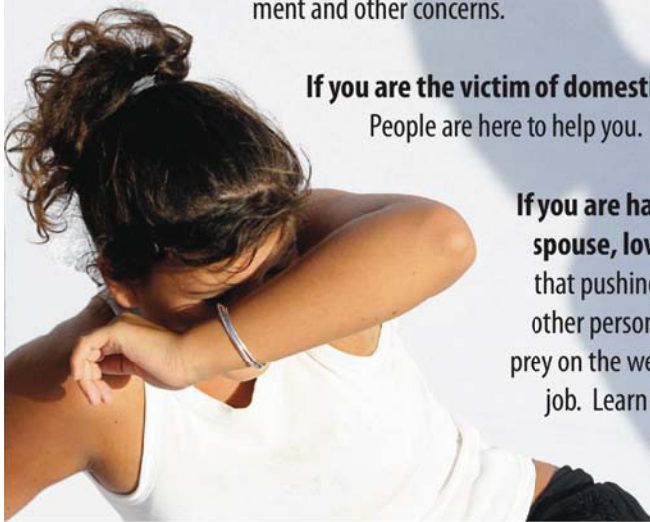
Get the help you need.

If you are having trouble at home, there's help for you. Resources are available to mediate disputes, provide marriage counseling, and assist with anger management and other concerns.

If you are the victim of domestic violence, let someone know.

People are here to help you.

If you are having trouble communicating with a spouse, loved one, or coworker, you should know that pushing, hitting, yelling, or forcing sex on another person are all instances of abuse. When you prey on the weak, it impacts your family, friends, and job. Learn to control your anger and keep peace in your home or you may be sitting on the other side of a jail cell.



For Civilian Employees
COPE (202) 628-5100 www.cope-inc.com
1120 G Street NW, Suite 550, WDC 20005

For Sworn Members
MPEAP (202) 546-9684 www.mpeap.com
901 East Capitol Street, SE, WDC 20003



Cathy L. Lanier
Chief of Police



Adrian M. Fenty
Mayor

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Chief of Police



Adrian M. Fenty
Mayor

Don't let a couple of beers ruin your career.

Alcohol abuse can lead to a host of other problems, including DUI charges, domestic violence, increased health risks, memory lapses, and other psychological factors.

Don't be a statistic.

This year, more than 55 percent of the members who were referred to the Disciplinary Review Board for alcohol-related offenses were terminated.

Get the help you need.

If you or someone you know is fighting an alcohol problem, there are resources to help. Contact the organizations below to get the assistance you need. It may save your career . . . or a life.

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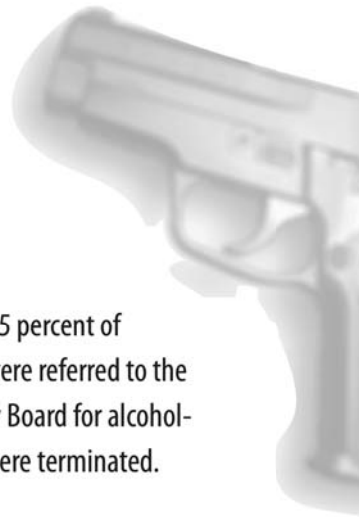
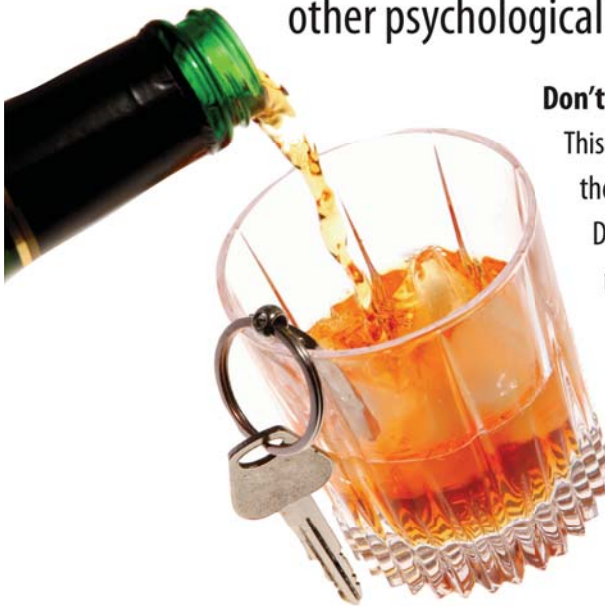
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