

United States District Court for the Western District of Texas  
Austin Division

Sydni Beuhler,	§	
Plaintiff,	§	
	§	Case no. 1:21-cv-00054
v.	§	
	§	
City of Austin and	§	
John Does,	§	
Defendants.	§	

**Plaintiff’s Complaint and Request for Jury Trial**

To the Honorable Court:

**I. Introduction**

This is a lawsuit about as-yet unidentified Austin police officers who arrested Sydni Beuhler to punish her for participating in a peaceful protest against police brutality on or near the intersection of 4<sup>th</sup> Street and Congress Avenue. The unnamed officers arrested Sydni while Sydni was peacefully exercising her constitutional right to assemble with like-minded people and protest the government and police misconduct.

This lawsuit is also about the City of Austin’s appalling response to protests—especially its pattern of violently violating demonstrators’ civil rights—during the weekend of May 30-31, 2020. The City compounded its mishandling of the situation by failing to investigate or attempt to deter further misconduct by Officer Defendants and other police.

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**II. Parties**

1. Sydni Beuhler is a resident of Austin, Texas.
2. The City of Austin is a Texas municipal corporation in the Western District of Texas.

Brian Manley is Austin’s policymaker when it comes to policing.

3. Officer Defendants are three as-yet unidentified Austin police officers. Upon information and belief, they include Officer Smart, Badge 8674 and Officer Gonzalez, Badge 7422.

**III. Jurisdiction**

4. This Court has federal question subject matter jurisdiction over this 42 U.S.C. § 1983 lawsuit under 28 U.S.C. § 1331.

5. This Court has general personal jurisdiction over the Officer Defendants because they work and live in Texas. The City of Austin is subject to general personal jurisdiction because it is a Texas municipality.

6. This Court has specific personal jurisdiction over Officer Defendants and the City because this case is about their breach of Plaintiff’s civil and constitutional rights that occurred here in Austin, Texas.

#### IV. Venue

7. Under 28 U.S.C. § 1391(b), the Western District of Texas is the correct venue for this lawsuit because the events described above and below occurred in Austin.

#### V. Facts

##### A. Officer Doe arrested Sydni Beuhler even though Sydni was doing nothing wrong.

8. On August 1, 2020 at approximately 7:00 pm, Sydni Beuhler was peacefully exercising her constitutional right to assemble and protest the government. She was protesting near the memorial of Garrett Foster, in the northbound lane of Congress Avenue near the intersection of 4<sup>th</sup> street.

9. Moments before her arrest, Austin police began forcing protestors to retreat northbound on Congress Avenue. Officers used horses and bicycles to force protestors backwards in the northbound direction on Congress Avenue.

10. Sydni was among the people in the front of the crowd that the police were forcing backwards. She retreated while continuing to exercise her First Amendment right to protest policy brutality. She backed up from the road and was inches away from the extended sidewalk. Even though protesters were complying with officer commands, police continued to pepper spray the crowd. When Sydni observed officers again pepper spray a fellow protestor, she turned to the officers and verbally expressed her outrage by yelling at the officers and verbally objecting to their conduct. An Officer, who is believed to be Officer Smart, responded by yelling: "We are arresting this one." Officer Smart wrapped his arms around Sydni and immediately picked her up into the air. He carried her away from the crowd and proceeded to throw her to the ground. Sydni is much smaller than the officer handling her arrest, yet two other officers got involved by kneeling on Sydni to hold her down. Sydni is all of 5'7" and weighs less than 145 pounds. She was not fighting or posing any risk to officers, yet three officers pinned her by kneeling on her back

and pressing her into the street. Upon information and belief, one of those officers was Officer Gonzalez, Badge 7422. The three officers used unnecessarily and excessive force. One officer knelt on Sydni's neck and another officer knelt on the base of her spine. A third officer was pressing her into the street as he handcuffed her. At the time the Officer Defendants' arrested Sydni, the police were still clearing the road and had not arrested the other surrounding protestors. Officer Smart singled out Sydni for arrest because of her verbal criticism of APD policy tactics to injury protestors.

11. The excessive force used by Officer Defendants in picking Sydni up, forcing her to the ground, kneeling on her back, and crushing her into the street caused Sydni to suffer a lower back disk bulge. Sydni now suffers from extreme back pain and neurological symptoms that interfere with her daily activities. The incident has caused Sydni physical, injury and pain, mental and emotional distress and discomfort, mental anguish, humiliation, and embarrassment. Sydni has been unable to return to subsequent protests to exercise her First Amendment rights against police misconduct because of her injuries.

## VI. Claims

### **A. Officer Smart violated Sydni Beuhler's First Amendment rights when he arrested Sydni in retaliation for protesting police misconduct.**

12. Sydni Beuhler incorporates sections I through V above into her First Amendment claim.

13. Sydni brings this claim under 42 U.S.C. § 1983.

14. Sydni exercised her right to free speech and her right to assemble with other demonstrators to protest police brutality on August 1, 2020.

15. Officer Defendants' excessive force against Sydni while targeting her for arrest has caused her to suffer injuries that would chill the willingness of a person of ordinary firmness from continuing to engage in peaceful protest.

16. Officer Smart's decision to arrest Sydni was substantially motivated by Sydni's exercise of constitutionally protected conduct. The officers were clearing the road, and the protestors were moving from the road. Sydni herself was inches from the extended sidewalk. APD Officers, including the Officer Defendants arrested none of the other protestors who were standing in the same or similar location of the road as Sydni. Only Sydni was arrested at this time immediately after verbally expressing her outrage at the officers' actions. It is clear from the sequence of events that Officer Smart's decision to arrest Sydni was substantially motivated by Sydni's exercise of her First Amendment rights.

17. "The First Amendment also protects a significant amount of verbal criticism and challenge directed at police officers. Indeed, a core First Amendment freedom allows individuals verbally to oppose or challenge police action without thereby risking arrest [and] is one of the principal characteristics by which we distinguish a free nation from a police state." *Flores v. Rivas*, No. EP-18-CV-297-KC, 2019 U.S. Dist. LEXIS 178034 \*44-46, 2019 WL 5070182 (W.D. Tex. 2019) (internal citations omitted). Officer Smart arrested Sydni because she criticized officers while protesting Austin police and other police departments around the country for their habitual use of excessive force. Officer Smart was acting under color of law when he arrested Sydni as retribution for Sydni exercising her First Amendment rights. Officer Smart and the other Officer Defendants were acting under color of law when they directly and proximately caused Sydni's injuries.

**B. Officer Defendants violated Sydni's Fourth and Fourteenth Amendment rights by using excessive force during her arrest.**

18. Sydni Beuhler incorporates sections I through VI.A above into her punitive damages claim.

19. The three officer Defendants are liable to Plaintiff under 42 U.S.C. § 1983 for arresting Sydni with excessive force that constituted a deprivation of her Fourth and Fourteenth Constitutional right to due process.

20. Officer Defendants were acting under color of law when they arrested Sydni on August 1, 2020.

21. Defendants' unlawful and unjustified use of force against Sydni was excessive and was objectively unreasonable in light of established law. Sydni was attempting to comply with officers' demands to leave the street, even as she verbally criticized police conduct. Before she could reasonably comply, but after verbally expressing her outrage at police tactics, Officer Defendants violated Sydni's constitutional rights under the Fourth and Fourteenth Amendments to be free from excessive force and unreasonable seizure and her rights of due process of law and equal protection under the law. They lifted Sydni by her torso into the air and forced her to the ground. This was without any less extreme attempt to detain Sydni. The officer believed to be Officer Smart did not order Sydni to come with him or seek to detain her through less forceful means—he wrapped his arms around her torso and lifted her over a line of officers and bicycles. Officer Smart, with the assistance of another officer, forced Sydni to the ground on her knees. While she was on the ground, a third officer joined in the arrest by pressing Sydni into the ground. Officer Smart helped to hold Sydni down while the two other officers knelt on Sydni's back while she was on the ground, one on her neck and upper back, and the other on the base of her spine. The force of three officers on the back of a petite woman caused Sydni severe spinal injury, mental and emotional distress, and in light of at least two other victims of police excessive force by kneeling on their backs that resulted in death, a bona fide fear for her life.

22. The force used by the officer Defendants was unnecessary, excessive, and unreasonable under the circumstances because Sydney did not pose an immediate threat to the safety of the Officer Defendants or others. The use of such excessive force was objectively unreasonable and unnecessary. The decision to arrest Sydney, and to do so in such a violent fashion, as Sydney was in the process of complying with police commands to exit the roadway while continuing to exercise her First Amendment rights, was wholly motivated by her presence at a protest against police brutality and the verbal criticism she directed toward police. Sydney posed no threat to officers to justify the use of such excessive force during her arrest. A reasonable officer would have clearly understood that that his conduct was unlawful in the situation he confronted.

23. Defendants engaged in a willful, malicious, and reckless course of conduct that was intended to cause and, in fact, did cause Sydney to suffer extreme and severe physical injuries, mental and emotional distress, agony, and anxiety.

24. Defendants' unlawful and unconstitutional use of force against Sydney directly and proximately caused her damages.

**C. Officer Defendants acted with such impunity and reckless disregard for Sydney's civil rights, this case warrants damages that will deter this type of misconduct in the future.**

25. Sydney Beuhler incorporates sections I through VI.B above into her punitive damages claim.

26. Officer Defendants' actions and conduct were egregious, reckless, and endangered the peaceful protesters including Sydney. Sydney seeks punitive damages to deter this

type of retaliatory excessive force against protesters who demonstrate against police brutality in the future.

**D. The City of Austin’s policy of using excessive violence to control demonstration crowds violated protesters’ First, Fourth, and Fourteenth Amendment rights.**

27. Sydney Beuhler incorporates sections I through VI.C above into her *Monell* claim against the City of Austin.

28. Sydney brings this claim under 42 U.S.C. § 1983.

29. Austin had these policies, practices, and customs on August 1, 2020:

- a. A policy of using excessive force against non-violent demonstrators,
- b. A policy not to adequately train officers regarding civil rights protected by the United States Constitution,
- c. A policy not to adequately train officers in crowd control during non-violent protests,
- d. A policy not to adequately supervise officers doing crowd control during non-violent protests,
- e. A policy not to intervene to stop excessive force and civil rights violations by its officers during non-violent protests,
- f. A policy not to investigate excessive violence by its officers against peaceful protesters, and
- g. A policy not to adequately discipline officers for—and deter officers from—using excessive force and violating protesters’ civil rights during demonstrations.

30. The City of Austin and Austin Police Chief Brian Manley knew about these policies and directed Austin police to comply with them. The City and Chief Manley developed and issued these policing policies with deliberate indifference to Sydney’s and other peaceful demonstrators’ civil rights.



31. The City and Chief Manley were aware of the obvious consequences of these policies. Implementation of these policies made it predictable that Austin police would violate Sydni's constitutional rights in the manner they were, and the City and Chief Manley knew that was likely to occur. It was obvious that these policies would injure more people on August 1, 2020 because they had already injured so many people during protests earlier in the year. The City and Chief Manley condoned and ratified the civil rights violations and the conduct that caused injuries to Sydni Beuhler and others on August 1, 2020 by continuing the practices and policies that lead to similar and more severe injuries earlier in the year.

32. These policies were the moving force behind Officer Defendants' violation of Sydni's civil rights and thus proximately caused Sydni's severe injuries and potentially permanent disability.

#### **VII. Damages**

33. Sydni Beuhler incorporates sections I through VI above into this section on damages.

34. Sydni seeks recovery for all of her damages including past and future pain, past and future mental anguish, past and future disfigurement, past and future physical impairment, past and future loss of enjoyment of life, past and future medical expenses, past and future lost income, past and future loss of consortium, past and future loss of services, miscellaneous other economic damages including out-of-pocket expenses, pre- and post-judgment interest, attorney's fees, expenses, and costs.

#### **VIII. Request for jury trial**

35. Plaintiff requests a jury trial.

**IX. Prayer**

36. For all these reasons, Sydni Beuhler requests that the City of Austin and Officer Does be summoned to appear and answer Sydni's allegations. After a jury trial regarding her claims, Sydni seeks to recover the damages listed above in an amount to be determined by the jury and any other relief to which she is entitled.

Respectfully submitted,  
Hendler Flores Law, PLLC



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Rebecca Webber  
[rwebber@hendlerlaw.com](mailto:rwebber@hendlerlaw.com)  
Scott M. Hendler  
[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)  
**HENDLER FLORES LAW, PLLC**  
1301 West 25th Street, Suite 400  
Austin, Texas 78705  
Telephone: 512-439-3202  
Facsimile: 512-439-3201

Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS: Sydni Beuhler; (b) County of Residence of First Listed Plaintiff: (EXCEPT IN U.S. PLAINTIFF CASES); (c) Attorneys (Firm Name, Address, and Telephone Number): Rebecca Webber, Scott Hendler, Hendler Flores Law PLLC; DEFENDANTS: City of Austin and John Does; County of Residence of First Listed Defendant: Travis; NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED; Attorneys (If Known):

II. BASIS OF JURISDICTION (Place an "X" in One Box Only): 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III); III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant): Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only): CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes categories like 110 Insurance, 210 Land Condemnation, 310 Airplane, 440 Other Civil Rights, 463 Alien Detainee, 625 Drug Related Seizure, 710 Fair Labor Standards Act, 820 Copyrights, 861 HIA (1395ff), 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party, 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes.

V. ORIGIN (Place an "X" in One Box Only): 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983; Brief description of cause: Civil Rights Violation.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.; DEMAND \$; CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No.

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Robert Pitman; DOCKET NUMBER 1:20-cv-01113-RP.

DATE: January 15, 2021; SIGNATURE OF ATTORNEY OF RECORD: Rebecca Webber; Digitally signed by Rebecca Webber Date: 2021.01.15 17:27:50 -0800.

FOR OFFICE USE ONLY: RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE.

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**SYDNI BEUHLER,  
Plaintiff,**

v.

**CITY OF AUSTIN AND  
JOHN DOES  
Defendants.**

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**CIVIL ACTION NO. 1:21-CV-00054-RP**

**DEFENDANT CITY OF AUSTIN’S ANSWER AND  
AFFIRMATIVE DEFENSES TO PLAINTIFF’S ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Answer and Affirmative Defenses to Plaintiff’s Original Complaint (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

**ORIGINAL ANSWER**

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiff’s Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiff, Defendant expressly denies that averment.<sup>1</sup>

This Defendant denies the allegations contained in the first unnumbered paragraph in Plaintiff’s Original Complaint.

**INTRODUCTION**

As to the paragraphs in the Complaint labeled “**Introduction**,” Defendant denies the allegations contained in the “Introduction.”

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<sup>1</sup> Paragraph numbers in Defendant’s Answer correspond to the paragraphs in Plaintiffs’ Original Complaint.

### **PARTIES**

1. Upon information and belief, Defendant admits the allegations contained in Paragraph 1.
2. Defendant admits the allegations contained in Paragraph 2.
3. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint and therefore denies same.

### **JURISDICTION**

4. Defendant admits the allegations contained in Paragraph 4.
5. Defendant admits the allegations contained in Paragraph 5.
6. Defendant admits that this Court has personal jurisdiction over the Defendants. Defendant denies the remaining allegations contained in Paragraph 6.

### **VENUE**

7. Defendant admits the allegations contained in Paragraph 7.

### **FACTS**

8. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore denies same.
9. Defendant denies the allegations contained in Paragraph 9.
10. Defendant denies the allegations contained in Paragraph 10.
11. Defendant denies the allegations contained in Paragraph 11.

### **CLAIMS**

12. Defendant incorporates and adopts its responses to the previous paragraphs of the Complaint.
13. Defendant denies the allegations contained in Paragraph 13.
14. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 of the Original Complaint and therefore denies same.

15. Defendant denies the allegations contained in Paragraph 15.
16. Defendant denies the allegations contained in Paragraph 16.
17. Defendant denies the allegations contained in Paragraph 17.
18. Defendant incorporates and adopts its responses to the previous paragraphs of the Complaint.
19. Defendant denies the allegations contained in Paragraph 19.
20. Defendant admits the allegations contained in Paragraph 20.
21. Defendant denies the allegations contained in Paragraph 21.
22. Defendant denies the allegations contained in Paragraph 22.
23. Defendant denies the allegations contained in Paragraph 23.
24. Defendant denies the allegations contained in Paragraph 24.
25. Defendant incorporates and adopts its responses to the previous paragraphs of the Complaint.
26. Defendant denies the allegations contained in Paragraph 26.
27. Defendant incorporates and adopts its responses to the previous paragraphs of the Complaint.
28. Defendant denies the allegations contained in Paragraph 28.
29. Defendant denies the allegations contained in Paragraph 29.
30. Defendant denies the allegations contained in Paragraph 30.
31. Defendant denies the allegations contained in Paragraph 31.
32. Defendant denies the allegations contained in Paragraph 32.

**DAMAGES**

33. Defendant incorporates and adopts its responses to the previous paragraphs of the Complaint.

34. Defendant denies the allegations contained in Paragraph 34.

**REQUEST FOR JURY TRIAL**

35. Paragraph 35 is merely Plaintiff's Request for Jury Trial and requires no response from the Defendant.

**PRAYER**

36. Defendant denies the allegations contained in Paragraph 36.

**AFFIRMATIVE DEFENSES**

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. As a political subdivision, Defendant City of Austin denies that it can be liable for exemplary/punitive damages under 42 U.S.C. § 1983.

4. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

**DEFENDANT'S PRAYER**

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney's fees, and any additional relief to which it is entitled under law or equity.



RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY  
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ David May\_\_\_\_\_

DAVID MAY

Assistant City Attorney

State Bar No. 24092778

[david.may@austintexas.gov](mailto:david.may@austintexas.gov)

City of Austin - Law Department

P. O. Box 1546

Austin, Texas 78767-1546

Telephone: (512) 974-2342

Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANT  
CITY OF AUSTIN**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 22<sup>nd</sup> day of March, 2021.

Rebecca Webber

[rwebber@hendlerlaw.com](mailto:rwebber@hendlerlaw.com)

Scott M. Hendler

[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)

**HENDLER FLORES LAW, PLLC**

1301 West 25th Street, Suite 400

Austin, Texas 78705

Telephone: (512) 439-3202

Facsimile: (512) 439-3201

**ATTORNEY FOR PLAINTIFF**

/s/ David May\_\_\_\_\_

DAVID MAY

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**Sydni Beuhler,**  
Plaintiff,

v.

**City of Austin,  
Officer Gavin Smart (AP8674),  
Officer Javier Gonzalez (AP7422),  
and Officer Anne Allare (AP7755),**  
Defendants.

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**Case no. 1:21-cv-00054**

**PLAINTIFF’S FIRST AMENDED COMPLAINT AND REQUEST FOR JURY TRIAL**

To the Honorable Court:

**I. Introduction**

This is a lawsuit about Austin Police Officers Gavin Smart, Javier Gonzalez, and Anne Allare, who arrested Plaintiff Sydni Beuhler to punish her for participating in a peaceful protest against police brutality on or near the intersection of 4<sup>th</sup> Street and Congress Avenue; who singled Sydni out for arrest because of her First Amendment expressive conduct, including her voiced criticism of the police that day; and who used excessive force against Sydni during the course of her arrest. The Defendant Officers arrested Sydni while she was peacefully exercising her constitutional right to assemble with like-minded people and protest the government and police misconduct.

This lawsuit is also about the City of Austin’s appalling response to protests—especially its pattern of violently violating demonstrators’ civil rights—during the weekend of May 30–31, 2020, and during the subsequent weeks and months. The City compounded its mishandling of the

situation by failing to investigate or attempt to deter further misconduct by Officer Defendants and other police.

## **II. Parties**

1. Plaintiff Sydni Beuhler is a resident of Austin, Texas.

2. Defendant the City of Austin is a Texas municipal corporation in the Western District of Texas (sometimes referred to herein as “the City”). Brian Manley was Austin’s policymaker when it comes to policing at the time of the events that give rise to this lawsuit.

3. The Officer Defendants are Officer Gavin Smart (Badge AP8674), Officer Javier Gonzalez (Badge AP7422), and Officer Anne Allare (Badge AP7755). Defendant Officers Smart, Gonzalez, and Allare are sometimes referred to collectively herein as “the Officer Defendants.”

## **III. Jurisdiction**

4. This Court has federal question subject matter jurisdiction over this 42 U.S.C. § 1983 lawsuit under 28 U.S.C. § 1331.

5. This Court has general personal jurisdiction over the Officer Defendants because they work and live in Texas. The City of Austin is subject to general personal jurisdiction because it is a Texas municipality.

6. This Court has specific personal jurisdiction over the Officer Defendants and the City because this case is about their breach of Plaintiff’s civil and constitutional rights that occurred here in Austin, Texas.

## **IV. Venue**

7. Under 28 U.S.C. § 1391(b), the Western District of Texas is the correct venue for this lawsuit because the events described above and below occurred in Austin, Texas.

**V. Facts - Officers Smart, Gonzalez, and Allare arrested Sydni Beuhler even though Sydni was doing nothing wrong; and the Officer Defendants used excessive force in making the arrest.**

8. On August 1, 2020 at approximately 7:00 pm, Sydni Beuhler was peacefully exercising her constitutional right to assemble and protest the government. She was protesting near the memorial of Garrett Foster, in the northbound lane of Congress Avenue near the intersection of 4<sup>th</sup> Street.

9. Moments before her arrest, Austin police began forcing protestors to retreat northbound on Congress Avenue. Officers used horses and bicycles to force protestors backwards in the northbound direction on Congress Avenue.

10. Sydni was among the people in the front of the crowd that the police were forcing backwards. She retreated while continuing to exercise her First Amendment right to protest police brutality. She backed up from the road and was inches away from the extended sidewalk. Even though protestors were complying with officer commands, police continued to pepper spray the crowd.

11. When Sydni observed officers again pepper spray a fellow protestor, she turned to the officers and verbally expressed her outrage by yelling at the officers and verbally objecting to their conduct. An Officer, who is believed to be Officer Smart, responded by yelling: "We are arresting this one." Officer Smart wrapped his arms around Sydni and immediately picked her up into the air. He carried her away from the crowd and proceeded to throw her to the ground.

12. Sydni is much smaller than the officer handling her arrest, yet two other officers (Officer Gonzalez and Officer Allare) got involved by kneeling on Sydni to hold her down. Sydni is all of 5'7" and weighs less than 145 pounds. She was not fighting or posing any risk to officers, yet the three Defendant Officers pinned her by kneeling on her back and pressing her into the street.

13. The three officers used unnecessary and excessive force. One Defendant Officer knelt on Sydni's neck and another Defendant Officer knelt on the base of her spine. A third Defendant Officer was pressing her into the street as he handcuffed her.

14. At the time the Officer Defendants arrested Sydni, the police were still clearing the road and had not arrested the other surrounding protestors. Officer Smart singled out Sydni for arrest because of her verbal criticism of APD policy tactics to injure protestors.

15. The excessive force used by the Officer Defendants in picking Sydni up, forcing her to the ground, kneeling on her back, and crushing her into the street caused Sydni to suffer a lower back disk bulge. Sydni now suffers from extreme back pain and neurological symptoms that interfere with her daily activities. The incident has caused Sydni physical injury and pain, mental and emotional distress and discomfort, mental anguish, humiliation, and embarrassment. Sydni has been unable to return to subsequent protests to exercise her First Amendment rights against police misconduct because of her injuries.

## **VI. Claims**

### **A. First Amendment Claim - The Defendant Officers violated Sydni Beuhler's First Amendment rights when they arrested Sydni in retaliation for protesting police misconduct.**

16. Sydni Beuhler incorporates the allegations of sections I through V above into her First Amendment claim.

17. Sydni brings this claim under 42 U.S.C. § 1983.

18. Sydni exercised her right to free speech and her right to assemble with other demonstrators to protest police brutality on August 1, 2020.

19. Officer Smart's decision to arrest Sydni was substantially motivated by Sydni's exercise of constitutionally protected conduct. The officers were clearing the road, and the protestors were moving from the road. Sydni herself was inches from the extended sidewalk. APD Officers, including the Officer Defendants arrested none of the other protestors who were standing

in the same or similar location of the road as Sydni. Only Sydni was arrested at this time, immediately after she verbally expressed her outrage at the way in which the Austin police were using excessive force against the protestors on that particular day. It is clear from the sequence of events that Officer Smart's decision to arrest Sydni was substantially motivated by Sydni's exercise of her First Amendment rights, including her specific criticism of the police conduct on that day.

20. "The First Amendment also protects a significant amount of verbal criticism and challenge directed at police officers. Indeed, a core First Amendment freedom allows individuals verbally to oppose or challenge police action without thereby risking arrest [and] is one of the principal characteristics by which we distinguish a free nation from a police state." *Flores v. Rivas*, No. EP-18-CV-297-KC, 2019 U.S. Dist. LEXIS 178034 \*44–46, 2019 WL 5070182 (W.D. Tex. 2019) (internal citations omitted). Officer Smart violated Sydni's First Amendment rights when he singled her out for arrest because of the content of her words and expressive conduct.

21. The Officer Defendants' excessive force against Sydni while targeting her for arrest has caused her to suffer injuries that would chill the willingness of a person of ordinary firmness from continuing to engage in peaceful protest and other expressive activities protected by the First Amendment.

22. Officer Smart was acting under color of law when he arrested Sydni as retribution for Sydni exercising her First Amendment rights. Each of the Defendant Officers was acting under color of law when they used excessive force in ways that chilled her willingness to engage in her First Amendment protected speech and expressive activities.

**B. Excessive Force Claim - The Officer Defendants violated Sydni's Fourth and Fourteenth Amendment rights by using excessive force during her arrest.**

23. Sydni Beuhler incorporates the allegations of sections I through VI.A above into her excessive force claim.

24. Each of the three Officer Defendants are liable to Plaintiff under 42 U.S.C. § 1983 for arresting Sydni with excessive force that constituted a deprivation of her Fourth and Fourteenth Amendment constitutional rights.

25. The Officer Defendants were acting under color of law when they arrested Sydni on August 1, 2020.

26. Defendants' unlawful and unjustified use of force against Sydni was excessive and was objectively unreasonable in light of established law. Sydni was attempting to comply with officers' demands to leave the street, even as she verbally criticized police conduct. Before she could reasonably comply, but after verbally expressing her outrage at police tactics, the Officer Defendants violated Sydni's constitutional rights under the Fourth and Fourteenth Amendments to be free from excessive force and unreasonable seizure and her rights of due process of law and equal protection under the law. Officer Smart lifted Sydni by her torso into the air and forced her to the ground. This was done without warning, and without attempting any less forceful method to detain Sydni. Officer Smart did not order Sydni to come with him or seek to detain her through less forceful means—he wrapped his arms around her torso and lifted her over a line of officers and bicycles. Officer Smart, with the assistance of Officer Gonzalez and/or Officer Allare, forced Sydni to the ground on her knees. While she was on the ground, Officer Gonzalez and/or Officer Allare joined in the arrest by pressing Sydni into the ground. Officer Smart helped to hold Sydni down while the two other officers knelt on Sydni's back while she was on the ground, one on her neck and upper back, and the other on the base of her spine. The force of three officers on the back

of a petite woman caused Sydni severe spinal injury, mental and emotional distress, and a bona fide fear for her life (in light of at least two other recent victims of police excessive force by kneeling on their backs that resulted in death).

27. The force used by the Officer Defendants was unnecessary, excessive, and unreasonable under the circumstances because Sydni did not pose an immediate threat to the safety of the Officer Defendants or others. The use of such excessive force was objectively unreasonable and unnecessary. The decision to arrest Sydni, and to do so in such a violent fashion, as Sydni was in the process of complying with police commands to exit the roadway while continuing to exercise her First Amendment rights, was wholly motivated by her presence at a protest against police brutality and the verbal criticism she directed toward police. Sydni posed no threat to officers to justify the use of such excessive force during her arrest. Sydni made no attempts to resist arrest. Sydni was not given any warning that the Officer Defendants intended to arrest her. The Officer Defendants did not make any effort to use less forceful methods to arrest Sydni. A reasonable officer would have clearly understood that the conduct of each Officer Defendant amounted to excessive force and was unlawful in the situation each Officer Defendant confronted.

28. The Officer Defendants engaged in a willful, malicious, and reckless course of conduct that was intended to cause and, in fact, did cause Sydni to suffer extreme and severe physical injuries, mental and emotional distress, agony, and anxiety.

29. Defendants' unlawful and unconstitutional use of force against Sydni directly and proximately caused her damages.

30. Each Officer Defendant acted under color of law at the time each engaged in excessive force against Sydni.



**C. Punitive Damages Claim - The Officer Defendants acted with such impunity and reckless disregard for Sydni's civil rights, this case warrants damages that will deter this type of misconduct in the future.**

31. Sydni Beuhler incorporates sections I through VI.B above into her punitive damages claim.

32. Officer Defendants' actions and conduct were egregious, reckless, and endangered the peaceful protesters including Sydni. Sydni seeks punitive damages to deter this type of retaliatory excessive force against protesters who demonstrate against police brutality in the future.

**D. Monell Claim - The City of Austin's policy of using excessive violence to control demonstration crowds violated protesters' First, Fourth, and Fourteenth Amendment rights.**

33. Sydni Beuhler incorporates the allegations of sections I through VI.C above into her *Monell* claim against the City of Austin.

34. Sydni brings this claim under 42 U.S.C. § 1983.

35. Austin had at least the following policies, practices, and customs on August 1, 2020:

- a. A policy of using excessive force against non-violent demonstrators,
- b. A policy not to adequately train officers regarding civil rights protected by the United States Constitution,
- c. A policy not to adequately train officers in crowd control during non-violent protests,
- d. A policy not to adequately supervise officers doing crowd control during non-violent protests,
- e. A policy not to intervene to stop excessive force and civil rights violations by its officers during non-violent protests,
- f. A policy not to investigate excessive violence by its officers against peaceful protesters, and
- g. A policy not to adequately discipline officers for—and deter officers from—using excessive force and violating protesters' civil rights during demonstrations.

36. The City of Austin and Austin Police Chief Brian Manley knew about these policies and directed Austin police to comply with them. The City and Chief Manley developed and issued these policing policies with deliberate indifference to Sydni's and other peaceful demonstrators' civil rights.

37. The City and Chief Manley were aware of the obvious consequences of these policies. Implementation of these policies made it predictable that Austin police would violate Sydni's constitutional rights in the manner they were, and the City and Chief Manley knew that was likely to occur. It was obvious that these policies would injure more people on August 1, 2020 because they had already injured so many people during protests earlier in the year. The City and Chief Manley condoned and ratified the civil rights violations and the conduct that caused injuries to Sydni Beuhler and others on August 1, 2020 by continuing the practices and policies that lead to similar and more severe injuries earlier in the year.

38. These policies were the moving force behind the Officer Defendants' violation of Sydni's civil rights and thus proximately caused Sydni's severe injuries and potentially permanent disability.

## **VII. Damages**

39. Sydni Beuhler incorporates the allegations of sections I through VI above into this section on damages.

40. Sydni seeks recovery for all of her damages including past and future pain, past and future mental anguish, past and future disfigurement, past and future physical impairment, past and future loss of enjoyment of life, past and future medical expenses, past and future lost income, past and future loss of consortium, past and future loss of services, miscellaneous other economic damages including out-of-pocket expenses, pre- and post-judgment interest, attorney's fees, expenses, and costs.

**VIII. Request for jury trial**

41. Plaintiff requests a jury trial.

**IX. Prayer**

42. For all these reasons, Sydni Beuhler requests that the City of Austin, Officer Gavin Smart (AP8674), Officer Javier Gonzalez (AP7422), and Officer Anne Allare (AP7755) be summoned to appear and answer Sydni's allegations. After a jury trial regarding her claims, Sydni seeks to recover the damages listed above in an amount to be determined by the jury and any other relief to which she is entitled.

Respectfully submitted,  
**HENDLER FLORES LAW, PLLC**



Scott M. Hendler

[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)

901 S. Mopac Expy., Bldg. 1, Suite #300

Austin, Texas 78746

Telephone: 512-439-3202

Facsimile: 512-439-3201

***ATTORNEY FOR PLAINTIFF***

**CERTIFICATE OF SERVICE**

I certify that a correct copy of this Plaintiff's First Amended Complaint has been served via the Federal Rules of Civil Procedure on May \_\_, 2022.



Scott M. Hendler

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**SYDNI BEUHLER,**  
**Plaintiff,**

v.

**CITY OF AUSTIN,**  
**Officer Gavin Smart (AP8674),**  
**Officer Javier Gonzalez (AP7422),**  
**and Officer Anne Allare (AP 7755),**  
**Defendants.**

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**CIVIL ACTION NO. 1:21-CV-00054-RP**

**DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES  
TO PLAINTIFF’S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, City of Austin, and Officer Gavin Smart (AP8674), Officer Javier Gonzalez (AP7422), and Officer Anne Allare (AP 7755), by and through counsel, file this Answer and Affirmative Defenses to Plaintiff’s First Amended Complaint (Doc. No. 21). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendants respectfully show the Court the following:

**ANSWER**

Pursuant to Federal Rule of Civil Procedure 8(b), Defendants respond to each of the specific averments in Plaintiff’s First Amended Complaint as set forth below. To the extent that Defendants do not address a specific averment made by Plaintiff, Defendants expressly deny that averment.<sup>1</sup>

**I. Introduction**

As for the two paragraphs following the label “**Introduction**,” Defendants deny the allegations. The allegations are vague and ambiguous, referring to and asserting conclusions of

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<sup>1</sup> Paragraph numbers in Defendants’ Answer correspond to the paragraphs in Plaintiff’s First Amended Complaint.

law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

**II. Parties**

1. Upon information and belief, admitted.
2. Defendant admits the allegations contained in Paragraph 2.
3. Admitted.

**III. Jurisdiction**

4. Admitted.
5. Admitted.
6. Defendants admit that this Court has personal jurisdiction over the Defendants.

Defendants deny the remaining allegations contained in Paragraph 6.

**IV. Venue**

7. Admitted.

**V. Facts - Officers Smart, Gonzalez, and Allare arrested Sydni Beuhler even though Sydni was doing nothing wrong; and the Officer Defendants used excessive force in making the arrest.**

8. Denied. The allegations of subheading V., and this paragraph 8., are referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

9. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

10. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.
11. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.
12. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.
13. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.
14. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.
15. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

**VI. Claims**

**A. First Amendment Claim - The Defendant Officers violated Sydni Beuhler's First Amendment rights when they arrested Sydni in retaliation for protesting police misconduct.**

16. Defendants denies the allegations contained in subheading VI, A., and Paragraph 16.

17. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

18. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

19. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

20. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

21. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

22. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

**B. Excessive Force Claim - The Officer Defendants violated Sydni's Fourth and Fourteenth Amendment rights by using excessive force during her arrest.**

23. Defendants deny the allegations contained in subheading VI., B., and Paragraph 23.

24. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

25. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

26. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

27. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

28. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

29. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

30. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

**C. Punitive Damages Claim - The Officer Defendants acted with such impunity and reckless disregard for Sydni's civil rights, this case warrants damages that will deter this type of misconduct in the future.**



31. Denied. Defendants deny the allegations contained in subheading VI., C., and Paragraph 31.

32. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

**D. *Monell* Claim - The City of Austin's policy of using excessive violence to control demonstration crowds violated protesters' First, Fourth, and Fourteenth Amendment rights.**

33. Denied. Defendants deny the allegations contained in subheading VI., D., and Paragraph 33.

34. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

35. Denied. The allegations of this paragraph, including a., b., c., d., e., f., g., are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

36. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

37. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

38. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

**VII. Damages**

39. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

40. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

**VIII. REQUEST FOR JURY TRIAL**

41. Paragraph 41 is merely Plaintiff's Request for Jury Trial and requires no response from the Defendants.

**IX. PRAYER**

42. Denied. The allegations of this paragraph are referring to and asserting conclusions of law or fact which do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

**AFFIRMATIVE DEFENSES & IMMUNITIES**

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. As a political subdivision, Defendant City of Austin denies that it can be liable for exemplary/punitive damages under 42 U.S.C. § 1983.

4. Defendants reserve the right to assert additional affirmative defenses throughout the development of the case.

5. Pleading further and in the alternative, Plaintiff's injuries and damages were caused in whole or in part by the conduct of other persons or entities for whom these defendants have no responsibility.

6. To the extent applicable and subject to withdrawal, Defendants assert the affirmative defense of comparative fault and that Plaintiff failed to mitigate damages, if any, and assert failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiff.

7. Defendants assert the affirmative defense of statute of limitations as to all claims outside the applicable limitations period(s), both statutory and administrative, if any.

8. Defendants deny deprivation of rights under color of statute, ordinance, custom, or abuses of any rights, privileges, or immunities secured to the Plaintiff by the United States Constitution, state law, or 42 U.S.C. § 1983, *et seq.*

9. Defendants hereby invoke applicable defenses based on the doctrine of Qualified Immunity, Official Immunity, and any related defenses. Defendants discharged their obligations and public duties in good faith, its actions were objectively reasonable in light of the law and the information possessed at that time.

10. To the extent applicable and subject to withdrawal, Defendants assert the incident in question and the resulting harm to Plaintiff were caused or contributed to by Plaintiff's own conduct.

11. Defendants further plead that, in the unlikely event liability is found, such liability be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.

12. Defendants plead legal justification for the actions and conduct relating to this incident.

13. To the extent Defendants did not address a specific averment made by Plaintiff, Defendants expressly deny all such averments.

14. Defendants reserve the right to assert additional affirmative defenses as may be applicable throughout the development of the case, including immunity, estoppel, illegality, laches, waiver, or any other matter which may constitute an avoidance or affirmative defense.

15. Defendant Officers deny any deprivation under color of statute, ordinance, custom, or abuses of any rights, privileges, or immunities secured to the Plaintiff by the United States Constitution, state law, or 42 U.S.C. § 1983, *et seq.*

16. Defendants hereby invoke the doctrine of Qualified Immunity and Official Immunity. Defendants discharged their obligations and public duties in good faith, and would show that their actions were objectively reasonable in light of the law and the information possessed at that time.

17. Pleading further, alternatively, and by way of affirmative defense, to the extent applicable and subject to being withdrawn, Defendants would show that at the time and on the occasion in question, Plaintiff failed to use any degree of care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and alleged damages that arise therefrom. Defendants invoke the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.

18. Defendants assert that punitive damages are not available and would be contrary to the protections of the United States Constitution by allowing a jury or fact finder standardless discretion..

**DEFENDANTS' PRAYER**

Defendants pray that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendants costs and attorney's fees, and any additional relief to which they may be entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY  
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ Monte L. Barton Jr.  
MONTE L. BARTON JR.  
State Bar No. 24115616  
[monte.barton@austintexas.gov](mailto:monte.barton@austintexas.gov)  
City of Austin  
P. O. Box 1546  
Austin, Texas 78767-1546  
Telephone (512) 974-2409  
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 14th day of July, 2022.

**Scott M. Hendler**

**Email: [shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)**

**Donald Puckett**

**Email: [dpuckett@hendlerlaw.com](mailto:dpuckett@hendlerlaw.com)**

**HENDLER FLORES LAW, PLLC**

901 S. Mopac Expy., Bldg. 1, Suite #300

Austin, Texas 78746

Telephone: 512-439-3202

Facsimile: 512-439-3201

**ATTORNEYS FOR PLAINTIFF**

/s/ Monte L. Barton Jr.  
MONTE L. BARTON JR.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER,

Plaintiff,

v.

CITY OF AUSTIN, et al,

Defendants.

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**ORDER**

Before the Court is Plaintiff’s Notice of Voluntary Dismissal as to Defendant Officer Anne Allare (“Allare”). (Dkt. 35). Plaintiff represents that she seeks to dismiss all claims against Defendant Allare pursuant to Rule 41(a)(1)(A)(i). (*Id.*). Defendants did not file responses or oppositions to Plaintiff’s motion.

Federal Rule 41(a)(1)(A)(i) allows a plaintiff to voluntarily dismiss their claims without order of court at any time before defendant serves an answer or motion for summary judgment. Defendant Allare has served an answer to Plaintiff’s complaint. (Dkt. 30). Therefore, Plaintiff’s notice is not self-effectuating.

Nonetheless, the Court will construe Plaintiff’s notice as a Motion for Voluntary Dismissal under Rule 41(a)(2). Rule 41(a)(2) “allows plaintiffs to freely dismiss their suits, subject to court approval, provided the dismissal does not prejudice any party.” *Templeton v. Nedlloyd Lines*, 901 F.2d 1273, 1274 (5th Cir. 1990). The district court has discretion to grant a Rule 41(a)(2) motion to dismiss. *Mansback v. Sw. Elec. Power Co.*, 915 F.2d 172, 174 (5th Cir. 1990). Generally, motions for voluntary dismissal should be freely granted, unless the non-moving party can show it would suffer some plain legal prejudice. *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002).

Plaintiff's Motion is unopposed, and she seeks to dismiss the claims against Defendant Allare with prejudice. Accordingly, Plaintiff's Motion for Voluntary Dismissal with Prejudice, (Dkt. 30), is **GRANTED. IT IS ORDERED** that all claims against Anne Allare are **DISMISSED WITH PREJUDICE.**

**IT IS FURTHER ORDERED** that Anne Allare and Sydni Beuhler shall bear their own costs.

**IT IS FINALLY ORDERED** that the Anne Allare is **TERMINATED** as a party in this case.

**SIGNED** on January 13, 2023.

A handwritten signature in blue ink, appearing to read "Robert Pitman", written over a horizontal line.

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**SYDNI BEUHLER,  
Plaintiff,**

v.

**CITY OF AUSTIN,  
Officer Gavin Smart (AP8674),  
Officer Javier Gonzalez (AP7422),  
Defendants.**

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**CIVIL ACTION NO. 1:21-CV-00054-RP**

**DEFENDANT OFFICERS’  
MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Defendant Officers, Gavin Smart (“Smart”) and Javier Gonzalez (“Gonzalez”), file this Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure as follows:

**I. Introduction**

Plaintiff, Sydni Beuhler, brings a §1983 claim for alleged violations of her First, Fourth and Fourteenth Amendment rights against Officers Smart and Gonzalez and a §1983 *Monell* claim against the City of Austin as a result of her arrest on August 1, 2020, in Austin, Texas. Video evidence conclusively shows all relevant events. There is no genuine dispute as to any material fact and all of the defendants are entitled to judgment as a matter of law.

All of Plaintiff’s claims fail and should be dismissed with prejudice. The Defendant Officers had probable cause to arrest Plaintiff, and the application of Qualified Immunity bars this lawsuit against them.

The available video footage clearly shows that Plaintiff intentionally refused to comply with police verbal commands to exit the roadway and resisted arrest. She was arrested with probable

cause for Obstruction of Highway or Other Passageway and Resisting Arrest after she and a large group of protesters had been repeatedly instructed to clear Congress Avenue near its intersection with 4th Street and to stop blocking the roadway. Instead of simply leaving the street as instructed by police officers the Plaintiff remained in place, continued to obstruct passage, and refused to move even though most of the other protesters had voluntarily stepped from the roadway onto the sidewalks.

In accordance with Austin Police Department training and policies, the plaintiff was restrained and placed in handcuffs, and Officer Anne Allare performed a safety frisk (pat-down) search for weapons before removing the plaintiff from the roadway and securing her in a police vehicle.

The Defendants deny the Plaintiff's claims and maintain that Plaintiff cannot meet her considerable evidentiary burden to establish liability under 42 U.S.C. §1983.

## **II. Summary Judgment Evidence**

Exhibit 01	Declaration of Chief Joseph Chacon;
Exhibit 02	Declaration of Commander Wade Lyons;
Exhibit 03	Deposition of Officer Gavin Smart (Feb 16, 2023) with exhibits;
Exhibit 04	Deposition of Officer Javier Gonzalez (Feb 9, 2023) with exhibits;
Exhibit 05	Deposition of Officer Anne Allare (Dec 15, 2022) with exhibits;
Exhibit 06	Deposition of Sydni Beuhler (March 22, 2023) with exhibits;
Exhibit 07	Smart (BWC) Body Worn Camera Video, Bates # COA 376;
Exhibit 08	Gonzalez (BWC) Body Worn Camera Video, Bates # COA 378;
Exhibit 09	Allare (BWC) Body Worn Camera Video, Bates # COA 379;
Exhibit 10	Bystander Video, Bates COA 770 [Beuhler Bates#488];
Exhibit 11	Bystander Video, Bates COA 769 [Beuhler Bates#491 & 492];
Exhibit 12	Bystander Video, Bates COA 768 [Beuhler Bates#489];
Exhibit 13	Screen Shots from Smart (BWC), Bates # COA 376; Time stamp: T01:25:08Z; T01:25:16Z; T01:25:33Z;
Exhibit 14	Screen Shots from Gonzalez (BWC), Bates # COA 378; Time stamp: T01:26:20Z;

- T01:25:34Z;  
T01:25:55Z
- Exhibit 15 Screen Shot from Bystander Video, [Beuhler Bates#489], Bates COA 768  
Time elapsed 00:04;
- Exhibit 16 Screen shots from Bystander Video, [Beuhler Bates#491 & 492], Bates  
COA 769, Time elapsed:  
00:08  
00:11,  
00:20,  
00:21,  
00:28

### III. Facts

This lawsuit arises out of the arrest of Plaintiff Sydni Beuhler on August 1, 2020. She was arrested with probable cause for Obstruction of Highway or Other Passageway (TX Penal Code § 42.03) and Resisting Arrest (TX Penal Code § 38.03) after she and a large group of protesters had been repeatedly instructed to clear Congress Avenue near its intersection with 4th Street and to stop blocking the roadway. Instead of simply leaving the street as instructed by police officers the Plaintiff remained in place, verbally cursed the officers and refused to cooperate and physically refused to comply with police instructions, and continued to obstruct passage. She refused to move even though most of the other protesters had voluntarily stepped from the roadway onto the sidewalks.

In accordance with Austin Police Department training and policies, the plaintiff was restrained and placed in handcuffs, and Officer Anne Allare performed a safety frisk (pat-down) search for weapons before removing the plaintiff from the roadway and securing her in a police vehicle. See *Exhibit 03 - Smart deposition transcript* pages 65-77, 81-85, 90-92, 109-111, 115 and the documents referenced in the deposition: COA 000822-823; COA 000405; *Exhibit 04 - Gonzalez deposition transcript*, pages 62-65, 92-99, 103-107, 117-124, and the documents referenced in the deposition: COA 000098, COA 000402-000403; *Exhibit 05 - Allare deposition transcript*, pages 67, 68, 85, 86, 95-97, 102-104; and the documents referenced in the deposition:

COA 000105; *Exhibit 06 - Beuhler deposition transcript*, pages 15, 50, 66, 73; *Exhibit 07 - Smart (BWC)* Time stamps: T01:23:36 [elapsed 00:12], T01:24:26 [elapsed 01:03], T01:24:43 [elapsed 01:20], T01:24:47 [elapsed 01:23], T01:24:58 [elapsed 01:34], T01:25:05 [elapsed 01:42], T01:25:13 [elapsed 01:49] (“Move back. You’re going to get arrested.”), T01:25:34 [elapsed 2:10] (Plaintiff approaches Officer Smart); *Exhibit 08 - Gonzales (BWC)* Time stamps: T01:25:18 [elapsed 05:10] - T01:26:33 [elapsed 06:25]; *Exhibit 09 - Allare (BWC)* Time stamps: T01:25:03 [elapsed 00:40] - T01:27:04 [elapsed 02:41]; *Exhibit 10 - Bystander Video*, Bates COA 770 [Beuhler Bates#488]; *Exhibit 11 - Bystander Video*, Bates COA 769 [Beuhler Bates#491 & 492]; *Exhibit 12 - Bystander Video*, Bates COA 768 [Beuhler Bates#489].

On August 1, 2020, at approximately 8:22 PM, officers from the Mounted Patrol and Austin Police Bicycle Public Order Team (BPOT) began clearing a large crowd of protesters out of Congress Avenue north of its intersection with 4th Street, where this group was blocking all lanes of the roadway. As officers were attempting to clear the roadway, several officers were giving verbal commands to the protesters to back up, while sirens and whistles could be heard in the background. All officers were uniformed and multiple police vehicles with emergency lights activated were in the immediate area. Officers issued numerous loud commands telling the crowd ‘to move back’, and at least once loudly stated, “move back or you’re going to get arrested.” *Id.*, and *Exhibits 13, 14, 15, 16*.

The plaintiff, Sydni Beuhler, remained standing in the roadway as many other protesters either voluntarily moved out of the roadway, or were pushed back by officers. *Id.*, and *Exhibit 06 - Beuhler deposition transcript*, pages 15, 50, 66, 73. As numerous BPOT officers were moving their bicycles forward to move the crowd. Officer Smart approached Ms. Beuhler and instructed her loudly ‘Move back!’ Ms. Beuhler cursed the officers and refused to move. *Id.*

Officer Smart wrapped his arms around Ms. Beuhler while facing her and pulled her back behind the line of BPOT officers, away from the other protesters. *Id.* Ms. Beuhler began yelling and struggling with Officer Smart while he tried to control her. Officer Gonzalez observed the struggle and approached to assist Officer Smart, who at that point had put Ms. Beuhler on the ground. She was on her knees, with her upper body over her thighs. Officer Gonzalez had control of Ms. Beuhler's right arm, and Officer Smart had control of her left. *Id.* At that point, Officer Anne Allare approached and briefly held Ms Beuhler's left hand. Once they were able to get her handcuffed, Officer Smart immediately stood Ms. Beuhler up and escorted her to a waiting patrol car. Officer Smart loudly asked if there was a female officer in the area. Officer Allare turned around to assist Officer Smart. At this point, Ms. Beuhler jumped up and down stating that she needed a female officer. Officer Allare informed Ms. Beuhler that she was a female officer. Officer Allare quickly frisked Ms. Beuhler, who was then placed in the patrol car. After this neither Officer Smart nor Officer Gonzalez had any further involvement with Ms. Beuhler. *Id.*

The response to resistance incident involving Ms. Beuhler was reviewed by Officer Smart's chain of command, and was deemed to be within policy and state law. Internal Affairs (IA) also reviewed the response to resistance and found it to be objectively reasonable. No APD policies or procedures were violated. See *Exhibit 01 - Declaration of Chief Joseph Chacon*; *Exhibit 03 - Smart deposition transcript* and the documents referenced in the deposition: COA 000822-823; COA 000405; *Exhibit 04 - Gonzalez deposition transcript*, and the documents referenced in the deposition: COA 000098, COA 000402-000403.

#### STANDARD OF REVIEW

Summary judgment is proper against a party who bears the ultimate burden of proof and fails to establish the existence of an element essential to its case by raising an issue of material fact.

FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323. The moving party satisfies its burden by "pointing out to the district court . . . that there is an absence of evidence to support the non-moving party's case." *Id.* at 326. The plaintiff may not rest on allegations in pleadings, but must produce competent, tangible evidence to survive summary judgment. *Id.* at 325. Moreover, "conclusory allegations, speculation, and unsubstantiated assertions are inadequate to satisfy the non-movant's burden." *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996).

#### IV. ARGUMENT & AUTHORITIES

##### A. **Plaintiffs' §1983 Claim against the Defendant Officers should be dismissed.**

Plaintiff alleges that defendant officers Smart and Gonzalez are liable for violations of her constitutional rights. Plaintiff asserts that officers Smart and Gonzalez violated not only the Fourth Amendment's prohibition against unreasonable searches and seizures, but also the First Amendment's protections of freedom of speech and assembly and also the Fourteenth Amendment's guarantees of equal protection and due process.

The Plaintiff's claims should be dismissed because Officers Smart and Gonzales did not violate plaintiff's constitutional rights. An officer may arrest a person in public without a warrant if the officer has probable cause to believe that person has violated the law. *Atwater v. City of Lago Vista*, 532 U.S. 318, 354, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001) ("If an officer has probable cause that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."); *Favela v. City of Las Cruces ex rel. Las Cruces Police Dep't*, 398 F. Supp. 3d 858, 927–31 (D.N.M. 2019).

In this case, the irrefutable facts are established by video. "[A] plaintiff's version of the facts should not be accepted for purposes of qualified immunity when it is 'blatantly contradicted'

and ‘utterly discredited’ by video recordings.” *Hanks v. Rogers*, 853 F.3d 738, 744 (5<sup>th</sup> Cir. 2017) (emphasis added). Moreover, a court need not rely on the “plaintiff’s description of the facts where the record discredits that description, but should instead consider ‘the facts in the light depicted in the videotape’.” *Carnaby v. City of Houston*, 636 F.3d 183, 187 (5<sup>th</sup> Cir. 2011); citing *Scott v. Harris*, 550 U.S. 372, 381 (2007).

For the reasons set forth above and irrefutably depicted on the available video footage and also as explained in the Depositions referenced above, which are incorporated herein by reference, the arrest of the plaintiff was lawful and based on probable cause. As a result, since there was no constitutional violation, the Plaintiff does not have a viable claim. Accordingly, summary judgment in favor of all defendants is proper as a matter of law.

**B. Officers Smart and Gonzalez have Qualified Immunity**

Because Officer Smart and Officer Gonzalez have been sued in their individual capacities, they each assert the defense of qualified immunity. *See Salazar-Limon v. City of Houston*, 826 F.3d 272, 277 (5<sup>th</sup> Cir. 2016). Consequently, the burden is on Plaintiff to plead sufficient facts showing the inapplicability of that defense.

Government officials performing discretionary functions generally are shielded from liability for civil damages in suits under § 1983 for constitutional violations insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 n.30 (1982); *Palmer v. Johnson*, 193 F.3d 346, 351 (5<sup>th</sup> Cir. 1999). “The Supreme Court has characterized the doctrine as protecting ‘all but the plainly incompetent or those who knowingly violate the law.’” *Cozzo v. Tangipahoa Parish Council-President Gov’t*, 279 F.3d 273, 284 (5<sup>th</sup> Cir. 2002) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

Plaintiff does not have sufficient evidence to raise a genuine issue of material fact to demonstrate that Smart and Gonzalez do not have qualified immunity. “The doctrine of qualified immunity immunizes government officials acting within their discretionary authority from civil damages if their conduct does not violate clearly established constitutional law of which a reasonable person would have known.” *Modica v. Taylor*, 456 F.3d 174, 179 (5th Cir. 2006). Whether an individual is entitled to qualified immunity at the summary judgment stage is determined by following a two-part analysis. In one part of the analysis, the court must determine whether the facts, taken in the light most favorable to the party asserting the injury, show that the official violated a “clearly established” constitutional right. *Price v. Roark*, 256 F.3d 354, 369 (5th Cir. 2001). If there is no constitutional violation, the inquiry ends in favor of the official asserting qualified immunity. *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003). In the other part of the analysis, the court must determine whether the official’s conduct was objectively reasonable in light of the clearly established law. *Saucier v. Katz*, 533 U.S. 194, 202 (2001), *overruled on the other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009). In other words, courts look to whether “it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted.” *Price*, 256 F.3d at 369. Qualified immunity protects officials who merely make a mistake in judgment and it shields “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986). Thus, when a defendant asserts qualified immunity, the burden is on the plaintiff to produce evidence to pierce that immunity. *Atteberry v. Nocona General Hospital*, 430 F.3d 245, 253 (5th Cir. 2005).

“[P]olice officers are entitled to qualified immunity unless existing precedent ‘squarely governs’ the specific facts at issue.” *Kisela v. Hughes*, 584 U.S. \_\_\_\_, 138 S. Ct. 1148, 1153 (2018), quoting *Mullenix v. Luna*, 577 U.S. 7, 136 S. Ct. 305 (2015)(*per curiam*). “An officer ‘cannot be



said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Kisela*, 138 S. Ct. at 1153, quoting *Plumhoff v. Rickard*, 572 U.S. 765, 134 S. Ct. 2012 (2014). Plaintiffs can point to no cases that would have put Smart and Gonzalez on notice that every reasonable officer in their position would have concluded that their respective actions in arresting and handcuffing the Plaintiff were a violation of her clearly established rights.

Plaintiff's bare allegations regarding this incident are simply not supported by the evidence. It was reasonable for Officer Smart and Officer Gonzalez to detain and arrest Plaintiff under the circumstances established on the video. It was also reasonable for them to handcuff her per standard practice and for Officer Allare to perform a standard pat-down frisk to search for potential weapons before securing Plaintiff in the police vehicle, in accordance with APD policy and in accordance with Police Academy training.

"An officer may be shielded from liability even if he is mistaken. Whether actions were objectively reasonable is a question of law." *Evetts v. DETNTFF*, 330 F.3d 681, 688 (5th Cir. 2003). In this case, Smart and Gonzalez did not violate clearly established law but were in fact following clearly established practices. The overwhelming weight of the evidence establishes that Officers Smart and Gonzalez are entitled to qualified immunity.

When viewed from the perspective of a reasonable officer on the scene of this rapidly evolving incident, the actions of Officers Smart and Gonzalez were objectively reasonable under the circumstances.

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant officers Smart and Gonzales respectfully request that the Court grant this Motion for Summary Judgment and dismiss the

Plaintiff's claims against them with prejudice with all costs assessed to the Plaintiff. Defendants further request any additional relief to which they may be entitled.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY  
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ Monte L. Barton Jr. \_\_\_\_\_

MONTE L. BARTON JR.

Assistant City Attorney

H. GRAY LAIRD III

State Bar No. 24087054

MONTE L. BARTON, JR.

State Bar No. 24115616

[monte.barton@austintexas.gov](mailto:monte.barton@austintexas.gov)

City of Austin-Law Department

Post Office Box 1546

Austin, Texas 78767-1546

Telephone: (512) 974-2409

Facsimile: (512) 974-1311

**Counsel for Defendant**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 14th day of April, 2023.

**Via CM/ECF:**

Scott M. Hendler

SBN: 09445500

shendler@hendlerlaw.com

Grayson McDaniel

SBN: 24078966

gmcdaniel@hendlerlaw.com

Stephen Demik (pro hac vice)

sdemik@hendlerlaw.com

HENDLER FLORES LAW, PLLC

901 S. MoPac Expressway

Bldg. 1, Suite #300

Austin, Texas 78746

Telephone: (512) 439-3202

Facsimile: (512) 439-3201

**ATTORNEYS FOR PLAINTIFF**

/s/ Monte L. Barton Jr.

MONTE L. BARTON JR.

# **Exhibit 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**SYDNI BEUHLER,  
Plaintiff,**

**v.**

**CITY OF AUSTIN,  
Officer Gavin Smart (AP8674),  
Officer Javier Gonzalez (AP7422)  
Defendants.**

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**CIVIL ACTION NO. 1:21-CV-00054-RP**

**DECLARATION OF JOSEPH CHACON**

STATE OF TEXAS  
COUNTY OF TRAVIS

I, Joseph Chacon, pursuant to 28 U.S.C. 1746, do hereby declare based on my own personal knowledge as follows:

1. “My name is Joseph Chacon, I am over the age of eighteen years, and I am authorized to make this affidavit in support of Defendant City of Austin’s Motion for Summary Judgment. I have never been convicted of a crime and am competent to make this affidavit. I am personally acquainted with the facts herein stated which are true.

2. I am currently employed as the Chief of Police for the City of Austin Police Department (APD). I have been the Chief of Police for APD since October, 2021. I am a certified Texas law enforcement officer. Overall, I have been a professional law enforcement officer with APD since 1998. Prior to becoming Chief of Police, I held numerous patrol, investigative, supervisory, and management positions with the Austin Police Department.

3. As the Chief of Police, I manage the personnel, budget, and police operations for APD. I have final responsibility for setting the operational policies (“APD Policies”), hiring

standards, and training standards for APD. I also have personal knowledge of how APD (and the City of Austin) investigates complaints against officers and of the discipline of sworn APD officers. In my role as the police chief, I have final authority over internal affairs investigations and police officer discipline, subject to State of Texas Civil Service laws and the Meet and Confer Agreement between the City of Austin and the Austin Police Association (the "Agreement"). Through my employment as the APD Chief of Police, I have personal knowledge of the Agreement, APD work rules and APD policies, APD training requirements, personnel and hiring information for APD police officers, and APD investigative and disciplinary policies and procedures.

**I. APD Hiring**

4. The Chief of Police has final authority to hire new APD cadets. I know that all APD applicants must undergo and pass a written cognitive test, sit for an oral interview before a board of APD officers, pass a medical examination, and pass a physical fitness test. Additionally, before any new cadets are hired, APD's recruiting division conducts comprehensive employment, criminal, and military background checks. All applicants must also undergo and pass a psychological evaluation and a polygraph examination before hiring. APD does not hire any candidates whose background or psychological evaluation indicates that they pose a higher than normal risk of using excessive force, or that they are otherwise unfit for law enforcement work.

5. I know that APD conducted a comprehensive background investigation on Gavin Smart (APD #8674), Javier Gonzalez (APD #7422), and Anne Allare (APD #7755) before they were hired as cadets.

6. Based on the results of the extensive background investigation conducted on Officers Smart (APD #8674), Gonzalez (APD #7422), and Allare (APD #7755) and the fact that

they passed all of the pre-employment examinations, the Austin Police Department found no indication that Officers Smart (APD #8674), Gonzalez (APD #7422), and Allare (APD #7755) posed any higher than normal risk of using improper, unnecessary or excessive force, or otherwise engaging in the inappropriate conduct as alleged in Plaintiff's Amended Complaint (including violations of free speech, due process, and/or assembly and/or retaliating for the exercise of these constitutional rights) as police officers for the City of Austin.

## **II. APD Investigations and Discipline**

7. APD has policies and procedures in place to ensure that officers accused of violating APD policies are investigated and, if appropriate, disciplined. APD has a set of policies that all officers must obey. The APD policies govern all manner of officer conduct, including, but not limited to, pursuit of fleeing suspects, appropriate arrest procedures, reasonable suspicion and detention, use of APD computers, officer discipline, and use of force. Every APD officer is issued a set of these policies. As the APD policies are updated or revised, they are distributed to all officers. All officers must acknowledge, in writing, receipt and understanding of any new policies. A copy of the policies in effect at the time of this 8/01/2020 incident is attached and incorporated herein (Austin Police Department General Orders issued 7/22/2020). This includes the policies set out by: APD General Order 100.2 Law Enforcement Authority – Peace Officer Powers; GO 100.3 Law Enforcement Authority – Constitutional Requirements; GO 200 Response to Resistance; GO 200.1 Purpose and Scope; GO 200.1.1 Philosophy; GO 200.1.2 Definitions; GO 200.2 De-escalation of Potential Force Encounters; GO 200.2.1 Assessment and De-escalation; GO 200.3 Response to Resistance; GO 200.3.1 Determining the Objective Reasonableness of Force; GO 200.3.2 Use of Force to Affect a Detention, an Arrest or to Conduct a Search; GO 200.5.2 Duty to Give Aid and Medical Care; GO 211 Response to Resistance Inquiry, Reporting, and Review; GO

301 Responsibility to the Community; GO 301.2 Impartial Attitude and Courtesy; GO 306 Search and Seizure; GO 306.3.1 Search Protocol; GO 306.4 Exigent Circumstances; GO 306.6 Search Incident to Arrest; GO 306.8 Probable Cause; GO 306.9 Frisk (Pat-Down) for Weapons; GO 318.3 Detentions; GO 318.3.1 Handcuffing Detainees, GO 318.5 Field Interviews, Statements and Confessions; GO 318.5.1 Miranda Warning; GO 319 Arrests; GO 319.3 Warrantless Arrest Guidelines; GO 408 Mobile Field Force; GO 900 General Conduct and responsibilities; GO 900.1.1 Responsibility to Know and Comply; GO 900.3 General Conduct; GO 900.3.4 Personal Conduct.

8. At the time of this incident, August 1, 2020, APD had policies in place specifically forbidding the use of improper, unnecessary or excessive force, or otherwise engaging in the inappropriate conduct as alleged in Plaintiff's Amended Complaint (including violations of free speech, due process, and/or assembly and/or retaliating for the exercise of these constitutional rights). These policies specified when an officer may arrest, detain, stop, and search suspects for alleged violations of the law, and when to use force, and, when appropriate, the level of force that may be used. Officers who violated the APD policies were subject to discipline up to, and including, termination. At the time of this incident, August 1, 2020, APD's use of force reporting and investigation requirements were set forth in Policy GO 211. APD monitored its officers' use of force by requiring all officers who use force to report their use of force. APD conducted a review of and inquiry into every reported use of force to determine whether it comported with APD's policies.

9. At the time of this incident, August 1, 2020, APD maintained an internal affairs unit (IAD). IAD was responsible for investigating any violation of general orders by APD officers. IAD investigators were all experienced law enforcement officers who hold the rank of sergeant or



above. All formal complaints about APD officers, whether generated internally or externally, were investigated by IAD. IAD was responsible for producing a report on the allegations and detailing the evidence collected, which included compelled statements given by the officer (if officers refused to give statements to IAD, they were subject to being terminated from their employment).

10. APD maintains disciplinary records for its officers. Gavin Smart (APD #8674), Javier Gonzalez (APD #7422), and Anne Allare (APD #7755) have never been disciplined by APD for excessive force or otherwise engaging in the inappropriate conduct as alleged in Plaintiff's Amended Complaint (including violations of free speech, due process, and/or assembly and/or retaliating for the exercise of these constitutional rights). At the time of this incident, APD did not have any indication that Officer Smart, Officer Javier Gonzalez, or Officer Anne Allare posed any unusually high risk of using excessive force or otherwise engaging in inappropriate conduct as alleged in Plaintiff's Amended Complaint (including violations of free speech, due process, or assembly or retaliating for the exercise of these constitutional rights) asserted against them, or that APD police officers were not adequately trained for their jobs.

11. There is considerable citizen oversight of APD and IAD. The City established the Office of Police Monitor, now known as the Office of Police Oversight (OPO) in 2002. The Community Police Review Commission (CPRC) was established in 2018 and met for the first time in October 2020. At the time of this incident on August 1, 2020, the OPO monitored APD in several ways. For instance, OPO staff sat in on interviews when conducted by IAD investigators for various matters to ensure that they are conducted fairly and impartially. The OPO received complaints from the public and ensured that they were investigated by IAD. The OPO also reviewed IAD investigative files, reviewed disciplinary decisions made by the Chief of Police, and created reports on APD performance.

12. At the time of this incident, the CRP (Citizens Review Panel, now known as the Community Police Review Commission (CPRC)), was a panel of citizens selected by the Austin City Council to monitor APD. The CRP conducted public hearings, during which it received complaints from the public regarding APD, discussed completed IAD investigations, and it received information from APD and OPO staff. The CRP also reviewed ongoing investigations in closed sessions, and had complete access to IAD files. The CRP could vote to recommend discipline in certain cases or could request that the Austin City Manager hire an independent third-party firm to conduct a review of an IAD investigation or a specific incident.

13. On August 29, 2020, the Office of Police Oversight sent a Notice of Formal Complaint regarding this incident to the APD Internal Affairs Division (IAD). The Notice stated, in part:

“This notice of formal complaint is a request for Internal Affairs to initiate an investigation in order to determine if the employee conduct is within compliance of APD policy. Civil Service Rules, and Municipal Civil Service Rules.”

14. The complaint stated the following:

“ICMS #: 2020-1301

Complaint: Complainant, Ms. Sydney Beuhler alleges: I wasn't read my Miranda rights, I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds. The officers were not going to get a female officer, they said they didn't have time to get a female officer and I started to have a panic attack, so they got one. The arresting officer was Smart, #8674. Officer in the car that transported, threatened me, and they were mouthing things to one another and one wouldn't talk to me at all.”

15. IAD conducted its investigation to determine if Gavin Smart (APD #8674), Javier Gonzalez (APD #7422), and Anne Allare (APD #7755) violated any APD policies with respect to use of force and otherwise. I know that OPO monitored the IAD investigation. When IAD

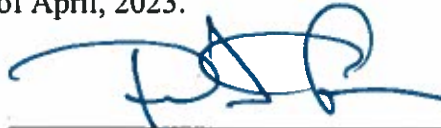
concluded its investigation, the APD chain of command concluded that there were no violations of policy by these three officers during IA's review of this incident.

16. In support of this Declaration and Defendant City of Austin's Motion for Summary Judgment, the following Attachment[s] are records retained in the normal course and scope of business of the City of Austin, and are true and correct copies of what they purport to be:

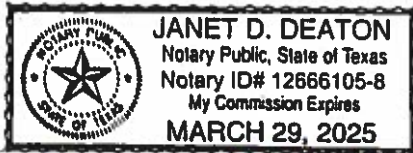
Attachment 1: APD General Orders issued 7/22/2020

PURSUANT to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this, the 11<sup>th</sup> day of April, 2023.



JOSEPH CHACON



# **Attachment 1**

## Austin Police Department

General Orders

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### **CHIEF'S MESSAGE**

I am proud to present the newest edition of the Austin Police Department General Orders. The General Orders are designed to assist all employees in accomplishing the Department's mission in a professional and lawful manner. Adherence to these orders also helps safeguard employees and the Department against civil litigation and ensures that employees will be protected when their individual actions are scrutinized, especially after a critical incident.

All employees will abide by these orders and are responsible for keeping themselves current on the content of this manual.

Stay safe,

Brian

*Brian Manley*

Chief of Police

## Austin Police Department

### General Orders

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#### **LAW ENFORCEMENT CODE OF ETHICS**

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

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

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement.

*IACP Code of Ethics, adopted 37 Tex. Admin. Code § 1.112*

## Austin Police Department

### General Orders

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#### **CANONS OF POLICE ETHICS**

##### **Article 1: Primary Responsibility of Job**

The primary responsibility of the police service, and of the individual officer, is the protection of people of the United States through the upholding of laws. Chief among these laws is the Constitution of the United States and its Amendments. The law enforcement officer always represents the whole of the community and it's legally expressed will and is never the arm of any political party or clique.

##### **Article 2: Limitations of Authority**

The first duty of a law enforcement officer, as upholder of the law, is to know its bounds upon him in enforcing it. Because he represents the legal will of the community, be it local, state, or federal, he must be aware of the limitations and proscriptions which the people, through the law, have placed upon him. He must recognize the genius of the American system of government which gives to no man, groups of men, or institutions, absolute power; and he must ensure that he, as a prime defender of that system, does not pervert its character.

##### **Article 3: Duty to be Familiar with the Law and with Responsibilities of Self and Other Public Officials**

The law enforcement officer shall assiduously apply himself to the study of the principles of the laws which he is sworn to uphold. He will make certain of his responsibilities in the particulars of their enforcement, seeking aid from his superiors in matters of technicality or principle when these are not clear to him. He will make special effort to fully understand his relationship to other public officials, including other law enforcement agencies, particularly on matters of jurisdiction, both geographically and substantively.

##### **Article 4: Utilization of Proper Means to Gain Proper Ends**

The law enforcement officer shall be mindful of his responsibility to pay strict attention to the selection of means in discharging the duties of his office. Violations of law or disregard for public safety and property on the part of an officer are intrinsically wrong; they are self-defeating in that they instill in the public mind a like disposition. The employment of illegal means, no matter how worthy the end, is certain to encourage disrespect for the law and its officers. If the law is to be honored, it must be by those who enforce it.

##### **Article 5: Cooperation with Public Officials in the Discharge of Their Authorized Duties**

The law enforcement officer shall cooperate fully with other public officials in the discharge of authorized duties, regardless of party affiliation or personal prejudice. He shall be meticulous, however, in assuring himself of the propriety, under the law, of such actions and shall guard against the use of his office or person, whether knowingly or unknowingly, in any improper or illegal action. In any situation open to question, he shall seek authority from his superior officer, giving him a full report of the proposed service or action.

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#### **Article 6: Private Conduct**

The law enforcement officer shall be mindful of his special identification by the public as an upholder of the law. Laxity of conduct or manner in private life, expressing either disrespect for the law or seeking to gain special privilege, cannot but reflect upon the police officer and the police service. The community and the service require that the law enforcement officer lead the life of a decent and honorable person. Following the career of a police officer gives no person special perquisites. It does give the satisfaction and pride of following and furthering an unbroken tradition of safeguarding the American republic. The officer who reflects upon this tradition will not degrade it. Rather, he will so conduct his private life that the public will regard him as an example of stability, fidelity, and morality.

#### **Article 7: Conduct Toward the Public**

The law enforcement officer, mindful of his responsibility to the whole community, shall deal with individuals of the community in a manner calculated to instill respect for its laws and its police service. The law enforcement officer shall conduct his official life in a manner such as will inspire confidence and trust. Thus, he will be neither overbearing nor subservient, as no individual citizen has an obligation to stand in awe of him nor a right to command him. The officer will give service where he can, and will require compliance with the law. He will do neither from personal preference or prejudice but rather as a duly appointed officer of the law discharging his sworn obligation.

#### **Article 8: Conduct in Arresting and Dealing with Law Violators**

The law enforcement officer shall use his powers of arrest strictly in accordance with the law and with due regard to the rights of the citizen concerned. His office gives him no right to prosecute the violator nor to mete out punishment for the offense. He shall, at all times, have a clear appreciation of his responsibilities and limitations regarding detention of the violator. He shall conduct himself in such a manner as will minimize the possibility of having to use force. To this end, he shall cultivate a dedication to the service of the people and the equitable upholding of their laws, whether in the handling of law violators or in dealing with the law abiding.

#### **Article 9: Gifts and Favors**

The law enforcement officer, representing government, bears the heavy responsibility of maintaining, in his own conduct, the honor and integrity of all government institutions. He shall, therefore, guard against placing himself in a position in which any person can expect special consideration or in which the public can reasonably assume that special consideration is being given. Thus, he should be firm in refusing gifts, favors or gratuities, large or small, which can, in the public mind, be interpreted as capable of influencing his judgment in the discharge of his duties.

#### **Article 10: Presentation of Evidence**

The law enforcement officer shall be concerned equally in the prosecution of the wrong-doer and the defense of the innocent. He shall ascertain what constitutes evidence and shall present such evidence impartially and without malice. In so doing, he will ignore social, political, and all other



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distinctions among the persons involved, strengthening the tradition of the reliability and integrity of an officer's word.

**Article 11: Attitude Toward Profession**

The law enforcement officer shall regard the discharge of his duties as a public trust and recognize his responsibility as a public servant. By diligent study and sincere attention to self-improvement, he shall strive to make the best possible application of science to the solution of crime, and in the field of human relationships, shall strive for effective leadership and public influence in matters affecting public safety. He shall appreciate the importance and responsibility of his office and shall hold police work to be an honorable profession rendering valuable service to his community and country.

IACP Canons of Police Ethics, adopted 37 *Tex. Admin. Code* § 1.113

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#### **PHILOSOPHY, VALUES, VISION AND MISSION**

##### **Philosophy of the Austin Police Department**

The protection of life is the primary core value and guiding principle of the Austin Police Department. As such, all employees will strive to preserve human life while recognizing that duty may require the use of deadly force, as a last resort, after other reasonable alternatives have failed or been determined impractical. The department's basic goal is to protect life, property, and to preserve the peace in a manner consistent with the freedom secured by the United States Constitution. It is our duty to guarantee these inalienable rights in strict accordance with the highest principles of our society. Operating with the statutory and judicial limitations of police authority, our role is to enforce the law in a fair and impartial manner. It is not our role to legislate, render legal judgment, or punish.

Employees should, by professional attitude and exemplary conduct, ensure all persons are treated with respect and courtesy. Employees should be cognizant of the fact that they are a part of the community they serve and are accountable to the community for their decisions and the consequences of those decisions. Employees should make every effort to involve the community in problem solving, crime suppression, and crime prevention. Employees should strive to know the residents they serve. Positive contact between employees and residents will enhance the public understanding of the employee's role in society and help build partnerships from which crime and fear of crime can be reduced.

Knowledge of the law itself and the ability to understand those ideals upon which the law is built are the cornerstones of law enforcement. Compassion and discretion will play an important role within the philosophy of any employee.

Employees of the Department are professionals. We must realize our main responsibility is the protection of the community and the preservation of human life and dignity. We are guided by the philosophy set forth here and the policies and procedures incorporated into this and other Department manuals.

##### **Department Values - I. C.A.R.E.**

**Integrity** - the cornerstone of Police work; without it, public trust is lost.

**Courage** - to make the right professional decision.

**Accountable** - to the community, the Department, and coworkers.

**Respect** - of the community, the Department, and most importantly, self.

**Ethical** - professional actions and decision making.

**Vision Statement:** A trusted and respected Department that collaborates with our community to make Austin the safest city in America.

**Mission Statement:** To keep you, your family, and our community safe through innovative strategies and community engagement..

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**Chapter 1 - Department  
Organization and Administration**





## Austin Police Department General Orders

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# Law Enforcement Authority

### 100.1 PURPOSE AND SCOPE

Law enforcement officers are granted the authority to perform their functions based on established legal authority. This department does not tolerate abuse of law enforcement authority.

### 100.2 PEACE OFFICER POWERS

Sworn members of this department shall be considered peace officers pursuant to Tex. Code of Crim. Pro. art. 2.12. The authority of any such peace officer extends to any place in the State of Texas and assigns the duty to every peace officer to preserve the peace within the State of Texas and their jurisdiction through all lawful means. A peace officer shall perform the duties as required under the Tex. Code of Crim. Pro. art. 2.13.

Special or limited peace officer powers or authority to arrest may be granted to others as specified in Tex. Code of Crim. Pro. art. 2.121 - 2.125.

### 100.3 CONSTITUTIONAL REQUIREMENTS

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

### 100.4 LAW ENFORCEMENT JURISDICTION

Employees should be aware that there are numerous law enforcement agencies within and surrounding the City. These agencies have jurisdiction within the confines of their geographical boundaries or areas of control. This includes, but is not limited to, the following:

- (a) Federal law enforcement officers possess full federal authority nationwide as given to them under the United States Code (U.S.C.). Federal Law Enforcement Officers are authorized to enforce various laws at the federal, state, county, and local level. The Federal Building in Austin is a federal reservation. The Federal Police have patrol jurisdiction and the FBI has investigative jurisdiction.
- (b) The Department of Public Safety (DPS) is a state entity which has statewide jurisdiction to conduct criminal investigations, issue traffic citations, and investigate intra-state crashes. This includes the Texas Rangers and DPS Troopers.
- (c) Sheriff's Offices are county level entities which have jurisdiction to conduct criminal investigations and enforce County Ordinances within their county. They have statewide jurisdiction to arrest for any criminal offense committed within their presence or view. They have countywide jurisdiction to issue traffic citations. Local Sheriff's Offices includes the Travis County Sheriff's Office (TCSO), the Williamson County Sheriff's Office (WCSO) and the Hays County Sheriff's Office (HCSO).
- (d) Constable Offices are county level entities which have countywide jurisdiction to serve civil process and conduct criminal investigations. They have statewide jurisdiction to

## Austin Police Department

### General Orders

#### *Law Enforcement Authority*

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serve warrants and arrest for any criminal offense committed within their presence or view. They have countywide jurisdiction to issue traffic citations. Constable Offices are broken up into Precinct's and Travis County has five (5) Constable Precincts.

- (e) Municipal Police Departments are city level entities which have citywide jurisdiction to conduct criminal investigations. They have jurisdiction in their municipality and concurrent counties to issue traffic citations and statewide jurisdiction to arrest for any criminal offense committed within their presence or view. The Austin Police Department is a Municipal Police Department.
- (f) Independent School Districts (ISD) and higher education police have concurrent jurisdiction on school property. This includes, among others, Austin Community College Police, Austin Independent School District Police (AISD-PD) and The University of Texas Police Department (UTPD).



Austin Police Department  
General Orders

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## Chief Executive Officer

### 102.1 PURPOSE AND SCOPE

The Texas Commission on Law Enforcement (TCOLE) has mandated that all sworn officers and dispatchers employed within the State of Texas shall receive initial certification by TCOLE within prescribed time periods.

#### 102.1.1 CHIEF EXECUTIVE OFFICER REQUIREMENTS

Any chief executive officer of this department shall, as a condition of continued employment, complete the course of training prescribed by TCOLE and obtain the Basic Certificate by TCOLE within the time frame prescribed by Tex. Educ. Code § 96.641 (Tex. Occ. Code § 1701.358).



Austin Police Department  
General Orders

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## Oath of Office

### 104.1 PURPOSE AND SCOPE

Officers of this department are sworn to uphold the federal and state constitutions and to enforce federal, state and local laws.

#### 104.1.1 OATH OF OFFICE

Upon employment, all sworn employees shall be required to affirm and sign the oath of office expressing commitment and intent to respect constitutional rights in discharging the duties of a law enforcement officer. The oath shall read as follows:

"I \_\_\_\_\_, do solemnly swear that I will faithfully and impartially discharge and perform all duties incumbent upon me as a Police Officer of the City of Austin, according to the best of my skill and ability, agreeable to the Constitution and laws of the United States and the State of Texas.

I further solemnly swear that I will be faithful to the demands for truth and honesty, as established by my profession and the Austin Police Department. I will devote my efforts and skills to the honorable profession of policing, and to the service of the neighborhoods and individuals of this community, the City of Austin.

So help me God."

#### 104.1.2 CODE AND CANONS OF ETHICS

All sworn employees shall adhere to the Code of Ethics and Canons of Police Ethics in the General Orders preface, as adopted by the International Association of Chiefs of Police (IACP).

**GO  
105****Austin Police Department**  
General Orders

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## Community Policing

### 105.1 PURPOSE AND SCOPE

The purpose of this general order is to identify the tenets of Community Policing, which serves as the basis for this Department's mission and guiding principles. Community Policing is beyond a philosophy, it is a practice. The Austin Police Department is committed to Community Policing which strives to build mutual respect, collaborative partnerships, fair and impartial policing, and procedurally just behavior with the community that we serve. The Department's goal is to have an understanding of the traditions, culture, and history of the neighborhoods in which they serve in order to develop proactive solutions to problems and increase overall trust in policing. Likewise, the Department is required to provide information and training to the community so community members gain an understanding of police practices and procedures, as well as an understanding of the traditions and culture of law enforcement.

### 105.2 DEFINITIONS

- (a) **Community Policing** - Building positive relationships, one contact at a time, by being present, engaged, and visible in our community to address crime and improve the general well-being of residents and visitors of Austin.
- (b) **Procedurally Just Behavior** - Four Principles
  1. Treating people with dignity and respect.
  2. Giving individuals "voice" during encounters.
  3. Being neutral and transparent in decision-making.
  4. Conveying trustworthy motives.
- (c) **SARA Problem Solving Model**
  1. Scanning – Identify and prioritize problems.
  2. Analysis – Research known elements of the problem.
  3. Response – Develop solutions to eliminate or reduce the frequency of the problem.
  4. Assessment – Evaluate the success of the solution.

### 105.3 COMMUNITY POLICING MODEL

The Department will use the following concepts to help develop community policing goals and objectives, as well as provide a basis for evaluation and accountability.

- (a) Types of problems within individual neighborhoods and the Austin community as a whole
- (b) Alternative solutions to the problems
- (c) Implemented solutions

## Austin Police Department

### General Orders

### *Community Policing*

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- (d) Quality of the relationship between the police and other departments and agencies
- (e) Fear of crime
- (f) Signs of crime within the community
- (g) Crime patterns
- (h) Degree of citizen involvement in program implementation and problem-solving activities
- (i) Responsiveness to citizen demands
- (j) Complaints about police behavior (looking at the types of complaints, not the numbers)
- (k) Quantity and quality of information about serious crimes from the public

#### **105.4 COMMUNITY PARTNERSHIPS**

- (a) All employees will actively engage the public in its operations to gain information on local problems, seek cooperation and support in identifying solutions, gather feedback about agency policies and programs, engage in joint crime prevention programs, and provide information and elicit opinions about current and proposed policing policies and programs. Some of the ways this may be accomplished include, but are not limited to, the following:
  1. **Community Engagement** – The Department supports and is involved with civic and neighborhood events when possible. Events may include holiday celebrations, ethnic festivals, youth events, etc.
  2. **Interaction with Youth** – The Department interacts with youth and youth groups on a regular basis, and participates in both planned and unplanned activities with youth and youth groups.
  3. **Meetings** – The venue for police and the community to meet and discuss issues of public safety, including the plans and methods used to enhance public safety. Meetings may include formal, regularly scheduled meetings with neighborhood groups, merchant groups, Community Advisory Boards, and ad-hoc meetings with community members concerned with neighborhood problems.
- (b) All employees play a significant role in engaging community members in all interactions, not just when they are addressing a public safety problem. On a daily basis, every encounter with a citizen has the potential to increase community trust.
- (c) The following community stakeholders are key players in developing police-community programs and partnerships. They may be engaged individually or in combined meetings, forums, advisory boards, or similar groups.
  1. **Neighborhood Members and Groups** - This includes people who live, work or otherwise have an interest in the neighborhood such as volunteer groups, activists, formal and informal neighborhood leaders, residents, visitors, and commuters.

# Austin Police Department

## General Orders

### *Community Policing*

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2. **Nonprofits and Service Providers** - These providers include such entities as victim advocate groups, support groups, community developments corporations, service clubs, and faith based communities.
3. **Private Businesses** - This may include individual businesses or through groups such as the Chamber of Commerce, local business consortiums, corporate management, or others.
4. **Media** - Print, television, and related mass media should be engaged to strengthen relationships with the community by communicating public safety and quality of life issues, soliciting feedback for development of solutions, presenting the Department's current strategies and proposed initiatives for addressing local problems, and conveying information about the Department's varied public services, events, and activities.
5. **Governmental Agencies** - The Department will coordinate programs and services with other local and state governmental agencies that provide services and programs to complement and enhance the Department's mission, as well as those of partner agencies. These include, but are not limited to, human services, child welfare, corrections, probation and parole, other state and local law enforcement agencies, public works, schools and other City departments.

#### **105.5 DEPARTMENT ORGANIZATION**

- (a) In order to enhance the ability of officers to interact, communicate, and form relationships with individuals and neighborhoods, officer assignments may be on a long-term basis to geographical regions and/or areas corresponding to neighborhood boundaries.
- (b) Supervisors may provide officers discretion to pursue criminal investigations, identify problems and formulate solutions, individually or in conjunction with other officers working as a team. Supervisors may request officers and investigators with specialized experience and training to assist in particularly complex or specialized investigative solutions.
- (c) When possible, the Department will allocate resources and finances, and where appropriate, request supplemental financial support, to support operational components and programs of Community Policing and problem solving.
- (d) Supervisors will promote and incentivize all employees to take responsibility for their role in community policing by taking personal responsibility for identifying community problems and formulating solutions that serve both the well-being of the community and crime prevention.

**GO  
106****Austin Police Department**  
General Orders

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## Department Manuals

### 106.1 PURPOSE AND SCOPE

Department manuals are the written procedures, guidelines and rules that formulate Department orders to provide employees with clear information and direction as to the expectations and responsibilities relating to the performance of their duties. This general order defines the use of each type of manual, restricts the authority to issue, and provides distribution and maintenance guidelines to ensure that all personnel become acquainted with the contents of any manual affecting their position.

#### 106.1.1 LEGALITY OF CONTENTS

If any section, subsection, item, clause, or phrase contained in any written directive is found to be illegal or otherwise incorrect or inapplicable, such finding shall not affect the validity of the remaining portions of the written directive.

### 106.2 GENERAL GUIDELINES

- (a) Due to the amount of information needed to operate an organization the size and complexity of the Austin Police Department, Department Manuals are compiled into the following:
  - 1. General Orders.
  - 2. Special Orders.
  - 3. Standard Operating Procedure Manuals.
  - 4. Operations Manuals.
- (b) The Chief is the ultimate authority for the provisions of Department Manuals and will ensure compliance with all applicable Texas law.
- (c) The Chief or designee may approve and authorize exceptions to individual provisions within any Department Manual or directive.
  - 1. Exemptions may be made after a legitimate business need has been clearly articulated and it is determined that failure to provide the exemption would severely interfere with a person's or work group's ability to achieve department goals (e.g. Undercover officers having to comply with all provisions of the Dress and Grooming Code).
  - 2. Exemptions will not necessarily be referenced within the directives; however, it is the responsibility of the assistant chiefs and commanders to ensure that any exemptions are documented in a form where they can be identified and verified. All exemptions will require periodic review to determine their continued applicability and/or the need for alteration.
  - 3. Exemptions will not be authorized which allow employees to infringe upon residents' rights to be treated fairly, humanely, and equitably under the law.



# Austin Police Department

## General Orders

### *Department Manuals*

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#### 106.2.1 DEFINITIONS

The following words and terms shall have these assigned meanings within all Department Manuals and directives, unless it is apparent from the content that they have a different meaning:

**City** - The City of Austin (as a government entity).

**Civilian/Non-Sworn** - an employee of the Austin Police Department having no arrest authority as defined for sworn officers. Civilian personnel may be employed and affiliated with APD in a variety of supporting roles, and may be uniformed, but lack the authority to make a full-custody arrest.

**Department/APD** - The Austin Police Department.

**Employee/Member/Personnel** - All persons employed by the Austin Police Department. This includes sworn officers, civilian employees, unpaid interns and volunteers.

**Child** - Generally any person under the age of 17 years. Certain sections of general orders may differ in the age range of a Child due to statute specifications.

**Manual** - The Austin Police Department General Orders.

**Officer/Sworn** - An employee of the Austin Police Department who is commissioned by the City of Austin as a law enforcement officer and granted those general peace officer powers prescribed by constitution, statute, or ordinance in the jurisdiction.

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

**TCOLE**- The Texas Commission on Law Enforcement.

**Rank** - The job classification title held by a sworn employee.

#### 106.2.2 FORMATTING AND ABBREVIATION CONVENTIONS

- (a) The following formatting conventions will be used for each Department Manual and directive:
  - 1. The document will begin with a scope and purpose statement and conclude with specific directive information.
  - 2. The subject of the document will be included in the header and the published date will be included in the footer.
- (b) The following are acceptable substitutions:
  - 1. Special Orders may be abbreviated as "SO."
  - 2. An individual order may be referenced as "General Order X."
  - 3. Individual sections of an order may be referenced as "Section 106.X" or "§ 106.X."

#### 106.2.3 GRAMMATICAL CONSTRUCTION OF MANUALS

- (a) The meaning of words or phrases not specifically defined shall be interpreted to have the meaning and intent established in common usage.

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- (b) No exception to directives will be made based on verb tense, gender, or number. The following rules of grammar shall apply throughout all Department Manuals and directives:
1. Present tense wording includes the past and future; Future tense wording includes the present.
  2. The use of a specific gender is inclusive of all genders.
  3. The use of the singular number includes the plural, and the plural includes the singular.
  4. Verb forms:
    - (a) The words "shall", "will", and "must" are mandatory in intent and are used to specify a required action.
    - (b) The word "should" is advisory in intent. While not mandatory, an advised action should be followed if the situation permits and the action is deemed practical.
    - (c) The word "may" is permissive.
  5. The use of "e.g.," means "for example;" its use is not intended to be an all-inclusive list.

#### 106.2.4 ACKNOWLEDGMENT OF DEPARTMENT MANUALS AND MANUAL REVISIONS

- (a) As a condition of employment, all employees are required to electronically or physically sign a statement of receipt acknowledging that the employee:
1. Has received a copy or has been provided electronic access to the General Orders; and
  2. Is responsible for reading and becoming familiar with the General Orders; and
  3. Will obtain any necessary clarification of the General Orders; and
  4. Will keep abreast of all revisions to the General Orders.
- (b) Supervisors/managers will ensure their employees are issued any applicable SOP(s) and/or Ops Manual(s) specific to that work assignment.
1. Employees are required to electronically or physically sign an issuance receipt upon receiving an SOP and/or Ops Manual.
  2. Physical issuance logs will be maintained by the Unit Supervisor.
- (c) Supervisor/managers will ensure their employees are made aware of any applicable Department Manual revision.
1. Employees are required to review and acknowledge revisions upon receiving an update to any Department Manual through INFORMA.
  2. Physical issuance logs will be maintained by the Unit Supervisor.

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#### **106.3 GENERAL ORDERS**

The General Orders are a statement of the current directives and general practices of the Department. Except where otherwise expressly stated, all employees are to conform to the provisions of this manual. It is recognized, however, that police work is not always predictable and circumstances may arise which warrant departure from these guidelines. It is the intent of this manual to be viewed from an objective standard, taking into consideration the sound discretion entrusted to members of the Department under the circumstances reasonably available at the time of any incident.

- (a) Upon issuance of an updated General Orders, all prior and existing General Orders are revoked.
- (b) A computerized version of these General Orders will be made available on the Department network for access by all employees.
- (c) Department directives issued after this manual shall stand over General Orders until such orders have been updated.

#### **106.4 STANDARD OPERATING PROCEDURE MANUALS**

Standard Operating Procedure (SOP) Manuals contain procedures and guidelines specific to a rank, Unit, Command, or multiple Commands.

- (a) Procedures contained in SOP Manuals shall not conflict with the policies, procedures or rules established in General Orders. However, exceptions to specific parts of the General Orders may be approved by an assistant chief/director.
- (b) SOP Manuals are generally considered public documents; information of a sensitive law enforcement nature should therefore be included in an Operations Manuals.
- (c) SOP Manuals that encompass an entire Command of the Department shall take precedence over SOP manuals that encompass a specific Unit within that Command.

#### **106.5 OPERATIONS MANUALS**

Oftentimes a need arises for extremely detailed procedural information of a confidential nature. This information will be placed in an Operations Manual (Ops Manual) and kept separate from the SOP Manuals. Due to their inherent sensitive law enforcement nature, Ops Manuals are not considered public documents.

- (a) Manuals of this nature have the same force and effect as an SOP Manual. Procedures contained in these Manuals shall not conflict with the policies, procedures, or rules established in General Orders. However, exceptions to specific parts of General Orders may be approved by an assistant chief/director.
- (b) These Manuals may consist of materials produced professionally by a source outside of the Department, in addition to any intra-departmentally produced information.
- (c) Materials may be included in these manuals due to:
  - 1. Their detailed and extensive nature.
  - 2. Their applicability to a very limited number of employees.

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3. A need to maintain confidentiality of the information (e.g., investigative strategy) within a specific work group.

#### **106.6 REVISION OF DEPARTMENT MANUALS**

Any Department employee may suggest a revision to a Department Manual. Employee's suggesting a revision of the contents to a Department Manual shall complete a *Request for Revision to General Order/Procedure/SOP* form.

- (a) Revision requests that affect multiple Commands (e.g. Patrol, District Representatives, Sector Detectives) or the entire Department will be forwarded through the employee's chain-of-command to the Risk Management Unit or directly to [APDPolicy@austintexas.gov](mailto:APDPolicy@austintexas.gov) on form PD0057.
- (b) Revision requests that affect a single Command will be forwarded through the employee's chain-of-command to the appropriate commander/manager. If approved by the appropriate commander/manager, the revision request will be forwarded to the Risk Management Unit or directly to [APDPolicy@austintexas.gov](mailto:APDPolicy@austintexas.gov) on form PD0057
- (c) Final approval for revision requests are handled as follows:
  1. General Orders revisions require the final approval of the Chief.
  2. Patrol SOP revisions require the final approval of the affected commanders and assistant chiefs.
  3. All other SOP and Ops Manual revisions require the final approval of the affected commanders/managers.
  4. A signed copy of the approved revisions will be sent to the Risk Management Unit.

##### **106.6.1 RISK MANAGEMENT UNIT**

The Policy Development Unit is responsible for:

- (a) Coordinating the submission of Department Manual revision requests to the Policy Review Committee and Command/Executive Staff, as appropriate.
- (b) Implementing all approved Department Manual revisions into a Special Order.
- (c) Integrating all outstanding Special Orders into the affected Department Manual as needed.
- (d) Maintaining the current version and archiving all previous versions of all Department Manuals.

##### **106.6.2 POLICY REVIEW COMMITTEE**

The Policy Review Committee (PRC) is responsible for reviewing proposals for revisions to Department general orders that would impact the entire Department or multiple Commands. The PRC shall adhere to the following procedures:

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- (a) The PRC will meet monthly to review the quarterly changes recommended to General Orders, or on an as needed basis to initiate or review internally proposed revisions to applicable Department Manuals.
- (b) In order for a PRC meeting to convene, a quorum of at least fifty percent of the members of the PRC must be in attendance for the entirety of the meeting.
- (c) The PRC will ensure proposed changes do not contradict existing agency directives or applicable laws.
- (d) Nothing in this order shall preclude the Chief from directly approving a Department order or from appointing a focus group to review any order revision and provide feedback in those areas where there is no consensus, the issues are complex, and/or exigent circumstances exist.

**106.7 REVIEW OF DEPARTMENT MANUALS**

- (a) The Chief will cause the entire General Orders to be reviewed and updated as necessary to ensure it conforms to actual Department operations and complies with law.
- (b) Commanders/managers will cause their affected SOP and Ops Manuals to be reviewed and updated as necessary to ensure it conforms to actual Department operations and complies with law.
  - 1. A complete up-to-date copy of each SOP and Ops Manual shall be submitted to the Risk Management Unit by December 1 of each year, regardless of whether there have been any revisions.



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## Organizational Structure and Responsibility

### 110.1 PURPOSE AND SCOPE

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

### 110.2 SWORN RANKS ESTABLISHED

Sworn employees are classified by the following ranks:

- (a) Chief of Police.
- (b) Assistant Chief of Police.
- (c) Commander.
- (d) Lieutenant.
- (e) Sergeant.
- (f) Corporal/Detective.
- (g) Police Officer.

#### 110.2.1 CHIEF OF POLICE

The Chief of Police is the director of the Department and assumes responsibility for the overall management of the organization, authorizes the institution of programs which keep APD effective in responsiveness to a wide variety of community needs, and guides the Department in progressive leadership and technology arenas. The Chief is responsible for keeping the City Manager informed of Department activities and accomplishments.

#### 110.2.2 ASSISTANT CHIEF OF POLICE

- (a) Assistant chiefs assume management responsibility over all matters relating to the fulfillment of the functions within their Command. Assistant chiefs work in conjunction with each other to provide unified direction to the multiple segments of the organization, assisting the Chief in the management of the agency.
- (b) One assistant chief is designated as Chief of Staff. In addition to any other duties incumbent upon the position of an assistant chief, this person will serve in the absence or unavailability of the Chief, be the Chief's direct designee in all matters, and coordinate the activities of the other assistant chiefs. The Chief of Staff is responsible for the daily management of Department Operations.

#### 110.2.3 COMMANDER

Commanders exercise line command over the employees assigned to them and assume staff responsibility over matters relating to the operations within their assigned command.

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#### 110.2.4 LIEUTENANT

Lieutenants exercise line command and provide advice and guidance to those employees assigned to them, as well as being responsible for keeping the respective commander informed about the activities and accomplishments of those employees.

#### 110.2.5 SERGEANT

Sergeants exercise line command over the employees of their assigned unit and function as the first line supervisory level within the Department. They are responsible for ensuring service delivery, compliance with general orders, making recommendations to their lieutenants for improvements in operations, and to guide, train, direct, and motivate those they supervise.

#### 110.2.6 CORPORAL/DETECTIVE

- (a) Corporals/detectives are responsible for:
  - 1. Ensuring service delivery, employee compliance with general orders, and making recommendations to the sergeant for operation improvements.
  - 2. Conducting criminal investigations, interviewing witnesses and suspects, and assisting crime victims in filing complaints for criminal acts committed against them.
  - 3. Serving as training instructors and in other non-enforcement roles for the Department.
- (b) Corporals/detectives will exercise line command over the employees of their assigned Unit in the absence of the sergeant due to approved leave, training, or a special assignment.
- (c) Corporals/detectives may be given limited supervisory authority to support the role of the sergeant.
- (d) Corporals may not be hired to work overtime in a supervisory role.

#### 110.2.7 POLICE OFFICER

Police officers make up the majority of the Department's sworn personnel and often are the first to make contact with the public. Assignments vary in content but generally include patrol and community interaction. They are responsible for keeping their respective supervisors informed about their activities and accomplishments.

### **110.3 DEPARTMENT ORGANIZATION AND COMMAND PROTOCOL**

APD's ability to make organizational adjustments to meet changing needs is essential in order to maximize the use of assigned resources. To ensure stability, the basic Department structure should not be changed in the absence of a demonstrated need brought about by changing community conditions. Redistribution of personnel and resources may occur as a result of any Department reorganization. APD-HR will maintain personnel allocation information.

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#### 110.3.1 SUCCESSION OF COMMAND

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

- (a) Except when designated as above, the order of command authority in the absence or unavailability of the Chief of Police is as follows:
1. Chief of Staff.
  2. An assistant chief, in order of seniority.
  3. A commander, in order of seniority.

#### 110.3.2 UNITY OF COMMAND

The principles of unity of command ensure efficient supervision and control within the Department. Generally, each employee shall be accountable to one supervisor at any time for a given assignment or responsibility. Except where specifically delegated authority may exist by order or special assignment (e.g., K-9, SWAT), any supervisor may temporarily direct any subordinate if an operational necessity exists.

#### 110.3.3 SPAN OF CONTROL

The number of employees under the immediate management of a single supervisor should not normally exceed fifteen (15). However, when staffing requirements are anticipated to exceed fifteen per supervisor, the span of control should be based upon the complexity/variety of the tasks of subordinates and the potential for a supervisor to adequately oversee the number of employees involved.

#### 110.3.4 DELEGATED AUTHORITY

At all levels of the Department, authority will be delegated to employees to make decisions necessary for the effective execution of their responsibilities. Employees are accountable for the use of, or the failure to use, delegated authority.

#### 110.3.5 DETERMINATION OF SENIORITY

- (a) The senior officer at a police incident shall be determined by rank, then by seniority within rank.
- (b) Seniority of civilian employees shall be determined as follows:
1. Competent authority will designate a person to be in charge of a particular situation or group.
  2. In the absence of designation of command, seniority will be determined by job classification, then by length of continuous service within the classification.

### **110.4 EMPLOYEE RESPONSIBILITIES**

Employees are at all times individually responsible for conducting themselves in a professional and ethical manner and for treating coworkers with respect and dignity. The intent of this section



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is to clearly state that unprofessional behavior will not be tolerated in the workplace. Employees shall maintain loyalty to the Department as is consistent with the law and personal ethics.

#### 110.4.1 CHAIN-OF-COMMAND

Employees are responsible for knowing their chain-of-command and operating within it except when impractical to do so.

- (a) If an employee bypasses the chain-of-command, the employee will notify his affected supervisor as soon as practical.
- (b) When a written directive requires an employee notify an immediate supervisor and the immediate supervisor is not readily available, the employee will:
  1. Notify the person designated as the acting supervisor; or
  2. Notify his next-level manager; or
  3. Notify another supervisor of equal rank/grade with similar responsibilities (e.g., another patrol sergeant, another forensics supervisor).

#### 110.4.2 AUTHORITY AND ACCOUNTABILITY

Delegation of authority is essential to the good working order of any organization.

- (a) Employees shall exercise the responsibility and authority of the position to which they are assigned in accordance with the job specifications and work rules of that agreement.
- (b) Authority to complete a task shall be commensurate with the responsibility placed on employees by the supervisor.
- (c) Supervisors are ultimately responsible for the action of themselves and their subordinates; supervisors who delegate tasks to subordinate employees are ultimately accountable for ensuring the task is completed.
- (d) Employees shall be held accountable for their use, or failure to use, their delegated authority.

#### 110.4.3 OBEDIENCE TO ORDERS

The Department is an organization with a clearly defined hierarchy of authority. This is necessary because obedience of a superior's lawful command is essential for the safe and prompt performance of law enforcement operations. This section also applies to orders received by an employee in the field training program from a Field Training Officer (FTO).

- (a) Orders from a supervisor to a subordinate will be in clear and understandable language, civil in tone, and issued pursuant to departmental business.
- (b) Employees will not publicly criticize nor comment derogatorily to anyone about instructions or orders they have received from a supervisor.
- (c) Employees will promptly obey any lawful order from a supervisor of higher rank, regardless if the supervisor is outside of the employees' chain-of-command.

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1. Employees will obey any lawful order from a supervisor even if the order is relayed through an employee of a lower rank.
- (d) Employees who are given an otherwise proper order which appears to be in conflict with an existing policy or previous order will respectfully inform the supervisor issuing the order of the conflict.
  1. If the supervisor issuing the order does not alter or retract the conflicting order, the order will stand.
  2. The supervisor issuing the conflicting order will be responsible for the consequences, if any, of the conflicting order.
- (e) Employees who are given an order which they believe violates a provision of a Meet and Confer Agreement, constitutes a safety hazard, or is in some other way improper, will respectfully inform the supervisor issuing the order of such belief.
  1. If the supervisor does not alter or retract the order, the order will stand and will be obeyed.
  2. The employee may initiate a formal grievance to seek redress.
- (f) Unlawful orders are prohibited.
  1. Supervisors will not knowingly or willfully issue any order which is a violation of any law.
  2. Employees will not obey an order that is a violation of any law.
    - (a) Responsibility for refusal to obey rests with the employee and he will be strictly required to justify the action.
    - (b) Obedience to an unlawful order is not considered a defense for an unlawful action.
  3. If in doubt as to the legality of an order, employees will either request clarification of the order or confer with higher authority.
    - (a) An employee receiving an unlawful order will notify the issuing supervisor that compliance with the order, as issued, is unlawful.
    - (b) If the supervisor does not rescind the order, the employee will request the presence of the next-level supervisor in the chain-of-command.
    - (c) The supervisor will contact the next-level supervisor and request his presence at the scene.
  4. An employee receiving an unlawful order will report that fact in writing to the Chief by memorandum through the next-level supervisor in the chain-of-command as soon as practicable. The memorandum will contain the facts of the incident and the actions taken.

#### 110.4.4 INSUBORDINATION

Employees will not be insubordinate. The willful disobedience of, or deliberate refusal to obey any lawful order of a supervisor is insubordination. Defying the authority of any supervisor by obvious

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disrespect, arrogant or disrespectful conduct, ridicule, or challenge to orders issued is considered insubordination whether done in or out of the supervisor's presence.



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## APD Standing Committees

### 111.1 PURPOSE AND SCOPE

This order sets forth the established standing committees of the Department.

### 111.2 STANDING COMMITTEES AND BOARDS

The following standing committees and boards exist within the Department. A list of the committee members will be maintained on the APD Main SharePoint Site in the Committee folder:

- (a) Awards Committee
- (b) Budget Committee
- (c) Chaplain Advisory Committee
- (d) Equipment Committee
- (e) Force Review Board
- (f) Funeral Committee
- (g) Homeland Security Committee
- (h) Policy Review Committee
- (i) Training Curriculum Review Committee
- (j) Wellness Committee
- (k) Chief's Advisory Committee
- (l) Pursuit Review Board
- (m) Policy Vetting Committee
- (n) Technology Committee
- (o) History and Museum Committee



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## Administrative Communications

### 114.1 PURPOSE AND SCOPE

Administrative communications of this department are governed by the following orders.

### 114.2 PERSONNEL DIRECTIVES

Personnel Directives may be issued periodically by the Chief to announce and document all promotions, transfers, hiring of new personnel, separations, individual and group awards and commendations or other changes in status.

### 114.3 DEPARTMENT CORRESPONDENCE

All Department correspondence must be delivered through the sender's chain-of-command and cannot be stopped by anyone until it reaches the addressee. Employees will use the appropriate Department memorandum or form when composing and submitting Department correspondence.

#### 114.3.1 INTERNAL CORRESPONDENCE

Internal correspondence consists of correspondence from a Department employee to another employee or group within the Department (e.g., memorandum, PRF). Employees will use the appropriate Department memorandum or form when submitting internal correspondence.

- (a) Internal correspondence should be submitted electronically in order to conserve physical resources and to provide an electronic record or history of the document, when practicable.
  1. Correspondence that requires the sender's signature should be submitted on paper; however, correspondence that requires only the addressee's signature can be submitted electronically.
  2. Correspondence that is submitted on paper but could otherwise be submitted electronically (e.g., memoranda) must be initialed or signed by the sender and each recipient.
  3. Internal memoranda will not be altered by any recipient within the chain-of-command although individual notes may be added or attached.
- (b) Correspondence forwarded through the chain-of-command shall be delivered to the addressee within a reasonable time of initial receipt.
- (c) Employees may request a reply from the addressee to address the issue or confirm receipt of the correspondence; however, the addressee is not required to provide one unless the request is from a designee of the Chief (e.g., IA, SIU) or from a supervisor of a higher rank.
  1. Employees who do not receive a requested response from an addressee within a reasonable amount of time may go to each level in their chain-of-command,

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starting with their immediate supervisor and up to the addressee, in order to confirm that the correspondence was received.

**114.3.2 EXTERNAL CORRESPONDENCE**

External correspondence consists of correspondence from a Department employee to a person or group outside the Department.

- (a) External correspondence will be written on Department letterhead.
- (b) In order to ensure that letterhead and name of the Department are not misused, Department letterhead shall only be used for official business and with the approval of the appropriate commander.

**114.4 SURVEYS**

Surveys made in the name of the Department require authorization from the Chief of Police or designee. Surveys made for internal purposes should be approved by the appropriate supervisor.



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# Forms Control

### 115.1 PURPOSE AND SCOPE

This order establishes directives over the development, modification, review, and approval of APD forms to ensure accountability. This directive does not apply to forms supplied by other agencies and used by Department employees.

### 115.2 FORMS CONTROL

The Risk Management Unit is responsible for the coordination of forms development and control process.

- (a) The Risk Management Unit will conduct an annual review of APD forms to ensure:
  - 1. Each APD form is assigned an appropriate APD form number.
  - 2. Information on Department forms is not duplicated.
  - 3. New and modified forms include the functions the form will be used for.
  - 4. The format is consistent with the records maintenance and data-processing requirements of the Department.
  - 5. The master roster of all APD forms is updated.

#### 115.2.1 DEVELOPMENT, MODIFICATION, REVIEW, AND APPROVAL OF DEPARTMENT FORMS

Requests for the development, modification, or review of any APD form will be made by memorandum through the chain-of-command to the employee's commander/manager.

- (a) The memorandum should contain:
  - 1. Purpose of the development, modification, or review of the form; and
  - 2. Effect on other Department written directives; and
  - 3. Department areas that use or will use the form.
- (b) Commanders/managers will make a recommendation regarding the request. If the request is approved, forward it to the forms control coordinator in the Risk Management Unit.
- (c) The Chief or designee will approve any APD form prior to use.

#### 115.2.2 REPRODUCTION OF EXISTING FORMS

No blank APD forms will be reproduced without the APD form number printed on the document.



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## Security and Release of Records and Information

### 116.1 PURPOSE AND SCOPE

The purpose of this section is to establish a comprehensive reference and procedure for the maintenance and release of department reports and records in accordance with applicable law and in compliance with the Meet and Confer Agreement.

This order does not prevent the Department from voluntarily making part or all of specific information available to the public, unless disclosure is expressly prohibited by law or the information is confidential under law (Tex. Gov't Code § 552.007; Local Gov't Code § 143.089).

### 116.2 PUBLIC REQUESTS FOR RECORDS

Records created by this agency are subject to inspection and release to the public unless otherwise expressly exempt from public disclosure by statute or judicial order (Tex. Gov't Code § 552.001). Public requests for records of this Department shall be processed in accordance with Texas Government Code, Chapter 552, regarding public information and this order.

The Department shall prominently display a sign that contains the basic rights of a person who requests public information, the responsibilities of the Department and the procedures, including fees, for inspecting or obtaining copies of records (Tex. Gov't Code § 552.205).

The Tex. Gov't Code § 552.001 provides that records created by a public agency shall be subject to inspection and release pursuant to request, except pursuant to exemptions set forth in Chapter 552 of the Texas Government Code or otherwise established by statute or judicial order. Public requests for records of this department shall be processed as follows:

#### 116.2.1 SUBMISSION OF PUBLIC REQUESTS FOR RECORDS

Any member of the public, including the media, may request access to records of this Department by submitting a request for the record(s) sought in the following manner:

- (a) In person at:
  - 1. APD Headquarters located at 715 E 8th Street, Austin; or
  - 2. Austin City Hall located at 301 W 2nd Street, Austin;
- (b) By email to [public.information@austintexas.gov](mailto:public.information@austintexas.gov);
- (c) Through the City's Website at [www.AustinTexas.gov/PIR](http://www.AustinTexas.gov/PIR).
- (d) Mailed to City of Austin, Public Information Request, P.O. Box 689001, Austin, Texas 78768-9001.

Requests by fax are not accepted. Any other form of receipt outside of the aforementioned will not be considered received.

#### 116.2.2 RECEIVING PUBLIC REQUESTS FOR RECORDS

A request will not be considered received unless it is sent to the proper email address as listed in section 116.2.1, or it is received by one of the other listed methods. If a Department employee



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receives a request for public information by electronic mail, the employee shall respond with this message:

"Pursuant to Section 552.301(c) of the Government Code, the City of Austin has designated certain addresses to receive requests for public information sent by electronic mail. For requests seeking records held by the Austin Police Department, the address is: public.information@austintexas.gov. Your request will NOT be considered received unless it is sent to the proper address."

Once this message has been communicated to the requestor, no further response is required.

If an employee receives a request for public information in any other manner listed in section 116.2.1, that employee is responsible for forwarding the request to Central Records.

#### 116.2.3 PROCESSING OF PUBLIC REQUESTS FOR RECORDS

The processing of requests is subject to these limitations:

- (a) The authorized receiving employee shall determine if the requested record is available and/or subject to any exemption from disclosure.
- (b) The requesting party may be required to pay in advance any established fee for each record sought depending on the volume of the request (Tex. Gov't Code § 552.261). The Department Legal Advisor will be advised of this information and will process the cost letter.
- (c) The Department shall not be required to create records which do not otherwise exist; however, existing records may be copied in such a manner as to provide the requesting party with unrestricted portions of any record.

#### 116.2.4 RESPONDING TO PUBLIC REQUESTS FOR RECORDS

The Public Information Act requires governmental bodies to respond promptly to written requests for information. "Promptly" means as soon as possible under the circumstances and without unreasonable delay. Failure to comply with the Act may result in the mandatory release of information that otherwise could have been withheld. The statute also contains civil and criminal penalties for intentional violations.

- (a) Media requests and requests from students will be forwarded to the Department's Public Information Office.
- (b) With the exception of booking photos, employees shall not release information that has not gone through the open records process and is cleared through the Department Open Records Supervisor or Department Legal Advisor.
- (c) After reviewing the request and the information being requested, the Open Records Supervisor will decide whether the information should be released or will be denied due to exemptions outlined by the Attorney General. The Open Records Supervisor, or their designee, will notify the requestor of the denial.
- (d) If an Attorney General's ruling is requested within 61 days of response to an open records request, the Open Records Supervisor, or their designee, will notify the Department Legal Advisor in order to request a ruling.

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### **116.3 OUTSIDE AGENCY REQUESTS FOR RECORDS**

The Department recognizes requests from other agency should be processed in a timely manner. Therefore, these requests are received and processed by the Department directly.

#### **116.3.1 SUBMISSION OF OUTSIDE AGENCY REQUESTS FOR RECORDS**

Outside agencies must use their agency letterhead to submit a request for records. Additionally, requests sent via email must come from a government email address, i.e., .gov, .org. Each request must identify the specific record sought. Requests and subpoenas can be submitted in the following manner:

- (a) In person at APD Headquarters located at 715 E 8th Street, Austin;
- (b) By email to [agency.requests@austintexas.gov](mailto:agency.requests@austintexas.gov);
- (c) Faxed to (512) 974-6662;
- (d) Mailed to Central Records, Austin Police Department, P.O. Box 689001, Austin, Texas 78768-9001; or
- (e) In any manner to any employee of the Austin Regional Intelligence Center (ARIC).

#### **116.3.2 RECEIVING OUTSIDE AGENCY REQUESTS FOR RECORDS**

If an employee, other than an ARIC employee, receives an outside agency request for records, that employee is responsible for forwarding the request to Central Records for processing. Emailed requests shall be forwarded to [agency.requests@austintexas.gov](mailto:agency.requests@austintexas.gov).

### **116.4 REPORT RELEASE RESTRICTIONS**

Absent a valid court order or other statutory authority, records and/or unrestricted portions of such records of this department shall be made public subject to the following restrictions.

#### **116.4.1 GENERAL CASE AND CRIME REPORTS**

Certain information pertaining to any of the items listed below will not be released unless authorized by the Department Legal Advisor:

- (a) **Victim Information** - Victims of crimes who have requested that their identifying information be kept confidential (Tex. Code Crim. Pro. art. 57.02), victims who are minors and victims of certain offenses shall not be made public. It is a misdemeanor to release confidential victim information to unauthorized persons (Tex. Code Crim. Pro. art. 57.03).
- (b) **Confidential Information** - Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved or information that would endanger the successful completion of the investigation or a related investigation shall not be made public (Tex. Gov't Code § 552.108).
  - 1. Analysis and conclusions of investigating officers may also be exempted from disclosure.

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2. If it has been noted in any report that any individual wishes to protect his right to privacy under the Texas Constitution, such information may not be subject to public disclosure.
  3. Information on the actual identity of any victim who has filed a pseudonym form (Tex. Code of Crim. Pro. §§ 57.02 and 57B.02).
- (c) **Specific Crimes** - Certain types of reports involving, but not limited to, child abuse/neglect (Tex. Fam. Code § 261.201), minors and juveniles (Tex. Gov't Code § 552.148 and Tex. Fam. Code § 58.106) and elder abuse Tex. Hum. Res. Code § 40.005) shall not be made public. Certain individuals may be allowed redacted copies of child abuse or neglect reports; these records may be released only in accordance with Family Code § 261.201(k) and (l).
- (d) **General Information** - Absent statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Tex. Gov't Code § 552.

#### 116.4.2 ARREST REPORTS

Arrestee information shall be subject to release in the same manner as information contained in other reports as set forth above.

In addition to the restrictions stated above, all requests from criminal defendants and their authorized representatives, including attorneys, shall be subject to release as prescribed by law.

Local criminal history information including, but not limited to, arrest history and disposition, fingerprints and booking photos shall only be subject to release to those agencies and individuals as prescribed by law.

#### 116.4.3 TRAFFIC CRASH REPORTS (CR-3)

Traffic crash reports and related supplemental reports are privileged and for the confidential use of only those identified by law. Employees shall not release traffic crash reports without the legal authority to do so. Authorized persons are identified under the Texas Transportation Code and HB 2633.

#### 116.4.4 PERSONNEL RECORDS

Personnel records, medical records and similar records which would involve personal privacy shall not be made public (Local Gov't Code § 143.089).

Requests for peace officer personnel records are deemed confidential and shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order. Requests for such personnel records shall be forwarded to the City's Human Resources Department (Civil Service). If the requestor wishes to receive a copy of the Department's personnel records (g file), the request will be forwarded to the Department Legal Advisor.

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#### 116.4.5 INTERNAL AFFAIRS FILES

Subpoenas for documents or items from files maintained by Internal Affairs (IA) will be directed to the IA commander or lieutenant. No documents or items will be released pursuant to a subpoena without authorization from the Department Legal Advisor.

- (a) Any open records request for IA files will be referred to the Department Legal Advisor.
  - 1. When IA is notified that an open records request has been received for a particular file, IA personnel will review the file and forward to the Department Legal Advisor for redactions to be completed.
  - 2. The Department Legal Advisor will be consulted before any file is released in relation to an open records request to ensure that any necessary redactions have been completed.
  - 3. If the request is submitted through the Civil Service Commission, the original redacted case file will be transferred to the Commission as soon as possible to ensure compliance with the statutory deadline for responding to the open records request (10 business days or less).

#### 116.4.6 VIDEO RECORDINGS FROM DWI STOPS

Pursuant to House Bill 3791, the Department is required to release to a person (or their designee) stopped or arrested on suspicion of DWI, a copy of any video of the stop, arrest, field sobriety tests, and all other interactions with the officer.

#### 116.4.7 BODY WORN CAMERA VIDEO

Chapter 1701 of the Occupations Code outlines the requirements for releasing information recorded by body worn cameras including recordings as evidence. An officer or other employee commits an offense (Class A Misdemeanor) if the officer or employee releases a recording created with a body worn camera without the permission of the department.

- (a) Recordings as evidence
  - 1. Except as provided by Subsection (a)(2), a recording created with a body worn camera and documenting an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer may not be deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and the longest retention period has been met.
  - 2. The department may release to the public a recording described by Subsection (a)(1) if the Chief of Police or his designee determines that the release furthers a law enforcement purpose. At the request of the Chief of Police, the Internal Affairs Unit (IA) or the Special Investigations Unit (SIU) may grant temporary access to a video described in this section on Evidence.com for the purpose of making a copy for public release. The person or persons to whom access was granted shall notify IA or SIU once they have completed making the copy. Copies shall be made within 7 days. IA or SIU will then update Evidence.com.

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- (b) Public Requests for Body Worn Camera Videos
1. When submitting a request for BWC video, a member of the public is required to provide the following information:
    - (a) The date and approximate time of the recording;
    - (b) The specific location where the recording occurred; and
    - (c) The name of one or more persons known to be a subject of the recording.
  2. A failure to provide all of the information required by Subsection (b)(1) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.
  3. The department may not release any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.
  4. A BWC recording is confidential and may not be released to the public if the recording was not required to be made under department orders and does not relate to a law enforcement purpose.

### **116.5 OTHER RECORDS**

Any other record not addressed in this order shall not be subject to release where such record is exempted or prohibited from disclosure pursuant to state or federal law, including, but not limited to provisions of the Evidence Code relating to privilege.

Any record which was created exclusively in anticipation of potential litigation involving this department shall not be subject to public disclosure unless authorized by the Department Legal Advisor (Tex. Gov't Code § 552.111 and 552.103).

#### **116.5.1 PERSONAL IDENTIFYING INFORMATION**

Employees shall not access, use or disclose personal identifying information, including an individual's photograph (except booking photo), social security number, driver identification number or identification card number, type driver's license, expiration date, driving restrictions and/or endorsements, state of issue, email address, date of birth and the individual's medical or disability information, which is contained in any driver license record, motor vehicle record or any department record except as authorized by the Department and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721 and 18 USC § 2722).

Motor vehicle records will be reviewed to redact license plate number, VIN, state of issuance, registered owner, owner address, lienholder information, issue date, expiration date, and insurance policy number.

The only exception is when an individual is requesting their own personal information.

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**116.6 SUBPOENA DUCES TECUM**

When a Department employee is personally served with a subpoena duces tecum:

Any subpoena duces tecum or discovery request should be promptly provided to a supervisor for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

All questions regarding compliance with any subpoena duces tecum should be promptly referred to the Department Legal Advisor so that a timely response can be prepared.

When a subpoena duces tecum is received in the Open Records Unit, the Subpoena will be logged in and promptly reviewed and processed. All questions regarding compliance with any subpoena duces tecum shall be promptly referred to the Department Legal Advisor.

**116.7 RELEASED RECORDS TO BE DOCUMENTED**

Release of records by a Department employee who was personally served pursuant to a subpoena duces tecum shall be documented by:

- (a) Hard Copies, CD, or Flash Drive:
  - 1. Release form (PD0212) identifying the individual to whom the records were released and who released the records shall be attached to a cover letter listing all records released.
- (b) Email of records:
  - 1. Release form (PD0212) shall be completed with an attached a copy of the email detailing to whom the records are being released and a listing all records released.

**116.8 PRIVACY AND SECURITY OF RECORDS**

Austin Police Department employees shall not access, view, distribute, or allow anyone else to access, view, or distribute any hard copy or electronic record, file, or report, except in accordance with Department orders and with a legitimate law enforcement or business purpose, or as otherwise permissible by law.

All reports including, but not limited to, initial, supplemental, follow-up, evidence and property reports, shall be maintained in a secure manner accessible only to authorized personnel.

**116.9 RECORDS RETENTION**

All records will be maintained in accordance with City Code Chapter 2-11 Records Management. A copy of department retention schedules may be obtained by contacting the Department Records Analyst or the Office of the City Clerk. They are also maintained at <http://coaspweb1/sites/wiki/OCC/Lists/Approved%20Records%20Control%20Schedules/Austin%20Police%20Department.aspx>

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No employee shall dispose of any record maintained by this department without proper authorization from the Records Administrator or Records Analyst.



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# Critical Incident - Public Release

### 117.1 PURPOSE

This General Order reflects the Austin Police Department's (Department) commitment to fostering greater public trust by increasing transparency with respect to the operations of the Austin Police Department and the community it serves. This policy will establish criteria for when video footage of certain police "critical incidents" as defined below, will be released to the public. Our community has an undeniable interest in being informed, in a timely fashion and based on the most accurate information available, about incidents where officers use lethal force, or where the use of force by the police results in the serious bodily injury of another.

This General Order is intended to balance important interests, including: the public's interest in transparency and police accountability, the necessity of preserving the integrity of criminal and administrative investigations, and the privacy interests of the individuals depicted in such videos (including the police officers involved, any victims, witnesses, or bystanders who may be on the video, and the person upon whom force is used). This policy creates a presumption of release pursuant to a law enforcement purpose unless the chief determines that a delay is needed to address investigative, prosecutorial, or privacy interests.

In recognizing that a video may not tell the whole story, the Department will also provide the necessary context when making video publicly available so the public has the most accurate picture of what occurred based on the information known at the time of release.

### 117.2 POLICY

It is the policy of the Austin Police Department that video evidence in the Department's possession of critical incidents involving APD be released to the public within 60 days of the incident. Such video evidence will be made available to the public prior to the final adjudication of all criminal matters and prior to the conclusion of all related administrative investigations. For the purpose of this policy, a law enforcement purpose may include solving a crime, locating a suspect or a witness, or enhancing police-community relations. This release shall consist of relevant video imagery that depicts the actions and events leading up to and including the critical incident. Relevant video imagery is video and accompanying audio footage, which may include relevant portions of 911 calls, Combined Transportation, Emergency & Communication Center (CTECC) dispatch recordings, and the Department's radio calls, that are typically considered by the Chief of Police and criminal prosecutors to determine the propriety of an officer's conduct during a critical incident. The release of video shall be accompanied by additional information to provide context based on the evidence available at the time of release.

#### 117.2.1 CRITICAL INCIDENTS

For purposes of this General Order, "critical incidents" are defined as:

- (a) Officer-involved shootings, including unintentional discharge while in the course of duty or in response to a call, regardless of whether a person was hit by gunfire and even if no allegation of misconduct is made;



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### *Critical Incident - Public Release*

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- (b) A use of force resulting in death or serious bodily injury as defined by Section 1.07, Texas Penal Code;
- (c) All deaths while an arrestee/detainee is in the custodial care of the Department; or
- (d) Any other police encounter where the Chief of Police determines release of video furthers a law enforcement purpose.
- (e) This General Order does not include or apply to officer-involved shootings of an animal, an unintentional discharge during pre-shift equipment checks, or during training/qualifications on the firing range.

#### 117.2.2 RELEASE TIMELINES

The Department will post and maintain on its website relevant video imagery of “critical incidents” pursuant to the following timelines:

- (a) The Department will post the relevant video imagery on a publicly accessible website within 60 days of the incident .
- (b) If the Chief of Police determines that no video will be released following a critical incident, then the Department will post a statement summarizing the reasons for the decision within 45 days of the incident with an explanation as to whether or not an opportunity for release exists/or is possible on a future date.
- (c) Posted materials will remain on the website for at least two years after the date of the corresponding release posting.

#### 117.2.3 VIDEO SOURCES

The sources of video that may be released pursuant to this policy include, but are not limited to, body-worn camera video (BWC), digital in-car video (DMAV), or other video captured by the Department, and video captured by third parties that is in the Department's possession.

#### 117.2.4 PRIVACY PROTECTIONS

Video will not be released where prohibited by law or court order. Further, consistent with the protections afforded juveniles and the victims of certain crimes, video imagery shall be redacted or edited to the extent necessary to ensure that the identity of said individual(s) is protected. Where the video cannot be sufficiently redacted or edited to protect the person's identity, it will be withheld. In addition, video may also be redacted or edited to protect the privacy interests of other individuals who appear in the video. In each instance, such redaction may include removing sound or blurring of faces and other images that would specifically identify involved individuals, sensitive locations, or reveal legally protected information. Further, where possible, such redaction or editing shall not compromise the depiction of what occurred during the incident.

#### 117.2.5 DELAYED RELEASE

- (a) There may be circumstances under which the release of such video must be delayed to protect one or more of the following:
  - 1. Safety of the involved individuals, including officers, witnesses, bystanders, or other third parties.

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#### *Critical Incident - Public Release*

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2. Integrity of an active investigation (including criminal or administrative) or criminal prosecution.
  3. Confidential sources or investigative techniques.
  4. Constitutional rights of an accused.
- (b) If the Chief of Police determines that no video will be released within 60 days following a critical incident, then the Department will post a statement summarizing the reasons for the decision within 45 days of the incident.
1. These reasons may not be general; they must have a factual basis and be specific to the individual case. For example, investigators have identified but not yet been able to interview a key witness to the incident.
  2. Except where release is prohibited by law, any decision to delay release shall be reassessed every 30 days thereafter, with any continued justification for the delay. The video imagery in question shall be released as soon as the reason (s) for the delay has been resolved to the satisfaction of the Chief of Police.

#### 117.2.6 NOTIFICATIONS & CONSULTATIONS

Absent exigent circumstances, reasonable attempts shall be made to notify and, where appropriate, consult with the following individuals or entities at least forty-eight hours prior to the release of video imagery:

- (a) Officers depicted in the video and/or significantly involved in the use of force.
- (b) Subject upon whom force was used.
- (c) If the subject is deceased, the next of kin will be notified.
- (d) If the subject is a juvenile, the subject's parents or legal guardian will be notified.
- (e) If the subject is represented by legal counsel, that representative will be notified.
- (f) District Attorney's Office and the City Attorney's Office.
- (g) Office of Police Oversight.
- (h) Other individuals or entities connected to the incident as deemed appropriate.

APD shall consult and seek feedback from the Office of Police Oversight during the production of the video for public release.

#### 117.2.7 RELEASE - LIMITED WAIVER

The release of any specific video imagery does not waive the Department's right to withhold other video imagery or investigative materials in the same case or any other case, as permitted by law. This policy is not intended to displace or supersede any legal right or remedy available to any person or entity, and it is also not intended to prevent or hinder compliance by the Department with respect to any legal disclosure requirements, including but not limited to, any court order or disclosure provisions of the Texas Public Information Act or the Texas Occupations Code, Chapter 1701, Subchapter N.



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# Criminal History Record Information

### 118.1 PURPOSE AND SCOPE

This order provides guidelines for the release of Criminal History Record Information (CHRI), security of that information and persons authorized to release and receive that information (Tex. Gov't Code §§ 411.082, 411.085, 411.087 and 411.089).

### 118.2 AUTHORITY

This order is established pursuant to the mandates under Texas Government Code for the Department of Public Safety to maintain, control, disseminate the information and determine who has access to CHRI.

### 118.3 DEFINITIONS

**Criminal History Record Information (CHRI)** - Information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information and other formal criminal charges and their dispositions (Tex. Gov't Code § 411.082(2)).

**Criminal Justice Agency** - Is a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice, or a non-governmental railroad or campus police department that has obtained an originating agency identifier from the FBI (Tex. Gov't Code § 411.082(3)).

**Criminal Justice Purpose** - An activity that is included in the administration of criminal justice, or screening of applicants for employment with a criminal justice agency (Tex. Gov't Code § 411.082(4)).

**Authorized Recipient** - Any person or agency authorized by court order, statute or case law to receive CHRI.

### 118.4 AUTHORIZED RECIPIENTS OF CHRI

The Department is entitled to receive CHRI from the Texas Department of Public Safety (Tex. Gov't. Code § 411.089). CHRI may only be released to authorized recipients. All law enforcement personnel with proper identification are authorized recipients.

CHRI may be obtained by authorized recipients for criminal justice purposes only. The information may be disseminated via radio devices when needed and if necessary to another criminal justice agency for a criminal justice purpose (Tex. Gov't. Code § 411.089).

#### 118.4.1 TERMINAL AGENCY COORDINATOR (TAC)

The Police Technology Lieutenant is the designated Terminal Agency Coordinator (TAC) for the Austin Police Department. The TAC is responsible for ensuring compliance with this procedure

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and with applicable records security regulations and requirements imposed by federal and state law, as well as resolving specific questions that arise regarding authorized recipients of CHRI.

#### 118.4.2 RELEASE OF CHRI

Only the persons listed below are authorized to release CHRI. Each authorized person releasing CHRI is responsible to ensure that each request granted appears legitimate and that the requester is an authorized recipient.

- (a) Terminal Agency Coordinator.
- (b) All Communications Center personnel.
- (c) All sworn law enforcement personnel.
- (d) Personnel specifically designated by the TAC and trained to receive CHRI information.

#### 118.4.3 RELEASE OF CHRI TO FIELD PERSONNEL

CHRI shall not generally be transmitted by radio, cell phone, or through computer terminals to field personnel or vehicles except in cases where circumstances reasonably indicate that the immediate safety of the officer or the public are at significant risk. Examples of situations where the transmission of summary criminal history information would be justified include a hostage situation or an armed suspect; a routine investigation or traffic enforcement stop would not be sufficient justification.

- (a) Personnel shall not have access to CHRI until a background investigation has been completed and approved.
- (b) Nothing in this procedure is intended to prohibit broadcasting warrant information concerning wanted persons.

#### 118.4.4 POLICE CADETS

Police cadets are authorized access to criminal history information when under the direct supervision of a Field Training Officer.

#### 118.5 JUVENILE RECORDS

Nothing in this procedure is intended to alter existing statutes, case law or the policies and orders of both the county's juvenile board and the designated juvenile court regarding the release of juvenile offender records. Juvenile records and information are confidential and may only be disclosed pursuant to Tex. Fam. Code § 58.005.

#### 118.6 REVIEW OF CRIMINAL OFFENDER RECORD

The Texas Department of Public Safety provides the authority and procedure whereby an individual may review his own criminal history record (Tex. Gov't Code 411.135).

An individual seeking to review his arrest or conviction record should be directed to contact the Texas Department of Public Safety. The requirements and fees can be found at <http://www.txdps.state.tx.us>.

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**118.7 COMPUTER ACCESS AND DESTRUCTION OF CHRI**

**118.7.1 CHRI COMPUTER TERMINAL SECURITY**

OMNIXX Computer terminals capable of providing access to automated CHRI are located at various locations throughout the Department.

- (a) No employee shall be authorized to operate computer terminal equipment with access to CHRI until the operator has completed the appropriate training.

**118.7.2 DESTRUCTION OF CHRI**

Employees are responsible for destroying CHRI documents they receive once the document has served the purpose for which it was obtained. Documents shall be destroyed by shredding.

**118.8 CERTIFICATION REQUIREMENT**

All personnel authorized to process, view and/or release CHRI shall be required to maintain certification as required by the Texas Department of Public Safety.

**118.9 PENALTIES FOR MISUSE OF RECORDS**

The Tex. Gov't Code § 411.085 makes it a Class B misdemeanor to obtain CHRI in an unauthorized manner, to use the information for an unauthorized purpose, to disclose the information to a person who is not entitled to the information or to provide a person with a copy of the person's criminal history record information or to violate any rule pertaining to CHRI adopted by Department of Public Safety under state law. In addition, Tex. Gov't. Code § 411.085 makes it a second degree felony if the CHRI is obtained, used or disclosed for remuneration or the promise of remuneration. The following violations may also result in administrative penalties:

- (a) Divulging the content of any criminal record to anyone other than authorized personnel.
- (b) Obtaining or attempting to obtain information from department files other than that to which an employee is entitled in accordance with his official duties.

**118.10 EXPUNCTION OF FILES**

For the purposes of this section, "expunge" means to remove all data or materials relating to a particular arrest from all files in such a manner that there is no indication that such data or materials ever existed or have been removed.

- (a) Expunction is done by physically destroying such data or materials, or by sending all such material to District Court pursuant to a court order. Expunction of files will be done in compliance with Chapter 55 of the Code of Criminal Procedure and will include any record(s), arrest and identification files from any section which would have such files.
- (b) Expunction procedures may relate to:
  - 1. Arrest records which are indexed, accessed, and filed by individual name, and which are retrieved by reference to name (such as "rap sheets").

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2. Any data or materials identifying an individual, such as fingerprints, fingerprint classifications, photographs, or other items contained in an information system that are accessible by name, and which indicate any arrest or criminal offender information including, but not limited to, that contained in:
  - (a) Arrest index cards (Identification).
  - (b) Computer data banks known offender files.

118.10.1 EXPUNCTION REQUESTS

- (a) The APD legal advisor is designated as the recipient of requests for expunction. Any employee receiving a request for expunction of Department records shall immediately hand deliver the request to the legal advisor.
- (b) The Identification Unit and Central Records Unit are the authorized coordinating bodies for implementing expunction procedures as ordered by the court.
  1. All Department personnel will provide assistance and support to the Identification Section and Central Records Section in order to ensure compliance with this order.
  2. The Identification and Central Records managers or designees are responsible for returning all expunged records and files to the legal advisor in a timely manner.

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# Inspections

## 123.1 PURPOSE AND SCOPE

The inspection process compares Departmental formal expectations with actual performance. This process is an essential mechanism for evaluating the quality of departmental operations; ensuring that the Departmental goals are being pursued; identifying the need for additional resources; and ensuring control is maintained throughout the Department.

### 123.1.1 TYPES OF INSPECTIONS DEFINED

- (a) Staff Inspection, An inspection performed by the Inspections Unit that generally focuses on agency procedures to promote an objective review of departmental administrative and operational activities, facilities, property, equipment, and personnel outside the normal supervisory and/or line inspection
- (b) Line Inspection, An inspection performed at frequent intervals by line supervisors to ensure that departmental employees are adhering to established policies and procedures. Examples are:
  - 1. Personal appearance (dress and groom),
  - 2. Use and maintenance of equipment,
  - 3. Driver's License, or
  - 4. Weapon.

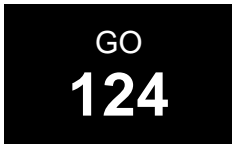
### 123.1.2 INSPECTION FREQUENCY AND RESPONSIBILITY

- (a) Staff Inspections are conducted by the Inspections Unit as directed by the Chief or his designee. Specific responsibilities of the Inspection Unit are outlined in the Risk Management SOP.
- (b) Line Inspections are conducted by supervisors in accordance with:
  - 1. Chapter 3, Field Operations, Custody, and Traffic Enforcement Guidelines,
  - 2. Chapter 5, Field Support Operations, and
  - 3. Chapter 8, Equipment Policies.

### 123.1.3 COMPLIANCE REQUIRED

The Inspection Unit acts under direct authority of the Chief and compliance with a Staff Inspection is required.

- (a) The Chief will receive an inspection report containing the recommendation(s) of the Inspections Unit. The report will contain the responses to those recommendations by the affected Commander(s).
- (b) The Chief has final approval and/or appropriate disposition of the recommendations.
- (c) Employees designated by the Chief, or his designee, with the responsibility for implementation, additional research and/or follow-up of the final recommendations shall adhere to the Chief's designated timeline.



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## Watch Lieutenant

### 124.1 PURPOSE AND SCOPE

The Watch Lieutenant (WL) is a lieutenant that assists CTECC in matters which may require management level decisions.

### 124.2 WATCH LIEUTENANT RESPONSIBILITIES

The WL is entrusted with the responsibility, among many others, to maintain efficient department operations at all times but especially during those situations that place stresses on critical department resources. This important task is one that separates the WL function from other lieutenant positions.

- (a) The WL may be called upon to move personnel resources within and amongst divisions.
- (b) At times the WL's decision regarding movement of those resources may be counter to the wishes of the lieutenant in direct command. It is understood that the authority of the WL supersedes that of his or her peers during those emergency situations.
- (c) Specific responsibilities of the WL are outlined in the Watch Lieutenant SOP.





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# Meet and Confer

### 127.1 PURPOSE AND SCOPE

Chapter 143 of the Texas Local Government Code allows the City of Austin to adopt a collective bargaining process called "Meet and Confer." This process allows the City and the Department to negotiate and enter into a written agreement with the labor organization representing sworn employees concerning wages, work hours and other terms of employment. The written agreement is known as the "Meet and Confer Agreement."

### 127.2 MEET AND CONFER NEGOTIATIONS PROCESS

Under the City Charter and City-HR policies, the City Manager has overall responsibility for negotiating and administering contracts for the City, and shall manage the City's participation in the Meet and Confer process. The Chief is responsible for managing the Department's participation in the process. The City Manager and the Chief will conduct Meet and Confer negotiations jointly.

(a) **City Bargaining Team**

1. The City Manager and the Chief will designate the members of the City bargaining team serving as the City's sole and exclusive bargaining agent.

(b) **Sworn Employee Bargaining Team**

1. The Austin Police Association (APA) is a labor organization that is currently designated by a majority of the sworn employees as their bargaining unit for the Meet and Confer negotiation. The City will only participate in negotiations with the APA.
2. The APA may request information from the Department or City that is relevant to the negotiation or administration of the contract agreement. Any such requests shall be made by the APA's primary negotiator and submitted to the City bargaining team.

- (c) The City and sworn employee bargaining teams shall negotiate in good faith and establish ground rules to govern the bargaining process.

### 127.3 MANAGEMENT OF MEET AND CONFER AGREEMENT

- (a) The City will abide, in both letter and spirit, to a negotiated labor agreement that has been signed by City Management, approved by a majority of the City Council, and ratified by a majority of the APA voting membership.
- (b) Subsequent to ratification of the agreement by all parties, the City Manager and Department shall review and amend all written directives to coincide with the terms of the Meet and Confer agreement.
- (c) APD will disseminate any information relative to the new Meet and Confer Agreement to the supervisors of bargaining team personnel.

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## **Chapter 2 - Response to Resistance and Pursuit**



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# Response to Resistance

### 200.1 PURPOSE AND SCOPE

This order recognizes that the use of force in response to resistance by law enforcement requires constant evaluation and that response to resistance is a serious responsibility. The purpose of this order is to provide officers with guidelines on objectively reasonable response to resistance. While there is no way to specify the exact amount or type of objectively reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial, and objectively reasonable manner.

This order is written in terms to apply to sworn officers. In incidents where civilian employees are authorized to use force, they are subject to the same policies and procedures as officers but the test of objective reasonableness is judged from the perspective of an objectively reasonable civilian employee.

Additionally, this order will provide directives and guidelines on the following:

- (a) De-escalation principals and techniques.
- (b) Parameters relating to the use of objectively reasonable force.
- (c) Reporting requirements.
- (d) Providing medical assistance to injured subjects.

#### 200.1.1 PHILOSOPHY

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

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force and to protect the public welfare requires a careful balancing of all human interests.

Officers should recognize that their conduct prior to the use of force may be a factor which can influence the level of force necessary in a situation.

#### 200.1.2 DEFINITIONS

**Bodily Injury** - Physical pain, illness or any impairment of physical condition (Tex. Penal Code § 1.07(a)(8)).

**Serious Bodily Injury** - Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ (Tex. Penal Code § 1.07(a)(46)).

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**De-escalation** - Using techniques to stabilize the situation and reduce the immediacy of the threat, so that more options and resources are available to bring about a successful resolution to an encounter with a non-compliant subject. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, thereby eliminating the need to use force in response to resistance.

**De-escalation Techniques** - Communicative or other actions used by officers, when safe, and without compromising law-enforcement priorities, that are designed to increase the likelihood of gaining voluntary compliance from a non-compliant subject, and reduce the likelihood of using force in response to resistance.

**Deadly Force** - Force that is intended or known by the officer to cause, or in the manner of its use or intended use is capable of causing death or serious bodily injury (Tex. Penal Code § 9.01(3)).

**Force** - Any physical contact with a subject by an officer using the body or any object, device, or weapon, not including unresisted escorting or handcuffing a subject.

**Non-Deadly Force** - Any application of force other than deadly force.

**Objectively Reasonable** - An objective standard viewed from the perspective of a reasonable officer on the scene, without the benefit of 20/20 hindsight, and within the limitations of the totality of the circumstances presented at the time of the incident.

#### 200.1.3 DUTY TO INTERCEDE

Any officer who observes another officer using force shall intercede to prevent further harm if the officer knows that the force being used is not objectively reasonable and the officer has a reasonable opportunity to prevent the harm. Such officers must also promptly report these observations to a supervisor.

#### 200.1.4 RESPONSE TO RESISTANCE RELATED ORDERS

- (a) General Order 200 (Response to Resistance).
- (b) General Order 202 (Firearm Discharge Situations).
- (c) General Order 204 (Leg Restraint Guidelines).
- (d) General Order 206 (Control Devices and Techniques).
- (e) General Order 208 (TASER® Guidelines).
- (f) General Order 211 (Response to Resistance Inquiry, Reporting and Review).
- (g) General Order 212 (Force Review Board).

### **200.2 DE-ESCALATION OF POTENTIAL FORCE ENCOUNTERS**

When safe and reasonable under the totality of circumstances, officers shall use de-escalation techniques to reduce the likelihood for force and increase the likelihood of voluntary compliance.

Nothing in this de-escalation policy requires an officer to place themselves in harm's way to attempt to de-escalate a situation. Recognizing that circumstances may rapidly change, officers may need

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to abandon de-escalation efforts after they have commenced. Understanding that no policy can realistically predict every situation an officer might encounter, the Department recognizes that each officer must be entrusted with well-reasoned discretion in determining the reasonable de-escalation techniques to use in a situation. This de-escalation policy is intended to complement, not replace or supersede, other portions of the APD Policy Manual or specific officer training that addresses de-escalation.

#### 200.2.1 ASSESSMENT AND DE-ESCALATION

As officers arrive on the scene, observe conditions, and interact with the persons there, they should continue to gather additional relevant information and facts. These assessments, along with reasonable inferences help to develop an understanding of the totality of the circumstances of the incident.

- (a) Assessing Risks and Benefits – After an officer has gathered sufficient information to ascertain anticipated threats at the scene, they shall consider whether de-escalation is appropriate. Factors that should be considered are:
1. whether the officer believes the search, arrest or transportation must be undertaken immediately;
  2. what risks and benefits may be associated with delaying immediate action;
  3. what contingencies may arise;
  4. whether the situation requires a supervisor's response;
  5. whether other officers may be needed on the scene, including special units, such as CIT or CINT;
  6. whether other resources (e.g. less-lethal weaponry, special equipment, or other emergency professionals, interpreters or other persons) are needed; and
  7. other factor(s) relevant to assessing risks, benefits and contingencies.

Having completed the above outlined assessment the officers shall, if reasonable, identify and employ appropriate de-escalation techniques.

- (b) Use of De-escalation Techniques – Employing de-escalation techniques may involve securing additional resources, tactical repositioning, and employing verbal persuasion.
1. Securing Additional Resources -- Officers may utilize additional resources which are reasonably calculated to lessen or possibly eliminate the need to respond to resistance in a situation. To the extent possible and reasonable, in light of the totality of the circumstances, officers should avoid physical confrontation until such time as additional resources have arrived to assist. Additional resources may include:
    - (a) less lethal weaponry;
    - (b) additional officers;
    - (c) officers with special training, such as CIT or CINT; or

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- (d) any other persons whose presence may help de-escalate the situation (e.g., emergency medical professionals, interpreters, or supportive family members).
- 2. Tactical Repositioning -- To delay or avoid physical confrontation, officers may wish to employ any one or more of the following tactical repositioning measures, to the extent possible and reasonable in light of the totality of circumstances:
  - (a) maintain safe physical distance from the subject;
  - (b) maintain cover behind existing or assembled physical barriers; or
  - (c) communicate from a location that is concealed from the subject.
- 3. Verbal Persuasion -- To the extent possible and reasonable under the totality of the circumstances officers may use one or more of the following verbal techniques to try to calm an agitated subject and promote rational decisions.
  - (a) Treat the subject with dignity and respect, the way the officer would wish to be treated if they stood in the subject's shoes;
  - (b) Listen to the subject's side of the story and permit them to express frustration;
  - (c) Explain what the officer is doing, what the subject can do, and what needs to happen;
  - (d) Explain why the officer is taking a specific action, again permitting the subject to respond and acknowledging their perspective;
  - (e) If possible, provide the subject with alternatives, even though those alternatives may be limited;
  - (f) Advise the subject of the consequences for noncompliance;
  - (g) Offer reasonable, professional advice if it is expected to help; or
  - (h) Provide the subject with reasonably sufficient time within which to respond to directives.

### **200.3 RESPONSE TO RESISTANCE**

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this order.

- (a) Assessment shall be ongoing – As the circumstances of a situation change, the force necessary to affect a detention, arrest, search, or transportation of a subject or to protect officer or other persons from imminent harm may also change. Officers will therefore need to re-evaluate their determination of the appropriate response to resistance as circumstances change.
- (b) Officer Discretion - Understanding that no order can realistically predict every situation an officer might encounter, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the objectively reasonable response to resistance in each incident.

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- (c) Vascular Neck Restraints, Carotid Neck Restraints, and strangleholds are prohibited in all cases except where deadly force would be authorized. Unless engaged in a lethal force encounter, officers will not:
  - 1. Apply direct or indirect pressure by any means to an individual's throat, windpipe, or airway in a manner that is reasonably likely to prevent, reduce, or hinder the intake of air (e.g., apply a chokehold); or
  - 2. Apply direct or indirect pressure to an individual's neck in a manner that is reasonably likely or intended to prevent, reduce, or hinder the blood flow within the carotid arteries.
- (d) Improvising Permitted - Circumstances may arise in which officers reasonably believe that it would be impracticable or ineffective to use a standard tool, weapon, or method provided by the Department. Officers may find it more effective or practicable to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must still be objectively reasonable and used only to the extent which reasonably appears necessary to accomplish a legitimate law enforcement purpose.
- (e) Injury to Officer Not Required - While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this order requires an officer to actually sustain physical injury before applying objectively reasonable force.
- (f) Reporting Required - Any complaint by a subject that an officer caused pain or injury shall be treated as a response to resistance force incident, except complaints of minor discomfort from unresisted handcuffing.

#### 200.3.1 DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

Any interpretation of objective reasonableness about the amount of force that reasonably appears to be necessary in a particular situation must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving, and the amount of time available to evaluate and respond to changing circumstances may influence their decisions. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him.

- (a) When determining whether to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:
  - 1. Reasonable opportunity for the officer to engage in de-escalation;
  - 2. The conduct of the individual being confronted as reasonably perceived by the officer at the time;
  - 3. Officer and subject factors such as age, size, relative strength, skill level, injury/level of exhaustion and number of officers versus subjects;
  - 4. Influence of drugs and alcohol or mental capacity;
  - 5. Proximity of weapons;

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6. The degree to which the subject has been effectively restrained and his ability to resist despite being restrained;
7. Time and circumstances permitting, the reasonable availability of other resources to the officer;
8. Seriousness of the suspected offense or reason for contact with the individual;
9. Training and experience of the officer;
10. Potential for injury to citizens, officers and subjects;
11. Risk of escape;
12. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others; or
13. Other exigent circumstances.

#### **200.3.2 USE OF FORCE TO AFFECT A DETENTION, AN ARREST OR TO CONDUCT A SEARCH**

An officer is justified in using reasonable force when the officer reasonably believes the use of such force is immediately necessary (Tex. Penal Code § 9.51(a)):

- (a) To make or assist in a detention or an arrest, or to conduct a search that the officer reasonably believes is lawful;
- (b) To prevent or assist in preventing escape after an arrest, provided the officer reasonably believes the arrest or search is lawful; or
- (c) To make an arrest or conduct a search under a warrant that the officer reasonably believes is valid.

#### **200.3.3 NOTICE OF AUTHORITY AND IDENTITY**

If it is not already reasonably known by the subject to be searched or arrested, or it is not reasonably impracticable to do so, officers should make clear their intent to arrest or search and identify themselves as a peace officer before using force (Tex. Penal Code § 9.51(a)(2)).

#### **200.4 DEADLY FORCE APPLICATIONS**

An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):

- (a) Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
  1. The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or



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2. The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

#### **200.5 REPORTING THE RESPONSE TO RESISTANCE**

Any response to resistance by a member of this department shall be documented promptly, completely and accurately in an appropriate report as prescribed by General Order 211 (Response to Resistance Inquiry, Reporting, and Review).

##### **200.5.1 NOTIFICATION TO SUPERVISORS**

Supervisor notification shall be made as soon as practicable following any force incident or allegation of force.

##### **200.5.2 DUTY TO GIVE AID AND MEDICAL CARE**

Prior to booking or release, medical assistance shall be obtained for any subject who has sustained visible injury, expressed a complaint of injury or continuing pain or who has been rendered unconscious. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail.

A subject who exhibits extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and impervious to pain, or who requires a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and shall be examined by qualified medical personnel as soon practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

##### **200.5.3 ASSISTING MEDICAL PROFESSIONALS**

- (a) An officer who restrains a patient to assist medical personnel, with an amount of force which does not rise above the level of holding the patient down (e.g. arms, legs, foot, torso) is not required to report a Response to Resistance or notify their supervisor as outlined in General Orders 211 and 200.5.1.
  1. Medical personnel are:
    - (a) Medical staff at a medical facility (e.g. Brackenridge, Austin State Hospital, Seton)
    - (b) Licensed emergency medical technicians (EMT), phlebotomist, or other medical professional in performance of their official medical duties

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- (b) If an officer uses a level of force greater than merely holding a limb or applying bodily weight on the patient, the officer will adhere to General Orders 211 and 200.5.1 Response to Resistance by:
1. Notifying their supervisor, and
  2. Completing an incident report including the title code 8400.



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# Firearm Discharge Situations

### 202.1 PURPOSE AND SCOPE

The purpose of this order is to establish procedures for the use and reporting of incidents involving the discharge of firearms. This order is for internal use only and does not increase the Department's and/or an officer's civil or criminal liability in any way. Violations of this order can only form the basis for departmental administrative actions.

#### 202.1.1 POLICY

It is the policy of this department to resort to the use of a firearm when it reasonably appears to be necessary under the circumstances.

- (a) An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):
  - 1. Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.
  - 2. Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
    - (a) The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
    - (b) The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.
- (b) To stop a dangerous and aggressive animal:
  - 1. In circumstances where officers encounter any animal which reasonably appears to pose an imminent threat of bodily injury to officers or others, officers are authorized to use objectively reasonable force up to and including deadly force (when lesser means would be impractical) to neutralize the threat. If time and distance permit, an officer may consider using the following less-lethal options:
    - (a) Fire Extinguisher
    - (b) Oleoresin Capsicum spray
    - (c) TASER Device
    - (d) Assistance of Animal Control
  - 2. In circumstances in which officers have sufficient advanced notice that a potentially dangerous domestic animal (e.g., dog) may be encountered, such as in the serving of a search warrant, officers should develop reasonable contingency plans for dealing with the animal without the use of deadly force (e.g., fire extinguisher, TASER Device, oleoresin capsicum (OC) spray, assistance of animal control). Nothing in this order shall prohibit any officer

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from resorting to deadly force to control a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impracticable.

3. In the event force is used against an animal by an officer and the animal is injured or there is a reasonable belief the animal was injured, regardless of whether visible injury exists, officers shall make a reasonable attempt to ensure the animal receives care for its' injuries. This may include but is not limited to:
  - (a) Contacting the owner to arrange private treatment in an appropriate time frame.
  - (b) Contacting Animal Control to have the animal collected and treated
  - (c) Arranging transport of the animal to a veterinary facility
  - (d) Transporting the animal to a veterinary facility
- (c) With the approval of a supervisor, an officer may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impracticable.
- (d) For target practice or recreational shooting at an approved range or any area where firing a weapon would be safe and not a violation of law.

Where feasible, a warning should be given before an officer resorts to deadly force as outlined (a), (b) or (c) above. A specific warning that deadly force will be used is not required by this order; only that a warning be given if feasible.

#### 202.1.2 WARNING SHOTS

Warning shots are prohibited.

#### 202.1.3 MOVING VEHICLES

This order is not intended to restrict an officer's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the officer or others. Officers who utilize a firearm against a vehicle or operator of a vehicle must meet the same standards established in 202.1.1(a) above.

- (a) Officers shall exercise good judgment and will not place themselves in the path of a moving vehicle since doing so may increase the likelihood of having to resort to the use of deadly force.
- (b) Unless it reasonably appears that it would endanger officers or the public, officers will move out of the path of any approaching vehicle.
- (c) When encountering a vehicle being operated in a threatening manner, officers may leave a position of cover only:
  1. to utilize an avenue of escape
  2. move to a position of better cover, or
  3. if the need to apprehend the suspect or stop the threat outweighs the danger imposed to the officer or any other person.

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- (d) Disabling a vehicle by use of a firearm will only be attempted under extraordinary circumstances. Officers who utilize a firearm against a vehicle or operator of a vehicle must meet the same standards established in 202.1.1(a) above.

#### 202.1.4 DISPLAY OF FIREARMS

Firearms may be readied for use in situations where it is anticipated they may be required. Firearms shall not be displayed or pointed in a threatening or intimidating fashion unless it is objectively reasonable to believe there is a substantial risk that the situation may escalate to the point where deadly force would be permitted. Firearms shall be secured or re-holstered as soon as reasonably practicable when it is determined that deadly force is no longer necessary.

#### **202.2 REPORT OF INTENTIONAL FIREARM DISCHARGE AGAINST A PERSON**

For any intentional firearm discharge against a person, regardless of whether the person is hit, the incident shall be handled as a Level 1 Force Incident and the employee shall comply with the reporting procedures prescribed in Policy 211 (Response to Resistance Inquiry, Reporting and Review).

#### **202.3 REPORT OF INTENTIONAL FIREARM DISCHARGE AGAINST AN ANIMAL**

This section is written to cover the reporting procedures for the following situations:

- (a) The humane destruction of a seriously injured animal.
- (b) In defense against an attacking or dangerous animal.

Any intentional firearm discharge which results in an injury to another person will be investigated by SIU (211.2.1).

##### 202.3.1 REPORTING A FIREARM DISCHARGE FOR THE HUMANE DESTRUCTION OF A SERIOUSLY INJURED ANIMAL

The following reporting guidelines shall be followed for the humane destruction of a seriously injured animal or an attacking or dangerous animal.

- (a) Employees who need to destroy a seriously injured animal for humane reasons shall first request approval from a supervisor.
- (b) Employees shall complete an incident report entitled Injured Animal Firearm Used (Title Code 3449-7). The incident report should detail the circumstances requiring the animal's destruction. The authorizing supervisor should be identified in this report.
- (c) Supervisors who approves the destruction shall:
  - 1. Add a comment in the CAD call notating their notification and approval.
  - 2. Send e-mail notifications with the incident report number prior to the end of the tour of duty to the:
    - (a) Involved employee's chain of command up to the lieutenant.

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3. Review the primary reporting employees' incident report and add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident
- (d) Each level of the chain-of-command, up to the lieutenant, shall review the incident and complete a case note to document their review. In the event the reviewing lieutenant identifies concerns with the destruction, he/she will notify the commander.
- (e) The chain-of-command shall determine what, if any, corrective action is needed.
- (f) Employees are not required to be placed on restricted duty.

#### 202.3.2 REPORTING A FIREARM DISCHARGE AGAINST A DANGEROUS AND THREATENING ANIMAL

The following reporting guidelines will be followed for the destruction of a dangerous or attacking animal.

- (a) Employees who destroy an attacking or dangerous animal will notify their supervisor or another on-duty supervisor in the absence of their immediate supervisor, as soon as practical.
- (b) The supervisor, or designated acting supervisor, will respond to the scene and conduct an on-scene investigation of the incident, interview witnesses, and insure digital photographs are taken and downloaded into the Digital Crime Scene Management System.
- (c) The involved employee(s) are required to complete an incident report entitled Dangerous Animal - Firearm Used (3434-7) detailing the event and the reason(s) for selecting deadly force over other force options..
- (d) Investigating supervisors will complete a supplement to the incident report detailing their investigation and findings.
- (e) The investigating supervisor will notify, via e-mail, each member of the involved employee's chain of command up to the assistant chief when the investigation is ready for review. This notification will include the incident report number. Each member of the chain-of-command through the assistant chief shall add a Versadex case note to the incident report indicating they have reviewed the incident.
- (f) The chain-of-command will determine what, if any, corrective action is needed.
- (g) Employees are not required to be placed on restricted duty.

#### 202.4 REPORT OF UNINTENTIONAL FIREARM DISCHARGE

This section is written to cover the reporting procedures for the following unintentional firearm discharge situations:

- (a) While at the APD firearms range.
- (b) While at an approved firearms training site.
- (c) While on-duty.

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- (d) While off-duty.

#### 202.4.1 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE AT THE APD FIREARMS RANGE OR APPROVED FIREARMS TRAINING SITE

The following reporting guidelines will be followed when an employee discharges a firearm unintentionally while at the APD firearms range or approved firearms training site.

#### DEFINITIONS:

**Unintentional Discharge-** The discharge of a firearm that the shooter did not intend to occur.

**Preventable Discharge-** An unintentional discharge that constitutes a gross deviation from Department training received prior to the incident or a discharge which exhibits a failure to exercise the care that a reasonably prudent employee would have exercised in similar circumstances.

- (a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).
- (b) If there is no injury or the injury is only to self:
  1. Employees will report the discharge immediately to range personnel and request emergency medical assistance if needed.
    - (a) The Learned Skills sergeant will be notified immediately.
    - (b) Employees may be immediately disqualified and placed on restricted duty depending on the severity of the incident.
  2. The Learned Skills Unit will:
    - (a) Notify the involved employee's immediate supervisor regarding the incident.
    - (b) The training instructor will completed an UD/PD form and forward it to the Learned Skills Sergeant.
    - (c) The Learned Skills Sergeant will review the UD/PD form and make the determination on whether the firearms discharge was unintentional or preventable. He/she will prepare a memorandum addressed to the employee's immediate supervisor regarding the incident and send a copy to the Learned Skills Lieutenant.
  3. If the discharge is determined to be unintentional the employee's chain-of-command will handle the inquiry.
  4. If the discharge is determined to be preventable the incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):
    - (a) The Learned Skills Lieutenant will review the prepared memorandum and complete an Internal Affairs complaint and forward it to Internal Affairs.
  5. The incident will be reviewed by the Force Review Board after the internal investigation is complete.

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#### 202.4.2 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE ON-DUTY

The following reporting guidelines will be followed when an on-duty employee discharges a firearm unintentionally anywhere other than at the APD firearms range.

- (a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).
- (b) If there is no injury:
  - 1. Employees will report the situation immediately and request their immediate supervisor to respond to the scene.
  - 2. Employees may be placed on restricted duty.
  - 3. The incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):
    - (a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System.
    - (b) The employee's immediate supervisor has investigative responsibility for the incident. If the immediate supervisor is not available, an on-duty lieutenant from the employee's assigned area will designate an on-duty supervisor to investigate the incident.
    - (c) The employee's chain-of-command will determine what, if any, corrective action is needed.
  - 4. The incident will be reviewed by the Force Review Board after the internal investigation is complete.

#### 202.4.3 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE OFF-DUTY

The following reporting guidelines will be followed when an off-duty employee discharges a firearm unintentionally anywhere other than at the APD firearms range.

- (a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).
- (b) If there is no injury:
  - 1. Employees will report the situation immediately and request an on-duty supervisor to respond to the scene.
  - 2. Employees may be placed on restricted duty.
  - 3. The incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):
    - (a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System.



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- (b) The employee's immediate supervisor has investigative responsibility for the incident. If the immediate supervisor is not available, an on-duty lieutenant from the employee's assigned area will designate an on-duty supervisor to investigate the incident.
  - (c) The employee's chain-of-command will determine what, if any, corrective action is needed.
- 4. If the incident occurs out of city, the proper law enforcement authority having jurisdiction must be notified. The employee's supervisor will coordinate the investigation with the responsible agency.
- 5. The incident will be reviewed by the Force Review Board after the internal investigation is complete.



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# Leg Restraint Device

### 204.1 PURPOSE AND SCOPE

The proper use and application of a leg restraint device can reduce the potential of injury and damage to property when dealing with violent or potentially violent subjects. This order provides guidelines for the proper use of these devices.

#### 204.1.1 PHILOSOPHY

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. A leg restraint device should only be used when officers reasonably believe it is necessary to augment other restraints while performing their lawful duties; a leg restraint device is never to be used as punishment.

### 204.2 POLICY

When an officer encounters circumstances where it reasonably appears necessary to restrain the legs to prevent escape or restrain a violent or potentially violent subject during the course of a detention, arrest, and/or transportation, only Department approved RIPP Hobble or Ankle/Leg Iron restraint devices shall be used and only in the Department approved manner for temporary immobilization of the legs.

Patrol sergeants and corporals will be assigned leg irons as part of their issued equipment on their personal inventory list. When the sergeant or corporal is no longer assigned to a patrol shift they will return the leg iron to Police Equipment.

### 204.3 AUTHORIZED USE

- (a) Only those officers trained in the use of the leg restraint device are authorized to employ it on any subject.
- (b) The leg restraint device shall only be used after a subject has been handcuffed.
- (c) In determining whether to use a leg restraint device, officers should consider the following:
  1. If the officer and/or others are subject to harm due to the assaultive behavior of a violent, resisting, and/or attacking subject.
  2. If it is objectively reasonable to protect the subject from his own actions (e.g., hitting his head against the interior of the Patrol unit, running away from the arresting officer while handcuffed, kicking at objects or officers).

### 204.4 PROCEDURE

The leg restraint device is designed to reduce the likelihood of injury to the restrained subject or others, and to reduce the likelihood of property damage caused by the restrained subject by preventing him from using his legs in a manner likely to result in injury or damage. The following guidelines shall be used when applying a leg restraint device:

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- (a) If practicable, officers should notify a supervisor of the intent to apply the restraint. In all cases, a supervisor shall be notified as soon as practicable after the application of the restraint and the name of that supervisor shall be noted in a report or supplement.
- (b) This device shall not be used to hog tie. Once the subject's legs have been bound, the safety clip of a restraint shall not be attached to the chain of the handcuffs.
- (c) Absent a medical emergency, the subject being restrained shall remain restrained until the officer arrives at the jail or other facility or the subject no longer poses a threat.
- (d) Once secured, the subject should be placed in a seated or upright position. Subjects shall not be placed on their stomach for an extended period as this may potentially reduce their ability to breathe.
  - 1. The restrained subject should be constantly watched by an officer while in the restraint. The officer is to ensure the subject does not roll onto and remain on his stomach.
  - 2. The officer should look for signs of labored breathing and, where practicable, take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
  - 3. In the event that it appears reasonably necessary to restrain a subject in such a position that the subject's ability to sit upright is restricted, an officer should monitor the subject in an effort to minimize restricted breathing. The subject should be placed in an upright position as soon as it reasonably appears safe and practicable.



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## Control Devices and Techniques

### 206.1 PURPOSE AND SCOPE

In an effort to reduce and minimize altercation related injuries to officers, the public and subjects, the Department authorizes the use of selected control devices. These control devices are approved in order to control violent or potentially violent subjects. It is anticipated that the use of these devices will generally result in fewer altercation related injuries to officers and subjects. The order below is for the use and maintenance of control devices.

#### 206.1.1 PHILOSOPHY

The use of control devices upon a subject by an officer shall only occur when the officer, while in the performance of his lawful duties, reasonably believes it necessary to gain control of the subject.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force and protect the public welfare requires a careful balancing of all human interests.

### 206.2 CONTROL DEVICES AND TECHNIQUES OVERVIEW

#### 206.2.1 WHEN DEVICES MAY BE USED

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

#### 206.2.2 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES

Any application of a control device and/or technique shall be documented as prescribed by General Order 211 (Response to Resistance Inquiry, Reporting and Review).

#### 206.2.3 APPROVED CONTROL DEVICES

Only Department issued or approved control devices and munitions shall be carried. Only Department approved modifications may be made to any control device.

- (a) The control devices approved by the Department are:
  - 1. Baton and/or Impact Weapons (long, short, side-handle or expandable).
  - 2. Chemical Agents (Oleoresin Capsicum (OC) spray).
  - 3. Kinetic Energy Projectiles and their delivery systems.
  - 4. TASER Device - See General Order 208 (TASER® Guidelines).
- (b) Every control device shall be periodically inspected by the employee's supervisor or the designated instructor for a particular control device. All daily inspections, routine maintenance, charging and cleaning shall remain the responsibility of the employee assigned the device.
- (c) All damaged, inoperative, or expended control devices shall be returned to the Property Control Office for disposal, repair and/or replacement.

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#### 206.2.4 TRAINING FOR CONTROL DEVICES

- (a) Only employees trained and certified in the use of a specified control device are authorized to carry and/or use that device. Proficiency training must be monitored and documented by a certified device, weapons, or tactics instructor.
- (b) Civilian employees may use issued chemical agents for self-defense only. Recertification for chemical agents issued to civilian employees shall occur annually.
- (c) Officers shall re-certify annually for all control devices they have been previously approved to carry with the exception of the TASER®. Recertification for the TASER® shall follow the guidelines set forth in General Order 208 (TASER® Guidelines).
- (d) All formal training and proficiency for control devices shall be documented in the employees' training file.
- (e) Employees failing to demonstrate proficiency with a device shall be provided remedial training. Employees failing to pass remedial training shall not be permitted to carry the device and may be subject to other provisions prescribed by the Training Division.

#### **206.3 BATON AND IMPACT WEAPON GUIDELINES**

The baton and/or an impact weapon is authorized for use when, based upon the circumstances perceived by the officer, such force reasonably appears justified and necessary to result in the safe control of a subject.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury. The head, neck, spine and groin should not be intentionally targeted except when the officer has an objectively reasonable belief the subject may cause serious bodily injury or death to the officer or others.

#### **206.4 CHEMICAL AGENT GUIDELINES**

Chemical agents are devices used to minimize the potential for injury to employees, offenders, or other subjects. They should be used only in situations where such force reasonably appears necessary.

- (a) Authorized employees may use chemical agents when the application of the chemical agent is objectively reasonable to:
  - 1. Subdue or control a violent or physically resisting subject.
  - 2. Subdue or control a subject who by words or action has demonstrated an intention to be violent or to physically resist and who reasonably appears to present the potential to harm employees, himself, or others.
    - (a) Employees should give a verbal warning followed by a reasonable opportunity to voluntarily comply when practicable.
    - (b) Employees must be able to articulate their use of the chemical agent.
  - 3. Apprehend a subject fleeing lawful arrest or detention.
  - 4. Address situations where there is a reasonable expectation that it will be unsafe for employees to approach within contact range of the subject.

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5. Repel physical attacks from humans or animals.
6. Compel subjects to leave an enclosure.
7. Disperse violent crowds or riots.

#### 206.4.1 PROHIBITED USES

The following are prohibited uses of chemical agents:

- (a) To torture, psychologically torment, elicit statements or inflict undue pain on any individual.
- (b) Horseplay or practical jokes.
- (c) Demonstrations without the permission of a supervisor.
- (d) When a subject exhibits **only** verbal and/or passive resistance to arrest or authority.
- (e) When a subject is under physical restraint unless the subject is still aggressively resisting and lesser means of controlling the subject have failed.

#### 206.4.2 CARRYING OF OLEORESIN CAPSICUM SPRAY

Uniformed employees carrying the OC spray shall carry the device in its holster on the equipment belt. Plainclothes and non-field employees may carry the OC spray as authorized, consistent with the needs of their assignment or at the direction of their supervisor.

#### 206.4.3 TREATMENT FOR CHEMICAL AGENT EXPOSURE

Subjects who have been affected by the use of chemical agents should be afforded means of cleansing the affected areas as soon as practicable. Those subjects who complain of further severe effects shall be afforded a medical examination by competent medical personnel.

#### 206.4.4 TRANSPORTING OF PRISONERS SUBJECTED TO CHEMICAL AGENT EXPOSURE

When transporting prisoners who have been subjected to chemical agents, officers shall ensure that the prisoner stays upright with a clear airway and is not placed in a prone position to avoid possible positional asphyxia. Officers must be especially careful when tightly restraining combative subjects following the use of chemical agents.

Before booking, officers shall advise jail personnel when a prisoner has been subjected to chemical agents.

### **206.5 KINETIC ENERGY PROJECTILES**

This department is committed to reducing the potential for violent confrontations when such subjects are encountered. Kinetic energy projectiles are less likely to result in death or serious physical injury.

Kinetic energy projectiles are approved by the Department and are fired from 12 gauge shotguns that are clearly identified as less lethal shotguns. Certain munitions can be used in an attempt to

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de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

#### 206.5.1 DEPLOYMENT

Approved munitions are justified and may be used in an effort to compel individuals to cease their actions when such munitions present a reasonable option for resolving the situation at hand.

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

#### 206.5.2 VERBAL WARNINGS

A verbal announcement of the intended use of the kinetic energy projectile should precede its application unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances.

- (a) The purpose of the warning is for the following:
  - 1. Provide the individual with a reasonable opportunity to voluntarily comply.
  - 2. Provide other officers and individuals with warning that a kinetic energy weapon may be deployed.
- (b) The fact that a verbal and/or other warning was given, or the reasons it was not given, shall be documented in any related reports, as well as any responses by the subject.
- (c) When the less lethal kinetic energy projectile is deployed on scene, the officer carrying the weapon shall announce over the air as soon as practicable that the less lethal shotgun/40mm weapon was deployed and be acknowledged by the dispatcher.
- (d) When given, the verbal warning should be "IMPACTING" to prevent any confusion as to which weapon system is being deployed.

#### 206.5.3 EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT

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

- (a) Is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- (b) Has made credible threats to harm himself or others.
- (c) Is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers, creating a risk for injury.
- (d) There is reasonable suspicion to believe that the subject has already committed a crime of violence and is refusing to comply with lawful orders.

#### 206.5.4 ADDITIONAL DEPLOYMENT CONSIDERATIONS

- (a) Before discharging projectiles, the officer should consider the following factors:

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1. The subject's capability to pose an imminent threat to the safety of officers or others.
  2. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
  3. The credibility of the subject's threat as evaluated by the officers present, and the subject's physical capacity/capability to carry out the threat.
  4. The availability of other force options and their possible effectiveness.
  5. Distance and angle to target.
  6. Type of munitions employed.
  7. Type and thickness of subject's clothing.
  8. The subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.
- (b) The use of Kinetic Energy Projectiles should generally be avoided in the following situations unless the totality of the circumstances indicate that other available options reasonably appear ineffective, impractical, and the officer reasonably believes that the need to control the individual outweighs the risk of using the Kinetic Energy Projectile.
1. As a breaching tool for windows in vehicles, especially when the vehicle is occupied.
  2. As a breaching tool for windows of a structure, especially if it places occupants at risk of injury.
- (c) An officer who is currently assigned to Special Operations Command and who has been trained in the use of Kinetic Energy Projectiles as a breaching tool may use that technique in a way that is consistent with their training.

#### 206.5.5 SHOT PLACEMENT AND DEPLOYMENT DISTANCES

Officers should generally follow their training instructions regarding minimum deployment distances and target areas. The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death.

The head and neck should not be intentionally targeted, however any target area or distance may be considered when it reasonably appears necessary to accomplish immediate incapacitation in order to prevent serious injury or death to officers or others.

#### 206.5.6 REPORT OF USE

All kinetic energy projectile use shall be documented in the related incident report/supplements and notification made to a supervisor in compliance with General Order 211 (Response to Resistance Inquiry, Reporting and Review).

- (a) Specific information on the use of a kinetic energy projectiles should include, but is not limited to, the following:
1. Articulate reasons for the use of the kinetic energy projectile weapon.



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2. Information on the type of individual who was subject to the kinetic energy projectile(s) (e.g., age, sex, health conditions).
  3. Any special circumstances surrounding the use of the kinetic energy projectile(s).
  4. Whether the kinetic energy projectile(s) application was successful.
  5. Where the projectile(s) impacted the subjects body.
  6. Number of kinetic energy projectiles deployed.
  7. Number of times subject was impacted by kinetic energy projectile(s).
  8. Approximate distance the kinetic energy projectile(s) was deployed from the subject.
- (b) Photographs of impact sites should be taken. Expended projectiles should be collected and the expended projectile(s) shall be submitted into evidence for future reference. The evidence packaging should be marked "Biohazard" if the projectile(s) penetrated the subject's skin.

#### **206.6 PAIN COMPLIANCE TECHNIQUES**

Pain compliance techniques may be effective in controlling a passive or actively resisting individual. Officers may only apply those pain compliance techniques for which the officer has an objectively reasonable belief that the use of such a technique appears necessary to further a legitimate law enforcement purpose.

- (a) Officers should consider the following when using pain compliance techniques:
1. The potential for injury to the officers or others if the technique is not used.
  2. The potential for serious injury to the individual being controlled.
  3. Whether the pain compliance technique is effective in achieving an appropriate level of control.
  4. The nature of the offense involved.
  5. The level of resistance of the individual(s) involved.
  6. The need for prompt resolution of the situation.
  7. If time permits (e.g., passive demonstrators), other reasonable alternatives.
- (b) The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved or other more appropriate alternatives can reasonably be utilized.

#### **206.6.1 USE OF FORCE TO SEIZE EVIDENCE**

- (a) Pressure point techniques are the maximum amount of force authorized to seize evidence (e.g., narcotics) when there is probable cause to believe it is being held or hidden in the mouth of a subject.

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- (b) Soft/empty hand control is the maximum amount of force authorized to seize blood from a subject pursuant to a mandatory blood draw.



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## TASER Device Guidelines

### 208.1 PURPOSE AND SCOPE

The TASER® is intended to control a violent or potentially violent individual while minimizing the risk of serious injury. It is anticipated that the appropriate use of such a device will result in fewer serious injuries to officers and suspects.

#### 208.1.1 PHILOSOPHY

The use of a TASER Device upon a subject by an officer shall only occur when the officer, while in the performance of his lawful duties, has an objectively reasonable belief that it is necessary to gain control of the subject.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force to protect the public welfare requires a careful balancing of all human interests.

### 208.2 POLICY

Personnel who have completed department approved training may be issued a TASER Device for use during their current assignment. Personnel leaving a particular assignment may be required to return their issued device to the Department's inventory.

Officers shall only use the TASER Device and cartridges that have been issued by the Department. If an officer is issued a TASER®, the device must be carried as a part of a uniformed officer's equipment in an approved holster.

- (a) When the TASER Device is carried as a part of a uniformed officer's equipment, the TASER Device shall be carried on the side opposite from the duty weapon.
- (b) All TASER Devices shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.
- (c) Whenever practicable, officers should carry a total of two or more TASER Device cartridges on their person while carrying a TASER Device.

### 208.3 VERBAL WARNINGS

A verbal announcement of the intended use of the TASER Device shall precede its application unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances.

- (a) The purpose of the warning is for the following:
  1. Provide the individual with a reasonable opportunity to voluntarily comply.
  2. Provide other officers and individuals with warning that a TASER Device may be deployed.
- (b) The aiming laser should never be intentionally directed into the eyes of another.

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- (c) The fact that a verbal and/or other warning was given, or the reasons it was not given, shall be documented in any related reports, as well as any responses by the subject.
- (d) When given, the verbal warning should be "TASER, TASER, TASER" to prevent any confusion as to which weapon system is being deployed.

#### **208.4 USE OF THE TASER DEVICE**

As with any law enforcement equipment, the TASER Device has limitations and restrictions requiring consideration before its use. The TASER Device should only be used when its operator can safely approach the subject within the operational range of the TASER Device. Although the TASER Device is generally effective in controlling most individuals, officers should be alert to the potential for failure and be prepared with other options.

Generally, an assisting officer should be present with lethal cover in the event the TASER Device is ineffective or defective and the subject initiates a potentially life threatening confrontation.

Officers should never hold both a firearm and the TASER device at the same time.

##### **208.4.1 APPLICATION OF THE TASER DEVICE**

Authorized personnel may use the TASER Device when circumstances known to the officer at the time indicate that such application is objectively reasonable to control a subject in any of the following circumstances:

- (a) Apprehend a subject fleeing lawful arrest or detention.
- (b) A violent or physically resisting subject.
- (c) There is reasonable expectation that it will be unsafe for officers to approach within contact range of the subject.
- (d) A subject who by words or action has demonstrated an intention to be violent or to physically resist and who reasonably appears to present the potential to harm officers, himself, or others.
  - 1. Officers should give a verbal warning of the intended use of the TASER Device followed by a reasonable opportunity for the subject to voluntarily comply, when practicable.
  - 2. Officers must be able to articulate their use of the TASER Device in an incident report.

##### **208.4.2 PROHIBITED USES**

The following are prohibited uses of the TASER Device:

- (a) The TASER Device shall not be used to torture, psychologically torment, elicit statements or to punish any individual.
- (b) Horseplay or practical jokes.
- (c) Demonstrations, without the permission of a supervisor.
- (d) Against passively resisting subjects.

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- (e) Individuals who are covered in, or in close proximity to, any combustible material.

#### 208.4.3 SPECIAL DEPLOYMENT CONSIDERATIONS

- (a) The use of the TASER Device should generally be avoided in the following situations unless the totality of the circumstances indicate that other available options reasonably appear ineffective, impractical, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the TASER Device.
  - 1. Obviously pregnant females.
  - 2. Elderly individuals or obvious juveniles.
  - 3. Individuals who are handcuffed or otherwise restrained.
  - 4. Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).
- (b) Individuals suspected of being under the influence of drugs/alcohol or exhibiting extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and impervious to pain, or requires a protracted physical encounter with multiple officers to be brought under control may be more susceptible to serious medical problems and shall be closely monitored following the application of the TASER Device until they can be examined by paramedics or other medical personnel.
- (c) Because the application of the TASER Device in the drive-stun mode (i.e. direct contact without darts) relies primarily on pain compliance and requires close proximity to the subject, additional caution should be exercised. The application in drive-stun mode should be limited to brief applications in which pain compliance would reasonably appear necessary to achieve control.

#### 208.4.4 TARGETING CONSIDERATIONS

While manufacturers generally recommend that reasonable efforts should be made to target lower center mass and to avoid intentionally targeting the head, neck, chest and groin, it is recognized that the dynamics of each situation and officer safety may not permit the officer to limit the application of the TASER Device darts to a precise target area. As such, officers should take prompt and ongoing care to monitor the condition of the subject if one or more darts strikes the head, neck, chest or groin until he is released to the care of paramedics or other medical personnel.

#### 208.4.5 MULTIPLE APPLICATIONS OF THE TASER DEVICE

Only one officer shall deploy his TASER Device on an individual unless it is obvious the deployment was not effective.

- (a) If the first application of the TASER Device appears to be ineffective in gaining control of an individual and if circumstances allow, the officer should consider the following before additional application of the TASER Device:
  - 1. Whether the probes or darts are making proper contact.

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2. Whether the application of the TASER Device is interfering with the ability of the individual to comply.
  3. Whether other options or tactics may be more effective.
- (b) This does not preclude an officer from multiple, reasonable applications of the TASER Device on an individual.

#### 208.4.6 REPORT OF USE

All TASER Device discharges shall be documented in the related incident report/supplements and notification made to a supervisor in compliance with General Order 211 (Response to Resistance Inquiry, Reporting and Review).

- (a) Specific information on the use of a TASER Device should include, but is not limited to, the following:
1. Articulate reasons for the use of the TASER Device.
  2. Information on the type of individual who was subject to the TASER Device (e.g., age, sex, health conditions).
  3. Any special circumstances surrounding the use of the TASER Device (e.g., handcuffed prisoner).
  4. Whether one or both of the TASER Device darts penetrated a subject's clothing and/or skin.
  5. How many applications/cycles of the TASER Device were used.
  6. Whether the TASER Device application was successful.
  7. How many cartridges were used.
  8. Serial numbers of any used cartridge(s).
  9. Whether multiple officers used the TASER Device.
  10. Any pain compliance use of the TASER Device (e.g., drive stun).
- (b) The on-board TASER Device memory will be downloaded through the data port by a supervisor and saved with the related incident reports.
- (c) Photographs of probe sites should be taken, Anti-Felon Identification (AFID) tags should be collected and the expended cartridge along with both probes shall be submitted into evidence for future reference. The cartridge serial number should be noted and documented on the evidence paperwork. The evidence packaging should be marked "Biohazard" if the probes penetrated the subject's skin.

#### **208.5 MEDICAL TREATMENT**

Officers will remove TASER Device darts as trained once the subject is in custody. Used TASER Device darts shall be considered a sharp biohazard, similar to a used hypodermic needle. Universal precautions should be taken accordingly.

All subjects who have been struck by TASER Device darts or who have been subjected to the electric discharge of the device shall be medically assessed prior to booking. Additionally, an

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individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

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

Subjects who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and impervious to pain or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and shall be examined by qualified medical personnel. Officers shall call EMS to diagnose and treat any individual exhibiting these signs as soon as the signs are recognized. Any such individual shall be medically cleared prior to booking.

If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or the interview with the individual, any refusal should be included, if possible.

The transporting officer shall inform any person receiving custody or any person placed in a position of providing care that the individual has been subjected to the application of the TASER Device. All subjects shall be evaluated by the jail nurse prior to booking.

#### **208.6 TRAINING**

In addition to the initial department-approved training required to carry and use a TASER Device, all employees carrying a TASER Device shall demonstrate proficiency annually.

- (a) Employees who have not carried a TASER Device as a part of their assignment for a period of six months or more shall be recertified by a department approved TASER Device instructor prior to again carrying or using the device.
- (b) A reassessment of an officer's knowledge and/or practical skill may be required at any time if deemed appropriate by the Training commander.

#### **208.7 FUNCTIONALITY CHECK**

After a Response to Resistance incident, supervisors shall download the firing data from an employees' TASER Device and comply with the reporting procedures outlined in General Order 211 (Response to Resistance Inquiry, Reporting and Review).

Officers shall download data from their assigned TASER Device when it is reassigned to another officer or retired from active police inventory:

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- (a) One copy of the data report shall be filed with the officer's property inventory retained by Police Equipment.
- (b) One copy of the data report shall be retained by the officer.

**208.7.1 PROPER MAINTENANCE**

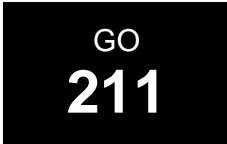
Officers shall be responsible for ensuring that their issued TASER device is properly maintained and in good working order.

- (a) The supervisor or designee will perform functionality checks. This check shall occur monthly for probationary police officers and quarterly for all other officers.
- (b) The results of the check will be documented on form PD0128 and will include whether or not the internal clock was "reset" and if a Taser was found defective. If defective, the supervisor shall notate corrective action. Examples are:
  - 1. Turned into Police Equipment for repair or replacement
  - 2. Taser cartridge trap doors replaced
  - 3. Low battery replaced

**208.8 DEPLOYMENT RECORD RETENTION**

All TASER Device deployment information shall be maintained by the Department for a minimum of three (3) years.





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# Response to Resistance Inquiry, Reporting, and Review

### 211.1 PURPOSE AND SCOPE

This directive sets forth Department policy and procedures for inquiring, reporting, and reviewing force incidents in response to resistance involving Department personnel. The specific required inquiry, reporting, and review of these incidents is determined by the force level, as defined in this order.

Personnel may delay compliance with the provisions of this order if the scene is unstable, there is unrest, or other conditions make immediate compliance impracticable. The protection of the public, Department personnel, and maintenance of public safety shall remain a top priority. Compliance with this order shall occur as soon as practicable. The approving supervisor shall ensure the reason for the delay is documented in the supervisor's supplement or SharePoint IRP.

#### 211.1.1 DEFINITIONS

**Inquiry:** The preliminary review of the events surrounding a response to resistance incident, including the initial response to the scene and follow-up investigations.

**Reporting:** The process of documenting the information gathered in the inquiry of a response to resistance incident through written, oral and visual means and compiling that information into the appropriate packet for review.

**Review:** The process of evaluating all the given information obtained in the force incident inquiry and reporting stages to determine if the response to resistance complies with law and General Orders.

**Primary Review Commander:** The Commander responsible for conducting the initial review of the response to resistance incident.

**Secondary Review Commander:** A Commander independent of the involved officer's chain-of-command assigned to complete a secondary review of the response to resistance incident. The Secondary Review Commanders are assigned as follows:

Patrol Assignment are reciprocal

- Commander of Adam Sector will review Frank Sector
- Commander of Baker Sector will review Henry Sector
- Commander of Edward Sector will review David Sector
- Commander of Ida Sector will review Charlie Sector
- Commander of Charlie will review Ida Sector
- Commander of Henry will review Baker Sector
- Commander of David Sector will review Edward Sector

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- Commander of Frank Sector will review Adam Sector

#### Support Assignments

- Commander of Organized Crimes will review DTAC Day and Evening I Lieutenant Shifts
- Commander of Highway Enforcement will review DTAC Evening 2 and Night Lieutenant Shifts
- Commander of Investigations II/Property Crimes will review Special Operations
- Commander of Special Operations will review Investigations I and II/Property Crimes
- Commander of Intelligence will review Special Events, Professional Standards, Recruiting/Training, and Organized Crimes
- Commander of Special Events will review Intelligence
- Commander of Recruiting/Training will review Highway Enforcement

#### 211.1.2 IDENTIFYING RESPONSE TO RESISTANCE DOCUMENTATION

The following Response to Resistance reports and forms are required as determined by the force level of the incident:

**Response to Resistance Incident Report:** The initial incident report written by the primary reporting employee for all force level incidents. Title Code 8400 shall be added to the incident report by the primary reporting employee to identify the incident as a response to resistance incident. The Use of Force section of the "Details" page shall also be completed.

**Response to Resistance Supplement:** A supplement written to the primary reporting employee's incident report.

**Response to Resistance SIU Inquiry Report:** A separate incident report written by the Special Investigations Unit (SIU) for all Level 1 incidents and in-custody deaths.

**Incident Review Folder:** An electronic folder labeled with the case number, created in the G: \Digital Incident Review Folder which contains all applicable response to resistance supporting documentation.

**Incident Review Packet (IRP):** An administrative review of the incident to include response to resistance. The IRP is completed on SharePoint by the appropriate person, unit, or chain-of-command.

- Level 1 incident review packets are completed by SIU. A chain-of-command inquiry is also required at the completion of the SIU report to identify department or individual equipment, training, and tactical issues.
- Level 2, Level 3, and Level 4 incident review packets are completed by the supervisor conducting the inquiry.

**Group Reporting:** The act of sharing, providing, or acquiring information with or from other officers or employees about an incident for the purpose of ensuring that officers or employees make similar

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reports about the incident that include information not consistent with the reporting officer's or employee's own perception or recollection of the incident. The act of reading another officer's or employee's report prior to completing a required report is considered group reporting.

**211.2 DETERMINING THE CORRECT FORCE LEVEL**

Force levels are broken up into four types: Level 1, Level 2, Level 3, and Level 4. Each level is defined below by the response to resistance used in the incident. These levels are established for inquiry, reporting, and review purposes only. If there is uncertainty about which level to designate a particular incident then the higher level shall be used.

**211.2.1 LEVEL 1 FORCE INCIDENTS AND IN-CUSTODY DEATHS**

- (a) Any force resulting in death.
- (b) Any force that resulted in a substantial risk of death.
- (c) Any intentional firearm discharge at a person, vehicle, or structure regardless of injury.
- (d) Any intentional firearm discharge at an animal that results in injury to another person.
- (e) Any unintentional firearms discharge resulting in another person's injury or death.
- (f) Any force that resulted in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g., serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ).
- (g) Use of any impact weapon, including kinetic energy projectiles, and improvised weapons, that strikes the head of a subject.
- (h) **In-Custody Deaths:** For inquiry, reporting, and review purposes, all in-custody deaths occurring prior to or within 24 hours after booking shall be treated as Level 1 incidents and require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject.
- (i) The utilization of the Precision Immobilization Technique when serious bodily injury or death occurs.

**211.2.2 LEVEL 2 FORCE INCIDENTS**

- (a) Any strike to the head by an employee with any weaponless technique.
- (b) Use of any impact weapons, including kinetic energy projectiles (other than a Taser), and improvised weapons, to strike a subject and contact is made, regardless of injury. (A strike to the head is a Level 1).
- (c) Any deployment of a police canine resulting in a bite to a subject's skin, or which results in any injury to a subject.
- (d) The utilization of the Precision Immobilization Technique, unless serious bodily injury or death occurs.

**211.2.3 LEVEL 3 FORCE INCIDENTS**

- (a) Use of Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent on a subject.

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- (b) Any Taser application.
- (c) Use of any impact weapon, including kinetic energy projectiles or any other similar object, in an attempt to strike a subject but no contact is made.
- (d) Use of a baton for a non-striking purpose (e.g., prying limbs, moving, or controlling a subject).
- (e) Any force resulting in injury or a continued complaint of pain, but not rising to a Level 1 or 2 incident.
- (f) Any weaponless technique that causes an impact to the body with or without a complaint of injury or pain. (A weaponless strike to the head is a Level 2). Examples of weaponless techniques include:
  - 1. Hand/palm/elbow strikes.
  - 2. Kicks or leg sweeps.
  - 3. Take-downs.
- (g) Any deployment of a police canine for the purpose of biting a subject whose location is known to the handler which results in no injury to the subject.

#### 211.2.4 LEVEL 4 FORCE INCIDENTS

- (a) A level of force utilizing empty hand control techniques that does not result in injury or continued complaint of pain and does not rise to a Level 3 response to resistance. Examples include, but are not limited to:
  - 1. Restricting a subject's movement by strength or body weight (to include resisted escorting or handcuffing of a subject who is actively resisting arrest beyond the initial or reflexive stiffening or pulling away of a person's arm(s) that officers commonly encounter during handcuffing).
  - 2. Using leverage or strength to bring a subjects arms or legs together for the purposes of controlling, handcuffing, or hobbling the subject (to include resisted control, handcuffing, hobbling when the subject is actively resisting arrest beyond the initial or reflexive stiffening or pulling away of the subject's arm(s) or leg(s) that officers commonly encounter during efforts to control, handcuff, or hobble a subject).
  - 3. Pressure point control tactics.

#### 211.2.5 ELEVATION OF A FORCE LEVEL INCIDENT

If information is uncovered during a response to resistance inquiry to indicate that the original force level falls into a higher category, the force level should be elevated to conduct the appropriate inquiry.

- (a) Supervisors have the discretion to elevate any Level 3 and Level 4 force incident to a Level 2 in order to conduct a more extensive inquiry and review of the incident.
- (b) Any supervisor, with the approval of the commander or Duty Commander, may elevate any response to resistance incident to a Level 1 force incident.

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### **211.3 VIOLATIONS OF LAW OR GENERAL ORDERS**

Supervisors receiving a complaint regarding a response to resistance incident will review the available information regarding the incident to determine if any credible evidence of a violation of General Orders or law may have occurred.

- (a) Supervisors making a determination based on objective evidence (e.g., MAV shows an allegation is false) that there is **no credible evidence** a violation of General Orders or law has occurred by the officer shall complete a *Complainant Contact Form* and forward it to IA.
  - 1. The incident shall be closed as information and tracked in the IA database for information purposes only.
  - 2. The force incident shall be handled based on the normal criteria as outlined in this order and the initiation of an IA investigation is not required.
- (b) Supervisors discovering, during the normal course of their review or in response to a complaint, **any credible evidence** a violation of law or General Orders may have occurred concerning the officer's response to resistance shall follow the guidelines outlined below.

#### **211.3.1 CRIMINAL MISCONDUCT**

Regardless of the original force level of the incident, if there is **any credible evidence** that criminal misconduct may have occurred by the officer then the incident shall be treated as a Level 1 force incident.

- (a) The supervisor shall immediately notify SIU and IA. The supervisor shall document the time and date SIU and IA were notified in the supervisor's supplement.
- (b) The Chief of Police shall be notified on all credible allegations of criminal conduct.
- (c) SIU and IA shall handle the concurrent investigation of criminal allegations as outlined in the Criminal Investigations and Administrative Investigations General Orders.

#### **211.3.2 GENERAL ORDERS VIOLATION**

- (a) If there is **any credible evidence** a General Orders violation may have occurred by the officer relating to his/her response to resistance then the incident shall be handled as follows:
  - 1. Level 1 force incidents - If the original incident would have been handled as a Level 1 force incident, supervisors shall notify SIU and IA of the possible General Orders violation and handle the response to resistance inquiry as a Level 1 force incident. Supervisors shall document the date and time SIU and IA were notified in the supervisor's supplement.
  - 2. Level 2, Level 3, and Level 4 force incidents - If the original incident would have been handled as a Level 2, Level 3 or a Level 4 force incident, supervisors shall notify IA of the possible General Orders violation and handle the response to resistance inquiry as a Level 2 force incident. Supervisors shall document the date and time IA was notified in the supervisor's supplement.

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- (b) Internal investigations of General Orders violations shall be handled as outlined in General Order 902 (Administrative Investigations).

**211.4 EMPLOYEE RESPONSIBILITIES FOR ALL FORCE LEVEL INCIDENTS**

The following outlines the required responsibilities of involved employees, employees that witness an incident, and employees designated to assist at the scene of any response to resistance incident. If a juvenile is in custody related to the incident, the juvenile should not be interviewed unless the juvenile has been brought before a magistrate.

- (a) Involved employees shall notify their supervisor as soon as practicable of any force incident or allegation of use of force.
- (b) Involved employees shall request EMS as soon as practicable when a subject complains of injury, has visible injuries, or the circumstances indicate that an injury may have occurred. For purposes of this section "Injury" does not include TASER probe marks that are not in a sensitive area of the body. Officers will comply with section 208.5 in regards to post-TASER deployment medical treatment.
- (c) If a person not under arrest is transported for medical treatment as a direct result of an officer's response to resistance, an officer will accompany that person to the medical facility for monitoring unless or until a supervisor believes such monitoring is no longer necessary.
- (d) Employees not involved in the force incident may be directed by a supervisor to assist at a force incident scene. This may include locating and identifying witnesses to the incident.
1. Employees shall notify a supervisor in the event a witness refuses to give a statement or provide identifying information.
  2. Employees shall not detain or delay a witness who refuses to remain at the scene.
    - (a) The witness' physical description, license plate, comments, or other identifiers shall be documented in the employee's supplemental report.
    - (b) Any photographs or videotape containing images of a witness who refused to remain at the scene shall be saved in the incident review folder.

**211.4.1 EMPLOYEE REPORTING GUIDELINES FOR ALL FORCE LEVEL INCIDENTS**

The following outlines the reporting guidelines for involved employees, employees that witness an incident and employees designated to assist at the scene of any response to resistance incident.

- (a) An incident report shall be completed by the primary reporting employee and include title code 8400. This report shall be written regardless of whether a report or supplement would normally be written for the initial incident.
- (b) Supplements shall be completed by:
1. All other employees who are involved in a force incident.
  2. Employees who witness a force incident.
  3. Employees assisting at the scene of a force incident.

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4. A supervisor is required to complete a supplement to the response to resistance incident report for Level 1 incidents. They may also be required by SIU to complete a supplement to the SIU inquiry report.
- (c) The following information shall be included in each report and supplement:
1. The original reason for police presence on the scene.
  2. The name and employee number of the supervisor notified of the incident.
  3. A detailed description of the circumstances and subject actions that resulted in the response to resistance.
  4. A detailed description of the force used.
    - (a) Include specific details regarding any weapon used on a subject (e.g., when OC spray is used you document the number of bursts, duration of each burst, the approximate distance from the subject, the location of spray contact).
  5. Subject and witness information.
  6. Reports shall not contain "boilerplate" or "pat" language (e.g., "furtive movement" or "fighting stance") without descriptive details of the action.
  7. Involved employees shall also complete the force section of the "Details" page in their report/supplement.
- (d) All incident reports and supplements shall be completed separately and without discussing the details of the incident with other personnel. "Group reporting" is prohibited. Debriefing after an incident and/or the necessary discussions to further the training requirements of officers enrolled in the Field Training Program (FTP) are allowed.

#### **211.5 DESIGNATION OF SUPERVISOR TO CONDUCT INQUIRY**

The supervisor of the employee involved in the force incident shall typically be the primary supervisor conducting the force inquiry. The following exceptions apply:

- (a) If an incident involves multiple employees with different supervisors, those supervisors should work together to determine who will be the primary reporting supervisor. If an agreement cannot be reached, a Lieutenant from the area where the incident occurred or the Watch Commander shall assign one supervisor to be the primary reporting supervisor. The responding supervisor will conduct the force inquiry. Additionally, the responding supervisor will notify the other involved employees' supervisor(s) of the force incident and their employee's involvement. This notification will be made by e-mail and will include the incident report number.
- (b) A supervisor involved in a force incident shall not review the incident. A supervisor who is at the scene and witnesses the incident, but is not directly involved in the force incident, may conduct the inquiry.
- (c) If an employee the rank of sergeant or lieutenant is involved in a Level 2, Level 3, or Level 4 force incident, another supervisor the rank of the involved employee or higher shall conduct the inquiry.

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- (d) If an employee the rank of commander or higher is involved in a Level 2, Level 3, or Level 4 force incident, the employee will notify their immediate supervisor and the Duty Commander. At the direction of the Duty Commander, an on duty lieutenant may be designated to complete the inquiry.
- (e) Corporals may be designated as the inquiry supervisor as follows:
  - 1. Level 1 Incidents - Corporals may not act as the designated supervisor to conduct inquiries for Level 1 Force Incidents.
  - 2. Level 2 Incidents - As long as an employee is in their chain-of-command, or when responding as the acting sergeant to an incident occurring in their sector involving a Department officer working an off-duty LERE position, corporals may conduct the initial on-scene inquiry of a Level 2 incident when serving as acting sergeant or when the sergeant is not immediately available. The corporal should notify the corporal's supervisor, lieutenant, or other designated supervisor of the Level 2 incident by the end of the shift and the initial Level 2 SharePoint IRP should be forwarded within eight (8) working days for final approval or further inquiry.
  - 3. Level 3 and Level 4 Incidents: Corporals may function as the designated supervisor to conduct inquiries for Level 3 and Level 4 force incidents.

#### **211.6 LEVEL 1 AND IN-CUSTODY DEATH INQUIRY, REPORTING, AND REVIEW REQUIREMENTS**

Level 1 force incidents require an inquiry be conducted by SIU and may also concurrently be investigated by IA. In-custody deaths occurring prior to or within 24 hours after booking require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject. The following sections explain the responsibilities in Level 1 force incidents and in-custody deaths for:

- (a) Supervisors,
- (b) Special Investigations Unit (SIU),
- (c) Lieutenants,
- (d) Chain-of-command, and
- (e) Internal Affairs (IA).

#### **211.6.1 SUPERVISOR RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS**

Supervisors shall respond to the scene of all Level 1 force incidents and in-custody deaths unless a hostile crowd or other conditions make such a response impracticable. In such incidents, an alternate safe location shall be designated by the supervisor.

- (a) Supervisors are responsible for managing the scene until a higher ranking supervisor or the ranking SIU supervisor arrives.
- (b) Supervisors should secure and manage the scene upon arrival and:



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1. Take all reasonable steps to obtain emergency medical attention for all injured individuals.
2. Ensure involved personnel, subjects, and witnesses are separated, identified and advised that communication regarding the incident with other people is prohibited.
3. Obtain a brief overview of the situation from available sources.
4. Following an officer involved shooting, the supervisor shall administer the public safety questions to the involved officers(s). If necessary, the supervisor shall administratively order any officer from this department to immediately provide public safety information to secure the scene, pursue subjects, and locate any possible injured persons requiring medical attention.
  - (a) The public safety questions can be found on form PD0297 located in the APD Approved Forms Folder. The information shall be limited to such things as outstanding subject information, number and direction of shots fired, perimeters of the incident scene, identity of known witnesses, and similar information.
  - (b) The public safety questions shall be captured using the BWC system. When the BWC system is unavailable, the DMAV system shall be used.
5. With the exception of answering the public safety questions, involved personnel subject to a potential criminal investigation shall be able to speak with an APA union representative and/or their attorneys prior to speaking with a supervisor.
6. Ensure a crime scene is established:
  - (a) Ensure a *Crime Scene Security Log* (PD0175) is maintained to record the time and identifying information of all persons entering and exiting the scene.
  - (b) Ensure the *Crime Scene Security Log* is delivered to the SIU investigator.
7. Ensure an appropriate sized perimeter is established, if needed.
8. Assess the need for additional resources and notify the Watch Lieutenant and appropriate lieutenant.
9. Identify the number of subjects involved and coordinate the apprehension of subject(s) who are unaccounted for.
10. Assign employees who were not involved with the force incident to conduct a reasonable canvass in an effort to identify witnesses in the proximity of the incident. Witness information should be provided to on scene investigators as soon as practicable and shall be documented in the employee's supplement.
11. Assign employees who were not involved with the force incident to identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video. Any information regarding sources

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- of pertinent video should be provided to on-scene investigators as soon as practicable and shall be documented in the employee's supplement.
12. Coordinate the preliminary inquiry with the SIU and IA investigators to include, but not limited to:
    - (a) Identifying employees either involved in or witness to the incident.
    - (b) Designating the primary reporting officer for the response to resistance incident report.
    - (c) Ensuring the preservation of evidence.
    - (d) Assisting investigators to ensure statements are taken.
  - (c) Once the scene has been cleared, supervisors shall be responsible for the following:
    1. Completing a supplement to the response to resistance incident report detailing their actions. SIU may direct a supervisor to complete a supplement to the SIU inquiry report as well.
    2. Reviewing the primary reporting employees' response to resistance incident report and change the 8400 title code to 8401 to indicate a Level 1 force incident.
    3. Identifying Department or individual equipment, training, and tactical issues, if applicable.
    4. Making recommendations for corrective action when appropriate. Recommendations shall be documented in the SharePoint IRP.

#### 211.6.2 SPECIAL INVESTIGATIONS UNIT (SIU) RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

The ranking SIU supervisor on-scene of a Level 1 incident shall assume command of the scene. SIU shall conduct a response to resistance inquiry and forward the incident review packet to the involved employee's chain-of-command within forty-five (45) calendar days, unless extended by an assistant chief. A referral to IA may be initiated if SIU or the chain-of-command discovers credible evidence of a General Orders violation during their review of a Level 1 force incident. All in-custody death incidents will have a concurrent investigation with IA.

#### 211.6.3 LIEUTENANT RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

On-duty lieutenants responsible for the area in which the response to resistance incident has occurred will respond to the scene to assume scene management and ensure the assigned supervisor coordinates and assists with a thorough and proper preliminary inquiry. When appropriate, lieutenants may place the involved employees on restricted duty with the approval of the employee's commander or the Duty Commander.

#### 211.6.4 CHAIN-OF-COMMAND REVIEW RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

The chain-of-command, up to and including the appropriate assistant chief, shall review the response to resistance incident review packet for Level 1 force incidents. All reviewers shall:

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- (a) Document their review following IA administrative procedures relating to the IA investigation of the incident.
- (b) Review the incident review packet and evaluate the report and supplements for compliance with law and General Orders. Any reports that are incomplete or inadequate shall be returned to ensure corrections are made.
- (c) Order further inquiry or additional resources when necessary.
- (d) Evaluate and comment on any training, tactical, or equipment issues.
- (e) Document any extension approvals for report deadlines. The employee's commander shall ensure SIU and IA are notified of any deadline extensions.
- (f) Forward the response to resistance incident review packet to the next level in the chain-of-command under which the involved employee was working when the incident occurred, within eight (8) working days from the time it was received for review.
- (g) Upon completion of the review, and the final disposition of any Administrative Investigation, if applicable, the commander shall:
  - 1. Forward all approved incident review packet links via email to APD Training.
  - 2. Document any identified individual, command or Department-wide training issues:
    - (a) If an individual or command training issue is identified, the commander shall ensure training is conducted and a training memorandum is completed and forwarded to the commander of the Training Division for review and appropriate additional action, if any; and/or
    - (b) Request Department-wide training from the Training Division.
    - (c) Scan the final signed memorandum into the electronic folder.

**211.6.5 INTERNAL AFFAIRS RESPONSIBILITIES IN LEVEL 1**

- (a) If an Administrative Investigation is initiated due to alleged misconduct by an APD employee, at any stage of the inquiry or review process, the process established by General Order 902 (Administrative Investigations) will be followed.
- (b) Upon final disposition of the Administrative Investigation, IA will notify the involved employee's commander.
- (c) For in custody deaths and officer involved shootings, IA will forward the electronic link to the Force Review Board.

**211.7 LEVEL 2 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS**

The following sections explain the responsibilities in Level 2 force incidents for:

- (a) Supervisors, and
- (b) Chain-of-Command.

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#### 211.7.1 SUPERVISOR RESPONSIBILITIES IN LEVEL 2 FORCE INCIDENTS

Level 2 force incident inquiries are conducted by the designated inquiry supervisor. A supervisor shall respond to the scene of all Level 2 force incidents unless a hostile crowd or other conditions make such a response impracticable. In such incidents, an alternate safe location shall be designated by the supervisor.

- (a) Supervisors should secure and manage the scene upon arrival and:
1. Ensure involved personnel, subjects, and witnesses are identified, separated, and advised that communication regarding the incident with other people is prohibited.
  2. Verbally review the general circumstances of the incident individually with the involved personnel, subjects, and witnesses. All employee statements shall be captured using the BWC recording system. When the BWC system is unavailable, the DMAV system shall be used.
  3. Ensure the reporting level is consistent with the facts and assess whether injuries, if present, are consistent with the force applied.
  4. Ensure a perimeter is established if needed.
  5. Locate injured subjects and ensure medical services have been requested as needed.
  6. Assess the need for additional resources and make appropriate notifications.
  7. Identify the number of subjects involved. Coordinate the apprehension of subject(s) outstanding.
  8. Personally interview witnesses and the subjects upon whom the force was used, or alleged to have been used, and obtain a statement. The statement should be captured using a MAV recording system. If a statement is not obtained by video or audio, the supervisor shall thoroughly document the information in their SharePoint IRP and explain the circumstances that prevented the recording.
  9. Assign employees who were not involved with the force incident to conduct a reasonable canvass in an effort to identify witnesses in the proximity of the incident. Witness information should be provided to the on-scene supervisor as soon as practicable and shall be documented in the employee's supplement. Witness information shall also be documented in the supervisor SharePoint IRP.
  10. Assign employees who were not involved with the force incident to identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video. Any sources of pertinent video should be provided to on scene supervisor as soon as practicable and shall be documented in the employee's supplement.
  11. Ensure digital images or photographs are taken of:
    - (a) The physical condition of the subject and involved personnel to record the presence or lack of injuries.
    - (b) The scene where the response to resistance incident occurred.

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- (c) Other relevant evidence.
- 12. If a kinetic energy projectile is used in the force incident, all spent projectiles shall be submitted to evidence for retention.
- 13. Supervisors shall ensure all MAV media is properly classified if it contains any information or statements related to the incident.
- (b) Once the scene has been cleared, supervisors shall be responsible for the following:
  - 1. Send email notifications with the incident report number prior to the end of the tour of duty to the:
    - (a) Involved employee's chain-of-command up to the commander.
    - (b) Reviewing supervisor's chain-of-command up to the commander, if not already included.
    - (c) Commander of the area where the incident took place, if not already included.
  - 2. Supervisors shall review the primary reporting employee's response to resistance incident report and change the 8400 title code to 8402 for Level 2 force incidents.
  - 3. Complete an Incident Review Packet on SharePoint filling in all applicable fields to include:
    - (a) All pertinent information relating to the resistance and the officer(s) response to resistance.
    - (b) The findings of the supervisor investigation, including whether the response to resistance complies with law and General Orders.
      - 1. Utilization of the Precision Immobilization Technique (PIT) will be handled in both the pursuit review and Level 2 response to resistance sections of the SharePoint IRP and reviewed through the rank of Commander.
    - (c) Any training issues or General Orders violations on the part of the involved officer(s), if applicable.
  - 4. Create an electronic folder with the case number in the folder G:\Incident Review Folder containing all supporting documentation which is not already located in a different location on the APD Network. Supporting documentation includes but is not limited to:
    - (a) Copies of private surveillance video, cell phone video, etc.
  - 5. Forward the electronic link(s) to the SharePoint IRP and the digital incident review folder to the next level in the chain-of-command under which the involved employee was working when the incident occurred, within eight (8) working days from the time the incident occurred.
  - 6. Supervisors shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure

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completeness, accuracy, and quality and send it to the next level in the chain-of-command within eight (8) working days of the date of incident.

**211.7.2 CHAIN-OF-COMMAND REVIEW RESPONSIBILITIES IN LEVEL 2 FORCE INCIDENTS**

The chain-of-command, up to and including the commander, shall review Level 2 force incidents.

- (a) All reviewers shall:
1. Review the SharePoint IRP and evaluate the report and supplements for compliance with law and General Orders.
  2. Document in the SharePoint IRP whether the response to resistance was within General Orders:
    - (a) Each level of the chain-of-command should comment in the applicable review fields in the SharePoint IRP.
  3. Evaluate and comment on any training, tactical, or equipment issues.
  4. Order further inquiry or additional resources when necessary.
  5. Ensure any reports that are incomplete or inadequate are returned and corrections made.
  6. Supervisors shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure completeness, accuracy, and quality. Each level of the chain-of-command, up to and including the Primary Commander, shall review the incident according to the following timeline:
    - (a) Sergeants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days of the date of the incident.
    - (b) Lieutenants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days from the time the incident was received for review.
    - (c) The Commander shall complete their review of the SharePoint IRP within eight (8) working days from the time the incident was received for review. A case note shall be added to the SharePoint IRP to document their review.
    - (d) The Commander may grant an extension to any deadline for completing a review listed above in subsection (a)(6)(a) or (a)(6)(b). Requests for extensions must be based upon delays in the review process, including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.
    - (e) An assistant chief may grant an extension to any of the deadlines for completing a review listed in subsections (a)(6)(a)-(d). Requests for extensions must be based upon delays in the review process including, but not limited to: delays in gathering evidence, staffing or scheduling

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issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.

- (b) Upon completion of the review, the commander shall:
1. Forward link(s) to all approved SharePoint IRP via email to APD Training and appropriate review board(s).
  2. Document any identified individual, command or Department-wide training issues:
    - (a) If an individual training issue is identified an Employee Success Plan may be implemented. If a command training issue is identified, the commander shall ensure training is conducted; and/or
    - (b) Request Department-wide training from the Training Division.

**211.8 LEVEL 3 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS**

Level 3 force incidents require the involved employees to document the incident in a report and notify their supervisors. Supervisors shall conduct a review of Level 3 force incidents as outlined below but may upgrade any Level 3 force incident to a Level 2 force incident in order to conduct a more extensive review. Any Level 3 that is upgraded to a Level 2 shall be investigated and documented in the same manner as a Level 2.

- (a) Supervisors shall respond to the scene of any Level 3 incident involving:
1. Use of OC spray or other chemical agent on a subject.
  2. Any Taser application. See the "Report of Use" section of General Order 208 (TASER® Guidelines) for specific information to be included in the report.
  3. Use of an impact weapon.
  4. Any incident resulting in injury or continued complaint of pain.
  5. Any deployment of a police canine for the purpose of biting a subject whose location is known to the handler which results in no injury to the subject.
- (b) Supervisors shall review the primary reporting employees' response to resistance incident report:
1. When required to respond, supervisors shall review the general circumstances of the incident with the involved personnel, subjects, and witnesses. If the interview is conducted by phone, the officer and supervisor will activate the speakerphone. All employee statements shall be captured using a BWC recording system. When the BWC system is unavailable, the DMAV system shall be used.
  2. Ensure the reporting level is correct based on all of the facts gathered during the response to resistance review.
  3. Incomplete or inadequate reports shall be returned for additional details or clarification.

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4. Supervisors shall change the 8400 title code in the Versadex incident report and detail page to 8403 for Level 3 force incidents.
  5. Supervisors shall complete an Incident Review Packet on SharePoint filling in all applicable fields to include:
    - (a) All pertinent information related to the resistance and the officer(s) response to resistance.
    - (b) The findings of the supervisor investigation, including whether the response to resistance complies with law and General Orders.
    - (c) Any training issues or General Orders violations on the part of the involved officer(s), if applicable.
  6. Supervisors shall ensure all MAV media is properly classified if it contains any information or statements related to the incident.
- (c) If a TASER Device is used in the force incident, the data report shall be downloaded and a copy scanned into the image section of the Versadex incident report or submitted into evidence with the spent cartridge for retention.
- (d) Supervisors shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure completeness, accuracy, and quality. Each level of the chain-of-command, up to and including the Primary and Secondary Review Commanders, shall review the incident according to the following timeline:
1. Sergeants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days of the date of the incident.
  2. Lieutenants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days from the time the incident was received for review.
  3. The Primary Review Commander shall complete their review of the SharePoint IRP and send it to the designated Secondary Review Commander for final review within eight (8) working days from the time the incident was received for review. A case note shall be added to the SharePoint IRP to document their review.
  4. The Primary Review Commander may grant an extension to any deadline for completing a review listed above in subsection (d)(1) or (d)(2). Requests for extensions must be based upon delays in the review process, including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.
  5. An assistant chief may grant an extension to any of the deadlines for completing a review listed in subsections (d)(1)-(4). Requests for extensions must be based upon delays in the review process including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review



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process, or other unforeseen emergency situations that may interfere with the completion of the review.

6. The Secondary Review Commander shall complete the final review of the SharePoint IRP and notify the Primary Review Commander within eight (8) working days from the date the Secondary Review Commander received the review from the Primary Review Commander.
- (e) Level 3 incidents that involve the use of OC, Taser (where contact is made), or weaponless strikes on a restrained subject will be forwarded to the Force Review Board by the Primary Review Commander for their review.

#### **211.9 LEVEL 4 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS**

Level 4 force incidents require the involved employees to document the incident in a report and notify their supervisors. Supervisors shall conduct a review of Level 4 force incidents as outlined below, but may upgrade any Level 4 force incident to a Level 3 or Level 2 force incident in order to conduct a more extensive review.

- (a) Supervisors shall be briefed by the primary reporting officer to determine whether or not the Level 4 force incident should be upgraded. If the determination is made to upgrade the incident then it will be investigated in accordance with the appropriate level as determined by this General Order.
- (b) Supervisors shall review the primary reporting employees' response to resistance incident report:
  1. Supervisors shall review the general circumstances of the incident with the involved personnel and ensure the reporting level is correct based on all of the facts gathered during the response to resistance review.
  2. Incomplete or inadequate reports shall be returned for additional details or clarification.
  3. Supervisors shall change the 8400 title code in the Versadex incident report and detail page to 8404 for Level 4 force incidents.
  4. Supervisors shall complete an Incident Review Packet on SharePoint filling in all applicable fields to include:
    - (a) All pertinent information related to the resistance and the officer(s) response to resistance.
    - (b) The findings of the supervisor investigation, including whether the response to resistance complies with law and General Orders.
    - (c) Any training issues or General Orders violations on the part of the involved officer(s), if applicable.
  5. Supervisors shall ensure all MAV media is properly classified if it contains any information or statements related to the incident.
  6. Supervisors shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure

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completeness, accuracy, and quality. Each level of the chain-of-command, up to and including the Primary Commander, shall review the incident according to the following timeline:

- (a) Sergeants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days of the date of the incident.
- (b) Lieutenants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days from the time the incident was received for review.
- (c) The Commander shall complete their review of the SharePoint IRP within eight (8) working days from the time the incident was received for review. A case note shall be added to the SharePoint IRP to document their review.
- (d) The Commander may grant an extension to any deadline for completing a review listed above in subsection (b)(6)(a) or (b)(6)(b). Requests for extensions must be based upon delays in the review process, including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.
- (e) An assistant chief may grant an extension to any of the deadlines for completing a review listed in subsections (b)(6)(a)-(d). Requests for extensions must be based upon delays in the review process including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.

**211.10 INCIDENTS DURING SECONDARY LAW ENFORCEMENT RELATED EMPLOYMENT (LERE)**

Officers involved in a force incident while working secondary law enforcement related employment (LERE) shall be required to comply with this order. Supervisors in the area where the force incident occurred shall conduct the inquiry. However, for Level 3 and Level 4 force incidents, should the LERE assignment employ two or more officers and one of the officers is a supervisor not involved in the force incident, the LERE supervisor may conduct the review.

**211.11 INCIDENTS OCCURRING OUTSIDE THE CITY OF AUSTIN**

Employees involved in a Level 1, Level 2, Level 3, or Level 4 force incident while taking police action outside of the City of Austin shall notify the proper law enforcement authority having jurisdiction, contact their supervisor, and follow the reporting procedures outlined in this order.

**211.12 SPECIAL CIRCUMSTANCES**

Any deviation from the above reporting requirements must be approved by an assistant chief and only for special circumstances (e.g., mass arrest situations, emergency crowd control).



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# Force Review Board

### 212.1 PURPOSE AND SCOPE

The Austin Police Department is charged with the important responsibility of objectively evaluating an Officers Response to Resistance. The Force Review Board (FRB) shall identify any policy, training, tactical, equipment, or other improvements related to the force incident that may be needed. The Board shall also review the quality and timeliness of the response to resistance reporting, investigation, and chain-of-command review, and take appropriate action. The Chief may direct the Board to review any Response to Resistance incident.

The FRB is empowered to conduct an administrative review of the following types of incidents:

- (a) Level 1 and Level 2 force incident.
- (b) In-custody death.
- (c) Vehicle pursuits resulting in the serious bodily injury or death to any person.
- (d) Any incident causing serious injury or death as a result of an employee's actions.
- (e) Any firearms discharge other than those in the course of authorized training, practice, legal recreational activities, during an organized competitive event, or the authorized discharge against an animal.
- (f) Any incident where an officer uses OC Spray, Taser, or weaponless strikes on a restrained subject.
- (g) Any commander may request that an incident occurring within their area of responsibility be reviewed.

#### 212.1.1 AUTHORITY OF FORCE REVIEW BOARD

When a FRB is convened, the Board may:

- (a) Direct Department personnel to appear before the Board.
- (b) Request any private person to appear as a witness.
- (c) Access all relevant documents, records, recordings, including any video, audio, text messages, and transcripts of interviews of all involved personnel, including non-departmental witnesses, as provided by law.

The Board shall make recommendations concerning any policy, training, tactical, equipment, or other improvements but does not have the authority to recommend discipline. Recommendations shall be determined by a majority vote of the Board. Any approved recommendations shall be referred to the Chief of Police or designee.

#### 212.1.2 CONFIDENTIALITY OF INFORMATION

Documentation provided to the FRB necessary to perform its function has the same legal character as documentation in the possession of Internal Affairs. No member of the FRB may release any information regarding its review of a specific incident to anyone not authorized to review the information without the authorization of the Chief or designee.

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#### **212.2 FORCE REVIEW BOARD COMPOSITION**

The FRB consists of Voting Members, Non-Voting Members and Presenters. Current Board membership shall be outlined and updated in General Order 111 (APD Standing Committees and Boards).

##### **212.2.1 BOARD MEMBER TRAINING**

The Training Division Commander shall ensure all FRB members receive continuing professional training in the following subjects:

- (a) Departmental force policies, force application, and practices including demonstrations of training techniques.
- (b) Departmental force investigation procedures.
- (c) Criminal and administrative investigation techniques, practices, and standards presented and/or coordinated by the Training Academy.
- (d) Legal updates on force case law presented by representatives from the City Law Department and/or the District Attorney's Office.
- (e) Officer-involved shootings, vehicle pursuit-related matters, and in-custody death investigations.

#### **212.3 FORCE REVIEW BOARD INQUIRY PACKETS**

##### **212.3.1 INQUIRY PACKET PREPARATION**

A FRB shall not be convened if any Response to Resistance, In-Custody Death or Vehicle Pursuit incident is being investigated by IA until the internal investigation is completed. IA shall provide the completed investigative report packets to the FRB Chairperson. The FRB Chairperson shall convene a FRB within 30 days of receipt of the investigative files from IA.

For all in custody deaths and officer involved shootings, IA shall present a detailed summary of the investigation to the FRB.

The FRB Chairperson may request additional information from Internal Affairs and/or the Vehicular Homicide Unit (if the incident is a pursuit resulting in serious bodily injury or death), as needed.

Inquiry Packets that are not subject to an IA investigation are forwarded to APD Training by the chain-of-command. APD Training shall prepare the Packets for presentation to the FRB.

##### **212.3.2 INQUIRY PACKET DISTRIBUTION**

The Chairperson shall ensure FRB participants are provided a list of all cases that will be reviewed, as well as the Response to Resistance Inquiry Packet Control Sheet and any supervisor memoranda, at least (7) calendar days prior to the FRB. The FRB participants may review the incident report and any case notes via Versadex.

All other ancillary documents, reports and recordings shall be made available at the FRB, including:

- (a) Ancillary documents such as supplement reports and written statements.

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- (b) Communications Division audiotapes, if necessary.
- (c) MAV media, if available.
- (d) CAD records.
- (e) Medical reports or summary of injuries, if available.
- (f) Digital Images or photographs.
- (g) Training and force incident records of involved personnel.
- (h) Applicable Department policies and procedures.

#### **212.4 FORCE REVIEW BOARD PROCEDURES AND RESPONSIBILITIES**

The Chair of the Force Review Board shall track the status of all FRB's to include:

- (a) Date of the Board.
- (b) Date the FRB Report is submitted to the affected commanders for corrections..
- (c) Findings and recommendations of the Board.
- (d) Implementation of the approved recommendations in accordance with this order.
- (e) Date Final FRB Report submitted to Chief or his designee.

##### **212.4.1 CONVENING A FORCE REVIEW BOARD**

The FRB Chairperson shall contact IA within twenty-four (24) hours of the scheduled Board to ascertain whether a force complaint is pending. If a complaint is pending relating to the incident, the FRB Chairperson shall notify the Chief of Police or designee and reschedule the Board after the completion of the internal investigation.

If no investigation is pending, the FRB Chairperson shall preside over the review of the incident to include, but not limited to, the following:

- (a) A presentation and review of the Inquiry Packet and all relevant documents and materials.
- (b) A discussion regarding:
  1. The quality and timeliness of the reporting, investigation, and chain-of-command review.
  2. Applicable general orders.
  3. Relevant tactics.
  4. Current practices and training.
  5. Any equipment issues.
  6. Additional follow-up by the supervisor conducting the inquiry, IA, and/or SIU.
  7. Questions from Board members.

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- (c) If additional inquiry or other follow-up is recommended, the FRB Chairperson shall advise the appropriate Commander that should address the specific issue and assign a due date not to exceed thirty (30) calendar days.
- (d) Deliberate on the possible need for:
  - 1. General Orders revision or the promulgation of new directives.
  - 2. Changes in equipment.
  - 3. Changes in tactics.
  - 4. Changes in practices and training.
  - 5. Additional training:
    - (a) Individual.
    - (b) Specialized, including training for Response to Resistance investigators.
    - (c) Department-wide.
  - 6. Improvements in the quality and timeliness of the reporting, investigation, and chain-of-command review of the force incident.

#### 212.4.2 ATTENDANCE BY THE OFFICER(S) INVOLVED

For incidents involving the discharge of a firearm, the involved officer and their chain-of-command may be requested to appear before the Board.

For all other incidents reviewed by the Board, the involved officer(s) and supervisor(s) may appear, or the Chairperson may order their appearance.

#### 212.4.3 FORCE REVIEW BOARD REPORT

The Chairperson shall ensure a FRB Report is prepared. The original shall be sent electronically to the affected Commanders within five (5) calendar days after the Board adjourns. The FRB Report shall contain the following, as appropriate:

- (a) A summary of the Board's deliberations.
- (b) A draft Departmental publication identifying training or equipment issues (e.g, Officer Safety or Information Bulletin).
- (c) Recommendations concerning equipment shall be sent to the Training Commander.
- (d) Recommendations concerning tactics shall be sent to the Training Commander.
- (e) Recommendations to develop or revise Departmental policy and procedures shall be sent to the Professional Standards Commander.
- (f) Recommendations on the quality and timeliness of the reporting, investigation, and chain-of-command review shall be sent to the Commander who was involved in the Review of the Response to Resistance.

#### **212.5 FORCE REVIEW BOARD RECOMMENDATIONS AND FOLLOW-UP**

- (a) Corrective Actions:

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1. If the FRB Report contains approved recommendations for corrective actions for specific personnel (e.g., training), the FRB Chairperson shall assign it to the appropriate Commander.
2. The assigned Commander shall ensure the approved recommendations are implemented.
  - (a) Upon completion of the recommended corrective action(s), the assigned Commander shall prepare and forward a written response documenting the corrective action to the Force Review Board within twenty (20) calendar days of receipt, unless extended by an Assistant Chief.
- (b) Department-Related Recommendations:
  1. If the FRB report contains Department-related recommendations (e.g., general order revision, equipment evaluation, tactical changes, Training Bulletins, or improvements in the quality and timeliness of the reporting, investigation, and chain-of-command review), the Chair of the FRB shall assign the required tasks to the appropriate Commander.
  2. The assigned Commander shall review the proposed recommendations/planned corrective action with their Assistant Chief and present a status update to Executive Staff.
  3. The Chair of the FRB shall monitor and document the implementation of Board recommendations and advise the Chief or his designee when:
    - (a) Implementation is completed.
    - (b) An extension has been requested and the reason for the extension request.
    - (c) Implementation has not been completed within thirty (30) calendar days and no extension has been requested.
  4. The chair of the FRB shall prepare a final FRB report which indicates how each issue or concern that was identified was handled. That report shall be sent to the Chief or his designee electronically within thirty (30) calendar days of the initial FRB meeting.
    - (a) After the completion of the final FRB memo, the FRB chair will update Command Staff on any changes that were identified.
  5. The chair of the FRB will meet with Executive Staff to give an overview of the previous months FRB findings as they relate to general order revisions, equipment evaluations, tactical changes, or findings that result in an IAD/SIU investigation.

## **212.6 RECORDS RETENTION AND REPORTING**

### **212.6.1 RECORDS RETENTION**

The FRB Chairperson shall add the original FRB reports and any additional documents/material into the Inquiry Packet and forward it to IA.

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IA shall serve as the custodian of records for Force Review Board Reports, Response to Resistance Inquiry Packets, In-Custody Death Inquiry Packets, and Vehicle Pursuit Report Packets if the pursuit resulted in serious bodily injury or death to any person. Records shall be retained consistent with IA's records retention general order.

**212.6.2 ANNUAL REPORTING**

The following annual reports shall be prepared and distributed by the end of the third quarter of the following year to the Chief.

- (a) The commander over Internal Affairs shall prepare an annual Response to Resistance analysis report.
- (b) The chairperson of the FRB shall prepare an annual analysis of all incidents examined by the FRB in the prior year to identify any patterns and practices that have policy, training, tactical, equipment, quality control, or other implications.





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# Vehicle Pursuits

### 214.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers, and fleeing violators to the risk of serious injury or death. The primary purpose of this order is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law. Another purpose of this order is to minimize the potential for pursuit-related crashes. Vehicular pursuits require officers to exhibit a high degree of common sense and sound judgment. Officers must not forget that the immediate apprehension of a subject is generally not more important than the safety of the public and pursuing officers.

#### 214.1.1 PHILOSOPHY

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the risk to public safety created by vehicle pursuits, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a vehicle pursuit due to the risk involved. This includes circumstances where department general orders would permit the initiation or continuation of the pursuit. It is recognized that vehicle pursuits are not always predictable and decisions made pursuant to this order shall be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

Officers must remember that the most important factors to the successful conclusion of a pursuit are self-discipline and sound professional judgment. Officers' conduct during the course of a pursuit must be objectively reasonable; that is, what a reasonable officer would do under the same circumstances. An unreasonable desire to apprehend a fleeing subject at all costs has no place in professional law enforcement.

### 214.2 DEFINITIONS

**Channel** - A tactic designed to cause a violator's vehicle to follow a particular path by blocking side streets and/or exit ramps with a patrol unit that has its emergency lights on.

**Terminate** - Deactivate lights and siren, and cease pursuit.

**Tire Deflation Device (TDD)** - A device that extends across the roadway designed to puncture the tires of the pursued vehicle. These are also known as Spikes or Tack Strips.

**Vehicle Pursuit** - An active attempt by a law enforcement officer in a motor vehicle to apprehend the occupant(s) of another moving motor vehicle when the driver is not merely failing to stop at the direction of an officer using emergency lights and siren, but is actively attempting to evade apprehension or is continuing to commit further violation(s) of the law.

**Precision Immobilization Technique** - A technique used to terminate a hazardous vehicle pursuit situation.

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#### **214.3 PURSUIT CONSIDERATIONS AND RESTRICTIONS**

The following section is established to provide officers with guidelines for driving with due regard and caution for the safety of all persons using the highway (as required by Tex. Transp. Code § 546.005).

##### **214.3.1 RESTRICTIONS ON VEHICLE PURSUITS**

Officers will not engage in a pursuit under any of the following circumstances:

- (a) The subject evades after having committed only:
  1. Any Class C Offense, including traffic; or
  2. A non-hazardous traffic violation, regardless of the class of offense.
- (b) The subject is committing, or has committed, only a misdemeanor other than suspected DWI/DUI, and his identity is known to the officer.
- (c) The officer has a prisoner, subject, or other non-police passenger who has not signed a liability release.
- (d) The road surface is wet or otherwise slippery, unless the violator has committed a felony involving violence, and then only when all considerations for safety have been taken into account and the pursuit is still deemed reasonable.

##### **214.3.2 FACTORS TO CONSIDER BEFORE INITIATING A PURSUIT**

With the exception of the specified restrictions on vehicle pursuits listed in this order, officers are authorized to initiate a pursuit when it is reasonable to believe that a subject is attempting to evade arrest or detention by fleeing in a vehicle.

- (a) The following factors will be considered both individually and collectively when deciding whether to initiate or continue a pursuit:
  1. Seriousness of the known or reasonably suspected crime and its relationship to community safety.
  2. The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to officers, innocent motorists, and others.
  3. Apparent nature of the fleeing subject (e.g., whether the subject represents a serious threat to public safety).
  4. Extended pursuits of violators for misdemeanors not involving violence or risk of serious harm (independent of the pursuit) are discouraged.
  5. The identity of the subject has been verified and there is comparatively minimal risk in allowing the subject to be apprehended at a later time.
  6. Safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic (e.g., school zones) and the speed of the pursuit relative to these factors.

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7. Pursuing officer's familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the dispatcher/supervisor and the driving capabilities of the pursuing officers under the conditions of the pursuit.
8. Weather, traffic, and road conditions that unreasonably increase the danger of the pursuit when weighed against the risks resulting from the subject's escape.
9. Performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.
10. Vehicle speeds.
11. Other subjects in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).
12. Availability of other resources such as aircraft assistance.

#### 214.3.3 WHEN TO TERMINATE A PURSUIT

Pursuits should be discontinued whenever the totality of objective circumstances known, or which reasonably ought to be known, to the officer or supervisor during the pursuit indicates that the present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the subject's escape. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to motorists, themselves, and the public when electing to continue a pursuit. This section shall not be construed to authorize a pursuit that is expressly prohibited as outlined in the Restrictions on Vehicle Pursuits section of this order.

- (a) The factors listed in this order on when to initiate a pursuit are expressly included herein and shall also apply to the decision to discontinue a pursuit. In addition to those factors listed, the following should also be considered in deciding whether to terminate a pursuit:
  1. Distance between the pursuing officers and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time or distance.
  2. Pursued vehicle's location is no longer definitely known.
  3. Officers shall discontinue the pursuit when they become aware their vehicle has developed a mechanical malfunction. This includes, but is not limited to:
    - (a) Any engine warning light activates on the dash (e.g., brake, ABS, or check engine lights).
    - (b) Audible warning tones.
    - (c) Physical damage that affects the performance, maneuverability, or functioning of the vehicle.
  4. Hazards to uninvolved bystanders or motorists.
  5. If the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, officers should strongly consider discontinuing the pursuit and apprehending the offender at a later time.

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

#### 214.3.4 PURSUIT DRIVING CONSIDERATIONS AND RESTRICTIONS

The decision to use specific driving tactics requires the same assessment of factors to be considered concerning pursuit initiation and termination. The following driving tactics apply to units involved in a pursuit:

- (a) Officers will space themselves from other involved vehicles, in consideration of their driving skills and vehicle performance capabilities, so they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle and other police units.
- (b) Officers should not attempt to pass other units in a pursuit unless the situation indicates otherwise or requested to do so by the primary unit or control supervisor.
- (c) In the event that the pursued vehicle drives the wrong way on a roadway, the following tactics should be used:
  1. Request Air Support assistance.
  2. If a divided roadway, maintain visual contact with the pursued vehicle by paralleling on the correct side.
  3. Request other units to watch for exits available to the vehicle.
- (d) Officers will not pursue a vehicle driving the wrong way on a:
  1. Highway or Freeway,
  2. Highway or Freeway frontage / service roads, or
  3. any roadways that are:
    - (a) directly connected to highway/freeway entry or exit ramps, or
    - (b) adjacent to or running parallel to a highway or freeway.
- (e) Officers have an obligation to drive with a due regard for the safety of lives and property. Driving the wrong way on a roadway does not necessarily protect the officer from the consequences of a disregard for traffic and/or legal restrictions.

#### 214.4 PURSUIT GUIDELINES

Pursuit units shall be limited to four vehicles (three units and a control supervisor); however, a control supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely stop

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the pursuit and/or arrest the subject(s). All other officers will stay out of the pursuit but should remain alert to its progress and location.

- (a) All officers involved in a pursuit shall:
  - 1. Operate their police unit with emergency lights and siren activated (Code 3).
  - 2. Ensure their Mobile Audio Video (MAV) recording system has been activated if their vehicle is equipped with one.
- (b) Any officer who drops out of a pursuit may, with permission of a control supervisor, trail the pursuit to the termination point in order to provide necessary information and assistance in the arrest of the subject(s).
  - 1. The term "trail" means to follow the path of the pursuit at a safe speed while obeying all traffic laws and without activating emergency equipment. If the pursuit is at a slow rate of speed, the trailing unit will maintain sufficient distance from the pursuit units so as to clearly indicate an absence of participation in the pursuit.
- (c) Pursuit communications shall be handled as follows:
  - 1. If a pursuit is confined within the City limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or communications dispatcher.
  - 2. If a pursuit contains multiple agencies and/or leaves APD jurisdiction, Communications will determine the appropriate radio channel to use.

#### 214.4.1 POLICE MOTORCYCLES AND UNMARKED UNITS

Police motorcycles and unmarked units equipped with emergency lights and siren may initiate a pursuit; however, those officers should terminate their involvement in the pursuit immediately upon arrival of a sufficient number of distinctively marked law enforcement vehicles equipped with emergency lights and siren, or any law enforcement aircraft.

#### 214.4.2 POLICE UNITS WITHOUT EMERGENCY EQUIPMENT

Police units not equipped with emergency lights and siren are generally prohibited from initiating or joining in a pursuit. Officer(s) in such vehicles may become involved in emergency activities involving serious crimes or life-threatening situations; however, those officers should terminate their involvement in the pursuit immediately upon arrival of a sufficient number of distinctively marked law enforcement vehicles equipped with emergency lights and siren, or any law enforcement aircraft.

#### 214.4.3 UNITS NOT INVOLVED IN A PURSUIT

- (a) There shall be no paralleling of a pursuit route by officers not authorized to be in a pursuit.

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- (b) Officers not directly involved in the pursuit are authorized to proceed safely to controlled intersections ahead of the pursuit and use emergency equipment to warn vehicular and pedestrian traffic in an effort to protect the public. Officers should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.
- (c) Non-pursuing personnel needed at the termination of a pursuit should respond in the appropriate manner based on the totality of the circumstances and type of assistance needed.

#### 214.4.4 SUPERVISORS INITIATING A PURSUIT

- (a) When a supervisor initiates a pursuit, another supervisor working in the same area should acknowledge the pursuit over the radio and assume responsibility as the control supervisor.
  - 1. If a supervisor in the same area is unavailable, and no supervisor volunteers as control supervisor, Communications shall notify the nearest available field supervisor that a control supervisor is needed. Corporals serving as acting sergeants may not assume responsibility as the control supervisor in this situation.
  - 2. Acknowledgment by the appointed control supervisor must be made by radio.
- (b) The supervisor who initiates the pursuit may continue pursuing the subject vehicle until such time as patrol units are able to assist, or the pursuit is terminated.
  - 1. As authorized patrol units engage the pursuit, the initiating supervisor will allow those units to take up the first and subsequent positions behind the subject vehicle and call the pursuit.
  - 2. The initiating supervisor shall move to the last position behind the authorized units and assume the role of control supervisor.
- (c) Once the initiating supervisor is in a position to assume the role of control supervisor, they shall advise Communications by radio that they are now control supervisor and the previous control supervisor shall be relieved.
- (d) The supervisor acting as control supervisor at the conclusion of the pursuit shall complete all appropriate paperwork.
  - 1. Any other supervisor who acted as control supervisor, or became involved in a supervisory capacity at any time during the pursuit, shall write a supplement documenting his involvement.

#### 214.4.5 PURSUITS INITIATED BY OTHER LAW ENFORCEMENT AGENCIES

The agency that initiates a pursuit shall be responsible for conducting the pursuit. Units from this department should not participate in, join, or assume control of a pursuit initiated by another agency unless approved by a supervisor or the Watch Lieutenant. As soon as practicable, a supervisor or the Watch Lieutenant should review a request for assistance from another agency to determine if assistance will be provided.

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- (a) At no time should a request to join or take over a pursuit from another agency that has entered this jurisdiction be granted if it violates the considerations and restrictions on vehicle pursuits outlined in this order, with the following exceptions:
  - 1. Authorization to participate in the pursuit may be granted for the sole purpose of ending the pursuit using TDD's, PIT or other approved devices and methods as outlined in this order, regardless of the reason for the pursuit.
  - 2. In the event that a pursuit from another agency terminates within this jurisdiction, approval may be given to provide appropriate assistance to officers from the allied agency including, but not limited to, scene control, containment, subject search, completion of supplemental reports, and any other assistance requested or needed.
- (b) Pursuit assistance to an allied agency by officers of this department should terminate at the City limits. Ongoing participation from this department may only continue with the approval of a supervisor.

#### 214.4.6 APD PURSUITS ENTERING OTHER JURISDICTIONS

- (a) Officers should request communications to notify the appropriate law enforcement agency when it appears that the pursuit may enter another jurisdiction.
- (b) When a pursuit enters another agency's jurisdiction, the primary officer or supervisor should determine whether to request the other agency to assume the pursuit by taking into consideration distance traveled, unfamiliarity with the area, and other pertinent factors.

#### 214.4.7 LOSS OF PURSUED VEHICLE AND SUBJECT BAILING

- (a) When the pursued vehicle is lost, the primary unit should broadcast pertinent information to assist other units in locating the vehicle. The control supervisor will determine if the pursuit should be terminated and whether Air Support should continue searching the area.
- (b) When subjects abandon the vehicle and flee on foot, the primary unit will be responsible for coordinating any further search with the permission of the control supervisor.

### **214.5 PURSUIT UNIT ROLES AND RESPONSIBILITIES**

This section outlines the roles and responsibilities of police units involved in a pursuit.

#### 214.5.1 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing officer will be the primary pursuit unit and is responsible for the conduct of the pursuit unless unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the subject(s) without unreasonable danger to themselves or other persons.

- (a) The primary unit should notify Communications on the appropriate primary channel corresponding to the area the vehicle pursuit was initiated in and, as soon as practicable, provide the following information:

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1. Reason for the pursuit.
  2. Location and direction of travel.
  3. Speed of the fleeing vehicle.
  4. Description of the fleeing vehicle and license number, if known.
  5. Number of occupants.
  6. The identity or description of the known occupants.
  7. Evasive actions being taken by the fleeing vehicle (e.g., disregard of traffic control devices, intentional collisions, driving on the wrong side of the roadway).
  8. Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.
- (b) Unless relieved by a supervisor or secondary unit, the officer in the primary unit shall be responsible for the broadcasting of the progress of the pursuit. Unless circumstances reasonably indicate otherwise, the primary unit should relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft joining the pursuit to minimize distractions and allow the primary unit to concentrate foremost on safe pursuit tactics.

#### 214.5.2 SECONDARY UNIT(S) RESPONSIBILITIES

- (a) The second officer in the pursuit is responsible for the following:
1. Immediately notify the dispatcher of entry into the pursuit.
  2. Broadcast the progress of the pursuit unless the situation indicates otherwise.
- (b) The secondary unit should remain a safe distance behind the primary unit unless directed to assume the role of primary unit (e.g., the primary unit is unable to continue the pursuit).

#### 214.5.3 CONTROL SUPERVISOR RESPONSIBILITIES

It is the policy of this department that supervisor control shall be exercised over all vehicle pursuits involving officers from this department.

- (a) The immediate supervisor (sergeant or corporal) of the officer initiating the pursuit, or if unavailable, the nearest available field supervisor (sergeant or corporal) shall assume the responsibility as the control supervisor.
- (b) The control supervisor is responsible for the following:
1. Upon becoming aware of a pursuit, immediately ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.
  2. Engage in the pursuit when appropriate and provide on scene supervision.
  3. Exercise management and control of the pursuit even if not engaged in it.



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4. Ensuring that no more than the number of required police units needed are involved in the pursuit under the guidelines set forth in this order.
5. Direct that the pursuit be terminated if, in his judgment, it is unjustified to continue the pursuit under the guidelines of this order.
6. Ensure that aircraft assistance is requested.
7. Ensure that the proper radio channel is being used.
8. Ensure the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.
9. Control and manage APD units when a pursuit enters another jurisdiction.
10. Prepare a post pursuit critique and analysis of the pursuit for training purposes.

#### 214.5.4 COMMUNICATIONS RESPONSIBILITIES

Upon notification that a pursuit has been initiated, Communications shall:

- (a) Broadcast an alert tone citywide to inform officers that a pursuit is in progress.
- (b) Assign an incident number and log all pursuit activities.
- (c) Coordinate communications of the involved units and personnel.
- (d) Notify and coordinate with other involved or affected agencies, as needed.
- (e) Broadcast updates and other pertinent information, as necessary.
- (f) Ensure that the Communications supervisor and appropriate lieutenant are notified of the pursuit.
  1. If the lieutenant over the area where the pursuit initiated is unavailable or does not respond in a timely manner, the nearest available lieutenant shall be contacted.
- (g) Notify the Watch Lieutenant as soon as practicable.
- (h) Dispatchers shall keep other areas of the city advised if the pursuit is likely to enter or cross into multiple areas.
- (i) Upon verbal confirmation that a pursuit has been terminated, Communications shall again broadcast the designated citywide alert tone signifying the pursuit has been terminated.

#### 214.5.5 AIR SUPPORT RESPONSIBILITIES

Once the Air Unit has established visual contact with the pursued vehicle and is capable, it should start calling the actions of the pursuit to allow ground units to focus on driving. The primary and secondary ground units should consider the participation of aircraft assistance when determining whether to continue the pursuit.

- (a) The Air Unit should coordinate the activities of resources on the ground, report progress of the pursuit and provide officers and supervisors with details of upcoming traffic congestion, road hazards or other pertinent information to evaluate whether to continue the pursuit. If ground units are not within visual contact and the Air Unit

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determines that it is unsafe to continue the pursuit, the Air Unit should recommend terminating the pursuit.

- (b) Once a vehicle pursuit has been terminated, the Tactical Flight Officer may request permission from the control supervisor to allow the Air Unit to track the subject. If permission is granted to track, the Air Unit will advise location and any pertinent information relative to the safety of the public. If the Air Unit indicates that the subject vehicle has stopped, the control supervisor may authorize ground units to proceed to the vehicle location. The control supervisor shall determine the manner in which units respond.
  - 1. If the control supervisor denies permission to track, the Air Unit will break off all contact with the subject.
  - 2. If the Air Unit determines, in the interest of safety, that it can no longer assist or continue tracking the subject, the Air Unit shall notify the control supervisor.

#### 214.5.6 WATCH LIEUTENANT RESPONSIBILITIES

Upon becoming aware that a pursuit has been initiated, the Watch Lieutenant should monitor and continually assess the situation.

#### **214.6 APPROVED PURSUIT INTERVENTION AND TERMINATION TACTICS**

Any approved tactic, depending upon the conditions and circumstances under which it is used, may present dangers to the officers, the public, or anyone in the vehicle being pursued. It is imperative that officers act within the bounds of legality, good judgment, accepted practices, and orders.

- (a) Certain applications of intervention and termination tactics may be construed to be a use of force, including deadly force, and are subject to Department orders guiding such use and reporting.
- (b) In deciding whether to use an approved tactic, officers and supervisors should balance the risks of allowing the pursuit to continue with the potential hazards arising from the use of each tactic to the public, the officers, and subjects in or on the pursued vehicle. With these risks in mind, the decision to use any tactic should be reasonable in light of the circumstances apparent to the officer at the time of the decision.
- (c) Unless exigency exists, the use of intervention tactics should be employed only after approval of a supervisor.

#### 214.6.1 USE OF FIREARMS

Officers should exercise good judgment and not place themselves in the path of a moving vehicle since doing so may increase the likelihood of having to resort to the use of deadly force.

- (a) Unless it reasonably appears that it would endanger officers or the public, officers are expected to move out of the path of any approaching vehicle.
- (b) Officers shall adhere to the guidelines set forth in General Order 202 (Firearm Discharge Situations) in regards to the discharge of a firearm at or from a moving vehicle.

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#### 214.6.2 TIRE DEFLATION DEVICE (TDD)

The use of a Tire Deflation Device (TDD) should be approved in advance by the control supervisor and deployed only when it is reasonably apparent that only the pursued vehicle will be affected by their use. Officers should carefully consider the limitations of such devices as well as the potential risks to officers, the public and occupants of the pursued vehicle. If the pursued vehicle is transporting hazardous materials, or a school bus transporting children, officers and supervisors should weigh the potential consequences against the need to immediately stop the vehicle.

- (a) TDD's shall not be used when a motorcycle is involved in the pursuit.
- (b) TDD Deployment
  1. Only officers who have received and successfully completed Department approved training in the application and use of an approved TDD shall use this intervention tactic.
  2. The following scenarios require supervisor approval prior to TDD deployment:
    - (a) The fleeing vehicle has made overt attempts to strike any other vehicles, persons, or structure during the pursuit, or
    - (b) There is a reasonable belief that the suspect is armed (independent witness claims, self-admittance, multiple victim statements, etc.)
  3. Officers who are driving units equipped with a TDD and are authorized to deploy the TDD may proceed Code 3 to a location likely to be in path of the pursuit.
  4. TDD units shall advise Communications when they have reached the deployment site and give their location.
  5. Prior to deploying TDD officers shall consider the following:
    - (a) The need to continue pursuit versus terminating the pursuit in the event the deployment of TDDs are ineffective;
    - (b) The risk to the public or pursuing law enforcement vehicles caused by the deployment of the TDD; and,
    - (c) The hazard to the occupants of the pursued vehicle.
  6. After a deployment site has been established, the control supervisor may authorize other units to operate Code 3 in order to channel the fleeing vehicle to this location.
    - (a) Channeling may include blocking freeway exits and/or major side streets.
    - (b) Police units shall not attempt to make a fleeing vehicle take any action other than continuing straight on the road upon which it is already traveling.
    - (c) Police units shall activate all emergency lighting while blocking exits or streets.
  7. The officer calling the pursuit shall broadcast the identity of the target vehicle to the TDD unit when the pursuit approaches the deployment site. The information should include details of the vehicle such as license plate, color, make and model.

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- (a) The target vehicle should be visually confirmed by the TDD unit to reduce errors in deployment.
- (b) All pursuing units should maintain at least a three to five second gap behind the target vehicle to allow sufficient time for the setup and retrieval of the TDD.
- (c) Pursuing vehicles should proceed cautiously upon approaching and crossing the TDD site.

#### 214.6.3 PRECISION IMMOBILIZATION TECHNIQUE

The use of the PIT should be approved in advance by the control supervisor. Officers and supervisors should weigh the need to immediately stop the vehicle based on the driving behavior and risk to the public, versus apprehension of the suspect, or termination of the pursuit.

- (a) PIT shall not be performed on the following vehicles:
  - 1. Motorcycle.
  - 2. All-Terrain Vehicle.
  - 3. Vehicles pulling trailers.
  - 4. Tractor trailers.
  - 5. Large Motor homes.
  - 6. Vehicle's carrying known hazardous materials.
- (b) Special PIT Considerations
  - 1. If known, the use of PIT should generally be avoided in the following situations:
    - 1. Pickup truck with passengers in the bed.
  - 2. StarChase equipped vehicles should not normally be used to perform PIT.
- (c) PIT Application
  - 1. The primary unit involved in a pursuit may attempt to utilize the PIT to end a pursuit provided the risks to the public outweigh the risks of continuing the pursuit.
    - (a) The primary unit will be certified to perform the PIT. If the primary unit is not certified, the control supervisor will authorize a PIT certified officer to move to the front of the other police vehicles to perform the PIT.
  - 2. Other units involved in the pursuit will assist with the Tactical Vehicle Containment once the PIT is performed.
    - (a) If additional units are utilized in the pursuit, they are responsible for immediately notifying the dispatcher of their entry into the pursuit.
  - 3. Prior to deploying PIT officers shall:
    - (a) Give the operator of the suspect vehicle a reasonable opportunity to stop and comply with police authority.

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- (b) Ensure that there are at least two additional units in the pursuit.
  - (c) Consider the risk to the public and suspect from utilizing the PIT, versus terminating the pursuit.
  - (d) Advise communications and the officers involved in the pursuit that he/she is going to attempt the PIT by using the phrase "PIT, PIT, PIT" and identify whether or not the Tactical Vehicle Containment (TVC) is a "two" or "three" vehicle containment.
  - (e) Under normal circumstances, a PIT maneuver at speeds above 40 mph should not be applied. However, if exigent circumstances exist, higher speeds may be authorized with supervisor approval.
  - (f) At the conclusion of a successful PIT application, tactical vehicle containment procedures shall be used by all officers when practical.
- (d) Reporting PIT
1. Any attempt or use of PIT against another vehicle shall be documented in the related incident report/supplements.
  2. For the purposes of reporting and review:
    - (a) PIT is a Level 2 force incident, unless the PIT results in serious bodily injury or death.
    - (b) PIT is a Level 1 force incident if the PIT results in serious bodily injury or death.
- (e) Post PIT Requirements
1. The Special Investigations Unit shall be called to all crashes resulting in serious bodily injury or death as a result of PIT.
  2. A CR-3 is not required after the utilization of the PIT unless there is damage to third-party property. In the event of third-party property damage as a result of a PIT, an incident title code "crash/city vehicle" (3651) will be included in the report with the following documentation included in the SharePoint Incident Review Packet (IRP):
    - (a) A CR-3,
    - (b) A large, not to scale, diagram, and
    - (c) Digital photographs of the scene/including damage to vehicle(s)/ person(s).

#### 214.6.4 LOW SPEED INTERVENTION

Other than an approved usage of PIT, police vehicles shall not be used to physically force a pursued vehicle off the roadway or to a stop, or to otherwise change its direction of travel or alter its speed unless:

- (a) The pursued vehicle is at a *stop or near stop*; and
- (b) The police vehicle is maneuvering at low speed; and

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- (c) Doing so would reduce or eliminate the risk associated with the pursuit continuing.

Before engaging in such actions, officers must consider the unintended consequences of the low speed intervention and recognize that a better course of action may be to terminate the pursuit altogether.

#### 214.6.5 STARCHASE PURSUIT MANAGEMENT SYSTEM

The StarChase® system allows an officer to remotely affix a GPS tracking device to a pursued (or about to be pursued) vehicle using an air pressure system to discharge the tracker from the front of the StarChase® equipped patrol car to the vehicle in front of it. Once the tracker is affixed, its location can be tracked by an employee (StarChase® Monitor) using a computer with an internet connection. This concept is similar to a RAT/GPS.

- (a) For the purpose of clarity of communications, radio traffic should identify the device as "StarChase®".
- (b) StarChase® equipment in the patrol vehicle will only be operated by officers who have been trained in its use. StarChase® equipped vehicles will not be assigned to officers who are not trained on its use unless required by exigent circumstances.
- (c) Vehicles equipped with StarChase® equipment will not be used to push vehicles.
- (d) Except as specified below, officers shall use their own judgment regarding affixing a StarChase® tag upon a vehicle and do not need prior approval from a supervisor:
  - 1. All safety decisions related to the discharge of a StarChase® tag rest with the operating officer. While supervisors may direct or approve the deployment of a StarChase® equipped patrol car that is involved in the discharge of a tag, safety decisions related to passing other involved vehicles and the actual discharge of the device rest solely upon the operating officer whose decisions must take into account the guidelines contained in General Orders. In accordance with general orders, the safety of officers, uninvolved persons and persons inside the targeted vehicle shall be considered. The following decisions are specifically included:
    - (a) Whether the officer can safely maneuver close enough to the suspect vehicle to come within targeting range.
    - (b) Whether the officer can safely pass any other vehicle involved in the pursuit.
    - (c) Whether any circumstance would indicate the device would not work (e.g. weather conditions, suspect vehicle weaving, etc.)
- (e) StarChase® equipped patrol cars, with approval from a supervisor, are authorized to respond Code 3 to join a pursuit for potential use of the device.
  - 1. Unless directed otherwise, the StarChase® equipped vehicle will join the pursuit at the rear of authorized pursuing vehicles until cleared to pass.
  - 2. Once a StarChase® equipped vehicle joins a pursuit, it becomes an authorized unit as it relates to the number of authorized pursuing vehicle.

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3. StarChase® equipped vehicles may pass other pursuing vehicles only when deemed safe and only with specific permission from the unit to be passed. Permission is to be sought and acknowledged one passing at a time. Officers driving the StarChase® equipped vehicle will identify which side of the overtaken vehicle they will pass.
- (f) StarChase® tags will be deployed in accordance with training.
1. Once the StarChase® tag has been successfully deployed, pursuing vehicles should normally drop back significantly from the suspect vehicle.
  2. Officers will maintain constant communication with the StarChase® Monitor for speed/direction/location updates of the suspect vehicle.
  3. The Control Supervisor will coordinate with the StarChase® Monitor to direct resources and officers to appropriate locations to apprehend the suspect.
  4. No officer who is driving a moving patrol car will access the StarChase® Monitor data as this creates an unnecessary hazard.
- (g) Tactical Considerations
1. The StarChase® tag will not normally be deployed in the following situations unless the suspect poses a substantial risk to the public:
    - (a) During heavy rain.
    - (b) While driving on exceptionally rough terrain.
    - (c) On a motorcycle.
    - (d) When pedestrians are between or very near the suspect vehicle and the StarChase® equipped vehicle.
- (h) In addition to the normal pursuit reporting procedures required by general orders, Officers who use the StarChase® system will report all tag deployments to the Police Technology Unit by sending an email to [APDPoliceTechnology@austintexas.gov](mailto:APDPoliceTechnology@austintexas.gov)

### **214.7 REPORTING AND REVIEW REQUIREMENTS**

#### 214.7.1 INVOLVED OFFICER(S) RESPONSIBILITY

All officers involved in the pursuit will write a detailed incident report or supplement and ensure their MAV media is correctly classified. This includes the primary officer initiating the pursuit, any secondary officer(s), and any additional officer(s) who assisted with the pursuit (e.g., Officers using a TDD, Air Support).

#### 214.7.2 CONTROL SUPERVISOR RESPONSIBILITIES

The control supervisor shall review the involved officers' incident report for accuracy and completeness, and:

- (a) Complete an Incident Review Packet on SharePoint filling in all applicable fields to include:
  1. All pertinent information relating to the vehicle pursuit,

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2. The findings of the supervisor investigation, and
  3. Any training issues or general order violations on the part of the involved officer(s), if applicable.
- (b) In order to preserve DMAV videos, the highest applicable category shall be used. In the absence of any criminal charges, the "Two Year" retention code shall be used. This will ensure that the Pursuit Review Board has access to the video and that it is not deleted from the server prematurely.
- (c) Create an electronic folder with the case number in the folder G:\Digital Incident Review Folder containing all supporting documentation which is not already located in a different location on the APD network. Supporting documentation includes but is not limited to:
1. Copies of private surveillance video, cell phone video, etc.
- (d) Forward the electronic link(s) to the SharePoint IRP and the digital incident review folder to the involved employee's chain-of-command, up to the lieutenant, for review.

#### 214.7.3 LIEUTENANT RESPONSIBILITIES

After receiving notification and link(s) to the SharePoint IRP and digital incident review folder the lieutenant or designee shall:

- (a) Review the SharePoint IRP, MAV media and supporting documentation in the digital incident review folder for completeness and accuracy.
- (b) Complete the appropriate Lieutenant fields in the SharePoint IRP as follows:
  1. Provide a critique of the vehicle pursuit in the Lieutenant Review field.
  2. Provide a preliminary determination whether the vehicle pursuit appears to be in compliance with this order or if additional review and/or follow-up are warranted.
- (c) Forward the link(s) to the SharePoint IRP and digital incident review folder to the commander(s) of all involved officers.

#### 214.7.4 COMMANDER RESPONSIBILITIES

- (a) If the initiating officer's commander determines that the pursuit falls within general orders guidelines, he shall enter comments reflecting that determination in the Commander Review field in the SharePoint IRP.
- (b) If the initiating officer's commander determines that the pursuit violates general orders guidelines, he shall ensure that appropriate corrective actions are taken. Notification of the corrective action taken shall be made to their Assistant Chief.
- (c) If the pursuit resulted in death or serious bodily injury the pursuit packet link shall be forwarded via email to the chairperson of the Force Review Board.

#### **214.8 DEATH OR SERIOUS BODILY INJURY DURING PURSUITS**

The Vehicular Homicide Unit shall forward pursuit packet link via email to the chairperson of the Force Review Board when the pursuit resulted in death or serious bodily injury.





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# Foot Pursuits

### 215.1 PURPOSE AND SCOPE

Foot pursuits are inherently dangerous and require common sense, sound tactics, and heightened officer safety awareness. This order sets forth guidelines to assist officers in making the decision to initiate or continue the pursuit of subjects on foot.

#### 215.1.1 POLICY

It is the policy of this department when deciding to initiate or continue a foot pursuit that officers must continuously balance the objective of apprehending the subject with the risk and potential for injury to department personnel, the public, or the subject.

Officers are expected to act reasonably based on the totality of the circumstances. Absent exigent circumstances, the safety of department personnel and the public should be the primary consideration when determining whether a foot pursuit should be initiated or continued. Officers must be mindful that immediate apprehension of a subject is rarely more important than the safety of the public and Department personnel.

### 215.2 DECISION TO PURSUE

Officers may be justified in initiating a foot pursuit of any individual the officer reasonably believes is about to engage in, is engaging in, or has engaged in criminal activity. The decision to initiate or continue such a foot pursuit, however, must be continuously re-evaluated in light of the circumstances presented at the time.

Mere flight by a subject who is not suspected of criminal activity shall not serve as the sole justification for engaging in a foot pursuit without the development of reasonable suspicion regarding the individual's involvement in criminal activity.

Deciding to initiate or continue a foot pursuit is a decision that an officer must make quickly and under unpredictable and dynamic circumstances. It is recognized that foot pursuits potentially place department personnel and the public at significant risk. Therefore, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a foot pursuit because of the perceived risk involved.

If circumstances permit, surveillance and containment are generally the safest tactics for apprehending fleeing subjects. In deciding whether to initiate or continue a foot pursuit, an officer should continuously consider reasonable alternatives to pursuit based upon the circumstances and resources available, such as the following:

- (a) Containment of the area.
- (b) Canine search.
- (c) Saturation of the area with patrol personnel.
- (d) Air support.

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- (e) Apprehension at another time when the identity of the subject is known or there is information available that would likely allow for later apprehension, and the need to immediately apprehend the subject does not reasonably appear to outweigh the risk of continuing the pursuit.

#### **215.3 FOOT PURSUIT CONSIDERATIONS**

An order by a supervisor to terminate a foot pursuit shall be promptly obeyed. Officers should consider alternatives to engaging in or continuing a foot pursuit under the following conditions:

- (a) When the officer is acting alone.
- (b) When two or more officers become separated, lose visual contact with one another or obstacles separate them to the degree that they cannot immediately assist each other should a confrontation take place. In such circumstances, it is generally recommended that a single officer keep the subject in sight from a safe distance and coordinate the containment effort.
- (c) The officer is unsure of his location and direction of travel.
- (d) When pursuing multiple subjects and the pursuing officers do not reasonably believe that they would be able to control the subjects should a confrontation occur.
- (e) When the physical condition of the officers renders them incapable of controlling the subject if apprehended.
- (f) When the officer loses radio contact with Communications or with backup officers.
- (g) When the subject enters a building, structure, confined space, or a wooded or otherwise isolated area and there are insufficient officers to provide backup and containment. The primary officer should consider discontinuing the pursuit and coordinating containment pending the arrival of sufficient officers.
- (h) The officer becomes aware of unanticipated or unforeseen circumstances that unreasonably increase the risk to officers or the public.
- (i) The officer reasonably believes that the danger to the pursuing officers or to the public outweighs the objective of immediate apprehension.
- (j) The officer loses possession of his firearm or other essential equipment.
- (k) The officer or a third party is injured during the pursuit, requiring immediate assistance and there are no other emergency personnel available to render aid.
- (l) The subject's location is no longer definitely known.
- (m) The identity of the subject is established or other information exists that will allow for the subject's apprehension at a later time, and it reasonably appears that there is no immediate threat to department personnel or the public if the subject is not immediately apprehended.
- (n) The officer's ability to safely continue the pursuit is impaired by inclement weather, darkness, or other conditions.

#### **215.4 RESPONSIBILITIES IN FOOT PURSUITS**

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#### 215.4.1 INITIATING OFFICER RESPONSIBILITIES

Unless relieved by another officer or a supervisor, the initiating officer shall be responsible for coordinating the progress of the pursuit.

- (a) Early communication of available information from the involved officers is essential so that adequate resources can be coordinated and deployed to bring a foot pursuit to a safe conclusion. Officers initiating a foot pursuit should broadcast the following information as soon as it becomes practicable and available:
  1. Unit identifier.
  2. Location and direction of travel.
  3. Reason for the foot pursuit.
  4. Number of subjects and description.
  5. Whether the subject is known or believed to be armed.
- (b) Officers are reminded that radio transmissions made while running may be difficult to understand and may need to be repeated.
- (c) Absent extenuating circumstances, any officer unable to promptly and effectively broadcast this information should terminate the pursuit. If the foot pursuit is discontinued for any reason, immediate efforts for containment should be established and alternatives considered based upon the circumstances and available resources.
- (d) When a foot pursuit terminates, the officer shall notify Communications of his location and the status of the pursuit termination (e.g., subject in custody, lost sight of subject), and shall direct further actions as reasonably appear necessary.

#### 215.4.2 ASSISTING OFFICER RESPONSIBILITIES

Whenever any officer announces that he is engaged in a foot pursuit, all other officers should minimize non-essential radio traffic to permit the involved officers maximum access to the radio frequency.

Officers in a position to intercept a fleeing subject, or who can assist the primary officer with the containment or apprehension of the subject, shall act reasonably and in accordance with Department General orders based upon available information and their own observations.

#### 215.4.3 CONTROL SUPERVISOR RESPONSIBILITY

It is the policy of this department that supervisor control shall be exercised over all foot pursuits involving officers from this department.

- (a) The immediate supervisor of the officer initiating the foot pursuit, or if unavailable, the nearest available field supervisor shall assume the responsibility as the control supervisor.
- (b) Corporals serving as acting sergeants shall assume the responsibility as the control supervisor during a foot pursuit initiated in their area if no other sergeant is on-duty or immediately available in that area; however, corporals may not be the control supervisor when a sergeant initiates a foot pursuit.

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- (c) The control supervisor is responsible for the following:
1. Upon becoming aware of a foot pursuit, immediately ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the foot pursuit in order to ensure that the foot pursuit is conducted within established department guidelines.
  2. Proceed to the area of the foot pursuit and provide on scene supervision.
  3. Exercise management and control of the foot pursuit even if not on scene.
  4. Ensure that a perimeter is established by responding officers to ensure containment of the suspect.
  5. Direct that the foot pursuit be terminated if, in his judgment, it is unjustified to continue the foot pursuit under the guidelines of this order.
  6. Ensure that aircraft and K-9 assistance is requested.
  7. Prepare a post foot pursuit critique and analysis of the foot pursuit for training purposes.

#### 215.4.4 WATCH LIEUTENANT RESPONSIBILITIES

Upon becoming aware that a foot pursuit has been initiated, the Watch Lieutenant should monitor and continually assess the situation.

#### 215.4.5 COMMUNICATIONS RESPONSIBILITIES

Upon notification that a foot pursuit has been initiated, Communications shall:

- (a) Assign an incident number and log all foot pursuit activities.
- (b) Coordinate communications of the involved units and personnel.
- (c) Notify and coordinate with other involved or affected agencies, as needed.
- (d) Broadcast updates and other pertinent information, as necessary.
- (e) Ensure that the Communications supervisor and appropriate lieutenant are notified of the foot pursuit.
  1. If the lieutenant over the area where the foot pursuit initiated is unavailable or does not respond in a timely manner, the nearest available lieutenant shall be contacted.
- (f) Notify the Watch Lieutenant as soon as practicable.
- (g) Dispatchers shall keep other areas of the city advised if the foot pursuit is likely to enter or cross into multiple areas.
- (h) Upon verbal confirmation that a foot pursuit has been terminated, Communications shall again broadcast the foot pursuit has been terminated.

#### 215.5 REPORTING

- (a) The initiating officer shall complete an incident report documenting, at minimum, the following:

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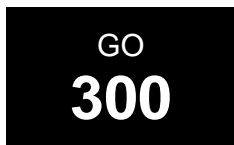
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1. The reason for initiating the foot pursuit.
  2. The identity of involved personnel.
  3. The course and approximate distance of the pursuit.
  4. Whether a subject was apprehended as well as the means and methods used.
  5. Any injuries or property damage.
- (b) Any response to resistance shall be reported and documented in compliance with the Department Response to Resistance Order.
- (c) Assisting officers taking an active role in the apprehension of the subject shall complete supplemental reports as necessary or as directed.

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**Chapter 3 - Field Operations and Custody**



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# Patrol Function

### 300.1 PURPOSE AND SCOPE

The purpose of this order is to define the functions of the patrol unit of the Department to ensure intra-department cooperation and information sharing.

#### 300.1.1 FUNCTION

Officers will generally patrol in clearly marked vehicles, patrol assigned jurisdictional areas of Austin, respond to calls for assistance, act as a deterrent to crime, enforce state and local laws and respond to emergencies 24 hours per day seven days per week.

Patrol will generally provide the following services within the limits of available resources:

- (a) Patrol that is directed at the prevention of criminal acts, traffic violations and collisions, the maintenance of public order and the discovery of hazardous situations or conditions.
- (b) Crime prevention activities such as residential inspections, business inspections and community presentations.
- (c) Calls for service, both routine and emergency in nature.
- (d) Investigation of both criminal and non-criminal acts.
- (e) The apprehension of criminal offenders.
- (f) Community oriented policing and problem solving activities such as citizen assists and individual citizen contacts of a positive nature.
- (g) The sharing of information between the Patrol and other bureau within the Department, as well as other outside governmental agencies.
- (h) The application of resources to specific problems or situations within the community, which may be improved or resolved by community oriented policing and problem solving strategies.
- (i) Traffic direction and control.

#### 300.1.2 TERRORISM

It is the goal of the Austin Police Department to make every reasonable effort to accurately and appropriately gather and report any information that may relate to either foreign or domestic terrorism. Officers should advise a supervisor as soon as practicable of any activity believed to be terrorism related and should document such incidents with a written report or Field Interview (FI). The supervisor should ensure that all terrorism-related reports and FIs are forwarded to Strategic Intelligence Unit in a timely fashion.

### 300.2 PATROL INFORMATION SHARING PROCEDURES

The following guidelines are intended to develop and maintain intra-department cooperation and information flow between the various bureaus of the Austin Police Department.

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### *Patrol Function*

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#### 300.2.1 CRIME ANALYSIS UNIT

The Crime Analysis Unit (CAU) will be the central unit for information exchange. Criminal information and intelligence reports can be submitted to the Central Records for distribution to all bureaus within the Department through daily and special bulletins.

#### 300.2.2 CRIME REPORTS

A crime report may be completed by any patrol officer who receives criminal information. The report will be processed and forwarded to the appropriate bureau for retention or follow-up investigation.

#### 300.2.3 PATROL BRIEFINGS

Patrol supervisors, detective sergeants and special unit sergeants are encouraged to share information as much as possible. All supervisors and/or officers will be provided an opportunity to share information at the daily patrol briefings as time permits.

#### 300.2.4 INFORMATION CLIPBOARDS

Several information clipboards will be maintained in the briefing room and will be available for review by officers from all bureaus within the Department. These will include, but not be limited to, the patrol check clipboard, the wanted persons clipboard and the written directive clipboard.

#### 300.2.5 BULLETIN BOARDS

A bulletin board will be kept in the briefing room and the Investigation Unit for display of suspect information, intelligence reports and photographs. New Special Orders will be made available for patrol supervisors and will be discussed at briefings and shift meetings. A copy of the Special Order will be placed on the briefing room clipboard.

### **300.3 CROWDS, EVENTS AND GATHERINGS**

Officers may encounter gatherings of people, including but not limited to, civil demonstrations, civic, social and business events, public displays, parades and sporting events. Officers should monitor such events as time permits in an effort to keep the peace and protect the safety and rights of those present. A patrol supervisor should be notified when it becomes reasonably foreseeable that such an event may require increased monitoring, contact or intervention.

Officers responding to an event or gathering that warrants law enforcement involvement should carefully balance the speech and association rights of those present with applicable public safety concerns before taking enforcement action. Officers are encouraged to contact organizers or responsible persons to seek voluntary compliance that may address relevant public safety/order concerns.

Officers should consider enforcement of applicable state and local laws, such as Tex. Penal Code § 42.03 (Obstructing Highway or Other Passageway), when the activity blocks the entrance or egress of a facility or location and when voluntary compliance with the law is not achieved.





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# Responsibility to the Community

### 301.1 PURPOSE AND SCOPE

All persons deserve protection by fair and impartial law enforcement and should be able to expect similar police response to their behavior wherever it occurs. Employees will serve the public through direction, counseling, assistance, and protection of life and property. Employees will be held accountable for the manner in which they exercise the authority of their office or position. Employees will respect the rights of individuals and perform their services with honesty, sincerity, courage, and sound judgment.

### 301.2 IMPARTIAL ATTITUDE AND COURTESY

Employees are expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity or gender expression or social or ethnic background.

- (a) Employees will not express or otherwise manifest any prejudice concerning race, religion, national origin, age, political affiliation, sex, or other personal characteristics in the performance of their duties.
  - 1. Employees will respect the rights of individuals and will not engage in discrimination, oppression, or favoritism whether by language, act, or omission.
  - 2. The use of racial or ethnic remarks, slurs, epithets, words or gestures, which are derogatory or inflammatory in nature to or about any person or group of persons is strictly prohibited.
- (b) Employees will be tactful in the performance of their duties, control their tempers, exercise patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation.
- (c) Employees will make every effort to be courteous and respectful toward all persons.

### 301.3 CUSTOMER SERVICE AND COMMUNITY RELATIONS

APD constantly works to establish direct contacts with the community we serve. Without grassroots community support, successful enforcement of many laws may be difficult, if not impossible. Community involvement can be an effective means of eliciting public support, can serve to identify problems in the making, and may foster cooperative efforts in resolving community issues. Input from the community can also help ensure that agency general orders accurately reflect the needs of the community.

- (a) The conduct of each employee reflects on the agency as a whole and the burden of achieving the agency's community relations objectives is shared. A unified, coordinated effort requires the participation, enthusiasm, and skills of all agency personnel.

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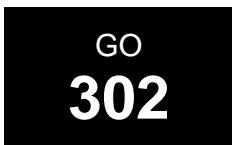
*Responsibility to the Community*

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- (b) Employees will extend reasonable assistance to the public when called upon. Employees must not neglect community services in the belief that the police function is restricted to crime control.

301.3.1 COMMUNITY INVOLVEMENT AND RECRUITMENT PROGRAMS

- (a) Police-Community cooperation can be obtained through open channels of communications, thus allowing for the discussion of concerns and problem areas within the community. All avenues must be utilized in promoting the respect and cooperating of the public with the police including, but not limited to:
  - 1. Establishing liaisons with existing community organizations or establishing community groups where they are needed.
  - 2. Assisting in the development of community involvement general orders for the agency.
  - 3. Publicizing agency objectives, community problems, and successes.
  - 4. Conveying information transmitted from citizens' organizations to the agency.
  - 5. Improving agency practices bearing on police community interaction.
  - 6. Developing problem oriented or community policing strategies.
- (b) Employees should actively conduct or participate in APD's recruitment program. Employees should encourage all qualified individuals to seek a career with the Department and direct them to contact APD's Recruiting or HR Division.



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# Public Recording of Official Acts

## 302.1 PURPOSE AND SCOPE

The Austin Police Department recognizes that members of the general public have a First Amendment right to video record, photograph, and/or audio record APD officers while they are conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity.

## 302.2 INTERACTION WITH COMMUNITY

- (a) Officers are reminded that photography, including videotaping, of places, buildings, structures and events are common and normally lawful activities.
  - 1. If a person is taking photographs or recording from a place where he or she has a right to be, officers are reminded that this activity by itself does not constitute suspicious conduct.
- (b) In areas open to the public, officers shall allow bystanders the same access for photography as is given to members of the news. Officers shall be aware that:
  - 1. A bystander has the same right to take photographs or make recordings as a member of the media, as long as the bystander has a legal right to be present where he or she is located.
  - 2. A bystander has the right under the First Amendment to observe and record officers in the public discharge of their duties.
  - 3. Public settings include parks, sidewalks, streets, and locations of public protests; but that protection extends also to an individual's home or business, common areas of public and private facilities and buildings, and any other public or private facility at which the individual has a legal right to be present.
  - 4. The fact that a bystander has a camera or other recording device does not, however, entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.
- (c) As long as the photographing or recording takes place in a setting at which the individual has a legal right to be present and does not interfere with an officer's safety or lawful duties, officer's shall not inform or instruct people that photographing or recording of police officers, police activity or individuals who are the subject of police action (such as a Terry stop or an arrest) is not allowed; requires a permit; or requires the officer's consent. Additionally, officers shall not:
  - 1. Order that person to cease such activity;
  - 2. Demand that person's identification;
  - 3. Demand that the person state a reason why he or she is taking photographs or recording;
  - 4. Detain that person;
  - 5. Intentionally block or obstruct cameras or recording devices; or

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6. In any way threaten, intimidate or otherwise discourage an individual from recording officer's enforcement activities.
- (d) Nothing in this order prohibits officers from questioning or detaining individuals they reasonably suspect have committed, are committing, or are about to commit any crime.
  - (e) Officers are reminded that a person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law.
    1. If a person is photographing or recording police activity from a position that impedes or interferes with the safety of officers or their ability to perform their duties, an officer may direct the person to move to a position that will not interfere. However, an officer shall not order the person to stop photographing or recording.
    2. If a person is photographing or recording police activity from a position that impedes or threatens the safety of members of the public, the officer shall direct the person to move to a safe position. However, officers shall not order the person to stop photographing or recording.
    3. A person's recording of officer's activity from a safe distance, and absent any attendant action that obstructs the activity or threatens the safety of the officers, does not constitute interference.
    4. A person has the right to express criticism of the police activity being observed. As long as that expression does not jeopardize the safety of any officer, suspect or bystander; and so long as that expression does not violate the law or incite others to violate the law, the expression does not constitute interference.
  - (f) Evidence on a Camera or Recording Device
    1. If an officer has probable cause to believe that a camera or other recording device contains images or sounds that are evidence of criminal acts, the officer shall request that the person either:
      - (a) allow the officer to listen to or view the recording
      - (b) Voluntarily provide the device or recording medium (e.g., the memory chip) to the officer; or
      - (c) Where possible and practicable, and in the presence of the officer, voluntarily transmit the images or sound via electronic mail to the officer's official government electronic mail account.
      - (d) Consent to view or take possession of a recording device or medium must be given voluntarily and in accordance with APD General Order 306.4 Consent to Search.
    2. If the person provides the device or recording medium to the officer, the officer shall:

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- (a) Exercise due care and caution with any of the individual's property or electronic device(s);
  - (b) Enter the item into evidence
  - (c) Document the officer's request and the individual's response in the narrative of the report
  - (d) Contact the on-call Detective responsible for the highest charge and notify them of the media evidence. Officers shall not attempt to view, download, or otherwise access any material contained on the device.
3. If the individual declines to voluntarily provide the device or recording medium, or to electronically transmit the sound and/or images where possible and practicable, and the officer believes that exigent circumstances exist insofar as the evidence of criminal activity will be lost absent an immediate seizure of the device, the officer shall take control of the device and contact a supervisor
- (a) The Supervisor shall, in consultation with the officer, determine whether exigent circumstances permit the seizure of the device without a warrant. Warrantless seizure is permissible only when:
    - 1. There is probable cause to believe that the property holds contraband or evidence of a crime; and
    - 2. The exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present.
- (g) Viewing/Listening to Evidence on a Camera or Recording Device
- 1. Absent exigent circumstances, officers shall obtain a search warrant before viewing photographs or listening to recordings on a camera or memory chip that has been seized as evidence.
  - 2. In exigent circumstances, where there is reason to believe that an immediate search of the seized material is necessary to prevent death or injury, officers shall contact a supervisor for authorization to review photographs or recordings without a warrant.
  - 3. Photographs or recordings that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed.
- (h) Officers shall not, under any circumstances, erase, delete, instruct, or require any other person to erase or delete any recorded images or sounds from any camera or other recording.



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# Body Worn Camera Systems

### 303.1 PURPOSE AND SCOPE

In this order, the word “employees”, or variant of, refers to sworn and civilian employees trained and authorized to wear the Body Worn Camera system (BWC). The BWC system provides an unbiased audio/video recording of events that employees encounter. These recordings can be useful for the documentation of evidence, the preparation of offense reports, and future court testimony. BWC systems can improve community relations and deter inappropriate conduct by both the members of the public and the police department.

This order covers the use of the Department issued and personally owned BWC systems. This order does not cover the use of surreptitious recording devices used in undercover operations.

### 303.2 DEFINITIONS

**MAV Recording:** Mobile Audio Video media obtained from Body Worn Camera and/or Digital Mobile Audio Video systems.

**Metadata:** Data that provides detailed information unique to each entry in Evidence.com, such as, ID, Category, and Title.

### 303.3 DEPARTMENT ISSUED BODY WORN CAMERA

BWC equipment is to be used primarily by uniformed personnel as authorized per assignment by the Department and must be used unless otherwise authorized by a Commander or above.

- (a) The Chief of Police, Assistant Chiefs, and Commanders are exempt from wearing the BWC except when law enforcement action is foreseen or likely to occur, (e.g. working patrol duties, actively participating in a tactical operation or deployment).
- (b) Employees equipped with a Department issued BWC system must be trained in the operation of the equipment prior to its use. BWC equipment will be used in accordance with Department training and the BWC operations manual.
- (c) Unless otherwise authorized by the Chief of Police or his/her designee, BWC's will be worn consistent with the training and manufacturer's recommendations, in regards to fields of view and employee safety. Employees will adhere to the following dimensions for placement of the BWC:
  1. From the center of the sternum, no more than four inches to the right or left on the outermost layer of clothing such that the camera has an unobstructed view.
  2. No higher than four inches below the top button of the uniform shirt and no lower than six inches below the top button of the uniform shirt.
  3. Exemptions to the placement of the BWC in accordance with this order will be authorized by a Commander or above. Examples for exemptions may include, but are not limited to, SWAT, OCD, Executive Protection, and Mounted Patrol.
- (d) Employees shall ensure that their BWC equipment has adequate battery charge and storage space to complete their regular tour of duty.

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1. Employees assigned to the units below are required to power on the device at the beginning of their tour of duty and not power the device off until the end of that tour of duty.
  - (a) Patrol,
  - (b) DTAC Patrol,
  - (c) George District Representatives,
  - (d) Mounted Patrol,
  - (e) Court Services,
  - (f) Park Patrol,
  - (g) Lake Patrol,
  - (h) Commercial Vehicles,
  - (i) DWI,
  - (j) Motors,
  - (k) Metro Tac,
  - (l) Patrol K9,
  - (m) Gangs,
  - (n) Criminal Interdiction.
2. Employees not assigned to the units above are not considered to be “first responders” and are therefore not required to power on their assigned Body Worn Camera at the beginning of their tour of duty. However, if at any time their duties and responsibilities require any type of field work where they could be called upon to take enforcement action, their device will be properly attached and powered on for the entirety of the time they are in that role.
3. Employees not engaged in a law enforcement action shall power the device off or remove it from their body when using a restroom, locker room, changing room, or any other location where the employee has an expectation of privacy. Immediately upon exiting such a facility or room, the employee shall ensure the BWC equipment is powered back on and appropriately placed according to this order.
  - (e) Employees shall test the BWC equipment at the commencement of their tour of duty and shall categorize the video as '10-41'.
  - (f) The BWC equipment test shall consist of employees recording the following:
    1. Employee name;
    2. Employee number; and
    3. The current date and time.
  - (g) Employees shall review the recording to verify the BWC microphone is operational, and the date and time is accurate.

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- (h) Employees who discover an operational defect with the BWC system shall attempt to correct the system following the received training on the device (i.e., Reseating cables, Cycling the power, etc.). If the BWC is found to have a physical defect or malfunction:
  - 1. Employees shall notify an on-duty supervisor, and write up the device for service describing the events leading up to the failure.
  - 2. Employees shall notify their dispatcher to have a note added to their activity log that their BWC system has failed.
  - 3. Employees shall notate on the device repair form if there is existing video which was unable to be uploaded because of the device's failure.
  - 4. Employees shall complete a supplement to any report in which there is video on the defective camera that was unable to be uploaded to Evidence.com.
- (i) Employees shall not:
  - 1. Bypass or attempt to override the equipment;
  - 2. Erase, alter, or delete any recording produced by the BWC; or
  - 3. Use any non-issued chargers, adapters, or cables with the BWC system.

#### 303.3.1 WHEN DEPARTMENT ISSUED BWC SYSTEM USE IS REQUIRED

This section is not intended to describe every possible situation where the system may be used. In some circumstances it may not be possible to capture images of an incident due to conditions or location of the camera, however the audio portion can be valuable evidence and is subject to the same activation requirements. The BWC should only be activated for law enforcement purposes.

- (a) All units responding to a scene shall activate their department issued BWC equipment when they:
  - 1. Arrive on-scene to any call for service;
  - 2. Have detained or arrested a person;
  - 3. Are attempting to detain or arrest a person;
  - 4. By the nature of the call for service, are likely to detain or arrest a person; or
  - 5. Any consensual contact in which the employee or a citizen believes activation of the BWC would be in the best interest of the community.
- (b) Examples of when the department issued BWC system must be activated include, but are not limited to:
  - 1. Traffic stops;
  - 2. Foot pursuits, until completion of enforcement action;
  - 3. DWI investigations including field sobriety tests;
  - 4. Warrant service;
  - 5. Investigatory stops; or



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6. Any contact that becomes adversarial in an incident that would not otherwise require recording.
7. While interviewing an employee during a Response to Resistance review.
- (c) Employees that are issued a BWC shall utilize the BWC when engaging in Off-Duty LERE Overtime.
- (d) In addition to the required situations, employees may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.
- (e) There may be instances in which an employee is required to take immediate action in response to an event which may not allow time to activate their BWC. In those situations, it may be impractical or unreasonable for employees to activate their BWC system before taking police action. It is expected that once the immediacy of the situation is over, employees will activate their BWC system to record the remainder of the incident. Employees shall articulate the reasoning for the delayed activation of their BWC in an offense report, supplement, or other form of Department approved documentation.

#### 303.3.2 ADVISEMENT AND CONSENT

Employees should inform individuals they are being recorded unless doing so would be unsafe, impractical or impact the investigation of criminal activity.

#### 303.3.3 WHEN DEPARTMENT ISSUED BWC SYSTEM DEACTIVATION IS AUTHORIZED

Once the BWC system is activated it shall remain on until the incident has concluded or until deactivation is permissible in accordance with this order.

- (a) For purposes of this section, conclusion of an incident has occurred when:
  1. All arrests have been made and arrestees have been transported; and
  2. No further law enforcement action is likely to occur (e.g., waiting for a tow truck or a family member to arrive.)
- (b) Employees may choose to discontinue a recording currently in progress for any non-confrontational encounter with a person, including an interview of a witness or victim.
- (c) Employees shall adhere to posted policies of any Law Enforcement, Court, or Corrections entity that prohibit the use of BWC systems therein (i.e. TCSO, Courts, Juvenile Detention Centers).
- (d) Employees may deactivate the audio portion by engaging the mute button on the body worn camera, for administrative reasons only, as follows:
  1. The reason for audio deactivation must be recorded verbally prior to audio deactivation; and
  2. After the purpose of audio deactivation has concluded, employees will reactivate the audio track.
- (e) For purposes of this section, an "administrative reason" refers to:
  1. Personal conversations unrelated to the incident being recorded;

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2. Employee to employee training (e.g., when a Field Training Employee or Field Training Supervisor wishes to speak to an employee enrolled in the Field Training Program about a training issue);
3. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall be stated prior to the audio deactivation.

#### 303.3.4 VICTIM AND WITNESS STATEMENTS

When conducting an investigation, the employee shall attempt to record the crime victim or witness' statement with the body worn camera. The recording may be valuable evidence that contributes to or compliments an investigation. While evidence collection is important, the Department also recognizes it is important for employees to maintain credibility with people wanting to share information with law enforcement.

On occasion, an employee may encounter a reluctant crime victim or witness who does not wish to make a statement on camera. In these situations, the employee should continue to develop rapport with the individual while balancing the need for evidence collection with the individual's request for privacy.

Should the employee use discretion and not record the crime victim or witness statement with the body worn camera, the employee shall document the reason for not fully recording the statement with the body worn camera. In these instances, employees may still record with an audio recorder. Employees should work with victim services when possible in determining what type of statement will be taken.

- (a) If a citizen, other than a victim or witness as described in this section requests that an employee turn off the BWC, the employee will explain that APD General Orders requires the camera to be activated and recording until the conclusion of the incident or until there is no further law enforcement action necessary.

#### 303.3.5 WHEN DEPARTMENT ISSUED BWC SYSTEM USE IS NOT REQUIRED

Activation of the BWC system is not required:

- (a) During break and lunch periods
- (b) When not in service and not on a call
- (c) When in service, but not on a call.
- (d) Employees shall not utilize the body worn camera in the following circumstances:
  1. A potential witness who requests to speak to an employee confidentially or desires anonymity;
  2. A victim or witness who requests that he or she not be recorded as a condition of cooperation and the interests of justice require such cooperation;
  3. During tactical briefings, or the discussion of safety and security procedures unless approved by the commander;

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4. Public or private locker rooms, changing rooms, restrooms, unless taking police action;
5. Doctor's or lawyer's offices, unless taking police action;
6. Medical or hospital facilities, unless taking police action;
7. At a school, where minor children are present, unless taking police action;
8. To monitor persons based solely upon the person's political or religious beliefs or upon the exercise of the person's constitutional rights to freedom of speech and religious expression, petition, and assembly under the United States Constitution, or because of the content or viewpoint of the person's protected speech;
9. While in any magistrate's or judge's office or in any courtroom, except under exigent circumstances; i.e. police action being taken;
10. During departmental or supervisory meetings.

#### **303.4 REQUIRED ENTRY OF METADATA FOR BWC RECORDINGS**

All BWC recordings shall be assigned a category. Doing so determines the length of time the recording is retained in the Evidence.com storage system.

- (a) Employees shall ensure that all BWC recordings are uploaded from the camera to the storage system prior to the completion of their scheduled tour of duty unless approved by a supervisor.
- (b) Employees shall ensure that within two weeks from the recording date all videos are assigned the proper category and the ID field contains the 9-digit incident number (YYJJJ####), if applicable.
- (c) When possible, all employees "on-scene" or "10-23" should assign the same category to their video as the primary employee (e.g. arresting officer or employee writing initial report).
- (d) Unless involved in a response to resistance, an arrest or directed by a supervisor, employees utilizing a BWC during LERE overtime are permitted to download and categorize their recordings during their next regularly scheduled work day.
- (e) For purposes of this section, a "Non-Event" video generally refers to a recording that meets all of the following criteria:
  1. Video where no investigatory stop is made;
  2. Video that does not include any call for service;
  3. Video where no person has been detained or arrested; and
  4. Video where no enforcement action is documented.
- (f) Detectives are responsible for verifying the category assigned to recordings for assigned incidents within 30 days of the recording. Detectives are also responsible for updating the category for recordings when necessary to ensure proper retention.

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#### 303.4.1 SUPERVISOR RESPONSIBILITIES

- (a) In conjunction with personnel inspections, General Order 801.8, supervisors of units listed in 303.3(d) of this order shall conduct inspections of BWC recordings to ensure they are complying with APD General Orders. Supervisors shall ensure all assigned employees are reviewed in a fair and equitable manner. Additionally, supervisors shall ensure employees:
  - 1. Act professionally, treating persons fairly and impartially;
  - 2. Demonstrate the appropriate knowledge, skills, and abilities to manage the interaction; and
  - 3. Comply with laws, ordinances, and APD written directives.
- (b) These inspections will be electronically documented on form PD0128 and sent to the lieutenant within the chain-of-command. Each inspection will include:
  - 1. One randomly selected recording to ensure compliance with "10-41" video check;
  - 2. Two randomly selected recordings to ensure compliance with the "eventful video" compliance check; and
  - 3. Two randomly selected recordings from employee-initiated calls to ensure compliance with the Racial or Bias-Based Profiling general order.
- (c) In addition to the above inspections, supervisors shall ensure all assigned employees have categorized all videos in accordance with APD General Order 303.4.
- (d) Supervisors shall ensure all employees assigned to them are allotted time during their regularly scheduled work week to properly categorize all BWC recordings in Evidence.com.
- (e) Investigative unit supervisors shall ensure their assigned Detectives have properly categorized all videos in accordance with APD General Order 303.4.

#### 303.4.2 DOCUMENTING BWC SYSTEM USE

Any incident recorded with a BWC system shall be documented in the employee's report. If a citation was issued, a notation of "BWC" shall be placed in the notes section of the citation.

#### 303.4.3 COPIES OF BWC SYSTEM RECORDINGS

BWC media recordings shall be used for official APD business only. This may include public information requests after the recording has been reviewed by the Department Legal Advisor and approved for release by the Department. Copies of BWC System Recordings will not be provided unless the person requesting the copy is authorized to view the recording and does not otherwise have access to view the recording using the BWC system. When a copy is made, it is the responsibility of the person receiving the copy to comply with records retention as outlined in General Orders.

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#### 303.4.4 BWC RECORDING RETENTION SCHEDULE

Videos shall be retained for the longest period of time consistent with the City of Austin's Records Management Ordinance, Chapter 2-11, and any applicable City Records Control Schedules and/or the State Local Government Retention Schedules. At a minimum all BWC recordings shall be retained for 181 days.

#### 303.4.5 STORAGE AND SECURITY OF BWC SYSTEM RECORDINGS

Employees will upload the media and data contained on their BWC into the Department's official system of record for the storage of BWC information utilizing the approved upload procedures (wireless, docking station, etc.).

- (a) The Department's official system of record for BWC media and data will be stored utilizing a secure storage server and backed up for redundancy purposes.
- (b) The Department's official system of record will store all BWC media and data utilizing nationally recognized and approved security methods and will be in compliance with State of Texas Occupations Code 1701.655(b)(3).
- (c) A maintenance agreement and/or contract for the BWC program shall be in place to ensure the security of all BWC media and data stored in the Department's system of record. This contract will include, but will not be limited to:
  1. A service level agreement (SLA);
  2. Data protection;
  3. Data ownership;
  4. Data location;
  5. Import and export of data;
  6. Right to audit;
  7. Security, to include compliance with Chapter 521 of the Texas and Business Commerce Code;
  8. Security incident or data breach notification;
  9. Change control and advance notice; and
  10. Notification of legal requests.

#### 303.4.6 REQUESTS FOR BWC RECORDINGS

The Department shall comply with all applicable laws pertaining to the release of BWC recordings. News or other media outlet requests for video will be processed through the Public Information Office (PIO). All other open records requests will be processed through the department coordinator in Central Records.

### **303.5 PERSONALLY OWNED BWC SYSTEMS**

Personally owned BWC's are not permitted for use by employees.

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**303.6 REVIEW OF ALL BWC SYSTEM RECORDINGS**

- (a) If available, the recording that best captured the incident should be reviewed by the involved officers in the following situations prior to writing a report, supplement, memorandum, or prior to making a required statement:
1. Critical incidents, as defined by General Order 902.1.2;
  2. Response to resistance incidents; and
  3. Foot and vehicle pursuits.
- (b) Recordings may be reviewed:
1. By an employee to make sure the BWC system is operational;
  2. By an employee to assist with the writing of a report, supplement, memorandum, or prior to making a required statement about the incident;
  3. By authorized persons for the purpose of reviewing evidence;
  4. Upon approval by the Chief of Police, by a person, or the person's authorized representative, who is depicted in a recording of an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer, but who is not a witness to the incident (Tex. Occ. Code § 1701.660);
  5. By a supervisor investigating a specific act of employee conduct; or
  6. By authorized Department personnel participating in an official investigation, such as a personnel complaint, administrative inquiry, or a criminal investigation.
- (c) Recordings may be shown for the purpose of training. Employees wishing to view another employee's video for training purposes will submit a request via email through their chain-of-command, up to their lieutenant, for approval. The receiving lieutenant will review the video to ensure a training purpose exists and that the video is appropriate for viewing. If the lieutenant questions whether the video should be viewed for training, the lieutenant will contact the involved employee's lieutenant for approval. If the two lieutenants disagree, the involved employee's commander shall make the final determination. Factors for determining whether a video is appropriate for viewing for training include:
1. The likelihood of an internal/external investigation;
  2. Whether the video portrays actions that are likely to be embarrassing for any involved employee, and whether the embarrassment suffered by the employee would be outweighed by the training benefits; and
  3. Whether permitting uninvolved officers to view the video for training purposes may have a negative impact on any future or current prosecution or civil proceeding (lawsuit).
- (d) In no event shall any recording be used or shown to ridicule or embarrass any employee.

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*Body Worn Camera Systems*

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- (e) Employees shall not obtain, attempt to obtain, or convert for their personal use or for the unauthorized use of another person, any information from Department video files or the confidential files of any other agency.
- (f) Employees shall not make personal copies or attempt to upload recordings to social networking sites (e.g., YouTube, Facebook).

**303.7 REVIEW OF BODY WORN CAMERA ORDER**

This order will be reviewed for continuous effectiveness and adherence to local, state, and federal laws by the Department.



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# Digital Mobile Audio Video Recording

## 304.1 PURPOSE AND SCOPE

The Austin Police Department has equipped designated police units with a Digital Mobile Audio Video Recording (DMAV) system. This DMAV system is designed to assist and complement employees in the performance of their duties. The DMAV is used to record certain activities by providing a visual and/or audio record. Recordings are intended to provide an unbiased record of the incident and to supplement the employee's report.

This order covers the use of the DMAV system. The VHS MAV system guidelines are outlined in General Order 303 (Body Worn Camera Systems).

## 304.2 DEFINITIONS

**MAV Recording:** Mobile Audio Video media obtained from Body Worn Camera and/or Digital Mobile Audio Video systems.

## 304.3 DIGITAL MOBILE AUDIO VIDEO RECORDER OPERATION

- (a) The DMAV system is designed to turn on automatically when any of the following are detected:
  - 1. Emergency lights.
  - 2. Siren.
  - 3. Driver's door opening.
  - 4. Crash sensor.
  - 5. Speed in excess of 90 MPH.
  - 6. Activation of a wireless body microphone.
  - 7. Manual activation by pressing the record button on the camera, the mobile data computer, or the Video Processing Unit.
- (b) Employees shall turn off the vehicle's AM/FM radio and/or personal music devices while the DMAV is recording and there is a subject sitting in the backseat of the unit.
- (c) Employees shall not:
  - 1. Bypass or override the automatic activation of the equipment.
  - 2. Erase, alter, or delete any recording produced by the DMAV.
- (d) Absent legal cause or lawful order, no member of the Department may surreptitiously record any other member of the Department without the expressed knowledge and consent of all parties.



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## 304.3.1 REQUIRED DMAV TESTING

Employees driving DMAV equipped vehicles during field duty assignments where the required use of the DMAV is likely (e.g., patrol, metro-tactical shifts, traffic enforcement) must be trained in the operation of the equipment prior to its use.

- (a) Employees will test the vehicles DMAV equipment:
  - 1. At the commencement of their tour of duty.
  - 2. Anytime they switch cars during a shift.
  - 3. When the DMAV media has been replaced for an approved reason.
- (b) Employees will classify the video as '10-41'.
- (c) The DMAV equipment test will consist of employees recording the following:
  - 1. Employee name; and
  - 2. Employee number; and
  - 3. The current date and time.
- (d) Employees will review the recording to verify the in-car and body microphone is operational, and the date and time is accurate.
- (e) Employees discovering a defect with the DMAV will remove that police unit from service and complete a *Vehicle and Equipment Repair Form*. Vehicles with non-operable DMAV systems will not be used unless an emergency situation exists and a lieutenant approves its use. If this occurs, the unit will be removed from service as soon as the emergency subsides.

## 304.3.2 WHEN DMAV USE IS REQUIRED

This order is not intended to describe every possible situation where the system may be used. In some circumstances it is not possible to capture images of the incident due to conditions or location of the camera however the audio portion can be valuable evidence and is subject to the same activation requirements.

- (a) All units responding to a scene shall activate their DMAV equipment when they:
  - 1. Arrive on-scene to any call for service; or
  - 2. Are attempting to detain or arrest a person; or
  - 3. Have detained or arrested a person; or
  - 4. By nature of the incident, are likely to detain or arrest a person.
- (b) Examples of when the DMAV system must be activated include, but are not limited to:
  - 1. Traffic stops.
  - 2. Pursuits, until completion of enforcement action.
  - 3. DWI investigations including field sobriety tests.
  - 4. Warrant service.

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5. Investigatory stops when the subject is on foot or in a vehicle.
  6. Any contact that becomes adversarial in an incident that would not otherwise require recording. In those situations, it may be impractical or unreasonable for officers to activate their DMAV system before taking police action. It is expected that once the immediacy of the situation is over, officers will activate their DMAV system to record the remainder of the incident.
  7. While interviewing an employee during a Response to Resistance review when the BWC recording system is unavailable.
- (c) In addition to the required situations, employees may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.

**304.3.3 WHEN DMAV DEACTIVATION IS AUTHORIZED**

- (a) Once the DMAV system is activated it shall remain on until the incident has concluded.
1. For purposes of this section, conclusion of an incident has occurred when:
    - (a) All arrests have been made and arrestees have been transported; and
    - (b) All witnesses and victims have been interviewed.
  2. Recording may cease if an employee is simply waiting for a tow truck or a family member to arrive, or in other similar situations where no further law enforcement action is likely to occur.
- (b) Employees may deactivate the audio portion by engaging the mute button on the wireless microphone, for administrative reasons only, as follows:
1. The reason for the audio deactivation must be recorded verbally prior to audio deactivation; and
  2. After the purpose for audio deactivation has concluded, employees will reactivate the audio track.
- (c) For purposes of this section, an "administrative reason" refers to:
1. Personal conversations unrelated to the incident being recorded.
  2. Officer to Officer training (e.g., when a Field Training Officer or Field Training Supervisor wishes to speak to an officer enrolled in the Field Training Program about a training issue).
  3. The conclusion of an incident.
  4. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall also be stated prior to the audio deactivation.

**304.3.4 WHEN DMAV USE IS NOT REQUIRED**

Activation of the DMAV system is not required unless otherwise specified by this order. Examples of when DMAV use is not required may include:

- (a) During breaks and lunch periods.
- (b) When not in-service and not on a call.

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*Digital Mobile Audio Video Recording*

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- (c) When in-service but not on a call.

**304.4 REQUIRED CLASSIFICATION OF DMAV RECORDINGS**

- (a) Employees should ensure that all DMAV recordings are accurately classified upon stopping the recording. All recordings, except those classified as "Non-Event," must also include the 9-digit incident number when available using the following format: YYJJJ#### (e.g., 100711267).
- (b) Employees shall ensure that all incident recordings have the required information assigned prior to the completion of their next scheduled tour of duty.
- (c) For purposes of this section, a "Non-Event" video generally refers to a recording that meets all of the following criteria:
1. Video where no investigatory stop is made;
  2. Video that does not include any call for service;
  3. Video where no person has been detained or arrested; and
  4. Video where no enforcement action is documented.
- (d) Employees who do not have the ability to add incident numbers to recordings (e.g. Motors Officers) or who share a common case number across multiple videos (e.g. Officers working STEP) shall ensure that reports and citations reflect the time of recording exactly as shown in the DMAV system.
- (e) Detectives are responsible for verifying the classification of recordings for assigned incidents within 30 days of the recording. Detectives are also responsible for reclassifying recordings when necessary to ensure proper retention.
- (f) Supervisors, including corporals, are responsible for verifying the classification of recordings made by their officers for all direct filed charges that are a 3rd degree felony or higher.

**304.5 REVIEW OF DMAV SYSTEM RECORDINGS**

- (a) If available, the recording that best captured the incident should be reviewed by the involved officers in the following situations prior to writing a report, supplement, memorandum, or prior to making a required statement:
1. Critical incidents, as defined by General Order 902.1.2;
  2. Response to resistance incidents; and
  3. Foot and vehicle pursuits.
- (b) Recordings may be reviewed:
1. By an employee to make sure the DMAV system is operational;
  2. By an employee to assist with the writing of a report, supplement, memorandum, or prior to making a required statement about the incident;
  3. By authorized persons for the purpose of reviewing evidence;

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4. By a supervisor investigating a specific act of employee conduct; or\
  5. By authorized Department personnel participating in an official investigation, such as a personnel complaint, administrative inquiry, or a criminal investigation.
- (c) Recordings may be shown for the purpose of training. Employees wishing to view another employee's video for training purposes will submit a request via email through their chain-of-command, up to their lieutenant, for approval. The receiving lieutenant will review the video to ensure a training purpose exists and that the video is appropriate for viewing. If the lieutenant questions whether the video should be viewed for training, the lieutenant will contact the involved employee's lieutenant for approval. If the two lieutenants disagree, the involved employee's commander shall make the final determination. Factors for determining whether a video is appropriate for viewing for training include:
1. The likelihood of an internal/external investigation;
  2. Whether the video portrays actions that are likely to be embarrassing for any involved employee, and whether the embarrassment suffered by the employee would be outweighed by the training benefits; and
  3. Whether permitting uninvolved officers to view the video for training purposes may have a negative impact on any future or current prosecution or civil proceeding (lawsuit).
- (d) In no event shall any recording be used or shown to ridicule or embarrass any employee.
- (e) Employees shall not obtain, attempt to obtain, or convert for their personal use or for the unauthorized use of another person, any information from Department video files or the confidential files of any other agency.
- (f) Employees shall not make personal copies or attempt to upload recordings to social networking sites (e.g., YouTube, Facebook).

#### **304.6 DOCUMENTING DMAV SYSTEM USE**

Any incident that was recorded with either the video or audio system shall be documented in the employee's report. If a citation was issued, a notation shall be placed on the back of the records copy of the citation that the incident was recorded.

#### **304.7 COPIES OF DMAV SYSTEM RECORDINGS**

Copies of a DMAV media recording will be used for official APD business only. This may include public information requests after the recording has been reviewed by the Department Legal Advisor. Copies of DMAV System Recordings will not normally be made unless the person requesting the copy is authorized to view the recording and does not otherwise have access to view the recording using the DMAV system. Personnel assigned to SIU and IA are authorized to create copies of DMAV recordings as needed per their investigative process. When a copy is made, it is the responsibility of the person receiving the copy to comply with records retention as outlined in general orders.

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**304.8 DMAV RECORDING RETENTION SCHEDULE**

All DMAV recordings shall be retained for a period of time that is consistent with the City of Austin's Records Management Ordinance, Chapter 2-11, and any applicable City Records Control Schedules and/or the State Local Government Retention Schedules.



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## Radio and Mobile Data Computer Use

### 305.1 PURPOSE AND SCOPE

Digital radio and data communications are extremely vital elements of effective law enforcement. These communications will be conducted in a professional, concise, and effective manner.

Employees are reminded that all digital radio and data transmissions are recorded and subject to public information requests.

### 305.2 MOBILE DATA COMPUTER USE GUIDELINES

- (a) The mobile data computer (MDC) shall be used for official police communications only.
- (b) There is no expectation of privacy concerning sending or receiving messages via the MDC system. Messages may be reviewed by supervisors at any time without prior notification.
- (c) The MDC will remain docked and the docking switch will be in the locked position when the vehicle is in motion or if the MDC is left unattended unless otherwise approved by a supervisor.
- (d) Employees will not intentionally disrupt the GPS signal.
- (e) Employees driving vehicles equipped with an MDC shall:
  - 1. Accept all updates to the MDC prior to logging on and while at a hot-spot; however, employees reporting to duty from a location that is not a hot-spot shall ensure the updates are downloaded as soon as practicable.
  - 2. Log on at the start of a shift with complete and accurate information.
  - 3. Log off at the end of the shift.
- (f) Employees granted access to the Watch List should limit the number of additional sectors they are watching to two (2) unless needed for an official reason (e.g., monitoring a significant event that could impact all sectors).
- (g) When an MDC is utilized in an area where the public might be able to view the screen, the user will take reasonable measures to ensure any information is not viewable by unauthorized persons (e.g., lower the screen, lock the computer).
- (h) Unless Officers are utilizing dual factor authentication, Mobile Data Computers may only be removed from the vehicle for remote operation if they are used in a secure facility (substation, arrest review, etc).

#### 305.2.1 MDC USE WHILE DRIVING

Use of the MDC by the operator should be limited to times when the vehicle is stopped. When the vehicle is in motion, the operator should only attempt to read messages that are likely to contain information that is required for immediate enforcement, investigative, or safety needs.

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Short transmissions, such as a license plate check, are permitted if it reasonably appears they can be done safely.

#### **305.3 RADIO USE GUIDELINES**

##### **305.3.1 COMPLIANCE**

- (a) Employees shall comply with FCC regulations relating to the use of radio communications systems, as well as the established guidelines outlined below:
  - 1. Communications involving the protection of life and property shall be afforded priority.
  - 2. False calls, false or fraudulent distress signals, unnecessary and unidentified Communications and the transmission of unassigned call signals are specifically prohibited.
  - 3. Employees shall monitor the talk-group on which they intend to transmit for a sufficient period to ensure their transmissions will not interfere with others.
  - 4. Duration of radio transmissions must be restricted to the minimum practical transmission time.
- (b) Employees shall comply with the Greater Austin/Travis County, Texas, Regional Radio System (GATRRS), Interoperability Plan when necessary, to communicate on interoperability channels that are part of the GATRRS and is related to the use of radio interoperability.

##### **305.3.2 RADIO TRANSMISSION PROTOCOL**

- (a) Only English shall be spoken.
- (b) Employees calling or responding to dispatch shall identify themselves by their assigned unit number. They should not continue the transmission until acknowledged by the dispatcher.
- (c) The employee's primary talk-group dispatcher shall be notified before an employee changes to another talk-group (e.g., a Central West officer switching to the North West talk-group).
- (d) Employees shall not call for another employee by name unless their radio or unit number is unknown (e.g., "Baker 101 to Sgt. Doe").
- (e) Long transmissions should only be done over a secondary talk-group, as an MDC message, or via a cell phone if available.
- (f) Employees shall refrain from seeking advice from a dispatcher regarding a point of law, enforcement action, or Department General Orders. Employees should consult their immediate supervisor on these matters or obtain the information from their laptop computers.
- (g) Under normal circumstances, employees will not turn off or lower their in-car police radios to a volume that cannot be captured by the vehicle's DMAV equipment regardless if the employee is wearing an ear-bud listening device on their portable

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radio. An exception would be under circumstances when it is deemed necessary to safeguard transmissions from a prisoner seated in the patrol car during and incident.

#### 305.3.3 REQUESTING RECORDED TRANSMISSIONS

Employees with a legitimate need to hear or copy a radio or telephone recording may do so by making a request to the Communication supervisor on duty.

#### 305.4 ADDITIONAL GUIDELINES

##### 305.4.1 DOCUMENTATION OF ACTIVITY

Radio and MDC transmissions are used to record an employee's daily activity. To ensure the most accurate recording of these activities, the following are required:

- (a) All contacts or activity shall be documented at the time of the contact.
- (b) Whenever the activity or contact is initiated by voice, it shall be entered into the Computer Aided Dispatch (CAD) system by a dispatcher.
- (c) Whenever the activity or contact is not initiated by voice, the employee shall record it on the MDC.

##### 305.4.2 STATUS CHANGES

- (a) Employees shall make changes in status (e.g., arrival at scene, meal periods, in-service) through the MDC system when safe and practicable.
  1. If MDC use is not safe or practical, employees shall advise the dispatcher of status changes using proper radio codes.
  2. Employees responding to in-progress calls shall advise changes in status over the radio to assist other employees responding to the same incident.
- (b) An employee's status shall be made Code 4 when it is determined that no other units are needed. Any additional units still responding to the incident shall change their status to available.

##### 305.4.3 HIGH PRIORITY INCIDENTS

Transmissions regarding emergencies (e.g., high-speed pursuits, serious crimes in progress) shall be given priority over all other transmissions. Units not involved in the emergency shall stay off the air until the situation has been resolved.

Units coming in-service during an emergency shall change their status on the MDC. If unable to do so, the unit will switch to an adjoining sector talk-group, advise that dispatcher they are in-service and then switch back to their primary talk-group.

##### 305.4.4 EMERGENCY BUTTON ACTIVATION

If the emergency button is depressed on the MDC or Radio, the dispatcher will call the unit and ask if the unit is Code 4.

- (a) If there is no emergency the employee should respond "Code 4" and all units shall resume their normal activity.



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#### *Radio and Mobile Data Computer Use*

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- (b) If there is no response or the employee answers in some other way, the dispatcher shall send available units to assist in locating the unit that is transmitting the emergency. Available units may self-assign the call via the MDC and respond as appropriate.
  - 1. Units shall refrain from transmitting on the radio until there is a Code 4, unless they are themselves handling an emergency.
  - 2. When the situation is considered Code 4, all units not on-scene shall go back in service.

#### 305.4.5 BOMB THREATS

Bombs and other explosive devices can be detonated by radio waves (e.g., mobile phones, radio, MDC) transmitted in close proximity to the device.

- (a) When responding to bomb threats, employees should be conscious of the location of any suspected devices (e.g., parking lot, inside a building, open field) and park their patrol unit accordingly.
- (b) When investigating reports of a bomb threat, employees shall follow General Order 414 (Bomb Threat and Explosive Device Response).

#### 305.4.6 CLOSING THE CHANNEL

Closing a radio channel ("holding the air") is done for the safety of officers involved in a call or event that requires the radio remain silent. Events that require a channel be closed will follow these guidelines:

- (a) Any supervisor (including a dispatch supervisor) may close a channel to ensure officer safety. If the dispatcher does not apply the channel marker, units involved in the event may request that it be applied.
- (b) The dispatcher will broadcast the channel is closed and should enable the channel marker on that channel so that a low audible "beep" will occur every 8-10 seconds. The "beep" is a clear indication that the channel is closed to all non-emergency radio traffic.
- (c) When safe and practical, the dispatcher will then broadcast the channel is open and will remove the channel marker.

#### 305.5 RESPONSIBILITY OF SUPERVISORS

Supervisors shall:

- (a) Be responsible for entering complete and accurate roster information into the current electronic system, including capability codes for all qualified personnel.
- (b) Use the MDC to monitor incidents and the activity of employees when practicable.
- (c) Carefully monitor and supervise the use of the radio to assist employees as needed. Supervisors may monitor additional talk-groups; however, supervisors shall remain available to their primary talk-group. Supervisors are responsible for the radio conduct of their subordinates and should immediately correct improper radio procedures.
- (d) Self-assign calls when practical and other units are not available.

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### *Radio and Mobile Data Computer Use*

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- (e) Respond to any scene when requested to the location by a subordinate.
- (f) Inform and update the Watch Lieutenant of any significant call or critical issue.

#### **305.6 MOBILE DATA INSPECTION**

APD Risk Management will select random CAD audit dates and notify lieutenants and sergeants/civilian supervisors via Departmental email quarterly. Any supervisor of sworn or non-sworn employees (to include Communications, Victim Services, and Crime Scene units) who use CAD messaging shall audit their employees' messages and submit an electronic report using APD Approved Form PD0128A to their next level manager for review within 10 days from the date of the notification from Risk Management. If a sergeant is unavailable during the entire 10 day time frame, the audit shall be conducted by the corporal of that shift or a sergeant from another shift.

- (a) If an employee did not work on the dates to be audited, they will be audited on the next available working day. The date will be noted on the report.
- (b) If the employee is on extended leave (FMLA, Light Duty, etc.) the reason of absence will be documented on the report.

The report shall be retained by the sergeant/civilian supervisor for at least 3 years in an APD group drive.

If an inappropriate CAD message is found that involves dialogue with an employee from another shift/unit, the sergeant/civilian supervisor conducting the CAD audit shall notify the other employee's sergeant/civilian supervisor via Departmental email for follow-up.

If a subordinate's message results in counseling a copy of the message and memo will be placed in the supervisor's file for the employee. If no further counseling is needed in the three years following the counseling, the CAD messages may be discarded.



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# Search and Seizure

### 306.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This order provides general guidelines for Austin Police Department personnel to consider when dealing with search and seizure issues.

### 306.2 SEARCH AND SEIZURE

This order outlines the following types of searches and seizures:

- (a) Exigent circumstances
- (b) Consent
- (c) Search incident to a lawful arrest
- (d) Vehicle inventory
- (e) Probable cause
- (f) Protective frisk based on reasonable suspicion
- (g) Plain view
- (h) Strip/Body cavity search
- (i) Residences, open fields, and abandoned property

### 306.3 SEARCH AND SEIZURE

**Transgender-** An umbrella term that describes individuals whose gender identity is different from their assigned sex at birth.

**Female-to-Male (FTM)-** A person who transitions from "female-to-male", meaning a person who was assigned female at birth, but identifies and lives as a male. A "female-to-male" individual should be addressed using masculine pronouns (e.g.- he, him, his), regardless of surgical status.

**Male-to-Female (MTF)-** A person who transitions from "male-to-female", meaning a person who was assigned male at birth, but identifies and lives as a female. A "male-to-female" individual should be addressed using feminine pronouns (e.g.- she, her, hers), regardless of surgical status.

**Intersex-** Intersex individuals are born with chromosomes, external genitalia, and/or an internal reproductive system that varies from what is considered "standard" for either males or females.

**Gender-** The state of being male or female.

**Gender Non-Conforming (Individuals)-** Display gender expression or behavior that does not conform to dominant gender norms of male or female. Gender non-conforming individuals may not identify as male, female, or transgender. Gender non-conforming is also known as gender variant, gender atypical, or androgynous.

**TIGN-** Transgender, Intersex, and/or Gender Non-Conforming Individual.

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### *Search and Seizure*

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**Gender Identity-** An individual's internal sense of being male or female, or something not defined by traditional definitions of male or female.

**Gender Expression-** An individual's external and social characteristics and behaviors (such as appearance, dress, mannerisms, speech, and social interactions) that may be perceived as masculine or feminine.

#### 306.3.1 SEARCH PROTOCOL

Nothing in this order supersedes officer safety tactics.

- (a) Officers will conduct person searches with dignity and courtesy.
- (b) Officers will conduct property searches in a manner that returns the condition of the property to its pre-search status as nearly as reasonably practicable.
- (c) Officers should attempt to acquire keys to locked property when a search is anticipated and the time and effort required to gain the keys makes it a practicable option.
- (d) It is the responsibility of each individual officer to search a prisoner for weapons or contraband anytime he gains custody of that prisoner, regardless of whether the prisoner was previously searched by another officer.
- (e) When safety permits:
  1. Officers should explain to the person being searched the reason for the search and how the search will be conducted.
  2. When practical, an officer of the same gender should be called to the scene when officers believe the subject is concealing items in a sensitive area, such as, evidence or narcotics in the groin, buttocks, or breast areas. This does not apply to items that pose an immediate threat to officer safety.
  3. If a subject requests a search by an officer of the same gender, an attempt should be made to have a same gender officer conduct the search.
  4. If a same gender officer is unavailable, the search should be conducted in front of a Mobile Audio Video (MAV) recording system, if available, or a second officer should be present.
  5. If the gender of the individual needing to be searched comes into question, officers should respectfully inquire as to whether the individual identifies as transgender. When an individual self-identifies as transgender, officers will not question this identity absent articulable, compelling reasons, nor will an officer inquire about intimate details of an individual's anatomy to determine gender. Officers needing to search a person who has disclosed that, or the officer recognizes by prior knowledge, the individual is Transgender, Intersex, and/or Gender Non-Binary/Gender Non-Conforming (TIGN), should, when practicable, conduct the search based on the gender with which the individual identifies. (For example, a Female-to-Male individual should, when practicable, be searched by a male officer, or by a female officer who conducts an opposite gender search. A Male-to Female individual should, when practicable, be searched by a female officer, or by a male officer who conducts an opposite gender search).

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6. Officers will use the backside of their hands and fingers to frisk/search sensitive areas of the opposite gender to include the breast, crotch, and buttocks.

#### **306.4 EXIGENT CIRCUMSTANCES**

Exigent circumstances permitting entry into premises without a warrant or valid consent generally include any of the following:

- (a) The reasonable belief that a person within is in need of immediate aid.
- (b) The need to protect or preserve life or avoid injury.
- (c) Imminent escape of a suspect.
- (d) The reasonable belief that contraband is about to be removed or destroyed.
- (e) Public safety.

An exigency created by the officer's own conduct as an excuse for a warrantless entry is not permitted.

#### **306.5 CONSENT**

- (a) Entry into a location or vehicle for the purpose of conducting a search for any item reasonably believed relevant to any investigation is permitted once valid consent has been obtained. Officers should be aware that overuse of the consent search can negatively impact the Department's relationship with our community and only request a consent search when they have an articulable reason why they believe the search is necessary and likely to produce evidence related to an investigation. A search by consent is only allowed if the following criteria are met:
  1. The officer has explained the reason for the consent search request to their supervisor (or their Corporal/Detective if their supervisor is unavailable) and received their approval prior to requesting consent. If the officer is:
    - (a) Assigned to a specialized unit that has received specific training on consent searches; or
    - (b) The officer has completed the department's Interdiction for the Protection of Children (IPC) training and is actively conducting an IPC investigation; then the officer would not need supervisor approval prior to requesting consent.
  2. Consent is voluntary (e.g., clear, specific and unequivocal).
  3. Consent is obtained from a person who has the authority to give the consent (e.g., care, custody and control of the location or vehicle).
  4. The search does not exceed the scope of the consent given.
- (b) Consent must be obtained as the product of a free will. It cannot be obtained through submission to authority, either expressed or implied.
- (c) Although officers are not required to conduct searches within the plain view of suspects, those who have the authority to grant or revoke consent should be in a

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position to communicate a withdrawal of consent should they so desire. If consent was obtained by telephone from a person who has authority to grant the consent, the person should be provided with contact information to revoke the consent.

- (d) Absent other legal justification, any related search should be discontinued at any point that consent is withdrawn, even if the withdrawal is made by a different party who is at the scene and who also has authority over the area being searched.

#### 306.5.1 RECORDING CONSENT

- (a) Consent requests and authorization for all vehicles, locations where there is a reasonable expectation of privacy, and subject stops shall be recorded by the Body Worn Camera (BWC). When the BWC system is unavailable, the DMAV system shall be used.
  - 1. Prior to the search, the officer shall read the Consent to Search Card to the subject.
  - 2. After the subject consents to the search, the officer can proceed with the search. If at any time after the search has begun the person revokes their consent, the officer will immediately stop and search no further unless sufficient probable cause has already been developed to warrant continuing with the search or a warrant has been obtained.
- (b) Employees will document in their report, supplement, or street-check anytime a consent search is used and that the consent was successfully recorded. If the recording is not successful the reason will be documented in the report, supplement, or street-check as well as in CAD history.
- (c) Employees will notify their immediate supervisor of the consent search as soon as practicable, but prior to the end of the tour of duty.

#### 306.5.2 CHAIN-OF-COMMAND REVIEW OF CONSENT SEARCHES

The immediate supervisor shall send an email notification with the incident report number to the involved employee's chain-of-command up to the lieutenant. Each level in the chain, up to the lieutenant, will review the search and complete a case note to document their review. In the event the chain-of-command identifies concerns with the search, the reviewing lieutenant will notify the commander.

#### 306.6 SEARCH INCIDENT TO ARREST

The general authority to search incident to a lawful custodial arrest is not qualified or limited by the type of arrest. Objects of the search are weapons, evidence, and/or means of escape.

- (a) Persons:
  - 1. When officers make a lawful arrest, they are permitted to conduct a contemporaneous search of the arrestee. Such a search safeguards the arresting officer and others nearby from harm while ensuring that the arrestee will not discard or destroy evidence.

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2. It is entirely reasonable for arresting officers to search the area where the defendant might reach in order to grab a weapon or evidence.
- (b) Vehicles:
1. A search of a vehicle interior may be made when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.
  2. A search of a vehicle interior may be made when it is reasonable to believe that the vehicle contains evidence of the offense of arrest.
  3. If officers do not have a valid reason to search a vehicle after making an arrest (e.g. probable cause, inventory), a search warrant will need to be obtained.
  4. Officers may examine the contents of any opened or closed container within the passenger compartment, provided the container is within reaching distance of the arrestee and the arrestee is unsecured at the time of the search.
  5. Locked containers found within the vehicle passenger compartment may be seized and a search warrant obtained in a timely manner.

#### **306.7 VEHICLE INVENTORY**

An inventory is a legitimate law enforcement activity that is not a search and that sometimes, incidentally, results in the discovery of evidence. Vehicle inventories will be conducted in accordance with General Order 350 (Vehicle Towing and Impound).

#### **306.8 PROBABLE CAUSE**

- (a) Person:
1. When officers have probable cause to believe that evidence or contraband is located on a person they are permitted to conduct a search of the person.
- (b) Vehicles:
1. Officers may conduct a warrantless search of a readily movable vehicle (e.g., automobile, mobile home, boat or airplane) if there is probable cause to believe that evidence or contraband is inside and the search cannot safely be delayed in order to obtain a warrant.
    - (a) Officers must have probable cause that contraband is in the vehicle.
    - (b) A search of an automobile based on probable cause lawfully extends to all parts of the vehicle in which evidence or contraband could be concealed, including closed compartments, containers, and trunks.
    - (c) The scope of a warrantless search of a lawfully stopped vehicle based on probable cause is no narrower and no broader than the scope of a search under the authority of a warrant.

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#### **306.9 FRISK (PAT-DOWN) FOR WEAPONS**

A frisk is a mere pat-down of the outer clothing, area, vehicle or container to which a detained person may have immediate access. The purpose of a limited weapons frisk after an investigatory stop is not to discover crime, but to allow the officer to pursue the investigation without fear of violence. An officer does not need to be absolutely certain that an individual is armed; the issue is whether a reasonably prudent person would justifiably believe that he or others were in danger.

(a) Persons:

1. A frisk is a limited patting of the outer surfaces of a person's clothing in an attempt to find weapons. A frisk can only be used by officers when they justifiably stop someone and have a reasonable fear for their safety, the safety of the public, or when a cautious and prudent officer under the same or similar circumstances would conduct a pat-down.
2. Normally, officers cannot put their hands under the suspect's outer clothing until they feel something they reasonably believe is a weapon. If the outer clothing is too bulky to allow officers to decide if a weapon is concealed underneath, outer clothing such as overcoats and jackets may be opened to allow a pat down of the inner clothing, such as shirts and trousers.
3. Packages, purses, briefcases and other containers may be frisked during the stop.
4. The scope of a protective frisk is limited to persons and places within arm's reach of a concealed weapon or toward which the subject might lunge.

(b) Vehicles:

1. A protective frisk may include the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, if the officer possesses reasonable belief that the suspect is dangerous and may gain control of a weapon at any time during the encounter.

#### **306.10 PLAIN VIEW**

Because an individual does not have an expectation of privacy as to items that are in plain view, no search has taken place in a constitutional sense when an object is viewed from a location where the officer has a right to be.

(a) An item in plain view may generally be seized when all of the following conditions exist:

1. The object must be in plain view; and
2. Officers conducting the seizure must lawfully arrive at the position from which the object is plainly seen; and
3. Officers must have a lawful right of access to the object itself, apart from lawfully viewing the object; and
4. The object's incriminating character must be so immediately and sufficiently apparent that officers have probable cause to believe the object is contraband or evidence of a crime.



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#### **306.11 STRIP/BODY CAVITY SEARCHES**

Strip and body cavity searches are sometimes necessary for the safety of persons and/or to secure evidence of criminal activity. However, such searches are highly intrusive and must be conducted only when the justification can be clearly articulated, and then done only with proper regard for human dignity and privacy.

- (a) All cases of strip or body cavity searches will be documented in an incident report or supplement and include (at a minimum):
  1. Facts known to the officer that justify a strip/body cavity search; and
  2. Name and employee number of supervisor authorizing the search; and
  3. Place that the search was conducted (e.g., bathroom of suspect's residence, jail, doctor's office); and
  4. Name and employee number of all persons involved in the search; and
  5. The areas searched and results of the search.

##### 306.11.1 STRIP SEARCHES

Strip searches:

- (a) Will be conducted only with the approval of a supervisor.
- (b) Will be conducted in privacy, including only the number of officers necessary to maintain a safe situation.
- (c) Will be conducted **ONLY** by members of the same gender as the person to be searched. Should an officer of the same gender not be immediately available, the prisoner will either be secured until one can arrive, or the prisoner will be secured and transported to the jail where a jailer of the same gender will conduct the search.
- (d) If the individual to be strip searched is Transgender, Intersex, or Gender Non-Conforming, officers should ask that individual whether they prefer a male or female officer to conduct the strip search.

##### 306.11.2 BODY CAVITY SEARCHES

Other than for checking the mouth area, these searches will not be conducted by officers of this department. Should the need arise for this type of search, the prisoner will be transported to the jail where proper hygienic/medical resources are available. Only jail personnel will conduct the cavity search.

#### **306.12 RESIDENCES, OPEN FIELDS, AND ABANDONED PROPERTY**

##### 306.12.1 RESIDENCES

Every person has a reasonable expectation of privacy inside his home and a search of a residence will not be conducted without a valid search warrant, exigent circumstances, or valid consent. Individuals do not, however, generally have a reasonable expectation of privacy in areas around

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the home where the general public (e.g., mail carriers and solicitors) would reasonably be permitted to go.

Once lawfully inside a residence, officers may conduct a protective frisk of a subject if the officer has a reasonable belief that the person is armed and dangerous. In addition, the Fourth Amendment permits a limited protective sweep of a residence when the searching officer possesses a reasonable belief that the area to be swept harbors an individual posing a danger to those on scene. The sweep should not last longer than is necessary to dispel the reasonable suspicion of danger.

#### 306.12.2 OPEN FIELDS

Open fields do not provide the privacy expectation that is unique to the Fourth Amendment's safeguards of a "person's, houses, papers and effects." Officers must be mindful of the requisites of curtilage. The following are the factors the officers need to assess:

- (a) The proximity of the area to the home.
- (b) Whether the area is included within an enclosure surrounding the home.
- (c) The nature of the uses to which the area is put.
- (d) Steps taken by the resident to protect the area from observation by people passing by.

#### 306.12.3 ABANDONED PROPERTY

Abandonment occurs when a person discards or denies ownership of property in a public right of way or public spaces. To ensure admissibility of evidence, the following factors should be considered:

- (a) When making a trash run officers need to consider curtilage factors that fall within open fields.
- (b) Officers need to have an affirmative link to create probable cause between the discarded property and the target of the investigation.
- (c) The abandonment must be voluntary and not a result of police misconduct.



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## Mobile Fingerprinting Device

### 307.1 PURPOSE AND SCOPE

The purpose of this order is to establish guidelines for the appropriate use of the Mobile Fingerprinting Device (e.g., Blue Check).

### 307.2 MOBILE FINGERPRINTING DEVICE USE GUIDELINES

Only officers that have been trained in the use of a Mobile Fingerprinting Device may use the device.

- (a) The device may be used in an attempt to positively identify a person in the field when an officer has:
  - 1. Lawfully detained a person based on reasonable suspicion that the person may be involved in past, present, or future criminal activity; or
  - 2. Probable cause to arrest the person; or
  - 3. Arrested the person (e.g., custody arrest, field release); or
  - 4. Obtained a person's consent at any time. Consent must be documented as outlined in General Order 306 (Search and Seizure).
- (b) The device shall not be used on a juvenile or a person that is suspected to be a juvenile.

#### 307.2.1 IMPLIED CONSENT

Consent to submitting to the taking of a subject's fingerprints is implied when the subject is deceased or unconscious. Under implied consent circumstances, officers must receive supervisor approval prior to taking fingerprints.

### 307.3 USE OF FORCE

Officers shall not physically force a person to be fingerprinted.

### 307.4 INVENTORY

The Mobile Fingerprinting Device will be allocated to a specific shift or Unit and assigned to an officer that has been trained in the device.

- (a) The device will be part of the trained officer's inventory and the officer is responsible for the device.
- (b) If the trained officer leaves the shift or Unit, or promotes, the device shall be reassigned by the supervisor to another trained officer.



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## Misdemeanor Citations

### 308.1 PURPOSE AND SCOPE

Tex. Code of Crim. Pro. art. 14.06 permits law enforcement agencies to use citation release procedures in lieu of arrest for specified Class A or B misdemeanor offenses, and all Class C misdemeanor offenses with certain exceptions.

This order does not apply to juveniles under the age of 17, publicly intoxicated persons, or traffic citations. Officers shall refer to the following orders regarding these topics:

- (a) General Order 317 (Handling Juveniles).
- (b) General Order 342 (Traffic Enforcement).
- (c) General Order 309 (Handling Publicly Intoxicated Person).

### 308.2 STATUTORY REQUIREMENTS

A citation, or field release, is when the violator is released in the field without being transported to a jail facility for booking and magistration. The citation must contain notice of the time and place the subject must appear before a magistrate, the name and address of the subject, and the offense charged.

### 308.3 MISDEMEANOR CITATION USE

Officers shall issue misdemeanor citations as permitted by this order.

- (a) On-duty officers who decide to take enforcement action on a subject who commits a citation eligible misdemeanor offense shall, except as otherwise permitted by this Order, issue a citation when all considerations outlined in this order have been met, and no disqualifying circumstances exist.
- (b) Officers shall select the least intrusive or severe method when considering issuing a citation in lieu of arrest, which will:
  - 1. Stop existing criminal conduct; a subject's criminal history should not be a determining factor.
  - 2. Remove the imminent threat of violence or criminal conduct.
  - 3. Prevent persons from endangering themselves or others.
- (c) Supervisor approval is required to make a custody arrest in lieu of a citation for eligible offenses.
- (d) If an arrest is made in lieu of a citation for an eligible offense, the following must be documented in the offense report:
  - 1. Approving supervisor's name and employee number.
  - 2. Reason for the arrest in lieu of citation

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#### 308.3.1 GENERAL MISDEMEANOR CITATION CONSIDERATIONS

The following shall be considered when making the determination whether to issue a misdemeanor citation in lieu of custodial arrest and booking:

- (a) The subject has sufficient identification; and
- (b) The officer has reason to believe that release by citation will result in termination of the violation; and
- (c) The subject did not resist detention, assault anyone during the offense, or appear to be combative or violent.
- (d) For a misdemeanor offense that can be enhanced due to prior convictions, a criminal history check should be performed to determine if a subject is no longer eligible for a citation and would require a custody arrest.

#### 308.3.2 DISQUALIFYING CIRCUMSTANCES

A citation shall not be issued if the following situations are present:

- (a) The subject could not provide satisfactory evidence of personal identification. Some form of government photo identification is preferable. If a government photo identification is not available, officers shall use all reasonably available means to confirm the validity of the personal information provided by the person in custody. Officers shall document in their offense report what identification was used to establish the identity of the person in custody. If the person in custody cannot be positively identified and after all reasonable efforts to ascertain an identity have been made, officers will make a custody arrest and book the subject into jail. Officers shall document in their officer report what attempts were taken to establish the identify of the person in custody.
- (b) The officer has reason to believe that the safety of persons (including the subject) or property would be imminently endangered by the release of the subject.
- (c) The subject demands to be taken before a magistrate or refuses to sign the citation.
- (d) The offense is DOC 10 (Exposure) and the exposure appears to have been committed with sexual motivation.

#### 308.3.3 SUPERVISORY ORDERS

Supervisors will not order any subordinate to cite a person suspected of a misdemeanor violation of law witnessed by the supervisor but not witnessed by the subordinate unless:

- (a) The supervisor articulates the probable cause upon which the citation is based as soon as practicable; and
- (b) The supervisor is listed on the citation.

#### 308.3.4 INSTRUCTIONS TO CITED PERSON

The citing officer shall, at the time he asks the defendant to sign the notice to appear, call attention to the time and place for appearance and take any other steps he deems necessary to ensure that the defendant understands his written promise to appear (Tex. Code of Crim. Pro. art. 14.06).

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#### 308.3.5 INDIVIDUALS WITH ACTIVE WARRANTS

Persons with one or more outstanding arrest warrants shall be handled according to General Order 405 (Fugitive and Search Warrants). Secondary offenses which are eligible for a citation shall be handled according to this order.

#### **308.4 CLASS A AND CLASS B MISDEMEANOR CITATIONS**

In addition to the above considerations, officers must verify all of the following requirements in order to issue a Class A or B misdemeanor citation. If all the following requirements are not met, the subject is not eligible for citation and the officer is not required to contact a supervisor to make an arrest. The officer will document in their offense report why the subject was not eligible for a citation.

- (a) The offense is eligible for release by citation; and
- (b) The violator is not a juvenile; and
- (c) The violator committed the offense in:
  - 1. Travis County and the violator resides in Travis County; or
  - 2. Hays County and the violator resides in Hays County.

#### 308.4.1 ELIGIBLE OFFENSES

The following Class A and B misdemeanors are eligible for a release by citation:

- (a) Possession of Marijuana less than two (2) ounces - (Class B).
- (b) Possession of Marijuana of two (2) ounces but less than four (4) ounces - (Class A).
- (c) Criminal mischief where the value of the damage inflicted is \$100 or more, but less than \$750 - (Class B).
- (d) Graffiti where the value of the damage inflicted is \$100 or more, but less than \$750 - (Class B).
- (e) Graffiti where the value of the damage inflicted is \$750 or more, but less than \$2500 - (Class A).
- (f) Theft where the value of the property stolen is \$100 or more, but less than \$750 - (Class B).
- (g) Theft of Service where the value of the property and/or service stolen was \$100 or more, but less than \$750 - (Class B).
- (h) Driving While License Invalid - (Class A or B).

#### 308.4.2 DOCUMENTATION AND FILING PROCEDURES

The following documentation and required procedures shall be used when issuing a Class A or B Misdemeanor citation:

- (a) Officers shall complete a(n):
  - 1. Incident report with the appropriate title code(s); and
  - 2. PC affidavit that shall be notarized by a second officer.

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- (b) Write the incident number on any photos, documents, or receipts.
- (c) Attach a copy of the citation, PC affidavit, and any photos, documents, or receipts together to be turned in to the Class A or B Misdemeanor drop box by the end of the officer's tour of duty.
- (d) Follow the guidelines of General Order 618 (Property and Evidence Collection Procedures) when submitting narcotic or other evidence in relation to a Class A or Class B Misdemeanor Citation.

#### **308.5 CLASS C MISDEMEANOR CITATIONS**

Incident reports are generated by Central Records from the information on Class C Misdemeanor citations issued by officers. Having accurate and sufficient information (e.g. witness/victim information, property involved, brief narrative) on the front and back of a citation is critical for Central Records to complete these reports.

Class C Misdemeanor citation may only be used when the offense is a Class C Misdemeanor other than a traffic violation. Guidelines for issuing traffic citations are outlined in General Order 342 (Traffic Enforcement). Just as outlined in General Order 342.2 (Traffic Enforcement), Officers shall use the Department's electronic ticketing system instead of using paper field release citations. If a paper citation is issued, it shall be turned in to the officer's supervisor and General Order 342.2(d) shall be followed by the officer and the supervisor.

#### **308.6 MISDEMEANOR POSSESSION OF DRUG PARAPHERNALIA**

- (a) Class C misdemeanor citations may be issued to subjects found in possession of drug residue. The citation shall be titled Possession of Drug Paraphernalia.
- (b) An incident report with the appropriate title code(s) shall be completed.
- (c) The drug residue (non-usable amount) or object with drug residue, shall be seized and submitted according to General Order 618.4.2 (Submitting Narcotics and Narcotic Paraphernalia).
- (d) The misdemeanor citation(s) shall be turned in by the end of the officer's tour of duty.
- (e) This citation shall not be used in lieu of a Possession of Marijuana charge.

#### **308.7 THEFTS AND SHOPLIFTING**

- (a) Class C misdemeanor citations may be issued for theft or shoplifting if the property value is under \$100.
- (b) An incident report with the appropriate title code(s) shall be completed.
- (c) The stolen property (evidence) shall be properly photographed and returned to the business.
- (d) A sales receipt from the business shall be obtained clearly showing the value of the stolen property without sales tax.

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- (e) The misdemeanor citation(s), photograph and sales receipt(s) shall be turned in by the end of the officer's tour of duty.
- (f) A Class C - Attempted Theft citation shall not be used in lieu of a Class B theft.

**308.8 DRIVING WHILE LICENSE INVALID (DWLI)**

For all DWLI offenses, officers shall issue a Class C citation except under the circumstances listed below. If one or more of the following circumstances are present, officers may make an arrest or issue a citation as otherwise permitted by section 308.3 and 308.4 of this general order.

- (a) The subject's license is suspended for an offense involving the operation of a motor vehicle while intoxicated (e.g., Driving While under the Influence (DWI)).
- (b) The subject was involved in a collision where a CR3 is required to be completed, an officer finds the subject to be at fault for the collision, and the subject's DWLI offense is a Class A or B misdemeanor.

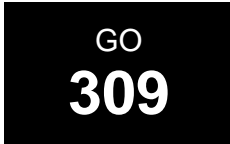
**308.9 MISDEMEANOR POSSESSION OF MARIJUANA (POM)**

For Class A and B POM offenses, officers should only make an arrest or issue a citation as otherwise permitted by section 308.3 and 308.4 of this order if doing so as part of:

- (a) the investigation of a high priority, felony-level narcotics case, or
- (b) the investigation of a violent felony.

In all other Class A or B POM cases, and when officers have probable cause to believe the substance is marijuana, officers shall seize the marijuana, write a detailed report titled "possession of marijuana" and release the individual if POM is the sole charge. Officers shall deposit the marijuana as evidence. In the event there are offenses in addition to POM, officers should take appropriate enforcement action for those additional offenses, but should not charge for the POM offense unless it meets one or both of the factors identified in paragraphs (a) or (b) of this order.





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## Handling Publicly Intoxicated Persons

### 309.1 POLICY

When encountering persons who are in violation of Texas Penal Code 49.02, and who meet the criteria outlined in this order, officers shall divert publicly intoxicated individuals to the custody of a responsible adult or the Sobering Center (herein referred to as the "Center") as an alternative to arrest (Tex. Code of Crim. Pro. Art. 14.031).

### 309.2 DEFINITIONS

**Active Aggression** - A threat or overt act of an assault (through physical or verbal means) coupled with the present ability to carry out the threat or assault that reasonably indicates that an assault or injury to any person is imminent.

**Intoxicated** - Not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body.

**Public Intoxication** - A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger themselves or another person.

**Sobering Center** - The sobering Center provides a safe environment for publicly intoxicated individuals to sober up and, when appropriate, initiate recovery. The Center is located at 1213 Sabine Street., Austin, Texas.

### 309.3 AUTHORITY

In lieu of arresting an individual who is not a child as defined by Texas Family Code, Section 51.02 and who commits an offense under Texas Penal Code, Section 49.02, a peace officer may release the individual if:

- (a) The officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and
  1. The individual:
    - (a) is released to the care of an adult who agrees to assume responsibility for the individual;
    - (b) verbally consents to voluntary treatment for substance use in a program at a treatment facility licensed and approved by the Health and Human Services Commission, and the program admits the individual for treatment; or
    - (c) verbally consents to voluntary admission to a facility that provides a place for individuals to become sober under supervision, and the facility admits the individual for supervision.
  2. The Center is able to serve as the responsible adult under the state law referenced in item "a (1)" above.

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**309.4 PERSONS NOT ELIGIBLE FOR THE CENTER**

The following persons are not eligible to be transported to the Center:

- (a) Intoxicated individuals less than 18 years of age. State law does not allow the Center to accept anyone less than 18 years of age. These individuals shall be handled in the following manner:
  - 1. Persons seventeen years of age and charged with public intoxication may be released to a parent or legal guardian or arrested and transported to jail.
  - 2. For juveniles (less than 17 years of age) investigated for public intoxication, refer to General Order 317 (Handling Juveniles).
- (b) Intoxicated individuals who are unconscious or experiencing any medical condition that requires attention from medical personnel.
- (c) Intoxicated individuals displaying signs of active aggression.
- (d) Intoxicated individuals who meet the criteria for a Peace Officer's Emergency Detention (POED).
- (e) Intoxicated individuals who cannot be positively identified.
- (f) Intoxicated individuals with a confirmed warrant.
- (g) Intoxicated individuals who are being charged with any additional offense other than those eligible for cite and release.
- (h) Intoxicated individuals who are suspected of driving under the influence of alcohol or other drugs.
- (i) Intoxicated individuals who are suspected of committing a sexual offense (e.g. Indecent Exposure, DOC Exposure, Lewd Conduct) at the time of their encounter with the officers, but officers are unable to file that charge at that time.

**309.5 PROCEDURES**

As set forth above, when circumstances meet the criteria outlined in this order, officers shall divert publicly intoxicated individuals to the custody of a responsible adult or the Center as the alternative to arrest.

Officers deciding to make a custody arrest for Public Intoxication of a person who is eligible for the Center shall consult with an on-duty supervisor. The arresting officer shall explain to the responding supervisor why the individual requires custodial arrest. The arresting officer shall document the approving supervisor's name, employee number, and reason for the arrest in the narrative of the offense report. In addition, the arresting officer shall document the reason for the arrest on the arrest report (AB) by choosing one of the applicable arrest reasons from the "Reason" drop down menu.

If an individual is intoxicated on a substance other than alcohol, the individual shall be handled in the same manner as if they were under the influence of alcohol.

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For individuals accepted by the Center, officers shall not issue a Class C citation for the offense of public intoxication.

#### 309.5.1 OTHER CLASS C CHARGES

If an individual arrested for public intoxication is to be charged with another Class A, B, or C misdemeanor offense eligible for a citation in lieu of arrest, the officer shall issue a citation when the person is taken to the Center or is released to the custody of a responsible adult.

#### 309.5.2 MEDICAL CONDITIONS

Officers observing persons whom they believe to be intoxicated are reminded that certain medical conditions can be mistaken for intoxication. Officers should ask the individual about any current medical conditions as well as check for a medical identification bracelet or other similar item that may indicate the person has a medical issue.

Any detainee who exhibits signs of possible acute alcohol intoxication (alcohol poisoning) or other serious medical condition shall be evaluated by Emergency Medical Services. If responding medical personnel determine that the individual requires transportation to a hospital for further treatment, officers may assist, but shall not transport the intoxicated person themselves. If the person is not being charged with a crime and does not pose an immediate threat to medical personnel, there is no need for officers to follow medical personnel to the medical facility.

Identifiable symptoms of acute alcohol intoxication may include:

- (a) Unconsciousness or semi consciousness
- (b) Repeated episodes of vomiting
- (c) Vomiting while sleeping or passed out and not waking after vomiting
- (d) Inability to walk or stand

#### 309.5.3 IDENTIFICATION

If an officer believes it is necessary to take an intoxicated individual into custody for his or her own safety or for the public's safety, the officer shall check the person's identification and check for outstanding warrants. Prior to an individual being taken to the Center, officers shall verify the person's identity. Some form of government issued photo identification is preferable. If this or other photo identification is not available, officers shall use all available means to confirm the validity of the personal information provided by the person in custody.

If the subject cannot be positively identified, officers will make a custody arrest.

#### 309.5.4 SEARCH AND TRANSPORT

When transporting publicly intoxicated individuals, officers shall handcuff, search, and transport them in accordance with General Order 321 (Care and Transport of Prisoners).

If an intoxicated individual is found to be in possession of illegal weapons or narcotics that are not eligible for the cite and release program, then a custody arrest will be made.

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#### **309.6 PROCESSING AT THE CENTER**

##### 309.6.1 PROPERTY

Center personnel are responsible for the inventory, safekeeping, and return of all property to individuals processed through the Center.

##### 309.6.2 MEDICAL SCREENING

All individuals transported to the Center will be subject to a medical evaluation by personnel at the Center. If medical issues are present that are beyond the scope of the services at the Center, personnel at the Center will assume custody of the intoxicated individual and arrange for medical transportation. Officers are not required to wait while medical transportation is arranged.

##### 309.6.3 DOCUMENTATION

Officers utilizing the Center shall complete the Center's public intoxication intake form available in the officer work area at the Center. Officers shall leave a copy of the form with the Center staff. Officers shall document the arrest and release to the Center with a Street Check by choosing the Street Check Type as "S – Sobriety Center-Public Intox" and the Street Check Reason as "S – Sobriety Center-Public Intox". The individual's personal information shall be entered into the "Entity" portion of the Street Check ensuring race and ethnicity are included. The Entity Role shall be entered as 20 – Arrested-Sobering Center. Multiple entities may be entered on the same Street check if arrested during the same incident. A text narrative detailing the arrest should be entered and any other pertinent information should be documented in the text portion of the Street Check.

An offense report shall not be utilized to document a Public Intoxication arrest that is released to the Sobriety Center if that is the only involvement.

In addition to a street check, an offense report will be completed in the following circumstances:

- (a) To document any other offenses for which the individual(s) received a citation in lieu of arrest.
- (b) If a Use of Force details page is necessary.

#### **309.7 REMOVING INDIVIDUALS FROM THE CENTER**

During the Center's intake procedure the staff may reject the admission of a person for reasons discovered during this process. When this occurs, the officer will transport the person to central booking and document why this occurred in their offense report, including the name of the Center staff who rejected the admission.

Intoxicated individuals who remain within the Center may not be charged with public intoxication because the Center is not considered a public place.



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## Handling Juveniles

### 317.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidance and direction for processing and handling juvenile offenders within APD's jurisdiction. Juveniles are afforded equal protection under the law; however, there are differences in the manner in which juveniles are handled under Texas law.

Employees are responsible for participating with and supporting the ideals set forth in Title 3 of the Texas Family Code. These provisions are:

- (a) To provide for the protection of the public, and public safety.
- (b) Consistent with the protection of the public and public safety:
  1. To promote the concept of punishment for criminal acts; and
  2. To remove, when appropriate, the taint of criminality from children committing certain unlawful acts; and
  3. To provide treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct.
- (c) To provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions.
- (d) To achieve these purposes in a family environment whenever possible, separating the child from the child's parent only when necessary for the child's welfare or in the interest of public safety and, when the child is removed from the child's family, to give the child the care that should be provided by parents.
- (e) To provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

#### 317.1.1 DEFINITIONS

**Child/Juvenile:** a person who is (Tex. Fam. Code § 51.02(2)):

- (a) 10 years of age or older and under 17 years of age, or
  - (b) 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.
- *The ages of children who come within various classifications of offenses may vary in each instance. Note carefully the age limitations in each situation as set forth by law.*

**Conduct Indicating a Need For Supervision:** Conduct, other than a traffic offense, that is punishable by a fine only or would not be a criminal offense if committed by an adult (e.g., runaway, curfew violation). (Tex. Fam. Code § 51.03 (b))

**Custody:** A child is considered "in custody" when they would be considered "under arrest" if the child was an adult.

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**Delinquent Conduct:** Conduct, other than a traffic offense, that if committed by an adult is punishable by imprisonment or confinement in jail. (Tex. Fam. Code § 51.03 (a))

**Detention:** A detention situation exists when an officer detains a child for a short period for investigative purposes.

**Status Offender:** Generally, a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult. (Tex. Fam. Code § 51.02(15))

#### 317.1.2 CONFIDENTIALITY

The confidentiality of names of juveniles and their records is mandated by state law. The following guidelines will be strictly followed:

- (a) The names of juvenile offenders will not be released to the news media or any other person not involved in the judicial or diversion process.
- (b) A juvenile defendant or juvenile suspect shall not be named in any public document, including an affidavit for an arrest warrant involving an adult co-defendant or in an affidavit for a search warrant. However, there may be times when an investigator believes that naming a juvenile in the affidavit is essential. In those cases, an assistant district attorney assigned to juvenile court should be contacted in order that alternatives (other than naming the juvenile) can be explored.
- (c) Information on juveniles collected during the course of business may be released/disseminated under the following circumstances:
  1. Information required to be collected for the "juvenile justice information system" will be forwarded to the Department of Public Safety (DPS);
  2. Information compiled during investigation of a criminal combination may be released to other criminal justice agencies or any court having jurisdiction over a child;
  3. Information concerning missing children may be entered into NCIC; and
  4. Information concerning children adjudicated of sexual offenses and required to register with the Department as sex offenders will be forwarded to DPS.
- (d) Physical files and records concerning juveniles shall not be open to public inspection, and shall be open to inspection only by a juvenile justice agency or criminal justice agency.
- (e) If an investigator believes obtaining a warrant for the arrest of a juvenile offender is necessary the investigator will present the probable cause affidavit and arrest warrant to a magistrate for approval and signature.
  1. The municipal court clerk currently issues the warrant a "J" number but will not retain the affidavit or warrant on file.
  2. The investigator will provide the original arrest affidavit and warrant to the Warrant Office to be entered. The original warrant and affidavit will be retained by the Warrant Office until the juvenile is taken into custody.

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3. Upon apprehension of the juvenile the original affidavit and warrant will be forwarded to Gardner-Betts. Copies of the affidavit and warrant will be retained in the investigative file.
- (f) An affidavit for a search warrant on a juvenile offender should be submitted to a juvenile court judge to obtain the search warrant. Record of the search warrant will be retained by the juvenile court.
- (g) All juvenile arrest files and records, when not in use, shall be secured. Under no circumstances will juvenile arrest records be mingled with adult records.

### **317.2 CUSTODY OF JUVENILES**

#### 317.2.1 TAKING A JUVENILE INTO CUSTODY

- (a) Section 52.01 of the Texas Family Code states that a child may be taken into custody:
  1. Pursuant to an order of the Juvenile Court.
  2. Pursuant to the laws of arrest.
  3. By a law enforcement officer, if there is probable cause to believe that the child was engaged in:
    - (a) Conduct that violates a penal law of this state or a penal ordinance of any political subdivision of this state; or
    - (b) Delinquent conduct or conduct indicating a need for supervision.
  4. By a probation officer if there is probable cause to believe that the child has violated a condition of probation imposed by the juvenile court.
  5. Pursuant to a directive to apprehend.
- (b) In place of taking a child into custody, state law allows a peace officer to issue a field release citation for a traffic offense or an offense, other than public intoxication or possession of marijuana, punishable by fine only.
- (c) State law does not require that a warrant be issued to take a child into custody for a past offense, as long as there is probable cause to believe that the child committed the offense. In making warrantless arrests, patrol officers will follow the direction of an investigative unit and/or their supervisor.
- (d) Officers will apply the same probable cause standard for juveniles as that used for adult offenders.
- (e) Officers are encouraged to contact their Sector Detective Unit for advice regarding the probable cause for arrest, the type of charge, disposition of the juvenile, or to provide any other assistance needed.

#### 317.2.2 EMERGENCY MEDICAL TREATMENT

Children taken into custody that are believed to suffer from a serious physical condition or illness and requires prompt treatment should be seen by EMS and/or transported to a medical facility.

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#### 317.2.3 REQUIRED PARENT NOTIFICATION

In contrast to detention situations, the law requires that a child's parent/guardian be promptly notified when the child is in police custody.

- (a) If a child is taken to a Juvenile Detention Facility, intake personnel will typically make the parent notification. However, at times, they may need assistance from APD when a parent/guardian cannot be contacted by phone. In that case, intake personnel may request that APD attempt to contact the parents in person by calling Communications.
- (b) In the event that a child taken into custody is brought directly to an APD facility to be interviewed, it is the responsibility of the arresting officer to make parent/guardian notification or coordinate that notification with the appropriate investigator.
- (c) Officers shall indicate on the juvenile facility booking form and in an incident report information regarding contact with the juvenile's parent/guardian.

#### 317.2.4 SEPARATION REQUIREMENTS

Juveniles shall not be transported in the same vehicle with adults who are suspected of or charged with criminal acts. Juveniles shall be separated at any and all times by sight and sound from adults detained in the same building. Separation requires that adults and juveniles in detention are unable to see each other or to converse (Tex. Fam. Code § 51.12).

#### 317.2.5 RELEASING A JUVENILE FROM CUSTODY

- (a) When releasing a juvenile from custody, officers should take reasonable steps to release him to his custodial parent or guardian.
- (b) If a custodial parent or guardian is not available and officers need to release the juvenile to someone else, the following guidelines shall be followed:
  1. Run a check for any protective order regarding the adult with whom placement of the juvenile is being considered.
  2. Complete warrant and criminal history checks to ensure the juvenile is not being placed with a wanted or dangerous felon.
  3. Contact Child Protective Services' Law Enforcement Number (the number is available through APD Communications) and request a CAPS (Child/Adult Protective Services) check be done to ensure the juvenile is being placed in a safe environment with no abuse history through CPS. The CPS worker answering the phone will need the following information on the person with whom you want to place the child:
    - (a) Name, address, and any other pertinent identifying information.
    - (b) The CPS worker will ask you for a phone number to call in order to verify your identity and provide any history on the subject. Officers shall provide the phone number for the Communications supervisor. (This process should take approximately 10 minutes).
  4. Fully identify the person with whom the juvenile is being placed and any CPS related information in the incident report.



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#### **317.3 JUVENILE DISPOSITIONS AND REQUIRED DOCUMENTATION**

An officer who has detained or arrested a child for conduct indicating a need for supervision, delinquent conduct, or a traffic offense will use the following guidelines for disposition of the child.

The paperwork and procedures for taking custody of a juvenile varies depending on the type of conduct.

##### **317.3.1 CONDUCT INDICATING A NEED FOR SUPERVISION**

- (a) **Class C Misdemeanors:** are punishable by fine only and fall under the jurisdiction of Municipal Court. Juveniles who commit Class C Misdemeanors shall be issued citations.
- (b) **Child in need of supervision:** Officers encountering juveniles who are not violating any criminal law, but who are in potentially hazardous situations, should be familiar with Family Code section 262.110. This law permits a law enforcement officer to take temporary custody of a child without a court order if the officer finds the child in a situation that poses a danger to the child's physical health or safety. The officer may take custody of the child under the law when the sole purpose is to deliver the child without unnecessary delay to the child's parent, guardian, caretaker, or custodian who is entitled to possession of the child.
  - 1. Officers who take temporary custody of a child under this provision will write a report (Child in Need of Supervision) specifically identifying the conditions that placed the child's physical health or safety at risk.
- (c) **Runaways:** When an officer establishes that a juvenile is a runaway, every attempt should be made to transport the runaway home for release to a custodial parent or guardian, or have the custodial parent or guardian meet the officer at the scene for release. If the officer is not able to contact a custodial parent or guardian, the officer shall follow the guidelines for "Releasing A Juvenile From Custody" as outlined in this order. If a juvenile cannot be released to an appropriate adult, the following guidelines shall be followed:
  - 1. Transporting
    - (a) If the initial runaway report was generated by any agency within Travis County, the juvenile shall be taken to Life Works. Any forms required by the facility shall be completed.
    - (b) If the runaway report was generated by an agency outside of Travis County, the juvenile shall be taken to Gardner-Betts. A booking sheet shall be completed.
  - 2. Reporting
    - (a) If the original report was generated by APD, a supplement shall be written to the original report.
    - (b) If the original report was generated by any agency other than APD, an incident report shall be initiated and titled "Recovered Runaway."

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- (d) **Possible Custody Situations:** The following situations are typically considered conduct indicating a need for supervision though sometimes circumstances dictate that transport to a detention facility may be required. If a juvenile is transported to a detention facility for any of the following offenses, the officer is required to complete a booking sheet.
1. **Driving Under Influence (DUI):** Officers shall adhere to the guidelines outlined in General Order 355 (DWI Enforcement) for how to handle Juvenile DUI/DWI arrests.
  2. **Family Violence Assault By Contact/Threat:** If necessary to preserve the peace and eliminate the possibility of further violence, a juvenile may be taken into custody and transported to the appropriate juvenile detention facility if they are involved in a family violence situation and commit a Class C misdemeanor offense such as "assault by contact" or "assault by threat" in the presence or view of a peace officer.

## 317.3.2 DELINQUENT CONDUCT

- (a) Juveniles taken into custody for delinquent conduct (Class B misdemeanors or above) shall be processed and booked as follows:
1. **Travis County:** The juvenile shall be transported to Gardner-Betts where the officer will fingerprint the juvenile and complete all necessary booking paperwork for intake into the facility. Any accompanying paperwork shall be submitted to the Gardner-Betts intake officer. The officer will also complete an APD Arrest Booking (AB) report and General Offense (GO) report via MRE and upload both reports to Versadex.
    - (a) If the identification of the juvenile is in question, officers may transport the juvenile to the APD ID Section to attempt positive identification prior to taking the juvenile to Gardner-Betts.
  2. **Williamson County:** The juvenile shall be transported to the Williamson County Juvenile Justice Center for processing and booking. Any accompanying paperwork (e.g., booking sheet, receipts, pictures) shall be forwarded to the appropriate Area Command Investigative Unit for disposition.
  3. **Hays County:** Upon taking a juvenile into custody in Hays County, officers shall call the 24 hour intake number for the Hays County Juvenile Detention Center at (512)393-5220, ext 11201 for approval prior to transport. If the officer is denied approval for intake, the officer shall notify his immediate supervisor and follow the guidelines for "Releasing A Juvenile From Custody" as outlined in general orders. The juvenile shall be transported to the APD ID Section for processing, followed by booking at the Hays County Juvenile Detention Center. Any accompanying paperwork shall be turned in to the Hays County Juvenile Detention Center intake officer.
- (b) In certain instances, processing of a Juvenile is not required. Juveniles may be transported directly to the appropriate Juvenile Detention Facility and booked when:

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1. Any warrant or directive to apprehend issued by TYC or Juvenile Court (e.g., probation violation warrants, escape from TYC warrants).
  2. Any warrant or directive to apprehend a child where the child was already processed for the original charge.
  3. Any offense that occurred prior to Jan. 1, 1996.
- (c) If a juvenile is taken into custody for DWI, the juvenile shall be transported directly to an Intoxilyzer room and requested to perform any tests prior to processing and booking.
- (d) If an officer is booking a juvenile for delinquent conduct and also chooses to file a Class C charge, the officer shall issue the juvenile a misdemeanor citation for the Class C violation(s). Class C charges shall NOT be placed on the booking sheet.
- (e) A juvenile taken into custody for delinquent conduct shall not be released to a parent/guardian until the child has been processed and booked at the appropriate Juvenile Detention Facility.

#### 317.3.3 TRAFFIC OFFENSES

Juvenile traffic violators should be handled in the same manner as adult violators.

#### **317.4 INFORMATION NEEDED BY A JUVENILE DETENTION FACILITY**

Under the provisions of the Family Code, pending a hearing, a child taken into custody will be released immediately by the Juvenile Court to a parent unless certain designated circumstances exist. Officers should inform intake personnel the following facts, when known:

- (a) The child is likely to abscond or be removed from the jurisdiction of the court.
- (b) Suitable supervision, care or protection is not being provided to the child by a parent, guardian or other person.
- (c) The child has no parent, guardian or other person able to return them to the court when required.
- (d) The child may be a danger to themselves or may threaten the safety of the public if released.
- (e) The child has previously been found to be a delinquent child or has been previously convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

#### **317.5 JUVENILE INTERVIEWS, INTERROGATIONS AND STATEMENTS**

##### 317.5.1 TYPES OF STATEMENTS

- (a) The following types of statements made by juvenile suspects are admissible as evidence under the Family Code:
  1. **Res Gestae** - spontaneous statements made by children may be used as if they were made by an adult.

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2. **Statements leading to the discovery of evidence** - defined as oral statements of fact or circumstances that are true, which tend to establish the child's guilt, such as finding secreted or stolen property or the instrument with which the child states the offense was committed.
  3. **Custodial Statements** - An oral or written statement by a child in custody, detention or confinement is admissible if, before giving the statement, the child has been given the Miranda warning by a magistrate. This warning must be given out of the presence of police officers or prosecutors. An exception would be under circumstances when it is deemed necessary to have an officer present for the magistrate's protection.
    - (a) **Oral Statements:** The statement must be recorded by an electronic recording device (video camera or digital video camera) and, before making the statement, the child receives the Miranda warning by a magistrate as described above and the warning is made part of the recording.
    - (b) **Written Statements:** The written statement must be reviewed with the juvenile, and signed, in front of the magistrate and out of the presence of police officers or prosecutors unless necessary for the magistrate's protection.
- (b) The Family Code does not preclude the admissibility of other types of statements, including those that "do not stem from custodial interrogation." The admissibility of such statements will depend upon the circumstances surrounding the taking of the statement and the facts of the case.

#### 317.5.2 WORKING WITH PARENTS

A child's parent or guardian has personal legal responsibility for the child's welfare and behavior. The Department recognizes this responsibility and police officers will work with parents as closely as possible in interviewing children. Examples of procedures that help parents are:

- (a) Explaining a child's illegal or suspicious behavior as soon as possible.
- (b) Responding with patience and understanding to questions that are defensive or reflect a parent's fears about police procedures and the court system.
- (c) When reasonable, giving parents advance notice that their child will be interviewed or interrogated.

#### 317.5.3 GENERAL GUIDELINES FOR INTERVIEWING JUVENILES

- (a) The Department encourages officers to adjust their interviewing style to be sensitive to each person's age and experience, remaining consistent with the Department's commitment to treat all people with respect. The more approaches an officer can use, the more cooperation they can achieve with each child.
- (b) **Interviews:** An interview takes place when a juvenile witness or victim of a crime is questioned. It is not necessary to administer rights or to have the parents or guardians

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present. If a child implicates themselves during the interview, the interview shall be stopped and the procedures for interrogation followed.

(c) **Age Considerations:**

1. If the child is too young or mentally incompetent to render a decision, the parents or guardians should be present.
2. Interviewing children under the age of 13 should be done at the Center for Child Protection, especially when the child is the victim of a violent offense.

#### 317.5.4 GENERAL GUIDELINES FOR INTERROGATING JUVENILES

(a) **Interrogations:** An interrogation is the questioning of a juvenile who is suspected of a status or criminal offense.

1. **On-scene Interrogation:** Street interrogations should be avoided until after the juvenile can be processed unless it is absolutely necessary for the preliminary investigation. However, street interviews often present exigent circumstances that demand immediate action from the responding officer. Suspects, weapons and evidence may be lost if information is not immediately obtained. Officer safety, safety of the public, and the need to obtain basic information are considerations that patrol officers must deal with in making decisions regarding the street interrogation of a juvenile. The general rules of interrogation and admissibility of evidence apply to juveniles, with additional requirements existing for custodial interrogations.
2. **Non-Custodial Interrogations:**
  - (a) Juveniles are not in custody when they are voluntarily brought in by a parent or guardian. Therefore, no magistrates' warning is required prior to taking a confession under these circumstances.
  - (b) Officers should be aware of any factor that might negate the non-custodial status of the interrogation and affect the admissibility of the statements obtained. For example, giving a child a ride to the station, even if the child accompanied the officer voluntarily and with the consent of their parents, could be interpreted by the courts as an indication that the juvenile was "in custody."
  - (c) Juveniles who have given voluntary non-custodial confessions will not be immediately taken into custody. They will be released to a parent/guardian. If probable cause for arrest is developed through the confession or otherwise, a juvenile warrant may be obtained. Failure to follow this procedure could taint the voluntariness of the confession.
3. **Custodial Interrogations:** The Miranda warning administered by a magistrate must precede all custodial confessions. Prior to conducting a custodial interrogation of a juveniles, employees will confer with the juvenile and parents or guardians to explain agency and juvenile justice system procedures. The custodial interrogation of a juvenile may take place in two types of situations; the exact procedures to be followed vary depending on the situation.

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- (a) **At a Juvenile Processing Office:** The interrogation of a juvenile may take place at a juvenile processing office if the juvenile is transported there immediately after the juvenile is taken into custody. While at the juvenile processing office the guidelines of Family Code Section 52.025 must be strictly adhered to:
1. The child may not be left unattended.
  2. The child is entitled to be accompanied by a parent, guardian, or attorney.
  3. The child may not be detained in the juvenile processing office for longer than six (6) hours.
  4. Under normal circumstances, no more than 2 detectives should be actively engaged in the interrogation of the child.
- (b) **At a Juvenile Detention Facility:** To interview a juvenile who has been booked into Gardner-Betts or the Williamson County Juvenile Justice Center, APD must request the juvenile be returned to APD custody for an interrogation or other follow-up. Gardner-Betts or Williamson County Juvenile Justice Center personnel will rule whether the request will be granted.
1. The investigator will call Gardner-Betts or the Williamson County Juvenile Justice Center in advance to arrange for a custody transfer.
  2. Unless the interview occurs at the detention facility, the interview will only take place in a designated Juvenile Processing Office that is in accordance with CCP Sec. 52.025.
  3. Upon completion of the interview/statement the juvenile must be returned to the custody of Gardner-Betts or the Williamson County Juvenile Justice Center.

### **317.6 FINGERPRINTS AND PHOTOGRAPHS**

- (a) Except as listed in section (d) below, juveniles may be photographed or fingerprinted only under the following circumstances consistent with provisions of the Family Code:
1. With consent of the Juvenile Court (e.g., via a court order).
  2. If the child is taken into custody for conduct that is a felony, or a misdemeanor punishable by confinement in jail.
  3. If the child is not in custody and the child's parent or guardian voluntarily consents in writing to the photographing or fingerprinting of the child.
- (b) The fingerprints of a juvenile suspect in a criminal case where latent prints were obtained may be used for comparison purposes only if the prints were obtained in a manner allowed by the Family Code.
- (c) The photograph of a juvenile suspected in connection with a criminal case where it is believed the photograph will help in the identification of the offender (e.g., a photo

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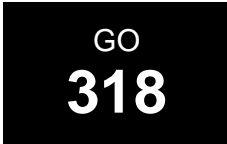
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lineup) may be used only if it was obtained in a manner allowed by the Family Code unless it is publicly available (such as in a school yearbook).

(d) **Exceptions:** Restrictions on fingerprinting/photographing juveniles do not apply in the following situations:

1. If the photographs/fingerprints are obtained as part of the registration process for a juvenile required to register as a sex offender under CCP Section 62.
2. If the child is a victim or witness, and photographs are needed for evidentiary or documentary purposes (e.g., photographs of injuries, or videotaped statement of a child victim/witness).
3. If a child has had access to a crime scene but is not a suspect, and their prints are needed for comparison to latents for elimination purposes.



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## Detentions, Field Interviews & Field Photographs

### 318.1 PURPOSE AND SCOPE

The purpose of this order is to establish guidelines for conducting and documenting detentions, interviews, and taking and retaining photographs of subjects in the field.

#### 318.1.1 DEFINITIONS

**Consensual Encounter** - Occurs when an officer contacts an individual but does not create a detention through words, actions or other means. In other words, a reasonable individual would believe that his contact with the officer is voluntary.

**Custody** - A person is in "custody" only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest. Custody can be construed as actual or constructive; therefore it is incumbent upon the officer to be conscious of the subject's belief about whether or not he is free to leave.

**Detention** - The brief stopping of an individual based on reasonable suspicion for the purposes of determining the individual's identity and resolving the officer's suspicions.

**Field Observation (FO) Card** - The documentation of a subject stop when there is not a corresponding incident report, supplement or citation for the stop.

**Field Photographs** - Posed photographs taken of a person during a contact, detention or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a Mobile Audio Video system when persons are not posed for the purpose of photographing are not considered field photographs.

**Reasonable Suspicion** - Occurs when, under the totality of the circumstances, an officer has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

### 318.2 GENERAL POLICY

- (a) Officers will identify themselves when they initiate a duty-related contact with a person, when practicable, unless their identity is obvious.
- (b) Officers will explain the reason for the contact and the purpose of anticipated police action, when practicable.
- (c) Officers will act with as much restraint and courtesy toward persons interviewed, detained or arrested as is possible under the circumstances.
- (d) Nothing in this order is intended to discourage consensual encounters. Frequent and random casual contacts with consenting individuals are encouraged by the Austin Police Department to strengthen our community involvement, community awareness and problem identification.



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### **318.3 DETENTIONS**

Detentions are "seizures" under the Fourth Amendment. Officers may stop and question individuals when reasonable suspicion that the person may be involved in past, present or future criminal activity exists.

- (a) In justifying the stop, officers should be able to point to specific facts which, when taken together with rational inferences, reasonably warrant the stop. Such facts include, but are not limited to, the following:
  - 1. The actions, appearance or demeanor of an individual suggests that he is part of a criminal enterprise or is engaged in a criminal act. Some factors include:
    - (a) The subject is carrying a suspicious object.
    - (b) The subject's clothing bulges in a manner that suggests he is carrying a weapon.
    - (c) The hour of day or night is inappropriate for the subject's presence in the area.
    - (d) The subject's presence in the particular area is suspicious.
  - 2. The subject is located in proximity to the time and place of an alleged crime.
  - 3. The officer has knowledge of the subject's prior criminal record or involvement in criminal activity.
- (b) Officers may detain persons they lawfully stop for a reasonable length of time in an attempt to:
  - 1. Verify their identity. (Officers should be familiar with Penal Code Section 38.02. Persons are not required to identify themselves unless they are under arrest; however, if they are legally detained and choose to identify themselves, they must do so accurately.)
  - 2. Account for their conduct and/or their presence.
  - 3. Discover whether a crime occurred.
  - 4. Determine person's involvement.
- (c) Officers shall release a person from an investigative stop if:
  - 1. The person eliminates the officer's reasonable suspicion of criminal involvement;  
or
  - 2. The officer fails to develop the probable cause necessary to arrest within a reasonable time.

#### **318.3.1 HANDCUFFING DETAINEES**

- (a) As a practice, officers should not handcuff lawfully detained individuals. However, situations may arise where it may be reasonable to handcuff a lawfully detained individual.
- (b) Some factors reasonably causing an officer to handcuff a detained individual include, but are not limited to:

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1. physical resistance;
  2. verbal threats against the officer or others nearby;
  3. investigation of a violent crime or a crime involving weapons; or
  4. reliable information that the person is armed (without appropriate license), the person is violent, or is a flight risk.
- (c) Officers should weigh the safety interests of all involved individuals against unreasonable intrusion upon a detainee when deciding to place handcuffs on a detainee.
- (d) Unless arrested, handcuffing detainees at the scene of a search warrant should continue for only as long as is reasonably necessary to ensure the safety of officers and others.
- (e) If not documented in a report, officers will document their justification for handcuffing a detainee for a limited investigation, with a Street Check/Field Interview report.
1. Officers will check "detained" in the Reason field dropdown list.
  2. Officers will justify handcuffing the detainee in the Remarks field.

### 318.3.2 DETAINING FOREIGN NATIONALS

Refer to General Order 330 (Interactions with Foreign Nationals).

### 318.3.3 REQUESTS FOR ASSISTANCE FROM FEDERAL IMMIGRATION OFFICIALS

- (a) Upon request, officers may provide reasonable or necessary assistance to ICE (or other federal immigration officials), including with enforcement operations if those operations will be directed and supervised by federal officials. Except in emergencies involving the possibility of imminent death, serious injury, or loss of property, officers must receive approval from supervisors holding the rank of Lieutenant or higher prior to providing any such assistance. The supervisor will determine whether the request is reasonable or necessary based on factors including:
1. the availability of Department resources and personnel that are appropriate for and trained to perform the requested task;
  2. whether providing the requested assistance would pose an unreasonable risk to public safety or to Department personnel or property;
  3. whether providing the assistance would assist with stopping criminal activity; and
  4. whether providing the requested assistance would cause the Department to incur unreasonable overtime costs.
  5. The urgency of the request.
- (b) Officers (including officers working secondary employment) shall not provide assistance to ICE for operations at a place of worship unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.

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- (c) Officers working secondary employment for a hospital, religious organization, school district, or open enrollment charter school shall not provide assistance to ICE for operations unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.
- (d) Officers providing immediate or planned assistance to ICE shall create a GO using title code 3499-1 – Assist Other Agency – ICE. A CAD call will be generated for each report, and every officer on scene will log into that call. Direct entry Versadex reports will not be permitted. The following items shall be documented in the GO:
  - 1. The name of the outside agency and the personnel who requested the assistance;
  - 2. The number of APD officers who assisted and the amount of time expended by each officer;
  - 3. The number of persons arrested, if known;
  - 4. The number of persons charged and the specific charges that were applied, if known;
  - 5. Any Department information or intelligence shared with ICE (no report is required for this item if the information or intelligence shared is otherwise documented pursuant to unit SOPs);
  - 6. Any additional resources used (e.g. canine units, helicopter, SWAT, etc.); and
  - 7. Any information provided by APD that is shared with a federal immigration enforcement agency at the request of a federal immigration agency (no report is required for this item if the information or intelligence shared is otherwise documented pursuant to unit SOPs).
- (e) Only the Chief of Police has the authority to enter into any formal, written agreement with ICE for ongoing operations, such as a 287G agreement.

#### 318.3.4 ICE DETAINER REQUESTS

The purpose of this order is to establish guidelines for handling ICE detainers. All officers are expected to comply with, honor, and fulfill formal immigration detainer requests issued by ICE.

- (a) An officer who receives information that a detainee or arrestee in his/her custody is the subject of an ICE detainer request, will take the following actions:
  - 1. Notify a supervisor.
  - 2. Notify ICE to determine the validity of the detainer.
  - 3. Comply with the detainer request if its validity is confirmed.
  - 4. Inform the person he/she is being held subject to a detainer (in addition to any applicable criminal charges).
  - 5. Take the person to the Central Booking Facility or other suitable detention facility.

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- (b) If the person subject to the detainer provides proof, including a Texas Driver's License or other government issued identification, that he/she is a United States citizen or has lawful immigration status, the officer will do the following:
1. Notify a supervisor.
  2. Notify ICE and provide an update.
  3. Cease from complying with the detainer request.
  4. Unless impracticable to do so, officers will make and retain a copy of the proof that was offered by the subject. The retained copy may be scanned into the Versadex report or submitted as evidence.
  5. If the officer is unsure whether the proof provided is adequate proof of U.S. citizenship or lawful immigration status, the officer should continue honoring the detainer request until definitive proof is provided.

#### 318.3.5 MAINTENANCE AND SHARING OF IMMIGRATION RECORDS

From time to time, the Department may have records with information, or need information, concerning a detainee's or arrestee's immigration status, including information concerning that person's place of birth (Immigration Status Information). Employees are permitted to:

- (a) Send, request, or receive Immigration Status Information to or from federal agencies involved in immigration enforcement;
- (b) Maintain Immigration Status Information pursuant to applicable records retention schedules; and
- (c) Exchange Immigration Status Information with other law enforcement agencies, or with federal or state governmental entities.

#### 318.3.6 DETAINING FEDERAL AND STATE LEGISLATORS

General Order 319 (Arrests) outlines procedures for arresting Federal and State Legislators.

#### 318.4 CONSENSUAL ENCOUNTERS

Officers are encouraged to initiate interviews with people of the community in order to gain a thorough knowledge and become an integral part of the community.

- (a) Except as specifically prohibited by general orders, officers may talk to a person at any time, for any reason, in performance of their duties.
- (b) An interview should be conversational and not confrontational.
- (c) A consensual encounter is not a stop or arrest and there is no intent to inhibit any rights or freedoms of a person. The person has the right to:
  1. Fail to respond to the officer.
  2. Refuse to identify himself.
  3. Walk away from the officer.
- (d) Negative inferences will not be made based on a person's refusal to cooperate in the interview.

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- (e) Still photographs of persons interviewed during a consensual encounter shall not be taken without the person's permission. Verbal consent shall be captured using the BWC recording system. When the BWC system is unavailable, the DMAV system shall be used. The officer shall document the consent in the appropriate incident report, supplement, or FO card. Officers should refer to General Order 303 (Body Worn Camera Systems) for further guidelines.
- (f) Officers will not inquire into a person's immigration status during a consensual encounter.

### **318.5 FIELD INTERVIEWS, STATEMENTS AND CONFESSIONS**

The basis of a statement or confession is to corroborate the elements of an incident. Written and oral statements or confessions should not be utilized as the sole basis for filing charges; any statement or confession should be corroborated by other legally obtained evidence or verified in an appropriate manner. Officers should keep in mind the following things when interviewing/interrogating a subject:

- (a) During a non-custodial interview, an officer will usually allow a subject to leave after taking the statement or confession. A warrant can be obtained at a later time to take the subject into custody.
- (b) There may be occasions when information is disclosed that changes the focus of the investigation toward the subject, where the facts and circumstances of the case dictate that he is no longer free to leave changing the non-custodial interview to a custodial interrogation.
- (c) When an officer begins accusatory questioning of a subject who is not free to leave, the subject would generally be considered under "arrest" and the interview/interrogation would be "custodial."
- (d) Once a subject requests to speak with an attorney or indicates a desire for legal representation, the interview/interrogation will cease.

#### **318.5.1 MIRANDA WARNING**

- (a) Officers will administer the Miranda Warning to a subject during a custodial interview/interrogation when questioning begins to focus on the person stopped, becoming accusatory regarding a specific offense.
- (b) The Miranda Warning will be recorded by audio/video recording (e.g., in-car Mobile Audio Video Recording system, Body-Worn Cameras) using the following process:
  1. Read the Miranda card to the subject in its entirety; and
  2. Ensure the subject acknowledges, understands, and voluntarily waives his rights by:
    - (a) Write the officer's name and the date, time, and incident number on the face of the card; and
    - (b) If practical, request the subject to initial next to each Miranda right and sign the card. If the subject has verbally acknowledged understanding and

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waiving his rights but does not sign the card, the interview/interrogation may still continue.

3. Officer safety should not be compromised during a field interview/interrogation in order to record acknowledgment of rights.

#### **318.6 FIELD PHOTOGRAPHS**

- (a) Field photos should only be used for:
  1. Identification of a subject or a subject's automobile.
  2. Identification of a subject's condition (e.g., injuries, tattoos, evidence stains on clothing, jewelry, distinctive clothing/shoe patterns).
  3. Documenting evidence.
- (b) Access to field photographs shall be strictly limited to law enforcement purposes.
- (c) Force shall not be used to obtain photos in a detention situation.

##### **318.6.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT**

Still photographs may be taken when the subject of the photograph knowingly and voluntarily gives consent. Verbal consent shall be captured using the BWC recording system. When the BWC system is unavailable, the DMAV system shall be used. The officer shall document the consent in the appropriate incident report, supplement or FO card. Officers should refer to General Order 303 (Body Worn Camera Systems) for further guidelines.

##### **318.6.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT**

Field photographs may be taken without consent only if taken during a detention that is based on reasonable suspicion of criminal activity and the photograph serves a legitimate law enforcement purpose related to the detention.

- (a) The officer must be able to articulate facts that reasonably indicate that the subject was involved in, or was about to become involved in, criminal conduct.
- (b) Mere knowledge or suspicion of gang membership or affiliation is not a sufficient justification for taking a photograph without consent.
- (c) If, prior to taking a photograph, the officer's reasonable suspicion of criminal activity has been dispelled, the detention must cease and the photograph should not be taken.

##### **318.6.3 JUVENILE PHOTOGRAPHS**

Refer to General Order 317 (Handling Juveniles).

##### **318.6.4 PROHIBITED RECORD KEEPING**

All field photographs must be processed according to General Order 618.5 (Digital Evidence Collection and Storage).

- (a) Officers shall not:
  1. Keep a personal or shift-level copy of any photograph taken during a field stop for non-law enforcement purposes.

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2. Post a field photograph of any person not currently wanted by a law enforcement agency.

**318.6.5 SUPERVISOR RESPONSIBILITY**

While it is recognized that field photographs often become valuable investigative tools, supervisors should monitor such practices for compliance with Department General Orders. This is not to imply that supervisor approval is required before each photograph.

**318.7 FIELD EYEWITNESS IDENTIFICATION**

Proper procedures for handling field identifications are outlined in the Field Identifications section of General Order 403, Follow-up Investigations.



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### 319.1 PURPOSE AND SCOPE

This order outlines the guidelines for warrant and warrantless arrests. The following order cannot address every situation that an officer might encounter; however, in exercising arrest authority, officers should be guided by what is contained in this document. Nothing in this order should be interpreted as authorizing or restricting an officer's arrest authority as defined by the Code of Criminal Procedure.

#### 319.1.1 ARRESTS REQUIRING SUPERVISOR APPROVAL

Officers shall obtain supervisor approval on the following types of arrests prior to booking the subject into jail:

- (a) Any arrest where an officer is the victim (e.g., assault on a police officer, resisting arrest or search).
- (b) Evading arrest.
- (c) Arrests for citation-eligible traffic offenses.
- (d) Refusal to sign a citation.
- (e) Failure to identify.
- (f) Any full custody arrest for an offense meeting the criteria for a Class A or Class B Misdemeanor Citation as outlined in General Order 308 (Misdemeanor Citations).
- (g) Any Class C warrant arrest inside a private residence.
- (h) Any arrest where a foreign official is claiming immunity as outlined in General Order 330 (Foreign Officials Claiming Immunity).

#### 319.1.2 SUPERVISORY ORDERS

Supervisors will not order any subordinate to arrest a person suspected of a misdemeanor violation of law witnessed by the supervisor but not witnessed by the subordinate unless:

- (a) The supervisor articulates the probable cause upon which the arrest is based as soon as practicable; and
- (b) The supervisor completes a supplement to the incident report.

### 319.2 WARRANT ARREST GUIDELINES

- (a) Officers will arrest any person found to have an outstanding warrant, provided the arrest can be made in compliance with Department General Orders.
- (b) Officers legally inside a residence that finds any resident found to have an outstanding:
  - 1. Felony, Class A or Class B warrant will arrest the person.
  - 2. Class C warrant will not arrest the person unless authorized by a supervisor.



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#### 319.2.1 WARRANT SERVICE GUIDELINES

Officers attempting to conduct a warrant service shall adhere to the following guidelines:

- (a) Before any warrant service is attempted at a private residence or place of employment (as listed in the PICKUP supplement) officers shall:
  1. Review the incident report in its entirety to determine if and when a previous warrant service has been attempted.
    - (a) Officers shall not normally return to a location to serve a warrant where an attempt has been previously made unless additional information has been developed suggesting the offender has returned.
  2. Verify the warrant status by contacting the Central Records/Warrant Unit or Teletype, either directly or through Communications.
  3. Supervisors shall be notified and a "Threat Assessment Form" (APD Form 11) shall be completed prior to any warrant service where a forced entry is planned or anticipated.
- (b) Officers receiving information that a person with an arrest warrant is inside a third party private residence may NOT enter and search for the violator. Courts have held that this includes, but is not limited to a home, apartment, or hotel/motel room. The exception to this rule is when:
  1. The officer is in possession of a valid search warrant for that specific residence/ location. (There is no requirement for a search warrant of PUBLIC areas of a commercial establishment); or
  2. The officer has received consent from the person/s in care, custody and control of the location. Consent procedures are outlined in General Order 306 (Search and Seizure); or
  3. The officer can clearly articulate exigent circumstances that delaying entry would expose a person to serious injury or death or allow the violator to escape.
- (c) Warrant service attempts that did not result in the arrest of a subject shall be documented immediately by DIRECT ENTRY of a supplement to the original incident report in Versadex. The following information is required in the supplement:
  1. Date/time of each attempt; and
  2. Address(s) and/or location(s) of attempt(s); and
  3. Identity of person(s) contacted; and
  4. Information relating to the search of a location (e.g., was permission granted or refused, vacant); and
  5. Useful information relating to a subject (e.g., new location, vehicles, employment, acquaintances); and
  6. Identification of all officers involved in warrant service.

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- (d) Warrant service resulting in an arrest of the wanted subject shall be documented immediately by DIRECT ENTRY of a supplement to the original incident report into Versadex. The following information is required:
1. "CANCEL CANCEL CANCEL" in the subject line and at the top of the supplement; and
  2. Date/time of service; and
  3. Address(s) and/or location(s) of service; and
  4. Information relating to search of location (e.g., was permission granted or refused, vacant); and
  5. Identification of all officers involved in warrant service.

#### 319.2.2 WARRANT HIT AND CONFIRMATION

During the course of a lawful detention or arrest, an officer may run a subject for warrants.

- (a) When a "hit" is received on a local, TCIC or NCIC warrant inquiry, confirmation from APD or the originating agency must be obtained prior to taking official action. Confirmation shall be the authorization for placing the person in jail for the warrant.
1. The person may be detained until confirmation is made by APD or the originating agency.
  2. Should circumstances make a custody arrest impractical, a person detained solely for a Class C warrant may be released with the approval of a supervisor.
  3. If a warrant confirmation is not received within 10 minutes, the arresting officer may either release the subject or continue to await a response.
- (b) If a subject is arrested for an APD warrant, officers shall:
1. Obtain the original APD warrant from the Central Records/Warrant Unit during normal business hours; or
  2. Have Communications/Teletype fax or email the warrant to the jail after confirmation.
  3. Warrants from other agencies should be faxed or emailed to the jail by the originating agency after confirmation.

#### 319.2.3 WARRANT ARRESTS AT PRIVATE RESIDENCES

- (a) Officers legally inside a residence shall arrest any resident found to have an outstanding Felony, Class A or Class B misdemeanor warrant.
- (b) Officers shall not normally arrest a resident for a Class C warrant unless authorized by a supervisor.

#### 319.3 WARRANTLESS ARREST GUIDELINES

These guidelines are based upon the idea that the use of an arrest, followed by prosecution, is not the primary or exclusive method available to officers and the Department.

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- (a) Minor infractions of the law may not be sufficient to justify an arrest. Officers should be concerned with what the law says and what the law was designed to accomplish. Laws generally serve as the tools officers use to protect residents' rights and to maintain peace in the community. If enforcement of the law does not serve these purposes, arrests can rarely be justified.
- (b) One of our concerns is the maintenance of public order, looking toward a preventive rather than a punitive approach to crime.
- (c) Officers are not required to exhaust all alternatives, or go through the alternatives in succession before making an arrest, but may resort to that method that will most quickly and safely bring the situation under control.
- (d) Officers may consider any factors that are reasonably believed to be relevant, based upon observations and in light of personal knowledge, training and experience.
- (e) Officers are expected to be able to state and describe the reason(s) for a particular course of action upon the request of a reviewing supervisor or the Arrest Review Unit.
- (f) Arrests will not generally be made outside the jurisdiction of this department except in cases of hot and/or fresh pursuit, while following up on crimes committed within the City, or while assisting another agency. On-duty officers who discover criminal activity outside the jurisdiction of the City should, when circumstances permit, consider contacting the agency having primary jurisdiction before attempting an arrest.

#### 319.3.1 IN-CUSTODY ARREST SITUATIONS

- (a) **Felony, Class A and Class B Misdemeanors**
  - 1. Violators who commit a Class A or Class B offense and meet all the requirements for a Misdemeanor Citation as outlined in General Order 308 (Misdemeanor Citations) shall be issued a citation in lieu of arrest unless otherwise authorized by a supervisor.
  - 2. Custody arrests shall be made for all other offenses greater than a Class C where there is a lawful arrest authority.
- (b) **Class C Misdemeanors**
  - 1. Class C misdemeanors should *generally* be enforced by a field release citation. Officers shall select the least intrusive or severe course of enforcement action but should initiate a custody arrest if the issuance of a citation will not:
    - (a) Stop existing criminal conduct; or
    - (b) Remove the imminent threat of violence or criminal conduct; or
    - (c) Prevent persons from endangering themselves or others.
  - 2. A custody arrest for minor offenses should be made when there is reason to believe the actor is, or has been, involved in a more serious offense and the arrest will serve to gather evidence of that additional offense.

#### 319.3.2 WARRANTLESS ARRESTS AT A PRIVATE RESIDENCE

- (a) **Misdemeanors**

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1. Officers shall not forcibly enter a private home to arrest a person for a misdemeanor violation. This includes officers in hot pursuit of a subject, and cases in which the subject has escaped from custody and fled into a private home.
  2. Custody arrests shall not normally be made for a misdemeanor offense inside a home unless authorized by a supervisor. However, the following misdemeanor custody arrests inside a home shall be made and do not require a supervisor's approval:
    - (a) The offense is committed in the officer's presence.
    - (b) Family Violence incidents. Officers shall comply with current Department general orders regarding Family Violence.
    - (c) The offense is a violation of a valid protective order.
  3. Except as noted above, when a violation occurs in a private home or the person flees into a private home, it is preferable for the officer or a citizen to file a complaint and have warrants issued for the person's arrest.
  4. Persons should not be arrested and charged with being intoxicated if they are on their own property. Subjects may be arrested if they are creating a disturbance on their own property and can be viewed by other persons, and the disturbance cannot be ended in any other manner. However, if they are not creating a disturbance and no other violation exists, no arrest shall be made.
- (b) **Felonies**
1. Officers who are legally inside a private residence and observe a felony being committed, or develop probable cause to believe a felony has been committed and there is no time to get a warrant, may make an arrest.
  2. Before officers forcibly enter a private home to arrest for a felony, they should, whenever possible, obtain the approval of a supervisor and act only when the supervisor is present.
  3. When officers develop probable cause to believe a felony is being committed inside a private home and a bona fide emergency exists (exigent circumstances), they may enter to arrest the violator.
  4. Officers in hot pursuit of a felony violator who flees into a private home may enter to effect the arrest.
  5. Officers receiving information that a felony violator is inside a private residence (courts have held that this includes but is not limited to a home, apartment, or hotel/motel room) may only enter and search for the violator when:
    - (a) They are in possession of a valid search warrant for the location; or
    - (b) They have received consent from the person(s) in care, custody and control of the location. Consent can be written or recorded electronically with audio and/or video; or

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- (c) They can clearly articulate that delaying entry would expose a person(s) to serious injury or death, or allow the violator to escape; or
- (d) They have personally observed the felony violator enter the residence at that time.

#### 319.3.3 ADDITIONAL FELONY ARREST PROCEDURES

- (a) Most felony arrests require direct notification to the appropriate Investigative Unit.
- (b) Officers can make the notification by phoning the Investigative Unit during normal business hours, the on-call detective after business hours, or the Unit's voice mail line designated for such notification or the city email designated for that investigative unit (e.g. [apdburglaryunit@austintexas.gov](mailto:apdburglaryunit@austintexas.gov)). Investigative Units will have a detective available on-duty or on-call 24 hours a day if guidance is needed or they have specific questions that need to be answered at that time (i.e. validity of arrest).
  - 1. The arresting officer is responsible for consulting with their supervisor prior to notifying any *on-call* detective after business hours.
  - 2. Supervisors are responsible for ensuring the appropriate Investigative Unit is contacted when necessary.
- (c) The Investigative Unit will:
  - 1. Help ensure the validity of the arrest; and
  - 2. Provide assistance with the appropriate wording of probable cause affidavit(s); and
  - 3. Respond to the crime scene, if necessary, to provide additional expertise.
- (d) For charges that will be direct filed, consultation with an on-call detective does not replace the required review of arrest paperwork by Arrest Review.

#### 319.4 SPECIAL CIRCUMSTANCES SURROUNDING ARRESTED PERSONS

##### 319.4.1 IMPOUNDING VEHICLES

- (a) If the owner/operator of a vehicle has been arrested, the vehicle shall be impounded and preserved for evidence processing if it:
  - 1. Is the instrument, fruit, or evidence of a crime; or
  - 2. Contains an instrument, fruit or evidence of a crime.
- (b) If the owner/operator of a vehicle has been arrested but the vehicle is not needed for evidentiary purposes, the arresting officer may impound the vehicle.
  - 1. At the officers discretion, the vehicle may be released to a responsible person present at the scene if the owner/operator requests it.

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- (a) The person taking custody of the vehicle must be in possession of a valid driver's license and be capable of providing care, custody and control of the vehicle.
- (b) The identity of the person (name, DOB, driver's license, address) who takes custody of the vehicle shall be noted in the officer's incident report.
- (c) When a subject's vehicle has been impounded due to an arrest and it is determined that the subject will be released rather than booked into jail, a supervisor may authorize the waiving of any applicable impound fee.
  - 1. The supervisor will contact the authorized impound company and advise to release the vehicle without charge.
  - 2. The fact that the fee was waived, and the name and employee of the supervisor authorizing the waiver, shall be documented in the officer's incident report.

#### 319.4.2 CHILDREN IN CUSTODY OF ARRESTED PERSONS

When arrested persons have a child less than 17 years of age in their care, custody and control at the time they are arrested, it is the responsibility of the arresting officer or a designated officer on-scene to ensure the safe placement of the child.

- (a) Whenever possible, officers should take reasonable steps to accomplish the arrest of a parent or guardian out of the presence of a child.
- (b) Officers shall first attempt to locate a competent adult, at the request of the arrested party, to come and take custody of any children. Should a competent adult be located, the officer shall:
  - 1. Run a check for any protective order regarding the adult with whom placement of the child/children is being considered.
  - 2. Complete warrant and criminal history checks to ensure the child/children is not being placed with a wanted or dangerous felon.
  - 3. Contact Child Protective Services' Law Enforcement Number (the number is available through APD Communications) and request a CAPS (Child/Adult Protective Services) check be done to ensure the child/children is being placed in a safe environment with no abuse history through CPS. The CPS worker answering the phone will need the following information on the person with whom you want to place the child:
    - (a) Name, address, and any other pertinent identifying information.
    - (b) The CPS worker will ask you for a phone number to call in order to verify your identity and provide any history on the subject. Officers shall provide the phone number for the Communications supervisor. (This process should take approximately 10 minutes).
  - 4. Fully identify the person with whom the child/children is being placed and any CPS related information in the incident report.
- (c) If a competent adult is not located after a reasonable amount of time, the arresting officer shall contact Victim Services to take custody of any children and assist with their

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placement with Child Protective Services. Victim Services shall assume responsibility for assistance in placing children as per agreements with Child Protective Services.

- (d) Law enforcement officers in the State of Texas under the Family Code, Chapter B, are given the same powers as Child Protective Services in the following situations:
1. Section 262.104: Taking possession of a child in an emergency without a court order.
  2. Section 262.110: Taking possession of child in an emergency with intent to return home.

#### 319.4.3 ANIMALS IN CUSTODY OF ARRESTED PERSONS

When prisoners have an animal with them at the time of their arrest and no responsible person is available to take custody of the animal, it shall be taken to the City Animal Shelter for safekeeping until the prisoner's release. Officers shall note in the incident report who took custody of the animal.

### 319.5 SPECIAL ARREST SITUATIONS

#### 319.5.1 FOREIGN NATIONALS

Refer to General Order 330 (Interactions with Foreign Nationals).

#### 319.5.2 FEDERAL AND STATE LEGISLATORS

Numerous federal and state legislators have offices within the City of Austin. During official legislative sessions, including travel to and from sessions, senators and representatives are immune from citations and arrest except for felonies and breaches of the peace.

- (a) Officers shall notify their supervisor when enforcement action (e.g., arrest, citation) is taken against a senator or representative.
- (b) Supervisors shall ensure the Watch Lieutenant is notified.

#### 319.5.3 TEXAS MILITARY PERSONNEL

A member of the Texas military forces enroute to or from active state military duty may not be arrested except for treason, a felony or an offense involving a breach of the peace (Tex. Gov't. Code § 437.223). For all other offenses, these persons may be issued a citation that does not conflict with the member's duty hours as specified within this order.

### 319.6 CITIZEN'S ARREST

The purpose of this section is to provide guidance for handling arrests made by citizens pursuant to state law.

#### 319.6.1 CITIZEN ARREST AUTHORITY

A citizen may arrest another under the following circumstances:

- (a) When the offense is committed in the citizen's presence or view and the offense is one classified as a felony or a breach of the peace (Tex. Code of Crim. Pro. art. 14.01).
- (b) When there are reasonable grounds to believe property is stolen, a citizen may seize the stolen property and the person suspected of committing the theft and bring the

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person and the property before a magistrate or to a peace officer for that purpose (Tex. Code of Crim. Pro. art. 18.16).

#### 319.6.2 OFFICER RESPONSIBILITIES

Officers approached by a citizen making an arrest must determine whether there is probable cause to believe that such an arrest would be lawful. Officers should not detain or restrain a subject beyond that which reasonably appears necessary to safely investigate the matter and determine the lawfulness of the arrest.

- (a) When officers determine there is probable cause to believe the arrest is lawful, they may exercise one of the following options as outlined by Department General Orders:
  1. Take the individual into physical custody for booking; or
  2. Release the individual pursuant to a field release citation.
- (b) When officers determine there is insufficient arrest authority or that there does not appear to be probable cause for a lawful arrest, they will promptly release the arrested individual.
  1. Officers should advise the parties that no arrest will be made at that time and that the circumstances will be documented in an incident report. Officers will document the basis of the release in the incident report.
  2. If the citizen is the victim of a crime that does not have a warrantless arrest authority and the person wants to file charges, officers should give the citizen the incident number and the phone number for the Investigative Unit that will perform any follow-up review.

#### 319.7 ASSISTING OTHER AGENCIES

##### 319.7.1 ASSISTING WITH OTHER AGENCIES WARRANT SERVICE

- (a) Officers encountering or dispatched to assist out of city law enforcement agency personnel or bail/bond apprehension agents with a warrant service shall contact a supervisor and consult with them prior to ANY warrant service attempts.
- (b) If granted permission to assist in the warrant service, officers shall follow all warrant service guidelines outlined in this order including:
  1. Contacting the Fugitive Apprehension Unit during business hours and/or Communications to verify warrant status. Confirmation from the originating agency that the warrant is valid must be obtained prior to taking official action.
  2. Checking involvement on the address for prior warrant service attempts. Officers shall not return to a location to serve a warrant where an attempt has been previously made, unless additional information has been developed suggesting the offender has/will return.
- (c) If an arrest of the wanted subject is made:
  1. Officers shall transport the subject to jail for booking and/or magistration in accordance with CCP 15.16 and 15.17.



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2. Warrant confirmation and any other warrant paperwork should be submitted with the booking sheet.
  3. Officers will not turn an arrested subject over to a bail/bond apprehension agent under any circumstances.
- (d) All warrant service attempts and arrests for out of city agency personnel or bail/bond apprehension agents shall be documented as outlined in the warrant service section of this order.

#### 319.7.2 ARRESTS BY OTHER AGENCIES

When an arrest is made by another law enforcement agency within the confines of its geographical jurisdiction and the Department is asked for assistance, necessary assistance will be provided in compliance with Department General Orders governing relations with other law enforcement agencies. All follow-up investigations, booking, and filing of complaints shall remain the responsibility of the arresting agency.

- (a) Under CCP Article 14.03(d) and (g), peace officers have statewide arrest authority in many situations, even when outside the peace officer's jurisdiction. APD may be called upon to take custody of a subject for any arrest made in the City of Austin by a peace officer whose jurisdiction does not include the City of Austin:
1. APD officers shall handle the case complying with CCP 14.03(d) or (g).
  2. The outside agency arresting officer is required to complete the necessary supplemental reports.
  3. Any arrest made by an off-duty officer from another jurisdiction that does not meet the requirements of CCP 14.03 (d) or (g) shall be handled as a citizen's arrest.



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## Care and Transport of Prisoners

### 321.1 PURPOSE AND SCOPE

Department values mandate that persons taken into custody will not be abused, and the individual rights of prisoners must be protected at all times. Until arrested persons are accepted at the booking facility, their care and custody shall be the responsibility of the arresting/transporting officers.

### 321.2 HANDLING PRISONERS

#### 321.2.1 RESTRAINT GUIDELINES

- (a) Suspects being arrested and transported in police vehicles shall be handcuffed or otherwise restrained as described below:
  - 1. Prisoners will generally be restrained with hands behind the back. If handcuffs are used, they shall be double locked.
  - 2. In case of advanced age, injury, physical disability, or other circumstances where arrested persons are incapable of placing their hands behind their back, but circumstances warrant restraint, the officer may:
    - (a) Use flex cuffs.
    - (b) Apply handcuffs with the hands to the front.
    - (c) Choose not to use a restraining device. If the prisoner is not restrained, two officers should be used to transport the prisoner as safely as possible.
  - 3. Unless it would pose a safety risk to officers, the arrested person, or the public, officers should apply handcuffs to the front for arrested persons who are deaf or hard of hearing and who request to use their hands to communicate. Such communication may occur through sign language or written communication.
  - 4. The use of an authorized waist chain, waist belt, or travel belt is authorized:
    - (a) At a prisoner processing center, which includes transport from the center to the booking facility;
    - (b) By officers in a specialized unit, if the use is authorized by Standard Operating Procedures;
    - (c) When the use is specifically authorized as part of an operations plan, or
    - (d) When authorized by a supervisor in cases where an officer feels an arrested subject may:
      - 1. attempt to escape,
      - 2. resist transport to any location,
      - 3. or the transport involves an unusual length of time or distance.

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4. The supervisor's name shall be noted in the offense report or supplement. For this section, Corporals may grant approval.
  5. Officers shall adhere to General Order 204 (Leg Restraint Device) for guidelines on using an authorized waist chain, waist belt, or travel belt.
  6. Officers may purchase, at their own cost, a waist chain, waist belt, or travel belt that has been approved by the Equipment Committee.
  7. Restraints should be drawn to a secure fit but not so tight as to cause a restriction in blood flow.
- (b) Officers shall not:
1. Use restraints to punish, display authority, or as a show of force.
  2. Secure a person to any part of a vehicle.

#### 321.2.2 SEARCHING PRISONERS

Officers shall adhere to General Order 306 (Search and Seizure) when conducting searches.

#### 321.2.3 WARNING ABOUT POSITIONAL ASPHYXIA

Positional asphyxia occurs when the physical position of the body interferes with normal respiration. Such a position can be induced by the use of one or more restraints. Officers in control of a restrained person must be alert to the physical position of the person in order to minimize the possibility of positional asphyxia.

### **321.3 TRANSPORTING ARRESTED PERSONS**

The law imposes a duty of care on the transporting officer to protect prisoners from injury.

#### 321.3.1 GENERAL GUIDELINES

- (a) Any vehicle used to transport prisoners shall be searched for weapons and contraband at the beginning of a tour of duty, before and after each prisoner transport, and at the end of a tour of duty.
- (b) All prisoners shall be seatbelted and placed in an upright position while in a police vehicle.
- (c) The prisoner must be under observation at all times to reduce opportunities for escape, disposal or destruction of contraband, and/or attack on the transporting officer.
- (d) Safety Barrier:
  1. When a vehicle is equipped with a safety barrier, the prisoner shall always be transported within the confines of the safety barrier. Officers shall position prisoners in the passenger side rear seat so they can be observed through the rear view mirror.
  2. If the vehicle is not equipped with a safety barrier, a single prisoner shall be placed in the front seat where the transporting officer can maintain observation and control of the prisoner.

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- (e) Once secured in the vehicle, prisoners should not be allowed to talk with anyone other than police or medical personnel.
- (f) While transporting a prisoner in a vehicle equipped with an MAV device, officers shall have the rear seat camera activated, or the front camera activated and faced toward the prisoner.
- (g) Prisoners will be transported without unnecessary delay. Officers shall use the MDC to change their status when transporting prisoners to a jail/detention facility or police station, and again upon arrival.
- (h) While transporting prisoners, officers shall not respond to any calls for service or initiate any enforcement action unless it is a situation where risk of serious bodily injury or death to a third party is imminent and the risk to the prisoner is minimal. Officers shall notify the dispatcher of any incident that may require a police response.

#### 321.3.2 SPECIAL SITUATIONS

(a) **Officer/Prisoner of Opposite Gender, or Juveniles**

1. When transporting prisoners of the opposite gender, prisoners known to the officer to be transgender or whose gender is undetermined, or juveniles, the transporting officer shall notify the dispatcher of the:
  - (a) Intended destination and beginning odometer reading to the nearest tenth of a mile; and
  - (b) Ending location and odometer reading to the nearest tenth of a mile upon arrival at the intended destination.

(b) **Violent or Mentally Disturbed Persons**

- (a) To reduce the risk of injury to transporting officers and other prisoners, only one violent or mentally disturbed prisoner will be transported per vehicle at a time. No other prisoner will ride in the same vehicle with a violent or disturbed person.

(c) **Ill, Injured or Disabled Prisoners**

1. Transporting of the ill, the injured, or prisoners with a disability should be done with the officer's safety and the physical comfort of the prisoner in mind. Circumstances may require that the arresting officer transport the prisoner by EMS, prisoner transport van, or by a specially designed vehicle that can be requested through City or commercial entities. At least one officer will ride with the prisoner in the EMS unit or other designated transport unit. A second officer will follow the prisoner transport vehicle in a police vehicle.
  - (a) Under extraordinary circumstance and with supervisory approval the officer may follow in a police vehicle in lieu of an officer riding in the ambulance. The supervisor will document the justification in a supplement to the report.
2. Each circumstance should be considered on an individual basis; prisoners shall not be allowed to retain any instrument that could be used as a weapon against the transporting officer.

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3. Ill or injured prisoners in custody of an officer should be restrained, if possible, to prevent escape or to prevent injury to officers or medical personnel.
    - (a) The officer will consider the prisoner's special circumstances before applying any restraining device.
    - (b) The prisoner should not be restrained in such a way that proper medical attention is prevented.
  4. If medical personnel request removal of restraining devices to treat an injured prisoner, the restraints will be removed.
    - (a) The custodial officer shall always remain with the prisoner unless directed to depart from a treatment area by medical personnel for treatment purposes.
    - (b) The officer shall remain nearby to prevent violent acts or escape.
    - (c) This applies to transporting a prisoner who has been refused intake by the jail nurse. Only use EMS to transport from the jail to the hospital or other type of facility when it is medically necessary (e.g. high blood pressure, chest pains, etc.). Do not utilize EMS if the refusal to the jail is for reasons that do not require EMS.
- (d) Spit Hoods
1. Spit hoods are safety hoods used to prevent contaminants from being transmitted by a prisoner or detainee.
  2. Spit hoods should be used when dealing with prisoners or detainees that have attempted or threatened to bite or spit.
  3. Officers shall ensure that the spit hood is properly fitted and secured.
  4. Medical personnel may remove the spit hood as needed.

#### 321.3.3 ESCAPE

- (a) In the event an escape occurs while transporting a prisoner, the officer shall immediately notify the dispatcher and request assistance. The officer should provide, at a minimum, the following information:
  1. Complete physical description;
  2. Direction and method of travel;
  3. If any weapons and/or accomplices were used to effect the escape; and
  4. The nature of the offense which resulted in the original arrest.
- (b) A supervisor shall be notified.
- (c) A complete search of the area will be conducted. This search may include the following measures:
  1. Establishing a perimeter.
  2. Requesting canine.

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3. Requesting air support.
  4. Notifying surrounding agencies, if appropriate.
- (d) The officer shall complete all necessary incident reports to ensure the preparation of an arrest warrant if the prisoner is not located.

#### **321.4 PRISONERS REQUIRING MEDICAL ATTENTION**

The intent of the Department is to quickly provide each ill or injured prisoner with medical attention. Prisoners shall be treated for injuries before being booked into jail. This includes subjects who have been subjected to Response to Resistance techniques. (Refer to Chapter 2 on Response to Resistance General Orders).

##### **321.4.1 MEDICAL ATTENTION PRIOR TO BOOKING**

- (a) Officers shall either request EMS or transport a person to an appropriate medical facility when any of the following criteria are present:
1. Large lacerations (greater than one inch in length), which are less than 12 hours old.
  2. Actively bleeding lacerations (greater than 3/4 inch).
  3. Obvious deformity of bones of the extremities, or open fractures.
  4. Swelling to the face to the extent vision/breathing is difficult or impaired.
  5. Possible heart attacks. Symptoms of heart attacks would include the chest pains, pain extending down the left arm, and/or difficulty breathing.
  6. Alcohol or drug intoxication to the extent that the prisoner is unconscious.
  7. Any condition in which the prisoner cannot move his extremities.
  8. Neck pain following an auto collision.
  9. Overdoses.
- (b) Unconscious persons:
1. Unconscious persons will not be transported to a jail facility. Officers shall request EMS to respond to the scene for examination, treatment and/or transport.
  2. Prisoners who become unconscious during regular transport will be taken to the nearest medical facility, or officers will request EMS to respond to their current location (whichever is the most expeditious).
- (c) Prisoners who are examined by EMS at the scene, but refuse treatment/transport, will be transported to the booking facility.
1. If an individual refuses medical treatment/transport, the refusal should be witnessed by another officer and/or medical personnel and fully documented in the incident report. Whenever practicable, such refusal should be captured by audio/video recording.

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2. Officers will provide the intake jail nurse with EMS attendants' names and numbers for future reference.
- (d) Prisoners transported by EMS will be accompanied by an officer inside the ambulance. At least one officer will ride with the prisoner in the EMS unit or other designated transport unit. A second officer will follow the prisoner transport vehicle in a police vehicle.
- (a) Under extraordinary circumstance and with supervisory approval the officer may follow in a police vehicle in lieu of an officer riding in the ambulance. The supervisor will document the justification in a supplement to the report.

#### 321.4.2 HOSPITAL GUIDELINES

Once at a hospital, prisoners will be guarded by the transporting officer until treated and released by a physician or admitted for medical attention. Under NO circumstances will officers release and/or leave unguarded prisoners who are violent or who officers have reason to believe may become violent.

- (a) Medial Release from Hospital
1. Once released from the hospital, prisoners will be transported to the jail along with the proper discharge documentation.
  2. The jail will require documentation to show that prisoners have received/refused medical attention from the hospital.
  3. The jail nurse/medical officer should be briefed on prisoners' injuries and subsequent treatment/refusal.
- (b) Admittance to Hospital
1. In circumstances where prisoners are arrested on for non-violent offenses and there is no reason to believe the prisoner will become violent, a supervisor may authorize the prisoner's release if the prisoner is being admitted into the hospital. Prisoners will not be released from custody if they are under arrest for an offense involving violence or have outstanding warrants higher than a Class C Misdemeanor.
  2. Prisoners may be released from custody provided there is sufficient identifying information available to obtain a warrant and meet the following criteria:
    - (a) Felony Offense
      1. All Charges, other than direct file narcotic related charges, require authorization to release from the:
        - (a) Investigative unit responsible for the highest charge, and
        - (b) on duty Patrol Lieutenant over the area where the subject was arrested; or, if unavailable, any on duty Patrol Lieutenant.
      2. Narcotic related charges, that can be direct filed, only requires authorization from the on duty area Patrol Lieutenant; or, if unavailable, any on duty Patrol Lieutenant.

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- (b) Class A and B misdemeanors arrests require authorization from a sergeant or above. Corporals, only when in the capacity of acting sergeant, may grant authorization for release and only for their immediate subordinates.
- (c) Class C misdemeanor arrests except for public intoxication, prisoners may be issued a misdemeanor citation. If the prisoner refuses to sign the citation, a notation will be made on the signature line that the person was admitted to the hospital and refused to sign. Municipal Court can file the case based upon the citation.
- (d) On public intoxication arrests where prisoners are under arrest solely for public intoxication and have been taken to the hospital, officers may request a supervisor after four hours from the time of arrest to determine if continued custody is required.
  - 1. If the supervisor determines that the prisoner is no longer intoxicated to the extent that he is a danger to himself or to others, release may be authorized.
  - 2. If the prisoner is released, supervisors will complete a supplement to the incident report detailing their assessment and authorization for release.
- 3. When a prisoner is authorized for release under this order, the arresting officer is responsible for completing all necessary paperwork as if the charge was being direct filed and forwarding that paperwork to the investigative unit responsible for the charge.
- 4. Prisoners not authorized or approved for release and admitted to the hospital shall be guarded until they are magistrated as follows:
  - (a) 10 PM until 7 AM (Monday-Friday)- By an officer from the patrol area in which the arrest was made. The on-duty lieutenant or designee for that area is responsible for scheduling patrol officers to guard the prisoner during these hours.
  - (b) 7 AM until 10 PM (Monday-Friday)- By the Investigative Unit responsible for the highest arrest charge of the case.
    - 1. The Investigative Unit supervisor is responsible for scheduling detectives to guard the prisoner during these hours.
    - 2. The responsible Investigative Unit will have the prisoner magistrated as soon as possible and notify the appropriate jail facility so they can begin guarding the prisoner.
  - (c) Weekends (10PM, Friday- 7AM, Monday)- By an officer from the patrol region in which the arrest was made, unless the investigative unit responsible for the highest arrest charge of the case has detectives assigned to an on-call status that can be called in to relieve the patrol officer and have the prisoner magistrated.



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1. The on-duty lieutenant or designee for that region is responsible for scheduling patrol officers to guard the prisoner during these hours, and to contact the unit responsible for the highest arrest charge for assistance.
2. If the investigative unit responsible for the highest arrest charge has detectives assigned to an on-call status, then the investigative unit supervisor is responsible for scheduling detectives to guard the prisoner during these hours.
  - (d) No visitors shall be admitted while the prisoner is being guarded.
  - (e) Officers guarding a prisoner shall always keep him in sight unless a medical procedure requires otherwise.
  - (f) Supervisors shall rotate guard assignments at least every four hours.

#### 321.4.3 PRISONERS EXHIBITING SYMPTOMS OF CONTAGIOUS DISEASE

- (a) Officers arresting persons with outward signs of contagious disease, or who complain of known infections or disease, will isolate the prisoner from others.
  1. EMS shall be called to determine the prisoner's condition.
  2. Prisoners requiring medical attention as a result of the disease shall be transported by EMS.
  3. After taking appropriate health safety precautions, officers shall follow the Hospital Guidelines outlined in this order.
- (b) Officers taking prisoners to the Travis, Hays, or Williamson County jail facility who are known to have a contagious disease or who are exhibiting symptoms of a contagious disease will notify the jail supervisor immediately upon entering the facility.

#### 321.5 HANDLING OF PRISONERS AWAY FROM JAIL AREA

- (a) When signing out prisoners from any jail or correctional facility for any purpose, Department personnel shall:
  1. Ensure the prisoner they are taking into custody is positively identified; and
  2. Determine if there are any security or safety issues associated with the prisoner (e.g., escape risk, history of violence, medical problems).
- (b) Department personnel removing a prisoner from the jail or correctional facility for any purpose shall sign the prisoner out and will be responsible for the return of the prisoner.
  1. Department personnel will ensure the prisoner is thoroughly searched for weapons, contraband, or items that might be used as implements of escape prior to returning them to the custody of jail or correctional facility personnel.
- (c) Department personnel who sign out prisoners to transport them back to the scene of the crime or any other location to continue their investigations are responsible for the safe transport of that prisoner.

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- (d) Wherever the prisoner is taken, the officer having custody will be responsible for ensuring that no weapon, and/or instrument that could be used as a weapon or implement of escape is accessible to the prisoner.
- (e) Department personnel shall, whenever possible, avoid walking a prisoner who is not handcuffed through crowded hallways or other public areas.
- (f) Prisoners may be taken to public bathrooms only after the area has been checked for weapons and cleared of other persons. Employees shall accompany prisoners and keep them under visual observation at all times.
- (g) Anytime Department personnel accompany a prisoner to court and that prisoner is considered a security hazard, the judge shall be notified.



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## Booking and Arrest Review

### 323.1 PURPOSE AND SCOPE

This order outlines the booking and arrest review guidelines.

### 323.2 BOOKING GUIDELINES

#### 323.2.1 SECURING WEAPONS

Officers shall abide by all orders, procedures and any required security safeguards regarding weapons or implements of escape when conducting any type of business (e.g., booking, prisoner transport, interview) at any correctional/detention facility.

- (a) Firearms, ammunition, TASER Devices, batons, flashlights, knives, OC spray and any other personal equipment that could be used as a weapon shall be secured in the police vehicle or the provided lock boxes prior to entering the booking facility.
- (b) Officers shall ensure the shotgun in the police vehicle is securely locked in the rack or trunk of their police vehicle.

#### 323.2.2 BOOKING PRISONERS

- (a) Officers shall ensure that jail personnel are advised of any security or safety risk presented by the prisoner (e.g., escape risk, history of violence, medical problems).
- (b) Prisoners shall remain handcuffed until the booking process begins. After receiving approval by a jail intake officer, APD officers will relinquish custody to jail personnel.
- (c) Unless directed or approved to do so by the jail supervisor on duty, officers shall NOT enter the confinement area of the jail.
- (d) Officers shall complete all required County Sheriff's Office booking and arrest documentation.
- (e) Once the booking process is complete, all completed booking paperwork shall be submitted to the booking desk personnel.
- (f) On all APD warrants containing a Detective Notification Form, the arresting officer shall notify the detective in the manner indicated on the form.
- (g) Officers will write a supplement if they transport a subject to jail or if otherwise required by general orders (i.e. Response to Resistance) unless the Officer is operating a prisoner transport vehicle in which they are expected to conduct multiple transports
  1. When the Officer is operating a transport vehicle, in lieu of a supplement the officer shall enter a note in their CAD history noting the name and DOB of the person being transported, their starting point, and their destination.

### 323.3 DIRECT FILING CHARGES AND ARREST REVIEW APPROVAL

Officers shall not circumvent this process when booking a subject into jail.

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### 323.3.1 DIRECT FILING CHARGES

All required arrest paperwork (e.g., direct file probable cause affidavits/complaints, EPO) shall be reviewed by Arrest Review. Except when at Travis County Central Booking, this review may be made by phone, email or fax from the jail facility where booking occurs.

(a) **Travis County**

1. Officers shall prepare the required arrest paperwork and direct file each misdemeanor and felony charge unless directed not to by a Detective. In those instances, the Detective shall follow-up and file appropriate charges within 24 hours (misdemeanors) and 48 hours (felonies). The arresting officer shall note the Detective's name in the incident report and advise Arrest Review of the Detective who has taken responsibility for filing charges.

(b) **Williamson or Hays County**

1. Charges must be filed when the prisoner is booked.

### 323.3.2 ARREST REVIEW

- (a) The Arrest Review Unit will work with the officer to make certain the affidavit/complaint articulates the required probable cause for the charges filed.
- (b) If Arrest Review does not agree with an arrest as originally made, the officer shall work with the Arrest Review Unit to determine the appropriate charge(s).
  1. In cases of dispute over the probable cause of an arrest or charge(s) filed, the arresting officer's supervisor shall be contacted and is responsible for resolving the dispute.
  2. The arresting officer's supervisor shall make the final decision on the charges or whether to release the arrested person.
- (c) On arrests that require Investigative Unit approval, Arrest Review shall verify with the officer that a detective from the appropriate Unit was notified. If required, the arresting officer will place a copy of the incident report and probable cause affidavit/complaint in the Investigative Unit's tray at Arrest Review or at the appropriate substation.
- (d) Arrest Review shall ensure probable cause affidavits/complaints that are rejected by the reviewing magistrate are corrected to the extent possible to avoid the release of a prisoner before charges can be filed.

### 323.3.3 MAKING MODIFICATIONS TO AN ARREST

When an officer discovers that charges need to be changed or dropped, or that additional charges need to be added after a prisoner has been booked into jail, the following procedures shall be followed prior to a probable cause affidavit being signed by a judge:

(a) **Travis County**

1. If officers are still at Arrest Review, they shall fill out the "Charge Status Report" and/or "Additional Charges" form and submit the form(s) to the Arrest Review detective. Officers shall make the appropriate changes to their reports.

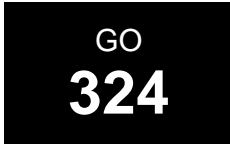
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2. When a detective who has been assigned a felony discovers a modification is in order, they shall use the electronic mail system to order the change.
- (b) **Williamson or Hays County**
1. Officers shall go to the jail booking desk and correct/change the charges on the arrest report (booking sheet). They shall make the appropriate changes to their probable cause affidavit and reports.
  2. When a detective who has been assigned a case discovers a modification is necessary, the detective shall call the appropriate office for the County Attorney or District Attorney for specific instructions. For documentation purposes, an updated report shall be faxed to the appropriate County or District Attorney's Office and to the jail's booking desk.
    - (a) In Williamson County, the county attorney prosecutors handle all juvenile crimes (felony and misdemeanor), all protective orders, CPS and Department of Family and Protective Services cases.



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# Police Observer Program

### 324.1 PURPOSE AND SCOPE

This order provides guidelines for the Police Observer Program. The Police Observer Program provides an opportunity for eligible citizens to experience how the Department works first hand.

#### 324.1.1 CITIZEN OBSERVERS

The Austin Police Department Police Observation Program is offered to eligible citizens who desire to ride as observers in an APD police vehicle during an officer's patrol shift or duty hours. An applicant may be declined or disqualified from participating for a number of reasons, including but not limited to the following reasons:

- (a) Outstanding warrants of any type.
- (b) Having a conviction for being under indictment for, or currently charged with any felony offense.
- (c) Having a conviction for any sexual related offense.
- (d) Having a history of or conviction for Family Violence.
- (e) Having been convicted for a class A Misdemeanor with the last ten (10) years.
- (f) Having been convicted for a class B Misdemeanor within the last five (5) years.
- (g) Having a driver's license or ID card suspension for any reason that indicates poor driving behavior or responsibility to comply with State laws; up to five (5) years from the time of suspension to application. This does not include suspensions resulting from MIP violations.
- (h) Having a driver's license or ID card that is currently classified as a habitual violator.
- (i) Applicant is a suspect of a crime while such case is being investigated by this Department or prosecuted as a result of such an investigation.
- (j) Applicant is a known associate of a convicted felon.
- (k) Applicant is a known member of or associated with any person or organization which advocates hatred, prejudice, or oppression of any person or group or which disseminates such material.
- (l) Applicant is a known member of or associated with any organization, association, movement, or group which advocates the commission of acts of force or violence to deny others their rights under the Constitution of the United States or which seeks to alter the form of government of the United States by unconstitutional means.
- (m) Any other indications of criminal history or criminal involvement will be evaluated on a case by case basis and must receive approval of an on duty lieutenant or appropriate commander.
- (n) Persons under the age of eighteen (18) shall not be permitted to ride as an observer in a police unit unless prior approval has been granted by the Chief or designee; or

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they are participating in the APD Explorer Program and have met the requirements of the APD Explorer Unit SOPs as outlined in (s) below.

- (o) Citizens may only ride once per calendar quarter unless otherwise approved by the appropriate commander; however, City Council members and personnel from the City Manager's Office may ride more than once per calendar quarter provided they comply with the rest of this order.
- (p) Persons who have a pending lawsuit against the Department shall not be allowed to ride as an observer while the lawsuit is active.
- (q) For staffing and operational issues, supervisors may decline to have an observer ride on a particular shift; if the observer is otherwise approved to participate, supervisors will make every effort to assign the observer to another shift or to reschedule the observer for a future time.
- (r) Participation may be terminated by an officer at any time because of the unacceptable behavior of the observer. In such a case, the officer shall immediately notify a supervisor about the situation.
- (s) Members of the APD Explorer Program may ride at the age of 16 if they meet the requirements of the APD Explorer Unit SOP's.
  1. If for any reason the assigned officer feels it is in the best interest of the APD Explorer or the department, they can terminate the observation period at any time. Any early release of an APD Explorer should be reported as soon as practical to the post officer or advisor.

#### 324.1.2 DEPARTMENT EMPLOYEE OBSERVERS

- (a) On-duty civilian employees may ride as an observer with the approval of their supervisor and the appropriate lieutenant or designee. The *Police Observer Information Form* is not required.
- (b) Off-duty civilian employees riding as an observer will comply with this order except they are not required to list their address on the *Police Observer Information Form*. Off-duty employees are not allowed to ride more than once per calendar quarter without the approval of the appropriate commander.
- (c) No APD employee shall ride as an observer while on restricted duty, limited duty, injury leave, during a suspension, or while under administrative or criminal investigation.

#### 324.1.3 OBSERVERS FROM OTHER LAW ENFORCEMENT AGENCIES

Sworn and civilian employees from other law enforcement agencies may ride with on-duty APD employees only if they are engaged in active operations with our department (e.g., training, familiarization) and the request has been approved by an assistant chief or designee. If such officers desire to ride merely as off-duty police observers, they must comply with regulations set out in this order as a citizen observer.

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#### 324.1.4 MEDIA OBSERVERS

- (a) Media observers must be coordinated through the APD Public Information Office (PIO).
- (b) Media observers will abide by all rules and regulations for police observers.
- (c) Media observers encountering crime scenes or police incidents will be considered working members of the media concerning access to restricted areas.

#### 324.2 POLICE OBSERVER REQUESTS

Unless otherwise exempted by this order, all participants of the Police Observer Program shall complete the Request for Approval to Ride in an APD Unit section of the *Police Observer Information Form* [PD0094] in its entirety. This form also includes the guidelines all observers are required to follow.

- (a) Generally, police observer requests shall be scheduled by the administrative staff of the Region in which the person wishes to ride.
- (b) Employees contacted by a member of the public wishing to ride as an observer should provide the person with the administrative phone number of the appropriate Region.
- (c) If the observer request is denied, an administrative staff member will contact the applicant and advise them of the denial.
- (d) Persons participating in this program as the guest of an officer must comply with this order and the guidelines established on the *Police Observer Information Form*.
  1. Officers shall have the guest observer complete the *Police Observer Information Form* and forward it to their supervisor for approval.
  2. Supervisors shall forward the form to the appropriate administrative staff for filing.

#### 324.2.1 PROCESSING POLICE OBSERVER REQUESTS

##### (a) **Approving Police Observer Request Forms**

1. Administrative staff or supervisors receiving a completed *Police Observer Information Form* shall:
  - (a) Review the form for completeness, including signature and date.
  - (b) Conduct all required checks and document the results on the *Police Observer Information Form*:
    1. Does not have any active warrants (NCIC, TCIC and local); and
    2. Does not have a criminal history, Versadex or CopLink involvement that meets the disqualifying criteria outlined in Section 324.1.1; and
    3. Is not banned from being an observer:
      - (a) Banned observers are identified in the Police Explorer database located in SharePoint at APD Main SharePoint/ Patrol Ops/Police Observer Log.



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- (b) Banned observers requesting more information concerning their ban should be referred to the appropriate commander.
  - (c) Sign and date the form, indicating approval.
  - 2. Administrative staff who process the Police Observer Information Forms shall forward the completed packet to the appropriate supervisor after scheduling the observation date and time with the observer.
  - 3. Administrative staff will send the assigned Sergeant and Corporal an email with the name of the observer and the observation date and time to ensure the Supervisor has knowledge of the scheduled rider.
- (b) **Day of Police Observation**
- 1. Supervisors are additionally responsible for:
    - (a) Assigning the observer to an officer if the assignment has not been made; and
    - (b) Ensuring the observer is in compliance with the guidelines outlined in the *Police Observer Information Form* .
    - (c) If an observer is assigned to an officer of the opposite gender, the supervisor must have the Police Observer Information Form signed by an on-duty lieutenant.
  - 2. Upon completion of the observation, the *Police Observer Information Form* shall be forwarded to the appropriate administrative staff for entry into the Rider Database.

#### 324.2.2 RULES AND REGULATIONS FOR POLICE OBSERVERS

- (a) If observers violate any of the guidelines outlined in the *Police Observer Information Form*, or their behavior prevents officers with whom they are riding from doing their job effectively, the following will occur:
  - 1. Prior to the riding period - The observer shall be advised by the assigned supervisor or officer that they are not permitted to ride until they are in compliance. Supervisors may require the observer to reschedule if he cannot comply with the guidelines.
  - 2. During the riding period - The observer shall be returned to the APD facility where the supervisor may either immediately terminate the riding session or allow the rider to finish that session if the problem can be readily corrected.
- (b) If the problem cannot be corrected:
  - 1. The officer to whom the observer was assigned shall complete a memorandum detailing the actions of the observer. The memorandum shall be forwarded through the chain-of-command to the appropriate commander.
  - 2. If a supervisor finds cause that an observer should be banned, the supervisor shall complete a memorandum detailing their findings. The memorandum shall be forwarded through the chain-of-command to the appropriate commander.

# Austin Police Department

## General Orders

### *Police Observer Program*

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3. Commanders or their designee shall make the determination as to whether or not the observer should be banned from further rides with the Department and the duration of the ban, if imposed. If the determination is made that a ban should be imposed, commanders or their designee shall advise the administrative staff to update the Rider Database with the duration of the imposed ban. The memorandum and rider forms shall be maintained for a minimum of three (3) years or the duration of the ban, whichever is longer.

#### **324.3 OFFICER RESPONSIBILITIES**

- (a) Officers shall advise the dispatcher that a participant in the Police Observer Program is present in the vehicle before going into service. Officers shall consider the safety of the observer at all times.
- (b) Officers should use sound discretion when encountering a potentially dangerous situation. The dispatcher shall be advised of the situation and, if necessary, may have another police unit respond to pick up the observer. Participation may continue with another officer or the ride may be terminated and the observer returned to the APD facility where the ride initiated.

#### **324.4 CONTROL OF POLICE OBSERVER**

Officers shall maintain control over observers and instruct them in the conditions that will limit the observers' activity. This includes, but is not limited to, the following:

- (a) Observers shall follow the officer's directions. Officers may return observers to the original APD facility if observers interfere with the performance of any duties.
- (b) Observers shall not become involved in any investigation, handling of evidence, or discussions with victims or subjects.
- (c) Observers shall not handle any police equipment unless instructed to do so by an officer.
- (d) Observers may be allowed to continue riding during the transportation and booking process provided this does not jeopardize their safety. Officers and observers shall follow all booking facility (e.g., TCSO, WILCO) guidelines.
- (e) Officers shall not allow any observer into a private residence without consent of the individual in control of the property unless there is an emergency or exigent circumstances exist.
- (f) Officers shall not allow observers to be present in any situation that would jeopardize their safety or cause undue stress or embarrassment to a victim or any other citizen.

#### **324.5 RESTRICTIONS**

- (a) Department Tactical Alert

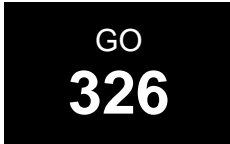
# Austin Police Department

## General Orders

### *Police Observer Program*

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1. The Police Observer Program will be suspended when a Department-wide Tactical Alert has been implemented.
  2. Administrative Staff will notify the scheduled observer of the cancelation as soon as practical. The observer will be rescheduled at the earliest convenience of the Department and the observer.
- (b) Special Event
1. At the discretion of the Region Commander the Police Observer Program may be suspended during Special Events.
  2. Administrative Staff will notify the scheduled observer of the cancelation as soon as practical. The observer will be rescheduled at the earliest convenience of the Department and the observer.
  3. The following events, although not comprehensive, may be considered under this section.
    - (a) New Year's Eve
    - (b) Mardi Gras
    - (c) SXSW
    - (d) Texas Relays
    - (e) X-Games
    - (f) Republic of Texas Motorcycle Rally
    - (g) Independence Day
    - (h) Austin City Limits Music Festival
    - (i) Formula 1
    - (j) Halloween
- (c) DTAC Walking Beat
1. Observers should not be scheduled with a DTAC Officer assigned to walking beat without approval of the DTAC Commander.



## Austin Police Department

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# News and Media Relations

### 326.1 PURPOSE AND SCOPE

The purpose of this order is to seek a balance between permitting the free flow of information to the public and the media while protecting both the prosecution's case and the rights of the accused from possible prejudicial publicity. Public information and positive media relations are an integral part of the operation of any public service agency and APD is no exception. Most citizens have little contact with law enforcement and their opinions of the police are often formed by our Department's portrayal in the media. The release of public information and maintenance of good media relations is a crucial element of APD's mission. Employees must maintain a good rapport with the public and the media and deal with them in a courteous manner. The media has a legitimate function in our society and the public trust of the police can be enhanced through media relations.

APD is committed to informing the community and members of the news media of events that are handled by, or involve, the Department. Employees will cooperate fully in meeting the relevant information needs of the public and the news media. Every reasonable effort should be made to obtain requested information, so long as the release of that information conforms to federal and state laws, and follows established Department guidelines.

### 326.2 RELEASE OF PUBLIC INFORMATION

APD's Public Information Office (PIO) is responsible for collecting police information and then fairly, equitably and efficiently disseminating it to the public and media. PIO's primary function is to act as a liaison between the public, the news media and the Department and to coordinate all of the Department's release of public information.

During regular weekday business hours, PIO personnel will respond to the scene as determined by PIO. After office hours the on-call PIO will coordinate with the ranking on-scene officer and make the determination if PIO needs to respond. If the on-call PIO does not respond to the scene, they will send pager notification to the media with information about the incident. The ranking on-scene officer will be responsible for media interviews at the scene.

#### 326.2.1 MEDIA REQUEST GUIDELINES

Any media request for information or access to a law enforcement situation shall be referred to the designated PIO representative, or if unavailable, to the ranking on-scene officer. Prior to releasing any information to the media, employees shall consider the following:

- (a) Employees releasing information will ensure that the information is releasable and sheds a positive light on the City, APD and the law enforcement community. Information of a controversial nature will be directed to the PIO.
- (b) In situations involving multiple law enforcement agencies, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this department.

# Austin Police Department

## General Orders

### *News and Media Relations*

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- (c) Under no circumstance should any member of this department make any comment(s) to the media regarding any law enforcement incident not involving this department without prior approval of the Chief of Police.

Media personnel are not exempt from any federal or state law, or any local ordinance and will be treated in the same manner as any other person violating the law.

Employees who encounter issues with the media should initiate a memorandum through their chain-of-command to the PIO Commander clearly outlining the situation and identifying, if possible, those involved.

#### 326.2.2 OTHER METHODS OF PUBLIC INFORMATION RELEASE

- (a) Austin Warning and Communications System (AWACS)
  - 1. A City alphanumeric pager system designed to provide a rapid method of getting emergency information to the public through the media. It also can be used to provide the media with information about other newsworthy events.
- (b) News Releases and News Conferences
  - 1. Written information released by the Department for the media will be coordinated by PIO. News releases will be emailed to news organizations. In addition, press conferences will be coordinated by PIO. Notification of news conferences will be done through news releases, "ring downs", or by AWACS.
- (c) Employee Interviews
  - 1. Media interviews with an employee may be arranged through PIO or directly with the employee.
    - (a) Employees contacted directly by the media and who have questions or do not want to provide an interview can refer the media representative back to PIO; or
    - (b) Employees contacted directly by the media and who want to provide an interview will:
      - 1. Notify their supervisor if the interview is regarding an open or ongoing investigation and request approval before conducting the interview; and
      - 2. Notify PIO either before or shortly after the interview.
- (d) Police Records
  - 1. Copies of police and crash reports must be purchased from APD's report sales.

#### 326.3 MEDIA ACCESS

Authorized members of the media shall be provided access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities subject to the following conditions:

- (a) The media representative shall produce valid press credentials that shall be prominently displayed at all times while in areas otherwise closed to the public.

# Austin Police Department

## General Orders

### *News and Media Relations*

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- (b) Media representatives will not be allowed to interfere with emergency operations and criminal investigations. Media personnel may not resist, obstruct or otherwise interfere with an officer in the lawful execution of his duty. However, the mere presence of a member of the media, the taking of pictures or the asking of questions does not, in itself, constitute unlawful interference.
  - 1. Reasonable effort should be made to provide a safe staging area for the media that is near the incident and that will not interfere with emergency or criminal investigation operations. All information released to the media should be coordinated through PIO or other designated spokesperson.
  - 2. Whenever the presence of media or other aircraft pose a threat to public or officer safety or significantly hampers incident operations, the field supervisor should consider requesting a Temporary Flight Restriction (TFR). All requests for a TFR should be routed through the Watch Lieutenant. The TFR request should include specific information regarding the perimeter and altitude necessary for the incident and should be requested through the appropriate control tower. If the control tower is not known, the Federal Aviation Administration should be contacted (14 CFR § 91.137).
- (c) No member of this department shall be subjected to media visits or interviews without the consent of the involved employee.
- (d) Media interviews with individuals who are in custody shall not be permitted without the approval of the PIO Manager, Investigative Unit supervisor and the expressed consent of the person in custody.
- (e) Media access to working areas of the Department shall be coordinated through PIO and should extend only for the length of time necessary to achieve a specifically approved objective of the media.

A tactical operation should be handled in the same manner as a crime scene, except the news media should be permitted within the outer perimeter of the scene, subject to any restrictions as determined by the supervisor in charge. Department members shall not jeopardize a tactical operation in order to accommodate the news media. During the tactical operation, all comments to the media shall be coordinated through a supervisor or PIO.

#### **326.4 SCOPE OF INFORMATION SUBJECT TO RELEASE**

Requests for information shall be handled as follows:

- (a) **Open Records Requests** - General Order 116 (Security and Release of Records and Information) deals with the release of information in the form of an Open Records request. Employees receiving an open records request should contact the Open Records Coordinator in Central Records. Public and/or media requesting information not contained in the public portion of police reports may file an open records request with the Department.
- (b) **Juvenile Information** - At no time shall identifying information pertaining to a juvenile arrestee, victim or witness be publicly released without prior approval of a competent court.

## Austin Police Department

## General Orders

*News and Media Relations*

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- (c) **Police Photograph (Mug Shot)**
1. Mug shots of adult arrestees are subject to public release unless the release would interfere with law enforcement interests or hinder investigative efforts. All mug shots of adult arrestees are publicly released automatically through the online APD Booking Photo Database Search 13 days after date of arrest.
  2. Mug shots and photos of juvenile arrestees are confidential and will not be released without a court's approval.
- (d) **9-1-1 Tapes or In-Car Video Tapes** - Requests for APD 9-1-1 recordings need to be submitted in writing. Media requests for these recordings should be sent through the open records coordinator assigned to PIO.
- (e) **Identities of Deceased Persons** - In death investigations, the name of the deceased shall not be released by an employee until Victim Services or the Medical Examiner's Office has had a reasonable time to notify the next-of-kin. What constitutes a "reasonable time" will vary depending upon the circumstances of each case. Public release of the name of the deceased will be made through PIO or the Medical Examiner's Office.
- (f) **Arrest Information** - By law, the public and/or media has access to the following arrest information:
1. Arrestee's name, age, race, sex, occupation, alias, department identification number, and physical condition;
  2. Location of arrest;
  3. Names of the arresting officers;
  4. Charges filed and the court in which it is filed (if known); and
  5. The date and time of the arrest.
- (g) **Internal Affairs (IA) Investigations** - Information regarding an internal investigation is confidential and will be released through PIO only after authorization by the Office of the Chief. Premature and/or unauthorized statements made concerning confidential information is a violation of Department General Orders and may have an adverse effect on, or seriously jeopardize, an investigation. Only the IA Commander, and/or PIO personnel may confirm:
1. An internal investigation is being conducted;
  2. The name of the employee involved; and
  3. The nature of the allegation or incident.
- (h) **Statistical Information** - Media requests for statistical data should be coordinated and released through PIO.
- (i) **Media Riders** - Media riders must be coordinated as outlined in General Order 324 (Police Observer Program).

# Austin Police Department

## General Orders

### *News and Media Relations*

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#### 326.4.1 RESTRICTED INFORMATION - GENERAL

It shall be the responsibility of the authorized employee dealing with media requests to ensure that restricted information is not inappropriately released to the media by this department. When in doubt, authorized and available legal counsel should be obtained.

Examples of such restricted information include, but are not limited to:

- (a) Confidential peace officer personnel information.
- (b) Copies of traffic crash reports (except to those authorized pursuant to Tex. Transp. Code § 550.065).
- (c) Criminal history information.
- (d) Information that would tend to endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation.
- (e) Information pertaining to pending litigation involving this department.
- (f) Information obtained in confidence.
- (g) Any information that is otherwise privileged or restricted under state or federal law.

#### 326.4.2 RESTRICTED INFORMATION - WARRANTS

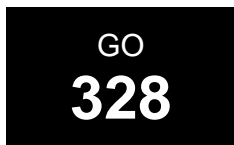
To protect the safety and rights of officers and other persons, advance information should not be provided to the news media regarding search warrant or arrest warrant actions planned by law enforcement personnel, nor should media representatives be solicited or invited to be present. Any exceptions require prior approval of the Chief of Police.

At no time shall the media be brought into a private residence during the execution of a search or arrest warrant.

#### 326.5 DEPARTMENT WEBSITE

PIO is responsible for the APD website (<http://www.austintexas.gov/department/police>). PIO will coordinate requests for information to be included on the website and develop and/or assist in the development of page layout for any additions to the APD website.





## Austin Police Department General Orders

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# Racial or Bias-Based Profiling

### 328.1 PURPOSE AND SCOPE

This order provides guidance to department members and establishes appropriate controls to ensure that members of the Austin Police Department do not engage in racial or bias-based profiling or violate any related laws while serving the community.

#### 328.1.1 DEFINITIONS

Definitions related to this order include:

**Racial or Bias-Based Profiling** - Any instance of disparate treatment by law enforcement based on race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability or affiliation with any non-criminal group, rather than on behavior or information identifying the individual as having engaged in criminal activity. Racial or bias-based profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.

**Race or Ethnicity** - Individuals of a particular descent. This includes, White, Black, Hispanic or Latino, Asian or Pacific Islander, Middle Eastern, or Alaska native or Native American.

**Acts Constituting Racial or Bias-Based Profiling** - Initiating law enforcement action, such as a traffic stop, a detention, a search, issuance of a citation, or an arrest based solely upon an individual's race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or affiliation with any non-criminal group rather than upon the individual's behavior, information identifying the individual as having possibly engaged in criminal activity, or other lawful reasons for the law enforcement action.

### 328.2 POLICY

The Department strives to provide law enforcement services to our diverse community while respecting the racial, cultural, or other differences of those we serve. It is the policy and practice of the Department to provide law enforcement services and to enforce the law equally, fairly, and without discrimination toward any individual or group.

Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability, or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law.

While the practice of racial or bias-based profiling is strictly prohibited, it is recognized that race or cultural differences may be legitimately considered by an officer in combination with other legitimate factors; to establish reasonable suspicion or probable cause (e.g., subject description is limited to a specific race or group), to establish relevant elements of a crime (e.g. exploitation of an elderly or disabled individual), or to gather evidence relevant to enhanced punishment due to offenses committed because of bias or prejudice.

# Austin Police Department

## General Orders

### *Racial or Bias-Based Profiling*

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#### **328.3 MEMBER RESPONSIBILITIES**

Every member of this Department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any known instances of racial or bias-based profiling to a supervisor.

##### **328.3.1 REASON FOR DETENTION**

Officers detaining a person shall be prepared to articulate sufficient reason for a lawful detention, independent of the individual's membership in a protected class.

To the extent that written documentation would otherwise be completed (e.g., arrest report, field observation (FO) card), the involved officer should include those facts giving rise to the authority for the detention, as applicable.

Nothing in this order shall require any officer to document a contact that would not otherwise require reporting.

##### **328.3.2 REQUIRED DOCUMENTATION**

Every member of the Department is required to document and report to the Department any detention, frisk, search, nonconsensual stop and/or arrest of a person. Officers shall document the following information in the appropriate fields of an incident report, field release citation, warning, field observation card or electronic street check:

- (a) a physical description of any person who is detained or arrested, including (if applicable) passengers in a motor vehicle, including:
  1. the person's gender; and
  2. the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability.
- (b) whether the officer knew the race or ethnicity of the individual detained before detaining that individual;
- (c) the initial reason for the stop;
- (d) whether the officer conducted a search during the stop and, if so, whether the person detained consented to the search;
- (e) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;
- (f) the reason for the search, including whether:
  1. any contraband or other evidence was in plain view;
  2. any probable cause or reasonable suspicion existed to perform the search;
  3. the search was performed as to inventory a motor vehicle or other package being impounded or seized; or
  4. the search was performed incident to arrest.

# Austin Police Department

## General Orders

### *Racial or Bias-Based Profiling*

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- (g) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
- (h) the street address or approximate location of the stop; and
- (i) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and
- (j) whether the officer used physical force that resulted in bodily injury during the stop.

#### **328.4 SUPERVISOR RESPONSIBILITIES**

Supervisors shall monitor those individuals under their command for any behavior that may conflict with the purpose of this order and shall handle any alleged or observed violation of this order in accordance with the Administrative Investigations general order.

- (a) Supervisors will discuss any issues with the involved officer and his/her supervisor in a timely manner.
- (b) In conjunction with the personnel inspections required by General Order 801.8, supervisors will conduct inspections to review Body Worn Camera (BWC) recordings, MDC data, and any other available resource used to document contact between officers and the public to ensure compliance with this order.
  - 1. Supervisors will document these periodic reviews using form PD0128.
  - 2. Recordings or data that capture a potential instance of racial or bias-based profiling should be appropriately retained for administrative investigation purposes.
- (c) Supervisors will initiate investigations of any actual or alleged violations of this order.
- (d) Supervisors will ensure that no retaliatory action is taken against any member of this department who discloses information concerning racial or bias-based profiling.

#### **328.5 REPORTING**

- (a) Pursuant to applicable law, the Chief of Police shall submit an annual report, which includes complaints of disparate treatment based on race or ethnicity, as well as analysis of information required by law, to TCOLE and each governing body served by this agency. The report will be based on motor vehicle stops that resulted in a citation and/or an arrest and will include information based on the requirements of Tex. Code of Crim. Pro. § 2.132.
  - 1. The report may not include identifying information about any officer who made the stop or any individual who was stopped or arrested.

#### **328.6 COMPLAINTS**

The Department will provide access to the complaint process for the public on the Austin Police Department and Austin Police Monitor websites, as well as brochures in every police facility.

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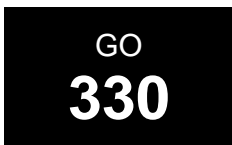
*Racial or Bias-Based Profiling*

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The Department will investigate all complaints involving racial or bias-based profiling by any employee as outlined in the Administrative Investigations general order. The officer should be given a copy of any related recording as soon as practicable upon written request (Tex. Code of Crim. Pro. art. 2.132).

**328.7 TRAINING**

All sworn members of this department will complete all Texas Commission on Law Enforcement (TCOLE) mandated training on the subject of racial or bias-based profiling.



## Austin Police Department

### General Orders

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# Interactions with Foreign Nationals

## 330.1 PURPOSE AND SCOPE

This order controls employee interactions with foreign nationals, including those who claim immunity, and with immigration authorities, including Immigration and Customs Enforcement (ICE).

## 330.2 POLICY

It is the policy of the Department that all employees make personal and professional commitments to impartial enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

## 330.3 DEFINITIONS

**Foreign National** - Anyone who is not a citizen of the United States. A person with dual U.S. and foreign citizenship is not a foreign national.

**Foreign Official** - A foreign national serving in the capacity of ambassador, United Nations representative, consular officer, or other diplomatic agent who may be entitled to certain immunity. In certain cases, immediate family members of a foreign official are also entitled to certain immunity.

**Immunity** - Refers to various protections and privileges extended to the employees of foreign governments who are present in the U.S. as official representatives of their home governments. These privileges are embodied in international law and are intended to ensure the efficient and effective performance of their official "missions" (i.e., embassies and consulates) in foreign countries. Proper respect for the immunity to which an individual is entitled is necessary to ensure that U.S. diplomatic relations are not jeopardized and to maintain reciprocal treatment of U.S. personnel abroad.

Although immunity may preclude U.S. courts from exercising jurisdiction, it is not intended to excuse unlawful activity. It is the policy of the U.S. Department of State's Office of Foreign Missions (OFM) that illegal acts by foreign service personnel should always be pursued through proper channels. Additionally, the host country's right to protect its citizens supersedes immunity privileges. Peace officers may intervene to the extent necessary to prevent the endangerment of public safety or the commission of a serious crime, regardless of immunity claims.

**Immigration Status Inquiry** - Questioning a person about the person's immigration status and/or contacting immigration authorities to confirm a person's identification and/or immigration status.

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*Interactions with Foreign Nationals*

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### **330.4 IMMIGRATION STATUS INQUIRIES**

Officers who have lawfully detained a person to conduct a criminal investigation into an alleged criminal offense, or who have arrested a person for a criminal offense, may make an inquiry into the person's immigration status, except as prohibited in this order.

Before officers inquire into immigration status, they must instruct the detainee or arrestee that the detainee or arrestee is not compelled to respond to the inquiry and that the detainee or arrestee will not be subjected to additional law enforcement action because of their refusal to respond.

- (a) All immigration status inquiries shall be documented in a Versadex offense report by adding Title Code 4201 "Immigration Status Inquiry," regardless of whether an arrest was made or not, and regardless of whether the individual answered the question or not. A CAD call will be generated for each report, and every officer on scene will log into that call. Direct entry Versadex reports will not be permitted.
  - 1. The report will include the reasons why the officer asked about the person's immigration status and the specific questions asked.
  - 2. This order does not apply to citizenship inquiries made as part of the jail booking process; therefore, officers do not need to add Title Code 4201 for citizenship inquiries made as part of the jail booking process.
- (b) Officers will not consider race, color, religion, language or national origin when deciding whether to inquire into a detainee's or arrestee's immigration status.
- (c) Officers will not inquire into the immigration status of a person who is the victim of a crime or a witness to a crime, except under the following conditions, or for the following reasons:
  - 1. The officer is investigating a criminal offense and the officer reasonably believes that the inquiry will provide evidence or information pertinent to the investigation;
  - 2. The inquiry will allow the officer to provide a victim or witness, who is assisting law enforcement, information about federal visas designed to protect victims (refer to GO 607 (U-Visa Nonimmigrant Status Certifications)); or
  - 3. The officer has probable cause to believe a victim or witness has engaged in specific conduct constituting a separate criminal offense.
- (d) Officers will not inquire into the immigration status of a person while the officer is engaged in a secondary employment contract with:
  - 1. A hospital or hospital district;
  - 2. A school district or open-enrollment charter school; or
  - 3. A place of worship or religious organization.

#### **330.4.1 REPORTING IMMIGRATION STATUS INQUIRIES DURING FOLLOW-UP INVESTIGATIONS**

- (a) All immigration status inquiries during follow-up investigations shall be documented in a Versadex offense report by adding Title Code 4201 "Immigration Status Inquiry."

# Austin Police Department

## General Orders

### *Interactions with Foreign Nationals*

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1. The report will include the reasons why the officer asked about the person's immigration status and the specific questions asked.
2. This order does not apply to citizenship inquiries made as part of the jail booking process; therefore, officers do not need to add Title Code 4201 for citizenship inquiries made as part of the jail booking process.

#### **330.5 FOREIGN NATIONALS CLAIMING IMMUNITY**

The Vienna Convention on Consular Relations sets forth certain rights of foreign officials from member countries when they are arrested, detained, or imprisoned by U.S. law enforcement officials in this country.

As noted herein, the United States is a party to several bilateral agreements that obligate authorities to notify the consulate upon the person's detention, regardless of whether the detained person requests his consulate to be notified.

A list of specific countries that the United States is obligated to notify is maintained by the U.S. Department of State(DOS). CTECC will maintain contact information for the U. S. Department of State, a current telephone list of foreign embassies and consulates, and a list of mandatory notice countries.

##### **330.5.1 IDENTIFICATION OF THOSE CLAIMING IMMUNITY**

- (a) Diplomatic agents and consular officers are immune from arrest or detention unless they have no identification and the detention is to verify their diplomatic status. Proper identification of subjects claiming immunity is imperative in potential custody situations.
  1. Subjects who are placed under arrest and claim diplomatic or consular immunity shall not be physically restrained before verification of the claim unless restraint is necessary for the protection of the officer or others.
- (b) All diplomatic and consular personnel who are entitled to immunity are registered with the DOS and are issued distinctive identification cards by the DOS Protocol Office. These cards are the best means of identifying foreign service personnel. They include a photograph, identifying information, and, on the reverse side, a brief description of the bearer's immunity status. These identification cards are not always promptly issued by DOS. In addition to theDOS identification card, Foreign Service personnel should also have a driver license issued by theDOS Diplomatic Motor Vehicle Office (DMVO), which in most circumstances replaces the operator's license issued by the state. DOS identification cards are 3-3/4 inches by 1-1/2 inches and contain a photograph of the bearer. The following types of identification cards are issued:
  1. Diplomatic (blue bordered),
  2. Consular (red bordered), and
  3. Official (green bordered).
- (c) Field verification of the subjects identity is to be attempted as follows:

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## General Orders

### *Interactions with Foreign Nationals*

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1. Identification cards issued by DOS are the only valid evidence of diplomatic or consular immunity.
2. Verify immunity by phone with DOS any time an individual claims immunity and cannot present satisfactory identification, the officer has reason to doubt the claim of immunity, or there is a possibility of physical arrest. Officers can contact CTECC for the appropriate contact phone numbers.
3. Members of diplomatic or consular missions may also have other forms of identification. These include identification cards issued by the Office of Emergency Services, local law enforcement agencies, the foreign embassy, or consulate; driver licenses issued by DOS; and, DOS license indicia on the vehicle. All these items are only an indication that the bearer may have some form of immunity.

#### 330.5.2 FOREIGN DIPLOMAT VEHICLE REGISTRATION

Vehicles that are owned by foreign missions or foreign service personnel and their dependents are registered with OFM and display distinctive red, white and blue license plates. Vehicles assigned to diplomatic or consular officers will generally have license plate labels with the words "diplomat" or "consul." Vehicles owned by honorary consuls are not issued OFM license plates; but may have Texas license plates with an "honorary consul" label. A driver's identity or immunity status should not be presumed from the type of license plates displayed on the vehicle. The status of an OFM license plate should be run via the National Law Enforcement Telecommunications System (NLETS), designating "U.S." as the state, if the officer has reason to question the legitimate possession of the license plate.

#### 330.5.3 DIPLOMATIC IMMUNITY TABLE

Notes for the diplomatic immunity table:

- (a) This table represents general rules. The employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.
- (b) Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.
- (c) A small number of senior officers are entitled to be treated identically to diplomatic agents.
- (d) Note that consul residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.



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<b>Category</b>	<b>Arrested or Detained</b>	<b>Enter Residence Subject to Ordinary Procedures</b>	<b>Issued Traffic Citation</b>	<b>Subpoenaed as Witness</b>	<b>Prosecuted</b>	<b>Recognized Family Members</b>
<b>Diplomatic Agent</b>	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
<b>Member of Admin and Tech Staff</b>	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
<b>Service Staff</b>	Yes (note (a))	Yes	Yes	Yes	No for official acts Yes otherwise (note (a))	No immunity or inviolability (note (a))
<b>Career Consul Officer</b>	Yes if for a felony and pursuant to a warrant (note (a))	Yes (note (d))	Yes	No for official acts Testimony may not be compelled in any case	No for official acts Yes otherwise (note (a))	No immunity or inviolability
<b>Honorable Consul</b>	Yes	Yes	Yes	No for official acts Yes otherwise	No for official acts Yes otherwise (note (a))	No immunity or inviolability
<b>Consulate Employees</b>	Yes (note (a))	Yes	Yes	No for official acts Yes otherwise	No for official acts Yes otherwise (note (a))	No immunity or inviolability (note (a))

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<b>Int'l Org Staff (Note (b))</b>	Yes (note (c))	Yes (note (c))	Yes	Yes (note (c))	No for official acts  Yes otherwise (note (c))	No immunity or inviolability
<b>Diplomatic Level Staff of Missions to Int'l Org</b>	No (note (b))	No	Yes	No	No	Same as sponsor  (full immunity & inviolability)
<b>Support Staff of Missions to Int'l Orgs</b>	Yes	Yes	Yes	Yes	No for official acts  Yes otherwise	No immunity or inviolability

### **330.6 ENFORCEMENT PROCEDURES FOR FOREIGN NATIONALS ENTITLED TO IMMUNITY**

The following procedures provide a guideline for handling incidents involving foreign officials who claim some form of immunity. Supervisors shall be promptly notified and should respond to the scene when possible. Supervisors shall ensure the Watch Lieutenant is notified of the incident.

- (a) The U.S. is obligated under the Vienna Convention on Consular Relations, international treaties, and customary international law to notify consular officials when foreign nationals make such a request, are arrested, or are detained for more than two hours.
  1. Officers detaining a foreign national shall notify the appropriate consular official upon request or when a detention exceeds two hours.
  2. Upon arrest, the officer shall inform the intake officer at the booking facility to notify the appropriate consular.
- (b) Officers shall document in the narrative of the appropriate incident report the date and time Communications was notified of the foreign national's arrest or detention and his/her claimed nationality.

#### **330.6.1 CITABLE OFFENSES**

A citation shall be issued at the scene for all violations warranting such action pursuant to state law and departmental policy regardless of the violator's immunity status. The issuance of a citation is not considered an arrest or detention under current DOS guidelines. Whenever a citation is issued to a subject claiming immunity, these additional procedures shall be followed:

- (a) Identification documents are to be requested of the subject.
- (b) The title and country represented by the subject are to be recorded in the notes section of the e-citation for later reference.

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- (c) The subject shall be requested to sign the citation. If the subject refuses, the identity and immunity status of the individual shall be conclusively established.
  - 1. Verified diplomatic agents and consular officers, including staff and family members from countries with which the U.S. has special agreements, are not required to sign the citation. The word "refused" shall be entered in the signature section of the e-citation and the violator shall be released.
  - 2. Verified consular staff members, excluding those from countries with which the U.S. has special agreements, are generally obligated to sign the citation but a signature shall not be required if their immunity status is uncertain.
- (d) The violator shall be provided with the appropriate copy of the citation.

#### 330.6.2 DETENTION AND CUSTODY ARREST GUIDELINES

Subjects entitled to immunity may not be subject to a custody arrest; the procedures below shall be followed instead. These procedures should also be used in the event immunity cannot be verified but another form of identification indicates that immunity is probable. Supervisor approval is required for all custody arrests and releases when a claim of immunity is involved.

- (a) If the release of the violator will not create an additional hazard, adequate information to properly identify the violator shall be obtained then the official shall be released. The necessary release documents (e.g., citation) should only be issued under the proper conditions.
- (b) If the violator appears to have been driving while under the influence, field sobriety tests should be offered. The subject shall not be permitted to drive and alternative transportation should be arranged:
  - 1. All facts of the incident shall be documented in accordance with this order in a Driving While Intoxicated (DWI) Incident Report and/or any other relevant report form. Prosecution is still appropriate and should be pursued.
  - 2. The DWI Unit shall contact the Department of State, as soon as practicable, to verify the violator's status and immunity. Within five working days of the stop, the DWI Unit shall send to the Bureau of Diplomatic Security Office of Foreign Missions of the Department of State a copy of the citation and/or any accident or other written report documenting the incident (Tex. Transp. Code § 543.011 et seq.). The Department of State will take appropriate sanctions against errant foreign service personnel, even where prosecution is not undertaken by the agency.
- (c) Foreign consular officials have the right to visit their arrested or detained nationals as soon as practicable unless the person objects to the visit.

#### 330.6.3 TRAFFIC CRASHES

Persons involved in a traffic crash who possess an OFM Diplomatic Driver License issued by the DMVO, shall have "D" coded in the license "class" box of the Traffic Crash Report. The actual driver license class (e.g., 1, 2, 3, or A, B, C, M) shall be entered on the traffic report. If subsequent prosecution of the subject is anticipated, the subject's title, country, and type of identification presented should be recorded for future reference.

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- (a) Issuance of a citation or arresting a subject claiming immunity at a crash scene shall be handled as outlined in the previous section of this order.

#### 330.6.4 VEHICLES

Vehicles which are owned by subjects with full immunity may not be searched, stored or impounded without the owner's permission. Such permission may be assumed if the vehicle has been stolen. These vehicles may, however, be towed the necessary distance to remove them from obstructing traffic or creating any other hazard.

#### 330.6.5 REPORTING PROCEDURES

- (a) A copy of all reports and documents (e.g., citations, incident reports, crash reports) related to the incident which involves an identified diplomat and/or immunity subject shall be immediately forwarded to the office of the Chief of Police through the officer's chain-of-command, regardless of whether the claim of immunity is verified. The words "Immunity Claim" shall be marked on the top copy, together with a notation of the subject's title, country and type of identification presented, if applicable.
- (b) In addition to the reports and documents, a follow-up cover memorandum should be submitted for incidents where the investigation indicates the violation was flagrant, the subject was uncooperative, or involved any other unusual aspects of the enforcement contact where further action by the Department of State may be necessary.
- (c) The supervisor apprised of the incident shall ensure that all related documents, including any supervisor's notes, materials and/or logs are forwarded to the office of the Chief of Police without delay. The Chief of Police's office will verify that notification to the Department of State and all necessary follow-up occur.

### **330.7 ENFORCEMENT PROCEDURES FOR FOREIGN NATIONALS NOT ENTITLED TO IMMUNITY**

It is the policy of this Department is to protect the public safety through enforcement of the criminal laws and other laws authorizing action by local police. Officers will adhere to the following with respect to detentions and arrests involving foreign nationals who are not claiming immunity.

#### 330.7.1 DETENTION AND CUSTODY ARREST GUIDELINES

- (a) Officers shall not detain or arrest a person solely because the officer suspects or knows that a person may be an undocumented immigrant or for the purpose of determining or investigating a person's immigration status.
- (b) Officers shall immediately inform any foreign nationals of their right to have their consular official notified concerning a detention or arrest.
- (c) Unless complying with a formal detainer request issued by Immigration and Customs Enforcement (ICE) or another federal immigration authority, or providing authorized assistance to ICE under the supervision of ICE, an officer may not prolong a detention of a person suspected to be an undocumented immigrant beyond a reasonable time needed for the officer to complete an investigation or an enforcement activity (e.g., issue a written warning, issue a citation, complete an F.O. card, etc.).

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**330.7.2 REPORTING PROCEDURES**

- (a) The U.S. is obligated under the Vienna Convention on Consular Relations, international treaties, and customary international law to notify consular officials when foreign nationals make such a request, are arrested, or are detained for more than 2 hours.
  - 1. Officers detaining a foreign national shall notify the appropriate consular official upon request or when a detention exceeds two hours.
  - 2. Upon arrest, the officer shall inform the intake officer at the booking facility to notify the appropriate consular.
- (b) Officers shall document in the narrative of the appropriate incident report the date and time Communications was notified of the foreign national's arrest or detention and his/her claimed nationality.
- (c) Foreign consular officials have the right to visit their arrested or detained nationals as soon as practicable unless the person objects to the visit.

**330.8 REQUESTS FOR ASSISTANCE FROM FEDERAL IMMIGRATION OFFICIALS**

- (a) Upon request, officers may provide reasonable or necessary assistance to ICE (or other federal immigration officials), including with enforcement operations if those operations will be directed and supervised by federal officials. Except in emergencies involving the possibility of imminent death, serious injury, or loss of property, officers must receive approval from supervisors holding the rank of Lieutenant or higher prior to providing any such assistance. The supervisor will determine whether the request is reasonable or necessary based on factors including:
  - 1. the availability of Department resources and personnel that are appropriate for and trained to perform the requested task;
  - 2. whether providing the requested assistance would pose an unreasonable risk to public safety or to Department personnel or property;
  - 3. whether providing the assistance would assist with stopping criminal activity; and
  - 4. whether providing the requested assistance would cause the Department to incur unreasonable overtime costs.
  - 5. The urgency of the request.
- (b) Officers (including officers working secondary employment) shall not provide assistance to ICE for operations at a place of worship unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.
- (c) Officers working secondary employment for a hospital, religious organization, school district, or open enrollment charter school shall not provide assistance to ICE for operations unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.
- (d) Officers providing immediate or planned assistance to ICE shall create a GO using title code 3499-1 – Assist Other Agency – ICE. A CAD call will be generated for each

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report, and every officer on scene will log into that call. Direct entry Versadex reports will not be permitted. The following items shall be documented in the GO:

1. The name of the outside agency and the personnel who requested the assistance;
  2. The number of APD officers who assisted and the amount of time expended by each officer;
  3. The number of persons arrested, if known;
  4. The number of persons charged and the specific charges that were applied, if known;
  5. Any Department information or intelligence shared with ICE (no report is required for this item if the information or intelligence shared is otherwise documented pursuant to unit SOPs);
  6. Any additional resources used (e.g. canine units, helicopter, SWAT, etc.); and
  7. Any information provided by APD that is shared with a federal immigration enforcement agency at the request of a federal immigration agency (no report is required for this item if the information or intelligence shared is otherwise documented pursuant to unit SOPs).
- (e) Only the Chief of Police has the authority to enter into any formal, written agreement with ICE for ongoing operations, such as a 287G agreement.

### **330.9 ICE DETAINER REQUESTS**

The purpose of this order is to establish guidelines for handling ICE detainers. All officers are expected to comply with, honor, and fulfill formal immigration detainer requests issued by ICE.

- (a) An officer who receives information that a detainee or arrestee in his/her custody is the subject of an ICE detainer request, will take the following actions:
1. Notify a supervisor.
  2. Notify ICE to determine the validity of the detainer.
  3. Comply with the detainer request if its validity is confirmed.
  4. Inform the person he/she is being held subject to a detainer (in addition to any applicable criminal charges).
  5. Take the person to the Central Booking Facility or other suitable detention facility.
- (b) If the person subject to the detainer provides proof, including a Texas Driver's License or other government issued identification, that he/she is a United States citizen or has lawful immigration status, the officer will do the following:
1. Notify a supervisor.
  2. Notify ICE and provide an update.
  3. Cease from complying with the detainer request.

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4. Unless impracticable to do so, officers will make and retain a copy of the proof that was offered by the subject. The retained copy may be scanned into the Versadex report or submitted as evidence.
5. If the officer is unsure whether the proof provided is adequate proof of U.S. citizenship or lawful immigration status, the officer should continue honoring the detainer request until definitive proof is provided.

**330.10 MAINTENANCE AND SHARING OF IMMIGRATION RECORDS**

From time to time, the Department may have records with information, or need information, concerning a detainee's or arrestee's immigration status, including information concerning that person's place of birth (Immigration Status Information). Employees are permitted to:

- (a) Send, request, or receive Immigration Status Information to or from federal agencies involved in immigration enforcement (employees must appropriately document when the employee sends, requests, or receives Immigration Status Information);
- (b) Maintain Immigration Status Information pursuant to applicable records retention schedules; and
- (c) Exchange Immigration Status Information with other law enforcement agencies, or with federal or state governmental entities.



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# Traffic Enforcement

### 342.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines for improving public safety through education and enforcement of traffic-related laws.

### 342.2 POLICY

Officers shall enforce traffic regulations in a uniform, impartial manner. It is imperative that individuals committing identical offenses under similar conditions/circumstances be accorded the same treatment by an officer. To cite one person for an offense and warn another for the same offense committed to the same degree, under similar conditions and circumstances, is improper.

The guidelines established in this order are applicable to both adults and juveniles.

### 342.3 ENFORCEMENT GUIDELINES

- (a) On-duty officers in uniform should stop the operator of any vehicle committing a traffic violation when practical to do so.
- (b) On-duty officers not in uniform may make traffic stops only if the vehicle used in making the traffic stop is equipped with emergency lights and a siren.
- (c) After stopping the violator, officers shall exercise good judgment in deciding what enforcement action should be taken (e.g., warning, citation, arrest).
- (d) Whenever practicable, officers shall use the Department's electronic ticketing system. If officers are unable to use the electronic ticketing system, then paper citations, warnings, and/or field observations will be made available at the Property Control Office (PCO).

#### 342.3.1 CLASS C CUSTODY ARRESTS IN LIEU OF CITATION

- (a) Officers shall select the least intrusive or severe method when considering enforcement actions. However, a custody arrest can be made in the following situations:
  1. The violator refused to sign the citation.
  2. The violator cannot be sufficiently identified.
  3. The violator resisted detention, assaulted someone during the offense, or was combative or violent.
- (b) Supervisor approval is required to make a custody arrest in lieu of a traffic citation for eligible offenses.
- (c) If an arrest is made in lieu of a traffic citation for an eligible offense, the following must be documented in the offense report:
  1. Approving supervisor's name and employee number.
  2. Reason for the arrest in lieu of a traffic citation.



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#### 342.3.2 SUFFICIENT SUBJECT IDENTIFICATION

- (a) Officers should make every effort to sufficiently identify a driver or passenger prior to issuing a citation. If it is not possible to sufficiently identify a subject and the officer has an arrest authority, a custody arrest may be made in accordance with this order.
- (b) Some form of government photo identification is preferred. If a government photo identification is not available, officers shall use all reasonably available means to confirm the validity of the personal information provided by the person who is in custody. Officers shall document in their offense report what identification was used to establish the identity of the person in custody. If the person in custody cannot be positively identified, and after all reasonable efforts to ascertain identity have been made, officers will make a custody arrest and book the subject into jail. Officers shall document in their offense report what attempts were taken to establish the identity of the person in custody.
- (c) Subjects whose identity is in question and who are being issued a citation or whose identity needs confirmed as part of an investigation shall be transported to the APD ID section to verify identity prior to issuing the citation. While at the Main and ID Section, the officer is solely responsible for the detained/arrested individual and at no time will leave the individual unattended.
- (d) Subjects whose identity is in question and who are being booked into jail shall be transported to the appropriate booking facility where they will be fingerprinted by booking staff and identification confirmed.

#### 342.3.3 SPEEDING

In situations where officers stop a driver for speeding only, officers may not arrest the driver solely for this violation unless (Tex. Transp. Code § 543.004):

- (a) The driver does not have sufficient identification; or
- (b) The driver refuses to sign a citation, or
- (c) The violation is a component of a more serious violation (e.g., reckless driving, DWI, racing). When an arrest is made for the more serious violation, officers shall not issue a citation or charge the violator with speeding.

#### 342.3.4 OPEN CONTAINER

Possession of Alcoholic Beverage in a Motor Vehicle is a Class C Misdemeanor (Tex. Penal Code § 49.031) and must be observed by the officer before a citation can be issued.

- (a) Officers may not arrest solely for this violation unless (Tex. Transp. Code § 543.004):
  - 1. The violator does not have sufficient identification; or
  - 2. The violator refuses to sign a citation.

#### 342.3.5 FAILURE TO MAINTAIN FINANCIAL RESPONSIBILITY

When drivers who do not have current proof of insurance, officers shall make an inquiry through the Texas Sure Database to confirm if the driver has insurance on file.

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- (a) The inquiry shall be performed on the MDC or through Communications by running a license plate check.
- (b) If the Texas Sure Database is not accessible during the stop, officers shall note on the back of the citation "SURE was down".

#### **342.3.6 MULTIPLE HAZARDOUS TRAFFIC VIOLATIONS**

When an officer observes a driver that has committed multiple hazardous traffic violations, a custody arrest may be made with supervisor approval.

- (a) The intent is to remove an obviously dangerous driver from the roadway.
- (b) Generally, three or more hazardous violations should be observed by an officer.

#### **342.4 REFUSAL TO SIGN A CITATION**

Officers shall explain the consequences when a violator refuses to sign a citation. If the violator continues to refuse, the officer shall request a supervisor at the scene.

The supervisor shall confirm that the violator understands the consequences of refusing to sign the citation and may order the violator taken into custody if the violator continues to refuse to sign the citation.

#### **342.5 SUBMISSION OF TRAFFIC CITATIONS**

Officers shall submit all court copies of issued paper traffic citations to a Municipal Court drop box by the end of their tour of duty. Drop boxes are located at the various substations.

#### **342.6 CORRECTION AND DISMISSAL OF TRAFFIC CITATIONS**

##### **(a) Correction of Citations**

1. When a traffic citation is issued and in need of correction, officers issuing the citation shall submit the citation and a Motion for Correction Form requesting a specific correction to their immediate supervisor. The citation and Motion for Correction Form shall then be emailed to [prosecutor@austintexas.gov](mailto:prosecutor@austintexas.gov) or [court.liaison@austintexas.gov](mailto:court.liaison@austintexas.gov). The correction will then be handled by Municipal Court.

##### **(b) Dismissal of Citations**

1. APD employees do not have the authority to dismiss a citation once it has been issued; only the court has the authority to dismiss a citation that has been issued. Any request from a recipient to dismiss a citation shall be referred to the court.
2. Should an officer determine that a traffic citation should be dismissed in the interest of justice or where prosecution is deemed inappropriate, the officer will:
  - (a) Complete a Motion for Dismissal form where the officer will explain the reason for dismissal.
  - (b) The officer will present the completed form to their supervisor for approval.

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- (c) The form will be emailed to APD Court Liaison ([court.liaison@austintexas.gov](mailto:court.liaison@austintexas.gov))
- (d) The officer should also discuss the citation with the Municipal Court prosecutor when submitting the required form requesting the dismissal.

#### **342.7 CITATION ACCOUNTABILITY**

Citation books are stored and secured in PCO. Officers shall:

- (a) Sign for all issued citation books by legibly printing their name, employee number and signing on the designated form or log book.
- (b) Be accountable for all citations issued.
- (c) Return all outdated citation books to PCO.

##### **342.7.1 LOST, STOLEN, MISPLACED OR DAMAGED TRAFFIC CITATIONS**

- (a) Officers will notify their supervisor if an issued citation book or individual citation is lost, stolen, misplaced or damaged.
- (b) Supervisors will review the incident and email Municipal Court at [Municipal.Court@austintexas.gov](mailto:Municipal.Court@austintexas.gov) with the citation number(s) and notification that the citation was lost, stolen, misplaced or damaged.

#### **342.8 SPECIAL TRAFFIC ENFORCEMENT SITUATIONS**

##### **342.8.1 CONSULAR AND DIPLOMATIC PERSONNEL**

Foreign consular officials enjoy varying degrees of immunity from arrest, which may include traffic violations/citations. See General Order 330 (Foreign Officials Claiming Immunity) for more information.

##### **342.8.2 FEDERAL AND STATE LEGISLATORS**

Numerous federal and state legislators have offices within the City of Austin. During official legislative sessions, including travel to and from sessions, senators and representatives are immune from citations and arrest except for felonies and breaches of the peace.

- (a) Officers shall notify their supervisor when enforcement action (e.g., arrest, citation) is taken against a senator or representative.
- (b) Supervisors shall ensure the Watch Lieutenant is notified.

##### **342.8.3 MILITARY PERSONNEL**

Personnel of the Armed Forces of the United States (including National Guard) are exempt from state driver's licensing requirements while operating an official motor vehicle in the scope of that service. While operating a private vehicle, active duty non-resident military personnel are not required to hold a Texas driver's license; however, they must possess a current driver's license issued by another state.

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#### 342.9 UNIFORM TRAFFIC ENFORCEMENT CHART

The following charts cannot cover each situation or violation; this is only a guide for commonly used citation titles.

#### Hazardous Violations

Violation Type	Citation Title	Guide
Speed Tolerances	Speeding	Over Limit -- Posted Speed Zone (Radar) – may allow at least nine (9) mph in excess of the specified speed. Cite at ten (10) mph or greater over the limit
	Speeding - School Zone	School Zones – should allow four (4) mph in excess of the specified speed. Cite at five (5) mph or greater.
	Speeding	Officers may cite at any speed if the facts, circumstances or conditions would justify enforcement at a lower speed. Examples can be, but are not limited to: Wet, icy, or slick road conditions, residential area, construction zones, and special events involving pedestrian and/or bicycle traffic. Officers must be able to articulate why the speed was not reasonable or prudent for the circumstances.
Speed over limit – “posted area” (radar & non-radar)	Speeding	Lower to at least 1 mile per hour less than speed (i.e. 49 in 35 zone – lower to at least 48)
Speed over limit – “school zone”	Speeding “SCHOOL ZONE”	Same as above (i.e. 27 in 20 – lower to at least 26)
Speed over limit – “Construction Area” (radar & non-radar)	Speeding “Construction Zone, Workers Present”	Same as speed “posted area” Construction workers must be present w/signage indicating “Const. Zone, Fines Double when Workers Present.”
Speed over limit – “construction area” (radar & non-radar)	Speeding “Construction Zone”	Same as speed “posted area” Construction workers not present but signage indicates “Const. Zone”
Imprudent speed (collision)	Imprudent Speed	Any vehicle at any speed when existing conditions are such as to make the speed unreasonable or imprudent.
Impeding traffic	Impeding Traffic	An operator drives at a speed that impedes the normal and reasonable movement of traffic for a distance of 3 blocks or more
Right-of-way	Fail to Yield ROW (Left turn, right turn, no left turn, no right on Red, etc.)	If involved in collision or causes serious interference to another vehicle, pedestrian or bicyclist.
Signs, signals & markings (see below)	(see below)	Warning citations will be issued for a 3-day period after installation of new signs, signals & devices. Exceptions would be where an accident occurs or in aggravated situations.

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### Hazardous Violations, Cont.

Violation Type	Citation Title	Guide
Impeding traffic	Speed Under Minimum, Unsafe	If conditions above are not met – Vehicle traveling for a period of 3 or more blocks, will be removed from roadway.
Red light	Ran Red Light	When involved in collision or when vehicle had not reached nearest stop line or crosswalk when light changed red.
Flashing red light	Ran Flashing Red Light	Same as Stop Sign
Ran warning sign/disregard of flashing amber light	Disregard Posted Sign	When involved in collision or apparently deliberate and hazardous
Unsafe change of lanes	Unsafe Change of Lane (from Marked Lane)	When involved in collision or apparently deliberate and hazardous
Crossing Physical Barrier	Crossing Physical Barrier	When crossed concrete, grass or other physical object. <b>Does not apply to crossing solid lines.</b>
Drove Left of Double Yellow Line or Passing in a No Passing Zone	Drove Left of Double Yellow Line or Passing in a No Passing Zone	Do not cite if operator crossed double yellow line or passed in a no passing zone in a safe manner for the sole purpose of passing a vulnerable road user
Turned from wrong lane	Improper Right/Left Turn, Exit or Approach	Turned from wrong lane, or wide right turn <b>interfering with other traffic</b> (if no interference--warn)
Illegal U-turn	Illegal U-turn, Crest/Bottom of Hill	Involved in collision or <b>interfered with another vehicle</b> (if no interference—warn)
Wrong side of road/wrong way	Wrong Side of Road – Passing Or Drove Wrong Way on One-Way	Involved in collision or near collision, or where traffic is heavy (if no interference--warn)
Following too closely	Fail to Maintain an Assured Clear Distance.	Willful or sustained, or involved in collision (Use common sense regarding enforcement during peak traffic periods when congestion exists).
Cut through private drive	Cut Through Private Drive to Avoid Light/Sign	Cite if cut through in deliberate attempt to avoid traffic control device
Fail to yield right-of-way to pedestrian	FTYROW to Pedestrian in Marked Crosswalk	Cite if pedestrian in marked crosswalk has to move/run to avoid being hit
Seat belt violations	No Seat Belt – Driver/Passenger	Cite per Transportation Code

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### Non-Hazardous Violations

Violation Type	Citation Title	Guide
Expired MV inspection or registration	Expired MVI or LP	Allow six (6) day grace period from expiration date
Defective brakes	Defective Equipment – Brakes	No emergency or weak foot brakes. Vehicle will not stop within 30 feet @ 20 mph. Or, brake on only one wheel
Defective headlights, tail-lights or other light violation	Defective Equipment – headlight, tail-light, etc.	Evidence of willful neglect or multiple warning violations
Open door to traffic	Open Vehicle Door into Traffic	Involved in collision or interferes with movement of another vehicle.
Commercial vehicle equipment violations	Do Not Cite	All suspected commercial vehicle equipment violations will be responsibility of HE/L&W Unit
Soiled or damaged license plate or no front plate	Obscured LP; No Front LP	Evidence of willful neglect or multiple warning violations
License plate bracket or mounting violations	Obscured LP	Warn on first offense of partially obscured plate.
Other lighting violations	White Light to Rear; Neon Lights	Evidence of willful neglect or multiple warning violations
Buyer, & dealer in-transit tag violations	Misuse of Dealer In-transit/Demo Tag; Buyer's Tag Expired	Evidence of willful neglect or multiple warning violations
Altered or Fictitious MVI		Fact Specific
Defective exhaust, mufflers, smoke, etc.	Defective Exhaust – Noise/Smoke	Evidence of willful neglect or multiple warning violations
Altered or fictitious vehicle registration		Fact Specific
Driver's license Violation (expired)	Expired DL	Citations may be issued upon expiration
Driver's license Violation (fail to change address)	Fail to Change Driver's License	Cite per Transportation Code
No insurance, 1st and 2nd offenses	Fail to Maintain Financial Responsibility	Cite per Transportation Code
Window tint violation – rear window	Unlawful Window Tint	Cite if light transmission is 20% or less; and vehicle does not have an exterior rear view mirror on each side.
Window tint violation – front door windows- both sides	Unlawful Window Tint	Warn if light transmission is 21% to 24%. Cite if light transmission is 20% or less.
Window tint violation – windshield	Unlawful Window Tint	Cite if light transmission more than 5" from top of windshield is 65% or less.



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# Escorts and Traffic Control

### 343.1 PURPOSE AND SCOPE

This order provides guidelines to Department personnel who encounter traffic situations that require the use of alternative methods of enforcement, traffic direction, utilization of personnel, and specialized equipment or assistance.

### 343.2 ESCORTS FOR MEDICAL PURPOSES

It is the order of this Department to provide medical aid to persons requesting, or in need of, assistance. Employees should weigh the hazards and traffic dangers involved in providing escorts against the timely response of EMS or AFD.

- (a) When confronted by a person requesting medical assistance, and if the patient's condition does not appear immediately life-threatening, personnel will:
  - 1. Make every effort to provide first aid, if needed, and notify Communications to request EMS/AFD be dispatched; or
  - 2. Provide directions to the nearest (or requested) hospital and allow the person to proceed; or
  - 3. Provide a Code I escort to the hospital.
- (b) Due to the inherent liability of an untrained driver following an emergency vehicle and the fact that EMS/AFD can respond within minutes to virtually any location within the City, Code 2 or Code 3 escorts will NOT normally be conducted.
  - 1. However, when in the officer's opinion the extent of injuries or illness is immediately life-threatening and awaiting EMS/AFD would cause an inordinate delay in treatment, the officer will request supervisory approval for a Code 3 escort to the closest hospital emergency room.
  - 2. If approved, Communications will be notified before initiating the escort.
  - 3. The officer's primary function is to clear traffic, guiding the vehicle containing the patient safely to the hospital.

### 343.3 DIGNITARY AND VIP ESCORTS

Coordination of escorts for local or visiting dignitaries/VIPs will be handled through the Special Events and Executive Protection Units. Normally, these type events will be pre-planned and necessary personnel assigned to provide adequate traffic assistance and personal protection.

### 343.4 UNUSUAL TRAFFIC INCIDENTS

Situations may occur that require numerous officers to assist with traffic direction. Each occurrence will vary and may require significantly different approaches. Resources and personnel from various sources should be utilized. Some of these incidents may be, but are not limited to:

- (a) Major collisions (e.g., fatalities, serious injury, officer involved, roadway blocked).

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- (b) Aircraft crashes.
- (c) Hazardous Materials (e.g., spills, ruptures).
- (d) Fires or power failure.
- (e) Inclement weather (e.g., ice, flooding).
- (f) Tactical situations (e.g., hostage, barricaded subject, civil unrest).
- (g) Major planned events.

#### **343.5 TRAFFIC CONTROL GUIDELINES**

When officers must provide traffic control and direction it is important to remember the inherent dangers involved. These guidelines should be followed to make it as safe and efficient as possible.

- (a) Officers will notify Communications of their location prior to directing traffic in the roadway.
- (b) Officers will keep Communications informed of any lane or street closures during major situations.
- (c) It should be remembered that fatigue and monotony can increase the danger of this type of assignment. Supervisors should schedule breaks for officers working traffic for extended periods of time.

##### **343.5.1 REQUIRED EQUIPMENT**

When officers are directing traffic, at the scene of a collision, or investigating any incident where officers are exposed to vehicular traffic, the following gear is required:

- (a) Department issued reflective vest at all times; and
- (b) Flashlight with cone during darkness or limited visibility conditions.

##### **343.5.2 BARRIERS AND TRAFFIC CONTROL DEVICES**

- (a) Police units should be used as initial traffic control barriers until a traffic pattern is established through the use of arrow boards, cones and/or flares.
- (b) Flares may be used to assist in traffic movement.
  - 1. Flares used at night or in limited visibility conditions may cause disorientation rather than providing direction to drivers.
- (c) Traffic cones and/or arrow boards should be utilized as additional traffic direction and spaced accordingly to give drivers ample time to react.
  - 1. Placing the initial cone pattern and set-up of arrow boards is extremely hazardous and should only be done with multiple units to provide adequate protection.

##### **343.5.3 PRIORITY OF TRAFFIC FLOW**

- (a) While engaging in traffic direction, officers will remain aware of the following:
  - 1. Emergency vehicles.



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2. Vehicles on heaviest traveled or main thoroughfares.
3. Vehicles on lesser traveled or secondary roadways.
4. Vehicles entering the roadway from a driveway.
5. Pedestrians.



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## Automatic License Plate Reader (ALPR)

### 344.1 PURPOSE AND SCOPE

The ALPR (Automated License Plate Reader) system will be used as a tool to enhance patrol functions and assist with the collection and storage of data (license plates, dates, times, locations of vehicles and photographs of license plates and vehicles). The ALPR's main function will be to scan vehicle license plates and cross reference the license plate with information located on "hot lists". These "hot lists" include but are not limited to license plates that have been listed as stolen, B.O.L.O., AMBER alerts, or wanted. The ALPR will also collect and store license plate data for future investigative records, analysis and dataset linking.

### 344.2 PROCEDURE

#### 344.2.1 LAW ENFORCEMENT USE

The ALPR data is law enforcement information and will be used solely for law enforcement purposes. Any non-law enforcement usage of the data is strictly prohibited. Any misuse or inappropriate application of ALPR operations, information, data, or software will be addressed through General Order 902 (Administrative Investigations).

If a possible violation of this order from an outside law enforcement agency is discovered, it will be reported to the Auto Theft Interdiction Unit Lieutenant. The Auto Theft Interdiction Lieutenant will review the possible violation and determine if the sharing of ALPR data with the outside agency will continue.

The privacy of the information obtained by the Austin Police Department is of the utmost importance. The information obtained by the use of the ALPR is the property of the Austin Police Department and will not be sold, transferred or otherwise distributed to any non-law enforcement entities.

#### 344.2.2 MANAGEMENT OF ALPR

- (a) The ALPR program will be managed by the Auto Theft Interdiction Unit.
- (b) Operators who encounter problems with ALPR equipment or programs will contact CTM.

#### 344.2.3 ASSIGNMENT, USE, AND LOCATIONS OF ALPR SYSTEMS

- (a) No member of the Austin Police Department will utilize ALPR equipment without successfully completing the required training.
  1. Training will include the appropriate use and collection of ALPR data and emphasize the requirement to document the reason for the inquiry.
- (b) The assignment of the mobile ALPR systems will be determined by the Region or Unit supervisors to whom the ALPR system is assigned.

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- (c) Portable trailer mounted ALPR locations will be determined by the Region or Unit supervisors to whom the ALPR trailer is assigned.
  - 1. The ALPR trailer will not be placed in a location that would create a hazard to passing vehicles or pedestrians.
  - 2. The ALPR trailer will not be left in a location that blocks any part of the roadway.
- (d) Portable ALPR systems will be available to use on unmarked vehicles.
  - 1. Unmarked vehicles will require an MDC that contains the required ALPR software.
- (e) Permanently mounted "fixed" ALPR systems
  - 1. Fixed ALPR systems will be monitored by RTCC (Real Time Crime Center).
- (f) ALPR systems will not be operated or used for any type of warrant round-up operations, or any operations focused on the collection of past due fees and/or fines.

#### 344.2.4 COLLECTION OF ALPR DATA

The ALPR system will be utilized as both an active crime enforcement tool as well as a passive data collection tool which may assist investigations across all divisions.

- (a) ALPR data is typically collected in a non-directed, non-specific technique.
- (b) ALPR operators will conduct active and passive ALPR patrols when available in addition to performing their regular assigned tasks.

ALPR data bases will not contain PII (Personally Identifiable Information). APD will not maintain PII data regarding the registered owner of a vehicle in the ALPR database. Collected ALPR data will only be available for law enforcement usage. This includes criminal investigations and law enforcement-related purposes (e.g. searching for a missing person). Secondary use of data by users of the ALPR system will be prohibited and enforced through formal user agreements and audits.

#### 344.2.5 ALPR RETENTION SCHEDULE

All ALPR data collected will be stored on a designated ALPR server. Server operators will purge ALPR data 365 days after it is collected. The length of time for the retention of ALPR data will be in accordance with state law. All logins and transactions are logged within the ALPR system and will be audited to ensure proper use and whether there is a criminal predicate.

ALPR data related to ongoing criminal investigations, or criminal investigations that contain ALPR as evidence, will require the investigator to download and record the relevant ALPR data into the case file.

- (a) All ALPR data related to a criminal investigation shall be retained for a period of time that is consistent with the City of Austin's Records Management Ordinance, Chapter 2-11, and any applicable City Records Control Schedules and/or the State Local Government Retention Schedules.

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#### 344.2.6 ALERTS FROM ALPR SYSTEMS

Alerts from a fixed and trailer mounted ALPR systems

- (a) Will be monitored by the RTCC personnel who will determine whether a received alert will be dispatched, a general broadcast will be delivered to patrol, or no notification will be made to patrol.

Vehicle mounted ALPR systems

- (a) Every alert must be interpreted and validated by a sworn ALPR trained peace officer.
- (b) An ALPR alert alone, including an alert of RTCC, does not create reasonable suspicion to justify a traffic stop or the detention of an individual. Before making a stop or detention, the officer must:
  1. Make a visual confirmation that the license plate actually matches the information captured by the ALPR and reported in the last alert; and
  2. Confirm the license plate information with NCIC/TCIC.
- (c) Officers conducting a traffic stop based on a confirmed ALPR alert should consider the level of risk associated with the nature of the offense, and ensure that their response complies with all applicable laws and APD policies and procedures.

#### 344.2.7 PUBLIC RELEASE OF INFORMATION CONTAINING INFORMATION FROM ALPR COLLECTION

Public requests for records of ALPR data shall be processed in accordance with Texas Government Code, Chapter 552, and General Order 116 (Security and Release of Records and Information).

#### 344.2.8 AUDIT REQUIREMENTS

The ALPR system will be audited by the Professional Standards, Risk Management Unit. The results of the audit will be presented to the Chief of Police or his/her designee and may be public information as allowed by law. At minimum:

- (a) The Risk Management Unit will perform a quarterly random audit of the system to ensure compliance to policies and procedures.



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## Crash Investigation And Reporting

### 346.1 PURPOSE AND SCOPE

The public safety responsibilities of law enforcement include responding to crashes in order to provide aid and assistance, document the incident, and identify possible criminal activity. Therefore, officers shall be dispatched to all reported crashes except as noted.

In the event that a city-wide emergency or inclement weather creates an inordinate volume of calls for service involving minor crashes, the Watch Lieutenant may authorize patrol to temporarily deviate from any portion of this order.

### 346.2 CRASH RESPONSE

#### 346.2.1 TOWING FROM A CRASH

Upon arriving at the crash scene, an officer should give immediate consideration to:

- (a) Proper placement of the emergency vehicle to provide protection for officers and the scene.
- (b) Requesting medical assistance for any injured parties.
- (c) Requesting additional support that may be necessary (e.g., Crime Scene Unit, traffic control, AFD, tow vehicles).
- (d) Clearing the crash off of the roadway as soon as possible.
  1. If it is not possible to clear the roadway in a reasonable period of time, officers may need to manually direct traffic and/or place traffic cones/flares to divert traffic around the crash scene.

#### 346.2.2 REQUIRED SUPPORT NOTIFICATIONS

##### (a) Highway Enforcement

1. When on-duty, Highway Enforcement shall assist with traffic incident management when a freeway is blocked.
2. A Highway Enforcement supervisor should be notified anytime patrol operations will be negatively impacted by:
  - (a) A collision that will block a freeway for more than 60 minutes; or
  - (b) A commercial motor vehicle crash involving a hazardous material spill occurring on a roadway.
  - (c) Any serious injury or fatality involving a commercial vehicle.
3. The Vehicular Homicide Unit shall be promptly notified of vehicle crashes involving:
  - (a) Life threatening injury or death.
  - (b) Serious bodily injury involving a Department employee.

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#### 346.2.3 PATROL CRASH INVESTIGATOR

A Patrol Crash Investigator is an officer assigned to a patrol shift and who has been to specialized training with the Highway Enforcement Command.

- (a) Patrol Crash Investigators shall be called to all vehicle crashes involving:
  - 1. Life threatening injury or death
  - 2. Serious bodily injury in which impairment of the driver due to alcohol or drugs is suspected.
  - 3. Serious bodily injury when APD, AFD, or EMS vehicles are involved.
- (b) A Patrol Crash Investigator shall be promptly notified of, and may respond to crashes involving serious bodily injury.
- (c) When responding to a crash scene, Patrol Crash Investigators shall:
  - 1. Determine if other resources are needed at the scene
  - 2. Review the completed CR-3
  - 3. Ensure the scene and evidence are processed as needed if the Vehicular Homicide Unit is not responding, to include:
    - (a) Marking evidence positions with paint
    - (b) Photographing the scene and evidence
    - (c) Collecting key evidence
    - (d) Confirming that witnesses are identified and interviewed

#### 346.3 CRASH INVESTIGATION

During crash investigations, officers should:

- (a) Identify and interview drivers and occupants.
- (b) Identify and interview any witnesses.
  - 1. Request all witnesses remain at the scene to speak with the Vehicular Homicide Unit, if applicable.
- (c) Provide the drivers involved with a *Driver / Insurance Information Form* (PD0023 / "Brown Form") to exchange information. Officers will ensure the forms are completely filled out with the correct information before the drivers exchange the forms.
- (d) Determine if any traffic violation(s) or crime(s) have occurred and take appropriate enforcement action.
- (e) Identify and protect items of apparent evidentiary value.
  - 1. Ensure property belonging to a crash victim is protected from theft or damage and removed to a place of safekeeping. Protection of the property may consist of securing the property in a vehicle, releasing it to a third party, or turning it into the property room for safekeeping.
- (f) Notify the dispatcher of any damage to the roadway, signs, or utilities.

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- (g) Document the incident as necessary (e.g., insurance information, statements, measurements, photographs, collection of evidence and reporting) on appropriate report forms.

#### 346.3.1 TOWING FROM A CRASH

- (a) Preference or Non-Preference wreckers shall be used for vehicles that require towing from the scene of a crash, including parked and unattended vehicles on a public roadway, anytime the vehicle is deemed inoperable.
  - 1. Officers should have the driver select a towing company, if possible, and confirm with Communications that it is on the Approved Wrecker List.
  - 2. When there is no preferred company requested, or the company is not on the Approved Wrecker List, a company shall be selected through the Auto-Return Dispatching System used by Communications.
  - 3. AFD or EMS may request wreckers when approved by an on-duty patrol sergeant.
- (b) An authorized impound wrecker shall be used in the following circumstances:
  - 1. When the driver is arrested and the vehicle is otherwise safely operable.
  - 2. When the vehicle has been confirmed as stolen.
  - 3. When the vehicle is of evidentiary value and needed for further investigation in a criminal offense.
    - (a) The vehicle will be loaded onto a flatbed type wrecker only;
    - (b) The vehicle will be accompanied until secured in the lot to maintain proper chain of custody by APD personnel;
    - (c) The Crime Scene Section will be notified if placement inside the Vehicle Processing Facility is required.
  - 4. As outlined in General Order 350 (Vehicle Towing and Impound).

#### 346.4 TAKING ENFORCEMENT ACTION

Officers generally cannot make an arrest for a Class C misdemeanor which did not occur in their presence. After a thorough investigation in which physical evidence or independent witness statements indicate a violation of the Transportation Code led to the crash, officers may issue the appropriate citation(s) to the offending driver (Tex. Transp. Code § 550.041).

- (a) Officers shall cite for all the following violations at the scene of a crash, when applicable:
  - 1. Failure to Maintain Financial Responsibility (FTMFR).
  - 2. Driver's License violations.
  - 3. Hazardous violations.
- (b) Driving While Intoxicated (DWI) violations shall be enforced immediately.

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- (c) Felony violations (e.g., Intoxication Assault, Aggravated Assault, Manslaughter) shall be enforced immediately. Officers shall consult with the appropriate Investigative Unit as outlined in Department General Orders.
- (d) If a driver is subject to enforcement and admitted to a hospital, a supervisor shall be contacted to determine the best course of action.

#### 346.4.1 LEAVING THE SCENE & FAILING TO STOP AND RENDER AID

When a driver leaves the scene of a crash where there is damage to a vehicle without exchanging information required by law, it is considered an Leaving The Scene (LTS) crash (Tex. Transp Code § 550.022). When there is very minor damage, officers should determine if a reasonable driver would have had knowledge of the damage caused.

Failing to Stop and Render Aid (FSRA) crashes are LTS crashes where someone suffers an injury (e.g., complaint of pain or visible injury) as a direct result of the crash (Tex. Transp Code § 550.021).

- (a) **Found Suspect Vehicle and/or Driver**
  - 1. If the suspect vehicle and/or driver is located before the original reporting officer's tour of duty ends, officers shall:
    - (a) Obtain any additional information and include it in the incident report or write a supplement; and
    - (b) Take enforcement action if all necessary elements can be proven and the intent to evade responsibility is shown.
- (b) **Enforcement Action**
  - 1. Enforcement of an LTS crash is determined by the following:
    - (a) A citation may be issued for a class C misdemeanor if the pecuniary loss is less than two hundred dollars (\$200).
    - (b) A custody arrest may be made for a class B misdemeanor if the pecuniary loss is two hundred dollars (\$200) or more.
- (c) **Required Information For Follow-up**
  - 1. If no enforcement action is made at the scene of an LTS crash and any of the following criteria is missing, there will not be enough evidence needed to file criminal charges. The officer shall notify the victim there will not be a follow-up investigation when there is:
    - (a) Lack of a suspect driver description; or
    - (b) Lack of a suspect vehicle description; or
    - (c) Lack of a suspect license plate number.
  - 2. FSRA crash follow-up shall be handled by the LTS Unit.
- (d) Follow the reporting guidelines outlined in the "Crash Reports and Incident Reporting" section of this order.



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#### 346.4.2 PRIVATE PROPERTY CRASHES

Officers may only take traffic enforcement action on the following violations when the crash occurs on private property:

- (a) Driving While Intoxicated (DWI).
- (b) Leaving the Scene (LTS).
- (c) Fail to Stop and Render Aid (FSRA).
- (d) Reckless Driving.
- (e) Offenses related to financial responsibility.

#### **346.5 CRASH REPORTS AND INCIDENT REPORTING**

This section outlines the appropriate TxDOT crash report(s) to use and when an APD incident report is required.

- (a) Crash report forms shall only be completed electronically.
- (b) Most questions concerning how to fill out a crash report can be answered by referring to latest version of the *Instructions to Police for Reporting Crashes* (CR-100) available online through TxDOT. Officers shall comply with the instructions in this manual.
- (c) A change or modification of a crash report prepared by a peace officer that alters a material fact in the report may be made only by the peace officer who prepared the report. A supplemental report may be made by any authorized employee (Tex. Transp. Code § 550.068).
- (d) All CR-3 reports will be completed by the end of the officer's tour of duty or, if authorized by a supervisor, within 24 hours of the reported crash.

#### 346.5.1 CRASH REPORTS

##### (a) ***Driver's Crash Report (CR-2 / "Blue Form")***

1. Unless otherwise specified by this order, officers may issue the drivers a "Blue Form" if the crash meets the following criteria:
  - (a) There is no report of injury; and
  - (b) The vehicles involved are safely operable.
2. LTS incidents are eligible for a "Blue Form" if the crash meets the above requirements.

##### (b) ***Texas Peace Officer's Crash Report (CR-3)***

1. The following crashes shall be investigated by APD and documented on a CR-3:
  - (a) Crashes involving any injury (complaint of pain or any visible injury).
  - (b) Crashes involving death.
  - (c) Crashes in which impairment of the driver due to alcohol or drugs is suspected.
  - (d) Crashes requiring a wrecker due to damage caused by the crash.

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- (e) Crashes involving a leased, owned or rented city vehicle unless exempted by General order 346.6.1(c).
  - (f) FSRA crashes.
  - (g) When it is determined to be in the best interest of the Department or public.
2. If a crash involves a commercial motor vehicle and meets one of the above requirements for completing a CR-3, the commercial motor vehicle section of the CR-3 shall also be completed.

#### 346.5.2 APD INCIDENT REPORTING

In addition to completing the appropriate crash report form(s), officers shall also complete a detailed incident report when crashes involve any of the following:

- (a) Life threatening injury or death.
- (b) Crime Scene Unit response (regardless if victim condition is upgraded).
- (c) Driver impairment due to alcohol or drugs is suspected.
- (d) Leaving the Scene (LTS) incident.
- (e) Failing to Stop and Render Aid (FSRA) incident.
- (f) An APD leased, owned or rented vehicle as outlined below.
- (g) An arrest for any offense.

#### **346.6 CRASHES AND DAMAGE TO APD CITY VEHICLES; CRASHES INVOLVING CITY OF AUSTIN VEHICLES OPERATING AS AN EMERGENCY VEHICLE (EMS, FIRE, OTHER OPERATING CODE TWO OR THREE)**

- (a) APD Vehicles are:
  - 1. Any vehicle owned, leased, or rented by the department
  - 2. Any vehicle loaned or granted to the department for use by an employee
- (b) A supervisor shall be notified of all crashes involving APD vehicles and vehicles operating in an emergency capacity.
  - 1. Supervisors will respond to the scene of APD involved crashes within the city limits or if directed by a Commander or above to conduct an investigation:
    - (a) The involved employee's immediate supervisor shall be contacted if he is on-duty.
    - (b) If the involved employee's supervisor is off-duty, another supervisor on-duty shall be notified.
- (c) In the event the crash involves an APD commander or above, the next-level supervisor in the involved employee's chain-of-command shall be notified and assume responsibility for follow-up of the incident.
- (d) In the event the crash occurs outside the city limits of Austin, the investigating supervisor shall determine what APD resources will be sent to the scene.

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- (e) Supervisors will determine if the incident meets the criteria for a crash or "damage to city vehicle".
1. "Damage to City Vehicle" is:
    - (a) Any physical contact between a city vehicle while being operated and another city vehicle, property, object, unoccupied and parked vehicle, or animal which results in visible damage to either the city vehicle(s) or another object with the following results:
      1. No injuries
      2. Damage to vehicle(s) and/or property is cosmetic
      3. Vehicle(s) can still be safely and legally operated and
      4. Damage to property is minor and there is no impairment to the property's intended function
    - (b) Any incident where an approved police tactic (PIT maneuvers, Vehicle Assaults, moving disabled cars w/ push bumpers) is used that causes damage to either the police unit or the vehicle subjected to the police tactic, shall not be designated as an "Officer Involved Crash". These incidents will be handled and documented as "Damage to City Vehicle".
  2. Reporting requirements for damage to city vehicle incidents:
    - (a) Involved officer(s) will notify their supervisor.
    - (b) Supervisors will inspect the damage and make a determination if the incident is a crash or damage to city vehicle.
    - (c) The involved officer will complete the Damage to City Vehicle incident report.
    - (d) Photographs of the scene, vehicle(s), and/or property will be taken and downloaded into the appropriate records management system.
    - (e) Vehicle damage will be documented and repair requests will be submitted (if necessary) in PCO.
    - (f) Reviewing supervisors shall:
      1. Send e-mail notifications with the incident report number prior to the end of the tour of duty to the:
        - (a) Involved employee's chain of command up to the lieutenant; and
        - (b) APD Risk Management
      2. Review the primary reporting employee's incident report and add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident.
    - (g) Lieutenants in the reporting officers' chain of command will review reports, photos, and any information related to the incident.

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1. If the reviewing lieutenant determines that the officer is not negligent, no further action is needed.
2. If the reviewing lieutenant determines that the officer is negligent in the incident; the information is forwarded to the commander for further review and action if appropriate (documented in field notes, training, IAD, etc.).

#### 346.6.1 REQUIRED REPORTING

- (a) All crashes involving APD vehicles or non-APD City Emergency Vehicles (EMS, AFD, others equipped with emergency lights and responsible for responding to emergencies) shall have:
  1. An incident report titled "Crash / City Vehicle" (3651) completed: and
  2. A large, not-to-scale diagram; and
  3. Digital photographs of the scene including damage to the vehicle(s) (downloaded into the Digital Crime Scene Management System); and
  4. A CR-3, if required, and notate:
    - (a) If the unit was operating in an emergency capacity by checking the appropriate box in the Vehicle/Driver section and document the details in the Investigator's Narrative section, including the damaged vehicle unit number and city number.
- (b) When the crash involves an APD Vehicle, all involved APD employees shall complete a supplement to the original report;
- (c) APD supervisors will have final authority to determine when the CR-3 will be completed. Crashes involving APD vehicles and/or non-APD City Emergency Vehicles that meet all of the following criteria do not require a CR-3 if the APD employee's immediate supervisor approves the exception.
  1. All vehicles involved belong to the City, or the vehicle has struck a fixed object, or an animal only; and
  2. There are no persons injured; and
  3. The damage caused is less than \$1,000

#### 346.6.2 INVESTIGATIVE SUPERVISOR RESPONSIBILITY FOR CRASHES INVOLVING APD VEHICLES

A supervisor shall be notified of all crashes involving APD vehicles and respond to the scene if within the city limits or if directed by a Commander or above. Additionally the supervisor will:

- (a) Conduct an assessment of the situation and determine the appropriate reporting parameters.
- (b) Complete all required Workers' Compensation forms as outlined in General Order 956 (On Duty Injury and Illness) for each APD employee who was an occupant in the APD vehicle AND has an injury, suspected injury, or any complaint or statement of pain or

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injury, regardless of the level of complaint or statement. Supervisors will submit the completed forms to the APD Workers' Compensation Office no later than 24 hours from the crash.

1. During the supervisory investigation of the crash, if there are no reports of injury, complaint/statement of pain; but the supervisor believes the totality of the incident or the mechanism of the crash could have resulted in injury to any occupant, the supervisor should complete all necessary Workers Compensation forms.
- (c) Initiate an IA investigation if they reasonably believe there is credible evidence a violation of law or general order may have occurred concerning the officer's operation of an APD vehicle.
- (d) Ensure an Equipment Repair Request form is completed and turned into PCO.
- (e) Send e-mail notifications with the incident report number, prior to the end of the tour of duty, to the involved employee's chain of command up to the commander.
- (f) Review the primary reporting employees' incident report for accuracy and completeness.
- (g) Ensure that any DMAV associated with the crash is properly categorized as Veh Hom Crash Investigation - 3 yrs.
- (h) Complete an Incident Review Packet on SharePoint filling in all applicable fields to include:
  1. All pertinent information relating to the crash,
  2. The findings of the supervisor investigation, and
  3. Any training issues or general order violations on the part of the involved officer(s), if applicable.
- (i) Create an electronic folder with the case number in the folder G:\Digital Incident Review Folder containing all supporting documentation. Supporting documentation includes but is not limited to:
  1. Digital photographs of any injuries suffered by any party and any property damage,
  2. Copies of the incident and supplemental reports from all involved officers,
  3. CAD call history if the involved officer was on a call,
  4. An electronic copy of the CR-3, if required,
  5. An electronic copy of a large not-to-scale diagram of the crash, and
  6. Copies of all-audio and/or video media of the crash. Supervisors shall identify the applicable MAV information in Share Point IRP. Supervisors are not required to provide a digital copy of audio/video media from a DMAV in car system.
- (j) Forward the electronic link(s) to the SharePoint IRP and the digital incident review folder within eight (8) working days from the date of the crash as follows:
  1. APD Risk Management <[Accreditation@austintexas.gov](mailto:Accreditation@austintexas.gov)>, and

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2. The involved employee's chain-of-command, up to the lieutenant, for review. If the reviewing lieutenant believes the collision is an at-fault collision, the lieutenant will forward the link(s) to the SharePoint IRP and digital incident review folder to the commander.

**346.7 CRASHES INVOLVING ALL OTHER LEASED, OWNED OR RENTED CITY VEHICLES (OTHER THAN APD)**

- (a) All crashes involving City vehicles shall have:
  1. A CR-3, if required, or
  2. Crashes involving City vehicles that meet all of the following criteria do not require a CR-3 and will be issued a CR-2 (Blue Form).
    - (a) The City vehicle has struck another City vehicle, a fixed object, or an animal only; and
    - (b) There are no persons injured; and
    - (c) The damage caused is less than \$1,000
- (b) An incident report is not required solely based on the crash involving a city vehicle; however, a responding officer shall complete an incident report if the crash would otherwise require a report (e.g., LTS, DWI, death).
- (c) In circumstances where a City vehicle requires a tow truck, officers shall notify Communications that it is a City owned or leased vehicle and Communications should ensure the contracted towing company for Fleet Services is contacted.

**GO  
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## **Disabled Vehicles and Stranded Motorists**

### **348.1 PURPOSE AND SCOPE**

This order provides guidelines to Department personnel to check on and offer to provide assistance to disabled or stranded motorist on all roadways within the City of Austin. The safety of the vehicle occupants, the officer, and other motorists is the first priority. Removal of vehicles posing a hazard or blocking traffic is essential to continuous safe and efficient traffic movement.

### **348.2 OFFICER RESPONSIBILITY**

When an on-duty officer observes a disabled vehicle on the roadway, the officer should make a reasonable effort to provide assistance. If that officer is assigned to a call of higher priority, the dispatcher should be advised of the location of the disabled vehicle and the need for assistance. The dispatcher should then assign another available officer to respond for assistance as soon as practicable.

### **348.3 EXTENT OF ASSISTANCE**

In most cases, a disabled motorist will require assistance. After arrangements for assistance are made, continued involvement by department personnel will be contingent on the availability of department resources and the vulnerability of the disabled motorist.

#### **348.3.1 MECHANICAL REPAIRS**

Department personnel may provide minor mechanical assistance (e.g., change flat tires, provide electrical battery boost) to a disabled vehicle.

#### **348.3.2 PUSH/BUDDY BUMPER USE**

If exigent circumstances exist or with the permission of the vehicle operator, officers may push a disabled vehicle out of roadway to a safe location using their push/buddy bumpers. Refer to General Order 804 (Vehicle Use) on their proper use.



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# Vehicle Towing and Impound

### 350.1 PURPOSE AND SCOPE

This order provides the procedures for towing a vehicle by or at the direction of the Austin Police Department.

#### 350.1.1 DEFINITIONS

- (a) **Impound Wrecker:** For purposes of this order, impound of a motor vehicle means the taking of a vehicle from a street, alley, highway, sidewalk or public thoroughfare, and in some instances a public place, into actual constructive police custody. It is the removal of a vehicle from where it is initially located, and may also include continued retention of the vehicle in a garage, vehicle storage facility, or other place of safekeeping. Only the authorized impound wrecker service will be used to tow and store impounded vehicles.
  - 1. The following are situations/circumstances which do not constitute an impound.
    - (a) The towing/removal of a vehicle from the scene of a crash due to damage.
    - (b) The removal of an unauthorized vehicle from a private parking lot by the person who has care, custody and control of the lot.
    - (c) Persons engaged in construction, street repair, etc. relocating vehicles to a nearby place of safety.
    - (d) The towing of a vehicle seized by police under applicable forfeiture proceedings.
- (b) **Preference Wrecker:** An APD approved wrecker that is requested by the driver or owner of a vehicle.
- (c) **Non-Preference Wrecker:** An APD approved wrecker that is dispatched through the Auto-Return System used by Communications.

### 350.2 GENERAL TOWING GUIDELINES

#### 350.2.1 TOWING SITUATIONS

Vehicles shall be towed using an authorized Preference or Non-Preference wrecker in the following situations:

- (a) Vehicles disabled due to a traffic crash that must be removed from the scene regardless of whether the driver is arrested, as outlined in General Order 346 (Crash Investigation and Reporting).
- (b) All other disabled vehicles where the driver is on-scene, officers are providing assistance and the driver is requesting the vehicle be towed.

#### 350.2.2 DRIVING A NON-CITY VEHICLE

Non-City vehicles should not be driven by police personnel unless it is necessary to move a vehicle a short distance to eliminate a hazard, prevent the obstruction of traffic or to comply with posted signs.



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### *Vehicle Towing and Impound*

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#### **350.3 IMPOUND GUIDELINES**

The decision to impound may be made by any officer as long as the vehicle is in violation of any City ordinance related to traffic or parking, or constitutes a traffic hazard.

##### **350.3.1 AUTHORIZED IMPOUNDS**

The following are situations/circumstances for which a vehicle may be impounded.

- (a) The operator of the vehicle has been arrested and the vehicle is otherwise safely operable.
- (b) It is an abandoned vehicle or junked/nuisance vehicle as defined in the Texas Transportation Code.
- (c) The vehicle is listed in the BOLO file as a "Stop, ID and Impound" (e.g., UUMV).
- (d) Due to any catastrophe, emergency or unusual circumstances the safety of the vehicle is imperiled and it cannot be moved to a safe place by other means.
- (e) The vehicle (including non-motorized) is an immediate and substantial hazard to persons or property because of the vehicle's location and/or condition.
- (f) The vehicle (including non-motorized) is unattended and parked, stopped or left standing upon any alley, highway, street, sidewalk, or other thoroughfare within the City in apparent violation of state law or City ordinance and the vehicle:
  1. Has been ticketed for illegal parking at least ten (10) minutes before beginning the impound process and the vehicle is in:
    - (a) A commercial delivery zone; or
    - (b) Any area on a public roadway or alley marked "No Parking/Tow-Away Zone."
  2. Is obviously obstructing the safe and orderly flow of vehicular and/or pedestrian traffic and it is impractical to move the vehicle to a nearby location.
- (g) Municipal Court has issued an order that a specific vehicle be impounded due to outstanding parking citations.
- (h) When there is articulable probable cause to believe that the vehicle:
  1. Is the instrument, fruit, or evidence of a crime; or
  2. Contains an instrument, fruit or evidence of a crime; or
  3. Other means of effecting the gathering or security of evidence at the immediate location of the vehicle is not readily available, or appears futile.
    - (a) The vehicle will be accompanied by APD personnel, until secured in the lot, to maintain proper chain of custody.
    - (b) The Crime Scene Section will be notified if the vehicle is to be secured inside the Vehicle Processing Facility.

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#### 350.3.2 IMPOUND PROCEDURES

- (a) A vehicle is considered impounded once the wrecker has been called by Communications.
  - 1. In the event that the owner/operator of the operable vehicle arrives before the arrival of the authorized impound wrecker, officers should attempt to cancel the wrecker.
  - 2. If the authorized impound wrecker cannot be canceled, the owner/operator of the vehicle must settle with the authorized impound wrecker service by payment of a standard fee at the scene or the vehicle will be impounded by the wrecker.
- (b) When a vehicle is impounded, the impounding officer will deliver the ignition key, if available, to the wrecker driver.
- (c) A parking citation will be issued in all cases in which the vehicle was impounded for a parking violation.
- (d) Anytime a vehicle is actually impounded or moved, officers will:
  - (a) Complete an *APD Impound/Wrecker Report* and provide the contacted wrecker service driver with the appropriate copy.
  - (b) Contact dispatch and have the towed/impounded vehicle entered into the Impound/BOLO file prior to the removal of the vehicle.
  - (c) Complete an incident report entitled *Impounded/Moved Vehicle* identifying the vehicle, location, time, registered owner, wrecker service, and show justification for the impound when:
    - (a) The operator of the vehicle has been arrested, or
    - (b) It is an abandoned vehicle or junked/nuisance vehicle as defined in the Texas Transportation Code, or
    - (c) The vehicle is listed in the BOLO file as a "Stop, ID and Impound" (e.g., UUMV), or
    - (d) Municipal Court has issued an order that a specific vehicle be impounded due to outstanding parking citations, or
    - (e) When there is articulable probable cause to believe that the vehicle:
      - 1. Is the instrument, fruit, or evidence of a crime, or
      - 2. Contains an instrument, fruit or evidence of a crime; or
      - 3. Other means of effecting the gathering or security of evidence at the immediate location of the vehicle is not readily available, or appears futile.
        - (a) The vehicle will be accompanied by APD personnel, until secured in the lot, to maintain proper chain of custody.
        - (b) The Crime Scene Section will be notified if the vehicle is to be secured inside the Vehicle Processing Facility

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- (d) An incident report is *not required*, however detailed notes identifying reasons for the officer's presence (officer initiated, call for service, etc.), reason for impound (special event, hazardous violation, etc.), and authority for impound (citation, city ordinance, emergency, etc.) when:
  - (a) Due to any catastrophe, emergency or unusual circumstances the safety of the vehicle is imperiled and it cannot be moved to a safe place by other means.
  - (b) The vehicle (including non-motorized) is an immediate and substantial hazard to persons or property because of the vehicle's location and/or condition.
  - (c) The vehicle (including non-motorized) is unattended and parked, stopped or left standing upon any alley, highway, street, sidewalk, or other thoroughfare within the City in apparent violation of state law or City ordinance and the vehicle:
    - 1. Has been ticketed for illegal parking at least ten (10) minutes before beginning the impound process and the vehicle is in:
      - (a) A commercial delivery zone; or
      - (b) Any area on a public roadway or alley marked "No Parking/Tow-Away Zone."
    - 2. Is obviously obstructing the safe and orderly flow of vehicular and/or pedestrian traffic and it is impractical to move the vehicle to a nearby location.

#### 350.3.3 HOLDS ON IMPOUNDED VEHICLES

- (a) A hold may be placed on an impounded vehicle when:
  - 1. The vehicle was involved in a criminal incident and it is necessary to establish the identity of the person who will attempt to claim the vehicle.
  - 2. There is a need to secure the vehicle for evidentiary reasons (e.g., homicide, stolen property, a vehicular fatality, vehicle to be forfeited).
- (b) A hold shall only be authorized by a supervisor or the appropriate Investigative Unit.
  - 1. The employee number of the authorizing supervisor or investigator shall be placed on the "approved by" line on the *APD Wrecker/Impound Report*.
  - 2. The impounding officer shall document the hold in their incident report.
- (c) The initial hold placed on an impounded vehicle shall be in effect for 72 hours. A hold may be lifted by the appropriate Investigative Unit before the 72 hours expires, or extended if continued retention is necessary.

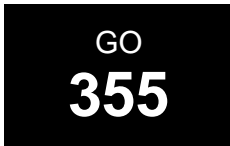
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**350.4 VEHICLE INVENTORY**

- (a) In all incidents where a vehicle is impounded or moved, officers will make an inventory of the vehicle for damage and any items of personal property. Such an inventory is a care taking function intended to protect:
  - 1. The owner's property while it remains in police custody.
  - 2. The police against claims or disputes over lost or stolen property.
- (b) The scope of the inventory will include:
  - 1. The exterior for body damage.
  - 2. Those places in a vehicle where a person ordinarily would store or leave items of personal property. Those areas can be but are not limited to:
    - (a) Passenger compartment.
    - (b) Trunk, console, glove box, and attached locked containers (e.g., toolbox) if the key is readily available.
    - (c) Open and closed containers.
  - 3. The inventory will include contents of locked containers (e.g., briefcase, footlockers) if the key or combination is readily available. If the key is unavailable, containers/compartments may be opened with supervisor's approval.
- (c) All vehicle damage and personal property located during an inventory of a vehicle will be listed on the *APD Wrecker/Impound Report*, including its description and location.
- (d) Unless placed with the prisoner's property at Central Booking, any personal items removed from the vehicle by the impounding officer will be:
  - 1. Listed and described on the *APD Wrecker/Impound Report* and the property section of the incident report; and
  - 2. Turned into the Evidence Room in accordance with Department General Orders.
- (e) If an item of contraband, or fruit or instrument of a crime is found during a vehicle inventory, it may be seized and the person in possession of the vehicle arrested for the appropriate offense(s).



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# DWI Enforcement

### 355.1 PURPOSE AND SCOPE

The responsibility to remove intoxicated drivers from the roadway extends to all sworn members of the Department. This order establishes guidelines for the detection, arrest, and processing of drivers who are suspected of operating a motor vehicle while intoxicated. It also provides guidelines for the implementation of the Texas Administrative License Revocation (ALR) Statute for intoxicated drivers who either refuse or fail a blood or breath test.

#### 355.1.1 DEFINITIONS

**Administrative License Revocation (ALR)** - The administrative process to suspend the drivers license of persons who refuse or fail a breath and/or blood test.

**Breath Alcohol Testing Bus (BAT Bus)** - A vehicle deployed by the DWI Unit at various locations around the City of Austin to process and obtain breath and/or blood samples from drivers arrested for DWI.

**Drug Recognition Expert (DRE)** - An officer trained and certified by the International Association of Chiefs of Police to recognize impairment in drivers under the influence of drugs other than, or in addition to, alcohol using the 12 Step Drug Evaluation and Classification process

**Intoxication/Intoxicated** - As defined in Chapter 49, Texas Penal Code.

**Minor** - For purposes of this order, any person under 21 years of age (Tex. ABC 106.01).

### 355.2 HANDLING SUSPECTED DWI DRIVERS

Officers shall make the appropriate DWI arrest when probable cause exists.

#### 355.2.1 REASON FOR STOP

Officers may stop a vehicle when they:

- (a) Observe a traffic violation; or
- (b) Develop reasonable suspicion that a person in the vehicle has been, is currently, or is about to be engaged in criminal activity based on specific and articulable facts by the officer or from information provided by credible witness(es).

#### 355.2.2 REQUESTING A DWI ENFORCEMENT OFFICER

Officers who encounter a driver exhibiting characteristics of intoxication may request a DWI Enforcement Officer to conduct the preliminary DWI investigation as outlined below:

- (a) A request for a DWI officer requires the approval of a DWI supervisor when:
  1. The requesting officer has less than 2 years APD patrol experience; or
  2. The driver is physically combative; or
  3. The driver is under arrest, or will be arrested, for another offense.
- (b) If a DWI Officer is available to respond, the following guidelines apply:

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1. The requesting officer should not perform any field sobriety tests on the driver.
  2. Driver's license and warrant checks should not be conducted prior to DWI officer arrival unless it is an officer safety issue. Any findings in reference to prior DWI offenses shall not be given to the DWI officer until after field sobriety tests are conducted.
  3. If the incident involves a crash and/or offense where the officer did not witness the subject driving, officers should identify any witnesses on scene that can positively identify the driver(s) and request that they remain on scene until investigators can obtain their statement.
  4. Any charges to be filed in addition to DWI shall be filed by the stopping officer.
  5. If the DWI officer arrests a driver for DWI during an assist and that driver is subsequently transported to any hospital for a medical reason (other than to obtain a blood draw for the DWI investigation), it shall be the responsibility of an officer from the originating patrol area to guard the prisoner at the hospital and later transport him to jail.
- (c) If a DWI officer is not available to respond, the officer shall conduct the preliminary DWI investigation and take appropriate enforcement action. A DWI officer should be considered unavailable if they are not en-route within 15 minutes of the assist request.

### **355.3 PRELIMINARY DWI INVESTIGATION**

Officers must be able to articulate specific facts that lead to the development of probable cause for a DWI arrest. This can be done through observations, use of a field interview, and field sobriety tests.

- (a) Units equipped with a Mobile Audio Video (MAV) recording system for which the officer has been trained shall, if possible, position the device in such a way as to record the field interview and field sobriety tests.

#### **355.3.1 FIELD INTERVIEW**

A field interview should be conducted to document the following:

- (a) Any characteristics of intoxication exhibited by the driver (e.g., odor of alcoholic beverage on the breath, bloodshot or glassy eyes, impaired speech).
- (b) Interview answers given by the driver (e.g., originating location, destination, alcohol consumption).

#### **355.3.2 FIELD SOBRIETY TESTS**

Officers trained and certified in the administration of the SFST (e.g., Horizontal Gaze Nystagmus (HGN), Walk and Turn, One Leg Stand) shall conduct the tests during a DWI interview.

- (a) Officers not trained and certified in the SFST should request a trained and certified officer to the scene.
- (b) Officers should go through the instructions for each SFST and give the driver an opportunity to complete the test, even if the driver does not wish to perform any of the requested tasks.

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- (c) As a last field sobriety test, when reasonably available, officers should request the driver to submit to a preliminary alcohol screening test. This test is to be performed by an officer who has been trained in the use of the device. The officer will administer the admonishment listed in the training manual.
- (d) Officers are not required to conduct the SFST when:
  - 1. Physical limitations of the driver preclude its use; or
  - 2. The safety of the officer and/or driver may be compromised; or
  - 3. The tests are impractical for some other articulable reason.
- (e) Other field sobriety tests (e.g., Romberg Balance Test, Finger to Nose) may be conducted to further develop probable cause but should not be used as a substitution for the SFST, unless necessary.

### 355.3.3 HANDLING MINORS

- (a) **DWI** - Minors are subject to the same standard in developing probable cause to determine intoxication for a DWI arrest. If the field interview and SFST indicate that a minor is intoxicated, he may be arrested for DWI.
- (b) **DUI** - Minor that do not exhibit signs of intoxication and/or have passed the SFST but has any detectable amount of alcohol on their breath may be arrested for Driving Under the Influence (DUI) Minor-Alcohol (Class C misdemeanor). Officers shall either arrest the minor or issue a field release citation for DUI Minor-Alcohol as follows:
  - 1. **Arrest**
    - (a) Officers may request a breath specimen by reading a DIC-24, if desired. The DIC-24 does not need to be read to a minor unless a breath specimen is being requested.
      - 1. If the minor refuses to provide a sample, or the sample shows an alcohol concentration greater than or equal to .001, issue the DIC-24, DIC-25 and seize the minor's Texas drivers license.
      - 2. If the officer does not request a sample, do not seize the minor's Texas drivers license.
    - (b) **Breath Samples From Minors Under 18 Years of Age**
      - 1. The Family Code, Title 3, Chapter 52, Section 52.02(d) states that a juvenile taken into custody for DUI Minor-Alcohol may submit to the taking of a breath specimen without the concurrence of an attorney, but only if the request and the child's response to that request is videotaped.
      - 2. In accordance with this statute, officers wishing to request a breath specimen from a juvenile arrested for DUI Minor-Alcohol must videotape the administration of the DIC-24 prior to administering the intoxilyzer test.
  - 2. **Field Release Citation**

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- (a) Along with the citation, issue a DIC-25 and turn the minor over to a responsible adult.
- (b) A minor shall not be allowed to drive the vehicle from the scene if issued a citation. Disposition of the vehicle shall be made in one of the following ways:
  - 1. Release the vehicle at the scene to a licensed, sober passenger.
  - 2. Contact a parent or other adult to come to the scene and assume custody of the minor/vehicle.
  - 3. If none of the above options are available (e.g., the minor is from out-of-town), the vehicle may be impounded and the minor arrested and transported to a Juvenile Detention Facility or County booking facility, as appropriate.
    - (a) If the detention facility will not accept custody of the minor due to the category of offense, officers shall follow General Order 317.2.5.(b) RELEASING A JUVENILE FROM CUSTODY.

#### **355.4 REQUESTING A SPECIMEN**

After placing a driver under arrest, officers may read the DIC-24 (DIC-55) and request a specimen of the drivers' breath and/or blood.

- (a) The reading of the DIC-24 (DIC-55) should be recorded using a unit equipped with an MAV recording system or a booking facility video room.
- (b) If the driver agrees to provide a specimen of his breath and/or blood, follow the appropriate specimen guidelines outlined below.
- (c) If a driver refuses to provide a specimen of his breath and/or blood, follow the booking guidelines outlined below.

##### **355.4.1 FORCE TO OBTAIN SPECIMEN**

- (a) Officers shall not coerce a driver to submit to a breath or blood test.
- (b) Officers shall not use force to compel a driver to submit to a breath or blood test except in cases authorized by mandatory blood draws or as a result of a search warrant for blood.
  - 1. Only the least amount of force reasonable to obtain the specimen may be used when force is authorized and should generally be limited to soft restraints.

##### **355.4.2 BOOKING FACILITY VIDEOTAPING**

- (a) If the field interview and field sobriety tests were videotaped by means of an MAV recording system and during that taping the driver refused to give a breath or blood specimen, it is not necessary to videotape the driver again.
- (b) If the driver refuses both breath and blood tests and the SFST were not taped by a MAV recording system, the officer shall videotape the driver at the appropriate County



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booking facility. The following steps and procedures shall be followed in the video room:

1. Attorneys for drivers shall not be allowed in the video room.
2. After entering the video room, make reasonable attempts to keep the driver within the viewing area of the camera.
3. If the driver is not cooperative and refuses to stand up in the video room, do not force the driver to stand.
4. The officer shall go through all appropriate steps listed in the video room, even if the driver does not wish to perform any of the requested tasks.
5. The officer shall display the DIC-24 (DIC-55) that was already read and ask the driver if he wishes to sign it to indicate his refusal.
6. The officer shall give the driver his copies of the DIC paperwork while being recorded.
7. The driver shall be booked into jail for DWI.

#### **355.5 BREATH SPECIMEN GUIDELINES**

- (a) If a driver has consented to give a specimen of his breath, take the driver to an intoxilyzer testing location at the BAT Bus or County booking facility.
  1. The intoxilyzer shall only be administered by a trained and certified Intoxilyzer Operator (IO).
  2. Officers transporting a driver to a County booking facility shall request dispatch to have an IO meet the officer at the facility, if needed.
- (b) Upon arrival to an intoxilyzer testing location and prior to taking a breath specimen, officers shall record the reading of the DIC-24 (DIC-55) to the driver if it hasn't been done yet. If the driver is a Spanish speaker, the tape-recorded DIC-24S shall be played or a Spanish-speaking officer shall read the DIC-24S.

#### **355.5.1 INTOXILYZER RESULTS**

- (a) If the intoxilyzer results indicate the driver's alcohol concentration was at or above the legal limit, he shall be charged with DWI. Officers shall follow the appropriate booking guidelines outlined in this order.
- (b) If the intoxilyzer results indicate the driver's alcohol concentration was less than .05 grams of alcohol per 210 liters of breath, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.
  1. The arresting officer shall contact his supervisor or a DWI Enforcement Unit supervisor.
  2. The responding supervisor shall review the MVR recording of the initial stop and subsequent investigation.
  3. Absent confirmation of the presence of drugs through an examination by a Drug Recognition Expert, the responding supervisor shall order the release of

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the driver or direct the officer to issue a citation for the original traffic or other violation.

- (c) If the intoxilyzer results are .05 but less than .08, the arresting officer shall contact his supervisor or a DWI Enforcement Unit supervisor.
  - 1. The responding supervisor shall review the MVR recording of the initial stop and subsequent investigation. If it is determined that the level of impairment exhibited by the driver, and the totality of the circumstances surrounding the arrest still warrant the continued detention, the supervisor shall approve the arrest of the driver.
  - 2. If the responding supervisor, after review of all the evidence including the intoxilyzer results, determines there is insufficient probable cause to support the DWI charge, he shall order the release of the driver.
- (d) If the driver exhibits symptoms of intoxication but the intoxilyzer results do not indicate a level of alcohol concentration consistent with the impairment displayed, the driver may be asked for a specimen of his blood and if he would consent to a DRE evaluation. If the driver was not videotaped during the initial stop, he must be videotaped when the request is made.
  - 1. If the driver consents to a DRE evaluation, it shall be administered by a trained and certified DRE. Based on the outcome of the evaluation, the driver will either be booked into jail or released.
  - 2. If the driver only consents to a blood specimen, follow the blood specimen guidelines outlined in this order.
  - 3. If the driver does not consent to a blood specimen, even after supplying a breath specimen, seize his Texas drivers license and follow the booking guidelines outlined in this order.

#### **355.6 BLOOD SPECIMEN GUIDELINES**

Officers shall adhere to the following guidelines if requesting a blood specimen from a driver after reading the DIC-24 (DIC-55) and the driver:

- (a) Refuses to give a specimen but meets the conditions for a mandatory blood draw (with DWI Supervisor approval); or
- (b) Refuses to give a specimen but meets the requirements for obtaining a blood search warrant; or
- (c) Voluntarily consents to give a blood specimen.

#### **355.6.1 MANDATORY BLOOD DRAWS**

- (a) When an officer arrests a DWI suspect who refuses to provide a voluntary breath or blood test and who falls under the following criteria, the officer will contact their corporal (or another corporal on duty) and attempt to obtain a blood search warrant.
  - 1. A death has occurred or is likely to occur as a result of the collision; or
  - 2. Serious bodily injury occurred to another as a result of the collision; or

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3. Bodily injury occurred to another and that person was transported to a medical facility; or
  4. The driver has 2 or more prior convictions for DWI; or
  5. The driver is being charged with DWI with a child passenger under 15 years of age; or
  6. The driver has 1 or more prior convictions for Intoxication Manslaughter; or
  7. The driver has 1 or more prior convictions for DWI with a child passenger under 15 years of age.
- (b) In the unusual case that an officer feels there is an exigency or they do not have time to apply for a blood search warrant, the officer shall contact an on-duty (or on-call) DWI supervisor for approval for a warrantless blood draw. Officers should be aware that there is a magistrate at the Travis County Jail 24 hours a day for warrants. The DWI supervisor will determine if exigency articulated by the officer overrides the blood search warrant requirement.
1. For a blood search warrant in Williamson County, contact the Williamson County booking desk and determine if there is an on-duty or on-call magistrate for review of a blood search warrant. If they are not available, an Austin Municipal Magistrate may be utilized.

#### 355.6.2 BLOOD DRAW PROCEDURES

- (a) Blood draws performed at the Travis County Central Booking Facility shall be recorded by the video cameras in the phlebotomy room.
- (b) The following lists the available locations for mandatory blood draws, blood search warrants, and voluntary blood draws:
  1. Daily from 9:30 p.m. to 5:30 a.m. transport the driver to Travis County booking and have the medical professional perform the blood draw.
  2. All other times, request dispatch to contact the on-call DWI officer. The DWI officer will contact the medical professional to respond to the jail and perform the blood draw.
  3. For blood draws in Williamson County, contact the booking desk and determine if the jail nurse is available for a blood draw. If they do not have a nurse available, transport the suspect to the Georgetown Hospital to have a medical professional complete the blood draw.
  4. **Hospital Setting**
    - (a) If the suspect has been transported to a hospital, the evidentiary blood draw can be done by medical personnel at the hospital.
    - (b) There is no need to contact the Department medical professional if the hospital is performing the blood draw.
    - (c) Follow blood draw procedures that have been established by the hospital.

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- (c) Blood tubes shall be handled in accordance with General Order 618 (Property and Evidence Collection Procedures) and placed in the appropriate refrigerated drop box for processing by the APD Crime Lab, along with appropriate routing and chain-of-custody paperwork.

#### **355.7 DWI BOOKING GUIDELINES**

When booking a driver into jail for DWI, the arresting officers shall:

- (a) Complete a booking sheet and indicate the appropriate DWI charge.
- (b) Complete the DIC-24 (DIC-54):
  - 1. Notate what type of specimen was requested; and
  - 2. Whether a specimen was provided; and
  - 3. Give a copy of the document to the driver.
- (c) Complete the DIC-25 (DIC-55), give a copy of the document to the driver and seize his Texas driver's license when the driver:
  - 1. Refuses to provide a specimen; or
  - 2. Provides a breath specimen with results at or above the legal limit.
- (d) Do not seize an out-of-state license from a driver or a driver who provides a voluntary blood sample.

#### **355.8 FILING DWI CHARGES**

##### **355.8.1 REQUIRED ADMINISTRATIVE LICENSE REVOCATION DOCUMENTATION**

- (a) The following Administrative License Revocation (ALR) documents are required when making an arrest for DWI:
  - 1. Motor Vehicles
    - (a) DIC-23 - Peace Officer Sworn Report.
    - (b) DIC-24 - Statutory Warning.
    - (c) DIC-25 - Notice of Suspension / Temporary Driving Permit.
  - 2. Commercial Motor Vehicles
    - (a) DIC-54 - Peace Officer Sworn Report / Commercial Motor Vehicles.
    - (b) DIC-55 - Statutory Warning / Commercial Motor Vehicle Operators.
    - (c) DIC-57 - Notice of Disqualification / Temporary Driving Permit.
- (b) The following documents are required when taking a breath and/or blood specimen:
  - 1. TLE-51A Affidavit of Person who Withdrew Blood.
  - 2. The APD Chemistry Lab Blood Alcohol Submission Form is used when a blood specimen is taken.

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*DWI Enforcement*

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- (c) The following documents have Spanish versions that can be used for Spanish speaking drivers: DIC-24S, DIC-25S, DIC-57S.

**355.8.2 DIRECT FILING DWI CHARGES**

- (a) Officers direct filing charges for DWI shall complete the following documentation to be turned in to a DWI Enforcement supervisor if utilizing the BAT Bus or the Arrest Review detective if going directly to a County Booking facility:
1. Case disposition sheet; and
  2. Original signed DWI PC Affidavit; and
  3. Required ALR paperwork; and
  4. Intoxilyzer results if a breath sample was given; and
  5. TLE-51A if a blood sample was given; and
  6. Any seized Texas drivers license, if applicable; and
  7. Copy of Blood Search Warrant paperwork, if applicable.
- (b) Officers who request a DWI officer that subsequently arrests the driver, shall:
1. Write a supplement to the incident report;
  2. Complete any CR-3 (Crash Report), if applicable;
  3. Submit into evidence any in-car recording(s) showing event's prior to arrival of the DWI officer.

**355.8.3 ADDITIONAL WILLIAMSON COUNTY GUIDELINES**

- (a) Officers arresting and booking a driver into Williamson County Jail are required to get DWI Enforcement Unit or Arrest Review Unit review and approval on arrests.
- (b) In addition to copies of the required documentation listed above, officers shall turn in the following to the Williamson County Booking Officer:
1. Williamson County Sheriff's Department Arrest Report or a copy of the incident report, if printed out and available. The Williamson County form does not replace the requirement of officers to complete an incident report
- (c) All original ALR paperwork, a copy of the DWI PC Affidavit and any seized Texas drivers license shall be stapled together and forwarded to the Traffic Office.

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# Outside Agency Assistance and Joint Task Forces

## 362.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidance to officers when requesting assistance or answering a request for assistance from another law enforcement agency.

It is the order of this department to provide assistance whenever possible, consistent with the applicable laws of arrest and detention orders of this department, when another law enforcement agency requests assistance with an arrest or detention of any person. This department may also request an outside agency to provide assistance.

### 362.1.1 PUBLIC REQUESTS FOR SERVICE IN ANOTHER JURISDICTION

All incoming calls from the general public requesting police assistance at a location not within the geographical jurisdiction of the Austin Police Department shall be immediately routed or referred to the proper agency.

## 362.2 ASSISTING OUTSIDE AGENCIES

### 362.2.1 REQUESTS FOR NON-EMERGENCY ASSISTANCE

(a) Requests of Minor Nature

1. Law enforcement agencies making a minor nature request of APD (e.g., back-up on traffic, identification inquiries) shall normally be processed through APD Communications.

(b) Requests for Major or Specialized Non-Emergency Assistance

1. Law enforcement agencies making a formal request for any major or specialized non-emergency assistance shall be advised to contact the following APD supervisors:
  - (a) **Uniform Personnel** - Affected commander or lieutenant.
  - (b) **Specialized Investigative or Tactical Assistance** - Investigations commander, Organized Crime commander or Special Operations commander, as the situation dictates.
  - (c) **Specialized Forensic or Victim Counseling Services**: Forensics manager or Victim Services manager, as the situation dictates.
2. In the absence of the above APD supervisors, the Watch Lieutenant or Duty Commander shall be contacted.
3. APD supervisors shall notify the chain-of-command up to the affected assistant chiefs if it is determined a service request will take an extended period of time and impact APD resources.

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### 362.2.2 REQUESTS FOR EMERGENCY ASSISTANCE

Law enforcement agencies may request emergency assistance from the Department at any time. Such requests are categorized and handled as follows:

(a) **Immediate Emergency Assistance**

1. These are incidents in which another agency's officers are within or immediately adjacent to our jurisdiction and have encountered a situation or incident requiring immediate assistance (e.g., officer needs assistance, major crashes).
2. Such requests are normally received by APD Communications which is responsible for:
  - (a) Determining the nature of the request; and
  - (b) Dispatching the appropriate APD units to assist; and
  - (c) Notifying the appropriate unit sergeant and lieutenant of the request.

(b) **Formal Emergency Assistance**

1. This type of request is normally made when another agency's resources have been overwhelmed or need to be supplemented (e.g., disasters, hostage/barricade situations, explosive devices, mass casualty incidents).
2. The affected assistant chiefs, or in their absence the Duty Commander, shall be immediately notified and will make a decision as to what extent the Department will honor such requests.

### 362.2.3 COMMAND AND COORDINATION OF APD PERSONNEL

- (a) APD personnel shall not be placed under the command of any outside agency.
- (b) Any APD Units dispatched for routine assistance to another agency shall contact the other agency's officer-in-charge to render approved assistance but shall remain under the direct control of an APD supervisor.
- (c) At the scene of an incident where APD personnel are working with officers from an outside agency:
  1. The ranking APD patrol supervisor shall assume command and responsibility of all assigned APD patrol officers.
  2. The ranking APD support unit supervisor shall assume command and responsibility of all APD support unit personnel.
  3. The responsible supervisors shall coordinate their efforts with each other and with the ranking supervisor of the outside agency.
  4. If there is only one APD supervisor on-scene and several units of the Department are present, that supervisor shall assume command and responsibility of all APD personnel and shall coordinate operations with the ranking supervisor of the outside agency.
- (d) The appropriate Commanders or Duty Commander shall be kept informed by the on-scene ranking APD supervisor of the progress, delays, or conclusion of any operation.

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- (e) When a long-term investigation is being performed jointly with another law enforcement agency, the affected Commanders will maintain liaison with the outside agency.

### **362.3 JOINT INVESTIGATIVE TASK FORCE**

An investigative task force may be established when normal resources are unable to cope with a problem or would aid in the investigation of certain types of offenses.

- (a) To request establishment of a joint task force a written memorandum of understanding or task force agreement must be completed and agreed to by the involved agency or agencies.
- (b) The decision to establish any joint task force must be approved by the Chief or designee.
- (c) Planning and Analysis will track the number and type of ongoing joint task forces. This will be accomplished in accordance with any prescribed security or confidentiality clauses established in each task force agreement.

#### **362.3.1 JOINT TASK FORCE MANAGER**

Once the decision to establish an investigative task force has been approved, a joint task force manager will be appointed. Selection of the joint task force manager will be based upon work experience, management skills, the overall reputation of the candidate and the type of investigation.

- (a) The joint task force manager will be of the rank of lieutenant or higher, depending on the scope of the problem or investigation, and requires final approval by the Chief or designee.
- (b) The joint task force manager will be responsible for:
  1. Establishing accountability for all facets of the operation.
  2. Identifying all available resources required.
  3. Briefing the Chief or designee periodically, or as requested, on the progress of the task force.
  4. Preparing an after-action report to be presented to the Chief or designee detailing:
    - (a) Expenditures (e.g., overtime, equipment, travel).
    - (b) Staff-hours used.
    - (c) Arrests and prosecutions.
    - (d) Property and contraband recovered or seized.
    - (e) Effectiveness of task force.
    - (f) Recommendations.
  5. Forwarding a copy of the after action report to Planning and Analysis for archiving.



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**362.3.2 APD PERSONNEL IN JOINT TASK FORCES**

When APD personnel are assigned to assist other agencies in either long- or short-term joint task forces:

- (a) APD personnel will remain under the control of a specified APD supervisor.
- (b) Reporting procedures shall be established by APD supervisors to ensure regular reports are received from APD employees regarding their activities.
- (c) The involvement of APD personnel in joint task forces will undergo regular review by the involved employee's chain-of-command.
- (d) Affected assistant chiefs may request periodic reports from a chain-of-command either recommending the continuation or termination of the employee's involvement.

**362.4 NOTIFICATIONS AND INVESTIGATIONS INVOLVING AUSTIN INDEPENDENT SCHOOL DISTRICT (AISD) POLICE**

- (a) AISD Police have agreed to notify APD Communications when incidents of a serious nature (e.g., Homicide, Aggravated Assault, and Sexual Assault) occur on school property.
  - 1. APD Communications will contact an APD patrol supervisor with details of the incident and will supply a contact number for the AISD police supervisor.
  - 2. The APD supervisor will determine what, if any, response is needed from APD and will confer with the AISD supervisor on which agency will assume investigative responsibility.
- (b) APD Communications shall notify AISD police of any AISD school related safety issues (e.g., fire around school property during school hours) or serious incident affecting AISD students (e.g., death of an AISD student, AISD bus crash).
- (c) Prior to APD PIO releasing information to the media on any major incidents affecting AISD schools or students, APD PIO first shall notify AISD PIO.

**362.5 REQUESTING ASSISTANCE FROM OTHER AGENCIES**

An APD supervisor shall coordinate any assistance needed from outside agencies.



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## Off-Duty Law Enforcement Actions

### 364.1 PURPOSE AND SCOPE

The decision to become involved in a law enforcement action when off-duty can place an officer as well as others at great risk and must be done with careful consideration. This order is intended to provide guidelines for officers of the Austin Police Department with respect taking law enforcement action while off-duty. The same standard of objective reasonableness that applies to on-duty enforcement actions shall also apply to off-duty enforcement actions.

This order does not apply to officers who are working in an undercover or approved secondary employment capacity.

### 364.2 POLICY

Initiating law enforcement action while off-duty is generally discouraged, particularly when officers are outside their jurisdiction. Reporting to the appropriate law enforcement agency and safe monitoring of suspected criminal activity is favored.

- (a) Officers should not attempt to initiate enforcement action when witnessing minor crimes; Officers are not expected to place themselves in unreasonable peril.
- (b) Officers who becomes aware of an incident or circumstance that he reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage, should take reasonable action to minimize the threat.
- (c) Officers must remember that their authority to arrest may be limited based upon their jurisdiction.

### 364.3 FIREARMS

Officers of this department may carry firearms while off-duty in accordance with federal and state law and department general orders.

- (a) Any officer wishing to carry a firearm while off-duty is authorized to do so as either a law enforcement officer as allowed by this order or as a civilian under the authority of the state issued license, not both.
- (b) Officers shall carry their Department issued badge and identification card when carrying firearms off-duty under the authority granted to a law enforcement officer.
- (c) An officer carrying off-duty under the authority of a state issued license, whether concealed or open, will not display his or her APD badge or ID, or use or carry any APD equipment, including their issued firearm.
- (d) Firearms shall not be carried by any officer who has consumed an amount of an alcoholic beverage, or taken any drugs, that would tend to adversely affect the officer's senses or judgment.
- (e) For purposes of this section of this order, off-duty is defined and as any activity in which the employee is not receiving compensation or benefit as a result of their employment with the Department, or wearing any part of an authorized uniform.

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1. This definition does not apply to officers who are working in an undercover capacity.

#### **364.4 DECISION TO INTERVENE**

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

- (a) Officers should take into consideration the following factors when making a decision on whether or not to intervene:
  1. The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.
  2. The inability to communicate with responding units.
  3. The lack of equipment, such as handcuffs, OC or baton.
  4. The lack of cover.
  5. The potential for increased risk to bystanders if the off-duty officer were to intervene.
  6. Unfamiliarity with the surroundings.
  7. The potential for the off-duty officer to be misidentified by other peace officers or members of the public.

#### **364.4.1 INTERVENTION PROCEDURE**

If involvement is reasonably necessary, an officer should call or have someone else call 9-1-1 to request immediate assistance if possible.

- (a) The operator should be informed that an off-duty officer is on-scene and provided a description of the officer if possible.
- (b) Officers should clearly identify himself as a police officer to those involved in the situation, if practicable.
- (c) Officers should fully cooperate with the agency having jurisdiction in providing statements or reports as requested or as appropriate.

#### **364.4.2 INCIDENTS OF PERSONAL INTEREST**

Unless there is an exigent circumstance, employees shall refrain from handling police incidents of personal interest (e.g., family or neighbor disputes). When practicable, employees should report the matter to 9-1-1 so that an on-duty officer can respond.

- (a) Offenses that may be committed against the employee, members of the employee's family, or a business interest of the employee will be reported to the Investigative Unit with responsibility for investigation of such offenses. Normal filing procedures will be followed to prevent any potential for abuse of authority.
- (b) Employees shall not maintain continued involvement in any criminal case, nor personally file any criminal charge in a court of law, against any person for criminal

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offenses committed against the employee, any member of the employee's family, or which involves any business in which the employee has a proprietary interest.

#### **364.4.3 CIVILIAN RESPONSIBILITIES**

Civilian personnel should not become involved in any law enforcement incident while off-duty except to notify the local law enforcement authority and remain at the scene, if safe and practicable. This order does not prevent a civilian employee from taking action as a private citizen as authorized by State law.

#### **364.4.4 OTHER CONSIDERATIONS**

When encountering non-uniformed officers in public, uniformed officers should wait for acknowledgement by non-uniformed officers in case they need to maintain an undercover capability.

#### **364.5 REPORTING**

- (a) In addition to contacting the appropriate agency, any off-duty employee who engages in any law enforcement activity shall notify, as soon as practicable:
  - 1. The employee's immediate supervisor if the supervisor is on-duty.
  - 2. Any on-duty supervisor when the employee's immediate supervisor is off-duty.
- (b) The notified supervisor shall determine whether a report should be filed by the employee.

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**Chapter 4 - Field Response,  
Investigations and Reporting Policies**



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## Officer Response to Calls

### 400.1 PURPOSE AND SCOPE

The Department has a responsibility to protect life and property and to provide service to the residents of Austin. To fulfill this obligation it must provide an appropriate response to calls. Officers should be ever mindful that they have a responsibility to ***use caution, good judgment, and due care*** when operating vehicles in an emergency capacity to ensure the safety of motorists and pedestrians. This document describes the conditions under which an APD vehicle may be operated as an emergency vehicle.

### 400.2 EMERGENCY RESPONSE AND VEHICLE OPERATIONS

- (a) Officers responding to an emergency call shall do so without delay.
- (b) Responding with emergency lights and/or siren does not relieve the operator of an authorized emergency vehicle of the duty to act as a reasonably prudent emergency vehicle operator in like circumstances (Tex. Transp. Code § 546.005).
- (c) Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle (Tex. Transp. Code § 546.001).
- (d) If the emergency equipment on the vehicle should fail to operate at any time during the response, the officer shall notify Communications of the equipment failure so that another unit may be assigned to the emergency response. The officer may still respond to the call without the use of emergency equipment.
- (e) Operation of emergency vehicles is classified in 3 levels:
  1. Code 3 (Emergency Operation).
  2. Code 2 (Limited Emergency Operation).
  3. Code 1 (Routine Operation).

#### 400.2.1 CODE 3 (EMERGENCY OPERATION)

Code 3 is used to describe the operation of a vehicle while the emergency lights and siren are activated.

- (a) When operating Code 3, officers may:
  1. Exceed the speed limit but must regulate their speed so as not to endanger life or property.
  2. Proceed with caution through traffic signals and stop signs after slowing and, if necessary, stopping to ensure the intersection is safe/clear.
  3. Disregard laws governing direction of movement and turning when it can be done safely.

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*Officer Response to Calls*

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- (b) Unmarked vehicles equipped with a siren and emergency lights may be operated Code 3 in compliance with this order.
- (c) Officers should only respond Code 3 when so dispatched or when circumstances reasonably indicate an emergency response is required.
  - 1. Unless otherwise required by Department General Orders (e.g., pursuits), the decision to operate Code 3 in authorized situations is at the discretion of the officer
  - 2. If, in the officer's judgment, roadway conditions or traffic congestion causes an unreasonable risk to operate Code 3, the officer may elect to respond to the call without the use of lights and siren at the legal speed limit. In such an event, the officer should immediately notify Communications.
  - 3. Officers shall discontinue Code 3 operation when directed to do so by a supervisor.
- (d) Emergency Operation Exemptions. This section does not relieve an officer from the duty to operate an authorized emergency vehicle with appropriate regard for the safety of all persons or the consequences of reckless disregard for the safety of others.
  - 1. Officers may operate an authorized emergency vehicle for a law enforcement purpose without using the audible or visual signals if the officer is responding to an emergency call or pursuing a suspected violator of the law with probable cause to believe that:
    - (a) Knowledge of the presence of the officer will cause the suspect to:
      - 1. Destroy or lose evidence of a suspected felony;
      - 2. End a suspected continuing felony before the officer has obtained sufficient evidence to establish grounds for arrest; or
      - 3. Evade apprehension or identification of the suspect or the suspect's vehicle; or
      - 4. Because of traffic conditions on a multi-lane roadway, vehicles moving in response to the audible or visual signals may increase the potential for a crash.
  - 2. In operating an authorized emergency vehicle, the officer may:
    - (a) Park or stand;
    - (b) Proceed past a red or stop signal or stop sign, after stopping or slowing as necessary for safe operation;
    - (c) Exceed a maximum speed limit, as long as the officer does not endanger life or property;
    - (d) Disregard a regulation governing the direction of movement or turning in specified direction. Officers will adhere to General Order 214.3.4 (Pursuit Driving Considerations and Restrictions).
  - 3. This section applies when an officer is:

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- (a) Responding to an emergency call;
- (b) Pursuing an actual or suspected violator of the law;
- (c) Directing or diverting traffic for public safety purposes; or
- (d) Conducting a police escort as defined by 546.003 Transportation Code.

#### 400.2.2 CODE 2 (LIMITED EMERGENCY OPERATION)

Code 2 is used to describe the operation of a vehicle while the emergency lights are activated, but without use of the siren.

- (a) When operating Code 2, officers shall obey all traffic laws and regulations.
- (b) Officers may temporarily operate Code 3 in order to pass through traffic control devices or heavy traffic congestion when normally authorized to operate Code 2, as necessary. Officers will revert back to operating Code 2 when Code 3 is no longer needed.
- (c) Officers may be allowed to drive Code 2 as a patrol technique with the approval of a lieutenant or higher.

#### 400.2.3 CODE 1 (ROUTINE OPERATION)

Code 1 is used to describe the normal operation of a vehicle without the use of emergency lights or siren.

### **400.3 CALLS FOR SERVICE**

- (a) Calls for service are classified by Communications into the following categories:
  - 1. Hot Shot (Priority 0).
  - 2. Urgent (Priority 1).
  - 3. Priority 2.
  - 4. Priority 3
  - 5. Information Calls.
- (b) Once a call for service has been dispatched, it may only be downgraded by a supervisor or Communications.
- (c) Each type of call for service permits a specific type of Code response as outlined below.
- (d) Once a Code 4 has been broadcast by a unit at the scene, all units still responding shall immediately terminate their response and go in-service.

#### 400.3.1 HOT SHOT CALLS

- (a) Hot shot calls are incidents:
  - 1. Involving physical harm or injury to a person or property; and
  - 2. That is in progress and/or all involved parties are still on scene.
- (b) Officers responding to Hot Shot calls should operate Code 3.



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#### 400.3.2 URGENT CALLS

- (a) Urgent calls are incidents:
  - 1. Involving physical harm or a perceived threat to any person or property; and
  - 2. That just occurred and/or suspects may still be in the area; and
  - 3. Where a quick response might aide in apprehension.
- (b) Officers responding to Urgent calls may operate Code 2.

#### 400.3.3 PRIORITY 2 CALLS

- (a) Priority 2 calls are incidents:
  - 1. That pose either a minimal or no immediate threat; and
  - 2. That are in progress or just occurred; and
  - 3. Warrant a rapid police response.
- (b) Officers responding to Priority 2 calls shall operate Code 1.

#### 400.3.4 PRIORITY 3 CALLS

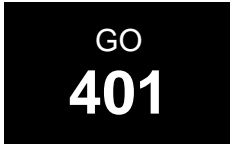
- (a) Priority 3 calls are incidents:
  - 1. Where protection of life or property is not at risk; and
  - 2. An immediate police response will not likely prevent further injury, loss of property, or adversely impact an investigation.
- (b) Officers responding to Priority 3 calls shall operate Code 1.

#### 400.3.5 INFORMATION CALLS

Information calls are incidents requiring information to be documented and/or disseminated to law enforcement personnel but do not require a police response.

### 400.4 ASSIGNMENT OF CALLS

- (a) **Hot Shot and Urgent Calls**
  - 1. Hot Shot and Urgent calls require a two-officer response and are generally dispatched by Communications to the two closest available patrol officers. Officer safety and call priority shall be the primary considerations when dispatching officers. Additional officers may self assign using the MDC, as necessary.
- (b) **Priority 2 and Priority 3 Calls**
  - 1. Officers may be dispatched by Communications or self-assign using the MDC to any Priority 2 and Priority 3 calls.



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## Preliminary Field Investigations

### 401.1 PURPOSE AND SCOPE

Law enforcement operations consist of many diverse activities which are directed toward the attainment of the Department's objectives. The purpose of this order is to improve coordinated efforts between Patrol and Investigative Unit personnel concerning investigative procedures.

Officers should review General Order 318 (Detentions, Field Interviews and Field Photographs) and General Order 319 (Arrests) for information on handling subjects during field investigations.

### 401.2 INITIAL RESPONSE AND INVESTIGATION

- (a) Officers responding to an incident shall ensure that all persons are safe and anyone in need of medical attention receives assistance.
- (b) Subjects exhibiting unusual agitation, aggression, or similar behaviors:
  - 1. Officers should take special care when encountering subjects exhibiting any of the following behaviors or symptoms:
    - (a) under the influence of drugs/alcohol;
    - (b) extreme agitation;
    - (c) violent irrational behavior accompanied by profuse sweating;
    - (d) extraordinary strength beyond their physical characteristics;
    - (e) apparent imperviousness to pain; or
    - (f) requires a protracted physical encounter with multiple officers to be brought under control.
  - 2. Officers encountering these subjects should gain rapid control of the subject and transfer care to emergency medical providers as soon as possible.
  - 3. For safety, officers should only engage a subject displaying these symptoms when adequate back-up assistance is present.
  - 4. Subjects who display these symptoms may initially violently resist detention then become suddenly calm. They may seem to be sleepy and resting. This condition is sometimes called "sudden tranquility" and usually indicates an immediate need for medical attention. "Sudden tranquility" is not an indication that the subject no longer needs medical attention.
- (c) The primary officer shall make a preliminary determination if a crime has been committed.
  - 1. If the information indicates that a crime has occurred, follow the guidelines outlined in this General Order.
  - 2. If the information indicates that no crime occurred, determine what other action may be necessary and/or what resources may be available to the subject.

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- (d) Generally, officers assigned to calls or discovering incidents requiring a report shall be responsible for the preliminary investigation and required paperwork.
  - 1. Certain incidents (e.g., family violence, sexual assault) require a specific response and investigation as outlined in its respective General Order, Standard Operating Procedure (SOP) or Operations (Ops) Manual.

#### 401.2.1 REQUEST ADDITIONAL RESOURCES

Officers shall request the assistance of additional resources as necessary or required.

- (a) The Special Investigations Unit (SIU) shall be notified anytime an incident involves a commissioned peace officer as a suspect, regardless of that officer's agency or jurisdiction.
- (b) Personnel from the appropriate Investigative Unit shall be requested during the initial investigation of all:
  - 1. Homicides and suicides.
  - 2. Extortions.
  - 3. Officer-involved shootings.
  - 4. Officer-involved serious injury incidents.
  - 5. Certain crashes as outlined in General Order 346 (Crash Investigation and Reporting).
  - 6. Suspected bombs and explosive devices.
  - 7. Clandestine laboratories.
  - 8. Exigent mobile phone requests.
- (c) Personnel from the appropriate Investigative Unit shall be requested when needed in the initial investigation of all:
  - 1. Aggravated sexual assaults.
  - 2. Burglaries and thefts where there are major losses.
  - 3. Robberies of businesses.
  - 4. Robberies of individuals with serious injury.
  - 5. Serious injury assaults.
  - 6. Major narcotics investigations.
- (d) A Crime Scene Technician shall be requested:
  - 1. At the direction of an Investigative Unit; and
  - 2. For major crime scenes that involve:
    - (a) Evidence collection.
    - (b) Photographing.
    - (c) Latent fingerprinting.

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- (d) Large property loss.
- (e) Serious injury or death.

#### 401.2.2 MEDIA ACCESS

Guidelines on handling Media Access at the scene of incidents is outlined in General Order 326 (News and Media Relations).

#### **401.3 ROUTINE COMMAND AT POLICE INCIDENTS**

- (a) Routine command at a police incident is handled as follows:
  - 1. Generally the highest ranking officer, or senior officer if of the same rank, should assume command of the scene and operations until relieved by a supervisor, or until the conclusion of the incident; however, the highest ranking officer will assume command whenever the situation appears to be beyond the control of the current officer in charge, when jurisdiction is concurrent over a particular duty, or for disciplinary purposes.
  - 2. Any officer may take command of the scene and operations when the current officer in charge is unable to perform the required duties because of physical or mental inability.
  - 3. Command at major incidents is outlined in General Order 407 (Emergency Management).
- (b) Assumption of command will be done by the officer identifying himself and informing the current officer in charge of his intent to assume command.

#### 401.3.1 SUPERVISOR ASSUMING COMMAND OF INCIDENTS

Supervisors are not normally expected to engage in law enforcement operations except in a command or supervisory capacity. Supervisors may be held accountable for failure to take command if unfavorable developments occur which could have been prevented had he assumed control of the scene.

- (a) Supervisors will not assume command outside their own organizational segment during the normal completion of their responsibilities unless failure to do so would adversely affect the Department's operational capability.
- (b) The ranking supervisor shall assume command of the scene and operations at the scene of police incidents involving more than one segment of the Department.
- (c) In instances of multiple crimes requiring personnel from more than one Investigative Unit, the ranking on-duty supervisor of the most serious offense will assume command (e.g., if a homicide occurs in conjunction with a burglary, Homicide Unit would be in command).

#### **401.4 CRIME SCENE MANAGEMENT**

- (a) Officers arriving at a crime scene are often faced with the immediate need to search for and render aid to victims as well as determine if suspects are present and continue to pose a threat.

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1. Searches are limited to "plain view" in the immediate area unless exigent circumstances exist (e.g., additional suspects, injured persons).
  2. Once officers are satisfied that no additional suspects are present and/or there are no injured persons to be treated, exigent circumstances will likely no longer exist.
  3. Officers should secure the scene and conduct no further search until proper authority for the search is obtained.
  4. While consent to search should be obtained from authorized individuals where possible, it may be more prudent to obtain a search warrant in the case of serious crimes or major investigations.
- (b) Crime scene supervision is normally conducted by the senior officer present. They have the authority to direct and oversee the processing of a scene unless relieved by a senior officer present, Investigative Unit personnel with expertise in the particular crime, or by a supervisor.
- (c) The primary officer or designee has the following responsibilities when a crime scene is present which requires processing:
1. Initiate a *Crime Scene Security Log* (PD0175) to record the name and time of all persons entering, or assigned to, the crime scene. Upon completion, the form shall be given to the primary Investigative Unit.
  2. Setup an initial perimeter around the crime scene with crime scene tape. The scene should be large enough to include potential evidence.
  3. Determine if additional inner/outer perimeter(s) need to be setup. These may be used to create a space for media or the public, as a safety measure for officers, or to further protect the crime scene from contamination.
  4. Protect items of apparent evidentiary value and ensure the scene is processed accordingly.

#### 401.4.1 CRIME SCENE PROCESSING AND EVIDENCE COLLECTION

Employees will ensure that items identified as evidence are not tampered with in any way prior to being photographed and collected.

- (a) Weapons at crime scenes will only be moved if they pose a threat to persons at the scene. If the scene has been properly secured, a weapon will not generally pose a threat and can be left where it is found.
- (b) At major crime scenes:
1. Employees will only handle evidence at the direction of a supervisor, the investigator in charge, or a Crime Scene Unit member at the scene.
  2. If an employee is requested to handle evidence, employees should be given explicit instructions on handling the evidence; employees will document who instructed them to handle the evidence and the instructions given.

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3. Employees will identify any possible sources of video or photos of the scene and determine if they may contain any pertinent evidence. Any information regarding sources of pertinent evidence shall be documented in the employee's supplement.
- (c) At all other crime scenes:
1. If a crime scene technician responds to the scene, the technician will be responsible for processing the scene.
  2. If a crime scene technician is not available or is not requested, the primary officer or designee will be responsible for:
    - (a) Processing the crime scene as outlined in this order; and
    - (b) Evidence collection as outlined in General Order 618 (Property and Evidence Collection Procedures).
  3. Employees will identify any possible sources of video or photos of the scene and determine if they may contain any pertinent evidence. Any information regarding sources of pertinent evidence shall be documented in the employee's supplement.
- (d) Scenes involving large property loss, serious injury, or death require a sketch to be completed.
1. The sketch should be clear and understandable to allow for the construction of a diagram at a later time.
  2. All diagrams shall be drawn based on measurements taken at the scene.
  3. All evidence will be depicted in its relative position on the diagram and described in the legend.
  4. Elements of the sketch should include:
    - (a) Dimensions.
    - (b) Relation of the crime scene to other buildings.
    - (c) Geographical features, or roads.
    - (d) Address, floor, or room number, as appropriate.
    - (e) Location of significant features of the scene, including the victim.
    - (f) Date and time of preparation.
    - (g) Names of the persons preparing the sketch.
    - (h) Direction of north, and the location of items of physical evidence recovered.
- (e) If a scene is not processed at the time of the initial investigation, the primary officer will document the reason(s) in the incident report.

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#### 401.4.2 LATENT PRINT PROCESSING

The employee responsible for processing a crime scene will be responsible for ensuring latent prints are lifted when prints are necessary (e.g., primary officer, crime scene technician).

- (a) Latent prints will be obtained at the crime scene; employees will not seize items of physical evidence for printing unless:
  - 1. The item is constructed such that it cannot be printed at the scene (e.g., forgery documents); or
  - 2. The item has evidentiary value beyond latent prints.
- (b) Employees will label all latent print cards with their name, employee number, date, time, offense number, and location the print was lifted. Print cards will be placed into a collection envelope and submitted to an evidence room.
- (c) Evidence which cannot be fingerprinted by employees at the scene will be recovered and wrapped securely in a paper or plastic bag in a manner which will minimize the possibility of destroying the fingerprints.
- (d) Employees will not process forgery documents for latent prints at the scene. Forgery documents will be handled as outlined in General Order 618 (Property and Evidence Collection Procedures).

#### 401.5 SECURE AND IDENTIFY WITNESSES

Officers should attempt to locate any witnesses to an offense when warranted by the seriousness of the case. Since potential witnesses to an incident may be lost or the integrity of statements compromised with the passage of time, officers should take reasonable steps to promptly coordinate the following tasks with on-scene personnel:

- (a) Separate witnesses from the public, media and other subjects on-scene as the situation and personnel allow.
- (b) Obtain necessary identification from witnesses and an account of what they observed.
  - 1. Any potential witness who is unwilling or unable to remain available for a formal interview or who refuses to be identified should not be detained absent reasonable suspicion to detain or probable cause to arrest.
  - 2. When feasible, a recorded statement should be obtained from witnesses present at the time the incident occurred, regardless of whether they actually saw something.
- (c) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where an investigator may obtain a recorded statement. Such witnesses, if willing, may be transported by Department personnel.
  - 1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness in a Department vehicle.
  - 2. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
- (d) Record witness information and statements in an incident report or supplement.

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#### **401.6 SECURING PROPERTY AFTER ENTRY**

In the event APD personnel must force entry into any residence or business, the following procedures will apply.

##### **401.6.1 WHEN A RESIDENCE OR BUSINESS CAN BE SECURED AFTER FORCED ENTRY**

After making a forced entry into a residence or business and there is no further action to be taken, and the residence or business can be secured just as it was prior to the forced entry, the employee may secure the property without notifying an owner, resident, or an agent of the business.

- (a) When there is no contact made and there is no further action to be taken, the supervisor who approved the forced entry will leave a note with the following information:
  - 1. A brief message stating why the Department made entry.
  - 2. The incident number for the call.
  - 3. The employee's name and employee number.
  - 4. The employee's office or other contact number.

##### **401.6.2 WHEN A RESIDENCE OR BUSINESS CANNOT BE SECURED AFTER FORCED ENTRY**

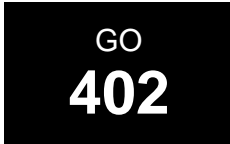
After making a forced entry into a residence or business and there is no further action to be taken, employees will ensure the security of the residence or the business by notifying the owner, resident, or an agent of the property.

- (a) When the owner, resident or a responsible agent for the property can be located and can arrive on site within a reasonable amount of time, the employee will remain at the site until the owner, resident, or the agent has arrived.
- (b) When the owner, resident or a responsible agent for the property cannot be located or cannot arrive at the site within a reasonable amount of time,
  - 1. The employee will have APD Communications contact the city's on-call service company to meet with the employee at the scene so the site can be secured.
  - 2. The employee will remain at the site until the on-call service company representative has completed all necessary steps to secure the property.

#### **401.7 REPORTING RESPONSIBILITIES**

- (a) When the preliminary investigation is done, officers shall prepare an initial incident report detailing an accurate record of events as outlined in General Order 402 (Incident Reporting and Documentation). The initial incident report will not be uploaded until the IBR Check is run and all errors corrected.
- (b) When Investigative or Specialized Unit personnel (e.g., crime scene technician, crash investigator) respond to the scene and conduct the preliminary investigation, unit personnel shall be responsible for the completion of the initial report. All other responding officers will be responsible for completing supplemental reports as outlined in General Order 402 (Incident Reporting and Documentation).





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## Incident Reporting and Documentation

### 402.1 PURPOSE AND SCOPE

Documentation is a major part of each officer's job. Reports, including CR-3s, may be used to document information to assist investigators in follow-up investigations. Field release citations, warnings, field observation (FO) cards and electronic street checks are used to document law enforcement actions and/or contacts with the public. Sufficient information should be included in any form of documentation to:

- (a) Assist in prosecution.
- (b) Refresh an officer's memory during testimony.
- (c) Comply with legal requirements and Department General Orders.

#### 402.1.1 GENERAL GUIDELINES

Officers will not write an offense report when they are the victim of a crime. The victim officer will write a supplement. The offense report will be written by an officer who is not a victim.

An incident number will be assigned and all required fields completed during documentation anytime an employee observes or receives any information concerning the following, but not limited to:

- (a) Criminal or suspected criminal offenses, regardless of the victim's level of cooperation.
- (b) Citizen complaints of non-criminal incidents requiring action by the police.
- (c) Self-initiated stops
- (d) When Crime Scene personnel are assigned to an incident that was first initiated or responded to by sworn personnel and no tele-serve report has been made.
- (e) Crashes involving bicyclists will be investigated and reported as defined in Section 346.3 Crash Investigation. Non-crash events involving a bicyclist will be documented in a Versadex report using title code 4311 under the following circumstances:
  - 1. The incident occurred on a public place
  - 2. At least one of the involved subjects sustained bodily injury; and
  - 3. The incident occurred as a result of a potential criminal act, violation of the Transportation Code, violation of a City Ordinance, or the actions of another party.
- (f) Any other situation where documentation is required by law or another section of departmental general orders.

If in doubt as to whether an incident should be documented, employees shall confer with a supervisor. For the purpose of this order, Corporals may function as the designated supervisor.

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#### **402.2 INCIDENT REPORTING**

A well-written report can help make a case just as easily as a poorly written report can ruin a case. Employees have the responsibility to write clear, factual, and complete reports.

##### **402.2.1 DOCUMENTING GENDER IDENTITY IN VERSADEx**

When officers are made aware of persons who identify as transgender, gender non-binary, or gender non-conforming and need to document that encounter in police reports, field observation cards, field release citations, or warnings they will use the following guidelines.

- (a) If the person's legal name and gender marker corresponds with how the person identifies, officers will document them the same way they would any other person. Officers will make no mention of the person's former name and gender marker in their report unless it has an investigative purpose.
- (b) If the person has legally changed their name and gender marker and the Master Name Index (MNI) has not been updated:
  1. Document the person's identity on the MRE report with their new identity.
  2. Create an alias/associate name through the Entity section of the MRE report documenting the person's previous legal name and gender marker.
  3. Instruct the person to contact APD Central Records at [Review.Report@austintexas.gov](mailto:Review.Report@austintexas.gov) if they wish to update the original MNI Prime with their new legal name and gender marker.
- (c) If the person's legal name and gender marker do not correspond with how the person identifies, the officer shall enter their legal name and gender into the entities section of the report and conduct the MNI check to determine if the person is already on file. If the MNI does not exist;
  1. Create an entity documenting the person's legal name and legal gender marker.
  2. The officer will then create an alias/associate name documenting the person's preferred or Also Known As name and the gender they identify as, prefer, or present themselves to be.
  3. Officers will also enter the Association Role "Transgender/Gender Non-Conforming, Non-Binary" into the entity of the Alias/Associates entity.
  4. Officers will document the person's legal name in the first few sentences of the narrative i.e., "On 01/01/2018, I contacted the complainant, Jane Smith (legal name), known as John Smith". Officers will then make every effort to refer to the person by their known as or preferred name and gender marker throughout the rest of the report.
- (d) If the person does have an MNI but no alias/associate name or the alias/associate name does not contain the correct information, officers will then create or correct the alias/associate name by documenting the person's correct preferred or Also Known As name and gender marker.

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#### 402.2.2 DOCUMENTING VICTIM IDENTIFICATION IN AFFIDAVITS

In order to respect the dignity of victims, in instances where officers feel it is necessary and/or the victim requests it, officers may use the following guidelines when documenting victim identity.

- (a) Identify the victim with their legal first initial and last name the first time they are referenced in the affidavit.
- (b) Throughout the remainder of the affidavit refer to them as “the victim.”
- (c) Do not use gender identifying pronouns for the victim(s).
- (d) If multiple victims are listed in an offense report, the affidavit should refer to them as their corresponding Versadex victim assignment number, e.g., “Victim #1”, “Victim #2”, “Victim #3”, etc.
- (e) Victims should be documented in the same manner in subsequent affidavits.

#### 402.2.3 NOTE TAKING

Good reports can be achieved from accurate notes. Memory alone is not always a reliable method upon which to document detailed information.

- (a) Brief notations concerning specific events and circumstances recorded while fresh on the mind will be useful when preparing an incident report.
- (b) Notes used in court are subject to the scrutiny of the court; employees should ensure they are accurate and pertain to the case.
- (c) Notes should contain the following:
  1. **WHO** - Persons involved.
  2. **WHAT** - Type of incident(s), an accurate account of what was observed, what transpired, and the property/evidence involved.
  3. **WHEN** - Date(s), time/s of the incident.
  4. **WHERE** - Location(s) of the incident, persons involved during the incident, property and evidence involved.
  5. **WHY** - What actions taken by persons involved led to the incident(s).
  6. **HOW** - What manner, way, means, reason, purpose, effect, extent, amount, or degree.

#### 402.2.4 REPORT WRITING

- (a) All reports shall accurately reflect:
  1. The identity of the persons involved.
  2. All pertinent information seen, heard, or assimilated by any other sense.
  3. Any action(s) taken.
  4. Any property which the employee takes possession of, clearly documenting the:
    - (a) Events that led up to the taking possession of the property

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- (b) Purpose for taking the property
  - (c) Identification of the property by name and/or description
  - (d) Location where the property was taken
  - (e) Complete identifiers, as available, for anyone who may claim ownership of the property.
- (b) Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing.
  - (c) Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such.
  - (d) Sentences with proper structure should express complete thoughts. When writing the narrative portion of an incident report, personnel should avoid writing:
    - 1. Sentence fragments which do not convey or express a complete thought.
    - 2. Run-on sentences where two or more complete ideas are joined without punctuation.

#### 402.2.5 REPORT COMPLETION

Employees will complete and download all reports written, including CR-3s, during their shift.

- (a) Prior to downloading reports, employees should:
  - 1. Proofread reports to ensure they are sufficiently detailed for their purpose; and
  - 2. Check initial incident reports for IBR errors and fix them.
- (b) Unless authorized by a supervisor, reports and CR-3s shall be downloaded as follows:
  - 1. Reports written from incidents that lead to an arrest shall be completed and downloaded prior to the employee going back in service.
  - 2. If an arrest is made, officers shall complete an AB (Arrest Booking) report in addition to the General Offense (GO) report.
  - 3. All other incident reports shall be downloaded by the end of the employee's tour of duty.
  - 4. With supervisor approval, CR-3s may be turned in the next day, but must be completed within 24 hours.
  - 5. Officers shall ensure that all reports, including CR-3s, are downloaded correctly.

#### 402.2.6 REPORT CORRECTIONS, CHANGES AND ALTERATIONS

- (a) Once a report has been sent and uploaded into the Versadex Data Transcription Queue, report corrections, changes and alterations shall be handled as follows:
  - 1. Minor corrections (e.g., location, business name) shall be accomplished by notifying Central Records.
  - 2. Corrections that need to be done to a narrative shall be accomplished by writing a supplemental report.

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3. Any changes to an entity's role in a report, (i.e.- subject changed to suspect or arrestee, victim #1 changed to victim #3, witness changed to suspect, etc.), can only be done by a detective/corporal or higher ranked person. The person making such change shall write a supplement detailing the reason for the change to the entity's role.
4. Corrections to CR-3s shall be made in the Brazos system immediately upon receiving a notice from the Highway Enforcement Command that the CR-3 has any deficiencies. This must be completed prior to the 9th day after the crash was originally reported.

#### 402.2.7 SUPERVISOR RESPONSIBILITIES

- (a) All reports routed to a supervisor's queue shall be reviewed for compliance with Department General Orders. Supervisors must ensure there are no Incident Based Reporting (IBR) errors and approve the report by completing the "Date approved" field and "Approved by" field on the front page of the GO. Reports that are incomplete or inadequate shall be returned for correction.
- (b) If an arrest was made in connection with the GO, supervisors will ensure the "Clearance status" is set to "Cleared By Arrest." "Internal status" should remain "open" or blank for detective's clearance responsibility.
  1. Supervisors will ensure their employees are assigned to the correct queue.
  2. If an employee's report goes into the wrong queue, then supervisors will contact Central Records requesting it be re-routed to their assigned queue for review.
  3. Supervisors will update a PPO's queue when they get their SOLO assignment; prior to this they will approve the PPO's report in the Academy Cadet Training Queue (HTRAIN) and ensure any reviewed documentation to include street checks, follow-ups and supplements are removed.
- (c) Supervisors shall not review reports for which they are involved in; however, supervisors that are not directly involved in an incident (e.g., witness the incident) may conduct the review. When a supervisor is involved in the incident, a supervisor one rank higher than the involved supervisor will conduct the review.
- (d) Supervisors receiving notification from Central Records or an Investigative Unit of a deficient report shall:
  1. Ensure that the responsible employee corrects the report.
  2. Take proper steps to ensure that deficiencies do not occur again (e.g., counseling, remedial training, increased monitoring and review).

#### 402.3 FIELD OBSERVATION CARDS AND ELECTRONIC STREET CHECKS

- (a) An FO card or electronic street check is required when an officer detains an individual for more than simple, preliminary questioning to find out their level of involvement in a particular incident and no other record of the contact (other than CAD) is produced. Examples of this include, but are not limited to:
  1. Detaining a suspicious person and no report is written; or

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2. Initiating a traffic stop when no field release citation or warning is issued; or
  3. Conducting a subject stop and the officer initiates a police action (e.g., detaining, frisking, or searching).
- (b) An FO card or electronic street check is **NOT** required in the following situations:
1. When an incident report, field release citation, warning or crash report (including blue form) is completed.
  2. During a non-custodial interview or casual contact where the individual is free to leave and no frisk or search has occurred.

#### 402.3.1 DETENTION GUIDELINES

The following examples are intended to guide officers in understanding when a person has been detained. These examples are not meant to describe all possible situations where documentation is required.

- (a) Was the person free to leave?
- (b) Would a reasonable person feel they were free to leave?
- (c) Was force used to prevent the person from leaving?
- (d) Was the person checked for warrants?
- (e) Is the person being frisked or asked for a consent search?

#### 402.3.2 MULTIPLE SUBJECTS

It is not always necessary for an officer to complete an FO card or electronic street check on every individual in a group of 2 or more persons.

- (a) If the passenger(s) in a car or the cohort(s) of a subject who has been detained by police is not the primary focus of the officer, it is not necessary to complete more than one FO card or street check.
- (b) If at any point during the contact an officer goes past the point of asking preliminary questions (e.g., detaining, frisking, searching) to determine a level of involvement for a passenger or cohort, those subjects shall also be documented.

#### 402.4 FIELD RELEASE CITATIONS AND WARNINGS

Field release citations and warnings shall be completed as outlined in General Order 308 (Misdemeanor Citations) and General Order 342 (Traffic Enforcement).

#### 402.5 REPORTING THE ACTIVE TARGETING OF A FIREARM AT A PERSON

By the nature of their duties, officers may be required by general orders and training to point their firearm, including impact munitions, and actively target at a person. This section does not create an additional requirement for officers to initiate an incident report; however, officers that actively target their firearm at a person shall properly document the incident as outlined below.

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#### 402.5.1 OFFICER RESPONSIBILITIES

- (a) Employees shall immediately notify and brief their supervisor. If their supervisor is unavailable, another field supervisor shall be notified
  - 1. When employees the rank of sergeant or above are involved in the incident, another supervisor the rank of the involved employee or higher will be notified.
  - 2. If the incident involves multiple employees with different supervisors, the lieutenant of the area where the incident occurred, or the Watch Lieutenant, will be notified and assign one supervisor to conduct the review.
- (b) Employees shall adhere to the following documentation guidelines:
  - 1. **FO Card or Electronic Street Check**
    - (a) When a report is not otherwise required for the incident, complete an FO card or electronic street check to document that a firearm was actively targeted at a person and the details of the incident.
  - 2. **Reports and Supplements**
    - (a) Add a study notation to the report to document that a firearm was actively targeted at a person or notify their supervisor the notation needs to be added.
    - (b) Document the details of the incident in the narrative of an incident report or supplement.

#### 402.5.2 SUPERVISOR RESPONSIBILITIES

- (a) Supervisors shall review the employee's incident report, supplement, FO card or electronic street check when notified of an incident involving an officer actively targeting a firearm at a person. Incomplete or inadequate documentation shall be returned for correction.
- (b) Supervisors will forward a memorandum up the chain-of-command if a safety, general order, training, equipment, tactical, or other specific issue is identified.
- (c) Supervisors shall adhere to the following documentation guidelines:
  - 1. **FO Card**
    - (a) Legibly sign the FO Card with the supervisors name and employee number that reviewed the incident.
  - 2. **Electronic Street Check**
    - (a) Add a supplement using the electronic street check incident number to document that the employee made a supervisor notification and the incident was reviewed.
  - 3. **Reports and Supplements**
    - (a) Add a study notation, if not already added, to document that an officer's firearm was actively targeted at a person.

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- (b) Add a case note to the incident report to document that the employee made a supervisor notification and the incident was reviewed.

**402.6 REPORTING GANG AFFILIATION**

Certain offenses may be enhanced when committed by subjects who are documented gang members. Only employees assigned to the Gang Suppression Unit may designate a subject as affiliated with a gang in the report writing system.

Employees who interact with a subject that may be affiliated with a gang should initiate an incident report titled "Gang Information" and include specific details that give rise to the belief the subject is affiliated with a gang. This includes, but is not limited to, subjects who:

- (a) Wear known, gang-related clothing (i.e., specific colors, designs).
- (b) Have known, gang-related tattoos.
- (c) Associate with documented gang members.



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## Follow-Up Investigations

### 403.1 PURPOSE AND SCOPE

Criminal investigations are a complex, multi-step process that require employees to be aware of, operate within and comply with federal, state, and local regulations so as not to prejudice the case or jeopardize the prosecution of the defendant. It is the policy of the Department to comply with the highest standards of legal and professional conduct when performing a criminal investigation. This order provides guidelines to ensure that criminal investigations are conducted under legal authorization using extraordinary safeguards to protect innocent persons from unauthorized invasions of privacy.

### 403.2 FOLLOW-UP INVESTIGATIONS

Follow-up investigations may include, but are not limited to:

- (a) Reviewing and analyzing preliminary reports.
- (b) Reviewing Department records and databases.
- (c) Seeking additional information from complainants, witnesses, neighbors, informants, officers and Department employees.
- (d) The incident may require contact with the victim(s) and witness(es) by the assigned personnel to obtain information not uncovered during the preliminary investigation.
- (e) Upon request and without jeopardizing case security, the assigned personnel or designee shall advise the victim(s) of the status of the case.
- (f) Conducting interviews and interrogations. Arranging for the dissemination of information, as appropriate.
- (g) Soliciting assistance and/or information from other Units within the Department and/or outside law enforcement agencies.
- (h) Planning, organizing and conducting searches.
- (i) Collecting physical evidence.
- (j) Identifying and apprehending suspects.
- (k) Follow-up on emergency mobile phone request court orders and related paperwork within 48 hours of first request.
- (l) Checking suspects' criminal histories.
- (m) Determining the involvement of suspects in other crimes.
- (n) Reviewing the results of laboratory examinations.
- (o) Preparing cases for court presentation.
- (p) Assisting in the prosecution.
- (q) Documenting entry, modification, validation or cancelation of TCIC/NCIC records.

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#### **403.3 CASE ASSIGNMENT AND RESPONSIBILITY**

Generally, follow-up investigations shall be the responsibility of the Investigative Unit assigned to the case. Report routing to an Investigative Unit is an automated process that is controlled by the title code(s) used. Unit ownership of a title code is programmed into the current reporting system and updated as needed.

- (a) With supervisor approval, first responders should conduct limited follow-up investigations when there is a reasonable chance of apprehending the suspect, a need for obtaining additional information for the preliminary investigation report, or when there are other compelling circumstances.
- (b) Once a report is routed to an Investigative Unit, the supervisor or designee of that Unit will assign each case to appropriate employee. The assigned employee will be responsible and accountable for any additional investigation. When assigning cases, a supervisor or designee should:
  1. Take into account the level of expertise, specialized skill, knowledge and abilities of the employee.
  2. Provide direction and guidance to employees by periodically reviewing their supplements and affidavits.
  3. Record and maintain the following information to ensure a timely and complete investigation:
    - (a) Incident number.
    - (b) Personnel assigned.
    - (c) Date assigned.
    - (d) Clearance type.
    - (e) Date cleared.
- (c) When assigned to a case for follow-up investigation, investigators shall proceed with due diligence in evaluating and preparing the case for appropriate clearance or presentation to court personnel for the filing of criminal charges.
- (d) Employees will not participate in an unassigned investigation, regardless of the source, which is unusual, protracted, or not in the normal course of their duties without the express, written approval of their chain-of-command.
- (e) Investigators are responsible for the NIBRS data accuracy of their cases within the Versadex Records Management System. Every change made within any case requires an IBR Check to be run insuring that no errors have been created. If NIBRS errors are found when the case is processed at the end of the month the lead investigator will be contacted to correct the errors.

#### **403.3.1 CASE FILES/JACKETS**

- (a) Active cases shall be maintained by the assigned personnel. Case files/jackets shall be:
  1. Kept from public view while the person assigned is working on the case.

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2. Locked up at the end of the assigned personnel's tour of duty.
- (b) All original case files/jackets on investigations shall be maintained and secured by the appropriate Investigative Unit.
- (c) Case files shall be maintained and purged in accordance with established record retention schedules for law enforcement and Department general orders regarding records.

#### 403.3.2 FELONY CASE MANAGEMENT

All felonies direct filed by an arresting officer require follow-up investigation by the appropriate Investigative Unit. The assigned investigator shall be responsible for completing any further investigative steps necessary.

- (a) Assigned investigators shall prepare a case jacket for the prosecutor's office with copies of all paper documents.
  1. Digital evidence will be made available through the appropriate source outlined by General Order 618.5 (Digital Evidence Collection and Storage).
- (b) The presence of audio/video media evidence will be documented in the report but does not need to be copied unless requested by a prosecutorial agency.
- (c) The case jacket will be forwarded to the prosecutor's office within two (2) weeks of the date the individual is booked into jail and an investigator assigned the case.
  1. The case jacket will contain *DA Control Sheet* [PD0050 - PD0055] specific to the type of crime being investigated to document the evidence contained in the jacket and to make notation about any evidence that is pending (e.g., DNA and Print comparison results).
  2. Assigned investigators shall notify their supervisor if the case is not completed within the two-week guideline. Supervisors will monitor the progress of the case to ensure it is forwarded to the prosecuting agency in a timely manner.

#### 403.3.3 TITLE CODE RECLASSIFICATION

Employees shall not delete or change a title code from a Part I UCR crime to a Part II UCR crime on any incident report, once the report comes out of report review, without the signed approval of the appropriate unit supervisor.

- (a) This order is only intended to prevent serious Part I UCR crimes from being dropped to a less serious Part II UCR crime without proper review after a report comes out of report review.
- (b) This order does not prevent title code(s) being changed:
  1. From one Part I UCR crime to a different Part I UCR crime; or
  2. From a Part II UCR crime to a Part I UCR crime; or
  3. To any UCR classification, prior to the report coming out of report review (i.e. a dispatcher may, upon request, correct/update the title code on a dispatched call if an officer discovers the incident is different from the original call).

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- (c) Nothing in this order prevents adding title codes to a report at any time if the investigation supports the need for additional title codes.
- (d) Employees who discovers a Part I UCR crime that needs to be reclassified as a Part II UCR crime shall use the following procedure to request a title code change:
  - 1. Employees wanting to reclassify a title code shall do so by submitting the request by email to the supervisor over the unit that has ownership of the title code.
    - (a) Employees who originate a reclassification request shall document the reason(s) for the title code change in a supplement of the incident report and include a reference to the title code change in the 'notes' section.
  - 2. Upon receiving notice of the title code change request, the unit supervisor will review the request and electronically document their agreement or disagreement with the request in the "notes" section. Title code change requests approved by the unit supervisor must be forwarded to the Central Records Manager for review
  - 3. The Central Records Manager (CRM) will review all approved title code reclassification requests and make a ruling on whether the requested change is appropriate. The determination shall be based on UCR reporting guidelines for the incident reported rather than what state charge could or will be filed.
    - (a) If the Central Records Manager agrees with the decision of the unit supervisor, the CRM will make the title code change in Versadex.
    - (b) If the Central Records Manager does not agree with the decision of the unit supervisor, the issue may be brought to the commander/manager of the unit. The commander/manager shall indicate "Approved" or "Denied" in the "notes" section. The CRM will then make the change in accordance with the commander/manager of the unit's decision.

#### **403.4 STATEMENTS AND CONFESSIONS**

The purpose or objective of a statement or confession is to take lawful and accurate statements that corroborate the elements and details of an incident. In doing so, investigators and supervisors will be cognizant of such factors as the mental and intellectual abilities of the subject being interviewed and the duration of the interview itself. Written and oral statements or confessions should not be utilized as the sole basis for the filing of charges; any statement or confession should be corroborated by other legally obtained evidence or verified in an appropriate manner.

- (a) Employees shall make a complete electronic recording of all custodial interviews and interrogations. Employees shall make a separate audio recording of all custodial interviews and interrogations as a back-up. Audio recordings will be utilized for custodial interviews and interrogations when an audiovisual recording device is unavailable.
  - 1. An electronic recording means an audiovisual electronic recording, or an audio recording if an audiovisual electronic recording is unavailable, that is authentic, accurate, and unaltered.
  - 2. A recording is complete when it begins at the time the subject enters the room or area where the interview or interrogation will take place, or when a

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Miranda Warning is given, whichever is sooner; and ends when the interview or interrogation ceases.

- (b) Employees need not make a complete electronic recording of a custodial interrogation when good cause exists and is appropriately documented by the employee.
  - 1. The subject refuses to respond or cooperate in a custodial interrogation at which an electronic recording is being made, and such refusal by the person is electronically recorded. If the person is unwilling to allow the refusal to be electronically recorded, the refusal is documented in writing by the employee.
  - 2. The subject makes spontaneous statements or confessions that are not in response to questions by an employee.
  - 3. An employee attempts in good faith to record the custodial interview or interrogation but the electronic recording equipment is operated incorrectly, malfunctions, or stops operating without the knowledge of the employee.
  - 4. Exigent public safety concerns prevent the feasibility of making an electronic recording.
  - 5. An employee reasonably believes that the subject being interviewed or interrogated is not in custody, and is not a suspect in an offense.
- (c) Statements and confessions should be taken in the suspects own words and typed by the person taking the statement or confession.
- (d) Written or recorded copies of statements or confessions will not be given to the person from whom the statement or confession was obtained.
- (e) Employees shall test the recording equipment and verify that it is properly functioning prior to taking statements or confessions, or conducting a custodial interrogation.

#### 403.4.1 MIRANDA WARNING AND ADMISSIBILITY

No statement or confession made by an adult as a result of custodial interrogation is admissible as evidence unless the person has first been administered the Miranda warning and knowingly, intelligently and voluntarily waives those rights.

- (a) To evidence that the Miranda Warning was read to the person, employees will record the following by audio/video:
  - 1. Reading of the Miranda card to the person in its entirety; and
  - 2. Writing the name of the employee reading the rights to the person, the date and time, and the incident number on the face of the warning card; and
  - 3. Requesting the person to initial each right and sign the card indicating that he understands the warning and freely waives his rights; and
  - 4. The Miranda card will become part of the original case jacket.
- (b) Once the person requests to speak with an attorney or indicates a desire for legal representation, the interrogation will be discontinued at that point.
  - 1. Should the person request to continue the interrogation after requesting legal representation, the Miranda rights will be administered again.

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- (c) Guidelines on admissibility of statements and confessions of a person accused of an offense as evidence is outlined in Tex. Code of Crim. Pro. art. 38.22.

#### 403.4.2 PROCEDURES FOR LIMITED ENGLISH AND DEAF SUBJECTS

- (a) If the person does not speak English, or speaks limited English:
  - 1. The Miranda warning will be read in the person's primary language.
  - 2. The statement or confession will be written or typed, whenever possible, in the primary language that the person understands.
    - (a) If the statement or confession is not typed in the person's primary language, it will be translated aloud for them in the person's primary language prior to obtaining their signature. This will be done in the presence of two civilian witnesses.
  - 3. The statement or confession will be witnessed by at least one person who speaks the same language as the person.
- (b) If the person is deaf, a certified interpreter from the current service contractor will assist in translating during the interrogation. Sign language statements and confessions must be recorded by video.

#### 403.4.3 JUVENILE STATEMENTS AND CONFESSIONS

- (a) Oral confessions made in non-custodial interviews of juveniles are admissible if the statement is given voluntarily and not as a result of coercion, threats, promises, or an extensive interview with the oral admission being the primary objective.
  - 1. To ensure the non-custodial statement is given voluntarily, personnel shall release the juvenile to a parent or guardian after taking the statement and then obtain a warrant to take the juvenile into custody.
- (b) Statements and confessions given in custodial interrogations of juveniles require additional steps to ensure the statement or confession is given voluntarily. Personnel shall comply with State Law and General Order 317 (Handling Juveniles) when interviewing or interrogating a juvenile.

#### 403.4.4 DOCUMENTING STATEMENTS AND CONFESSIONS

All attempts to obtain an incriminating statement/confession, whether successful or not, shall be documented fully by supplement(s) to the incident report. This shall include:

- (a) Date, time and location of the attempt; and
- (b) Identity of the person being interrogated/interviewed; and
- (c) The identity and role of all persons involved in the attempt to obtain the statement/confession; and
- (d) Any unusual circumstances or occurrences surrounding the attempt or taking of a statement/confession; and
- (e) A brief synopsis of any statement/confession obtained from the person.

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### **403.5 EYEWITNESS IDENTIFICATION PROCEDURES**

The investigation of criminal incidents includes many diverse aspects. Eyewitness identification is only one element of a successful criminal investigation. The purpose of this order is to outline the proper protocol for eyewitness identification procedures thus maximizing the reliability of identifications, exonerate innocent persons, and establishing evidence that is reliable and conforms to established legal procedure. Regardless of the type of lineup utilized, if identification is made through the use of a lineup with no additional supporting probable cause or corroborating evidence, detectives must first staff the case with the County or District Attorney's Office before filing charges.

#### **403.5.1 DEFINITIONS**

**Confidence Statement** - A statement in the witness' own words, articulating their level of confidence in the identification. The officer documenting the confidence statement should record verbatim the words used by the witness to describe their level of certainty as to the identification of the suspect.

**Field Identifications** - An identification procedure in which a single subject is shown to an eyewitness and asked to identify or reject the subject as an actual perpetrator.

**Fillers** - Non-suspect photographs or persons.

**Independent Administrator/Double Blind Testing Procedure** - An officer administering a lineup who did not compose the line-up and has no knowledge of the actual suspect or the location of the suspect within the lineup.

**Folder Shuffle Method** - This method is employed when a blind procedure is not possible. It is a method of administering a photographic line-up such that the officer cannot see or track which photograph is being presented to the witness until after the procedure is completed.

**Illiterate Person** - An individual who speaks and understands English but cannot read or write in English.

**Interpreter** - An interpreter is a person who is fluent in English and the language of the witness and who facilitates communication between two parties in two different languages. The term includes persons who facilitate communications with persons who are deaf, hard of hearing, or who may have different speaking capabilities than most.

**Lineup or Field Identification Instructions** - A written document that is read out loud to the witness describing the procedures of the identification process. The witness then signs the form.

**Live Line-up** - An identification procedure in which a group of persons are displayed to a witness (es) in a controlled environment in an effort to identify or reject the individual as the actual perpetrator.

**Person with Limited English Proficiency** - An individual who is unable to communicate effectively in English with a level of fluency that is typical of native English speakers. Such a

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person may have difficulty speaking, reading, or writing in English and includes persons who can comprehend English, but are physically unable to talk or write.

**Sequential Line-up** - An identification procedure in which line-up photos are displayed one by one (sequentially). Only sequential lineups are authorized for investigative use, with an exception for certain Child Abuse investigations that may sometimes require a simultaneous line-up.

**Simultaneous Line-up** - An identification procedure in which a group of photographs are displayed simultaneously and presented to one witness. This procedure will only be utilized in child abuse investigations and require the approval of a Child Abuse Unit Supervisor.

#### 403.5.2 SIMULTANEOUS LINE-UPS

Simultaneous line-ups require the approval of a Child Abuse Unit Supervisor. The incident report will document which supervisor provided the approval. The administration of a simultaneous line-up will adhere to the Child Abuse Unit Standard Operating Procedures.

#### 403.5.3 SEQUENTIAL LINE-UPS

An independent administrator will be used for all sequential line-ups unless an extraordinary circumstance(s) necessitates using the same officer to both compile and administer the line-up. If this occurs, the extraordinary circumstance(s) shall be documented in the incident report. No other person should be present during the lineup presentation who knows the suspect's identity.

- (a) Independent administrators should avoid actions or statements that could contaminate witness perception or judgment. Be aware that witnesses may perceive such things as unintentional voice inflection or prolonged eye contact, in addition to off-hand words or phrases, as messages regarding their selection. Avoid casual conversation comments such as "very good."
- (b) Photographic or live line-ups will only be conducted when a specific suspect is developed during an investigation, or when a suspect has been narrowed down to a specific group of individuals. Random suspect line-ups are not permitted.
- (c) The Photographic or Live line-up Instructions Form (PD0163) will be used during the administration of all line-ups. These forms include a confidence statement which will be completed on each administered line-up. Any confidence statement given by a victim or witness shall also be documented in any relevant PC Affidavits and reports.
- (d) If there are multiple witnesses:
  1. Each witness shall be given an instruction form regarding the identification procedures without other witnesses present.
  2. The officer will read the instructions aloud to each witness.
  3. Each witness shall view the line-up separately.
  4. The suspect will be placed in a different position of the line-up for each witness.
  5. Witnesses shall not be allowed to confer with one another until all identification presentations have been completed and statements taken.



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6. If the witness declines to sign the instruction form for some reason, then the officer will document that the witness was appropriately instructed.
- (e) The suspect's photo will be grouped with at least five other subject photos (fillers). The showing of a single photograph for identification purposes is prohibited, unless the subject is positively known by the victim and the photograph is shown only to confirm the identity.
    1. Photos shall be of similar characteristics (i.e., hair color, length, facial hair, age, weight and general appearance).
    2. Avoid using fillers that so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
    3. Do not mix color and black and white photographs. All color or all black and white photos shall be used. Photo copies are not permitted.
    4. Cover any portions of mug shots or other photographs that provide identifying information about the subject.
    5. If there is more than one suspect, include only one suspect in each line-up.
    6. Always place a filler in the first position of a - sequential lineup (if not using the folder shuffle method).
  - (f) If the witness identifies a person as the perpetrator, the witness shall not be provided any information concerning such person before the officer obtains the witness' confidence statement about the selection.
  - (g) When showing a new suspect, avoid reusing the same fillers in line-ups shown to the same witness.
  - (h) Identification procedures will be videotaped whenever possible. If this is not practical, an audio tape of the procedure will be done. If neither is possible, document why recording is not available.
  - (i) Document all persons present during the administration of the line-up.
  - (j) The line-ups should consist of at least six (6) photos - the suspect photo and a minimum of five filler photos - separated into individual envelopes.
  - (k) Place a filler in the lead position and the remaining five photographs in random order.
  - (l) Place two empty folders at the end.
  - (m) Witnesses should not be told how many photos will be shown.
  - (n) Witnesses will not be allowed to view photographs side-by-side during a sequential lineup.
  - (o) Witnesses will be shown all photographs, even if an identification is made on an earlier photograph. Showing all photographs greater ensures the objectivity and reliability of the identification.
  - (p) The witness should not view the photographs in the line-up more than two times. If a second presentation is conducted, then the lineup will be presented again in the same order as the original presentation.

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- (q) The officer will document in the offense report the order in which the photographs were presented.
- (r) If the same suspect needs to be shown to a different witness, then the officer will remix the lineup.

#### 403.5.4 FOLDER SHUFFLE METHOD

There may be unavoidable situations where an independent administration is not possible. If this occurs, then the officer will attempt the folder shuffle method of presenting the lineup and attempt a blind administration. If emergency circumstances preclude an independent administrator or folder shuffle method, then the officer will document the circumstances in the offense report. The folder shuffle method is done using only sequential lineups.

- (a) The officer will place the suspect photograph and a minimum of five filler photographs in separate envelopes.
- (b) The officer will shuffle the envelopes until the officer does not know which envelope contains the suspect's photograph.
- (c) Place two empty folders at the end.
- (d) The officer will provide the witness one envelope at a time without looking at the photograph first.
- (e) Each time the witness has viewed a photograph, the witness will return the folder to the officer and indicate whether or not it is the suspect's photograph.
- (f) The officer will maintain the envelopes in the original order so that it can later be documented in the offense report.
- (g) The witness should not view the photographs in the lineup more than two times and will not compare photographs side-by-side.
- (h) As with all lineup presentations, the administration of the folder shuffle method will be videotaped if at all possible. If videotaping is not practical, then audio recording will be done. If the circumstances do not allow either form of documentation, then the officer will document these reasons in the offense report.
- (i) Any confidence statement given by a victim or witness shall also be documented in any relevant PC Affidavits and reports.

#### 403.5.5 LIVE LINE-UPS

An independent administrator will be the administrator for live line-ups. Only sequential live line-ups are authorized for investigative use.

- (a) The investigating officer will arrange for an Assistant District Attorney to be present to assist in coordinating the live line-up.
- (b) The suspect's attorney will be notified of the date and time for the line-up.
- (c) If the suspect is unable to retain an attorney, the court must appoint an attorney.
- (d) The suspect's attorney and assistant district attorney will view the persons in the line-up prior to the start of the line-up.

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- (e) Victim(s) and witness(es) will be notified of the date and time of the line-up and where they are to wait prior to the viewing. They should remain separated prior to the viewing.
- (f) The necessary personnel must also be notified of the date and time in order to document by photograph and videotape the appearance of all persons used in the line-up. The viewing of the lineup by the witness(es) will be videotaped to best document what took place.
- (g) All physical line-ups can be coordinated with the supervisor of the Booking facility, if using TCSO prisoners as fillers. The booking supervisor can assist in:
  - 1. Obtaining clothing, such as jail fatigues; and
  - 2. Arranging for transfer of prisoners for use in the line-up; and
  - 3. Having release forms signed by all prisoners used in the line-up.
- (h) A minimum of six (6) people - the suspect and five fillers - shall be used in each physical line-up. For the line-up to be valid, each person must be:
  - 1. Similar in physical characteristics; and
  - 2. Approximately the same age, height, and weight; and
  - 3. The same race and sex; and
  - 4. Wearing similar clothing; and
  - 5. Wearing no jewelry or other distinguishing items.
- (i) Two sets of lights for the stage area of the line-up room will be turned on prior to bringing victims and witnesses into the room. (The APD line-up room is located on the 2nd floor of the Main, next to the Municipal Court waiting area).
- (j) One Investigative Unit member or supervisor shall remain with the victim(s) and witness(es) during the line-up process. Victims and witnesses must not be allowed to discuss the case with each other during or immediately after the line-up process.
- (k) Prior to viewing the line-up, an officer will individually administer the Live Line-up Instruction form (PD0163) to each victim or witness viewing the line-up.
- (l) The person being viewed will be out of the view of the witness before the next person is brought in.
- (m) After each person is viewed, the officer will ask the witness if this was the person that he or she saw commit the crime.
- (n) If the witness answers "yes," then the officer will ask the witness to describe in his or her words how sure the witness is of the identification.
- (o) Document in the witness's own words how sure he or she is of the identification. Any confidence statement given by a victim or witness shall also be documented in any relevant PC Affidavits and reports.
- (p) Even if the witness makes an identification, show each person one at a time until all persons have been viewed. This greater ensures the objectivity and reliability of the lineup process.

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- (q) Only upon request of the witness will the witness view the lineup again after the first full viewing. If a second viewing is requested, then all steps involved in the first viewing will be followed.
- (r) A witness will not view the lineup more than twice.
- (s) Identification of the suspect by those viewing the line-up will be done individually in writing, rather than spoken while in the company of other witnesses.
- (t) No talking is allowed during the live line-up. If anyone viewing the line-up wishes to ask a question, request certain words or phrases be spoken or specific actions performed by those standing in the line-up, they should use an index card and submit the comment to the investigator.
- (u) If a request is made for one person in the line-up to speak a certain word or phrase, then all those in the line-up will be instructed to individually repeat the same word or phrase.
- (v) Victims and witnesses will be interviewed separately to determine any possible identification of a suspect.
- (w) Personnel will take a written statement from each witness who identifies the suspect and a confidence statement obtained if an identification is made.
- (x) Photos and/or video of the physical line-up will be added to the digital case folder or processed according to General Order 618.5 (Digital Evidence Collection and Storage).
- (y) Persons administering the live line-up should avoid any unintentional overt actions that might influence the decision made by the witness.

#### 403.5.6 SPECIAL PROCEDURES FOR ILLITERATE PERSONS OR PERSONS WHO POSSESS LIMITED ENGLISH PROFICIENCY

- (a) Officers should be aware during the investigation when encountering a person who does not speak English or possess limited English proficiency that certain accommodations may be necessary to ensure the validity of the lineup process.
- (b) Officers should carefully consider the ethical and legal ramifications of how to handle case where there is a language barrier.
- (c) Unless the officer speaks the witness's language fluently, an interpreter should be used for persons who do not speak English. The interpreter shall sign the lineup instruction form documenting that the instructions were provided in the language best understood by the witness.
- (d) The officer should consider arranging for an interpreter if a person interviewed:
  - 1. Is unable to communicate in English;
  - 2. Has a limited understanding of English;
  - 3. Is deaf, hard of hearing, or who may have different speaking capabilities than most; or
  - 4. Is otherwise physically challenged to communicate in English.

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- (e) If the person is unable to read, the officer, in the presence of the witness, will give the explanation, read any forms, and obtain verbal acknowledgment of the witness that he or she understands what has been explained and/or read to him or her.

#### 403.5.7 FIELD IDENTIFICATIONS

- (a) Field identifications shall only be conducted under the following exigent conditions:
  - 1. Prior supervisor's approval; and
  - 2. The suspect is detained within a reasonable time of the offense; and
  - 3. A line-up cannot be promptly arranged; and
  - 4. There is an immediate need to arrest the suspect.
- (b) What constitutes "within a reasonable time" is dependent on the individual circumstances of the case, but generally the courts have held that a two-hour time lapse is acceptable.
- (c) A full and detailed description of the suspect shall be provided by the witness before the witness observes the suspect.
- (d) The witness shall be transported to the location where the suspect is being detained. If at all possible, avoid returning the suspect to the scene of the crime.
- (e) Measures shall be taken to reduce potentially damaging or prejudicial inferences that may be drawn by the witness, including, but not limited to:
  - 1. Removing the suspect from a squad car.
  - 2. When practical, removing handcuffs from the suspect.
  - 3. Public and officer safety is first priority on decisions regarding removing the suspect's handcuffs.
- (f) If there are multiple witnesses to the offense:
  - 1. The witness with the most complete information should participate in the field identification.
  - 2. If a positive ID is made by the witness, the other individual(s) who witnessed the crime should be shown a photo line-up by the assigned Investigator.
- (g) If there are multiple suspects:
  - 1. The suspects shall be separated; and
  - 2. Each suspect shall go through a separate field identification.
- (h) Avoid requirement of any performance by the suspect during a field identification.
- (i) Officers should avoid actions or statement that could contaminate witness perception or judgment. Be aware that witnesses may perceive such things as unintentional voice inflection or prolonged eye contact, in addition to off-hand words or phrases, as messages regarding their identification. Avoid casual conversation comments such as "very good."

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- (j) The Field Identification Instructions Form will be used during the administration of all such eyewitness identifications made in the field. This form includes a confidence statement. Any confidence statement given by a victim or witness shall also be documented in any relevant PC Affidavits and reports.
- (k) Officers in the field will utilize their in-car Mobile Audio Video (MAV) recording system to record field identifications.

#### **403.6 PHYSICAL EVIDENCE COLLECTION**

Property seized by personnel for processing or evidence on cases where a Crime Scene Unit is not used will be submitted to the proper agency, Department, Unit, or evidence control in accordance with Department General Orders.

#### **403.7 FORENSIC "HITS" OR MATCHES**

APD has multiple forensics capabilities that can aid in a criminal investigation, including but not limited to:

- (a) AFIS (Latent Prints).
- (b) CODIS (DNA).
- (c) NIBIN (Ballistics).

##### **403.7.1 NOTIFICATION OF FORENSIC "HIT" OR MATCH**

- (a) Forensics shall notify the assigned investigator and Unit supervisor of a forensics "hit" or match.
  - 1. Notifications will be sent simultaneously via email to the investigator assigned in Versadex and the Unit email address.
  - 2. The supervisor or designee shall be responsible for ensuring that the Unit email address is checked on a daily basis.
- (b) The supervisor shall ensure that the currently assigned investigator is notified of the "hit" or match following one of two methods:
  - 1. If the case is closed or suspended, the supervisor will re-open the case and assign a new follow-up with a specific completion date. Upon completion, the supervisor shall ensure that the investigator documented their follow-up actions in the reporting system.
  - 2. If the case is still open, the supervisor shall ensure that the currently assigned investigator is aware of the "hit" or match. The supervisor shall approve the follow-up before the case is closed.

##### **403.7.2 FOLLOW-UP OF "HIT" OR MATCH**

The assigned investigator shall conduct a follow-up on all notifications of a forensics "hit" or match. The specific action(s) taken shall be documented in a supplement to the incident report. Follow-up includes but is not limited to:

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- (a) Notifying the assigned Assistant District Attorney or Assistant County Attorney of a "hit" or match in a case that has already been referred for prosecution, whether the case was direct filed by uniformed patrol or an Investigative Unit. The name of the person notified will be included in the follow-up supplement along with the date the notification was made.
- (b) Documenting information that identifies if the "hit" or match belongs to the victim or some other person with legitimate access to the item or scene where the evidence was recovered.
- (c) Notifying the appropriate jurisdiction if the "hit" or match stems from another "Out of City" report.
- (d) Documenting the link to an identified "hit" or match from evidence recovered from the exterior of a property crime scene and whether filing a criminal charge can occur.
- (e) Filing the appropriate charges when the new forensic information assists in the identification or linking the offender(s) to the offense being investigated.

#### **403.8 SURVEILLANCE**

- (a) Personnel will not violate the right to privacy, or other constitutional rights, of any individual while conducting a surveillance.
- (b) Complex or long-term surveillance requires specialized training and equipment. These types of surveillance will be conducted only by those investigative and specialized skills units whose personnel are authorized and trained to conduct such operations.
- (c) Personnel should be aware that legal authorization may be required for electronic surveillance.

#### **403.9 POLYGRAPH EXAMINATIONS**

The Polygraph Unit was established to provide a useful investigative tool to support the investigative and administrative mission of the Department. Polygraph examination support is also provided to other federal, state and local law enforcement agencies on an as-needed basis. Polygraph examination used for administrative purposes require the approval of the Chief.

##### **403.9.1 POLYGRAPH GUIDELINES**

The polygraph examiner is the only person authorized to use the polygraph equipment or administer a polygraph examination.

- (a) Persons with serious physical or psychological ailments are not suitable for testing. The examiner will have the responsibility of determining the suitability of all persons submitted for polygraph examinations.
- (b) The examiner will determine who is authorized to observe a polygraph examination.
- (c) Polygraph examinations will not be administered to a subject on a particular offense unless requested by the assigned investigator or his supervisor. Anytime a person is under arrest for one offense and is to be tested on another, the investigator of the original offense will be contacted.

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- (d) Polygraph examinations will not be administered unless:
  - 1. a specific offense has been reported and prosecution is intended, or
  - 2. The Chief has directed the polygraph use in an administrative case.
- (e) The subject will be advised by the investigator that the examination will not cause pain. The investigator should not attempt to discuss the actual procedure of the examination with the subject. This will be done by the examiner before the test is given.

**403.9.2 POLYGRAPH APPOINTMENTS**

- (a) Appointments for polygraph examinations must be made by the investigator assigned to the case.
  - 1. An investigator shall not offer a polygraph test for a specific date and time unless an appointment has been made with the polygraph examiner.
- (b) Appointment cancelation notices will be forwarded to the Polygraph Unit as soon as this information is known.
  - 1. If, for any reason, the investigator and the person to be tested are 15 or more minutes late, another test may be scheduled unless the examiner has been notified.

**403.9.3 POLYGRAPH REPORTING PROCEDURES**

The examiner will verbally advise the assigned investigator of the results of the examination. It will be the assigned investigator's responsibility to write a supplement to the incident report concerning the polygraph examination.





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# Civil Disputes

### 404.1 PURPOSE AND SCOPE

This order provides officers of the Austin Police Department with guidance for addressing conflicts between persons when no criminal investigation or enforcement action is warranted (e.g., civil matters), with the goal of minimizing any potential for violence or criminal acts.

The Family Violence Order will address specific legal mandates related to domestic violence court orders. References in this order to “court orders” apply to any order of a court that does not require arrest or enforcement by the terms of the order or by Texas law.

### 404.2 POLICY

The Austin Police Department recognizes that a law enforcement presence at a civil dispute can play an important role in the peace and safety of the community. Subject to available resources, officers of this department will assist at the scene of civil disputes with the primary goal of safeguarding persons and property, preventing criminal activity and maintaining the peace. When handling civil disputes, officers will remain impartial, maintain a calm presence, give consideration to all sides and refrain from giving legal or inappropriate advice.

### 404.3 GENERAL CONSIDERATIONS

When appropriate, officers handling a civil dispute should encourage the involved parties to seek the assistance of resolution services or take the matter to the civil courts. Officers must not become personally involved in disputes and shall at all times remain impartial.

While not intended to be an exhaustive list, officers should give considerations to the following when handling civil disputes:

- (a) Civil disputes tend to be confrontational and officers should be alert that they can escalate to violence very quickly. De-escalation techniques should be used when appropriate.
- (b) Officers should not dismiss alleged or observed criminal violations as a civil matter and should initiate the appropriate investigation and report when criminal activity is apparent.
- (c) Officers shall not provide legal advice, however, when appropriate, officers should inform the parties when they are at risk of violating criminal laws.
- (d) Officers are reminded that they shall not enter a residence or other non-public location without legal authority including valid consent.
- (e) Officers should not take an unreasonable amount of time assisting in these matters and generally should contact a supervisor if it appears that peacekeeping efforts longer than 30 minutes are warranted.

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#### **404.4 COURT ORDERS**

Disputes involving court orders can be complex. Where no mandate exists for an officer to make an arrest for a violation of a court order, the matter should be addressed by documenting any apparent court order violation in a report. If there appears to be a more immediate need for enforcement action, the investigating officer should consult a supervisor prior to making any arrest.

If a person appears to be violating the terms of a court order but is disputing the validity of the order or its applicability, the investigating officer should document the following:

- (a) The person's knowledge of the court order or whether proof of service exists.
- (b) Any specific reason or rationale the involved person offers for not complying with the terms of the order.

A copy of the court order should be attached to the report when available. The report should be forwarded to the appropriate prosecutor. The report should also be forwarded to the court issuing the order with a notice that the report was also forwarded to the prosecutor for review.

##### **404.4.1 STANDBY REQUESTS**

Officers responding to a call for standby assistance to retrieve property should meet the person requesting assistance at a neutral location to discuss the process. The person should be advised that items that are disputed will not be allowed to be removed. The officer may advise the person to seek private legal advice as to the distribution of disputed property.

Officers should accompany the person to the location of the property. Officers should ask if the other party will allow removal of the property or whether the other party would remove the property.

If the other party is uncooperative, the person requesting standby assistance should be instructed to seek private legal advice and obtain a court order to obtain the items. Officers should not order the other party to allow entry or the removal of any items. If there is a restraining or similar order against the person requesting standby assistance, that person should be asked to leave the scene or they may be subject to arrest for violation of the order.

If the other party is not present at the location, the officer will not allow entry into the location or the removal of property from the location.

##### **404.4.2 JUSTICE COURT ORDERS**

Persons issued a Writ of Retrieval from a justice court should be referred to the Sheriff's Office or Constable's Office in their respective county (Tex. Prop. Code Sec. 24A.001).

#### **404.5 VEHICLES AND PERSONAL PROPERTY**

Officers may be faced with disputes regarding possession or ownership of vehicles or other personal property. Officers may review documents provided by parties or available databases (e.g., vehicle registration), but should be aware that legal possession of vehicles or personal property can be complex. Generally, officers should not take any enforcement action unless a crime is apparent. The people and the vehicle or personal property involved should be identified and the incident documented.

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**404.6 REAL PROPERTY**

Disputes over possession or occupancy of real property (e.g., land, homes, apartments) should generally be handled through a court order.



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## Fugitive and Search Warrants

### 405.1 PURPOSE AND SCOPE

The purpose of this order is to establish the guidelines for filing arrest and search warrants.

### 405.2 ARREST WARRANTS

This section outlines the guidelines for employees to follow when obtaining an arrest warrant and the proper internal handling procedures to ensure the warrant is properly entered into Local, TCIC, and/or NCIC.

- (a) Employees will complete the investigation of an alleged offense before obtaining an arrest warrant.
  - 1. Exigent circumstances that supersede the completion of the investigation will be discussed with the Unit supervisor and with the appropriate County or District Attorney's office of the county where the offense occurred.
- (b) The City of Austin overlaps into multiple counties. Depending on the county in which the offense occurred, personnel will prepare either a complaint or a probable cause affidavit for presentation to the appropriate Magistrate in the county where the offense occurred.
  - 1. All felony affidavits/complaints will be reviewed by a supervisor prior to presentation to a Magistrate.
  - 2. Affidavits/complaints for any case of a complex nature (as determined by the Unit supervisor) will be presented to an Assistant County/District Attorney from the county where charges are to be filed, if available, for review and advice on the proper wording or text of the affidavit/complaint prior to the Magistrate's review.
  - 3. The affidavit/complaint along with the subject's criminal history, if any, will be presented to the proper Magistrate for signature. Further documentation of facts to be considered when setting bond may be presented with the affidavit/complaint and criminal history.

#### 405.2.1 ARREST WARRANT "PICKUP" SUPPLEMENT

Any employee wishing to obtain an arrest warrant for a person will first complete a "PICKUP" supplement in Versadex using the "PICKUP" supplement template.

- (a) Completely fill out the "PICKUP" supplement to include the following information:
  - 1. Name, date of birth, race, and sex of the wanted person.
  - 2. Any known aliases.
  - 3. Identification numbers (e.g., Texas DL/ID, SSN, DPS SID, FBI, APD).
  - 4. Any other state identifiers (e.g., handgun/firearm permit).
  - 5. Residence address(es). Clearly notate in this field if a subject is currently in custody at any detention facility and advise the Central Records/Warrant Unit staff when dropping the warrant off.

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6. Employer(s).
  7. Vehicle(s) information (e.g., license plate number, make, color, style, year model)
  8. Any other vehicle identifiers (e.g., collision information, bumper stickers).
  9. Charge being filed.
  10. Clearly state if the person is violent, has a history of resisting arrest, any history of previous weapons charges or is licensed to carry a firearm.
  11. Name and phone number of the District Attorney contacted for NCIC extradition purposes.
- (b) After the warrant has been signed by a Magistrate, the employee will update the "PICKUP" supplement with the warrant number, bond amount, and issuing Magistrate.

#### 405.2.2 OBTAINING AN ARREST WARRANT

- (a) Depending on the County in which the offense occurred, employees will prepare the following documentation:
1. Travis County - Prepare a probable cause affidavit, a Travis County warrant, and a Municipal Court cover sheet.
  2. Williamson County - Prepare a complaint, probable cause affidavit and a Williamson County warrant.
  3. Hays County - Prepare a complaint, probable cause affidavit and a Hays County warrant.
- (b) Employees will present the typed affidavit/complaint and warrant to a Magistrate for signatures in the County where the offense occurred.
1. A separate affidavit/complaint and warrant are required for each offense or victim.
  2. The affidavit/complaint should identify the affiant, the name of the victim and suspect, the type of offense, and the elements that constitute a violation of law.
  3. The contents of the affidavit/complaint must indicate that the suspect committed the crime.
  4. Employees will not file any charge or complaint alleging any type of law violation in any court within Travis County except for Municipal Court without authorization from their supervisor.
  5. In Williamson County, the affidavit, complaint and warrant can be presented to any Justice of the Peace and all County or District Judges currently holding office in Williamson County. Warrants, affidavits and complaints signed by a court other than a Justice of the Peace must be presented to a JP office to obtain a Cause #.
- (c) Magistrate signed warrants and affidavits/complaints will be taken to the appropriate clerk's office and a cause number will be obtained for both.

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1. Travis County - Municipal Court charges office.
  2. Williamson County - Williamson County Justice of Peace Courts have clerk services available.
  3. Hays County - Hays County clerk's office.
- (d) Employees will:
1. Make copies of the signed affidavits/complaints to be kept with the original warrant packet and submit the original affidavits/complaints to the appropriate clerk for retention.
  2. If in Williamson County, deliver the original warrant to the Williamson County Sheriff's office located at 508 South Rock St. Georgetown, TX.
  3. Scan and file the warrant packet as outlined below.

#### 405.2.3 SCANNING REQUIRED ARREST WARRANT DOCUMENTATION

Warrant packet items must be scanned in the following order via a Xerox scan/copy station into the G:\Xerox\Warrants folder after the arrest affidavit/complaint is signed by a judge but prior to submitting the hard copies to the Central Records/Warrant Unit.

- (a) Original signed warrant. (Copy if charges filed in Williamson County)
- (b) Copy of the affidavit/complaint signed by the magistrate.
- (c) Emergency Protective Order (EPO) for Family Violence offenses, if applicable.
- (d) Victim Notification Form for Family Violence offenses, if applicable.
- (e) Detective Warrant Served Notice form.

#### 405.2.4 SUBMITTING DOCUMENTATION TO CENTRAL RECORDS/WARRANT UNIT

- (a) Original APD arrest warrant packets will be filed with the Central Records/Warrant Unit immediately after being scanned if the warrant is obtained during the Central Records/Warrant Unit's normal business hours.
  1. If the warrant is obtained after Central Records/Warrant Unit's normal business hours, Teletype will be notified directly by phone of the arrest warrant. If the warrant meets the criteria for immediate entry, the entire arrest warrant packet will be faxed to Teletype at 974-0900.
  2. An exception to this rule will be authorized when the arrest warrant is served immediately upon receipt (e.g., suspect is being interviewed, suspect is under surveillance).
- (b) The arrest warrant packet will include the following documentation:
  1. Original warrant.
  2. Copy of the affidavit/complaint signed by the Magistrate.
  3. Copy of the suspect's drivers license and/or state ID return.
  4. Printout of the "PICKUP" supplement to the incident report.

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5. Printout of the subject's QH from CCH (state) and QH from NCIC (national). Do not submit the QR rap sheets.
  6. Emergency Protective Order (EPO) for Family Violence offenses, if applicable.
  7. Victim Notification Form for Family Violence offenses, if applicable.
  8. Any other information pertinent to the wanted subject or investigation.
  9. Detective Warrant Served Notice form.
- (c) Employees may provide a copy of a filed arrest warrant to any officer or Investigative Unit after the warrant packet has been scanned and submitted to the Central Records/Warrant Unit. Warrants will be clearly stamped "COPY."

#### 405.2.5 ARREST WARRANT SERVICE

Investigative Unit personnel may serve a filed arrest warrant as outlined in General Order 319 (Arrests). Warrants may also be turned over to the APD Fugitive Apprehension Unit (Travis County) or the appropriate County Sheriff's Office for service.

#### 405.3 SEARCH WARRANTS

In order to preserve the integrity of evidence seized in search warrants and for the protection of officers involved, the following procedures are mandated regarding obtaining and executing search warrants.

##### 405.3.1 OBTAINING A SEARCH WARRANT

Search warrants will not be obtained by any member of the Department without prior approval of a supervisor in the employee's chain-of-command. All search warrants will be written by an officer in the rank of detective or above.

- (a) Supervisors shall review and approve search warrants by placing their initials and employee number in the upper right corner on the face of the warrant application before allowing the investigator to take the warrant to a magistrate for issuance.
  1. Search Warrants authored by sergeants or above must seek review and approval from a supervisor one rank higher than the author.
  2. A blood search warrant for DWI enforcement is exempt from this order and shall adhere to General Order 355 (DWI Enforcement) and DWI Enforcement Unit SOP
- (b) The case agent will place the incident number pertaining to the search warrant in the upper right corner on the face of the warrant as soon as it is obtained.
- (c) When a search warrant is obtained relative to an offense ordinarily handled by another Investigative Unit, a supervisor of the Investigative Unit normally responsible for that type of offense will be notified prior to service of the warrant.
- (d) When a search warrant is for computer equipment that is to be examined in the computer forensics lab the case agent should contact the DART Unit or the Child Abuse unit to obtain information on the proper wording of the computer search warrant before taking the search warrant to a magistrate for issuance. Prior to executing

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the search warrant, the seizing officer should be familiar with the document *Seizing Computers and Computer Related Evidence*.

- (e) The appropriate Investigative Unit will normally be the one responsible for follow-up investigation of the case.

#### 405.3.2 EXECUTION OF A SEARCH WARRANT

A supervisor will be present and in charge when any search warrant is executed.

- (a) Narcotic based search warrants will not be executed by any personnel other than those assigned to Organized Crime unless an Organized Crime supervisor has been consulted. The Organized Crime supervisor will determine whether the search warrant would damage any on-going investigation and whether prior approval has been obtained from the appropriate commander, assistant chief, or the Chief.
- (b) Prior to execution of any search warrant:
  1. The supervisor in charge will ensure that a *Search/Arrest Warrant Threat Assessment Form* (APD Form #11) is completed, and:
    - (a) Review the form for accuracy and sign the completed form in the space provided.
    - (b) Follow the provided line on the form to determine the level of threat to personnel and refer the warrant service to SWAT if required.
    - (c) Contact the on-call SWAT supervisor for consultation for assistance in completing the form or as needed.
    - (d) Ensure the form is added to the case file.
  2. Personnel assigned to Organized Crime will use the *Operational Briefing & Threat Assessment* forms as specified in their Operations Procedure Manual.
  3. If the search warrant is for computer equipment, the seizing officers should be familiar with the document *Seizing Computers and Computer Related Evidence*.
  4. A meeting will be held with all participating personnel.
    - (a) A sufficient number of officers will be assigned to execute the search warrant safely and to conduct a thorough search.
    - (b) One officer will be assigned as the seizing officer for all evidence seized and is responsible for properly tagging all evidence.
    - (c) One officer will be assigned to draw an accurate diagram of the premises. The diagram will be used to assign officers' positions for the entry to the location.
    - (d) One officer will be assigned the responsibility of seizing personal papers to show an affirmative link between the defendant(s), premises, and evidence.
    - (e) The supervisor or designee shall prepare the inventory and receipt of items seized.



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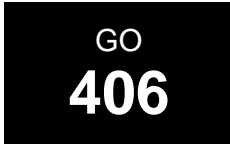
*Fugitive and Search Warrants*

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- (c) The supervisor of the Investigative Unit obtaining the search warrant shall be responsible for notifying the Communications supervisor of the location and approximate time of the warrant service unless it is determined that such notification would compromise the case or jeopardize officer safety.
- (d) When executing a search warrant:
  - 1. Department-approved raid jackets and body armor will be worn by all plainclothes officers involved in the execution of a search warrant.
  - 2. Department-approved body armor will be worn by all uniformed personnel involved in the execution of a search warrant.
  - 3. Officers will announce their agency and purpose (e.g., "Austin Police search warrant!").
  - 4. Personnel who have not received dynamic entry training will not participate in the entry portion of the execution of any narcotics search warrant.
- (e) Copies of the search warrant, the inventory of seized property, and the receipt form should be given to the person in charge of the premises at the time the search warrant is executed. If no one is home, copies should be left at the scene.

**405.3.3 SEARCH WARRANT REPORTING PROCEDURES**

- (a) The officer obtaining the search warrant is responsible for writing the original incident report.
- (b) All other involved officers will write a supplement detailing their participation and actions during the warrant service.



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# Case Clearance

### 406.1 PURPOSE AND SCOPE

The proper clearance of a case, regardless of whether the crime was solved, is an important part of case management and vital for accurate reporting. This order outlines how to properly clear a case and the guidelines for dismissing charges.

When an arrest is made on a case, the arresting officer shall complete the Clearance Status within the Clearance Block of the General Offense (GO) report to show Cleared by Arrest. If no arrest is made at the time of the original report, the responsibility of updating the Clearance Status will belong to the detective.

Patrol Supervisors are responsible for ensuring the external IBR Clearance Status is updated to Cleared by Arrest for cases where a patrol officer makes an arrest for one of the offenses reflected on the GO. The Supervisor will also approve the Clearance Status by completing the "Approved by" tab within the Clearance Block of the report.

Detectives assigned to cases are responsible for ensuring the external IBR Clearance Status is updated once the case reaches clearance status level. Detectives will document the clearance status update by completing the "Date cleared" and "Cleared by" tabs within the Clearance Block of the GO.

Investigative Unit Supervisors are responsible for ensuring the case clearance reflects the correct status, and will approve the external IBR Clearance Status by completing the "Approved by" tab within the Clearance Block of the GO.

### 406.2 CLEARANCE STATUS

Clearance Status is defined as the external clearance for FBI reporting purposes. Reports shall be given one of the following clearance statuses as outlined in this section:

- (a) Cleared by Arrest
- (b) Cleared Exceptionally
- (c) Not Applicable

#### 406.2.1 NOT APPLICABLE

The Clearance Status is defaulted to Not Applicable. It should remain Not Applicable until the case reaches an exceptional or arrest clearance.

#### 406.2.2 CLEARED EXCEPTIONALLY

This status is used, when approved by the investigative supervisor, to clear incidents that meet all the following criteria:

- (a) The investigation has established the identity of the offender; and
- (b) There is sufficient information to support an arrest, charge, and prosecution; and

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- (c) The exact location of the offender is known so that the offender could be taken into custody; and
- (d) There is some reason outside law enforcement control that prevents arresting, charging, and prosecuting the offender, such as:
  - 1. The victim will not cooperate with the investigation or does not wish to pursue the case; or
  - 2. A prosecuting attorney has reviewed the case and declines prosecution, or
  - 3. The suspect is a juvenile and committed a status offense; or
  - 4. The suspect is under the age of criminal responsibility; or
  - 5. The suspect dies; or
  - 6. Extradition of the suspect is denied.

An investigative supplement describing how each of the above criteria is met is required on all cases that are cleared exceptionally.

If the case is Cleared Exceptionally, the IBR Cleared Exceptionally status reason must be chosen.

- (a) Death of Offender
- (b) Prosecution Declined
- (c) Extradition Denied
- (d) Victim Refused to Cooperate
- (e) Juvenile, No Custody

#### **406.2.3 CLEARED BY ARREST**

This status should be used if any person involved in the report meets the following criteria, regardless of the disposition of other persons involved or the status of other offenses alleged in the same report.

- (a) This status is used to clear criminal cases involving adult offenders when a suspect is arrested and charged with the commission of one of the offenses from the initial incident and the case is referred to court for prosecution, whether following an arrest or cite and release. An unrelated warrant arrest does not clear the case by arrest.
- (b) This status is used to clear criminal cases involving juvenile offenders when:
  - 1. The suspect is physically taken into custody and transported to a juvenile facility or home with pending charges from the initial incident; or
  - 2. The suspect is processed for an offense from the initial incident and the case referred to Juvenile Court, whether or not the suspect was actually taken into custody.

#### **406.3 INTERNAL STATUS**

Defined as the department's internal status of cases for operational and tracking purposes. Reports shall be given one of the following clearance statuses as outlined in this section.

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- (a) Cleared Administratively
- (b) Cleared Exceptionally
- (c) Cleared by Arrest
- (d) Field Release Citation
- (e) Suspended (Closed)
- (f) Suspended (Pending Prosecutorial Review)
- (g) Unfounded
- (h) Warrant Issued (Suspended)
- (i) Referred to Municipal Court (Suspended)
- (j) Open
- (k) Suspended Pending DNA
- (l) Suspended Pending Follow-up
- (m) Suspended Pending Victim Readiness
- (n) Suspended Prosecutor Declined
- (o) Suspended No Leads/Evidence

#### 406.3.1 CLEARED ADMINISTRATIVELY

This status is used to clear non-criminal reports such as the following:

- (a) Missing persons that are found or returned home.
- (b) Juvenile runaways who are found or returned home without law enforcement involvement.
- (c) Found property that is returned to the owner.
- (d) Request to locate where the subject is found.
- (e) Accidental injuries when no crime is involved.
- (f) Suicides where no crime has occurred.
- (g) Dependent/neglected children when there is no criminal element.

#### 406.3.2 CLEARED EXCEPTIONALLY

This status is used, when approved by the investigative supervisor, to clear incidents that meet all the following criteria:

- (a) The investigation has established the identity of the offender; and
- (b) There is sufficient information to support an arrest, charge, and prosecution; and
- (c) The exact location of the offender is known so that the offender could be taken into custody; and
- (d) There is some reason outside law enforcement control that prevents arresting, charging, and prosecuting the offender, such as:

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1. The victim will not cooperate with the investigation or does not wish to pursue the case;
2. A prosecuting attorney has reviewed the case and declines prosecution;
3. The suspect is a juvenile and committed a status offense;
4. The suspect is under the age of criminal responsibility;
5. The suspect dies;
6. Extradition of the suspect is denied.

An investigative supplement describing how each of the above criteria is met is required on all cases that are cleared exceptionally.

If the case is Cleared Exceptionally, the IBR Cleared Exceptionally status reason must be chosen.

- (a) Death of Offender
- (b) Prosecution Declined
- (c) Extradition Denied
- (d) Victim Refused to Cooperate
- (e) Juvenile, No Custody

#### 406.3.3 CLEARED BY ARREST

This status should be used if any person involved in the report meets the following criteria, regardless of the disposition of other persons involved or the status of other offenses alleged in the same report.

- (a) This status is used to clear criminal cases involving adult offenders when a suspect is arrested and charged with the commission of one of the offenses from the initial incident and the case is referred to court for prosecution, whether following an arrest or cite and release. An unrelated warrant arrest does not clear the case by arrest.
- (b) This status is used to clear criminal cases involving juvenile offenders when:
  1. The suspect is physically taken into custody and transported to a juvenile facility or home with pending charges from the initial incident; or
  2. The suspect is processed for an offense from the initial incident and the case referred to Juvenile Court, whether or not the suspect was actually taken into custody.

#### 406.3.4 FIELD RELEASE CITATION

This status is used in misdemeanor cases where all arrested persons are issued a field release citation instead of a custody arrest.

#### 406.3.5 SUSPENDED (CLOSED)

This status is used when approved by the Investigative Unit supervisor and:

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- (a) When the determination is made that any further investment of time would be inefficient or unproductive; or
- (b) After 30 days from the date of assignment and the case has not progressed to the point that it can be cleared by any other means described in this section.

#### 406.3.6 SUSPENDED (PENDING PROSECUTORIAL REVIEW)

This is a temporary clearance status to indicate that the case is being reviewed by the Grand Jury.

- (a) Upon a Grand Jury decision, the status will be changed to reflect the correct final disposition:
  - 1. "True bill" will use the status Cleared by Arrest.
  - 2. "No bill" will use the status Cleared Exceptionally.

#### 406.3.7 UNFOUNDED

This status is used with the approval of the Investigative Unit supervisor if the investigation shows that no offense occurred or was attempted.

- (a) If the facts of a case indicate that an offense occurred but not the offense indicated by the title code of the report, the supervisor will change the title code.
- (b) This status shall not be used when a report includes multiple title codes where at least one of the offenses listed is supported by the facts of the case.

#### 406.3.8 WARRANT ISSUED (SUSPENDED)

This is a temporary internal status to indicate that a warrant is outstanding for the arrest of one or more suspects. When all suspects have been arrested the internal status shall be changed to Cleared by Arrest.

#### 406.3.9 REFERRED TO MUNICIPAL COURT (SUSPENDED)

This status is used with class C offenses to reflect the victim or complainant was instructed on how to personally direct-file with the municipal court.

#### 406.3.10 OPEN

This internal status is used to show that a case is still unsolved, leads are being worked, and the case hasn't met suspended status.

#### 406.3.11 SUSPENDED PENDING DNA

This internal status is used to show that a case is awaiting evidence sent for DNA analysis.

#### 406.3.12 SUSPENDED PENDING FOLLOW-UP

This internal status is used to show that a case is suspended with anticipation of additional information or leads.

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#### 406.3.13 SUSPENDED PENDING VICTIM READINESS

This internal status is used for cases that do not meet the requirements for exceptional clearance to show that a case is suspended due to the victim being unavailable, requesting to drop the charges, or is not ready to move forward with the investigation.

#### 406.3.14 SUSPENDED PROSECUTOR DECLINED

This internal status is used for cases that do not meet the requirements for exceptional clearance to show that a case is suspended due to the prosecuting attorney's office declining to prosecute for various reasons.

#### 406.3.15 SUSPENDED NO LEADS/EVIDENCE

This internal status is used to show that a case is suspended due to lack of suspect information or lack of evidence to further the investigation.

### 406.4 DISMISSAL OF COMPLAINTS AND CHARGES

Employees are not authorized to recommend alteration or dismissal of charges to the District Attorney, City Attorney or to any other official of the court without proper authorization. Employees will not sign any form or affidavit to obtain a dismissal of a complaint without going through the following procedure:

- (a) When an employee learns of facts or circumstances to suggest a case they initiated should be dismissed, the employee will discuss the case with his supervisor.
- (b) If the supervisor and employee both feel the case should be dismissed, they will review the case with the appropriate commander.
- (c) With approval of the appropriate commander, requests for dismissal of charges will be handled as outlined below.

#### 406.4.1 MUNICIPAL COURT

A recommendation to dismiss a case in Municipal Court will be handled as follows:

- (a) With the approval of the appropriate commander, the employee and supervisor will sign the *Request for Dismissal* form in municipal court.
  1. The employee will take the form to a prosecuting attorney and explain the reasons for recommendation; and
    - (a) If an incident report has been written, a supplement will be prepared by the employee setting out the reasons for recommending dismissal.
    - (b) If there is no incident report the employee will write a memorandum or letter, as appropriate.
  2. A copy of the supplement, memorandum, or letter will be forwarded to the appropriate commander.

#### 406.4.2 COUNTY OR DISTRICT COURT

A recommendation to dismiss a case in County or District Court will be handled as follows:

- (a) With the approval of the appropriate commander, the employee will:

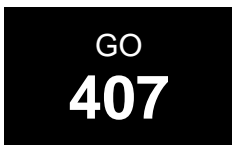
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1. Prepare a detailed supplement or appropriate documentation (memorandum or letter) setting out the facts or circumstances that lead them to believe the case should be dismissed.
2. If the employee requesting the dismissal is not part of the Investigative Unit assigned the case, an employee from the assigned Investigative Unit will review the case with the appropriate prosecutor.
3. The final decision to dismiss a case must be made by the prosecuting attorney.
4. No case may be dismissed without the consent of the presiding judge.





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# Emergency Management

### 407.1 PURPOSE AND SCOPE

The Austin City Council passed resolution 20050929-008 on September 29, 2005 in response to a Homeland Security Presidential Directive (HSPD-5), as well as the State of Texas Office of Homeland Security requiring local governments to adopt the National Incident Management System (NIMS) as a pre-condition to the receipt of federal grants, contracts, and activities related to the management and preparedness for all hazards. This resolution officially adopts NIMS and endorses the Incident Command (ICS) for all City of Austin departments for the management of disasters, acts of terrorism, and other extraordinary emergencies.

This order establishes the framework from which the department directs its strategic planning (preparedness) and tactical response for all hazards and large special events. This order is applicable to all employees (sworn and non-sworn) and assigns specific responsibilities for all hazards (i.e., man-made or natural disaster or large special events).

### 407.2 DEFINITIONS

**Alpha-Bravo Schedule**– A modified work schedule broken-down into 12-hour shifts. Day shift (Alpha) begins at 0600 and ends at 1800 and Night shift (Bravo) begins at 1800 and ends at 0600 the following calendar day.

**Department Operations Center (DOC)**– Department Operations Centers (DOCs) are facilities from which individual departments control their internal resource mobilizations and tactical operations during periods of increased service demands beyond normal capabilities. Activities normally carried out in a DOC should not take place in the EOC. Conversely, interagency coordination and strategic planning should not take place at a DOC. Department level staffing plans should address both tactical level DOC and EOC staffing needs during significant events. Also see Emergency Operations Center (EOC) and Incident Command Post (ICP).

**Department-Wide Emergency Response**- When a circumstance (man-made or natural) has created an emergency situation requiring the use of tactics and resources other than those normally used in a Normal State of Readiness, the Chief of Police, or designee, may order a Department-wide Emergency Response in order to decisively and immediately respond, mitigate, and recover from the emergency situation.

**Director of Emergency Management (APD)**- Lieutenant assigned to manage APD's Emergency Management Unit. The Director of Emergency Management is responsible for ensuring APD's emergency management planning and response efforts comply and/or coincide with applicable city ordinances, National Incident Management System, and Incident Command System protocols and best practices. In addition, the Director of Emergency Management is responsible for ensuring that APD's emergency management planning and response general strategies seamlessly integrate with the City of Austin Homeland Security and Emergency Management (HSEM) emergency operations plans, as well as plans, memoranda of understanding/agreement, and interlocal agreements with other partner entities.

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**Emergency Management Coordinator (APD)** – Sergeant assigned to supervise APD's Emergency Management Unit. The Emergency Management Coordinator (EMC) is responsible, under the direction of the Chief of Police or designee, for the organization of personnel, resources, and facilities in times of crisis. The EMC coordinates APD's disaster preparedness and response plan in accordance with city, state, and federal regulations and provides assistance to other organizations in the development of their preparedness, response and recovery plans. The EMC will pay close attention to city, state, and federal regulations, implementing them in a timely manner. The EMC is also responsible for conducting tests and emergency service drills and exercises with the public, local officials, and first responders, as well as coordinating and conducting training activities and programs. The EMC will serve as the APD designated single point of contact (SPOC) for all routine emergency management matters.

**Emergency Operations Center (EOC)**– The purpose of the Emergency Operations Center is to coordinate strategic decision-making, resource allocation, public information, and warning. The operation of the EOC does not eliminate a department's needs for tactical level coordination of staffing and resources which normally takes place in a DOC. The EOC focuses on inter-agency coordination and strategic decision-making. Agency representatives cannot effectively carry out these functions if they are preoccupied with internal department response planning and coordination which should take place within a DOC. Also see Department Operations Center (DOC) and Incident Command Post (ICP).

**Emergency Operations Center Representative**- Agency representatives at the EOC, usually Assistant Chiefs, who are at least senior managers, commanders, or chiefs capable of committing their department's resources. Lower ranking representatives sent to the EOC as "liaisons" cannot effectively participate in joint, strategic decision-making and may not have the necessary influence with higher-ranking officials in their own organizations.

**Emergency Operations Plan (EOP)**– An emergency operations plan is a course of action developed to mitigate the damage of potential events that could endanger an organization's ability to function. Such a plan should include measures that provide for the safety of personnel, property and facilities. It should also include provisions to assess the severity of an incident and implement steps to eliminate the problem -- for example, contacting firefighters in case of a fire.

**Emergency Management Unit (EMU)**– Managed by the APD Director of Emergency Management, this unit is responsible for ensuring APD's emergency management planning and response efforts comply and/or coincide with applicable city ordinances, National Incident Management System, and Incident Command System protocols and best practices. In addition, as directed by the Director of Emergency Management, is responsible for ensuring that APD's emergency management planning and response general strategies seamlessly integrate with the City of Austin Homeland Security and Emergency Management (HSEM) emergency operations plans, as well as plans, memoranda of understanding/agreement, and interlocal agreements with other partner entities.

**Event**- A planned, non-emergency activity. ICS can be used as the management system for a wide range of events (e.g., parades, concerts, and/or special and sporting events). Also see Incident.

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**Event Action Plan (EAP)-** A written plan containing general SMART objectives reflecting the overall strategy for managing an event. It may include the identification of operational resources and assignments. It may also include attachments that provide direction and important information for management of the event during one or more operational periods. Also see Incident Action Plan (IAP) and SMART objectives.

**Finance Section-** The Section responsible for all incident costs and financial considerations. This section includes the Time Unit, Procurement Unit, Compensation/Claims Unit, and Cost Unit.

**FLOP-** An acronym used to identify a group of incident management personnel organized according to function and reporting to the Incident Commander. The General Staff normally consists of the Finance/Administration Section Chief, Logistics Section Chief, Operations Section Chief, and Planning Section Chief.

**Incident-** An occurrence, natural or human-caused, that requires an emergency response to protect life or property (e.g., terrorist threats or attacks, wild land and urban fires, floods, hazardous materials spills, aircraft accidents, earthquakes, hurricanes, tornadoes, public health and medical emergencies, etc.). Also see Event.

**Incident Action Plan (IAP)-** A written plan containing general SMART objectives reflecting the overall strategy for managing an incident. It may include the identification of operational resources and assignments. It may also include attachments that provide direction and important information for management of the incident during one or more operational periods. Also see Event Action Plan (EAP) and SMART objectives.

**Incident Command Post (ICP)-** The location of the tactical-level, on-scene incident command and management organization for field response teams. The ICP typically comprises the Incident Commander and immediate staff and may include other designated incident management officials. Typically, the ICP is located at or in the immediate vicinity of the incident site and is where direct, on-scene control of field response units takes place. Incident planning and communications are also conducted at the ICP.

**Incident Command System (ICS)-** A standardized emergency management construct specifically designed to provide for the adoption of an integrated organizational structure that reflects the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries. ICS is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to aid in the management of resources during incidents. It is used for all kinds of emergencies and is applicable to small as well as large and complex incidents.

**Incident Commander (IC)-** The individual responsible for all incident activities, including the development of strategies and tactics and the ordering and release of resources. The IC has overall authority and responsibility for conducting incident operations and is responsible for the management of all incident operations at the incident site. APD IC's generally operate from the DOC and delegate responsibilities at the incident site. Also see Incident Command Post (ICP).

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**LIPS-** Acronym used to prioritize SMART objectives.

- (a) Life Safety- Objectives that deal with immediate threats to the safety of the public and responders are the first priority.
- (b) Incident Stabilization- Objectives that contain the incident to keep it from expanding and objectives that control the incident to eliminate or mitigate the cause are the second priority.
- (c) Property/Environmental Conservation- Objectives that deal with issues of protecting public and private property and the environment are the third priority.
- (d) Societal Restoration- Objectives that identify strategies to return public and private sector functions to normal levels and are the fourth priority.

**Logistics Section-** The Incident Command System Section responsible for providing facilities, services, and material support for the incident.

**National Incident Management System (NIMS)-** A system mandated by HSPD-5 that provides a consistent nationwide approach for Federal, State, local, and tribal governments; the private sector; and nongovernmental organizations to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.

**Normal State of Readiness-** This phase constitutes a continuous and constant state of readiness. The APD proactively ensures this state of readiness by constantly training, maintaining equipment, conducting ongoing equipment inspections, and gathering information in order to formulate an effective response plan.

**Operational Period-** An operational period is the period of time scheduled for executing a given set of operational actions as specified in the EAP or IAP. The length of the operational period is to be determined by the APD DOC. When operations are focused primarily on recovery programs, operational periods are typically a week or longer.

**Operations Section-** The Incident Command System Section responsible for all tactical incident operations and implementation of the EAP or IAP.

**Planning Section-** The Incident Command System Section responsible for the collection, evaluation, and dissemination of operational information related to the incident, and for the preparation and documentation of the EAP or IAP. This Section also maintains information on the current and forecasted situation and on the status of resources assigned to the incident.

**SMART Objectives-** Objectives reflecting the overall strategy for managing an event or incident. SMART stands for:

- (a) Specific – Is the wording precise and unambiguous?
- (b) Measurable – How will achievements be measured?
- (c) Action-oriented – Is an action verb used to describe expected accomplishments?
- (d) Realistic – Is the outcome achievable with given available resources?
- (e) Time-sensitive – What is the timeframe?

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**Situational Awareness-** The perception of environmental elements with respect to time or space, the comprehension of their meaning, and the projection of their status after some variable has changed, such as time, or some other variable, such as a predetermined event. It is also a field of study concerned with perception of the environment critical to decision-makers in complex situations.

**Tactical Alert-** When the department has received or developed reliable intelligence that there is a relatively high probability that a circumstance (man-made or natural) may escalate into an emergency situation requiring the use of tactics and resources other than those normally used in a Normal State of Readiness, the Chief or Police, or designee, may place the department on Tactical Alert in order to prepare for a decisive and immediate department-wide tactical response, if needed.

#### **407.3 OPERATIONAL CONDITIONS (OPCON)**

The department operates in three general states. Each state automatically triggers certain duties and responsibilities for all department personnel (sworn and non-sworn). These states are:

##### **407.3.1 NORMAL STATE OF READINESS**

In accordance with the Department's mission, and in order to effectively serve the citizens of the City of Austin, all personnel carry out their duties in a perpetual state of readiness. The Department proactively ensures this state of readiness by constantly training, maintaining equipment, conducting ongoing equipment inspections, gathering information, and distributing intelligence in order to formulate an effective response to all hazards. In this normal state of readiness all department personnel are required to maintain a constant state of situational awareness by doing certain daily activities to include, but not limited to the following:

- (a) Sworn and non-sworn supervisors must be aware of the potential need to send their resources and personnel to other units or other assignments (e.g., DOC, EOC, Command Posts, etc.) with little to no notice.
- (b) Sworn and non-sworn supervisors will review Emergency Operations Plans (EOPs) with their employees published by the Emergency Management Unit (EMU).

##### **407.3.2 TACTICAL ALERT**

When the department has received or developed reliable intelligence that there is a relatively high probability that a circumstance (man-made or natural) may escalate into an emergency situation requiring the use of tactics and resources other than those normally used in a Normal State of Readiness, the Chief of Police, or designee, may place the department on Tactical Alert in order to prepare for a decisive and immediate department-wide tactical response, if needed.

In the event the Chief of Police places the department on Tactical Alert, the Chief's designee will notify the department via an "APD All" page and email. This page and email title will include the reason for the tactical alert (e.g., Tactical Alert-Severe Weather, Tactical Alert-Flooding, Tactical Alert-Civil Disturbance, Tactical Alert-Terror Threat, etc.), as well as, any additional directions.

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In addition to any special instructions received via pager or email, when placed on Tactical Alert all department supervisors will begin to prepare for the probable incident by doing the following:

- (a) Duty Chiefs/EOC Representatives, or designee, for the potential initial operation period will complete the following:
  1. Identify, schedule, and notify additional EOC Representatives for potential subsequent operational periods.
  2. Identify and notify personnel needed to serve in the EOC, if it is activated.
  3. Disseminate to all identified and notified potential EOC personnel and review applicable Emergency Operations Plans (EOPs).
- (b) Duty Commander/DOC IC for the potential initial operation period will complete the following tasks:
  1. Identify and notify personnel needed to serve in the DOC (FLOP), if it is activated.
  2. Identify, schedule, and notify additional DOC ICs for potential subsequent operational periods.
  3. Disseminate information to all identified and notified potential DOC personnel and review applicable Emergency Operations Plans (EOPs).
  4. Task applicable potential DOC personnel with drafting preliminary SMART objectives.
  5. DOC ICs for subsequent operational periods will, in turn, identify and notify personnel needed to serve in the DOC.
  6. With the Duty Chief's authorization, DOC ICs may rescind or deny any leave, department wide, for all personnel (sworn or non-sworn).
- (c) Sworn and non-sworn supervisors will obtain a preliminary count of personnel and equipment available for the next three calendar days, at minimum, and be prepared to report that count to the DOC on applicable APD ICS Forms (i.e., Sergeant to Lieutenant, Lieutenant to Commander, Commander to DOC, DOC to EOC).
  1. Sworn and non-sworn supervisors will identify and draft a schedule personnel for potential Alpha/Bravo assignments.
  2. Sworn and non-sworn supervisors will review applicable Emergency Operations Plans (EOPs) as disseminated by the DOC or APD Emergency Management.
  3. Sworn and non-sworn supervisors will review and prepare to execute their applicable section of the department's Continuity of Operations (COOP) annex, if applicable.
- (d) In addition to any special instructions, when placed on Tactical Alert, all department personnel (sworn and non-sworn) will prepare for the probable incident by doing the following:
  1. Continue performing all activities as in a Normal State of Readiness.

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2. Keep issued pager nearby, day or night, whether on or off-duty, in accordance with APD General Orders.
3. Prepare to work modified hours (e.g. Alpha/Bravo) for a long duration of time.
4. Prepare to work or support EOC and/or DOC operations.
5. Prepare a “go bag” containing personal items needed for extended duty assignments (e.g., personal hygiene items, change of clothing, water, and food, etc.)
6. Sworn personnel will report to work in Class D (tactical uniform) with all equipment needed to work patrol and crowd control regardless of primary or ancillary assignments (See Patrol SOP for a list of equipment needed.)

#### 407.3.3 DEPARTMENT-WIDE EMERGENCY RESPONSE

When a circumstance (man-made or natural) has created an emergency situation requiring the use of tactics and resources other than those normally used in a Normal State of Readiness, the Chief of Police, or designee, may order a Department-wide Tactical Response in order to decisively and immediately respond, mitigate, and recover from the emergency situation.

In the event the Chief of Police orders a Department-wide Emergency Response, the Chief's designee will notify the department via an “APD All” page and email. This page and email title will include the reason for the department-wide emergency response (e.g., Emergency Response-Severe Weather, Emergency Response-Flooding, Emergency Response-Civil Disturbance, Emergency Response-Terror Incident, etc.), as well as, any additional directions.

In addition to any special instructions received via pager or email, during a department-wide emergency response all department supervisors will execute the tasks they would normally prepare for while on a Tactical Alert and follow orders given by the DOC.

#### 407.3.4 PERSONNEL DEPLOYMENT (ALPHA/BRAVO)

In order to leverage the resources needed to decisively and immediately respond to, mitigate, and recover from an emergency situation, the Chief of Police (or designee) may establish a department-wide work schedule change. If so directed, the usual modified work schedule is broken-down into 12-hour shifts. Day shift (Alpha) begins at 0600 and ends at 1800 and Night shift (Bravo) begins at 1800 and ends at 0600 the following calendar day. Supervisors will submit personnel rosters reflecting personnel assignments to day and night shifts to the DOC, via their chain of command, on an APD ICS Form 204. The DOC IC may modify any or all portions of Alpha/Bravo. The following groups are designated to work as follows:

- (a) Day Shift (Alpha):
  1. All Patrol Day shifts
  2. All District Representatives
  3. All Regional Detectives
- (b) Night Shift (Bravo)

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1. All Patrol Evening shifts
  2. All Patrol Night shifts
  3. All Metro Tactical teams
- (c) All other personnel within their respective Commands (e.g., Violent Crimes, Property Crimes, OCD, Training, etc.) shall be divided equally between day and night shift (i.e., 50% Alpha and 50% Bravo), unless otherwise directed by the DOC.
- (d) Special Operations and non-sworn personnel schedule modifications will be designated by the DOC IC, if needed.

#### **407.4 DEPARTMENT OPERATIONS CENTER (DOC)**

When the Departmental Operations Center (DOC) is activated, the incident shall be managed in accordance with ICS protocols. The objectives of any activation is to decisively and immediately respond to, mitigate, and recover from an emergency situation while continuing to provide police services to the citizens of the City of Austin.

#### **407.5 CRITERIA FOR DOC ACTIVATION**

Situations that trigger activations may be unique and therefore activations are a judgment call based upon numerous factors; however, generally, the DOC should be activated when a situation exists that has overwhelmed or will overwhelm and/or depleted department resources, regardless if the Austin-Travis County Emergency Operations Center (EOC) has been activated or not.

When the Watch Lieutenant is aware of a situation that could potentially trigger a DOC activation, he or she will consult with the Duty Commander. The Duty Commander will consult with the Duty Chief to make the final determination to activate the DOC. The Duty Commander will factor the magnitude of the incident along with the incident's impact on department operations.

Incidents that would merit a DOC activation may include, but are not limited to the following:

- (a) 9-1-1 system crash
- (b) Large spontaneous protest
- (c) Large-scale power outage
- (d) APD Medical Countermeasure Plan Activation
- (e) Hazardous weather event
- (f) Officer involved incident with an associated hostile crowd
- (g) Larger than normal media response to an incident
- (h) Multi-agency protracted response to an event
- (i) Large training exercise
- (j) Continuity event requiring APD COOP activation
- (k) As directed by the Chief of Police or designee



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#### **407.6 DOC RESPONSE AND PROTOCOL**

Upon initial activation of the DOC, the Duty Commander will respond as the DOC Incident Commander (IC) for the initial operational period. Generally, the DOC will be located at the COMPSTAT Room (4th Floor of Police Headquarters); however, the IC may direct that the DOC be located elsewhere. The IC will begin to assess the situation and direct what personnel will be needed in the DOC as an initial response.

- (a) Upon activation, the IC, or designee, will immediately notify other entities that the APD DOC has been activated. Notifications include, but are not limited to, the following:
  1. COA HSEM
  2. APD Communications
  3. AFD DOC, if applicable
  4. EMS DOC, if applicable
- (b) Upon activation, the IC, or designee, will:
  1. Review all relevant emergency operations plans (i.e., Regional, City, APD, etc.).
  2. Draft SMART objectives for the operational period using LIPS to prioritize objectives.
  3. Determine what the operational periods will be (e.g., 8-hour, 10 hour, Alpha/Bravo, etc.).
  4. Document all relevant decisions, requests for resources, and activity in WebEOC or APD ICS 214 Activity Log.
- (c) The DOC will be run in accordance with ICS training and protocol. Each operational period of the incident will be documented in an Incident Action Plan (IAP) using all the applicable APD ICS forms. The number of personnel who will respond to the DOC will vary depending on the size and scope of the incident (scalable). The personnel required at the DOC can either be increased or decreased, as needed. Specific personnel with specialized skills may be required during complex incidents.
- (d) All APD personnel (sworn and non-sworn), regardless of rank and/or work groups are either subject to support or subject to callback for the DOC. The usual personnel needed for DOC duties may include, but are not limited to the following:
  1. Personnel to assist with:
    - (a) Finance
    - (b) Logistics
    - (c) Operations
    - (d) Planning
    - (e) PIO
    - (f) CTM
    - (g) ARIC

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- (h) Fleet
- (i) Special Events
- (j) Special Operations
- (k) SRT leadership
- (l) CAST leadership
- (m) Police Technology
- (n) Administrative support

#### **407.7 DOC OPERATIONAL AUTHORITY**

The DOC operates with the authority of the Chief of Police. The designated IC may leverage this authority in order to decisively and immediately respond to, mitigate, and aid in recovery from an emergency situation while continuing to provide police services to the citizens of the City of Austin. ICs have all department resources at their disposal and have the authority to do the following, to include but not limited to:

- (a) Cancel training courses, court, and leave
- (b) Modify work schedules
- (c) Direct equipment issue
- (d) Suspend the ride-along program
- (e) Direct staff to establish an Incident Command Post (ICP)
- (f) Hold over APD personnel (sworn and non-sworn)
- (g) Direct support units to report to Patrol functions (e.g., Motors, detectives, Highway Enforcement, etc.).
- (h) Limit APD response to service types and actions (e.g., not responding to alarm calls, issuing "blue forms" in crashes that require a towtruck, etc.).
- (i) Assign personnel (sworn and non-sworn) to serve in the DOC in various capacities.

#### **407.8 INCIDENT ACTION PLANS (IAP) AND EVENT ACTION PLANS (EAP)**

The IAP or EAP is a written plan that defines the incident or event objectives and reflects the tactics necessary to manage an incident or event during an operational period. The IAP or EAP is to be considered directive and helps all personnel involved understand incident objectives and issues. An IAP or EAP is primary source of data used to refine public safety systems, protocols, and procedures for subsequent incidents or events. In addition, financial reimbursement to the department for large incidents is contingent upon submitting an IAP. APD EMU will be available, day or night, to assist IC's designees with drafting an IAP or EAP.

An IAP or EAP or supporting ICS documents are required under the following circumstances:

- (a) DOC activations

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- (b) EOC activations
- (c) Special Events requiring a command post
- (d) Anytime a command post is used for any operation for two or more designated operational periods.
- (e) Anytime any emergency operations plan (EOP) is applied in to an event or incident in conjunction with a DOC, EOC, and/or command post activation.

#### **407.9 AFTER ACTION REVIEW/REPORT (AAR) AND CORRECTIVE ACTION PLAN (CAP)**

Organizational learning requires continuous assessment of organizational performance, looking at successes and failures, and ensuring that learning takes place to support continuous improvement. The After Action Review/Report (AAR) is the primary means and tool used by APD for facilitating this assessment. It works by bringing together a team to discuss a task, incident, event, activity, or project, in an open and honest fashion.

The systematic application of properly conducted AARs across an organization can help drive organizational change. When applied correctly, AARs can become a key aspect of the internal system of learning and motivation.

Subsequent to any incident or event, which requires an IAP or EAP, APD EMU will facilitate an After Action Review with key personnel no later than two calendar weeks after the last operational period of the incident or event. Attendance and participation at the After Action Review is mandatory, unless otherwise authorized by the Chief of Police. APD EMU will compile all input from the review into an After Action Report and submit it to the Chief of Police.

Via APD EMU, the Chief of Police will then issue a Corrective Action Plan (CAP). As the name of the document implies, compliance with the CAP is mandatory. CAPs may direct that corrective action be taken, to include, but not limited to, the following examples:

- (a) Department general order changes
- (b) Unit SOP changes
- (c) Equipment purchases or redistribution
- (d) Department reorganization
- (e) budget reallocation
- (f) Personnel reassignment

In lieu of an APD CAP, the Chief of Police may direct that corrective action be taken in compliance with a CAP published by the City of Austin Homeland Security and Emergency Management department (HSEM).

#### **407.10 DUTY COMMANDER (DOC IC) AND DUTY CHIEF (EOC REPRESENTATIVE) ROSTER**

Duty Commander (DOC IC) and Duty Chief (EOC Rep) roster is maintained by the Intelligence Division Commander and is stored and maintained on the Emergency Management Unit

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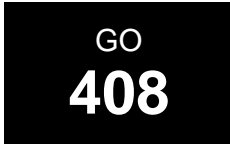
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SharePoint page. Any changes to the Duty Commander (DOC IC) and Duty Chief (EOC Rep) roster can be made 24/7 by either calling the Intelligence Division Commander or the APD Director of Emergency Management.

**407.11 ORGANIZATIONAL DEVELOPMENT AND COMPLIANCE REPORTING**

In compliance with resolution 20050929-008, and in a continuing effort to ensure all department personnel (sworn and non-sworn) possess and maintain the knowledge, skills, and abilities needed to decisively and immediately respond, mitigate, and recover from any emergency situation, the department provides the up-to-date NIMS and ICS training for its employees.

The APD Director of Emergency Management is tasked with evaluating and determining the applicability of various NIMS and ICS training courses to personnel assignments and ranks within the department. At least twice a calendar year, APD EMU will publish the latest NIMS and ICS training requirements and training compliance roster for all employees. All employees are required to complete all required NIMS and ICS training within 18 months of their initial assignment and/or promotion to their current rank.



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# Mobile Field Force

### 408.1 PURPOSE AND SCOPE

Civil disorders may arise from a number of contributing factors and the event may be triggered by a single cause or a combination of causes. The Department is dedicated to utilizing the most effective techniques and procedures when dealing with civil unrest.

The initial response to emergency and disaster incidents by patrol officers is outlined in General Order 407 (Emergency Management). This order covers the activation and mobilization of on-duty personnel to handle civil disorder situations when it has been determined to use the Mobile Field Force (MFF) concept.

#### 408.1.1 MOBILE FIELD FORCE ACTIVATION

Several different types of scenarios can utilize a MFF. These include planned events, such as a rally or protest, as well as spontaneous incidents that exceed normal response capabilities and require a MFF response.

- (a) The activation of a MFF should be considered when dealing with any:
  1. Large scale disturbance; or
  2. Disturbance where there is potential for escalation of violence if a large scale show of force is not present.
- (b) The following personnel have the authority to activate a MFF response:
  1. Chief of Police.
  2. Assistant chiefs.
  3. Commanders.
  4. Watch Lieutenant.
  5. Patrol and support lieutenants.

### 408.2 MOBILE FIELD FORCE CONCEPT

The Mobile Field Force (MFF) is an organized group of specially trained and disciplined officers that can vary in size depending on the scale of the situation. The objectives of the MFF are to:

- (a) Life/Safety.
- (b) Incident Stabilization.
- (c) Property Protection.
- (d) Societal Restoration.

#### 408.2.1 MOBILE FIELD FORCE COMPOSITION

- (a) The MFF is commanded by the on scene Incident Commander (IC) and/or designated Operations Section Chief(s) who are in charge of the event per ICS protocol. IC responsibilities include:

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1. Determining how many officers will respond to form the MFF; and
  2. Designating the location of a Command Post and rally point.
- (b) The Incident Commander and/or Operations Section Chief(s) may be assisted by a lieutenant or sergeant acting as a Deputy or Executive Officer (XO).
- (c) A MFF squad is usually divided into groups of seven to ten officers and one supervisor.
- (d) A MFF platoon is composed of four MFF squads.
1. A platoon should be commanded by a lieutenant, if available.
  2. A preemptive platoon will provide the Incident Commander with the flexibility to conduct offensive operations, if needed, and to make mass arrests.

#### 408.2.2 MOBILE FIELD FORCE EQUIPMENT AND SUPPLIES

The MFF will be equipped with Batons or PR24's (excluding ASPs), OC spray, less-lethal shotguns, and helmets with face shields.

- (a) Each Patrol Region will maintain an inventory of items necessary for the MFF (e.g., OC spray, less-lethal munitions, flex-cuffs).
- (b) The Patrol Region where the incident occurs will be responsible for resupplying the MFF.
- (c) When resupply is needed, the Incident Commander will have dispatch designate an available Patrol supervisor from the Region where the incident occurred to deliver these items to the MFF.

#### 408.3 TRAINING AND PREPAREDNESS

Being prepared for incidents of civil unrest can be the key to reducing the potentially catastrophic consequences associated with these incidents. All sworn personnel are responsible for maintaining a level of proficiency in MFF training and tactics.

- (a) Patrol commanders shall ensure that all lieutenants and sergeants under their command are familiar with the Unified Tactical Response Plan (UTRP) and MFF implementation.
- (b) Patrol and support lieutenants are responsible for:
  1. Ensuring that personnel under their command are proficiently trained in MFF tactics, procedures, and commands; and
  2. Verifying personnel attend training in MFF procedures and tactics on a regularly scheduled basis.
- (c) Sergeants are responsible for ensuring that members of their squad attend MFF training.
- (d) All personnel who have received specialty training in the deployment of impact munitions are responsible for maintaining a level of proficiency in those capacities.
- (e) All supervisors are responsible for making personnel in their chain-of-command aware of existing conditions or actions that may affect them. This may include:

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1. Changing officers' and supervisors' schedules.
2. Changing officers' and supervisors' assignments.
3. Implementing a callback plan.
4. Inspecting and assessing the readiness of MFF equipment and munitions.
5. Advising personnel of any situation, or potential situation, involving a riot or civil disturbance that could require deployment of an MFF.

#### **408.4 MOBILE FIELD FORCE RESPONSE**

The number of officers comprising the MFF will depend on the time of day that the MFF is initiated and is at the discretion of the Incident Commander.

- (a) Initiation of the MFF will be broadcast citywide by dispatch.
- (b) The MFF activation will utilize a tiered response plan.
  1. Tier I Response - This involves using two designated officers from each on-duty patrol shift to respond to a MFF call up.
  2. Tier II Response - This involves using officers from the Highway Enforcement Command (Motors, L&W, and Highway Response) and can be supplemented by additional officers from patrol or other Department units as dictated by the Incident Commander.
- (c) Generally a Tier I Response will be utilized for most situations. At the Incident Commander's discretion, a Tier II Response can be utilized.
- (d) Designated MFF officers will respond to the MFF broadcast.
- (e) The Incident Commander will make the determination whether MFF officers will respond to the scene or to a designated staging area. In some situations, MFF officers may be directed to respond directly to the scene to support the on scene officers while others are directed to respond to the staging location to form up a MFF response.

#### **408.5 CONTROL STRATEGIES AND CONSIDERATIONS**

The control strategies employed by the MFF include:

- (a) Containment.
- (b) Arrest.
- (c) Local Emergency Orders.
- (d) Emergency Response.

##### **408.5.1 CONTAINMENT**

After the initial response, the next most important control objective is to contain the spread of disorder. Through the use of perimeter control, officers will limit access to the affected area. The three basic concepts of perimeter control are linear strategy, cordoning, and sectoring.

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- (a) **Linear Strategy** - Deploys police as a blocking force along a roadway or geographic barrier perpendicular to access routes into the impacted area.
- (b) **Cordoning** - Surrounds a particular problem area by using the linear strategy to seal off access on all sides. These two maneuvers allow the police to prevent outsiders from being drawn into the unrest as victims or participants and, at the same time, limit the spread of violence from inside the affected area.
- (c) **Sectoring** - Divides the cordoned area into smaller sized units. Order can be restored one sector at a time as sufficient police resources are assembled to begin the process of regaining control.

#### 408.5.2 ARRESTS

During acts of civil disorder, police must act quickly to arrest violators of the law. These arrests will help diffuse the unrest while also providing a break in the violence.

- (a) Arrests must commence from the outset and be made early, quickly, constitutionally, fairly, and reasonably. This pattern must be sustained for the duration of the unrest.
- (b) If mass arrests occur, the Incident Commander will request prisoner transport vehicles to the scene.

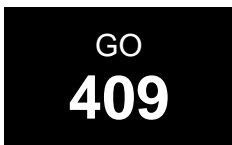
#### 408.5.3 LOCAL EMERGENCY ORDERS

An essential component of the Department's strategy for responding to a civil disorder is the issuance of emergency orders. The Mayor has the authority to issue and enforce rules, regulations, orders, and directions necessary to maintain Life Safety, Incident Stabilization, Property Conservation, and Societal Restoration (e.g., establish a curfew).

#### 408.5.4 EMERGENCY RESPONSE

A major civil disorder will require the Department to devote a large portion of its resources to restore order. When circumstances indicate that such a response is required, the Incident Commander will announce the mobilization of the MFF and will give the location of the assembly area. Once this has been initiated, all specified personnel will respond to the designated location. The ranking supervisor will refer to the instructions in the Mobile Field Force Supervisor Instructions and Scribe Log (PD0239) and should perform the prescribed tasks.





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## Swift Water and Flooding Incidents

### 409.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidance and direction in responding to a swift water/flooding incident. The objective in responding to swift water/flooding incidents is to safely remove victims from the danger of swift water or flooding while keeping the safety of responders and citizens at a premium. These situations are inherently dangerous. The possibility of a rescuer becoming a victim is ever present and should be considered at all times.

### 409.2 EQUIPMENT AND TRAINING

- (a) Each patrol vehicle shall be equipped with a Department approved Personal Floatation Device (PFD) and Throw Bag.
- (b) Each patrol officer shall be trained in the proper use of the PFD and Throw Bag.

### 409.3 OFFICER RESPONSE

Water rescue incidents may involve individuals or vehicles trapped in swift water, water evacuations involving individuals stranded by slow moving but rising water, or individuals reported under water. Water rescue is normally a technical rescue to be accomplished only by a swift water rescue Special Operations Team.

- (a) Officers should request the AFD Special Operations Team, if not already dispatched.
- (b) Upon arrival at the scene, officers will:
  - 1. Park the patrol unit out of potentially vulnerable areas in the event rising water becomes more widespread.
  - 2. Wear their Personal Flotation Device (PFD) at all times at water rescue incidents.
  - 3. Keep personnel and citizens without PFD's a minimum of 15 feet away from the water's edge.
  - 4. Assess the situation, victim status and water conditions and continually update Communications.

### 409.4 WATER RESCUE GUIDELINES

A water rescue should not be undertaken unless a victim's life is in immediate peril or conditions are rapidly deteriorating and it is unlikely that any immediate assistance will be available from a swift water rescue Special Operations Team.

- (a) Officers will only initiate a water rescue after a thorough risk/benefits analysis, including:
  - 1. Life safety issues for both victim(s) and officers; and
  - 2. Risks of initiating rescue operation versus delaying until arrival of trained Special Operations Team resources.

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*Swift Water and Flooding Incidents*

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- (b) Notify communications if a rescue operation is attempted.
- (c) Do not attempt to swim to a victim.
  - 1. If victim is seen struggling in water, attempt to assist with a Throw Bag from the shore.
  - 2. Never tie a victim or yourself to the Throw Bag rope.



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# Hazardous Material Response

### 410.1 PURPOSE AND SCOPE

Hazardous substances present a potential harm to employees resulting from their exposure. This order outlines the Department's response when dealing with hazardous materials.

#### 410.1.1 HAZARDOUS MATERIAL DEFINED

**Hazardous material** - A substance which, by its nature, containment and reactivity, has the capability of inflicting harm during exposure. It is characterized as being toxic, corrosive, flammable, reactive, an irritant or strong sensitizer and thereby poses a threat to health when improperly managed (Tex. Health and Safety Code § 501.002).

### 410.2 HAZARDOUS MATERIAL RESPONSE

Employees may encounter situations involving suspected hazardous materials, such as at the scene of a traffic crash, chemical spill or fire. When employees come into contact with a suspected hazardous material, certain steps should be taken to protect themselves and citizens.

The Austin Fire Department is the agency trained and equipped to properly respond and mitigate most hazardous substances and biohazards. In an effort to increase efficiency and effectiveness, AFD and APD will communicate and coordinate activities in accordance with an Incident Command System.

Responders entering the area may require decontamination before they are allowed to depart the scene and should be evaluated by appropriate technicians and medical professionals for signs of exposure.

The following steps should be considered at any scene involving suspected hazardous materials:

- (a) Attempt to identify the type of hazardous substance. Identification may be determined by placard, driver's manifest or statements from the person transporting the material.
- (b) Utilization of personal protective gear. If in doubt about whether the use of personal protective equipment is appropriate, officers should contact on scene Hazmat personnel.
- (c) Notify the Fire Department.
- (d) Provide first aid to injured parties if it can be done safely and without contamination.
- (e) Begin evacuation of the immediate area and surrounding areas, dependent on the substance. Voluntary evacuation should be considered; however, depending on the substance, mandatory evacuation may be necessary. The decision to continue evacuation beyond the immediate area or shelter in place should be made after consultation with AFD Haz-Mat units.
- (f) Responders should remain up hill and upwind of the hazard until a zone of entry and a decontamination area is established.

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*Hazardous Material Response*

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**410.2.1 RADIOLOGICAL TESTING**

All explosions should be assumed to have dispersed radiological material. Testing for signs of radiation should be conducted by trained APD officers or AFD Hazmat personnel as soon as possible after an incident.

**410.3 REPORTING EXPOSURE(S)**

- (a) Employees who believe they have been exposed to a hazardous material shall immediately report the exposure to a supervisor.
1. Supervisors informed of an employee exposed to a hazardous material shall ensure that immediate medical treatment is obtained and appropriate action is taken to lessen the exposure.
  2. Each exposure shall be documented by the employee in an employee memorandum that shall be forwarded via chain-of-command to the employee's Commander.
  3. Should the affected employee be unable to document the exposure for any reason, it shall be the responsibility of the notified supervisor to complete the memorandum.
  4. Supervisors shall complete the required Workers' Compensation forms as outlined in General Order 956 (On-Duty Injury or Illness).

**GO  
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# Hostage, Barricaded, and Suicidal Subject Incidents

## 412.1 PURPOSE AND SCOPE

Hostage situations and barricaded suspects present unique problems for law enforcement. The protection of the public and law enforcement personnel is of the utmost importance. Proper planning and training will tend to reduce the risks involved with these incidents. The Critical Incident Negotiation Team's (CINT) sole purpose is to facilitate the professional resolution of hostage and/or barricaded subject incidents.

For purposes of this document, "professional resolution" means utilizing nationally recognized law enforcement negotiation techniques which focus on saving human life during critical times involving emotionally disturbed persons and/or criminal subjects. Professional resolution further means recognizing the importance of safety and inter-unit communication and cooperation with regard to the overall success of critical incident resolution.

### 412.1.1 DEFINITIONS

**Barricaded Subject** - A person who takes a position of cover or concealment or maintains a position in a structure and who resists capture by law enforcement personnel. A barricaded subject may be armed, suspected of being armed, threatening violence and/or have demonstrated the potential to commit violence against others or themselves.

**Hostage** - A person held by one party in a conflict as security, so that specified terms will be met by the opposing party.

**Hostage Negotiator** - An officer who has been selected, trained and certified by the CINT Coordinator.

**"Jumper" Situations** - An unarmed suicidal subject who is threatening to jump from an elevated position which is capable of causing death.

**Unarmed Suicidal Subject** - An unarmed suicidal subject who presents no immediately apparent danger to officers or the public.

## 412.2 CRITICAL INCIDENT NEGOTIATION TEAM RESPONSE

The primary function of the Austin Police Department Critical Incident Negotiation Team is to assist other members of the Austin Police Department and/or other law enforcement agencies who require assistance with the professional resolution of hostage/barricaded subject situations, and unarmed suicidal subjects.

The CINT is a direct support unit to the SWAT Team and together comprise a component of Special Operations. As such, the CINT is on the SWAT call-up trigger page. All requests for hostage negotiators or the CINT are made through the Communications supervisor.

### (a) Hostage and Barricaded Subjects

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*Hostage, Barricaded, and Suicidal Subject Incidents*

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1. SWAT and CINT shall always respond to hostage/barricaded subject incidents.
- (b) **"Jumper" Situations**
1. Hostage negotiators may be called to the scene of "jumper" situations. When requested, generally two (2) hostage negotiators will respond.
- (c) **All Other Unarmed Suicidal Subjects Situations**
1. SWAT and CINT will not normally respond to any other type of unarmed suicidal subject. In unarmed suicidal subject situations other than a "jumper," officers may request a response from crisis intervention officers or the Crisis Intervention Team (CIT).

#### **412.3 FIRST RESPONDER ASSESSMENT**

Nothing in this order precludes an officer from making a call inside a structure to determine what is going on, or to request that a subject come outside to speak with officers.

The ranking officer may request the assistance of an on-duty hostage negotiator to aid in the initial assessment, phone call or verbal contact.

As soon as it becomes apparent that a hostage/barricaded subject incident or "jumper" situation is in progress, officers shall adhere to the notification process outlined in this order.

##### **412.3.1 NOTIFICATION PROCESS AND RESPONSIBILITIES**

- (a) If the assessment determines a hostage/barricade situation exists, the first responder shall immediately request a supervisor to respond and notify Communications to request a SWAT/CINT response.
- (b) If the assessment determines that a "jumper" situation exists, the ranking officer should notify Communications to request a CINT-only response.
- (c) The ranking officer on the scene of an actual or potential hostage/barricade situation shall consider the following:
  1. Avoid confrontation in favor of controlling and containing the situation until the arrival of trained personnel and/or trained hostage negotiation personnel.
  2. Evacuation of bystanders and injured persons.
  3. Provide responding officers with a safe arrival route to the location.
  4. Follow Department guidelines for perimeter control, containment, and communications.
- (d) The ranking officer is responsible for ensuring that personnel on scene with pertinent information are available to relay it to SWAT/CINT as soon as possible.
- (e) The responsibility for the disposition of a subject who has been taken into custody for a criminal offense or mental health evaluation lies with the uniformed first responders.

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*Hostage, Barricaded, and Suicidal Subject Incidents*

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**412.4 SUPERVISOR RESPONSIBILITIES**

- (a) Supervisors shall immediately respond to the scene of all hostage/barricade situations and be responsible for the following:
  - 1. Rapidly evaluate and assess the situation, and obtain a briefing by the initial responders.
  - 2. Assume the role of Incident Commander and retain this role until relieved.
  - 3. Establish a Command Post and appropriate chain-of-command.
  - 4. Notify tactical and hostage negotiation personnel.
  - 5. Notify appropriate persons within and outside the agency, such as command officers, dog handlers or helicopter pilots.
  - 6. Establish inner and outer perimeters.
  - 7. Request ambulance, rescue, fire and surveillance equipment.
  - 8. Authorize news media access and news media general order.
  - 9. Pursuit/surveillance vehicles and control of travel routes.
- (b) Supervisors or the Watch Lieutenant should advise the Special Operations commander with as much of the following information as is available:
  - 1. The number of suspects, known weapons and resources available.
  - 2. Whether the suspect is in control of hostages.
  - 3. If the suspect is barricaded.
  - 4. The type of crime involved.
  - 5. If the suspect has threatened or attempted suicide.
  - 6. The location of the Command Post and a safe approach to it.
  - 7. The extent of any perimeter and the number of officers involved.
  - 8. Whether the suspect has refused an order to surrender, and any other facts critical to the immediate situation.

**412.5 ON-SCENE COMMAND RESPONSIBILITIES**

- (a) Upon arrival of the Special Operations supervisor at the scene, the Special Operations supervisor shall be briefed about the situation by the original on-scene supervisor and/or on-scene personnel with knowledge of the incident.
- (b) Once briefed, the Special Operations supervisor or designee shall be responsible for the tactical portion of the operation.
- (c) The original on-scene supervisor shall be responsible for perimeter security and general support for the Special Operations teams.
- (d) The original on-scene supervisor and the Special Operations supervisor, or authorized designees, shall maintain communication as the situation develops.

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**412.6 REPORTING**

Unless otherwise relieved by a supervisor, the initial officer at the scene is responsible for completion of reports or coordination of reports for the hostage/barricade incident.





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# Clandestine Lab

## 413.1 PURPOSE AND SCOPE

Clandestine laboratory enforcement actions are complicated by the presence of hazardous and/or explosive chemicals. Clandestine laboratories often house substantial quantities of highly toxic, corrosive and explosive chemicals posing serious human health and environmental risks. To ensure that issues concerning health, officer safety, and safety of the environment are properly handled, the following procedures will be followed when an employee discovers apparatus they suspect may be used to manufacture narcotics. There are strict federal and state guidelines for the dismantling, removal, and transporting of clandestine lab chemicals and apparatus.

### 413.1.1 CLANDESTINE LAB TEAM

The Organized Crime Division (OCD) has a certified Clandestine Lab Team (CLT) that is specially equipped and trained for the purpose of investigating, dismantling, and transporting clandestine laboratories. This team is on call 24 hours a day, seven days a week to respond to clandestine labs.

## 413.2 CLANDESTINE LABS

A clandestine lab can be either a cooking lab in the process of producing an illegal drug, or it can be a boxed-up or dismantled lab.

- (a) Clandestine Labs can be found in, but are not limited to, the following places:
  1. Residential structures (e.g., houses, motel rooms).
  2. Vehicles, boats, and travel trailers.
  3. Self-storage units.
  4. Wooded areas.
- (b) Clandestine labs are dangerous due to the threat of explosion, fire, and chemical contamination to officers and civilians who are close to a lab.
- (c) Except in emergency situations, no employee, other than members of the CLT, will enter any room or structure known to contain or reasonably suspected to contain a clandestine laboratory.
- (d) Officers should be aware that clandestine laboratories may also be established for the production of biological or chemical agents to be used in weapons of mass destruction (WMD). If a WMD lab is suspected, notification should be made to the APD Bomb Squad as well as the CLT.

## 413.3 PROCEDURES AFTER THE DISCOVERY OF A LABORATORY OR LABORATORY APPARATUS

Only certified, trained CLT members or an APD Chemist will be involved in the dismantling, removal and transportation of clandestine lab chemicals and apparatus.

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#### Clandestine Lab

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- (a) Officers who discover any item(s), which may resemble a clandestine lab and/or chemicals, will notify APD Communications immediately.
  - 1. Communications will contact the Fire Department if any clandestine lab, chemical spill, or chemical situation presents an immediate threat of fire,
  - 2. Communications will immediately notify the on-call CLT sergeant. In the absence of the CLT sergeant, the CLT lieutenant will be notified.
- (b) Officers will not attempt to disconnect any apparatus, except in extreme circumstances where taking no action would lead to more serious consequence (e.g., fire, explosion).
- (c) If officers discover a clandestine lab during the course of an investigation or arrest, all persons in the house or vehicle should be moved a safe distance from the lab.
  - 1. Any suspect(s) believed to have involvement should be detained until the CLT members arrive and debrief the suspect(s).
  - 2. Residents in nearby dwellings should be moved to a safe location until the area has been declared safe by the CLT supervisor.
- (d) Officers will not transport any chemicals or apparatus in police vehicles unless directed otherwise by a CLT member.
- (e) Officers should never discard or move any chemical substances found unless at the direction of a CLT member.



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## Bomb Threats, Explosive Devices, and Bombing/ Explosion Incidents

### 414.1 PURPOSE AND SCOPE

These guidelines have been prepared to assist officers in the initial response to incidents involving bomb threats, explosive devices, or bombing/explosion incidents. Under no circumstances should these guidelines be interpreted as compromising the safety of first responders or the public. When confronted with an incident involving explosives, safety shall always be the primary consideration.

#### 414.1.1 REQUIRED BOMB SQUAD NOTIFICATION

- (a) The Bomb Squad shall be notified of, and respond to:
1. Bomb threats made at mobile targets such as aircraft, trains, and watercraft.
  2. Incidents where a suspected or known explosive device is discovered.
  3. Explosive emergencies.
  4. All incidents where an explosion has occurred.
  5. Scenes where suspected explosives have been located or recovered (e.g., commercial, military, homemade).
- (b) The Bomb Squad should NOT normally be utilized in response to bomb threats targeting a building, dwelling or fixed structures unless an explosive device is found or circumstances warrant it. This includes all fixed structures such as:
1. Industrial buildings.
  2. Shopping centers or malls.
  3. School or college campuses.
  4. Government buildings.
  5. Residential dwellings.

#### 414.1.2 USE OF RADIOS/CELLULAR PHONES DURING BOMB RELATED INCIDENTS

The use of equipment during bombing/bomb threat response incidents that generate radio frequency energy is a subjective matter that must balance risk versus benefit. The need for communications among responders can outweigh the risk of communication equipment inadvertently causing a detonation of an unknown explosive device. With this in mind it is permissible to leave radios and cell phones on during a bomb threat search or life saving measures at explosion scenes, but if a suspicious item is identified, do not transmit from a position near the item (National Guidelines for Bomb Technicians, Section 8.5, rev 3/10, U.S. Dept. of Justice, Federal Bureau of Investigation).

### 414.2 BOMB THREATS AND FOUND EXPLOSIVE DEVICES

Officers responding to a bomb threat and/or who find a potential explosive device shall follow the guidelines outlined in this section.

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*Bomb Threats, Explosive Devices, and Bombing/Explosion Incidents*

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#### 414.2.1 BOMB THREATS

When dispatched to a bomb threat, officers should:

- (a) Advise Communications of arrival one (1) to two (2) blocks from the location.
- (b) Locate, identify and interview the following personnel:
  1. Person in charge of the premises.
  2. Person who received the threat.
  3. Anyone who knows anything about the threat or the suspect.
  4. Evaluate the validity of the threat.
- (c) Evacuate the premises or area, if necessary:
  1. The decision to evacuate a premises on a bomb threat should be made by the person in charge of the premises, but may be superseded by a supervisor at the scene.
  2. If evacuation occurs, establish a perimeter of 300 feet or more from the target.
- (d) Search for potential explosive devices:
  1. The decision to conduct a search of the target of a bomb threat should be made by the person in charge of the premises based on an evaluation of validity of the threat. Officers should assist in conducting any search.
  2. If possible, obtain a search team of volunteers who are familiar with the area to be searched.
  3. Systematically search the area starting with areas accessible to the public.
  4. Search for unusual items that seem out of place or suspicious.
    - (a) If no potential explosive device is found, officers can clear the call and go back in-service.
    - (b) If an potential explosive device is found, officers shall follow the guidelines below.

#### 414.2.2 FOUND EXPLOSIVES/SUSPECT DEVICES

No known or suspected explosive device should be considered safe regardless of its size or apparent packaging. The device should not be touched or moved except by qualified Bomb Squad personnel. When officers locate a suspected explosive device, the following guidelines should be followed:

- (a) All equipment within 300 feet of the suspected device that is capable of producing radio frequency energy (e.g, two-way radios, cell phones, MDC, personal communication devices) should be turned off. These devices may cause a detonation.
  1. When it is necessary to communicate with a radio or cell phone, officers should place as much distance and shielding between themselves and the suspect item as possible or use a land line telephone.
- (b) Notify a supervisor and request additional assistance, as necessary.

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- (c) Have Communications contact the Bomb Squad and Duty Commander. Provide the following information to Communications, as available:
  - 1. Any stated threat(s).
  - 2. Exact comments.
  - 3. Time of device discovery.
  - 4. Exact location of the device.
  - 5. Full description of the device (e.g., size, shape, markings, construction).
- (d) Establish a minimum perimeter of 300 feet around the location of the device and evacuate the area. In establishing a perimeter, wind speed and direction must be considered. This information is available from Communications.
- (e) Set up an initial Command Post.
  - 1. The designated site for the initial Command Post should be swept for possible secondary explosive devices and other hazards and established upwind of the incident scene if possible.
  - 2. Advise Communications of the Command Post location and direct initial responding units to perimeter locations.
  - 3. Request anyone who has seen the device/explosive to stand by at the Command Post.
- (f) Officers will have their Personal Protective Equipment (PPE) immediately available in the event an explosion occurs.
- (g) A search of the area should be conducted for secondary devices or other objects that are either hazardous or foreign to the area, and a perimeter should be established around any additional suspicious device found.
- (h) Explosive or military ordnance of any type should be handled only by the bomb squad or military ordnance disposal team.

#### 414.2.3 SUPERVISOR RESPONSIBILITY

The first supervisor on the scene to a legitimized bomb threat should do the following:

- (a) Assume command of the scene.
- (b) Establish the primary Command Post.
  - 1. The primary Command Post can be the same as the initial Command Post or it can be moved at the discretion of the supervisor based on the best information available at the time.
  - 2. The site should be swept for possible secondary explosive devices and other hazards.
  - 3. The Command Post should be established up-wind of the incident scene if possible.
- (c) Establish an outer perimeter if believed necessary.

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- (d) Order an evacuation if believed necessary.
- (e) If possible, contact the responding bomb techs and brief them on the information about the device/explosive.
- (f) Execute all suggestions of the bomb techs and await their arrival.
- (g) Do not allow anyone other than Bomb Squad personnel to approach the suspected explosive device for any purpose without consulting responding bomb technicians first.

**414.3 RESPONSE TO EXPLOSION/BOMBING INCIDENTS**

When an explosion has occurred, there are multitudes of considerations which may confront the responding officers. As in other catastrophic incidents, a rapid response may help to minimize injury to victims, contamination of the scene by gathering crowds or additional damage by resulting fires or unstable structures.

- (a) Whether the explosion was the result of an accident or a criminal act, responding officers should consider the following actions:
  - 1. Immediately don PPE upon arrival at the scene.
  - 2. Attempt an up-wind approach if feasible.
  - 3. Notify a supervisor and request assistance.
  - 4. Immediately establish a safety perimeter and evacuate anyone in the immediate area. In establishing the perimeter, wind speed and direction must be considered. This information is available from Communications.
  - 5. Have Communications contact the Bomb Squad and Duty Commander.
  - 6. Set up an initial Command Post with other emergency services providers and advise Communications of its location. The location selected for a Command Post should be swept for secondary explosive devices and other hazards
  - 7. Direct initial responding units to perimeter locations.
  - 8. Request anyone who has seen the device/explosion to stand by at the Command Post.
  - 9. Be aware of the possibility of secondary devices and/or explosions.
- (b) All explosions should be assumed to have dispersed radiological material. Officers should not attempt to enter the immediate area of the explosion until AFD Hazmat or trained APD officers have made an assessment of possible hazards.

**414.3.1 SUPERVISOR RESPONSIBILITY**

- (a) The first supervisor on the scene of a post-explosion incident should:
  - 1. Assume command of the scene.
  - 2. Establish the primary Command Post. This site can be the same as the initial Command Post or it can be moved at the discretion of the supervisor based on the best information available at the time. The location selected for the primary

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Command Post should be swept for secondary explosive devices and other hazards and established up-wind of the incident scene if possible.

3. Establish an outer perimeter if believed necessary.
  4. Order an evacuation if believed necessary.
  5. Ensure all APD personnel are wearing appropriate PPE.
  6. Contact Communications and advise that a potential WMD/CBRN event is in progress.
  7. Contact the responding bomb techs and brief them on the information about the incident, if practicable.
  8. Execute all suggestions of the bomb technicians and Hazmat Commanders and await their arrival at the scene.
- (b) Supervisors will not permit officers to enter the inner perimeter area until Hazmat has evaluated the scene for potential hazards.
- (c) Supervisors will insure that personnel are properly decontaminated at the conclusion of the incident. AFD Hazmat should be contacted for assistance.

#### 414.3.2 CROWD CONTROL

Only authorized personnel with a legitimate need shall be permitted access to the scene. Spectators and other unauthorized individuals shall be excluded to a safe distance as is reasonably practicable given the available resources and personnel.

#### 414.3.3 SCENE OF INCIDENT

As in any other crime scene, steps should immediately be taken to preserve the scene. The scene could extend over a long distance. Evidence may be imbedded in nearby structures or hanging in trees and bushes. The initial perimeter at an explosion scene should be set at 1.5 times the distance from the site of the explosion to the farthest found piece of debris if possible.



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# Aircraft Crashes

### 416.1 PURPOSE AND SCOPE

This order describes situations involving aircraft crashes, including responsibilities of personnel, making proper notification and documentation.

### 416.2 RESPONSIBILITIES

In the event of an aircraft crash, employee responsibilities are as follows:

#### 416.2.1 OFFICER RESPONSIBILITY

Officers should treat an aircraft crash site as a crime scene until it is determined that such is not the case. If a military aircraft is involved, additional dangers, such as live ordnance or hazardous materials, may be present. The scene may require additional security due to the potential presence of confidential equipment or information.

- (a) Officers arriving on scene of an aircraft crash should:
  1. Determine the nature and extent of the crash.
  2. Request additional personnel and other resources to respond as needed.
  3. Provide assistance for the injured parties until the arrival of EMS, AFD and/or other emergency personnel.
  4. Cordon off and contain the area to exclude unauthorized individuals as soon as practicable.
  5. Provide crowd control and other assistance until directed otherwise by a supervisor.
- (b) Entering an aircraft or tampering with parts or debris is only permissible for the purpose of removing injured or trapped occupants, protecting the wreckage from further damage or protecting the public from danger. If possible, the investigating authority should first be consulted before entering or moving any aircraft or any crash debris. Photographs or sketches of the original positions should be made whenever feasible.
- (c) The fire department will be responsible for control of the crash scene until the injured parties are cared for and the crash scene has been rendered safe for containment. Thereafter, police personnel will be responsible for preserving the scene until relieved by the investigating authority.
- (d) Once the scene is relinquished to the investigating authority, personnel from this department may assist in containment of the scene until the investigation is completed or assistance is no longer needed.
- (e) An airport service worker or the airport manager may respond to the scene to assist the on-scene commander with technical expertise, should it be needed during the operation.



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*Aircraft Crashes*

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416.2.2 NATIONAL TRANSPORTATION SAFETY BOARD

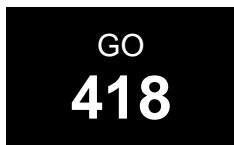
The National Transportation Safety Board (NTSB) has the primary responsibility for investigating crashes involving civil aircraft. In the case of a military aircraft incident, the appropriate branch of the military will be involved in the investigation. The NTSB is concerned with several aspects of a crash as described in this section.

Every effort should be made to preserve the scene to the extent possible in the condition in which it was found until such time as NTSB or other authorized personnel arrive to take charge of the scene.

Military personnel will respond to take charge of any military aircraft involved, regardless of any injury or death.

If the crash did not result in a death or injury and the NTSB elects not to respond, the pilot or owner may assume control of the aircraft.

Removal of the wreckage shall be done under the guidance of the NTSB or military authorities or, if the NTSB is not responding for an on-site investigation, at the discretion of the pilot or the owner.



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# Family Violence

### 418.1 PURPOSE AND SCOPE

Family Violence is alleged criminal conduct and it is the order of the Austin Police Department to stress enforcement of criminal laws related to family violence, the protection of the victim and the availability of civil remedies and community resources.

#### 418.1.1 DEFINITIONS

**Bodily Injury** - "Bodily Injury" means physical pain, illness, or any impairment of physical condition (Texas Penal Code § 1.07).

**Dating Relationship** - A relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a dating relationship. The existence of such a relationship shall be determined based on consideration of the (Tex. Fam. Code § 71.0021(b & c)):

- (a) Length of the relationship,
- (b) Nature of the relationship, and
- (c) Frequency and type of interaction between the persons involved in the relationship.

**Dating Violence** - An act by an individual that is against another individual with whom that person has or has had a dating relationship and that is intended to result in physical harm, bodily injury, assault or sexual assault or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault or sexual assault. However, dating violence does not include actions taken in self-defense. (Tex. Fam. Code § 71.0021).

**Family** - Individuals who are related either by blood or by marriage. Family includes former spouses, parents of the same child regardless of the marital status or the legitimacy of the child, and foster child/parent relationships (Tex. Fam. Code § 71.003).

**Family Violence** - An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault. However, family violence does not include actions taken in self-defense (Tex. Fam. Code § 71.004).

- *Family violence also includes the term dating violence (Tex. Fam. Code § 71.004).*

**Household** - A unit composed of persons living together in the same dwelling, without regard to whether they are related to each other (Tex. Fam. Code § 71.005).

**Member of a household** - Includes a person who previously lived in a household. (Tex. Fam. Code § 71.006).

**Primary Aggressor** - The person who appears to be the most significant aggressor rather than the first aggressor. In identifying the primary aggressor an officer shall consider:

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- (a) The intent of the law to protect victims of family violence from continuing abuse,
- (b) The threats creating fear of physical injury,
- (c) The history of family violence between the persons involved, and
- (d) Whether either person acted in self-defense.

#### **418.2 ENFORCEMENT GUIDELINES**

The primary duties of an officer who investigates a family violence allegation, or who responds to a disturbance call that may involve family violence, are to protect any potential victim of family violence and enforce the law by making lawful arrests of violators.

Officers making an arrest for any incident involving family violence shall direct file all charges as outlined in General Order 323 (Booking and Arrest Review), unless directed otherwise by the appropriate investigator.

##### **418.2.1 ARREST REQUIREMENT FOR ASSAULTIVE OFFENSES**

- (a) Officers are required to make an arrest for incidents involving family violence when:
  - 1. An assault has occurred that resulted in a minimum of bodily injury or complaint of pain; or where an officer can articulate facts from which a reasonable person could infer that the victim would have felt pain due to:
    - (a) The manner in which the suspect made contact with the victim, or
    - (b) the nature of observable physical marks on the suspect's body allegedly caused by the suspect's contact with the victim, and
  - 2. The suspect is still on-scene; and
  - 3. The assault meets the definition of "family violence" or "dating violence."
- (b) If both parties have been assaulted, officers shall make reasonable efforts to identify the primary aggressor. Arrests of both parties should be avoided unless warranted.
  - 1. If officers at the scene cannot determine the primary aggressor, an on-duty supervisor shall be contacted to make the determination.
  - 2. If the on-duty supervisor cannot determine the primary aggressor and there is adequate and articulable probable cause to believe that each person contributed to the violence, supervisors may authorize officers to make multiple arrests.
    - (a) Officers shall write probable cause affidavits for each of the arrests and direct file the charges.
    - (b) The name of the supervisor authorizing a multiple arrest situation shall be included in the incident report.
- (c) Officers shall not use mediation at the scene as a substitute for appropriate reporting and enforcement action when physical violence has taken place.
- (d) Officers shall arrest for assault by threat or assault by contact if no physical violence has occurred that resulted in bodily injury, but circumstances reasonably show that

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- further violence is likely to happen. Supervisor approval is required when the arrest is made from inside a residence.
- (e) Supervisors may authorize an exception to an arrest if there are articulable facts that lead a reasonable person to believe the alleged suspect was acting in self-defense. The facts leading to the decision for an exception shall be fully documented in the incident report, along with the name of the supervisor approving the exception.
  - (f) In felony incidents involving family violence the on-call investigator from the Domestic Violence Unit shall be contacted by a supervisor when:
    - (a) Serious or life-threatening injuries are sustained, regardless of whether an arrest is made; or
    - (b) A crime scene is complex and may require a response and/or the assistance of a unit detective (ex. search warrant, high profile cases, etc.).

Notification simply due to a felony offense occurring or a felony arrest being made is not required. Should an officer or supervisor determine or feel that a notification to the Domestic Violence Unit in these situations is necessary, such notification should be made via email at [family.violence@austintexas.gov](mailto:family.violence@austintexas.gov).

#### 418.2.2 ARREST PC AFFIDAVITS FOR FAMILY VIOLENCE RELATED ASSAULTS

- (a) Arrest affidavits for family violence assaults shall be limited to information that is necessary to establish probable cause. Officers shall refrain from copying and pasting their incident report into the arrest affidavit. It is not necessary to include the primary aggressor's account of events within the arrest affidavit, unless such inclusion is necessary to establish probable cause.
- (b) Arrest affidavits prepared by patrol officers shall be reviewed by APD Arrest Review Detectives to ensure the elements of the offense have been met. Arrest Review shall present all arrest affidavits that include said elements to the Municipal Court Magistrate for signature. Rejected affidavits will be documented per general orders and forwarded to the Domestic Violence Unit for further investigation.

#### 418.2.3 FAMILY VIOLENCE INVOLVING MENTAL ILLNESS

If there is reason to believe a suspect that is still on-scene suffers from a mental illness, an on-duty patrol officer that is a certified Crisis Intervention Team (CIT) officer shall be requested to the scene.

- (a) A Peace Officer Emergency Commitment (POEC) may be used to remove a suspect from the scene for the purpose of a psychiatric evaluation and/or treatment in lieu of a custodial arrest. The discretion to use a POEC rests solely with the on-scene CIT officer.
- (b) It is recommended that a suspect in a family violence offense only be placed in protective custody pursuant to a POEC when sufficient psychiatric bed space is available and has been confirmed at the proper psychiatric facility by the CIT officer prior to transport. Under no condition will a suspect in protective custody pursuant

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- to a POEC be transported to a hospital ER for a family violence offense when no psychiatric beds are available in lieu of filing criminal charges.
- (c) If the CIT officer determines the subject fits the criteria for a POEC, the CIT officer may transport the subject to a psychiatric facility on the POEC.
1. Once at the facility, the CIT officer will remain with the subject pending the physician's evaluation.
    - (a) If the facility admits the subject, the CIT officer shall complete all required family violence documentation but will not file any charges on the subject. Additional charges may be filed at a later time.
    - (b) If the facility does not admit the subject, the CIT officer will place the subject under arrest for the family violence criminal offenses(s) committed. Once arrested, the CIT officer shall complete all documentation and use direct file procedures for the filing of charges at the time of booking.
- (d) This section does not:
1. Remove the requirement to complete an *Assault Victim Statement (AVS)* and make any applicable notifications as outlined in this order.
  2. Supersede an officer's authority to arrest for a felony offense at the scene in accordance with Department General Orders.

## 418.2.4 FAMILY VIOLENCE INVOLVING JUVENILES

- (a) **Juvenile Suspects**
1. Family violence incidents involving a juvenile suspect between the ages of 10-16 years old shall be enforced and reported the same way as if the suspect was an adult.
- (b) **Juvenile Victims**
1. Officers investigating an allegation of family violence that involves the discipline of a child/juvenile should make the determination if the force used was reasonable. Officers are reminded not to allow personal beliefs regarding discipline to interfere with their legal judgment.
    - (a) Officers who determine that the force was unreasonable, that serious injury occurred, or that the potential for serious injury is likely, shall contact their supervisor prior to making an arrest.
    - (b) Supervisors shall contact the appropriate Investigative Unit prior to transporting the suspect; these arrests are not direct filed.
- (c) **Investigative Unit Responsibility**
1. The incident shall be handled by the Family Violence Protection Team when:
    - (a) The victim is 15, 16, or 17 years of age and the alleged suspect is any "family member;" or
    - (b) The victim is 14 years of age or younger and the alleged suspect is a "family member" who **does not** have care, custody and control of the

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child at the time of the incident (e.g., older sibling, cousin, or person not authorized to discipline the child).

2. The incident shall be handled by the Child Abuse Unit when:
  - (a) The victim is a juvenile 14 years of age or younger and the alleged suspect is a "family member" who **does** have care, custody, and control of the child at the time of the incident (e.g., parent, guardian, related babysitter).

#### 418.2.5 FAMILY VIOLENCE INVOLVING STRANGULATION/SUFFOCATION

When the suspect impedes the normal breathing or circulation of the blood of the victim by applying pressure to the victim's throat, neck or by blocking the victim's nose or mouth, the assault shall be enhanced to a felony of the third degree (Tex. Penal Code § 22.01(b)(2)(B)).

- (a) While in most cases there is evidence of both external and internal injury to the neck, many times there are no visible injuries. In those instances, an internal injury may still have occurred that can result in death. Victim may not understand the danger of their injuries and may be reluctant to seek medical attention.
  1. Call EMS to the scene to evaluate the victim even if the victim doesn't want them.
  2. Advise EMS you suspect strangulation with possible life threatening injury.
- (b) Proper documentation of an assault involving strangulation/suffocation is critical and should include at least the following:
  1. **Physical Signs** - This may include, but is not limited to:
    - (a) Red marks or bruising around the neck.
    - (b) Loss of memory in the recollection of the sequence of events.
    - (c) Petechial hemorrhaging (burst blood vessels) in the eye or face area.
    - (d) Difficulty and/or painful swallowing or hoarseness in the voice.
  2. **Type/Method**
    - (a) Ligature - Involves the use of a weapon (e.g., belt, telephone cord, shoe string, rolled up shirt) to impede breathing or cause air restriction.
    - (b) Manual - Involves the use of the suspects' hands to impede breathing or to cause air restriction.
      1. Describe in detail the position of the suspect in relation to the victim (e.g., grabbed from the front or from behind) and what body part was used by the suspect (e.g., one hand, both hands, arm using choke hold).
  3. **Specific Questions**
    - (a) What did you think was going to happen?
    - (b) What did the suspect say?
    - (c) How did it stop?
    - (d) What did you say during the assault?

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(e) How did you feel?

4. **Additional Observations**

- (a) If the victim has trouble swallowing, breathing or any pain or tenderness in neck area.
- (b) Any changes in the victim's voice during interview (e.g., hoarseness, raspy, loss of voice).

418.2.6 ENHANCEMENT DUE TO PRIOR CONVICTION

- (a) A misdemeanor assault shall be enhanced to a felony of the third degree if the suspect has an eligible prior conviction on his CCH (Tex. Penal Code § 22.01(b)(2)(A)).
- (b) An assault involving strangulation/suffocation shall be enhanced to a felony of the second degree if the suspect has an eligible prior conviction on his CCH, with the exception of a prior conviction involving continuous violence against family (Tex. Penal Code § 22.01(b-1)).
- (c) **Eligible Prior Conviction**
  - 1. A prior conviction meets the guidelines for enhancement if:
    - (a) The victim in the previous offense had a family or dating relationship with the defendant; and
    - (b) The offense is classified as:
      - 1. Any offense in Tex. Penal Code Chapter 19; or
      - 2. Any offense in Tex. Penal Code Chapter 22; or
      - 3. Kidnapping (Tex. Penal Code § 20.03); or
      - 4. Aggravated kidnapping (Tex. Penal Code § 20.04); or
      - 5. Indecency with a child (Tex. Penal Code § 21.11); or
      - 6. Continuous violence against the family (Tex. Penal Code § 25.11).

418.2.7 CONTINUOUS FAMILY VIOLENCE

- (a) Continuous violence against family (Tex. Penal Code § 25.11) is a separate offense and should only be used when the defendant does not have a qualifying previous conviction.
- (b) The determination of whether to file the continuous violence against family charge shall be at the discretion of Arrest Review.

418.2.8 INTERFERENCE WITH EMERGENCY TELEPHONE CALL

Interference with emergency telephone call has its own arrest authority (Tex. Code of Crim. Pro. art. 14.03(a)(5)) that is separate from the arrest authority for family violence.

- (a) Officers should consult with their supervisor or Arrest Review to confirm there is enough probable cause for the arrest of this offense. If enough probable cause exists, officers may make an arrest.

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- (b) When no arrest is made, officers shall write up a report and detail whether the victim wants to file charges for the offense.
- (c) When this offense also involves a family violence incident, officers shall make sure an *Assault Victim Statement (AVS)* is completed.

#### **418.3 ADDITIONAL INVESTIGATIVE GUIDELINES**

This section includes additional guidelines and required notifications when investigating any incident that involves family violence or may have involved family violence.

##### 418.3.1 ASSAULT VICTIM STATEMENT

- (a) An *Assault Victim Statement (AVS)* form shall be completed on every incident involving family violence, regardless of whether an arrest is made. This includes, but is not limited to, any assault offense involving family violence with the exception of assault by contact and assault by threat offenses.
- (b) Officers shall advise victims of their right to obtain an emergency protective order (EPO) and ask them if they wish to file one. The required guidelines for filing an EPO are outlined later in this order.
- (c) Victims of family violence are to be given the opportunity to complete the AVS and sign it.
  - 1. Victims should be advised that the AVS may be used to file charges.
  - 2. In the event the victim refuses to complete and sign the AVS, the reporting officer shall complete the form and sign it under the signature refused section with a witness to the refusal, if possible.
  - 3. The AVS form must be reviewed for completeness by the officer prior to leaving the scene.

##### 418.3.2 VICTIM INFORMATION

- (a) Officers shall provide each adult present with a copy of the information pamphlet entitled *Victim Assistance Information* that includes the *Notice to Adult Victims of Family Violence* and write the incident number on the front page.
- (b) Victims should always be referred to Victim Services for counseling.
- (c) Victims and offenders should be told that assault charges on family violence arrests may be filed even if the victim does not wish charges to be filed.
  - 1. Victims who express a desire to drop charges should be referred to Victim Services. Victim Services will refer the victim, after counseling, to the County or District Attorney.
- (d) Victims with additional questions should be referred to the Family Violence Protection Team.
  - 1. On felony arrests, the victim should be told to contact the Family Violence Protection Team the next day to determine if the assigned investigator needs additional information or statements.



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2. On non-arrest incidents, the victim should be told that the case will be assigned to an investigator for follow-up investigation.

**418.3.3 REQUIRED CHILD PROTECTIVE SERVICES NOTIFICATION**

**(a) When CPS Notification is Required**

1. Child Protective Services (CPS) must be notified following all incidents of family violence that resulted in a visible injury or aggravated assault if a child is:
  - (a) Present at the scene of the incident; or
  - (b) Known to reside at the location of the incident.
2. The notification shall be made:
  - (a) Regardless of whether the child witnessed the incident; or
  - (b) If an officer has reason to be concerned for the physical or emotional welfare of the child.

**(b) How CPS Notification may be Completed**

1. The incident should be reported to CPS from the scene or immediately after clearance; however, notification shall be made prior to the end of the primary officer's tour of duty.
2. It is ultimately the primary officer's responsibility to ensure the required notification is completed, regardless of what method is used.
  - (a) The primary officer can complete the notification by using the CPS Law Enforcement Hotline number available through Communications.
  - (b) APD Victim Services may be requested to complete the notification.
    1. If Victim Services is used, officers need to provide all the required pertinent information to the team member.

**(c) Required Information for CPS**

1. APD incident number.
2. Brief summary of incident.
3. Names, ages and dates of birth of all children involved.
4. Names, ages, dates of birth of adults involved.
5. Address where incident occurred.
6. Address where parties reside and/or may be located.

**(d) Reporting**

1. Any received CPS call ID number provided to the officer or Victim Services member should be included in the narrative of the incident report.

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#### 418.3.4 EVIDENCE COLLECTION AND PHOTOGRAPHS

Evidence and digital media shall be submitted as outlined in General Order 618 (Property and Evidence Collection Procedures).

(a) **Evidence to be Collected**

1. Any weapon or object used in the commission of the offense shall be seized as evidence.
2. Any other evidence that relates to the offense (e.g., ripped clothing, soiled clothing, broken phone) should be seized and photographed as appropriate. For additional guidance, contact an on-duty supervisor.

(b) **Photographs**

1. Digital photographs should be taken of:
  - (a) All visible injuries on the victims and suspects, regardless of severity.
    1. All victims and suspects shall receive proper medical care prior to being photographed, if needed or desired.
    2. Photographs should include, but are not limited to:
      - (a) Full body;
      - (b) Close up of face;
      - (c) Visible injuries;
      - (d) Area of body surrounding injury;
      - (e) Body part used as a weapon.
    3. Victims whose injuries are not visible at the time of the incident shall be advised to contact the Investigative Unit in the event they become visible. An investigator may be assigned to ensure the injuries are photographed during the course of preparing the case for court.
  - (b) The overall scene if there was a struggle or damage to property.
  - (c) Any weapon or object used in the commission of the offense.
2. If possible, the clarity/quality of photographs should be confirmed prior to clearing a scene.

#### 418.4 EMERGENCY PROTECTIVE ORDERS

Officers shall offer all victims of family violence the opportunity to file an EPO.

- (a) Officers shall file a motion for an EPO on the victim's behalf in all felony family violence arrests, including felony enhancements.
- (b) Officers shall file a motion for an EPO on the victim's behalf in all other family violence arrests when:
  1. The victim wishes to have an EPO filed; or

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2. The victim is unable or refuses to file and the officer has sufficient reason to believe it is imperative to the safety of the victim to file an EPO.
- (c) The reason why the suspect will be a further danger to the victim shall be documented on a motion for an EPO and included in the incident report.
- (d) Completed motions shall be turned in at Arrest Review.

#### **418.5 CIVIL STANDBY**

Officers may respond to a call for service where a complainant is requesting an officer to standby while he removes some of his minor belongings from a residence. The goal of the standby is to prevent a disturbance from occurring while the complainant takes necessary items from a residence.

- (a) When requested to conduct a standby, officers shall:
  1. Check to see if the complainant has a protective order against him for the requested address. No person, including the protected person or a law enforcement officer, can authorize any person to violate a protective order.
  2. Advise the complainant that the determination of property ownership is not the officer's responsibility. Any contest to property ownership should be handled by the appropriate Justice of the Peace.
  3. If the person presents a Writ of Retrieval issued by a justice court, officers should refer the person to the Sheriff's Office or Constable's Office in their respective county (Tex. Prop. Code Sec. 24A.001).
- (b) The incident may be cleared as a civil issue without an incident report as long as no disturbance occurs, or there is no alleged violation of court order. However:
  1. Officers are encouraged to include notes in the call log summarizing the incident and whether the complainant needs to return for more belongings.
  2. Officers shall complete an incident report if a disturbance occurs.

#### **418.6 REPORTING GUIDELINES**

- (a) A written report shall be completed on all incidents involving:
  1. Family disturbances and dating disturbances.
  2. Family violence and dating violence allegations.
  3. Any complaint of unreasonable discipline against a juvenile, regardless of whether an arrest is made.

##### **418.6.1 USE OF PROPER TITLE CODES**

When initiating an incident report, the use of proper title codes is critical to ensure proper report routing.

- (a) When no offense has been committed, the following title codes shall be used:

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1. Dating Disturbance (2400) - When the incident involves a dating disturbance or dating violence incident.
  2. Family Disturbance (3400) - When the incident involves a family disturbance or family violence incident.
  3. Family Disturbance/Parental (3458) - When the incident involves a parent/guardian and child under 17.
- (b) When a family violence related offense is alleged or found to have been committed, the following title codes shall be used:
1. Assault W/Injury Fam/Dating Violence (0900-1).
  2. Assault by Threat Fam/Dating Violence (0901-1).
  3. Assault by Contact Fam/Dating Violence (0902-1).
  4. Agg Assault Fam/Dating Violence (0402-1).
  5. Agg Aslt Strangle/Suffocate - FV (0410-1).
  6. Agg Aslt Enhancement Strangle/Suffocate - FV (0411-1) - When an assault involving strangulation/suffocation is enhanced due to an eligible prior conviction.
  7. Continuous Violence Against Family (4030-1).
  8. Felony Enhancement Assault with Injury - FV (0909-0) - When a misdemeanor assault is enhanced due to an eligible prior conviction.

#### 418.6.2 REQUIRED INFORMATION

Officers shall document the following information in an incident report:

- (a) Specific facts that lead to the probable cause for an arrest, including a detailed description of injuries sustained and threats made by the victim and/or suspect.
- (b) Information supporting, and the name of the supervisor approving, a decision to:
  1. Not make an arrest when a suspect is on-scene of a family violence incident; or
  2. Make multiple arrests in a family violence incident.
- (c) The identity of all children witnessing or residing at the location of an incident. This includes the child's full name, date of birth, race, and sex in the "Persons" section of the incident report.
  1. List as witness if the child was present in the household during the disturbance.
  2. List as observed/seen if the child was not present in the household during the incident of family violence.
- (d) Whether a motion for an EPO is being filed and the reason why, including why the suspect is believed to be a further danger to the victim upon release from jail.
- (e) The CPS Call ID number in the event a CPS notification is made as outlined in this order.

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- (f) A description of any evidence seized or photographs taken.
- (g) Names of EMS and/or AFD personnel on scene that cares for any person, if applicable.
- (h) Name of any medical facility that any person is transported to, if applicable.

#### 418.6.3 FOSTER HOME LOCATIONS

In addition to the required incident report, an officer who investigates a family violence incident, or who responds to a disturbance call that may involve family violence, shall make an oral or electronic report to the Department of Family and Protective Services within 24 hours if the location of the incident or call, or the known address of a person involved in the incident or call, matches the address of a current licensed foster home or a verified agency foster home as listed in the Texas Crime Information Center (Tex. Code of Crim. Pro. art. 5.05(a-1)).

#### **418.7 SUPERVISOR RESPONSIBILITIES**

Supervisors shall:

- (a) Contact the Domestic Violence Unit when:
  - 1. Serious or life-threatening injuries are sustained, regardless of whether an arrest is made.
  - 2. A crime scene is complex and may require a response and/or the assistance of a unit detective (ex. search warrant, high profile cases, etc.).
  - 3. Any family violence incident involving a barricaded subject where SWAT is responding.
- (b) Contact the appropriate Investigative Unit when there is an arrest situation involving a juvenile victim 14 years of age or younger.
- (c) Determine whether to authorize the following types of family violence arrests:
  - 1. Multiple arrest situations when the primary aggressor cannot be determined; or
  - 2. No arrest is made at the scene; or
  - 3. Assault by contact or assault by threat arrests from inside a residence.
- (d) Provide guidance to responding officers on procedural/general order questions that may surface during an on-scene investigation. The Domestic Violence Unit on-call investigator shall not be utilized for this purpose (ex. elements for an offense, authority to arrest, what title code to use, etc.).
- (e) Review family disturbance and dating disturbance reports to ensure the reports do not meet the qualifications of a criminal offense and clear said reports administratively. Should a criminal offense be reported, supervisors shall ensure the correct title code is added and the report is routed to the appropriate Investigative Unit.

Notification simply due to a felony offense occurring or a felony arrest being made is not required. Should an officer or supervisor determine or feel that a notification to the Domestic Violence Unit in these situations is necessary, such notification should be made via email at [family.violence@austintexas.gov](mailto:family.violence@austintexas.gov).



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# Protective Orders

### 419.1 PURPOSE AND SCOPE

Victims of family violence are entitled by law to protection from harm or abuse and the threat of harm or abuse. Various types of orders may be issued by various courts in family violence cases.

### 419.2 PROTECTIVE ORDERS AND BOND CONDITIONS

- (a) Protective orders and bond conditions set by a court may prohibit a person found to have committed family violence from (Tex. Fam. Code 85.022):
1. Committing family violence.
  2. Communicating:
    - (a) Directly with the protected person or a member of the family or household in a threatening or harassing manner;
    - (b) A threat through any person to the protected person or a member of the family or household;
    - (c) In any manner with a member of the family or household except through the party's attorney or a person appointed by the court.
  3. Going to or near the residence, place of employment or business of the protected or a member of the family or household of the protected person.
  4. Going to or near the residence, child care facility, or school of a child protected under the order where the child normally attends or in which the child normally resides.
  5. Engaging in conduct directed specifically toward the protected person or a member of the family or household, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person.
  6. Possessing a firearm unless the person is a peace officer, as defined by Penal Code 1.07, actively engaged in employment as a sworn, full-time paid employee of a state agency or political division.

#### 419.2.1 EMERGENCY PROTECTIVE ORDERS

A magistrate may issue an emergency protective order (EPO) against a defendant at the defendant's initial appearance before the magistrate, if the defendant is under arrest for family violence, sexual assault, aggravated sexual assault, trafficking, continuous trafficking, or stalking. The order may be issued on the magistrate's own motion, or on request of the victim, the guardian of the victim, a peace officer, or the attorney representing the State (Tex. Code of Crim. Proc. art 17.292).

- (a) An EPO shall be entered into TLETS within 3 business days of receipt from the court.
- (b) An EPO may be effective for a period:

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1. Between 31-61 days; or
  2. Between 61-91 days if the suspect used or exhibited a deadly weapon during the assault.
- (c) A violation of an EPO is included in Penal Code § 25.07.
- (d) EPO's for victims of family violence shall be filed by officers as outlined in General Order 418 (Family Violence).

#### 419.2.2 TEMPORARY EX-PARTE ORDERS

Temporary ex-parte orders are issued by the court when the court finds there is a clear and present danger of family violence contained in the application for a protective order. The court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex-parte order for the protection of the applicant or any other member of the family or household of the applicant (Tex. Fam. Code § 83.001).

- (a) Temporary ex-parte orders may be effective for a period not to exceed 20 days.
- (b) A violation of a temporary ex-parte order is included in Penal Code § 25.07 but only after it has been served to the person named in the order.

#### 419.2.3 FINAL PROTECTIVE ORDERS

A final protective order is designed to protect victims of violence by stopping violent and harassing behavior for a longer period of time (Tex. Fam. Code § 85.021).

- (a) Final protective orders issued by a court may be effective for the following time periods:
1. A period not to exceed two years; or
  2. If a period is not stated in the order, until the second anniversary of the date the order was issued; or
  3. If the respondent is in prison on the date the protective order is set to expire, the expiration date is extended for one year from the date the respondent is released.
- (b) A violation of a final protective order is included in Penal Code § 25.07.

#### 419.2.4 BOND CONDITIONS

Judges and magistrates can attach conditions to a bond set in a family violence case preventing certain actions. A violation of a bond condition is included in Penal Code § 25.07.

### **419.3 ENFORCEMENT PROCEDURES**

Court orders that are enforceable by law enforcement are

- (a) Emergency protective orders.
- (b) Final protective orders.
- (c) Temporary ex-parte orders after they have been served to the person named in the order.

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- (d) Certain bond conditions.
- (e) Valid out-of-state and tribal court protective orders (Tex. Fam. Code § 88.004).

#### 419.3.1 VERIFICATION OF ORDER

Whenever a complainant advises of the existence of a protective order, officers shall immediately attempt to determine the following:

- (a) If a protective order exists through the following means:
  - 1. The complainant has a certified or official court copy of a protective order in his possession.
  - 2. A protective order is on file via NCIC, TCIC, or APD Central Records. Temporary ex-parte orders are not entered into TCIC or NCIC and can only be verified by checking through APD Central Records.
- (b) If the protective order is valid by checking the termination or expiration date of the order, or whether the order has been vacated by the court.
  - 1. Temporary ex-parte orders must have been served prior to enforcement action in order for them to be valid. Service of temporary ex-parte orders can only be verified by checking through APD Central Records.
- (c) If a violation of the protective order has occurred by checking:
  - 1. The terms of the protective order; and
  - 2. The location of the protected address.
    - (a) Some orders specify the applicant's county of residence rather than a specific street address. This attempt by the court to further protect the applicant does not invalidate the order's protection of the residence address. In these cases, if a residence appears to be the applicant's home, it shall be considered the protected address and the order will be enforced accordingly.
- (d) Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, officers should utilize all reasonably available resources to confirm the validity of the order.

#### 419.3.2 ARREST GUIDELINES

Officers must carefully read a protective order prior to taking enforcement action to verify the details of the prohibited conduct and that the order is still in effect.

- (a) No person can grant the subject of a protective order permission to violate any tenet of the order, including a law enforcement officer or the victim.
- (b) The protected person cannot be arrested for personally violating any tenet of the order.
- (c) If it is found that a person has violated a court order, the following arrest guidelines apply:



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1. An arrest shall be made when an officer witnesses a violation of any enforceable court order. (Tex. Court of Crim. Proc. art. 14.03(b)).
  2. An arrest should be made when an officer has probable cause to believe a violation of any enforceable court order has been committed (Tex. Code of Crim. Proc. art. 14.03(a)(3)).
- (d) In the event the suspect is no longer at the scene, officers shall document the incident in a report for follow-up investigation.

#### **419.3.3 WHEN ORDER IS NOT VERIFIABLE**

If the victim is not in possession of the protective order and/or for any reason the officer cannot verify the validity of the order, the following action shall be taken:

- (a) Write a report and give the report number to the victim.
- (b) Inform the victim of how to contact the appropriate Investigative Unit for further action.

#### **419.4 REPORTING**

When officers investigate a family disturbance or similar incident and are informed that any person has violated a protective order, officers shall initiate an incident report regardless of whether an arrest is made.

- (a) Officers shall use the appropriate title code to the incident report:
  1. Viol of Bond Conditions (3006).
  2. Viol Temp Ex Parte Order (3007).
  3. Viol of Emerg Protective Order (3008).
  4. Viol of Protective Order (3009).
  5. Viol PO / Sexual Assault Victim (3010).
  6. Viol of Court Order - Non EPO/PO (2008) - When the incident is of a civil nature (e.g., restraining order, child custody).
- (b) Officers should document the identifying information of the protective order (e.g., order number, effective dates, judge's name) in the narrative.



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# Sexual Assault

### 420.1 PURPOSE AND SCOPE

This order will establish a procedure by which officers shall investigate and report sexual assault related crimes.

### 420.2 INVESTIGATION CONSIDERATIONS

#### 420.2.1 INITIAL INTERVIEW WITH THE VICTIM

Officers shall adhere to the following guidelines when conducting an initial interview of a victim involved in a sexual assault.

- (a) The physical well-being of the victim takes precedence in the initial response by officers. If the victim requires medical attention, the officer will summon EMS to the scene.
- (b) Officers shall contact a Victim Services Unit.
- (c) Officers shall conduct the interview of the victim with dignity and respect, being mindful that the victim has experienced a traumatic event.
  1. Officers should make every attempt to maintain the victim's privacy and protect the integrity of the investigation.
  2. Officers should not interview a victim 12 years of age or younger; these interviews shall be done by an investigator from the appropriate Investigative Unit. However, if the victim made an "outcry" statement to an adult, the officer should identify and interview the adult, if possible.
  3. Officers will not ask a victim if they want to prosecute (the suspect / crime); this inquiry is premature.
- (d) Officers shall provide the victim with the information outlined in this order on the SAFE (Sexual Assault Forensic Exam). If the victim consents to the exam, approval shall be at the discretion of the Sex Crimes investigator.
- (e) Once a sexual assault or attempted sexual assault has been reported and one or more of the following have been identified:
  1. There is a crime scene
  2. A suspect is detained and/or
  3. The victim has agreed to a SAFE

Officers shall contact the on-call Sex Crimes Investigator and fully brief him/her on the incident. The investigator will determine if there is a need to respond to the scene.

- (f) Officers should contact a Crime Scene Unit when a crime scene or evidence is present. Officers should be mindful that there are multiple crime scenes in a majority of sexual assaults; the victim, the suspect and the actual scene itself.

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#### 420.2.2 INVESTIGATIVE UNIT RESPONSIBILITY

When conducting a preliminary investigation of an alleged sexual assault, officers shall contact the appropriate Investigative Unit for assistance:

- (a) **Child Abuse Unit** - If the victim is 16 years of age or younger.
- (b) **Sex Crimes Unit** - If the victim is 17 years of age or older.

#### 420.3 SEXUAL ASSAULT FORENSIC MEDICAL EXAM INFORMATION

- (a) Officers will explain the following information to the victim concerning the Sexual Assault Forensic Examination (SAFE) to allow them to make an informed decision about having the exam conducted.
  - 1. A SAFE is not mandatory, but is strongly recommended.
  - 2. The SAFE provides medical attention necessary for emergency and preventative treatment. Additionally, the examination allows for the collection and documentation of valuable forensic evidence.
  - 3. Charges for the SAFE shall be paid for by the City of Austin and not billed to the victim. However, all other charges shall be the responsibility of the victim.
  - 4. Officers should suggest that victims bring a change of clothing to the hospital if they are wearing the clothing they had on during the assault. Officers should explain that the clothing worn during the assault will be collected by the nurse for evidentiary purposes.
  - 5. Whether or not a victim has bathed, showered, or douched does not preclude the exam from being conducted.
  - 6. If the victim needs to urinate prior to the start of the SAFE, officers should obtain a sterile container from hospital personnel and give it to the victim so the victim's urine can be collected and preserved as evidence.
- (b) Officers should determine if the victim, a person authorized to act on behalf of the victim or an employee of the Department of Family and Protective Services, will consent to the forensic examination, as appropriate (Tex. Code of Crim. Pro. art. 56.06). If the consent is given, officers shall request authorization from the appropriate Investigative Unit.
- (c) Generally, exams shall be approved if the incident occurred within 120 hours. However, if a sexual assault is not reported within 120 hours, the Investigative Unit may still authorize a forensic medical examination.

#### 420.3.1 PREFERRED HOSPITAL FOR FORENSIC EXAM

The gender and age of the victim shall determine the preferred hospital for the examination. However, the victim may choose a particular hospital as long as it is within the city limits of Austin.

- (a) The preferred hospitals are:
  - 1. **St. David's Hospital**
    - (a) Any adult victim.

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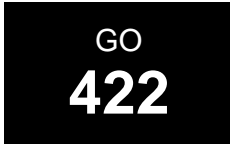
*Sexual Assault*

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- (b) Males who are 12 and older.
- (c) Females who have started their menstrual cycle.
- 2. **Dell Children's Hospital:**
  - (a) Males under the age of 12.
  - (b) Females who have not started their menstrual cycle.
- (b) The charge nurse at St. David's Hospital will be given the incident number upon arrival. This is to ensure the SANE (Sexual Assault Nurse Examiner) is contacted and can respond to the hospital in a timely manner.

420.3.2 CLOTHING COLLECTION AS FORENSIC EVIDENCE

- (a) Officers should attempt to gather clothing worn by victims during the time the sexual assault occurred for evidentiary purposes when victims do not consent to a forensic exam or are no longer wearing the clothing they were wearing at the time the sexual assault occurred.
- (b) Proper handling of evidence can be found in General Order 618 (Property and Evidence Collection Procedures).



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# Elder Abuse

### 422.1 PURPOSE AND SCOPE

The purpose of this order is to provide members of this department with direction and understanding of their role in the prevention, detection and intervention in incidents of elder abuse. It is the order of the Austin Police Department to treat reports of violence against elderly persons as a high priority criminal activity that is to be fully investigated regardless of the relationship between the victim and the suspect(s) (Tex. Hum. Res. Code § 40.0527).

### 422.2 DEFINITIONS

For purposes of this order, the following definitions are provided (Tex. Hum. Res. Code § 48.002).

**Dependent Adult** - A person with a mental, physical or developmental disability that substantially impairs the person's ability to provide adequately for the person's own care or protection, and who is 18 years of age or older.

**Elder** - Any person 65 years of age or older.

**Abuse** -

- (a) The negligent or willful infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member or other individual who has an ongoing relationship with the person.
- (b) Sexual abuse of an elderly or disabled person, including any involuntary or non-consensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

**Exploitation** -The illegal or improper act or process of a caretaker, family member or other individual who has an ongoing relationship with the elderly or disabled person, using the resources of an elderly or disabled person for monetary or personal benefit, profit or gain without the informed consent of the elderly or disabled person.

**Protective Services Agency** - A public or private agency, corporation, board or organization that provides protective services to elderly or disabled persons in the state of abuse, neglect or exploitation.

**Neglect** - The failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain, or the failure of a caretaker to provide such goods or services.

### 422.3 MANDATORY REPORTING REQUIREMENTS

The Austin Police Department is considered a mandated reporter. If during the course of an investigation an officer has cause to believe that the elderly or disabled person has been abused,

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neglected or exploited by another person in a manner that constitutes a criminal offense under any law, the officer shall take a report and notify the appropriate state agency (Tex. Hum. Res. Code § 48.051).

#### **422.4 OFFICER'S RESPONSE**

All incidents involving actual or suspected elder and dependent abuse shall be fully investigated and appropriately documented.

##### **422.4.1 INITIAL RESPONSE**

Officers may be called upon to make a forced entry as the first responders to the scene of a suspected elder abuse case. Entry should be immediate when it appears reasonably necessary to protect life or property. When the need for an emergency entry is not evident, officers should seek supervisory approval. Officers must be prepared to provide emergency care pending the arrival of medical personnel, if medical personnel not already present.

##### **422.4.2 STABILIZE THE SITUATION**

Officers must quickly assess the situation to ensure the immediate safety of all persons. Officers shall also consider the following:

- (a) Attempt to identify the victim, suspect and witnesses as well as the roles and relationships of all parties. Parties should be interviewed separately when possible. Frequently it is wrongfully assumed that elderly persons are incapable of accurately reporting the incident. Do not automatically discount the statement of an elderly person.
- (b) Preserve the crime scene where evidence may be present. All persons should be removed from the scene until it has been photographed and processed. Any evidence that may change in appearance, such as injuries, should be photographed immediately.
- (c) Assess and define the nature of the problem. Officers should assess the available information to determine the type(s) of abuse that may have taken place or the potential for abuse in the future that may be eliminated by law enforcement intervention.
- (d) Make on-scene arrests when appropriate. Immediate arrest of an abuser (especially when the abuser is a family member or caretaker) may leave the elderly victim without necessary support and could result in institutionalization. The effect of an arrest on the victim should be considered and weighed against the assessed risk and the competent victim's desires. The present and future safety of the victim is of utmost importance.

##### **422.4.3 SUPPORT PERSONNEL**

The following person(s) should be considered if it appears an in-depth investigation is appropriate:

- (a) Patrol supervisor.
- (b) Investigative personnel.
- (c) Evidence collection personnel.

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- (d) APD Victim Services.
- (e) Adult Protective Services.

#### 422.4.4 PROTECTIVE ORDERS AND EMERGENCY PROTECTIVE ORDERS

In any situation which an officer reasonably believes that an elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or threat of abuse (other than financial abuse alone), the officer may contact Adult Protective Services and request that they obtain a protective order against the person alleged to have committed or threatened such abuse if that person is not in custody.

Refer to General Order 418 (Family Violence) for guidelines on filing an EPO on any incident where a suspect is arrested and it is clear there has been family violence against an elder or dependent adult.

#### **422.5 ELDER ABUSE REPORTING**

Every allegation of elder abuse shall be documented. When documenting elder/dependent abuse cases, the following information should be included in the report:

- Current location of the victim
- Victim's condition/nature and extent of injuries, neglect or loss
- Names of agencies and personnel requested and on-scene
- Any information that indicates a victim or critical witness may suffer from a health condition that may warrant an expedited investigation/prosecution or the preservation of testimony under Tex. Code of Crim. Pro. art. 39.025

Reporting of cases of elder/dependent abuse is confidential and will only be released in accordance with General Order 116 (Security and Release of Records and Information).

#### **422.6 ELDER ABUSE IN A CARE FACILITY**

Officers investigating allegations relating to the abuse, neglect or exploitation of an elderly or disabled person in a care facility or under the care of a facility shall notify the Texas Department of Health regardless of whether a crime report was taken (25 Tex. Admin. Code § 1.205).



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# Child Abuse

### 424.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines and procedures for reports of suspected child abuse and the taking of minors into protective custody.

### 424.2 DEFINITIONS

For purposes of this section the following definitions are provided:

**Child** - A person who is under 18 years of age (Tex. Fam. Code § 101.003).

**Abuse** - Includes the following acts or omissions by a person (Tex. Fam. Code § 261.001):

- (a) Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development or psychological functioning.
- (b) Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development or psychological functioning.
- (c) Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation, given and excluding an accident or reasonable discipline by a parent, guardian or managing or possessory conservator, that does not expose the child to a substantial risk of harm.
- (d) Failure to make a reasonable effort to prevent an action by another person that causes physical injury that results in substantial harm to the child.
- (e) Sexual conduct harmful to a child's mental, emotional or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of a young child or children under Tex. Penal Code § 21.02, indecency with a child under Tex. Penal Code § 21.11, sexual assault under Tex. Penal Code § 22.011 or aggravated sexual assault under Tex. Penal Code § 22.021.
- (f) Failure to make a reasonable effort to prevent sexual conduct harmful to a child.
- (g) Compelling or encouraging a child to engage in sexual conduct as defined by Tex. Penal Code § 43.01.
- (h) Causing, permitting, encouraging, engaging in or allowing the photographing, filming or depicting of the child if the person knew or should have known that the resulting photograph, film or depiction of the child is obscene as defined by Tex. Penal Code § 43.21 or pornographic.
- (i) The current use by a person of a controlled substance as defined by Tex. Health and Safety Code Chapter 481, in a manner or to the extent that the use results in physical, mental or emotional injury to a child.
- (j) Causing, expressly permitting or encouraging a child to use a controlled substance as defined by Tex. Health and Safety Code Chapter 481, or causing, permitting,



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encouraging, engaging in or allowing a sexual performance by a child as defined by Tex. Penal Code § 43.25.

#### **424.3 MANDATORY NOTIFICATION**

When this department receives a report of abuse occurring at the facilities listed below, notification shall be made promptly to the licensing office with jurisdiction over the facility.

- (a) A state operated, licensed or certified facility (Tex. Fam. Code § 261.103).
- (b) A report of the death of a child who was, at the time of death, living at, enrolled in or regularly attending a facility licensed by the state to care for children, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

Additionally, an immediate notification is required to the appropriate licensing agency if the suspected child abuse occurs while the child is being cared for in a child-day care facility, involves a child-day care licensed staff person or occurs while the child is under the supervision of a community care facility licensee or staff person.

#### **424.4 FAMILY VIOLENCE RELATED CHILD ABUSE**

Officers should follow the guidelines outlined in General Order 418 (Family Violence) on the proper investigation and notification procedures for allegations of child abuse and/or excessive discipline.

#### **424.5 SEXUAL ASSAULT RELATED CHILD ABUSE**

Officers should follow the guidelines outlined in General Order 420 (Sexual Assault) on the proper investigation and notification procedures for sexual assaults involving children.

#### **424.6 TAKING POSSESSION OF A CHILD IN EMERGENCY OR OTHER SITUATIONS**

If there is no time to obtain a court order, a child may be taken into protective custody if an officer determines emergency circumstances described by Tex. Fam. Code § 262.104 exist.

Whenever practicable, the officer should inform a supervisor of the circumstances prior to taking a child into protective custody, and articulate the facts indicating why an immediate danger to the child may exist. If prior notification is not practicable, officers should contact a supervisor promptly after taking a child into protective custody.

Prior to taking a child into protective custody, the officer should take reasonable steps to deliver the child to another qualified parent or legal guardian unless it reasonably appears that the release would endanger the minor or result in abduction. If this is not a reasonable option, the officer shall ensure the minor is delivered to the appropriate child welfare authority.

An officer may take possession of a child without a court order on the voluntary delivery of the child by the parent, managing conservator, possessory conservator, guardian, caretaker or custodian who is presently entitled to possession of the child (Tex. Fam. Code § 262.004). The officer should contact a supervisor as soon as practicable upon taking possession of a child under this authority.

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An officer may take possession of a child when, during a criminal investigation relating to the child's custody, the officer believes that someone may flee or conceal that child (Tex. Fam. Code, § 262.007). The officer should contact a supervisor as soon as practicable upon taking possession of a child under this authority.

Supervisors who have been made aware that a child has been taken into an officer's possession should make reasonable inquiries to ensure the possession is lawful and that the Department of Family and Protective Services (DFPS) will be contacted when appropriate.

#### **424.7 CHILD SAFETY CHECK ALERT LIST**

The Texas Department of Public Safety has created a Child Safety Check Alert List as part of the Texas Crime Information Center to help locate a family for purposes of investigating a report of child abuse or neglect (Tex. Fam. Code § 261.3022 (a)).

If an officer encounters a person, including a child, listed on the Texas Crime Information Center's child safety alert list, he/she shall request information from the person or the child regarding the child's well-being and current residence (Tex. Fam. Code §261.3023 (a)).

The officer should investigate as to whether it is appropriate to take possession of the child without a court order under Tex. Fam. Code § 262.104 and General Order 424.6 above.

The officer should inform a supervisor as soon as practicable when a child on the Texas Crime Information Center's Child Safety Check Alert List is located. The circumstances shall be documented in an appropriate report. The officer shall contact the Texas Crime Information Center and advise that the child has been located and shall provide the case number related to the incident.



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# Missing Persons

### 425.1 PURPOSE AND SCOPE

This order describes the procedure for acceptance, reporting, documenting and investigating missing persons. State law, as well as federal law under 42 USC 5779(a), specify certain requirements relating to missing persons (Tex. Code of Crim. Pro. art. 63.002 et. seq).

#### 425.1.1 DEFINITIONS

For purposes of this section the following definitions are provided (Tex. Code of Crim. Pro. art. 63.001):

**Missing Person** - A person 18 years of age or older who cannot be located and the circumstances surrounding the disappearance are unknown.

**Child** - A person under 18 years of age (For purposes of federal law, a child is considered any person under 21 years of age).

**Missing Child** - A child whose whereabouts are unknown to the child's legal custodian, the circumstances of which indicate that:

- (a) The child did not voluntarily leave the care and control of the custodian, and the taking of the child was not authorized by law.
- (b) The child voluntarily left the care and control of his legal custodian without the custodian's consent and without intent to return (e.g., runaway).
- (c) The child was taken or retained in violation of the terms of a court order for possession of, or access to, the child (e.g., Interference with Child Custody, Enticing a Child, Harboring a Runaway).

**High-Risk Missing Person** - A person who is missing (Tex. Code of Crim. Pro. art. 63.051(5)):

- (a) As a result of an abduction by a stranger; or
- (b) Under suspicious or unknown circumstances; or
- (c) More than 30 days; or
- (d) Less than 30 days if there is reason to believe that the child or person is in danger of injury or death; or
- (e) A child who (Tex. Code of Crim. Pro. art. 63.0091):
  1. had been reported missing on four or more occasions in the 24-month period preceding the date of the current report; or
  2. is in foster care or in the conservatorship of the Department of Family and Protective Services and had been reported missing on two or more occasions in the 24-month period preceding the date of the current report; or
  3. is under 14 years of age and otherwise determined to be at a high risk of human trafficking, sexual assault, exploitation, abuse or neglectful supervision; or

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4. investigators have determined to be high-risk based on other factors or evidence.
- (f) Regardless of age, is believed or determined to be experiencing one or more of the following circumstances:
1. Out of the zone of safety for his/her chronological age and development stage.
  2. Mentally or behaviorally disabled.
  3. Any person known by the Department to have or is reported to have chronic dementia or Alzheimer's.
  4. Drug dependent, including prescribed medication and/or illegal substances, and the dependency is potentially life-threatening.
  5. Absent from home for more than 24 hours before being reported to law enforcement as missing.
  6. In the company of others who could endanger his/her welfare.
  7. Absent in a way that is inconsistent with established patterns of behavior and cannot be readily explained. Most children have an established and reasonably predictable routine.
  8. Involved in a situation that would cause a reasonable person to conclude the person should be considered at risk, or in life-threatening danger.

#### **425.2 INVESTIGATION GUIDELINES**

Upon arrival to a missing person call, officers shall:

- (a) Completely identify and interview the complainant to determine the circumstances surrounding the disappearance, along with the last person to have seen or been in contact with the missing individual.
- (b) Verify the person is missing, especially in the case of a child, by conducting a thorough search of immediate area where the individual was last seen or known to have been.
- (c) Obtain a complete description of the missing individual, consisting of, but not limited to:
  1. Full name.
  2. Date of birth.
  3. Race/Sex.
  4. Hair color and length.
  5. Eye color.
  6. Height and weight.
  7. Last known clothing description.
  8. Scars, body markings, or tattoos.
- (d) Attempt to obtain the following items and forward them to the Missing Persons Unit:
  1. A color photograph of the person.

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2. A birth certificate if the child is under 11 years of age.
- (e) Identify the missing person's zone of safety to determine how far the individual could travel from the location before he would most likely be at risk of injury or exploitation.
- (f) In the case of a missing child, confirm custody status to determine possible role in the disappearance (e.g., parental kidnap, interference with custody, enticing a child).
- (g) In the case of dementia or senile patients, determine last known location that the patient would indicate if asked by a citizen where they were living.

#### 425.2.1 HIGH RISK CIRCUMSTANCES REQUIRING SUPERVISOR NOTIFICATION

- (a) Officers will contact their supervisor if the missing individual fits any category outlined below:
  1. Aged or senile adults that require continuous supervision by a care-giver and are not capable of being left unsupervised.
  2. Aged or senile adults 65 or over with a documented mental or medical impairment which creates a threat to personal safety.
  3. Children under age 12.
  4. Mentally or physically handicapped individuals whose impaired ability would create a risk to their safety and well-being.
  5. Suicidal persons who are missing after immediately taking threatening actions against their life or making imminent threats to harm themselves.
  6. Individuals with a medical condition or a need for medication, which creates a risk to their safety and well-being.
  7. If kidnapping or foul play is feared in the individual's disappearance.
- (b) Supervisors will review the incident to determine if it meets the requirements for a Public Alert and notify the appropriate Investigative Unit as outlined in this order. Final approval for a Public Alert rests with the appropriate Investigative Unit.
- (c) Supervisors will contact the the appropriate Investigative Unit if an Alert System activation is required to make a determination as to what type of field search effort will be undertaken.
  1. Factors to be considered are:
    - (a) Length of time that has passed since the disappearance.
    - (b) Age and mobility of the missing person.
    - (c) Infirmary and/or need for medication.
    - (d) Suspicious circumstances (foul play feared).
  2. Field searches that may be used include, but are not limited to:
    - (a) Door-to-door (foot search making contact with residents).
    - (b) Neighborhood canvas (larger scale foot and vehicle search).

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- (c) Use of the Canine Unit.
- (d) Use of Air Support as outlined in General Order 504 (Air Operations and Air Support).

#### 425.2.2 ATTEMPTED CHILD ABDUCTIONS

Upon receiving a report of an attempted child abduction (Tex. Code of Crim. Proc. Art 63.0041):

- (a) Officers shall immediately provide relevant information about the suspect to Communications. Relevant information includes, but is not limited to:
  - 1. Name, race, sex, approximate age,
  - 2. Physical description,
  - 3. Clothing description,
  - 4. Physical/Mental disabilities/infirmities,
  - 5. Unusual circumstances, and
  - 6. Vehicle information, if applicable.
- (b) Communications shall ensure that entry is made into the appropriate network as soon as practicable, but no later than 8 hours after receiving a report.
- (c) Any additional information obtained after the initial entry should be entered as soon as possible.

#### **425.3 MISSING PERSONS REPORTING**

##### 425.3.1 INCIDENT REPORT

Officers shall initiate an incident report for all individuals alleged to be missing.

- (a) If the missing person does not meet one of the special circumstances listed above, officers shall:
  - 1. Initiate an incident report titled Request to Locate if the missing person is an adult; and
  - 2. Initiate an incident report titled Runaway Child if the missing person is a runaway.
- (b) If the missing person does meet one of the special circumstances, officers shall initiate an incident report with the appropriate title related to the circumstance.

##### 425.3.2 COMMUNICATIONS NOTIFICATION

Upon receiving a report of a missing child or missing person:

- (a) Officers shall provide the following information to Communications:
  - 1. Name, race, sex, date of birth; and
  - 2. Physical description; and
  - 3. Clothing description; and
  - 4. Physical/Mental disabilities/infirmities; and

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5. Unusual circumstances; and
  6. Vehicle information, if applicable.
- (b) Communications shall ensure that entries are made into the appropriate missing person networks:
1. Immediately, when the missing person is determined to be a high-risk missing person; or
  2. As soon as practicable, but not later than two hours from the time of the initial report.
- (c) Officers shall inform the complainant that the information will be entered into the Missing Persons Clearinghouse.

#### **425.4 MISSING PERSONS LOCATED**

A missing persons investigation may be concluded when the missing person is located or when another agency accepts the case and formally assumes the investigative responsibilities.

- (a) Runaways
1. Refer to General Order 317.3.1.c (Handling Juveniles) on how to properly recover juvenile runaways.
- (b) All Other Missing Persons
1. Officers that locate all other missing persons or respond to the scene of a located missing person shall immediately notify Communications and advise them to cancel any BOLO, NCIC, TCIC, and the state clearinghouse (Tex. Code of Crim. Pro. art. 63.009(f)).
    - (a) If the person recovered is 18 years of age or older, the officer's responsibility is to confirm that the person is safe.
    - (b) Officers shall not divulge the location of a located person 18 years of age or older if the located person requests his location not be disclosed to anyone unless there is a court order that places that person in the care and custody of another.
  2. Officers shall document the recovery as follows:
    - (a) Complete a supplement to the original incident report if the missing person originated from APD; or
    - (b) Complete an incident report if the missing person originated from another agency.



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# Public Alerts

### 426.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines for alerting the public to important information and soliciting public aid when appropriate.

### 426.2 POLICY

Public alerts may be employed using the Emergency Alert System (EAS), local radio, television, social media sites, and press organizations and other groups to notify the public of incidents, or enlist the aid of the public, when the exchange of information may enhance the safety of the community. Various types of alerts may be available based upon each situation and the alert system's individual criteria.

### 426.3 AMBER ALERTS™

AMBER Alerts™ are used to provide a statewide system for the rapid dissemination of information regarding abducted children.

#### 426.3.1 AMBER ALERT™ CRITERIA

An AMBER Alert™ can only be activated by the state network and only approved by DPS if all of the following criteria are met:

- (a) There is reason to believe that a child 17 years of age or younger has been abducted. For purposes of this section, abduction includes a child who is younger than 14 years of age:
  1. who departed willingly with someone more than three years older than the child;
  2. who departed without a parent or legal guardian's permission; and
  3. the person with whom the child departed is not an immediate relative of the child, as defined by Subchapter B, Chapter 573, Tex. Gov't. Code;
- (b) It is believed that the abducted child is in immediate danger of serious bodily injury or death or of becoming the victim of a sexual assault;
- (c) A preliminary investigation has taken place that verifies the abduction and eliminates alternative explanations for the child's disappearance; and
- (d) There is sufficient information available to disseminate to the public that could assist in locating the child, the person suspected of abducting the child or a vehicle that may have been used in the abduction.

### 426.4 BLUE ALERTS

Blue Alerts are used to provide a statewide system for the rapid dissemination of information regarding a violent criminal who has seriously injured or killed a local, state, or federal law enforcement officer.



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#### 426.4.1 BLUE ALERT CRITERIA

The following criteria are utilized to determine if a Blue Alert should be issued:

- (a) A law enforcement officer has been killed or seriously injured by an offender;
- (b) The offender poses a serious risk or threat to the public or other law enforcement personnel; and
- (c) A detailed description of the offender's vehicle, vehicle tag or partial tag is available for broadcast to the public.

#### **426.5 SILVER ALERTS**

Silver Alerts are used to provide a statewide system for the rapid dissemination of information regarding a missing person who is a senior citizen and has an impaired mental condition.

#### 426.5.1 SILVER ALERT CRITERIA

The following criteria are utilized to determine if a Silver Alert should be issued:

- (a) The person reported missing is 65 years of age or older or has Alzheimer's disease;
- (b) The person's location is unknown;
- (c) The person has an impaired mental condition, including Alzheimer's disease, and the family or legal guardian provides documentation of the condition;
- (d) It is determined that the person's disappearance poses a credible threat to their health and safety;
- (e) The Silver Alert request is made within 72 hours of the person's disappearance; and
- (f) There is sufficient information available to disseminate to the public that could assist in locating the person.

#### **426.6 ENDANGERED MISSING PERSONS ALERTS**

Endangered Missing Persons Alerts are used to provide a statewide system for the rapid dissemination of information regarding those with intellectual disabilities.

#### 426.6.1 ENDANGERED MISSING PERSONS ALERT CRITERIA

The following criteria are utilized to determine if an Endangered Missing Persons Alert should be issued:

- (a) There is reason to believe that a person with an intellectual disability is missing and the person's location is unknown. For purposes of this section, a person is considered to have an intellectual disability if:
  - 1. the person has been evaluated by a physician or psychologist licensed in this state, as required by Tex. Health and Safety Code § 593.005; and
  - 2. the medical professional has determined that the person suffers from an intellectual disability;
- (b) The activating official shall obtain a written diagnosis documenting the missing person's intellectual disability from the treating licensed physician or psychologist;

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- (c) The Endangered Missing Persons Alert request is made within 72 hours of the person's disappearance;
- (d) It is believed that the person's disappearance poses a credible threat to their health and safety; and
- (e) There is sufficient information available to disseminate to the public that could assist in locating the person.

#### **426.7 CAMO ALERTS**

Camo Alerts are used to provide a statewide system for the rapid dissemination of information regarding a missing military member who has elected to participate in the system and who suffers from a mental illness or a traumatic brain injury.

##### **426.7.1 CAMO ALERT CRITERIA**

The following criteria are utilized to determine if a Camo Alert should be issued:

- (a) The person has been reported missing to the Department and an employee has verified:
  - 1. The person is a current or former military member and is a participant in the Camo Alert System;
  - 2. The person's location is unknown; and
  - 3. The person suffers from a mental illness, including post-traumatic stress disorder (PTSD), or a traumatic brain injury. When practicable, the officer receiving the report should request documentation regarding the person's illness or injury; and
- (b) There is reason to believe that the person's disappearance poses a credible threat to the person's health and safety, or to the health and safety of another.

#### **426.8 CLEAR ALERTS**

Missing Adult Alerts are used to provide a statewide system for the rapid dissemination of information regarding a missing adult who is younger than age 65. This alert is titled the CLEAR Alert System (Coordinated Law Enforcement Adult Rescue Alert).

##### **426.8.1 CLEAR ALERT CRITERIA**

The following criteria are utilized to determine if a Missing Adult Alert should be issued:

- (a) The person reported missing is between 18 and 64 years of age;
- (b) The adult's location is unknown;
- (c) The adult has been missing for less than 72 hours;
- (d) A preliminary investigation determines:
  - 1. The adult is in imminent danger of bodily injury or death; or
  - 2. The disappearance of the missing adult may not have been voluntary, including cases of abduction or kidnapping; and

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- (e) There is sufficient information available to disseminate to the public that could assist in locating the person or a vehicle suspected of being related to the disappearance of the person.

#### **426.9 ALERT PROCEDURES**

In the event a confirmed missing person meets the criteria for an alert, the following procedures shall be followed:

- (a) Officers shall notify their immediate supervisor.
- (b) Supervisors shall notify the investigative unit to request an alert system activation.
  - 1. AMBER™, Blue, Silver, Endangered Missing Persons Alerts, and CLEAR Alerts are assigned to the Missing Persons Unit.
  - 2. Camo Alerts are assigned to the Crisis Intervention Unit.
- (c) The appropriate investigative unit shall:
  - 1. Submit the completed request form to the State Operations Center (SOC);
  - 2. Include required documentation;
  - 3. Email photographs of the missing person, suspect, and/or vehicles, if available, to the SOC;
  - 4. Confirm the form and any sent emails were received by the SOC;
  - 5. Ensure that appropriate entries are made in the TCIC and NCIC databases;
  - 6. Notify the Public Information Office (PIO);
  - 7. Ensure a press release is prepared by PIO or the investigative unit as soon as practicable to include:
    - (a) The person's identity, age, and description;
    - (b) Photograph, if available;
    - (c) Pertinent vehicle description;
    - (d) Suspect information, if applicable;
    - (e) Details regarding location of incident, direction of travel, potential destinations, if known;
    - (f) Name and phone number of the authorized media liaison; and
    - (g) A telephone number for the public to call with leads/information; and
  - 8. Ensure the press release is disseminated to local law enforcement agencies, television stations, social media sites, and radio stations.
- (d) PIO or the investigative unit shall prepare follow-up press releases with updates regarding the search and investigation, or immediately upon locating the missing person.

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#### **426.10 EXTENSION OF ALERT**

If it is determined an extension beyond the initial 24 hours is needed, the Investigative Unit supervisor should contact the State Operations Center during the 23 hour reminder.

#### **426.11 TERMINATION OF ALERT**

An Alert system activation should be terminated with respect to a particular missing person if:

- (a) AMBER and EndangeredMissing Person Alert:
  - 1. The abducted child or missing person is recovered or the situation is otherwise resolved; or
  - 2. The director determines that the alert system is no longer an effective tool for locating and recovering the abducted child or missing person.
- (b) Blue Alert:
  - 1. The missing suspect is apprehended;
  - 2. The department receives evidence the missing suspect has left this state; or
  - 3. The department determines the alert system will no longer aid in the apprehension of the missing suspect.
- (c) Silver Alert:
  - 1. The missing person is located or the situation is otherwise resolved; or
  - 2. The notification period ends, as determined by department rule.
- (d) Camo Alert:
  - 1. The missing military member is located or the situation is otherwise resolved; or
  - 2. The notification period ends, as determined by department rule.
- (e) CLEAR Alert:
  - 1. The missing adult is located or the situation is otherwise resolved; or
  - 2. The notification period ends, as determined by department rule.



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# Exigent Mobile Phone Ping Requests

### 427.1 PURPOSE AND SCOPE

Case law has determined that pinging a mobile phone is the equivalent of conducting a search; therefore, probable cause must exist prior to obtaining ping results. A court order, signed by a district judge, must be obtained prior to pinging a mobile phone, except under exigent circumstances. This order outlines the procedure for officers wishing to use a mobile phone ping in emergency (exigent) situations.

#### 427.1.1 DEFINITIONS

**Designated Officer** - For the purposes of this section, a Designated Officer is an APD Officer of any rank who has completed the statutory 24 hours of kidnapping training and is authorized in writing by the Austin Police Department Chief of Police as well as the Travis County District Attorney as having the authority to declare exigent circumstances for the purposes of pinging a mobile phone without a search warrant. A list of current Designated Officers is maintained in the Watch Commander's Office and is available upon request.

**Appropriate Investigative Unit** - The unit ultimately responsible for the investigation of the highest applicable criminal charge in an incident (e.g., Region Detectives for Terroristic Threat; Robbery for Robberies, etc.)

### 427.2 EXIGENT MOBILE PHONE PING REQUESTS

- (a) Per Texas CCP statutory restrictions, exigent mobile phone pings will NOT be utilized to attempt to locate a suicidal subject who poses a threat only to themselves.
- (b) Some examples of incidents that may qualify for an exigent mobile phone ping are:
  1. Active kidnappings.
  2. Aggravated crime sprees within a short amount of time (e.g., multiple robberies involving shootings within an hour of each other).
  3. Missing or suicidal subjects who threaten another person with serious bodily injury or death or exposes another person to substantial risk of serious bodily injury or death.

#### 427.2.1 EXIGENCY REQUIREMENTS

Officers requesting a mobile phone ping in emergency situations shall adhere to the following guidelines. Exigent mobile phone ping request must meet all of the following requirements:

- (a) An immediate threat of serious injury or loss of life of another person; and
- (b) Reason to believe a criminal offense is, or will be, involved; and
- (c) There is no time to obtain a court order; and
- (d) Belief that the phone number is subscribed to or is in possession of the suspect or victim and/or is likely to determine the location of the suspect or victim; and

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- (e) Other means to locate suspect have been attempted and were unsuccessful and/or employing other means would create a substantial risk of serious injury or loss of life to the officer or another if attempted.

#### 427.2.2 REQUESTING AN EXIGENT MOBILE PHONE PING

- (a) Officers seeking to ping a mobile phone should first determine whether the phone can be located directly by the owner or someone else with legal standing without the need for legal process or an exigent request.
  - 1. Consent is needed by the owner of the phone, or by someone with legal standing.
  - 2. The owner can attempt to locate the phone themselves through a variety of “find my phone” apps through the internet or other mobile devices.
  - 3. If this method is used, the officer shall document the circumstances in their report and no other notification is needed.
- (b) When the owner is not available or the officer is unable to utilize this method for some other reason, the officer shall contact their supervisor when requesting an exigent mobile phone ping that meets all the exigency requirements listed in 427.2.1 above.
- (c) The supervisor shall review the circumstances surrounding the incident, and upon verifying that the request meets the requirements shall choose between the following options:
  - 1. In almost all situations, the supervisor should directly contact the appropriate investigative unit ultimately responsible for investigation of the incident and follow their direction on the next steps in the process. The Watch Lieutenant does not need to be notified.
  - 2. In rare instances, there may be a situation in which circumstances dictate there is no time to go through the normal notification process of the investigative unit. In these time critical instances, the supervisor should notify the Watch Lieutenant directly and request the ping.
    - (a) Supervisors should keep in mind that the preferred and most common method will be to contact the appropriate investigative unit directly as they will be following up on criminal charges and need to be included in the process as early as possible.
    - (b) An example of a situation where a supervisor should circumvent this process and contact the Watch Lieutenant directly is when there is real and credible information that someone is going to commit an act of violence in the very near future and an immediate mobile phone ping is the only way to prevent the violence from taking place. A reasonable belief must exist that waiting for the extra step of notifying the investigative unit is likely to result in loss of life or serious bodily injury.
    - (c) The Watch Lieutenant shall make the final determination if they will initiate the ping, or redirect the supervisor to the appropriate investigative unit.

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#### 427.2.3 EXECUTING AN EXIGENT MOBILE PHONE PING

- (a) If an investigative unit is executing the mobile phone ping, the on call investigator who was contacted shall:
  - 1. Contact any Designated Officer from the list maintained in the Watch Commander's Office to request formal authorization/permission to ping the mobile phone.
  - 2. If approved by the Designated Officer, work directly with the phone carrier to request the ping and provide the location information to involved units until the incident is resolved.
    - (a) Once approved, if necessary, the appropriate investigative unit may request assistance from the Watch Lieutenant's Office with completing and signing the necessary paperwork as well as receiving and disseminating the location information from the phone carrier to the involved units.
  - 3. The Designated Officer shall immediately afterward, notify the on-call Assistant District Attorney at 512-923-3782 (daytime) or 512-860-2002 (after hours).
- (b) If the Watch Lieutenant agrees with the patrol supervisor that there is no time to notify the appropriate unit, the Watch Lieutenant shall:
  - 1. Obtain authorization/permission from any Designated Officer available to them. For the purposes of this process, a short list of Designated Officers who have agreed to be available for this purpose may be kept on file at the Watch Lieutenant's Office so that they may obtain legal authorization in an expedited manner.
    - (a) The Designated Officer providing authorization/permission shall immediately afterward, notify the on-call Assistant District Attorney at 512-923-3782 (daytime) or 512-860-2002 (after hours).
  - 2. Request and obtain the location information from the phone carrier by using the Watch Lieutenant's Guide to Exigent Cell Phone Pings flowchart located in the Watch Lieutenant's Office.
  - 3. As soon as is reasonably possible under the circumstances, notify the appropriate investigative unit so they may take control over the cell ping and overall investigation.
  - 4. The appropriate investigative unit shall be responsible for completing any additional paperwork required by law.

#### 427.2.4 RESPONSIBILITY TO TRAIN AND UPDATE LIST

- (a) As the need arises, the APD Training Academy will coordinate and host trainings which will fulfill the statutory requirements to authorize new Designated Officers to various investigative units throughout the Department.
- (b) It is the responsibility of the supervisor of any unit with investigatory responsibility to ensure they are aware of how to obtain a list of Designated Officers from the Watch Commander's Office should the need arise to conduct an exigent cell phone ping.

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- (c) At the conclusion of the training, the APD Training Academy will supply the list of newly trained Designated Officers to the Intelligence Division Commander.
  - 1. The Intelligence Division Commander, or his designee, will add the names of the new Designated Officers to the Department wide list and remove any names of personnel who have promoted or moved out of investigative assignments. The newly updated list will be provided to the Chief's Office to fulfill the statutory requirement of designating these officers in writing both by the Chief of Police and the Travis County District Attorney.

#### 427.2.5 DOCUMENTATION

- (a) The officer originally requesting the cell phone ping shall ensure that a detailed offense report outlining the facts and circumstances that gave probable cause to ping the phone is completed in Versadex prior to the end of their tour of duty.
- (b) Regardless of whether the mobile phone ping is initiated by the appropriate investigative unit or the Watch Lieutenant, the following steps shall take place:
  - 1. The Designated Officer who authorized the mobile phone ping shall immediately afterward, notify the on-call Assistant District Attorney via the 24 hour on-call number at 512-923-3782 (daytime) or 512-860-2002 (after hours).
  - 2. Within 48 hours of ordering the exigent cell phone ping, the assigned investigator in the appropriate investigative unit shall ensure the applicable court order has been properly completed, delivered to the District Attorney's Office, and signed by the appropriate judge.
  - 3. All Officers of any rank who took investigative action of any kind, including but not limited to authorizing the cell ping and/or executing the cell ping, will write a supplement to the original report detailing their involvement in the process.





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# Medical Marijuana

### 428.1 PURPOSE AND SCOPE

The purpose of this order is to provide members of this department with guidelines for investigating the acquisition, possession, transportation, delivery, production or use of marijuana under Texas's medical marijuana laws.

#### 428.1.1 DEFINITIONS

Definitions related to this order include (Tex. Occ. Code § 169.001; Tex. Health and Safety Code § 487.001):

**Dispensing organization** - An organization licensed by DPS to cultivate, process and dispense low-THC cannabis to a patient under a prescription.

**Low-THC cannabis** - Marijuana and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin or oil of that plant that contains not more than 0.5 percent by weight of tetrahydrocannabinols (THC).

### 428.2 POLICY

Texas medical marijuana laws are intended to provide protection from prosecution to those who use or possess marijuana in the form of low-THC cannabis by prescription. However, Texas medical marijuana laws do not affect federal laws and there is no medical exception under federal law for the possession or distribution of marijuana. The Austin Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under Texas law and the resources of the Department.

The Texas medical marijuana law only permits prescriptions issued under the Compassionate Use Program of the State of Texas.

### 428.3 INVESTIGATION

Investigations involving the possession, delivery, production or use of marijuana generally fall into one of two categories:

- (a) Investigations when no person makes a medicinal claim.
- (b) Investigations when a medicinal claim is made by a person with a prescription.

#### 428.3.1 INVESTIGATIONS WITH NO MEDICAL CLAIM

In any investigation involving the possession, delivery, production or use of marijuana or drug paraphernalia where no person claims that the marijuana is used for medicinal purposes, the officer should proceed with a criminal investigation. A medicinal defense may be raised at any time, so officers should document any statements and observations that may be relevant to whether the marijuana was possessed or produced for medicinal purposes.

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#### 428.3.2 INVESTIGATIONS INVOLVING A PERSON WITH A PRESCRIPTION

Neither the patient for whom the low-THC cannabis is prescribed, nor the patient's legal guardian, shall be arrested for possession of low-THC cannabis obtained under a valid prescription from a dispensing organization (Tex. Health & Safety Code § 481.111).

Reasonable effort should be taken to confirm a person has a prescription for low-THC cannabis if it is not in the person's possession.

#### 428.3.3 ADDITIONAL CONSIDERATIONS

Officers should consider the following when investigating an incident involving marijuana possession, delivery, production or use:

- (a) Officers may obtain information from the Compassionate-Use Registry for the purpose of verifying whether a patient has a prescription for low-THC cannabis and whether it has been filled (37 Tex. Admin. Code § 12.41).
- (b) Officers may obtain information from the Texas Department of Public Safety for the purpose of verifying whether a purported licensed dispensing organization has a valid license.

#### **428.4 FEDERAL LAW ENFORCEMENT**

Officers should provide information regarding a marijuana investigation to federal law enforcement authorities when it is requested by federal law enforcement authorities or whenever the officer believes those authorities would have a particular interest in the information.

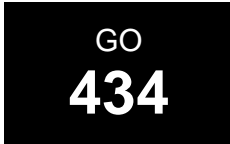
#### **428.5 DEPARTMENT RESPONSIBILITIES**

Sworn personnel shall ensure that marijuana, drug paraphernalia or other related property seized from a person engaged or assisting in the use of medical marijuana is not authorized for destruction without a thorough investigation, direction from the County/District Attorney Offices, or court order.

Upon the prosecutor's decision to forgo prosecution, or the dismissal of charges, or an acquittal, the Disposal Unit or Investigative Bureau should, as soon as practicable, authorize the return to the person from whom it was seized any useable marijuana, plants, drug paraphernalia, or other related property.

The Evidence Section shall not destroy marijuana that was alleged to be for medical purposes, except upon authorization from the investigative or Disposal Unit, or upon receipt of a court order.

Medical marijuana may be released to federal law enforcement authorities upon presentation of a valid court order, or by a written order of the assigned detective or investigative.



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# Death Investigations

### 434.1 PURPOSE AND SCOPE

The investigation of cases involving death includes those ranging from natural causes to homicide. Some causes of death may not be readily apparent and some cases differ substantially from what they appeared to be initially. The thoroughness of death investigations cannot be emphasized enough.

### 434.2 INVESTIGATION CONSIDERATIONS

Death investigation cases require certain actions be taken. Officers responding to the scene of a death incident shall adhere to the following guidelines:

- (a) Paramedics shall be called in all suspected death cases even when the death is obvious (e.g., decapitated, decomposed). Officers are not authorized to pronounce death, and shall obtain the time and doctor's name who pronounced death from EMS and document that information in their report.
- (b) A supervisor shall be notified in all death investigations.
- (c) Gather as much information regarding the incident and deceased as possible.
  1. Identify the name, DOB, address and social security number of the deceased, if possible.
  2. Identify the attending physician and whether he will sign the death certificate, if applicable.
  3. Identify any witness(es) to the incident and request that they remain on scene until the Homicide Unit determines if any witnesses need to be interviewed.
- (d) Notify the Homicide Unit to determine if the death is reportable and whether an investigator from the Homicide Unit will respond.
- (e) Establish a perimeter for suspicious deaths/homicides or as necessary.
- (f) Initiate a *Crime Scene Log* for suspicious deaths/homicides, or as necessary, to include a list of all persons who enter the crime scene and their purpose for doing so.
- (g) With the exception of certain Nursing Home and Hospice situations described in 434.3 below, officers responding to a death shall notify the appropriate authority and advise them of the circumstances of the death and the deceased person's information. The appropriate authority is the Travis County Medical Examiner (TCME) in Travis County, and the Justice of the Peace in Williamson or Hays Counties.
  1. The TCME investigator or Justice of the Peace shall notify the officer of who will sign the death certificate and who the deceased will be released to.
  2. If the deceased can be released to a funeral home, ensure the requested funeral home is notified.
- (h) Remain at the scene until the deceased has been removed by personnel from the TCME's Office or funeral home.

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- (i) Document all reportable natural deaths and suspicious deaths/homicides in an incident report as outlined in this order.
- (j) Except when it is necessary to provide information to EMS or other officers for life saving measures or for officer safety purposes, the following information should not be transmitted over the radio or provided to the public:
  - 1. The name of the victim,
  - 2. The nature, type, or location of injuries to any victim (however, generally stating gunshot wounds or stab wounds is appropriate),
  - 3. The specific type of weapon used, or
  - 4. Any other details that may compromise the integrity of the case.

#### 434.2.1 SEARCHING DEAD BODIES

The TCME or the Justice of the Peace is generally the only person permitted to search a body that is known to be dead. The only exception is that an officer is permitted to search the body of a person killed in a traffic collision for the limited purpose of locating an anatomical donor card. If such a donor card is located, the TCME or the Justice of the Peace shall be promptly notified. Should exigent circumstances indicate to an officer that any search of a known dead body is warranted prior to the arrival of the TCME or the Justice of the Peace, the investigating officer shall first obtain verbal consent from the TCME.

Whenever possible, a witness, preferably a relative to the deceased or a member of the household, should be requested to remain at the scene with the officer pending the arrival of the TCME or the Justice of the Peace. The name and address of this person shall be included in the narrative of the death report. The handling officer should obtain a receipt from the TCME or Justice of the Peace whenever personal effects are removed from the body of the deceased. This receipt shall be attached to the death report.

#### 434.3 REPORTABLE AND NON-REPORTABLE NATURAL DEATHS

Officers should assume that an apparent natural death is reportable until the officer can determine that all qualifications for a non-reportable natural death are met. Officers shall always initiate a report entitled "Deceased Person" when responding to a reportable natural death. Officers may contact the Homicide Unit at any time for guidance on any of the below items.

- (a) **Reportable Natural Death**
  - 1. A reportable death is a death that requires a law enforcement agency and a medical examiner or Justice of the Peace to be notified and an incident report to be written.
    - (a) Any death at a private residence is a reportable death unless the death meets the requirements of a "hospice death" as explained below.
    - (b) Any death of a child 17 and under is a reportable death and investigated by the Homicide Unit and reviewed by the Travis County Child Fatality Review Team.

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**(b) Nursing Home Death**

1. An apparent natural death at a nursing home is not always reportable; nursing homes are considered 24 hour health care facilities. A death that occurs at a nursing home is reportable only if it meets any of the conditions set forth in the Texas Code of Criminal Procedure (Art. 49.25, Sec 6 (a)).
2. An apparent natural death that occurs at an Assisted Living facility is considered an at home death and shall be reported.

**(c) Hospice Death**

1. An apparent natural death at a qualified Hospice facility is not considered a reportable death. Usually these facilities will not call police in the event of a death, however from time to time they may call police to the scene. If called to a qualified hospice facility, officers should verify that it is in fact a hospice death by asking for the Physician's Order that the decedent was a hospice appropriate patient. At any time officer may contact the Homicide Unit for guidance on determining the status of the hospice facility and the decedent. While on scene officer should inquire as to whether there are any suspicious circumstances surrounding the death. If there are no suspicious circumstances and it is verified that the facility is a qualified hospice facility and it is in fact a hospice death, the officer should go back in service without writing a report. There is no need to notify the Homicide Unit, nor is there a need to notify the TCME or the Justice of the Peace. This policy does not prevent any officer from notifying the Homicide Unit, writing a report or documenting any information if they feel it would be appropriate.
2. Although a private residence hospice death is by definition a reportable death, by agreement with the various counties described below, the responding officer may not need to initiate an incident report depending on the circumstances. Officer should verify that it is in fact a hospice death by asking for the Physician's Order that the decedent was a hospice appropriate patient. At any time officer may contact the Homicide Unit for guidance on determining the hospice status of the decedent. When responding to these scenes, officers should determine whether any suspicious circumstances exist. If any suspicious circumstances exist, officers should notify the Homicide Unit and document their findings in an incident report. If there are no suspicious circumstances and the below criteria are met, the officer may clear the call without writing a report and does not need to notify the Homicide Unit.

**(a) Private Residence Hospice Deaths Occurring in Travis County**

1. If no suspicious circumstances are present, the responding officers shall contact the Travis County Medical Examiner's office and speak with an investigator. If the TCME Investigator verifies that the decedent is a verified Hospice patient, the officer can clear the call with no report. There is no need to notify the Homicide Unit. The name of the TCME Investigator shall be logged into CAD notes

**(b) Private Residence Hospice Deaths Occurring in Williamson or Hays Counties**

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1. If no suspicious circumstances are present, and the below two criteria are met, the responding officer may clear the call without notifying the Justice of the Peace and without writing a report
  - (a) The responding officer verifies that the cause of death will be listed as natural, and that the terminal illness and subsequent death was not caused by a previous assault or any type of accident, motor vehicle, or otherwise
  - (b) The responding officer verifies with a family member or nurse on scene as to the name of the Hospice organization that is caring for the decedent as well as the name of the doctor willing to sign the death certificate and logs that information into the CAD call notes.

#### **434.4 DEATH NOTIFICATION**

It is normally the responsibility of the Medical Examiner's Office to make death notifications to the next-of-kin.

- (a) At the Medical Examiners' request and when practicable, notification to the next-of-kin may be made by the Victim Services Unit or investigative personnel.
- (b) If the next-of-kin lives in another jurisdiction, the law enforcement agency from that jurisdiction shall be requested to make the notification.

#### **434.5 REPORTING GUIDELINES**

Officers shall include the following information when an incident report is required:

- (a) Deceased persons information (e.g., name, DOB, race, sex).
- (b) How the body was discovered and by whom.
- (c) A description of the body and scene as it was found at the officers arrival.
- (d) Any alterations to the body or the scene made by the officer or any other person (e.g., EMS, AFD).
- (e) Time of death.
- (f) Name of physician who will sign the death certificate.
- (g) Name of witnesses.
- (h) Name and employee number of Homicide Investigator.
- (i) Name(s) of Medical Examiner's personnel.
- (j) Next of kin information.

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# Abandoned, Stolen, and Unauthorized Use of A Motor Vehicle

## 435.1 PURPOSE AND SCOPE

This order prescribes the guidelines for handling:

- (a) Abandoned/Junked Motor Vehicles.
- (b) Stolen Vehicles.
- (c) Unauthorized Use of Motor Vehicles.

## 435.2 ABANDONED/JUNKED MOTOR VEHICLES

- (a) Generally, routine calls regarding abandoned/junked vehicles shall not be dispatched to field officers.
  - 1. Communications shall obtain what information the complainant can give and forward it to the Abandoned Vehicle Unit. Communications shall direct the complainant to contact the Abandoned Vehicle Unit for further assistance.
  - 2. An officer should be dispatched to the scene if the complainant reports that the vehicle may be stolen, is creating an immediate traffic problem, or appears to have been involved in the commission of a crime.
- (b) When Communications and/or officers receive a complaint regarding an alleged violation of the Parking in a Front or Side Yard City Ordinance (16-5-22) they shall direct the complainant to the appropriate District Representative Unit.
- (c) Follow-up on all calls for service referred to the Abandoned Vehicle Unit shall become the responsibility of the Abandoned Vehicle Unit. The supervisor shall be responsible for ensuring that the proper follow-up investigation is conducted.
- (d) Tagging Abandoned Vehicles
  - 1. If a field officer tags an abandoned vehicle on public property, the officer will initiate an incident report using the "Abandoned Vehicle" title code.
    - (a) The Abandoned Vehicle Unit will be responsible for follow-up on the removal of the vehicle.
  - 2. Field officers shall not tag abandoned vehicles on private property. Officers shall contact the Abandoned Vehicle Unit or appropriate District Representative officer for assistance with abandoned/junked vehicles on private property.
- (e) Unless the vehicle is a traffic hazard, officers will not tow any tagged vehicle except as authorized by the Abandoned Vehicle Unit.

### 435.2.1 ABANDONED MOTOR VEHICLES ON UT PROPERTY

- (a) Abandoned Vehicles on Public Streets

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1. The University of Texas Police Department (UTPD) directly provides abandoned vehicle information to the Abandoned Vehicle Unit.
  2. Upon receipt, the Abandoned Vehicle Unit shall handle the complaint in the same manner as any other abandoned vehicle in the city limits.
- (b) Abandoned Vehicles on Private Property
1. UTPD directly provides the Abandoned Vehicle Unit with the private property affidavit signed by the owner of the property stating that the owner wants the vehicle removed.

### **435.3 STOLEN VEHICLES**

#### **435.3.1 STOLEN VEHICLE REPORT**

- (a) Prior to determining if a vehicle is stolen, officers shall:
1. Determine if the alleged stolen vehicle is actually an Unauthorized Use of a Motor Vehicle (UUMV); and
  2. Find out if the vehicle has been impounded or repossessed by running the license plate.
- (b) **Stolen Vehicles**
1. Officers should inform a subject reporting a stolen vehicle of the reporting and recovery process.
  2. Officers shall require the subject to complete and sign an Auto Theft Affidavit.
    - (a) If the subject refuses to sign the affidavit, the officer will inform him that the vehicle information will not be entered into TCIC/NCIC.
    - (b) Auto Theft affidavits shall be scanned into the Xerox Workflow Scanning "Auto Theft Affidavit" folder by the end of an officer's tour of duty.
    - (c) The original auto theft affidavit shall be sent via interoffice mail to the Auto Theft Unit.
  3. Officers shall inform the subject that the assigned investigator will notify him if the vehicle is recovered.
  4. Officers shall provide the complainant/victim with the incident number and the phone number to the Auto Theft Interdiction Unit.
  5. Officers should inform the complainant/victim to notify 3-1-1, 9-1-1 or the Auto Theft Interdiction Unit if he recovers the vehicle so an officer can be dispatched to the scene.
  6. Request Communications to enter the vehicle into TCIC/NCIC and the BOLO file.
- (c) **Stolen Vehicle Incident Report Guidelines**
1. Officers shall complete an incident report titled "Auto Theft." Indicate whether the subject signed an Auto Theft Affidavit.



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- (a) If there is one victim involving multiple stolen vehicles (e.g. Auto Dealership) then only one report incident number is required.
- (b) If there is more than one victim involving multiple stolen vehicles at one location (e.g. Apartment Complex) then separate incident numbers are required for each victim.

#### 435.3.2 RECOVERING STOLEN VEHICLES

- (a) When a call for service indicates a stolen vehicle has been found, or a stolen vehicle hit is returned through TCIC/NCIC, confirmation shall be obtained by an officer prior to recovering the vehicle.
  - 1. Officers shall be dispatched to all recovered stolen vehicle incidents.
  - 2. Officers shall request Communications to have the vehicle removed from TCIC/NCIC.
  - 3. All confirmed and recovered stolen vehicles shall be processed for latent prints.
    - (a) Vehicles should be processed by a Property Crime Technician if one is on-duty and available within a reasonable amount of time. A Property Crime technician shall not be left alone while processing a recovered stolen vehicle.
    - (b) If a Property Crime Technician is not available, the responding officer shall process the recovered vehicle for prints.
    - (c) If a stolen vehicle is not processed at the time it is confirmed and recovered, the reason must be explained in the narrative of the incident report/supplement.
  - 4. Confirmed stolen vehicles may be returned to the registered owner if he is present at the scene, however, they shall still be processed for latent prints.
  - 5. If the registered owner is not present, confirmed stolen vehicles shall be impounded by the City contracted impound wrecker, regardless of its involvement in other incidents, collisions, or its condition.
  - 6. Recovered stolen vehicle incidents at a wrecker company other than the City contracted impound wrecker shall be handled as follows:
    - (a) The vehicle should remain at the storage lot except under unusual circumstances (e.g., investigative purposes).
      - 1. Supervisor or Investigative Unit approval is required to move the vehicle.
      - 2. If there is no need to move the vehicle:
        - (a) The vehicle shall be confirmed and processed at its current storage location.
        - (b) A hold can be placed on the vehicle for the Investigative Unit involved, if needed.

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- (b) When a recovered stolen vehicle has been processed and no hold is placed, the wrecker company may release the vehicle to the owner, lien holder or insurance company and collect accumulated fees.
- 7. Recovered out-of-city stolen vehicles where a suspect is present, and no local charges exist, shall be handled as follows:
  - (a) The request for confirmation shall include:
    - 1. All pertinent information regarding the vehicle and suspect; and
    - 2. Authorization to hold the suspect for that agency before officially arresting the suspect.
  - (b) The suspect shall be detained until the confirmation is received.
- (b) **Recovered Stolen Vehicle Incident Report Guidelines**
  - 1. If the vehicle was originally reported stolen to APD, the responding officer shall write a supplement to the original incident report.
  - 2. If the vehicle was originally reported stolen to another law enforcement agency, the responding officer will generate a new incident report titled "OOC Auto Theft". The originating agency case number should be documented in the narrative.

#### **435.4 UNAUTHORIZED USE OF A MOTOR VEHICLE**

An Unauthorized Use of a Motor Vehicle (UUMV) occurs when a complainant has allowed another person to use their vehicle and the person has not returned it. Officers responding to a possible stolen vehicle incident need to determine if the complainant is aware of who is in possession of the vehicle and if the person had been given permission to use the vehicle at one point. This is a matter of current or prior permission to use the vehicle, not a matter of familiarity with the suspect.

- (a) Officers responding to a UUMV incident shall take the following steps:
  - 1. Determine if the vehicle has been impounded or repossessed by running the license plate and/or VIN.
  - 2. Provide the complainant with the UUMV form letter and incident number.
  - 3. Inform the complainant it is their responsibility to send the UUMV form letter by certified mail with return receipt requested to the last known address of the person who had possession or control of the vehicle. This will serve as an official notice demanding return of the vehicle within 10 days of receipt of the letter.
  - 4. Inform the complainant the incident will remain a civil matter until the return receipt has been received and the 10 days have passed.
  - 5. Inform the complainant that once the 10 days have passed they should contact the Auto Theft Interdiction Unit at 512-974-5265 to schedule an appointment. Advise the complainant that only after they have met with a detective and provided a sworn statement will the vehicle be entered as stolen.
- (b) UUMV Incident Report Guidelines

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1. Officers will enter notes into the CAD call indicating who was given the UUMV form letter and their contact information.
2. Officers will ensure that the call type is changed to UUMV and clear the call 10-8-5. No written report needed.



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# Identity Theft

### 436.1 PURPOSE AND SCOPE

Identity theft is a growing trend that frequently involves related crimes in multiple jurisdictions. This order is intended to provide guidelines for the reporting and investigation of such crimes.

### 436.2 REPORTING

- (a) In an effort to maintain uniformity in reporting, officers presented with the crime of identity theft (Tex. Penal Code § 32.51) shall initiate a report for victims residing within Austin, regardless of where the incident occurs.
- (b) While victims should make a report to the law enforcement agency where the victim resides, officers of this department should investigate and report any identity theft related incident that occurs within Austin, regardless of where the victim resides (e.g., the victim lives elsewhere but the stolen credit card was used in Austin).
- (c) If a victim does not reside within Austin and the incident did not occur within APD jurisdiction, the officer may either take a courtesy report to be forwarded to the victim's residence agency or encourage the victim to promptly report the identity theft to the law enforcement agency where he resides.
- (d) Officers should include all known incidents of fraudulent activity (e.g., credit card number applied for in victim's name when the victim has never made such an application).
- (e) Officers should also reference all known reports made by the victim (e.g., U.S. Secret Service, credit reporting bureaus, U.S. Postal Service and Department of Public Safety, Driver License Division) with all known report numbers.
- (f) Officers should make a notation in the report narrative if the victim is an elderly individual, as defined by Tex. Penal Code § 22.04, since the penalty for offenses committed against an elderly individual is enhanced (Tex. Penal Code § 32.51).
- (g) Following supervisory review and department processing, the initial report should be forwarded to the appropriate Investigative Unit for follow-up investigation, coordination with other agencies and prosecution as circumstances dictate.

### 436.3 INFORMATION

The victim should also contact the Federal Trade Commission, which is responsible for receiving and processing complaints under the Identity Theft and Assumption Deterrence Act. The victim can contact the FTC online at <http://ftc.gov> or by telephone at 1-877-ID Theft (877-438-4338). Additional information may be found at the United States Department of Justice (USDOJ) website, <http://www.usdoj.gov>.



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## Criminal Trespass

### 437.1 PURPOSE AND SCOPE

This order outlines the procedures for handling criminal trespass situations.

#### 437.1.1 DEFINITIONS

**Entry** - The intrusion of the entire body.

**Notice** - This may be in the following forms:

- (a) Oral or written communication by the owner or someone with apparent authority to act for the owner; or
- (b) A sign(s) posted on the property or at the entrance to a building where it is reasonably likely to come to the attention of intruders indicating that entry is forbidden; or
- (c) Fencing or any other enclosure designed to exclude intruders.

**Owner/Agent** - Person(s) designated as the owner or with apparent authority to act on behalf of the owner (e.g., manager, custodian).

### 437.2 INVESTIGATION GUIDELINES

For a violation to have occurred:

- (a) A subject must enter (or remain) in or on the property without consent of the owner/agent and the subject received notice that entry was forbidden (within one year prior to the current date); or
- (b) A subject had consent to be on the property but the owner/agent has withdrawn consent and the subject fails to leave.

#### 437.2.1 ARREST AUTHORITY

Officers should be familiar with Chapter 14 of the Texas Code of Criminal Procedure (CCP) and Texas Penal Code 30.05 (PC 30.05) when enforcing criminal trespass offenses. The authority to make a warrantless arrest is contingent upon the particular circumstances an officer encounters when responding to trespass-related incidents. Officers will not make an arrest unless the violation occurs in the officer's presence or view, or the offense is committed in a manner which constitutes a breach of the peace. Furthermore, the other guidelines and stipulations established by this order must be met before an officer can make an arrest for criminal trespass.

- (a) Officers relying on CCP article 14.01(b) [offense within view] to make a warrantless arrest for criminal trespass do not need to actually witness the offense to make an arrest. Officers can rely on the totality of the circumstances, including any/all of the following, to establish probable cause and show that the offense was committed in their presence or view under CCP article 14.01(b):
  1. Facts within the arresting officer's personal knowledge and observations, including first-hand inspections of physical or video evidence.

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2. Trustworthy or reliable information from a credible person, including probative video of a suspect committing the offense.
  3. Information from fellow officers.
- (b) Except under narrow and limited circumstances, a criminal trespass offense alone - absent the threat of violence - is typically not considered a breach of the peace, therefore:
1. Residents generally may not legally arrest for this offense (i.e. citizen's arrest).
  2. Officers will not make an arrest unless the violation occurs in the officer's presence or view as defined by section (a), or is one of the rare instances in which a criminal trespass could be considered a breach of the peace.
- (c) This section does not eliminate the need to obtain arrest warrants in many situations. If less intrusive means adequately resolve the situation and serve the interests of justice, and there is no other public safety concern that might justify more immediate action, officers should seek an arrest warrant.
- (d) Officers should consult with a supervisor, the applicable investigative unit, or the Arrest Review Unit if further guidance is required to determine the most appropriate method for resolving a particular incident.

#### 437.2.2 TRESPASS NOT IN PROGRESS - JUST OCCURRED

Officers should not make warrantless arrests for criminal trespass that occurred at an earlier time and which the officer did not personally observe unless:

- (a) The offense recently occurred and the subject is still nearby the property, and
- (b) The officer can develop reliable and credible evidence, including video and/or witness statements, sufficient for the officer to reasonably believe that the subject committed the earlier criminal trespass. This can include a store owner, employee, or other witness's credible account that the person was at the place in question, and
- (c) The officer confirms that the subject had previously received notice that entry was forbidden or received notice to depart, but failed to do so.
  1. To ensure proof of the required notice element, officers shall rely on documented or personally observed criminal trespass notices, posted signage, or the presence of fencing (or other physical forms of notice listed in Penal Code § 30.05) to verify that the subject had prior notice that entry was forbidden or received notice to depart, but failed to do so.
  2. Officers should confirm and document the way in which the subject received notice as prescribed in section 437.2.4 (b) of this order.

#### 437.2.3 TRESPASS IN PROGRESS - CONSENT WITHDRAWN

In cases where a subject initially enters a property with consent but fails to leave when given notice to do so by the owner/agent, officers shall adhere to the following guidelines:

- (a) Officers must witness:
  1. The subject in/on the property; and

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2. The owner/agent administer to the subject the notice to leave.
- (b) If the subject does not leave, officers may make an arrest for criminal trespass.
- (c) If the subject leaves, officers shall write a criminal trespass notice report as outlined in this order.

## 437.2.4 TRESPASS IN PROGRESS - PRIOR NOTICE DOCUMENTED

Officers may make an arrest for criminal trespass when the officer witnesses a subject on the property without the consent of the owner/agent after the subject received notice that he was not to enter and meets the following guidelines:

- (a) The complainant has sole or undisputed authority to restrict the subject from the location (e.g., another tenant in an apartment complex may allow others on the premises' common areas).
- (b) Confirm and document the way in which the subject received notice:
  1. Previous oral notice witnessed by the officer and less than one year old.
  2. Previous oral notice was documented in an incident report and less than one year old.
  3. Written notice less than one year old (e.g., *APD Criminal Trespass Incident Form*, proof by registered letter).
  4. Fencing or other enclosure obviously designed to exclude intruders.
  5. Posted sign prohibiting entry:
    - (a) The sign should state "No Trespassing," and may lay out the parameters of the restriction. The sign may allow for certain individuals to enter the premises such as tenants, customers, or patients.
    - (b) Arrest will not be made when conditions of the posted sign single out a specific class group such as transients, homeless people, or a minority group.

## 437.2.5 TRESPASS IN PROGRESS - PRIOR NOTICE NOT DOCUMENTED

In cases where the subject is witnessed on the property by an officer and the owner/agent claims to have previously given a trespass notice to the subject but it is not documented; and

- (a) The owner/agent will immediately furnish an affidavit attesting that a prior trespass notice was given to the subject, the subject may be arrested.
- (b) The owner/agent cannot or will not immediately furnish an affidavit attesting that a prior trespass notice was given to the subject:
  1. The owner/agent should administer another trespass notice to the subject in the officers presence and advise the subject to leave the property:
    - (a) If the subject does not leave, officers may make an arrest for criminal trespass.

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- (b) If the subject leaves when given notice, the officer will write a criminal trespass incident report as outlined in this order and instruct the owner/agent to follow-up with the appropriate Investigative Unit if he wishes to file charges.

#### 437.2.6 TRESPASS IN PROGRESS - PRIOR NOTICE MORE THAN ONE YEAR OLD

In cases where the subject is witnessed on the property by the officer but the trespass notice is more than one year old:

- (a) The owner/agent should administer another trespass notice to the subject in the officer's presence and advise the subject to leave the property:
  - 1. If the subject does not leave, officers may make an arrest for criminal trespass.
  - 2. If the subject leaves when given notice, officers will write a criminal trespass incident report as outlined in this order and instruct the owner/agent to follow-up with the appropriate Investigative Unit if he wishes to file charges.
- (b) If the owner/agent provides compelling information, or the current incident contains aggravating circumstances that would substantially warrant an arrest for criminal trespass and the documented notice was given more than one year prior, the officer may make an arrest with supervisor approval. The details warranting arrest, as well as the supervisor's name, must be articulated in the incident report narrative.

#### 437.2.7 TRESPASS IN PROGRESS - OWNER/AGENT NOT ON-SCENE

Officers may arrest a subject that trespasses on a property when the owner/agent is not on-scene if all of the following are met:

- (a) A letter is on file from the owner/agent authorizing APD to facilitate an arrest on the owner's/agent's authority in the owner's/agent's absence; and
- (b) An APD incident report documenting the owner/agent's written authorization is verified prior to an arrest being made; and
- (c) A criminal trespass notice has previously been given to the subject in accordance with the PC 30.05.

### **437.3 REPORTING PROCEDURES**

#### 437.3.1 CRIMINAL TRESPASS NOTICE

When an officer witnesses a subject being given a trespass notice by an owner/agent, the officer shall document the incident by either writing a "Criminal Trespass Notice" incident report (title code 2730) or complete a *Criminal Trespass Notice Incident Form* (PD0040 or PD0040E). A subject does not need to be on the property at the time the notice is given in order for the notice to be valid.

If the notice is to be temporary and the suspect leaves when told to do so by the owner/agent, the officer will title the report "Assist Complainant" and document that the notice was temporary and should not be considered a permanent (e.g., up to one year) notice.

- (a) **Criminal Trespass Notice Report**



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1. Use the offense title "Criminal Trespass Notice" (title code 2730).
2. Use the Trespass Notice template when writing the narrative.
3. The narrative should contain the following information:
  - (a) Location of occurrence.
  - (b) Date and time of occurrence.
  - (c) Witnesses to the incident.
  - (d) Type of notice issued (e.g. oral, written, posted sign).
  - (e) Name and identifying information on the owner/agent who issued notice.
  - (f) Reason the owner/agent wants to issue the notice.
4. Under no circumstances will "Criminal Trespass Warning" or "CTW" be used in the body/narrative of the report. Refer to it as a criminal trespass notice, not a warning.

#### (b) **Criminal Trespass Notice Incident Form**

1. Officers may use the *Criminal Trespass Notice Incident Form* in lieu of writing an incident report.
2. The officer shall complete all the fields of the form except for the narrative and have the suspect read and sign the form in the officer's presence. If the suspect refuses to sign the form, notice is still considered to be valid. The officer will note the refusal on the form.
3. The officer shall detach both the yellow and pink pages of the completed form prior to beginning the narrative portion.
4. The suspect will be given the pink page of the completed 3-part form.
5. The owner/agent will be given the yellow page of the completed 3-part form. The officer shall recommend to the owner/agent that the copy be kept accessible and on file for future reference and documentation.
6. Officers will complete the narrative portion of the white page:
  - (a) The same information listed above shall be included in the narrative portion of the form.
  - (b) A copy of the white page will be turned in to the appropriate Investigative Unit inbox.
  - (c) The original white copy shall be turned in to Data Entry for entry into APD's electronic report writing system.
7. If additional narrative space is needed, attach a narrative form to the *Criminal Trespass Notice Incident Form*.

#### (c) **Criminal Trespass Notice List – SharePoint**

The Criminal Trespass Notice SharePoint list allows users to effectively and efficiently locate and identify active and expired Criminal Trespass Notices (CTNs). The list is searchable by

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case number, first and last names, business names, and addresses. The list provides two (2) views, *Active CTNs* and *Expired CTNs*. CTNs in the *Active CTNs* view will automatically transfer to the *Expired CTNs* view upon their expiration date.

The Criminal Trespass Notice SharePoint list is located on the Patrol page in SharePoint. The list is accessible through the Patrol page or the quick link titled Criminal Trespass Notices on the SharePoint homepage. The hyperlink on the *APDnet* homepage titled *Criminal Trespass Notices* allows direct access to a blank CTN template.

The Criminal Trespass Notice list in SharePoint shall be used to document:

1. Authorization Letters for Criminal Trespass Arrest – Business locations.
  - (a) Entered by District Representatives or patrol officers.
2. Criminal Trespass Notices issued by City Employees for City property.
  - (a) Entered by CTECC Non-Emergency Call Takers.
3. Criminal Trespass Notices issued by Patrol Officers.
  - (a) Entered by patrol officers.

#### 437.3.2 CRIMINAL TRESPASS ENFORCEMENT ACTION OR FOLLOW-UP

Any time an incident leads to an arrest or requires follow-up by an Investigative Unit where the owner/agent wishes to file charges, officers shall complete an incident report.

- (a) Use the offense title "Criminal Trespass" (title code 2716).
- (b) The following information must be documented in the narrative section of the report:
  1. Location of occurrence.
  2. Date and time of occurrence.
  3. Witnesses to the incident.
  4. Name and identifying information on the owner/agent who issued notice and whether or not that person still has authority to issue the notice.
  5. History of prior notices including any applicable incident report numbers. If history exists between the owner/agent and the suspect, the court prefers to have this information prior to acceptance of PC affidavit. Include it in both the narrative of the report and in the PC affidavit.

#### 437.4 SUPERVISOR RESPONSIBILITIES

Supervisors shall review each criminal trespass incident report to confirm the correct title code is used. If the incident is a:

- (a) Criminal trespass warning only and no enforcement action is needed, title code 2730 (Criminal Trespass Warning) shall be used.
- (b) Criminal trespass offense that includes charges being filed or follow-up is required from an Investigative Unit, title code 2716 (Criminal Trespass) shall be used.



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# Hate Crimes

### 438.1 PURPOSE AND SCOPE

This department recognizes and places a high priority on the rights of all individuals guaranteed under the Constitution and the laws of this state. When such rights are infringed upon by violence, threats or other harassment, this department will utilize all available resources to see that justice is served under the law. This order has been developed to meet or exceed the provisions of the James Byrd, Jr. Hate Crimes Act and provides members of this department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

#### 438.1.1 FEDERAL JURISDICTION

The federal government also has the power to investigate and prosecute bias-motivated violence by providing the U.S. Department of Justice with jurisdiction over crimes of violence where the perpetrator has selected the victim because of the person's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability (18 USC § 245).

### 438.2 DEFINITIONS

**Hate Crimes** - An intentional criminal act committed in whole or in part because of a bias or prejudice against a person or group's (Tex. Code of Crim. Pro. art. 42.014):

- (a) Disability
- (b) Gender
- (c) National origin or ancestry
- (d) Race, ethnicity or color
- (e) Religion
- (f) Sexual orientation
- (g) Age
- (h) Peace Officer
- (i) Judge

### 438.3 CRIMINAL STATUTES

Tex. Penal Code § 12.47 - Penalty enhancement if an offense is committed because of bias or prejudice.

Tex. Penal Code § 22.04 - Prohibits assaulting elderly or disabled individuals.

Tex. Penal Code § 25.071 - Violation of a protective order preventing an offense caused by bias or prejudice.

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**438.4 UNDERSTANDING HATE CRIME ENHANCEMENT**

"Hate Crime" is not a specific offense that any person can be charged with but rather a penalty enhancement (Tex. Penal Code § 12.47).

- (a) Officers cannot enhance the level of a crime at the time of booking even if there is sufficient evidence that the crime was motivated because of bias or prejudice.
- (b) Investigators do not control whether an offense committed because of bias or prejudice is enhanced; the decision to file for the enhancement is handled by the prosecution.
- (c) The enhancement allows for specific offenses to be increased to the next category of offense; however, a Class A misdemeanor cannot be increased to a felony.

**438.5 PROCEDURE FOR INVESTIGATING AN ALLEGED HATE CRIME**

Whenever any member of the Department receives a report of a suspected hate crime, or other activity that reasonably appears to involve a potential hate crime, the following should occur:

- (a) Officers will be assigned to the incident to conduct a preliminary investigation.
- (b) A supervisor should be notified of the circumstances as soon as practicable.
- (c) Once all "in progress" aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of suspects), the assigned officers will take all reasonable steps to preserve available evidence that may tend to establish that a hate crime was involved.
- (d) Officers will interview available witnesses, victims and others to determine what circumstances, if any, indicate the situation may involve a hate crime.
- (e) Officers should not tell individuals they are a victim of a hate crime as the determination is not made by law enforcement, however, officers should treat victims with empathy.
- (f) Officers or supervisors may request additional assistance from the appropriate Investigative Unit or other resources to further the investigation.
- (g) Officers should take photographs and collect physical evidence such as hate literature, spray paint cans, and symbolic objects used by hate groups (e.g., graffiti, clothing with symbols, letters).
- (h) Officers will provide victims of any suspected hate crime with a *Victim Assistance Information* pamphlet.
- (i) Officers will complete an incident report and include:
  - 1. The title code that relates to the specific offense (e.g., assault, robbery). In addition, the Hate Crime Information title code 4601 shall be added. This will result in the report routing to the Hate Crimes Review Committee report queue for review.
  - 2. The "BIAS" box must be filled out if there is any suspicion of a hate crime. This is required for inclusion in the Department's report to the FBI.
  - 3. Specific facts (e.g., racial slurs, ethnic slurs, other derogatory slurs, signs and symbols) used during the incident to indicate the likelihood a hate crime

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occurred. It is important to quote the exact language used by the suspects whenever possible.

**438.5.1 HATE CRIME REPORTING**

This Department shall report hate crimes in the form and manner and at regular intervals as prescribed by rules adopted by the Department of Public Safety. This shall be conducted by the Central Records Manager or assigned to the Investigation Unit (Tex. Gov't. Code § 411.046(b)).

- (a) A Hate Crimes Review Committee shall review all suspected hate crimes on a monthly basis to determine those cases that fall within the definition of a hate crime for reporting purposes.
- (b) The Department may request hate crime-related information or statistics from the Department of Public Safety to carry out investigations or other lawful business (Tex. Gov't. Code § 411.046(c)).



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# Service Animals

### 440.1 PURPOSE AND SCOPE

Service animals play an important role in helping to overcome the limitations often faced by people with disabilities. The Austin Police Department recognizes this need and is committed to making reasonable modifications to its policies, practices and procedures in accordance with Title II of the Americans with Disabilities Act of 1990 (ADA) to permit the use of any animal that is individually trained to assist a person with a disability.

### 440.2 SERVICE ANIMALS

The ADA defines a service animal as any guide dog, signal dog or other animal individually trained to provide assistance to an individual with a disability. Service animals may be of any type or breed and need not be certified by any government agency or service group.

Some service animals, such as guide dogs, may be readily identifiable but many do not have a distinctive symbol, harness or collar.

The following examples are just some of the ways service animals may provide assistance:

- (a) Guiding people who are blind or have impaired vision.
- (b) Alerting people who are deaf or hard of hearing.
- (c) Retrieving or picking up items, opening doors or flipping switches for people with disabilities that limit use of their hands, arms, or legs.
- (d) Pulling Wheelchairs.
- (e) Providing physical support by assisting people with physical disabilities with stability and balance.
- (f) Doing work or performing tasks for persons with traumatic brain injury, intellectual disabilities or psychiatric disabilities, such as reminding a person with depression to take medication or to wake the person.
- (g) Alerting a person with anxiety to the onset of panic attacks; providing tactile stimulation to calm a person with post-traumatic stress disorder; assisting people with schizophrenia to distinguish between hallucinations and reality; and helping people with traumatic brain injury to locate misplaced items, to find places or to follow daily routines.

### 440.3 EMPLOYEE RESPONSIBILITIES

Under the Americans with Disabilities Act, service animals assisting individuals with disabilities are permitted in all police facilities and areas where the general public is allowed. Employees are expected to treat individuals with service animals with the same courtesy and respect that the Austin Police Department affords to all members of the public.

If an animal exhibits vicious behavior, poses a direct threat to the health of others or unreasonably disrupts or interferes with normal business operations, the employee may direct the partner/

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handler to remove the animal from the premises. Barking alone is not a threat nor does a direct threat exist if the partner/handler takes prompt, effective action to control the animal. Each incident must be considered individually and past incidents alone are not cause for excluding a service animal. Removal of a service animal may not be used as a reason to refuse service to an individual with disabilities. Members of this department are expected to provide all services as are reasonably available to the individual with the disability.

If it is unclear whether an animal meets the definition of a service animal, officers should ask the individual only the following questions:

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

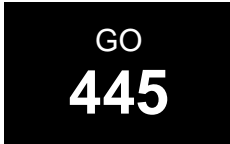
If the individual explains that the animal is required because of a disability and has been trained to work or perform at least one task, the animal meets the definition of a service animal. No further question as to the animal's status should be asked. The person should not be asked questions about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

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

#### **440.4 INQUIRIES AND COMPLAINTS**

When handling calls of a complaint regarding a service animal, members of this department should remain neutral and should be prepared to explain the ADA requirements concerning service animals to the concerned parties. Under the Americans with Disabilities Act, people with disabilities have the right to be accompanied by service animals in all public areas.

- (a) Businesses are required to permit service animals to accompany their partner/handler in all areas that other customers or members of the public are allowed. Individuals who believe they have been discriminated against as a result of their disability should be referred to the Civil Rights Division of the U.S. Department of Justice.
- (b) The Austin Police Department considers interference with or denial of this right by any member of the Department to be a serious violation of this order. Complaints alleging violations of this order against any Department employee will be promptly investigated and should be referred to the Internal Affairs Unit.



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# Mental Health Response

### 445.1 PURPOSE AND SCOPE

The Crisis Intervention Team (CIT) Unit and (CIT) officers are tasked with addressing and responding to any calls for police assistance related to the mental health community to include Intellectual Developmental Disabilities (IDD) and cognitive disorders. This order sets guidelines for utilizing the CIT Unit and the certified CIT officers assigned to field duty.

#### 445.1.1 DEFINITIONS

**Crisis Intervention Team (CIT) Officer** - An officer off probationary status who has successfully completed the TCOLE prescribed CIT certification course. The Austin Police Department has CIT officers who receive a mental health certification pay/stipend (see Meet and Confer Agreement, Article 7 Wages and Benefits, Section 4, Mental Health Certification Pay) to respond to CIT calls and perform Peace Officer Emergency Detentions (POED). If an officer who receives mental health certification pay is not available, an officer who is a CIT Officer can respond to a CIT call or perform a POED.

**Crisis Intervention Team (CIT) Unit** - A unit of specially trained CIT officers within APD who act as liaisons between the CIT officers assigned to patrol and the facilities, providers, and consumers within the mental health community. CIT Unit officers also respond to calls for service as outlined in this order.

**Mental Illness** - An illness, disease or condition other than epilepsy, senility, alcoholism or mental deficiency that substantially impairs a person's thoughts, perception of reality, emotional process or judgment, or grossly impairs behavior as demonstrated by recent disturbed behavior.

**Intellectual Development Disorder (IDD)** - A significantly sub-average intellectual function that is concurrent with deficits in adaptive behavior and which originates during the developmental period.

**Cognitive Disorders** - organic mental disorders such as Traumatic Brain Injury (TBI), dementia, Alzheimer's, Parkinson's, and substance withdraw delirium, etc. Symptoms of these disorders could include but are not limited to the following: memory loss, loss of motor skills, delirium, deficits in general mental ability/reasoning/problem solving/planning/abstract thinking/judgment, communication disorders, etc

**Jail Diversion** – Alternative method(s) of addressing a mentally ill, cognitively disabled, or IDD person's behavior, other than with arrest and confinement in jail.

**Expanded Mobile Crisis Outreach Team (EMCOT)** - A group of medical or mental health professionals who respond to the scene of a psychiatric crisis, assisting officers with jail diversion and emergency detentions.



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#### **445.2 INCIDENTS REQUIRING A CIT OFFICER**

- (a) If the incident is an emergency involving a person in mental health crisis, a CIT officer will be dispatched as the primary responding officer. If a CIT officer is not available, any patrol officer will be dispatched immediately and a CIT officer will respond as soon as possible.
- (b) If the incident is non-emergency in nature, a CIT officer shall respond as the primary officer, with the exception of an emergency room transport of a POED to a psychiatric hospital (secondary transport)..
- (c) The following incidents also require the response of a CIT officer:
  - 1. Any situation where the responding officer believes that a person's mental health is adversely affecting the person's behavior (e.g., attempted suicide, suicidal subject, Peace Officer Emergency Detention (POED) evaluation).
  - 2. Any request from a member of the community for a CIT officer.
  - 3. Mental health related calls from a facility/provider that furnishes services on behalf of the mental health community.
  - 4. Any health care facility or emergency room request for assistance relating to a person suspected of a mental illness.

#### **445.3 CIT OFFICER REFERRALS**

Officers receiving a mental health request for assistance from a complainant will refer the individual to an on-duty CIT officer or the CIT Unit. An incident report will be completed as outlined in this order.

- (a) If the person about whom the call is made poses any threat to safety, the responding officer will remain at the scene until contact is made with an on-duty CIT officer or the CIT Unit to determine the appropriate action to be taken.
- (b) When deemed necessary by a CIT officer or the CIT Unit, an EMCOT employee will be called to the scene to assist with:
  - 1. Assessment of the client (including suicide assessments).
  - 2. Assessment of the situation.
  - 3. Linking the client with existing mental health services in the community.
  - 4. In-depth counseling for the client and family.
  - 5. Transportation of the client, when appropriate.
  - 6. Jail Diversion, when appropriate (see section 445.6 of this order for further details).

#### **445.4 MENTAL HEALTH COMMITMENTS**

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#### 445.4.1 VOLUNTARY COMMITMENT

Employees encountering persons desiring to be voluntarily committed to a mental health facility and that meet the criteria for an Emergency Detention shall contact an on-duty CIT officer. If the subject does not meet the criteria for an Emergency Detention the officer may do one of the following:

- (a) Request EMCOT to the scene.
- (b) Provide voluntary transport to a facility within the located county.
- (c) Provide referral information.

#### 445.4.2 PEACE OFFICER EMERGENCY DETENTION

- (a) The authority to apprehend a person by using the Peace Officer's Emergency Detention (POED) is granted under the Tex. Health and Safety Code § 573.001. This type of custody is protective rather than criminal in nature and does not constitute an arrest. A POED may be used when:
  1. The officer has reason to believe, and does believe, that the person is mentally ill; and
  2. Because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and
  3. The officer believes that there is not sufficient time to obtain a warrant before taking the person into custody.
- (b) An employee encountering a person who needs to be assessed for a possible POED shall contact an on-duty CIT officer.
  1. The responding CIT officer shall be responsible for:
    - (a) Conducting an assessment to determine whether the person should be handled as an Emergency Detention;
    - (b) Providing transportation to the appropriate mental health facility or furnishing referral information;
      1. The CIT officer may transport the Emergency Detention or have a non CIT officer transport the Emergency Detention after completing all paperwork and advising where the subject is to be taken.
    - (c) Preparing all required documentation.
  2. If it is determined that the person does not meet the criteria for a POED, the initial officer may:
    - (a) Request a response from the Expanded Mobile Crisis Outreach Team (EMCOT), (refer to 445.6)
    - (b) Release the person, if no criminal violation has been committed;
    - (c) Use other available referral services or release options; or
    - (d) Place the person in jail, provided the officer has legal authority to do so.

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3. Officers shall perform secondary transports of subjects from an emergency room to a psychiatric hospital on an APD Emergency Detention. All officers are responsible for the following:
  - (a) Taking custody of the individual who is detained under a POED.
  - (b) Collect and verify all necessary documents for the transfer of the detained individual.
  - (c) Transport the patient to the directed psychiatric hospital with all required paperwork and personal property.
  - (d) Complete a supplement to the original POED report.
4. Officers shall transport persons on a still active APD POED from the Judge Guy Herman Center to another arranged hospital or psychiatric hospital when the Center's staff determines that patient care exceeds the capabilities of the Center. All transporting officers are responsible for the following:
  - (a) Verifying a nurse-to-nurse/doctor-to-doctor transfer was completed and collecting all necessary documents for the transfer, if available.
  - (b) Taking custody of the individual who is detained under an APD POED.
  - (c) Transporting the person and their property to the directed hospital or psychiatric hospital, if available.
  - (d) Completing a supplement to the original POED report.

#### 445.4.3 ORDER OF PROTECTIVE CUSTODY

Due to special requirements, employees receiving a request to transport a subject due to an Order of Protective Custody (OPC) shall contact the Travis County Sheriff's Office (TCSO) CIT Unit to transport the person named in the order.

#### 445.4.4 UNAUTHORIZED DEPARTURES FROM MENTAL HEALTH FACILITIES

When officers comes into contact with a person who is a confirmed Unauthorized Departure (UD) from a mental health facility, officers will confirm that a court order has been issued for the individual requiring him to return to the appropriate mental health facility.

- (a) If confirmed, take the person into custody and transport him to the appropriate mental health facility.
- (b) If no court order exists the employee shall request an on-duty CIT officer to respond and complete a supplement detailing his observations.

#### 445.5 MENTALLY ILL PERSONS REQUIRING MEDICAL ATTENTION

Officers shall call EMS to treat and/or transport the person to a medical facility when a mentally ill person needs medical attention.

- (a) If the subject is transported, a *Mental Health Transport Form* shall be completed and given to EMS personnel.

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- (b) If the subject is not transported, officers shall request an on-duty CIT officer to respond to the scene.

**445.6 ARREST AND JAIL DIVERSION OF MENTALLY ILL, COGNITIVELY DISABLED, AND IDD PERSONS**

- (a) The arrest of a mentally ill person creates an extraordinary burden on the criminal justice and judicial systems. The department and the community benefit from alternative methods of addressing a mentally ill person's behavior, other than with arrest and confinement in jail. In lieu of arrest under certain circumstances, when encountering a mentally ill, cognitively disabled, or IDD person during a call for service, any officer can request the assistance of the local mental health authority, Austin Travis County Integral Care (ATCIC) and their response group, or Expanded Mobile Crisis Outreach Team (EMCOT) when deemed appropriate.
1. Officer must obtain supervisor approval prior to jail diversion. When the decision has been made to jail divert, officers may request that communications dispatch EMCOT. EMCOT's inability to respond does not prevent an officer from using jail diversion.
    - (a) EMCOT is available to respond within 30 minutes of dispatch during the following hours:
      1. Monday-Friday: 6am-10pm
      2. Saturday and Sunday: 10am-8pm
  2. The acceptance of EMCOT's services by the person is voluntary.
  3. The option of calling EMCOT will not be exercised in the following situations:
    - (a) Violent crimes in which another person has been assaulted.
    - (b) Crimes involving damage to property.
    - (c) Crimes involving theft if the property is not recovered.
    - (d) Any felony offense;
    - (e) Any offense involving the use or possession of a firearm
    - (f) Any situation in which the person meets the criteria for a POED
  4. Once EMCOT has arrived and conducted a preliminary evaluation of the mentally ill, cognitively disabled, or IDD person the EMCOT employee will advise the officer if they are needed further or if they are free to return to service. The ultimate decision as to whether or not the officer stays on scene or returns to service will be based on the officers own judgment.
- (b) An arrest shall be made in lieu of a POED under the following circumstances:
1. Felony offense;
  2. DWI offense;
  3. For Family violence offenses see General Order 418.2.2.

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- (c) If a suspected mentally ill person is placed in jail, officers shall:
  - 1. Advise the intake officers; and
  - 2. Complete all paperwork required by Travis County (e.g., Mental Health Hold/Evaluation Form); and
  - 3. Bring the person to the jail nurse.
- (d) When a mentally ill, cognitively disabled, or IDD person is diverted from arrest, the officer shall document the details and reason for the diversion in an offense report.

#### **445.7 REPORTING PROCEDURES**

Employees responding to any incident involving a mental health individual shall comply with the following reporting requirements:

- (a) **Responsibility**
  - 1. CIT officers responding to a scene shall complete the incident report. If the primary officer is not a CIT officer, he shall complete a supplement detailing his observations.
  - 2. When a CIT officer does not respond, the primary officer shall complete the incident report.
  - 3. When a mentally ill person is arrested, detained, and/or released for an offense, the arresting officer shall complete the incident report.
- (b) **Guidelines**
  - 1. Officers completing an incident report shall:
    - (a) Use the appropriate EDP title code; and
    - (b) Not include any reference to the mental health of a person in a report synopsis that is available for public disclosure (e.g., "press release"). All such information shall be documented in the narrative section, as needed.

#### **445.8 INCIDENTS INVOLVING EMERGENCY DETAINED SUBJECTS IN POSSESSION OF FIREARMS**

Peace Officers have authority to seize firearms from a person who is being detained for mental health services under the Texas Health and Safety Code § 573.001(g). This seizure is for the safety of the detained individual and community.

- (a) Officers may seize any firearm found in possession of a person being detained into custody under an Emergency Detention (Health and Safety Code 573.001).
- (b) If a firearm is seized under this authority, Officers shall:
  - 1. Complete the Receipt for Seized Firearm and Procedures (PD0222 A)
  - 2. Review the front page of the Receipt for Seized Firearm and Procedures (PD0222 A) with the detained subject and place it in their property.

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3. Make a reasonable attempt to identify an immediate family member for the detained subject and notate that person's name and contact information in the incident report.
4. Contact the Crisis Intervention Team by the end of the officers tour of duty either by phone at (512-854-3450) or by email [Crisis.Intervention@austintexas.gov](mailto:Crisis.Intervention@austintexas.gov) with the following:
  - (a) Officer's name,
  - (b) Incident number, and
  - (c) Actions taken.
5. Use the title codes Emergency Detention/Firearm Seized 3465.



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# Informants

### 450.1 PURPOSE AND SCOPE

In many instances, a successful investigation cannot be conducted without the use of informants. To protect the integrity of the Austin Police Department and the officers using informants, it shall be the policy of this department to take appropriate precautions by developing sound informant policies.

#### 450.1.1 TYPES OF INFORMANTS

The following types of informants are considered resources of the Austin Police Department. Informants shall not be considered as personal sources of information to any individual officer.

- (a) **Citizen Informants** - Persons who provide information or evidence to assist the Department in the reduction of crime without any expectation of payment or benefit. This is normally referred to as the "concerned citizen."
- (b) **Paid Informants** - Persons who are providing information or evidence to APD in exchange for money paid by APD.
- (c) **Defendant Informants** - Persons who have been:
  - 1. Arrested and the evidence is sufficient to support a charge; or
  - 2. Formally charged with an offense; or
  - 3. Indicted.
- (d) **Juvenile Informants** - Persons under the age of 17 years old may only be used as an informant with parental consent or as authorized by a court order.

#### 450.1.2 RELATIONSHIP WITH INFORMANTS

No member of the Austin Police Department shall maintain a social relationship with a known paid or defendant informant or otherwise become intimately involved with a such an informant. Members of the Austin Police Department shall neither solicit, accept gratuities, or engage in any private business transaction with any informant.

### 450.2 PATROL GUIDELINES

#### 450.2.1 CITIZEN INFORMANTS

Officers working patrol and patrol related assignments normally encounter citizen informants.

- (a) Information regarding criminal activity obtained in this manner shall be handled as follows:
  - 1. Where exigent circumstances exist, the officer should take appropriate action and document the source of information in an incident report.
  - 2. Where no exigent circumstances exist, the officer shall refer the informant to the appropriate Investigative Unit.

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- (b) Occasionally officers will encounter individuals who want to provide information but do not desire to be identified.
  - 1. Officers shall not enter into any agreement promising that the individual's involvement in a particular incident will remain confidential. The individual could be required to testify in court or provide additional information to other law enforcement entities.
  - 2. Informants still desiring to remain confidential should be referred to the appropriate Investigative Unit or to Crime Stoppers for follow-up.
- (c) If a citizen informant wishes to be paid, officers shall follow the paid informant guidelines.

#### 450.2.2 PAID INFORMANTS

Officers working patrol and patrol related assignments who encounter individuals wishing to provide information in exchange for compensation or some other benefit (other than dismissal of arrest charges - see Defendant Informants below) will be handled in the following manner:

- (a) The officer's supervisor must be notified that a person is attempting to provide information.
- (b) The supervisor and officer should determine whether or not exigent circumstances exist.
  - 1. Where exigent circumstances exist (e.g., a crime is in progress or imminent):
    - (a) The officer should attempt to obtain the information and take enforcement action as needed.
    - (b) Any monetary compensation will be determined after the fact by the appropriate Investigative Unit following the Organized Crime Division (OCD) Confidential Informant Payment Guidelines.
  - 2. Where no exigent circumstances exist (e.g., a crime has already occurred or is an on-going long-term situation):
    - (a) The informant should be referred to the appropriate Investigative Unit or to Crime Stoppers for follow-up.
    - (b) If the informant wishes to work with an Investigative Unit:
      - 1. The officer should contact or email the appropriate Investigative Unit supervisor with the informants' identity, a brief explanation of the situation, and the incident number.
      - 2. The Investigative Unit's supervisor will determine whether to use the informant. Informant use must be approved by OCD as outlined in this order.
- (c) With supervisor approval, officers may be requested to:
  - 1. Act as a liaison between the informant and Investigative Unit.
  - 2. Set up interviews with the informant and investigators.



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- (d) Officers will not engage in any other phase of the investigation unless authorized by the Investigative Unit and the officer's chain-of-command.

#### 450.2.3 DEFENDANT INFORMANTS

Officers working patrol and patrol related assignments who arrest an individual that wishes to provide information or evidence will be handled in the following manner:

- (a) Officers shall not enter into any agreement to accept information in lieu of filing charges.
- (b) Informants should be referred to the appropriate Investigative Unit.
  - 1. Officers should contact or email the appropriate Investigative Unit supervisor with the informants' identity, a brief explanation of the situation, and the incident number.
  - 2. Investigative Unit supervisors will determine whether to use the informant. Informant use must be approved by OCD as outlined in this order.

#### 450.3 ALL OTHER ASSIGNMENTS

##### 450.3.1 CITIZEN INFORMANTS

Investigative Units within the Department wishing to utilize a citizen informant shall adhere to the following guidelines:

- (a) A citizen informant does not have to be documented in the Confidential Informant Database unless he wishes to be paid for the information or evidence being provided.
- (b) If a citizen informant wishes to be paid, the paid informant guidelines shall be followed or refer the informant to Crime Stoppers.

##### 450.3.2 PAID AND DEFENDANT INFORMANTS

Investigative units within the Department shall not deal with any paid informant or defendant informant unless policies and procedures outlined within the unit SOP and/or Operations Manual that mirror OCD's general orders on informants.

- (a) **Any** potential paid informant or defendant informant shall be approved by an OCD supervisor **before** using the informant. The OCD supervisor will check the informant through the Confidential Informant Database.
- (b) When use of an informant has been approved:
  - 1. All informant information shall be entered into the Confidential Informant Database by an OCD supervisor and issued an informant control number.
  - 2. All employees shall forward original informant files to OCD for filing, retention, and archival.
  - 3. A copy of an informant file may be kept by the unit controlling the informant.
  - 4. All payments made to an informant shall be immediately communicated to an OCD supervisor so the Confidential Informant Database can be updated with the payment information.

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**450.4 WILLIAMSON COUNTY GUIDELINES**

Guidelines for using Defendant Informants are different for Williamson County and must be followed. When a subject is being considered for use as a Defendant Informant in Williamson County, an OCD supervisor shall be contacted before using the informant.

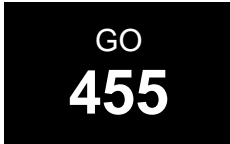
**450.5 ORGANIZED CRIME DIVISION RESPONSIBILITIES**

OCD shall be the Department's central repository for all informant paper files and maintain a Confidential Informant Database that will contain informant information as well as all payments made to the informant. Informant records shall be maintained indefinitely.

**450.5.1 REPORTING OF PAYMENTS**

Each confidential informant receiving a cash payment shall be informed of his/her responsibility to report the cash to the Internal Revenue Service (IRS) as income. If funds distributed exceed \$600 in any reporting year, the confidential informant should be provided IRS Form 1099 (26 CFR 1.6041-1). If such documentation or reporting may reveal the identity of the confidential informant and by doing so jeopardize any investigation, the safety of peace officers or the safety of the confidential informant (26 CFR 1.6041-3), then IRS Form 1099 should not be issued.

In such cases, the confidential informant shall be provided a letter identifying the amount he/she must report on a tax return as "other income" and shall be required to provide a signed acknowledgement of receipt of the letter. The completed acknowledgement form and a copy of the letter shall be retained in the confidential informant's file.



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# Social Media for Official Use

### 455.1 PURPOSE AND SCOPE

The Department endorses the use of social media to enhance communication, collaboration, and information exchange. This order establishes the department's position on the utility of social media, including management, administration, and oversight. This order is intended to address social media in general, not a particular form of social media.

### 455.2 APPLICABILITY

This policy applies to employees who are on duty or representing the department in an official manner. See General Order 972 Employee Speech, Expression, and Social Networking for non-duty related social media.

### 455.3 POLICY

Social media assists the department in meeting community outreach, problem-solving, investigations, and crime prevention. Social media is a valuable tool when seeking evidence or information including missing persons, wanted persons, gang activity, crimes perpetrated online, and photographs or videos of a crime. The content of postings on personal social media sites by employees reflects on them in their official capacity. This order provides information on the use of social media by department personnel.

- (a) The Austin Police Department will not utilize social media to seek or retain information about:
  - 1. Individuals or organizations solely on the basis of their religion, political association, social views or activities.
  - 2. An individual's participation in a particular non-criminal organization or lawful event.
  - 3. An individual's race, ethnicity, citizenship, place of origin, disability, gender, or sexual orientation unless such information is relevant to the individual's criminal conduct or activity or if required to identify the individual.
  - 4. An individual's age other than to determine if someone is a minor.
- (b) The Austin Police Department will not directly or indirectly receive, seek, accept, or retain information from an individual or nongovernmental information provider who may or may not receive a fee or benefit for providing the information if there is reason to believe that the information provider is legally prohibited from obtaining or disclosing the information.

### 455.4 DEFINITIONS

**Confidential information** - Information designated as confidential by law (state, federal statute, or court decision).

**Post** - Content an individual shares on a social media site or the act of publishing content on a site.

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**Online Alias** - Profile information that a user provides about himself or herself on a social networking site for the purposes of gathering intelligence or advancing a criminal investigation.

**Social Media** - A category of Internet-based resources that integrate user-generated content and user participation. This includes, but is not limited to, social networking sites (Facebook, MySpace), microblogging sites (Twitter, Nixle), photo- and video-sharing sites (Flickr, YouTube), wikis (Wikipedia), blogs, and news sites (Digg, Reddit).

**Social Networks** - Online platforms where users can create profiles, share information, and socialize with others using a range of technologies.

**Speech** - Expression or communication of thoughts or opinions in spoken words, in writing, by expressive conduct, symbolism, photographs, videotape, or related forms of communication.

**Web 2.0** - The second generation of the World Wide Web focused on shareable, user-generated content, rather than static web pages. Some use this term interchangeably with social media.

**Wiki** - Web page(s) that can be edited collaboratively.

#### **455.5 PROCEDURES**

Social media content shall adhere to applicable laws, regulations, and policies, including information technology and records management policies. Employees representing the department via social media outlets shall conduct themselves as representatives of the Department and shall adhere to all Department and City standards of conduct.

(a) Employees will:

1. Identify themselves as members of the department
2. Observe and abide by all copyright, trademark, and service mark restrictions in posting materials to electronic media.

(b) Employees will not:

1. Make comments regarding the guilt or innocence of suspects or arrestees.
2. Make comments concerning pending prosecutions.
3. Post, transmit or otherwise disseminate confidential or law enforcement sensitive information, including pictures, videos, evidence, or other materials in the department relating to training, work assignments, and enforcement efforts without the express written permission of the Strategic Intelligence Commander.
4. Divulge information gained by reason of their authority, make statements, speeches, appearances, and endorsements, or publish materials that could reasonably be considered to represent the views or positions of this department without express authorization of the Chief of Police.
5. Conduct political activities or private business on departmental social media.
6. At no time will the identity, image, or other information of a real person be used in an undercover operation without their express written consent and that person being documented as a Confidential Source if acting in such a capacity.

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#### **455.6 UTILIZATION AND ACCESS TO SOCIAL MEDIA MONITORING TOOLS**

No authorization is necessary for general research, topical information, or other law enforcement uses that do not require the acquisition of an online alias.

- (a) Social media may be used by Departmental personnel for a valid law enforcement purpose. The following are valid law enforcement purposes:
  - 1. Pre-employment background investigations.
  - 2. Crime analysis and situational assessment reports.
  - 3. Criminal intelligence development.
  - 4. Criminal investigations.
- (b) Information and/or intelligence gathered from social media will be evaluated to determine source reliability and content validity (confidence levels).
- (c) Employees will utilize social media, access social media websites, online aliases, and social media monitoring tools only for a valid law enforcement purpose. The on-duty utilization of an online alias or social media monitoring tool for personal use is prohibited and is considered employee misconduct.
- (d) Employees will only utilize social media to seek or retain information that:
  - 1. Is based upon a criminal predicate or threat to public safety, or
  - 2. Is based upon reasonable suspicion that an identifiable individual or organization, regardless of citizenship or U.S. residency status:
    - (a) Has committed an identifiable criminal offense or is involved in or is planning criminal conduct or activity that presents a threat to any individual, the community, or the nation and the information is relevant to the criminal conduct or activity (criminal intelligence information), or
    - (b) Is relevant to the investigation and prosecution of suspected criminal incidents; the resulting justice system response; the enforcement of sanctions, orders, or sentences; or the prevention of crime, or
    - (c) Is useful in crime analysis or situational assessment reports for the administration of criminal justice and public safety.

#### **455.7 ALIAS AUTHORIZATION**

- (a) Authorization for an online alias is based upon:
  - 1. A criminal predicate or threat to public safety; or
  - 2. Reasonable suspicion that an identifiable individual or organization, regardless of citizenship or U.S. residency status, has committed a criminal offense or is involved in or is planning criminal conduct or activity that presents a threat to:
    - (a) Any individual, or
    - (b) The community, or

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- (c) The nation, and
  - (d) The information is relevant to the criminal conduct or activity.
- (b) Employees seeking authorization to use an online alias must be approved by their supervisor. The supervisor must evaluate the request to determine whether an online alias would serve a valid law enforcement purpose. The supervisor must maintain the requests for online alias and their status (approved/denied) for two years from the date of deactivation of the online alias.
1. If approved, the supervisor will complete Request for use of Online Alias PD0238 and route it to the Strategic Intelligence Lieutenant. The request must include:
    - (a) Purpose for the request (i.e. type of investigative activity)
    - (b) Username/Alias
    - (c) Identifiers to be utilized for the online alias, such as email address
      1. Do not include password(s) for online aliases.
      2. Ensure password(s) are secured at all times.
    - (d) Photograph to be used with online alias, if applicable.
    - (e) Social media accounts utilized.
    - (f) Anticipated duration for the online undercover activity.
    - (g) The Strategic Intelligence Lieutenant will approve or deny all requests and return a copy of the request to the supervisor submitting it.
    - (h) If there is a disagreement in the approval, the employee's commander will confer with the Strategic Intelligence Commander. The Strategic Intelligence Commander has final authority to approve or deny the request.
- (c) Approved requests for an online alias will be deconflicted at the Austin Regional Intelligence Center.

**455.8 ALIAS USE AND REVIEW**

- (a) All approved online undercover activity requests will be reviewed not less than every 90 days by the employee's unit supervisor to ensure continued need for the online undercover activity.
  1. Approved online undercover activity that does not provide information regarding a valid law enforcement purpose will be discontinued.
  2. A summary will be placed in the file indicating the date of termination of the online undercover activity. The online alias may be maintained if it is anticipated that it will be utilized again.
- (b) Departmental personnel with an approved online alias may use their online alias to make false representations in concealment of personal identity in order to establish social media accounts.

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1. The establishment of a social media account with an approved online alias must be documented by the unit supervisor.
  2. Online undercover activity occurs when the agent utilizing the online alias interacts with a person via social media.
- (c) Online undercover operations will only be utilized when there is reason to believe that criminal offenses have been, will be, or are being committed (e.g. internet chat rooms where child exploitation occurs).
- (d) In some instances, an Intelligence or Criminal Analyst may obtain and maintain an on-line alias user name or password to a closed online network or site related to an online surveillance operation. The Intelligence Division Supervisor, or designee, will maintain a list of authorized on-line aliases used by departmental personnel.

#### **455.9 DOCUMENTATION AND RETENTION**

- (a) Other than crime analysis and situational assessment reports, all information obtained from social media websites shall be placed within a case file, suspicious activity report, or intelligence report. At no time should departmental personnel maintain any social media files outside of these authorized files.
- (b) Crime analysis and situational assessment reports may be prepared for special events management, including First Amendment-protected activities. If there was no criminal activity related to the information gathered, the information obtained from the social media monitoring tool will be retained for no more than fourteen (14) days. Information from the social media monitoring tool that does indicate a criminal nexus will be retained in an intelligence report, suspicious activity report, or case investigative file pursuant to retention and destruction schedules adopted by the City.
- (c) Information identified as criminal in nature that is obtained in the course of an investigation from a social media site will be collected and retained using screen shots, printouts of chat logs, copying uniform resource locators (URL's) for subpoena or investigatory purposes, or storing the information via secure digital means. When possible, employees will utilize investigative computer systems and software intended to record data from social media sites.

#### **455.10 DISSEMINATION**

Retention and dissemination of social media information within an intelligence file will be treated in the same manner as an intelligence file. Information developed during the course of a criminal investigation will be located in the investigative case file and retained and disseminated in the same manner as the investigative case file.

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**Chapter 5 - Field Support Operations**





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# Bicycle Operations

### 500.1 PURPOSE AND SCOPE

Bicycle operations have been shown to be an effective way to increase officer visibility, accessibility, and response in congested areas. The purpose of this order is to provide uniform guidelines regarding the use of bicycles by Austin Police Department personnel.

### 500.2 UTILIZATION AND DEPLOYMENT

The use of bicycle patrols will emphasize the mobility and visibility of the Department to the community.

- (a) Bicycles may be used for:
  - 1. Regular Patrol duty.
  - 2. Traffic enforcement and parking control.
  - 3. Special events.
- (b) Bicycles may be deployed to any area at any hour of the day or night in accordance with Department needs and as staffing levels allow.
- (c) Requests for specific deployment of bicycle patrols may be coordinated through any chain-of-command, a specific Commander, or the Watch Lieutenant.

### 500.3 POLICE BICYCLE TRAINING AND CERTIFICATION

Officers must successfully complete all required Police Mountain Bike courses in order to use a bicycle during their normal course of duty.

- (a) Officers interested in becoming a Certified Bicycle Officer by attending the initial Police Mountain Bike course must meet each of the following requirements:
  - 1. Have two or more years of police service with the Department unless otherwise approved by a supervisor; and
  - 2. Get supervisor permission prior to signing up for the Police Mountain Bike course; and
  - 3. Pass a prerequisite Fitness Assessment conducted by the APD Wellness Office or pass a Physical (for strenuous activity) by your personal physician within 6 months prior to the first day of class.
- (b) Priority for acceptance into the Police Mountain Bike course shall go to officers assigned to a full-time Bicycle assignment (e.g., Downtown Patrol).
- (c) Certified Bicycle Officers shall complete a Department-approved Police Mountain Bike Refresher course as required.

### 500.4 BICYCLE OFFICER RESPONSIBILITIES

This section establishes the specialized procedures for officers that work any part of their assigned duty on a bicycle.

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### *Bicycle Operations*

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- (a) Bicycle Officers shall follow all guidelines outlined in Department General Orders, the Police Mountain Bike course, and any subsequent refresher courses.
- (b) Bicycle Officers must operate the bicycle in compliance with the Transportation Code under normal operation (Tex. Transp. Code § 551.101 et seq.).
  - 1. Bicycle Officers may operate the bicycle without lighting equipment during hours of darkness when such operation reasonably appears necessary for officer safety and tactical considerations. Officers must use caution and care when operating the bicycle without lighting equipment.
- (c) Bicycle Officers are exempt from the rules of the Transportation Code under the following conditions (Tex. Transp. Code § 546.002):
  - 1. In the execution of daily law enforcement activities and/or tactical considerations.
  - 2. In response to an emergency call.
  - 3. While engaged in rescue operations.
  - 4. In the immediate pursuit of an actual or suspected violator of the law.
- (d) Bicycle Officers should be deployed in teams of two.

#### **500.5 REQUIRED UNIFORM AND EQUIPMENT**

- (a) Bicycle Officers shall:
  - 1. Only use a Department issued bicycle and Department approved equipment in the course of their duties.
  - 2. Wear the Department approved uniform and safety equipment (e.g., helmet with face shield and gloves) while operating a police bicycle.
  - 3. Carry the same required equipment on their duty belt as a regular Patrol assignment.
  - 4. Be responsible for obtaining the necessary forms, citation books and other equipment to perform the duties of their regular assignment and have these available while using a police bicycle.
- (b) Bicycle Officers may wear Department approved bicycle eyewear and footwear while operating a police bicycle.

#### **500.6 HANDLING POLICE BICYCLES**

The following section outlines the guidelines for Police Bicycles:

- (a) Accountability.
- (b) Care and Use.
- (c) Repair and Maintenance.
- (d) Storage Locations.

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#### 500.6.1 ACCOUNTABILITY

Each authorized unit that utilizes Bicycle Officers shall be allocated a specific number of bicycles.

- (a) A supervisor shall be responsible for the assignment of allocated bicycles to unit personnel.
- (b) Officers shall not use a bicycle that is assigned to another unit without approval of a supervisor.
- (c) Officers shall not remove, modify, or add components to a bicycle unless approved by a supervisor or there is an emergency.
- (d) During prolonged periods of non-use, each unit assigned a bicycle shall periodically rotate the equipment batteries on unused bicycles in order to increase battery life.

#### 500.6.2 CARE AND USE

- (a) Officers shall conduct a preliminary inspection of the bicycle and equipment prior to each use to ensure proper working order of the equipment (e.g., tire pressure, brakes, chain lubrication).
- (b) Officers should not expose the bicycle to unreasonable hazards or abuse.
- (c) Bicycles shall be properly secured when not in the officer's immediate presence except in exigent circumstances.
- (d) Bicycle racks are available on certain police vehicles should the officer need to transport the bicycle. Due to possible component damage, transportation of the bicycle in a trunk or on a police unit push-bumper is discouraged.
- (e) Bicycle batteries shall be rotated on the assigned charger at the end of each tour of duty.
- (f) Officers shall return the bicycle clean and ready for the next tour of duty at the end of their assignment.

#### 500.6.3 REPAIR AND MAINTENANCE

Bicycles shall have scheduled maintenance conducted throughout the year as outlined in the Bicycle Maintenance Contract.

- (a) Repair of flat tires shall be the responsibility of each individual Bicycle Officer.
- (b) For all other repairs, Bicycle Officers should complete a repair work order and transport the bicycle to the designated Department bicycle repair location.
  1. Bicycle Officers may be issued a temporary spare bicycle, if one is available, until the primary bicycle is repaired.

#### 500.6.4 STORAGE LOCATIONS

Every bicycle storage location must have at least two tire pumps, a first aid kit, repair tool kits, tire tubes, equipment information, and use manuals.

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**500.7 RECORDS MANAGEMENT AND REPORTING**

Records will be kept on each bicycle and its associated Department issued equipment by Police Equipment and the Commander or designee of where bicycles are assigned.

- (a) Each Command will utilize the Department Bicycle Sign-Out Form.
- (b) All bicycles will be numbered with the first two initials of the bike make and last four of the serial number.
- (c) Maintenance records shall be kept and filed according to bicycle number and shall consist of repair requests and all documented maintenance/repairs performed.
- (d) An annual Department bicycle inventory and inspection shall be conducted by Police Equipment to determine the number of bikes in each chain-of-command. The inventory and inspection shall include all associated serial number(s), equipment, and personnel assignment(s).

**500.8 ANNUAL INSPECTION AND INVENTORY**

All personnel shall assist and cooperate with the Risk Management Unit when conducting staff inspections as well as the Police Equipment Unit when conducting an annual inventory. Discrepancies and or deficiencies noted during these inspections will be corrected in a timely manner by the appropriate responsible party.



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# Canine Unit

### 503.1 PURPOSE AND SCOPE

The purpose of this order is to establish the guidelines and procedures for using the APD Canine Unit.

### 503.2 UTILIZATION OF THE CANINE UNIT

- (a) The Canine Unit may be requested for the following situations:
1. To locate suspects that have fled on foot from officers, or from the scene of a crime, for Class B and above offenses, and suspects related to window peeping (Tex. Penal Code § 42.01(a)11);
  2. Residence and building searches w/forced entry or when information exists that a criminal suspect may still be inside (e.g. real-time audio/video, etc.);
  3. Article searches when evidence may be located (e.g., gun, knife);
  4. High risk traffic stops; and
  5. To locate Missing, lost, or injured persons when exigent circumstances exist. If no exigent circumstances exist, AFD Search and Rescue should be utilized.
- (b) The Canine Unit shall not be utilized:
1. When a suspect cannot be identified or linked to a crime (e.g., insufficient physical description, no witness).
  2. For crowd control (e.g., demonstrations, regular crowd control).
  3. During questioning or interrogation of a suspect.
  4. To transport prisoners.
  5. For routine Patrol calls or arrests.

### 503.3 ON-SCENE PROCEDURES

- (a) Officers at the scene of an incident where a Canine Team may be needed should do the following:
1. Set an **immediate** search perimeter;
  2. Notify a supervisor and request approval to utilize the Canine Unit;
  3. Request Communications to contact the available or on-call Canine Team; and
  4. Stay at the location where the suspect was last seen until the Canine Team arrives.
- (b) All officers on the perimeter shall stay in or next to their vehicle with all emergency lights activated.
- (c) No officer shall enter the perimeter or building at any time during a canine call unless directed to do so by a Canine Officer.

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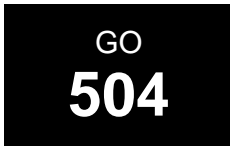
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1. If a suspect moves within the perimeter, officers shall remain on the perimeter and the ranking officer or Canine Officer on-scene will readjust the perimeter as needed.
  2. This does not prohibit an officer from making an immediate arrest or preventing the escape of a suspect out of the perimeter.
- (d) Officers shall not place themselves between a working canine and a suspect at any time.
- (e) The Canine Officer has the final decision on when and how the canine is utilized on any call.

**503.4 USE OF OTHER AGENCY CANINE UNITS**

Due to strict APD Canine Unit orders, training, and national certification, no outside agency's Canine Unit shall be called or allowed to be utilized on an APD initiated call without authorization from the APD Canine Unit supervisor.

This does not restrict an outside agency from using its own Canine Unit on any call that the agency initiates which then enters APD jurisdiction (e.g., vehicle pursuits).



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## Air Operations and Air Support

### 504.1 PURPOSE AND SCOPE

The use of the air support can be invaluable in certain situations. This order specifies potential situations where use of air support may be requested and the responsibilities for making a request.

### 504.2 REQUEST FOR AIR SUPPORT ASSISTANCE

APD Air Operations shall be the primary responder for all aircraft assistance requests originating within the Department.

- (a) If a supervisor or officer in charge of an incident determines that the use of air support would be beneficial, a request for APD Air Operations shall be made by contacting Communications.
- (b) If APD Air Operations is unavailable or off-duty and an officer needs aircraft assistance to conduct law enforcement related activities, a request to another law enforcement agency or Starflight shall be made through an APD Air Operations supervisor or the Watch Lieutenant as follows:
  1. When the situation involves imminent danger to officers or the public, the request for assistance must be approved by the Watch Lieutenant. The Watch Lieutenant will then immediately notify Air Operations supervisor.
  2. For all other law enforcement related situations, a supervisor shall contact the on-duty or on-call Air Operations supervisor to determine the appropriate course of action.
- (c) Upon arrival at an incident where the officer determines medical assistance is needed, the officer shall notify Communications of the victim's age, sex and injuries and request EMS. The decision to call Starflight for medical purposes is the responsibility of EMS ground units. Officers shall be responsible for setting up and maintaining a landing zone as outlined in this order.

#### 504.2.1 CIRCUMSTANCES UNDER WHICH AID MAY BE REQUESTED

While it is recognized that the availability of air support will generally provide valuable assistance to ground personnel, the presence of air support will rarely replace the need for officers on the ground.

Law enforcement air support may be requested under any of the following conditions:

- (a) When the aircraft is activated under existing mutual aid agreements.
- (b) Whenever the safety of law enforcement personnel is in jeopardy and the presence of the aircraft may reduce such hazard.
- (c) When the use of aircraft will aid in the capture of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community.

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- (d) When an aircraft is needed to locate a person who is missing and whose continued absence constitutes a serious health or safety hazard.
- (e) Vehicle pursuits.

**504.3 ROTARY AIRCRAFT LANDING ZONE GUIDELINES**

In the event a rotary aircraft needs to land, officers shall establish and maintain a landing zone.

(a) **Establishing a Landing Zone**

1. Preferably 60 ft. by 60 ft.; and
2. Hard road surface, if possible, otherwise grass or dirt areas if a paved road is not available; and
3. No obstructions such as telephone wires, power lines, poles, structures or vehicles; and
4. No debris on the ground (remove any objects that may be blown around). Officers are also reminded to remove hats or caps which may be blown away during landing and take-off.

(b) **Marking the Landing Zone**

1. All emergency lights, spotlights, and headlights shall be turned off during landing and take-off.
2. Vehicle parking lights may be left on for landing recognition purposes.

(c) **Securing the Landing Zone**

1. At least two (2) officers should be used to secure the landing zone.
2. All personnel and vehicles shall be kept out of the landing zone prior to landing, while the aircraft is on the ground, and during its take off.
3. The pilot has responsibility for, and final authority over, everyone and everything within the immediate area of the landing zone.
4. Officers shall not approach the aircraft from the rear or sides. Approaches to the aircraft shall be made only to the front, and only after the pilot has signaled approval for the approach.
5. No smoking or open flames are allowed within 100 feet of the aircraft.
6. When the aircraft is ready to depart, officers shall ensure the established landing zone area is clear of vehicles and pedestrians.



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**Chapter 6 - General Support Operations**



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# Victim Services

### 601.1 PURPOSE AND SCOPE

The Victim Services Division (VSD) was created in 1981 to respond to crime victims' psychological and emotional needs. This is achieved through crisis intervention, counseling, advocacy, education, information, and referral for victims of crime and trauma, individuals with mental illness, witnesses, families of crime and trauma victims, first responders, investigative units, and on a larger scale, the neighborhoods and communities in which they live.

VSD also provides assistance to criminal justice personnel, the community and others in non-crime situations. The overall mission is to positively impact the quality of life for Austin residents by assisting victims/survivors, and families/neighborhoods who have experienced crime and/or trauma.

### 601.2 VICTIM SERVICE DIVISION PERSONNEL RESPONSE

- (a) VSD personnel shall respond immediately to any request for assistance.
- (b) VSD personnel shall automatically be dispatched on the following incidents:
  - 1. Partial or Citywide disasters (e.g., aviation, criminal, natural or man-made).
  - 2. Any death of an APD employee.
  - 3. All adult and child sexual assaults regardless if it just occurred or is a delayed report.
- (c) VSD personnel shall be notified of the following call types if needed:
  - 1. Homicides, suicides, child deaths, and fatality collisions.
  - 2. Robberies & aggravated robberies (e.g., banks, restaurants, motels).
  - 3. Aggravated assaults (child, family or adult).
  - 4. Family violence.
  - 5. Child/elderly abuse or neglect.
  - 6. Hostage/barricade incident and SWAT/hostage negotiator call outs.
  - 7. Attempted suicides.
  - 8. Any death of an APD employee's family member.
  - 9. Unexpected death of any City employee.
- (d) Officers on the scene of any incident may request VSD personnel when they determine assistance may be needed.
- (e) VSD personnel may respond to an incident without being requested, but only when a scene is determined to be safe.
- (f) VSD personnel shall be contacted by the officer if the victim requests their services.

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#### **601.3 ON-SCENE PROCEDURES**

- (a) When VSD personnel are dispatched or respond to an incident and the scene is deemed safe, counselors shall:
  - 1. Immediately notify the officer in charge that they are present.
  - 2. Stand by for an officer to complete their contact and release the subject(s) to the counselor.
- (b) VSD personnel may be left at the scene only if the officer and counselor agree the scene is safe.
  - 1. If the officer deems the scene is unsafe and needs to return to duty, VSD personnel must:
    - (a) Take any subjects to a safe location (e.g., a Department facility, shelter, friend's/family's residence); or
    - (b) Leave the scene and advise the subjects of community resources and referrals.
- (c) VSD personnel who respond to a scene are required to complete a supplement documenting their observations and actions.

#### **601.4 SUPPORT SERVICES PROVIDED**

- (a) VSD personnel provide trauma-counseling, referrals and follow-up services to victims, witnesses, survivors, and community members. These services are provided through counselors working with the various Patrol, Support, and Investigative Units of the Department.
- (b) VSD personnel provide death notification services in conjunction with the Travis County Medical Examiner's Office and the appropriate investigative unit.
- (c) VSD personnel are responsible for notifying victims/survivors of violent crimes of their:
  - 1. Potential eligibility for compensation under State law and the assistance available in filing a claim; and
  - 2. State constitutional rights.
- (d) VSD personnel are also responsible for coordinating the Department's policies and procedures concerning General Order 607 (U-Visa Nonimmigrant Status Certifications).

##### **601.4.1 CRIME VICTIM LIAISON**

The Austin Police Department VSD is the designated crime victim liaison for the Department. As the liaison, the VSD is responsible for ensuring that crime victims are afforded the rights granted to them under 56.02 of the Texas Code of Criminal Procedures. VSD personnel will be the point of contact for individuals requiring further assistance or information from the Austin Police Department regarding benefits from crime victim resources. This includes notifying victims/survivors of violent crimes their potential eligibility for compensation under State law and the

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assistance available in filing a claim. VSD shall also be responsible for maintaining compliance with all legal mandates related to crime victims and/or witnesses.

#### **601.5 INFORMATION FOR ALL VICTIMS OF CRIME AND TRAUMATIC EVENTS**

All Department personnel, including officers, are responsible for providing victims of crimes against persons and traumatic events with victim assistance information. This information is contained in the English (pink) and Spanish (yellow) brochures entitled "Victim Assistance Information". These brochures are provided to the Department by Victim Services personnel upon request.

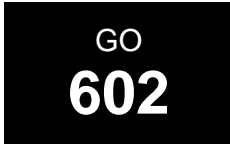
(a) Information for victims include:

1. APD incident report number, when applicable.
2. Appropriate Investigative Unit, when applicable.
3. Information on appropriate internal and external referrals.
4. Information on crime victims compensation.
5. Notice to adult victims of domestic violence.
6. Recognizing intimate partner abuse.
7. Information for parents on child exposure to family violence.
8. Safety planning.
9. Rights of crime victims.

#### **601.6 COMMITMENT TO TRAINING**

VSD personnel provide training on basic victimology, procedures, special services, types of victims, trauma impact and reactions. This training is provided to:

- (a) APD Cadet classes.
- (b) Department in-service training.
- (c) Communications.
- (d) Community groups.
- (e) Other law enforcement agencies.
- (f) State and federal agencies.



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# Chaplain Unit

### 602.1 PURPOSE AND SCOPE

The Austin Police Department Chaplain Unit is established for the purpose of providing spiritual and emotional support to all members of the Department, their families, and members of the public.

### 602.2 POLICY

The Chaplain Unit shall be an interdenominational, ecumenical ministry provided by volunteer clergy. With the exception of gratuities for wedding services, chaplains may not accept gratuities for services or follow-up contacts while functioning as a chaplain for the Austin Police Department.

The Department may, at its discretion, provide financial compensation for the supervision of the Chaplain Unit.

### 602.3 GOALS

- (a) Members of the Chaplain Unit shall fulfill the program's purpose in the following manner:
  - 1. By providing counseling, spiritual guidance and insight for Department personnel and their families.
  - 2. By being alert to the spiritual and emotional needs of Department personnel and their families.
  - 3. By familiarizing themselves with the role of law enforcement in the community.
  - 4. By serving as a resource for departmental personnel when dealing with the public in such incidents as accidental deaths, suicides, suicidal subjects, serious crashes, drug and alcohol abuse, critical incidents, and other such situations that may arise.
  - 5. By providing an additional link between the community, other chaplain programs, and the Department.
- (b) The Chaplain Advisory Committee exists to continually oversee chaplains' qualifications and conduct while providing service to the Department.

### 602.4 DUTIES AND RESPONSIBILITIES

The duties of a chaplain may include, but are not limited to, the following:

- (a) Assist in making notification to families of Department personnel who have been seriously injured or killed, where necessary.
- (b) Visit sick or injured law enforcement personnel in the hospital or home.
- (c) Attend and participate, when requested, in funerals and weddings of active or retired members of the Department and their families.

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- (d) Assist sworn personnel in the diffusion of a conflict or incident when requested by on-scene staff.
- (e) Maintain an active presence of the Chaplain Unit by riding out with officers on a regular basis. Chaplains are exempt from completing the *Police Observer Information Form*.
- (f) Respond to critical incidents, natural and accidental deaths, suicides and attempted suicides, family disturbances and any other incident that in the judgment of the Watch Lieutenant or supervisor aids in accomplishing the Department's mission.
- (g) Be on call and, if possible, on-duty for incidents as assigned by the Chaplain Unit supervisor.
- (h) Counsel officers and other personnel with personal problems, when requested.
- (i) Attend Department ceremonies, academy graduations and social events and offer invocations and benedictions, as requested.
- (j) Be responsible for the organization and development of spiritual organizations and support groups within the Department.
- (k) Respond to all major disasters such as earthquakes, bombings and similar critical incidents.
- (l) Provide liaison with other religious leaders of the community.
- (m) Assist public safety personnel and the community in any other function of the clergy profession, as requested.
- (n) Participate in in-service training classes.
- (o) Be willing to train to enhance effectiveness.
- (p) Promptly facilitate requests for representatives of clergy of other denominations and religions.
- (q) Make referrals in cases where specialized attention is needed or in cases that are beyond the chaplain's ability to assist.

#### **602.5 CONFIDENTIALITY**

Except as otherwise specified, matters of a personal nature that are discussed between chaplains and others shall remain private and confidential. Members of the clergy are not required to reveal penitential communications. However, clergy must report child, elder or dependent adult abuse discovered while acting in any of the following capacities:

- (a) Marriage, family or child counselor.
- (b) Religious practitioner who diagnoses, examines or treats children, elders or dependent adults.



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# Auxiliary and Support Services

### 605.1 PURPOSE AND SCOPE

The Department utilizes a variety of civilian personnel who assist in delivering day-to-day law enforcement services to the community. This order serves to identify the various programs and support services these civilian personnel provide.

### 605.2 SERVICES AND PROGRAMS AVAILABLE

#### 605.2.1 COMMUNICATION FACILITATOR PROGRAM

The APD Communication Facilitator (CF) Program is a branch of the Community Liaison Office that utilizes a volunteer work force to strengthen community relations and build strong partnerships.

- (a) The goal and mission of the CF Program is to remove the Spanish language barrier between APD Officers and the Spanish speaking public. This allows Officers the opportunity to complete required law enforcement duties and affords the Spanish speaking public equal access to the justice system.
- (b) In addition, the CF Program strives to remove other communication obstacles like behavior or attitude resulting from cultural differences between the Spanish speaking public and APD Officers not familiar with Spanish cultural issues.
- (c) The CF Program is available during specific days and hours during which officers may request the assistance of the Communication Facilitators via APD Communications.

#### 605.2.2 CRIME PREVENTION SPECIALIST

The primary function of the crime prevention specialist is the development, implementation, and evaluation of various citizen awareness programs offered to the Austin community. These programs promote public awareness and citizen involvement through a wide range of activities.

#### 605.2.3 CRIME SCENE AND PROPERTY CRIME RESPONSE UNIT

The Crime Scene and Property Crime Response Unit is responsible for handling those property crimes not requiring the immediate attention of an officer, taking reports from citizens, and processing crime scenes for evidence. Personnel are also responsible for providing expert testimony in criminal cases regarding their areas of support.

#### 605.2.4 DOWNTOWN RANGERS

The primary role of the Downtown Ranger Program is to be "goodwill ambassadors" for the Public Improvement District within downtown Austin. They provide information about points of interest and provide assistance to visitors and business owners while being a visible street presence in the downtown area. Downtown Rangers maintain direct communication with APD officers and dispatchers using police radio channels.

#### 605.2.5 LAW ENFORCEMENT EXPLORERS

A program that gives young men and women between the ages of 14 and 20 an opportunity to:

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- (a) Interact and work with police officers;
- (b) Learn more about available career opportunities; and
- (c) Act as youth ambassadors to the community for the Austin Police Department.

Explorers also assist various APD Units with community outreach programs and community service projects. Explorers may be allowed to participate in the Patrol Observer Program which gives them an opportunity to observe Patrol work firsthand.

**605.2.6 VOLUNTEERS IN POLICING**

Volunteers in Policing (VIPs) is designed to find quality volunteers who will enhance the work of the Austin Police Department by building partnerships and strengthening relationships between APD and the community. Volunteers work in various areas of the Department and may be trained to provide support during a catastrophic event.

**605.3 TRAINING REQUIRED**

Each program position has minimum training requirements; these are specified in a respective Unit standard operating procedures manual.

For some positions, training may include the use of OC spray and proper reporting procedures required by the Department after its use.



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## **U-Visa Nonimmigrant Status Certifications**

### **607.1 PURPOSE AND SCOPE**

U-Visa Nonimmigrant Certification ("Certification") extends temporary legal status to foreign nationals who are victims of a qualifying crime or criminal activity. APD will consider issuing U-Visa Nonimmigrant Status Certification on a case-by-case basis.

#### **607.1.1 DEFINITIONS**

Qualifying Crime or Criminal Activity - As listed in 8 U.S.C. § 1101(a)(15)(U), one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

### **607.2 STATEMENT OF CERTIFICATION INTENT**

APD's intent is to consider issuance of Certification to those individuals who prove willing to assist in furtherance of the law enforcement purposes of detecting, investigating, and prosecuting crimes. APD's decision to provide an applicant with a Certification is entirely discretionary. A victim who receives a Certification has an ongoing responsibility to assist APD in the investigation or prosecution of crime(s) listed on their Form I-918, Supplement B.

### **607.3 ELIGIBILITY FOR U-VISA NONIMMIGRANT STATUS**

To be eligible for Certification, a person must:

- (a) Be a victim of a qualifying crime or criminal activity; and
- (b) Cooperate with law enforcement and the criminal justice systems throughout the investigation and prosecution of the qualifying crime or criminal activity.

### **607.4 AUTHORITY TO ISSUE CERTIFICATIONS**

A lieutenant over the Violent Crime Units is designated by the Chief of Police to issue Certifications on behalf of APD.

### **607.5 CERTIFICATION PROCEDURES**

- (a) The I-918 Supplement B, U-Visa Nonimmigrant Status Certification, and associated instructions is available in the UVISA folder on APD Sharepoint.
- (b) Requests for Certification must be submitted in writing to [APDUvisacertification@austintexas.gov](mailto:APDUvisacertification@austintexas.gov).
- (c) All requests for Certification will be routed to the APD UVISA Certification Review Team.

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- (d) The UVISA Certification Review Team will make a recommendation for approval or denial of the certification as soon as possible, but no more than 90 days from the date of receipt of the request.
- (e) The UVISA Certification Review Team will forward their recommendations to the designated lieutenant for their review.
- (f) After reviewing the recommendations from the UVISA Certification Review Team, the lieutenant will make the decision to approve or deny the request. The decision will be final and not subject to appeal.
- (g) All requests and their dispositions will be stored according to APD's record retention general order.

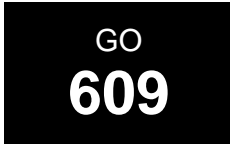
**607.6 REFERRALS OF APPLICANT TO OTHER CERTIFYING AGENCIES**

If APD determines it will not issue Certification in a particular case, it may refer the requester to:

- (a) a Federal, State or Local Law Enforcement agency.
- (b) a Prosecutor.
- (c) a Federal or State Judge.
- (d) the Department of Family and Protective Services.
- (e) the EEOC.
- (f) the Department of Labor.

**607.7 NOTIFICATION OF REFUSAL TO ASSIST**

If an individual unreasonably refuses to assist in the investigation or prosecution of the qualifying crime or criminal activity after certification has been granted and the I-918 Supplement B has been submitted to the U.S. Citizenship & Immigration Service (USCIS), the authorized Investigative Unit Sergeant shall notify the USCIS in writing of the refusal to assist.



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# Interpreter Services

### 609.1 PURPOSE AND SCOPE

Immediate language interpretation services are available 24 hours a day by phone. Qualified interpreters for those who are deaf or hard of hearing are available to respond to the scene upon request.

### 609.2 LANGUAGE INTERPRETER SERVICE

- (a) The Language Interpreter Service should be used when interpretation is necessary to provide services to the public and to perform police duties.
- (b) The Language Interpreter Service should not be used:
  1. For interpretation for Spanish-speaking persons. Spanish-speaking employees are available on each shift and throughout the Department.
  2. When other means are available, unless this would jeopardize the investigation.
  3. For long interrogations, confessions, or statements.
- (c) To obtain an interpreter, the employee should:
  1. Request the APD Communications supervisor notify the interpreter service;
    - (a) Communications will provide the employee with any applicable agency identification number/code needed when contacting the service.
  2. Provide the interpreter service with the agency identification number/code if required, the requester's employee number, and the language required.
  3. The employee should explain to the interpreter what is needed.
- (d) All calls made from CTECC will be recorded. If a copy of the conversation and translation is needed for evidentiary purposes, a copy should be requested from APD Communications.

### 609.3 INTERPRETERS & OTHER COMMUNICATION FACILITATION SERVICES FOR THOSE WHO ARE DEAF OR HARD OF HEARING

Qualified interpreters and other communication facilitation services for those who are deaf or hard of hearing are available at all hours. Instructions for obtaining their services are available through APD Communications, the Booking Desk, Centralized Investigations and Municipal Court.

When choosing what type of interpretation, auxiliary aids, or other communication facilitation services to use or provide, employees should give primary consideration to the request made by the person who is deaf or hard of hearing.

#### 609.3.1 INTERVIEWING A SUBJECT TO ESTABLISH PROBABLE CAUSE

If an officer needs to interview a subject who is deaf or hard of hearing to determine if there is probable cause to make an arrest, an interpreter or other service must be provided if written

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communication is ineffective. When an officer cannot wait until an interpreter or other service arrives, the following procedures apply:

(a) **Minor Offenses**

1. If possible, postpone the interview until an interpreter or other service is available. If an interpreter or other service is not available in a reasonable period of time, the officer must document the investigation as completely as possible for later follow-up by the appropriate investigative unit.

(b) **Serious Offenses**

1. If an interpreter or other service is not available in a reasonable period of time, a supervisor shall be contacted to decide if an investigator should be called in to wait for an interpreter or other service. If the supervisor decides that an investigator should not respond, the officer must document the investigation as completely as possible for later follow-up by the appropriate investigative unit.

#### 609.3.2 COMMUNICATING WITH A SUSPECT BEFORE ARREST

If probable cause exists for the arrest of a person who is deaf or hard of hearing and the same standard would apply to a suspect who is not deaf or hard of hearing, then no interpreter or other service would be required before arrest unless the officer is unable to convey the nature of the criminal charges.

If the arrestee requests the opportunity to communicate through an interpreter or other service, the arrestee should be transported to the Central Booking facility. Either the arresting officer or the transporting officer can convey the information through the interpreter or other service upon arrival.

#### 609.3.3 INTERROGATING AN ARRESTEE

If an officer cannot inform the arrestee of the Miranda warnings without the use of an interpreter or other service, then the officer must secure an interpreter or other service before any interrogation.

- (a) Suspects who are deaf or hard of hearing must be provided an interpreter or other service before any interrogation whenever one is needed for effective communication. If exigent circumstances do not allow a delay in the interrogation of the arrestee and an interpreter or other service cannot respond within a reasonable period, the officer may go on with the interrogation only if:
1. The arrestee can understand the Miranda warnings as given; and
  2. The arrestee specifically declines the opportunity to have an interpreter or other service present or available.
- (b) If written communication becomes ineffective, the officer must stop the interrogation and wait until an interpreter or other service is present or available.

#### 609.3.4 COMMUNICATING WITH A TRAFFIC VIOLATOR

If a person who is not deaf or hard of hearing would be issued a traffic citation without the need of being questioned, then a person who is deaf or hard of hearing in the same situation does not need to be provided an interpreter.

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If an officer has stopped a subject for a traffic violation and is unable to convey the nature of the infraction through written communication or the use of other means, the officer should use discretion about whether to call an interpreter or other service or to issue a warning rather than a citation.

#### 609.3.5 INTERVIEWING A VICTIM OR CRITICAL WITNESS

If officers can communicate effectively in writing with a person who is deaf or hard of hearing, they may proceed with an interview using a notepad or electronic device (written notes should be retained). However, if an investigating officer is unable to communicate effectively with a victim or a critical witness, the officer must utilize an interpreter or other communication facilitation service. If the officer cannot wait until an interpreter or other service arrives, the following procedures apply:

(a) **Minor Offenses**

1. Have an interpreter or other service dispatched to the victim's or critical witness's location and request APD Communications re-contact the officer when the interpreter arrives; or
2. The officer may ask the victim or critical witness to come voluntarily to the station when an interpreter or other service is available. When the victim/witness arrives, the investigating officer may then return to the station to complete the investigation or arrange for follow-up by the appropriate investigative unit.

(b) **Serious Offenses**

1. When the victim or witness is deaf or hard of hearing and is critical to establishing probable cause for an arrest or for completing the investigation, the investigating officer must contact the appropriate supervisor before leaving the scene. The supervisor will decide if an investigator will be called in to wait for an interpreter or other service. If the supervisor decides that an investigator should not respond, the officer must document the investigation as completely as possible for later follow-up by the appropriate investigative unit.

#### 609.3.6 SPECIAL COMMUNICATION FACILITATION CIRCUMSTANCES

In circumstances where an interpreter or another communication facilitation service is required, employees may not rely on the family members, friends, or other persons accompanying a person who is deaf or hard of hearing to provide interpretation or communication facilitation services except as specifically permitted by this order.

(a) If the person accompanying the person who is deaf or hard of hearing is an adult, then employees may rely on the accompanying adult to provide interpretation or communication facilitation services only when:

1. There is an emergency involving an imminent threat to the safety or welfare of an individual or the public and no department-provided interpreter is immediately available; or
2. The person who is deaf or hard of hearing specifically requests that the accompanying adult provide interpretation or communication facilitation services, the accompanying adult agrees to provide such assistance, and

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reliance on that adult for such assistance is appropriate under the circumstances (e.g., such assistance may not be appropriate if the person who is deaf or hard of hearing is a suspect in a serious criminal offense).

- (b) If the person accompanying the person who is deaf or hard of hearing is a child, then employees may rely on the child to provide interpretation or communication facilitation services only in an emergency involving an imminent threat to the safety or welfare of an individual or the public and no department-provided interpreter is immediately available.



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# Crime Analysis

### 610.1 PURPOSE AND SCOPE

Crime Analysis can aid in disseminating appropriate information to authorize personnel both internally and externally. Crime Analysis should provide currently useful information to aid operational personnel in meeting their tactical crime control and prevention objectives by identifying and analyzing methods of operation of criminals, providing crime pattern recognition, and providing analysis of data from field interviews and arrests. Crime analysis can be useful to the Department's long range planning efforts by providing estimates of future crime trends and assisting in the identification of enforcement priorities.

### 610.2 DATA SOURCES

Crime analysis data is extracted from many sources including, but not limited to:

- (a) Crime reports
- (b) Field interviews
- (c) Computer aided dispatch data
- (d) Department of Public Safety - Crime Records Service
- (e) Open Record / Public Information Sources

### 610.3 CRIME ANALYSIS FACTORS

The following minimum criteria should be used in collecting data for crime analysis:

- (a) Frequency by type of crime
- (b) Geographic factors
- (c) Temporal factors
- (d) Victim and target descriptors
- (e) Suspect descriptors
- (f) Suspect vehicle descriptors
- (g) Modus operandi factors
- (h) Physical evidence information

### 610.4 CRIME ANALYSIS DISSEMINATION

For a crime analysis system to function effectively, information should be disseminated to the appropriate units or persons on a timely basis. Information that is relevant to the operational and tactical plans of specific line units should be sent directly to that unit. Information relevant to the development of the Department's strategic plans should be provided to the appropriate staff units. When information pertains to tactical and strategic plans, it should be provided to all affected units.



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# Communication Operations

### **612.1 PURPOSE AND SCOPE**

The basic function of the communications system is to satisfy the immediate information needs of the law enforcement agency in the course of its normal daily activities and during emergencies. The latter situation places the greatest demand upon the communications system and tests the capability of the system to fulfill its functions. Measures and standards of performance are necessary to assess the effectiveness with which any department, large or small, uses available information technology in fulfillment of its mission.

#### **612.1.1 FCC COMPLIANCE**

Austin Police Department radio operations shall be conducted in accordance with Federal Communications Commission (FCC) procedures and guidelines.

### **612.2 COMMUNICATION OPERATIONS**

This department provides 24-hour telephone service to the public for information or assistance that may be needed in emergencies. The ability of citizens to telephone quickly and easily for emergency service is critical. This department provides access to the 9-1-1 system for a single emergency telephone number. This department has two-way radio capability providing continuous communication between CTECC and officers.

### **612.3 TELECOMMUNICATOR TRAINING**

All personnel hired as telecommunicators shall be trained as necessary in the operation of the communications equipment and in Department operations. All telecommunicators are required to complete TCOLE Basic Telecommunicator Course and required NCIC/TCIC courses within one year of assignment.

#### **612.3.1 TCOLE TELECOMMUNICATOR TRAINING**

Any person hired as a telecommunicator shall complete at least 40 hours of training as determined by the TCOLE (Tex. Occ. Code § 1701.405 et seq.).





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## Central Records Procedures

### 614.1 PURPOSE AND SCOPE

The Central Records Manager shall maintain the Department Central Records Procedures Manual on a current basis to reflect the procedures being followed within the Central Records. Policies and procedures that apply to all employees of this department are contained in this chapter.

### 614.2 FILE ACCESS AND SECURITY

Austin Police Department employees shall not access, view or distribute, or allow anyone else to access, view or distribute any record, file or report, whether hard copy or electronic file format, except in accordance with department order, and with a legitimate law enforcement or business purpose or as otherwise permissible by law.

All reports including, but not limited to, initial, supplemental, follow-up, evidence and all reports related to a case shall be maintained in a secure manner accessible only to authorized APD personnel.

### 614.3 REPORTS TO THE DEPARTMENT OF PUBLIC SAFETY

The Central Records Manager will ensure that all offenses listed under Tex. Penal Code § 22.011 and Tex. Penal Code § 22.021 are reported on a monthly basis to the Texas Department of Public Safety as mandated (Tex. Gov't Code § 411.042 and 37 Tex. Admin. Code § 27.121). The Central Records Manager should promptly advise the Chief of Police if this mandated reporting will be delayed for any reason.



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# Public Safety Camera System

### 616.1 PURPOSE AND SCOPE

The Public Safety Camera system assists the Department in the identification of criminal activity as it is occurring, the prevention and deterrence of criminal activity, and the capture of video evidence to support prosecutions in cases of criminal activity. This is accomplished through the use of overt cameras in public areas.

The primary use of the cameras will be to enhance public safety in areas where the safety and security of individuals are at increased risk. The cameras are installed at the direction of the Department and operated in such a manner that will protect individual privacy rights.

The decision to place cameras in specific locations will be made based on current crime data, large crowd events, or community requests. The Department acknowledges that real-time camera monitoring of the public safety cameras is ideal but that this may not always be feasible due to resource constraints.

### 616.2 PUBLIC SAFETY CAMERA SYSTEM OPERATION

- (a) Information obtained through the public safety cameras shall only be used for lawful law enforcement purposes. Information shall not be sought, gathered, or retained if there is reason to believe such information was gathered or retained in violation of local, state or federal law, or Department General Orders.
- (b) The Department will utilize reasonable means to ensure compliance with the law when a legal expectation of privacy exists.
- (c) The following factors shall not be considered reasons to create suspicion except when used as part of a specific suspect description and information shall not be sought, gathered, or retained solely on the basis of:
  1. Race, ethnicity, citizenship, age, disability, gender, or sexual orientation; or
  2. Participation in a particular organization or event; or
  3. Religious, political, or social views or activities.

#### 616.2.1 PROGRAM MONITORING OFFICERS

Only personnel specifically trained in the operation of the public safety camera system will be allowed to use, monitor and manage the camera system. Trained officers will conduct safety camera monitoring only from the Public Safety Camera Command and Control Center, or other designated monitoring stations as recommended by the Public Safety Camera Advisory Board.

#### 616.2.2 TRAINING

All designated Public Safety Camera operating officers and supervisors shall receive the following training prior to being authorized to use any camera equipment:

- (a) How to properly operate the public safety camera equipment; and

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- (b) Department policies and procedures; and
- (c) Privacy concerns covered by the First Amendment and Fourth Amendment.

#### 616.2.3 TEMPORARY MOBILE CAMERA GUIDELINES

- (a) In the event the temporary use of a public safety camera is warranted, one or more mobile cameras may be utilized.
  - 1. Approval for the mobile camera(s) must first be obtained from the affected assistant chief.
  - 2. Mobile camera(s) shall contain the same or similar signage to the stationary public safety camera locations.
  - 3. Use of these mobile camera(s) will be temporary, logged, and reported during regular Public Safety Camera Advisory Board meetings.

#### **616.3 PUBLIC SAFETY CAMERA ADVISORY BOARD**

The Public Safety Camera Advisory Board is comprised of the following personnel:

- (a) Intelligence Division Commander.
- (b) Austin Assistant City Attorney.
- (c) All Patrol Commanders, or respective designee(s).
- (d) Crime Data Advisor (APD Crime Analysis).

The Intelligence Division Commander will assume the role of Technical Advisor and Chairperson over the Board and conduct the business of the Public Safety Camera Advisory Board as outlined in this order.

#### 616.3.1 BOARD DUTIES AND RESPONSIBILITIES

The Public Safety Camera Advisory Board is responsible for making recommendations regarding APD's Public Safety Camera system to the Chief of Police. The Public Safety Camera Advisory Board shall:

- (a) Review all requests for camera placement, relocation and removal.
- (b) Analyze the effectiveness of camera placement/relocation.
- (c) Forward a list of approved public safety camera locations to the Chief or designee for final approval.
- (d) Ensure annual audits of the Public Safety Camera system are completed as outlined in this order.
- (e) Review current program training and make recommendations to the Chief regarding changes or improvements to training for the Public Safety Camera system.
- (f) Prepare an annual report to the Chief of Police related to the overall system performance measures.
- (g) Verify that rules of retention are being followed.

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#### 616.3.2 INTELLIGENCE DIVISION COMMANDER

The Intelligence Division Commander or their designee, will be the single point of contact for questions or concerns related to the Public Safety Camera Program. The Intelligence Division Commander or their designee shall ensure:

- (a) Each camera has a historical log that documents the date and location of each camera's placement and relocation if applicable.
- (b) The placement and relocation of each camera is monitored to maximize utilization of the system.
- (c) Meetings of the Public Safety Camera Advisory Board will be held annually or more frequently as required by operational needs.
- (d) A maintenance program is in place that is designed to increase effectiveness and decrease down time.

#### 616.3.3 COMMANDER RESPONSIBILITIES

- (a) Each Patrol Commander shall be responsible for providing appropriate time during Commander Forums for citizen input on any proposal to place a camera within the affected Commanders geographic area.
- (b) Members of the Public Safety Camera Advisory Board should be invited to any Commanders Forum where citizen input is requested regarding camera placement. All input will be considered, along with those other criteria defined in this order when making recommendations to the Chief of Police for final camera placement.
- (c) The appropriate Patrol Commander shall be responsible for notification to the community if removal of a camera is deemed appropriate after recommendation by the Public Safety Camera Advisory Board to the Chief of Police.

#### **616.4 PUBLIC SAFETY CAMERA PLACEMENT**

Public safety cameras will be placed in locations pursuant to recommendation by the Public Safety Camera Advisory Board and contingent on final approval by the Chief or designee. Cameras will be overt and have markings that clearly indicate the camera as being part of the Public Safety Camera system.

Once a location has been recommended by the Board and approved by the Chief, the location shall be made known to the public at least 72 hours prior to installation.

#### **616.5 RETENTION**

Retention of images recorded by the safety cameras shall be done in accordance with City, State and Department General Orders. Such retention shall be no longer than 10 days.

#### **616.6 REVIEW AND RELEASE OF CAMERA IMAGES AND INFORMATION**

- (a) All images and information obtained through the use of the public safety camera system shall be handled in accordance with:

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1. Accepted Department procedures and legal rules governing the handling of evidence; and
  2. The Texas Public Information Act; and
  3. Applicable laws, statutes, record retention policies, and court orders.
- (b) All images and information that would interfere with the detection, investigation, or prosecution of a crime shall be released to the public only to the extent required by law.
- (c) All requests for non-evidentiary video must be submitted on form PD0149 and approved by a Commander or above, unless authority to approve such request is granted by RTCC/HALO SOPs.

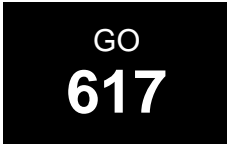
#### **616.7 PERFORMANCE MEASURES**

- (a) Performance measures for the cameras are based on information and data indicating disruption of known patterns of crime, identification of criminals and criminal activity and confirmed cases of the video evidence obtained from the public safety cameras being used to assist in the prosecution of crimes.
- (b) The Intelligence Commander or designee will provide quarterly reports to the Public Safety Camera Advisory Board for camera locations which will include:
1. Identifying what each camera placement has accomplished as demonstrated through the stated performance measures.
  2. Identify what actions will be taken to eliminate a future need for the camera at the current location.
  3. When the camera may be removed from the location.
- (c) The Intelligence Division Commander will present updates to Public Safety Commission as needed.

#### **616.8 AUDIT REQUIREMENTS**

The Public Safety Camera system will be audited separately by the Austin Police Department Risk Management Unit and the Office of City Auditor for policy compliance. The results of the audits will be presented to the Chief of Police and may be public information as allowed by law. At minimum:

- (a) The Risk Management Unit will perform quarterly random audits of the system to insure compliance to policies and procedures.
- (b) The Office of City Auditor will perform random audits based on a schedule known only to the City Auditor.



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# Critical Incident Support Systems and Procedures

## 617.1 PURPOSE AND SCOPE

This order describes support systems for employees involved in on-duty or off-duty critical incidents and assistance provided to the employee's family.

### 617.1.1 DEFINITION

**Critical Incident** - For the purpose of this order, a "critical incident" is defined as an event in which an employee:

- (a) Is injured and hospitalized while performing a law enforcement function; or
- (b) Causes the death or serious injury of another person; or
- (c) Is traumatized due to feeling responsible for a tragedy while at the same time being helpless to prevent the tragedy; or
- (d) Any police incident or interaction which results in an employee experiencing emotional or psychological distress, ranging from mild to severe.

## 617.2 CRITICAL INCIDENT SUPPORT SYSTEMS

The following critical incident support systems are available for employees involved in a critical incident:

- (a) Critical incident support partner.
- (b) Peer Support.

### 617.2.1 CRITICAL INCIDENT SUPPORT PARTNER

Employees involved in a critical incident will be able to have another employee function as a critical incident support partner. The critical incident support partner's work schedule may be adjusted to accomplish this role.

- (a) The critical incident support partner will:
  - 1. Remain available to the involved employee until the employee is escorted home.
  - 2. Attempt to provide emotional support and needed assistance to the involved employee.
- (b) The critical incident support partner will not be involved in the investigation, nor act as a spokesperson for the employee involved.

### 617.2.2 PEER SUPPORT

Peer Support is comprised of sworn and civilian employees who have been trained to support and assist employees during times of need, including, but not limited to, critical incidents.

- (a) The Duty Commander, Watch Lieutenant, or an employee's supervisor may contact the Peer Support Coordinator anytime it is deemed necessary to support an employee or the employee's family.

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- (b) Peer Support may act as a critical incident support partner for employees involved in a critical incident or serve as a secondary support system for an employee's designated critical incident support partner.

#### **617.3 CRITICAL INCIDENT PROCEDURES**

- (a) The Peer Support Program Coordinator will be notified by the Watch Lieutenant anytime there is a critical incident involving an APD employee.
  - 1. If requested by the on-scene supervisor or an involved employee, the Peer Support Coordinator may, as needed, respond to the scene or direct trained Peer Support employees to respond and assist.
- (b) The on-scene supervisor will ensure the employee's Department Support Contact is notified.
  - 1. If the on-scene supervisor determines the employee's designated Department Support Contact is unavailable, then:
    - (a) An on-scene supervisor may request a trained peer support employee as the Department Support Contact; or
    - (b) The employee's on-duty lieutenant/manager or on-scene supervisor may designate another employee as the Department Support Contact.
- (c) The employee's supervisor will email Court Liaisons at [court.liaisons@austintexas.gov](mailto:court.liaisons@austintexas.gov) for the purpose of requesting a continuance if:
  - 1. The employee has scheduled court appearances within ten (10) days of the incident; or
  - 2. The employee is incapacitated or injured to the point they are unable to attend court.
- (d) In the event sworn employees are incapacitated or injured to the point they are unable to notify their family of their injury, their Department Support Contact will be utilized to assist Victim Services and appropriate members from the chain-of-command with any necessary emergency/next-of-kin contact notifications.
- (e) Supervisors may contact APD-HR or the Watch Lieutenant to access employees emergency contact information.
  - 1. An emergency contact report is run every 24 hours and placed in a restricted folder located in the "G" drive called "Emergency Contact". Watch Lieutenants and APD HR personnel have access to this report.
  - 2. Employees with access to the emergency contact report will safe guard the information. This report WILL NOT be copied, e-mailed, printed or saved to another location without the approval of an APD HR Manager.

#### **617.4 HOSPITALIZED EMPLOYEES**

When an employee is hospitalized for an on-duty injury, a supervisor may assign another employee to transport the injured employee's family members to the hospital.

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**617.4.1 HOSPITAL GUARD**

The lieutenant of a hospitalized officer or the Duty Commander may assign an officer as a hospital guard if the employee requests one or there is reason to believe that reprisals might be planned against the injured employee.

- (a) The work schedule of the officer performing guard duty may be adjusted to accomplish this service.
- (b) Shifts for officers serving as hospital guards will not exceed four (4) hours.

**617.5 DEBRIEFING**

This section covers the required debriefings of employees involved in a critical incident. The debriefings are conducted by the Department Psychologist and City Legal.

**617.5.1 DEBRIEFING WITH THE DEPARTMENT PSYCHOLOGIST**

The involved employee's commander/manager will ensure the Department psychologist is notified within 24 hours after a critical incident.

- (a) The Department psychologist will conduct a debriefing session within 72 hours of the incident. The employee's immediate family may be included in the debriefing session.
- (b) The purposes of the debriefing are:
  - 1. To inform employees and their immediate families of the normal symptoms and reactions associated with critical incidents and allow everyone an opportunity to express their feelings; and
  - 2. To provide support and guidance to employees and their immediate families in relation to dealing with the psychological after-effects of the incident.
- (c) The debriefing is not related to any Department investigation and nothing discussed in the debriefing will be reported to the investigators. By state law (Article 5561h, Vernon's Civil Statutes) and Department General Orders, the contents of the debriefing session will remain confidential.

**617.5.2 LEGAL DEBRIEFING**

Should an employee be sued for civil liability resulting from a critical incident, a City attorney or other qualified attorney will brief the employee. The briefing will include an overview of the procedures in liability suits and a summary of the outcome of similar suits in Austin.

**617.6 WORK ASSIGNMENTS WHILE ON ADMINISTRATIVE DUTY**

When an employee is placed on Administrative Duty status pending an investigation of a critical incident, the employee's commander/manager will work with the appropriate assistant chief to assign the employee to duties which serve the Department's needs and best use the employee's skills and experience.



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# Property and Evidence Collection Procedures

## 618.1 PURPOSE AND SCOPE

It is the duty and obligation of employees of the Department to properly seize, control, care for, store, process, and dispose of property and evidence that may come into their possession. Employees will adhere to the property handling procedures described in this document. For the purposes of this document, all items that come into police care and control will be considered property or evidence and will be handled equally.

## 618.2 DEFINITIONS

- (a) **Administrative Value (AV):** The Administrative Value retention period is generally associated with routine or administrative business documents. The retention period is tied to the usefulness of the records for the conduct of current or future administrative business.

## 618.3 GENERAL PROVISIONS

- (a) Employees will not convert to their own use, manufacture, conceal, destroy, remove, tamper with, or withhold any property or evidence in connection with an investigation or other departmental action.
- (b) Employees shall not purchase, convert to their own use, or have any claim to any found, impounded, abandoned, or recovered property, or any property held or released as evidence.
- (c) Employees, or persons acting on their behalf, shall not bid in any auction of property seized, confiscated, or found by the Department.
- (d) Email messages, text messages, images, and attachments stored on a personally owned electronic device shall be forwarded to a City account unless there is no administrative value in retaining the information. Additional guidelines are listed in Administrative Bulletin 08.06 which can be found on the COA Human Resources Policies and Procedures intranet page.
- (e) When handling valuable items such as cash, coins, jewelry, or electrical devices (smart phones) employees will document proper handling, control, processing and disposal of such items. Methods of documentation include; but, are not limited to:
  - 1. Detailing actions of handling and disposal in the incident report;
  - 2. Utilizing video/audio recording equipment at all times if those resources are available;
  - 3. In cases involving currency during a field investigation, have a second officer witness and verify:
    - (a) The amount seized
    - (b) The amount returned if not submitted as evidence.

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#### **618.4 PHYSICAL EVIDENCE COLLECTION**

Employees will assess a crime scene before seizing any item of physical evidence. Only items of physical evidence that relate to allegations of criminal conduct or the identity of a suspect will be seized. Employees will ensure that items identified as evidence are not tampered with in any way prior to being photographed and collected.

- (a) Guidelines for crime scene and latent print processing are outlined in General Order 401 (Preliminary Field Investigations).
- (b) Before seizing physical evidence, it should be photographed or videotaped in its original location and condition, with a scale marker when practical and necessary to the investigation.
  1. Crime Scene personnel should be used to photograph or videotape all physical evidence found at major crime scenes.
  2. Employees who are qualified in the use of Department issued cameras should photograph or videotape physical evidence at lesser crime scenes
- (c) Seized physical items, such as, cell phones and computers, containing original digital evidence requiring forensic analysis will be submitted to the Digital Forensics Unit along with the appropriate request.
- (d) Seized physical items containing original digital evidence not requiring forensic analysis will be processed in the following manner:
  1. The device will be submitted to evidence according to section 618.6 of this order.
  2. Digital media from the device will be processed by the appropriate investigative unit according to section 618.5 of this order.

#### **618.4.1 STOLEN PROPERTY**

- (a) Employees will only seize items considered as stolen property when reasonable grounds exist to believe it is stolen or when the items are readily identifiable and traceable.
- (b) In theft offenses, if the owner of the property is known and the ownership of the property is uncontested, employees will take a digital image of the property and make a reasonable effort to return it to the owner.
  1. Property recovered in shoplifting offenses will generally not be seized.
  2. If a digital camera is not available at the scene, personnel may bring the property to the station to be photographed and then return the property to the rightful owner.

#### **618.4.2 FOUND PROPERTY**

- (a) Employees will only seize items of abandoned or found property which:
  1. Are readily identifiable and traceable; or
  2. Are of value, such as money and jewelry; or
  3. Appear to have been involved in a criminal offense; or

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4. Constitute a hazard to the public safety; or
  5. May be offensive to public morals or sensitivities.
- (b) Employees will make a reasonable effort to return the property to the owner immediately when the owner of the property is known.
- (c) Employees will treat the property as though it was stolen if the facts and circumstances suggest that is the case.

#### 618.4.3 CONTRABAND

- (a) Except during undercover operations, employees will seize all items in their presence that they have probable cause to believe is contraband, including narcotics, illegal weapons, and gambling equipment.
- (b) Suspected controlled substances will be treated as known controlled substances. Employees will not taste or smell a suspected controlled substance but will instead field test it and submit it to the evidence room.

#### 618.4.4 HAZARDOUS MATERIALS

- (a) Unless assigned to the Bomb Squad or the Clandestine Lab Team, employees will not move or disturb any suspected:
1. Explosive device.
  2. Hazardous chemicals.
  3. Flammable substances.
  4. Radioactive materials.
- (b) Employees will immediately notify a supervisor and Communications, and adhere to procedures as outlined in General Order 413 (Clandestine Lab) and General Order 414 (Bomb Threats, Explosive Devices and Bombing/Explosion Incidents).

#### 618.4.5 FORGERY DOCUMENTS

Forgery documents will be placed in a plastic bag with an evidence tag, attached to the forgery incident report, and submitted to the evidence room. Employees will not process forgery documents for latent prints; forgery documents are only processed by the forensic lab when a request is made by the appropriate investigator.

#### **618.5 DIGITAL EVIDENCE COLLECTION AND STORAGE**

The purpose of this section is to give employees guidelines for collection and storage of digital evidence. The Department utilizes various vendors for digital storage; however, due to limited space, some digital evidence will be stored in a Digital Case Folder. The digital case folder is a subfolder within the unit's respective G drive folder that contains digital evidence that is not already stored in other approved locations. Each investigative unit shall create and maintain the folder according to records retention. Cases should be organized by the case number year and clearly labeled for easy retrieval.

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- (a) Photos
  1. Photos taken with the Axon Body Camera App are uploaded to Evidence.com.
  2. Photos taken with City owned digital cameras are uploaded to Digital Crime Scene Management System (DCSMS).
  3. Photos taken with personal digital cameras are stored in the digital case folder.
  4. Digital photos provided by outside sources, such as, citizens or other law enforcement agencies, are stored in the digital case folder.
  5. Physical photos that are provided by outside sources will be scanned and stored in the digital case folder. Originals are submitted to evidence.
- (b) Videos
  1. Videos captured on the Body Worn Camera (BWC) are uploaded to Evidence.com.
  2. Videos captured on an in-car video system are uploaded to the Department's relevant official system of record.
  3. Videos, such as, surveillance videos, provided by outside sources are stored in the digital case folder. The original device the video was provided on is submitted to evidence.
- (c) Documents
  1. Digital documents, excluding photos and videos, are uploaded to Versadex.
  2. Emails that are relevant to a case are stored in the digital case folder.
- (d) Any other digital evidence not mentioned here that is not stored elsewhere shall be stored in the digital case folder.

#### **618.6 EVIDENCE PROCESSING AND SUBMISSION**

Employees will process and submit all property taken into their custody as expeditiously as possible while following established guidelines.

- (a) Employees seizing property will be responsible for properly marking it to make it readily identifiable in court.
  1. When evidence is marked, the mark shall be distinctive, but as small as practical; property will not be marked in a way that impairs its evidentiary value or reduces its monetary value.
  2. Evidence will not be marked for later identification when:
    - (a) It bears a serial number; or
    - (b) It can be identified through distinctive markings and recorded information.
- (b) Evidence that cannot be marked or identified by distinctive marking shall be packaged and sealed with a completed chain of custody label.
- (c) Before submitting property, personnel will complete the following:

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1. Enter each item into Versadex; and
  2. Print a bar code for each item to be submitted; and
  3. Complete any necessary chain of custody label(s); and
  4. Package the item in a way that protects it from damage and ensures the item's integrity as evidence; and
  5. Attach the chain of custody label(s) to the item in an area that will reduce potential damage caused by the label. If the item can be placed in a bag, the chain of custody label should be placed on the outside of the bag.
- (d) Employees receiving evidence or property from another employee or agency will sign and notate the date and time on the chain of custody form.

#### 618.6.1 EVIDENCE SUBMISSION GUIDELINES

Employees will submit processed physical evidence or property to an assigned investigator, the Evidence Section, or a temporary drop box/locker (e.g., North Substation, South Substation) before completing their tour of duty, however:

- (a) The following types of evidence or property will **only** be turned in at the East Substation Evidence Section:
1. Combustibles in outside lockers.
  2. Hazardous materials (e.g., gasoline, aerosols, volatile chemicals) in outside lockers.
  3. Rape kits in inside lockers, refrigerated if necessary.
  4. Blood tubes in inside lockers, refrigerated if necessary.
  5. Perishables in inside lockers, refrigerated if necessary.
- (b) Firearms will not be dropped off at the Main.

#### 618.6.2 SUBMITTING NARCOTICS AND NARCOTIC PARAPHERNALIA

- (a) Narcotics and narcotic paraphernalia may be turned in as follows:
1. Identified narcotics and narcotic paraphernalia may be turned in at the Evidence Section located at the East Substation or any temporary evidence drop box/locker location when:
    - (a) Charges have been direct filed (affidavit turned in at the time of the arrest); or
    - (b) A Field Release citation has been issued; or
    - (c) Charges will not be filed.
  2. In cases involving a custody arrest and narcotic charges are pending:
    - (a) narcotics that cannot be identified will only be turned in to the Evidence Section located at the East Substation.

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3. The temporary evidence drop box at Arrest Review is designated only for narcotics and narcotic paraphernalia that can be identified or unidentified items where no charges are filed.
- (b) Officers with supervisor approval may authorize disposal of evidence in certain cases. Officers will document the approving supervisor's name and employee number in the offense report. Officers submitting narcotics evidence for disposal will follow the below procedure:
1. This section only applies to the below cases where evidence is being submitted for destruction:
    - (a) Possession of Drug Paraphernalia, after being photographed;
    - (b) Found Controlled Substances
    - (c) No charges filed cases having no identifiable suspect(s) (Titled "Found Controlled Substance")
  2. When submitting evidence, the officer should notate the item status of "D" for "Disposal" on the individual Versadex Property Description Form to reflect which item(s) is being submitted for disposal and check the Evidence indicator box.
  3. Under no circumstance will sworn personnel authorize the destruction of marijuana, drug paraphernalia, or other related property seized from a person potentially engaging or assisting in the lawful use of medical marijuana without a thorough investigation, direction from the County/District Attorney Offices, or a court order.
  4. A supervisor may authorize the return of marijuana, drug paraphernalia, and other related property in cases where the items are being legally possessed, but were submitted into the Evidence Section for safekeeping, or as property not accepted by the jail.
- (c) All narcotics and/or paraphernalia will be submitted in accordance with procedures established by the Evidence Section. This includes prescription medication.

#### 618.6.3 SUBMITTING BIOHAZARD MATERIAL

Evidence with blood or body fluids should be packaged in accordance with methods outlined in evidence handling procedures available at evidence drop-off locations. Items with blood or body fluid must be packaged to prevent any cross contamination of other evidence/property and must be clearly marked as "Biohazard".

#### 618.6.4 SUBMITTING CURRENCY

Foreign and domestic currency must be counted and verified by a second employee, sworn or non-sworn, before being submitted.

- (a) After counting and verifying the amount of currency, both employees will place their initials, employee number, and the date on the seal.
- (b) The submitting officer and the person who verified the currency amount will document their verification in a supplement to the incident report.

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**618.6.5 SUBMITTING FIREARMS**

Employees shall use a clearing barrel or clearing tube when available to unload weapons prior to submission. If a weapon cannot be unloaded, employees shall:

- (a) Make every effort to make the firearm safe or inoperable (ex. Use of tie strap to prevent firearm from cycling).
- (b) Place the firearm into an individual evidence submission locker. Do not deposit the firearm into a bulk receptacle, such as, a mailbox style drop box.
- (c) Place a magnetic Loaded Firearm warning label or some type of hand written warning notice inside the locker which is easily noticeable by evidence staff.
- (d) Notify the On-Call Evidence Specialist via Communications of the facility location and locker number in which the loaded firearm was submitted.

**618.6.6 SUBMITTING SEIZED DIGITAL EVIDENCE**

Employees shall submit all seized digital evidence to the Digital Forensics Unit for analysis.

- (a) Employees submitting seized digital evidence to the Digital Forensics Unit shall follow the Department's general orders related to seized evidence processing and submission.
- (b) Employees shall submit an ATLAS Forensics Analysis Request to the Digital Forensics Unit no later than 30 days after submitting the seized digital evidence.
- (c) Employees shall not attempt to access seized digital evidence, unless exigent circumstances exist or the employee accesses the evidence at the direction of a Digital Forensics Unit detective.

**618.7 INCORRECTLY PROCESSED EVIDENCE AND PROPERTY**

Seized property and evidence not packaged properly will be collected but will not be processed by the Evidence Section. In the event this occurs, the following will take place:

- (a) Evidence Section personnel will contact the submitting officer's supervisor and give direction on how to correct the error. All corrections will take place at the Evidence Section during the Evidence Section's normal business hours or as directed by personnel from the Evidence Section.
- (b) The submitting officer's supervisor will ensure the necessary corrections are made within 5 days of being notified by personnel from the Evidence Section.

**618.8 RELEASE OF EVIDENCE AND PROPERTY**

- (a) Temporary Releases
  1. Employees will not remove property from the Evidence Section except to comply with a subpoena or for an official law enforcement function (e.g., laboratory or forensic testing).
  2. Except for routine forensic testing, only the investigator assigned the case may temporarily check out the property without a subpoena or prior written approval from the manager of Forensic Division.

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(b) Permanent Releases

1. Property may only be released to a law enforcement agency, the courts, the owner, or the owner's agent.
2. Only the investigator assigned to a case, the investigator's supervisor, or the Evidence Section manager may authorize the permanent release of property.
3. It will be the responsibility of the investigator assigned to the case to notify the owner, as expeditiously as possible, when property is ready for release.

**618.9 SUBMITTING FIREWORKS**

- (a) When an officer is provided fireworks by a citizen for destruction, the officer may dispose of the fireworks at an Austin Fire Department facility if fireworks are being accepted by the Fire Department.
- (b) When an officer seizes small quantities of fireworks as part of a criminal investigation or as contraband, or when the Austin Fire Department refuses acceptance, the officer will submit the fireworks into evidence at the following locations:
  1. 4708 E. MLK Blvd. (Evidence Warehouse) between 6am - 4pm Monday - Friday (closed on City Holidays),
  2. Any unmanned evidence submission point.



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**Chapter 8 - Equipment Policies**



## Austin Police Department General Orders

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# Property and Equipment Accountability

### 800.1 PURPOSE AND SCOPE

Department employees are expected to properly care for City property and equipment assigned or entrusted to them. Employees may also suffer occasional loss or damage to personal or City property while performing assigned duties. This order outlines the procedures for the handling, accountability and replacement of City and personal property used for official duties.

### 800.2 GENERAL POLICY

For purposes of this order, Department property is synonymous with City property.

- (a) Willful damage to City property by an employee is prohibited.
- (b) Negligent or incorrect use of City property is prohibited.
- (c) Employees are responsible for the ordinary care and cleaning of City equipment in their custody and control, and will maintain it in the best possible condition.
- (d) Each employee will, by practical means, secure all equipment from unauthorized access or use.
- (e) Lockers, desks, computers, and other such items that have been assigned for the use of an individual employee remain the property of the City of Austin and are subject to inspection or examination by a supervisor at any time. Employees should not store personal information or belongings at these locations with an expectation of privacy.

### 800.3 CITY PROPERTY AND EQUIPMENT GUIDELINES

This section covers the guidelines for the handling of property and equipment checked out from a Property Control Office (PCO) or issued by the Department.

#### 800.3.1 CHECKING OUT EQUIPMENT AND SUPPLIES FROM A PROPERTY CONTROL OFFICE (PCO)

Employees must acknowledge in writing receipt of all equipment and supplies received from a PCO.

- (a) Expendable supplies are items which do not have to be returned to PCO (e.g., flares, pager batteries).
- (b) Non-expendable equipment is any item that is reusable on a continual basis and must be returned to PCO at the end of each shift (e.g., radar, car keys, digital cameras).
  1. Employees must acknowledge in writing the return of all non-expendable equipment and supplies to a PCO.
  2. Any non-expendable item not returned at the end of the duty shift or on the expected return date will be flagged by PCO.
    - (a) PCO will immediately notify the employee's commander/manager of the situation by email, phone, or in writing.

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- (b) Commanders/managers are responsible for ensuring that the property is returned by the employee.

#### 800.3.2 ISSUANCE OF CITY PROPERTY AND EQUIPMENT

Employees must acknowledge receipt of all property, equipment, and clothing issued from the Equipment and Supply Section by signing a *Department Receipt Form*.

- (a) The Equipment and Supply Section will assemble the initial issuance of equipment for cadets. Distribution of equipment to the cadets will be conducted by the Equipment and Supply Section.
- (b) New non-sworn employees will process through the Equipment and Supply Section within five (5) workdays after beginning work to establish an equipment issue record. Non-sworn employees required to wear uniforms will be issued the appropriate items by the Equipment and Supply Section or will be furnished a clothing requisition form in order to draw clothing from the City Clothing Store.
- (c) All employees who are transferred into or out of a position which requires the issuance of specialized equipment are required to process through the Police Equipment and Supply Section within five (5) work days after the effective date on the personnel directive.
- (d) Employees will be furnished a clothing requisition form for all items issued from the City Clothing Store.
  1. The employee will sign for all items and ensure that the sizes are correct at the time of issue by the Clothing Store.
  2. An electronic copy of the form will be sent by the Clothing Store to the Equipment and Supply Section so that it can be filed in the employee's permanent equipment issue file.
  3. Once issued, the care and maintenance of clothing is the employee's responsibility.
  4. Subsequent alterations needed due to weight loss or gain will be the employee's responsibility.

#### 800.3.3 DEPARTMENT ISSUED PERSONAL COMMUNICATION DEVICES

Depending on an employee's assignment and needs of the position, the Department may, at its discretion, issue a Personal Communication Device (PCD). Department issued PCDs should only be used by employees for Department business.

- (a) For purposes of this order, the term Personal Communication Device (PCD) is intended to include all mobile phones, Personal Digital Assistants (PDA) and other such wireless two-way communication and/or portable Internet access devices that are owned by the Department.

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- (b) Department owned PCDs shall remain the sole property of the Department and are subject to inspection and monitoring (including all related records and content) at any time without further notice.
- (c) The use of any Department owned PCD shall occur only with the understanding that any and all messages transmitted or received are subject to disclosure to, and review by, the Department without further notice.

#### 800.3.4 BODY ARMOR

The Department will issue body armor to authorized employees. Employees will be notified by Equipment and Supply Section 60 days prior to the date of expiration to be measured for new issued body armor. All body armor will be replaced prior to the expiration date of the manufacturer warranty.

- (a) Any issued body armor believed to be defective will be turned in immediately to Equipment and Supply Section:
  - 1. Employees turning in issued body armor as defective will be temporarily issued an unexpired body armor.
  - 2. Equipment and Supply Section will make arrangements with the vendor to have the reported defective body armor examined.
  - 3. If the determination is made that the body armor is defective, Equipment and Supply Section will notify the employee that the issued body armor will be replaced.
  - 4. Equipment and Supply Section will make arrangements to have the employee measured for new body armor.
  - 5. The employee will turn in the temporarily issued body armor at the time the new body armor is issued.
  - 6. If the determination is made that the body armor is not defective, Equipment and Supply Section will notify the employee to return the temporarily issued body armor and pick up the originally issued body armor.

#### 800.3.5 PURCHASE OF ISSUED CITY PROPERTY AND EQUIPMENT

- (a) Officers being promoted may purchase the prior rank badge (cap and/or breast badge) at the prevailing replacement cost. Officers will turn in or purchase the badge set at the time they are issued the new rank badge set.
- (b) Officers resigning in good standing will be permitted to purchase their badge set at the prevailing replacement cost if they have:
  - 1. Five (5) years minimum service with the Department; or
  - 2. Commissioned a minimum of two (2) years and are hired by another law enforcement agency.
- (c) Retiring officers in good standing will be presented with their current breast badge and may purchase their cap badge and Department-issued handgun.
  - 1. These privileges will expire if not executed at the time of retirement.

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2. Payment must be made prior to final clearance.
- (d) For purposes of this section, "good standing" is defined as not being under investigation, suspension, or indefinite suspension at the time of resignation or retirement.

#### 800.3.6 RETURNING ISSUED CITY PROPERTY AND EQUIPMENT

Upon resignation, termination, transfer to another City Department, or retirement, employees are required to process through the Equipment and Supply Section no later than the effective date of the action in order to turn in all APD issued equipment and uniforms.

- (a) When an employee turns in any property, equipment, or clothing to the Equipment and Supply Section, he will sign a receipt form countersigned by the Equipment and Supply Section employee receiving the item(s).
- (b) An inventory audit will be conducted and a clearance form will be completed. The employee and the Equipment and Supply Section employee will sign the form after accounting for all equipment.
- (c) Employees who fail to clear through the Police Equipment and Supply Section or who fail to adequately account for all APD issued equipment prior to the effective date of separation will be sent a letter demanding payment or the return of any outstanding equipment.

#### 800.4 HANDLING DAMAGED, LOST, AND STOLEN PROPERTY

Employees shall be responsible for the safekeeping, serviceable condition, proper care, use, and replacement of City property assigned or entrusted to them.

- (a) An employee's intentional or negligent abuse or misuse of City property may lead to discipline including, but not limited to, the full or partial cost of repair or replacement. For the purpose of this order, negligence is the failure to use such care and prudence as would be expected of a reasonable person.
- (b) The Equipment and Supply Section Manager will determine whether damaged City property is to be repaired or replaced. If the cost of repair is greater than the cost of replacement, the Equipment and Supply Section Manager will replace the property.

##### 800.4.1 DAMAGED, LOST, AND STOLEN CITY PROPERTY

- (a) If issued property is damaged, lost, or stolen, the employee to whom the property is issued must within five (5) working days of discovering the damage or loss:
  1. Complete *Form PD-0021A*; and
  2. Complete an incident report which fully describes the loss or damage; and
  3. Email the form, through the chain-of-command, to their commander/manager.
- (b) Commanders/managers will review the Form PD0021A and the offense report for completeness and within five (5) calendar days of receiving the documents:
  1. Forward the Form PD0021A to the commander in charge of the Equipment Committee.

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- (c) The Equipment Committee Commander will:
  - 1. Determine if the employee exercised reasonable care; and
  - 2. Determine if re-issue of the equipment is necessary; and
  - 3. Notify the affected employee's commander and the Equipment and Supply Section manager of his decisions; and
  - 4. Email the completed Form PD0021A to APD Police Equipment Manager.
- (d) If the Equipment Committee Commander deems the employee was negligent, the employee may be required to reimburse the City for the lost or damaged property.
- (e) The employee may present a written appeal on the decision of the Equipment Committee Commander to his assistant chief concerning whether the employee was negligent in the loss or damage of the property.
  - 1. The employee may be required to make full reparation of the depreciated value of a lost item to a maximum of \$500 per item.
  - 2. The employee may be required to make payment of repaired damaged property up to a maximum of \$500 per item (excludes City vehicles damaged in a traffic crash).
  - 3. When payment to the City is required for lost or damaged property, the employee may be allowed to reimburse the City through a payment schedule. Unless the employee agrees to a higher amount, the payments will not exceed \$100 per pay period.
  - 4. The employee has 30 days to either pay for the equipment in full through the accounts payable department or arrange for a payment schedule through APD-HR.
  - 5. The Equipment and Supply Section Manager will provide the Equipment Committee Commander with a monthly report of employees that have NOT paid for or made payment arrangements for negligently lost or damaged equipment.
- (f) Re-issuance of equipment will be handled as follows:
  - 1. Equipment that is not essential to the performance of duty will not be re-issued to the employee until final action is taken on *Form PD-0021A* by the commander/manager.
  - 2. Equipment essential to the performance of duty such as badge, handcuffs, flashlight, etc. can be temporarily checked out from the Police Equipment and Supply Section for 30 days pending payment for their lost/damaged property.

#### 800.4.2 DAMAGED, LOST, OR STOLEN PERSONAL PROPERTY

Employees may request restitution for lost or damaged personal equipment if the loss or damage was suffered while on duty and in performance of official business. Employees shall not be reimbursed if they contributed to the loss or damage through negligence.

- (a) To request restitution, the employee shall complete the following two forms:

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1. APD's *Form PD-0021* may be sent electronically through the employee's Chain of Command and digitally signed. The employee's commander/manager shall determine whether or not the employee exhibited reasonable care and indicate the amount to be reimbursed, if any.
  2. The City of Austin's "Business Expense Reimbursement Form" (or BERF) requires a hard signature and cannot be stamped.
- (b) The employee must provide a clear, legible receipt or proof of purchase for the original damaged, lost, or stolen item. A receipt of proof of purchase for a replacement item of equivalent type and value is also acceptable.
1. Reimbursement amounts will generally follow these guidelines, but it will be up to the commander/manager to make the final decision on whether the employee will be reimbursed more or less:
    - (a) Prescription glasses \$500
    - (b) Sunglasses \$50
    - (c) Contact lenses \$100 per lens
    - (d) Personal Firearm \$300
    - (e) Any other personal equipment (e.g. clipboard, watch, boots...) \$100
- (c) The employee must submit original copies of *Form PD-0021*, the BERF, and the receipt to the Austin Police Department's Accounts Payable Office.

### **800.5 EQUIPMENT INVENTORY CONTROL**

There are eight categories of departmental inventory with specific employees responsible for control of each. Commanders/managers may establish additional controls within their area of responsibility.

- (a) **Fixed Assets or "Capital Equipment"**
  1. This category includes items with a purchase price of \$1,000 or more and having a life span of one year or longer. The Materials Manager is responsible for Department-wide control of these assets. Geographic "zone managers" (commanders/managers), are responsible for the care and control of the assets within their area.
- (b) **APD Numbered Equipment**
  1. This category includes items issued by Equipment and Supply with a purchase price of less than \$1,000 and having a life span of one year or longer.
- (c) **Vehicle and Radio Equipment**
  1. This category includes vehicles, mobile radios, hand-held radios, radar, visibars and MDTs. The Fleet and Equipment Manager is responsible for the Department-wide management of these resources.
- (d) **Photography/Video/Surveillance Equipment**

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1. This category includes items classified as fixed assets, but may also include lower cost items provided they have a life span of one year or longer. The Multi Media Laboratory supervisor is responsible for the Department-wide management of photography and video equipment. Certain specialized photography and video surveillance equipment is the responsibility of the Technical Unit of the Organized Crime Division.
- (e) **Donated or Loaned Property**
1. This category may include items in any of the above categories, and will be included in the inventories of the division utilizing the property, but listed in a separate "donated or loaned property" section of the inventory list. Donated and loaned property is considered Department-owned property as per City purchasing policy. The employee taking receipt, having custody, or making use of these items will furnish a copy of the documentation regarding the donation or loan of the item(s) to the Equipment and Supply Section manager.
- (f) **Converted Equipment**
1. This category includes equipment forfeited under applicable criminal laws which has a fair market value of \$250 or more and a life span of one year or longer and is converted to ownership of the Police Department. The employee taking receipt, having custody, or making use of the item will furnish the commander/manager and the Materials Manager a copy of the court order and any other appropriate documentation so that the item may be added to the inventory.
- (g) **Forfeited Funds Purchased Equipment**
1. This category includes equipment purchased with forfeited funds. Items included are valued at \$250 or more and have a life span of one year or longer. The employee authorized to purchase these items will provide a copy of the receipt to the Materials Manager and will present the equipment to have an inventory number placed on it.
- (h) **LESO Military Equipment**
1. This category includes equipment obtained through the Law Enforcement Support Office (LESO) military portal for use within the Austin Police Department. This equipment cannot be issued outside of the Austin Police Department without proper justification through the program manager and without approval of the Assistant Chief over Special Operations. Federal rules and regulations in obtaining the equipment, maintaining the equipment, dispersal of the equipment, and return of the equipment will be followed at all times and properly documented through APD PCO and the program manager. This equipment will be inventoried through the program manager and PCO. LESO equipment will be issued the same as any APD equipment following all guidelines in General Order 800 (Property and Equipment Accountability). Issued equipment will be placed on the employee's personnel inventory.



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**800.5.1 ZONE MANAGERS AND SPECIALIZED EQUIPMENT MANAGERS**

Specific responsibility for fixed assets and certain other specifically identified items will be assigned to commanders/managers who will serve as geographic "zone managers" or "specialized equipment managers."

- (a) Zone managers will assist in conducting the annual inventory and, upon request, reconciling any differences from prior inventories.
- (b) Specialized equipment managers will conduct complete inventories and, upon request, provide updated database information for reconciliation with prior inventories.

**800.6 ANNUAL INVENTORY**

City of Austin policies require that each Department conduct a physical inventory of fixed assets and reconcile that inventory annually. APD will conduct its inventory in July of each year.

- (a) A computerized listing of all equipment assigned to a unit will be provided to the supervisor when the inventory has been completed.
- (b) Each employee will be provided a copy of his issued clothing and equipment record in July.
  - 1. The employee and immediate supervisor will account for all equipment shown as issued and sign and return the inventory form within 10 days after receipt.
  - 2. The employee will attach a Lost/Stolen/Damaged Report on any items not found and comply with the requirements of this order on handling lost, stolen and damaged property.



## Austin Police Department General Orders

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# Equipment and Uniform Regulations

### 801.1 PURPOSE AND SCOPE

The equipment and uniform order of the Austin Police Department is established to ensure that all employees of the Department exhibit a consistent and professional appearance to the community when representing the Department.

Unless otherwise stated, commanders/managers may approve an exemption to this order for employees assigned to undercover operations, certain specialized activities, or due to special circumstances.

### 801.2 EQUIPMENT GUIDELINES

This section includes guidelines for Department approved identification and equipment to include:

- (a) Department Issued Identification.
- (b) Duty Belt and Accessories.
- (c) Armor.
- (d) Department Issued Pagers.
- (e) Headgear.
- (f) Footwear.
- (g) Jackets.
- (h) Reflective Vests.
- (i) Scarves and Gloves.

#### 801.2.1 DEPARTMENT ISSUED IDENTIFICATION

The Department issues each employee an official Department identification card (APD ID) bearing the employee's name, identifying information and photo likeness.

- (a) Employees shall be in possession of the issued APD ID card at all times while on-duty.
- (b) Employees shall conspicuously display the issued APD ID card when the employee is not in uniform and is on the premises of any APD facility.
- (c) Employees shall be in possession of the issued APD ID card at all times while carrying a concealed weapon off-duty.
- (d) Employees shall present their issued APD ID card in a courteous manner to any person upon request and as soon as practicable whenever on-duty, acting in an official capacity, or representing the Department.
- (e) Employees shall not lend their APD ID to another person, or permit it to be photographed or otherwise reproduced without the prior approval of the Chief or designee.

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- (f) Sworn employees working specialized assignments may be excused from the possession and display requirements when directed by the employee's commander.

#### 801.2.2 DUTY BELT AND ACCESSORIES

- (a) Employees may only wear an authorized duty belt and accessories. Basket weave designs are not allowed. When practical, the accessories must be made of the same material as the belt itself. Arrangement of the approved items is optional with each officer unless a specific location is designated.
- (b) Employees assigned to office positions and who have limited direct contact with the public may be allowed to remove the duty belt while in the office during on-duty hours with the approval of the respective commander. Once removed, the duty belt will be placed in a secure location in the office.
- (c) The following list contains the authorized duty belt and accessories:
  1. Duty Belt - The duty belt will be worn with the center of the buckle in line with the center of the trouser zipper flap and secured with keepers. The Department issues four (4) keepers but additional keepers may be purchased at the officer's expense.
  2. Trouser Belt - A black trouser belt made of either nylon web or leather will be worn with the uniform trousers.
  3. Duty Weapon - Handgun issued by the department.
  4. Holster - Holsters must be equipped with a Level 2 or above security retention device and will be worn on the side of the shooting hand with the butt of the pistol toward the rear. Information on approved holsters can be found at the Training Academy.
  5. Ammunition Magazines and Holder(s).
  6. Conductive Energy Device (CED) - CED's must be in an approved holster and worn on the side of the body opposite of the duty weapon. Extra CED cartridges are allowed.
  7. OC Canister and Holder - Only approved chemical agents will be worn as outlined in General Order 206 (Control Devices and Techniques).
  8. Baton and Holder - Only approved batons will be worn as outlined in General Order 206 (Control Devices and Techniques).
  9. Folding Knife - Only folding knives are permissible; fixed blade knives (e.g., Bowie, dagger) are not approved.
    - (a) The primary purpose of the folding knife is to act as a tool and not a weapon.
    - (b) The folding knife must be secured in a case or pouch on the duty belt with at least one level of retention (e.g., snap, Velcro), or affixed to the body armor.
    - (c) Officers working a plain clothes assignment who choose to carry a folding knife must carry it in a concealed fashion.

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- (d) Officers assigned to specialized tactical units who want to carry a fixed blade knife or carry a folding knife in a manner other than described above must receive prior written permission from their assistant chief.
- 10. Handcuff Case - Minimum of one (1), maximum of two (2). Handcuff locking mechanisms will be operable with a universal size key.
- 11. Portable Radio and Holder.
- 12. Flashlight and Holder.
- 13. Tape Recorder and Case.
- 14. Keys and Whistle - If using a key silencer it must be black in color.
- 15. Pager - A pager may be worn in case or clipped on belt. Pagers will not be worn attached to a uniform shirt/jacket epaulet.
- 16. Cell Phone - A cell phone may be used but should be secured in a case or pouch on the duty belt, or concealed within the uniform or pocket.
- 17. Glove Case - A glove case may be used to hold protective gloves (e.g., latex, nitrile).

#### 801.2.3 LOAD BEARING VESTS

The Department recognizes the need for officers to maintain a level of comfort and physical health when wearing the required equipment while in uniform. Officers are permitted to wear an authorized Load Bearing Vest (LBV) and accessories while in uniform. Officers may obtain information about authorized LBVs from Police Equipment.

- (a) Within 30 days of being issued the LBV, officers will complete a familiarization course at the Training Academy.
- (b) Only the authorized LBV and accessories will be worn while in uniform. The list of the authorized LBV and accessories is located at Police Equipment.
- (c) The following items will remain on the duty belt while wearing an LBV:
  - 1. Duty Weapon - Handgun issued by the Department.
  - 2. Holster - Holsters must be equipped with a Level 2 or higher security retention device and will be worn on the side of the shooting hand with the butt of the pistol toward the rear. Information on approved holsters can be found at the Training Academy.
  - 3. Conductive Energy Device (CED) - CEDs must be in an approved holster and worn on the side of the body opposite of the duty weapon.
  - 4. Folding Knife - Only folding knives are permissible; fixed blade knives (e.g., Bowie, dagger) are not approved.
    - (a) The primary purpose of the folding knife is to act as a tool and not a weapon.
    - (b) The folding knife must be secured in a case or pouch with at least one level of retention (e.g., snap, Velcro).

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- (d) The following items may be worn on the duty belt or the LBV:
1. Ammunition magazines and holders.
  2. OC canister and holder - Only approved chemical agents will be worn as outlined in General Order 206 (Control Devices and Techniques).
  3. Expandable baton and holder - Only approved batons will be worn as outlined in General Order 206 (Control Devices and Techniques).
  4. Handcuff case - Minimum of one (1), maximum of two (2). Handcuff locking mechanisms will be operable with a universal size key.
  5. Portable radio and holder.
  6. Flashlight and holder.
  7. Keys and whistle - Key silencers must be black or navy blue in color.
  8. Pager - A pager may be worn in a case or clipped onto the belt or LBV. The pager will not be clipped to a uniform shirt or jacket epaulet.
  9. Cell phone - A cell phone may be secured in a black or navy blue pouch or case.
  10. Glove case (e.g. latex, nitrile).
  11. Tourniquet.
  12. Extra CED cartridges secured in a pouch or case.

#### 801.2.4 ARMOR

- (a) Body Armor
1. Issued body armor must be worn at all times by uniformed officers engaged in:
    - (a) Field duty.
    - (b) Secondary Law Enforcement Related Employment (LERE).
    - (c) The pre-planned service of any arrest or search warrant.
  2. Officers assigned to office positions are exempt from wearing body armor during normal duty assignments.
  3. Officers seeking a medical waiver from wearing body armor while in uniform shall adhere to the following guidelines:
    - (a) Officers will request a waiver by submitting a memorandum through the chain-of-command to the Chief detailing the reasons for the waiver. The memorandum must be accompanied by:
      1. Medical documentation clearly showing the condition caused by the wearing of the body armor.
      2. A signed letter from the employee's physician confirming a medical condition and recommending that the employee be allowed to wear the body armor at the employee's discretion.

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3. A liability release with all required information filled in and signed by the requesting employee. Refusal to sign the liability release will be grounds for denying the waiver.
  - (b) If the medical waiver is approved, the Chief or designee will ensure:
    1. A copy of the memorandum, letter, documentation and liability release are forwarded to the person who requested the waiver; and
    2. All originals will be forwarded to APD Health Services for placement in the employee's medical file.
  - (c) A waiver is a privilege granted by the Chief, not an entitlement or a right. As such, it can be revoked by the Chief or designee at any time for any reason.
  - (d) The waiver will be updated annually.
4. Defective and expired body armor will be handled as outlined in General Order 800 (Property and Equipment Accountability).
  - (b) Patrol Plate Carriers - Due to the increased threat of calls for service in which suspects may be armed with high powered weapons, the Department will issue enhanced ballistic plates and carriers (heavy vests) to authorized employees. The following order will cover the issuance, care and use of the heavy vests.
    1. Heavy vest issue/care:
      - (a) The heavy vests will be issued through the Police Equipment section and will become part of the employee's inventory.
        1. The Police Equipment section will develop a plan to replace the heavy vests before they expire. No heavy vest will be worn after the warranty expiration date has passed, except for training purposes as approved.
        2. Employees will contact their supervisor and the Police Equipment section if they believe their heavy vest is defective.
        3. The Police Equipment section will issue a loaner heavy vest if one is available.
        4. The Police Equipment section will make arrangements for the vest to be replaced or repaired.
      - (b) Employees will follow General Order 800.2 and the manufacturer's care instructions when caring for their heavy vest.
      - (c) Heavy vests must be stored in an air conditioned location in order to minimize heat damage to the armor.
      - (d) All officers will receive training on the proper care, fitting, inspection, use, storage, and maintenance of the armor.
      - (e) Personally owned heavy vests.

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1. Employees may wish to purchase heavy vests or rifle plate inserts at their own expense for use while on duty. If an employee chooses to do so, the following guidelines will apply:
  - (a) The personally owned heavy vest plates will have the same or higher ballistic rating that is approved by the NIJ Level IV standard as the departmentally issued heavy vest.
  - (b) The heavy vest carrier will be black in color and have the word "Police" clearly visible in a light color on the front and back. No other markings or patches will be worn on the heavy vest.
  - (c) The heavy vest carrier will be similar in appearance to the heavy vest carriers issued by the department.
  - (d) Supervisors will inspect the personally owned heavy vest to ensure it is not worn past the warranty expiration date.
2. Heavy Vest Use:
  - (a) The purpose of the heavy vest is to offer a higher level of ballistic protection for employees responding to incidents where the possibility of engaging a suspect with a high powered firearm is present.
    1. Examples of when the heavy vest may be deployed are:
      - (a) Active shooter(s)
      - (b) Calls which state a subject is or may be armed with a firearm
      - (c) Building/open field clearing
      - (d) Forcing entry into a structure/breaching a door
      - (e) This list is not all inclusive and other scenarios may arise where the use of the heavy vest is appropriate.
    2. Examples of when the heavy vest should not be deployed are:
      - (a) Routine traffic stops
      - (b) Routine, low priority calls for service
      - (c) Lunch breaks

Nothing in this order is intended to discourage the use of the heavy vest when appropriate. The appropriate use of the heavy vest should be measured and monitored by the shift supervisor. Corrective action will be taken by the supervisor in the event the heavy vest is not used in accordance with this order.

#### 801.2.5 DEPARTMENT ISSUED PAGERS

- (a) Employees issued a Department pager will ensure the pager is operational and, when practicable, in their possession at all times.
  1. Employees will respond to any Departmental page as soon as practicable.

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2. Employees paging another employee will include their employee number or other identifying designation in the page (e.g., their name or employee number).
  3. Pages requiring an immediate response or are urgent in nature (e.g., SWAT call out) should be sent using a designated City of Austin paging system (e.g., Wireless Office, CAD). Systems such as outlook, the internet, and the telephone are not as reliable and/or may not work during large events where technology usage is high.
- (b) Employees may request to receive individual pages as a text message or e-mail with the following considerations:
1. Employees are still required to have their pager in their possession as outlined above.
  2. Requests must be submitted by email to the Help Desk and include the employee's name, employee number, email address, cell phone number, and cell phone provider.
  3. Only individual pages sent by text message or email via Wireless Office will be received. Group or mail drop pages will not work with this system.
  4. Employees are responsible for any costs incurred with their cell phone provider for using this optional service. The Department provides pagers at no cost to the employee and will not reimburse employees for any messages received.
  5. Employees making the request must be an authorized person on cell phone provider account to make billing changes and accept charges.

#### 801.2.6 HEADGEAR

The Department authorizes only the following types of headgear:

- (a) **Military Style Hat**
1. Will be immediately accessible when wearing the Class A uniform, and will be worn when directed to do so.
  2. May not be worn with Class B, C and D uniform.
  3. Will be worn in a traditional manner with the bill facing forward.
  4. Emblems, pins, or decorations other than the Department hat badge and authorized command braid will not be placed on the hat.
- (b) **Baseball Style Cap**
1. Only the Department issued or approved baseball style cap with cloth hat badge may be worn.
  2. May only be worn with a Class C or D uniform.
  3. Will be worn in a traditional manner with the bill facing forward.
  4. Emblems, pins, or decorations other than the cloth Department hat badge and authorized command braid will not be placed on the hat.
- (c) **Fur Trooper Style Winter Cap**



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1. Officers may purchase a black or dark navy blue fur trooper style cap to be worn during cold weather.
  2. The hat badge will be affixed to the cap's front.
- (d) **Winter Style Knit Stocking Cap**
1. A black or a navy blue knit stocking cap may be worn with the Class B, C, and D uniform during cold weather.
  2. May not be worn when attending a formal ceremony.
- (e) **Helmet**
1. General duty helmets may be worn with a Class B, C or D uniform.
  2. Tactical helmets may only be worn with the Class D uniform.
  3. May be worn with or without a face shield, as appropriate.

#### 801.2.7 FOOTWEAR

- (a) Types of authorized footwear:
1. Black low quarter shoes, including dress, tactical or athletic style shoes.
  2. Black tactical style boots (leather or leather and nylon construction), including combat or jump style boot, and "Rocky" styles.
  3. Black walking boots, including Wellington or Roper styles.
- (b) All footwear must:
1. Be made of smooth grained leather or a similar synthetic material having an acceptable likeness to leather; and
  2. Be black in color; and
  3. Be capable of being shined, polished, or cleaned; and
  4. Have a round or medium-round toe style.
- (c) The following footwear is prohibited:
1. Sharp pointed shoes or boots.
  2. Footwear with decorative stitching, embossing, welts, and holes or other patterns, ornamental designs, buckles, stripes, or "wingtips".
  3. Footwear with taps or metal plates.
- (d) Socks worn with low-cut shoes will be black or dark navy blue.

#### 801.2.8 JACKETS

- (a) Authorized jackets include:
1. Jackets issued or authorized by the Department; or
  2. Individually purchased black leather Bomber or patrol style, similar to the issued winter style jacket.

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- (b) Jackets will be worn with the sleeves rolled down and buttoned at all times.
- (c) Jacket linings or other type vests will not be worn separately.

#### 801.2.9 REFLECTIVE VESTS

A Department issued reflective vest will be worn whenever an officer is directing traffic, at a collision scene on a public road, or is directly exposed to vehicular traffic for an extended period of time.

#### 801.2.10 GLOVES AND SCARVES

- (a) Black leather or cloth, full-fingered gloves may be worn only during cold weather conditions.
- (b) Full-fingered Kevlar type gloves specifically designed to protect the hands from cuts and punctures may be worn only:
  - 1. During the frisk or search of persons, vehicles, objects or premises.
  - 2. While handling evidence or objects that are hazardous (e.g., hypodermic needles, edged weapons, broken glass).
- (c) Dark navy or black winter weight neck scarves, ski-type neck warmers, or cowls may be worn with authorized jackets during cold weather conditions.

#### 801.3 UNIFORM GUIDELINES

Sworn employees wear a uniform to be identified as the law enforcement authority in society. The uniform also serves to identify the wearer as a source of assistance in an emergency, crisis or other time of need. Some civilian employees also wear a uniform to be identified as part of a specific assignment (e.g., crime scene, victim services).

- (a) All sworn employees shall possess and maintain a serviceable uniform and the necessary equipment to perform uniformed field duty at all times.
- (b) Uniforms shall be neat, clean and appear professionally pressed.
- (c) Undershirts worn beneath a uniform shall be white, black, or dark navy blue. No visible slogans, logos, or printing on the shirt are permitted.
- (d) Officers shall not wear any garment under the uniform shirt whose sleeves extend beyond the uniform shirt's sleeves.
- (e) Officers shall wear approved footwear with a clean, shined finish while in uniform.
- (f) Civilian attire shall not be worn in combination with any distinguishable part of the uniform.
- (g) Employees shall only wear a uniform while on-duty, while in transit to or from work, for court, or at other official Department functions or events.
- (h) Employees under suspension shall not wear any part of the police uniform.
- (i) Employees who normally wear a uniform as required by assignment shall not appear for duty in plainclothes without permission of a supervisor. Employees shall be considered out of uniform when not wearing the prescribed uniform.

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- (j) Employees are not to purchase or drink alcoholic beverages while wearing any part of the Department uniform.
- (k) Mirrored sunglasses shall not be worn with any Department uniform.
- (l) Exemptions to the uniform guidelines may only be made by the appropriate assistant chief upon request from the commander.
  - 1. Units requesting a permanent exemption will be referred to the Equipment Committee.
  - 2. Uniform standards for units exempt from this order will be outlined in the specified units' Standard Operating Procedures.

#### 801.3.1 CLASS A - DRESS/CEREMONIAL UNIFORM

The Class A uniform consists of:

- (a) Dark blue long-sleeved uniform shirt with metal badge and name plate.
- (b) Uniform pants (non-tactical or BDU style without side pockets).
- (c) Tie with authorized tie bar.
- (d) Duty belt.
- (e) Formal military style hat.

#### 801.3.2 CLASS B - STANDARD UNIFORM

The Class B uniform consists of:

- (a) Dark blue long-sleeved or short-sleeved uniform shirt with metal badge and name plate.
- (b) Uniform pants(non-tactical or BDU style without side pockets).
- (c) Hats and ties are not authorized.
- (d) Duty belt.
  - 1. For office duty assignments, the full duty belt is not required; however, officers shall wear the Department issued handgun in a holster on their black trouser belt.
- (e) Authorized baseball style cap (optional).

#### 801.3.3 CLASS C - PATROL UNIFORM

The Class C uniform consists of:

- (a) Dark blue long-sleeved or short-sleeved uniform shirt with embroidered name and badge.
- (b) Authorized tactical BDU style pants with side pockets.
- (c) Approved shorts may be worn year round.
  - 1. The approved shorts may only be worn with:

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- (a) Dark blue short sleeved uniform shirt with embroidered name and badge, or
- (b) DTAC blue polo shirt approved by the department.
- 2. Civilian personnel assigned to direct field support (e.g. Crime Scene, Victim Services) are included in this order.
- (d) Authorized baseball style cap (optional).
- (e) Duty belt.
  - 1. For office duty assignments, the full duty belt is not required however, officers shall wear the Department issued handgun in a holster on their black trouser belt.

#### 801.3.4 CLASS D - SPECIALIZED UNIFORM

Any exception to this uniform order must be approved by Executive Staff.

#### 801.3.5 EXECUTIVE UNIFORM

Commanders and above may wear the Executive Uniform year round. The Executive Uniform consists of a dress coat with epaulet rank insignia, badge, award ribbons and medals.

#### 801.3.6 CIVILIAN EMPLOYEE UNIFORMS

Civilian employees assigned to positions requiring a uniform shall:

- (a) Possess a serviceable uniform and equipment to perform their assignment.
- (b) Wear footwear authorized in this order.
- (c) Not wear the uniform or any part of the uniform for off-duty activities unless authorized by the respective commander/manager.

### **801.4 REQUIRED AND AUTHORIZED UNIFORM RAIMENTS**

This section covers the use of the required and authorized items employees may place on their uniforms, including:

- (a) Badge (required).
- (b) Name Tag (required).
- (c) Rank Insignia (required).
- (d) Service Stripes (authorized).
- (e) Award Ribbons (authorized).
- (f) Award Medals (authorized).
- (g) Service/Unit Pin (authorized).

#### 801.4.1 BADGE

- (a) The breast badge will be worn at all times centered over the left breast pocket.
- (b) The hat badge will be worn on the formal military style hat and the fur trooper style hat.

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- (c) Officers in plainclothes will wear his badge whenever a weapon is visible.
  - 1. The badge will be worn in a clip-type holder, clearly visible from the front.
  - 2. The badge will be worn on the gun side of the waistline and as close to the holster as possible without hindering access to the weapon.
- (d) Uniformed employees will wear a black mourning band across the uniform badge whenever a law enforcement officer is killed in the line of duty. The following mourning periods will be observed:
  - 1. An officer of this Department - From the time of death until midnight on the 14th day after the death.
  - 2. An officer from Texas - From the time of death until midnight on the day of the funeral.
  - 3. Funeral attendee - While attending the funeral of a fallen officer.
  - 4. National Peace Officers Memorial Day (May 15).
  - 5. As directed by the Chief of Police or designee.
- (e) Employees will not lend their badge to another person, or permit it to be photographed or otherwise reproduced without the prior approval of the Chief or designee.

#### 801.4.2 NAME TAG

- (a) Name tags will be silver with only the employee's last name printed in black lettering.
- (b) Cloth name tags worn on the Class D uniform will be dark blue with silver lettering.
- (c) The name tag will be worn centered and one-quarter (1/4) inch above the right breast pocket when no award ribbons are worn.
- (d) When award ribbons are worn, the name tag will be centered above the right breast pocket and one-quarter (1/4) inch above the award ribbons.

#### 801.4.3 RANK INSIGNIA

Officers will wear such insignia of rank or recognition as issued or prescribed by the Department.

- (a) **Corporal/Detective**
  - 1. Two sleeve chevrons with a single star centered below them will be worn centered on each uniform shirt and jacket sleeve, five and one half inches (5 1/2) below the shoulder seam of each sleeve.
  - 2. Employees in the rank of corporal/detective for 10 cumulative years are issued a rocker with two sleeve chevrons with a single star centered below them to be worn centered on each uniform shirt and jacket sleeve, five and one half inches (5 1/2) below the shoulder seam of each sleeve.
- (b) **Sergeant**
  - 1. Three sleeve chevrons will be worn centered on each uniform shirt and jacket sleeve, five and one half inches (5 1/2) below the shoulder seam of each sleeve.

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2. Employees in the rank of sergeant for 10 cumulative years are issued a rocker with three sleeve chevrons to be worn on each uniform shirt and jacket sleeve, five and one half inches (5 1/2) below the shoulder seam of each sleeve.
- (c) **Lieutenant, Commander, Assistant Chief, and Chief of Police**
1. Rank insignia will be worn in symmetrical pairs, centered between the top and bottom edge of the insignia one inch from the front of the collars of uniform shirts and on the epaulets of uniform jackets, including the Executive Uniform jacket.
    - (a) Lieutenant bars will be worn with the long axis of the bars parallel to the front edge of the collar, with the outer edge of the insignia one inch from the bottom of the collar.
    - (b) Commander, assistant chief, and Chief stars will be worn with one ray of each star pointing toward the top of the collar.

#### 801.4.4 SERVICE STRIPES

Service stripes may be worn on the left sleeve of long sleeve shirts, four (4) inches from the end of the sleeve.

- (a) One stripe is permitted for each completed four (4) years of commissioned police service.
- (b) Service stripes are not worn on uniform jackets.

#### 801.4.5 OFFICER RECOGNITION CHEVRONS

Employees in the rank of officer for 10 cumulative years may be issued a single chevron with a single star centered below them to be worn centered on each uniform shirt and jacket sleeve, five and one half inches (5 1/2) below the shoulder seam of each sleeve.

#### 801.4.6 AWARD RIBBONS

- (a) Award ribbons may be worn in a line centered and one-quarter (1/4) inch above the top of the right breast pocket of the Class A uniform shirt or Executive Uniform jacket.
- (b) The line of ribbons will not normally be broken, and will not extend past either edge of the pocket.
- (c) Ribbons will be worn on an authorized ribbon bar. No part of the bar should be visible.
- (d) Three award ribbons shall constitute a complete line. If necessary, additional lines will begin centered above the first.
  1. Awards will be worn in a descending order with the highest award ribbon placed closest to the heart.
  2. If more than one row is used, the higher precedence awards will be on the top.
  3. In no case will more than five lines of award ribbons be worn.

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- (e) Only the initial ribbon received for any award type will be worn. Subsequent awards of the same type will be indicated by authorized stars placed on the first award ribbon as outlined in General Order 922 (Awards and Commendations).

#### 801.4.7 AWARD MEDALS

Award medals may be worn but only on the Executive Uniform jacket.

- (a) Award medals may be worn in a line, centered, and one-quarter (1/4) inch below the police badge on the jacket.
- (b) Medals will be worn in a descending order with the highest award medal placed closest to the heart. Only one type of each awarded medal may be worn.
- (c) "Ribbon only" awards may be worn centered on the right breast of the jacket.

#### 801.4.8 SERVICE/UNIT PIN

Service/unit pins must be submitted to the Equipment Committee and approved by the Chief or designee. Only one approved pin may be worn on the uniform.

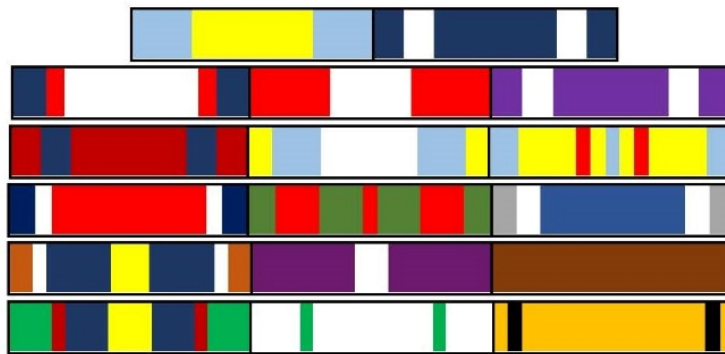
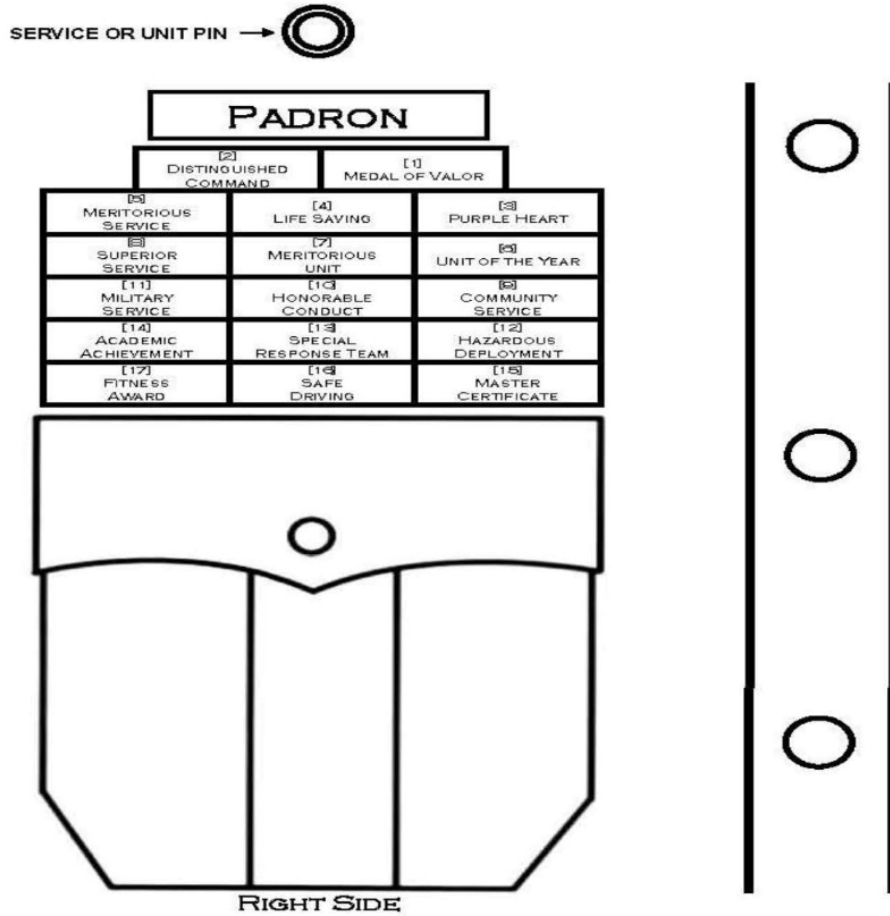
- (a) Upon approval, service/unit pins will be worn centered in a line one-quarter (1/4) inch above the name plate. Approved Service and Unit pins are:
  1. SWAT
  2. EOD
  3. Air Unit
  4. Patrol K9
  5. Hostage Negotiations
  6. SRT
  7. Honor Guard
  8. Motors
  9. Mounted Patrol
  10. FTO
  11. CIT
  12. City Years of Service.
  13. CAST
- (b) Only personnel currently assigned to the unit for which a pin has been authorized shall be permitted to wear the unit pin.

#### 801.4.9 ORDER OF PRECEDENCE AND WEAR CHART

The name tag, award ribbons, and authorized service/unit pins will be worn in the following manner:

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**801.5 PLAIN CLOTHES ATTIRE**

This section applies to sworn and civilian employees that do not wear a uniform as part of their assignment. All employees are expected to present a clean, professional appearance in the workplace and when representing the Department. Variations from this order are allowed as required by assignment, approved due to a medical condition, or approved by the Chief of Police.



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#### 801.5.1 SWORN GUIDELINES

- (a) Employees shall wear clothing that fits properly, is clean and free of stains and not damaged or excessively worn.
- (b) Male employees who wear civilian clothing to work shall wear:
  - 1. Button-style shirts with a collar, slacks or suits that are moderate in style.
  - 2. Footwear that is appropriate for the assignment and does not present a safety hazard to the employee.
  - 3. A tie is optional unless attending court or formal meetings with the Chief, or when designated to be worn by a supervisor for a specific purpose.
- (c) Female employees who wear civilian clothes to work shall wear:
  - 1. Dresses, skirts, slacks, blouses, capri or crop pants, or suits that are moderate in style. Dress/skirt lengths shall be professional in appearance.
- (d) Employees may wear casual attire (e.g., denim jeans, athletic shoes) on Friday, Saturday, and Sunday, unless the employees is attending court, has a formal meeting with the Chief, a media interview, or when it is not authorized to be worn by a supervisor for a specific purpose.

#### 801.5.2 PROHIBITED ATTIRE - SWORN

No item of civilian attire may be worn on-duty that would adversely affect the reputation of the Austin Police Department or the morale of the employees.

- (a) Unless otherwise approved, the following items shall not be worn on-duty:
  - 1. T-shirt or tank tops alone.
  - 2. Slippers or flip-flops.
  - 3. Swimsuit, tube tops or halter tops.
  - 4. Clothing designed specifically for sports, such as workout clothing, unless it is necessary during the course of your assigned duties (i.e. Training, Recruiting, PAL, etc.).
  - 5. Sweatpants, sweatshirts, sweat suits or wind/warm-up suits.
  - 6. See-through clothing.
  - 7. Clothing that shows bare shoulders (e.g., strapless, spaghetti straps) unless a coordinating jacket or blouse is worn as a top garment at all times.
  - 8. Denim clothing and athletic shoes unless otherwise authorized by this order.
  - 9. Any attire with offensive or inappropriate language.

#### 801.5.3 REQUIRED SWORN EQUIPMENT

Immediately Available - Close at hand, so as to be instantly ready without delay for use

Available - Readily obtainable or accessible within a short period of time or delay (e.g. in a vehicle parked nearby)

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- (a) On duty sworn employees will have the following items immediately available while not in contact with the public (e.g. in the office) or while in the public but not identifiable as a police officer and not engaged in any law enforcement activity:
  1. Authorized handgun
  2. Handcuffs with key
  3. APD Badge
  4. Police Identification
  
- (b) On duty sworn employees will have the following items on their person while in the public and identifiable as a police officer:
  1. An authorized handgun in a Level 1 (or greater) holster affixed to a belt with APD badge displayed adjacent to the handgun or worn on a lanyard which visibly displays the badge at chest level.
    - (a) Access to the handgun may not be restricted by clothing (e.g. untucked shirt) other than a jacket, sports coat, windbreaker, or similar clothing item which limits easy access to the area of the handgun.
  2. A spare magazine for the handgun in a magazine holder attached to the belt.
  3. Approved control device listed in General Order 206.2.3 (Approved Control Devices) attached to the belt.
  4. Handcuffs with a key
  5. Police Identification, made plainly visible from the front of the officer
  6. A ballistic vest
    - (a) Available, does not need to be worn
  7. A windbreaker, vest, or cover with the word "Police" on the front and back
    - (a) Available, does not need to be worn
  8. A police radio, powered on
  
- (c) In addition to the requirements in 801.5 (b), on duty sworn employees engaged in law enforcement action, follow-up activity, or field interview will wear a windbreaker, vest, or cover with the word "Police" on the front and back and will log onto the radio with dispatch.

#### 801.5.4 CIVILIAN GUIDELINES

Clothing should fit properly, be clean and free of holes, tears, or other signs of damage and not be excessively wrinkled. Footwear should be appropriate for clothing being worn and workplace appropriate.

#### 801.5.5 PROHIBITED ATTIRE - CIVILIANS

No item of civilian attire may be worn on-duty that would adversely affect the reputation of the Austin Police Department or offend customers, clients, or colleagues.

- (a) The following items shall not be worn on-duty:

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1. Clothing with offensive or inappropriate designs or stamps.
2. Clothing that is excessively revealing.
3. Clothing designed specifically for sports, such as workout clothing, unless it is necessary during the course of your assigned duties (i.e. Health and Wellness Coordinator, etc.).

#### **801.6 POLITICAL ACTIVITIES, ENDORSEMENTS, AND ADVERTISEMENTS**

Unless specifically authorized by the Chief of Police, Austin Police Department employees may not wear any part of the uniform, be photographed wearing any part of the uniform, utilize a department badge, patch or other official insignia, or cause to be posted, published, or displayed, a photograph as an employee of the Austin Police Department in order to:

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support, or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or non-profit publication, or any motion picture, film, video, public broadcast or on any website.

#### **801.7 REQUESTS FOR CHANGE TO AUTHORIZED EQUIPMENT**

Requests for new equipment or uniform exemptions shall be routed to the Equipment Committee. The Chief retains the right to add or remove equipment as needed.

#### **801.8 PERSONNEL AND EQUIPMENT INSPECTIONS**

Supervisors shall perform inspections of personnel and equipment to ensure compliance with Department General Orders. The supervisor will have until the 10<sup>th</sup> of the month to submit the completed inspections to their lieutenant. The lieutenant will have until the 20<sup>th</sup> of the month to review the inspections and forward them to Risk Management at [APDRiskManagement@austintexas.gov](mailto:APDRiskManagement@austintexas.gov) for storage.

- (a) Using form PD0128, first responder units listed in 303.3(d) will be inspected in the following manner:
  1. Probationary patrol officers (PPO) will be inspected monthly.
  2. All other officers will be inspected quarterly in the months of January, April, July, and October for the previous 3 month period.
- (b) Using form PD0127, non-first responder units will be inspected annually in the following months:
  1. Units within the Headquarters and Wellness Bureaus will be inspected in the month of February.
  2. Non-first responder units within the Patrol Bureaus will be inspected in the month of May.

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3. Units within the Investigations I Division will be inspected in the month of June.
4. Units within the Investigations 2 Division will be inspected in the month of August.
5. Units within the Organized Crime Division will be inspected in the month of September.



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# Duty Firearms

### 803.1 PURPOSE AND SCOPE

This order sets guidelines on the types of authorized weapons and ammunition, as well as procedures for registration, qualification and proficiency with authorized duty weapons. For purposes of this order, on-duty is defined as any activity in which the employee is receiving compensation or benefit as a result of their employment with the Department, or wearing any part of the uniform.

#### 803.1.1 AUTHORIZATION TO CARRY FIREARMS

Only sworn personnel who have met all state standards, required Department training, and have been authorized by the Chief of Police shall be able to carry a firearm both on- and off-duty.

Nothing in this directive shall be construed to prevent officers from using any weapon at their disposal for protection from death or serious bodily injury in a bona fide emergency.

#### 803.1.2 ALIAS HANDGUN LICENSE

On written approval of the DPS director, the Department may issue to an officer an alias license to carry a concealed handgun to be used in supervised activities involving criminal investigations (Tex. Gov't Code § 411.198(a)).

### 803.2 SAFE HANDLING OF FIREARMS

The intent of this order is to promote proper firearm safety on and off duty. Employees shall maintain the highest level of safety when handling firearms.

#### 803.2.1 GENERAL GUIDELINES

- (a) Officers shall not unnecessarily display or handle any firearm.
- (b) Officers shall be governed by all rules and regulations pertaining to the use of the range and shall obey all orders issued by range personnel.
- (c) Officers will unload all weapons prior to entering the firearm range when going for firearm practice, training, qualification, or repair. Officers will use a clearing barrel to ensure weapons are unloaded.
- (d) Range personnel will inspect all firearms for safety and maintenance needs during the training or qualification sessions or on schedules established by the range supervisor.
  1. If the weapon is in satisfactory condition, the officer will be allowed to go on with practice or qualification.
  2. If the weapon is not in satisfactory condition, the problem must be corrected before the officer may engage in practice or qualification. If there is a problem with a duty weapon that cannot be corrected:
    - (a) Affected officer's supervisor and the Learned Skills Unit supervisor will be notified.

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- (b) If the weapon is a city issued Smith and Wesson M&P pistol, range personnel will issue the officer a temporary M&P until the problem is corrected
- (e) Any unintentional firearm discharge by an employee will be reported as outlined in General Order 202 (Firearm Discharge Situations). If the unintentional firearm discharge is deemed negligent, the employee will be considered in violation of Department General Orders.

#### 803.2.2 STORAGE OF FIREARMS

Officers shall ensure that all firearms and ammunition are secured in a manner that will keep them inaccessible to children and irresponsible adults while in the officer's possession, home, vehicle, or any other area under the officer's control.

#### 803.3 AUTHORIZED WEAPONS

Department approved weapons and ammunition are those authorized by the Training commander for use by the Department while on-duty. Contact the APD Range for the most up-to-date Department Approved Weapons list.

- (a) The Department Approved Weapons list will be reviewed at least annually by the Training Division.
- (b) Officers who wish to add a weapon to the Department Approved Weapons list must utilize the following procedure.
  1. Officers will forward a memorandum to the Training Division requesting a new weapon be added to the current List.
  2. The memorandum will contain the following information:
    - (a) Information on weapon specifications (e.g., make, model, caliber, location of safety, bullet capacity); and
    - (b) Justification for adding the weapon to the list.
  3. All test weapons will undergo a thorough inspection. It will be test fired and evaluated for reliability and examined to see if it conforms to existing safety standards (e.g., night sights, ambidextrous thumb safety [if required], functioning grip safety). The test weapon will be left at the Academy Range until all testing and evaluation are completed.
  4. Consideration will only be given to weapons with improved design, function, or applicability to the job over those weapons currently on the list.
  5. APD will not provide reimbursement for rejected weapons.
  6. Final approval to add the weapon to the current list will be made by the Training commander.

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#### 803.3.1 REGISTRATION OF WEAPONS

Officers will not carry a primary or backup weapon on-duty until all the requirements of this order have been met. The Training Division will maintain a record of any weapon(s) an officer is authorized to carry.

- (a) Personally owned firearms carried on-duty must be registered with the Department by the officer requesting to carry them.
  - 1. Officers may have a maximum of three handguns and one rifle to include any city issued weapons.
  - 2. Handguns/rifles can be registered (added or deleted) at any time during the calendar year; however, officers may only register (add or delete) two handguns/rifles per year from his registered weapons list. Exceptions may be considered by the Training commander.
  - 3. All handguns added to an officer's registered weapons list are required to be equipped with night sights.
  - 4. Officers who desire to carry a personally-owned AR-15 while on-duty must meet the requirements listed in the personally-owned Long Rifles section of this order and register the weapon with the Department.
  - 5. All weapon additions must be approved by the Learned Skills Supervisor or their designee.
- (b) Officers wishing to add a weapon to his registered list must complete the following steps:
  - 1. Requesting officers shall deliver the weapon to the firearms range for inspection.
  - 2. Firearms range personnel will ensure the weapon is on the current Department Approved Weapons list and that the weapon is in good working order and meets any requirements listed in general orders or the Department Approved Weapons List.
  - 3. Requesting officers must qualify with the weapon on the current course of fire.

#### 803.3.2 MODIFICATION OF FIREARMS

Officers shall not make any unapproved modifications to any firearm carried on duty. Approved modifications and additions will be made in compliance with the Approved Weapons and Ammunition List.

Any modifications made to a firearm must be inspected by Learned Skills Unit personnel prior to being carried on-duty.

#### 803.3.3 DEPARTMENT ISSUED SHOTGUNS

Shotguns are assigned to most marked police units and to individual officers as needed.

- (a) At the beginning of each shift, officers are responsible for ensuring there is no shell in the chamber, the hammer is not cocked, and the weapon is secure until it is being readied for imminent use.

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- (b) Department shotguns will be loaded to magazine capacity (four or six rounds) with authorized 00 buckshot.
  - 1. One ounce rifled slugs may be used when:
    - (a) There is an immediate need or in situations that are deemed special circumstances; or
    - (b) Distances to the threat are such that it is beyond the effective range of 20-25 yards for 00 buckshot.
  - 2. The shotgun will be reloaded with 00 buckshot as soon as practicable after the incident.
  - 3. When rifled slugs are discharged from a shotgun, officers will document in an incident report or memorandum to the chain of command why the rifled slug was used.

#### 803.3.4 PERSONALLY OWNED SHOTGUNS

Officers that meet the following criteria may be authorized to carry personally owned shotguns while on-duty. Personally owned shotguns are for the exclusive use of the weapon owner and will not be loaned or distributed for use to any other officer unless there is a bona fide emergency.

- (a) To carry a personally owned shotguns, officers must:
  - 1. Receive approval through the chain-of-command up to the commander to carry the shotgun; and
  - 2. Meet requirements listed in the Department Approved Weapons and Ammunition List.
- (b) Officers must qualify with the shotgun annually on a course designated by the Learned Skills unit.
- (c) Officers authorized to carry a personally owned shotgun on-duty will be subject to monthly inspection by an immediate supervisor.
- (d) The weapon must be secured in the patrol vehicle weapon rack.
- (e) Officers shall carry only Department authorized ammunition. Officers shall not modify or alter any approved ammunition.
- (f) No offensive marking on the weapon. Any questions regarding if the image/word(s) falls under offensive will be directed to the LSU Sergeant with the final determination being made by the LSU Lieutenant.

#### 803.3.5 DEPARTMENT ISSUED RIFLES

Each Patrol shift will normally be authorized two (2) Department issued rifles (i.e., AR-15). Officers that have attended a Department approved Semi-Automatic Rifle Course will be eligible to be assigned a Department issued rifle.

- (a) Each Department issued rifle will be issued to an assigned officer and the rifle will be tracked by serial number.



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- (b) Officers must qualify with the rifle annually on a course designated by the Learned Skills unit.
- (c) If a designated officer is transferred, fails to qualify, or otherwise ceases to be approved to carry a Department issued rifle, the assigned weapon will be stored at the training academy until reassignment.
- (d) Shifts will not trade weapons unless there is a bona fide emergency.
- (e) The weapon must be carried in either a hard protective case or secured in the patrol vehicle weapon rack.
- (f) Department issued rifles will only be equipped with department issued Aimpoint optics and mounts. Officers are prohibited from replacing the issued Aimpoint optic with a different optic from the approved list for personally owned rifles.

#### 803.3.6 PERSONALLY OWNED RIFLES

Officers that meet the following criteria may be authorized to carry personally owned rifles while on-duty. Personally owned rifles are for the exclusive use of the weapon owner and will not be loaned or distributed for use to any other officer unless there is a bona fide emergency.

- (a) To carry a personally owned rifles, officers must:
  - 1. Receive approval through the chain-of-command up to the commander to carry the rifle; and
  - 2. Successfully complete the Department approved semiautomatic rifle course; and
  - 3. Meet requirements listed in the Department Approved Weapons and Ammunition List.
- (b) Officers must qualify with the rifle annually on a course designated by the Learned Skills unit.
- (c) Officers who fail a qualification or who have lost the approval of the chain-of-command will no longer be authorized to carry the rifle on-duty.
- (d) Officers authorized to carry a rifle on-duty will be subject to monthly inspection by an immediate supervisor.
- (e) The weapon must be carried in either a protective case or secured in the patrol vehicle weapon rack.
- (f) No offensive marking on the weapon. Any questions regarding if the image/ word(s) falls under offensive will be directed to the LSU Sergeant with the final determination being made by the LSU Lieutenant.
- (g) Short barrel rifles are approved for use on patrol. The requirements for the SBR are:
  - 1. 10.5" barrel length. (9.5" and a 1" flash suppressor does NOT meet the requirement, etc.)
  - 2. Silencers are not authorized.

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3. Officers shall carry only Department authorized ammunition. Officers shall not modify or alter any approved ammunition.
4. Officers MUST possess the proper ATF tax stamp for that specific weapon. The tax stamp will be checked by LSU staff prior to an officer being approved to carry the SBR on duty.
5. If an officer fails to provide the appropriate tax stamp, specific to the rifle they are possessing, the LSU Sergeant will be notified and a memorandum will be sent to the officer's chain of command as well as Internal Affairs.

#### **803.3.7 SPECIALIZED WEAPONS**

Specialized weapons may be authorized by the Chief for use by specific Units or persons.

- (a) Officers must meet the qualification standard for any specialized weapons before carrying the weapon on-duty and must qualify annually with these weapons.
- (b) Qualifications for authorized specialized weapons will be on a course of fire designed and supervised by the Special Operations SWAT Unit, at the direction of a Certified Firearms instruction with a specialty for the specific weapons. All records: annual, bi-annual, quarterly, or monthly qualifications will be performed by Special Operations Swat Team Firearms Instructors, and copies of both the course of fire and the documents showing proficiency will be provide to the Learned Skills Unit. Specialized weapons are those weapons not listed on the approved weapons list for the department.
- (c) The Special Operations Commander or his designee will have the authority to add or delete Specialty Weapons as the circumstance and situations change.
- (d) Special Operations Firearms instructors will be responsible for logging all qualification courses and those who have passed/failed. Copies of the qualifications will be forwarded to the Learned Skill Unit. The Special Operations Swat Sergeant who is responsible for the Sniper program will hold the original records and make those records available upon requested

#### **803.3.8 AMMUNITION**

- (a) Officers shall carry only Department authorized ammunition. Officers shall not modify or alter any approved ammunition.
- (b) Special Operations officers will carry authorized ammunition that has been tested by Special Operations personnel for use in specialized weapons not authorized for personnel outside of the Special Operations Division. All ammunition carried by Special Operations will be approved by the Special Operations Commander prior to use in the specialized weapons.

#### **803.4 FIREARMS PROFICIENCY**

- (a) Officers shall annually demonstrate proficiency to the proficiency officer for each authorized firearm carried (Tex. Occ. Code § 1701.355).

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- (b) The Learned Skills Unit shall keep accurate records of quarterly qualifications, repairs, maintenance and training as required by law. The course of fire shall meet or exceed the minimum standards required by law. Separate firearms proficiency tests must be demonstrated and conducted for each weapon used, such as a handgun, shotgun, patrol rifle or fully automatic weapon (37 Tex. Admin. Code § 217.21).
- (c) At least annually, all personnel carrying a firearm will receive training on the Department Response to Resistance General Order and demonstrate working knowledge and understanding of the order (Tex. Occ. Code § 1701.355).
- (d) In the event that the above requirements present a hardship, the Department may request in writing that TCOLE waive an officer's annual demonstration of weapons proficiency requirement (Tex. Occ. Code § 1701.355(b) and 37 Tex. Admin. Code § 217.21(e)).
- (e) All sworn personnel will practice and qualify in their regular work attire (e.g. plain clothed officers will qualify in plain clothes).

#### 803.4.1 ANNUAL QUALIFICATION

Officers must qualify annually on a TCOLE approved course of fire with each firearm and type of ammunition they are authorized to carry. In addition, approved firearms and duty ammunition must be thoroughly inspected by firearms personnel as outlined in this order.

- (a) Immediate supervisors are responsible for ensuring officers qualify when required to do so.
- (b) Scoring on APD qualification courses will be done on a pass/fail basis. No numerical score will be recorded for qualification purposes.
- (c) **Nightfire Qualification Requirements**
  1. Officers who routinely work all or part of a normal shift under low light or night low light conditions must qualify on the nightfire course.
  2. Officers who routinely work Law Enforcement Related Secondary Employment (LERE) during low light or night conditions must qualify on the nightfire course.
  3. Officers that qualify on the nightfire course do not have to qualify during the day.
  4. Officers transferring from a day shift to an evening or night shift must qualify as soon as practicable but no later than 28 days of receiving their 28-day notice of transfer. For those instances where an officer does not receive a 28-day notice of transfer, they must qualify as soon as practicable but no later than 28 days of receiving their transfer date. This includes temporary transfers that are 28 days or longer as well as permanent transfers.
- (d) **Qualification Scheduling**
  1. Annual qualification will normally be done during the first quarter of the calendar year. Scheduling and signup will be done through TRAIN.

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803.4.2 FAILURE TO QUALIFY WITH DUTY WEAPONS

- (a) Officers failing to appear at the firearm range to qualify during any mandatory qualification period will be subject to disciplinary action.
  - 1. At the end of each qualification period, the Learned Skills Unit supervisor will prepare a list of officers who did not appear at the firearms range to qualify by the designated deadline. This list will be submitted to the Office of the Chief and the affected Commander.
- (b) Officers that fail to make a passing score on a qualification relay for a primary duty weapon shall be given the opportunity to fire a second qualification relay.
  - 1. **Qualification While On-Duty**
    - (a) If an on-duty officer fails the second qualification relay, the officer will be placed in a non-enforcement capacity by the Learned Skills Unit supervisor and scheduled for a remedial training class designed for the type of weapon the officer failed to qualify with.
    - (b) The officer's immediate supervisor will be notified.
  - 2. **Qualification While Off-Duty**
    - (a) No overtime or compensation time will be given for a second qualification relay.
    - (b) If an off-duty officer cannot spend the extra time to qualify, or fails the second qualification relay, the Learned Skills Unit supervisor shall immediately notify the officer's supervisor
    - (c) The officer's supervisor will be responsible for:
      - 1. Changing the officer's duty status to a non-enforcement capacity; and
      - 2. Assigning the officer to a remedial training class designed for the type of weapon the officer failed to qualify with; and
      - 3. Ensuring the officer's duty hours are changed, if needed, to attend the remedial class.
  - 3. **Removal of Weapon from an Officer's Registered List**
    - (a) Instead of being placed on remedial status for failure to attain a passing score, the following options are available:
      - 1. An officer failing to qualify with a Secondary/Backup weapon has the option of removing the weapon from his registered list of handguns provided he has qualified with another handgun that is approved as a primary duty weapon. This will be done before the officer leaves the firearms range.
      - 2. An officer failing to qualify with a City-issued handgun does not have this option.

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- (c) Officers failing to qualify with a personally owned or City-issued semiautomatic rifle will be prohibited from carrying the weapon until they successfully complete an additional Department approved semiautomatic rifle course.

#### 803.4.3 REMEDIAL FIREARMS TRAINING

Remedial firearms training is specifically for APD personnel who have failed to qualify with an approved weapon.

- (a) Classes will be designed by the firearms range staff and conducted as soon as practical after an officer is placed on remedial status.
- (b) After completion of each remedial training class, the officer attending the class will fire in a qualification relay. If due to their assignment the officer is required to pass a low light qualification course, the officer must pass a low light qualification course prior to returning to duty.
  - 1. If the officer makes a passing score, the Learned Skills Unit supervisor will notify the officer's supervisor and recommend the officer be returned to an enforcement capacity.
  - 2. If the officer fails to make a passing score after remedial training, the officer may be subject to indefinite suspension. The Learned Skills Unit supervisor will forward the documentation through the Training commander to the officer's commander.
- (c) Firearms range personnel will ensure a training roster is completed and whether the officer passed the qualification relay.

#### 803.5 USE OF RANGE FOR PRACTICE FIRE

The firearm range will be available for practice as shown on the most current range schedule.

- (a) Only approved weapons and ammunition will be utilized on the firearms range.
- (b) Officers practicing on the range may be issued 50 rounds (maximum) of practice ammunition per day.
- (c) Firearm range personnel have the authority to decide which of the two forms of practice is fired.
  - 1. **Free Form:** The shooter fires on his own under firearms range supervision; or
  - 2. **Practice Course:** An organized course is run for all shooters practicing on the firearms range at that time.

#### 803.6 CLEANING AND MAINTENANCE

- (a) Officers are responsible for ensuring their weapons are clean, safe and functional.
- (b) Handguns may only be repaired by an APD approved gunsmith or armorer. Repairs shall not exceed manufacturer specifications.
- (c) When cleaning a Department shotgun, only the barrel may be removed by the officer.

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- (d) Cleaning a Department issued rifle is the responsibility of the officer to whom the weapon has been assigned. Cleaning will be done per current rifle training protocol.
- (e) The supervisor in charge of a unit that uses specialized weapons is responsible for coordinating the cleaning of those weapons.

#### **803.7 FLYING WHILE ARMED**

The Transportation Security Administration (TSA) has imposed rules governing law enforcement officers flying armed on commercial aircraft. The following requirements apply to personnel who intend to be armed while flying on a commercial air carrier or flights where screening is conducted (49 CFR § 1544.219):

- (a) Officers wishing to fly while armed must be flying in an official capacity, not for vacation or pleasure purposes.
- (b) Officers must carry their department identification card, which must contain a full-face picture, the officer's signature and the signature of the Chief or the official seal of the Department, and must present this identification to airline officials when requested. Officers must also carry their department badge as well as the standard photo identification needed for passenger screening by airline and TSA officials (e.g., driver's license, passport).
- (c) Officers must submit a National Law Enforcement Telecommunications System (NLETS) message prior to travel. The NLETS message sent by the employing agency will replace the current original letter of authority, signed by the chief or agency head, required under 49 CFR 1544.219. Once the NLETS message is received by TSA, a return NLETS message will be sent to the employing agency with an eight character Unique Alphanumeric Identifier for verification at the airport on the day of travel.
  1. Failure to use the NLETS message in lieu of the Original Letter of Authority (Commonly referred to as the "Chief's Letter") will result in denial to the sterile area for failure to comply with the "Letter of Authority" requirement delineated in 49 CFR 1544.219.
  2. Prior to submitting the NLETS request, officers must first obtain authorization signatures from their commander and the Chief of Police or his designee using form PD0284.
- (d) Officers must have completed the mandated TSA security training covering officers flying while armed. The training shall be given by the Department appointed instructor.
- (e) Officers are responsible for notifying the air carrier in advance. This notification can be accomplished by early check-in at the carrier's check-in counter.
- (f) Discretion must be used to avoid alarming passengers or crew by displaying a firearm. Officers must keep the firearm concealed on their person at all times. Firearms are not permitted in carry-on luggage and may not be stored in an overhead compartment.
- (g) Officers should not surrender their firearm but try to resolve any problems through the flight captain, ground security manager or other management representative of the air carrier.

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*Duty Firearms*

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- (h) Officers shall not consume alcoholic beverages while aboard an aircraft or within eight hours prior to boarding an aircraft.

**803.8 CARRYING FIREARMS OUT OF STATE**

- (a) Qualified active full-time officers and previously approved retired officers of the Department are authorized to carry a concealed firearm in all other states subject to the following conditions (18 USC § 926B and C):
  - 1. Officers or retired officers shall carry a valid, unexpired APD ID card whenever carrying a weapon.
  - 2. Officers or retired officers is not the subject of any current disciplinary action or current criminal investigation.
  - 3. Officers or retired officers may not be under the influence of alcohol or any other intoxicating or hallucinatory drug.
  - 4. Officers and retired officers are cautioned that individual states may enact local regulations that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property, or that prohibit or restrict the possession of firearms on any state or local government property, installation, building, base or park. Federal authority may not shield an officer or retired officer from arrest and prosecution in such locally restricted areas.
- (b) Officers will remain subject to this and all other Department General Orders (including qualifying and training).
- (c) Visiting active and retired peace officers from other states are subject to all requirements set forth in 18 USC § 926B and C.



## Austin Police Department

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# Department Vehicles

### 804.1 PURPOSE AND SCOPE

The Department utilizes motor vehicles operated by Department personnel in a variety of applications. In order to maintain a system of accountability and ensure vehicles are used appropriately, regulations relating to the use of these vehicles have been established.

For purposes of this order, Department vehicles are considered to be any vehicle used by Department employees for official Department business, including privately owned vehicles or vehicles owned, rented, leased, or maintained by the City.

### 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES

- (a) Employees will operate Department vehicles in a careful and prudent manner within the guidelines of the law and Department General Orders. Unsafe or negligent driving is prohibited.
  - 1. Vehicles will be operated in such a manner and at a rate of speed that the driver, by use of ordinary care, can avoid colliding with another vehicle, object, or person.
  - 2. Employees will wear a seatbelt in the front or back seat while operating or riding inside of a Department vehicle unless there is an operational, tactical, or medical need to be unsecured.
- (b) Department vehicles will be kept clean by utilizing car washes that are under City contract.
- (c) Employees will not use any type of Mobile Audio Video Recording system (MAV/DMAV) inside a Department vehicle unless the employee has been trained in its use.
- (d) The use of a Personal Communication Device (PCD), such as a mobile phone, PDA, or wireless two-way communication device while driving can cause unnecessary distractions and presents a negative image to the public.
  - 1. Employees operating emergency vehicles should restrict the use of these devices while driving to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to complete the call.
  - 2. Except in the case of an emergency, employees who are operating non-emergency vehicles will not use PCDs while driving unless it is specifically designed and configured to allow hands-free listening and talking. Such use should be restricted to business-related calls or calls of an urgent nature.
- (e) When a Department vehicle is unattended and out of sight of the operator:
  - 1. The vehicle should be turned off and legally parked, when practical, and properly secured by locking the doors and ensuring the windows are rolled up; and
  - 2. Any firearm inside the vehicle will be locked/secured unless being readied for use.



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## General Orders

### Department Vehicles

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#### 804.2.1 CHECK OUT AND RETURN OF DEPARTMENT VEHICLES

This section covers the guidelines for checking out and returning Department vehicles that are stored and maintained at Department facilities.

- (a) Employees will not use a vehicle assigned to another area or unit unless prior authorization has been given by a supervisor from the affected area or unit.
- (b) Employees checking out a Department vehicle will:
  1. Legibly sign the vehicle out on the appropriate roster.
  2. Conduct an inspection before using the vehicle and contact their immediate supervisor or PCO if any issues are found; employees will :
    - (a) Check for vehicle damage and cleanliness;
    - (b) Check the condition of installed equipment; and
    - (c) Perform standard maintenance checks including fluid levels.
- (c) Employees returning a Department vehicle will:
  1. Refuel the vehicle when it has one-half (1/2) a tank of gas or less.
  2. Park in a designated area at Department facilities.
  3. Turn off all equipment and electronics.
  4. Remove any personal equipment and trash from the vehicle.
  5. Ensure all firearms are locked or turned into PCO.
  6. Secure the vehicle and return the keys to PCO.

#### 804.2.2 ASSIGNMENT AND USE OF DEPARTMENT TAKE HOME VEHICLES

Take home vehicles are used to maintain the effectiveness and efficiency of the Department by allowing personnel to rapidly respond to situations involving the health, safety, or welfare of the community. Take home vehicle assignments may be on a permanent or on-call basis.

- (a) Take home vehicle assignments will be determined by the Chief or designee. The Department will maintain a list of assignments authorized to have permanent and on-call take home vehicles.
- (b) Employees will not be allowed to utilize a take home vehicle if their residence is more than 25 miles from the city limits of Austin.
- (c) Take home vehicles should be safely secured when not in use and parked in secure areas when left overnight.
- (d) Employees who have been assigned a take home vehicle will complete the APD Sharepoint Take Home Authorization Form : <http://sharepoint.ausps.org/sites/apd/SUPOPS/Lists/Take%20Home%20Car/AllItems.aspx> before the employee utilizes the take home vehicle and then complete an updated form in December of each subsequent year.

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### Department Vehicles

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- (e) Each person in the employees Chain of Command up to the Commander is required to approve the take home vehicle form on Sharepoint.
  - 1. Employees will submit the form to their immediate supervisor for chain-of-command review and assessment.
  - 2. The chain-of-command will forward the form to Fleet Management upon completion of the review.

#### 804.2.3 DEPARTMENT VEHICLE USE FOR OUT-OF-CITY ASSIGNMENTS

- (a) Employees who have obtained official authorization to utilize a Department vehicle for an out-of-city assignment may contact a substation PCO and obtain a City credit card prior to departing in the event the vehicle will need fuel or repairs.
- (b) Employees will ensure the Department vehicle is mechanically sound prior to departure by taking the vehicle to Service Center #5 for out-of-city trips exceeding 100 miles each way.

#### 804.2.4 AUTOMATED FUEL SUPPORT PROGRAM

- (a) The City has two types of fuel facilities:
  - 1. Primary Fuel Site - A fuel facility with an automated fuel card reader. A fuel card must be used at these facilities.
  - 2. Alternate Fuel Site - A non-automated fuel facility located primarily at City fire stations and Parks and Recreation facilities. Fuel issued at these sites is recorded on a Daily Fuel Issue form.
- (b) A magnetically coded plastic fuel card is assigned to every Department owned and leased vehicle.
- (c) Department vehicles without a fuel card can be denied fuel unless an emergency exists. Any lost, missing, or damaged fuel card will be reported in accordance with Department General Order on Equipment Accountability.
- (d) Unless authorized and specifically exempted in a Unit's SOP, whenever a Department vehicle is used for out-of-city trips and it is necessary to refuel at a site other than a City fuel facility, a current odometer reading must be reported prior to using a City fuel facility.

#### 804.3 PARKING OF DEPARTMENT VEHICLES

This section outlines the guidelines for parking Department vehicles while conducting City business. City business does not include an employee parking a vehicle when merely showing up for work at his regular work location.

- (a) Employees are not authorized to park a vehicle in any prohibited parking area.
  - 1. Employees receiving a parking citation for parking in a prohibited area are responsible for paying the citation in a timely manner, regardless of whether or not the employee was on City business at the time the citation was issued.

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### Department Vehicles

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- (b) Employees on City business may park at a metered parking space without paying the meter.
  - 1. Employees receiving a parking citation at a metered parking space while complying with a work related subpoena must adhere to the following guidelines in a timely manner to have the citation dismissed; employees will:
    - (a) Legibly write their name, employee number and the court information (e.g., "County Court 3/Cause #123456") in the margin of the parking citation itself; and
    - (b) Attach a copy of the subpoena to the citation, if available; and
    - (c) Submit the citation to the Court Liaison over the court the employee was attending.
  - 2. Employees receiving a parking citation at a metered parking space while on all other official City business will:
    - (a) Legibly write their name, employee number, and the type of City business they were on in the margin of the parking citation itself; and
    - (b) Submit the citation to their immediate supervisor or the Court Liaison Unit supervisor.
    - (c) Supervisors receiving a citation from employees that fit the criteria for dismissal will legibly write their initials and employee number on the parking citation and the statement, "Recommend Dismissal - On City Business."
  - 3. All citations requesting dismissal that have been reviewed by the employee's supervisor or a Court Liaison will be turned in to the Court Liaison Unit supervisor. The Court Liaison Unit supervisor is responsible for delivering citations requesting dismissal to the Municipal Court Hearings officer.
- (c) Employees who routinely travel away from their normal work location as part of normal duties may be issued a City Parking Permit to be used while conducting City business.
  - 1. Requests for issuance of a City Parking Permit must be forwarded through the chain-of-command for approval by the appropriate assistant chief.
  - 2. Approved requests will be given to the Assistant Chief's administrative specialist for processing.
- (d) Certain Department vehicles will not be issued a City Parking Permit but will have the vehicle license plate number entered into the City computer system as "exempt" when parking in metered parking spaces.

#### **804.4 USE OF DEPARTMENT VEHICLES TO PUSH/PULL OTHER VEHICLES**

Officers have the authority to remove personal property from a roadway or right-of-way if an officer determines that the property blocks the roadway or endangers public safety (Tex. Transp. Code § 545.3051).

# Austin Police Department

## General Orders

### Department Vehicles

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- (a) Some Department vehicles have push bars that are designed for and should be used to assist in moving disabled vehicles from the roadway when reasonable and practical.
  - 1. Employees must use caution because improperly pushing another vehicle may cause the safety airbag to deploy in the Department vehicle.
- (b) Some Department vehicles are equipped with trailer hitches designed to pull or tow other vehicles.
  - 1. Employees will not pull another motor vehicle or trailer unless the Department vehicle is equipped with a hitch capable of pulling the vehicle or trailer.
- (c) Officers are not liable for any damage to personal property removed from the roadway or right-of-way unless the removal is carried out recklessly or in a grossly negligent manner (Tex. Transp. Code § 545.3051).
  - 1. If there is a complaint of damage to any property, including the Department vehicle, as a result of pushing or pulling another vehicle from the roadway:
    - (a) Officers will notify their supervisor.
    - (b) Supervisors will inspect the alleged damage and make a determination if the damage is the result of pushing or pulling the vehicle.
  - 2. If the damage is a result of pushing or pulling the vehicle:
    - (a) Digital images will be taken and downloaded into the appropriate records management system using the incident number.
    - (b) The employee who pushed the vehicle will:
      - 1. Initiate an incident report titled Damage to City Vehicle.
      - 2. Describe the incident and apparent damage in detail in the incident narrative.
    - (c) Reviewing supervisors shall:
      - 1. Send e-mail notifications with the incident report number prior to the end of the tour of duty to the:
        - (a) Involved employee's chain of command up to the lieutenant; and
        - (b) APD Risk Management
      - 2. Review the primary reporting employee's incident report and add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident.

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## General Orders

### Department Vehicles

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- (d) Lieutenants in the reporting officers' chain of command will review reports, photos, and any information related to the incident.
  - 1. If the reviewing lieutenant determines that the officer is not negligent, no further action is needed.
  - 2. If the reviewing lieutenant determines that the officer is negligent in the incident; the information is forwarded to the commander for further review and action if appropriate (documented in field notes, training, IAD, etc.).

#### **804.5 RED LIGHT CAMERA CITATIONS**

The following guidelines cover how to handle citations generated by a red light camera issued to employees operating a Department vehicle. Employees may be held accountable for running a red light while operating a Department vehicle.

- (a) The Red Light Camera Coordinator will send an administrative notice to the appropriate commander when an emergency vehicle activates a red light camera. The commander or designee will make a determination if a violation of general orders occurred.

#### **804.6 REPAIR OF DEPARTMENT VEHICLES**

When an employee discovers a defect in a Department vehicle, the vehicle will not be used if the defect is such that the safety of the employee is in doubt or continued use would aggravate the defect. Before removing a Departmental vehicle from service the employee will remove and secure all weapons.

- (a) Vehicle defects and malfunctioning emergency lights, sirens and radios shall be reported on the *Vehicle and Equipment Repair Form* and submitted to the on-duty PCO employee.
- (b) Vehicles removed from service for maintenance or repair will not be operated by anyone other than a repair employee until the vehicle has been returned to normal duty status.
- (c) Damage to police vehicles resulting from a prisoner's actions will be documented in the employee's incident report and the charge of "Criminal Mischief" will be added to any other charges against the person.
  - 1. The employee will complete the repair form, include the incident number and the damage to the vehicle, and forward the repair request to the vehicle fleet manager.

##### **804.6.1 REPAIR OF DEPARTMENT VEHICLES DURING AN OUT-OF-CITY ASSIGNMENT**

When a Department vehicle used in an authorized out-of-city assignment becomes disabled and is in need of immediate repair to return safely to Austin, the employee using the Department vehicle will obtain minor repairs locally or coordinate by phone with Fleet Services for major repairs.

**Austin Police Department**  
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- (a) Minor repairs are considered repairs that can be made for less than \$300. The employee should attempt to use a service that will honor the City fuel credit card.
- (b) Major repairs are considered repairs that can be made for \$300 or more.
  - 1. The employee will contact Service Center #5 to coordinate major vehicle repairs. If Service Center #5 is closed, the employee will use the emergency number at (512) 974-3333.

**804.7 TOLL ROAD USAGE**

The Vehicle Coordinator assigned to fleet operations shall maintain a list of license plate numbers for City vehicles that are authorized to traverse toll roads and furnish this list to the Texas Toll Road Authority in Austin in order to prevent toll charges from accruing on these vehicles.

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**Chapter 9 - Personnel Policies**



## Austin Police Department General Orders

# General Conduct and Responsibilities

### 900.1 PURPOSE AND SCOPE

It is the policy of the Austin Police Department that employees conduct themselves at all times in a manner that reflects the ethical standards consistent with APD written directives. This order shall apply to all sworn and civilian members, including volunteer, part-time, auxiliary, and non-paid civilians affiliated with the Department through a Department-sponsored program while under the direction of a Department employee.

This order is intended to guide employees in conducting themselves and their affairs, both on-duty and off-duty, in a manner that reflects the professionalism required of Department personnel. Furthermore, this order is intended for internal use only and shall not be construed to increase or establish an employee's civil or criminal liability, nor shall it be construed to create or establish a higher standard of safety or care.

#### 900.1.1 RESPONSIBILITY TO KNOW AND COMPLY

The rules of conduct set forth in this order do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

- (a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD written directives which pertain to their assigned duties.
- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines, and will consult their immediate supervisor for clarification and explanation.
- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

### 900.2 REQUIRED REPORTING OF VIOLATIONS

Employees have an obligation and responsibility to report all facts or credible information they know regarding any criminal activity by other employees or any breach of APD written directives.

- (a) Suspected Criminal Activity
  1. Employees will report any knowledge or credible information regarding criminal activity of another employee via memorandum to IA, SIU, or any supervisor in their chain-of-command.
    - (a) When a memorandum is presented to a supervisor, the supervisor will notify his chain-of-command.
    - (b) When a memorandum is presented to an assistant chief/director, it will be immediately forwarded to IA and SIU.
- (b) Suspected General Order Violations
  1. Employees will report any employee known or believed to be guilty of any violation of a rule, regulation, or order issued by the Department to their immediate supervisor.



# Austin Police Department

## General Orders

### *General Conduct and Responsibilities*

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2. Supervisors will immediately take action as outlined in General Order 902 (Administrative Investigations) when a violation of a directive comes to their attention, regardless of the supervisor's or violator's assignment or rank within the Department.

#### 900.2.1 CONFIDENTIALITY

All information relating to an employee's suspected criminal act or general order violation is confidential.

(a) Except as required in reporting the incident:

1. Employees will not disclose or discuss such information with anyone except investigators assigned to the case, the employee's attorney, employee's chain-of-command or other persons specifically designated by the Chief.
2. Investigators of such cases will not disclose or discuss information about any such investigation with anyone except other investigators assigned to assist with the investigation, the investigator's chain-of-command, officers of the court, or other persons specifically designated by the Chief.

#### 900.2.2 RETALIATION PROHIBITED

Employees will not, in any way, cause or conspire to cause retaliatory action against any individual who has been involved in any such investigation or subsequent proceeding as a defendant, complainant, witness, victim, investigator, or any other capacity. While the Department wishes to avoid reassigning an employee while a complaint or grievance is being investigated, this order does not prohibit the Department from doing so, including the complainant/victim, while the complaint or grievance is under investigation should an assistant chief determine that a reassignment is in the best interest of the Department and/or the employee.

### 900.3 GENERAL CONDUCT

This section contains the expectations and requirements of employee conduct, both on-duty and off-duty, and causes for disciplinary action due to employee misconduct. This is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient Department service.

#### 900.3.1 HONESTY

Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.

- (a) Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement. The following are examples of an "official statement":
1. Documents prepared by an officer in connection with their official duties, including but not limited to incident reports or supplements, sworn affidavits, and citations.

# Austin Police Department

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### General Conduct and Responsibilities

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2. Verbal or written statements made by an officer in connection with their official duties to:
  - (a) An investigator conducting an administrative or criminal investigation of the officer or another person's conduct.
  - (b) A supervisor conducting an inquiry into the officer's use of force.
  - (c) A fact finder in an administrative, civil, or criminal proceeding in which the officer testifies.
- (b) Employees who obtain their employment by willful misrepresentation or false statements may be dismissed from the Department.
- (c) Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.
- (d) Employees will not use any improper or dishonest means to affect the outcome of any official test, process, or procedure.
- (e) Employees will not falsely report themselves ill or injured, or otherwise deceive or attempt to deceive the Department as to the condition of their health.

#### 900.3.2 ACTS BRINGING DISCREDIT UPON THE DEPARTMENT

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

- (a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.
- (b) Employees will refrain from being a party to any malicious gossip, rumor, report or activity, whether written or oral, that would tend to bring discredit to the Department or any member thereof.
  1. "Malicious gossip, rumor, report or activity" includes statements made with knowledge of their falsity or made without regard to whether the statements are true or false.
- (c) Employees will not engage in any activity in which there is a potential for conflict of interest or the appearance of a conflict of interest with the lawful duties of the employee.
  1. "Conflict of interest" includes any activity which would tend to influence a decision, create a bias or prejudice, or create a gain or loss for any person or agency which would favor one side or the other in conflict with the employee's official duties, or which conflicts with the accomplishment of the Department's mission or goals.
- (d) Employees will not congregate or loiter in any place or in any manner as to bring discredit to the Department.

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### General Conduct and Responsibilities

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1. No more than four (4) officers, uniformed or plainclothes, who are identifiable as officers by the display of badges, police radios, insignias, or any articles of clothing identifying them as police officers, will congregate in a public place except when required by official police duties or as authorized by a supervisor.
2. Except as necessary to perform assigned tasks or as authorized by a supervisor, the following restrictions apply to the number of marked APD police units parked in a parking lot or near a public place at any one time:
  - (a) No more than two (2) between the hours of 6:00 am and 10:00 pm, daily; or
  - (b) No more than four (4) between the hours of 10:00 pm and 6:00 am, daily.

#### 900.3.3 PROHIBITED ASSOCIATIONS

- (a) Employees will not establish an external social relationship with a known victim, a known witness, or a known suspect of a crime while such case is being investigated by this Department or prosecuted as a result of such an investigation.
- (b) Employees will not establish social and/or business dealings with persons they know, or should know, are likely to adversely affect the employee's or Department's credibility. Employees will not associate with convicted felons. Provisions of this section do not apply to association based on kinship or the discharge of official duties.
- (c) Employees will not knowingly loan money, accept as pawn any item, or enter into any type of business arrangement with a suspect of a criminal violation, a person under arrest or detention, a person known to have a criminal record or unsavory reputation, or a person known to be engaged in, or planning to engage in, criminal activity.
- (d) Employees will not affiliate with any organization or body, the constitution or regulations of which would in any way prevent or hinder performing departmental duties.
- (e) Employees will not knowingly associate with any person or organization which advocates hatred, prejudice, or oppression of any person or group or which disseminates such material.
- (f) Employees will not become a member of any organization, association, movement, or group which advocates the commission of acts of force or violence to deny others their rights under the Constitution of the United States or which seeks to alter the form of government of the United States by unconstitutional means.

#### 900.3.4 PERSONAL CONDUCT

- (a) Employees will not knowingly enter a location engaged in prostitution, illegal gambling, or any establishment wherein laws are being violated.
- (b) Supervisors will not place themselves under financial obligation to a subordinate.
- (c) While on-duty or on the premises of City facilities, employees will not:
  1. Use loud, indecent, profane, harsh, derogatory language, or use belittling term in any communications.

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2. Ridicule, mock, taunt, embarrass, humiliate, or shame any person, nor do anything that might incite that person to violence.
  3. Indulge in "horseplay."
  4. Produce or display graffiti of any nature.
  5. Post or display derogatory, offensive or lewd pictures which degrade or lower the self-esteem of fellow employees and would undermine the goal of professionalism within APD.
  6. Engage in any sexual conduct including lewd acts or solicitation for sex.
- (d) While on-duty or wearing any item which makes one identifiable to the public as an APD employee, employees will not:
1. Sleep.
  2. Engage in gambling, including lottery games.
  3. Play games, including cards, dominoes, billiards, video or computer games, watch television or movies, or otherwise engage in entertainment, unless it is job related and has been approved by their commander/manager.
  4. Read newspapers, magazines, books, or other material, except during approved breaks.
  5. Study for promotional examinations.
  6. Take an authorized break in a sexually oriented business.
  7. Ride a personally owned motorcycle without a DOT approved motorcycle helmet.

#### 900.3.5 USE OF BADGE OF OFFICE OR AFFILIATION WITH THE DEPARTMENT

- (a) Employees will not intentionally use their affiliation with the Department to influence another into offering a gift, gratuity, free or discounted service, reward, or special consideration. This includes:
1. For the personal benefit of self, family, friends, or associates.
  2. For the financial gain of self, family, friends, or associates.
  3. Obtaining privileges not otherwise available to them, except where necessary in the performance of their duty.
  4. Avoiding the consequences of illegal acts.
- (b) Employees will not permit the use of the name of the Austin Police Department for advertising purposes without the approval of the Chief.
- (c) Employees will not permit or authorize the use of their names, photographs, or official titles in connection with testimonials or advertisements of any commodity or commercial enterprise if such use identifies the employee as a member of the Department.

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- (d) Employees will not have or use business cards pertaining to a private business showing the employee's connection with APD.
- (e) Employees will not present themselves as representing the Department in any matter except as authorized as a function of their position or as authorized by a supervisor.
  - 1. Employees will not prepare any articles or write for publication concerning the affairs of the Department without the consent of the Chief.
  - 2. Employees will not release confidential information.

#### 900.3.6 POLITICAL AFFILIATION AND LEGISLATIVE TESTIMONY

- (a) Employees who desire to represent the City or Department in any testimony before any legislative committee must first obtain approval from the Chief or designee.
- (b) Employees who desire to represent themselves or a special interest group may do so on their own time or on approved leave, and at their own expense or at the expense of the special interest group, but not on City time nor at City expense.
- (c) Employees will remain neutral in all situations, never rendering an opinion as to the qualifications of any candidate, potential candidate or issue while in uniform or on-duty.
- (d) Employees are prohibited from:
  - 1. Knowingly becoming a candidate for nomination or election to any public office, unless in compliance with City Policy.
  - 2. Using their official capacity to influence, interfere with or affect the results of an election.
  - 3. Directly or indirectly using, promising, threatening or attempting to use an official influence in aid of any partisan political activity, or to affect the result of any election to partisan or political office by any other corrupt condition or consideration.
  - 4. Promoting, demoting, or in any way favoring or discriminating against any employee with respect to employment because of political opinions or affiliations.
  - 5. Seeking any advantage in employment for any person based on political action.
  - 6. Coercing any employee to provide anything of value to any individual or organization for political purposes.
  - 7. Using any authority of the position to gain support for, or to oppose, any candidate, party, or issue in a partisan election.
  - 8. Taking an active part in another person's political campaign, including attending fund-raising events, making speeches, writing letters, signing petitions, or actively soliciting votes while in uniform or on-duty.
  - 9. Displaying political campaign literature in work areas.

#### 900.3.7 RECOMMENDATION OF ATTORNEY OR AGENT

Employees will not suggest or recommend the services of an attorney, bail bondsman, towing agency, physician, or other business service to any person with whom they have had contact as

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a result of departmental business, except in the transaction of personal business with family and friends.

#### **900.4 REQUIREMENTS OF DUTY**

Employee conduct will always be consistent with the Department's values, vision, mission, and any supervisor's instructions.

- (a) Employees will maintain themselves in such a physical condition as to be able to handle the requirements of their assignment.
- (b) Employees will not exhibit cowardice or shirk their duty in case of danger.
- (c) Employees will consider themselves available for duty in any emergency situation.
- (d) Employees will report for all duty assignments, including assigned court appearances, at the time and place required by assignment or orders and be properly prepared and equipped to immediately assume their duties.
- (e) Employees will remain at their assignment and on-duty until properly relieved by another employee or until dismissed by proper authority.
- (f) Employees are considered on-duty while on authorized breaks.
- (g) Employees will remain alert and observant while on-duty and devote their time and attention to the business of the Department. Any exceptions require supervisor approval.
- (h) Employees will not engage in any strike, work slowdown or stoppage, concerted failure to report for duty, or any other action which interferes with the efficiency or integrity of the administration of criminal justice or departmental discipline, nor will any employee encourage, coerce or conspire with any other individual to do so.
- (i) Employees assigned to investigate an incident where the complainant and/or suspect is considered a friend or relative will contact their supervisor; supervisors will reassign the incident to another employee.
- (j) Unless otherwise authorized by law, City policy, or Department directive, employees will not go outside of the Department in an attempt to resolve police-related matters until appropriate Department procedures have been followed.
- (k) Employees will write a memorandum to the Chief through their chain-of-command before filing claims for damages or entering into legal compromises or settlements regarding events connected with the performance of duty.
- (l) Employees will not serve civil process or render assistance in civil cases except when:
  1. The City is a party; or
  2. There is a statutory duty to do so; or
  3. A court order requires assistance; or
  4. Authorized by a supervisor.

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#### 900.4.1 DISCRETION AND REQUIREMENT TO TAKE ACTION

Sworn employees are charged with the responsibility to enforce the law, preserve the peace, and to protect lives and property.

- (a) By itself, the mere fact that a minor violation of the law has occurred may not be sufficient reason to justify arrest. Laws generally serve as the tools officers use to protect residents' rights and to maintain peace in the community.
- (b) Officers will take immediate action, if reasonably possible, to prevent any obvious felony offense, arrest any known wanted felon they encounter, and protect all persons and property from imminent harm.
- (c) Officers assigned to Specialized Units or other special duty assignments are not relieved from taking enforcement action outside the scope of their specialized assignment when necessary.
- (d) Whether or not an officer should take immediate action to enforce any law depends on a number of things including, but not limited to, whether another more serious situation exists at the same time and needs to be addressed first.
- (e) When a law or general order does not provide clear guidance regarding a particular situation, employees will consult with their immediate supervisor for direction, when practicable.

#### 900.4.2 MAINTAINING REQUIRED LICENSES AND CERTIFICATIONS

Employees will maintain all required licenses and certifications in good standing including, but not limited to, a Texas driver's license and required licenses and certifications issued by TCOLE.

- (a) It is the responsibility of the employee to notify his immediate supervisor in the event of any suspension, revocation or cancelation of a license or certification necessary to the performance of job assignments.
- (b) Suspension, revocation, or cancelation of a license or certification necessary to the performance of job assignments will result in termination of that assignment or of employment with the Department.
- (c) Sworn employees will not be permitted to be a deputy or hold a commission from any other law enforcement agency, whether local, state or federal, except when authorized as part of a multi-agency task force.

#### 900.4.3 NEGLECT OF DUTY

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (a) Lack of knowledge of the application of laws required to be enforced.
- (b) Unwillingness or inability to perform assigned tasks.
- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.
- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.

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- (e) Absence without approved leave.
- (f) Repeated poor evaluations.
- (g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.
- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.
- (i) Employees are expected to be truthful at all times in the performance of their duties. However, there may be instances where, initially, the employee has not been truthful; but, before the investigation is complete, the employee provides an accurate and detailed accounting of their true culpability in a situation, and accepts full responsibility for their actions. In those cases, the Chief may consider each case on a fact-specific basis.

#### 900.4.4 DUTY TO IDENTIFY

- (a) Unless doing so would jeopardize an undercover officer or a covert operation, employees will furnish the name and identification number of any employee, including themselves, to any person requesting such information regarding matters in which the employee was acting in an official capacity. Names of employees will be given in sufficient form to fully identify the employee.
- (b) Sworn employees taking police action while not in uniform will, as soon as possible, display their police badge or APD ID and state the purpose for taking police action.
- (c) Employees will provide the name and business telephone number of their immediate supervisor upon request by any person.

#### 900.4.5 NEGOTIATIONS ON BEHALF OF SUSPECT

Prohibitions in this section do not relieve supervisors from their obligations to review enforcement contacts of subordinates and take appropriate action, if necessary, to prevent the filing or adjudication of improper charges.

- (a) Employees will not participate in any arrangement between a suspect and victim that would result in the suspect escaping the penalty of the law nor will any employee seek the continuance or dismissal of any case on behalf of the suspect in court for any reason.
- (b) Employees will not promise informants any immunity from or leniency in any criminal prosecution without approval of the prosecuting attorney.
- (c) Employees will not obstruct an investigation or legal process by interfering or attempting to interfere with any legal process.
- (d) Employees will consult with the investigator assigned to a suspect's original charge(s) before attempting to negotiate with that suspect to secure a more serious charge against another suspect.

#### **900.5 RESPONSIBILITY TO COWORKERS**

Cooperation among employees of the Department is essential to effective law enforcement.



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- (a) Employees are expected to treat each other with respect.
  - 1. Employees will be courteous and civil at all times in their relationships, perform their duties in a cooperative and supportive manner, and not threaten, display physical aggression toward, or use insolent or abusive language with one another.
  - 2. Employees will address one another by proper use of rank or title when on-duty and in the presence of the public.
- (b) Employees will not discuss the identity or assignment of any employee serving in a confidential or covert assignment unless required to do so as a direct result of their official duties.
- (c) Employees will not covertly record the conversations of other employees unless all persons being recorded are aware that they are being recorded and agree to be recorded. This does not apply to Department authorized criminal or administrative investigations, training modules, or MAV recordings from equipped APD vehicles.
- (d) Employees must be cautious about speaking to plainclothes officers when in public so as not to inadvertently compromise their anonymity and place them in potential danger; therefore, employees will not address undercover/plainclothes officers, or call attention to their presence, unless first addressed by them.
- (e) Employees will not reply to an outside request for a professional work reference for an active or past member of the Department; all work reference requests must be forwarded to APD-HR.

#### 900.5.1 SUPPORTING FELLOW EMPLOYEES

- (a) Employees will not knowingly aid, abet, or assist another Department member in violating any Department directive or order.
- (b) Employees will cooperate, support, and assist each other at every opportunity.
- (c) Employees will not publicly criticize the work or the manner of performance of duty of any other employee.
- (d) Officers are required to take appropriate police action to aid, assist, and protect fellow employees in times of danger or under circumstances where danger might reasonably be impending.

#### 900.5.2 SYMBOLISM IN THE WORK AREA

- (a) Work areas are not to be so adorned that it is difficult to conduct business.
- (b) Symbols which are of an insulting, profane, and demeaning nature are not permitted.
- (c) Wall area decor which is perceived to be offensive to any employee will be explained by the person displaying the symbolism. If the explanation does not satisfy the offended person, the Chief or designee will make the final decision as to whether or not the symbolism remains in the work area.

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#### 900.5.3 SEXUAL RELATIONSHIPS BETWEEN EMPLOYEES

Supervisors are not to engage in any sexual conduct with a subordinate in their direct chain-of-command. If a supervisor and a subordinate begin developing a relationship that is likely to involve sexual conduct, they are both responsible for arranging a transfer before engaging in any sexual conduct.

#### 900.6 REQUIRED EMPLOYEE CONTACT AND EMERGENCY CONTACT INFORMATION

It is imperative the Department be able to immediately contact any employee for mobilization in the event of an emergency situation. The Department must also be able to identify an employee's next of kin or other designated emergency contact person in the event of a critical incident. Employees will not disclose the physical or mailing addresses, phone numbers, or pager number of another APD employee unless permitted by law.

##### 900.6.1 EMPLOYEE CONTACT INFORMATION

The e-PIF (electronic personnel information on-line form) contains the employee's address, phone number, emergency contact, support contact, and religious affiliation. Employees are required to keep all information on their e-PIF current.

- (a) Employees will update their e-PIF within 10 days of any change.
- (b) If an employee has no physical address they will email a map with clear and detailed directions to the residence to [APDHR@austintexas.gov](mailto:APDHR@austintexas.gov). HR personnel will then attach this map to the employees record in the Master Work Schedule.
- (c) Employees will list their telephone numbers to include home, pager, work, and cell (if receiving stipend).
  1. Employees will maintain an operational phone capable of receiving and placing calls from their residence.
  2. Employees receiving a cell phone stipend will ensure the phone is operational and available for use at all times.
  3. Employees assigned a direct office phone number will use that number as their work number.
  4. Employees who are not assigned a direct office phone number may use a generic phone number (e.g., 974-5000), or, with the permission of their supervisor, the supervisor's phone number.
- (d) Sworn employees will list two APD employees to serve as their *Support Contact*. The *Support Contact* will represent the department when working with the employee's emergency contacts in the event the employee is involved in an emergency or critical incident.
- (e) Employees will identify at least one emergency contact.
- (f) The e-PIF does not contain beneficiary information; beneficiary information is maintained by the City of Austin's Human Resources and Benefits Section.



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## Special Investigations

### 901.1 PURPOSE AND SCOPE

The mission of the Special Investigations Unit (SIU) is to investigate allegations of criminal misconduct that involve APD employees, public integrity cases involving other City employees, all Level 1 response to resistance incidents, certain in-custody deaths of APD prisoners, shootings by law enforcement officers from other agencies operating within the city of Austin, and any other criminal cases as directed by the Chief of Police or designee.

### 901.2 SCOPE OF INVESTIGATIONS

- (a) SIU may conduct investigations on the following:
  - 1. Allegations of criminal misconduct involving law enforcement officers and APD civilian employees.
  - 2. Allegations of criminal misconduct by other City employees when the alleged offense falls into the category of public integrity.
    - (a) The appropriate Investigative Unit (e.g., decentralized detectives, OCD) will investigate all criminal incidents by other City employees when the allegation has no bearing on public integrity.
  - 3. Level 1 response to resistance incidents as described in General Order 211 (Response to Resistance Inquiry, Reporting, and Review) when an APD employee is involved. SIU will be the lead Investigative Unit in these incidents.
  - 4. Death of an in-custody prisoner arrested by an APD officer.
    - (a) Investigation of an in-custody death that occurs in a jail within 24 hours of booking by an APD officer will generally be led by SIU.
    - (b) Investigation of in-custody death that occurs in a jail more than 24 hours after booking by an APD officer will be investigated by the agency operating the jail; SIU will assist if requested.
  - 5. Officer-involved shootings involving law enforcement officers from other agencies that occur within the jurisdiction of the Austin Police Department, in partnership with the involved law enforcement agency as directed by the Chief of Police or designee.
  - 6. SIU may conduct proactive investigations when approved by the Chief of Police.
- (b) Allegations of criminal offenses involving APD employees that would normally be investigated by SIU but occur outside of APD jurisdiction shall be referred to the law enforcement agency that has jurisdiction.
- (c) Any APD unit may be utilized as an investigative resource to assist SIU in conducting major investigations involving any City employee. Operational confidentiality of such investigations is a priority and shall be maintained.

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- (d) When any APD unit initiates an operation or investigation and an APD employee becomes a suspect, SIU will be notified immediately. SIU will retain operational decision making authority during such investigations.

### **901.3 CONCURRENT INVESTIGATIONS**

#### 901.3.1 ROLE OF INTERNAL AFFAIRS

- (a) While the SIU is conducting an investigation involving APD employees, Internal Affairs (IA) will conduct a concurrent investigation into related general order violations as outlined in General Order 902 (Administrative Investigations).
- (b) The SIU supervisor will coordinate the investigation with the IA supervisor to ensure the integrity of all investigations. Information and documents related to the criminal investigation will be made available to IA unless directed otherwise by the proper prosecutorial agency; however, to protect the integrity of both the criminal and administrative investigations certain documents and/or information may not be shared.
  1. Grand Jury documents and testimony will not be made available to IA.
  2. "Garrity" protected documents and information will not be made available to SIU.
  3. Matters that clearly do not fall under the protection afforded by "Garrity" and the secrecy of the Grand Jury may be used in the criminal and administrative investigation in accordance with State and Federal Laws, Rules of Evidence, and Department General Orders.

#### 901.3.2 ROLE OF THE CITY AUDITOR'S OFFICE AND HUMAN RESOURCE DEPARTMENT

When the SIU conducts a criminal investigation involving a city employee from another city department, the City Auditor's Office and the Human Resources Department may conduct an internal investigation into related general order violations. Information and documents related to the criminal investigation will not be made available to the City Auditor's Office or the Human Resources Department, except as authorized by the assistant chief of Investigations.

### **901.4 SPECIAL INVESTIGATIONS PROCESS**

This section outlines the following:

- (a) Notification of investigations.
- (b) Investigation of offenses.
- (c) Completed investigations.
- (d) Misdemeanor charges and felony indictments.

#### 901.4.1 NOTIFICATION OF INVESTIGATIONS

- (a) When the SIU supervisor becomes aware of an incident within SIU's scope of investigation, he will electronically notify the assistant chief of Investigations through the chain-of-command. The following additional notifications may be made, as appropriate:

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1. When an allegation of criminal misconduct involves an APD employee, the IA supervisor will be electronically notified. Involved employees' commanders/managers will be verbally notified as long as it will not compromise the investigation.
  2. When an allegation of criminal misconduct involves a law enforcement officer from another agency, IA and/or the Chief of the accused officer's agency will be notified unless the notification will compromise the investigation.
- (b) When IA initiates an allegation of criminal misconduct, the IA commander will electronically notify the assistant chief of Investigations.
1. After the preliminary facts have been gathered, the assistant chief of Investigations will brief the Chief of Police or designee to determine if a criminal investigation will take place. If the decision is made to open a criminal case, the assistant chief of Investigations will route the IA electronic notification to SIU through the Violent Crimes commander.
- (c) When SIU intends to proactively initiate an investigation, the SIU supervisor will electronically notify the assistant chief of Investigations through the chain-of-command and outline the purpose of the investigation.
1. The electronic notification will request a review of the preliminary facts to determine if a criminal and/or IA investigation should be opened.
  2. After the preliminary facts have been gathered, the assistant chief of Investigations will make a decision that reflects one of the following.
    - (a) A criminal investigation is warranted and will be opened by the SIU.
    - (b) No criminal investigation is warranted, however an IA investigation should be opened due to a possible general order violation.
    - (c) No criminal or IA investigation is warranted based on the facts known.
  3. A copy of the electronic notification will be retained in the case file by the SIU supervisor.
  4. A copy of the electronic notification will be forwarded to IA if deemed appropriate by the assistant chief of Investigations or designee.

#### 901.4.2 INVESTIGATION OF OFFENSES

- (a) Class B misdemeanor and higher offense cases will be thoroughly investigated and routinely discussed with the Violent Crimes chain-of-command, and the District or County Attorney's Office as needed.
- (b) Class C misdemeanors will be documented in a secured incident report and reviewed by the assistant chief of Investigations to determine if it will be further investigated.
  1. If approved for criminal investigation the case will be assigned to an SIU Investigator and handled the same as a Class B or higher offense; however, the victim will be directed to the appropriate court to file a complaint.

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- (c) The involved officer, victim, or witnesses may be asked to conduct a re-enactment of the incident.
  - 1. If the involved officer is participating in the re-enactment, he will be informed that the re-enactment is voluntary and will constitute a waiver of the officer's Fifth Amendment rights against self-incrimination. When possible, the re-enactment may be done prior to the conclusion of the on scene investigation.
  - 2. Re-enactments can be videotaped by CSU personnel. The original tape will be marked as evidence and the SIU will maintain custody of the tape. The original, or copies, may be distributed to other department or law enforcement personnel only with the approval of the appropriate prosecutorial agency.

#### 901.4.3 COMPLETED INVESTIGATIONS

The SIU supervisor will maintain a database of all cases investigated for tracking and statistical purposes.

- (a) Completed investigations on APD employees or officers from another agency will normally be routed up the Violent Crimes chain-of-command for review prior to case closure.
  - 1. If the investigation clearly reveals that no criminal offense occurred, the report will be unfounded in accordance with Department General Orders.
  - 2. SIU will present completed investigations that are not unfounded to the appropriate prosecutor.
    - (a) Misdemeanor charges that do not involve an abuse of official capacity or official oppression will be presented to the County Attorney's Office. The County Attorney's Office will determine if the facts of a case are sufficient for charges to be brought against the suspect or if prosecution will be declined.
    - (b) Felony charges and misdemeanor investigations involving an abuse of official capacity or official oppression will be presented to the District Attorney's Office. The District Attorney's Office will determine if the facts of a case will be presented to a Grand Jury or if prosecution will be declined.
- (b) Notification of unfounded investigations and cases where prosecution is declined will be handled as follows:
  - 1. The assistant chief of Investigations or designee will send written notification to the APD employee who was under investigation if the final status of a case is unfounded or prosecution is declined. This notification will be copied to the employee's chain-of-command.
  - 2. The SIU supervisor will send written notification of the final status of a case if it is unfounded or prosecution is declined to:
    - (a) The appropriate Department director of a city employee who was under investigation; or
    - (b) The Chief of Police of a sworn officer from another agency who was under investigation.

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#### 901.4.4 MISDEMEANOR CHARGES AND FELONY INDICTMENTS

Notification of cases resulting in misdemeanor charges and felony indictments will be handled as follows:

- (a) The SIU supervisor will immediately notify the Violent Crimes chain-of-command when it is learned that a case is to be presented to the Grand Jury by the District Attorney's Office or when misdemeanor charges are being brought by the County Attorney's Office.
- (b) The SIU supervisor will immediately notify the SIU chain-of-command when an APD employee is charged with a misdemeanor or indicted on felony charges.
  1. The assigned Investigative Unit detective and/or supervisor will make arrangements for the suspect to be arrested.
  2. The Investigative Unit supervisor will coordinate with the SIU chain-of-command and APD PIO to have a press release ready should there be media inquiries.

#### **901.5 ARREST AND RELEASE OF APD EMPLOYEES AND OTHER AGENCY SWORN OFFICERS**

##### 901.5.1 ARRESTS OF APD EMPLOYEES AND SWORN OFFICERS FROM OUTSIDE AGENCIES

- (a) The SIU supervisor will be immediately notified of any criminal incident involving an APD employee or sworn officer from another law enforcement agency.
  1. The role of the SIU supervisor is to initiate an immediate investigation into the facts of the case, not to determine whether an arrest should be made.
  2. The SIU supervisor will normally respond to the scene of the incident unless the incident is of a nature that would not warrant the response.
- (b) Officers making custody arrests will follow the guidelines set out in Department General Orders for arrest and booking. SIU investigators will be assigned the case and follow the guidelines set out in Department General Orders for follow-up investigations.

##### 901.5.2 RELEASING WITHOUT FILING CHARGES OR FILING LESSER CHARGES

Approval by the commander of Violent Crimes or Duty Commander is required to release an APD employee or officer from another agency without filing charges or to charge the employee or officer with a lesser offense. The name of the commander authorizing a change in the filing of charges will be noted in a supplement to the incident report.

- (a) When authorized by a commander, an arrested person will be released without being charged or will be charged with a lesser offense when:
  1. A magistrate declines to accept the probable cause affidavit.
  2. An Assistant District or County Attorney advises prosecution will be declined.
  3. The complainant or victim refuses to file charges or assist with prosecution. However, the District or County Attorney may proceed with prosecution without the cooperation of the victim, such as in family violence cases.

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4. The written report by the arresting officer does not include sufficient probable cause for the arrest, or fails to establish that a crime occurred.
  - (a) The assigned detective will attempt to contact the arresting officer prior to releasing the prisoner to obtain additional probable cause or information.
  - (b) If the detective is unable to contact the arresting officer, the prisoner may be released pending further investigation.
5. After investigation by the assigned detective, there is insufficient probable cause to support charging the arrested person.
6. Filing charges may jeopardize prosecution of a more serious offense.
7. The arrested person is willing to assist detectives and can provide specific information that will solve a more serious offense or numerous equal offenses.
8. Considering all available information, the facts will not support the original offense, but do support the filing of lesser charges.

#### **901.6 CONFIDENTIALITY**

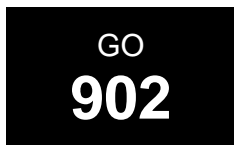
- (a) All investigations conducted by the SIU are of a confidential nature. No member of SIU will disclose information gained from their official duties as Department employees to persons not connected with SIU, Internal Affairs, or to persons who have no legitimate need to know.
- (b) Reports investigated by the SIU are secured in the computer reporting system to prevent viewing by unauthorized individuals. These reports can be unsecured by a SIU supervisor when there is no longer a need to secure them from viewing.

#### **901.7 RELEASE OF INFORMATION**

The Chief of Police and designees are the only personnel authorized to release information to the news media. No information will be released that will interfere with or prevent the apprehension and prosecution of the suspect(s) during an on-going investigation.

- (a) The name of the suspect will not be released until the charges have been filed.
- (b) A photograph of an employee charged with a criminal offense will not be released to the news media without the approval of the assistant chief of Investigations.





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# Administrative Investigations

### 902.1 PURPOSE AND SCOPE

This document establishes the required process for the administrative investigation of alleged employee misconduct by Internal Affairs and the employee's chain-of-command. It also outlines the imposition of fair and equitable disciplinary action when misconduct is identified. Investigations conducted by APD Human Resources are governed by City Personnel Policies.

This document does not supersede any rights or privileges afforded civilian employees through City Personnel Policies or sworn employees through the Meet and Confer Agreement, nor does it alter or supersede the powers vested in the Civilian Oversight Process of the Austin Police Department (APD) through that Agreement. In addition, nothing in this document limits or restricts the powers vested in the Chief of Police as the final decision maker in all disciplinary matters.

#### 902.1.1 ADMINISTRATIVE INVESTIGATIONS OVERVIEW

The following is a broad outline of the internal administrative investigation process from start to finish. Each section of this order will go into more detail of the process associated with investigating administrative complaints.

- (a) **Complaint Acceptance** - Complaints are accepted as outlined in this order and forwarded to Internal Affairs (IA). Once IA receives a complaint it will be entered into the electronic case tracking system.
- (b) **Complaint Assessment and Classification** - IA will give the complaint an initial classification level. This classification shall determine whether the complaint requires investigation and, if so, who shall conduct the investigation.
- (c) **Complaint Investigation** - Complaints that require further investigation may be handled as follows:
  1. Allegations of criminal conduct require concurrent investigations by both IA and the Special Investigations Unit (SIU) or outside agency holding jurisdiction over the incident.
  2. Allegations of administrative general order violations may be investigated by IA, the employee's chain-of-command and/or APD-HR.
- (d) **Complaint Disposition** - Once the complaint has been investigated by the appropriate investigative Unit or Command, the involved employee's commander shall recommend a disposition for the case. If the case receives a disposition of "sustained" it shall go through the discipline process. For all other dispositions the case shall be closed and filed.
- (e) **Discipline Process** - If the disposition of a complaint is "sustained" then the commander of the employee shall recommend the level of discipline based on the guidelines set forth in this order and the Discipline Matrix. Depending on the amount of discipline to be imposed, this may lead to a Discipline Meeting (DM) or a Dismissal Review Hearing (DRH). The Chief of Police is the final decision maker on all levels of discipline.

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902.1.2 DEFINITIONS

- (a) **Administrative Investigation** - An investigation of alleged misconduct by an APD employee that could result in disciplinary action. These may be conducted by:
  - 1. APD Internal Affairs (IA).
  - 2. Employee's chain-of-command.
  - 3. APD-Human Resources (APD-HR) or City-Human Resources (City-HR).
  - 4. The City Auditor's Office.
  - 5. An independent investigator appointed by the Chief of Police or their designee and/or the City Manager.
- (b) **Anonymous Complaint** - Any complaint in which the Complainant does not identify him or herself or does not wish to be identified. There shall be no duty to determine or reveal the identity of an anonymous Complainant.
- (c) **Classification** - Level of designation for a complaint to determine how it is investigated (e.g. "Class A", "Class B", "Supervisor Referral").
- (d) **Commander in Charge** - Generally, the commander over the employee who is the subject of an investigation. In Class B OFCA eligible complaints, the commander in charge shall designate the investigative supervisor, determine the final disposition of a complaint and recommend discipline for "Sustained" complaints.
- (e) **Complainant** - A person, including an officer, claiming to be a witness to or the victim of misconduct by an officer. "Complainant" does not include the Department designee in the case of an Administrative Referral, except that the Office of Police Oversight (OPO) may act as the Complainant in any allegation on its own initiative, and in the case of an anonymous complaint, the OPO or whichever entity that receives an anonymous complaint may act as the Complainant. If the OPO acts as the Complainant, the Director of OPO shall document the source of the complaint.
- (f) **Complaint** - Either (1) an affidavit or (2) any other written or verbal communication setting forth allegations or facts that may form the basis of future allegations of misconduct that violate policy against an officer and which serves as the basis for initiating an investigation. Anonymous written or verbal communications meet this definition of "Complaint".
- (g) **Criminal Investigation** - An investigation of alleged criminal conduct by an APD employee. These investigations are generally conducted internally by SIU. When there is an allegation of criminal conduct, a concurrent administrative investigation shall also be conducted by IA.
- (h) **Critical Incident** - For purposes of administrative investigations, the term "Critical Incident" shall have the meaning as agreed upon in the Meet and Confer Agreement. "Critical Incident" means:
  - 1. Any force resulting in death.
  - 2. Any force that resulted in a substantial risk of death.

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3. Any intentional firearm discharge at a person, vehicle, or structure regardless of injury.
  4. Any unintentional firearm discharge resulting in another person's injury or death.
  5. Any force that resulted in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g. serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ).
  6. Use of an impact weapon, including kinetic energy projectiles, and improvised weapons that strikes the head of a subject resulting in serious bodily injury or death.
  7. In custody deaths: For inquiry, reporting, and review purposes, all in-custody deaths occurring prior to or within 24 hours after booking shall be treated as critical incidents and require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject.
  8. The utilization of the Precision Immobilization Technique when serious bodily injury or death occurs.
  9. Note: The definition of "serious bodily injury" found in the Texas Penal Code, Section 1.07(a)(46) will apply.
- (i) **Disciplinary Action** - A temporary suspension, indefinite suspension, demotion in rank, reprimand, or any combination of those actions.
  - (j) **Discipline Meeting (DM)** - A meeting generally conducted by an employee's chain-of-command on "Sustained" complaints to determine the level of discipline an employee is going to receive. A Discipline Meeting is only held for discipline not to exceed a 15 day suspension.
  - (k) **Dismissal Review Hearing (DRH)** - A meeting generally conducted by the Chief of Police or designee on allegations that have been recommended to be "sustained" to determine the amount of discipline, if any, the employee is going to receive. A Dismissal Review Hearing is only held when discipline may exceed 15 days, up to and including indefinite suspension, and/or demotion in rank.
  - (l) **Disposition** - The final determination of how a complaint is closed (e.g. "Sustained", "Unfounded", "Administratively Closed").
  - (m) **Evidence** - Any statements, reports, records, recordings, documents, computer data, text, graphics, videotape, photographs, or other tangible forms of information, including a complaint.
  - (n) **Formal Discipline** - A discipline action at or above the level of a written reprimand, including temporary suspension, reduction in rank, and/or termination.
  - (o) **IA External Complainant Contact Form (PD0084)** - A form used to document an external complaint on an employee. This is generally used by supervisors who are attempting to handle minor complaints prior to notifying Internal Affairs.

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- (p) **IA Internal Complaint Memorandum (PD0081)** - A form used to initiate an internal complaint on an employee.
- (q) **Independent Investigation** - An administrative investigation or inquiry of alleged or potential misconduct by an officer, authorized by the Chief of Police or City Manager and conducted by a person(s) who is not:
  1. An employee of the City of Austin; or
  2. An employee of the Office of Police Oversight.
  3. An "Independent Investigation" does not include attorney-client work product or privileged material related to the defense of claims or suits against the City of Austin.
- (r) **Informal Discipline** - A discipline action at or below the level of an oral reprimand, including a Conduct Counseling Memorandum, Employee Success Plan, or training.
- (s) **Internal Affairs Case Management System (ICMS)** - The electronic system used to enter and track all complaints received by Internal Affairs and the Office of Police Oversight.
- (t) **Investigator** - An agent or employee of the Department or an Independent Investigator who participates in conducting an investigation.
- (u) **Minor Policy Violation** – Violations that may not normally result in formal discipline, including, but not limited to, tobacco use, operation of police vehicles, equipment violations, language use, etc.
- (v) **Statement** - Any oral or written communication setting forth particulars or facts regarding the alleged misconduct under investigation.
- (w) **Supervisor** - References made to a supervisor in this order do not include the rank of corporal unless they are the acting sergeant.

#### **902.2 COMPLAINT ACCEPTANCE PROCESS**

Complaints may be initiated internally or externally. This process outlines how each type of complaint is properly documented and handled.

##### **902.2.1 AVAILABILITY OF COMPLAINT FORMS**

The most current versions of the *IA External Complainant Contact Form* (PD0084) and *IA Internal Complaint Memorandum* (PD0081) shall be maintained on the "Public Drive" in the "Approved Forms" folder.

##### **902.2.2 INTERNALLY INITIATED COMPLAINTS**

This process does not prevent an employee from directly notifying a supervisor of an issue they feel needs to be addressed. Supervisors who receive information of an internal complaint shall follow the guidelines set forth in the initial supervisor responsibility section of this order.

- (a) The following is a list of the most common avenues for initiation of internal complaints:
  1. Possible misconduct of an employee learned of or observed by any department employee.

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2. A complaint initiated by an employee's chain-of-command.
  3. Administrative inquiry at the direction of the Chief of Police.
- (b) All internal complaints must meet the following documentation requirements and be processed accordingly:
1. **Civilian Employees:** Complaints that are received in IA from a civilian employee must be in writing, signed by the person making the complaint, sworn to and notarized.
  2. **Sworn Employees:** Complaints filed by an officer shall be on an *IA Internal Complaint Memorandum*. They may be emailed, faxed or personally delivered to IA.
  3. Any commander may initiate an internal investigation of any officer under his or her command provided the information in the complaint meets the criteria for a Class A or Class B complaint. The commander, or their designee, initiating the investigation shall provide IA with a completed *IA Internal Complaint Memorandum* describing the basic facts of the case. The memorandum will provide enough information for the case to be entered into the electronic case tracking system. Internal complaints that do not meet the Class A or Class B qualifications shall be referred back to the commander in charge.

#### 902.2.3 EXTERNALLY INITIATED COMPLAINTS

Under the Meet and Confer Agreement, the Office of Police Oversight (OPO) is a non-exclusive location for accepting administrative complaints of alleged officer misconduct from the public.

- (a) The following is a list of the most common avenues for initiation of written and verbal external complaints:
1. Complaint made directly to any department employee or supervisor, either in person, by mail or via phone.
  2. Complaint made through the OPO.
  3. Complaint made directly to IA.
- (b) All external complaints must meet the following documentation requirements and be processed accordingly:
1. Written complaints
    - (a) Complaints may be submitted from citizens outside the Department.
    - (b) Complaint letters received by any member of the Department (other than IA) shall be emailed, faxed, or personally delivered to IA.
  2. Verbal complaints (in person or by telephone)
    - (a) Civilian employees receiving an alleged minor nature complaint against an officer should refer the citizen directly to the OPO.
    - (b) Sworn employees receiving an alleged minor nature complaint against an officer should request a supervisor to respond to the scene. If a supervisor

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is not available, or if the complainant is not able to wait for a supervisor, the officer shall obtain the citizens contact information and forward it to a supervisor. The supervisor may handle the complaint as outlined in the Initial Supervisor Responsibility section.

3. Complaints of a serious nature require the immediate notification of an available supervisor. Serious complaints must be initially investigated by the rank of sergeant or above.

#### 902.2.4 ANONYMOUS COMPLAINT

Employees may be investigated based on an anonymous complaint. Anonymous complaints shall be treated as an internal complaint for documentation purposes.

#### 902.2.5 INITIAL SUPERVISOR RESPONSIBILITY

Unless a complaint is submitted directly to the OPO or IA, the initial response to an internal or external complaint shall generally rest with the employee's immediate supervisor.

- (a) Supervisors investigating a complaint shall adhere to the following guidelines:
  1. If the incident is force related, follow the guidelines set forth General Order 211 (Response to Resistance Inquiry, Reporting, and Review).
  2. Supervisors shall ensure the procedural rights of the accused employee are followed pursuant to state and federal law, as well as the Meet and Confer Agreement.
  3. During the preliminary investigation of any complaint, supervisors should make every reasonable effort to obtain names, addresses, and telephone numbers of additional witnesses.
- (b) Allegations of a Minor Nature:
  1. Supervisors notified of a minor complaint are required to contact the complainant within one (1) calendar week of the time the complaint was received and attempt to resolve the issue.
  2. After attempting to resolve any minor complaint, supervisors shall ensure that an *IA External Complainant Contact Form* has been completed as fully as possible and should indicate whether the complainant was satisfied. Forms will be emailed to [Internal.Affairs@austintexas.gov](mailto:Internal.Affairs@austintexas.gov).
    - (a) Minor complaints that are marked as "satisfied" on the form shall be entered into the IA Tracking Database as information and marked as closed.
    - (b) Minor complaints that are marked as "not satisfied" on the form shall be entered into the IA Tracking Database and will follow the normal complaint assessment, classification and investigation process as outlined in this order. If a complainant is not satisfied, supervisors shall refer the complainant to the OPO.
- (c) Allegations of a Serious or Criminal Nature:

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1. Allegations of a serious or criminal nature shall be initially investigated by a supervisor the rank of sergeant or above.
2. Supervisors receiving a complaint involving allegations of a potentially serious administrative nature shall notify an IA investigator as soon as possible. Serious administrative allegations include, but are not limited to:
  - (a) Serious violations of a general orders, rules, or regulations.
  - (b) Conduct that challenges the integrity, good order, or discipline of the Department.
3. A supervisor receiving a complaint involving allegations of a criminal nature shall notify the following personnel as soon as possible:
  - (a) The Watch Lieutenant.
  - (b) The Duty Commander.
  - (c) An SIU supervisor.
  - (d) An IA investigator.
  - (e) The involved employee's chain-of-command.

#### **902.3 COMPLAINT CLASSIFICATION AND INVESTIGATIVE ASSIGNMENT PROCESS**

When a complaint is received by IA it will undergo an initial assessment. Based upon this initial assessment, IA shall determine whether further investigation is warranted and designate a classification level for the complaint. IA shall enter the complaint into the IA electronic case tracking system and the complaint information will be forwarded to the OPO. All initial classifications are subject to approval by the IA commander or designee.

If facts uncovered during an investigation indicate that a more serious offense than originally alleged may have occurred, the case may be reclassified and reassigned to the appropriate unit or command with investigative responsibility. Conversely, any case may also be reclassified as a lower classification and reassigned if the facts warrant. All case reclassifications shall be mutually agreed upon between the IA commander and the commander in charge. If agreement cannot be reached, the final decision shall be made by the Chief of Police or designee. Nothing precludes any case being initially assigned to the Internal Affairs unit for investigation, regardless of the potential discipline involved.

#### **902.3.1 COMPLAINT CLASSIFICATION AND INVESTIGATIVE ASSIGNMENT TABLE**

The following table outlines who has investigative responsibility for each classification level.

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<b>Classification</b>	<b>Assessment</b>	<b>Investigative Responsibility</b>
Administrative Inquiry	An inquiry into a critical incident, or other incident, ordered by the Chief of Police or designee. Inquiries are generally for issues that could destroy public confidence in, and respect for, the Department or which is prejudicial to the good order of the Department.	Administrative Inquiries will be assigned to the appropriate Unit or Division based on the circumstances surrounding the inquiry.
Class A Complaint	Cases in which the potential discipline is more than a 15-day suspension, indefinite suspension and/ or demotion according to the Discipline Matrix. Generally, Class A Complaints are allegations of a serious nature, which include, but are not limited to: <ul style="list-style-type: none"> <li>• Criminal conduct.</li> <li>• Serious violations of a general order, rule, or regulation.</li> <li>• Conduct that challenges the integrity, good order, or discipline of the Department.</li> </ul>	Class A complaints are investigated by IA. Complaints that involve allegations of criminal conduct are also concurrently investigated by SIU as outlined in General Order 901.
Class B Complaint	Cases in which the potential discipline is a 15-day suspension or less. Generally, Class B Complaints are allegations of a less serious nature, which include, but are not limited to: Less serious violations of a Department general order, rule or regulation (e.g., profanity, belittling language, inadequate police service, minor traffic violations). <ul style="list-style-type: none"> <li>• Negligent damage or loss of property.</li> </ul>	Class B Complaints that are OFCA eligible will be investigated by the employee's chain-of-command. Class B complaints not eligible for OFCA will be investigated by IA. The OPO has full access rights to Class B investigations that are conducted by an employee's chain-of-command. Class B complaints are resolved through three different procedures: <ul style="list-style-type: none"> <li>• Investigation by IA</li> <li>• OFCA, if eligible (chain-of-command investigations)</li> <li>• Mediation, if eligible</li> </ul>



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<b>Classification</b>	<b>Assessment</b>	<b>Investigative Responsibility</b>
Class C Complaint	Generally, allegations that: Do not fit into the Class A or Class B category, <ul style="list-style-type: none"> <li>• The complaint does not rise to the level of a general order violation, and</li> <li>• The complaint would best be handled through other departmental processes (e.g., grievance, Conduct Counseling Memorandum, Employee Success Plan, or training).</li> </ul>	Class C complaints will be reviewed by the IA commander and the employee's chain-of-command. If all of the parties agree with the initial Class C classification, the complaint will be "Administratively Closed". If it is determined that additional investigative follow-up is needed, the complaint may be reclassified and investigated according to its new classification.
Class D Complaint	Allegations that do not rise to the level of a general order violation and meet one or more of the following criteria: <ul style="list-style-type: none"> <li>• A preliminary review of the allegation shows it is not true (e.g., video or audio recording shows allegation is false), and/ or</li> <li>• The complaint is about the probable cause for an arrest or citation that appears to be unsubstantiated.</li> </ul>	Class D complaints will be reviewed by the IA commander and the employee's chain-of-command. If all of the parties agree with the initial Class D classification, the complaint will be "Administratively Closed". If it is determined that additional investigative follow-up is needed, the complaint may be reclassified and investigated according to its new classification.
Supervisor Referral	A compliant: <ul style="list-style-type: none"> <li>• that is a minor policy violation which may result in informal discipline, or</li> <li>• where no formal complaint affidavit has been received by IA, however the complainant requests that the issue be brought to the attention of the supervisor, or</li> <li>• where there is no policy violation.</li> </ul> <p>These informal complaints can either be made directly to IA, an officer's supervisor and/or the OPO and are most appropriately handled through other departmental processes (e.g., grievance, Conduct Counseling Memorandum, Employee Success Plan, or training).</p>	If IA/OPO receives this informal complaint from a citizen, it will be forwarded to the appropriate supervisor and chain-of-command for its follow-up and response. Supervisor Referrals are entered into the IA tracking system for documentation purposes only and not for disciplinary purposes.

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<b>Classification</b>	<b>Assessment</b>	<b>Investigative Responsibility</b>
Information Incident	An incident where no apparent general order violation has been committed and a signed affidavit has not been received. Information incidents may also be from complaints that are brought to the direct attention of a supervisor, handled satisfactorily and documented on an IA External Complainant Contact Form.	Complaints documented using the IA External Complainant Contact Form will be forwarded to IA with a notation that the complaint either was/was not handled satisfactorily. Satisfactorily handled complaints will be marked as "Information". Information incidents are entered into the IA tracking system for documentation purposes only and not for disciplinary purposes.

#### **902.4 COMPLAINT INVESTIGATION**

After IA has received, classified and entered a complaint into ICMS, the complaint will be assigned to the unit or command with appropriate investigative responsibility based on the classification level. Minor nature complaints that have been satisfactorily handled by a supervisor will be entered into ICMS and closed as "Information".

##### **902.4.1 COOPERATING WITH ASSIGNED INVESTIGATORS**

- (a) Employees will cooperate with any assigned investigator as if they were addressing the Chief of Police. Employees who fail or refuse to cooperate with an assigned investigator will be subject to disciplinary action, up to and including indefinite suspension.
- (b) Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times during interviews with investigators as outlined in General Order 900 (General Conduct and Responsibilities).
  1. Employees who are found to have given a false official statement are subject to indefinite suspension as outlined in the Discipline Matrix ("Dishonesty - False Official Statements").
  2. There may be cases where officers have not been truthful but the dishonesty does not constitute a false official statement. In those situations, the Chief of Police shall consider each case on a fact specific basis and may decide that corrective action other than indefinite suspension is warranted as outlined in the Discipline Matrix ("Neglect of Duty - Misleading Statements").

##### **902.4.2 WITHDRAWN COMPLAINTS**

- (a) If the complainant withdraws their complaint or refuses to further cooperate with the administrative investigation, the investigation may be closed as incomplete.
- (b) If the nature of the allegations can be sufficiently determined without the assistance of the complainant, the investigation shall proceed and be completed as normal.

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#### **902.5 ALLEGATIONS OF CRIMINAL CONDUCT**

When employees are accused of potential criminal conduct, SIU shall be assigned to investigate the criminal allegations as outlined in General Order 901 (Special Investigations) apart from any administrative investigation. This section explains how IA and SIU work together in concurrent investigations.

##### **902.5.1 CONCURRENT CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS**

The Chief of Police will normally allow the administrative investigation and/or disciplinary action to proceed prior to the final (legal) disposition of any criminal investigation of an employee.

Internal Affairs will proceed with a concurrent investigation in cases involving a general order violation. SIU and IA shall coordinate their investigations and make a joint determination concerning whether involved officer(s) and witnesses should be initially interviewed by SIU or IA. Supervisors and assigned investigators from SIU and IA will regularly communicate on the joint progress of their investigation and share information expeditiously as allowed by law.

A supervisor from SIU shall be the Department's liaison with the prosecutor's office concerning any criminal investigation. The IA investigator or supervisor will not contact the prosecutor unless authorized to do so by the Chief of Police or designee.

##### **902.5.2 INFORMATION AND EVIDENCE SHARING BETWEEN IA AND SIU**

The following criteria shall dictate the sharing of information/evidence between the administrative and criminal investigations:

- (a) Representative(s) from IA will not normally be present during any criminal interview of an APD employee conducted by the SIU.
- (b) All evidence obtained during the criminal investigation shall be shared with the administrative investigator, to the extent allowed by law. An SIU investigator or supervisor shall consult with the prosecutor concerning the appropriate time to release this information to the administrative investigator.
  1. Investigative information received through a Grand Jury subpoena or testimony shall not be released or shared with Internal Affairs.
- (c) All evidence obtained during the administrative investigation, except for Garrity related materials, may be shared with the criminal investigator and/or prosecutor, to the extent allowed by law. The IA legal advisor shall review all potential Garrity related material prior to authorizing its release.
  1. Garrity Related Materials - Garrity related materials are the result of an administrative order requiring an employee to give evidence or statements as a condition of continued employment. This includes, but is not limited to:
    - (a) Sworn statements provided by the accused employee.
    - (b) The results of a Department ordered polygraph.
    - (c) The results of a Department ordered blood and/or breath test.
    - (d) Cellular telephone records.

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- (e) Credit card receipts.
  - (f) Medical records.
2. Except as provided herein, Garrity related materials obtained during the administrative investigation shall not be provided to a criminal investigator and/or prosecutor unless:
- (a) The employee who is the subject of the administrative investigation authorizes its release.
  - (b) The evidence relates to a false statement, given under oath by the employee, which may constitute perjury or aggravated perjury.
  - (c) In response to a lawful subpoena.
- (d) Investigative information shall be shared with IA in a timely manner. When a criminal investigation has been completed, the assigned SIU investigator or an SIU supervisor will notify the IA investigator conducting the administrative investigation of the final status of the criminal case.

#### **902.5.3 180 DAY INVESTIGATION TIME FRAME**

Generally, in order for a sworn employee to be temporarily suspended, demoted, or indefinitely suspended for allegations based on a criminal nature, an investigation must be completed and discipline imposed within 180 days from the date an Assistant Chief of Police or the Chief of Police has notice of the potential misconduct, provided that the officer is still subject to prosecution under the applicable criminal statute of limitations.

- (a) If a prosecutor notifies the SIU supervisor that taking disciplinary action will jeopardize the criminal investigation, the Chief of Police or designee shall decide whether to notify the Attorney General of his or her intent to take disciplinary action outside of the 180 day statutory period. Notification to the Attorney General is authorized only when the following criteria have been met:
  - 1. The Chief of Police or designee, at the time of the filing of the notice with the Attorney General, intends to indefinitely suspend the officer; and
  - 2. The prosecutor has notified the Chief of Police or designee that a delay in imposing an indefinite suspension is necessary to protect a criminal investigation; and
  - 3. The Chief of Police or designee consults with the IA legal advisor concerning the propriety of filing the notice to the Attorney General.

#### **902.6 ADMINISTRATIVE INVESTIGATION GUIDELINES**

Generally, in order for a sworn employee to be temporarily suspended, demoted, or indefinitely suspended for allegations of an administrative nature, an investigation must be completed and discipline imposed within 180 days from the date the incident occurred.

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The assigned investigator shall follow the rules established by Civil Service Law (generally, Tex. Local Gov't Code § 143.312) and the Meet and Confer Agreement between the City and the Austin Police Association (APA). This includes:

- (a) Investigators shall prepare and furnish a written *Notice of Allegations* which explains the nature of the complaint to the accused officer not less than 48 hours before beginning the initial interview of an accused officer.
- (b) Regardless of who is responsible for investigating the complaint, investigators:
  1. Shall be one rank higher than the officer subject to the investigation unless otherwise authorized by the Chief of Police or designee.
  2. Shall not be a person who is the complainant, the ultimate decision maker regarding disciplinary action, or a person who has any personal involvement regarding the alleged misconduct.
- (c) Interviews of accused employees shall be conducted during business hours. If the employee is normally off-duty during that time the employee shall be compensated.
  1. Off-duty interviews should only be conducted based on the seriousness of the investigation and other factors where time is of the essence.
  2. When appearing before Internal Affairs for a scheduled interview, employees shall wear:
    - (a) The Class A, B, or C uniform, or
    - (b) Plain clothes in adherence to General Order 801.5 – Plain Clothes Attire.
- (d) Investigators may not interview employees at their home without the employees' prior permission.
- (e) Employees who are the subject of an investigation have the right to be informed of the identity of every person who will be participating in any interview of the employee. No more than two interviewers should ask questions to prevent any confusion or misunderstanding.
  1. A representative from the OPO may attend an interview of the officer who is the subject of the investigation or administrative inquiry, as well as all witness interviews. The OPO representative may directly question the officer who is the subject of the investigation and any witness officer only if agreed to by the subject officer or witness officer or his/her representative and the IAD investigator. At the conclusion of or during a break in any interview, the OPO representative may take the IAD investigator aside and request that the investigator ask additional questions. Whether such information is sought in any interview is within the discretion of the IAD investigator.
- (f) All interviews shall be for a reasonable period and the employee's personal needs shall be accommodated.
- (g) Employees shall not be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Employees refusing to answer questions directly related to the investigation may be ordered

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- to answer questions administratively or be subject to discipline for insubordination. However, nothing administratively ordered may be provided to a criminal investigator.
- (h) Employees subject to a "do not discuss" order may only discuss details of an investigation with the people designated in the order.
    - 1. In order to maintain the integrity of each individual employee's statement, multiple employees subject to the same investigation may not discuss the details with each other. Multiple involved employees may not collectively meet with a representative or attorney to discuss details of an incident prior to being interviewed.
  - (i) Absent circumstances preventing it, interviewers should record all interviews of employees and witnesses. Employees may also record the interview if they notify the investigator of their intent to record.
  - (j) Employees who have been previously interviewed shall have a copy of the recorded interview made available to listen to prior to any subsequent interview and/or when they are reviewing their transcribed statement.
    - 1. Employees who are reviewing their statement may only make grammatical changes. Changes in content must be done through a follow-up interview or memorandum.
    - 2. Employees shall be required to sign their transcribed statement as it reflects the actual interview.
  - (k) A sworn employee who is the subject of an investigation or administrative inquiry shall have the right to be represented by an attorney of the officer's choice or an Austin Police Association (APA) representative or both during an interview, provided the attorney/representative complies with the Internal Affairs interview protocol (i.e. to observe only). Any failure to adhere to this observation rule may result in removal of the attorney or union representative from the interview room. A sworn employee who is a witness or complainant is not permitted to bring an attorney or union representative into the interview.
  - (l) In accordance with Municipal Civil Service Rule 6.03(D), a civilian employee who is the complainant, respondent, or witness, in an Internal Affairs investigation, may bring a representative of their choosing to attend the interview as an observer only, provided the representative does not have personal involvement in the incident as a complainant, witness, or subject of the investigation. Any failure to adhere to this observation rule may result in removal of the representative from the interview room.

## 902.6.1 ADMINISTRATIVE INVESTIGATION TOOLS

The results of any compelled technique shall be restricted to the administrative investigation. When civilian employees are the subject of an investigation, the IA Legal Advisor must be consulted prior to utilizing any of the following investigative tools.

- (a) Sworn employees of this department may be administratively ordered by the Chief of Police or designee to submit to:
  - 1. A blood, breath or urine test for alcohol and drugs.

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2. A polygraph examination under the conditions set forth in Tex. Gov't Code § 614.063.
  3. A psychological evaluation.
  4. Other medical or laboratory tests as deemed necessary.
  5. Conduct a video re-enactment.
  6. Be photographed.
  7. Participate in a physical lineup.
  8. Produce documents reasonably related to an investigation (e.g. financial documents, credit reports, phone records).
  9. Other administrative orders, as necessary.
- (b) Employees may be compelled to disclose personal financial information pursuant to proper legal process if such information tends to indicate a conflict of interest with official duties or if the employee is assigned to or being considered for a special assignment with a potential for bribes.
- (c) Employees shall have no expectation of privacy when using telephones, computers, radios, desks, filing cabinets, lockers, or any other type of equipment or storage space provided by the Department. An investigative search of departmentally assigned areas (e.g., desks, lockers, office space, assigned vehicles) may be conducted upon a suspicion that official misconduct is involved.

#### 902.6.2 INVESTIGATIONS HANDLED BY INTERNAL AFFAIRS

Investigations handled by IA shall adhere to the investigative guidelines set forth in this order and the Internal Affairs SOP. IA will investigate Administrative Inquiries, Class A, and Class B investigations that do not fit the criteria for eligibility to be handled using the officer final classification agreement (OFCA) outlined in section 902.6.4.

- (a) Once IA has completed their investigation they shall give the involved employee's commander access to the case file. The commander shall recommend a disposition for the allegation based upon a preponderance of the evidence. Disposition guidelines are outlined in Section 902.7.
1. If the recommended disposition is "Sustained", commanders shall follow the guidelines for administration of discipline as described in Section 902.9 and inform IA of the recommended discipline based on the Discipline Matrix.
  2. If the disposition of all allegations is something other than "Sustained", commanders shall notify IA who will then close the case.
- (b) IA shall notify the employee of the results of the investigation on Department memorandum.

#### 902.6.3 INVESTIGATIONS HANDLED BY EMPLOYEE'S CHAIN-OF-COMMAND

- (a) Assignment to Command

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1. Class B investigations that are eligible to be handled as an OFCA will be assigned to the employee's chain-of-command. If either the commander in charge or the officer do not accept the OFCA option, the investigation will remain with Internal Affairs and be conducted as a full Class B investigation.
  2. For OFCA investigations conducted by an employee's chain-of-command, the commander of the employee shall be designated as the commander in charge of the investigation. The command that the subject officer is currently assigned to will normally conduct the investigation, even if the allegation of misconduct occurred in a prior command. The commander in charge shall receive an investigative packet from IA containing all evidence relating to the complaint, all required forms and an investigative template.
- (b) Appointment of Investigative Supervisor
1. The commander in charge shall appoint a sworn supervisor to be the investigator. The investigator must be the rank of sergeant or above and at least one rank higher than the employee being investigated. The investigating supervisor may not be the complainant or have personal involvement in the alleged misconduct under investigation.

#### 902.6.4 INVESTIGATIONS HANDLED THROUGH THE OFFICER FINAL CLASSIFICATION AGREEMENT

The Officer Final Classification Agreement (OFCA) is an option available to officers who wish to shorten the investigative and discipline process time for minor complaints meeting the criteria specified below.

- (a) Minor nature complaints shall be reviewed by an IA lieutenant and/or commander to determine if the complaint falls into an eligible category for OFCA. If the complaint falls within an eligible category, an IA lieutenant shall review the officer's complaint history to determine if there are any patterns of behavior or serious allegations which would eliminate them from eligibility.
- (b) The following guidelines shall be used to determine which complaints may be eligible:
  1. Class B INTERNAL complaints that involve less serious violations of Department policies or procedures where the Matrix guidelines allow for discipline not greater than three (3) days may be eligible. Examples include, but are not limited to:
    - (a) Failure to Qualify.
    - (b) Unintentional Discharge (not at a training site).
    - (c) Preventable Discharge.
    - (d) Pursuits.
    - (e) Officer Involved Collisions.
  2. Class B EXTERNAL complaints that involve less serious violations of Department policies, or procedures where the Matrix guidelines allow for discipline not greater than a written reprimand may be eligible. Examples include but are not limited to:



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- (a) Allegations of profanity and/or inappropriate language.
  - (b) Allegations of inadequate police service.
  - (c) Allegations of rudeness.
3. Class A, C and D complaints are not eligible.
4. An officer with 2 or more complaints of a similar nature within the previous 12 months is not eligible for the OFCA for similar subsequent violations.
- (c) If the officer is found to be eligible for OFCA, IA shall simultaneously notify the officer's chain-of-command and the OPO of said determination. If the officer's Commander agrees that the officer is eligible then the officer shall be offered this option when they are served with their *Notice of Allegations*. Officers agreeing with the complaint and wanting to invoke their OFCA option may do so by submitting a memorandum along with a signed OFCA form to IA within 48 hours of receiving the *Notice of Allegations*.
- (d) By accepting the OFCA, the officer is accepting responsibility for their actions and the complaint shall receive a final disposition of sustained. The officer will not receive discipline exceeding a three (3) day suspension for internal complaints or a written reprimand for external complaints. These cases are not subject to additional investigation unless new information is received that indicates a more serious general orders violation may have occurred. OFCA's should be completed within twenty (20) days of the date the investigation is assigned to the chain-of-command. If an OFCA is invoked, the ten (10) business days' time frame for the administration of discipline does not apply.

#### 902.6.5 INVESTIGATIONS HANDLED THROUGH MEDIATION

As an alternative to the normal IA process utilized in investigating complaints, the complainant and involved officer(s) may be invited to voluntarily participate in mediation. Mediation shall be an option discussed by the Office of Police Oversight (OPO) intake staff after the external complaint affidavit has been submitted by the complainant. Complaints recommended for mediation will be noted on the OPO Interoffice Delivery Sheet. The OPO Interoffice Delivery Sheet and the original external complaint affidavit will be delivered to IA by OPO staff. Once mediation has occurred, the matter cannot be returned to the Department to be handled as a disciplinary matter unless the officer fails to complete the mediation session. Complaints resolved via mediation will not be counted as an incident in the Guidance Advisory Program (GAP).

- (a) The OPO intake staff shall not offer mediation to the complainant at the conclusion of the external complaint affidavit intake or as a complaint resolution option. Approval from the chain of command and willingness on the part of the officer to mediate a complaint shall be obtained prior to offering mediation to the complainant. To do otherwise may yield an unintended consequence of mistrust or dissatisfaction on the part of the complainant.
- (b) Complaints shall be reviewed by the IA lieutenant or commander within two (2) business days of receipt to determine whether they would be appropriate for mediation. Only Class B external complaints that involve less serious violations of

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Department policies and procedures may be eligible for mediation. Examples may include, but are not necessarily limited to:

1. Allegations of profanity, belittling or rudeness.
  2. Allegations of inadequate police service.
- (c) If mediation is deemed appropriate for the allegation, the IA Lieutenant shall review the officer's complaint history and confer with the officer's chain of command to determine if the officer meets the qualifications for the mediation process. The chain of command shall report back to the IA lieutenant within five (5) calendar days indicating whether the officer has accepted or declined mediation as a complaint resolution. The option to utilize mediation may be withdrawn by the Chief of Police or designee if withdrawal is deemed to be in the best interest of the Department.
1. Officers will be eligible to choose mediation as an option to resolve complaints of a substantially similar nature no more than once every six (6) months or twice per calendar year.
  2. IA will consult with the officer's chain of command to determine if subsequent complaints are of a substantially similar nature to previous complaints.
- (d) The officer's chain of command must obtain and review any audio/video related to the officer/complainant interaction. If the parties agree to mediate the complaint, the audio/video will be submitted to IA, copied to a designated flash drive or other portable media and supplied to the Dispute Resolution Center for the mediation session.
- (e) If the allegations are appropriate and the officer meets the qualifications for mediation, the offer to mediate shall be extended to the officer. If the officer agrees to mediate, the OPO shall extend the offer to mediate to the complainant.
1. If either the complainant or the officer declines to participate in mediation, the OPO Mediation Coordinator will notify the IA lieutenant. IA will utilize its usual investigative process to handle the complaint and notify both parties that mediation will not occur.
  2. If the officer and the complainant accept the offer to mediate, the OPO Mediation Coordinator will notify the Dispute Resolution Center of the referral via facsimile. The OPO Mediation Coordinator will furnish a summary of the incident and allegations to the Dispute Resolution Center as background information about the dispute. The assigned mediator may request additional information, if necessary, while contacting the complainant and the officer to schedule the session.
- (f) A neutral third party mediator from the Dispute Resolution Center will contact the complainant and the officer to complete an intake/assessment, answer questions specific to mediation and schedule a date/time for the mediation session. Mediations will be scheduled on the earliest possible date; generally within thirty (30) days from the date of receipt of the formal complaint affidavit, if possible.
- (g) A formal confirmation letter stating the date, time and location of the mediation will be sent to the officer and the complainant by the Dispute Resolution Center. A

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- mediation brochure will also be provided to both parties prior to the mediation session. A mediation session will be scheduled for a two (2) hour time slot.
- (h) Officers must schedule mediation sessions during their normal duty hours if those hours coincide with the normal business hours set forth by the Dispute Resolution Center. Officers working outside of the normal business hours set forth by the Dispute Resolution Center shall submit an overtime request form to the IA lieutenant.
  - (i) An officer attending a mediation session is considered to be on-duty, shall behave in a professional manner during the session, and is bound by general orders. The officer is expected to fully participate in the mediation session. The officer shall wear a uniform or clothing suitable for court, as outlined in general orders. Officers will not be prohibited from carrying their duty weapon while participating in a mediation session, but must comply with department general orders regarding weapons.
  - (j) Mediation sessions are confidential. Unless all parties agree, only complainants, officers, and the mediators will be allowed into the session. A qualified, neutral interpreter will also be present if the complainant or a third party mediator deems such action necessary. All parties will be required to sign a Dispute Resolution Center Agreement to Mediate Waiver and Consent form. Once the form is signed by both parties and the mediation session has commenced, there is no provision for a complaint to be returned to IAD for investigation if the complainant is dissatisfied with the mediation process or the outcome of the mediation session. The mediation session will not result in a written agreement between the parties.
  - (k) At the conclusion of a mediation session, the mediator will provide the OPO Mediation Coordinator a written response stating whether both parties appeared and whether the session resulted in a completed mediation. This written response will be submitted to the OPO Mediation Coordinator and entered into ICMS. The written documentation will be maintained by IA. Although the mediation session is confidential, the nature of the complaint and the officer's identifying information shall be recorded in the ICMS database as a 'mediated' complaint. Mediated complaints will NOT be included as an incident in the Guidance Advisory Program (GAP).
  - (l) The Dispute Resolution Center will provide each party with a satisfaction survey at the conclusion of the mediation session. The complainant and the officer will complete the survey prior to leaving the Dispute Resolution Center. The survey will be submitted to the OPO Mediation Coordinator and entered into ICMS. The written documentation will be maintained by IA.

## 902.6.6 MEDIATION SCHEDULING CONFLICTS

- (a) If the officer or complainant is going to be late for the scheduled mediation, they should contact the Dispute Resolution Center to inform them what time they will arrive:
  - 1. If the officer or complainant will be delayed **less** than twenty (20) minutes, the session shall commence upon the party's arrival.
  - 2. If the officer or complainant will be delayed **more** than twenty (20) minutes, the Dispute Resolution Center shall consult with the other party to determine whether the delay is acceptable or whether that party would prefer to reschedule.

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- (b) If the officer or complainant is unable to attend the mediation due to an unforeseen emergency, they should make every effort to immediately notify the Dispute Resolution Center to have the session rescheduled. The officer shall also contact the IA lieutenant regarding any cancellation and/or rescheduling. If the officer or complainant fails to appear and does not call the mediator, the mediation session shall be canceled for that day and the mediator will notify the OPO Mediation Coordinator and IA.
1. The OPO Mediation Coordinator shall attempt to make contact with the complainant to determine if there was a legitimate reason for the complainant's failure to attend the mediation session. If it is determined by the OPO Mediation Coordinator that a reasonable explanation did exist, the mediation session shall be rescheduled. If the OPO Mediation Coordinator determines the complainant did not have a reasonable explanation for missing the mediation session, the complaint shall be closed as a contact by IA.
  2. The IA lieutenant shall contact the officer to determine if there was a legitimate reason for the officer's failure to attend the mediation session. If it is determined that an explanation did exist, the mediation session shall be rescheduled. If IA determines the officer did not have a reasonable explanation for missing the mediation session, the option for the officer to engage in mediation may be withdrawn by IA and the allegation(s) made by the complainant will be fully investigated.
  3. Regardless of the circumstances, the officer and complainant may only reschedule a mediation session one time each.
  4. Failure to attend a rescheduled mediation session will result in the following action:
    - (a) If the officer fails to attend, the allegation will be fully investigated by IA.
    - (b) If the complainant fails to attend, the complaint shall be closed as a contact by IA.

#### 902.6.7 EDUCATIONAL BASED DISCIPLINE

Educational based discipline (EBD) is an alternative to traditional discipline suspensions. EBD reduces management-employee conflict and offers behavior focused education and training, enhanced communication, character, competence, and trust which is beneficial to the employee and the department. Minor nature complaints shall be reviewed by an IA lieutenant and/or commander to determine if the complaint falls into an eligible category for EBD. If the complaint falls within an eligible category, an IA lieutenant shall review the officer's complaint history to determine if there are any patterns of behavior or serious allegations which would eliminate them from eligibility.

- (a) A subject officer may be eligible for educational based discipline for a suspension of 1 to 5 days:
1. The EBD must be offered by the Chief of Police, their designee, or the involved officer's chain of command.
  2. The involved officer must voluntarily accept the EBD.

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- (a) The EBD days are not a one for one replacement for the number of suspension days and may be more or less.
  - (b) All EBD classes will be attended while on duty.
  - (c) The involved officer must waive their right to appeal.
3. All classes must be completed within one year of the subject officer's acceptance of the EBD.
- (a) If the training is not completed within one year, the involved officer will receive the original number of recommended suspension days with no right to appeal.
- (b) Educational Based Discipline cannot be utilized for written reprimand, suspensions above five (5) days, indefinite suspensions, demotions, or certain general order violations as determined by the Chief of Police.
  - (c) Educational Based Discipline may be offered during:
    - 1. The Officer Final Classification meeting;
    - 2. At the time the involved officer receives their notice of sustained allegations;
    - 3. At the conclusion of the involved officer's Discipline Meeting; or
    - 4. At the conclusion of the involved officer's Dismissal Review Hearing.
  - (d) The Officer's IAD history will reflect a written reprimand and the number of days it was in lieu of the suspension.

### **902.7 DISPOSITION PROCESS**

Regardless of which unit or command conducts an investigation, the involved employee's chain-of-command is responsible for recommending a disposition for each allegation based on the guidelines below. The final disposition for any allegation is ultimately determined by the Chief of Police or designee. Pursuant to a Department of Justice recommendation and a study of industry-wide best practices, IA does **not** recommend a disposition for any complaints.

#### 902.7.1 DISPOSITIONS

Each allegation shall be designated with one of the following dispositions based on a finding of fact and considering the totality of circumstances. The standard of proof used to arrive at a final disposition is a "preponderance of the evidence".

**Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

**Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper according to Departmental General Orders.

**Unfounded** - When the investigation discloses that the alleged act(s) did not occur.

**Inconclusive** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.

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**Administratively Closed** - Complaints will be administratively closed under the following circumstances:

- (a) An administrative inquiry has been completed and no allegations were made or misconduct discovered.
- (b) The case was classified as a Class C or Class D complaint.
- (c) At the discretion of the Chief of Police or designee.

**Mediated** - Completed the mediation process as detailed in this order.

**Retired or resigned under investigation.**

**Information** - An incident maintained for documentation purposes only.

**Supervisor Referral** - An informal complaint referred to a supervisor for their attention.

If an investigation discloses misconduct or improper job performance which was not alleged in the original complaint, the investigator shall take appropriate action with regard to any possible additional allegations. Any additional allegations shall go through the assessment, classification, and investigation process.

#### **902.8 POST INVESTIGATIVE REVIEW**

Any complaining party who is not satisfied with the findings of the Department concerning their complaint may contact the OPO to discuss the matter further.

#### **902.9 DISCIPLINE PROCESS**

The Discipline Process is a guide to be used by all levels of management in determining the appropriate discipline based upon the type of violation committed. This process does not create a binding procedural or substantive due process right for any officer.

The guidelines recommended do not diminish the authority of the Chief of Police in determining whatever disciplinary action is necessary to maintain the integrity of the Department. The Chief of Police retains the full authority to make all disciplinary decisions. Deviation from this process, whether by the Chief of Police or any other manager, does not violate any procedural or substantive rights of any officer unless the deviation violates a specific right guaranteed by law or the Meet and Confer Agreement. The Chief of Police retains the right to dissolve this process at any time, without consulting with, or obtaining the approval of any employee. Further, the Chief of Police maintains the option to revise or modify the process at any time without consulting with, or obtaining the approval of any employee. In the event the Chief of Police modifies or dissolves this process, any disciplinary hearing already scheduled will be handled under the provision(s) in place at the time it was scheduled. In the event the Chief of Police exercises discretionary authority to modify or dissolve this process, that decision is final.

##### **902.9.1 PHILOSOPHY AND GUIDING PRINCIPLES OF PROGRESSIVE DISCIPLINE**

Progressive discipline is a process for responding to on-duty and off-duty job related behavior that does not meet expected and communicated performance standards. The primary purpose

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for progressive discipline is to assist the employee to understand that a performance problem or opportunity for improvement exists. The process features increasingly formal efforts to provide feedback to the employee so they can correct the problem.

The goal of progressive discipline is to improve employee performance. Progressive discipline is most successful when it assists an individual in becoming an effectively performing member of the organization. Failing that, progressive discipline enables the organization to fairly, and when appropriate, terminate employment.

Development of the Discipline Process was based upon several guiding principles:

- (a) To provide motivation to employees to respect Departmental values and adhere to Department policies, procedures, rules, and regulations.
- (b) To encourage and maintain expected levels of performance through self-discipline and acceptance of responsibility.
- (c) To give employees a clear understanding of what is expected of them.
- (d) To ensure that consequences for inappropriate behavior are clearly explained.
- (e) To ensure that a consistent, fair, impartial, objective, timely, and unbiased disciplinary process exists.
- (f) To support effective law enforcement and the protection of civil rights as complementary pillars for policing in partnership with the community we serve.
- (g) To encourage and reinforce positive behavior by identifying and correcting poor employee performance through counseling, training, and/or discipline.
- (h) To use discipline as a corrective action.

#### 902.9.2 DISCIPLINE LEVELS

Additional training and counseling or evaluation may be coupled with any of the below options when in the best interest of the Department and/or the employee. Changes in assignment are at the discretion of the Chief of Police or designee. Any change in assignment may be warranted when in the best interest of the Department and/or employee. All types of progressive discipline will be classified as informal or formal discipline and will be documented in IA.

- (a) **Oral Reprimand** - A formal document of counseling notifying the employee that a department general order has been violated. It may be issued for any misconduct that the supervisor determines is necessary and appropriate to correct the problem. The original is sent to IA and a copy is given to the employee.
- (b) **Written Reprimand** - A formal letter of reprimand notifying the employee that a department general order has been violated. It is issued for any misconduct or performance in which the supervisor determines this level of discipline is necessary to correct the problem. Generally, written reprimands will be issued when there is a continuation of problems or a supervisor determines a onetime event is serious enough to warrant a written record being placed in the employee's file. The original is sent to IA and a copy is given to employee.

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- (c) **Temporary Suspension** - These may range from a 1 to 3 days, 4 to 15 days or an agreed upon 16 to 90 days suspension. When an employee receives a temporary suspension, the original suspension letter is sent to the Civil Service Commission; a copy shall go to the employee, be placed in the employee's IA file, and provided to APD-HR. A suspension may be given for any misconduct or performance problems as provided below:
1. Progressive disciplinary measures such as counseling, oral reprimands, and/or written reprimands have not been successful in correcting performance or conduct problems, or would not be appropriate given the circumstances. A suspension in this case would be part of the progressive discipline process and shall range from 1 to 15 days. Previous actions need not have been for the same violation in order to use suspension as a corrective measure. A compilation of different issues will enable a supervisor to apply a disciplinary suspension.
  2. Progressive disciplinary measures, including lower level suspensions, have not corrected performance or conduct problems.
  3. The involved officer must agree to suspensions of 16 to 90 days in lieu of indefinite suspension.
- (d) **Educational Based Discipline** - An alternative to traditional suspensions offering optional behavior-focused education and training for suspension of 1 to 5 days at the determination of the Chain of Command.
- (e) **Demotion Recommendation** - A recommendation to the Civil Service Commission of a permanent reduction in one or more steps in rank. The same guidelines provided in "Temporary Suspension" shall apply. This form of discipline may be used when a reduction is appropriate and will not transfer an irreconcilable problem to a different rank or grade. The demotion recommendation is sent to the Civil Service Commission; a copy shall go to the employee, placed in the employee's IA file, and provided to APD-HR.
- (f) **Indefinite Suspension** - Equivalent to dismissal or termination from the Department. When an indefinite suspension occurs the original suspension letter is sent to the Civil Service Commission; a copy shall go to the employee, be placed in the employee's IA file, provided to APD-HR, and sent to the APD Training Academy. A termination may only occur with the approval and direction of the Chief of Police as provided below:
1. The occurrence of a onetime violation is listed in the attached Discipline Matrix as an Indefinite Suspension (IS) offense.
  2. Progressive disciplinary measures, including suspension, have not been successful in correcting performance or conduct problems, or retention of the employee would tend to bring discredit to the Department, or any conduct deemed to warrant dismissal by the Chief of Police.
- (g) **Alternative Discipline and Last Chance Agreements** - As authorized by the Meet and Confer Agreement and the Chief of Police or designee.



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#### 902.9.3 FACTORS TO CONSIDER IN DETERMINING DISCIPLINE

In determining proper discipline, it is recognized that similar discipline should normally be imposed for similar violations; however, equal treatment does not necessitate identical discipline. The following non-inclusive factors, if applicable to the particular case, should be considered, especially in those instances where more severe discipline is likely:

- (a) The nature and seriousness of the violation and its relationship to the employee's duties and responsibilities.
- (b) Multiple violations.
- (c) The employee's motive (e.g., intentional act, technical mistake, inadvertent, or personal gain).
- (d) Whether the employee's actions or speech involved bias or discrimination (the treatment or consideration based on class or category rather than individual merit, driven by partiality or prejudice).
- (e) Whether the employee is in a supervisory or management role (it is the Department's intent that individuals in a supervisory or management role will be held to a higher standard with regards to their conduct).
- (f) The employee's past disciplinary and work record.
- (g) The effect of the violation upon the Department's confidence in the employee's future job performance.
- (h) Whether the officer's conduct has brought discredit to the Department.
- (i) Whether the employee accepted responsibility for their actions.
- (j) The consistency of the discipline with those imposed upon other employees for a similar offense and within the discipline matrix.
- (k) The progressive nature of discipline.

#### 902.9.4 SUBSEQUENT CORRECTIVE ACTION

The Discipline Matrix reflects increased levels of discipline for subsequent violations of the same or similar orders. A violation is considered "subsequent" if it occurs within 36 months of the occurrence date of the last violation. Exceptions are those more serious general order violations that result in suspensions of more than three days, or those involving dangerous conduct, such as accidental discharge. In those instances any past violation will be considered a previous occurrence. Additionally, an officer with a history of multiple unrelated violations within the previous 36 month period may be subject to discipline outside the prescribed Matrix range.

#### 902.9.5 ADMINISTRATION OF DISCIPLINE

After an investigation has been completed the commander in charge shall recommend a discipline level and, if applicable, the length of suspension. The commander in charge shall notify the employee of the specified discipline and provide them with any relevant paperwork, including a *Notice of Sustained Allegations*. All paperwork related to the discipline and the original case file shall be forwarded to IA for retention.

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- (a) Temporary and/or Indefinite Suspension
1. For discipline resulting in a suspension, the commander in charge shall supply the employee with a written *Notice of Sustained Allegations*, specifying the following:
    - (a) The disposition for all allegation(s) listed.
    - (b) The length of the suspension recommended for sustained allegations.
    - (c) The date/time of a Discipline Meeting (for 15 days or less) or Dismissal Review Hearing (for more than 15 days, demotion or indefinite suspensions) at which the final disciplinary decision made by the Chief of Police will be administered by the commander in charge.
      1. Generally, the DM or DRH will not be conducted any earlier than 10 business days after the *Notice of Sustained Allegations* has been presented to the subject officer unless the Chief of Police or designee determines this requirement will jeopardize the ability to impose disciplinary action within the 180-day statutory period or is in the best interest of the Department.
    - (d) Informing the subject officer if they are eligible for Educational Based Discipline
    - (e) Informing the subject officer that they and/or their attorney have the right to review the investigative file for a total of eight (8) hours prior to the scheduled DM or DRH, pursuant to the Meet and Confer Agreement. Reviews shall be conducted at the IA offices.
    - (f) Informing the subject officer that they have the right to be represented by:
      1. An attorney of the employee's choosing pursuant to the Meet and Confer Agreement; or
      2. An APA representative of the employee's choosing provided that the representative was not in their chain-of-command at the time of the incident, is not in his chain-of-command at the time of the DM or DRH, and has no personal involvement in the investigation as a complainant or witness; or
      3. Both an attorney and an APA representative.
  - (b) Additional guidelines for the DM and DRH are provided in the sections below.
  - (c) After all external investigations are completed, the discipline level has been decided and the investigation packet is received in IA, a letter shall be mailed to the complainant explaining the outcome of the investigation. All files shall be retained per the guidelines set forth below.

#### 902.9.6 DISCIPLINE MEETING

Discipline Meetings (DM) are conducted for temporary suspensions of 1 to 15 days.

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- (a) If an employee has received a *Notice of Sustained Allegations* to attend a DM they, and/or their attorney or APA representative, has the right to provide a written response to the investigation directly to the commander in charge:
1. The written response must be in the form of a Departmental memorandum or, if submitted by the attorney/APA representative, in an appropriate letter and may contain any facts or evidence the subject officer, the attorney/APA representative deems pertinent to the investigation and discipline process. The memorandum/letter must be presented to the commander in charge no more than five (5) calendar days after the *Notice of Sustained Allegations* is received by the subject officer.
  2. The commander in charge shall forward a copy of any written response memorandum received to IA immediately upon receipt.
  3. The commander in charge shall review the memorandum and may consider this information when deciding whether further investigation is warranted or when determining the appropriate disciplinary recommendation.
  4. After the commander in charge has reviewed the subject officer's memorandum, the commander shall notify the officer of the outcome. If, based on the review, the commander in charge determines changes should be made to the *Notice of Sustained Allegations*, they shall advise the subject officer that disciplinary action shall be imposed at the scheduled DM. The commander in charge shall make note of any changes on the original *Notice of Allegations* kept in the case file for documentation purposes.
- (b) Independent Discipline Review Process
1. Officers may request an Independent Discipline Review of the proposed disciplinary action after being notified by the commander in charge of the DM.
  2. If the officer does not request an Independent Discipline Review the DM shall be conducted as scheduled. The commander in charge shall notify the officer of the Chief's disciplinary decision. The commander in charge is responsible for ensuring that all relevant paperwork is completed.
  3. If an Independent Discipline Review is requested, the scheduled DM shall not take place until after the Review has occurred, unless this Review will prohibit the Department from imposing disciplinary action within the 180-day statutory deadline. The following procedures shall be followed when an Independent Discipline Review is requested:
    - (a) An Independent Reviewer shall be an assistant chief not in the subject officer's direct chain-of-command.
    - (b) The Independent Reviewer shall review the case file, including any response memorandum submitted by the subject officer and/or his attorney/APA representative.
    - (c) The Independent Reviewer shall have no personal contact with the subject officer.

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- (d) After reviewing the case file, the Independent Reviewer shall make a recommendation to the commander in charge concerning the length of the suspension.
  - 1. The Independent Reviewer's recommendation will pertain only to the length of the suspension.
  - 2. The Independent Reviewer will not make a recommendation concerning whether the allegations should be sustained.
  - 3. The Independent Reviewer cannot recommend a suspension longer than that recommended by the commander in charge but may recommend a shorter period of suspension.
  - 4. The suspension recommended by the Independent Reviewer must fit within the parameters defined by the Discipline Matrix.
- (e) The Independent Reviewer shall note their recommendation and justification on the original *Notice of Allegations* kept in the original case file.
- (f) Upon receipt of the Independent Reviewer's recommendation, the commander in charge shall conduct the scheduled DM and administer the disciplinary action imposed by the Chief of Police.
- (g) The commander in charge must notify the OPO and afford the OPO representative the opportunity to attend the DM.
- (h) The commander in charge must coordinate with the IA Legal Advisor to ensure that the appropriate suspension letter is drafted and signed by the Chief of Police or designee.

#### 902.9.7 DISMISSAL REVIEW HEARING

Dismissal Review Hearings (DRH) are conducted for possible temporary suspensions of 16 or more days, indefinite suspensions, and/or demotions. It shall be optional for the officer who is the subject of the investigation to attend and answer any questions at the hearing. Questions posed at the DRH do not constitute an "investigation" as defined in the Meet and Confer Agreement. No negative inference will be permitted should the officer elect not to attend or answer questions. If the officer chooses not to attend or has determined he / she will not answer any questions at the hearing, the officer must give 48 hours notice to the Department by filling out the necessary waiver form. Although the officer is not required to participate in the DRH, the officer must still appear at the designated time and location to execute and receive any relevant paperwork.

- (a) Employees shall appear before the DRH wearing the following:
  - 1. For male employees, a full suit or sports coat, slacks and dress shirt with tie.
  - 2. For female employees, a dress, suit or blouse with dress slacks or skirt.
- (b) Employees that are the subject of the DRH shall not carry any type of weapon, openly or concealed, into the facility where the DRH is being conducted.

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- (c) The Office of Police Oversight has the right to attend the DRH. Other attendees at the hearing shall be at the discretion of the Chief of Police or designee.
- (d) Employees who are scheduled for a DRH may present facts or evidence for consideration by the Chief of Police or designee. Following the completion of the DRH, the Chief of Police shall normally, within two (2) business days, render the final disciplinary decision. The subject officer shall be contacted and will meet with their chain-of-command so that they can be advised of the Chief's disciplinary decision.

#### 902.9.8 DISCIPLINARY APPEALS

Guidelines for disciplinary appeals are described in Chapter 143 of the Texas Local Government Code, the Rules and Regulations of the City's Civil Service Commission, and the current Meet and Confer Agreement.

#### **902.10 CONFIDENTIALITY AND RETENTION OF INVESTIGATIVE FILES**

##### 902.10.1 CONFIDENTIALITY OF INFORMATION

- (a) All information relating to an open IA investigation, or a closed IA investigation which did not result in formal discipline, is considered confidential. Employees shall not disclose or discuss details of any open IA case, or closed IA case which did not result in formal discipline, with anyone except:
  - 1. Investigator(s) assigned to the case.
  - 2. The employee's attorney.
  - 3. The employee's chain-of-command.
  - 4. Other persons specifically designated by the Chief of Police or designee.
- (b) IA employees, including administrative staff, shall not disclose or discuss information about any investigation with anyone who does not have a legitimate need to know without first obtaining approval from the IA commander and IA Legal Advisor.

##### 902.10.2 RECORDS RETENTION SCHEDULE

The Chief of Police or designee shall be the records management officer for Internal Affairs.

- (a) All records of investigations shall be securely maintained for the minimum periods defined by the Austin Police Department Internal Affairs Records Control Schedule.
  - 1. No local government office may dispose of records listed in the schedule prior to the expiration of its retention period.
- (b) Local Government Code § 202.002 states the following:
  - 1. Records involved in litigation or records subject to a request pursuant to the Texas Public Information Act may not be destroyed until either the litigation is finalized or the request is resolved.
- (c) Retention periods are from the final disposition date of the investigation. Once the retention period has passed the file shall be destroyed. The following is the established retention periods for records as adopted by the Department:

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<b>Records Retention Schedule</b>	
<b>Record</b>	<b>Retention Period</b>
Law enforcement shooting incidents which result in death or injury to any person, including the officer and/or any Critical Incident as defined in General Order 902 (Administrative Investigations)	Permanently retained
Investigations that result in sustained "formal discipline" above a written reprimand as defined by this section, to include suspension, indefinite suspension, and demotion	15 years or 5 years from date of separation, whichever is longer
Investigations that result in sustained "formal discipline" as defined by this section, or cases where the employee retires or resigns while under investigation	15 Years
Investigations that result in sustained "informal discipline" as defined by this section, or whose findings are inconclusive	5 Years
Investigations whose findings are not sustained (e.g., Unfounded, Exonerated or Administratively Closed)	3 Years
Complaints that do not lead to a formal IA investigation (e.g., Mediation, Class C, Class D, Information incidents and Supervisory Referrals)	2 Years from the date that determination is made not to initiate an IA investigation

#### 902.10.3 OPEN RECORDS REQUESTS

Open records requests shall be handled as outlined in General Order 116 (Security and Release of Records and Information).



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# Discipline Matrix

### 903.1 PURPOSE AND SCOPE

The Discipline Matrix is designed as a guide to be used in conjunction with General Order 902 (Administrative Investigations). This matrix is not an all-encompassing document, but should provide some guidance for the vast majority of investigations involving discipline. As a general rule, those violations below that are listed as IS (Indefinite Suspension), Fact Specific, or those that may include discipline greater than a 15-day suspension will be investigated by Internal Affairs.

<b>Discipline Matrix</b>				
<b>Violation</b>	<b>General Order Reference</b>	<b>1st Occurrence</b>	<b>2nd Occurrence</b>	<b>3rd Occurrence</b>
Required reporting of violations	900-General Conduct and Responsibilities 900.2	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Requirements of duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Time and attention to duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Unprofessional or abusive behavior to coworkers	900-General Conduct and Responsibilities 900.5	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Duty to Identify	900-General Conduct and Responsibilities 900.4.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper use of city resources not involving personal gain	1000 - Department Technology Use 1000.3.1	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Improper use of city resources involving personal gain	900 - Employee Speech, Expression, and Social Networking 972.4	4-15 Days	Indefinite Suspension	
Confidentiality	900-General Conduct and Responsibilities 900.3.5	4-15 Days	Indefinite Suspension	

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<b>Violation</b>	<b>General Order Reference</b>	<b>1st Occurrence</b>	<b>2nd Occurrence</b>	<b>3rd Occurrence</b>
Criminal violation while on duty or related to job duties	900-General Conduct and Responsibilities	Indefinite Suspension		
Driving While Intoxicated	900-General Conduct and Responsibilities	Indefinite Suspension		
Other criminal violations	900-General Conduct and Responsibilities	Fact Specific		
Dishonesty (false official statements)	900-General Conduct and Responsibilities 900.3.1	Indefinite Suspension		
Neglect of Duty (misleading statements)	900-General Conduct and Responsibilities 902.4.3	Fact Specific		
Duty to take action	900-General Conduct and Responsibilities 900.4.1	Fact Specific		
Dereliction of Duty	900-General Conduct and Responsibilities	4-15 days to Demotion	Demotion to Indefinite Suspension	
Neglect of duty	900-General Conduct and Responsibilities 900.4.3	Fact Specific		
Association with those of ill repute	900-General Conduct and Responsibilities 900.3.3	Fact Specific		
Failure to properly investigate a complaint and/or forward an external complaint contact form to Internal Affairs	902.2.5-Administrative Investigations	15 days up to Indefinite Suspension	Indefinite Suspension	
Courtesy (rudeness complaints)	301- Responsibility to Community 301.2	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Impartial attitude	301- Responsibility to Community 301.2	Fact Specific		



## Austin Police Department

## General Orders

*Discipline Matrix*

<b>Violation</b>	<b>General Order Reference</b>	<b>1st Occurrence</b>	<b>2nd Occurrence</b>	<b>3rd Occurrence</b>
Insubordination	110-Organizational Structure and Responsibility 110.4.4	4-15 Days	Indefinite Suspension	
Refusing to cooperate with Internal Affairs	902-Administrative Investigations 902.6	Indefinite Suspension		
Quid pro quo sexual harassment	914-Discrimination and Harassment 914.3.2	Indefinite Suspension		
Failure of Random drug test or test resulting from reasonable suspicion	916-Drug and Alcohol Free Workplace 916.2.3	Indefinite Suspension		
Missed court appearance	935-Court Appearances	Oral Counseling (documented in Field Notes)	Conduct Counseling Memorandum	Written Reprimand to 1-3 Days
Secondary employment violations	949-Secondary Employment 949	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Abuse of sick leave	955-Attendance and Leave General Order 955.7	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Failure to properly investigate	401-Preliminary Field Investigations, 403-Follow-Up Investigations	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper handling of evidence (not related to criminal conduct)	701-Property and Evidence	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper destruction of evidence	701-Property and Evidence 701.2	Written Reprimand to 4-15 Days	Increased one level	Increased one level
Biased based profiling/Racial Profiling	328-Racial or Biased Based Profiling	Fact Specific		
Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	Oral Counseling (documented in Field Notes)	Conduct Counseling Memorandum	Oral Reprimand to 1-3 Days

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### *Discipline Matrix*

<b>Violation</b>	<b>General Order Reference</b>	<b>1st Occurrence</b>	<b>2nd Occurrence</b>	<b>3rd Occurrence</b>
Intentional Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	4-15 Days	Indefinite Suspension	
Intentional Electronic Recording (DMAV, MAV) violation at a criminal incident	303 & 304-Mobile Audio Video Recording Operation	Indefinite Suspension		
Inappropriate electronic messages *	305-Radio and Mobile Data Computer Use 305.2	Written Reprimand	1-3 Days	4-15 Days
Internet/Computer violations	1000 & 1002-Department Technology Use	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Objectively unreasonable use of deadly force	Chapter 2-Response to Resistance	Indefinite Suspension		
Objectively unreasonable use of force	Chapter 2-Response to Resistance	Fact Specific		
Preventable discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Unintentional discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Violations of duty weapons general order	803-Duty Weapons	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Violations of pursuit general order	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Pursuit general order, Aggravated	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	1-15 Days	4-15 Days	4-15 Days to IS

## Austin Police Department

General Orders

### *Discipline Matrix*

<b>Violation</b>	<b>General Order Reference</b>	<b>1st Occurrence</b>	<b>2nd Occurrence</b>	<b>3rd Occurrence</b>
Operation of police vehicle (non-collision)	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
At-fault/negligent collision (not involving bodily injury or death)	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
At-fault/negligent collision causing bodily injury or death	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Fact Specific		
Negligent/Reckless conduct resulting in SBI or death	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit General Orders	Indefinite Suspension		
Violation of tactics, other than above "A".	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit General Orders	Fact Specific		

\* If inappropriate electronic messages bring discredit to the Department, increase one level.



## Austin Police Department

General Orders

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# Grievance Procedures

### 904.1 PURPOSE AND SCOPE

It is the policy of this department that all grievances be handled quickly and fairly without discrimination against employees who file a grievance. The Department's philosophy is to promote open and honest communication between employees and supervisors.

This order applies to both sworn and civilian employees; however, changes to City of Austin Personnel Policies will take precedence over any section of this order for civilian employees.

#### 904.1.1 DEFINITIONS

**Grievance** - A grievance can be any of the following

- (a) Any difference of opinion concerning terms or conditions of employment or the interpretation or application of any of the following documents:
  - 1. The Meet and Confer Agreement.
  - 2. Department General Orders.
  - 3. City Personnel Policy.
- (b) Complaints related to alleged acts of sexual, racial, ethnic or other forms of unlawful harassment and discrimination as set forth in General Order 914 (Discrimination and Harassment).

**Business Day** - For purposes of this order, a business day does not include weekends or City observed holidays.

### 904.2 GRIEVANCE PROCEDURES

- (a) Civilian employees shall follow the grievance procedure outlined in the City Personnel Policy.
- (b) Sworn employees shall follow the grievance procedure outlined in:
  - 1. The Meet and Confer Agreement to file a grievance related to the Agreement.
  - 2. Chapter 143 of the Texas Local Government Code, the Rules and Regulations of the City's Civil Service Commission, and the current Meet and Confer Agreement for grievances and appeals related to disciplinary action.
  - 3. This order is for all other grievances.

#### 904.2.1 PRE-GRIEVANCE

Sworn employees should attempt to resolve any grievance or complaint informally by communicating with their immediate supervisor and/or next level supervisor within fifteen (15) business days of the occurrence of the reason for the complaint. Every effort should be made by the employee and supervisor to resolve the grievance at this level.

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## General Orders

### *Grievance Procedures*

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#### 904.2.2 FORMAL GRIEVANCE

- (a) Sworn employees may file a formal grievance as outlined below if no resolution is reached by informally speaking with a supervisor.
  1. Complete the APD Civil Service Grievance Form, which may be obtained from APD-HR.
  2. Submit the completed form to the APD-HR Manager no later than five (5) business days after the final pre-grievance meeting with the officer's supervisor(s).
    - (a) APD-HR will date stamp the grievance and provide the Officer with a copy.
- (b) Within five (5) business days after the written grievance is filed with APD-HR, the grievant's commander shall schedule a meeting with the grievant and any other relevant parties in an attempt to resolve the grievance. This meeting shall occur no more than ten (10) business days after the grievance has been filed.
  1. If a resolution to the grievance is reached, the resolution shall be noted on the grievance form by the commander and grievant, and forwarded to the Chief for approval. If the Chief concurs with the resolution he will sign the grievance document and return the document to the APD-HR Manager who will forward a copy of the grievance to the grievant, the commander, and if appropriate, to the Austin Police Association (APA).
  2. If no resolution to the grievance is reached, or if the Chief does not concur with the resolution, the Chief shall schedule a meeting with the grievant to occur no later than ten (10) business days after receipt of the grievance.
    - (a) The Chief shall issue a written decision on the resolution of the grievance within five (5) business days of this meeting.
    - (b) The decision of the Chief for the grievance shall be final.

#### **904.3 NO REPRISAL**

No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of filing a grievance or complaint in good faith, or for participating in the investigation of a grievance or complaint.

No action of a formal or informal nature shall be taken by the Department against an employee, their witnesses, or the employee's representative, merely for having filed a grievance in good faith, nor is such filing to be unfavorably looked upon by the Department.

#### **904.4 EMPLOYEE REPRESENTATION**

Department employees are entitled to have representation during the grievance process. Employees may select their representative which may include, but is not limited to, an attorney or union representative.

**Austin Police Department**  
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**904.5 GRIEVANCE RECORDS**

At the conclusion of the grievance process, all documents pertaining to the process shall be forwarded to APD-HR for inclusion into a secure file for all written grievances.

- (a) If a civilian employee files a grievance with the City Employee Relations Division, City-HR will coordinate and retain the records for the grievance.
- (b) Employee grievances and the records relating to them will not be made part of the employee's personnel record unless requested in writing by the affected employee.



## Austin Police Department General Orders

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# Guidance Advisory Program

### 906.1 PURPOSE AND SCOPE

The Guidance Advisory Program (GAP) is an employee early warning system designed to give supervisors tools to manage their officers and proactively identify potential areas of concern before they lead to a more significant impact on the officer and/or Department.

GAP should not be used to disseminate any form of discipline, but should be used as an opportunity to assess, identify, and assist an officer with any issue(s) the officer may be experiencing.

### 906.2 INDICATORS FOR PERFORMANCE HISTORY AUDITS

Performance indicators represent the categories of activity that have been determined to be relevant data for generation and analysis into a Performance History Audit.

- (a) GAP tracks three (3) categories on all officers:
  1. **Use of sick leave** - Use 160 hours or more in any 12 month period.
  2. **Complaints received by Internal Affairs** -
    - (a) Level 1- A, Admin, B, C-- Two (2) or more per 12 month period
    - (b) Level 2- D, I, S-- Four (4) or more per 12 month period
  3. **Response to Resistance:**
    - (a) Patrol related duties (excluding DTAC) - Six (6) or more incidents per 12 month period.
    - (b) DTAC patrol - Nine (9) or more incidents per 12 month period.
    - (c) Non-Patrol related duties - Varies based on the assignment.

### 906.3 NOTIFICATION AND RESPONSE

Each quarter a Performance History Audit report will be run and verified by the Risk Management Unit. If an officer exceeds the established threshold for any one of the tracked categories, the officer's immediate supervisor is notified. The supervisor may be required to meet with the officer. The officer should be notified they have exceeded the GAP threshold and allowed the opportunity to discuss any action or incidents related to the GAP activation.

- (a) Prior to the meeting, supervisors may review:
  1. Officer's use of sick leave.
  2. Recent mobile video recording tapes.
  3. Response to resistance reports or other Versadex reports.
  4. Activity logs.
  5. Internal Affairs complaint history.

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### *Guidance Advisory Program*

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6. Secondary employment activity.
- (b) Supervisors may consider taking the following action plans:
1. Refer the employee to:
    - (a) The APD Psychologist.
    - (b) The Employee Assistance Program (EAP).
    - (c) A Chaplain.
    - (d) Peer Support.
  2. Place the officer on an Employee Success Plan, issue a Conduct Counseling Memo, or any other action the officer's chain-of-command deems appropriate
- (c) No follow-up action is necessary when the GAP thresholds are activated due to long term illness, approved Family Medical Leave, or incorrect data entered into the APD database.

#### **906.4 COMPLETION OF REVIEW**

Upon completing the review, supervisors may discuss their findings with the officer.

- (a) Supervisors will write a memorandum addressed to their commander to document the findings. The memorandum should be signed by each level of the officer's chain-of-command as it is routed to the commander.
- (b) Commanders will review the GAP memorandum then scan and email it to the GAP Coordinator for retention and any necessary follow-up. The original memorandum shall be retained by the officer's chain-of-command.
- (c) If an action plan is initiated, the GAP memorandum should include a date for the completion of the required action(s).

#### **906.5 CONFIDENTIALITY OF DATA**

Information, data and copies of material compiled to develop Performance History Audits Reports shall be considered confidential as part of the employee's personnel file and will not be subject to discovery or release except as provided by law. Access to the data in the system will be governed under the same process as access to an officer's personnel file as outlined in General Order 910 (Peace Officer Personnel Files).

#### **906.6 RETENTION AND PURGING**

Except as incorporated in separate training or disciplinary records, all performance indicators and Performance History Audit Reports shall be purged from the Risk Management Unit and all other locations within the Department five years from the date generated. The City Attorney however, shall retain a copy of Performance History Audit Reports for an additional one year period as attorney work product.



**GO  
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# Reporting of Employee Arrests and Police Involvement

**908.1 PURPOSE AND SCOPE**

Arrests and convictions of certain offenses may restrict or prohibit an employee's ability to properly perform official duties. All employees shall report any arrest, charge, or indictment of a:

- (a) Class B Misdemeanor offense or higher; or
- (b) Class C Misdemeanor involving the duties and responsibilities of office or family violence.

**908.2 DOMESTIC VIOLENCE CONVICTIONS AND RESTRAINING ORDERS**

Texas and federal law prohibit individuals convicted of certain offenses and individuals subject to certain court orders from lawfully possessing a firearm. Such convictions and court orders often involve allegations of the use or attempted use of force or threatened use of a weapon on any individual in a domestic relationship (e.g., spouse, cohabitant, parent, child (18 USC § 922; Tex. Penal Code § 46.04(b); Tex. Penal Code § 46.04(c)).

All employees are responsible for ensuring that they have not been disqualified from possessing a firearm by any such conviction or court order and shall promptly report any such conviction or court order to a supervisor, as provided in this order.

**908.2.1 EMPLOYEE DOMESTIC VIOLENCE**

The Department's position is one of zero tolerance toward domestic violence. It is the order of the Department to use early prevention strategies in order to avoid or minimize the occurrence and effects of domestic violence. This order addresses the dynamics of domestic violence and how it impacts the employee and the Department. The purpose of this order is to heighten awareness of domestic violence and provide guidance for employees, supervisors, and management.

- (a) The order takes a continuum approach, seeking first to educate at all phases of an employee's career, then prevent or intervene in domestic abuse situations in order to reduce victimization of the family member or partner and increase the chances of employee career stability.
- (b) The Department will respect the confidentiality and autonomy of its employees to direct their own lives, to the fullest extent permitted by state law. The Department will provide assistance to employees, which may include, but is not limited to:
  - 1. Resource and referral information; and
  - 2. Safety plans for the workplace; and
  - 3. Work schedule adjustment or leave necessary to obtain medical, counseling, or legal assistance and arrange for housing and child care; and
  - 4. Workplace relocation.

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### Reporting of Employee Arrests and Police Involvement

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#### 908.2.2 PREVENTION AND INTERVENTION OF EMPLOYEE DOMESTIC VIOLENCE

- (a) The goal of the Department is to accomplish the following in regard to domestic violence:
  - 1. Heighten awareness.
  - 2. Provide guidance for employees, supervisors, and management.
  - 3. Identify warning signs.
  - 4. Establish prevention and intervention guidelines.
- (b) In order to provide non-punitive avenues of assistance to employees, their partners, and other family members before an act of domestic violence occurs, the Department will provide confidential referrals to reputable internal or external counseling services.
- (c) Employees with knowledge of suspected abuse or violence involving another employee of the Department shall report it to their immediate supervisor.
- (d) Supervisors will monitor employees for warning signs of domestic violence. If warning signs exist, intervention measures must be taken. The following are some examples of steps that can be taken, based on the level of violence and the likelihood of recurrence:
  - 1. Problem solving meeting with both parties conducted by the Department's Psychological Services.
  - 2. Mediation.
  - 3. Referral to counseling services for emotional support and guidance:
    - (a) Internal (e.g., APD Peer Support, Wellness Office, Victim Services).
    - (b) External (insurance coverage).
    - (c) Employee Assistance Program (city benefits).
  - 4. Referral to Family Violence Protection Team for assistance with protective orders.
  - 5. Develop a safety/prevention plan with the assistance of counseling services.
  - 6. Arrange for temporary reassignment to avoid further contact.
  - 7. Issue directive to restrict contact with the other party.
  - 8. Liberal use of employees accumulated existing leave time up to and including approved Administrative Leave.

#### **908.3 OTHER CRIMINAL OFFENSES**

State law prohibits any person convicted of a felony from being a peace officer in the State of Texas. This prohibition applies regardless of whether the guilt was established by way of a verdict, guilty plea or *nolo contendere* plea.

Convictions of certain violations of the Texas Transportation Code (e.g., suspended drivers license) and other provisions of law may also place restrictions on an employee's ability to fully perform the duties of the job.

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Moreover, while legal restrictions may or may not be imposed by statute or by the courts upon conviction of any criminal offense, criminal conduct by members of this department may be inherently in conflict with law enforcement duties and the public trust.

#### 908.3.1 TELECOMMUNICATORS

Any person who has been convicted of a felony offense or convicted of barratry as defined by Tex. Penal Code § 38.12 may not be a telecommunicator in the State of Texas (Tex. Occ. Code § 1701.312; Tex. Occ. Code § 1701.313). In addition, telecommunicators are held to the statutory standards outlined in 37 Tex. Admin. Code § 217.2 with regard to certain misdemeanor offenses.

#### 908.4 REPORTING PROCEDURE

- (a) Employees who are arrested will inform the booking officer they are employed by APD and request APD Communications be immediately notified of the arrest.
- (b) Employees shall immediately report to their supervisor, with a follow-up memorandum through the chain-of-command to the Chief, of:
  - 1. Any arrests, criminal charges, and/or criminal court actions brought against the employee (to include the name of the arresting agency, a description of the nature of the charges, and the style, court and cause number of the charge or indictment, if any); or
  - 2. Anytime an employee is involved in an off-duty incident that results in a response from any law enforcement agency with the exception of traffic violations, minor collisions, and other minor calls for service where the employee is not considered to be a suspect (e.g. alarm calls, noise complaints); or
  - 3. Anytime an employee becomes the subject of a family violence protective order issued by a court of competent jurisdiction.
- (c) Supervisors receiving such information shall immediately notify the Internal Affairs Commander, with a follow-up memorandum through the chain-of-command to Internal Affairs, detailing the circumstances of the situation.
- (d) Employees who receive a criminal conviction which unduly restricts or prohibits them from fully and properly performing their duties may be disciplined up to and including indefinite suspension/termination.
- (e) Employees failing to provide prompt notice pursuant to this order are subject to discipline.

#### 908.4.1 DEPARTMENT RESPONSIBILITY TO REPORT

When a peace officer or county jailer is arrested, the Chief of the arresting agency must report such fact, as mandated by 37 Tex. Admin. Code § 211.28, to TCOLE within 30 business days of the arrest.

In addition, the Chief must report the arrest, charge or conviction of any person who is under appointment with this department to TCOLE within 30 days of the arrest, as mandated by 37 Tex. Admin. Code § 211.29.

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**908.4.2 RESPONSIBILITY TO REPORT**

Employees who hold a license issued by TCOLE shall report to the commission in writing within 30 days:

- (a) Any name change;
- (b) A permanent mailing address other than an agency address
- (c) All subsequent address changes;
- (d) An arrest, charge, or indictment for a criminal offense above the grade of Class C, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, including the name of the arresting agency, the style, court and cause number of the charge or indictment, if any;
- (e) The final disposition of the criminal action; and
- (f) Receipt of a dishonorable or other discharge based on misconduct which bars future military service.

In addition, a licensee must report:

- (a) Any name change to the APD HR, and
- (b) Any of the above mentioned arrest, charge or indictment for a criminal offense to the Austin Police Department.

**908.5 PROCEDURE FOR RELIEF**

While a peace officer may be permitted to carry a firearm following a conviction under state law, federal law does not provide for any similar relief, and therefore the peace officer is not relieved of the restrictions imposed by federal law. Pending satisfactory proof of relief from any legal restriction imposed on an employee's duties, the employee may be placed on administrative leave, reassigned or disciplined.



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## Peace Officer Personnel Files

### 910.1 PURPOSE AND SCOPE

This section governs the maintenance, retention and access to peace officer personnel files in accordance with established law. It is the policy of this department to maintain the confidentiality of peace officer personnel records pursuant to state law (generally, Tex. Gov't Code § 552.102 and Tex. Local Gov't Code § 143.089).

### 910.2 PERSONNEL FILES DEFINED

Peace officer personnel records shall include any file maintained under an individual officer's name. Employee records will generally be maintained in any of the following:

- (a) **Civil Service Personnel File** - That file maintained by the Department and based on the guidelines set by Tex. Local Gov't Code § 143.089(a).
- (b) **Confidential Employee Personnel Files** - Any file maintained internally by the Department, separate from the Civil Service Personnel file, and based on the guidelines set by Tex. Local Gov't Code § 143.089(g).

### 910.3 CIVIL SERVICE PERSONNEL FILE

- (a) The Civil Service Personnel File must contain any letter, memorandum or document relating to (Tex. Local Gov't Code § 143.089(a)):
  - 1. A commendation, congratulation or honor bestowed on the officer by a member of the public or by the Department for an action, duty or activity that relates to official duties.
  - 2. Any misconduct by the officer if the letter, memorandum or document is from the Department and if the misconduct resulted in disciplinary action. For purposes of this section, the phrase "disciplinary action" does not include discipline at the level of a written reprimand or lower.
  - 3. The periodic evaluation of the officer by a supervisor.
- (b) The Civil Service Personnel File may not contain a letter, memorandum or document relating to alleged misconduct when there is insufficient evidence to sustain the charge of misconduct.

### 910.4 CONFIDENTIAL EMPLOYEE PERSONNEL FILES

The Department may maintain confidential employee personnel files on a peace officer for the Department's use, but the Department may not release any information contained in these files to any agency or person requesting information relating to a peace officer except as permitted by law (Tex. Local Gov't Code 143.089(g)).

Confidential employee personnel files may include, but are not limited to, the following:

- (a) **Department File ("201 file")** - The permanent record of a sworn officer's employment with the Department.

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### *Peace Officer Personnel Files*

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- (b) **Internal Affairs File** - Information relating to the complaint and investigation history of each employee regardless of disposition.
- (c) **Training File** - Documentation of the training records of an employee.
- (d) **Medical File** - Information relating to an employee's medical history.
- (e) **Division File** - Documentation used by an employees supervisor for the purpose of completing timely performance evaluations.
- (f) **Recruiting File** - Required hiring documentation of employees.

#### 910.4.1 DEPARTMENT FILE ("201 FILE")

- (a) The Department File is maintained by the Human Resources Department and may contain, but is not limited to, the following:
  - 1. Performance evaluation reports regularly completed by appropriate supervisor(s) and signed by the affected employee shall be permanently maintained and a copy provided to the employee, along with any written statements the employee makes in response to the evaluation report. (generally, Tex. Local Gov't Code § 143.082).
  - 2. Commendations, with a copy provided to the involved employee(s).
  - 3. Personnel Action Reports reflecting assignments, promotions and other changes in the employee's employment status.
  - 4. A photograph of the employee.
- (b) If a negative letter, memorandum, document or other notation of negative impact is included in an officer's personnel file, the Department shall, within 30 days after the date of the inclusion, notify the affected officer. The officer may, on or before the 15th day after the date of receipt of the notification, file a written response to the negative letter, memorandum, document or other notation (Tex. Local Gov't Code § 143.089).
  - 1. Any such employee response shall be attached to and retained with the original adverse comment.
  - 2. If an employee refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment. Such a refusal, however, shall not be deemed insubordination nor shall it prohibit the entry of the adverse comment into the employee's file.

#### 910.4.2 INTERNAL AFFAIRS FILE

- (a) The Internal Affairs File is maintained under the exclusive control of the Internal Affairs Division on behalf of the Office of the Chief of Police.
- (b) While the Civil Service Personnel File contains the appropriate sustained complaint history of employees, the Internal Affairs File shall contain all the documentation relating to the complete investigation of all formal complaints of employee misconduct regardless of disposition.
- (c) Access to these files may only be approved by the Chief of Police or the supervisor of the Internal Affairs Unit.

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- (d) Further details on an employee's Internal Affairs File can be found in General Order 902 (Administrative Investigations).

#### 910.4.3 TRAINING FILE

- (a) The Training File is maintained by the Training Division for each employee and shall contain:
  1. Records of all training and education; and
  2. Original or photocopies of available certificates, transcripts, diplomas and other related documentation; and
  3. Firearms qualifications, including mandated annual qualification.
- (b) It shall be the responsibility of the involved employee to provide the Training Commander or designee with evidence of completed training/education in a timely manner.
- (c) The Training Commander or designee shall ensure that copies of such training records are placed in the employee's Training File.

#### 910.4.4 MEDICAL FILE

- (a) The confidential Medical File is maintained by Risk Management separately from all other files and shall contain documents relating to the employee's medical condition and history, including but not limited to the following:
  1. Materials relating to medical leaves of absence.
  2. Documents relating to workers compensation claims or receipt of short-term or long-term disability benefits.
  3. Fitness for duty examinations, psychological and physical examinations, follow-up inquiries and related documents.
  4. Medical release forms, doctor's slips and attendance records that reveal an employee's medical condition.
  5. Any other documents or material which reveals the employee's medical history or medical condition, including past, present or future anticipated mental, psychological or physical limitations.
- (b) Documentation regarding an employee's FMLA status is maintained separately by APD Human Resources.

#### 910.4.5 DIVISION FILE

- (a) The Division File is considered an interim file that is maintained by an employee's supervisor and may contain information (e.g., supervisor log entries, notices to correct) used to serve as a foundation for the completion of employee performance evaluation.
- (b) If any item will be included in the employee's Department File, a duplicate copy of it may also be placed in this interim file in anticipation of completing any upcoming performance evaluation.

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### *Peace Officer Personnel Files*

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#### 910.4.6 RECRUITING FILE

- (a) The Recruiting File is maintained by the Recruiting Division and contains all the required TCOLE documents of employees who are hired by the Department, including:
1. A copy of any TCOLE Forms L1, L2, L3, and any previous F5Rs; and
  2. Required background information including, at a minimum, proof of citizenship and age, proof of education, proof of criminal history checks, and proof of military discharge if applicable.

#### **910.5 REQUESTS FOR DISCLOSURE**

All personnel records shall be deemed confidential and shall not be subject to disclosure except pursuant to state and federal discovery procedures, state law or with the employee's consent.

Nothing in this section is intended to preclude review of personnel files by the City Manager, City Attorney or other attorneys or representatives of the City in connection with official business.

#### 910.5.1 REQUEST FOR CIVIL SERVICE PERSONNEL FILE INFORMATION

Subpoenas for documents or items from the Civil Service Personnel File maintained by IA will be directed to the IA Commander or Lieutenant. Any open records request for IA files will be referred to the APD Legal Adviser. No documents or items will be released pursuant to a subpoena without authorization from the APD Legal Adviser.

- (a) Open records requests can come directly from the general public, APD or City PIO, or through the Civil Service Commission. Records will be released to the public only when authorized by law. All sustained complaints that resulted in disciplinary action are subject to open records requests. For purposes of this section, "disciplinary action" means (Tex. Gov't Code 143.089(a)(2)):
1. Temporary suspension (1-15 days); or
  2. Agreed suspension (16-90 days); or
  3. Indefinite suspension (the civil service equivalent of termination); or
  4. Demotion.
- (b) When IA is notified that an open records request has been received for a particular file, IA personnel shall review the file to ensure information that is not related to the sustained allegation, which formed the basis of the "disciplinary action", is redacted.
- (c) The IA Legal Advisor shall be consulted before any file is released in relation to an open records request to ensure that any necessary redactions have been completed.
- (d) If the request is submitted through the Civil Service Commission, the original redacted case file will be transferred to the Commission as soon as possible to ensure compliance with the statutory deadline for responding to the open records.

#### 910.5.2 REQUESTS FOR CONFIDENTIAL EMPLOYEE PERSONNEL FILE INFORMATION

Subpoenas and open record requests for any portion of an Confidential Employees Personnel File shall be submitted to APD PIO or City Legal.



# Austin Police Department

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### *Peace Officer Personnel Files*

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#### 910.5.3 EMPLOYEE ACCESS TO PERSONNEL FILES

Employees, or the employees' representative, may request access to their own Confidential Personnel Files by completing the appropriate form or memo during the normal business hours of the Division responsible for maintaining such files. Employees may be restricted from accessing confidential portions of their Internal Affairs files that have not been sustained against the employee.

#### 910.5.4 APD EMPLOYEES SEEKING OTHER EMPLOYMENT

Former and current APD employees seeking employment with another law enforcement or government agency may have a representative from that agency granted access to portions of their Confidential Employee Personnel File as required by law when the following conditions are met:

- (a) The representative presents their agency credentials; and
- (b) The representative presents a signed, legally sufficient release/waiver form signed by the former employee; and
- (c) Prior to reviewing the file, an IA supervisor and the Legal Advisor give their approval to grant access to said file.

#### 910.6 RECORD RETENTION

All records and files shall be maintained for the minimum period outlined by law.

- (a) All Internal Affairs files, records, and investigations shall be securely maintained as outlined in General Order 902 (Administrative Investigations).
- (b) Contents of an employee's Division File may be destroyed:
  1. Once the information is incorporated into an employee performance evaluation; or
  2. If the original materials were forwarded for inclusion into another personnel file.
- (c) All other portions of the confidential employee personnel file may be kept indefinitely.

#### 910.7 BRADY MATERIAL IN PERSONNEL FILES

The purpose of this section is to establish a procedure for releasing potentially exculpatory information, known as *Brady* material, contained within confidential peace officer personnel files.

##### 910.7.1 DEFINITIONS

**Brady material** - In the *Brady v. Maryland* decision (373 U.S. 83 (1963)) the United States Supreme Court held that the prosecution has an affirmative duty to disclose to the defendant evidence which is both favorable and material to the guilt and/or punishment of the defendant.

**The prosecution** - Refers to any prosecuting attorney and all investigative agencies involved in the criminal prosecution of a defendant, including this department.

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### Peace Officer Personnel Files

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#### 910.7.2 RELEASE OF PERSONNEL FILES TO PROSECUTING ATTORNEY

Generally, the only time the prosecuting attorney, Attorney General or Grand Jury is entitled to access confidential peace officer personnel files without filing a court motion is when they are investigating the conduct of an officer or this department. Such access shall not be considered a waiver of the confidentiality of the information contained in these files.

Absent a specific investigation of identified officer(s) or a specific investigation of this department, or the consent of an involved officer, no confidential information from any officer's personnel file shall be released to the prosecuting attorney or Grand Jury without full compliance with the court process. The prosecution of a criminal defendant is not considered an investigation of any involved officer.

Should an officer's credibility or other issues related to an officer's personnel file arise in the context of an officer acting as a witness for the prosecution, access to that officer's personnel file by either the prosecuting attorney or the criminal defendant shall be limited to that which is authorized by the process set forth in court and evidentiary rules.

#### 910.7.3 PROCEDURE

If an officer is a material witness in a criminal case, a person or persons designated by the Chief may examine the subject officer's personnel file to determine whether there are *Brady* materials contained therein (e.g., evidence which is both favorable and material to the guilt and/or punishment of the defendant). If *Brady* material is located, the following procedure shall apply:

- (a) In the event that a court motion has not already been filed by the criminal defendant or other party, the prosecuting attorney shall be notified of the potential presence of *Brady* material in the officer's personnel file.
- (b) The prosecuting attorney should be encouraged to file a court motion in order to initiate an in-camera review by the court.
- (c) As with any court motion, and prior to any review of the files by the court, subject officer(s) shall be notified in writing that a court motion has been filed.
- (d) The Central Records Manager or authorized designee shall accompany all relevant personnel files during any in-camera inspection, and address any issues or questions raised by the court in determining whether any material contained in the file is both material and favorable to the criminal defendant.
- (e) If the court determines that there is relevant *Brady* material contained in the file(s), only that material ordered released will be copied and released to the parties filing the court motion.
  1. Prior to the release of any materials pursuant to this process, the Central Records Manager or designee should forward the request to the City Attorney to evaluate the need for a protective order from the court limiting the use of such materials to the involved case and requiring the return of all copies upon completion of the case.



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# Personnel Evaluations

### 912.1 PURPOSE AND SCOPE

Performance appraisal should be a continuous process done by supervisors for each employee under their command. Appraisals assist in making the best use of human resources, ensure that personnel problems are identified and dealt with promptly and appropriately, and help the employee reach optimum performance and job satisfaction.

Nothing in this order negates the Department's right to immediately take appropriate corrective action when deficient behavior is observed and/or discipline an employee for poor performance.

Performance - Issues related to the employee's knowledge, skills and/or abilities. These are issues that the employee may improve to a satisfactory level of performance given additional training, time, and/or other resources. Performance Issues may be addressed by an Employee Success Plan.

Conduct - Issues related to the employee's behavior, attitude, and/or the manner in which his or her duties are accomplished. These are issues covered by policies and standard operating procedures. The employee should be able to correct these issues immediately with little assistance from the supervisor. Conduct Issues may be addressed by a Conduct Counseling Memo.

### 912.2 POLICY

The evaluation system used by the Department is subject to periodic change and may be different for sworn and non-sworn employees. The system will provide evaluation of performance as it relates to, and supports, the Department's goals and objectives. The Department utilizes the City's Success Strategy Performance Review (SSPR) process for all employees.

- (a) Employees will only use the approved evaluation system.
- (b) The SSPR form must be specific to the employee's assignment during the evaluation period.
- (c) Evaluations will cover a specified period of time.

### 912.3 EVALUATION FREQUENCY

- (a) Written performance evaluations will be conducted with the following frequencies:
  1. **Sworn Employees**
    - (a) Officers will be evaluated annually with monthly performance counseling sessions being conducted by the supervisor unless they are enrolled in the Field Training Program (FTP).
    - (b) Officers enrolled in the Field Training Program (FTP) will be evaluated as designated by the FTP SOP.
  2. **Civilian Employees**

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### *Personnel Evaluations*

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- (a) Probationary employees will be evaluated every three (3) months.
- (b) Non-probationary employees will be evaluated annually, with at least one documented interim feedback session at six (6) months.
- (b) Employees with documented performance deficiencies may be evaluated more frequently until the deficiency has been satisfactorily corrected.

#### **912.4 EMPLOYEE ANNUAL SSPR EVALUATION SCHEDULE**

Non-probationary employees shall be given performance counseling on a monthly basis by their supervisor and shall have an annual SSPR conducted according to the schedule below.

- (a) Sworn employee evaluations will be completed as follows:
  - 1. Officers, corporals, and detectives are evaluated between September 1 and September 15 by sergeants.
    - (a) Completed evaluations will be forwarded to the lieutenant for review by September 20.
    - (b) Lieutenants will review and return the evaluations to their sergeants by October 5.
    - (c) Sergeants will review the evaluations with their employees.
  - 2. Sergeants are evaluated between September 20 and October 5 by lieutenants.
    - (a) Completed evaluations will be forwarded to the commander by October 10.
    - (b) Commanders will review and return the evaluations to their lieutenants by October 20.
    - (c) Lieutenants will review the evaluations with their sergeants.
  - 3. Lieutenants are evaluated between October 10 and October 20 by commanders.
    - (a) Completed evaluations will be forwarded to the assistant chief by October 25.
    - (b) Assistant chiefs will review and return the evaluations to their commanders by October 31.
    - (c) Commanders will review the evaluations with their lieutenants.
  - 4. Commanders are evaluated between October 25 and October 31 by assistant chiefs.
    - (a) Completed evaluations will be forwarded to the Chief by November 10.
    - (b) The Chief will review and return the evaluations to the assistant chiefs by November 20.

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- (c) Assistant chiefs will review the evaluations with their commanders.
- 5. Executive evaluations will be completed between November 10 and November 30 by the Chief.
- (b) Civilian employee evaluations will be completed by October 31 each year.

#### 912.4.1 RESPONSIBILITIES OF SUPERVISORS OF PROMOTED AND TRANSFERRED SWORN EMPLOYEES

- (a) Annual SSPR evaluations of employees promoted or transferred from one assignment to another will be handled by the employee's supervisor within 15 days of the effective date of the promotion or transfer as follows:
  - 1. An annual SSPR evaluation of the employee will be completed within 15 days of the employee's promotion unless the promotion is within 60 days of the last SSPR. The completed evaluation will be sent to the employee's new supervisor to accompany the evaluation given in the post-promotional position.
  - 2. An annual SSPR evaluation of the employee will be completed within 15 days of the employee's transfer if the effective date of the promotion or transfer occurs within two months of the next annual SSPR evaluation.
  - 3. If an employee transfers within two months of the next annual SSPR evaluation, the transferring supervisor will send the employee's monthly performance counseling notes to the employee's new supervisor to be incorporated into the employee's SSPR.
- (b) Within 15 days of an employee promoting or transferring, the employee's new supervisor will review the job description and SSPR with the employee to establish expectations.

#### 912.4.2 RESPONSIBILITIES OF PROMOTED AND TRANSFERRED SWORN SUPERVISORS

- (a) When supervisors promote or transfer within two months of the next annual SSPR, supervisors will complete evaluations on all of the supervisor's previous employees no later than 15 days after the effective date of their promotion or transfer. The evaluations will be given to the incoming supervisor.
- (b) Within 15 days of taking over a unit or command, promoted or transferred supervisors will:
  - 1. Review current evaluation documents or develop new evaluation documents related to the unit or command; and
  - 2. Review those evaluation documents with their new employees to set the supervisors expectations.

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#### **912.5 EVALUATION PROCESS FOR SWORN EMPLOYEES**

The principle objective when rating employees is to determine whether or not they can perform the required functions of the job. Supervisors/raters should evaluate an employee's knowledge, skills, and abilities and determine if any training or developmental needs exist.

- (a) Employees are responsible for actively participating in the monthly performance evaluations and annual SSPR process for their professional growth and development. Employees should come to the evaluation meeting prepared to discuss career goals and any skills, training, education, or other assistance needed to enhance their career development and/or their performance.
- (b) Supervisors will follow the instructions for completing and submitting employee evaluations included with the specific evaluation system being used.
  1. Supervisors/raters are responsible for providing a written explanation by giving specific reasons for the rating given based on the monthly field notes observations.
  2. At any time of employment when an employee fails to meet conduct expectations in a single incident or duty, supervisors may issue the employee a Conduct Counseling Memo (PD0102).
    - (a) Employees are expected to make minor errors in the performance of their jobs. These issues are best addressed informally with the employee by their supervisor.
    - (b) The Conduct Counseling Memo will be made in person with the employee's supervisor in a private setting.
    - (c) If the employee has any questions or concerns with the memo it must be documented in writing on the document.
    - (d) The employee and CoC will sign the memo.
  3. At any time of employment when unsatisfactory performance is identified in an employee, supervisors will notify the employee of the deficiency and define actions that should be taken to improve the performance as soon as practicable.
    - (a) Notification will be made in person with the employee's supervisor and Chain of Command to the level of Lieutenant in a private setting using form PD0103 Employee Success Plan.
    - (b) If the employee has any questions or concerns with the Employee Success Plan, it must be documented in writing on the document.
    - (c) The employee and CoC will sign the Employee Success Plan.
- (c) Next-level managers shall incorporate the following points into the monthly evaluations and annual SSPR's of the supervisors/raters under their command:
  1. Fairness and impartiality of ratings.
  2. Participation in counseling employees at time of evaluations.
  3. Uniform application of ratings.

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### *Personnel Evaluations*

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4. Ability to perform the role of evaluator.
5. Adherence to established deadlines for conducting evaluations.
6. Ability to communicate to employees the Department's goals and objectives, business plan.

#### 912.5.1 EVALUATION TRAINING

- (a) Field Training Officers and Field Training Supervisors - Training on the evaluation process used for officers enrolled in the Field Training Program (FTP) will be provided through the Field Training Unit.
- (b) Sworn Employee Supervisors - Officers promoting to the rank of sergeant will be provided instruction on the evaluation process during the first-line supervisor school. Further training will be provided as needed.
- (c) Civilian Employee Supervisors - The City Organizational Development Department conducts on-going training for supervisors on the performance evaluation process. APD-HR will provide training as needed.

#### 912.5.2 MONTHLY EVALUATION REVIEW PROCESS

- (a) All sworn employees will receive monthly performance counseling by their immediate supervisor.
  1. The supervisor will document ongoing employee performance using their field notes.
    - (a) The monthly observations will be used to aggregate comments for the annual SSPR
  2. The observations will be discussed with the employee on a monthly basis, with the exception of the month that the annual SSPR is administered.
- (b) Employees will be given the opportunity to make written comments to be included with the evaluation.

#### 912.5.3 ANNUAL SSPR REVIEW PROCESS

- (a) Prior to administering completed annual SSPR's to employees, evaluations will be forwarded to the rater's chain of command up to the level of commander for review and acknowledgment by signature. Commander evaluations will be forwarded to the Chief of Police or designee with final approval by the Chief of Police.
  1. Raters and members of the chain of command that do not agree on the evaluation should attempt to come to an agreement before the SSPR is given to the employee. If an agreement cannot be reached the commander or Chief of Police or designee will determine the final rating or commentary.
  2. After chain of command review:
    - (a) Sworn Employees - The SSPR will be reviewed with the employee.

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- (b) Civilian Employees - The SSPR will be forwarded to APD-HR. APD- HR will analyze the evaluations for compliance with city-wide guidelines. After analysis the evaluations will be returned to the supervisor for review with the employee.
3. Supervisors will review completed SSPR evaluations with their individual employees in a private setting and provide feedback regarding the employee's performance during the evaluation period.
- (a) Employees will be given the opportunity to make written comments to the completed SSPR to be included with the evaluation when it is submitted.
  - (b) Employees will sign their completed SSPR to indicate they have read and understand the evaluation. If the employee refuses to sign, supervisors will have another supervisor witness the employee's refusal and both the rater and the witness will initial the form.
  - (c) Career counseling will be provided for each employee in regard to training needed for continued improvement in their current position, advancement, specialization, and/ or promotion.
  - (d) New evaluation criteria for the next rating period will be established and discussed with the employee, including goals for the specified time period and the level of performance expected in each area. The employee will be given a written copy of this information.
  - (e) Completed and signed evaluations, along with any written comments attached, will be given to each employee once the evaluation review session is completed.

#### 912.5.4 RESPONSES TO EVALUATION RATINGS

- (a) Employees who disagree with the monthly performance counseling observations or annual SSPR provided by their supervisor should first speak with the supervisor about the specific reason(s) for the evaluation and provide any information about why they believe this rating is inaccurate.

#### 912.6 EVALUATION RETENTION

- (a) Annual SSPR evaluations shall be a permanent part of the employee's personnel file.
- (b) Pursuant to Local Government Code, Section 143.089, the annual SSPR's on officers shall be forwarded to the Civil Service office for retention in the officer's Civil Service Personnel File. Retention in this file will be governed by rules in accordance with law and as adopted by the Civil Service Commission.

#### 912.7 EMPLOYEE PERFORMANCE AND CONDUCT REMEDIATION

- (a) At any time of employment when unsatisfactory performance or conduct is identified in an employee, supervisors will notify the employee of the deficiency and define actions that should be taken to improve the performance or conduct as soon as practicable.



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1. Employees are expected to make minor errors in the performance of their jobs. These issues are best addressed informally with the employee by their supervisor.
  2. When a pattern of unsatisfactory performance is established or when the performance in an individual situation is viewed as substantial enough, notification will be made in person with the employee's supervisor and Chain of Command to the level of Commander in a private setting using form PD0103 Employee Success Plan.
  3. If the employee has any questions or concerns with the Employee Success Plan, it must be documented in writing on the document.
  4. The employee and CoC will sign the Employee Success Plan.
- (b) At any time of employment when an employee has established a pattern of failing to meet conduct expectations or has failed to meet conduct expectations in a single incident or duty that is deemed significant, supervisors may issue the employee a Conduct Counseling Memo (PD0102).
1. The Conduct Counseling Memo will be made in person with the employee's supervisor in a private setting.
  2. If the employee has any questions or concerns with the memo it must be documented in writing on the document.
  3. The employee and CoC will sign the memo.

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# Equal Employment Opportunity and Non-Discrimination

## 914.1 PURPOSE AND SCOPE

The purpose of this order is to prevent Department employees from being subjected to discrimination, harassment, sexual harassment, or retaliation.

## 914.2 POLICY

The Austin Police Department is committed to providing a work environment that is free of discrimination, harassment, sexual harassment, and retaliation and that ensures equal employment opportunities for all employees. Discrimination, harassment, sexual harassment, and retaliation based on a protected class, in any form, as defined in federal, state, or local law, will not be tolerated. Protected classes include race, color, religion, creed, sex, gender, pregnancy status, genetic information, sexual orientation, gender identity, national origin, ethnicity, age, disability, and veteran status or other legally protected class.

Every employee is responsible for maintaining a professional environment free of discrimination, harassment, sexual harassment, and retaliation, and for bringing to the City's attention conduct that interferes with providing a work environment free of discrimination, harassment, sexual harassment, and retaliation.

Findings of discrimination, harassment, sexual harassment, or retaliation against an employee may result in discipline up to and including discharge or indefinite suspension.

## 914.3 PROHIBITED CONDUCT

### 914.3.1 DISCRIMINATION

Discrimination is the unequal or different treatment of an individual in any employment and/or personnel action based on a protected class, as per section 914.2. The Department will recruit, hire, train, compensate, discipline, provide benefits, and promote without regard to a protected class. The Department will employ positive business and personnel practices designed to ensure equal employment opportunity.

- (a) The Department will ensure:
  - 1. equal employment opportunities to all employees and candidates; and
  - 2. that employees covered by these policies are selected and promoted based on merit and fitness and without discrimination, and in accord with the requirements of state civil service laws and any applicable labor contract.
- (b) The Department will not discriminate in employment decisions and/or personnel actions on the basis of an individual's AIDS, AIDS Related Complex, or HIV status; nor will the Department discriminate against individuals who are perceived to be at risk of HIV infection, or who associate with individuals who are believed to be at risk.

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- (c) Reasonable accommodations shall be provided for all employees and qualified applicants with a disability as defined by the Americans with Disabilities Act Amendments Act (ADAAA), provided that the individual is otherwise qualified to perform the essential functions of the job and such accommodations can be provided without undue hardship for the Department and City of Austin.

#### 914.3.2 HARASSMENT

- (a) Harassment is unwelcome verbal or physical conduct toward an individual or a group because of a protected class. Harassment can create a hostile work environment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or otherwise adversely affects an individual's employment opportunities. Examples of prohibited conduct that constitute harassment include, but are not limited to:
  - 1. Use of epithets, innuendos, names, comments, foul language or slurs because of an individual's protected class;
  - 2. Jokes, pranks or other banter, including stereotyping based on a protected class; or,
  - 3. Distribution, display, viewing, downloading or discussion of any written or graphic material, including online content, voicemail, e-mail, text-messages, calendars, posters and cartoons, that are sexually suggestive or show hostility toward an individual or group based on a protected class.
- (b) Employees shall not engage in conduct which could reasonably create a hostile work environment at any time while on duty or on City premises, or even if not on duty, but participating in any work-related setting outside the workplace, such as traveling on City business or attending professional conferences.

#### 914.3.3 SEXUAL HARASSMENT

- (a) Sexual harassment is any unwelcome sex or gender-based comments and/or conduct that occurs when:
  - 1. Submission to such conduct is made either openly or by implication a term or condition of an individual's employment;
  - 2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that person; or
  - 3. Such conduct unreasonably interferes with the individual's work performance or creates an intimidating, hostile, or offensive working environment.
- (b) Sex or gender-based and/or sexually oriented jokes, remarks, gestures, or pictures may be offensive to other employees and will not be tolerated.

#### 914.3.4 RETALIATION

The Department is committed to maintaining a work environment that is free of retaliation and where an employee is free to raise a question or concern involving the terms and conditions of any employee's employment.

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- (a) Retaliation is defined as an action or inaction that adversely affects the terms and conditions of employment, and is taken in response to an employee's good faith complaint, participation in an investigation, proceeding or hearing, or an employee's exercise of rights or benefits authorized under this order. Unacceptable conduct that would likely deter an individual from reporting or supporting a claim may constitute retaliation. Retaliation can occur even if the underlying complaint is not substantiated. An adverse employment action includes, but is not limited to, discharge, indefinite suspension, demotion, and denial of promotional opportunity.
- (b) The Department prohibits retaliation against an employee who, in good faith, reports discrimination, harassment, sexual harassment, or retaliation; files a complaint regarding a law, policy, practice, or procedure; testifies, assists or participates in an investigation, proceeding, or hearing; or exercises rights or avails themselves of any benefit authorized under the personnel policies, (such as filing a worker's compensation claim, requesting Family and Medical Leave (FMLA), or requesting military leave).
- (c) An adverse action taken against an employee for filing a discrimination charge, testifying or participating in an investigation, proceeding, or lawsuit, or for opposing discriminatory employment practices is retaliation under this order.

**914.4 BONA FIDE QUALIFICATIONS AND WORK-RELATED COMMUNICATIONS**

Discrimination, harassment, sexual harassment, and retaliation does not include actions that are in accordance with established rules, principles or standards, including the following:

- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission.
- (b) Bona fide requests or demands by a supervisor that an employee improve his work quality or output, that the employee report to the job site on time, that the employee comply with City or Department rules or regulations, or any other appropriate work-related communication between supervisor and employee.

**914.5 RESPONSIBILITIES**

**914.5.1 EMPLOYEE'S RESPONSIBILITY**

- (a) Employees are expected and encouraged to promptly raise questions and concerns regarding alleged violations of City or Department policy or local, state or federal law. Any employee who believes that they, or another employee, have been subjected to discrimination or harassment based on a protected class, or retaliation based on a protected activity, shall report the matter to any of the following:
  - 1. Any supervisor, manager, Chief, or other member of the Department executive staff,
  - 2. APD Human Resources representative,
  - 3. Integrity Unit in the Office of the City Auditor,

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4. COA Human Resources Director,
  5. COA Employee Relations Division,
  6. APD Internal Affairs, or
  7. Office of Police Oversight for complaints against a sworn employee.
- (b) An employee is not required to follow the “chain of command” when reporting harassment, discrimination, sexual harassment, or retaliation.
- (c) A complaint can be anonymous or named.
- (d) Employees will not be discriminated against, harassed, or retaliated against as a result of making a good faith report of any City or Department policy violation, or for participation in the investigation of a complaint.
- (e) If a civilian employee is aware of a work-related threat of imminent physical harm to themselves, another employee, or member of the public, the employee should attempt to remove themselves from the situation and immediately notify appropriate emergency personnel by calling “911”. The employee should report this emergency call to their supervisor or management immediately.
- (f) If a sworn employee is aware of a threat of imminent physical harm to themselves, another employee, or member of the public, the employee should respond according to General Order 401 (Preliminary Field Investigations).

**914.5.2 SUPERVISOR/MANAGER RESPONSIBILITIES**

- (a) The first supervisor and/or manager who has observed or been notified of circumstances surrounding an allegation of discrimination, harassment, sexual harassment, or retaliation shall, without undue delay, notify APD Human Resources at [APDHREmployeeRelations@austintexas.gov](mailto:APDHREmployeeRelations@austintexas.gov) and their chain of command as well as the chain of command of the employees reportedly involved in the incident, unless members of the chain of command were identified in the incident.
- (b) Failure by a supervisor or manager to notify APD Human Resources may result in discipline up to and including discharge or indefinite suspension.

**914.5.3 CHAIN-OF-COMMAND RESPONSIBILITIES**

- (a) The chain of command receiving allegations against a sworn employee of discrimination, harassment, sexual harassment, or retaliation shall notify APD Internal Affairs.
- (b) Continually monitor the work environment and strive to ensure it is free from all types of discrimination, harassment, sexual harassment, and retaliation.
- (c) Take prompt, appropriate corrective action within the work units to avoid and eliminate the incidence of any form of discrimination, harassment, or retaliation.
- (d) Ensure subordinates attend any required training on discrimination and harassment.

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- (e) Ensure that employees who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.

**914.5.4 APD HUMAN RESOURCES RESPONSIBILITIES**

APD Human Resources shall notify the COA Human Resources Director and/or the Human Resources Department Employee Relations Division for all complaints of discrimination, harassment, sexual harassment, or retaliation.

**914.6 SUPERVISOR'S ROLE**

Discrimination, harassment, sexual harassment, or retaliation is viewed from the perspective of the victim, not the offender. Because of differences in individual values, supervisors and managers may find it difficult to recognize that their behavior or the behavior of others is discriminatory, harassing, or retaliatory. Supervisors should consider whether a reasonable person in the victims place would consider the conduct to be inappropriate.

Supervisors and managers shall be aware of the following considerations:

- (a) Behavior of supervisors and managers should represent the values of the Department and professional law enforcement standards.
- (b) Supervisors and managers must act responsibly in the handling of such situations.

**914.7 INVESTIGATION OF COMPLAINTS**

- (a) The Chief of Police has the authority to order an investigation alleging discrimination, harassment, sexual harassment, or retaliation regardless of whether the conduct involves sworn or non-sworn employees.
- (b) All complaints of discrimination, harassment, and retaliation where a sworn employee is the subject will be investigated according to General Order 902 (Administrative Investigations). APD Human Resources will consult and collaborate as needed to enforce City and Departmental Policy.
- (c) All complaints of discrimination, harassment, and retaliation where a civilian is the subject will be investigated according to City Personnel Policy.
- (d) All complaints of sexual harassment for both sworn and civilian will be investigated by COA Human Resources and/or according to City Personnel Policy.



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## Drug and Alcohol Free Workplace

### 916.1 PURPOSE AND SCOPE

The Department believes employees have a right to work in a drug and alcohol free environment. Persons under the influence of drugs or alcohol on the job may pose serious safety, health and security risks to the public and to other Department employees. This order provides directives concerning the use or presence of drugs and alcohol in the workplace, the use or possession of drugs while off-duty, and provides procedures for substance abuse testing.

#### 916.1.1 APPLICABILITY

Each applicant and hired employee must agree, as a condition of employment or continued employment, to abide by the terms of this order.

- (a) All potential police cadets must submit to a pre-employment drug test.
- (b) All sworn employees must submit to:
  - 1. Random drug testing; and
  - 2. Drug and/or alcohol testing if there is a reasonable suspicion the employee has violated this order or after the occurrence of a critical incident (as defined in the Meet and Confer Agreement).

#### 916.1.2 DEFINITIONS

The following definitions apply to this order.

**Alcoholic Beverage** - Alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted (Tex. Alcoh. Bev. Code § 1.04).

**Drug** - Includes the following:

- (a) Illegal drugs.
- (b) Prescription drugs not prescribed to the employee by a physician.
- (c) Non-medical Inhalants.
- (d) Marijuana (Regardless of legality in location used, consumed, or possessed).
- (e) Any product that contains THC (Regardless of legality in location used, consumed, or possessed).

**Drug Test** - A urine, breath, hair, fingernail, toenail, or blood test for the presence of prohibited drugs or alcohol, conducted at a facility designated by APD management.

**Work Day** - Includes any time the employee is receiving compensation from the city (e.g., normal work shift, breaks, lunch hour, overtime).

### 916.2 GENERAL GUIDELINES

- (a) This order specifically prohibits employees from:

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1. Reporting to work under the influence of any drug or alcoholic beverage.
  2. Reporting to work under the influence of any prescription or over-the-counter drug that would adversely affect their senses or judgment.
  3. Reporting to work or driving a City vehicle within four (4) hours after having consumed an alcoholic beverage.
  4. Consuming alcoholic beverages or drugs while the employee is on-call.
  5. Using, possessing, selling, purchasing, distributing, or being under the influence of any prohibited drug while off-duty.
  6. Testing positive for a drug.
  7. Using, possessing, selling, purchasing, distributing, or being under the influence of any drug while on-duty unless authorized by the employees' supervisor and part of an employee's official duty.
  8. Consuming or possessing alcoholic beverages while on any Department facility or while wearing any part of the APD uniform unless authorized by a supervisor for a legitimate law enforcement purpose.
- (b) This order does not prohibit the consumption of alcohol or other drug as necessary in the performance of an employee's duties and as approved by a supervisor. Personnel who consume alcohol as part of their duties shall not do so to the extent of impairing on-duty performance.

#### 916.2.1 RESPONSIBILITY FOR REPORTING LEGAL DRUG USE

Department employees who use prescription or over-the-counter medication during work hours shall not allow such medication to impair their ability to perform their work.

- (a) Employees who take any medication with side-effects which might impair their ability to fully and safely perform all requirements of their position shall report the need for such medication to their immediate supervisor.
- (b) Supervisors will consult with the next level in the chain-of-command and make a determination whether to limit, suspend, or modify the employee's work activity, or otherwise reasonably accommodate such adverse effect.
- (c) Employees may be requested to provide medical documentation of their ability to safely and effectively perform the essential functions of their position.
- (d) Employees shall not be permitted to work on or drive a Department-owned or leased vehicle while taking medication that could impair their ability without a written release from their physician.
- (e) Any information about an employee's medical condition obtained by a supervisor or manager is confidential, and will be shared only on a need to know basis. Any documentation of such medical information must be kept in the employee's confidential file by the Drug Testing Coordinator.



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**916.2.2 RESPONSIBILITY FOR REPORTING PASSIVE DRUG EXPOSURE**

Employees subjected to the passive inhalation or exposure of a drug (e.g., marijuana) must immediately notify an on-duty supervisor.

- (a) The supervisor should document in a memorandum:
  - 1. The substance the individual was exposed to; and
  - 2. The period of exposure; and
  - 3. A brief statement explaining the circumstances surrounding the exposure.
- (b) The memorandum will be forwarded to the Drug Testing Coordinator who will maintain this documentation for use if needed in the drug testing program.

**916.2.3 CONSEQUENCES OF VIOLATIONS**

APD has a zero tolerance standard for any violation of this order. Employees shall be subject to disciplinary action up to and including indefinite suspension or termination.

**916.3 PRE-EMPLOYMENT DRUG TESTING OF POLICE CADETS**

Police cadet applicants ("applicant") shall submit to pre-employment drug testing after a conditional offer of employment has been extended. The following procedures will be followed for pre-employment drug testing:

- (a) Applicants shall provide a drug test sample to the designated vendor.
- (b) Test results shall be forwarded from the analyzing laboratory to the APD Wellness Office.
- (c) The Wellness Office shall notify the commander over the Recruiting Unit or designee, in writing, of the test results.
- (d) Applicants are not eligible for hire if they:
  - 1. Refuse to sign the consent form.
  - 2. Refuse to be tested.
  - 3. Do not provide an adequate specimen.
  - 4. Fail the drug test.

**916.4 RANDOM TESTING OF SWORN EMPLOYEES**

All officers are subject to unannounced and random drug testing at any time. Random tests will occur at unpredictable times and create the possibility any name(s) may be selected one or more times in a year, or not at all.

**916.4.1 RANDOM TESTING SELECTION**

The City will contract with a qualified and independent firm to operate and certify a non-discriminatory, computerized program, to generate an automated random list of officers to be tested, upon request by the Drug Testing Coordinator (DTC).

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- (a) The random list will be delivered to the DTC or designee by FAX, email, or hand delivered letter.
- (b) Acting under the authority of the Chief, the DTC will issue a written directive to each officer on the list ordering them to submit to drug testing at the specified date, time, and location.
- (c) Except when in actual use, the list of names will be limited to the DTC and employees approved by the Chief.

## 916.4.2 SWORN EMPLOYEE NOTIFICATION AND REPORTING FOR RANDOM TESTING

The DTC shall coordinate with the testing vendor concerning the date, time, location, and number of officers to be drug tested. The collection dates will not be announced to the affected employee in advance.

- (a) The DTC shall provide the respective commanders or a Special Point of Contact (SPOC) with a list of names of those officers selected for testing. The *Notification to Report Form* (PD0101) will be utilized.
- (b) The commander or SPOC shall ensure selected officers are ordered both orally, and in writing using the *Notification to Report Form*, to report for testing at the specified time and location. Officers shall consider this directive to be an order from the Chief.
  - 1. The use of the *Notification to Report Form* serves as a direct order by authority of the Chief to provide the necessary sample at the specified location.
  - 2. This notice also instructs the selected personnel to report to the specified collection location within one hour of being served with the notice.
- (c) The DTC shall coordinate the testing process to coincide with an officer's regularly scheduled workday.
  - 1. Supervisors shall make every effort to ensure the officer reports to the testing facility immediately upon notification.
  - 2. Officers with a legitimate conflict (e.g., court or training) shall immediately inform their supervisors of the conflict and shall report for testing as soon as practicable.
- (d) Supervisors shall complete the *Documented Absence Form* (PD0102) and forward it to the DTC when an officer is on approved leave (e.g., vacation, sick). The form will be routed through the officer's chain-of-command to the DTC.
  - 1. Officers missing a scheduled test due to an approved reason may be rescheduled for testing as soon as possible, irrespective of any random sampling selection.
  - 2. Officers missing a scheduled test due to an unapproved reason or who are unable or fail to provide an adequate specimen shall be placed on administrative leave pending review.
- (e) Officers who become involved in an emergency situation or police action while enroute to the testing facility shall notify an on-duty supervisor as soon as practical and request a second officer be dispatched to take over any necessary police functions. When relieved, the officer scheduled for testing shall continue to the testing facility.

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**916.4.3 ADDITIONAL DRUG SCREENING DUE TO ASSIGNMENT**

- (a) The Department has a compelling interest in ensuring that officers assigned to specified organizational levels do not use prohibited drugs or inhalants, abuse controlled substances, or abuse prescription or over-the-counter medications, due to the sensitive nature of their assignments. In these assignments, the strictest precautionary safeguards are necessary to provide for a drug-free working environment, and to ensure that there are no drug abusers or controlled substance abusers who jeopardize the safety of fellow officers and citizens. All sworn members who apply for or are assigned to the following divisions/bureaus will be subject to additional drug testing:
1. Organized Crime Division
  2. Special Operations Division
  3. Professional Standards Division
  4. Any other assignment (s) that the Chief of Police or his designee determines by SOP should be subject to additional random drug testing.
- (b) Sworn members assigned to these units may be randomly tested up to a maximum of three times per calendar year. This additional testing is separate and distinct from the random testing that every sworn member of the Department is subject to pursuant to this order and the Meet and Confer Contract.

**916.5 REASONABLE SUSPICION TESTING FOR SWORN EMPLOYEES**

- (a) The Chief, an assistant chief, the Duty Commander, the DTC, and authorized designees have the authority to order officers to submit to a drug test.
- (b) The Department may require drug testing of officers when a determination of reasonable suspicion is agreed upon by any two (2) supervisors.

**916.5.1 CONDITIONS FOR REASONABLE SUSPICION TESTING**

Reasonable suspicion must be based on facts or circumstances that lead a supervisor to believe the employee may:

- (a) Be under the influence of drugs or alcohol.
- (b) Currently have or had possession of drugs either on- or off-duty, or on or off City premises.
- (c) Have been associated with or involved with others who were using or under the influence of drugs, or who were in possession of same. Such association or involvement was not authorized or required in connection with any law enforcement duty, under circumstances which reasonably indicate participation or complicity with, or protection of such other individuals.
- (d) Have engaged in any conduct or situation involving alcohol, while on- or off-duty, which results in on-duty impairment.

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**916.5.2 PROCEDURES FOR REASONABLE SUSPICION TESTING**

- (a) Supervisors who reasonably suspect an employee to be under the influence of a drug or alcohol will:
1. Immediately remove the employee from performing regular duties, and, when possible, bring the employee to a private area away from the observation of coworkers and/or the public.
  2. Notify the employee's commander, or if after normal office hours the Duty Commander.
  3. Document in a memorandum addressed to the Chief detailing factors and any observations leading to the reasonable suspicion.
  4. Immediately request another supervisor to witness and record their observations of the employee in a memorandum to the Chief.
  5. Place the employee on restricted duty. Arrangements will be made for the employee to be taken home unless a decision is made to immediately conduct a drug test.
- (a) The Chief, an assistant chief, Duty Commander, or DTC may order the employee to take an immediate drug test. If testing is ordered:
1. Supervisors will be notified and the DTC will arrange for the test.
  2. Supervisors will notify the affected employee of the test and prepare a memorandum instructing the affected employee to submit to the test.
  3. Supervisors will accompany the employee to the testing site and remain at the site until the testing is complete.
- (b) If there is probable cause to believe a crime has been committed, appropriate arrest procedures will be followed.

**916.6 CRITICAL INCIDENT DRUG TESTING OF SWORN EMPLOYEES**

- (a) The Department shall require a drug test of any sworn employee within 24 hours after the following critical incidents:
1. Discharge of a firearm, on or off-duty, whereby a person was the intentional or accidental object of the shooting, including when no injury is caused;
  2. A vehicular crash while driving an APD vehicle resulting in the death or serious injury of any person.
  3. An event in which an officer, on or off-duty, while performing a law enforcement function causes the death or serious injury of another person.
- (b) The Chief or his designee may require a drug test of any sworn employee within 24 hours after an event in which an officer, on or off-duty, while performing a law enforcement function suffers serious bodily injury and is hospitalized.

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**916.7 SAMPLE COLLECTION AND RESULTS REPORTING PROCEDURES**

Collection of the necessary samples and analysis will be conducted by a contracted firm/laboratory certified by the National Institute of Drug Abuse (NIDA). Scientifically accepted screening and confirmation tests will be employed in the analysis of the collected samples. After arriving at the specified collection location, officers will comply with instructions received from screening personnel. Screening will only be done for prohibited drugs and/or alcohol.

- (a) When a drug test is required of employees, it will be collected by a vendor contracted with by the City or a person selected by the Chief or DTC who is qualified to administer such a test. Any employee involved in the collection of samples shall be trained in collection and chain of custody protocols.
  - 1. Drug test samples from police cadet applicants will be collected by the contracted vendor. The vendor will deliver the samples to the laboratory for testing.
- (b) Collection dates for random testing will not be announced in advance.
- (c) Three (3) samples of hair will be collected for hair follicle testing. Samples collected will be:
  - 1. Cut as close to the scalp as possible.
  - 2. Taken from the same body area, preferably the head or face, or if necessary the body. Samples will not be taken from the pubic area.
  - 3. If an employee does not have sufficient head, face, or body hair, then a nail sample from the fingers or toes will be taken for analysis.
- (d) Sample collections for all tests administered by the contracting vendor will be taken in accordance with the procedures established by the vendor. Officers will be required to present a valid driver's license and APD identification card at the collection location.
- (e) Officers summoned to provide a specimen for analysis will remain at the collection location in view of collection personnel until an adequate sample can be produced. The samples will be provided in feasible privacy.
- (f) Drug test results acquired by the DTC as a result of employment are the property of APD and copies will not be made available to employees; however, both positive and negative results will be communicated to the officer who submitted the sample.

**916.7.1 POSITIVE TEST RESULTS**

- (a) If the initial screening indicates a positive test result, a second test of this specimen will be performed.
  - 1. A confirmed positive report will only be made after this second test also comes back positive.
  - 2. A confirmed positive test report will be maintained by the DTC in a secure area.
- (b) Once the DTC has received the initial notification from the drug-testing vendor that an officer has a positive test result, the DTC will notify a supervisor in the officer's immediate chain-of-command.

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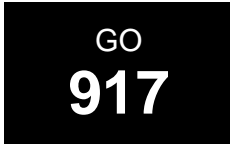
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1. Employees shall be placed on Restricted Duty pending final review and disposition which will be made, if possible, within thirty (30) calendar days of the date the positive test result was reported to the DTC.
  2. Within eight (8) hours after receiving notification from their chain-of-command of an initial positive test result, officers will have the opportunity, at their own expense, to provide a urine sample to their private physician.
  3. In order to ensure the integrity of the sample and the testing process, personnel from the drug-testing vendor will accompany the officer to the physician's office. The sample must be submitted by the physician for analysis to a firm/laboratory certified by the NIDA.
  4. Officers must provide the DTC with a copy of the independent test results, as well as a signed release authorizing the independent firm/laboratory to provide the DTC with a copy of all documents related to the drug test.
  5. Verified, confirmed, positive test results in random drug testing are for administrative purposes only and will not be used against officers in any criminal proceeding.
- (c) Officers may request the urine sample be stored in case of legal disputes. The urine sample will be submitted to the designated testing facility where a sample will be maintained for a period of one (1) year.

#### **916.8 STORAGE OF TESTING RECORDS**

Drug test documentation, other than disciplinary reports, shall be maintained in a secured cabinet in the office of the DTC. A separate, confidential file will be maintained for each employee who submits to drug testing.



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# Drug and Alcohol Abuse and Treatment

### 917.1 PURPOSE AND SCOPE

The Austin Police Department encourages any employee who has an alcohol or other drug problem to seek treatment before the problem manifests itself into a violation of Department General Orders.

### 917.2 ALCOHOL USE AND ABUSE

The Department recognizes alcoholism as an illness which can be effectively treated. Early recognition of alcohol abuse and problem drinking increases the chances for successful recovery before serious personal or professional problems occur.

- (a) Drinking alcohol by adults is a widely practiced social activity which does not violate any law and is often considered a natural part of participating in group recreational activities. As a result, there is more social pressure to drink than to be disciplined in drinking.
- (b) Because of its short-term numbing effects, alcohol is also used to relax and to manage mental stress and emotional pain. As a result, people can develop a dependence on alcohol to relax or to avoid the discomfort of stressful living.

#### 917.2.1 IDENTIFICATION OF PROBLEM DRINKING

When employees' drinking interferes with their work responsibilities and/or personal life, they should be encouraged to seek professional assistance. This would be to assess the nature of the drinking habit and to begin practicing the discipline of moderate drinking or abstention.

- (a) Some of the early signs of problem drinking include, but are not limited to:
  - 1. Poor attendance at work.
  - 2. Off-duty disturbances involving alcohol.
  - 3. Increased social drinking.
  - 4. Drinking alone or in isolation.
  - 5. Friends or family suggesting to reduce drinking.
  - 6. Looking forward to drinking at certain times or the day or week.
  - 7. A reliance on alcohol to relax or socialize more comfortably.
  - 8. Knowingly make excuses for excessive drinking.
  - 9. Arranging your weekly schedule around partying or drinking so as to have plenty of time to sleep it off or get over the hangover.

### 917.3 PERSONNEL RESPONSIBILITIES

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#### 917.3.1 AFFECTED EMPLOYEE RESPONSIBILITIES

- (a) Employees should recognize a problem with alcohol may exist when their personal attendance, job performance, off-duty behavior, or general conduct falls below normal professional standards.
- (b) Employees are expected to perform their job in a consistently professional manner regardless of their status with respect to alcohol issues (e.g., identification of a drinking problem, treatment program, recovery process).

#### 917.3.2 SUPERVISOR RESPONSIBILITIES

- (a) Supervisors are expected to be alert to signs that an employee may have a drinking problem. The supervisor will review the problem behavior with the employee, encourage the employee to seek voluntary assistance, and make a mandatory referral for professional assessment when appropriate.
- (b) Scheduling arrangements should be made for the employee to utilize accrued sick leave or personal leave to obtain assistance.
- (c) Supervisors should avoid accepting chronic excuses for problem drinking.

#### 917.4 VOLUNTARY ASSISTANCE AND TREATMENT

- (a) All professional counselors, both within the Department and in private practice, are ethically required to keep confidential the names of people who are receiving voluntary treatment.
- (b) All inquiries about assistance by an employee or family member shall be kept confidential.
  - 1. The City-HR maintains information regarding the Employee Assistance Program and other appropriate resources and programs.
  - 2. Employees who suspect they have an alcohol or legal drug problem can obtain assistance from:
    - (a) APD employees who are:
      - 1. Trained Peer Support employees.
      - 2. Chaplains.
      - 3. Recovering alcoholics.
    - (b) APD Psychological Services staff members.
    - (c) The City Employee Assistance Program (EAP).
    - (d) Private treatment programs.
- (c) An employees voluntary disclosure of an alcohol or legal drug problem before submitting to a drug test or being requested to submit to a drug test may be considered by the Chief as a mitigating factor should the facts warrant the matter being handled as a disciplinary issue.



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#### **917.5 REFERRAL FOR ASSESSMENT AND TREATMENT**

- (a) Employees who are identified by supervisors because of disciplinary problems or off-duty incidents shall:
  - 1. Be referred to the Department Psychological Services Unit which will coordinate the assessment, treatment and follow-up program with an outside professional treatment center; and
  - 2. Will not have confidentiality because of the Department's responsibility to follow-up on problem behavior.
- (b) Upon completion of the recommended treatment program, the affected employee shall obtain a letter from the treatment staff confirming that the employee has completed the recommended treatment. That letter will be forwarded through Psychological Services to the employees' chain-of-command.

#### **917.6 TREATMENT FOLLOW-UP**

- (a) To prevent relapses into problem drinking, it is often useful to establish new support networks such as joining an Alcoholics Anonymous group, obtaining a sponsor, or meeting regularly with other recovering problem drinkers. In some cases, the treatment center staff will recommend random urine testing to reinforce the habit of not drinking.
- (b) The Department will expect employees with drinking problems to complete whatever treatment follow-up is recommended by the outside treatment center staff.
- (c) In cases where the employee is referred by a supervisor for problem drinking, completion of any follow-up program will be documented by the treatment center staff and sent to the employee's supervisor.

#### **917.7 VOLUNTARY REHABILITATION PROGRAM**

These guidelines apply only to one requested leave of absence. Any request for additional leave of absence under the Voluntary Rehabilitation Program will be handled on a case-by-case basis and granted only at the sole discretion of the Chief or designee, and as required by law. The return to work agreement should be prepared by the affected employee's immediate supervisor, and a copy of this agreement should be sent to the DTC.

- (a) An employee who is being treated for a legal drug or alcohol problem may be placed on unpaid medical leave of absence; however, some or all of the leave of absence may be substituted with paid leave accrued by the employee.
- (b) While on such leave the employee will be subject to all APD policies and procedures governing such leaves of absence.
- (c) Nothing in this order is intended to conflict with the provisions of the Family and Medical Leave Act (FMLA), and in the case of any conflict, the provisions of the FMLA prevail.

##### **917.7.1 PROGRAM AGREEMENT**

Employees who seek to participate in the Voluntary Rehabilitation Program must agree to the following:

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- (a) Actively participate in an appropriate drug or alcohol treatment program of a licensed, accredited treatment facility, and follow all rules, guidelines, and recommendations of that program or facility, including but not limited to after-care recommendations; and
- (b) Complete the treatment program, not reject any treatment or recommendations of the program or facility, and not leave or discontinue the treatment program before being properly discharged; and
- (c) Upon completion of the treatment program, agree to unscheduled, periodic drug tests for a period of not less than one (1) year to be administered by the contract vendor. The failure of a subsequent drug test shall result in immediate termination or indefinite suspension of the employee; and
- (d) Sign all necessary authorizations and consents to allow the treatment facility to furnish copies of the employee's treatment records to APD's physician so that APD can monitor the employee's treatment program.

#### 917.7.2 RETURN TO WORK

An employee who seeks to return to active employment while undergoing treatment or after completing treatment must sign and fully comply with a written "Return to Work Agreement" containing at least the following provisions:

- (a) The employee must submit to a drug test and obtain a negative test result before returning to work; and
- (b) APD's physician must determine that the employee is capable of returning to full duty status; and
- (c) The employee must comply with all APD policies and procedures; and
- (d) The employee must agree to unscheduled, periodic drug tests for a period of not less than one (1) year. The failure of a subsequent drug test shall result in immediate termination or indefinite suspension of the employee.



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# Promotion, Transfer, and Vacancy Guidelines for Sworn Employees

## 918.1 PURPOSE AND SCOPE

The purpose of this order is to set guidelines for promotions, transfers, and the posting and filling of vacancies for all sworn employees up to and including the rank of lieutenant. The intent of allocating personnel to a specific assignment is to establish optimum effectiveness within the Department while considering the needs, abilities, and preferences of the individual employees. Although not mutually exclusive, at times both objectives may not be simultaneously achievable. Occasions will arise when deviations from standard operating procedures will be required in order to meet the needs of the Department.

### 918.1.1 AUTHORITY

The Chief has ultimate authority over all personnel allocation decisions and reserves the right to bypass provisions of this order if it is in the best interest of the Department. The Chief may delegate the authority for personnel allocation issues to a designee.

All personnel allocation adjustments shall be in accordance with the procedures outlined in this order.

### 918.1.2 OBJECTIVES

The Department will seek to attain the following objectives in personnel distribution:

- (a) Openness, fairness, and objectivity in selecting candidates for posted vacancies.
- (b) Increased and impartial transfer opportunities for officers of all ranks.
- (c) Maximum advance notice to officers designated for promotion or transfer.

### 918.1.3 MAINTENANCE OF RECORDS

The Staff Lieutenant will issue, process, and maintain records of all transfer directives, promotional checklists, and Sworn Application Forms. Maintenance of all personnel allocation records will comply with the records retention schedule.

## 918.2 DEFINITIONS

**Promotion-** A promotion is the act of moving a candidate from a Civil Service eligibility list into the rank for which they tested; after being approved by the Chief or designee. Promotion eligibility and testing procedures shall comply with Article 13 of the Meet and Confer Agreement.

**Transfer-** The act or process of moving a person and/or position from one location to another in accordance with established guidelines; after being approved by the affected Division Commanders.

**Mutually- Agreed Swaps-** The exchange of one officer for another of the same rank, between two units, that is agreed to by both of the affected Division Commanders.

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**Vacancy-** An unoccupied existing or newly created position in the Department.

**Anticipated Vacancy-** A vacancy which is anticipated within thirty (30) calendar days.

**Eligibility List-** A ranked list of qualified applicants established, as the result of a selection process, by a unit or shift, to fill vacancies as they occur; may be maintained for a period not to exceed six (6) months.

**Hardship** - A situation that an employee experiences because of a specific work assignment or a significant personal lifestyle change which causes unusual stress, an uncomfortable working relationship, or causes an employee to be mentally distracted from optimal performance of duty or attention to duty.

**28-Day Notice** – Except for normal shift rotations, for assignment changes that are determined far enough in advance, the Department will provide a twenty-eight (28) calendar-day notice to the affected Officer. Advance notice of the assignment change is not required if prior notice is not in the best interest of the Department or in any emergency situations. Advance notice of the assignment change may be waived by the Officer.

### **918.3 GENERAL GUIDELINES**

#### **918.3.1 EXEMPT RANKS**

Exempt ranks (assistant chief, commander, and lieutenant) are subject to transfer by the Chief at any time.

- (a) Assistant Chief and Commander assignments will be at the discretion of the Chief.
- (b) Lieutenants will be assigned in accordance with this order unless otherwise assigned by the Chief or designee.

#### **918.3.2 NON-EXEMPT RANKS**

- (a) Sergeant, corporal, detective, and officer assignments will be governed by this order.
- (b) Probationary police officers and officers assigned to the Field Training Program will be assigned to a patrol shift. Probationary Police Officers should not be assigned to the Downtown Area Command.

#### **918.3.3 APPOINTMENTS BY THE CHIEF OF POLICE**

The Chief may appoint employees to the following assignments:

- (a) Professional Standards
- (b) Special Investigations Unit
- (c) Recruiting and Training
- (d) Executive Protection Unit
- (e) Public Information Office
- (f) Lieutenant assigned to the Chief's office

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**918.3.4 NEWLY PROMOTED EMPLOYEES**

A newly promoted employee, other than commander, will not promote and be assigned within their current unit.

- (a) A newly promoted employee awaiting an assignment should be placed within their current command with a person of equal rank in order to begin learning the responsibilities of the rank.

**918.3.5 STABILIZATION PERIOD**

- (a) Sergeants and Lieutenants who transferred into or who were placed in a new assignment will serve a minimum of one (1) year in that assignment.
- (b) Employees at the rank of Officer, Corporal, and Detective who transferred into or who were placed in a new assignment, will serve a minimum of six (6) months in that assignment.
- (c) Employees in the rank of Officer who transfer into or who were placed in DTAC, will serve a minimum of one (1) year in that assignment.
- (d) A longer stabilization period may be required for certain units that require specialized training. Stabilization periods for those units shall be listed in the position posting and approved by the respective Assistant Chief.

**918.3.6 MAJOR STAFFING ADJUSTMENTS**

When a major staffing adjustment is necessary as a result of shift imbalances caused by promotions, transfers, cadet class graduations or reorganizations, all affected commanders or designees will coordinate with the Staff Lieutenant to facilitate the adjustment.

**918.4 PROMOTIONS**

**918.4.1 EFFECTIVE DATE**

- (a) Normally, the effective date of a promotion will be on a Sunday that coincides with the beginning of a pay period and either the day of or the closest Sunday after, the position becomes available based upon a promotion or by the separation of an employee (e.g. retirement, resignation, or termination).
- (b) The candidate will promote into their new rank on their effective date.

**918.4.2 PROCEDURES**

- (a) A candidate on a promotion list may begin applying for posted vacancies of the rank in which they are promoting into, no sooner than thirty (30) days prior to the anticipated effective date of their promotion.
- (b) If selected for a position, the candidate may transfer to the position for which they were selected on the effective date of their promotion. The physical transfer date will be determined by the affected Division Commanders.
- (c) If the candidate was not selected for a position prior to the effective date of their promotion, the candidate will promote and remain in their current position or the

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candidate may be placed in a vacant, uncontested position of their rank. If, after thirty (30) days of the effective date of their promotion, the candidate has not been selected or has not applied for a position, the candidate may, at the discretion of the Executive Staff, be placed in a vacant position of their rank on the next available date of transfer.

**918.4.3 ADMINISTRATIVE PROCEDURES**

- (a) At the direction of the Staff Lieutenant, APD Human Resources will send the promotion notification letter and physical examination checklist to the candidate(s) no sooner than sixty (60) days prior to their anticipated promotion(s). When the candidate(s) receive the paperwork from HR, they will promptly schedule their physical examination with the APD physician or their private physician. The APD physician must have the candidate's completed physical examination paperwork prior to signing their promotional checklist.
- (b) The Staff Lieutenant will obtain the candidate's Promotion Checklist from APD HR and post the checklist(s) on APD Main SharePoint under Staffing/Directives/Pending Promotional checklist(s).
- (c) The Staff Lieutenant will send email notifications to the candidate's Division Commander, the IA Commander, the SIU Commander and the APD physician advising them that the candidate's Promotion Checklist is ready for their electronic signatures. The email will include the names of the promotion candidates and a Hyperlink to the Pending Promotion Checklists page in SharePoint.
- (d) Once the checklist has been signed by the aforementioned personnel, the Staff Lieutenant will notify the Chief, or designee, via email that the promotion checklist(s) are ready for their approval. The email will provide the names of the promotion candidates and the Hyperlink to the Pending Promotion checklist's page in SharePoint.
- (e) With authorization from the Chief, or designee, and no later than the Wednesday prior to the candidate's promotion, the Staff Lieutenant will complete the following:
  - 1. Email the Promotion Checklist to the "APD Personnel Allocation Notification Group" for processing. The affected employee will be copied on this email.
  - 2. Archive the completed Promotion Checklist in the "G" drive.
- (f) The Staff Lieutenant shall make the appropriate personnel changes in the Staffing Allocation workbook located on the SharePoint Staffing page.

**918.5 VACANCY GUIDELINES**

- (a) Commanders may fill any vacancy within their Region/Division with an employee currently assigned within their Region/Division without posting said vacancy for the purpose of leveling the staffing of shifts or units or if the internal transfer is for the benefit of the employee or the Region/Division. The employee must meet the stabilization requirement outlined in this order prior to the transfer date.
- (b) Vacancy notice postings are maintained on the APD Main SharePoint Staffing page and available for review.

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- (c) A reasonable, good faith effort shall be made to post all vacancies.
- (d) The posting process shall not apply to vacancies that the Department fills by promotion during Department-wide leveling, involuntary transfers or mutually agreed swaps.
- (e) All officers are eligible to submit an application packet for any posted vacancies they qualify for. Applicants must meet the 4 year service time requirement for specialized units as outlined in this order. Application submission guidelines:
  - 1. If an applicant for a specialized unit does not meet the 4 year service time requirement at the time of submission, but will meet the requirement before the listed "start date" on the vacancy notice, the applicant's packet will be accepted for consideration. No applicant may transfer prior to meeting the 4-year service time requirement.
  - 2. If an applicant for a vacant position does not meet the stabilization requirement at the time of submission, but will meet the requirement before the listed 'start date' on the vacancy notice, the applicant's packet will be accepted for consideration.
  - 3. If an applicant for a vacant position does not meet the stabilization requirement at the time of submission AND will not meet the stabilization requirement by the 'start date' on the vacancy notice, the application will be allowed for consideration with the following caveats:
    - (a) Commanders and supervisors will first consider the applicants who meet the stabilization requirement.
    - (b) If an applicant who does not meet the stabilization requirement is preferred, the Commander must justify the selection to the affected Assistant Chief.
    - (c) The affected Assistant Chief may waive the stabilization requirement for the applicant if they agree with the Commander's recommendation.
    - (d) The affected Assistant Chief's decision will be final.
- (f) Applying for a posted position shall not jeopardize an officer's current assignment.

**918.5.1 VACANCY POSTINGS**

- (a) Supervisors will send an email to their Bureau Administrative Supervisor to request the creation of a vacancy notice. The Bureau Administrative Supervisor will confirm the vacancy or the anticipated vacancy prior to completing the vacancy notice form in SharePoint. (The vacancy notice form is located on the Staffing page in SharePoint).
- (b) The supervisor's email will contain the following information which will be used to complete the vacancy notice form:
  - 1. Title of the position;
  - 2. A job description or an attachment containing the job description;
  - 3. Duty hours, although the hours may be listed as "hours vary";
  - 4. Special requirements an applicant must meet;

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5. Special licenses, skills, or abilities (e.g. specialized training, physical abilities) desired or required for the position.
6. The name and contact information of the posting supervisor.
- (c) The Administrative Supervisor will complete the vacancy notice form in SharePoint and notify the Staff Lieutenant of the pending vacancy notice.
- (d) The Staff Lieutenant will verify the vacancy or anticipated vacancy and ensure the notice has been accurately completed and add the "start date". Once the vacancy has been verified and the notice reviewed, the Staff Lieutenant will approve the posting.
- (e) Absent exigent circumstances, a vacancy notice will be posted for ten (10) calendar days in SharePoint on the Staffing page under "Current Vacancies".
  1. For any vacancy notice posted prior to noon, day one (1) of the ten (10) day posting period will begin on that day.
  2. For any vacancy notice posted after noon, day one (1) of the ten (10) day posting period will begin on the following day.
  3. No postings will close on Saturday, Sunday, or an official City holiday.
  4. All postings are archived in SharePoint on the Staffing page.

#### 918.5.2 VACANCY APPLICATION PROCESS

Applications for all vacancies shall be made using the Sworn Application Form (SAF) available in the "G" drive at : G:\Public\Public Data for APD Only\Approved APD Forms\HR Forms\Sworn Application Form. An applicant must follow the application process outlined below.

- (a) Application Process:
  1. Applicants are responsible for electronically submitting the SAF and the required documentation (SA Packet) to their immediate supervisor for their signature.
  2. The immediate supervisor will electronically submit the SA packet to the next level supervisor for their signature. This process will continue until the SA packet reaches the Bureau Administrative Supervisor and Division Commander.
  3. The Bureau Administrative Supervisor or the Division Commander will electronically submit the SA packet to the Staff Lieutenant, the officer submitting the application, AND the supervisor listed on the posting prior to the posting deadline.
    - (a) The timestamp on the email sent from the Division Administrative Supervisor or the Division Commander will be the SA packet submission timestamp.
  4. The Staff Lieutenant will archive the SAF in the appropriate location.
  5. Any SA packet submissions after the posting deadline will not be eligible for consideration for the vacancy.
    - (a) An exception to the deadline may be considered in cases where the applicant has submitted their SA packet to their chain-of-command for



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approval, but the SA packet failed to be submitted to the Staff Lieutenant and the posting supervisor prior to the posting deadline. The applicant is responsible for allowing adequate time for the chain-of-command to process the SA packet.

- (b) If the applicant, or anyone in their chain-of-command, believes the SA packet should be eligible for submission for the posted vacancy; an email explaining the circumstances of the late submission may be submitted to the Staff Lieutenant.
- (c) The Staff Lieutenant will consider each request on a case-by-case basis.
- (d) The affected Bureau Chief will make a final determination on the eligibility of the SA packet submission.

(b) Lieutenant Application Process:

- 1. Applicants for a lieutenant vacancy are responsible for submitting the Sworn Application Form ONLY to their Division Commander for their signature.
- 2. The affected Division Commander, or designee, will electronically submit the SAF to the posting Division Commander AND the Staff Lieutenant.

- (a) The timestamp on the email sent from the Division Commander, or designee, will be the SAF submission timestamp.

(c) Denied Applications:

- 1. Division Commanders may deny Sworn Application submissions ONLY when an applicant does not meet the 4 year minimum service time requirement as per General Orders. Staffing shortages shall not be the sole reason for denying an application.
- 2. Objections to the application may be noted on the SAF.

### 918.5.3 FILLING VACANCIES

Commanders, or designees, have three (3) business days after the posting closes or interview boards are held, to select an applicant and/or establish an eligibility list for future vacancies.

- (a) Commanders shall ensure selection processes are job-related and that all candidates are evaluated fairly. Criteria used in the selection processes will take into consideration any special needs of the Unit(s) and/or the Department.
  - 1. For vacancies at the corporal/detective and sergeant rank, newly promoted applicants looking for their first placement in their new rank will not normally be selected over a candidate who is more senior in that rank and who meets stabilization.
  - 2. If a newly promoted applicant from (a)(1) is preferred over an applicant with rank seniority, the Commander must justify the selection to the affected Assistant Chief.
  - 3. The affected Assistant Chief may waive the requirement outlined in (a)(1) if they agree with the Commander's recommendation.

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- (b) The supervisors of the units that hold interview boards will select diverse board members. In this context, diversity includes factors such as varying years of service, gender, age, ethnicity, or professional background. All interview boards will have at least one member from another division.
  - 1. Supervisors will prepare written critiques on each candidate that will provide constructive feedback to the candidate. The critiques will be available to the candidates, upon request, for thirty (30) days after the process is completed. The supervisor shall also inform the candidate who was selected to fill the vacancy and their ranking on the eligibility list, if one was established.
- (c) If interview boards are not held, the supervisor making the selection shall contact each candidate and inform them who was selected to fill the vacancy and their ranking on the eligibility list, if one was established. The supervisor shall also provide feedback to the candidates who were not selected to potentially increase the candidate's future opportunities for selection.
- (d) Officers selected and placed on a ranked eligibility list will retain their eligibility for a period of time not to exceed six (6) months. The eligibility list will only apply to future vacancies that are of the exact description of the vacancy for which the eligibility list was established.
- (e) The Unit Supervisor will prepare a memorandum containing the eligibility list and forward the memorandum to the Bureau Administrative Supervisor and the Staff Lieutenant for retention.
- (f) The Staff Lieutenant will post all eligibility lists on the Staffing page located in SharePoint. Eligibility lists are archived in compliance with the records retention schedule.
- (g) Any officer declining an assignment when a vacancy exists may be removed from the eligibility list by the affected Division Commander. Officers may also be removed from an eligibility list for misconduct, pending investigations (IA or SIU), or any valid reason; subject to the approval of the affected Division Commander.
- (h) Applicants not selected for a vacancy or removed from an eligibility list may request a meeting with the applicable chain of command up to and including the affected Assistant Chief
- (i) If no applicants are selected or no applications are received, the Chief may approve an affected Assistant Chief or Division Commander to:
  - 1. Repost the vacancy; or
  - 2. Place the next promotional candidate in the vacant position; or
  - 3. Involuntarily transfer an employee from within their Bureau or Division into the vacant position.

## **918.6 TRANSFER GUIDELINES**

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918.6.1 ADMINISTRATIVE PROCEDURES

- (a) All transfers will take place on Sundays that coincide with the beginning of a pay period or shift change.
- (b) All transfer dates will be determined by the Staff Lieutenant in coordination with the affected Division Commanders.
- (c) When a transfer date has been determined for an employee that was selected for a vacancy posting or for employees who are swapping positions, the employee's current Administrative Supervisor shall email the following information to the Bureau Administrative Supervisor of the command receiving the employee.
  - 1. The name and employee number of the affected employee; and
  - 2. The position the employee is transferring into and the position the employee is transferring out of; and
  - 3. The effective date of the transfer.
- (d) The Bureau Administrative Supervisor receiving the employee will confirm transfer logistics with the Bureau Administrative Supervisor losing the employee.
- (e) Once the transfer logistics have been confirmed AND the effective date of the transfer is within thirty (30) calendar days, the Bureau Administrative Supervisor receiving the employee will email the aforementioned information to the Staff Lieutenant.
- (f) The Staff Lieutenant will create the Transfer Directive (PD0046) and place the Transfer Directive in the "Pending Transfer Directives" folder located on the "Personnel Directive" page which is located on the Staffing page in SharePoint.
- (g) The Staff Lieutenant will send an email to each of the affected Division Commanders and Administrative Supervisors advising the Transfer Directive is ready for approval.
  - 1. The Administrative Supervisors will ensure the correct stipend boxes on the form are checked for the employee.
- (h) No later than the Wednesday prior to the effective transfer date, the Staff Lieutenant will complete the following:
  - 1. Convert the Transfer Directive to PDF and archive the completed Transfer Directive in the "G" drive and in the "Transfer" folder located on the Personnel Directives page which is located on the SharePoint Staffing page.
  - 2. Send an email notification, with the directive attached, to the "APD Personnel Allocation Notification" Group, the affected supervisor(s), the affected Administrative Supervisor(s) and the affected employee.
- (i) The Staff Lieutenant shall make the appropriate personnel changes to the Staffing Allocation workbook located on the SharePoint Staffing page.
- (j) Within 10 working days of an employee's transfer, the Bureau Administrative Supervisor (or designee) receiving the employee will complete the APD "Transfer Employee Request" electronic form for CTM.

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#### 918.6.2 HARDSHIP TRANSFERS

- (a) The Chief shall create the Hardship Committee. The Hardship Committee will consist of the Professional Standards Commander, the requestor's commander, two additional commanders, and a member of the Wellness Bureau. The Professional Standards Commander will act as the chair of the Committee.
- (b) Employees requesting a hardship consideration shall document the request in a memorandum, addressed to the Hardship Committee, sent through their chain-of-command.
  1. The memorandum shall contain the following:
    - (a) The specific reasons why the current assignment is causing a hardship,
    - (b) The specific scheduling request (i.e. day shift, night shift, in-door assignment, etc.) and any other requested adjustments for the assignment, and
    - (c) The length or end date for the accommodation.
- (c) Upon receipt of a hardship memorandum, the chair of the Committee will coordinate a review of the request by the members of the Committee. Once the request has been reviewed, the Committee will recommend to approve or decline the hardship request and forward the request to the Chief of Police or his designee. The Chief will review the request and make the final decision.
- (d) If the hardship request is approved, the officer will be placed on a waiting list by rank for the next available position that meets the requests of the hardship. The staffing lieutenant will maintain the list of hardship eligible officers.
  1. When a position meeting the needs of the hardship request comes available, the staffing lieutenant will notify the commander over the identified hardship position that the position will be filled through the hardship process.
  2. If the position is determined as one that will be filled through a hardship, the staffing lieutenant will notify the first officer on the eligibility list of the position that meets their hardship request and their selection for the spot.
  3. If the selected officer declines the position, then it will be given to the next officer on the eligibility list. The officer declining the position will be removed from the hardship eligibility list.
- (e) The Chief may designate certain positions that officers are not eligible to transfer into under a hardship transfer.
- (f) The hardship application will not apply to future moves that an affected officer applies for at their current rank or if they choose to enter the promotional process.
- (g) The hardship committee is not for disability accommodations, medical leave (FMLA), or religious accommodations. These requests shall be requested and handled through Human Resources.

#### 918.6.3 TRANSFERS WHILE ON LIMITED DUTY

Employees may apply for transfers to full-duty positions while on Limited Duty status.

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- (a) An employee's Limited Duty status will not automatically disqualify the employee from consideration for a vacant position.
  - 1. Selections are based upon the qualifications of the individuals applying for the transfer and the operational needs of the Unit in which the vacancy exists.
  - 2. The availability of Limited Duty tasks in the assignment being applied for and the anticipated duration of the employee's Limited Duty status may be considered.

#### 918.6.4 TWENTY-EIGHT (28) DAY NOTICE

Except for normal shift rotations, for assignment changes that are determined far enough in advance, the Department will provide a twenty-eight (28) calendar day notice to the affected officer.

- (a) Advanced notice of the assignment change is not required if prior notice is not in the best interest of the Department or in any emergency situation.
- (b) Advance notice of the assignment change may be waived by the officer.
- (c) The Department reserves the right to transfer an employee without granting a twenty-eight (28) day notice when an operational need exists to make the transfer sooner due to workload, unforeseen vacancies, emergencies, or when it is in the best interest of the Department.
- (d) The 28-day Notice requirement does not apply to transfers based off promotions.
- (e) Supervisors will complete the 28-Day Notice of Transfer form prior to any applicable assignment change:
  - 1. It is understood that during emergencies, there may not be the opportunity to complete the form prior to the employee's transfer, but the form shall be completed as soon as practical thereafter.
- (f) The chain-of-command of the affected employee will place the 28-day Notice of Transfer in the employee's personnel file and retain it in compliance with the records retention schedule.
- (g) In cases where the 28-Day Notice of Transfer was denied either because it was in the best interest of the Department or for an emergency situation; the reason for the denial will be notated on the 28-Day Notice of Transfer form and forwarded, through the chain-of-command, to the Chief to be signed.

#### 918.7 APPEAL PROCESS

Employees involuntarily transferred into a position may submit a memorandum through their chain-of-command appealing the decision. The employee will remain in the transferred position while their appeal is considered. The Chief has final authority regarding all transfers.

#### 918.8 SPECIALIZED ASSIGNMENTS

Specialized Assignments are full-time assignments that have primary responsibilities outside of the "Patrol" function.

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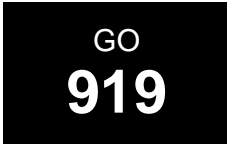
- (a) **Required Service Time** - The four (4) year “APD Service Time Requirement”, is the officer’s time of employment as an Austin Police Officer and is required prior to being eligible for application to a Specialized Assignment. Calculation of the required service time begins from the officer’s Commission Date as an Austin Police Officer. The required service time must be “uninterrupted service” to be fulfilled immediately prior to the filing date for application. “Uninterrupted service” means continuous service not interrupted by a leave of absence or indefinite suspension.
- (b) **Required Service Time Exception** - Graduates of a Modified Academy Class are required to have two (2) years of “uninterrupted service” as an Austin Police Officer prior to being eligible for application to a Specialized Assignment. Graduates of a Regular Academy Class, who had prior law enforcement experience, must have been eligible to attend a Modified Academy Class at the time of their hire to qualify for the two (2) year minimum service time exception. Any graduate of a Regular Academy Class who believes they qualify for the two (2) year minimum service time exception must submit a written request, containing qualifying facts, through their chain of command to their Assistant Chief for consideration. If the affected Assistant Chief approves the exception, the officer is still subject to any entry or testing requirements of the Specialized Assignment for which they are applying. The decision of the affected Assistant Chief shall be final and not subject to further administrative review.
- (c) **Specialized Assignments**
1. Public Information Office
  2. Citizen Police Academy Coordinator
  3. Cadet Training
  4. Learned Skills
  5. Advanced Education
  6. Recruiting
  7. Police Activities League
  8. Police Explorers
  9. Risk Management
  10. ARIC
  11. Tactical Intelligence Unit
  12. Real Time Crime Center
  13. Emergency Planning Unit
  14. SOAR
  15. Crisis Intervention
  16. CRASH
  17. Nuisance Abatement
  18. Property Crimes Task Force

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19. Gangs
20. Criminal Interdiction
21. Criminal Interdiction – K9
22. Street Narcotics
23. Criminal Conspiracy
24. District Representatives
25. Metro Tactical Unit
26. Mounted Patrol
27. Special Events Unit
28. Park Patrol
29. Lake Patrol
30. SWAT
31. Executive Protection
32. Bomb Unit
33. EOD & Patrol K9
34. Court Services
35. Air Support Unit
36. Police Technology Unit
37. Airport Patrol
38. Airport K9 Patrol
39. Highway Response
40. Commercial Motor Vehicle Enforcement Unit
41. DWI
42. Motors
43. Violent Crimes Task Force



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## Promotional Bypass of Sworn Employees

### 919.1 PURPOSE AND SCOPE

This purpose of this order is to outline the process for the Chief of Police to bypass a candidate on a promotional eligibility list.

### 919.2 POLICY

The Chief of Police may bypass a candidate on a promotional eligibility list with a valid reason. Factors taken into consideration to determine if a valid reason exists include, but are not limited to:

- (a) Whether the candidate is subject to any pending administrative or criminal investigation.
- (b) Whether the candidate understands his role in the organization as a leader and role model.
- (c) Whether the candidate has exhibited behavior which could result in a lack of trust or respect for the candidate by his superiors, his subordinates, and/or the community.
- (d) Whether the candidate or his chain-of-command has identified any deficiencies or concerns, and whether the candidate has taken advantage of opportunities available to him to address those deficiencies.
- (e) Whether the candidate has been subject to Disciplinary Action.
  1. Suspensions that are not eligible to be reduced to a written reprimand as provided for by the Meet and Confer Agreement may be considered for a period of five (5) years from the date the suspension was issued.
  2. Written reprimands resulting from a suspension reduction as provided for by the Meet and Confer Agreement may be considered for a period of thirty-six (36) months from the date the initial suspension was issued.
  3. All other written reprimands may be considered for a period of thirty-six (36) months from the date the written reprimand was issued.
- (f) Whether the candidate is or has been on an Employee Success Plan (ESP).
  1. A ESP may be considered for a period of eighteen (18) months from the date of successful completion.





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# Awards and Commendations

### 922.1 PURPOSE AND SCOPE

This document establishes directives regarding the Departmental commendations or awards to APD employees and other individuals outside of the Department.

### 922.2 COMMENDATION GUIDELINES

Any employee, group of employees, or individual outside of the Department may initiate the creation of a personal commendation to honor an employee or group of employees for exceptional performance.

- (a) Accessing Commendations in APD Main SharePoint.
  1. The Commendations SharePoint page is located in SharePoint on the Committees page, under the title "Awards and Commendations".
- (b) Create and process New Commendations
  1. On the Commendations page, click on "New Item" to create a new commendation. Alternatively, from the APDnet home page, click on the yellow star under "Commendations Form" to create a new commendation.
  2. Upon completion of the commendation, enter the name of the next person in the COC who needs to sign the commendation in the "Who needs to be notified next?" field at the bottom of the commendation.
  3. After entering the name of the next person in the COC, click on "Save". Once the form is saved, an email is automatically sent to the specified person with a link to the commendation; the creator will receive a confirmation email.
  4. The next reviewers will add their names, dates, and comments to the commendation. The reviewers will remove their name from the "Who needs to be notified next?" field and place the next reviewer's name in the field and save the document.
  5. This process continues until the appropriate Assistant Chief reviews the form.
  6. When the Assistant Chief completes his or her review and comments, the Assistant Chief will click the "Complete" check box.
  7. Checking the "Complete" check box triggers the next workflow. The commendation will automatically transfer from the "Active" view to the "Archives" view and will be automatically converted to a Word document in the "Commendation Word Documents" view.
  8. The Commendations site administrator will email the Commendation, in Word format, to the affected employee(s), file the commendation in the affected employee(s) personnel file, and email the commendation to Civil Service for retention.

### 922.3 AWARD GUIDELINES

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#### 922.3.1 AWARDS COMMITTEE

- (a) Members of the Committee will be selected by the Committee chairperson, with final approval by the Committee coordinator.
  - 1. Five (5) committee members, in addition to the chairperson and Committee Secretary, must be present to vote on nominations.
  - 2. The secretary is a non-voting position.
  - 3. The chairperson votes only in case of a tie.
- (b) The Committee may recommend a different award than a nomination recommends to maintain the integrity of the Department's award system.
- (c) The Chief reviews and has final approval over all recommendations for awards made by the Committee.

#### 922.3.2 AWARD NOMINATION PROCEDURES

- (a) An employee wishing to nominate another employee or a citizen for an award, except Unit of the Year, will:
  - 1. Complete nomination packet consisting of a memorandum (NOT Personal Commendation form) providing detailed information as to why the nomination is being made and attach all necessary documentation (e.g., reports, letters, newspaper articles) to support the nomination.
  - 2. Nomination packets will then be routed up the Chain of Command to the Commander/Division Manager level.
  - 3. The receiving Commander/Division Manager will ensure that the nomination packet, including all supporting documentation, is forwarded to the Committee Secretary at [APDAwardsCommittee@austintexas.gov](mailto:APDAwardsCommittee@austintexas.gov). The Committee will then forward approved award nominations to the Chief of Police or designee.
  - 4. Nominations should be submitted within one year of the event, however an amnesty period will be offered annually to employees for nominations for events that occurred more than 1 year ago.
- (b) Nominations for Unit of the Year procedures are as follows:
  - 1. An employee wishing to nominate a unit for Unit of the Year will submit a nomination packet to their respective Commander/Division Manager no later than December 1st. The packet should consist of:
    - (a) A two to three page summary memo (NOT Personal Commendation Form) containing an overview of the unit's accomplishments and up to 10 additional pages of supporting documentation (i.e. commendations, press releases, letters of recommendations, etc).
    - (b) A list of all personnel who were unit members for at least 6 months during the calendar year and the actual dates each member was assigned to that unit.

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- (c) Data used for nominations should run from calendar year start and end dates to ensure consistent time frames.
  - (d) There will be three awards per year for Unit of the Year. One unit will be recognized from patrol services, one unit will be recognized from non-patrol units, and one civilian unit will be recognized. Nominations can be made for any designation. The nomination should be limited to individual shifts or units and not for entire divisions, sections, or other large groupings.
2. Each Commander/Division Manager will review the nomination packets and forward the packets to the APD Awards Committee email inbox by the deadline designated by the Awards Chairperson. The Awards Committee will meet after the submission deadline and make recommendations to Executive Staff for the Unit of the Year awards.
  3. The final decision will be made by the Chief and sent to the Awards Committee Chair by the established deadline designated by the Awards Committee Chairperson.
  4. The unit selected must commit to having 80% of their staff attend the Chief's presentation of the award.

#### **922.4 CITIZEN AWARDS**

The following awards are authorized for citizens and shall consist of a citation mounted on a plaque or placed in a certificate holder or a crystal desk weight supplied by the department:

- (a) Distinguished Service Citation
  1. Presented by the Chief or designee to award citizens for providing exceptional service to the Department under emergency or hazardous conditions while displaying uncommon courage and good judgment.
- (b) Certificate of Recognition
  1. Presented by the Chief or designee to award citizens for providing unexpected and exceptional service, without regard for compensation, to the Department over any period of time. The provided service may include support of the Department, officers or the families of officers.

#### **922.5 EMPLOYEE AWARDS**

Medals, ribbons and authorized pins and medallions shall only be worn as specified in Department General Orders. Employees will not receive an award through the below process while under formal investigation for violating a departmental general order without the consent of the Chief.

- (a) The following awards, citations, and/or ribbons are for all employees:
  1. Medal of Valor
  2. Distinguished Command Medal
  3. Purple Heart

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4. Life Saving Medal
  5. Meritorious Service Medal
  6. Unit of Year
  7. Meritorious Unit Medal
  8. Superior Service Citation
  9. Community Service Citation
  10. Honorable Conduct Citation
  11. Military Service
  12. Hazardous Deployment
  13. Special Response Team (SRT) Campaign Ribbon
  14. Academic Achievement
  15. Master Certification Ribbon
  16. Safe Driving Ribbon
  17. Fitness Award
  18. Certificate of Recognition
- (b) A medal and device can be awarded for each occurrence unless specifically stated under each description.
- (c) To order replacement medals and/or ribbons, the employee shall fill out the approved replacement form signed by their division commander and routed to Awards Secretary [APDAwardsCommittee@austintexas.gov](mailto:APDAwardsCommittee@austintexas.gov) for processing.

#### 922.5.1 MEDAL OF VALOR

Conferred for displaying exceptional bravery and courageous action, risking life or serious bodily injury, while in the performance of duty, thereby earning high honor and distinction and bringing favorable recognition to the Department.

- (a) Recipient will receive a medal, ribbon, "V" device, and certificate.
- (b) Presented by the Chief.

#### 922.5.2 DISTINGUISHED COMMAND MEDAL

- (a) Conferred for distinguished command as demonstrated by:
  1. Exceptional and courageous command during critical times which required extraordinary police service; or
  2. Clearly exceptional command and leadership for an extremely difficult or hazardous project or task which was highly successful or brought great recognition to law enforcement; or
  3. Clearly exceptional command and leadership, which have been consistently demonstrated over an extended period of time.

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4. Nominations for this award will be sent by a Commander and/or Division manager to Executive Staff for consideration. This award will not be routed through the Awards Committee for consideration.
  - (b) Recipient will receive a medal, ribbon, lapel pin and certificate.
  - (c) Presented by the Chief.

#### 922.5.3 PURPLE HEART

Conferred for sustaining, through no fault of their own, serious bodily injury (bodily injury that involves a substantial risk of death or protracted loss or impairment that continues after medical intervention) or death resulting from a suspect's actions in the line of duty under honorable circumstances, which brought favorable recognition to the Department. In addition, this award may be conferred if injury was averted from a projectile by use of body armor.

- (a) Recipient will receive a medal, ribbon, and certificate.
- (b) "V" device may be awarded.
- (c) Presented by the Chief.

#### 922.5.4 LIFE SAVING MEDAL

Conferred for going above and beyond what is expected to save a human life. The event must have involved specific and direct intervention. The person receiving the life-saving efforts needs to survive for at least 24 hours.

- (a) Recipient will receive a medal, ribbon, and certificate.
- (b) "V" Device may be awarded.
- (c) Presented by the Chief or designee.

#### 922.5.5 MERITORIOUS SERVICE MEDAL

Conferred for meritorious service demonstrated through outstanding performance of duty under clearly hazardous and complicated conditions, or when the service delivered clearly contributed to a high degree of success in a difficult or complicated project or task by an individual.

- (a) Recipient will receive a medal, ribbon, and certificate.
- (b) "V" Device may be awarded.
- (c) Presented by the Chief or designee.

#### 922.5.6 UNIT OF THE YEAR CITATION

Presented to three outstanding units each year, based upon meritorious service as demonstrated through exceptional performance by all members during extremely hazardous duty or exceptional collective outstanding performance which exemplified dedication to the Unit mission or assignment over an extended period of time. One unit will be recognized from patrol services, one unit will be recognized from non-patrol units, and one civilian unit will be recognized.

- (a) Recipient will receive a medal, ribbon and certificate for each Unit member.

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- (b) Presented by the Chief or designee.

#### 922.5.7 MERITORIOUS UNIT MEDAL

Conferred for meritorious service demonstrated through outstanding performance of duty under clearly hazardous and complicated conditions, or when the service delivered clearly contributed to a high degree of success in a difficult or complicated project or task by a unit.

- (a) Recipient will receive a medal, ribbon, and certificate.
- (b) "V" Device may be awarded.
- (c) Presented by the Chief or designee.

#### 922.5.8 SUPERIOR SERVICE CITATION

- (a) Presented to employees for
  1. Demonstrating a superior commitment to quality service or caring service within the community or Department; or
  2. Exhibiting outstanding problem-solving skills which brings recognition to the individual and Department; or
  3. Actions that go beyond the expected duties and responsibilities of the employee's job description within the department.
- (b) Recipient will receive a medal, ribbon and certificate.
- (c) Presented by the Chief or designee, or the employee's commander/manager.

#### 922.5.9 SERVANT LEADERSHIP CITATION

- (a) Presented to employees for:
  1. Regardless of rank or position within the Department, consistently focusing primarily on the growth and well-being of people and the communities to which they serve;
  2. Acknowledging other people's perspectives, giving them the support they need to meet their work and personal goals, involving them in decisions where appropriate, and fostering a sense of community within the Department; or
  3. Enriching the lives of individuals, building a better organization and ultimately creating a more just and caring community.
- (b) Recipient will receive a medal, ribbon and certificate.
- (c) Presented by the Chief or designee, or the employee's commander/manager.

#### 922.5.10 COMMUNITY SERVICE CITATION

- (a) Presented to employees who engage in the following behavior over an extended or continuous period of time:
  1. Demonstrating a voluntary act of donating time and devotion to the community while promoting the safety, health, education or, welfare of the citizens;

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2. Providing volunteer community service which results in favorable recognition of the Department; or
  3. Actions that go beyond the required duties and responsibilities of the employee's job description that promote the Department's community policing principles.
- (b) Recipient will receive a medal, ribbon, and certificate.
- (c) Presented by the Chief or designee, or the employee's commander/manager.

#### 922.5.11 HONORABLE CONDUCT CITATION

- (a) Presented to employees for completing 10 years (aggregate) of service, as long as the employee:
1. Is in good standing;
  2. Receives a favorable recommendation from their supervisor; and
  3. After the formula set out in (b) has been applied.
- (b) Calculation of eligibility:
1. Written Reprimand
    - (a) Loss of 6 months eligibility (other than for a collision or minor traffic infraction)
  2. Suspension
    - (a) One (1) to three (3) days suspension results in a loss of (1) year of eligibility.
    - (b) Four (4) to fifteen (15) days suspension requires ten (10) years consecutive honorable service starting from the last day of suspension or results in a loss of five (5) years of eligibility from the aggregate amount; whichever period is shorter.
    - (c) Sixteen (16) or more days suspension requires ten (10) years consecutive honorable service starting from last day of suspension.
- (c) A minimum amount of time must pass between a dishonorable event and consideration for the Citation as determined by the Chief or his designee. The purpose is to prevent presenting the award to someone who has recently received discipline, thereby undermining the significance of the Citation.
- (d) An employee who remains eligible under the criteria above for 20 and 30 years of honorable service may add the following devices:
1. One authorized bronze star device for 20 years.
  2. Two authorized bronze star devices for 30 years.
- (e) To apply for the Honorable Conduct Citation:
1. Employees must complete the request form, attach a copy of their complaint history to the form, and submit both to their supervisor.

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2. Supervisors will review the complaint history and make a recommendation concerning the employee's eligibility. Supervisors will sign the form and forward it to the Commander of IAD for sworn employees or APD Human Resources for civilian employees.
  3. The request will be reviewed to confirm the criteria of a Honorable Conduct Citation has been met. Once confirmed, the Commander/Supervisor, or their designee, will sign the form and forward it to the Awards Committee Secretary.
- (f) Recipient will receive a medal, ribbon and certificate for 10 year award and star device and certificate for 20 year award.
- (g) Presented by the employee's commander/manager or designee.

#### 922.5.12 MILITARY SERVICE RIBBON

Issued to personnel honorably discharged from military service in one of the U.S. military branches (e.g., Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or Reserves).

- (a) A single star may be added to the ribbon for each foreign combat theater deployment.
- (b) To apply for the Military Service Ribbon employees must:
  1. complete a request form;
  2. provide a copy of their U.S. Department of Defense Form DD214, or equivalent paperwork from the Reserve or National Guard;
  3. submit the form to the Committee Secretary for Committee Chair's approval.
- (c) Recipient will receive a ribbon and Certificate.
- (d) Presented by the employee's commander or designee.

#### 922.5.13 HAZARDOUS DEPLOYMENT RIBBON

- (a) Conferred for response and deployment to a natural or man-made disaster in a public safety capacity under hazardous and extended conditions outside the City of Austin.
- (b) Only the initial ribbon received will be worn. Subsequent awards will be indicated by an authorized star device placed on the first award ribbon (up to four stars, representing a total of five awards).
- (c) Hazardous Deployment Ribbon request forms will be provided by the Emergency Planning and Response Unit who will assist employees in determining their eligibility.
- (d) The Hazardous Deployment Ribbon form will be routed to the APD Awards Committee who will make the final recommendation to the Chief
- (e) Recipient will receive a ribbon and copy of Hazardous Deployment Ribbon request.
- (f) Presented by the Chief or designee.

#### 922.5.14 SPECIAL RESPONSE TEAM (SRT) CAMPAIGN RIBBON

- (a) Presented to members of Units which the Chief determines:



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1. Are directly involved in the resolution of a large-scale crowd-control incident which immediately jeopardizes the safety of citizens, or causes great concern to a large segment of the Austin community; and
  2. The recipient demonstrated exceptional tactics, team work, courage, and self-discipline under hazardous conditions.
- (b) Only the initial ribbon received will be worn. Subsequent awards will be indicated by an authorized star device placed on the first award ribbon (up to four stars, representing a total of five awards).
- (c) SRT Campaign Ribbon request forms will be provided by the SRT Command Staff who will ensure officers have met the award's criteria.
- (d) Recipient will receive a ribbon and certificate.
- (e) Presented by the Chief or designee.

#### 922.5.15 ACADEMIC ACHIEVEMENT RIBBON

- (a) Issued to personnel who submit to the Incentive Pay Coordinator a completed request form.
- (b) The following devices may be worn on the Ribbon:
1. One silver diamond device for a Bachelor's degree,
  2. One single lamp device for a Master's or Doctorate degree.
  3. One single "L" device will be worn on the ribbon for the APD Leadership Academy or Department approved long-term management/leadership school.
  4. The "L" device may be worn with the Diamond or Lamp device if the employee has been awarded both devices.
- (c) The Incentive Pay Coordinator will review the request and approve only if the criteria in General Order 922 (Academic Achievement Ribbon) has been met.
- (d) Issued by Awards Committee Secretary.

#### 922.5.16 MASTER CERTIFICATION RIBBON

- (a) Issued to officers completing the request form and sending to the Awards Committee Secretary.
- (b) Issued by Awards Secretary who will forward the form to the officer's personnel file for archiving.

#### 922.5.17 SAFE DRIVING RIBBON

This award is given at three (3) years, with an authorized star device added at 5, 10, 15 and 20 years of safe driving (up to four stars, representing a total of five awards).

- (a) Eligibility is determined by subtracting one (1) year from the officer's total years of service for each preventable collision. After 5 years, a collision will no longer be

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counted against the officer if no other preventable collision has occurred within the period.

- (b) Officers must initiate receiving the ribbon by following the instructions on the Safe Driving Award form.
- (c) Approved awards are issued by Awards Committee Secretary. Completed forms will be forwarded to the officer's personnel file for archiving.

#### **922.5.18 FITNESS RIBBON**

Initial ribbon is approved by Health Services upon meeting established criteria.

- (a) Subsequent awards will be indicated by an authorized star device placed on the first award ribbon. The additional star device may be added in five (5) year increments, up to four stars, for a total of five (5) awards.
- (b) Issued by Awards Committee Secretary who will forward the completed form to the officer's personnel file for archiving.

#### **922.5.19 CERTIFICATE OF RECOGNITION**

Certificate presented by a commander/manager or designee to show recognition for exceptional effort or for a job well done.

#### **922.6 MEMORABILIA**

Department personnel who wish to distribute memorabilia (i.e. Challenge Coins, hats, t-shirts and etc.) that represent the Austin Police Department, an Austin Police Department unit or shift, and/or displays the Austin Police Department Badge, and/or other similarity are required to have approval by the Chief of Police or the Chief of Police's designee. The requestor must submit a memo requesting approval along with a photograph of the memorabilia to their chain of command up to their Assistant Chief. Pre-approved artwork can be found in the Approved APD Forms folder on the G drive.

Memorabilia shall not be offensive or inflammatory



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## Personal Appearance Standards

### 924.1 PURPOSE AND SCOPE

In order to project uniformity and neutrality toward the public and other members of the Department, employees shall maintain their personal hygiene and appearance to project a professional image appropriate for the Department and for their assignment.

### 924.2 DEFINITIONS

For purposes of this order, the following definitions apply:

- (a) Intermittent shaving – Shaving occurring at irregular intervals; not continuous or daily shaving, with no intent to grow a full beard.
- (b) Trimmed/Groomed beard – Neatly trimmed or groomed edges along the top and bottom edges of a beard, not to extend above the cheekbone, or below the onset of the upper neckline.

### 924.3 GROOMING STANDARDS

The following appearance standards shall apply to all employees unless an employee's current assignment would necessitate an approved exception to the standard or the Chief of Police has granted an exception.

#### 924.3.1 HAIR

Hairstyles of all civilian and sworn employees shall be neat and professional in appearance and shall not be extreme (e.g., spiked, partially shaved to form a design; colored an unnatural shade or sprayed with substances such as glitter, neon, or fluorescent colors). In addition:

- (a) Male Sworn Employees
  1. Hair must not extend below the top edge of the uniform collar while assuming a normal stance and shall not interfere with the wearing of any issued headgear. A medical exemption is required for any deviation from this order. The medical exemption process should follow 924.2.4 (a) 1-3 and also state the reason for the deviation.
  2. Dreadlocks, twists, and braids shall conform to uniform standards and shall be kept clean and neat. They must be proportionate in size, no larger than ½ inch in diameter, and tightly woven to present a neat, professional appearance.
  3. Decorative items will not be worn in the hair.
- (b) Female Sworn Employees
  1. Hair must not extend below the bottom line of the back yoke of the uniform shirt (or comparable area on a shirt without a yoke) and shall not interfere with the wearing of any issued headgear.

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2. Hair clasps or barrettes may be worn but must correspond with the colors of the uniform, employee's hair color or rank insignia. Decorative items will not be worn in the hair.
  3. Dreadlocks, twists, and braids shall conform to uniform standards and shall be kept clean and neat. They must be proportionate in size, no larger than ½ inch in diameter, and tightly woven to present a neat, professional appearance.
  4. Hairpieces or wigs shall not pose a safety hazard and shall present a natural appearance, as well as conform to the grooming standards set forth in this policy.
- (c) Examples are shown below.



#### 924.3.2 MUSTACHES

A short and neatly trimmed mustache may be worn. Mustaches shall not extend below the corners of the mouth or beyond the natural hairline of the upper lip.

#### 924.3.3 SIDEBURNS

Sideburns shall not extend below the bottom of the outer ear opening (the top of the earlobes) and shall be trimmed and neat.

#### 924.3.4 FACIAL HAIR

- (a) Officers may maintain a neat and uniformly-trimmed full beard; no more than one-half inch in length. Beards cut in a pattern are prohibited. Also, shaving, waxing, plucking or otherwise, removal of superfluous hair from the beard for the purpose of aesthetic grooming (shaping, pencil thin, trimming, designer beard, "chin strap" beard, etc.) or other cosmetic effects are prohibited. This section does not prohibit the trimming or grooming required for maintaining a trimmed/groomed beard.
- (b) This policy is intended for those officers wishing to grow a full beard and does not allow for intermittent shaving.
- (c) Examples are shown below.

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#### 924.3.5 FINGERNAILS

Fingernails extending beyond the tip of the finger can pose a safety hazard to officers or others. For this reason, fingernails shall be trimmed so that no point of the nail extends beyond the tip of the finger.

#### 924.3.6 JEWELRY AND ACCESSORIES

No jewelry or personal ornaments shall be worn by officers on any part of the uniform or equipment except those authorized within this manual. Jewelry, if worn around the neck, shall not be visible above the shirt collar.

- (a) Ear cuffs shall not be worn.
- (b) Wristwatches shall be conservative in design and will not display any offensive design, logo or wording.
- (c) Bracelets
  1. Employees in a field duty assignment may not wear bracelets, other than medical alert bracelets.
  2. Employees not in a field duty type assignment may wear bracelets as long as they do not present a hazard or a distraction in the normal work environment.
- (d) Tie Tacks, Tie Bars, and Pins
  1. Only issued or authorized tie bars will be worn with the Class A uniform. Tie bars will be worn horizontally on the lower half of the necktie, midway between the third and fourth buttons from the top.
  2. Only authorized tie tacks and pins may be worn with any APD uniform. Employees will not wear any tie tack or other pin making a political statement, or displaying any offensive design, logo, or wording.

#### 924.4 TATTOOS

While on-duty or representing the Department in any official capacity, every reasonable effort should be made to conceal tattoos or other body art. At no time while on-duty or representing the Department in any official capacity shall any offensive tattoo or body art be visible. Examples of offensive tattoos would include, but not be limited to, those that depict racial, sexual,

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discriminatory, gang related or obscene language. No tattoo or body art, regardless of content, located on or above the neck, shall be visible at any time while on-duty or representing the Department in any official capacity.

**924.5 BODY PIERCING OR ALTERATION**

- (a) Earrings
  - 1. Male employees will not wear earrings.
  - 2. Female employees in a field duty assignment may wear one pair of conservative ear studs.
  - 3. Female employees not in a field duty assignment may wear ear studs, hoops or dangle-type earrings as long as they do not present a safety hazard or distraction in the normal work environment due to their design, size, appearance, or number.
- (b) Any other body piercing which is not concealed by the employee's clothing is prohibited for wear when the employee is representing the Department.
- (c) Body alteration to any area of the body visible in any authorized uniform or attire that is a deviation from normal anatomical features and that is not medically required is prohibited. Such body alteration includes, but is not limited to:
  - 1. Tongue splitting or piercing.
  - 2. The complete or transdermal implantation of any material other than hair replacement.
  - 3. Abnormal shaping of the ears, eyes, nose or teeth.
  - 4. Branding or scarification.



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# Court Appearances

### 935.1 PURPOSE AND SCOPE

This procedure has been established to provide for the acceptance of subpoenas and to ensure that employees appear when subpoenaed, or are available to appear in court when requested and present a professional appearance.

### 935.2 DUTY RELATED COURT APPEARANCES

Employees who receive a subpoena related to employment with the Department are subject to the provisions of this order. Employees are expected to act in a professional manner to ensure the successful conclusion of a case.

#### 935.2.1 SERVICE OF SUBPOENA OR NOTIFICATION

Service of a subpoena or notification requiring the appearance of any Department employee in connection with a matter arising out of the employee's course and scope of official duties may be accomplished by:

- (a) Delivering a copy of the subpoena or notification to the employee.
- (b) Reading of the subpoena in the presence of the employee in a hearing.
- (c) Electronically transmitting a copy of the subpoena through Versadex to the employee.

#### 935.2.2 GENERAL SUBPOENA AND NOTIFICATION GUIDELINES

Court Liaisons shall maintain a log of all Department subpoenas and notifications.

- (a) Employees should be aware that compliance with all served subpoenas and notifications is mandatory.
- (b) Employees may be subpoenaed or notified on short notice. If contacted by a Court Liaison, the employee will be required to appear in court regardless of whether the employee received the subpoena or written notification.
- (c) Employees are responsible for keeping track of all court dates, times, and locations.
- (d) Employees are required to appear in court for all "Must Appear" subpoenas and notifications unless excused by the court.
  1. All ALR subpoenas (e.g., court appearance or telephonic hearing) are considered "Must Appear."
  2. All Municipal Court notifications are considered "Must Appear."
  3. County and District Court subpoenas may be marked as a "Must Appear."
- (e) Employees who will be unable to honor any subpoena or notification shall request to be excused by completing the required documentation (e.g., Motion for Continuance) and contacting the appropriate Court Liaison.
  1. An employee's regular day off and/or living outside the city limits of Austin are not valid reasons for being unavailable for any subpoena.

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2. Approved leave, in-service training, and/or supervisor approval alone does **not** relieve an employee from attending court; employees must complete the required documentation and request to be excused.
3. Employees are responsible for confirming whether they have been excused from court; this can be done by contacting a Court Liaison.
4. If the employee suffers an illness or injury that prevents appearing in court as directed by a previously served subpoena, the employee shall, at least one hour before the appointed date and time, inform the Court Liaison of the situation. It shall be the responsibility of the Court Liaison to notify the court/prosecutor of the employee's unavailability to appear.

#### 935.2.3 ELECTRONIC VERSADEx SUBPOENAS

Court Liaisons will log electronic subpoenas into the Versadex Subpoena Tracking Module and route them to the employee's Versadex queue.

- (a) Employees are required to check the Versadex queue at least once a week during regular duty hours.
- (b) Employees will acknowledge all subpoena notifications in the Versadex queue by selecting "Acknowledge" or "Decline."
  1. Employees who select "Decline" will be prompted electronically to provide a reason for requesting an absence from court and shall include the applicable date range the employee is unavailable.
    - (a) Declining a subpoena notice does not release the employee from complying with the subpoena; it is simply a request made to the court to be excused from appearing on the date indicated in the subpoena.
    - (b) Employees are responsible for confirming with a Court Liaison whether they have been excused from court.
- (c) If an employee is on leave for two weeks or longer for any reason, the employee's immediate supervisor is responsible for checking the employee's queue and notifying a Court Liaison if the employee has a subpoena. The supervisor, Court Liaison, and, if necessary, the employee will confer before the subpoena is acknowledged or declined.

#### 935.2.4 HARD COPY OF SUBPOENA NOTIFICATIONS

Employees receiving a hard copy subpoena or notification will acknowledge it by initialing and dating the subpoena or notification and placing it in a Court Liaison drop box.

- (a) Employees unable to honor a subpoena or notification on the specified date/time shall adhere to the following procedures:
  1. ALR, County, or District Court
    - (a) Notate the reason for not being able to appear on the notification form; and
    - (b) Indicate the date in which the employee will return to duty; and
    - (c) Return the form to a Court Liaison drop box within 24 hours of receipt of the subpoena.



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2. Municipal Court
  - (a) Complete a Municipal Court Motion for Continuance form.
  - (b) Notate the reason for being unable to appear on the Continuance form. Employees will not write the reason for being unable to appear on the subpoena notification form.
  - (c) Give the Continuance form to their supervisor to approve and sign.
  - (d) Fax, interoffice mail, or hand-deliver supervisor approved Continuance forms to the municipal court prosecutor's office. Faxed forms should be placed in a Court Liaison drop box after faxing.
- (b) Employees are responsible for confirming with a Court Liaison whether they have been excused from court.

#### 935.2.5 CIVIL SUBPOENA ACCEPTANCE

- (a) Employees will not accept a civil subpoena for another employee.
- (b) Employees receiving a civil subpoena or a subpoena duces tecum related to an on-duty incident will:
  1. Review the report upon which the incident is based and determine if criminal charges related to the civil case are pending.
  2. Notify the chain of command, up to the Lieutenant, of the subpoena and the employee's determination as to whether criminal charges are pending.
  3. Contact the APD Legal Advisor via email requesting guidance on the appropriate response to the subpoena. Employees will attach a copy of the subpoena to the email and include the determination of whether criminal charges are pending.
- (c) Employees should comply with all other acceptance, appearance, and notification guidelines listed in this section in dealing with civil subpoenas, or as directed by the APD Legal Advisor.
  1. Employees will make every reasonable attempt to appear at the date/time listed on the subpoena, even on short notice, or contact the issuing party to make other arrangements.
  2. Employees unable to comply with the subpoena shall advise their immediate supervisor and the APD Legal Advisor as soon as possible.

#### 935.2.6 COURT APPEARANCE GUIDELINES AND REQUIREMENTS

- (a) Employees will not request personal leave (e.g., vacation, exceptional vacation, compensatory leave, personal holiday), nor will supervisors approve these requests for any date and times the requesting employee has already received and acknowledged a subpoena.
  1. Supervisors may approve these leave requests if the requesting employee provides documentation that a Motion for Continuance has been filed and granted for all court cases occurring during the requested leave period.

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- (b) When a subpoena or notification indicates "MUST APPEAR," employees shall appear in court on the designated date and time.
- (c) When a County or District Court subpoena does not indicate "Must Appear," employees shall:
  - 1. Jury Trials
    - (a) Contact the Court Liaison for specific appearance instructions
  - 2. Pre-Trials and Trials Before the Court
    - (a) Appear on the designated date and time or be available by phone or pager.
      - 1. Phone and pager numbers on file with APD-HR will be used to contact employees.
      - 2. Employees are responsible for ensuring the Court Liaison has the appropriate phone number. Employees may leave a voice mail for the Court Liaison containing alternate phone number(s).
      - 3. Employees will not be compensated for being available by phone.
- (d) The appropriate Court Liaison should be notified as soon as possible when employees will be detained or late.
- (e) Officers are required to sign in on the sign in logs and complete overtime sheets (when overtime is earned) while attending court. Location of logs and overtime forms are outside the court liaison's offices, ALR hearing rooms, Gardner Betts, and the Williamson County courthouse.

#### 935.2.7 FAILURE TO APPEAR

Any employee who fails to comply with the terms of any valid and properly served subpoena may be subject to discipline as well as court-imposed civil and/or criminal sanctions (Tex. Code of Crim. Pro. art. 24.05).

#### 935.2.8 COURT OVERTIME

The guidelines on overtime granted to employees who appear in court are outlined in the current Meet and Confer Agreement.

- (a) When requesting overtime, each employee is responsible for completing an overtime form and forwarding it to the appropriate Court Liaison. The court subpoena must be attached to the overtime form.
  - 1. If the court assignment is after Court Liaison business hours, the employee may place the overtime form and subpoena in a Court Liaison drop box.
  - 2. If the court assignment is a week-long subpoena and the employee does not appear at court, the overtime form and the subpoena may be interoffice mailed to the Court Liaison.
  - 3. The Court Liaison will confirm the information on the form and forward it to the Court Liaison supervisor for approval and routing to APD-HR.
- (b) When a prosecutor requests a meeting with an off-duty employee:

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1. The Court Liaison will determine from the prosecutor if the meeting shall be in person or by phone
  2. The Court Liaison will page and email the officer with the prosecutor's request for a meeting
    - (a) If the meeting is conducted over the phone, the overtime form will indicate the actual length of the phone consultation rounded up to the nearest quarter hour (e.g., .25, .50, .75) as the hours worked.
    - (b) If the meeting is in person, the officer will sign in and out on the sign-in log. The overtime sheet will include the prosecutor's name and be submitted to the Court Liaison.
  3. If a prosecutor contacts an officer directly, the officer shall contact the court liaison prior to any meeting.
- (c) Before an employee submits an overtime request two weeks or more past the date of any related subpoena or court overtime, the employee will first submit a memorandum explaining the delay to the chain-of-command. The chain-of-command will review the circumstances described in the memorandum. A copy of the memorandum will be attached to the overtime form sent to Court Liaison.

#### 935.2.9 PARKING CITATIONS WHILE AT COURT

Employees receiving a parking citation at a metered parking spot while honoring a work related subpoena will adhere to General Order 804 (Department Vehicles) for guidelines on how to dismiss the citation. Employees will follow these guidelines in a timely manner to prevent the fine from being doubled, the vehicle being booted, and the ticket not being dismissed.

#### 935.3 NON-DUTY RELATED SUBPOENAS

Employees receiving a valid criminal or civil subpoena for matters not related to employment with the Department will comply with the requirements of the subpoena. Arrangements for time off to honor the subpoena will be coordinated through the employee's immediate supervisor. Employees will be compensated for a subpoena resulting from a law enforcement related case that originated while the employee was employed by another agency. Employees will follow the same general orders as outlined in 935.2.8.

#### 935.4 COURT TESTIMONY AND INTERVIEWS

- (a) Employees will notify their supervisor and the appropriate prosecutor if they are subpoenaed or otherwise agree to either testify as a witness or assist the defense in any criminal matter. Supervisors will notify the APD Legal Advisor so that the Legal Adviser can review the matter in a timely manner.
- (b) Employees will not receive compensation for testimony as an expert witness without the approval of the Chief or designee. Employees will complete all necessary Secondary Employment documents prior to the testimony being given.
- (c) Employees will not solicit themselves or otherwise encourage their appearance as an expert witness as a result of abilities gained through employment with the Department.

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#### 935.4.1 INTERVIEWS WITH ATTORNEYS

Contact with defense attorneys should be limited to those necessary to protect the legal rights of the accused and to speed the prosecution of criminal cases. Defense attorneys wishing to interview employees beyond that scope should be referred to the appropriate section supervisor or the appropriate prosecuting attorney.

- (a) When an attorney representing the City or an employee in any work-related civil suit needs to interview an employee about a criminal case, the employee's immediate supervisor will be notified.
  1. The supervisor should ensure the interview takes place while the employee is on-duty, if possible.
- (b) When an attorney representing residents in litigation against one another, or in litigation against the City of Austin, wishes to interview an employee concerning an incident, the attorney will be referred to the employee's immediate supervisor.
  1. The supervisor will contact the APD Legal Advisor.
  2. If the Legal Advisor approves an interview, the supervisor should ensure the interview takes place while the employee is on-duty.

#### 935.5 COURT DRESS CODE

- (a) Employees will not wear a uniform or other clothing which identifies them as a member of the Department, or represent themselves as speaking on behalf of the Department, in any cases not related to APD.
- (b) Employees will wear appropriate attire, but not any part of their uniform, if the employee appears in court for any action the employee has brought against the Department.
- (c) Employees appearing in court on a duty related subpoena will adhere to the following dress code:
  1. Sworn employees may wear their Class A, B, or C uniform unless testifying in Federal Court. Body armor is not required when appearing in court.
  2. Civilian employees, and sworn employees not wearing their uniform, will wear:
    - (a) Males:
      1. Business suit and tie; or
      2. Sport coat, slacks and dress shirt with tie.
    - (b) Females:
      1. Dress; or
      2. Skirt or dress slacks with blouse or sweater; or
      3. Skirted or Pant suit.
  3. When on-duty employees are urgently needed in court and do not have time to obtain suitable dress, they may appear in working attire (e.g., Class D uniform) with the approval of a supervisor.

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4. Casual wear is prohibited for court appearances.
  5. Dress code for sworn employees working in undercover operations will be regulated by the appropriate commander and mindful of all provisions of this section.
- (d) Weapon guidelines for sworn employees when not in uniform.
1. Plain clothes officers entering a criminal justice center or courthouse with a weapon are required to:
    - (a) Prominently keep the badge and APD ID displayed; and
    - (b) Allow court security to visually verify the weapon; and
    - (c) Notify the bailiff of each court of the officer's presence and the fact that the officer is armed.
  2. Employees who fail to comply with these requirements will be directed to secure the weapon elsewhere before being granted access to the facility.

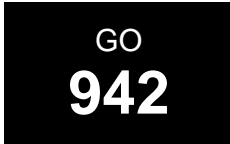
#### **935.6 OUT OF TOWN APPEARANCES**

When employees receive a criminal subpoena to testify in a court outside the City jurisdiction, they will notify their commander/manager through the chain-of-command. The commander/manager will help the employee with travel arrangements. When practical, travel within the state will be by City vehicle. When it is not practical to travel by City vehicle, air travel may be used.

- (a) Travel and living expenses will be advanced. Any witness fees, travel expenses or per diem fees granted to the employee will be refunded to the City.
- (b) Whenever possible, the employee's days off will be changed so that the out of town court appearance and travel will be on-duty. If it is not possible to change the employee's days off, the employee will be given overtime for off-duty court appearances.

#### **935.7 WITNESS FEES**

- (a) Employees may not accept or solicit fees for testifying before any Municipal, County or State Court within Travis County, except the witness fee attached to civil subpoenas or ALR hearings.
- (b) Employees are authorized to accept the witness fee required on subpoenas for the defense in federal court or military installations.
- (c) Employees summoned for jury duty while on-duty may keep jury duty fees paid. When an employee is dismissed before the end of the workday, the employee must return to their assignment for the remainder of the workday.
- (d) Except as provided in General Order 900 (General Conduct and Responsibilities), any other fees collected by an employee for a court appearance will be turned in to the Office of the Chief of Police. Fees will not be retained by an employee without the express approval of the Chief.



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# Training and Career Development

### 942.1 PURPOSE AND SCOPE

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

#### 942.1.1 TRAINING APPROVAL

All internal and external training of APD employees shall be coordinated through the APD Training Academy.

- (a) Employees attending any training that has not been reviewed and authorized by the Department do so at their own risk.
- (b) The Department will not assume any liability for an officer's utilization of information and/or techniques that are not Department sanctioned and which may be contrary to Department orders and procedures.

### 942.2 PHILOSOPHY

The Department seeks to provide ongoing training and encourages all personnel to participate in advanced training and formal education on a continual basis. Training is provided within the confines of funding, requirements of a given assignment, staffing levels and legal mandates. Whenever possible, the Department will use courses certified by the Texas Commission on Law Enforcement (TCOLE).

### 942.3 OBJECTIVES

The objectives of the Training Program are to:

- (a) Enhance the level of law enforcement service to the public.
- (b) Increase the technical expertise and overall effectiveness of our personnel.
- (c) Provide for continued professional development of Department personnel.
- (d) Comply with TCOLE rules and regulations concerning mandatory law enforcement training.

### 942.4 TRAINING

It is the responsibility of the Training commander to develop, review, update and maintain a training plan and to ensure that TCOLE mandated training, in-service training, and Department mandated training is completed by all employees.

- (a) While updates and revisions may be made to any portion of the training plan at any time it is deemed necessary, the Training commander shall review the entire training plan on an annual basis. The plan shall:

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1. Include a systematic and detailed method for recording and logging all training for all personnel.
2. Include information on curriculum, training material, training facilities, course and student scheduling.
3. Address state required minimum mandated training for the licensing of sworn officers and the training of non-sworn employees.

#### 942.4.1 MANDATED TRAINING

Training requirements include, but are not limited to:

##### (a) **Cadet Recruits and Sworn Officers**

1. Individuals hired by the Department as a Cadet Recruits shall complete all mandated training in order to be commissioned by the Austin Police Department.
2. Commissioned officers of the Austin Police Department shall complete:
  - (a) All mandated TCOLE recertification training to maintain TCOLE licensing.
  - (b) All training mandated by department general orders and the Training Division.
    1. All courses sent to an officer's INFORMA queue by the Training Command are considered MANDATORY and shall be completed within 30 working days (excluding vacation, sick, military leave, FMLA, etc.).
    2. During personnel inspections, supervisors shall ensure officers have completed their INFORMA training. This will be documented on form PD0128.

##### (b) **Civilian**

1. Individuals hired by the Department to work in a civilian capacity shall complete:
  - (a) all mandated training in order to perform all duties and functions of their position.
  - (b) Civilian employees shall receive additional job-related training as per City of Austin Personnel Policy.

#### 942.4.2 WEB BASED TRAINING

The Training Academy may deliver online courses via web based training. The courses may fulfill mandatory or elective training hours. This order also applies for courses taken through the TCOLE POSEIT website. If TCOLE and APD both offer the same course, officers will register for the APD course as it will include general orders and address APD needs.

- (a) Web based courses can be completed through the intranet by utilizing a Department computer or off-site through the internet utilizing a personal computer.
  1. Employees will not give access to the training website or material to anyone without approval of the Training commander or designee.

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2. Courses will consist of training content followed by an exam. To receive credit for the course, employees must successfully pass the exam. Upon completion, course information and exam score will be electronically transmitted to the Training Academy.

#### 942.4.3 SHIFT BRIEFING TRAINING

Shift briefing training is a technique that may supplement other training. Shift briefing training is a useful element of agency training if it is well managed and supervised. The goal of this training should be to keep officers up-to-date between formal training sessions.

- (a) This training is usually conducted by the shift sergeant or corporal but may include other personnel from other units (e.g., Communications, Forensics).
- (b) This training shall be designed with enough flexibility as to fit into a short and succinct time period.
  1. Shift briefing training will generally be less than one hour in duration and will be credited as Department training.
  2. At times, the Training Division may supply lesson plans for instruction for shift briefing training. If the training qualifies for TCOLE credit, the instructor shall follow the "Guidelines for Conducting a Continuing Education Course" established in this order.

#### 942.4.4 TRAINING FOR NEWLY PROMOTED EMPLOYEES

All newly promoted employees shall be required to participate in mandated training appropriate for their new position/rank.

- (a) Whenever possible, this training will occur prior to promotion. However, if this is not feasible, the training will occur within the first year following the date of promotion.
- (b) The training may be provided directly by the Department or through another source.
  1. The Training Academy will assist sworn employees and the employees' next-level supervisors in identifying appropriate training and locating sources for instruction applicable to the new rank.
  2. APD-HR will assist civilian employees and the employees' next-level supervisors in identifying appropriate training and locating sources for instruction applicable to the new position.

#### 942.4.5 PROFESSIONAL DEVELOPMENT TRAINING REQUIREMENTS

APD's professional development training requirements were established to provide incumbent and future lieutenants and commanders with a specific curriculum that must be completed during their tenure in a rank. The following mandatory training specifies the requirements that must be achieved at both levels during an officer's tenure as a lieutenant and commander.

- (a) Within three years of being promoted to the rank of lieutenant or commander, an officer must be enrolled in an APD approved long-term management school. The Training Academy will maintain a list of approved courses. Assistant chief approval is required



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for any substitutions including attendance to a management school that is not on the approval list.

- (b) Lieutenants and commanders must also attend and successfully complete additional APD sponsored courses as determined by Executive Staff and the Training Academy.
- (c) The Chief's Office will determine which employees are selected each year to attend approved management courses. Selections will be based upon consideration of all of the following factors:
  - 1. The individual's development needs.
  - 2. The individual's span of control.
  - 3. Previous management training.
  - 4. Tenure in position.
  - 5. Plans for the individual to assume more leadership responsibility.
  - 6. Budgetary constraints.

#### **942.5 GUIDELINES FOR CONDUCTING A CONTINUING EDUCATION COURSE**

All internal and external training must be coordinated through the Training Academy. These guidelines shall be followed when any APD instructor or outside source instructor is providing Department approved training to APD personnel, regardless of whether TCOLE credit is being requested. For additional information contact the Continuing Education Unit (CEU).

- (a) Thirty (30) days prior to the start of any training course provided to APD personnel, the CEU supervisor or designee needs the following items electronically (e.g., CD, DVD, email):
  - 1. Course Lesson Plan.
  - 2. Course Agenda/Schedule/Outline.
  - 3. Power Point presentation. If there are any audio or video clips embedded in the Power Point, a CD/DVD must be made of the entire presentation and sent to the CEU.
  - 4. Any course handouts (e.g., pamphlets, diagrams, instructor evaluations).
  - 5. A VITA/bio for each person providing any instruction as part of the class/course.
  - 6. TCOLE or other roster.
- (b) Within 5 days after completion of a course, an instructor must:
  - 1. Email the completed roster to the CEU; and
  - 2. Send the original roster with signatures to the APD Training Academy.
- (c) If TCOLE credit is being requested for the course and an instructor cannot provide any of the required materials due to intellectual property or proprietary interest reasons (e.g., copyright), the instructor must provide written documentation on company letterhead to the CEU supervisor or designee thirty (30) days prior to the start of any training course to include:

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1. The reason why the required materials cannot be provided to APD; and
2. A guarantee the instructor shall provide the materials to TCOLE upon request by TCOLE.

#### **942.6 TRAINING ADVISORY BOARD**

The Training Advisory Board serves to review the training practices of the Department and to make recommendations to the Chief of Police regarding needed changes in curriculum, general orders and direction, and meeting the guidelines for procedure, purpose and reporting, as directed by TCOLE.

#### **942.7 EMPLOYEE TRAINING RECORDS**

The Training Division is responsible for the creation, filing and storage of all training records in compliance with TCOLE standards using the Texas Commission on Law Enforcement Data Distribution System for sworn peace officer records. Training records shall be retained as long as the employee's personnel file is retained.

#### **942.8 TRAINING PROCEDURES**

For purposes of attendance, all training is considered on-duty and thus falls within compliance for time and attendance.

- (a) Employees assigned to attend training shall attend unless excused by their immediate supervisor. Excused absences from mandatory training should be limited to:
  1. Court appearances.
  2. Approved personal leave.
  3. Sick leave.
  4. Physical limitations preventing the employee's participation.
  5. Emergency situations.
- (b) Employees unable to attend a mandatory training shall:
  1. Notify their supervisor as soon as possible, but no later than one hour prior to the start of training.
  2. Notify the course instructor or Training Academy/APD-HR, if possible.
  3. Make arrangements through their supervisor and the Training Division/APD-HR to attend an alternate date.
  4. Update their attendance status for any missed training.

##### **942.8.1 ADDITIONAL GUIDELINES**

- (a) Approval for special assignment to attend a school, conference or seminar at the employee's own expense may be given provided the appropriate selection procedures have been followed. The supervisor approving the school may also authorize the special assignment.

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- (b) Prior approval must be given by the employee's assistant chief/director for any training that includes one or more of the following elements:
  - 1. Department funds are to be expended for travel, tuition, and meals.
  - 2. More than two (2) City vehicles are to be used for transportation.
  - 3. There is reason to believe that the training may conflict with established orders.
- (c) Employees will be compensated in accordance with current Department General Orders when the duration of the actual training hours, including travel for out-of-town trips, exceeds forty (40) hours in one week.
  - 1. Training conducted locally will not be eligible for travel/per diem expenses.
  - 2. Training conducted out-of-town may be eligible for travel/per diem reimbursement but only with prior approval.
- (d) If prior approval is obtained from the employee's commander/manager to use a privately owned vehicle, mileage will be paid at the current City rate.
- (e) Employees wanting to receive cash advances must submit the request to Financial Management at least four (4) weeks in advance of departure.
  - 1. Monies advanced for travel will be on an individual basis.
  - 2. Each person will be responsible for submission of his own travel vouchers upon completion of the travel and/or training.

#### 942.8.2 DRESS CODE

Employees will attend training, conferences, and seminars in uniform or authorized plain clothes attire.

- (a) A polo-type shirt is considered part of the authorized plain clothes attire while attending training.
- (b) The coordinator or sponsor of the training may direct an employee to wear other attire that is more appropriate to unusual training activities or conditions (e.g., tactical courses, physical training, maintenance/repair course).
- (c) APD Training may allow employees to wear casual attire (e.g., denim jeans, athletic shoes) for training conducted at APD facilities.

#### 942.8.3 LODGING

All requests must be submitted on form PD0224 and approved by the APD Budget Committee.

- (a) All employees attending approved out-of-town training and/or required travel will be authorized their own single occupancy room.



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## Smoking/Tobacco Use

### 946.1 PURPOSE AND SCOPE

The U.S. Surgeon General has determined that second-hand smoke is hazardous to one's health. Tobacco products may also be offensive to employees and the public.

### 946.2 POLICY

- (a) Employees shall not use tobacco products (e.g., cigarettes, chewing tobacco, electronic cigarettes) while engaged in official police business with the public or in any City building or City vehicle.
  - 1. This provision does not apply when conducting a custodial interrogation in an interview room, which is designated as a smoking area in accordance with the City ordinance and when the person being interrogated is also a user of tobacco.
- (b) Employees who smoke or use electronic cigarettes on-duty while working at a Department facility must do so during authorized breaks and in designated smoking areas.
- (c) Employees shall not use tobacco products in the sally port and shall not carry tobacco products into the booking area of any jail facility.



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## Secondary Employment

### 949.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines for employees who work overtime. Secondary employment is a privilege, not a right. While allowing employees to pursue legitimate sources of supplemental income, it is imperative to maintain an agency in which its employees are physically fit and mentally alert. Additionally, the appearance of impropriety must be avoided. The Chief, or designee, reserves the right to approve, deny, revoke, add restrictions or allow exemptions to any provision of this order.

#### 949.1.1 DEFINITIONS

For purposes of this order, the following definitions apply:

- (a) Department Overtime - As defined in General Order 955.1.1; which by definition does not include court overtime, late calls, overtime related to workload, or emergency holdovers.
- (b) Secondary Employment - Any employment where the employee works directly for an individual or business other than the Austin Police Department, either law enforcement related or non-law enforcement related.
  - 1. Law Enforcement Related Employment (LERE) - Any secondary employment that is conditioned on the actual or potential use of law enforcement powers by the officer (e.g., private security contracts).
  - 2. Non-Law Enforcement Related Employment (Non-LERE) - Any secondary employment that is not conditioned on the actual or potential use of law enforcement powers by the off-duty employee (e.g., lawn care business, real estate agent).
- (c) Special Event - is an event that:
  - 1. Involves an assembly of 100 or more individuals at a city facility, other than the Austin Convention Center, Long Center, or Palmer Events Center;
  - 2. Impedes, obstructs, impairs, or interferes with normal vehicular or pedestrian traffic on a city street, sidewalk, alley, walkway, or other city public right-of-way other than as permitted under Austin Code of Ordinances Chapter 14-8 (Temporary Closure for a Right-of-Way Event); or
  - 3. Is temporary, involves an assembly of 100 or more individuals, and is inconsistent with the permanent use to which the property may legally be put, or the occupancy levels permitted on the property, and includes one of the following:
    - (a) Set up of temporary structures including, but not limited to, tents, stages, or fences;
    - (b) Sound equipment as defined in Austin Code of Ordinances Section 9-2-1 (Definitions); or
    - (c) Consumption of food and/or alcohol.

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- (d) Supervisor - Includes the rank of Sergeant and above.
- (e) Manager - Includes the rank of Lieutenant and above.

#### **949.2 SPECIAL EVENTS**

The Special Events Commander will have discretion on whether a special event as defined in this order will be required to be coordinated by APD Special Events or whether an employee may hold the contract.

- (a) All sworn employees who are authorized to work secondary employment and who meet the tenure requirements outlined in this order may be allowed to work any secondary employment that has an approved contract on file with the APD Special Events Unit.
  - 1. It is the individual employee's responsibility to confirm that there is a valid contract on file with APD Special Events.
- (b) Employees applying to be the contract holder on special events approved by the Special Events Commander as employee held contracts must meet the requirements outlined in this order and follow the application approval process.
- (c) Employees who are current contract holders for special events that would no longer be approved as employee held contracts may continue to hold the contract as long as they maintain ownership of the contract. These types of contracts will be turned over to the APD Special Events Unit when the employee holding the contract no longer wishes to be the contract holder, no longer works for the Department, or at the discretion of the Chief or designee.

#### **949.3 SECONDARY EMPLOYMENT QUALIFICATION REQUIREMENTS**

All LERE secondary employment must be within the city limits of Austin.

##### **949.3.1 TENURE REQUIREMENTS FOR SECONDARY EMPLOYMENT**

The following tenure requirements apply to individuals who wish to work secondary employment unless otherwise approved by the Chief or designee.

- (a) Police Cadets will not engage in any type of secondary employment or department overtime as defined by General Order 955.1.1.
- (b) Sworn employees must have the following tenure requirements prior to working secondary employment:
  - 1. Non-LERE - At least six (6) months from the date of commissioning with APD.
  - 2. LERE - At least one (1) year from the date of commissioning with APD unless the employee graduated from a modified academy in which case he may engage in LERE after six (6) months from the date of commissioning with APD.
  - 3. Probationary Police Officers or officers assigned to the Field Training Program will not engage in department overtime as defined by General Order 955.1.1 unless they are in Solo Phase.

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- (c) Sworn employees with less than two (2) years of being commissioned with APD will not hold a secondary employment contract for LERE unless:
  1. The contract is for a courtesy officer at an apartment complex which the applicant resides; and
  2. The applicant is the sole employee for that contract.
- (d) Civilian employees do not have a City tenure requirement to apply for secondary employment.

#### 949.3.2 CONTRACT HOLDER RANK REQUIREMENTS

Any sworn employee that is approved to work secondary employment and who meets the requirements of this order may be the contract holder of an approved secondary LERE contract with the following exceptions:

- (a) A supervisor shall be the contract holder when four (4) or more officers are likely to have to work simultaneously at the same location. A corporal or detective may not function as a supervisor for this requirement.
- (b) A manager, as defined in this order, shall be the contract holder when 20 or more officers are likely to work simultaneously at the same location.

#### 949.3.3 SECONDARY EMPLOYMENT AS A COURTESY OFFICER FOR APARTMENT COMPLEX

- (a) Officers receiving discounted rent in exchange for service as a courtesy officer are considered to be working an LERE assignment. Officers are prohibited from accepting discounted rent or reduced rental rates in exchange for these services unless all secondary employment paperwork has been submitted and approved.
- (b) Courtesy officers shall confine their duties to those of a law enforcement nature. Notifications of evictions, collection of rent, bad checks, and enforcement of complex rules, regulations or policies that are not violations of the law are strictly prohibited.
- (c) All officers working as a courtesy officer are required to complete a full secondary employment packet even when multiple officers work at the same location.

### 949.4 SECONDARY EMPLOYMENT APPLICATION PACKETS

#### 949.4.1 SECONDARY EMPLOYMENT APPLICATION FORMS

All forms associated with this order can be found in electronic form at G:\Public\Public Data for APD Only\Approved APD Forms\Secondary Employment Forms.

- (a) **Application for Secondary Employment (PD0036)** – This form shall be completed for each new business or prospective employer that wishes to hire an APD employee. All secondary employment contracts are valid for a maximum of two (2) years from the effective date.
  1. Only one individual employee shall complete the Application for Secondary Employment contract as the contract holder when attempting to establish a new secondary employment agreement with a business or prospective employer,

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- when renewing an existing secondary employment contract, or when taking over as the primary officer of the contract.
2. A contract must be on file for each business or event an APD employees wishes to work.
  3. For events permitted by the City of Austin, the Application for Secondary Employment will be completed with the primary promoter of each event, not a sub-contractor, as the business name.
- (b) **Secondary Employment Cancellation Form (PD0036A)** – This form should be completed when an employee wishes to cancel a secondary employment contract prior to the expiration date.
  - (c) **Master Liability Agreement for LERE Secondary Employment (PD0036B)** – This additional form is required for all secondary LERE employment, other than Department overtime.
  - (d) **Apartment Complex Courtesy Officer (PD0036C)** – This form is required to be completed by the property owner/manager when an employee is engaged in secondary employment as a courtesy officer.
  - (e) **Overtime Log (PD0036D)** – This is a log of all overtime worked by sworn employees. The log will be maintained by unit supervisors and saved in a network group folder.
  - (f) **Secondary Employment Revocation Form (PD0036E)** – This form may be submitted by any supervisor in the officer's chain-of-command that believes revocation of a secondary employment contract is in the best interest of the Department.
  - (g) **Secondary Employment Exemption Request (PD0295)** – This form is used when an employee wishes to work for a nationally known or recognized organization, such as, Wal-Mart or Best Buy, and the hiring manager/supervisor refuses to provide their personal information for the background check through RTCC. This form takes the place of the Secondary Employment Application Request and must be sent through the chain-of-command to the Chief of Police for approval.
  - (h) **COA Secondary Employment Acknowledgement Form (PD0301)** – This form shall be completed and submitted to APD Human Resources by civilian employees after receiving chain-of-command approval to work secondary employment.

#### 949.4.2 SECONDARY EMPLOYMENT APPLICATION PACKETS

The following forms are required for each application packet listed below.

- (a) Law Enforcement Related Employment (LERE) Application Packet:
  1. Application for Secondary Employment (PD0036); and
  2. Master Liability Agreement for LERE Secondary Employment (PD0036B).
- (b) Courtesy Officer Secondary Employment Packet:
  1. Application for Secondary Employment (PD0036);
  2. Master Liability Agreement for LERE Secondary Employment (PD0036B); and



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3. Apartment Complex Courtesy Officer (PD0036C).
- (c) Sworn Non-Law Enforcement Related Employment (Non-LERE) Application Packet without Exemption Request:
  1. Application for Secondary Employment (PD0036).
- (d) Sworn Non-Law Enforcement Related Employment (Non-LERE) with Exemption Request:
  1. Secondary Employment Exemption Request (PD0295).
- (e) Civilian Secondary Employment Application Packet without Exemption Request:
  1. Application for Secondary Employment (PD0036); and
  2. Civilian Secondary Employment Acknowledgement Form (PD0301).
- (f) Civilian Secondary Employment Application Packet with Exemption Request:
  1. Secondary Employment Exemption Request (PD0295); and
  2. Civilian Secondary Employment Acknowledgement Form (PD0301).

#### **949.5 SECONDARY EMPLOYMENT APPLICATION PACKET PROCESS**

Secondary employment requests must be approved by the Department. All applications must first be sent to the Real Time Crime Center (RTCC) for a background check unless an APD Secondary Employment Exemption Request (PD0295) has been completed and approved.

Secondary employment requests originating from the Austin Police Association (APA) will be handled by the APA president and approved by the Staffing Lieutenant. Officers working secondary employment through the APA will not need to submit an application.

Denied applications may be grieved according to General Order 904 Grievance Procedures. The Chief of Police has final authority in decisions to accept or deny any prospective employer/business.

Secondary Employment Application Packets will be processed in the following order:

- (a) APD Real Time Crime Center (RTCC):
  1. The applicant will email the Secondary Employment Application Packet to the RTCC at [APDWatchCommander@austintexas.gov](mailto:APDWatchCommander@austintexas.gov). The RTCC will confirm the location of the secondary employment is within the city limits of Austin. Additionally, the RTCC will conduct a background investigation for the business, owner(s), and/or prospective employer(s) to identify if they are found to have been:
    - (a) Convicted of any felony;
    - (b) Affiliated with persons known to have a criminal record; or
    - (c) Engaged, or planning to engage in, criminal activity.
  2. The RTCC will electronically process the application in the following manner:

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- (a) Properly completed applications that were denied will be emailed to:
    - 1. [APDSpecialEvents@austintexas.gov](mailto:APDSpecialEvents@austintexas.gov) for sworn employees. The applicant and their supervisor will be copied on the email; or
    - 2. The applicant and their supervisor for civilian employees.
  - (b) Properly completed applications that were approved will be returned to the applicant by email.
- (b) Applicant Chain of Command:
- 1. Applicants are responsible for emailing the approved application packets or exemption requests to their immediate supervisor for review.
    - (a) Supervisors should not sign any Secondary Employment Application unless it has been reviewed and approved by the RTCC.
    - (b) Supervisors will ensure the type of secondary employment falls within the guidelines of Department General Orders.
  - 2. Supervisors will email approved application packets or exemption requests to the next level supervisor and up the chain-of-command as follows:
    - (a) For officer, detective, corporal, or sergeant applicants, as well as non-sworn equivalents, approval must proceed up to the appropriate commander or non-sworn equivalent.
    - (b) For lieutenant and commander applicants, as well as non-sworn equivalents, approval must proceed up to an assistant chief or assistant department director.
    - (c) Secondary Employment Exemption Request form (PD0295) must proceed up to the Chief of Police.
  - 3. Applications and exemption requests approved by the applicant's chain of command are handled as follows:
    - (a) The highest-ranking member of the chain of command will forward the application packet or exemption request to the employee's immediate supervisor.
    - (b) Immediate supervisors shall retain a copy of all paperwork and :
      - 1. Email sworn application packets and exemption requests to APD Special Events at [APDSpecialEvents@austintexas.gov](mailto:APDSpecialEvents@austintexas.gov). The applicant will be copied on the email.
      - 2. Email civilian application packets and exemption requests to Human Resources at [APDHR@austintexas.gov](mailto:APDHR@austintexas.gov). The applicant will be copied on this email.
  - 4. Applications denied by anyone in the chain-of-command will be handled by the immediate supervisor as follows:
    - (a) Ensure that the paperwork is clearly marked as "DENIED" with an explanation as to the reason;

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- (b) Retain an electronic copy of all paperwork; and
  - 1. Email sworn application packets and exemption requests to APD Special Events at [APDSpecialEvents@austintexas.gov](mailto:APDSpecialEvents@austintexas.gov). The applicant will be copied on this email.
  - 2. Email civilian application packets and exemption requests to the applicant.
- (c) APD Special Events Unit
  - 1. The APD Special Events Unit will confirm that the secondary employment application packet has all the necessary documentation filled out accurately, and:
    - (a) Email the approved application to the employee and give the employee the effective date; or
    - (b) Return the application to the chain-of-command if an issue is found with the application.
  - 2. All secondary employment packets will be retained for the contract length plus one year.

**949.5.1 SECONDARY EMPLOYMENT ORIGINATING FROM THE AUSTIN POLICE ASSOCIATION (APA)**

There are instances in which requests for LERE originate from the APA. In emergency situations, the Commander of Special Events may grant interim approval for LERE requests originating from the APA.

- (a) APA representatives will adhere to the following procedure when requesting LERE interim approval in emergency situations.
  - 1. APA representatives will contact the Commander of Special Events and explain the circumstances surrounding the emergency situation that requires LERE.
  - 2. If the Commander of Special Events determines the situation is an emergency that requires LERE, he or she will contact the RTCC and request that the required background investigation be expedited to meet the needs of the emergency situation that requires LERE.
  - 3. The APA representative will then complete a Secondary Employment Application and deliver it to the RTCC in order to conduct the background investigation.
  - 4. Once the background investigation is completed, the APA representative will contact the Commander of Special Events and inform him or her that the application was approved by the RTCC.
  - 5. The Commander of Special Events will then give verbal approval to the APA representative granting interim approval for the emergency situation requiring LERE.

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6. The Commander of Special Events will then send an email to the APA representative giving him or her two (2) work days to complete and turn in the required paperwork found in section 949.3.4 of this order.
- (b) Interim approval will not be granted for any application denied by the RTCC. Any applications denied by the RTCC will be processed in accordance with this order.
- (c) The Commander of Special Events is ultimately accountable for granting interim approval for LERE in emergency situations; however, he or she may delegate this authority to his or her designee.
- (d) For purposes of this order and procedure, an emergency is any situation that is a sudden, unexpected, or impending situation that may cause injury, loss of life, damage to or theft of property, and/or interference with the normal activities of any entity (real or perceived) and which, therefore, requires an immediate law enforcement presence. Examples of emergency situations include, but are not limited to, the following:
  1. The bank manager of a bank that was robbed is requesting to hire officers in an LERE capacity.
  2. A business is requesting to hire officers in an LERE capacity to provide security after a recently terminated employee has threatened violence in retaliation.
  3. A business is requesting to hire officers in an LERE capacity to provide security after a power failure has left hundreds of thousands of dollars in property vulnerable to theft.

#### **949.5.2 CANCELLING A SECONDARY EMPLOYMENT APPLICATION**

Employees who wish to cancel any secondary employment contract they are on prior to the expiration date of the contract must complete the required Secondary Employment Cancellation form (PD0036a).

- (a) The effective date of cancellation shall not be prior to the date the employee is submitting the cancellation form.
- (b) Cancellation forms shall be retained by APD Special Events Unit for one year from the date of cancellation.

#### **949.6 SECONDARY EMPLOYMENT GUIDELINES AND RULES**

All employees shall abide by the following guidelines when working secondary employment:

- (a) An employee's first duty is to the City and the Department. An employee will respond to any order to return to duty when issued by a supervisor, even if the employee is working secondary employment when called.
- (b) A sworn employee's primary responsibility is the enforcement of state laws and city ordinances. Sworn employees are reminded of the Code of Ethics and Oath of Office which shall not be circumvented by any secondary employment agreement.

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1. Sworn employees engaged in secondary employment work will not refuse to assist any resident requesting reasonable law enforcement assistance. Officers are expected to take any necessary action to assist residents in this capacity.
- (c) Employees performing secondary employment are subject to the same rules and regulations as if they were on-duty.
- (d) Employees performing secondary employment are required to notify their immediate supervisor regarding any acts of potential misconduct and/or disciplinary actions taken against them related to their secondary employment.
- (e) Employees shall honor all subpoenas, even when the subpoenas create a scheduling conflict with the secondary employment assignment.
  1. Employees shall be required to take personal leave for any civil trial resulting from secondary employment that is held during the employee's regularly scheduled workday; However, sworn employees may be placed on Special Assignment by their supervisor if the civil trial is a result of a police related matter.
- (f) Only the secondary employer is allowed to pay an employee for secondary employment. Cash payments from an employer are prohibited. All payments will be made by check, PayPal, electronic transfer, direct deposit, or other electronic method approved by the Special Events Commander, and must be executed from the employer to individual employees. One employee may pick up and distribute all checks but under NO circumstances shall any employee accept cash payments.
- (g) Employees serving as coordinators of secondary employment assignments shall act only as an administrative liaison between the secondary employer and the other employees working for the employer.
  1. Coordinators shall not exercise hiring or firing authority over other employees working for the secondary employer. Only employers may hire or terminate employees.
  2. Coordinators shall not receive any fee or other remuneration from other employees for any action as the coordinator.
  3. Coordinators shall maintain schedules of dates/times worked by officers for a minimum of 6 months.
- (h) Employees will report any alleged act of potentially significant misconduct by another employee engaged in secondary employment to that employee's chain-of-command or Internal Affairs.

#### 949.6.1 UNIFORM AND EQUIPMENT REQUIREMENTS

- (a) Unless approved by Special Events Commander, sworn employees will work special event LERE assignments in their patrol uniform (no specialized unit uniforms allowed)

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and carry department issued equipment that is normally worn with the officer's patrol uniform (e.g., radio, baton, OC, handcuffs).

1. Officers will carry the necessary forms and citations reasonably required for the assignment.
- (b) Employees working non-LERE assignments will not use any department issued equipment or uniform.
- (c) Employees will not wear any part of an APD uniform, or uniform of similar appearance, while engaged in any secondary employment outside the corporate city limits of Austin unless approved by the Chief or designee.
- (d) Commanders may approve plain clothes LERE assignments:
  1. If at least two (2) officers are assigned when police enforcement or intervention is likely (e.g., focus is targeting criminal behavior, at a congested public place where crime is likely); or
  2. If one (1) officer is assigned when police enforcement or intervention is not likely (e.g., weddings, apartment courtesy officer).
- (e) Police vehicles will not normally be used for secondary employment unless assigned through the Special Events Unit as department overtime.
  1. If a police vehicle is needed:
    - (a) Approval for the police vehicle(s) to be used for secondary employment must be obtained from the Chief of Police or designee; and
    - (b) The police vehicle must be equipped with emergency lights and siren.
  2. In situations where use of a police vehicle by an employee has been approved, the secondary employer must agree to:
    - (a) Pay applicable vehicle rental fees as outlined in the City of Austin's currently adopted fee schedule; and
    - (b) Obtain and show proof of "hired and non-owned" vehicle coverage in the amount not less than One Million Dollars (\$1,000,000) per accident.

#### 949.6.2 RESTRICTIONS AND PROHIBITIONS

The following section contains the restrictions and prohibitions on secondary employment.

- (a) Unless approved by the employee's assistant chief, employees are restricted from the following:
  1. All employees are prohibited from working LERE secondary employment while on Limited Duty, Extended Limited Duty, Restricted Duty, Administrative Duty, Suspension, or Extended Leave.
    - (a) Employees on Restricted Duty, Administrative Duty, or Suspension who observe conduct that requires a police response will call for an on-duty unit to handle the situation.

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- (b) Employees that work as a courtesy officer may be exempted from this with the permission of the assistant chief or designee.
- 2. All employees are prohibited from working Non-LERE secondary employment that is inconsistent with any limitations or restrictions placed on the employee while on Limited Duty, Extended Limited Duty, Restricted Duty, or Extended Leave.
  - (a) Sworn employees may request to work Non-LERE secondary employment by following the procedures outlined in General Order 958 (Limited Duty, Return to Work, and Pregnancy).
- 3. All employees are prohibited from working any secondary employment the same day the employee has failed to report for regular duty due to an illness or injury.
- 4. Employees are prohibited from performing any secondary employment during on-duty hours.
- 5. Prohibition to work secondary employment will be determined by the employee's commander or civilian manager.
- (b) Employees are prohibited from accepting or engaging in any secondary employment that might conflict or interfere with an employee's duty and responsibility to the Department.
- (c) Employees cannot recruit or solicit persons or organizations for, nor advertise for or accept, any secondary employment while on-duty or in uniform.
- (d) No one above the rank of commander will work LERE, or coordinate or schedule the work of other employees involved in LERE work.
- (e) Employees may not engage in any type of secondary employment which may:
  - 1. Render the employee unavailable to respond during an unanticipated emergency; or
  - 2. Physically or mentally exhaust the employee to the point that the employee's performance is affected; or
  - 3. Require any special consideration for scheduling the employee's regular duty hours; or
  - 4. Bring the Department into disrepute or impair the operation and/or efficiency of the Department; or
  - 5. Bring the employee into disrepute or impair the employee's effectiveness.
- (f) Confidential information obtained by the Department or in an employee's official capacity with the Department may not be used in any secondary employment unless the information is used in connection with law enforcement duties. This provision does not constitute an exception to any confidentiality requirements contained in law or other Department orders and regulations.
- (g) Sworn employees will not perform LERE outside the corporate city limits of Austin unless approved by the Chief or designee.

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- (h) Employees shall not be permitted to obtain a permit or license from the Texas Board of Private Investigators and Private Security Agencies.
- (i) Sworn employees shall not be permitted to be a deputy or hold a commission from any other law enforcement agency (e.g., local, state, federal).
- (j) APD employees working secondary employment will not impound or tow vehicles from Special Event Temporary No Parking Zones.
- (k) Employees acting as landlords, property owners, or property managers will limit any civil process to the filing of and responding to court process.
  - 1. An employee may not personally take any further action including, but not limited to the following:
    - (a) Enter a property to seize an item
    - (b) Change a lock to deny tenant access, or
    - (c) Participate in an eviction.
  - 2. An employee may hire another non-APD employee to perform any action allowed under an agreement or by law.
- (l) Patrol Officers, while on-duty, shall not self-initiate or self-assign a response to any property for which they are employed as a courtesy officer unless dispatched to that location by Communications, authorized by an APD supervisor, or the call is a Priority 1 or Hot Shot.
  - 1. Nothing in this section prohibits an employee from taking action when required by law or departmental general orders.
- (m) Authorization for secondary employment privileges of any employee may be revoked at any time by any supervisor in the employee's chain-of-command when an APD Secondary Employment Revocation Form (PD0036e) is completed documenting specific evidence that such action is in the best interest of the Department.
  - 1. After the employee initials the notice of revocation, a copy of the Revocation Form will be given to the officer. A copy of the Revocation Form will be maintained by the immediate supervisor and the original forwarded to the APD Special Events Unit.
  - 2. APD Special Events Unit will log this info into the Special Event Unit Secondary Employment Database. Any supervisor wishing to obtain information regarding a revoked application, may call or email the Special Event Unit sergeant and obtain that information.
- (n) The following are examples of some grounds for revocation of secondary employment privileges. This list is for example purposes only, and is not intended to be all inclusive:
  - 1. Apparent abuse of sick leave.
  - 2. Sleeping or being inattentive on-duty.
  - 3. Tardiness due to conflicts in work schedules.
  - 4. Damage to the reputation of the Department.



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5. Acts of misconduct associated with the secondary employment.
  6. Repeated physical injuries incurred during secondary employment.
  7. Evidence of debilitating stress from the secondary employment.
  8. Any conflict of interest that may develop or become known after approval of the employment was granted.
  9. Failure to comply with the TCOLE's firearm's qualification standards will result in suspension of secondary employment privileges until the standards are met.
- (o) Officers will not inquire into the immigration status of a person while the officer is engaged in a secondary employment contract with:
1. A hospital or hospital district.
  2. A school district or open-enrollment charter school.
- (p) Officers working secondary employment for a hospital, school district or open-enrollment charter school shall not provide assistance to ICE for operations unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.
- (q) Officers working any secondary employment shall not provide assistance to ICE for operations at a place of worship unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.

#### 949.6.3 PROHIBITED TYPES OF SECONDARY EMPLOYMENT

Employees shall not work for, or engage in, the following types of secondary employment:

- (a) A bad check or bill collector.
- (b) A repossession agent or agency.
- (c) A wrecker company.
- (d) Any other employment in which law enforcement authority might be used to collect money or merchandise for private purposes.
- (e) Where it is expected the employee will enforce company policies or rules (commonly known as "house rules").
- (f) A bouncer.
- (g) A bar or other establishment or event where liquor, beer, or other alcoholic beverages are sold and consumed on premises and the sale of alcohol is the principal source of income.
  1. The Department shall have the absolute discretion to determine which businesses, establishments or events fall within this section.
  2. This includes contracting with a leasing company for "strip centers" where a bar or other such drinking establishment is a tenant, and the obvious reason for the need of officers is due to that tenant.

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3. This section does not normally apply to businesses (e.g., restaurants, bowling alleys) whose primary source of income is not from the sale of alcohol.
  4. This section does not apply to City owned facilities, City sponsored events, or APD coordinated assignments.
- (h) Any employment which involves the manufacture or transportation of alcoholic beverages as the principal business.
- (i) A courier of monies, jewels, bonds, securities, or other things of value, except as additional security for such a person or business.
- (j) A pawnshop.
- (k) A sexually oriented business.
- (l) Protection of management, employees, or property during a strike or labor dispute.
- (m) For a business or labor organization that is on strike (e.g., "strike buster").
- (n) For any person or organization which advocates hatred, prejudice, or oppression of any racial, ethnic, gender or religious group, or which disseminates defamatory materials.
- (o) By political parties or employment that favors one candidate over another.
- (p) Any business or establishment in which gambling is the principal business.
- (q) By an employer known to engage in criminal activity.
- (r) Any individual, firm, association, company, partnership, corporation or other entity which holds a license or permit from the Texas Board of Private Investigators and Private Security Agencies. Exceptions to this will be reviewed on a case-by-case basis by the Chief or designee.

#### **949.7 SPECIFIC SECONDARY LERE GUIDELINES**

- (a) While working a LERE assignment, employees will notify APD Communications of:
1. The LERE assignment location; and
  2. Hours of the assignment (on-duty and off-duty times); and
  3. Immediate contact information (e.g., mobile and/or radio number); and
  4. If the assignment is in uniform or plain clothes. Employees in plainclothes will provide a description of their attire and the nature of the assignment.
- (b) LERE contract holders will be held responsible for ensuring the guidelines of this order are followed and the event is properly managed and supervised.
1. Secondary employment contract holders are responsible for sending a copy of their assignment rosters and security plan that have been approved by the APD Special Events Unit for any City Permitted assignment to the APD Watch Lieutenants and to APD Communications.

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## 949.7.1 SAFETY PLAN REQUIREMENTS FOR EVENTS PERMITTED BY THE CITY OF AUSTIN

- (a) Employees holding an approved Application for Secondary Employment contract for any event permitted by the City of Austin will coordinate the assignments with the APD Special Events Unit.
  - 1. Unless approved by the Special Events Commander, the APD contract holder will provide a security plan, using the APD ICS 208A Safety Message/Plan for Secondary Employment During Special Events, for review and approval by the Special Events Unit with all of the following no later than seven (7) days prior to the event:
    - (a) An outline of the date, times, and location of the event.
    - (b) The number of LERE assignment officers and supervisors working the event, including the length of the shifts.
    - (c) A description of the duties and responsibilities of the LERE officers.
    - (d) The name of the APD point-of-contact for the officers working the event.
    - (e) The communication plan for officers assigned to the event.
    - (f) Evacuation plan for attendees and event staff (in the event of a critical incident, or weather related incident.)
    - (g) Any additional information requested by the Special Events Commander.
  - 2. Should an APD contract holder fail to turn in a valid security plan within seven (7) days prior to the event, the event will be staffed by overtime officers hired through the Special Events Unit.
  - 3. Within ten (10) days after the conclusion of the event, the contract holder will provide the Special Events Unit with a detailed after action report concerning the event using the APD After Action Report form. The report will include any issues or incidents that occurred.
  - 4. The Special Events Unit will retain the security plan and after action report for one year.
  - 5. Contract holders who work for promoters that manage simultaneous events at multiple sites must complete an APD ICS 208A for each site. Completing one safety plan for multiple locations is prohibited.
- (b) APD officers working LERE assignments at road closures or officer-controlled intersections will be hired through the City of Austin. However, small events that do not require more than one block of a single-road closure, excluding bridges and multiple-lane roads with 3 or more lanes, may be worked through an employee held contract.
- (c) This section does not include escorts. Refer to the "Motor Vehicle Escort Guides" as outlined in this order.
- (d) APD contract holders may be required to attend any and/or all applicable event planning meetings, along with Special Events Unit coordinators, as deemed necessary by the Commander of the Special Events Unit or his or her designee.

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#### 949.7.2 MINIMUM REQUIRED NUMBER OF EMPLOYEES AND SUPERVISORS

- (a) Required number of officers:
  - 1. The number of officers and supervisors required for any City Permitted event will be determined by the Special Events Unit.
  - 2. A minimum of two (2) officers must be present at all times for any City Permitted assignment where alcohol is sold or served.
- (b) Supervisor requirements are as follows:
  - 1. When more than three (3) APD officers are simultaneously engaged in LERE at the same location, a supervisor must be one of those additional employees.
    - (a) No supervisor will supervise more than fifteen (15) officers.
    - (b) Supervisors must be present at the job site at all times.
    - (c) When multiple supervisors are required, one will be specifically designated as the supervisor-in-charge and be responsible for the actions of all officers working at that time. Designation of the supervisor in charge can be as assigned by the person scheduling the event or by agreement among those supervisors involved.
    - (d) When more than twenty (20) officers, along with the required number of supervisors, are needed simultaneously at the same location for a LERE assignment, a manager is required to be present at the job site at all times.
  - 2. The Chief or designee may assign up to five (5) officers for a LERE assignment related to traffic control (e.g., road closure) without utilizing a supervisor; However, when more than five (5) officers are simultaneously engaged in LERE at the same location, regardless of the event, a supervisor must be one of the officers.
  - 3. Corporals/Detectives may not be hired to work LERE in a supervisory role.
  - 4. Supervisors will not work any secondary employment where a subordinate employee in their direct chain-of-command holds the contract.
  - 5. Supervisors will not work any secondary employment where they function in a subordinate role to an officer of a lower rank without prior approval of the Chief or designee.
  - 6. The coordinator will work with the supervisor (designated supervisor-in-charge) on placement of employees at the LERE site. At no time should supervisors (designated supervisor-in-charge) be placed in a position where they are unable to monitor the operation of the assignment of all officers.

#### 949.7.3 LIMITATION ON LERE HOURS WORKED

- (a) Employees shall not work more than 16 hours of any combination of regular duty, department overtime, or LERE hours within a consecutive 24-hour period without the approval of a lieutenant or above for sworn employees, or the employee's supervisor/manager for civilian employees.

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1. A 24-hour period is any consecutive 24-hours, regardless of the time the work started.
  2. The employee is responsible for notifying the appropriate supervisor two (2) hours prior to the 16<sup>th</sup> hour of the 24-hour period. The name of the approving supervisor will be noted on the employee's overtime assignment form.
- (b) Employees shall not work in excess of 76 hours of any combination of regular duty, department overtime, or LERE hours within a work-week without the approval of a lieutenant or above for sworn employees, or the employee's supervisor/manager for civilian employees.

#### 949.7.4 REQUIRED REPORTING OF OVERTIME AND LERE HOURS WORKED

- (a) An electronic copy of from PD0036D Overtime Log will be maintained by the employee's supervisor in a network group folder designated by their chain of command. When an employee works overtime (this does not include mandatory/emergency holdovers, late calls, and overtime related to workload), they will complete an overtime log on form PD0036D and save it to the network location within one week of the assignment to include actual locations, dates, and times of LERE hours worked each week. The employee's supervisor will maintain the overtime log according to the City's retention policy. The logs will include all LERE hours worked by the employee that week including actual court overtime (time reported on court sign in/out log) and estimated hours worked as a courtesy officer.
1. This log will be reviewed and approved by the employee's immediate supervisor on a weekly basis by electronically initialing the form.
  2. Changes to LERE hours worked subsequent to having been reviewed by the supervisor will require the employee notifying their supervisor and an additional electronic initial by the supervisor.

#### 949.7.5 MOTOR VEHICLE ESCORT GUIDES

This section applies to officers working LERE assignments as Motor Vehicle Escort Guides. Supervisory requirements outlined in 949.5.2(b)(2) apply to this section. This section does not apply to motor vehicle escorts provided by on-duty personnel. If a city owned motorcycle is to be used for an off-duty escort, permission from a Motors Unit Supervisor is first required.

- (a) Officers working as a Motor Vehicle Escort Guide will:
1. Use personally owned motorcycles that are equipped as follows:
    - (a) In compliance with City Code
    - (b) Equipped with a siren.
    - (c) Equipped with an ABS braking system.
    - (d) Equipped with any additional equipment as directed by the Chief of Police.
  2. Submit the personally owned motorcycle for inspection and approval to the Chief of Police, or his designee. Inspections will be done at the renewal of the LERE contract, or whenever a new motorcycle is placed in service.

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3. Maintain the motorcycle in proper working order with current registration and Motor Vehicle Inspection. If any safety equipment is not functioning as intended, the motorcycle will not be used.
  4. Maintain Auto Liability insurance covering the operation of the motorcycle with minimum limits of \$100,000 bodily injury per person/\$300,000 bodily injury per accident and \$100,000 property damage.
  5. Wear an APD patrol or motor officers' uniform.
  6. Have completed the Escort Training Class from the Austin Police Department.
- (b) The use of amplified electronic horns and sirens are authorized for officer safety purposes.
- (c) Oversize load escorts will utilize a minimum of two (2) APD officers. This includes but is not limited to wide loads, oversized loads, house moves, and industrial equipment. When conducting escorts for oversized loads the officer will ensure that all necessary permits have been obtained from the Texas Department of Transportation and will abide by the route set out in the permit. The officer will not escort any vehicle if the officer has reason to believe it is not in a safe operating condition.
- (d) All other escorts will utilize a minimum of 3 APD officers. APD officers are not allowed to work off-duty escorts with officers from other agencies. On occasion the size or route of a funeral procession may require additional officers to be utilized to provide a safe escort. In the interest of safety, off-duty officers may request assistance from the on-duty patrol or HEC supervisor to assist with an escort. HEC supervisors shall be responsive to such requests and provide on-duty motor units if available. Any officer conducting an off-duty escort has the discretion to limit the number of vehicles allowed for safety reasons. A request to use on-duty patrol will be made through the Watch Lieutenant.
- (e) The route the procession travels will be determined by the officers conducting the escort. It will be chosen based on the safest route. Prior to leaving, the route will be discussed with the lead car driver for the funeral home. Officers will not enter intersections on red lights, however once they are in the intersection, they can control the intersection for as many light cycles as needed to clear the procession.
- (f) The Department understands that there are occasions where the escort officers need to travel beyond the city limits of Austin to provide for the safety of those in or around the vehicle procession or oversize load vehicles. Officers acting as motor vehicle escorts will be permitted to travel outside of the City of Austin as follows:
1. Officers engaging in motor vehicle escorts will be allowed to conduct the escorts within the boundaries of Hays, Travis, Bastrop and Williamson Counties.
  2. If the escort begins within 10 miles of the city limits of Austin, the escort must terminate inside the city limits.
  3. Officers will obey the laws of the State of Texas and any ordinances of any city they may pass through while providing an escort.

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949.7.6 LAW ENFORCEMENT ACTIONS TAKEN WHILE WORKING LERE ASSIGNMENTS

- (a) Law Enforcement Action
1. Incidents that originate off the property of the LERE work location.
    - (a) Officers will provide reasonable assistance (e.g., take immediate action to protect life and property, assist the citizen in contacting 911 for an on-duty officer) to any citizen requesting assistance for incidents that have occurred, or that are occurring, off the property of the LERE assignment.
      1. The responding on-duty officer will write an incident report.
      2. The LERE officer will write a supplemental report to the on-duty officer's incident report, if needed.
    2. Incidents originating on the property of the LERE work location.
      - (a) Officers will immediately report any incident or situation arising from or connected with the LERE assignment in the same regard as if on-duty. This includes completing all paperwork related to an incident (e.g., original and/or supplementary reports, associated forms and documents, evidence tags, impound forms).
      - (b) When an officer is the victim of an incident or the incident is of such a nature that an immediate extensive investigation would be required (e.g., murder, rape, robbery), an on-duty unit will be called.
  - (b) Arrest Guidelines
    1. LERE officers making arrests for incidents connected with the LERE assignment will complete an incident report and, if necessary, a probable cause affidavit following normal arrest reporting procedures and will:
      - (a) Contact Communications to request an incident number for the arrest report before turning it over to another officer; and
      - (b) Request a unit for prisoner transport.
    2. Transporting officers will write a supplement to the original report, sign any evidence tags or chain-of-custody documentation, and book the prisoner.
  - (c) Reporting Guidelines
    1. Incident reports initiated by the LERE officer not pertaining to custody arrests will be turned in by the LERE officer at any substation within 24 hours.
    2. Officers writing an incident report that requires immediate entry, such as a misdemeanor citation or custody arrest, shall ensure the report is entered into Versadex before the end of their LERE assignment.
  - (d) Nothing in this document prohibits an officer working a LERE assignment from calling for assistance from on-duty personnel.
  - (e) If prior to the end of the LERE assignment it becomes apparent to the officer that he will not be able to complete all duties required by the Department in connection with the use of his law enforcement powers (e.g. completing reports, transporting persons or

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property), the officer will immediately contact the on-duty patrol lieutenant responsible for the area where the LERE assignment is located. The officer will be required to provide the lieutenant with an explanation regarding why they are unable to complete the required duties prior to the end of the LERE assignment.

1. If the patrol lieutenant determines the duties can wait until the officer's next regularly scheduled shift, the officer will be released. It is the officer's responsibility to ensure the required duties are completed prior to the end of their next shift when released by a lieutenant.
  2. If the patrol lieutenant determines that the duties must be completed without delay at the conclusion of the LERE assignment, the lieutenant will authorize overtime and the time spent completing the required duties will be counted as productive hours during that work week.
- (f) If an officer is working a LERE assignment and takes law enforcement action during the time he is being compensated by the LERE employer, the officer will not be compensated by the City for those hours, nor will those hours be included as productive hours during the officer's work week.





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# Overtime and Compensatory Time

### 950.1 PURPOSE AND SCOPE

It is the policy of the Department to compensate non-exempt employees who work authorized overtime either by payment of wages or by allowing the accrual of compensatory time off. In order to qualify for either, the employee must complete and submit a Request for Overtime Payment as soon as practicable after overtime is worked.

#### 950.1.1 DEFINITIONS

**Callback** - Employees in non-exempt positions may receive compensation as established by the Meet and Confer Agreement and City Personnel policy when they are off-duty and receive notification to return to duty status.

**Compensatory Time** - Employees in non-exempt positions may receive compensatory time in lieu of overtime pay. The maximum amount of compensatory time that an employee may accumulate is 120 hours.

**Exempt Employee** - An employee exempt from the overtime provisions of the Fair Labor Standards Act. Employees in these positions are "salaried" and are not eligible for overtime pay or compensatory time.

**Non-exempt Employee** - An employee that meets the overtime requirements of the Fair Labor Standards Act. Non-exempt employees will receive overtime pay or compensatory time for productive hours worked in excess of 40 in a workweek.

**On-Call** - A period of time outside of normally scheduled working hours during which an employee must remain fit for duty and available to return to work.

**Productive Time (Civilian Personnel)** - Established by City Personnel Policy.

**Productive Time (Sworn Personnel)** - Established by the Meet and Confer Agreement. For the purposes of computing overtime or compensatory time, all approved paid leave other than sick leave and vacation time shall be calculated as hours worked.

### 950.2 DEPARTMENT POLICY

- (a) Employees may be required to work beyond regularly scheduled hours or be called back to active duty at any time in order to meet the operational needs of the Department.
- (b) Employees who refuse to work overtime or fail to report back to work when ordered to do so will be subject to disciplinary action.
- (c) Supervisors may adjust an employee's regularly scheduled hours so that no more than 40 productive hours are worked in a particular week.
- (d) Unless otherwise specified by the assignment, employees in non-exempt positions may choose overtime pay or compensatory time for productive hours in excess of 40 in a workweek.

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1. Overtime will be paid at a rate of 1.5 times the regular rate of pay.
  2. Compensatory time will be accrued at a rate of 1.5 hours for each hour worked.
  3. Overtime pay and compensatory time will be calculated by computing time worked to the nearest quarter hour, rounding either up or down.
  4. The assignment of elective City and mandatory overtime should be allocated in a fair and equitable manner and utilized only when necessary to meet the operational needs of the Department.
- (e) Specific assignments contracted for by a source outside the "City", excluding assignments reimbursed by Federal and State partners, will be compensated at the individual officer's overtime rate of pay regardless of the number of productive hours the officer has worked in that work week.
- (f) Employees will not be compensated by the Department for work performed during the course and scope of a secondary employment contract.

#### 950.2.1 ELECTIVE CITY OVERTIME/SECONDARY EMPLOYMENT

Employees will follow General Order 949 (Secondary Employment) on the limitations and reporting responsibilities for overtime assignments classified as elective city overtime or secondary employment.

#### **950.3 OVERTIME ASSIGNMENT GUIDELINES**

Employees may be eligible for overtime pay and/or compensatory time as outlined in this section for:

- (a) Employee Call-Back.
- (b) On-Call Assignments.
- (c) Court Time.

#### 950.3.1 EMPLOYEE CALL-BACK

- (a) Non-Exempt officers who are off-duty and receive notification to return to duty status one hour or less before the start of the employee's regularly scheduled shift shall receive one (1) full hour of compensation at time and one half.
- (b) Non-exempt officers who are off-duty and receive notification to return to duty status shall receive a minimum of (3) full hours of compensation at time and one half when notified to return to duty status:
  1. More than one (1) hour before the employee's regularly scheduled shift; or
  2. After the conclusion of their regularly scheduled shift.
- (c) Supervisors may authorize up to three (3) hours of overtime pay for an employee called into work for an official reason (e.g., IA/SIU interview, special investigation) while on approved leave that would coincide with the employees regular duty hours. Any amount in excess of three (3) hours must be approved by the appropriate commander/manager.

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- (d) Non-exempt officers who are off-duty and receive notification to return to duty status will receive only fifteen (15) minutes of compensation at time and one half should the call-back be canceled within fifteen (15) minutes of the notification, or the actual time spent completing the assignment lasts no more than (15) minutes.
- (e) Non-exempt civilian employees will be paid for call-back time according to current City policy.

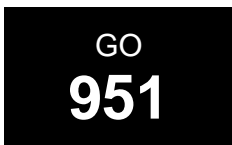
#### 950.3.2 ON-CALL ASSIGNMENT

On-call assignments may be established to meet the operational needs of the Department. Non-exempt officers will receive compensatory time in accordance with the current Meet and Confer Agreement. Non-exempt civilian employees will be compensated as determined by the Department Head and/or City policy. Employees assigned to be on-call will:

- (a) Accept an on-call assignment that might result in a call back to work.
- (b) Maintain any necessary equipment when in an on-call status (e.g., radio, pagers, mobile phone).
- (c) Respond when called back to work.
- (d) Maintain the physical and mental fitness standards that are regularly required for performing job tasks when in an on-call status.
- (e) Notify their supervisor if, due to illness, injury or other circumstances, the employee is unable to be on-call.

#### 950.3.3 COURT TIME

Court time will be paid as outlined in General Order 935 (Court Appearances) and the Meet and Confer Agreement.



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# Pay Differential

### 951.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines for handling temporary assignments in a higher rank classification and the associated pay differential for such assignments.

### 951.2 STATUTORY AUTHORITY

- (a) The Chief of Police may authorize the designation of a person from the next lower classification to temporarily fill a position in a higher classification (Tex. Local Gov't Code § 143.038).
- (b) The designated person is entitled to the base salary of the higher position plus the person's own longevity or seniority pay, educational incentive pay, and certification pay during the time the person performs the duties, even if the temporary position lasts only one (1) day.
- (c) Temporary designations will not be made for periods of less than one day unless approved by a Commander or above.

### 951.3 PROCEDURES

If a sworn supervisor will be absent for an entire day or longer (e.g., vacation, sick leave, FMLA leave, injury leave, training), the next higher supervisor in the chain-of-command is authorized to designate an officer to temporarily serve as an acting supervisor.

- (a) The consideration should be based on the following criteria:
  1. If it is in the best interests of the Department for an acting supervisor to be temporarily assigned.
  2. If there is another on-duty supervisor who can assume the supervisory duties within the Department's established span of control.
- (b) In order to initiate pay differential, a "Pay Differential Assignment Form" must be completed by the employee's supervisor and submitted to the APD-HR office.
- (c) The calculation for pay differential is based on years of service with the Department.
  1. Employees will be compensated as if they were at the higher rank with the same years of service.
  2. If years of service do not equal the minimum number of years required before attaining the higher rank, the base salary of that rank will be used for the calculations.
- (d) A sworn officer who works overtime while temporarily filling in for a higher classification, and who is eligible for overtime pay, shall be paid overtime at the appropriate rate as calculated by APD HR.
- (e) The temporary performance of the duties of a higher position by an employee who has not been promoted as prescribed by this chapter may not be construed as a promotion.

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All promotions must meet the requirements of the Civil Service Act and the Meet and Confer Contract.

**951.4 LIMITATIONS**

- (a) Orders related to compensation that are not required by Chapter 143 are dependent upon City Council's approval of the budget. Budget approval is determined annually. For current information, contact APD-HR.
- (b) The Chief or designee may set limitations on the duties and responsibilities on the person assuming the higher rank.



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# Incentive Pay

### 953.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for compensation for designated skills and education. Officers who have demonstrated their proficiency in designated skills and who are subsequently authorized may receive assignment pay in amounts provided by the current Meet and Confer Agreement.

### 953.2 BILINGUAL PAY

In order to be eligible for bilingual pay, officers must successfully pass an established bilingual test reflecting the types of bilingual communication in which officers would normally be required to engage during the course and scope of duty.

- (a) Eligible officers accepting bilingual pay will be required to utilize their bilingual communication skills when requested by the Department.
- (b) Officers who fail to utilize their bilingual skills when required may be deemed ineligible to receive bilingual pay. In these circumstances and on a case by case basis, the officer's commander will make a recommendation to the appropriate assistant chief. The Chief or designee will make the final decision on eligibility.

#### 953.2.1 BILINGUAL TESTING PROCEDURES

- (a) APD-HR will schedule bilingual tests as needed with a professional consultant or organization selected by the Department. A test will be given for each requested compensable language.
- (b) Any officer may take a bilingual test. Officers interested in testing for a language must submit an application for bilingual testing to their immediate supervisor to be forwarded through the chain-of-command to APD-HR.
- (c) The bilingual test is a voluntary test. Officers must take the test on their own time, with no compensatory time or overtime pay allowed.
- (d) APD-HR will notify officers taking a bilingual test of the test results by mail. Those officers who pass the bilingual test will begin earning bilingual pay during the pay period following the date the Department received notice of their successful completion of the test. Officers not passing the authorized proficiency test may retest after six (6) months.
- (e) Officers passing the proficiency test may be required to be reassessed.

### 953.3 MENTAL HEALTH CERTIFICATION PAY

Eligible officers shall be compensated for mental health certification as identified in the Meet and Confer Agreement. The Department identifies these officers as part of the Crisis Intervention Team (CIT).

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- (a) In order to be eligible for CIT pay, officers must attend the forty (40) hour TCOLE mental health certification class and pass the course test and meet the following requirements:
  - 1. Regularly assigned to a Patrol shift.
  - 2. Designated by the commander to receive CIT pay based on the needs of the Command (e.g., appropriate shift distribution of stipends).
  - 3. Attend required mental health/crisis intervention update training.
- (b) Officers above the rank of police officer are ineligible to receive CIT pay.
- (c) CIT officers will be required to utilize their intervention skills when requested or needed during the course and scope of their patrol duties.
- (d) CIT officers who fail to utilize their intervention skills when required or needed may be deemed ineligible to receive the stipend. The officer's commander will decide this on a case-by-case basis and/or documented mental health report activity and make a recommendation to the appropriate assistant chief. The Chief of Police will make the final decision.

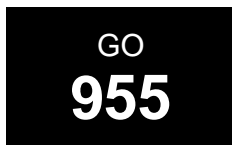
#### **953.4 EDUCATION AND CERTIFICATE PAY**

An officer shall be entitled to either Certificate pay or Education pay as outlined in the Meet and Confer Agreement but shall not be entitled to both. Education pay shall only be payable for degrees or college credit from an accredited college or university as defined by the Meet and Confer Agreement.

- (a) Only officers hired before March 25, 2001 are eligible for certificate pay if they have been awarded the TCOLE Intermediate or Advanced Certificate.
- (b) An officer holding at least 60 hours of college credit, an Associates, Bachelors, or Masters degree from a nationally accredited college or university may receive education pay as authorized by the Meet and Confer Agreement.

#### **953.5 FIELD TRAINING OFFICER PAY**

Field Training Officer (FTO) pay is eligible for officers assigned to the Field Training Unit as a Field Training Officer and who meet the requirements outlined in the FTP SOP.



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# Attendance and Leave

### 955.1 PURPOSE AND SCOPE

This order outlines employee attendance requirements, leave benefits, and the basic procedures to be followed when using leave time. The types of leave covered in this order include vacation leave, exception vacation leave, personal holiday, sick leave, Family Medical Leave Act (FMLA), compensatory time, emergency leave, leave without pay, leave of absence, administrative leave, and military leave.

- (a) Guidelines for on-duty injury, illness, and crash incidents are outlined in General Order 956 (On-Duty Injury and Illness).
- (b) Guidelines for Limited Duty status, Extended Limited Duty status, and the Return to Work Programs are outlined in General Order 958 (Limited Duty, Extended Limited Duty, Return to Work and Pregnancy).

#### 955.1.1 DEFINITIONS

**Exempt Positions** - Positions exempt from the overtime provisions of the Fair Labor Standards Act. Employees in these positions are "salaried" and are not eligible for overtime pay or compensatory time.

**Non-exempt Positions** - Positions that meet the overtime requirements of the Fair Labor Standards Act. Employees in these positions will receive overtime pay or compensatory time for productive hours worked in excess of forty (40) in a work week.

**Productive Time (Civilian Personnel)** - Established by City of Austin Personnel Policy.

**Productive Time (Sworn Personnel)** - For the purposes of computing overtime all approved paid leave, other than sick and vacation leave, shall be calculated as hours worked as established by the Meet and Confer Agreement.

**Law Enforcement Related Employment (LERE)** - Defined in General Order 949.1.1

**Non - Law Enforcement related Employment (Non-LERE)** - Defined in General Order 949.1.1

**Department Overtime** - Voluntary participation in job or duty related assignments originating from within the Department, which are outside an employee's regularly scheduled 40 hours of work per week, and for which the employee normally, but not necessarily, receives overtime compensation from the City of Austin. Compensation either can be at the expense of the Department or reimbursed through outside funding (e.g. grants). This does not include Court Overtime, late calls, overtime related to workload or emergency holdovers.

### 955.2 GENERAL ATTENDANCE GUIDELINES

- (a) Employees will not be absent from work without prior approval from an immediate supervisor.



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1. Unless a different notification is required by a Unit SOP, employees have the responsibility of notifying an immediate supervisor at least one (1) hour prior to the scheduled work start time if they are going to be absent.
2. Employees who fail to report to work at the assigned place and time, or who leave work or an assignment without proper authorization will be subject to disciplinary action.
3. Employees shall not work in excess of 76 hours of any combination of regular duty, department overtime, or LERE hours within a work-week without the approval of a lieutenant or above for sworn employees, or the employee's supervisor/manager for civilian employees.
4. Employees shall not work more than 16 hours of any combination of regular duty, department overtime, or LERE hours within a consecutive 24-hour period without the approval of a lieutenant or above for sworn employees, or the employee's supervisor/manager for civilian employees.
  - (a) A 24 -hour period is any consecutive 24 -hours, regardless of the time the work started.
  - (b) The employee is responsible for notifying the appropriate supervisor two (2) hours prior to the 16th hour of the 24-hour period. The name of the approving supervisor will be noted on the employee's overtime assignment form.

#### 955.2.1 TIMESHEETS

In order for the Department's payroll records to be properly and accurately maintained it is necessary that weekly timesheets be submitted to APD HR for each employee. Employees are responsible for the accurate recording of their own time on the weekly timesheet.

- (a) Attendance records will be based on a work week that begins at 12:00 am on Sunday and ends at midnight on Saturday.
- (b) Within each section, an employee may be designated as timekeeper to ensure completion and proper submission of weekly timesheets.
- (c) All timesheets shall be:
  1. Completed in ink; and
  2. Signed and dated by the employee to attest to accuracy; and
  3. Signed by a supervisor to indicate timesheet approval.
- (d) Completed and signed timesheets must be turned in to APD HR no later than 4:00 pm on Thursday of each week. In the event the City calls for an earlier payroll deadline, APD HR will send notification to all sections on the deadline to turn in timesheets.
- (e) Employees are responsible for submitting a corrected timesheet to the immediate supervisor if work hours or leave type changes after a signed timesheet has been submitted. Failure to do so may be considered falsification of an official City document. Any corrections to a timesheet must be initialed by an employee's supervisor.

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#### 955.2.2 FLEX TIME

Flex time is an adjustment of work hours on an hour-for-hour basis within a work week or pay week, as authorized.

- (a) All flex time adjustments must be approved in advance by the employee's supervisor; employees may not make his own decisions pertaining to scheduled work hours or adjustments to them.
- (b) The weekly timesheet should reflect the actual hours worked each day to ensure accurate attendance records.
- (c) For non-exempt civilian and sworn personnel, flex time must be used within the same work week they are accrued. Flex hours cannot be carried over to another week. Productive hours that exceed the 40-hour work week are required to be recorded as authorized overtime or compensatory time.
- (d) For exempt civilian and sworn personnel, flex time must be used within the same pay period it was accrued. Flex hours cannot be carried over to another pay period.

#### 955.3 GENERAL LEAVE GUIDELINES

When reviewing leave requests, supervisors will consider the needs of the Department and availability of other personnel before approving the requests.

- (a) Employees requesting to use any personal leave (e.g., vacation, exception, compensatory, personal holiday) shall submit the appropriate leave request form to their immediate supervisor for approval.
  1. Leave requests will not be approved when the leave will create the need for backfill unless exigent circumstances exist.
  2. Sworn employees may not use any personal leave (e.g., vacation, exception, compensatory, personal holiday) to work department overtime, that coincides with their normal shift schedule (i.e., day shift, evening shift, night shift), unless approved by the Chief of Police, or his designee or under one of the following situations.
    - (a) Personal leave may be taken to work events staffed by APD Special Events and the HEC Grants Coordinator if doing so will not create a need for backfill of their regular assignment.
    - (b) In order to ensure adequate patrol staffing, officers and detectives/corporals in non-patrol assignments may take vacation to fill a patrol vacancy if doing so does not create a need for their position to be backfilled.
  3. Sworn employees must submit an *APD Leave Request Form* (PD0069) for:
    - (a) paid continuous leave of 60 days (320 hours) or less for non-medical purposes, or
    - (b) pre-approved use of non-FMLA sick leave.
  4. *APD Leave of Absence Form* (PD0069C) for:

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- (a) Any unpaid leave, regardless of length
  - (b) Any leave exceeding more than 60 days, other than FMLA qualified
  - (c) Any leave of 30 days or more, if extending leave after FMLA approved leave has been exhausted
- (b) It is the intent of this order to provide a guideline about how vacation days are granted when two or more employees are seeking the same vacation days and not all requests can be granted. First and foremost, all attempts should be made to resolve the situation through mutual agreement as facilitated by the supervisor. A healthy workplace is one where employees work with each other to create a fair and equitable process for resolving internal differences. However, if a voluntary, mutual agreement cannot be reached to resolve conflicts over vacation days, then the following seniority guidelines will be followed:
- 1. When the number of employees requesting personal leave exceeds the limit allowed in a unit or shift, the supervisor will consider the employee's time in the unit and seniority in the department. Additionally, the supervisor should consider the reasons for the competing requests when determining priority.
- (c) Non-Sworn employees must submit a:
- 1. HRD/ Leave Request Form, effective 10/1/2004, updated 11/1/2010 any time an employee is absent regardless of the length of time or FMLA status, except when submitting the form in b) below.
  - 2. *APD Leave of Absence Form* (PD0069C) to request leave time of:
    - (a) Any additional leave after exhaustion of FMLA approved leave
    - (b) Any leave of 30 days or more that:
      - 1. Is not FMLA qualified; or,
      - 2. The employee is not FMLA eligible; or,
      - 3. For non-medical reasons such as e.g. sabbaticals or extended vacation.
    - (c) Any leave of 30 days or more, if extending leave after FMLA approved leave has been exhausted
  - 3. The APD Court Liaison Unit will be notified when the following employees are on approved leave:
    - (a) Sworn
    - (b) Non-sworn who are subject to subpoenas
  - 4. Supervisors shall complete the appropriate leave request form on behalf of the employee if the employee is unable or unavailable to do so.
- (d) Employees requesting to use sick leave shall follow the guidelines outlined in the sick leave section of this order.

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- (e) Supervisors and employees are responsible for ensuring that employees have sufficient leave time accrued prior to approving any leave request.
  - 1. Employees shall not schedule leave time for use in the same pay period in which it is earned.
  - 2. Leave time may not be taken in periods of less than a quarter (1/4) hour.

#### 955.3.1 LEAVE ACCRUAL AND LONGEVITY WHILE ON APPROVED LEAVE

- (a) Employees continue to accrue vacation leave, sick leave, and longevity while the employee is absent on approved vacation, exception vacation, personal holiday, sick, injury, compensatory, short-tour paid military leave, leave without pay, and FMLA.
- (b) Employees continue to accrue longevity while the employee is absent on long-tour military leave of absence (without pay), but ceases to accrue vacation and sick leave.
- (c) Employees will not accrue vacation, exception vacation, personal holiday, sick leave, or longevity while on leave of absence.

#### 955.3.2 LEAVE PAYOUT UPON SEPARATION

- (a) Employees who separate from the Department may be paid up to the following maximum allowable amounts (which may be different than the maximum allowable *accrual* amount):
  - 1. **Vacation Leave**
    - (a) Civilian employees may be paid up to 240 hours provided the employee has completed their probationary period and given a 10 day notice of intent to separate as required by City of Austin policy.
    - (b) Sworn employees may be paid up to 240 hours.
  - 2. **Exception Vacation Leave** - Up to 160 hours.
  - 3. **Compensatory Time** - Up to 120 hours.
  - 4. **Sick Leave**
    - (a) Sworn employees with sixteen (16) or more years of continuous service and who leave in good standing may be paid for accumulated sick leave hours as outlined in the Meet and Confer Agreement.
    - (b) Civilian employees hired prior to October 1, 1986 that have been employed on a continuous basis and leave in good standing may be paid up to 720 accumulated sick leave hours.
    - (c) Civilian employees hired on or after October 1, 1986 will not be paid sick leave hours.
- (b) Employees who separate from the Department will not receive a payout for:
  - 1. Any hours in excess of the maximum allowable amounts for each type of leave; and
  - 2. Accrued personal holiday, administrative leave, or military leave.

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- (c) Sworn employees who have been indefinitely suspended from the Department are eligible for leave payout as outlined in the Meet and Confer Agreement.
- (d) An employee's estate will receive payment for all maximum allowable leave amounts accrued by the employee in the event of an employee's death while:
  - 1. Still a member of the Department; or
  - 2. On military leave, for leave accrued up to the employee's last day of active duty with the Department prior to entering military leave.

#### **955.3.3 SWORN EMPLOYEE USE OF LEAVE TIME IN LIEU OF SUSPENSION**

The Chief may authorize a sworn employee to use vacation leave, exception vacation leave, compensatory time, or personal holiday when the employee has been temporarily suspended without pay in accordance with the Meet and Confer Agreement.

#### **955.4 VACATION LEAVE**

Employees start to accrue vacation leave immediately upon employment with the City; however, a civilian employee is not eligible to use it until completing at least six (6) months of service and a cadet is not eligible to use it until after graduating from the police academy.

- (a) Employees accrue vacation leave for 24 pay periods in a calendar year as regulated by City Personnel Policies (civilian) and the Meet and Confer Agreement (sworn).
- (b) The maximum allowable amount of vacation leave an employee may accrue and retain at any time is 400 hours.

#### **955.5 EXCEPTION VACATION LEAVE**

Employees may accrue exception vacation leave for City-observed holidays as outlined below. As many employees as possible will be given each City-observed holiday off.

- (a) Civilian employees:
  - 1. Accrue up to eight (8) hours of exception vacation for each City-observed holiday when:
    - (a) The employee works on the holiday; or
    - (b) The holiday falls on an employee's regularly scheduled day off.
  - 2. Do not accrue exception vacation when taking off on a City-observed holiday the employee is normally scheduled to work.
- (b) Sworn employees accrue up to eight (8) hours of exception vacation for each official City-observed holiday regardless of whether or not the employee works on the holiday.
- (c) The maximum allowable amount of exception vacation any civilian employee may accrue is 160 hours.
- (d) Effective January 1, 2019, sworn employees may accrue up to 200 hours of exception vacation. This provision shall expire on December 31, 2020 and the maximum hours of exception vacation accrual shall revert to 160 hours.

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- (e) Employees desiring to observe an official holiday that falls on a regularly scheduled workday must submit the appropriate leave request form to their immediate supervisor for approval.
- (f) Employees who work on December 25 will be paid according to City Personnel Policies (civilian) and the Meet and Confer Agreement (sworn).
- (g) Supervisors will schedule employees to use exception vacation when balances approach the 160-hour limit. Exception vacation should be used before the pay period in which the next holiday occurs.
  - (a) Civilian employees will be paid for any exception vacation hours accrued in excess of the 160 hour limit.
  - (b) Sworn employees are subject to the Meet and Confer Agreement in regards to exception vacation hours accrued in excess of 160 hours.

#### **955.6 PERSONAL HOLIDAY**

An employee in a regularly budgeted position who has completed six months of service is eligible for sixteen (16) hours of personal holiday per calendar year. A part-time employee in a regularly budgeted position is allowed personal holiday hours on a prorated basis. Failure to utilize any part of these hours by December 31st of the year accrued will result in forfeiture of the accrued personal holiday hours.

#### **955.7 SICK LEAVE**

Employees start to accrue sick leave immediately upon employment and may take it once hours have been actually accrued. Sick leave may be used for doctor appointments, personal illness, maternity purposes, physical incapacity of an employee, or when an employee is required to care for a family member who is ill or incapacitated.

- (a) Employees accrue sick leave for 24 pay periods in a calendar year as regulated by City Personnel Policies (civilian) and the Meet and Confer Agreement (sworn).
- (b) Sick leave may be accumulated without limit.
- (c) Employees who have a serious health condition, or are caring for a parent, spouse, or child with a serious health condition may apply for FMLA by contacting APD HR and/or request a medical leave of absence in accordance with City Personnel Policy.
- (d) Supervisors may, with discretion, visit an employee that is unable to report for duty or has left duty because of illness to determine the extent of the illness and decide whether or not any assistance is needed. Supervisors need to be aware of employees on FMLA as contacting them may violate their privacy rights.
- (e) Supervisors may require satisfactory proof of the proper use of sick leave and may disallow sick leave in the absence of such proof.
- (f) The Chief may require sworn employees using sick leave to submit to an examination by a physician named by the Chief at the City's expense.
- (g) Employees who misuse sick leave are subject to disciplinary action.

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#### 955.7.1 EMPLOYEE RESPONSIBILITIES WHEN USING SICK LEAVE

- (a) Employees shall notify their immediate supervisor:
  - 1. Unless otherwise specified in the employee's Unit SOP, at least one (1) hour prior to the employee's work start time if the employee is going to be out sick; or
  - 2. If the employee becomes sick while on-duty to the extent the assignment must be terminated.
- (b) Employees who become sick during approved personal leave may change their personal leave to sick leave while ill. It is the responsibility of the employee to contact his immediate supervisor to have the changes made on the timesheet and *Leave Request Form*.
- (c) Employees shall contact APD HR to obtain information on employee rights, responsibilities, eligibility and qualifying conditions under the Family and Medical Leave Act (FMLA) when meeting the criteria outlined in the "General Leave Guidelines" section of this order.
- (d) Employees who have taken sick leave for 40 or more consecutive work hours for their own medical condition/injury are required to submit a completed *Medical Release to Return to Work, Off the Job Illness/ Injury Form* (PD0119) to their immediate supervisor and APD Risk Management (sworn).
- (e) If an employee has taken sick leave for five or more consecutive work days, for a non-qualifying FMLA event, to care for a family member who is ill or incapacitated they should submit a memorandum to their immediate supervisor upon returning to work.

#### 955.7.2 SUPERVISOR RESPONSIBILITIES WHEN EMPLOYEES USE SICK LEAVE

- (a) Supervisors will notify the chain-of-command and APD HR when an employee:
  - 1. Has taken sick leave for three (3) consecutive work days and the reason is unknown or the reason indicates that the employee or employee's family member may be experiencing a serious health condition of themselves or a family member; or
  - 2. Has taken sick leave for 40 or more consecutive work hours; or
  - 3. Has an overnight stay in the hospital.

#### 955.7.3 WHEN MEDICAL RELEASE TO RETURN TO WORK IS REQUIRED

An employee may be required to provide a completed *Medical Release to Return to Work Off the Job Illness or Injury Form* (PD0119) in either of the following situations:

- (a) Whenever an employee is out for five or more consecutive work days for their own health condition.
- (b) Anytime (regardless of length of absence) an employee has an injury/illness that requires medical treatment that would lead the employer (supervisor/manager) to believe the employee may have a serious medical situation such as when the employer becomes aware that:
  - 1. the employee was transported to the hospital,

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2. admitted into the hospital, or
  3. had surgery, whether in or out patient.
- (c) The employee may be required to submit the completed *Medical Release to Return to Work Off the Job Illness or Injury Form* (PD0119) prior to or upon return to work to one of the following
1. immediate supervisor (Sworn) and
  2. APD HR (Civilians) or
  3. APD Risk Management (Sworn)
- (d) If the Medical Release to Return to Work Form indicates the employee may return to work in a Limited Duty capacity, the employee may be placed on Limited Duty as outlined in General Order 958 (Limited Duty, Extended Limited Duty, and Pregnancy).

#### 955.7.4 EXHAUSTION OF SICK LEAVE

- (a) Employees who have exhausted their accrued sick leave may request their personal leave be substituted for sick leave by completing the appropriate leave request form for approval.
- (b) Employees may request leave without pay or leave of absence as outlined in this order. Approval must be received prior to the last day personal leave is used.
- (c) Employees with an off-duty or non-occupational injury or illness may be terminated when:
1. The employee has exhausted all personal leave, sick leave hours, and FMLA; and
    - (a) The employee has exhausted or is not approved for leave without pay or leave of absence as outlined in this order; or
    - (b) No Limited Duty or Return to Work assignment is available.

#### 955.8 FAMILY AND MEDICAL LEAVE ACT

- (a) Employees shall contact APD HR as soon as practicable to obtain information on employee rights, responsibilities, eligibility, and qualifying conditions under the Family and Medical Leave Act (FMLA) when the employee:
1. Is absent or going to be absent from work on an intermittent basis due to a qualifying personal or family medical condition; or
  2. Has taken sick leave for *three (3) or more consecutive days* and is unsure if they will immediately return to work; or
  3. Is going to have ongoing treatment for a medical condition; or
  4. Has had an overnight stay in the hospital and is unsure if they will immediately return to work.
- (b) Guidelines for FMLA eligibility are outlined in City Personnel Policy. Employees may also contact APD HR for information on the Family and Medical Leave Act (FMLA).



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#### **955.9 EMERGENCY LEAVE**

Emergency leave is for the purpose of attending funerals, making funeral arrangements, or otherwise attending to the affairs of the deceased for a death in an employee's immediate family. Immediate family includes a parent, spouse, domestic partner, child, sister, brother, grandparent, parent or grandparent of a spouse or domestic partner, or any relative who has been living in your house.

- (a) An employee may be requested to provide information to document the necessity of the absence.
- (b) The leave request form should indicate the relation of the deceased on the form and be approved by the employee's supervisor.
  1. Regular and probationary civilian employees may use up to three consecutive days of emergency leave.
  2. Temporary civilian employees may be granted unpaid emergency leave.
  3. Commissioned personnel may utilize up to forty (40) hours of emergency leave.
  4. Additional time off, if approved, must be taken as vacation, exception vacation, compensatory, personal holiday, or unpaid leave.

#### **955.10 LEAVE WITHOUT PAY**

Employees may be granted leave without pay when the employee has exhausted all other leave balances.

- (a) The Chief or designee may grant up to one week (40 hours) of leave without pay to an employee.
- (b) An employee on leave without pay who exceeds the 40 hour allowance may be granted a leave of absence.

#### **955.11 EXTENDED LEAVE (NON-FMLA)**

Employees may be granted an extended leave (leave approved without pay or with pay via use of accrued leave) for a legitimate purpose (e.g., illness, disability, pregnancy, political activity, educational purposes, military duty).

- (a) Employee must request an extended leave using *APD Leave of Absence Form* (PD0069C) in accordance with General Order 955.3 (General Leave Guidelines). The completed form must be routed through the chain-of-command for appropriate approval and must include:
  1. The reason or need for the leave; and
  2. Duration of the leave; and
  3. Anticipated date to return to work; and
  4. Whether the approval being sought is for paid or unpaid leave; and,
  5. Any additional documentation to support the need for the request (e.g., medical).

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- (a) Medical documentation can be submitted to APD HR in lieu of sending it through the chain-of-command.
- (b) The employee's immediate supervisor is responsible for routing the completed request form through the chain-of-command for review and the forwarding of the original form, with appropriate signatures, to APD-HR for final disposition.
- (c) The Chief, or his designee, may grant extended leave to any employee for a period not to exceed thirty (30) days.
- (d) All requests for more than 30 days (up to one year) will be delivered to APD-HR to be forwarded to the City Manager's office for review. APD-HR will communicate the City Managers decision on whether the request for leave was approved to the employee's immediate supervisor, who will be responsible for notifying his/her chain of command.

#### **955.12 ADMINISTRATIVE LEAVE**

A Department director may grant an employee administrative leave at full pay and benefits for a purpose approved by the City Manager (e.g., blood bank donations, pre-termination hearings, power failure, reduced work day by administrative directive).

- (a) Employees may be placed on administrative leave/duty pending an internal investigation (e.g., IA, SIU).
  - 1. Employees placed on administrative leave/duty pending an internal investigation are required to remain available for court appearances.
- (b) Time off, when necessary, to vote in national, state, county and municipal elections shall be considered administrative leave.
- (c) Employees who refer an applicant who successfully attends at least the first full day of the police academy will be given one (1) day of administrative leave.
  - 1. Employees assigned to the Training or Recruiting Divisions, and all assistant chiefs, are excluded from receiving administrative leave for recruiting an applicant.
  - 2. No more than two (2) days of administrative leave for recruiting an applicant may be accrued or used in a calendar year.
  - 3. The Recruiting Unit will be responsible for maintaining the necessary information for implementation of the program.

#### **955.13 COMPENSATORY TIME**

When a non-exempt employee is required to work in excess of a normal 40-hour work week, the employee may be entitled to receive compensatory time in lieu of overtime pay for those extra hours worked.

- (a) Guidelines for compensatory time accrual are outlined in General Order 950 (Overtime and Compensatory Time).
- (b) The maximum allowable amount of compensatory time which an employee can accrue is 120 hours.

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- (c) Supervisors will review compensatory time balances prior to approving an employee to accrue additional compensatory time.

#### **955.14 MILITARY LEAVE**

An employee who is responding to orders of the US Armed Forces will be granted up to fifteen (15) working days of paid military leave per federal fiscal year (October 1 through September 30).

- (a) Military leave is used for time in which the employee is required to attend military functions during regularly scheduled work hours. Authorized military functions include regularly scheduled "weekend drills" and meetings, physical examinations for selection or admission into the military, physical examinations to maintain a selective service rating or reserve status, travel time, etc.
  - 1. Employees shall provide notice to the Department prior to the dates when military leave, with or without pay, or any other approved leave method is used to attend required military drills or training.
  - 2. The appropriate leave request form will be completed, designating the type of leave to be used. It is not required that copies of written training orders be attached before approval may be given. Copies should be attached or forwarded to the immediate supervisor as soon as possible.
- (b) Military Leave will not be used for:
  - 1. Hours before or after regularly scheduled work hours; or
  - 2. Regularly scheduled days off; or
  - 3. Scheduled overtime.
- (c) Whenever possible, employees required to attend short Reserve or Guard training sessions that conflict with regular work hours will, at the employee's request, have their schedule adjusted so they may work a full 40-hour week.
- (d) Military leave will not be granted for diagnosis or treatment of any service related sickness or disability, for obtaining or sustaining any disability rating, or for treatment in any government facility.
- (e) When tours cumulatively exceed the total of 15 days of military Leave, City Personnel Policy allows employees called to active duty to continue receiving pay while their active military duty continues.

#### **955.14.1 ACTIVE DUTY CALL-UP**

Although reservists called to active duty are not required to request leave or even notify the employer prior to responding to a call-up, notification should be given to the Department as soon as practical.

- (a) Notification of active call-up of less than 30 days may be done verbally to the employee's immediate supervisor and to APD HR. Employees who are scheduled to be activated for more than thirty (30) days will be required to meet with APD HR.
- (b) The immediate supervisor shall complete any needed paperwork and make the proper notations on weekly timesheets.

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- (c) When a copy of the orders becomes available, a set should be sent to the immediate supervisor and APD HR to retain with other paperwork relating to the absence.
- (d) Employees called to active duty may qualify for a military pay supplement in accordance with City Personnel Policy.
- (e) Upon release from military orders and pending return to the Department, the employee must contact APD HR.

**955.14.2 MILITARY ENLISTMENT**

The Department shall grant a military leave of absence (without pay) to employees who desire to enter a military service of the United States.

- (a) The leave of absence will continue during the period of active military service of the officer.
- (b) Upon receiving an honorable discharge from the military, the employee may make an application for reinstatement in accordance with applicable federal and state law.



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## On-Duty Injury and Illness

### 956.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines for reporting on-duty injuries, illnesses, and deaths to the APD Workers' Compensation Office to ensure proper medical attention is received when appropriate and to document the circumstances of the incident.

Provisions contained herein shall apply to both sworn and civilian employees but only to injuries and illnesses that occur in the authorized course and scope of employment on or after the effective date of this order.

- (a) Guidelines for off-duty or non-occupational injury and illness incidents are outlined in General Order 955 (Attendance and Leave).
- (b) Guidelines for Limited Duty status, Extended Limited Duty status and the Return to Work Programs are outlined in General Order 958 (Limited Duty, Extended Limited Duty, and Pregnancy).

### 956.2 DEFINITIONS

**Compensable Injury/Illness** - An injury or illness suffered by an employee in the course and scope of his employment as determined by the City of Austin's Third Party Administrator. This may include an injury or illness suffered:

- (a) During an employee's regular duty hours.
- (b) During authorized Department overtime.
- (c) Taking law enforcement action as a peace officer while off-duty.

**Full Duty** - A medical determination that an employee can safely perform all of the essential functions of his job with no limitations or restrictions.

**Injury Leave** - Leave that is provided to eligible employees who are unable to work due to a compensable injury or illness.

**Limited Duty** - A medical designation that an employee may return to work with specific and detailed limitations or restrictions.

**Extended Limited Duty** - An extension of Limited Duty status for non-probationary, sworn employees who have been on Limited Duty in excess of a cumulative total of 1,040 hours as a result of an on-duty or off-duty injury or illness.

**No Duty** - A medical determination that an employee is unable to return to work.

### 956.3 REQUIRED REPORT OF ON-DUTY INJURY/ILLNESS

- (a) Employees shall report all injuries, illnesses, and vehicle crashes that occur on-duty or qualify as a compensable injury to their supervisor within 24 hours of the occurrence or prior to the start of their next shift.

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- (b) Employees who fail to report an injury, illness, or crash as outlined in this order may fail to qualify for wage continuation benefits.

#### 956.3.1 INITIAL MEDICAL TREATMENT

Employees shall seek immediate medical attention when necessary and as required by the nature of the injury or illness. Employees who do not seek medical attention shall be considered on Full Duty status until otherwise determined by a physician as outlined in this order.

- (a) At the time of initial treatment, the employee shall have the attending physician complete a Texas Workers' Compensation Work Status Report (DWC-73).
  - 1. The DWC-73 shall include the following information:
    - (a) Whether the employee should be placed on a No Duty, Limited Duty, or Full Duty status; and
      - 1. If the employee is not cleared to return to work, a follow-up appointment date or return to work date.
      - 2. If the employee is cleared to return to work, any medical restrictions or limitations, and a follow-up appointment date.
    - 2. In the event the employee is seen at a hospital ER and the attending physician will not complete the DWC-73, the employee shall obtain all medical discharge paperwork.
- (b) It is the employee's responsibility to ensure the DWC-73 form (or medical discharge paperwork if a DWC-73 is not completed) is received by the APD Workers' Compensation office no later than 24 hours after the initial treatment.
  - 1. Forms or paperwork can be scanned and emailed to "APD Workers' Compensation" or faxed directly to the Workers' Compensation Office (974-6647).

#### 956.4 SUPERVISOR RESPONSIBILITIES

Supervisors learning of any work-related injury or illness, or any crash involving injury or a complaint/statement of injury or pain, shall adhere to the following guidelines:

- (a) Ensure the following Workers' Compensation forms are completed:
  - 1. Employer's First Report of Injury/Illness Form (DWC-1).
  - 2. Job Related Injury/Illness Supervisor Investigation Report.
  - 3. City of Austin Workers' Compensation Employee Letter of Rights.
  - 4. Employees Request for Wage Continuation (WC-800).
- (b) Completed forms shall be scanned and emailed to "APD Workers' Compensation," or faxed directly to the APD Workers' Compensation Office (974-6647), within 24 hours.
  - 1. All original forms shall be forwarded to the APD Workers' Compensation Office via inter-office mail.

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#### **956.5 INJURY LEAVE GUIDELINES**

Injury leave for Department employees shall be granted as follows:

- (a) Sworn employees shall receive up to 2,080 hours of injury leave per compensable injury or illness.
- (b) Civilian employees may receive up to 80 hours of injury leave per compensable injury or illness that qualifies for wage continuation benefits.

##### **956.5.1 EMPLOYEE RESPONSIBILITIES WHILE ON INJURY LEAVE**

All employees placed on injury leave for a compensable injury or illness shall adhere to the following guidelines:

- (a) Employees shall be placed on FMLA, if eligible. Employees shall be notified of their FMLA status by APD-HR.
- (b) Employees shall attend all doctor appointments as scheduled by their physician. Employees shall be required to schedule a monthly medical appointment if no follow-up appointment is scheduled by the physician.
- (c) Employees shall obtain a copy of the completed *Texas Workers' Compensation Work Status Report (DWC-73)* for each doctor appointment and submit it to the APD Workers' Compensation Office within 24 hours of an appointment.
  1. It is the employee's responsibility to ensure each DWC-73 is received by the APD Workers' Compensation Office.
  2. Completed forms can be scanned and emailed to "APD Workers' Compensation" or faxed directly to the Workers' Compensation Office (974-6647).
  3. No employee shall return to work or change their duty status until the DWC-73 form has been received by the APD Workers' Compensation Office indicating the employee can return to work.
  4. Employees on a no-duty status must contact APD Risk Management for guidance if they receive a subpoena directing them to appear in court.
- (d) Employees shall update their supervisor after each doctor appointment.
- (e) Employees shall be assigned to their residence and available Monday-Friday, 8am to 4pm, unless otherwise notified by Risk Management.
  1. Employees shall report to their supervisor before leaving their residence except in cases where they are attending physician appointments, physical therapy appointments, or pharmacy visits.
  2. Employees wishing to take personal leave (e.g., extended time away from home, go out of town) while on injury leave shall contact Risk Management for instructions.

##### **956.5.2 SWORN EMPLOYEE EXHAUSTION OF INJURY LEAVE**

Sworn employees not able to return to work in a Limited Duty or Full Duty capacity after the expiration of the 2,080 hours of injury leave have the following options:

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- (a) Sworn employees may submit a written request to the Chief to request an injury leave extension:
  - 1. At least 30 days prior to exhausting their 2,080 hours of injury leave, employees must submit a memorandum to the Chief requesting the extension.
  - 2. The memorandum must be accompanied by a written report (DWC-73) from the employees' physician that indicates an anticipated date to return to work in a Limited Duty or Full Duty capacity.
  - 3. The Chief shall review the request and, at his discretion, may forward the request to City Council for approval or deny the request.
- (b) After exhausting any injury leave extension, or if an extension is not granted, sworn employees may:
  - 1. Exhaust all available personal leave hours.
  - 2. Exhaust any remaining FMLA, if applicable.
  - 3. Submit a written request for leave donations pursuant to City of Austin policies.
  - 4. Submit a written request for a medical leave of absence pursuant to City of Austin policies.
- (c) Sworn employees still unable to return to work in a Limited Duty or Full Duty capacity after exhausting all the above options may have their employment with the Department terminated.

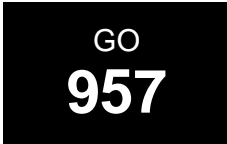
#### 956.5.3 CIVILIAN EMPLOYEE EXHAUSTION OF INJURY LEAVE

- (a) Civilian employees unable to return to work in a Limited Duty or Full Duty capacity after exhausting the 80 hours of injury leave may:
  - 1. Exhaust all available personal leave hours.
  - 2. Exhaust any remaining FMLA, if applicable.
  - 3. Submit a written request for leave donations pursuant to City of Austin policies
  - 4. Submit a written request for a medical leave of absence pursuant to City of Austin policies.
- (b) Civilian employees still unable to return to work in a Limited Duty or Full Duty capacity after exhausting all the above options may have their employment with the Department terminated.

#### 956.6 RESTRICTIONS WHILE ON INJURY LEAVE

Employees on injury leave have the same restrictions as employees on Limited Duty. Employees must know and comply with General Order 958.9 Restrictions While on Limited Duty and Extended Limited Duty.





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# Communicable Disease Exposures and Response Protocols

## 957.1 PURPOSE AND SCOPE

The purpose of this order is to provide reporting guidelines for employees who believe they have been exposed to any communicable disease during the normal course of their work. This order covers the most prevalent types of reported exposures which are Tuberculosis (TB) and Blood Exposures (HIV, Hepatitis B & C).

### 957.1.1 DEFINITION OF A COMMUNICABLE DISEASE EXPOSURE

When an external source of blood, body fluid or bacteria/virus from an infected person comes into contact with an employees' mucous membranes (eyes, mouth, or nose), an opening in the officers' skin or is inhaled by the officer.

### 957.1.2 DEFINITION OF DESIGNATED INFECTION CONTROL OFFICER (DICO)

Person serving as an agency's designated infection control officer under section 81.012 of the Health and Safety code. Austin Police Departments designated DICO will be the APD physician.

### 957.1.3 DICO RESPONSIBILITIES

(a) DICO responsibilities shall include the following:

1. Serve as the point of contact for possible communicable disease exposure reporting and post exposure notification;
2. Evaluate possible exposure events and required responses;
3. Document the exposure follow up process;
4. Interact and communicate with medical facilities involved in exposure testing, and counseling for officers;
5. Monitor state and federal laws, regulations and guidelines for department compliance;
6. Educate department members on current and new guidelines, laws and best practices related to exposures;
7. Collect and maintain data related to exposure statistics and exposure rates for monthly or year-end reports.

## 957.2 PREVENTION OF EXPOSURE

Each communicable disease has its own methods of causing infection. Each employee can limit the risk involved with any method by simply using the tools that are available to each of them. Use your (PPE's) personnel protection equipment i.e.: Rubber gloves, safety goggles and disposable filter masks to decrease the risk of exposure and becoming infected with any disease/illness.

### 957.2.1 SUGGESTED EMPLOYEE ACTIONS IN ALL EXPOSURES

Employees believing they have been involved in a blood exposure should:

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- (a) Thoroughly flush mucous membranes with water and thoroughly wash skin with soap and water or hand sanitizer.
- (b) It may be appropriate for the exposed employee who has been exposed to release care & custody of the suspect or delegate other tasks to a fellow employee so that the exposed employee may take more immediate decontamination or sanitization measures.

#### **957.3 BLOOD EXPOSURES**

A blood exposure can occur when an external source of blood comes into contact with another person's mucous membranes (eyes, mouth, or nose) or an opening in the skin. The highest risk for contamination is with hepatitis.

- (a) Notify a supervisor and proceed immediately to any hospital. It is recommended, but not required, to use a hospital that is familiar with blood exposure protocol (e.g., Brackenridge, Seton Main, St. David's).
- (b) Upon arriving at the hospital employees should:
  1. Explain to the intake nurse that they have been exposed to blood.
  2. Review the circumstances of how the exposure occurred with the doctor. The ER doctor will make an initial determination on whether a blood exposure has occurred.

#### **957.3.1 REPORTING REQUIREMENTS FOR ALL EXPOSURES**

An employee who believes that he/she has been exposed to any communicable disease shall notify his/her immediate supervisor (at least within 24 hours) or at the start of the next shift in order to be eligible for wage continuation benefits. To safeguard the employee's rights to workers' compensation, any required blood test should be done within 10 days to test for HIV and Hepatitis.

- (a) The employee's supervisor shall ensure the following forms are completely filled out. These forms are located in the Workers' Compensation Packet or can be printed from the "Workers' Comp Folder" in the public drive.
  1. Employers First Report of Injury or Illness (DWC-1)
  2. Supervisor's investigation report
  3. Letter of Rights for Employees
  4. Employees Request for Wage Continuation (WC-800)
  5. Texas Workers Compensation Work Status Report (DWC-73)
    - (a) This is filled out completely by the treating physician; however emergency room physicians are not required by law to complete the DWC-73. In these cases the discharge paperwork will suffice.
  6. Fax only the signed and notarized Sworn Affidavit Requesting Testing Following an Exposure and addendum to the following: (For All and any type of exposures Blood, TB, Hepatitis, etc) to: The HHSD Surveillance Program at (512) 972-5772 and The APD Physician/DICO at (512) 974-6655.

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7. Fax all the above forms and discharge paperwork to the APD Workers' Compensation Office or scan and email the forms from any XEROX network printer to [apdworkerscompensation@austintexas.gov](mailto:apdworkerscompensation@austintexas.gov).
  8. Forward all original documentation to the APD Workers' Compensation Office via interoffice mail.
- (b) With all suspected exposure incidents, the employee will also complete an exposure packet which also must be submitted any time that an exposure is reported. The packet will include the exposure affidavit.
1. If the exposure involves a sworn employee they must sign the sworn affidavit requesting testing following an exposure in the presence of another licensed Texas peace officer. The form can be notarized by another peace officer provided that the notarizing peace officer has no relation to the incident and cannot testify to any fact or circumstance surrounding the incident. The notarizing officer and involved employee (exposed officer) cannot be the same person.
    - (a) The exposed officer shall complete in 1st person only one of the following exposure packets:
      1. The Non-Needle and/or Sharps Exposure Packet; or
      2. The Needle and/or Sharps Exposure Packet.
    - (b) The notarizing peace officer SHALL follow the instructions provided in the packet.
    - (c) The employee's supervisor must fax the completed exposure affidavit to the HHSD Surveillance Program at (512) 972-5772 and the APD Physician/DICO at (512) 974-6655.
  2. If the employee is a civilian, they will complete the exposure packet titled "Civilian Only Exposure Packet" found in the same folder location; Public/APD approved Forms/Workers comp/exposure packets/Civilian only.
    - (a) This exposure packet uses a sworn notary page instead of the Peace Officer addendum form.
    - (b) The exposure packet will then be submitted in the same manner as the sworn exposure affidavit.

#### 957.3.2 SUPERVISOR RESPONSIBILITIES

Regardless of whether an ER doctor makes an initial determination that a blood exposure has occurred, supervisors will:

- (a) Make direct phone contact with the on-duty Watch Lieutenant via (512) 974-7822. If no answer, have APD Communications facilitate direct phone contact. Brief the Watch Lieutenant on the circumstances of the exposure.
- (b) Notify the Austin Travis County Health and Human Services Department (HHSD) at (512) 972-5555 of any potential employee blood exposure incident. Only the HHSD

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doctor can make a final determination on whether a blood exposure has occurred. If it is after hours, supervisors will leave a short message with the employee's name, incident number, and whether the ER doctor made an initial determination of blood exposure.

- (c) Fax the affidavit and addendum to HHSD and the APD physician/DICO. Then fax all the above forms and discharge paperwork to the APD Workers' Compensation Office or scan and email the forms from any XEROX network printer to [apdworkerscompensation@austintexas.gov](mailto:apdworkerscompensation@austintexas.gov)

#### **957.4 POST EXPOSURE INFORMATION**

Lab results from source blood draws completed by the Austin Travis County Health and Human Services will be faxed to the Austin Police Department Physician/DICO.

- (a) The Department physician/DICO will contact the employee within 72 hours and inform the employee of the results.
- (b) Employees who have not heard from the Department physician/DICO within 72 hours of the incident should contact the physician directly.

#### **957.5 FILING OF CRIMINAL CHARGES**

If criminal charges are to be filed against an individual for attempting to expose an officer to blood, or to cause alarm or harass an officer by putting them in fear of being infected, regardless if the individual is carrying a communicable disease, the officer should proceed with the filing of Harassment of a Public Servant (Tex. Penal Code § 22.11).

- (a) The individual need not be infected with a communicable disease to meet the elements of Harassment of a Public Servant and therefore no blood draw from the individual will be performed for the purpose of filing criminal charges.
- (b) Under no circumstances will any suspect or person be requested to submit to any blood and/or saliva sample for testing. Only the Travis County Health and Human Services has such authority.

#### **957.6 TUBERCULOSIS (TB) EXPOSURES**

Tuberculosis is a disease that is spread from person to person through the air. It must be inhaled by the victim for it to be contracted. Almost all TB can be cured. Becoming infected with TB is more difficult than previously believed. TB is almost always contracted while indoors with an infected person for long periods of time; the sun's UV (ultra violet) light kills active TB germs including drug resistant strains.

- (a) The employee who suspects that they have been exposed to TB shall notify their supervisor and complete the workers' compensation packet and the exposure affidavit packet. There is no need to report to any Emergency room for possible TB exposures.
- (b) The exposed employee shall contact the TB Surveillance team at the Travis County Health and Human Services Department (HHSD) during normal business hours. Their

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offices and clinic are located at 15 Waller street, Austin TX. This is the only location where testing for the COA is conducted. The Number is (512) 972-5460.

- (c) The exposed employee will review the circumstances with the team and may arrange an appointment time for their TB testing. Employees are reminded to contact the TB surveillance team by phone prior to any testing/treatment. Prior calling will help in arranging the most convenient and expedited testing for the employee.
- (d) It is suggested that TB testing be completed by the HHSD team for they have the most advanced experience dealing with TB and utilize the more advanced blood testing procedures. The blood test is more accurate, less subjective and requires only one visit, unlike the skin test which requires a subsequent interpretation visit.
- (e) If an exposed employee desires that their personal physician perform the test, the employee MUST ensure that their personal physician accepts workers' compensation claims. Otherwise, tests conducted will be at the employees' expense.

**957.7 EVIDENCE /PROPERTY HANDLING PROCEDURES**

Evidence or other materials coming into the custody of the Police Department and suspected of being contaminated should be treated with extraordinary care.

- (a) General procedures:
  - 1. All materials contaminated with blood or other body fluids, whether wet or dry, will be handled with disposable rubber gloves.
  - 2. Hypodermic needles and other sharp objects will be packaged in puncture resistant containers.
    - (a) To prevent needle stick injuries; employees SHOULD NOT cap, bend, break, or remove needles from the syringe, or otherwise manipulate the needle by hand. The needles placement in the protective container is of more importance.
  - 3. Blood or body fluid contaminated equipment
    - (a) Any Non-disposable item, when contaminated with blood/body fluid, will be treated as if the item has been exposed to a communicable disease. It should be cleaned with a disinfectant agent (i.e. Chlorine bleach-water solution of 1:10; as recommended by the CDC- Center for Disease Control) followed by a thorough washing with soap and water. Metal items, such as handcuffs or service weapons, require drying and lubrication/oil treatment afterwards to prevent rust.
    - (b) Officer's Clothing contaminated with blood or body fluid should be removed evaluated by EMS or AFD and decontaminated at the scene or bagged as hazardous materials and disposed of per AFD Hazardous Materials policy or EMS Biohazard policy.
  - 4. Evidence with blood or body fluids should be packaged in accordance with methods outlined in evidence handling procedures available at evidence drop off locations. Items with blood or body fluid must be packaged to prevent any

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cross contamination of other evidence/property and must be clearly marked as "Biohazard". (General Order 618.4.3 (Submitting Biohazard Material)).

**957.8 QUARANTINE RESPONSE**

The Center for Disease Control (CDC), Department of State Health Services (DSHS) and the Austin/Travis County Health and Human Services Department (ATCHHS) have authority to establish quarantine areas. The ATCHHS is the local health authority. The Austin Police Department will not establish a quarantine area.

- (a) General Procedures:
1. Quarantine orders will be obtained by the local health authority (HA).
    - (a) In exigent circumstances a verbal notification from the HA to law enforcement at the scene is acceptable as an official order.
    - (b) A written or verbal notice is similar to an arrest warrant. This is not an arrest, but a detention under an Order of Protective Custody as issued under HSC 81.162.
  2. Persons who try to enter or leave quarantine may be guilty of a 3rd Degree Felony under HSC 81.085.
    - (a) HSC 81.085 authorizes "reasonable force" to secure a quarantine area and except as directed by the department (DSHS) or HA, to prevent an individual from entering or leaving the quarantine area.
    - (b) Officers will follow the Department's Response to Resistance general order.
  3. The initial officers at the site of quarantine may not have full Personal Protective Equipment, or PPE.
    - (a) These officers shall remain outside of the quarantine area as much as possible, avoiding the "hot zone" unless needed by AFD/EMS. They will remain on scene until relieved by better equipped and trained units. The officers may contact AFD/EMS to obtain PPE.

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# Limited Duty, Extended Limited Duty, Return to Work, and Pregnancy

## 958.1 PURPOSE AND SCOPE

The purpose of this order is to establish procedures for assigning employees to Limited Duty or Extended Limited Duty. These assignments may be available to an employee who has an on-duty, off-duty, or non-occupational injury or illness, or is pregnant.

- (a) Guidelines for on-duty injury, illness, and crash incidents can be found in General Order 956 (On-Duty Injury and Illness).
- (b) Guidelines for off-duty or non-occupational injury and illness incidents can be found in General Order 955 (Attendance and Leave).

## 958.2 DEFINITIONS

**Limited Duty Status** - A temporary, limited term assignment not requiring performance of the full range of duties associated with the regular job classification due to medical limitations or restrictions.

**Extended Limited Duty** - An extension of Limited Duty status for non-probationary, sworn employees who have been on Limited Duty in excess of a cumulative total of 1,040 hours as a result of an on-duty or off-duty injury or illness.

**Return to Work Program (RTW)** - A City of Austin program that attempts to locate alternate job placement within the Department or City for employees who can no longer perform the essential functions of their job due to:

- (a) A compensable injury or illness; or
- (b) An off-duty injury or illness that is designated as meeting the definition of a disability under ADA and,
  - 1. The employee is non-sworn (as per City policy); or,
  - 2. The employee is sworn and has been designated not physically or mentally fit by the process set forth in Texas Local Government Code 143.081.

## 958.3 LIMITED DUTY GUIDELINES

Limited Duty assignments are a management prerogative and not an employee right. These assignments are intended to provide employees with the ability to continue working within the limits of their restrictions and limitations on a temporary basis while providing the Department with productive employees during the interim period. The Department will engage in a good faith interactive process to consider reasonable accommodations for any employee with a temporary or permanent disability.

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- (a) The Chief has the ultimate authority to determine whether it is in the best interest of the Department to place an employee on Limited Duty status and, if so, in what position within the Department.
- (b) For sworn employees, the Chief may at any time invoke the fitness for duty process as outlined in Texas Local Government Code 143.081.
- (c) If a sworn employee is designated not physically or mentally fit to perform the essential job functions by the process outlined in Texas Local Government Code 143.081, the procedure outlined in General Order 958.3.1(d) 2(a) shall apply.
- (d) Limited Duty assignments shall be subject to continuous reassessment dependent upon:
  - 1. Department need; and
  - 2. The estimated length of time the employee is expected to remain on Limited Duty; and
  - 3. The employee's current medical limitations and restrictions as dictated by a physician; and
  - 4. The employee's ability to perform in a Limited Duty capacity.
- (e) At the Department's discretion, employees with a compensable injury or illness may be assigned to a Limited Duty position outside of their normal assignment or duties if it becomes available and is consistent with any medical restrictions.
  - 1. If offered, employees shall be required to take the offered assignment; failure to accept the assignment may result in the employee forfeiting their workers' compensation indemnity benefits and may be subject to disciplinary actions.
  - 2. If an assignment meeting the required restrictions and limitations is unavailable, employees may be eligible for FMLA or Worker's Compensation indemnity benefits until an assignment becomes available.
  - 3. Employees who disagree as to whether their bona fide job offer is within the parameters of their medical limitations will be required to submit a memo along with an updated DWC-73 which supports their new limitations and/or work status change. This documentation will be submitted to Risk Management within 48 hours of receiving a bona fide job offer. Failure to provide this updated information may subject an employee to disciplinary actions.
- (f) Employees on a Limited Duty assignment shall be required to:
  - 1. Undergo a medical re-evaluation, as directed by a physician; or,
  - 2. Submit an updated DWC-73 or a Medical Release to Return to Work Form (PD0119) when directed by a Risk Management supervisor; and,
  - 3. Attend Designated Doctor appointments set by the Texas Department of Insurance, Division of Worker's Compensation.
- (g) Employees with an off-duty injury or illness may be offered a Limited Duty position. If a position is offered, the employee may either accept the position or continue to draw on personal leave balances (e.g., sick, vacation).



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- (h) Employees that cannot adequately perform in a Limited Duty assignment may have such assignment modified or discontinued.
- (i) The lack of Department need or a change in priorities may result in the employee's removal from or modification of a Limited Duty assignment.
- (j) The Department may place conditions as deemed appropriate upon any Limited Duty assignment.

## 958.3.1 SWORN EMPLOYEES

All Limited Duty assignments for sworn personnel shall be coordinated through the APD Risk Management Unit and adhere to the following guidelines:

- (a) Sworn employees shall be notified in writing by APD Risk Management of any approved, modified or canceled Limited Duty assignment.
- (b) Sworn employees wishing to be assigned to a Limited Duty assignment different than that identified by Risk Management must receive prior approval from the employee's chain-of-command and APD Risk Management.
  1. Consideration for any special Limited Duty assignments, including requests to keep a sworn employee in his current work assignment, shall be based on written justification by the sworn employee's supervisor.
  2. The sworn employee's supervisor shall complete a *Request to Keep Limited Duty Employee* (PD0061) and forward it up the chain-of-command for approval.
  3. Upon approval by the sworn employee's chain-of-command, completed forms shall be forwarded to the APD Risk Management sergeant for final approval, with the following exception:
    - (a) Sworn employees expected to remain on Limited Duty for no more than two (2) consecutive weeks shall be allowed to stay in their current work assignment with the approval of their commander.
- (c) The supervisor to whom the Limited Duty sworn employee is assigned shall complete a *Limited Duty Assignment Evaluation* to document the employee's performance and forward it to the employee's regular duty supervisor and APD Risk Management.
- (d) Sworn employees may remain on Limited Duty status for no more than a cumulative total of 1,040 hours (including, but not limited to, vacation, exception vacation, sick time, comp time, personal holidays, LTD, POD, and PFS hours) per incident of injury or illness.
  1. Prior to returning to full duty, sworn employees shall coordinate with APD Risk Management and may be required to provide a Medical Release to Return to Work Form (PD0119) completed by their physician.
  2. At least thirty (30) days before the expiration of a cumulative total of 1,040 hours of Limited Duty, the employee's physician must submit a written report to APD Risk Management indicating an anticipated return to work date, identifying the duration of any restrictions on the ability to return to full duty, and supporting the need for any additional limited duty time.

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3. If a sworn employee's physician determines that the employee cannot return to Full Duty after the initial 1,040 hours, sworn employees may request an Extended Limited Duty assignment as outlined in this order. The Chief may approve the Extended Limited Duty assignment or invoke the fitness for duty process outlined in Texas Local Government Code 143.081.
  - (a) If a sworn employee is not approved for a Limited Duty or Extended Limited Duty assignment and is designated not physically or mentally fit for duty by the process outlined in Texas Local Government Code 143.081, employment may be terminated. Prior to termination the employee can be referred to the Return to Work (RTW) Program if the below conditions are met:
    1. **Compensable on-duty injury or illness** will automatically qualify the employee for the RTW program. If the sworn employee elects to participate and is enrolled into the City of Austin RTW Program, the first 90 days shall be for placement within the Department. If no Departmental placement is found, the second 90 days shall be for placement in other city departments. If no placement is found, employment may be terminated
    2. **Off-duty injury or illness** requires an ADA Committee review - If the sworn employee is eligible and elects to participate in the City of Austin RTW Program, enrollment will be for the designated days allowed by the COA RTW policy for this classification of injury/illness. If no placement is found, employment may be terminated.

## 958.3.2 CIVILIAN EMPLOYEES

All Limited Duty assignments for civilian personnel shall adhere to the following guidelines:

- (a) Civilian employees shall be notified in writing of any approved, modified or canceled Limited Duty assignment.
- (b) **On-Duty Injury and Illness**
  1. All Limited Duty assignments for on-duty injury and illness shall be coordinated through the APD Workers' Compensation Office.
    - (a) Civilian employees may be entered into the Return to Work Program for an on-duty injury and illness for a total of 180 days.
      1. The first 90 days shall be under the APD Return to Work Program for placement within the Department.
      2. If no placement is found, the second 90 days shall be under the City of Austin Return to Work Program for placement within the City of Austin.
    - (b) If no placement is found in APD or the City of Austin after 180 days, employment may be terminated.
- (c) **Off-Duty Injury and Illness**

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1. All Limited Duty assignments for off-duty injury and illness shall be coordinated through APD-HR.
  - (a) Assignments shall only be accommodated if one is available in the employee's current work unit and the assignment is within the medical restrictions determined by the physician.
  - (b) Civilian employees may remain on Limited Duty status for no more than a cumulative total of 520 hours per off-duty injury and illness.
  - (c) Reduced work schedules shall be considered as a Limited Duty assignment for no more than 30 days. Employees unable to return to Full Duty status after 30 days will be placed on No Duty status. Employees on a reduced work schedule may be eligible for FMLA.
  - (d) As soon as APD-HR becomes aware that the employee will be unable to return to Full Duty after 8 weeks of being on a Limited Duty status, the employee will be informed of his rights under FMLA, ADA and the City of Austin Return to Work Program as appropriate.
2. If a Limited Duty assignment is not available, employees shall be placed on a No Duty status using their own personal leave (e.g., sick, vacation).
  - (a) Employees shall be informed of their rights under ADA and the City of Austin Return to Work Program, as appropriate.
  - (b) Employees may be eligible for FMLA.
  - (c) Employees are subject to leave restrictions and limitations as outlined in General Order 955 (Attendance and Leave).

#### **958.4 EXTENDED LIMITED DUTY ASSIGNMENTS**

This section applies only to non-probationary, civil service employees. There is no constitutional or statutory entitlement to an Extended Limited Duty assignment. The Chief of Police has created this order in recognition of the fact that in many instances, an injured officer may still make a significant contribution to the Department's mission.

- (a) The intention of this order is to place injured employees in temporary positions with the understanding and expectation that they will return to Full Duty at some future date.
  1. Extended Limited Duty assignments are not intended to create a permanent Limited Duty career path.
  2. While Extended Limited Duty assignments have no specified time limit, the Chief of Police retains the right to impose one at any time.
- (b) Two (2) essential job functions of every Austin Police Officer are the ability to make a forcible arrest and qualify with a firearm. Extended Limited Duty positions waive these specific essential functions as long as the following requirements are met:
  1. The employee obtains an exemption from TCOLE waiving any State mandated requirements for certification that the employee cannot comply with due to his injury or illness.

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2. A copy of the exemption is on file with the Department.
- (c) While on Extended Limited Duty, employees are required to have a quarterly medical examination by their own physician to determine whether the employee is physically and mentally capable of returning to Full Duty.
1. For on-duty injuries or illnesses, the employee is responsible for submitting a completed DWC-73 form to the APD Workers' Compensation Office within 24 hours of the appointment.
  2. For off-duty injuries or illnesses, the employee is responsible for submitting in a completed *Medical Release to Return to Work* form to the APD Workers' Compensation Office within 24 hours of the appointment.
  3. If the Chief of Police questions a physician's report, the Chief may formally invoke the fitness for duty process outlined in Texas Local Government Code Section 143.081.
- (d) Extended Limited Duty assignments will be evaluated every six (6) months. The Chief of Police has the authority to invoke the fitness for duty process at any time if a question arises as to whether the employee is sufficiently physically and mentally fit to continue his duties.
- (e) The assignment to Extended Limited Duty does not affect an employees entitlement to:
1. A paid leave of absence for an injury or illness that is sustained in the line of duty pursuant to Texas Local Government Code Section 143.073; or
  2. Any other form of leave that the employee may be entitled to under Chapter B of the City of Austin Personnel Policies, the Meet and Confer Agreement, and State or Federal law. (e.g., FMLA).

## 958.4.1 APPLYING FOR AN EXTENDED LIMITED DUTY ASSIGNMENT

A sworn employee who has been on Limited Duty status a cumulative total in excess of 1,040 hours may be placed on Extended Limited Duty as provided for in this order and only with the approval of the Chief or an assistant chief.

- (a) At least thirty (30) days before the expiration of a cumulative total of 1,040 hours of Limited Duty, the employees' physician must submit a written report to the APD Workers' Compensation Office indicating a reasonable anticipated date to return to Full Duty.
1. If the physician determines the employee will not be able to return to Full Duty by the expiration of a cumulative total of 1040 hours of Limited Duty, the officer may, within ten (10) days of the expiration of the 1040 hours, submit a written request for an Extended Limited Duty assignment to the Chief of Police through the APD Workers' Compensation office.
  2. The Chief of Police has the authority to deny an officer placement in an Extended Limited Duty assignment if the Chief determines that such placement is not in the best interest of the Department.

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- (b) Preferences for Extended Limited Duty assignments shall be given to employees with a compensable on-duty injury or illness, as well as employees with a qualifying disability as outlined below.

**958.4.2 QUALIFYING DISABILITY**

- (a) If a condition qualifies as a disability under State or Federal law, the employee with the qualifying disability shall have preference for an Extended Limited Duty assignment provided:
  - 1. The employee can perform the essential functions of the Extended Limited Duty assignment; and
  - 2. The Chief of Police determines it is in the best interest of the Department to place the employee in that assignment.
- (b) Employees claiming to have a qualifying disability must submit sufficient supporting medical documentation from their physician in order to have preference in the selection process.

**958.4.3 REVISION OR REVOCATION OF THIS ORDER**

The Chief of Police has the authority to discontinue or amend any part of this order at any time when it is determined to be in the best interest of the Department.

- (a) In the event the Chief of Police should rescind or amend this order, employees in Extended Limited Duty assignments must obtain a release to Full Duty from their physician within 90 days of being notified the assignment will be eliminated.
- (b) If any or all Extended Limited Duty positions are eliminated and an employee is unable to return to Full Duty within 90 days, every effort will be made to locate alternate placement within the Department.
- (c) If alternative placement within the Department is not successful, employees who have suffered a compensable injury or illness shall be referred to the City of Austin Return to Work Program. If placement through this program is not successful, employment shall be terminated.

**958.5 PREGNANCY**

This section outlines:

- (a) The method of reporting pregnancy.
- (b) The guidelines for reassignment to a Limited Duty assignment.
- (c) The type of leave available to pregnant employees.
- (d) The guidelines for returning to Full Duty.

**958.5.1 NOTIFICATION OF PREGNANCY AND REASSIGNMENT**

- (a) An employee should notify her commander/manager that she is pregnant when she feels she can no longer perform one or more of the essential functions of her normal duties.

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1. Upon receiving such notification from an employee, a commander/manager has the discretion to place the employee on Special Assignment to an appropriate position without the documentation of a physician.
  2. The employee shall not be considered on Limited Duty due to the lack of medical documentation.
- (b) An employee shall notify her commander/manager if her physician believes she can no longer perform one or more of the essential functions of her normal duties.
1. The employee shall submit to her commander/manager a written request for reassignment to a Limited Duty position within the Department.
  2. The physician's opinion shall be attached to such request, together with the physician's recommendation on restrictions and limitations of duties.
  3. The commander/manager shall forward a copy of the request to the APD Risk Management Unit for the employee's confidential medical file.
  4. Reassignment to a Limited Duty position shall be handled by the APD Risk Management Unit and should be made in accordance with a physician's recommended restrictions and limitations necessitated by the employee's changing physical condition.
  5. The duration of such reassignment shall include the time prescribed by the physician.
- (c) A supervisor in an employee's chain-of-command may place the employee on Special Assignment if reasons can be articulated as to why the employee is no longer able to perform one or more of the essential functions of her duties.
1. The supervisor may request the employee to provide medical documentation from her physician regarding her ability or inability to perform the essential functions of her job.
  2. If the medical documentation indicates the employee has:
    - (a) No restrictions and/or limitations, the employee shall only be placed on Special Assignment if requested as outlined in (a).
    - (b) Restrictions and/or limitations, the chain-of-command shall follow the procedures for placing the employee on Limited Duty as outlined in (b).

**958.5.2 GRIEVANCE PROCEDURES**

If an employee's physician has requested the employee be assigned to a Limited Duty position and the physician feels that the Department is not providing proper reassignment, the employee may file a grievance in writing to her commander/manager.

- (a) The employee shall be required to present a copy of the following:
1. The physician's original request for reassignment; and
  2. The recommended restrictions and limitations of the employee; and

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3. A written statement listing the reason(s) the employee believes the assignment is inappropriate.

**958.5.3 REQUESTING FMLA OR LEAVE OF ABSENCE WHILE PREGNANT**

- (a) Employees eligible for Family Medical Leave (FMLA) shall be granted up to 12 weeks each calendar year for the birth of a child.
  1. Employees who request FMLA must submit a completed *Request for Family and Medical Leave* form and *Certification of Health Care Provider* form to APD-HR at least thirty (30) days prior to the estimated delivery date.
- (b) Employees not eligible for FMLA, or who have exhausted FMLA leave, may request a leave of absence as outlined in City of Austin Policies.
  1. Employees requesting a leave of absence must make the request in writing.
  2. The request shall include the anticipated date of return and any other documentation the employee feels is necessary to support the request.
  3. The request shall be submitted to APD-HR.
- (c) While on leave, employees may be paid by using approved personal leave time in accordance with City Personnel Policies.

**958.5.4 RETURNING TO DUTY**

Before returning to work the employee must provide a *Medical Release to Return to Work* form to their supervisor indicating the anticipated return to a Limited Duty or Full Duty status.

- (a) If the employee returns on a Limited Duty status, the form shall include any restrictions and either an anticipated date the employee will return to Full Duty or the employee's next anticipated medical evaluation appointment.
- (b) If the employee requires an extension of their Limited Duty status beyond the anticipated return to Full Duty date, the employee must obtain an additional *Medical Release to Return to Work* form. The form shall include any restrictions and a new anticipated date to return to Full Duty or the employee's next anticipated medical evaluation appointment.
- (c) The employee is expected to maintain a current *Medical Release to Return to Work* form on file with their supervisor and APD Risk Management with either an anticipated return to Full Duty date or employee's next anticipated medical evaluation appointment date until they have been released to Full Duty status by their treating doctor.

**958.6 SWORN PROBATIONARY EMPLOYEES**

A sworn employee's probationary period begins on the date of commission with APD and ends after 15 months. Employees who are assigned to a temporary Limited Duty assignment or who take leave (other than non-FMLA vacation), shall have their probation extended by a period of time equal to the assignment or leave taken.

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**958.6.1 OFFICERS ENROLLED IN THE FIELD TRAINING PROGRAM**

- (a) An Officer is automatically enrolled in the Field Training Program upon commission as a police officer and must complete a minimum of 15 months of Field Training assigned to a uniformed patrol shift.
- (b) Officers who are assigned to a non-patrol uniformed shift (including DTAC), will have their Field Training enrollment extended by a period of time equal to the assignment.
- (c) Completion of the program is defined as having trained the minimum number of training days with a Field Training Officer as determined by the SOP (e.g., Modified, Standard, or Returning Officer) and upon successful completion of all FTP assignments.
- (d) Upon completion of the FTP, the Field Training Coordinator will submit the records to be entered into TCOLE.

**958.7 MAINTENANCE OF CERTIFICATION AND TRAINING**

- (a) Employees assigned to any Limited Duty assignment shall maintain all certification, training, and qualifications appropriate to both their regular and temporary duties provided the certification, training, or qualifications are not in conflict with any limitations or restrictions.
- (b) Employees assigned to a Limited Duty assignment shall inform their supervisor of any inability to maintain any certification, training, or qualifications.

**958.8 PROMOTION OF CIVIL SERVICE EMPLOYEES**

Provided the Chief of Police does not have a valid reason for a promotional bypass, sworn employees on Limited Duty or Extended Limited Duty are eligible for promotion under the following circumstances:

- (a) The employee obtains a release to Full Duty from his personal physician prior to the effective date of the promotion; or
- (b) An Extended Limited Duty assignment is approved and available in the rank the employee would be promoting to.

**958.9 RESTRICTIONS WHILE ON LIMITED DUTY AND EXTENDED LIMITED DUTY**

While on Limited Duty or Extended Limited Duty, employees shall not engage in conduct that could possibly hinder their own recovery or safety or the safety of others.

- (a) No sworn or civilian employees shall:
  - 1. Drive a City-owned vehicle without supervisor approval.
  - 2. Utilize a take home vehicle without supervisor approval.
  - 3. Participate in any firearms training, practice, or qualifications.
  - 4. Participate in activities that could possibly hinder recovery (e.g., strenuous athletic activity).



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5. Work any secondary employment that is inconsistent with any medical limitations or restrictions.
6. Work any secondary law enforcement related employment (LERE).
- (b) Sworn employees may request to work Department Overtime and Non-LERE secondary employment by completing the *Limited Duty Request for Departmental Overtime and Non-LERE Employment* form (PD0143) and submitting it to the Professional Standards commander at least 7 days prior to the assignment.
  1. The form shall specify the duration and duties being performed during the overtime assignment; and
  2. The Professional Standards commander shall determine if the duties of the assignment are within the medical limitations or restrictions; and, submit a written response to the requesting employee granting approval or denial of the overtime assignment.
- (c) In addition to the above guidelines, sworn employees shall not:
  1. Wear any part of the APD police uniform.
  2. Enforce any laws of the United States, State of Texas, or Ordinances of the City of Austin.
  3. Take law enforcement action or make arrests.
  4. Carry a firearm unless:
    - (a) It is concealed; and
    - (b) There are no medical limitations or restrictions which would prevent employees from using the weapon in an authorized manner.
  5. Display their police badge or identification card, either on-duty or off-duty, in a manner that may identify them as a police officer.
    - (a) This provision does not supersede the requirement that all Department employees must display Department issued identification while on Department premises.



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# Restricted and Administrative Duty

### 959.1 PURPOSE AND SCOPE

The purpose of this order is to outline when and how an employee is placed on restricted duty or administrative leave/duty.

### 959.2 RESTRICTED DUTY OR ADMINISTRATIVE LEAVE/DUTY

Employees involved in serious, critical, or traumatic incidents, not limited to shootings or fatality crashes, may be placed on restricted duty or administrative leave/duty status to restrict their authorities and/or work functions. This may be done at any point during an investigation when maintaining regular duties may compromise the integrity or general order of the Department.

- (a) Employees will be placed on restricted duty or administrative leave/duty when their actions or use of force in an official capacity result in death or serious bodily injury to another person.
- (b) Employees may be placed on restricted duty or administrative leave/duty based on any of the following factors:
  1. A compelling reason to believe the employee poses a threat to someone; or
  2. An allegation of serious misconduct; or
  3. The employee represents an increased potential liability to the Department; or
  4. Physical violence was involved in a violation; or
  5. The employee is pending physical, drug or psychological testing.

### 959.3 DUTY RESTRICTIONS

- (a) Officers placed on restricted duty or administrative leave/duty may be assigned to clerical duties at an APD site or at their residence and may have full, limited, or no police authority.
- (b) Civilian employees may be placed on administrative leave.
- (c) Any restriction placed upon an employee on restricted duty or administrative leave/duty status will be listed on the written direct order given placing the employee on restricted duty or administrative leave/duty.
  1. A restricted duty or administrative leave/duty order may restrict employees from:
    - (a) Enforcing any laws or ordinances.
    - (b) Working any Law Enforcement Related Secondary Employment.
    - (c) Accessing information contained in APD files or computer systems.
    - (d) Carrying any firearm on City or APD facilities.
    - (e) Carrying any firearm off-duty unless the employee holds a Handgun License (HL).

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2. In addition, a restricted duty or administrative leave/duty order may require employees to:
  - (a) Report to a designated supervisor at specified times.
  - (b) Remain available for court appearances.
  - (c) Remain at their designated work station (e.g., on-site, at home) during duty hours unless on approved leave. Employees must report to their designated supervisor if they leave the designated work station for more than reasonable breaks.
  - (d) Furnish a phone number where they can be reached at 24 hours a day to their designated supervisor and Internal Affairs.

#### **959.4 PLACEMENT PROCEDURES**

An employee's commander/manager or, in the event of an emergency, the Duty Commander, may place an employee on restricted duty or administrative leave/duty status. When practical, these procedures will take place in private with only the employee, the employee's supervisor, and, if requested, IA present. Upon request, IA will assist supervisors with completing the proper paperwork to place an employee on restricted duty or administrative leave/duty.

- (a) The following steps are used to place employees on restricted duty or administrative leave/duty:
  1. Employees will be issued a written direct order immediately placing them on restricted duty or administrative leave/duty and listing all restrictions being placed upon the employee.
  2. Employees will acknowledge the order by signing their name.
  3. Employees should be assigned to daytime hours to maintain accessibility for the investigator.
  4. Supervisors may request the employee's APD computer access be suspended.
  5. If required to do so, employees will turn in to their supervisor any Department issued equipment (e.g., badge, APD identification, building access cards, and Department issued firearms).
    - (a) Employees will receive a receipt for all property turned in.
    - (b) The property may be retained by the employee's supervisor or stored in Police Equipment.
- (b) The Chief will be notified of the placement as soon as practical.
- (c) The restricted duty or administrative leave/duty status and related paperwork will become part of the IA investigative file.
- (d) While on any type of restricted duty or administrative leave/duty status or suspension, other than an indefinite suspension, employees must maintain TCOLE licensing requirements for annual qualification and mandatory training.

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1. When employees are suspended or restricted from carrying their firearm on police facilities and the TCOLE annual weapon's qualification requirement might be violated, they will notify their supervisor so approved arrangements might be made for weapons qualification.
2. Employees are ultimately responsible for ensuring their compliance with all TCOLE mandated licensing requirements.

**959.5 RETURN TO FULL DUTY STATUS**

- (a) Employees may be returned to full duty status only upon:
  1. The conclusion of the investigation or suspension.
  2. By order of a court or Civil Service Proceeding.
  3. By order of the Chief or designee.
  4. When applicable for civilian employees by order of the City Manager.
- (b) Employees will be returned to full duty status by their commander/manager, with concurrence of the appropriate assistant chief.
- (c) Employees will be given written documentation to reflect the change in status which will be made part of the IA investigative file. Employees will acknowledge the documentation with their signature and will be given a copy of the signed form.
- (d) Supervisors will:
  1. Ensure any APD equipment and property is returned to the employee; and
  2. Request the employee's access to APD computer systems be reinstated if it was restricted.



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# Mother Friendly Workplace

### 960.1 PURPOSE AND SCOPE

The purpose of this order is to provide reasonable accommodations to employees desiring to express breast milk for the employee's infant child (Tex. Gov't Code § 619.003).

### 960.2 POLICY

It is the policy of the Austin Police Department to provide, in compliance with the Fair Labor Standards Act (FLSA) and the City of Austin's Mother Friendly Workplace Policy, reasonable break time and appropriate facilities to accommodate any employee desiring to express breast milk for her infant nursing child (29 USC § 207; 25 Tex. Admin. Code § 31.1).

### 960.3 LACTATION BREAK TIME

A rest period should be permitted each time the employee has the need to express breast milk (29 USC § 207; Tex. Gov't Code § 619.004). In general, lactation breaks that cumulatively total 30 minutes or less during any four-hour work period or major portion of a four-hour work period would be considered reasonable. However, individual circumstances may require more or less time.

Lactation breaks, if feasible, should be taken at the same time as the employee's regularly scheduled rest or meal periods. While a reasonable effort will be made to provide additional time beyond authorized breaks, any such time exceeding regularly scheduled and paid break time may be unpaid, depending on the circumstances.

Employees desiring to take a lactation break shall notify Communications or a supervisor prior to taking such a break. The Department may require employees to reasonably delay lactation breaks if taking the break immediately would seriously disrupt the Department's operations.

Once a lactation break has been approved, the break should not be interrupted except for emergency or exigent circumstances.

### 960.4 PRIVATE LOCATION

The Department will make reasonable efforts to accommodate employees with the use of an appropriate room or other location to express milk in private. Such room or place should be in proximity to the employee's work area and shall be other than a bathroom or toilet stall. The location must be shielded from view and free from intrusion from co-workers and the public (29 USC § 207; Tex. Health & Safety Code § 165.003; Tex. Gov't Code § 619.004).

Employees occupying such private areas shall either secure the door or otherwise make it clear to others that the area is occupied with a need for privacy. All other employees should avoid interrupting an employee during an authorized break, except to announce an emergency or other urgent circumstance.

Authorized lactation breaks for employees assigned to the field may be taken at the nearest appropriate private area.

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**960.5 STORAGE OF EXPRESSED MILK**

An employee shall be provided with access to a hygienic storage area for her expressed milk. Any employee storing expressed milk in any authorized refrigerated area within the Department shall clearly label it as such and shall remove it when the employee's shift ends (Tex. Health and Safety Code § 165.003).

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# Employee Speech, Expression, and Social Networking

## 972.1 PURPOSE AND SCOPE

This order is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the legitimate needs of the Department.

Nothing in this order is intended to prohibit or infringe upon any employee's communication, speech or expression that has been clearly established as protected or privileged.

### 972.1.1 APPLICABILITY

This order applies to all forms of communication including but not limited to film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, email, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

### 972.1.2 FIRST AMENDMENT CONSIDERATIONS

The United States Supreme Court case of *Garcetti v. Ceballos* (2006) held that speech made by public employees pursuant to their official duties is generally not protected by the First Amendment from employer discipline. Employees should be cognizant of the fact they are responsible, and may be held accountable, for any and all speech, posts, etc. made by them relating to, or as a result of, their employment.

Employees who are off-duty and speaking as private citizens on their personal social media website account(s), or in other forums, and address a matter of public concern are generally protected under the First Amendment from employer discipline. Matters of public concern include topics that address an issue of political, social, or other concern to the community, including matters of public corruption or the efficient provision of government services.

The United States Supreme Court case of *Connick v. Myers* (1983) held that speech made by public employees which affects the efficient operation of the public employer may not be protected by the First Amendment from employer discipline.

## 972.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the orders and performance of this department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Austin Police Department will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression. This policy is not intended to restrict employee speech that is protected by the First Amendment.

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#### **972.3 SAFETY AND OTHER CONSIDERATIONS**

- (a) Employees should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect the safety of the Austin Police Department employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees shall therefore not disseminate or post any information on any forum or medium that could reasonably be expected to compromise the safety or privacy of any employee, an employee's family or associates.
- (b) Unless otherwise stated in this policy, employees are not barred from presenting themselves on the Internet or on social media platforms as Austin Police Department employees. However, when posting information or material to the Internet or to social media platforms, or in any publicly accessible communication application or medium, employees shall carefully consider whether or not to identify themselves as employees of the Austin Police Department or members of law enforcement. Any information posted or disseminated may remain accessible to the public for an indefinite length of time even if access is restricted. Posted information may impact courtroom credibility, potential citizen contacts, employee safety, or the ability to seek and obtain an undercover assignment within the Department.

#### **972.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT**

To meet the Department's safety, performance, and public-trust needs, the following is prohibited:

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Austin Police Department or its employees.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Austin Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the Austin Police Department or its employees.
- (c) Speech or expression that could reasonably be foreseen as creating a negative impact on the credibility of the employee as a witness. Posting or making statements or expressions that glorify or endorse dishonesty, unlawful discrimination, or illegal behavior is prohibited.
- (d) Speech or expression of any form that could reasonably be foreseen as creating a negative impact on the safety of the employees of the Department. This includes speech or expression that would reveal the identity or affiliation with law enforcement of any undercover officer.
- (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Austin Police Department.
- (f) Speech or expression that reveals the identities of victims, suspects, or witnesses to an investigation or police related incident, without the express consent of those person(s). Additionally, employees will not post content or make statements regarding



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the guilt or innocence of suspects/arrestees in cases involving the Austin Police Department, the involved employee, or where such information would reveal non-public information, violate confidentiality provisions of law or APD policy, would impact ongoing investigations, or would otherwise impact efficient operations of the Austin Police Department.

- (g) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department for financial or personal gain, or any disclosure of such materials without the expressed authorization of the Chief of Police or designee (Tex. Penal Code § 39.06(a)(1)).
- (h) Posting, transmitting or disseminating images, video or other media that may include sensitive (CJIS) information or would otherwise compromise the integrity of an investigation (See General Order 116.8 PRIVACY AND SECURITY OF RECORDS).
- (i) Failure to take reasonable and prompt action to remove any content that is in violation of this order and/or posted by others from any web page or website maintained by the employee (e.g., social or personal website).

#### 972.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

Unless specifically authorized by the Chief of Police, employees may not represent the Austin Police Department or identify themselves in any way as being affiliated with the Austin Police Department in order to do any of the following (Tex. Local Gov't Code § 556.004(c) and (d)):

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his individual capacity or through some unofficial group or organization (e.g. bargaining group), is affiliated with this department the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Austin Police Department.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions on political subjects and candidates at all times while off-duty. However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 U.S.C. § 1502)).

#### 972.5 PRIVACY EXPECTATION

Employees forfeit any expectation of privacy with regard to anything published or maintained through file-sharing software or any Internet site open to public view (e.g., Facebook, Twitter). While the Department does not actively monitor member off-duty use of social media, the

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Department does have the right to review and take appropriate lawful action with respect to statements or speech that violate violates Departmental policy, conflicts with job duties, interferes with the Department's mission, or improperly discloses confidential Departmental information.

Additional guidelines on privacy expectations are outlined in:

- (a) General Order 1000 (Department Technology Use); and
- (b) General Order 1002 (Electronic Mail (Email) Communications).

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**Chapter 10 - General Policies**



## Austin Police Department General Orders

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# Department Technology Use

### 1000.1 PURPOSE AND SCOPE

Operation of all Department computers, software, and systems will be in accordance with City of Austin Communications and Technology (CTM) policies. This order provides guidance on the use of Department computers, software, and systems and is not meant to supersede established CTM policies. Questions on this order should be referred to a supervisor or the Police Technology Unit.

#### 1000.1.1 PRIVACY POLICY

Any employee utilizing any computer, electronic storage device or media, Internet service, phone service, information conduit, system or other wireless service provided by or funded by the Department expressly acknowledges and agrees that the use of such service, whether for business or personal use, shall remove any expectation of privacy the employee, sender, and recipient of any communication utilizing such service might otherwise have, including as to the content of any such communication.

- (a) The Department expressly reserves the right to access and audit any and all data, communications, and Internet usage, including content that is sent, received, and stored through the use of Department systems. Periodic audits may be conducted by the:
  1. Police Technology Unit (PTU).
  2. CTM.
  3. Internal Affairs/Risk Management Division.
- (b) All data, communications, and Internet usage by employees may be saved for an indefinite period and may be retrieved and reviewed without notice as needed.

### 1000.2 DEFINITIONS

The following definitions relate to terms used within this order:

**Department Technology** - Includes all computers (on-site and portable), Internet, email, hardware, software, and resources owned, leased, rented or licensed by the Austin Police Department or City of Austin which are provided for official use by employees.

**Hardware** - Includes, but is not limited to, computers, computer terminals, network equipment, modems, or any other tangible computer device generally understood to comprise hardware.

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

- (a) **Freeware Software** - Software freely obtained from public sources.
- (b) **Shareware Software** - Proprietary software that is provided to users without payment on a trial basis and is often limited by a combination of functionality, availability, or convenience.

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#### **1000.3 GENERAL DEPARTMENT TECHNOLOGY GUIDELINES**

These orders apply to all employees of the Austin Police Department using any Department Technology. Use of these systems implies that employees agree to comply with all applicable laws, guidelines, and Department and CTM policies.

- (a) The Police Technology Unit is responsible for maintaining and approving new technology.
- (b) Employees are responsible for their own network account regardless of who actually uses it. Employees will log off the network upon completion of computer activity or take reasonable precautions (e.g., lock the computer screen) when stepping away from a computer.
- (c) Employees must use their own login and password to access the network. Disclosure of login and password, access codes, or other authentication devices to others must be kept to an absolute minimum and done only when approved by a supervisor.
- (d) Employees are responsible for taking reasonable precautions to avoid introducing viruses to Department computer systems.
  1. Files obtained from any source outside the Department (e.g., computers, thumb drives, CD's, Internet, email attachments) may contain dangerous computer viruses.
  2. Employees should never use non-Department devices/sources, download Internet files, or accept email attachments from unknown sources without first scanning the material with Department-installed virus software.
  3. If a user suspects that a virus has been introduced into the Department network, the user should notify their supervisor and CTM through the Help Desk.
  4. Employees should regularly scan their Department computer for viruses. Report any viruses that the computer is not able to repair itself to CTM through the Help Desk. CTM has scheduled a virus scan for all networked computers on a regular basis.
- (e) Employees who become aware of any computer system security breach, whether internal or external, will immediately notify their supervisor, the Help Desk, and the Police Technology Unit.
- (f) Employees will notify their supervisor if they observe someone using Department Technology inappropriately. The supervisor receiving such information will review it and take appropriate action.

#### **1000.3.1 PROHIBITED USES OF DEPARTMENT TECHNOLOGY**

Prohibited uses of any Department Technology include, but are not limited to, the following:

- (a) Use for private gain or profit, or to solicit for political, religious, or other non-business purposes.
- (b) Engaging in discriminatory or harassing behavior, including sexual harassment.
- (c) Downloading or installing any hardware or software without approval from the Police Technology Unit.

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- (d) Creating an unauthorized copy of Department software.
- (e) Violating or invading the privacy of others by posting information on the Internet about another employee or unnecessarily viewing another employee's files or email. Employees must be sensitive to the fact that Internet news group postings, email messages, web sites, and various other communications on the Internet may be public information.
- (f) Placing any Department material (e.g., internal memos, bulletins) onto the Internet without prior approval of the Chief of Police or designee.
- (g) Interfering with or disrupting any Department network, Internet user, program, or equipment.
  - 1. Disruptions include but are not limited to:
    - (a) Propagation of computer worms, viruses, or other debilitating programs;
    - (b) Using the Department network to make unauthorized entry to any other machine accessible by the network or Internet.
  - 2. Deliberate attempts to degrade or disrupt system performance may be considered criminal activity with possible prosecution under applicable state and federal laws.
- (h) Deliberately accessing pornographic or Internet gambling web sites without prior authorization from a supervisor.
- (i) Streaming of audio/video media from the Internet for non-business related purposes without approval of a supervisor.

#### **1000.4 EMPLOYEE COMPUTER ACCESS GUIDELINES**

- (a) **New Employee, Employee Transfers, Employee Separation from Department**
  - 1. Supervisors are responsible for completing the appropriate request form to create, transfer, or delete computer access for new employees, employee transfers, and when an employee separates from the Department.
  - 2. Forms can be found in the *Approved APD Forms* folder under *Computer Security Access Related Forms* or the web based forms located on APD net.
    - (a) Completed forms will be sent to the Help Desk.
    - (b) A help ticket will be generated and sent to the Police Technology Unit for approval.
- (b) **Employee Suspensions**
  - 1. Supervisors needing to have an employee's computer access suspended or deleted should send an email to the Police Technology Unit Lieutenant or Sergeant.
  - 2. The Police Technology Unit will not suspend or delete an account for employee suspensions of five (5) days or less. This does not prevent the employee's chain-of-command from ordering the employee not to access the APD computer system during the suspension period.

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#### 1000.4.1 SUPPORT PERSONNEL REMOTE ACCESS

CTM personnel may have to access employee computers from time to time for support reasons.

- (a) When CTM personnel remotely connect into a computer, a small square notification announcement will pop up in the bottom right of the computer screen to indicate that someone has connected to the computer. This notice will contain that person's user name and the remote computer they are using.
- (b) It is the employee's responsibility to close down any applications or documents that contain confidential or sensitive data prior to allowing any support personnel to connect to the computer.
- (c) Employees who observe a remote session and believe it is not appropriate or authorized will report this session to the Police Technology Unit immediately.
- (d) If a virus or other potentially harmful program is detected and CTM personnel are required to shut down a computer, they are authorized to remote into that computer immediately without first contacting the user. This can occur when time is a factor or when the primary computer user is not known. Employees should keep this in mind when leaving work at the end of the day and should shut down all sensitive or confidential software applications.

#### 1000.5 DEPARTMENT HARDWARE AND SOFTWARE

Employees wishing to have any piece of hardware or software installed on a Department computer will get approval from the Police Technology Unit prior to it being installed.

- (a) Upon approval of any hardware/software request or change, the Police Technology Unit will notify CTM for installation.
- (b) When required for legal compliance, all software installed on Department computers will be registered or licensed with the software manufacturer. Copies of the registration and/or license agreement will be forwarded and maintained by CTM or designee.
- (c) Shareware software will not be used on Department computers for a time period in excess of that allowed by the manufacturer for trial purposes unless it has been purchased and properly registered.
- (d) Freeware software will only be installed on Department computers when it has been ascertained that such software is usable by government organizations free of charge.

#### 1000.5.1 PRIVATELY OWNED COMPUTER USE

Employees with proper authorization may utilize privately owned personal computer equipment for Department business.

- (a) Employees will adhere to Department and CTM policies when using privately owned computers for Department business.
- (b) Privately owned computers will not be connected directly to the Department network.
- (c) Personal hardware components (e.g., printers, external modems, external drives) will not be connected to Department equipment.

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- (d) Technical support on privately owned computers for Department business will be considered on a case by case basis.

#### **1000.6 REMOTE ACCESS GUIDELINES**

The Austin Police Department has the capability to grant remote access to APD and City of Austin computer systems for employees that need access when not at a normal work location.

Mobile Office is one form of remote access that enables employees to access a remote computer from any computer (i.e., Tough book, Home PC, or another department computer.) This remote computer includes the employees group folders, Versadex, Paging, Printers and other services only accessible from a city computer. Remote access users shall comply with CJIS requirements to ensure that CJIS data cannot be viewed by the general public.

##### **1000.6.1 REQUESTING AND GAINING REMOTE ACCESS**

- (a) All employees have been granted remote access to APD Citrix. Employees needing other types of remote access such as GoToMyPC or VPN must have approval from the employee's Lieutenant or equivalent civilian manager.
- (b) Some factors that should be considered when granting remote access to GoToMyPC or a VPN:
  - 1. The necessity for remote access
    - (a) Can the employee use Mobile Office instead?
    - (b) Is the employee on Emergency call back or when an employee is home sick for an extended period of time?
    - (c) Is the unit budgeted to pay for the licenses needed for GoToMyPc or VPN access?
  - 2. Is the employee a non-exempt employee?
    - (a) Non-exempt employee access must be in the City's best interest. Work done while using remote access is considered productive time
    - (b) Non-exempt employees working remotely should be compensated for any time that is beyond their normal 40 hours.
- (c) The supervisor approving any remote access request except Mobile Office will open a Help Desk ticket that will be routed to APD Data Control to determine if a license is required and available.
  - 1. If a license is required but not available, the employee will be placed on a "stand by" list for the next available license. This list will be used during budget planning to determine whether to purchase more licenses.
  - 2. The requesting employee must then complete the CTM Telework Request Form. The completed form must be faxed to the Help Desk. The Help Desk will generate a Help Desk ticket and send it to APD Data Control to verify authorization. Once confirmed, the Help Desk will contact the requester to complete the set up process.



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#### 1000.6.2 COMPLIANCE WITH CTM POLICIES AND REMOTE ACCESS TRAINING

As part of the APD readiness program all employees will complete Securing the Humans Cyber-Security Awareness Training for Police. This will ensure that during an unplanned event, employees will be able to access a city computer from home or other remote location if directed by a supervisor. It will also ensure that that employees and supervisors are aware of the requirements for tele-working (i.e., reporting for time and attendance, overtime usage, computer security etc.)

- (a) Cadets will complete the training during the Police Academy and prior to any ride out.
- (b) Civilian personnel will complete the training within the first 90 days of being hired.
- (c) Employees will not access any computer remotely, including Mobile Office without having completed the CTM Telework Training.

#### 1000.6.3 HOME ACCESS

- (a) Employees that remotely access a City Computer, including Mobile Office from Home or another personal computer are considered to be "tele-working":
  1. CTM requires that virus and firewall protection be installed on an employee's personal computer. It is the responsibility of the employee to keep this software up to date on security patches (The City provides free downloads of Antivirus and Firewall software)
  2. Employees will comply with the City of Austin Tele-work Personnel Procedures and agrees to the duties, obligations, responsibilities and conditions for remote access described in that document.
  3. Tele-work access must be scheduled in advance and approved by the employee's immediate supervisor (lieutenants are exempt from this requirement.)
  4. If technical difficulties occur employees must report those issues to the Help Desk (974 HELP)
  5. If employees cannot access the COA network, and do not have sufficient work tasks to accomplish without this access, they may be required to come into the office to complete the workday.
  6. Employees will code their time sheet with TLC for hours worked while tele-working.
  7. Employees will not use COA equipment for personal use as outlined in the Prohibited Uses of Department Technology section of APD General Orders.
- (b) Accessing Mobile Office from home requires supervisor and APD Data Control approval.
- (c) The department is limited on the number of concurrent users logged on at any one time. Once that limit is reached, additional user access requests will be denied. Patrol personnel have priority, and to insure access all personnel using the system should log off as immediately upon task completion.

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- (d) Personnel should not use the system to simply check their email. Employees should check email via pswebmail.com

#### **1000.7 INTERNET USAGE**

Internet access is only authorized for official Department business and users are expected to know the tools, rules, and etiquette of the Internet.

Employees must use the Internet in accordance with all applicable laws and regulations. This includes compliance with copyright and license laws governing programs, as well as data and written materials accessed, obtained, or provided to others via the Internet.

#### **1000.8 MANAGEMENT OF STORAGE AND BACKUPS**

Electronic storage space limits are set by CTM based on allocated resources and the ability to maintain and back up these files, along with budget constraints.

- (a) Employees are allocated limited storage space and are responsible for managing the amount of data collected and stored.
- (b) Group folders have similar constraints set by CTM. Employees should avoid storing electronic data that is already stored elsewhere in another group folder. Employees should use alternate solutions such as links or Sharepoint to share the data.
- (c) Employees are reminded that digital media relating to police cases should be stored according to General Order 618.5 (Digital Evidence Collection and Storage). Personally allocated storage space (H Drive) will not be used to permanently store any case related data.
- (d) Employees are reminded that the Department has Records and Retention orders that must be followed when deleting or removing any files.
- (e) Data saved on a networked computer drive (Digital Case Folder) is automatically backed-up (copied); therefore, it is not normally necessary for employees to keep additional copies. If there is a business need, any additional copies shall only be stored on another source, (e.g., thumb drive, external drive) and maintained and stored according to Department policy and retention.
- (f) Employees needing to share large amounts of data may use the Officer to Officer Daily Shared Folder located on the Public Data for APD Only drive. This folder is authorized for the temporary storage of large files and storage time should not exceed 5 days. Items in this folder 7 days or older will be automatically purged.



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## Electronic Mail (Email) Communications

### 1002.1 PURPOSE AND SCOPE

The purpose of this order is to establish guidelines for the proper use and application of the Department's electronic mail system (email), by employees of this department. Email is a communication tool available to employees to enhance efficiency in the performance of job duties and is to be used in accordance with generally accepted business practices and current law (e.g., Texas Public Information Act). Messages transmitted over the email system must only involve official business activities and contain information essential to the business, administration, or practices of the Department.

#### 1002.1.1 ADMINISTRATIVE GUIDELINES

Use of the email system by any employee implies both understanding and compliance with this order.

- (a) Employees using the email system will do so in an appropriate and professional manner.
  - 1. Employees observing someone using email inappropriately, or who receives unusual or inappropriate material, will notify their supervisor.
  - 2. The supervisor receiving such information will review it and take appropriate action.

### 1002.2 EMAIL PROCEDURES

- (a) Employees will check email on a regular basis to ensure timely acknowledgment of information.
  - 1. Employees who are scheduled to be out of the office for more than four (4) work days should use the "Out of Office" reply feature in Outlook to indicate their expected return to work date and alternative contact information such as a coworker or supervisor.
- (b) Department employees are encouraged to use email for, but are not limited to:
  - 1. Routine messages, announcements, notices, or other information that previously would have been disseminated by memorandum through the chain-of-command or by inter-department mail.
  - 2. Any message currently being sent by facsimile, telephone, or a paging system.
  - 3. Drafts of reports, projects, or proposals.
  - 4. Certain non-confidential Department documents such as job vacancies, Department memoranda, or Special Orders.

#### 1002.2.1 EMAIL RIGHT OF PRIVACY

All email messages, including any attachments, that are transmitted over Department networks are considered Department records and therefore are the property of the Department.

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### *Electronic Mail (Email) Communications*

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- (a) Employees using Department email shall have no expectation of privacy concerning communications transmitted over the system.
- (b) The Department reserves the right to access, audit, or disclose, for any lawful reason, any email, including any attachment that is transmitted and/or stored on any Department networking system, server, or other storage technology without notification to the employee. However, it is a violation of this order for any user, including the system administrator or supervisor, to access the email of another employee merely to satisfy curiosity about the affairs of others.
- (c) The email system is not a confidential system and therefore is not appropriate for confidential communications. If a communication must be confidential, an alternative method to communicate the message should be used instead of email.

#### **1002.3 PROHIBITED USE OF EMAIL**

- (a) Unless approved by the Chief of Police or designee, email will not be used for:
  - 1. Disseminating confidential materials or Department sensitive information, official documents that must be retained in their physical form, or documents that require a physical signature to certify receipt.
  - 2. Charitable endeavors.
  - 3. Private business activities.
  - 4. Inappropriate entertainment purposes.
- (b) Employees are prohibited from sending derogatory, defamatory, obscene, disrespectful, racist, sexually suggestive and harassing, or any other inappropriate email messages.
- (c) Employees are prohibited from sending out email messages addressed to the entire Department or all City employees, or selecting "Reply All" to such messages. Department or City-wide email messages should only be for business-related items that are of particular interest to all users and, as such, are restricted to Command Personnel or designee.
- (d) Employees will not send out an email message under another user's name without authorization. Email users that have a need to delegate this function will use email program settings to give access to authorized employees.

#### **1002.4 STANDARDIZED EMAIL SETTINGS**

##### **1002.4.1 STANDARDIZED EMAIL SIGNATURE**

- (a) Employees are encouraged to set up an electronic signature block for all new email messages. If an employee chooses to use an electronic signature block for their emails it shall be the one designated for Sworn or Civilian, as applicable. Personally customized email signature blocks are not authorized.
- (b) Replies do not need to have an electronic signature; however, if an electronic signature is used it can be shortened from the example below.

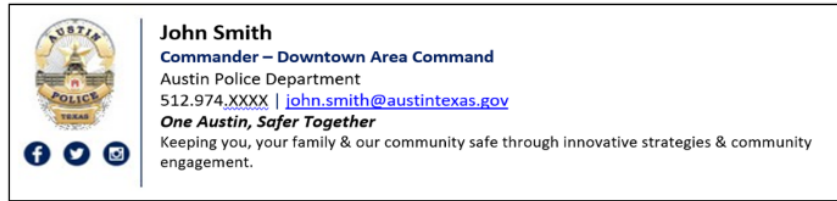
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- (c) Employees are prohibited from adding content such as, mottos, scriptures, quotes, etc.
- (d) Sample signature blocks can be copied from the original which is stored in the APD Approved Forms Memos & Letterheads Folder at G:\Public\Public Data for APD Only \Approved APD Forms\Memos & Letterheads. The two approved examples are shown below.

#### SWORN



#### CIVILIAN



#### 1002.4.2 STANDARDIZED EMAIL PROFILE PHOTO

Employees who choose to use a profile photo must use a headshot photo of themselves that is professional in appearance. Cartoon characters, emojis, team logos, etc. are prohibited.

#### 1002.5 MANAGEMENT OF EMAIL

The email system is not designed for long-term retention of messages.

- (a) Employees are solely responsible for the management of their email mailbox.
- (b) Employees shall adhere to General Order 1002.5 Management of Email when dealing with the storage of emails.
- (c) Employees should purge messages on a regular basis.
- (d) Emails that employees desire to save or that become part of an official record should be printed or stored in another database.
- (e) Archive emails (personnel folders inside Outlook) are stored on the employee's network drive and can impact server space that is set up for the employee.
- (f) Employees are reminded that the Department has Records and Retention orders that must be followed when deleting or removing any files.



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## Telephone and Mail Protocol

### 1003.1 PURPOSE AND SCOPE

This order establishes uniform procedures for dealing with telephone inquiries and the use of Department telephone and mail systems.

### 1003.2 TELEPHONE GUIDELINES

Employees should adhere to the following guidelines when using the Department telephone system:

- (a) Employees will be professional, polite, civil, and orderly when speaking on the telephone and treat all persons with fairness, dignity and respect.
- (b) Telephone calls to Department phones will be answered promptly (within three (3) rings).
- (c) Employees should answer the phone with the name of the Department, the work location, and employee name.
- (d) When making phone calls on Department business, employees will identify themselves as members of the Department and clearly state the purpose of the call.
- (e) Collect telephone calls should not be accepted by employees except in an emergency or with the approval of a supervisor.

#### 1003.2.1 HANDLING TELEPHONE CALLS

- (a) Depending upon the nature and subject of the request, employees will:
  1. Answer the person's request for information or service.
  2. Refer persons requesting information outside of the employee's area of responsibility to the best known source within the Department.
  3. Route all media requests for information to the Public Information Office (PIO) in accordance with Department General Orders on Public Information and Media Relations.
- (b) If the caller asks for a specific person who is not available, employees will:
  1. Ask if they or someone else can help the caller.
  2. Ask if the caller wishes to be forwarded to the specific person's voice mail.
  3. Ask if the caller wishes to leave a message.
- (c) When transferring a call, employees will:
  1. Inform the caller of the person and extension number to which the person is being transferred to in case a disconnect occurs.
  2. Ensure that someone is on the other end of the line before completing the transfer.

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### *Telephone and Mail Protocol*

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3. Brief the employee on the other end of the line on the nature of the call and the identity of the caller.
- (d) Before placing a caller on hold, employees should ask the caller if he is able to hold.
- (e) Angry callers will not be hung up on without warning. When dealing with an angry caller employees should:
  1. Keep control of the call by asking appropriate questions.
  2. Sympathize with the caller's experience.
  3. Offer help where they are able.
- (f) Abusive callers using profanity will be dealt with in the following manner:
  1. Politely interject (e.g., "Excuse me").
  2. Advise the caller you can deal with the problem but abusive language will not be tolerated.
  3. Maintain control of the call by immediately asking follow-up questions.

#### 1003.2.2 VOICE MAIL

- (a) Employees should answer the telephone when at their desk.
- (b) If you are on the phone or away from your desk when you receive a phone call, retrieve the message(s) and return calls immediately upon your return.
- (c) Employee voice mail greetings should contain:
  1. The employees name and assignment; and
  2. When callers can expect the employee to return the call; and
  3. If the employee is going to be gone for an extended period of time (e.g., vacation), give specific information as to when the employee will be returning to work.

#### 1003.2.3 PERSONAL USE OF DEPARTMENT PHONES

- (a) Department phones are to be used for Department business, and personal calls should be limited.
- (b) Department long-distance phone service should be used for Department business only.
- (c) Personal long-distance calls on Department phones should be made only with the use of a personal calling card, if possible.
- (d) All personal calls should be limited to breaks and authorized mealtimes unless an emergency exists.
- (e) Employees who use Department phones for personal use will reimburse the City for expenses incurred.

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### *Telephone and Mail Protocol*

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- (f) Employees will determine the amount of charges for which they are liable and bring cash or a to the Financial Management Division by the tenth day of the month following the month in which the personal call was made. Checks should be made out to City of Austin.
- (g) Employees will not make collect phone calls from Department phones except in an emergency or with the approval of a supervisor.

#### **1003.3 MAIL GUIDELINES**

This section deals with the handling of Department and personal mail.

- (a) Intra-office mail envelopes are used for mail staying within the Department.
- (b) Inter-office envelopes should be used for correspondence to other City departments.
- (c) Both types of envelopes will be clearly labeled with the:
  - 1. Date sent.
  - 2. Name of the recipient.
  - 3. Physical location of the recipient (e.g., North Substation, Robbery Unit, City of Austin Human Resources).
- (d) Employees' personal correspondence received at a police facility will be sorted and delivered to the addressee's Department mailbox.
- (e) Employees wishing to mail personal correspondence through the Department's mail system will pay all applicable postage.

##### **1003.3.1 PICKUP AND DELIVERY OF DEPARTMENT MAIL**

- (a) Mail pick-up points have been designated throughout the Department for pickup and delivery.
- (b) Personnel receiving mail will determine if the mail pertains to the receiver's Unit or assignment. If it does not, employees are responsible for ensuring it is directed to the appropriate Unit or person.
- (c) If the mail is a request for information that could be considered an open records request, the document will be immediately delivered to the APD Legal Advisor or APD PIO.

##### **1003.3.2 SPECIAL MAIL SERVICES**

Personnel requiring overnight delivery service for documents or other items will:

- (a) Contact the Mail Room and have a determination made as to which type of overnight delivery service is to be used.
- (b) Obtain necessary forms and packaging from the Mail Room.
- (c) Complete forms, including the complete physical address of recipient.
- (d) Return packaged item and forms to Mail Room before 2:00 p.m., Monday through Friday.





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## Department Owned Cell Phones

### 1004.1 PURPOSE AND SCOPE

This order establishes uniform procedures for the use of Department issued cell phones. Cell phones and the associated telephone numbers provided by the Department are City-owned resources. They are provided to enable Department employees to work more efficiently and effectively.

### 1004.2 CELL PHONE GUIDELINES

Employees shall adhere to the following guidelines when using any Department issued cell phone:

- (a) Employees issued a Department cell phone will ensure the device is operational and in their possession at all times while on duty or working law enforcement related secondary employment. The Department cell phone shall remain within the United States.
  1. On-duty non-exempt employees shall respond to any Departmental phone calls, texts, and voicemails which require a response, as soon as practicable.
  2. Off-Duty non-exempt employees will respond to Departmental phone calls, texts, and voicemails once they return to work.
  3. Exempt employees shall respond to any Departmental phone calls, texts, and voicemails which require a response, as soon as practicable.
  4. Cell phones are not the primary source for urgent communications as they can be unreliable during large events where technology usage is high. Messages requiring an immediate response or that are urgent in nature (e.g., SWAT call out) should be sent using a designated City of Austin messaging system (e.g., Wireless Office, SPOK, CAD).
- (b) Employee use of the cell phone shall be professional, polite, civil, and orderly, treating all persons with fairness, dignity and respect.
- (c) Employees shall select ring tones and audible alerts from factory-provided options on the cell phone and shall not download or install other ringtones or audible alerts.
- (d) When making phone calls or texts for Department business, employees should identify themselves as members of the Austin Police Department and clearly state the purpose of the call unless doing so would compromise the integrity of a criminal investigation.
- (e) In general, employees should not give out Department issued cell phone numbers unless:
  1. Immediate contact between a police employee and a victim, witness, or other person may be critical;
  2. The employee to whom the cell phone is assigned has granted authorization; or
  3. Release of the number was authorized by a supervisor.

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- (f) Telephones shall be placed in a vibration or silent mode while attending court and may be placed in a vibration or silent mode while attending training, meetings, and any other time needed to prevent interruption or annoyance.
- (g) All cellular telephone calls, text messages, emails, and other communications may be subject to discovery in criminal or civil matters, may be subject to release to a member of the public in response to a public information request, or may be used in internal investigations. All communications, unless an emergency, should be related to Department business.
  - 1. Employees should consider these communications a public record and should have no expectation of privacy.
    - (a) Text messages of evidentiary value shall be screenshot and processed according to General Order 618.5 (Digital Evidence Collection and Storage).
    - (b) Voicemails of evidentiary value shall be played with the speakerphone activated and recorded with the BWC recording system.
    - (c) Photos and videos of evidentiary value shall be processed according to General Order 618.5 (Digital Evidence Collection and Storage).
  - 2. Employees must not delete any items of evidentiary value from the cell phone.
- (h) For safety and accountability, employees shall ensure that location services (GPS) are enabled while on duty, including any LERE secondary employment.
- (i) The Department reserves the right to access any information on Department-issued cell phones. Supervisors will refer to 902.6.1(c) for guidance.
- (j) Upon separation from Department employment, all Department-issued cell phones shall be returned to Police Equipment or the employee's supervisor.

#### **1004.3 HANDLING PHONE CALLS/TEXTS**

All communications on a Department-issued phone shall be conducted in an appropriate and professional manner, according to the following guidelines:

- (a) Employees shall make their best effort to:
  - 1. Answer the caller's request for information or service;
  - 2. Refer persons requesting information outside of the employee's area of responsibility to the best known source within the Department; or
  - 3. Route media requests for information to the Public Information Office (PIO) in accordance with Department General Orders on Public Information and Media Relations.
- (b) If the caller asks for a specific person who is not available, employees should ask if they or someone else can help the caller.
- (c) Verbally abusive callers should not be hung up on without warning. When dealing with an abusive caller employees should:

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1. Keep control of the call/text by asking appropriate questions;
  2. Listen to the caller;
  3. Offer appropriate help;
  4. Politely interject (e.g., "Excuse me");
  5. Advise the caller that abusive language will not be tolerated; and
  6. As a final measure, advise the person that you are ending the call and notify your immediate supervisor.
- (d) Employees may block phone numbers when they receive abusive, harassing, or repeated calls. Employees receiving these calls should ensure that the caller has all relevant information they need or are directed to the appropriate person before blocking the number.

#### **1004.4 VOICEMAIL**

Voicemail is a communication tool attached to Department-issued cellphones to facilitate accurate telephone messaging. It is intended to enhance service to the public and not to replace direct personal contact with the caller.

- (a) If a call goes to voicemail, employees shall:
1. Retrieve the message(s);
  2. Return calls as soon as practicable, or;
  3. Return calls upon return to duty as appropriate.
- (b) Employee voicemail greetings, if changed from the default, shall be short and professional in nature.
- (c) Employees shall place an out-of-office message on their voicemail when on extended leave greater than 4 days.

#### **1004.5 USE OF DEPARTMENT CELL PHONE WHILE DRIVING/RIDING**

Employees shall adhere to State law and City ordinances governing use of cell phones while driving. When available, employees are encouraged to use hands-free technology to make or receive calls and texts while operating a vehicle.

#### **1004.6 PROHIBITED USES**

Employees shall adhere to all guidelines outlined in section 1000.3.1 in APD General Orders (Prohibited Uses of Department Technology) in addition to the following:

- (a) The cell phone shall not be used to record images or videos of crime scenes except for evidentiary purposes in accordance with General Order 618 Property and Evidence Collection Procedures.
- (b) Officers shall adhere to APD General Order 317.6 Handling of Juveniles: Fingerprints and Photographs.

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- (c) The cell phone shall not be used to take or send inappropriate photographic or video images, emails, or texts unless they can be clearly linked to official police business.
- (d) If the phone has a sim card, the sim card shall not be removed from the Department issued cell phone unless done so by authorized personnel. Authorized personnel includes Police Technology and CTM support staff (Enterprise Services Group and Wireless Communication Services Division).
- (e) If the phone sim card must be removed for an authorized investigation, the removal will be done in coordination with the entities listed in 1004.6.(d).
- (f) Employees shall not install any applications on their Department-issued cell phone except for the pre-approved applications provided in the Mobile Device Management catalog.
- (g) Employees shall not jail break, root, or attempt to circumvent security on the phones in any way.

#### **1004.7 CARE AND MAINTENANCE OF DEPARTMENT-ISSUED CELL PHONE AND ACCESSORIES**

Employees shall make all reasonable attempts to prevent loss, theft, and breakage of the cell phone and accessories. If the phone and/or accessories are broken, stolen, or lost due to negligence the officer may be held responsible for replacement or repair cost.

- (a) Phones shall be issued with a protective case and tempered glass screen protector. No employee shall modify, change, or replace either the case or the screen protector.
- (b) Any employee experiencing issues with software on the cell phone (applications, device login, connectivity, etc.) shall contact the CTM Help Desk.
- (c) Any cell phone or accessory that needs to be replaced due to being lost, stolen, defective, or damaged shall immediately be reported to the employee's immediate supervisor. The employee shall follow General Order 800.4 Handling Damaged, Lost, and Stolen City Property.
- (d) Any loss or theft of a cell phone shall be reported to the Police Technology Unit by the employee that was issued the phone as soon as possible.
- (e) Cell phones and accessories shall not be reassigned or loaned to another person. Any new issues or reassignments shall be completed through the Wireless Communication Services Division (Radio Shop).
- (f) All service and repair of Department-issued cell phones shall be performed by the Wireless Communication Services Division. Employees shall not make any attempt to repair a cell phone or use a third party service to perform repairs.

#### **1004.8 CITY MOBILE DEVICE USAGE POLICY**

Employees shall adhere to the guidelines outlined in the City's Mobile Device Policy found at the listed link: <http://cityspace.ci.austin.tx.us/departments/hrm/policies-procedures/bulletins/AB-13-02.pdf>.

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**1004.9 SUPERVISOR INSPECTION**

In conjunction with personnel inspections, General Order 801.8, supervisors shall conduct inspections of Department owned cell phones to ensure officers are complying with APD General Orders. Supervisors shall ensure all assigned officers are reviewed in a fair and equitable manner. Additionally, supervisors shall ensure officers do not have inappropriate or unapproved videos, images, emails, texts, or applications on the device per section 1004.6 (Prohibited Uses).



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# Funeral Procedures

### 1007.1 PURPOSE AND SCOPE

This order outlines the Department procedures for handling employee deaths, funerals, and the Department Funeral Committee.

#### 1007.1.1 EMPLOYEE DEATHS

- (a) Upon the death of an employee it will be the responsibility of the employee's Commander/Manager to notify the chairperson of the Funeral Committee.
- (b) After receiving notification, the Funeral Committee chairperson will:
  1. If practical, have a member of the Funeral Committee accompany the person going to notify the survivors.
  2. Contact the Special Events Lieutenant to coordinate the Motorcycle Unit for escort purposes.

#### 1007.1.2 BADGE MOURNING BAND

Guidelines for the wearing of a badge mourning band are outlined in General Order 801 (Equipment and Uniform Regulations).

### 1007.2 FUNERAL COMMITTEE

- (a) The Department has established a funeral committee composed of a chairperson and additional personnel from units in the department essential to the department's mission in the event of the death of an Austin Police Department Employee.
  1. Honor Guard Commander - Chairperson
  2. Honor Guard Operations Supervisor
  3. Senior Chaplain
  4. Victim Services Manager
  5. Human Resources Director
  6. Highway Enforcement Commander
  7. Austin Police Association President
  8. Austin Cops for Charities Chairperson
  9. Representative from the Austin Police Retired Officers Association
- (b) When requested by the survivors of a deceased employee, a committee member will be appointed as Survivors' Assistance Officer (SAO) to assist members of the family. They shall also help as needed until any responsibility of the Department to the surviving family members has been met. This liaison shall coordinate with and work through the committee chairperson. The SAO will be the primary liaison between the survivors and the concerned City, state and/or federal agencies.

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- (c) In certain instances, when the decedent's family requests assistance in making funeral arrangements from an employee who is not a Funeral Committee member, that employee will work in conjunction with the Funeral Committee's SAO. When under these stressful conditions employees are reminded to be cautious of making statements which might obligate the Department, its resources, or its personnel to family members. Funeral Committee members are authorized by the Department to make these decisions and should be consulted prior to making any commitments to the decedent's family.

#### **1007.2.1 RESPONSIBILITIES OF FUNERAL COMMITTEE**

Whenever applicable, the Funeral Committee shall have the following responsibilities:

- (a) Prepare a notice for Department-wide distribution informing all employees of the death and pending arrangements.
- (b) Contact departmental services for assistance to the family (e.g., Victim Services, Staff Psychological Services).
- (c) Assist family of the deceased in making burial arrangements through the funeral director and/or church of choice.
- (d) Contact members of the Honor Guard to prepare for any pending memorial services.
- (e) Serve as point of contact for Department employees who desire participation in memorial services.
- (f) For the death of an officer under honorable conditions:
  - 1. Ensure that Department flags at all Austin police facilities are flown at half-staff from the time of death through the day of burial.
  - 2. In instances where out-of-Austin arrangements are needed, the chairperson of the Funeral Committee will contact the law enforcement agency in the jurisdiction where the APD officer is to be buried to determine if ceremonial or other arrangements will be available. The chairperson will work with the local law enforcement agency to assist with any arrangements.
  - 3. Assist family with obtaining available City, state and federal benefits.
- (g) During off-duty hours, members of the Funeral Committee will serve as concerned friends of the family and will not charge overtime or expect compensation except actual, reasonable expenses incurred. However, at times and at the discretion of the Chief of Police, compensation for reasonable amounts of time spent in preparation for services may be approved.

#### **1007.3 OFFICER'S DEATH IN THE LINE-OF-DUTY**

For purposes of this order, "under honorable conditions" denotes a status, no matter the cause of death, in which the officer's service before his death has been of good and respectable repute, and the officer was not under the cloud of criminal prosecution at the time of death.

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#### 1007.3.1 IN-STATE AND LOCAL SERVICES PROVIDED BY THE DEPARTMENT

- (a) In cases of a line-of-duty death under honorable conditions, the wishes of the officer's family will hold priority over all other considerations. When the funeral is within the state, subject to the approval of the Chief of Police, the Department will be prepared to provide the following if desired by the family of the deceased:
1. A reasonable number of marked or unmarked police cars to provide transportation for members of the family and/or the Funeral Committee.
  2. Motorcycle units for escorts.
    - (a) Four (4) police motorcycles. (These units will be trailered when the distance to be traveled is determined to be excessive for the equipment and operator.)
    - (b) The number of motorcycle units for funeral services conducted locally or within a reasonable distance of Austin will be determined by the Motorcycle supervisor overseeing the escort requirement, with approval by the affected Commander(s).
  3. The officer's duty breast badge and a burial badge, Dress/Ceremonial Uniform (Class A) for the deceased's burial attire, and an entire set of decorations earned during the officer's career.
    - (a) In cases of an in-the-line-of-duty death under honorable conditions, a Purple Heart will be presented to the family by the Chief of Police or designee.
    - (b) The duty badge will be awarded to the survivors.
  4. Ceremonial flag to drape the casket.
    - (a) The ceremonial flag will be the National colors.
      1. In cases of non-veterans, the ceremonial flag will be provided by the Funeral Committee.
      2. For officers who were veterans, the ceremonial flag will be provided by the United States Government, through the U.S. Postal Service.
  5. A detail to serve as pall bearers.
    - (a) Honor Guard; or
    - (b) Officer's co-workers and/or friends, designated by the family.
      1. Officers selected as pall bearers will wear only the Dress/Ceremonial Uniform (Class A).
  6. Volunteer honor guards at the pall when lying in state coordinated through the Honor Guard.
  7. Special uniform items for ceremonial details within the funeral.
    - (a) Aiguillettes (shoulder cords).
    - (b) White gloves.



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- (c) Ascots.
- (d) Dress buttons.
- 8. An eight-person firing party, coordinated by the Funeral Committee chairperson.
- 9. A bugler to sound taps and/or a bagpiper.
- 10. Actual expenses incurred for food, lodging, and vehicle expenses for personnel assigned to attend the funeral as representatives of the Department.
- 11. Special assignment to members of the Funeral Committee when reasonably needed to help the family and to make arrangements.
- 12. During off-duty hours, members of the Funeral Committee will serve as concerned friends of the family, and will not charge overtime or expect compensation except actual, reasonable expenses incurred. However, at times and at the discretion of the Chief of Police, compensation for reasonable amounts of time spent in preparation for services may be approved.

#### 1007.3.2 OUT OF STATE OR OUT OF COUNTRY SERVICES PROVIDED BY THE DEPARTMENT

When the funeral is to be out of the State of Texas, a memorial service with all honors will be held in Austin up to the time of departure of the body.

- (a) Vehicle and motorcycle escorts may be approved for out-of-state services by the Chief of Police (e.g., marked/un-marked police vehicles and police motorcycles could be used if traveling within a reasonable distance across the state border).
- (b) The Committee chairperson will determine the minimum number of Honor Guard members required for the out-of-state service.
  - 1. These officers will be placed on special assignment.
  - 2. Travel and per-diem will be authorized by the Chief of Police.
- (c) At the Department's expense, a member of Command Staff and the deceased officer's immediate supervisory chain-of-command will travel to the out-of-area service.
- (d) Any other Department personnel who wish to attend are responsible for their own expenses and for obtaining approved leave.

#### 1007.4 OFFICER'S DEATH NOT IN THE LINE-OF-DUTY

Retired and active officers who die under honorable conditions other than while in the actual performance of police duties may be entitled to the following subject to approval of the Chief:

- (a) In-state services.
  - 1. Same as outlined for in the line-of-duty deaths except that no firing party is provided.
- (b) Out-of-state services.
  - 1. Two assigned Department representatives may attend an officer's funeral on special assignment, at their own expense.

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#### **1007.5 DEATH OF AUSTIN POLICE DEPARTMENT CADET**

For an in-the-line-of-duty death of a police cadet, the Department will provide the same services as for a commissioned officer who died under honorable conditions.

#### **1007.6 DEATH UNDER LESS THAN HONORABLE CONDITIONS**

In cases of death of a retired officer, active officer, or police cadet under less than honorable conditions, the Department is under no obligation to furnish or provide any assistance or honors for the service, or pay any expenses for any officer desiring to attend the services.

#### **1007.7 FUNERAL ATTENDANCE**

Employees are reminded that their attendance at functions of this nature is a direct reflection on the Department and should conduct themselves in a professional manner.

- (a) Employees desiring to attend any funeral or memorial service are required to obtain authorized special assignment or approved leave before attending.
- (b) Employees will adhere to the following dress and decorum at funerals:
  - 1. Sworn Employees
    - (a) If a uniform is worn, only the Dress/Ceremonial Uniform (Class A) with the military-style hat is authorized.
    - (b) Employees in uniform will render appropriate salutes as directed by the Honor Guard Commander.
    - (c) Plainclothes conforming with General Order 801 (Equipment and Uniform Regulations) may be worn in lieu of Class A uniform.
  - 2. Non-Sworn Employees
    - (a) Plainclothes conforming with General Order 801 (Equipment and Uniform Regulations) will be worn.

#### **1007.7.1 VISITING OFFICERS ATTENDING APD FUNERALS**

In cases where out-of-town officers would be coming to Austin to pay respects to a deceased APD officer, the Austin Police Association shall maintain a sign-up sheet listing the names of APD personnel willing to room and/or board visiting officers.

#### **1007.8 OUTSIDE AGENCY FUNERALS**

- (a) In cases where several officers from this Department wish to represent Austin at the funeral of an out-of-town officer within Texas, the Department will provide a reasonable number of marked police vehicles for the trip.
  - 1. Normally be a maximum of two marked units will be provided.
  - 2. All officers making the trip will do so on their own time unless special assignment has been approved by the appropriate Commander.
  - 3. The Department shall furnish vehicle expenses and per diem for meals.

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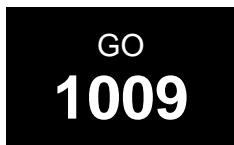
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- (b) The number of Motorcycle officers attending will be determined by the Commander of each Motorcycle Unit.

1007.8.1 OFFICERS FROM OUTSIDE AGENCIES BEING BURIED IN AUSTIN

The Funeral Committee chairperson will assist and coordinate with APD's Honor Guard and representatives from the outside agency regarding memorial services.



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# Building Security

### 1009.1 PURPOSE AND SCOPE

The size and complexity of APD facilities and the need for visitor access to numerous departmental areas mandate the establishment of a visible visitor and employee recognition system for the security and protection of persons and property. Employees share the responsibility for maintaining standards and attitudes which are conducive to this end. A prerequisite to the success of Department facility security is the total cooperation and commitment of employees and their determination to enforce the required control measures.

### 1009.2 GENERAL SECURITY GUIDELINES

Security of APD facilities is each employee's responsibility. Access cards and keys provide controlled entry to Department facilities and to certain areas within them.

- (a) For the purpose of security, areas within Department facilities will be designated as one of the following:
  1. **Restricted Access Area** - An area where only authorized personnel or persons under escort are granted access due to the sensitive nature of the work.
  2. **Controlled Access Area** - An area where the public is allowed to be after receiving authorization from facility security personnel.
  3. **Public Access Area** - An area where the public is authorized to be.
- (b) Employees will be issued identification cards (APD ID), access cards, and keys to open doorways into areas for which they have been authorized access.
  1. APD ID's are white in color.
  2. Officers will have an image of the APD badge adjacent to the officer's photo and their rank preceding the officer's name.
  3. Civilian employees will have their photo and will state 'EMPLOYEE' on the front of the ID.
  4. Retired employees will state 'RETIRED' in red uppercase text.
  5. Temporary, contract, and interns for the Department will display a diagonal red field behind their photo and the APD ID will contain an expiration date.
- (c) Visitors having legitimate business at a Department facility will check in with the front desk of the facility and be required to:
  1. State the nature of their business or the name of the APD employee or unit with whom they have business.
  2. Present picture identification.
  3. Sign the appropriate visitor log.
  4. Visibly wear the issued visitor ID at all times.
  5. Be escorted and under observation while inside a Department facility at all times.

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#### 1009.2.1 EMPLOYEE RESPONSIBILITIES

- (a) Employees shall not:
  - 1. Change, or cause to be changed, the authorization for their own or another's access card unless the change(s) has been properly authorized; or
  - 2. Loan their access cards or keys to any other person for any reason.
- (b) Employees or pre-authorized persons may enter an authorized area by any door which their access card or key opens.
- (c) Employees not in uniform will wear their APD ID when on the premises of any APD facility unless working in an official undercover capacity. This applies whether the employee is on or off-duty.
- (d) The APD ID will be clipped on the collar, shirt or blouse pocket, attached to a neck chain or neck cord, or displayed in some other conspicuous place on the outermost garment so that it is readily visible.
- (e) All packages, parcels and/or briefcases coming into any APD facility shall be subject to inspection for hazardous material and/or weapons at the discretion of the personnel assigned to facility security, or at any time by any employee who becomes suspicious of the item(s).
- (f) Any person not visibly displaying an APD ID, badge or a valid visitor's pass will be stopped and an inquiry made as to the nature of their business. Unless authorized, the person will be escorted to the nearest public area and presented to security personnel and interviewed for proper clearance.
- (g) Employees shall not access any door or elevator for another person unless they recognize the person to be an APD employee, or the person is displaying an APD ID or APD badge or a valid visitor's pass allowing access to the area.
- (h) Employees shall not "prop open" any door, disengage or damage any locking or security mechanisms, or by any means bypass the locking or security mechanisms on any door for the purpose of circumventing the security arrangements of Department facilities.
- (i) Stairwells will be utilized during emergency situations which mandate immediate exit from the building, or when the elevator system ceases to function.
- (j) Exterior doors shall remain secured at all times and entry will be by card or key access only, except for public access doorways into each facility.
- (k) Security procedures may be subject to change with the approval of the Commander responsible for security at each facility.

#### 1009.2.2 COMMANDER RESPONSIBILITIES

- (a) Responsibility for security plans and authorized access at each Department facility shall belong to the Commander in charge of security at each facility. Other off-site facilities will be the responsibility of the Commander over the units assigned to the facility. Primarily APD facility assignments are:
  - 1. Main Headquarters (Main)- Downtown Area Command Commander

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2. North Substation (N-Sub)- North West Area Commander
  3. Central East Substation (E-Sub)- Central East Area Commander
  4. South Substation (S-Sub)- South West Area Commander
  5. Rutherford Complex (OCD Building)- Organized Crime Division Commander
  6. Rutherford Complex (IAD/Recruiting Building)-IAD Commander
  7. Training Academy- Training Division Commander
- (b) For purposes of security, areas within the department facilities will be designated as one of the following:
1. Restricted Access Area- An area where only authorized personnel or persons under escort are granted access due to the sensitive nature of the work.
  2. Controlled Access Area- An area where the public is allowed to be after receiving authorization from facility security personnel.
  3. Public Access Area- An area where the public is authorized to be.



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# Purchasing

### 1011.1 PURPOSE AND SCOPE

This document outlines basic information concerning policies and procedures to be followed in procuring goods and services for Department use. It also contains general instructions and descriptions of the solicitation process and is intended to provide procedures to help employees make purchases. The Financial Services Division (FSD) should be contacted for specific information.

### 1011.2 PURCHASING GUIDELINES

The authority to enter into a purchase agreement or contract for the City rests with the City Manager and designee(s). The City Central Purchasing Office has authorized selected departmental personnel to make limited departmental purchases. A properly completed Purchase Order is a legally binding contract and should be treated accordingly.

- (a) No individual may obligate the City of Austin to procurement indebtedness, for any goods or services, without prior approval from either APD Procurement & Contract Services or the City Central Purchasing Office.
- (b) Purchase Orders are created in APD Procurement & Contract Services or the City Central Purchasing Office following submission of a Purchase Requisition Form (PRF) by the end user or requestor.
- (c) Unauthorized personnel who attempt to contract in the name of the City may be subject to disciplinary and legal action, and civil liability.

#### 1011.2.1 PURCHASING PROCESS

The single biggest concern expressed about the purchasing process is Processing Time. The single best way to minimize processing time is to contact a buyer at the earliest point in the project that there may be reason to believe that approval will be given for the purchase. The earlier in the process that APD Procurement & Contract Services is involved, the easier it is to cope with constraints within our system and/or the manufacturer's or vendor's supply chain. APD Procurement & Contract Services must be involved in every phase of the project; planning, pre-bid, vendor correspondence, kick off meetings, etc. Our common purpose in the purchasing process should be to maximize our options with vendors in a cooperative effort between the user/requisitioner and the buyer.

- (a) All APD purchases require an authorized Purchase Request Form (PRF) be completed and submitted to APD Procurement & Contract Services prior to making a purchase; no purchase will be made without a completed PRF.
  - 1. The end user is responsible for providing and developing all aspects of the specifications or scope of work and ensuring they are correct and appropriate prior to solicitation.

# Austin Police Department

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2. APD Procurement & Contract Services' is responsible for pointing out any questionable or unusual specifications, as well as to provide support and guidance to procure products and/or services properly.
- (b) A mandatory meeting will be arranged with APD Procurement & Contract Services to discuss the project, scope of work, and specification before a solicitation or order is placed.
- (c) PRFs shall be approved by the appropriate authorizer and will contain all required information; incomplete PRFs will be returned to the requestor.

#### 1011.2.2 PURCHASE APPROVAL REQUIREMENTS

Specific approval is required depending on the amount of the purchase and the source of the funds as outlined below. The listed budgetary limits may be changed periodically when increased budget review is required. Purchases made as Sole/Single Source, Professional Services Agreement, GAX exceptions, or through Cooperative Purchasing Agreements are not included in these guidelines.

- (a) Purchases may not be made with appropriated City funds without the prior approval of both the appropriate commander/manager/assistant chief and the FSD-Budget Section.
- (b) Purchases totaling \$2,500 or less must be approved by the commander/manager and do not require solicitation.
- (c) Purchases of \$2,500.01 to \$4,999.99 must be approved by the commander/manager and require a formal solicitation.
- (d) Purchases of \$5,000.00 or greater must be approved by an assistant chief or the Chief and require formal solicitation.
- (e) Purchases requiring City Council approval must be reviewed and approved by the Chief.
- (f) Regardless of dollar amount, purchases made using Forfeited Funds require approval of the Chief and City Legal.

#### 1011.3 EQUIPMENT DISPOSITIONS

APD equipment will not be loaned, traded, sold, disposed of, or otherwise transferred without the prior written approval of the appropriate commander/manager and the Financial Manager. Equipment will be disposed of in accordance with City policies.

#### 1011.4 SALES TAX EXEMPTIONS

The City is not subject to Texas sales tax.

- (a) The Tax ID Number is 1-74-6000085-8.
- (b) Employees making purchases will assure that vendors do not apply sales tax.



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1. It is the employee's responsibility to provide the vendor a tax exemption certificate and ensure that the vendor does not include tax at the time of purchase. Tax exemption certificates are available at the FSD.
2. No reimbursement will be made to employees who pay sales tax when making petty cash purchases.

#### **1011.5 PETTY CASH PURCHASES**

APD maintains a petty cash fund, which may be utilized for purchases not exceeding \$150.

- (a) All petty cash transactions will be made in accordance with Administrative Bulletin: Policies and Procedures for Petty Cash No. 93-01.
- (b) The purchase must be approved in accordance with this document.
- (c) When monies are advanced from petty cash, receipts and overages must be returned to the petty cash custodian within three (3) working days.
- (d) No reimbursement greater than \$150 will be made to employees who purchase items in excess of the petty cash limit.

#### **1011.6 INVOICES**

- (a) Invoices should not be sent to the receiving unit's attention. Any invoices received by the requester shall immediately be forwarded to FMD.
- (b) Vendors should be instructed to list the purchase order number on their invoice.
- (c) Requesters are required to submit all packing slips to FMD and provide authorization to pay upon satisfactory receipt of goods or service.
- (d) Employees shall instruct vendors to send all invoices to:

Austin Police Department  
Attn: Financial Management  
P.O. Box 1629  
Austin, Texas 78767-1629

#### **1011.7 BIDDING REQUIREMENTS**

- (a) Purchases totaling more than \$2,500 will require APD Procurement & Contract Services to obtain a minimum of three (3) competitive bids.
- (b) Purchases under \$2,500 will require the requestor to provide or obtain a written quote from the vendor, which will be attached to the Purchase Request Form.

##### **1011.7.1 BID SPLITTING PROHIBITED**

- (a) Purchases should be logically grouped together on a single purchase request.
- (b) Purchases are not to be subdivided, staggered, or otherwise separated in order to circumvent approval/purchasing requirements.

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- (c) Circumventing purchasing procedures is classified as a Class B misdemeanor.

**1011.8 SOLE/SINGLE SOURCE PURCHASES**

- (a) A sole source exists if an item or service meeting the following criteria is the only item or service capable of meeting the Department's requirement, and that item or service is only available from the source recommended, based on:
1. Compatibility of equipment, accessories, or replacement parts is an overriding consideration and the goods can only be supplied by one source; or
  2. Competition is precluded because the required purchase involves goods that are:
    - (a) Patented, copyrighted, that use secret processes, or involve natural monopolies; or
    - (b) A purchase of films, manuscripts, or rare books, sole expertise, or purchases of electricity, gas, and water as well as other utility services; or
    - (c) A purchase of captive replacement parts or components for equipment.
- (b) A single source is the one source among others in a competitive marketplace, which for specific justifiable reasons has predominant qualifications for selection for contract award. A single source situation exists if one or more of the following situations prevail:
1. Warranty will be voided if service is provided by other contract vendor.
  2. Replacement parts to an existing City owned item.
  3. An inter-local agreement or contract exists in which the partner or sub-recipient is willing to bear some of the costs if a specific vendor or contractor is utilized.
  4. Time restraints for the urgency for service or repairs to be completed dictate that a particular vendor must be utilized.
- (c) When an item is under consideration of a sole or single source for a particular purchase, the requestor must:
1. Prepare a memorandum documenting the reasons that the item or service requested is the only one capable of meeting the business need and/or explaining that no other source exists; and
  2. Submit the memo with the approved PRF to the Financial Manager for approval.
- (d) If the item/service requested is determined to be a sole or single source by the Financial Manager, sole source documents will be prepared and submitted to Central Purchasing for final review and approval.

**1011.9 EMERGENCY PURCHASES**

Emergency purchase and purchases necessary because of public calamity are defined as emergency purchases that are those procurements which must be made immediately in order to avoid imminent threat or danger to the citizens or to preserve the City's property. City policy outlines specific procedures for making emergency purchases.

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### *Purchasing*

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- (a) Emergency purchases may be made in order to quickly procure material and/or services when required for one of the following conditions:
  - 1. A public calamity such as a tornado, flood, riot, war, etc. to act at once to protect citizens or to preserve the property of the City; or
  - 2. Immediate action is necessary to preserve or protect public health or safety of the citizens; or
  - 3. Immediate repair is necessary because of unforeseen damage to city machinery, equipment, or other property.
- (b) When the Department is faced with any of the above conditions:
  - 1. Commanders/managers will advise their assistant chief.
  - 2. Assistant chiefs will advise the Chief of the necessity for an immediate purchase.
  - 3. If the Chief or designee believes that an emergency condition exists, the Financial Manager and City Purchasing Officer (CPO) must be contacted to either assist with the procurement or be advised of steps taken by the Department.
    - (a) If an emergency purchase is required outside normal working hours, an attempt must be made to contact the CPO. In the event the CPO cannot be contacted, the Chief should act for the CPO.
  - 4. The procurement process to locate the required item(s) should commence immediately.
    - (a) The CPO or designee will insure that the purchase is made in the most expeditious manner.
    - (b) If the Department already has located and obtained prices, CPO may defer involvement except for processing paperwork.
  - 5. For purchases requiring City Council approval, the CPO will advise the City Manager of recommend award and action taken.
    - (a) The Chief or designee will be required to sign and submit an affidavit which describes the nature of the emergency as well a memo that describes the events that led to this emergency.
    - (b) The affidavit can be obtained from the Financial Manager.

#### **1011.10 URGENT PURCHASES**

An urgent purchase is a purchase made after normal working hours of the Procurement and Contract Services Office or Central Purchasing Office which justifiably requires immediate purchase, and which cannot be telephoned in or emailed to the Procurement and Contract Services Office or Central Purchasing Office to obtain a purchase order number prior to the purchase being made.

- (a) All urgent purchase requisitions shall be approved by an assistant chief or Chief.

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- (b) All urgent expenditures shall be approved by the completion of an *Urgent Purchase Memorandum* which includes a written justification for the purchase and must be completed within 24 hours of the urgent situation.
- (c) When the *Urgent Purchase Memorandum* is completed and signed by an assistant chief or Chief, a purchase order or credit card payment will be issued to pay the vendor for the items obtained or services performed. This memorandum must be attached to the PRF as documentation for the expenditure.
- (d) Urgent purchases are not to exceed the Department limit of \$4,999.99.

#### **1011.11 RUSH PURCHASES**

Rush purchases are purchases that require immediate attention but do not align with an urgent or emergency purchase. These expenditures are to be expedited as quickly as possible but still must follow standard procurement processes.

- (a) A rush purchase is utilized to expedite a purchase that is considered necessary for a special project or program in which the requestor was unable to secure the proper planning.
- (b) This method requires that the requestor walk the PRF through the procurement process.
- (c) The requestor will be responsible for obtaining the proper authorizations to include chain-of-command, budget, and purchasing approvals, as well as the PRF must be clearly marked as a "RUSH" purchase.

#### **1011.12 OFFICE SUPPLIES**

Office supplies, business cards and forms are obtained from APD Procurement & Contract Services.

- (a) Employees may be set up as requestors to request office supplies through the City's Office Supply contractor; however, APD Procurement & Contract Services will review and release orders in order to maintain compliance with the City's Office Supply Contract.
- (b) Employees that do not have personnel authorized to issue office supply requests electronically can obtain their supplies through submitting a PRF.



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## Budget

### 1013.1 PURPOSE AND SCOPE

This document establishes fiscal management responsibilities within the Department.

### 1013.2 RESPONSIBILITIES AND AUTHORITY

The Chief has the ultimate authority and responsibility for the fiscal management of the Department.

- (a) The Chief has delegated financial administration responsibilities to the financial manager who is responsible for final budget preparation and fiscal management functions of the Department.
- (b) The Financial Management Division (FMD) has the responsibilities and authority for the following areas:
  1. Budget preparation.
  2. Accounting.
  3. Accounts receivable.
  4. Accounts payable.
  5. CIP project management.
  6. Purchasing.
  7. Revenue collection.
  8. Requests for Council action (RCA's).
  9. Seized asset management.
- (c) The FMD shall:
  1. Review all purchases and expenditures to ensure compliance with published purchasing policies and procedures.
  2. Process all cash receipts.
- (d) The financial manager will:
  1. Govern procedures for the conduct of internal audits of the Department's fiscal activities.
  2. Review and recommend supplemental or emergency appropriations and fund transfers.
    - (a) Requests for the above shall be made in writing to the financial manager by the requesting Commander.
    - (b) Additional appropriations or transfers between divisions must be approved by the Chief.
  3. Establish an accounting system that includes approval by the Chief of each account and provides for monthly status reports showing:

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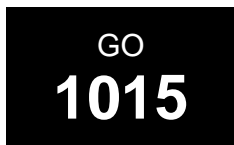
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- (a) Initial appropriation for each account or program; and
  - (b) Balances at the beginning of the monthly period; and
  - (c) Expenditures and encumbrances made during the period; and
  - (d) Unencumbered balances.
4. Make available financial information requested by commanders/managers.
5. Participate in the annual audit of funds as required by the City Controller's office.
- (e) Assistant chiefs, commanders, and section supervisors are required to participate in the Department's budget preparation process and are responsible for the efficient utilization of budget appropriations.
- (f) Commanders and managers will prepare written budget recommendations annually for the respective units and forward those recommendations to the FMD.

**1013.3 CASH HANDLING POLICY**

Employees and supervisors in units designated to handle cash disbursements or accepting payments on behalf of the Department must follow the cash handling policy contained in City Administrative Bulletin 92-02.

- (a) Copies of City and Department policies and procedures will be maintained in each cash handling unit.
- (b) The current list of designated cash handling units is available in Financial Management.



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# Grants Management

### 1015.1 PURPOSE AND SCOPE

The processes of applying for and administering grant funded programs require the coordination of personnel and resources in the Department. There are three groups involved in the administration of grants: Research and Planning, Financial Management, and the project-specific administrators. This order outlines the process for grants management.

### 1015.2 INITIATING A GRANT PROPOSAL

Initiating a grant proposal involves the following steps:

- (a) The Grants Coordinator (currently assigned to the Research and Planning Unit):
  1. Monitors funding announcements and online publications that outline available grant funding.
  2. Meets with personnel interested in applying for new or renewal grant funds.
  3. Assists personnel with the completion of a required "Request for Grant Funds" form (RGF).
  4. Confirms chain-of-command approval of all RGFs.
  5. Works with Financial Management to develop a draft project budget.
  6. Presents RGFs and grant renewal information to the APD Budget Committee for approval.
- (b) Following RGF approval, Research and Planning:
  1. Counsels prospective project administrators on the initiation of grant-funded projects and
  2. Establishes project-specific workgroups, consisting of the Grant Coordinator, Financial Consultant, the chain-of-command seeking funds, and any additional subject matter experts.

### 1015.3 SUBMITTING A GRANT APPLICATION

Submitting an application for new or renewal grant funds involves the Grants Coordinator/Research and Planning:

- (a) Alerting City Hall personnel to upcoming grant application submissions and, in certain instances, submitting requests for City Council action.
- (b) Collaborating with the project workgroups to draft all required grant application documents (narratives, timelines, budget, resumes, etc).
- (c) Finalizing and submitting the grant proposal to the granting agency.

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#### **1015.4 MAINTENANCE OF GRANT COMPLIANCE**

Maintenance of grant compliance involves the Grants Coordinator/Research and Planning, and Financial Management:

- (a) Drafting additional request for Council action paperwork and securing time on the City Council docket.
- (b) Maintaining contact with the workgroup to ensure that timelines are followed and special conditions are met.
- (c) Working with the project administrator to ensure the timely purchase of equipment, hiring of personnel, and establishing contracts that meet the rules and requirements of the grant.
- (d) Working with the project administrator to ensure successful site visits/audits, as well as the timely submission of progress/financial reports and grant adjustment notices.

#### **1015.5 ROLES AND RESPONSIBILITIES**

- (a) Project administrators will:
  - 1. Serve as the manager for individual grants thereby directing and controlling grant program activity.
  - 2. Work with their chain-of-command to ensure open communication about program activity and sustainability.
  - 3. Work with the Financial Consultant to ensure grant funds are spent in accordance with the grantor-approved budget.
  - 4. Maintain grant performance measure files and forward copies of all correspondence (program and financial) to the Grant Coordinator and Financial Consultant.
  - 5. Timely preparation and submission of data and program information to the Grants Coordinator and Financial Consultant.
- (b) Financial Management is the administrative unit responsible for maintaining a full set of copies of all grant materials.
- (c) The Grants Coordinator/Research and Planning supervises the administration of Department-wide grants that do not have a designated project administrator.





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## Gifts and Donations

### 1017.1 PURPOSE AND SCOPE

The guidelines set out in this document establish procedures concerning the solicitation and acceptance of gifts and donations made to the Department.

This order does not apply to:

- (a) Funds, property or services received from the City, through a grant, from another governmental entity under an inter-local agreement or an inter-agency contract, or other lawful method, or for the loan of items from vendors in use for evaluation and testing.
- (b) A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.
- (c) "Employee discount" programs afforded to all employees of a business where an APD employee happens to have a secondary employment relationship.

### 1017.2 GIFTS AND DONATIONS

- (a) Except as noted, the Chief or designee may only accept donations or gifts to the Department if:
  - 1. The gift or donation will further the accomplishment of the Department's goals and duties; and
  - 2. The donor is not a party to a pending criminal or civil case brought by an officer or employee of the Department; and
  - 3. The donor is not subject to Department licensing or regulation, or interested in any contract, purchase, payment, or claim with or against the Department.
- (b) The Chief or designee may approve the acceptance of a gift or donation on behalf of the Department notwithstanding the above provisions if he determines that acceptance would provide a significant public benefit and that the acceptance would not influence, or reasonably appear to influence, the Department in the performance of its duties.

### 1017.3 ACCEPTANCE AND SOLICITATION OF GIFTS AND DONATIONS

- (a) If a person or entity proposes to make a donation to the Department, that person or entity will be referred to the:
  - 1. APD Liaison for the Greater Austin Crime Commission (GACC), a non-profit organization; or
  - 2. A non-profit corporation administered by the APD Office of Community Liaison (OCL) if the donation or gift is valued at \$5000.00 or less.
- (b) The Chief or designee may contact the GACC or the OCL non-profit corporation about the Department's needs relating to donations. Unless approved in writing by the Chief

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### *Gifts and Donations*

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- or designee, employees will not directly contact the GACC or its members regarding a donation or potential donation.
- (c) An employee who is aware of a need that could be met by a donation to the Department is encouraged to bring the matter to the attention of the employee's chain-of-command, and, if approved, the matter will be submitted to the Chief or designee.

#### **1017.4 PROHIBITED ACCEPTANCE AND SOLICITATION OF GIFTS AND DONATIONS**

- (a) No employee will solicit or accept donations or loans of property, funds, or services for use by the Department, or in carrying out its duties, except as otherwise provided in this order.
- (b) Employees will not be permitted to use their affiliation with the Department to solicit funds for any purpose without the express approval of the Chief or designee.
- (c) Employees shall not accept or solicit any gift or favor that might reasonably tend to influence that individual in the performance of official duties, or that the employee knows or should know has been offered with the intent to influence or reward official conduct.
- (d) No employee shall knowingly borrow money, purchase any article, or accept gifts or favors from any person known or reasonably believed to be a habitual violator of the law or anyone who is under arrest, detention or suspected of a crime under investigation by any employee.
1. Employees shall not receive any article whatsoever, either as a gift or as the result of purchase or trade, from suspects, prisoners, persons recently arrested, known gamblers, prostitutes, or other persons of bad character, or professional bondsmen or other persons whose vocation may profit from information obtained from the police or from relatives, employees or associates of any of these persons.
  2. Employees will not buy anything from or sell anything to any complainant, suspect, witness, defendant, prisoner, or other person involved in any case which has come to their attention through their employment with the Department, nor can they act as an intermediary in the payment of a reward for the return of stolen property.
  3. Employees shall not accept any gift, favor or reward in money for services rendered in the line of duty.
- (e) No person shall be allowed on the premises of the Department to sell goods or offer them for sale, or to canvass or solicit for any purpose, without permission from the appropriate Commander/Manager in charge of the premises.
- (f) No employee shall participate, either directly or indirectly, in sales promotions, solicitations, fund-raising campaigns, or similar activities, while representing themselves as employees of the Department. Employees shall not authorize others to conduct themselves in a manner that would leave the impression the employee is representing the Department.

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- (g) Employees shall not solicit the aid of any individual or group outside the Department for assistance in procuring or preventing a duty assignment, promotion, or to mitigate discipline. Nor shall they permit any petition to be circulated for the same on their behalf. Should an employee learn of such a petition being circulated, the employee should immediately bring the matter to his immediate supervisor.

#### **1017.5 DISPOSITION OF ACCEPTED GIFTS AND DONATIONS**

- (a) The donor's request as to the use of the donation will be honored to the extent possible
- (b) Any property donated to the Department will be inventoried through APD's Property Management.



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# Bulletin Boards

### 1019.1 PURPOSE AND SCOPE

In order for the Department to encourage and support the exchange of general information, glass enclosed bulletin boards are installed at strategic locations within APD facilities.

### 1019.2 TYPES OF BULLETIN BOARDS:

The two types of bulletin boards are:

- (a) **Department Bulletin Boards** - For posting APD information.
- (b) **Austin Police Association (APA) Bulletin Boards** - For posting APA information.

#### 1019.2.1 DEPARTMENT BULLETIN BOARDS

Information posted on Department Bulletin Boards is considered important for all employees. Employees should check these Bulletin Boards regularly for new postings.

- (a) Department Bulletin Boards will be located at various locations at the Main Headquarters, the Training Academy, and substations, and remote offices.
- (b) Control of Posted Materials:
  - 1. The Commander over each facility where the Bulletin Board is located will designate a specific person to post/purge information on Department Bulletin Boards.
  - 2. Each Department Bulletin Board will remain locked to control the materials posted.
- (c) Only authorized Department information will be posted on Department Bulletin Boards.
- (d) Personal notices are not to be placed in, on, or affixed to Department Bulletin Boards.

#### 1019.2.2 APA BULLETIN BOARDS

Pursuant to terms in the Meet and Confer Agreement, the APA may have a bulletin board installed at designated APD facilities. The design and placement of APA Bulletin Boards will be approved by the Chief or designee.

- (a) The Agreement includes the following guidelines concerning APA Bulletin Boards:
  - 1. There shall be no personal attacks or inflammatory statements.
  - 2. All materials shall be directed toward dissemination of APA information.
  - 3. Any concerns about the content of posted material shall be brought to the attention of the APA's Executive Board for review and adjustment as soon as the concerns are noticed.
  - 4. The Chief retains the final decision as to whether APA material may be posted on APA Bulletin Boards. At no time shall the APA Bulletin Boards contain any political endorsement, whether at the local, state or federal level.



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## Severe Weather

### 1021.1 PURPOSE AND SCOPE

On occasion, Austin experiences severe weather conditions impacting all or a majority of the city. This includes flooding, icy conditions, or high winds and possible tornado activity. Severe weather conditions create hazards for employees as well as other members of the public.

### 1021.2 ESSENTIAL PERSONNEL

Essential personnel are employees who provide emergency police services to the public.

- (a) First Responders are essential personnel.
- (b) Personnel assigned to Communications are considered essential personnel unless otherwise designated as nonessential by the Communications SOP.
- (c) Supervisors will designate all other officer and civilian employees as either essential or non-essential personnel.

### 1021.3 SEVERE WEATHER SITUATIONS

The provisions of this order will be invoked only after specific authorization of the City Manager under the City of Austin Bad Weather Policy.

- (a) In the event a decision is made by the City Manager that an emergency situation has created hazardous conditions, only essential Department personnel should report for duty or remain on-duty.
- (b) All essential personnel will report for duty as normal, or as directed, if an emergency mobilization is declared unless the employee's absence is authorized by a supervisor.



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# Courtesies to the Flag

### 1022.1 PURPOSE AND SCOPE

Employees will render proper respect to the National Colors and the National Anthem when it is both practical and safe to do so. This order explains how to render the proper courtesy and when it should be rendered.

### 1022.2 MANNER OF EXECUTING A COURTESY TO THE FLAG

There are three (3) distinct manners in which courtesies may be extended, depending upon circumstances.

- (a) When in civilian attire, including wearing a non-police uniform, employees will place their right hand over their heart. Employees wearing a hat will remove their hat and hold them at the left shoulder with the hand over the heart.
- (b) When in a police uniform and a hand salute is appropriate:
  - 1. Stand at attention, with eyes facing forward.
  - 2. Raise the right hand smartly until the tip of the forefinger touches the lower edge of the brim of the headgear, or, if not wearing a hat/cap, until the forefinger touches the forehead above and slightly to the right of the right eye.
  - 3. The thumb and fingers are held straight and joined, with the palm facing to the left.
  - 4. The upper arm is horizontal, the forearm inclined at 45 degrees, and the hand and wrist are held straight.
  - 5. Complete the salute by returning the arm to its normal position at the side, using a smooth motion.
- (c) When in a police uniform and standing at attention is appropriate:
  - 1. Stand erect, with eyes facing forward.
  - 2. Let arms hang by the sides with the thumbs touching the outer trouser seams.

### 1022.3 WHEN COURTESIES ARE RENDERED

When practical and safe to do so personnel will render the proper courtesy, as designated during:

- (a) Parade Situations.
- (b) Posting of Colors.
- (c) Flag Raising/Lowering (Reveille and Retreat).
- (d) Playing of the National Anthem.

#### 1022.3.1 PARADE SITUATIONS

Render the courtesy when the flag approaches within six paces from the viewer and hold it until the flag has passed two paces beyond.

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- (a) Officers in uniform come to attention and render the hand salute.
- (b) Employees in civilian attire will render courtesy as outlined in this order.

1022.3.2 POSTING OF THE COLORS

- (a) If outdoors, officers in uniform will render the hand salute. Begin the salute when the command "present arms" is given and hold until the command "order arms" is given.
- (b) If indoors, officers in uniform will stand at attention. Come to attention as the honor guard begins its entry, and remain at attention until the honor guard exits the posting area (generally the stage or dais area).
- (c) Employees in civilian attire will render courtesy as outlined in this order from entry of the honor guard until it leaves the posting area.

1022.3.3 FLAG RAISING/LOWERING (REVEILLE AND RETREAT)

The ceremony of raising or lowering the national flag at police facilities constitutes a dignified homage to it. Begin to render the courtesy when the flag starts its ascent/descent, and end it when the flag has been fully raised/lowered.

- (a) Officers in uniform will render the hand salute.
- (b) Employees in civilian attire will render courtesy as outlined in this order.

1022.3.4 PLAYING OF THE NATIONAL ANTHEM

Render the courtesy beginning with the first note of the National Anthem and hold until the last note is played.

- (a) If outdoors, officers in uniform will render the hand salute.
- (b) If indoors, officers in uniform will stand at attention.
- (c) Employees in civilian attire will render courtesy as outlined in this order.

**GO  
1023****Austin Police Department**  
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# Honorably Retired Photo Identification and Range Qualification

## 1023.1 PURPOSE AND SCOPE

This order sets guidelines on officers who retire from the Department and who wish to:

- (a) Receive a Honorably Retired Photo Identification, and/or
- (b) Qualify for a handgun license under 18 USC (LEOSA Federal Law) or Tex. Occ. Code Ann. § 1701.357.

## 1023.2 IDENTIFICATION

Officers who have retired or who have given notice to the department of their retirement date may receive a retiree photo identification.

- (a) The individual will fill out the Identification Card Honorably Retired Peace Officers (PD0041b) and deliver the completed form to the control booth, headquarters.
- (b) After two weeks, the individual may call the control booth to determine if the form has been approved. Upon approval, the retiree shall schedule a time for the photo and identification card.
- (c) If an identification card issued under this order is lost or stolen, the retiree shall submit an affidavit stating such upon receiving a replacement card.

## 1023.3 QUALIFICATION

Retirees who possess a retiree photo identification may qualify at the Department's range.

- (a) The retiree shall call the range and schedule a time to qualify.
- (b) The retiree shall sign a Department waiver and a signed and notarized Certificate of Weapons Proficiency (PD0206 or PD0206a) before being allowed to shoot on the range. Sworn range personnel may notarize the waiver.
- (c) Upon successful qualification, the range officer shall issue the retiree a Certificate of Weapons Proficiency (PD0206 or PD0206a).





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## Emergency Notification System (ENS)

### 1024.1 EMERGENCY NOTIFICATION SYSTEM (ENS)

The Emergency Notification System (ENS) is an automated emergency notification tool which enables authorized public safety personnel the ability to notify citizens of emergency situations where human life or property are potentially in jeopardy.

The Emergency Notification System may also be recognized as the Regional Notification System (RNS) and/or Reverse 911. This system is accessible through APD Emergency Communications. This system is not the primary system for statewide AMBER, SILVER, or BLUE Alerts; but, can be utilized to support those statewide alerts.

- (a) When sworn personnel request an ENS activation through Emergency Communication personnel, the request must:
  - 1. Be approved by a supervisor with the rank of Sergeant or higher;
  - 2. Include some general geo-graphical identifiers for the boundaries of the message (radius distance and/or perimeter roadways); and
  - 3. Include the content of the message to be delivered
- (b) Examples of potential activation scenarios include, but are not limited to:
  - 1. Warning residences of severe weather events and providing instructions (usually handled by the EOC).
  - 2. Broadcasting the description of an endangered missing child or elderly person to residents in an area where the individual was last seen;
  - 3. Providing information concerning hazardous areas to avoid due to an imminent threat (chemical spills, fires, floods, etc.).

# General Orders

General Orders

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# **Exhibit 2**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**SYDNI BEUHLER,  
Plaintiff,**

v.

**CITY OF AUSTIN,  
Officer Gavin Smart (AP8674),  
Officer Javier Gonzalez (AP7422)  
Defendants.**

§  
§  
§  
§  
§  
§  
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**CIVIL ACTION NO. 1:21-CV-00054-RP**

**DECLARATION OF WADE LYONS**

STATE OF TEXAS  
COUNTY OF Travis

I, Wade Lyons, pursuant to 28 U.S.C. 1746, do hereby declare based on my own personal knowledge as follows:

1. My name is Wade Lyons, I am over the age of eighteen years, and I am authorized to make this declaration in support of Defendant City of Austin’s Motion for Summary Judgment. I have never been convicted of a crime and am competent to make this affidavit. I am personally acquainted with the facts herein stated which are true.

2. I am currently employed as a Commander of the Recruiting and Training Division of the City of Austin Police Department (APD). Prior to becoming a Commander, I held numerous patrol, investigative, supervisory, and management positions with APD.

3. As a Commander of the Recruiting and Training Division of the City of Austin Police Department, I have personal knowledge of APD hiring and training standards. Once an individual is hired by APD, he or she becomes a cadet in APD’s training academy. Every APD cadet must successfully complete a 32-week training course at the APD training academy before becoming an APD officer. At the academy, all APD officers receive over 800 Texas Commission

on Officer Standards and Education (TCOLE) approved hours of training. (TCOLE is the Texas state agency responsible for certifying and licensing law enforcement officers in Texas). APD's training requirements far exceed the minimum 720 TCOLE hours required by the State of Texas for TCOLE certification. All APD cadets must be certified by TCOLE before they become APD officers. All APD officers must maintain their TCOLE certification to remain APD officers.

4. All APD cadets receive comprehensive training at the academy on topics including, but not limited to: Arrest, Search, and Seizure; Penal Code; Use of Force; Firearms Training; Defensive Tactics; use of the APD Motor-Vehicle Recorder; and Mental Health and Crisis Intervention Training. This training includes numerous practical skills tests, including exercises where cadets are trained on how to make the decision whether to use force, and choose the appropriate level of force, in simulated situations. This includes APD General Order 306 Search and Seizure.

5. In particular, for at least the last several years, APD has required all cadets to undergo at least 190 hours of TCOLE approved training related to use of force and arrest techniques. This vastly exceeds the 24 hours required by TCOLE. In general, APD trains its officers and cadets using the "Dynamic Response to Resistance Model." This model and philosophy supports progressive and reasonable escalation and de-escalation of officer applied force in response to the actions and resistance posed by the subject. Officers and cadets are trained that the level of their response should correspond to the situation encountered on the scene and the actions of the subject in response to the officer's commands. This philosophy is taught through practical and classroom exercises.

6. I also know that the APD training academy includes classroom training on use of force law and policy. I know that cadets are instructed, based at least in part on the Supreme

Court's decisions in *Graham v. Connor* and *Tennessee v. Garner*, that they are only permitted to use the amount of force that is reasonable under the circumstances, judged from the perspective of a reasonable officer on the scene.

7. APD officers also receive considerable training on interacting with the public. APD cadets and officers are instructed and trained on how to communicate effectively and professionally with the public.

8. I know that Gavin Smart (APD #8674), Javier Gonzalez (APD #7422), and Anne Allare (APD #7755) successfully completed the APD training academy by passing all of the required written and practical tests. Gavin Smart (APD #8674), Javier Gonzalez (APD #7422), and Anne Allare (APD #7755) each received over 800 TCOLE hours and received training in all facets of police work, as described above. I know that Gavin Smart (APD #8674), Javier Gonzalez (APD #7422), and Anne Allare (APD #7755) were each licensed/certified by TCOLE as peace officers on or about the time they became a full-time APD police officers. True and correct copies of the TCOLE training records of Gavin Smart (APD #8674), Javier Gonzalez (APD #7422), and Anne Allare (APD #7755) are attached hereto, respectively, as Attachment 1, Attachment 2, and Attachment 3.

9. After officers are commissioned, TCOLE requires officers to undergo at least 40 hours of continuing education and training every two years. To ensure that its officers remain TCOLE certified, and to make sure that its officers receive the latest training, APD offers a number of continuing educational and training opportunities for its officers. Gavin Smart (APD #8674), Javier Gonzalez (APD #7422), and Anne Allare (APD #7755) satisfied this ongoing requirement and maintained their TCOLE licenses (Officer Allare has since retired, but her training was current on the day of the incident, August 1, 2020). Their training and instruction covered the policies in



effect at the time of this incident (Austin Police Department General Orders issued 7/22/2020), including, among others, the policies set out by: APD General Order 100.2 Law Enforcement Authority – Peace Officer Powers; GO 100.3 Law Enforcement Authority – Constitutional Requirements; GO 200 Response to Resistance; GO 200.1 Purpose and Scope; GO 200.1.1 Philosophy; GO 200.1.2 Definitions; GO 200.2 De-escalation of Potential Force Encounters; GO 200.2.1 Assessment and De-escalation; GO 200.3 Response to Resistance; GO 200.3.1 Determining the Objective Reasonableness of Force; GO 200.3.2 Use of Force to Affect a Detention, an Arrest or to Conduct a Search; GO 200.5.2 Duty to Give Aid and Medical Care; GO 211 Response to Resistance Inquiry, Reporting, and Review; GO 301 Responsibility to the Community; GO 301.2 Impartial Attitude and Courtesy; GO 306 Search and Seizure; GO 306.3.1 Search Protocol; GO 306.4 Exigent Circumstances; GO 306.6 Search Incident to Arrest; GO 306.8 Probable Cause; GO 306.9 Frisk (Pat-Down) for Weapons; GO 318.3 Detentions; GO 318.3.1 Handcuffing Detainees, GO 318.5 Field Interviews, Statements and Confessions; GO 318.5.1 Miranda Warning; GO 319 Arrests; GO 319.3 Warrantless Arrest Guidelines; GO 408 Mobile Field Force; GO 900 General Conduct and responsibilities; GO 900.1.1 Responsibility to Know and Comply; GO 900.3 General Conduct; GO 900.3.4 Personal Conduct.

10. In support of this Declaration and Defendant City of Austin's Motion for Summary Judgment, the following attachments are records retained in the normal course and scope of business of the City of Austin, and are true and correct copies of what they purport to be:

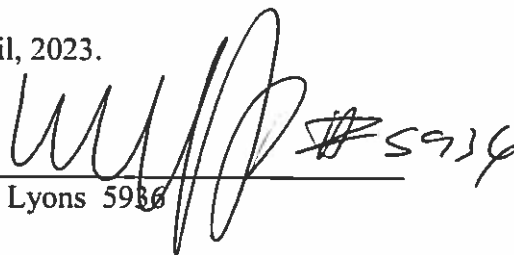
Attachment 1: TCOLE Training Record for Officer Gavin Smart (AP8674),

Attachment 2: TCOLE Training Record for Officer Javier Gonzalez (AP7422),

Attachment 3: TCOLE Training Record for Officer Anne Allare (AP7755),

-----  
PURSUANT to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true  
and correct.

EXECUTED on this, the 12 day of April, 2023.

  
Wade Lyons 5936

# **Attachment 1**

**Texas Commission On Law Enforcement**  
**Personal Status Report**

<b>Name</b>	<b>TCOLE ID (P ID)</b>	<b>STATUS</b>
GAVIN W. SMART	414912	

<b>Citizen</b>	<b>Race</b>	<b>Gender</b>
Yes	White	Male

**Career/Professional Training**

<b>Institution</b>	<b>Hours</b>	<b>Education</b>	<b>From</b>	<b>To</b>
	0	High School		
Sam Houston State University	120	Bachelor		
Total Higher Education Hours	120			
Total Higher Education Points	2400			
Total Military Training Hours	0			
Total	2400			

**Service History**

<b>Appointed As</b>	<b>Department</b>	<b>Award</b>	<b>Service Start Date</b>	<b>Service End Date</b>	<b>Service Time</b>
Peace Officer (Full Time)	AUSTIN POLICE DEPARTMENT	Peace Officer License	12/18/2017		4 years, 5 months
Peace Officer (Full Time)	COLLEGE STATION POLICE DEPT.	Peace Officer License	6/10/2013	9/3/2017	4 years, 3 months

**Total Service Time**

<b>Description</b>	<b>Service Time</b>
Peace Officer	8 years, 7 months
Total officer time	8 years, 7 months

**Award Information**

<b>Award</b>	<b>Type</b>	<b>Action</b>	<b>Action Date</b>
Peace Officer License	License	Granted	6/10/2013
Basic Peace Officer	Certificate	Certification Issued	5/26/2014
Intermediate Peace Officer	Certificate	Certification Issued	6/8/2017

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Academy History**

Completed	Date	Institution	Course Title
	6/7/2013	TEEX Central Texas Police Academy	Basic Peace Officer Course (643)

**Courses Completed**

**09/01/2021 - 08/31/2023**

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3362	All Terrain Vehicle Operation	4/14/2022	10	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	4/7/2022	0	Austin Police Academy	
<b>Unit Hours</b>			<b>10</b>		

**09/01/2019 - 08/31/2021**

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3271	Advanced Human Trafficking	7/1/2021	8	MyTCOLE 3 online	Human Trafficking
3843	CIT-Update	6/22/2021	10	Austin Police Academy	Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 2009-09
3358	Police Bicycle	4/29/2021	4	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	4/15/2021	0	Austin Police Academy	
3344	Less Lethal Electronic Control Device Training	11/19/2020	12	Austin Police Academy	
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	10/22/2020	8	Austin Police Academy	
3186	86th Legislative Session Legal Update	5/21/2020	3	Austin Police Academy	86th Session State and Federal Law Update
355	Annual Firearms Qualification 1701.355	1/23/2020	0	Austin Police Academy	
<b>Unit Hours</b>			<b>45</b>		

**09/01/2017 - 08/31/2019 \***

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3358	Police Bicycle	4/19/2019	40	Austin Police Academy	
3722	Peace Officer Field Training	3/24/2019	160	Austin Police Academy	Peace Officer Field Training

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2045	Patrol Procedures	1/31/2019	4	Austin Police Academy	
3517	Suicide Prevention (not 3501)	1/31/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	1/30/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	1/29/2019	2	Austin Police Academy	Civilian Interaction Training Program
3940	Community Policing	1/29/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	1/28/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
3358	Police Bicycle	1/16/2019	20	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/10/2019	0	Austin Police Academy	
3305	Active Shooter Response	10/26/2018	4	Austin Police Academy	
4001	Mental Health Officer Training Course	9/20/2018	40	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3185	85th Legislative Session Legal Update	8/16/2018	4	Austin Police Academy	85th Session State and Federal Law Update
3836	Concealed Carry for Law Enforcement Officers	5/16/2018	10	Austin Police Academy	
2040	Defensive Tactics	5/9/2018	3	Austin Police Academy	
2040	Defensive Tactics	2/6/2018	3	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/30/2018	0	Austin Police Academy	
2055	Firearms	1/30/2018	2	Austin Police Academy	
8158	Body Worn Camera	12/21/2017	2	Austin Police Academy	
3232	Special Investigative Topics	12/21/2017	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3270	Human Trafficking	12/20/2017	4	Austin Police Academy	Human Trafficking

## Texas Commission On Law Enforcement

### Personal Status Report

#### Courses Completed

09/01/2017 - 08/31/2019 \*

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
4068	Child Safety Check Alert List (Intermediate/Advanc	12/19/2017	1	Austin Police Academy	Child Safety Check Alert List (Advance) Child Safety Check Alert List (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	12/14/2017	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
2106	Crime Scene Investigation (Intermediate)	12/5/2017	32	Austin Police Academy	Crime Scene Investigation (Intermediate)
2109	Spanish for Law Enforcement (Intermediate)	12/1/2017	28	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3275	Missing and Exploited Children	11/27/2017	4	Austin Police Academy	Missing and Exploited Children Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
3344	Less Lethal Electronic Control Device Training	11/22/2017	8	Austin Police Academy	
2067	S.F.S.T. Practitioner	11/3/2017	24	Austin Police Academy	
4065	Canine Encounters (Intermediate/Advance)	10/30/2017	4	Austin Police Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)
7887	Interacting with drivers deaf or hard of hearing	10/20/2017	4	Austin Police Academy	Interacting with drivers deaf or hard of hearing (Intermediate)
3907	MultiCultural Diversity/Awarness for L.E. Prof.	10/18/2017	4	Austin Police Academy	
2107	Use of Force (Intermediate)	10/13/2017	12	Austin Police Academy	Use of Force (Intermediate)
3841	Crisis Intervention Training	10/12/2017	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2053	Baton (All)	10/6/2017	6	Austin Police Academy	
3257	Combined Asset Forfeiture and Racial Profiling	9/27/2017	2	Austin Police Academy	Asset Forfeiture (Intermediate) Racial Profiling (Intermediate)
3939	Cultural Diversity	9/26/2017	8	Austin Police Academy	Cultural Diversity (Intermediate)
3845	CPR	9/22/2017	8	Austin Police Academy	
3277	Identity Theft	9/19/2017	3	Austin Police Academy	Identity Theft (Intermediate)
3807	TCIC/NCIC for Less than Full Access Operators	9/18/2017	8	Austin Police Academy	
2108	Arrest, Search, and Seizure (Intermediate)	9/15/2017	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	9/11/2017	4	Austin Police Academy	
3910	Sexual Harassment Recognition	9/6/2017	2	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	9/5/2017	0	Austin Police Academy	Personnel Orientation
			<b>Unit Hours</b>	551	

**09/01/2015 - 09/30/2017**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3257	Combined Asset Forfeiture and Racial Profiling	9/27/2017	2	Austin Police Academy	Asset Forfeiture (Intermediate) Racial Profiling (Intermediate)
3939	Cultural Diversity	9/26/2017	8	Austin Police Academy	Cultural Diversity (Intermediate)
3845	CPR	9/22/2017	8	Austin Police Academy	
3277	Identity Theft	9/19/2017	3	Austin Police Academy	Identity Theft (Intermediate)
3807	TCIC/NCIC for Less than Full Access Operators	9/18/2017	8	Austin Police Academy	
2108	Arrest, Search, and Seizure (Intermediate)	9/15/2017	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	9/11/2017	4	Austin Police Academy	
3910	Sexual Harassment Recognition	9/6/2017	2	Austin Police Academy	



## Texas Commission On Law Enforcement

### Personal Status Report

#### Courses Completed

**09/01/2015 - 09/30/2017**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
1999	Personnel Orientation by Dept. Basic Proficiency	9/5/2017	0	Austin Police Academy	Personnel Orientation
4068	Child Safety Check Alert List (Intermediate/Advanc	5/27/2017	1	Classen Buck Seminars, Inc.	Child Safety Check Alert List (Advance) Child Safety Check Alert List (Intermediate)
4065	Canine Encounters (Intermediate/Advance)	5/18/2017	8	Capital Area Council of Governments	Canine Encounter (Intermediate) Canine Encouter (Advance)
7887	Interacting with drivers deaf or hard of hearing	4/27/2017	4	Capital Area Council of Governments	Interacting with drivers deaf or hard of hearing (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	3/6/2017	24	Classen Buck Seminars, Inc.	Child Abuse Prevention and Investigation (Intermediate)
3940	Community Policing	1/11/2017	24	COLLEGE STATION POLICE DEPT. (Training Rosters)	
3347	Less Lethal Electronic Control Device Update	10/20/2016	4	College Station Police Dept.	
3939	Cultural Diversity	7/14/2016	8	Classen Buck Seminars, Inc.	Cultural Diversity (Intermediate)
3345	Less Lethal Impact Weapons Training (Bean Bag/Impa	6/16/2016	2	College Station Police Dept.	
2040	Defensive Tactics	6/16/2016	8	College Station Police Dept.	
38763	SABA ( Self Aid, Buddy Aid )	6/15/2016	10	College Station Police Dept.	
4040	Mental Impairment (General)	6/14/2016	7	College Station Police Dept.	
3184	84th Legislative Session Legal Update	6/14/2016	3	College Station Police Dept.	84th Session State and Federal Law Update
2108	Arrest, Search, and Seizure (Intermediate)	6/2/2016	15	Classen Buck Seminars, Inc.	Arrest, Search, and Seizure (Intermediate)
3232	Special Investigative Topics	5/28/2016	8	Classen Buck Seminars, Inc.	Special Investigative Topics (Intermediate)
2107	Use of Force (Intermediate)	5/4/2016	13	Classen Buck Seminars, Inc.	Use of Force (Intermediate)
2106	Crime Scene Investigation (Intermediate)	1/24/2016	32	Classen Buck Seminars, Inc.	Crime Scene Investigation (Intermediate)
2109	Spanish for Law Enforcement (Intermediate)	11/10/2015	20	College Station Police Dept.	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
<b>Unit Hours</b>			<b>241</b>		

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2013 - 08/31/2015**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3275	Missing and Exploited Children	8/24/2015	5	College Station Police Dept.	Missing and Exploited Children Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
1994	Learn Our TCOLE Site	8/23/2015	1	TCOLE Online	
2055	Firearms	8/21/2015	10	College Station Police Dept.	
2040	Defensive Tactics	8/20/2015	10	College Station Police Dept.	
2046	Driving	7/29/2015	10	College Station Police Dept.	
3150	Law Update	7/28/2015	2	College Station Police Dept.	
3340	Crowd Control	7/28/2015	8	College Station Police Dept.	
3344	Less Lethal Electronic Control Device Training	3/6/2015	11	College Station Police Dept.	
2024	Narcotics/Dangerous Drug Inv.	1/16/2015	16	Tarrant County College District LEA	
2024	Narcotics/Dangerous Drug Inv.	1/16/2015	16	Tarrant County College District LEA	
3313	ALERTT Terrorism Response Tactics Active Shooter L	7/1/2014	16	Hays Co. Sheriff's Academy	
3322	Patrol Rifle	5/23/2014	40	College Station Police Dept.	
2055	Firearms	5/8/2014	10	College Station Police Dept.	
2040	Defensive Tactics	5/7/2014	10	College Station Police Dept.	
3183	83rd Legislative Session Legal Update	5/6/2014	3	College Station Police Dept.	83rd Session State and Federal Law Update
2178	S.F.S.T. Practitioner Update	5/6/2014	8	Texas Municipal Police Association	
2046	Driving	5/5/2014	10	College Station Police Dept.	
3308	Officer Safety/Survival	4/14/2014	10	College Station Police Dept.	
3270	Human Trafficking	12/30/2013	4	Classen Buck Seminars, Inc.	Human Trafficking
2055	Firearms	12/12/2013	10	College Station Police Dept.	
3843	CIT-Update	12/11/2013	8	College Station Police Dept.	Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 2009-09
2040	Defensive Tactics	12/10/2013	10	College Station Police Dept.	
2046	Driving	12/9/2013	10	College Station Police Dept.	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2013 - 08/31/2015**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3722	Peace Officer Field Training	11/4/2013	160	COLLEGE STATION POLICE DEPT. (Training Rosters)	Peace Officer Field Training
3277	Identity Theft	10/4/2013	3	College Station Police Dept.	Identity Theft (Intermediate)
<b>Unit Hours</b>			401		

**09/01/2011 - 08/31/2013**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
1999	Personnel Orientation by Dept. Basic Proficiency	7/5/2013	0	College Station Police Dept.	Personnel Orientation
2046	Driving	7/2/2013	10	College Station Police Dept.	
3182	82nd Legislative Session Legal Update	6/26/2013	4	College Station Police Dept.	82nd Session State and Federal Law Update
2055	Firearms	6/12/2013	30	College Station Police Dept.	
1000643	Basic Peace Officer Course (643)	6/7/2013	728	TEEX Central Texas Police Academy	82nd Session State and Federal Law Update 83rd Session State and Federal Law Update 84th Session State and Federal Law Update 85th Session State and Federal Law Update Asset Forfeiture (Intermediate) Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Cultural Diversity (Mandate) Identity Theft (Intermediate) Racial Profiling (Intermediate) S.F.S.T. NHTSA24hour Practitioner Special Investigative Topic (Mandate) State and Federal Law Update TCIC/NCIC for Less than Full Access Operators
<b>Unit Hours</b>			772		
<b>Total Hours</b>			2020		

**Texas Commission On Law Enforcement**  
**Personal Status Report**

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<b>Total Hours</b>	
<b>Total Career/Professional Hours</b>	2400
<b>Total TCOLE Course Hours</b>	2020
<b>Total Hours</b>	<u>4420</u>

\*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

Confidential

# **Attachment 2**

**Texas Commission On Law Enforcement**  
**Personal Status Report**

<b>Name</b>	<b>TCOLE ID (P ID)</b>	<b>STATUS</b>
JAVIER M. GONZALEZ	364796	

<b>Citizen</b>	<b>Race</b>	<b>Gender</b>
Yes	Hispanic	Male

**Career/Professional Training**

<b>Institution</b>	<b>Hours</b>	<b>Education</b>	<b>From</b>	<b>To</b>
	0	High School		
Austin Community College	87	Associate		
Texas State University	61	Bachelor		
Lamar University	30	Master		
Total Higher Education Hours	178			
Total Higher Education Points	3560			
Total Military Training Hours	0			
Total	3560			

**Service History**

<b>Appointed As</b>	<b>Department</b>	<b>Award</b>	<b>Service Start Date</b>	<b>Service End Date</b>	<b>Service Time</b>
Peace Officer (Full Time)	AUSTIN POLICE DEPARTMENT	Peace Officer License	3/20/2013		9 years, 2 months
Peace Officer	AUSTIN COMM COL DIST POLICE	Peace Officer License	10/20/2008	8/7/2012	3 years, 10 months

**Total Service Time**

<b>Description</b>	<b>Service Time</b>
Peace Officer	12 years, 11 months
Total officer time	12 years, 11 months

## Texas Commission On Law Enforcement

### Personal Status Report

#### Award Information

Award	Type	Action	Action Date
Peace Officer License	License	Granted	10/21/2008
Basic Peace Officer	Certificate	Certification Issued	10/5/2009
Intermediate Peace Officer	Certificate	Certification Issued	3/27/2013
Advanced Peace Officer	Certificate	Certification Issued	5/5/2014
Master Peace Officer	Certificate	Certification Issued	5/4/2018

#### Academy History

	Date	Institution	Course Title
Completed	2/26/2013	Austin Police Academy	Basic Peace Officer
Completed	8/16/2008	Austin Community College	Transfer Curriculum & Tex. P. O. Sequence

#### Courses Completed

**09/01/2021 - 08/31/2023**

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
355	Annual Firearms Qualification 1701.355	4/4/2022	0	Austin Police Academy	
			<b>Unit Hours</b>	<b>0</b>	

**09/01/2019 - 08/31/2021**

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3341	Police K9 Training	7/13/2021	3	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	6/15/2021	0	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	5/31/2021	2	Austin Police Academy	
3344	Less Lethal Electronic Control Device Training	11/20/2020	12	Austin Police Academy	
3186	86th Legislative Session Legal Update	11/13/2020	3	Austin Police Academy	86th Session State and Federal Law Update
355	Annual Firearms Qualification 1701.355	1/28/2020	0	Austin Police Academy	
3038	Agency Operations (General)	9/26/2019	4	Austin Police Academy	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2019 - 08/31/2021**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3517	Suicide Prevention (not 3501)	9/26/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	9/25/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	9/24/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
3940	Community Policing	9/23/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	9/23/2019	2	Austin Police Academy	Civilian Interaction Training Program
<b>Unit Hours</b>			<b>54</b>		

**09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
1850	Crisis Intervention Training 40hr	6/20/2019	40	Austin Police Academy	Crisis Intervention Training (Mandate) Crisis Intervention Training 40hr (Intermediate)
3304	Hostage and Barricade Suspect Situations	5/9/2019	7	Austin Police Academy	
54011	Incident Resp. Terror Bombing NMTech	5/1/2019	8	Austin Police Academy	
3860	Prevention and response to Suicide Bombings(NMIMT)	4/24/2019	8	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/31/2019	0	Austin Police Academy	
2042	Mechanics of Arrest & Search	12/18/2018	20	Austin Police Academy	
3340	Crowd Control	11/26/2018	10	Austin Police Academy	
3185	85th Legislative Session Legal Update	11/12/2018	4	Austin Police Academy	85th Session State and Federal Law Update
8158	Body Worn Camera	10/25/2018	2	Austin Police Academy	
3305	Active Shooter Response	8/1/2018	4	Austin Police Academy	
2040	Defensive Tactics	6/6/2018	3	Austin Police Academy	
3305	Active Shooter Response	4/5/2018	20	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	4/3/2018	10	Austin Police Academy	
3390	Ballistic Shield Training	4/2/2018	10	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	2/23/2018	0	Austin Police Academy	
2055	Firearms	2/23/2018	2	Austin Police Academy	



**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2040	Defensive Tactics	2/20/2018	3	Austin Police Academy	
3301	Basic S.W.A.T. Course	11/15/2017	80	Austin Police Academy	
9909	Officer Involved Shooting	9/27/2017	10	Austin Police Academy	
			<b>Unit Hours</b>	241	

**09/01/2015 - 09/30/2017**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
9909	Officer Involved Shooting	9/27/2017	10	Austin Police Academy	
3358	Police Bicycle	7/19/2017	20	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	6/26/2017	0	Austin Police Academy	
2055	Firearms	6/26/2017	3	Austin Police Academy	
3342	Tactical Firearms Training	4/10/2017	10	Austin Police Academy	
3907	MultiCultural Diversity/Awarness for L.E. Prof.	3/3/2017	10	Austin Police Academy	
3184	84th Legislative Session Legal Update	1/17/2017	4	Austin Police Academy	84th Session State and Federal Law Update
3258	Racial Profiling Update	7/30/2016	2	Austin Police Academy	
2057	Courtroom Demeanor/Testimony	5/6/2016	6	Texas District & County Attorneys Association	
3362	All Terrain Vehicle Operation	5/5/2016	7	Austin Police Academy	
4100	Information Technology (General)	4/14/2016	10	Austin Police Academy	
4100	Information Technology (General)	4/13/2016	10	Austin Police Academy	
3322	Patrol Rifle	3/31/2016	40	Austin Police Academy	
3836	Concealed Carry for Law Enforcement Officers	3/1/2016	10	Austin Police Academy	
2055	Firearms	10/28/2015	10	Austin Police Academy	
2046	Driving	9/30/2015	10	Austin Police Academy	
			<b>Unit Hours</b>	162	

## Texas Commission On Law Enforcement

### Personal Status Report

#### Courses Completed

**09/01/2013 - 08/31/2015**

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	8/5/2015	10	Austin Police Academy	
2055	Firearms	7/23/2015	1	Austin Police Academy	
3183	83rd Legislative Session Legal Update	6/29/2015	4	Austin Police Academy	83rd Session State and Federal Law Update
2055	Firearms	5/12/2015	1	Austin Police Academy	
2055	Firearms	11/18/2014	1	Austin Police Academy	
2055	Firearms	10/20/2014	1	Austin Police Academy	
3835	Tactical Trauma Care	9/15/2014	4	Austin Police Academy	
2055	Firearms	7/22/2014	1	Austin Police Academy	
3722	Peace Officer Field Training	6/23/2014	160	Austin Police Academy	Peace Officer Field Training
2055	Firearms	6/13/2014	1	Austin Police Academy	
4100	Information Technology (General)	4/23/2014	10	Austin Police Academy	
2055	Firearms	4/18/2014	1	Austin Police Academy	
2055	Firearms	11/15/2013	1	Austin Police Academy	
3358	Police Bicycle	11/7/2013	40	Austin Police Academy	
2055	Firearms	10/17/2013	1	Austin Police Academy	
2055	Firearms	9/4/2013	1	Austin Police Academy	
<b>Unit Hours</b>			238		

**09/01/2011 - 08/31/2013**

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	8/16/2013	1	Austin Police Academy	
3182	82nd Legislative Session Legal Update	8/15/2013	4	Austin Police Academy	82nd Session State and Federal Law Update
6030	Tactical Vehicle Traffic Stops & Extractions	8/2/2013	3	Austin Police Academy	
2055	Firearms	7/19/2013	1	Austin Police Academy	
2055	Firearms	6/25/2013	1	Austin Police Academy	
2055	Firearms	5/24/2013	1	Austin Police Academy	
2055	Firearms	5/6/2013	1	Austin Police Academy	
2055	Firearms	4/15/2013	1	Austin Police Academy	
2108	Arrest, Search, and Seizure (Intermediate)	3/21/2013	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2011 - 08/31/2013**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3270	Human Trafficking	3/21/2013	4	Austin Police Academy	Human Trafficking
3255	Asset Forfeiture	3/18/2013	2	Austin Police Academy	Asset Forfeiture (Intermediate)
3277	Identity Theft	3/18/2013	3	Austin Police Academy	Identity Theft (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	3/15/2013	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
2106	Crime Scene Investigation (Intermediate)	3/7/2013	32	Austin Police Academy	Crime Scene Investigation (Intermediate)
66094	FEMA Intro ICS Law Enf (FEMA IS-100LEb)	3/4/2013	3	Austin Police Academy	
1000	Basic Peace Officer	2/26/2013	618	Austin Police Academy	82nd Session State and Federal Law Update Crisis Intervention Training (Mandate) Cultural Diversity (Mandate) S.F.S.T. NHTSA24hour Practitioner Special Investigative Topic (Mandate)
4043	Mobile Video Training	2/25/2013	8	Austin Police Academy	
3232	Special Investigative Topics	2/22/2013	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3939	Cultural Diversity	2/20/2013	8	Austin Police Academy	Cultural Diversity (Intermediate)
3256	Racial Profiling	2/18/2013	4	Austin Police Academy	Racial Profiling (Intermediate)
66800	FEMA National Resp Plan Intro (FEMA IS-800b)	2/5/2013	3	Austin Police Academy	
66201	FEMA ICS Single Res/Initial Incident (FEMA IS-200b)	2/5/2013	3	Austin Police Academy	
3841	Crisis Intervention Training	2/4/2013	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2011 - 08/31/2013**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
66700	FEMA National ICS (FEMA IS-700a)	2/1/2013	3	Austin Police Academy	
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	12/29/2012	5	Austin Police Academy	
2067	S.F.S.T. Practitioner	12/7/2012	24	Austin Police Academy	
3270	Human Trafficking	11/19/2012	4	Austin Police Academy	Human Trafficking
3344	Less Lethal Electronic Control Device Training	11/18/2012	10	Austin Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	11/16/2012	20	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
2107	Use of Force (Intermediate)	10/26/2012	13	Austin Police Academy	Use of Force (Intermediate)
3300	Patrol/Tactical	9/30/2012	4	Austin Community College District Police	
3807	TCIC/NCIC for Less than Full Access Operators	9/19/2012	8	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	8/14/2012	0	Austin Police Academy	Personnel Orientation
3910	Sexual Harassment Recognition	8/14/2012	1	Austin Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	1/12/2012	24	Austin Community College District Police	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
2040	Defensive Tactics	1/3/2012	1	Austin Community College District Police	
2055	Firearms	1/3/2012	3	Austin Community College District Police	
3300	Patrol/Tactical	1/3/2012	4	Austin Community College District Police	
3308	Officer Safety/Survival	12/12/2011	8	Travis Co. Sheriff's Academy	
			<b>Unit Hours</b>	<b>896</b>	

**09/01/2009 - 08/31/2011**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
1014	Basic Instructor Course	2/25/2011	40	Austin Community College District Police	

## Texas Commission On Law Enforcement

### Personal Status Report

#### Courses Completed

**09/01/2009 - 08/31/2011**

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2107	Use of Force (Intermediate)	1/12/2011	24	Austin Community College District Police	Use of Force (Intermediate)
3320	Terrorism & Homeland Security (General)	1/6/2011	3	Austin Community College District Police	
3320	Terrorism & Homeland Security (General)	1/6/2011	4	Austin Community College District Police	
3342	Tactical Firearms Training	11/11/2010	7	Austin Community College District Police	
2109	Spanish for Law Enforcement (Intermediate)	5/27/2010	24	Austin Community College District Police	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3300	Patrol/Tactical	2/22/2010	8	Austin Community College District Police	
2105	Child Abuse Prevention and Investigation (Interm.)	11/20/2009	24	Austin Community College District Police	Child Abuse Prevention and Investigation (Intermediate)
3181	81st Legislative Session Legal Update	10/27/2009	4	Austin Community College District Police	State and Federal Law Update
<b>Unit Hours</b>			<b>138</b>		

**09/01/2007 - 08/31/2009**

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2108	Arrest, Search, and Seizure (Intermediate)	7/28/2009	16	Capital Area Council of Governments	Arrest, Search, and Seizure (Intermediate)
3277	Identity Theft	7/21/2009	4	TCOLE Online	Identity Theft (Intermediate)
3256	Racial Profiling	7/21/2009	7	TCOLE Online	Racial Profiling (Intermediate)
3255	Asset Forfeiture	7/21/2009	4	TCOLE Online	Asset Forfeiture (Intermediate)
2053	Baton (All)	7/3/2009	4	Austin Community College District Police	
2055	Firearms	6/18/2009	4	Austin Community College District Police	
2106	Crime Scene Investigation (Intermediate)	6/12/2009	40	Austin Community College District Police	Crime Scene Investigation (Intermediate)
3801	TCIC/NCIC (not 3807 or 3802)	5/22/2009	4	Austin Community College District Police	
3342	Tactical Firearms Training	4/21/2009	4	Austin Community College District Police	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	4/18/2009	8	Austin Community College District Police	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2007 - 08/31/2009**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2040	Defensive Tactics	4/17/2009	2	Austin Community College District Police	
2040	Defensive Tactics	4/17/2009	4	Austin Community College District Police	
3200	Investigations	4/17/2009	4	Austin Community College District Police	
1999	Personnel Orientation by Dept. Basic Proficiency	3/30/2009	0	Austin Community College District Police	Personnel Orientation
3722	Peace Officer Field Training	3/30/2009	160	Austin Community College District Police	Peace Officer Field Training
3841	Crisis Intervention Training	1/7/2009	16	Texas Alcoholic Beverage Commission LEA	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3398	Patrol/Tactical Seminar_2	12/16/2008	1	Austin Community College District Police	
3300	Patrol/Tactical	12/16/2008	6	Austin Community College District Police	
3300	Patrol/Tactical	12/15/2008	6	Austin Community College District Police	
3300	Patrol/Tactical	12/11/2008	6	Austin Community College District Police	
2053	Baton (All)	12/11/2008	8	Austin Community College District Police	
3300	Patrol/Tactical	12/4/2008	8	Austin Community College District Police	
3244	Sexual Assault Web with Exercises	11/1/2008	8	TCOLE Online	Part 3 of 4 (POSEIT) Special Investigative Topics
394	Cultural Diversity Web with Exercises	10/31/2008	8	TCOLE Online	Cultural Diversity (Intermediate)
3214	Family Violence Web w/ Exercises	10/31/2008	8	TCOLE Online	Part 1 of 4 (POSEIT) Special Investigative Topics
3224	Child Abuse (POSEIT)	10/28/2008	8	TCOLE Online	Part 2 of 4 (POSEIT) Special Investigative Topics

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2007 - 08/31/2009**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3254	Sex Offender Characteristics Web with Exercises	10/23/2008	8	TCOLE Online	Part 4 of 4 (POSEIT) Special Investigative Topics
1011	Transfer Curriculum & O. Sequence	Tex. P. 8/16/2008	0	Austin Community College	Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Cultural Diversity (Intermediate) Special Investigative Topics (Intermediate)
2176	S.F.S.T. NHTSA 24hour Practitioner - BPOC	8/12/2008	0	Austin Community College	
			<b>Unit Hours</b>	<u>356</u>	
			<b>Total Hours</b>	<u><u>2085</u></u>	

**Total Hours**

<b>Total Career/Professional Hours</b>	<u>3560</u>
<b>Total TCOLE Course Hours</b>	<u>2085</u>
<b>Total Hours</b>	<u><u>5645</u></u>

\*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

# **Attachment 3**



**Texas Commission On Law Enforcement**  
**Personal Status Report**

<b>Name</b>	<b>TCOLE ID (P ID)</b>	<b>STATUS</b>
ANNE C. ALLARE	428298	

<b>Citizen</b>	<b>Race</b>	<b>Gender</b>
Yes	White	Female

**Career/Professional Training**

<b>Institution</b>	<b>Hours</b>	<b>Education</b>	<b>From</b>	<b>To</b>
University of Notre Dame	128	Bachelor		
Total Higher Education Hours	128			
Total Higher Education Points	2560			
Total Military Training Hours	0			
Total	2560			

**Service History**

<b>Appointed As</b>	<b>Department</b>	<b>Award</b>	<b>Service Start Date</b>	<b>Service End Date</b>	<b>Service Time</b>
Peace Officer (Full Time)	AUSTIN POLICE DEPARTMENT	Peace Officer License	12/8/2014	4/1/2022	7 years, 4 months

**Total Service Time**

<b>Description</b>	<b>Service Time</b>
Peace Officer	7 years, 4 months
Total officer time	7 years, 4 months

**Award Information**

<b>Award</b>	<b>Type</b>	<b>Action</b>	<b>Action Date</b>
Peace Officer License	License	Granted	12/8/2014
Basic Peace Officer	Certificate	Certification Issued	5/5/2016

**Academy History**

	<b>Date</b>	<b>Institution</b>	<b>Course Title</b>
Completed	11/13/2014	Austin Police Academy	Basic Peace Officer Course (643)

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2021 - 08/31/2023**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
355	Annual Firearms Qualification 1701.355	3/3/2022	0	Austin Police Academy	
		<b>Unit Hours</b>	<b>0</b>		

**09/01/2019 - 08/31/2021**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2095	Use of Force (Non-Intermediate Core Course)	7/27/2021	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	7/27/2021	4	Austin Police Academy	
3232	Special Investigative Topics	7/23/2021	8	Austin Police Academy	Special Investigative Topics (Intermediate)
394	Cultural Diversity Web with Exercises	7/13/2021	8	MyTCOLE 3 online	Cultural Diversity (Intermediate)
470	Informed Response - Sexual Assault/Violence	6/1/2021	8	MyTCOLE 3 online	
403	The Telecommunicator and Stress (Online)	6/1/2021	4	MyTCOLE 3 online	
6030	Tactical Vehicle Traffic Stops & Extractions	1/21/2021	2	Austin Police Academy	
2050	S.W.A.T. (other than 3301 or 3310)	1/21/2021	2	Austin Police Academy	
3342	Tactical Firearms Training	12/15/2020	3	Austin Police Academy	
3271	Advanced Human Trafficking	12/14/2020	8	TCOLE Online	Human Trafficking
3344	Less Lethal Electronic Control Device Training	12/11/2020	12	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	10/19/2020	4	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	10/14/2020	6	Austin Police Academy	
3342	Tactical Firearms Training	10/13/2020	5	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	9/23/2020	4	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	9/2/2020	4	Austin Police Academy	
3305	Active Shooter Response	9/1/2020	16	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	8/27/2020	32	Austin Police Academy	
6014	Tactical Entry Training	8/21/2020	8	Austin Police Academy	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2019 - 08/31/2021**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2050	S.W.A.T. (other than 3301 or 3310)	8/20/2020	4	Austin Police Academy	
6014	Tactical Entry Training	8/19/2020	12	Austin Police Academy	
2050	S.W.A.T. (other than 3301 or 3310)	8/17/2020	4	Austin Police Academy	
2050	S.W.A.T. (other than 3301 or 3310)	8/6/2020	24	Austin Police Academy	
2050	S.W.A.T. (other than 3301 or 3310)	7/3/2020	4	Austin Police Academy	
2050	S.W.A.T. (other than 3301 or 3310)	7/3/2020	2	Austin Police Academy	
3329	SWAT-Use of Distraction Devices	7/2/2020	4	Austin Police Academy	
3329	SWAT-Use of Distraction Devices	7/2/2020	4	Austin Police Academy	
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	7/1/2020	4	Austin Police Academy	
3345	Less Lethal Impact Weapons Training (Bean Bag/Impa	7/1/2020	4	Austin Police Academy	
3342	Tactical Firearms Training	6/30/2020	8	Austin Police Academy	
3835	Tactical Trauma Care	6/29/2020	4	Austin Police Academy	
3361	Armored Vehicle Driving Course	6/29/2020	4	Austin Police Academy	
3186	86th Legislative Session Legal Update	6/11/2020	3	Austin Police Academy	86th Session State and Federal Law Update
3835	Tactical Trauma Care	3/5/2020	4	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	2/26/2020	8	Austin Police Academy	
2028	Surveillance Techniques	2/26/2020	8	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	2/6/2020	0	Austin Police Academy	
3342	Tactical Firearms Training	1/29/2020	20	Austin Police Academy	
6014	Tactical Entry Training	1/27/2020	4	Austin Police Academy	
2025	Organized Crime	12/12/2019	40	Austin Police Academy	
3342	Tactical Firearms Training	10/30/2019	4	Austin Police Academy	
<b>Unit Hours</b>			<b>315</b>		

## Texas Commission On Law Enforcement

### Personal Status Report

#### Courses Completed

09/01/2017 - 08/31/2019 \*

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
1850	Crisis Intervention Training 40hr	7/18/2019	40	Austin Police Academy	Crisis Intervention Training (Mandate) Crisis Intervention Training 40hr (Intermediate)
3304	Hostage and Barricade Suspect Situations	7/9/2019	3	Austin Police Academy	
3185	85th Legislative Session Legal Update	6/17/2019	4	Austin Police Academy	85th Session State and Federal Law Update
2050	S.W.A.T. (other than 3301 or 3310)	4/28/2019	8	Texas Tactical Police Officers Association	
3342	Tactical Firearms Training	4/27/2019	8	Texas Tactical Police Officers Association	
3310	SWAT Inservice Training	4/26/2019	4	Texas Tactical Police Officers Association	
3038	Agency Operations (General)	4/12/2019	4	Austin Police Academy	
3517	Suicide Prevention (not 3501)	4/12/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	4/11/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	4/10/2019	2	Austin Police Academy	Civilian Interaction Training Program
3940	Community Policing	4/10/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	4/9/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
3304	Hostage and Barricade Suspect Situations	4/8/2019	3	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	3/4/2019	0	Austin Police Academy	
2047	Officer Survival/Weapon Retent	1/15/2019	20	Austin Police Academy	
6014	Tactical Entry Training	1/7/2019	4	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	12/5/2018	2	Austin Police Academy	
3860	Prevention and response to Suicide Bombings(NMIMT)	11/7/2018	8	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	10/17/2018	4	Austin Police Academy	
3338	Law Enforcement Ambush Response	10/15/2018	4	Austin Police Academy	
3305	Active Shooter Response	9/19/2018	4	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	9/13/2018	5	Austin Police Academy	
8158	Body Worn Camera	9/6/2018	2	Austin Police Academy	
2178	S.F.S.T. Practitioner Update	8/2/2018	8	Austin Police Academy	

5/5/2022

Page Number: 4

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**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2040	Defensive Tactics	6/7/2018	3	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	4/10/2018	2	Austin Police Academy	
3322	Patrol Rifle	4/6/2018	40	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	2/22/2018	0	Austin Police Academy	
2055	Firearms	2/22/2018	2	Austin Police Academy	
2040	Defensive Tactics	2/5/2018	3	Austin Police Academy	
3301	Basic S.W.A.T. Course	11/15/2017	80	Austin Police Academy	
3316	ALERT First Responder Operations in Rural Terrain	10/11/2017	24	Hays Co. Sheriff's Academy	
<b>Unit Hours</b>			<b>319</b>		

**09/01/2015 - 09/30/2017**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3907	MultiCultural Diversity/Awarness for L.E. Prof.	7/24/2017	10	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	4/7/2017	0	Austin Police Academy	
2055	Firearms	4/7/2017	3	Austin Police Academy	
4001	Mental Health Officer Training Course	3/3/2017	40	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3830	General First Aid Training	2/28/2017	3	Austin Police Academy	
3184	84th Legislative Session Legal Update	1/18/2017	4	Austin Police Academy	84th Session State and Federal Law Update
3311	ALERT	12/2/2016	24	Hays Co. Sheriff's Academy	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2015 - 09/30/2017**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3258	Racial Profiling Update	7/21/2016	2	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	5/26/2016	8	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	5/20/2016	4	Austin Police Academy	
3922	Off Duty Encounters	2/16/2016	8	Combined Law Enforcement Asso. of Texas	
3836	Concealed Carry for Law Enforcement Officers	1/19/2016	10	Austin Police Academy	
2070	Accident Investigations	12/16/2015	20	Austin Police Academy	
3308	Officer Safety/Survival	11/16/2015	10	Austin Police Academy	
2040	Defensive Tactics	10/12/2015	10	Austin Police Academy	
2046	Driving	9/30/2015	10	Austin Police Academy	
<b>Unit Hours</b>			<b>166</b>		

**09/01/2013 - 08/31/2015**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2055	Firearms	7/27/2015	1	Austin Police Academy	
2055	Firearms	6/30/2015	1	Austin Police Academy	
3305	Active Shooter Response	5/24/2015	2	Austin Police Academy	
2055	Firearms	5/8/2015	1	Austin Police Academy	
3513	Identification of Prison Gangs	4/30/2015	2	Austin Police Academy	
3722	Peace Officer Field Training	4/10/2015	160	Austin Police Academy	Peace Officer Field Training
4100	Information Technology (General)	4/9/2015	10	Austin Police Academy	
782096	DPS - Interdiction for Protection of Children	3/31/2015	16	Austin Police Academy	Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
3183	83rd Legislative Session Legal Update	2/7/2015	4	Austin Police Academy	83rd Session State and Federal Law Update
66094	FEMA Intro ICS Law Enf (FEMA IS-100LEb)	1/22/2015	3	AUSTIN POLICE DEPARTMENT (Training Rosters)	
3270	Human Trafficking	12/10/2014	4	Austin Police Academy	Human Trafficking
66201	FEMA ICS Single Res/Initial Incident (FEMA IS-200b	12/10/2014	3	AUSTIN POLICE DEPARTMENT (Training Rosters)	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2013 - 08/31/2015**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
66800	FEMA National Resp Plan Intro (FEMA IS-800b)	12/10/2014	3	AUSTIN POLICE DEPARTMENT (Training Rosters)	
2105	Child Abuse Prevention and Investigation (Interm.)	12/5/2014	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
2106	Crime Scene Investigation (Intermediate)	12/2/2014	32	Austin Police Academy	Crime Scene Investigation (Intermediate)
3232	Special Investigative Topics	11/26/2014	8	Austin Police Academy	Special Investigative Topics (Intermediate)
2108	Arrest, Search, and Seizure (Intermediate)	11/23/2014	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
3939	Cultural Diversity	11/21/2014	8	Austin Police Academy	Cultural Diversity (Intermediate)
3841	Crisis Intervention Training	11/20/2014	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
66700	FEMA National ICS (FEMA IS-700a)	11/17/2014	3	AUSTIN POLICE DEPARTMENT (Training Rosters)	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2013 - 08/31/2015**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
1000643	Basic Peace Officer Course (643)	11/13/2014	643	Austin Police Academy	82nd Session State and Federal Law Update 83rd Session State and Federal Law Update 84th Session State and Federal Law Update 85th Session State and Federal Law Update Asset Forfeiture (Intermediate) Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Cultural Diversity (Mandate) Identity Theft (Intermediate) Racial Profiling (Intermediate) S.F.S.T. NHTSA 24hour Practitioner Special Investigative Topic (Mandate) State and Federal Law Update TCIC/NCIC for Less than Full Access Operators
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	9/18/2014	2	Austin Police Academy	
2067	S.F.S.T. Practitioner	8/22/2014	24	Austin Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	8/8/2014	20	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3845	CPR	8/5/2014	4	Austin Police Academy	
1033	Chapter 33 Rule Overview Exam	7/17/2014	0	TCOLE Online	
2107	Use of Force (Intermediate)	7/11/2014	13	Austin Police Academy	Use of Force (Intermediate)
2053	Baton (All)	7/3/2014	10	Austin Police Academy	
3807	TCIC/NCIC for Less than Full Access Operators	6/18/2014	8	Austin Police Academy	
3910	Sexual Harassment Recognition	5/6/2014	1	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	5/5/2014	0	Austin Police Academy	Personnel Orientation



**Texas Commission On Law Enforcement**  
**Personal Status Report**

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**Courses Completed**

**Unit Hours**      1041

**Total Hours**      1841

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**Total Hours**

**Total Career/Professional Hours**      2560

**Total TCOLE Course Hours**      1841

**Total Hours**      4401

\*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

Confidential

# **Exhibit 3**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER,                    ½  
   ½  
 Plaintiff,                            ½  
   ½  
 vs.                                    ½ CASE NO.1:21-cv-00054-RP  
   ½  
 CITY OF AUSTIN, OFFICER ½  
 GAVIN SMART (AP8674), AND ½  
 OFFICER JAVIER GONZALEZ ½  
 (AP7422),                            ½  
   ½  
 Defendants.                        ½

ORAL ZOOM VIDEOTAPED DEPOSITION

OFFICER GAVIN W. SMART

February 16, 2023

ORAL ZOOM VIDEOTAPED DEPOSITION OF OFFICER GAVIN

W. SMART, produced as a witness at the instance of  
 the Plaintiff and duly sworn, was taken in the  
 above-styled and numbered cause on the 16th day of  
 February, 2023, from 10:35 a.m. to 2:29 p.m., before  
 Ms. Michelle Hartman/A.S., Certified Shorthand  
 Reporter in and for the State of Texas and Registered  
 Professional Reporter, reported by computerized  
 stenotype machine/mask at the offices of via Zoom  
 videoconference, pursuant to the Federal Rules of  
 Civil Procedure and the provisions stated on the  
 record or attached hereto.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 Ms. Grayson E. McDaniel</p> <p>4 HENDLER FLORES LAW, PLLC</p> <p>5 901 S. Mopac Expressway</p> <p>6 Building 1, Suite 300</p> <p>7 Austin, Texas 78746</p> <p>8 Telephone: (512) 439-3200</p> <p>9 E-mail: gmcdaniel@hendlerlaw.com</p> <p>10 FOR THE DEFENDANT:</p> <p>11 Mr. Monte L. Barton, Jr.</p> <p>12 CITY OF AUSTIN LAW DEPARTMENT</p> <p>13 P.O. Box 1546</p> <p>14 Austin, TX 78767</p> <p>15 Telephone: 512-974-2409</p> <p>16 E-mail: monte.barton@austintexas.gov*</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 Mr. Joseph Alvarez, videographer</p> <p>20 Ms. Tina Kirkland, paralegal, Hendler Flores</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 EXHIBITS (cont.)</p> <table border="1"> <thead> <tr> <th>EXHIBIT</th> <th>DESCRIPTION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>3 Exhibit 18</td> <td>COA 770, CONF, "Bystander video of arrest 3"</td> <td>136</td> </tr> <tr> <td>4</td> <td></td> <td></td> </tr> <tr> <td>5 Exhibit 19</td> <td>COA 769, "Bystander video of arrest 2 (Sarrestshort).mp4"</td> <td>139</td> </tr> <tr> <td>6</td> <td></td> <td></td> </tr> <tr> <td>7</td> <td></td> <td></td> </tr> <tr> <td>8</td> <td></td> <td></td> </tr> <tr> <td>9</td> <td></td> <td></td> </tr> <tr> <td>10</td> <td></td> <td></td> </tr> <tr> <td>11</td> <td></td> <td></td> </tr> <tr> <td>12</td> <td></td> <td></td> </tr> <tr> <td>13</td> <td></td> <td></td> </tr> <tr> <td>14</td> <td></td> <td></td> </tr> <tr> <td>15</td> <td></td> <td></td> </tr> <tr> <td>16</td> <td></td> <td></td> </tr> <tr> <td>17</td> <td></td> <td></td> </tr> <tr> <td>18</td> <td></td> <td></td> </tr> <tr> <td>19</td> <td></td> <td></td> </tr> <tr> <td>20</td> <td></td> <td></td> </tr> <tr> <td>21</td> <td></td> <td></td> </tr> <tr> <td>22</td> <td></td> <td></td> </tr> <tr> <td>23</td> <td></td> <td></td> </tr> <tr> <td>24</td> <td></td> <td></td> </tr> <tr> <td>25</td> <td></td> <td></td> </tr> </tbody> </table>	EXHIBIT	DESCRIPTION	PAGE	3 Exhibit 18	COA 770, CONF, "Bystander video of arrest 3"	136	4			5 Exhibit 19	COA 769, "Bystander video of arrest 2 (Sarrestshort).mp4"	139	6			7			8			9			10			11			12			13			14			15			16			17			18			19			20			21			22			23			24			25		
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1 could you raise your right hand for me, please.  
 2 THE WITNESS: (Complies).  
 3 THE COURT REPORTER: You can lower  
 4 your right hand.  
 5 THE WITNESS: (Complies).  
 6 THE COURT REPORTER: Counsel, you may  
 7 proceed.  
 8 OFFICER GAVIN W. SMART,  
 9 having been first duly sworn, testified as follows:  
 10 EXAMINATION  
 11 Q. (BY MS. MCDANIEL) Good morning,  
 12 Officer Smart.  
 13 A. Good morning, ma'am.  
 14 Q. I'll introduce myself since we have not  
 15 met before. I am Grayson McDaniel, as I said, with  
 16 Hendler Flores Law and we represent Sydni Beuhler in  
 17 this case. Please do understand that, you know, we  
 18 are essentially in front of a judge and jury now as  
 19 we are doing this deposition today.  
 20 Could you please state your full name  
 21 for the record.  
 22 A. Gavin William Smart.  
 23 Q. And what is your occupation?  
 24 A. I'm a police officer with the City of  
 25 Austin.

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1 Q. Do you have an officer number that you  
 2 are identified by?  
 3 A. I'm sorry, a what? There's an  
 4 ambulance going by.  
 5 Q. Do you have an officer number that  
 6 you're identified by?  
 7 A. My badge number is 8674, and my call  
 8 sign with the city is George903.  
 9 Q. Is that George, like the name George?  
 10 A. It's for the area that I work downtown.  
 11 Q. Okay. Do you work downtown regularly?  
 12 A. Yes, ma'am.  
 13 Q. Which part of downtown?  
 14 A. The entire area of 15th to Lamar,  
 15 I-35 to the river.  
 16 Q. Are you represented by an attorney in  
 17 this deposition today?  
 18 A. Yes, ma'am.  
 19 Q. And do you understand that you're a  
 20 defendant in this case?  
 21 A. I do.  
 22 Q. And that it's a civil case?  
 23 A. Yes, ma'am.  
 24 Q. And do you recall providing a sworn set  
 25 of interrogatory responses and responses to requests

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1 for production in this case?  
 2 A. Yes, ma'am.  
 3 Q. Are you aware that you are supposed to  
 4 supplement those responses under the law if you  
 5 realize that your responses were not complete the  
 6 first time around or if you did not provide all  
 7 relevant documents?  
 8 A. I'm unaware of it, but okay.  
 9 Q. Yes, that's true. Are there any  
 10 responses that you would like to supplement?  
 11 A. No, ma'am.  
 12 Q. No documents that you did not produce  
 13 that you need to produce?  
 14 A. Not that I'm aware of, no.  
 15 Q. Okay. And do you understand that you  
 16 were just sworn in under oath by the court reporter?  
 17 A. I do.  
 18 Q. And do you have an understanding of  
 19 what the oath means, that you have sworn to tell the  
 20 truth to the best of your knowledge, and nothing but  
 21 the truth during this deposition today?  
 22 A. Yes, ma'am.  
 23 Q. And do you understand that the  
 24 deposition is being video recorded?  
 25 A. Yes, ma'am.

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1 Q. And the video of this deposition and  
 2 the transcript will be used in this case and can be  
 3 presented to the judge and the jury, were you aware  
 4 that?  
 5 A. Yes, ma'am.  
 6 Q. So you understand that the testimony  
 7 you give today has the same degree of seriousness as  
 8 if we were setting in a court of law right now?  
 9 A. Yes, ma'am.  
 10 Q. And I'm thinking that this will be easy  
 11 based on how your -- how you respond so far, but I do  
 12 want to be careful that we create a clean record in  
 13 this case and transcript for anyone who may be  
 14 viewing it or reading it.  
 15 And so since we are over an electronic  
 16 medium, I am going to try to be very careful and let  
 17 you finish your answer before I speak, and if you  
 18 will do the same for me and let me finish my entire  
 19 question before you start to answer. That way we can  
 20 not talk over each other and create a clean record.  
 21 Does that sound good?  
 22 A. Yes, ma'am.  
 23 Q. Thanks. If there's ever a time that I  
 24 ask you a question and you do not understand what I'm  
 25 asking or it does not make sense, please let me know

<p style="text-align: right;">Page 10</p> <p>1 and I will rephrase or re-ask the question.                  2 Are you taking any medication that                  3 could affect your ability to give accurate and                  4 complete testimony today?                  5 A. No, ma'am.                  6 Q. Do you have any medical issues that                  7 could affect your ability to give accurate and                  8 complete testimony?                  9 A. No, ma'am.                  10 Q. If you ever need to take a break, I am                  11 happy to accommodate you in that. I'll just ask that                  12 if you could -- if I just asked a question, if you                  13 could provide your answer before asking for a break,                  14 that would be excellent.                  15 Do you have any planned breaks today                  16 that we need to try to accommodate?                  17 A. No, ma'am.                  18 Q. Okay. Are you expecting any                  19 interruptions or anything that we need to plan                  20 around?                  21 A. No, ma'am.                  22 Q. And do you have a hard stop or a stop                  23 time that we need to adjourn?                  24 A. It's not hard. I have a doctor's                  25 appointment at 3:20, but it's flexible.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. No, ma'am.                  2 Q. And how well do you remember the events                  3 that led to this case?                  4 A. I guess it's vaguely, because it was a                  5 couple of years ago.                  6 Q. Okay. I want to try sharing an exhibit                  7 for the deposition via a Dropbox link. So we will                  8 try to see and make sure this is all working                  9 properly.                  10 MS. MCDANIEL: I'm going to ask Tina,                  11 Ms. Kirkland, to put a link in the Zoom chat for the                  12 Dropbox folder that I will put exhibits in as we go                  13 along. She will drop those in the folder, pretty                  14 much exactly like we did last time, the last                  15 deposition in this case.                  16 (Exhibit Plaintiff's 12 marked)                  17 MS. MCDANIEL: I'm going to ask                  18 Ms. Tina, Ms. Kirkland, will you please put                  19 Plaintiff's Exhibit 12 into the Dropbox folder.                  20 MS. KIRKLAND: (Complies).                  21 MS. MCDANIEL: And, let's see,                  22 Ms. Hartman, we are starting with Plaintiff's                  23 Exhibit 12 because we got to Plaintiff's Exhibit 11                  24 in our prior deposition in this case.                  25 MR. BARTON: Sorry, I did not hear all</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. That's good.                  2 Where are you located right now?                  3 A. In City Hall in Austin, Texas.                  4 Q. Are you on the first floor? It looks                  5 like you're way up there.                  6 A. I believe it's the second floor, but                  7 it's a unique style building. Fourth floor, I'm                  8 told.                  9 Q. And Mr. Barton is in the room with you?                  10 A. Yes, ma'am.                  11 Q. Is there anyone else there?                  12 A. No, ma'am.                  13 Q. And are you connected to Zoom through a                  14 personal computer?                  15 A. No, ma'am, it's a City computer.                  16 Q. Is there anything else running on the                  17 computer, any other applications?                  18 A. Not that I'm aware of.                  19 Q. And do you have a big enough screen                  20 where if I put up a document that you think you could                  21 be able to see it and read it?                  22 A. Yes, ma'am.                  23 Q. And are you communicating over any                  24 other messaging apps or chat functions, anything like                  25 that, other than what is on the Zoom here?</p>	<p style="text-align: right;">Page 13</p> <p>1 that. Were you talking to Monte Barton?                  2 MS. MCDANIEL: No, Ms. Hartman I think                  3 is the court reporter.                  4 Is that right?                  5 THE COURT REPORTER: Yes, ma'am.                  6 Thank you.                  7 MR. BARTON: Oh, I'm sorry, I                  8 misheard, I'm sorry.                  9 MS. MCDANIEL: No problem. I'm just                  10 letting her know we are starting with                  11 Plaintiff's Exhibit 12 because we are trying to stay                  12 consecutive.                  13 Q. (BY MS. MCDANIEL) So I see that                  14 there's now a link in the chat to                  15 Plaintiffs Exhibit 12.                  16 MS. MCDANIEL: Let's see, can you all                  17 view Plaintiff's Exhibit 12, Mr. Barton and                  18 Mr. Smart?                  19 Mine is asking me to download -- did                  20 the exhibit come through for you, Mr. Barton?                  21 MR. BARTON: Well, our computer is                  22 trying to download it, so we haven't had a chance to                  23 see it.                  24 MS. MCDANIEL: Okay.                  25 THE VIDEOGRAPHER: Do we need to go</p>

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1 off the record until this is resolved?  
 2 MS. MCDANIEL: It probably would not  
 3 be bad to go off the record for just a couple of  
 4 minutes for me to kind of set up a folder.  
 5 MR. BARTON: I think that would be  
 6 Okay.  
 7 THE VIDEOGRAPHER: Copy that. We are  
 8 now going off the record. It is now 10:46 a.m.  
 9 (Recess taken)  
 10 THE VIDEOGRAPHER: We are now back on  
 11 the record. It is now 10:59 a.m.  
 12 Q. (BY MS. MCDANIEL) Okay. I appreciate  
 13 your patience while we figured out the technology  
 14 issues. So now we have Plaintiff's Exhibit 12 in the  
 15 Zoom chat function. There is a link to  
 16 Plaintiff's Exhibit 12.  
 17 Can you review that document too,  
 18 Officer Smart?  
 19 A. Yes, ma'am.  
 20 Q. Now I'm going to share my screen and  
 21 review that with you. Let's see. Can you see  
 22 Plaintiff's Exhibit 12 on my screen?  
 23 A. Yes, ma'am.  
 24 Q. Excellent. And do you have any  
 25 problems reading it? Is the print large enough for

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1 you to be able to read that clearly?  
 2 A. Yes, ma'am, I can read it.  
 3 Q. Okay. And Plaintiff's Exhibit 12 is  
 4 Plaintiff's Notice of Deposition for Officer Smart.  
 5 Is this the notice of deposition by  
 6 which you're appearing here today?  
 7 A. I believe so, ma'am.  
 8 Q. I'm going to stop sharing my screen.  
 9 And so have you had any experience  
 10 providing sworn testimony in the past?  
 11 A. Yes, ma'am.  
 12 Q. Is that something you do as part of  
 13 your job?  
 14 A. Yes, ma'am.  
 15 Q. How often do you think that you have  
 16 testified in a courtroom?  
 17 A. I don't know off the top of my head,  
 18 I'm afraid.  
 19 Q. You think it's, like, more than 20  
 20 times?  
 21 A. It is probably around that.  
 22 Q. Like between 20 and 30 or between 10  
 23 and 20?  
 24 A. If you can -- if you're including  
 25 license revocation hearings, probably more than 20.

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1 Q. I see. And were all those in criminal  
 2 cases?  
 3 A. Yes, ma'am.  
 4 Q. Have you ever testified in a civil case  
 5 of any kind?  
 6 A. No, ma'am.  
 7 Q. Have you ever given a deposition  
 8 before?  
 9 A. No, ma'am.  
 10 Q. Okay. Have you ever been party to a  
 11 civil lawsuit before?  
 12 A. No, ma'am.  
 13 Q. How did you prepare for your deposition  
 14 today?  
 15 A. I reviewed my report, video footage  
 16 from the data that was available, as well as the  
 17 different legal paper works and questionnaires that  
 18 you had sent.  
 19 Q. And what else did you do?  
 20 A. That was it.  
 21 Q. When you say you "reviewed the video,"  
 22 did you view just the video from your camera or did  
 23 you view any of the other videos in --  
 24 A. Oh, no.  
 25 Q. -- in the City documents provided to

Page 17

1 you?  
 2 A. From my body camera, Officer Allare's  
 3 body camera, and Officer Gonzales' body camera.  
 4 Q. And did you meet with your attorney  
 5 prior to the deposition?  
 6 A. Yes, ma'am.  
 7 Q. How long did you meet?  
 8 A. A few hours.  
 9 Q. How many times?  
 10 A. One time.  
 11 Q. Did you speak with Officer Allare prior  
 12 to your deposition?  
 13 A. No, ma'am.  
 14 Q. Did you speak to Officer Gonzales prior  
 15 to your deposition?  
 16 A. No, ma'am.  
 17 Q. So we talked a little bit about you, do  
 18 have some experience providing testimony as part of  
 19 your job.  
 20 Have you received training in like  
 21 courtroom demeanor and those types of things?  
 22 A. In the police academy, they do a brief  
 23 overview of the courtroom testimony, as one of the  
 24 classes covers things such as the basics of how the  
 25 procedure goes. Because for officers, until they

<p style="text-align: right;">Page 18</p> <p>1 actually go, it's an unfamiliar prospect for us.                  2 Q. What were some of the things that you                  3 learned about providing testimony?                  4 A. From what I recall, one is speak the                  5 truth; and if you don't know the answer, don't create                  6 an answer, fictionally speaking. It's okay to not                  7 know something.                  8 Q. Did you provide any training on making                  9 your testimony -- helping to win the case for whoever                  10 you are representing?                  11 A. No, ma'am.                  12 Q. Or being persuasive, is that part of                  13 the training you received?                  14 A. No, ma'am.                  15 Q. Okay. What about the importance of                  16 completeness to testify about all the important                  17 facts?                  18 A. I don't know if that's specifically                  19 stated. I think what they tell us is to answer your                  20 questions as y'all ask them.                  21 Q. Okay. And what about if something is                  22 asked about that includes something, you know,                  23 possibly unpleasant, would you agree that, you know,                  24 to give full testimony means that you would include                  25 all the facts, even the bad ones?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I don't know.                  2 Q. How long have you been a police                  3 officer?                  4 A. Since 2013.                  5 Q. So that's seven years?                  6 A. That's roughly ten.                  7 Q. Ten years, okay.                  8 All right. Where did you grow up?                  9 A. In Saudi Arabia.                  10 Q. Oh really. What part?                  11 A. Raytheon.                  12 Q. Were you born in Saudi Arabia?                  13 A. Yes, ma'am.                  14 Q. When did you leave Saudi Arabia?                  15 A. When I was about 16.                  16 Q. Did you go to high school in                  17 Saudi Arabia or did you complete your high school                  18 here?                  19 A. I did both.                  20 Q. What was the reason for living in Saudi                  21 Arabia?                  22 A. They worked for an oil company.                  23 Q. And what was -- what made family your                  24 or yourself relocate to the United States?                  25 A. My parents were getting close to</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Yes, ma'am.                  2 Q. And when I ask you like if you were                  3 testifying, with regard to testimony, it's important                  4 to testify as to what you know from your personal                  5 knowledge, does the term "personal knowledge" mean                  6 anything to you?                  7 A. Yes, ma'am.                  8 Q. Can you explain what that means to you?                  9 A. To me, what I can personally testify to                  10 as being what I know to be true.                  11 Q. As supposed to, for example, an                  12 opinion, is that different than personal knowledge?                  13 A. It's relative.                  14 Q. What about something someone else saw,                  15 would that be in your personal knowledge?                  16 A. No, ma'am.                  17 Q. Okay. And are you familiar with using                  18 documents and videos to refresh your knowledge or                  19 recollection of an event?                  20 A. Yes, ma'am.                  21 Q. Okay. Thank you. What made you want                  22 to become a police officer?                  23 A. I wanted to help people.                  24 Q. When did you first decide that you                  25 wanted to do that?</p>	<p style="text-align: right;">Page 21</p> <p>1 retirement age.                  2 Q. I see. And when you moved to the                  3 United States, where did you move?                  4 A. Houston, Texas.                  5 Q. You moved to Houston, Texas when you                  6 are about 16?                  7 A. Yes, ma'am.                  8 Q. And did you go to high school in                  9 Houston?                  10 A. Yes, ma'am.                  11 Q. Where did you go to high school in                  12 Houston?                  13 A. I went to a couple -- I'm sorry --                  14 Elkins High School and Houston Christian High School.                  15 Q. I see. What did you do after you went                  16 to high school in Houston?                  17 A. I went to Texas Tech University.                  18 Q. Okay. What did you study at                  19 Texas Tech?                  20 A. Just the basics there.                  21 Q. What do you mean "the basics"?                  22 A. I was only there for a semester, so                  23 just your general basics such as English, math,                  24 sciences.                  25 Q. So did you leave before you graduated</p>



Page 22

1 undergrad?  
 2 A. Yes, ma'am. I then went to Sam Houston  
 3 where I graduated with a criminal justice and a minor  
 4 in Middle Eastern studies.  
 5 Q. Oh, wow. What made you transfer from  
 6 Texas Tech to Sam Houston?  
 7 A. Family.  
 8 Q. Oh, okay. Where is Sam Houston  
 9 University?  
 10 A. It's in Huntsville, Texas.  
 11 Q. And Texas Tech is in Lubbock, right?  
 12 A. Yes, ma'am.  
 13 Q. Tell me about any law enforcement  
 14 experience that you would have had between high  
 15 school and the time that you graduated from  
 16 Sam Houston.  
 17 A. I briefly worked for Aramco, which is  
 18 an Arabian oil company, doing a short internship  
 19 doing background investigations for them.  
 20 Q. That sounds interesting.  
 21 A. Not really.  
 22 Q. No? Was it in college or high school?  
 23 A. It was in college.  
 24 Q. And that's kind of a law -- is that law  
 25 enforcement related or is that --

Page 23

1 A. It's looking into people's histories  
 2 for their hire for employment, because it costs a lot  
 3 of money to send people overseas, so just making sure  
 4 that people are truthful and to what they're  
 5 portraying themselves to be.  
 6 Q. I think that sounds interesting, but I  
 7 will trust you that it's not.  
 8 Did you do that during the time of the  
 9 Internet?  
 10 A. Yes, ma'am.  
 11 Q. Did you use the Internet to accomplish  
 12 your background checks?  
 13 A. It was one of them, one of the tools.  
 14 Q. What else do you use?  
 15 A. Phone calls.  
 16 Q. Oh, really? So you would interview  
 17 people to check background?  
 18 A. Yes, ma'am.  
 19 Q. Interesting. How many people do you --  
 20 would you say you did background checks on in your  
 21 internship?  
 22 A. Not very many.  
 23 Q. But that helps develop your  
 24 investigative skills?  
 25 A. Potentially.

Page 24

1 Q. Did you take that internship because  
 2 you wanted to become a police officer?  
 3 A. It did provide me with criminal justice  
 4 credit, so, yes.  
 5 Q. Okay. Did you think about going to  
 6 work for Aramco again?  
 7 A. I did.  
 8 Q. Did you work for them again?  
 9 A. No, ma'am.  
 10 Q. Let's see. So after you graduated from  
 11 Sam Houston, what did you then?  
 12 A. I became a police officer.  
 13 Q. Did you become a police officer in  
 14 Huntsville?  
 15 A. No, in College Station.  
 16 Q. How did that process -- how far away is  
 17 Huntsville from College Station?  
 18 A. Maybe 45 minutes.  
 19 Q. So they are relatively close?  
 20 A. Yes.  
 21 Q. Okay. How far away is that from  
 22 Lubbock?  
 23 A. From Lubbock, that's maybe nine to ten  
 24 hours.  
 25 Q. Okay. So how did you come to work as a

Page 25

1 police officer in College Station?  
 2 A. They offered me the job first before  
 3 other cities did.  
 4 Q. Okay. So you went through an  
 5 application process with multiple cities or entities?  
 6 A. Yes, ma'am.  
 7 Q. And did you go to a police academy  
 8 while working at College Station?  
 9 A. Yes, ma'am.  
 10 Q. Was that police academy in Bryan,  
 11 Texas?  
 12 A. Technically I think it is in Bryan,  
 13 yes.  
 14 Q. Or right in the vicinity?  
 15 A. Yes, ma'am.  
 16 Q. Bryan is a fairly small town; is that  
 17 correct?  
 18 A. I thought so until I learned  
 19 population-wise it would be one of the bigger cities  
 20 in Wisconsin. That's a random fact.  
 21 Q. Really? Is that mainly because of the  
 22 college population or is that because of the -- that  
 23 it's the sprawl?  
 24 A. I think it's considered the  
 25 Bryan/College Station Metro area. I think it's

<p style="text-align: right;">Page 26</p> <p>1 between 250,000 to 300,000 people. It's kind of 2 viewed as one city. 3 Q. Okay. Kind of like Dallas, except lots 4 more? 5 A. Yes. 6 Q. What was your experience working as a 7 police officer in Bryan? 8 A. It was for the City of College Station, 9 and it was positive. 10 Q. Okay. And how long did you work for 11 the City of College Station? 12 A. From 2013 to roughly 2017. 13 Q. And what made you change your 14 employment in 2017? 15 A. Financial security. 16 Q. Does that mean you took a job that paid 17 more? 18 A. Yes, ma'am. 19 Q. And was that with the Austin Police 20 Department? 21 A. Yes, ma'am. 22 Q. And when did you come to the 23 Austin Police Department, was that in 2017? 24 A. Yes, ma'am. 25 Q. Did you receive training when you began</p>	<p style="text-align: right;">Page 28</p> <p>1 foot, as well as a multiple of other vehicles such as 2 ATVs or such. 3 Q. What about horseback? 4 A. No. 5 Q. No? 6 A. We do have horseback officers, but not 7 I. 8 Q. I see. Is that something you want to 9 start doing in your future? 10 A. Not a current interest of mine so far, 11 no, ma'am. 12 Q. Okay. Not a big horse fan? 13 A. I have no problem with them, it's just 14 not an interest of mine. 15 Q. I see. So do you see a fair amount of 16 violent crimes in your -- your work downtown? 17 A. I guess relatively sadly, yes. 18 Q. Did you work last night? 19 A. No, ma'am. 20 Q. How many nights a week do you work? 21 A. Usually four or five. 22 Q. And what time? Like, what are your 23 shifts you believe? 24 A. I'm 2100 hours to 0700. So 9:00 p.m. 25 to about 7:00 a.m.</p>
<p style="text-align: right;">Page 27</p> <p>1 your employment as a police officer? 2 A. Yes, ma'am. 3 Q. Did you receive additional training 4 when you became a police officer with APD? 5 A. Yes, ma'am, I went through another 6 academy. 7 Q. Why is that, why would you have to go 8 through another academy? 9 A. That's how Austin's procedure is. 10 Q. Anyone who joins APD has to go through 11 Austin Police Academy? 12 A. Yes, ma'am. 13 Q. I see. And you said that you worked 14 downtown Austin. What is the nature of your work in 15 downtown? 16 A. So I work at night. My primary duties 17 are split between regular call taking during the 18 week, and on the weekends one of my primary and 19 focuses is managing the entertainment district of 20 downtown Austin, mainly 6th Street. 21 Q. Do you work foot patrol? 22 A. It's one of my duties. It's one of my 23 options, yes. 24 Q. Do you work bicycle patrol? 25 A. Yes, ma'am, bicycle, vehicle, and on</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Okay. And then do you sleep during the 2 day? 3 A. Yes, ma'am. 4 Q. Interesting. Did you do ride along 5 field training for APB? 6 A. Yes, ma'am. 7 Q. Did you do that in the downtown area? 8 A. No, I did that in central Austin. 9 Q. In addition to your peace officer 10 license, do you have any additional licenses or 11 certifications? 12 A. Yes, ma'am. 13 Q. Can you tell me about those, please. 14 A. It would be a multitude of such. I 15 would have to refer to my TCOL records for all of 16 them. Ones that sticks out is I have certifications 17 and licenses in narcotics investigations, mental 18 health officer, as well as a platitude of others 19 ranging from de-escalation to building entry. 20 Q. And so when you say that, do you mean 21 that you had received training certificates in those 22 areas? 23 A. Yes, ma'am. 24 Q. Let's see. Did you have any changes in 25 your roles and responsibilities since 2017 -- well,</p>

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1 not 2017. It looks like you were made basic peace  
 2 officer in 2014. Did that change your roles and  
 3 responsibilities?  
 4 A. No, ma'am. It's more of a longevity  
 5 and hours of requirement type thing.  
 6 Q. And what about -- is that the same as  
 7 with your change in status to intermediate peace  
 8 officer in 2017?  
 9 A. Yes, ma'am. So some agencies will base  
 10 that off of their pay scale. College Station bases  
 11 your pay scale of what certificate you have. Austin  
 12 doesn't take that into account.  
 13 Q. Interesting. Do you get a raise every  
 14 year, a pay raise?  
 15 A. No, ma'am.  
 16 Q. What does govern pay raises in APB?  
 17 A. City Council.  
 18 Q. I see. And you have over 4,000 hours  
 19 of training. Does that sound correct?  
 20 A. Yes, ma'am.  
 21 Q. Are all of your trainings mandatory or  
 22 are some of them elective?  
 23 A. Some of them are elective.  
 24 Q. Okay.  
 25 (Exhibit 13 marked)

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1 MS. MCDANIEL: I'm going to ask  
 2 Ms. Kirkland to please put up Plaintiff's Exhibit 13  
 3 to where we can access it in the chat.  
 4 MS. KIRKLAND: (Complies).  
 5 Q. (BY MS. MCDANIEL) Do you do a fair  
 6 amount of club policing in your work downtown?  
 7 A. I'm sorry, what?  
 8 Q. Do you do a fair amount of club  
 9 policing in your work downtown?  
 10 A. I'm sorry, what kind of policing?  
 11 Q. Clubs, like nightclub.  
 12 A. Nightclubs. There are several bars,  
 13 yes.  
 14 Q. Do you usually work by yourself or with  
 15 another officer?  
 16 A. It depends. There's not really a fixed  
 17 wait. Generally speaking, downtown, due to the large  
 18 crowds and propensity for violence, we do try to  
 19 stick together in groups or at least pair up, but I  
 20 have been known to go off on my own.  
 21 Q. Would you say that you arrest someone  
 22 every night?  
 23 A. No, ma'am.  
 24 Q. Would you say that there is an arrest  
 25 once a week, that you arrest someone once a week?

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1 A. Potentially, yes.  
 2 Q. Do you plan to continue working  
 3 downtown Austin?  
 4 A. For the foreseeable future, yes, ma'am.  
 5 Q. Did the protest policing change your --  
 6 did that change your enthusiasm for working downtown?  
 7 A. No, ma'am.  
 8 Q. Did you enjoy working those protests?  
 9 A. Yes and no.  
 10 Q. What was something that you enjoyed  
 11 about it?  
 12 A. I enjoyed seeing people outside again  
 13 and interacting with each other, especially after  
 14 Covid, just nice to see. It was kind of sad to see  
 15 Austin as such a ghost town. The first night of the  
 16 protests were very nice, I would say. They were  
 17 very, very understandable and directly driven.  
 18 Shortly after that, in my opinion,  
 19 maybe it diverted a little bit. Maybe the voice in  
 20 the cause was lost, I'm not sure.  
 21 Q. About how long did that protest -- I  
 22 mean, not one obviously, but it was kind of like a  
 23 few months I feel like or obviously the whole time.  
 24 I witnessed a few of them to see what was going on  
 25 myself.

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1 Do you think they went on for two to  
 2 three months or am I wrong about that?  
 3 A. That sounds about right.  
 4 MS. MCDANIEL: I got an e-mail from  
 5 Tina here. Yes, that's it. I think if you drop that  
 6 link in the Zoom chat, Tina, that we will be able to  
 7 access that.  
 8 MS. KIRKLAND: (Complies).  
 9 Q. (BY MS. MCDANIEL) What was the thing  
 10 you did not enjoy about working those protests?  
 11 A. The long hours.  
 12 Q. What was the shift that you had to work  
 13 long hours during the protest?  
 14 A. It depended. We usually had 16-hour  
 15 days. So we would come in in the evening time and  
 16 sleep in the morning.  
 17 Q. Wow, that's a long day.  
 18 A. It's relative, but yes.  
 19 Q. Did you receive additional pay during  
 20 the protests?  
 21 A. Only overtime. Just normal overtime,  
 22 but otherwise, no, nothing further.  
 23 Q. And is overtime if you work more than  
 24 eight hours?  
 25 A. No. For us, we are based off of a

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1 40-hour workweek, and it's weekly, not biweekly. So  
 2 it's not over 80 hours. So it's just more than your  
 3 allotted 40 hours.  
 4 Q. And what do you get paid for overtime?  
 5 A. Then time and a half.  
 6 Q. I see. So in a way it could be  
 7 lucrative. So maybe the protests were kind of  
 8 lucrative?  
 9 A. I don't think it's worth it, but all  
 10 right.  
 11 Q. I'm just saying. Okay. Anyway, I  
 12 believe now our link is in the folder to  
 13 Plaintiff's Exhibit 13.  
 14 MS. MCDANIEL: Can you all access that  
 15 document?  
 16 THE WITNESS: Yes, ma'am.  
 17 MS. MCDANIEL: Excellent. Let's see.  
 18 Sorry I'm trying to access it myself.  
 19 So for me, Tina, that's taking me to  
 20 Plaintiff's Exhibit 12.  
 21 Are you guys getting Plaintiff's  
 22 Exhibit 13 or 12?  
 23 MR. BARTON: 13.  
 24 MS. MCDANIEL: Okay. You guys can see  
 25 Plaintiff's Exhibit 13. So I have it here. So I

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1 will share my screen this way.  
 2 Q. (BY MS. MCDANIEL) I'm going to share  
 3 my screen with you again. So this document is marked  
 4 Plaintiff's Exhibit 13, and it's an eight-page  
 5 document. I know you have only seen the first page,  
 6 but do you recognize this as your Texas Commission on  
 7 Law Enforcement Personal Status report?  
 8 A. Yes, ma'am.  
 9 Q. And as we discussed, it shows that you  
 10 received your peace officer license in 2013 and that  
 11 you started working for the Austin Police Department  
 12 in 2017, and then it has quite a bit of training.  
 13 I had asked you if some of these are  
 14 mandatory and some of them are elective. How do you  
 15 decide which trainings to take?  
 16 A. The State, as you said, are mandatory.  
 17 So the State mandate certain ones through Senate  
 18 Bills each two-year period that we have to take.  
 19 Then there's courses that are allotted to procedure,  
 20 peace officer license that are State mandated that  
 21 you take. Otherwise, through personal growth  
 22 interests, there's other courses that you can take.  
 23 Q. What are some of the areas that you're  
 24 interested in -- in -- in taking trainings?  
 25 A. Ones that I have taken collectively

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1 would be things such as like culture diversity a few  
 2 more times extra, I believe. Mental health stuff,  
 3 status-wise as an officer, that was an interest of  
 4 mine in dealing with people in crisis. Also crowd  
 5 control type training as well, I have taken several  
 6 of those. And then --  
 7 Q. Yes, I saw you took one -- I'm sorry,  
 8 go ahead.  
 9 A. I was just saying, and then narcotics  
 10 and addiction investigations.  
 11 Q. And are those trainings helpful to you  
 12 as -- your work as a downtown police officer?  
 13 A. Yes, ma'am.  
 14 Q. I would imagine that you encounter a  
 15 number of people in crisis?  
 16 A. Yes, ma'am.  
 17 Q. Let's see. I did see that you had use  
 18 of force training, and it looks like I'm scrolling  
 19 down to page COA00652, I think, 653.  
 20 Okay. Now, I'm on 654, and it states  
 21 you took 13 hours of use of force training in 2016.  
 22 What did you learn in that course?  
 23 A. I don't recall the exact syllabus for  
 24 2016, unfortunately.  
 25 Q. And then again, I'm on page 652, and it

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1 looks like you took 12 hours use of force in 2017.  
 2 What did you learn in general about  
 3 use of force?  
 4 A. Generally speaking, the class's use of  
 5 force will provide legislative updates, case law  
 6 updates, as well as guidelines, such as to use only  
 7 the reasonable amount of force necessary to achieve  
 8 one's goal at the time, and then different defensive  
 9 tactics to be used.  
 10 Q. I see. On the same page here it  
 11 begins -- sorry. In 2017 you took two hours of  
 12 training on body worn camera. What did you learn in  
 13 that training?  
 14 A. From that training, from what I recall,  
 15 the functions of the body worn camera, just how it  
 16 works, its general makeup, as well as maybe  
 17 Austin Police Department policies to such.  
 18 Q. Thank you. Going back up to page 650,  
 19 I see you took eight hours of de-escalation  
 20 techniques in 2019. What do you recall from the  
 21 training?  
 22 A. From de-escalation techniques in  
 23 2019 -- I'm trying to recall. Again, without the  
 24 syllabus like in front of me, specifics kind of blend  
 25 together over the years of all the trainings.

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1 But it would be different types of  
 2 training techniques, body language, tone of voice,  
 3 different levels of escalation to -- prior to achieve  
 4 your goal of de-escalation, such as your officer  
 5 presence, verbal commands, physical intervention, and  
 6 then potentially escalation further on to achieve  
 7 said goal.  
 8 Q. I notice you only had this one training  
 9 in de-escalation.  
 10 A. I believe it's a little bit further  
 11 down.  
 12 Q. Is there more?  
 13 A. Right. It might be that I was  
 14 mistaken, because I think that was a newly Senate  
 15 Bill, one that they created during that time.  
 16 Q. I was going to ask you if it was  
 17 because there had not been another one offered or if  
 18 it was any other reason?  
 19 A. I don't recall. That might have been  
 20 the only one that by name is called that, but many of  
 21 the classes do encompass it.  
 22 Q. I want to stop sharing my screen.  
 23 How important does APB, in your  
 24 estimation, view the police ethics and police code of  
 25 conduct?

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1 A. I believe they rate it probably at the  
 2 top of their priority list.  
 3 Q. From your point of view, you would say  
 4 the Austin Police Department views the police ethics  
 5 and code of conduct as extremely important?  
 6 A. Yes, ma'am.  
 7 Q. Can you explain why?  
 8 A. I would consider it the foundation for  
 9 our career. I think you're a person who operates  
 10 with integrity and ethics. Everything that you do  
 11 within and of the course of your duties are benefited  
 12 the public and yourself.  
 13 Q. And how do you believe the  
 14 Austin Police Department views your role as the peace  
 15 officer, what is your purpose?  
 16 A. So for my purpose, my primary purpose  
 17 as a police officer is to respond to calls for  
 18 service and ensure the safety of its citizens as well  
 19 as building good relationships with them.  
 20 Q. What would you turn to for your source  
 21 of authority, if you needed to, for looking at issues  
 22 relating to police ethics and the code of conduct?  
 23 A. Probably the Code of Criminal  
 24 Procedure.  
 25 Q. Texas Code of Criminal Procedure?

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1 A. Yes, ma'am.  
 2 Q. Do you refer to that often?  
 3 A. I do in my duties, yes, ma'am.  
 4 Q. When you say the "Code of Criminal  
 5 Procedure," is that the same as the Texas Penal Code?  
 6 A. No, ma'am. Generally speaking, they're  
 7 in the same book, along with the Health & Safety  
 8 Code, Transportation Code but -- and they do fall  
 9 into each other and reference each other, but it's  
 10 not the exact same as the Penal Code.  
 11 Q. Do you have an annotated version of the  
 12 Code of Criminal Procedure that you use or do you  
 13 look up the actual code?  
 14 A. When I refer to it, I prefer to use the  
 15 actual code. Things can be lost in translation.  
 16 Q. Interesting. That's a fair amount of  
 17 law that you read in the course of your employment;  
 18 is that correct?  
 19 A. Yes, ma'am.  
 20 Q. Is that something that you're able to  
 21 access into easily?  
 22 A. Yes, ma'am. The State has it online.  
 23 Q. Can you give me an example of a time  
 24 that you referred to or relied on the Code of  
 25 Criminal Procedures in the course of your career?

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1 A. Yes, ma'am. So the State of Texas is a  
 2 little different than several other states, in which  
 3 case our arrest authority as officers determines on,  
 4 largely, if it occurs within our presence. There are  
 5 exceptions to said that (sic), as well as through  
 6 case law.  
 7 So often as case officers, we will  
 8 maybe respond to a call where an assault had  
 9 occurred, and because there is no threat of  
 10 continuing violence and the offense did not occur in  
 11 our presence and there's no family relationship or  
 12 dating relationship to be established between the two  
 13 parties, it will -- an arrest will not occur that  
 14 day. It will be written up in a report format and  
 15 then a detective will follow up and, if deemed  
 16 necessary, present possible charges to their county  
 17 attorney's office.  
 18 Q. When did you elect -- on what occasion  
 19 do you have to refer to them?  
 20 A. It depends on the call for service. As  
 21 I said, it just depends as it comes and goes if it  
 22 occurs in our presence or if it's one of the breaches  
 23 of the peace, in which case we will enact an arrest,  
 24 even if it didn't occur in our presence or  
 25 potentially felonies. Or family violence is

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1 obviously different, too.  
 2 Q. I see. Would you say in your training  
 3 you received training on ensuring officer safety?  
 4 A. Yes, ma'am.  
 5 Q. How important is that aspect of officer  
 6 training?  
 7 A. It's rated very highly as well.  
 8 Q. Have you been -- have you had training  
 9 that emphasizes the importance of officers taking  
 10 steps to maintain their own safety?  
 11 A. Yes, ma'am.  
 12 Q. Is that a thing in your training?  
 13 A. What do you mean by like steps for our  
 14 own safety, I guess would be more clarification?  
 15 Are you talking about on-the-job or  
 16 are you talking about things such as mental health  
 17 and suicide prevention?  
 18 Q. You mean mental health and suicide  
 19 prevention for police?  
 20 A. Yes, ma'am.  
 21 Q. I meant more on-the-job safety, like  
 22 safety from citizen encounters, for example.  
 23 A. Yes, that's -- that's taught, yes.  
 24 Q. Is there a sense that you do not have a  
 25 duty to intervene, you do not have a duty to act if

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1 your safety is threatened?  
 2 A. Yes, ma'am, there is a sense that you  
 3 have a duty to intervene to protect yourself or other  
 4 citizens.  
 5 Q. No. I said, is there a sense that you  
 6 do not have that duty?  
 7 Like, for example, the police -- I  
 8 don't know if you followed or know anything about  
 9 the -- the situation that happened in Uvalde where  
 10 the police did not enter the classrooms that was  
 11 being commandeered by an individual, but there was a  
 12 sense that, like, well, they don't have a duty to  
 13 act.  
 14 A. Criminally speaking, I don't know if  
 15 there is a law that they would face for not doing  
 16 their duties, but there's obviously ethical  
 17 considerations to come into play for their chosen  
 18 profession and their oaths that they took.  
 19 Q. How do you think that those two  
 20 interact? You know, like how do you weigh your duty  
 21 to act, your ethical duty to act versus your own --  
 22 protecting your own safety in a situation like that  
 23 where your safety could be in danger?  
 24 MR. BARTON: Object to the form.  
 25 Q. (BY MS. MCDANIEL) You can answer.

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1 MR. BARTON: You can answer.  
 2 THE WITNESS: I think as a police  
 3 officer you took an oath to potentially put your life  
 4 after others, and I think that's without doubt in  
 5 your daily life of time away from family, missed  
 6 holidays, sleep deprivation, exposure to trauma, and  
 7 in doing so, that includes call for service where you  
 8 have to put yourself in situations that you could be  
 9 potentially harmed in order to protect other people,  
 10 and I think that's a paramount duty of a police  
 11 officer.  
 12 Q. (BY MS. MCDANIEL) Have you ever seen  
 13 training in the concept of action beats reaction?  
 14 A. Yes, ma'am.  
 15 Q. Can you explain what that means?  
 16 A. To me, personally, it means that I had  
 17 a firearm pointed at an individual and he fired his  
 18 off before I even realized that he had it. So when  
 19 action beats reaction, it's that your brain -- the  
 20 human brain does not compute quick enough, it takes  
 21 time. So if someone is doing something to you, you  
 22 have to conceptualize what they're doing and then  
 23 your brain has to react to it.  
 24 Q. And how does that -- why are you  
 25 trained in that?

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1 A. Again, it's just one of our -- in the  
 2 course of our duties, you come across situations like  
 3 that where you're taught to not predict, but to look  
 4 for indicators of potential actions by subjects, be  
 5 them flight or aggressive actions preparatory against  
 6 you, and when you recognize such and articulate such,  
 7 you can take steps to prevent it.  
 8 Q. If there's a situation where an  
 9 officer, as you're saying, to preserve their own  
 10 safety, but to do that would be against the code of  
 11 ethics and code of conduct, would you agree that the  
 12 ethics and code of conduct should take priority?  
 13 MR. BARTON: Object to the form.  
 14 THE WITNESS: I don't think I can give  
 15 an overall branching yes or no to that question  
 16 without -- it's each individual's instance as its own  
 17 and deserves its own weight and judgment.  
 18 Q. (BY MS. MCDANIEL) In your training,  
 19 have you received training on street-level  
 20 interaction with individuals in a multitude of  
 21 scenarios?  
 22 A. Yes, ma'am.  
 23 Q. And your video seems to be a little bit  
 24 glitchy.  
 25 A. Yes, I have.

<p style="text-align: right;">Page 46</p> <p>1 Q. Okay. According to your training, are</p> <p>2 individuals who are protesting committing an</p> <p>3 arrestable offense?</p> <p>4 A. No.</p> <p>5 Q. According to your training, what is a</p> <p>6 police officer's role during a protest?</p> <p>7 A. To ensure people have the right to</p> <p>8 exercise their Constitutional rights safely, and that</p> <p>9 other people also get to continue to exercise their</p> <p>10 Constitutional rights.</p> <p>11 Q. What other roles do you play?</p> <p>12 A. Crowd management.</p> <p>13 Q. What else?</p> <p>14 A. I can't think of anything else.</p> <p>15 Q. Well, during the protest, did you have</p> <p>16 to deal with property destruction or trespassing or</p> <p>17 other issues like that?</p> <p>18 A. Yes, ma'am. And that goes into people</p> <p>19 not -- or people interfering with other person's</p> <p>20 rights to be -- their Constitutional rights to be</p> <p>21 secure in their own holdings.</p> <p>22 Q. I see. But you have received training</p> <p>23 that people do have a Constitutional right to free</p> <p>24 assembly?</p> <p>25 A. Yes, ma'am.</p>	<p style="text-align: right;">Page 48</p> <p>1 police officer's personal liability exposure under</p> <p>2 US Code Section 1983?</p> <p>3 A. Possibly, but a specific training does</p> <p>4 not come to mind on it, no.</p> <p>5 Q. What does that mean to you when I say</p> <p>6 "an officer's personal liability exposure under</p> <p>7 1983"?</p> <p>8 A. That an officer that acts generally</p> <p>9 outside the confines of his duties and best practices</p> <p>10 can be similarly liable for their actions.</p> <p>11 Q. What does "similarly liable" mean to</p> <p>12 you?</p> <p>13 A. I guess punitive fines.</p> <p>14 Q. What training do you have to avoid</p> <p>15 becoming liable in a 1983?</p> <p>16 A. I would say all of our training</p> <p>17 encompasses that, because all of our training</p> <p>18 therefore gives you an idea of what is best</p> <p>19 practices, as well as just general common sense</p> <p>20 growing up.</p> <p>21 Q. Have you ever known any officers who</p> <p>22 have been held liable under 1983?</p> <p>23 A. Not personally, no.</p> <p>24 Q. Before the May 2020 protest, which is</p> <p>25 not to the -- the protest that's the subject of this</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. What does "free assembly" mean to you?</p> <p>2 A. To me, that you have the right to</p> <p>3 freedom of speech without punishment and the right to</p> <p>4 assemble.</p> <p>5 Q. Were there times when it was difficult</p> <p>6 to uphold the right to assemble during the pandemic?</p> <p>7 MR. BARTON: Object to form.</p> <p>8 THE WITNESS: From my understanding</p> <p>9 and recollection is that the County Courts at times</p> <p>10 would institute rules and laws governing how many</p> <p>11 people could be in a certain space that were not</p> <p>12 family related.</p> <p>13 Q. (BY MS. MCDANIEL) That's correct.</p> <p>14 Were you trained that those rules were</p> <p>15 to be observed over the right to freely assembly?</p> <p>16 A. No, ma'am.</p> <p>17 Q. Did you ever give a ticket or cite</p> <p>18 anyone for gathering in groups that were not</p> <p>19 permitted during the pandemic?</p> <p>20 A. No, ma'am.</p> <p>21 Q. Would you have if you had seen a group</p> <p>22 that was larger than what the County Court said was</p> <p>23 allowed during that time?</p> <p>24 A. I probably would not have.</p> <p>25 Q. Have you ever received training on</p>	<p style="text-align: right;">Page 49</p> <p>1 lawsuit is in August 2020 --</p> <p>2 A. Uh-huh.</p> <p>3 Q. -- but I believe that the protest in</p> <p>4 Austin, there was some that began in May of 2020.</p> <p>5 I'm going to go back to that.</p> <p>6 Before May 2020, did you receive</p> <p>7 training on protest policing?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. After May of 2020, did anything change</p> <p>10 with regard to the training provided on</p> <p>11 protest-related policing?</p> <p>12 A. Not vastly different that I can think</p> <p>13 of, other than certain tactics and equipment is a</p> <p>14 little bit different now.</p> <p>15 Q. Tell me more about that, please.</p> <p>16 A. The department no longer utilizes bean</p> <p>17 bag rounds in the same vicinity, as well as gas in</p> <p>18 the same vicinity.</p> <p>19 Q. Okay. Tell me what you mean by "in the</p> <p>20 same vicinity."</p> <p>21 A. I don't believe anymore that -- you</p> <p>22 will see, like, beanbags fired into a crowd of</p> <p>23 people, and as a department now, from my</p> <p>24 understanding, is we not deploy gas in the same crowd</p> <p>25 control matters unless certain elements are met. And</p>

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1 that's high up beyond my pay grade to know what they  
2 are.  
3 Q. Do you think those are positive  
4 changes?  
5 A. I think there is positive things to be  
6 taken from them, yes.  
7 Q. Did you use beanbag rounds at all  
8 during these protests in 2020?  
9 A. No, ma'am.  
10 Q. Did you use -- you call it "gas." Is  
11 that the same as pepper spray?  
12 A. No, ma'am. It's actual teargas that  
13 I'm referring to, but I did use pepper spray.  
14 Q. Did you use teargas during your 2020  
15 protests?  
16 A. I did not, ma'am, no.  
17 Q. Were you in protest situations where  
18 teargas was deployed?  
19 A. I believe they used it at times to  
20 clear the highway, but it did not directly relate or  
21 affect me.  
22 Q. When you say "the highway," do you mean  
23 I-35?  
24 A. Yes, ma'am.  
25 Q. Do you know who was Garrett Foster?

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1 A. Garrett Foster was a protester. He was  
2 one of our more regular ones. We went to see him  
3 quite often. He usually starts at the front. He was  
4 a protester that was killed a couple months into it,  
5 he was shot.  
6 Q. Do you know the purpose of the protest  
7 that occurred during the day of the incident that led  
8 to this lawsuit, August 1st, 2020?  
9 A. I can't tell you why everybody was  
10 there personally, no.  
11 Q. There was, I believe, a memorial for  
12 Garrett Foster. Does that refresh your recollection  
13 at all?  
14 A. There was a memorial there. Again, I  
15 don't know if everybody was there for that purpose.  
16 Q. Is an individual subject to detainment  
17 or arrest due to their presence at a protest?  
18 A. For just being present, no.  
19 Q. What about their participation in the  
20 protest?  
21 A. It depends on their level of what  
22 they're doing and what you consider "participation."  
23 Q. What if their participation entailed  
24 yelling, does that make them subject to arrest?  
25 A. No.

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1 Q. What if their participation includes  
2 cursing or using insulting language towards police  
3 officers, does that make them subject to arrest or  
4 containment?  
5 A. No, ma'am.  
6 Q. When is an individual subject to arrest  
7 or detainment due to their participation in a  
8 protest?  
9 A. When they violate State law.  
10 Q. Let's see. Does an individual give up  
11 their right to be free from excessive force if they  
12 participate in a protest?  
13 A. No, ma'am.  
14 Q. What if they are yelling at a police  
15 officer, does that mean they are no longer -- I'm  
16 sorry, I will rephrase that.  
17 If they are yelling at a police  
18 officer, are they no longer free to be -- free from  
19 excessive force?  
20 A. No, I cannot think of anything that  
21 would free you from excessive force.  
22 Q. What was your experience -- I saw that  
23 you stated in your interrogatory responses that you  
24 had experience policing the George Floyd protest.  
25 A. Uh-huh.

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1 Q. The George Floyd protest, can you tell  
2 me about that and you mean by that in your  
3 experience?  
4 A. So part of my duties is I'm a member of  
5 the Bicycle Public Order Team, and that's part of the  
6 police force. And what I consider the George Floyd  
7 protest, which is what took place that summer, was --  
8 per my duties on there was managing the crowd in  
9 that.  
10 Q. And when you say the "George Floyd  
11 protest," was that one day?  
12 A. No, ma'am, it was over -- it emitted  
13 over several months.  
14 Q. I see. Have you ever received any  
15 training that characterizes citizen encounters to be  
16 like a battle to be won?  
17 A. No, ma'am.  
18 Q. Have you received training on  
19 controlling individuals physically in your  
20 interactions with them?  
21 A. Yes, ma'am.  
22 Q. Controlling their movements?  
23 A. Yes, ma'am.  
24 Q. Their actions?  
25 A. I don't know if we have ever received



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1 training that you can dictate a person's actions.  
 2 Q. Have you received training on when it's  
 3 appropriate to escalate force in a citizen encounter?  
 4 A. Yes, ma'am.  
 5 Q. Can you tell me a little bit about  
 6 that.  
 7 A. Yes, ma'am. So I guess what you  
 8 consider escalation of force is what I would also use  
 9 as the term is overcoming one's resistance. An  
 10 example would be if a person is physically striking  
 11 you or out at you, you might go to what we would call  
 12 a higher level of force than striking back, such as  
 13 using a taser or an intermittent less lethal weapon.  
 14 Q. Okay. What other times?  
 15 A. That I have been trained on that?  
 16 Q. What other -- what's another example  
 17 of -- from your training?  
 18 A. I guess every defensive tactics course  
 19 are kind of similar-type things, and it's almost like  
 20 a step period where you use the objectionable and  
 21 reasonable amount of force to accomplish your goal.  
 22 Kind of the rule of thumb that I go by  
 23 is your first level of force is your mere police  
 24 presence. After that, I would consider verbal  
 25 commands from the police officer to be the second

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1 level of force; and thirdly, after that is what I  
 2 would call soft empty hand technique, maybe grab them  
 3 or holding onto a person, potentially pushing them or  
 4 redirecting them; after that, potentially going  
 5 towards a more hard, empty-hand technique with  
 6 potentially strikes or distraction-ary strikes,  
 7 followed by intermediate weapons, less lethal  
 8 options, and then deadly force.  
 9 Q. Okay. When is it appropriate for a  
 10 person being arrested or detained to use lethal  
 11 force?  
 12 A. When is it appropriate?  
 13 Q. Yes.  
 14 A. I would say never.  
 15 Q. Have you ever picked some individual up  
 16 off the ground when detaining or arresting them?  
 17 A. Yes, ma'am.  
 18 Q. Why?  
 19 A. A lot of our strength from our persons  
 20 and our bodies comes from our legs. So there could  
 21 be a lot of reasons to do it. One of them being is  
 22 when you lift a person off of the ground, they lose  
 23 their contact with the earth and they are losing a  
 24 lot of their strongest muscle groups that they can  
 25 use to resist you or potentially if they are refusing

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1 to walk or leave a situation or you have to remove  
 2 them over an obstacle.  
 3 Q. And is that considered a use of force  
 4 to pick someone up off the ground?  
 5 A. For Austin, a use of force is  
 6 considered when I have to overcome a person's  
 7 physical resistance through physical means, through  
 8 force. So if that could potentially be a use of  
 9 force, yes.  
 10 Q. Have you ever kneeled, knelt on an  
 11 individual when detaining or arresting?  
 12 A. Yes, ma'am.  
 13 Q. Why would you do that?  
 14 A. In order to control them and their  
 15 body.  
 16 Q. Does APD train officers to kneel on  
 17 individuals when arresting them?  
 18 A. Yes. I don't know if it is exactly  
 19 that terminology, but yes, it is a handcuffing  
 20 position that's taught both at APD and other  
 21 universal agencies.  
 22 Q. Tell me about the levels of force that  
 23 are in the APD general orders. Do you remember what  
 24 they are?  
 25 A. I don't have it directly in front of

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1 me, so quoting it exactly without --  
 2 Q. Yes.  
 3 A. -- to encompass it, but I have a  
 4 general understanding, yes, ma'am, a working  
 5 relationship with it.  
 6 Q. That's what I'm asking about. I could  
 7 bring it up, but if you need to go over -- I don't  
 8 think we need to go over it word for word, but I  
 9 wanted to know, what is level one force?  
 10 A. Level one force would be, in layman  
 11 terms, deadly force or something that could  
 12 potentially arise to such.  
 13 Q. I see. For example, using a gun?  
 14 A. Yes, ma'am.  
 15 Q. What is level two force?  
 16 A. Level two force, for most patrol  
 17 officers, a general rule is that when we encounter  
 18 what would be strikes to the head or impact weapons.  
 19 Q. Would a taser -- would tasing someone  
 20 be a level two force?  
 21 A. Taser --  
 22 Q. Or a taser is a level one force, I  
 23 guess that could be level one?  
 24 A. So the taser in and of itself is  
 25 considered level three. It could potentially arise

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1 to a level two if the subject that has been tased  
 2 suffers injury to the point that they require  
 3 hospitalization, actually actual admission, not just  
 4 to an ER.  
 5 Q. And so level two you said it sounded  
 6 like strikes to the head and I believe you used the  
 7 term like "some kind of weapon"?  
 8 A. An impact weapon.  
 9 Q. Does that mean like a baton?  
 10 A. It can, depending where the strikes  
 11 are, you can rise to that.  
 12 Q. What if you hit someone, on the videos  
 13 that we are going to see with regards to this case,  
 14 the use of bikes and using bikes to move people, is  
 15 that considered an impact weapon that would be a  
 16 level two force?  
 17 MR. BARTON: Objection: Form.  
 18 THE WITNESS: That's not considered an  
 19 impact weapon. It could be used potentially as one,  
 20 though.  
 21 Q. (BY MS. MCDANIEL) I see. I see. What  
 22 about level three force, what is that? How is that?  
 23 A. A level three force can range from  
 24 anything from taking a subject to the ground, which  
 25 we would call it "takedown," or if during the

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1 response to resistance is what we call our use of  
 2 forces, they have a prolonged complaint of pain or  
 3 injury.  
 4 Q. I see. And what is level four force?  
 5 A. Level four force would be the lowest  
 6 level, and that's just your basics. Such as an  
 7 example would be if they are pulling away from you  
 8 while you're securing them in handcuffs, so any  
 9 physical resistance that does meet the other  
 10 criteria.  
 11 Q. You're saying that the resistance is  
 12 level four, or you're saying that -- can you describe  
 13 that again? I'm sorry, I did not quite understand.  
 14 A. Yes. So if a person is resisting by  
 15 just pulling away from you while you are trying to  
 16 secure their hands into handcuffs and all you have to  
 17 do is overcome it through strength or technique and  
 18 pull them together and no one is injured, that that  
 19 would be a level four.  
 20 Q. I see. What level of force did you use  
 21 to arrest Ms. Beuhler?  
 22 A. I believe the highest level was a  
 23 three.  
 24 Q. And why did you use level three force?  
 25 A. Because she went from a standing

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1 position when I placed her down on the ground and  
 2 then she was pushed down to her knees. So that could  
 3 be considered a takedown.  
 4 Q. And why did you use that amount of  
 5 force to arrest her?  
 6 A. In order to control her quickly for her  
 7 safety and mine.  
 8 Q. Is an initial or reflexive stiffening  
 9 or pulling away considered resistance?  
 10 A. It can be. Generally speaking, it's  
 11 more prolonged intentional effort to do it. I don't  
 12 think it's -- I would not consider a person that when  
 13 I initially touch them to instinctively tense up that  
 14 they're resisting me, but if they continue to do  
 15 such, then yes.  
 16 MS. MCDANIEL: I would like to take a  
 17 ten-minute break if that sounds good to you guys. We  
 18 have been going for an hour and a half. I know that  
 19 we have been -- we had to take a break for the  
 20 technology, but it seems like it would be a good time  
 21 to take a break. What do you think?  
 22 MR. BARTON: Yeah, that's fine with  
 23 us. Ten minutes?  
 24 MS. MCDANIEL: Yes, a ten-minute  
 25 break, please.

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1 THE VIDEOGRAPHER: Copy that. We are  
 2 now going off the record. It is now 11:59 a.m.  
 3 (Recess taken)  
 4 THE VIDEOGRAPHER: We are now back on  
 5 the record. The record is now 12:12 p.m.  
 6 Q. (BY MS. MCDANIEL) In your law  
 7 enforcement training, is it part of your training to  
 8 write reports related to various incident?  
 9 A. Yes, ma'am.  
 10 Q. And under Austin policies and according  
 11 to your training, are officers always required to  
 12 write a report when they personally use force in the  
 13 line of their policing duties?  
 14 A. Yes, ma'am, it has to be documented.  
 15 Q. Under Austin policy, how soon after the  
 16 use of force must a report be written?  
 17 A. I believe it is before the end of your  
 18 tour of duty with -- you can make exceptions if it's  
 19 allotted by your supervisor.  
 20 Q. What do you mean by "tour of duty"?  
 21 A. Before you go home, in layman's terms.  
 22 Q. Okay, I see. Were you ever in the  
 23 military?  
 24 A. No, ma'am.  
 25 Q. Did you receive training about how to

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1 go about the logistics of filing that type of report?  
 2 A. Yes, ma'am.  
 3 Q. Is that the only type of report that  
 4 you have to fill out before you go home for the day?  
 5 A. No. Generally speaking, all reports  
 6 should be completed before you go home. Again, there  
 7 are exceptions where through supervisor approval you  
 8 can delay your writing to a later time.  
 9 Q. What is an RTR report?  
 10 A. The response to resistance. So either  
 11 RTR or R2R, depending on how the officer writes the  
 12 acronym.  
 13 Q. Can an officer fill out a report while  
 14 sitting in their car?  
 15 A. Yes, ma'am.  
 16 Q. If there are criminal charges that  
 17 arise out of an event, does an offense report need to  
 18 be completed?  
 19 A. Yes, ma'am.  
 20 Q. And what is that?  
 21 A. So for our internal system, there is no  
 22 difference. So a general offense report is every  
 23 single incident or a call for service that's created  
 24 has an incident number attached to it. A general  
 25 offense report is just a report that's written and to

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1 our report would be considered a general offense  
 2 report under APD as well. There's just different  
 3 title codes potentially under that general offense  
 4 report, one of them being a response to resistance  
 5 title code.  
 6 Q. So is a response to resistance report  
 7 kind of a subset of offense reports?  
 8 A. Yes, ma'am.  
 9 Q. When are you expected to be reading the  
 10 reports if you're -- when you're authoring them?  
 11 A. When I read them, I expect all my  
 12 reports to potentially be read by the general public.  
 13 Q. And is there anyone else that you are  
 14 writing for specifically or you are thinking of who  
 15 will read your report, other than the general public?  
 16 A. Supervisors in different departments  
 17 within the department itself, different units.  
 18 Depending on, like I said, the subsections in the  
 19 report, it goes to different people.  
 20 Q. According to your training, is it your  
 21 job to write up an event as it happens as opposed to  
 22 writing to create a narrative that would justify use  
 23 of force?  
 24 A. I would say the way we are trained is  
 25 to write the event as it happened, as you first

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1 detailed.  
 2 Q. Did you create a report after the  
 3 events of August 1st, 2020 that are the subject of  
 4 this lawsuit?  
 5 A. I believe I did what's called a  
 6 supplemental report. So I was not the creator of it  
 7 but I added text to it.  
 8 Q. Why would you be the supplemental  
 9 report and not the primary report?  
 10 A. From what I recall is I think they did  
 11 a general, broad report for the protest that day, a  
 12 general case number, and then you supplemented your  
 13 actions that you took during it individually as  
 14 officers. So that way it allots for several officers  
 15 to tie it back to that one specific incident.  
 16 (Exhibit 14 marked)  
 17 MS. MCDANIEL: Okay. I'm going to ask  
 18 Ms. Kirkland to place Plaintiff's Exhibit 14 and a  
 19 link to it in the Zoom chat. I'll wait a minute for  
 20 that to arrive.  
 21 MS. KIRKLAND: (Complies).  
 22 MR. BARTON: We have received the  
 23 report.  
 24 MS. MCDANIEL: I think I see it.  
 25 Q. (BY MS. MCDANIEL) Okay. So I'm going

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1 to share my screen and take a look at this.  
 2 Can you see what's on my screen of  
 3 what's marked Plaintiff's Exhibit 14 here?  
 4 A. Yes, ma'am.  
 5 Q. And here you can only see the first  
 6 page. This is a 20-page document produced by the  
 7 City in this case. It's COA810 through 829.  
 8 Now I am going to scroll down. And if  
 9 you are looking down, I will ask you to scroll down  
 10 to the page Bates labeled as 819, and we're going to  
 11 scroll a little further to 820.  
 12 Do you recognize this document as your  
 13 report on the incident that's the basis of this  
 14 lawsuit?  
 15 A. Yes, ma'am.  
 16 Q. And at the bottom of 821, so this is  
 17 821, is your description of -- it's your report on  
 18 your use of force with regard to Ms. Beuhler.  
 19 Do you agree?  
 20 A. Yes, ma'am.  
 21 Q. Let me make it a little bit bigger.  
 22 So I'm beginning at the bottom of 821  
 23 and going on to 822. You said, "A large group of  
 24 protesters had entered the road as pedestrians," and  
 25 I believe this is supposed to be, "intentionally

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1 blocked four lanes of travel. Prohibited the freedom  
 2 of movement for vehicles present in the area."  
 3 And you state, "The group of  
 4 protesters were verbally warned to exit the roadway  
 5 or else they would be subject to arrest."  
 6 I'm going down to the next paragraph.  
 7 It says, "APD BPOT officers".  
 8 BPOT, can you tell me again what that  
 9 means?  
 10 A. That's the Bicycle Public Order Team,  
 11 is what the acronym stands for.  
 12 Q. I see. It says, "APD BPOT arrive. I  
 13 observe a white female, later identified as  
 14 Sydney Beuhler, standing in the middle of the  
 15 roadway."  
 16 Do you see where I'm reading that?  
 17 Did I read accurately?  
 18 A. Yes, ma'am.  
 19 Q. What made you believe that Ms. Beuhler  
 20 was a white female?  
 21 A. I could see her face.  
 22 Q. What made you believe that Ms. Beuhler  
 23 was a female?  
 24 A. At the time, I don't recall. It could  
 25 have also just been that's how I described her upon

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1 making contact. If I remember right, it's probably  
 2 just her general outline of how I was describing her  
 3 to another person; that she was a Caucasian female  
 4 just based off of her body appearance, maybe  
 5 clothing, as well hair.  
 6 Q. I see. Let's see. I'm going to keep  
 7 moving down here. You write basically that,  
 8 "Ms. Beuhler did not leave the roadway when warned to  
 9 do so," and that you determined that she was  
 10 therefore "committing an arrestable offense."  
 11 Does that sound correct?  
 12 A. Yes, ma'am.  
 13 Q. I'm going to the paragraph that begins,  
 14 "When placing." You state in your report that "When  
 15 placing Beuhler under arrest, I wrapped both my arms  
 16 around her."  
 17 Do you see that?  
 18 A. Yes, ma'am.  
 19 Q. Why did you do that?  
 20 A. In order to secure and enact the  
 21 arrest.  
 22 Q. And let's see. It states -- did you  
 23 have the sense that Ms. Beuhler was capable of  
 24 overpowering you?  
 25 A. I don't know her capabilities.

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1 Q. I'm asking if you had that sense at the  
 2 time?  
 3 A. Again, I don't assume people's  
 4 capabilities and what they are physically not capable  
 5 of or what knowledge they have. I do not have  
 6 personal predisposition knowledge of what training  
 7 she has, nor how strong she is.  
 8 Q. Was Ms. Beuhler carrying a weapon?  
 9 A. Not that I'm aware of. I'm not sure to  
 10 what extent. I was not the officer that searched  
 11 her, so I don't know if she was carrying one or not.  
 12 Q. So it states, "When placing Beuhler  
 13 under arrest, I wrapped both my arms around her and  
 14 told her she was under arrest. I grabbed Beuhler and  
 15 carried her over the BPOT line."  
 16 Do you see that?  
 17 A. Yes, ma'am.  
 18 Q. Why did you do that?  
 19 A. In order to enact the arrest.  
 20 Q. Did you ask her to turn around and  
 21 place her hands behind her back?  
 22 A. No, ma'am.  
 23 Q. Had Ms. Beuhler struck you before  
 24 anyone arrested her?  
 25 A. I do not believe so, no.

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1 Q. Had Ms. Beuhler tried to run away  
 2 before you arrested her?  
 3 A. No, I don't believe we gave her the  
 4 opportunity.  
 5 Q. And had Ms. Beuhler physically resisted  
 6 you before you wrapped your arms around her, grabbed  
 7 her, and carried her over the BPOT line?  
 8 A. No. She could not, in definition,  
 9 physically resist me before I touched her.  
 10 Q. Let's see. Let me continue reading.  
 11 It says, "I then walked Beuhler back  
 12 and began to attempt to secure her in handcuffs.  
 13 Beuhler began to attempt to physically resist my  
 14 efforts to place her under arrest by attempting to  
 15 wrestle free from my grasp."  
 16 Why did you state that she began to  
 17 resist?  
 18 A. Because she did.  
 19 Q. In what -- after you say she began to  
 20 also -- what did she do to physically resist your  
 21 efforts that you recall?  
 22 A. I guess she would use her body to  
 23 wiggle, wrestle free. And then she also used her  
 24 legs, as I kind of referred to before, which I assume  
 25 that's what the question was allotting to, to push

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1 out against me; and when I attempted to pull her arms  
2 behind her back, she refused to do so and pulled them  
3 towards her torso.  
4 Q. When did your body worn camera get  
5 turned off during the arrest of Ms. Beuhler?  
6 A. I believe, from what I recall, and I  
7 think the footage of it, which I assume will be  
8 played eventually, will show that when I grabbed her,  
9 the way the camera works and its function is it has a  
10 very -- it's centered on our chest and it has a very  
11 large button that's an activation button. There's  
12 also a power switch -- because it's a different model  
13 now, it's an older model, they have since changed how  
14 they do it in -- one of the drawbacks of that version  
15 of the Axon Body Camera was if anything caught on it  
16 or depressed against the switch, it could deactivate  
17 it.  
18 Q. I see. So you believe that when you  
19 grabbed Ms. Beuhler, that that body contact  
20 deactivated the body worn camera?  
21 A. That would be my assumption. I don't  
22 know exactly what caused it.  
23 Q. How could you had prevented that from  
24 happening?  
25 A. Of the deactivation, I'm not aware of a

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1 way to prevent that. I think that's why they changed  
2 the physical makeup of the cameras for the newer  
3 generation. I think it was a common problem.  
4 Q. Did APD train you in picking people up  
5 to arrest them?  
6 A. They trained me in a multitude of ways  
7 to obtain and then enact arrest of people, yes.  
8 Q. Is one of them to pick people up?  
9 A. Yes, ma'am.  
10 Q. Is that risk that picking someone up  
11 would cause your camera to get turned off?  
12 A. Not specifically, no. Again, like I  
13 said, the drawback of the camera is -- and I don't  
14 think accounted for it at the time, it's just when it  
15 was used on the street in a more user friendly and  
16 data was created through -- you could argue through  
17 science, means of real world scenarios that the  
18 physical contact with the camera was persons or  
19 objects can cause it to deactivate.  
20 Q. Is it fair or reasonable to say that  
21 had you asked Ms. Beuhler to turn around and put her  
22 hands behind her back to arrest her that your  
23 body-worn camera would have continued running as  
24 opposed to being shut off?  
25 MR. BARTON: Object to the form.

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1 Q. (BY MS. MCDANIEL) You can answer.  
2 A. I'm not sure. I don't know. Because I  
3 cannot predict the future of what her actions or  
4 reactions would have been. She could have turned and  
5 then started to resist and still made contact with  
6 the camera.  
7 Q. Have you had your body-worn camera be  
8 inadvertent turned off?  
9 A. Yes, ma'am, multiple times.  
10 Q. How many arrests would you say that  
11 your body-worn camera was shut off during your  
12 arrest?  
13 A. I don't know. I'm afraid I can't tell  
14 you that.  
15 Q. You think it's more than five times?  
16 A. I don't know.  
17 Q. One time?  
18 A. At least one.  
19 Q. At least two?  
20 A. At least two.  
21 Q. More than two?  
22 A. Probably.  
23 Q. Would you say that it was fewer than --  
24 I mean, if you had to guess it's definitely not more  
25 than 50?

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1 A. I can't tell you, to be honest with  
2 you. It's in downtown, we regularly encounter people  
3 that are combative usually through nature of just  
4 their level of intoxication; and they may not have  
5 even been my direct arrest or may not have been  
6 something that was involved in arrest, it could have  
7 been through my mental health officer issues of  
8 detaining a person that was potentially harmful to  
9 themselves such as suicidal it could have come off.  
10 And I don't think APD nor myself keeps  
11 a record of it. Axon itself might. I don't know if  
12 they would be willing to provide it to you, though.  
13 Q. Is there a requirement that you provide  
14 documentation if your body-worn camera gets turned  
15 off while you're on duty?  
16 A. I don't know if it's specifically  
17 written in the document, but that's the practice  
18 that's done is we would notify our supervisors. Part  
19 of the process of our response to resistance is  
20 that's reviewed by a supervisor, now by a table of  
21 sergeants, and one of the things they review is the  
22 camera footage, so it clearly comes up in the camera  
23 footage in and of itself; but again, the best  
24 practice is to notify your supervisor when you  
25 realize it's been deactivated and then to reactivate

<p style="text-align: right;">Page 74</p> <p>1 as soon as probable.</p> <p>2 Q. Is it fair to say that you have</p> <p>3 experience having your body-worn camera get turned</p> <p>4 off during duty?</p> <p>5 A. I'm sorry, what was that, ma'am? I did</p> <p>6 not hear you.</p> <p>7 Q. I said: Is it fair to say that you</p> <p>8 have a history of having your body-worn camera be</p> <p>9 turned off during your policing?</p> <p>10 MR. BARTON: Object to the form.</p> <p>11 THE WITNESS: I think it's fair to say</p> <p>12 that it has happened to me before, as well as other</p> <p>13 officers, yes.</p> <p>14 Q. (BY MS. MCDANIEL) Okay. I'm going to</p> <p>15 go back to the report. And let's see. So I'm still</p> <p>16 on the paragraph that begins with, "Buehler began to</p> <p>17 attempt." I'm going to go to the sentence.</p> <p>18 "During this time I yelled at Beuhler</p> <p>19 to stop resisting, but she did not comply. Due to</p> <p>20 her physical resistance, Officer Gonzales 7422 and I</p> <p>21 had to physically push her down to the ground to her</p> <p>22 knees and then forcefully pull her hands behind her</p> <p>23 back in order to secure Beuhler in handcuffs."</p> <p>24 Did I read that correctly?</p> <p>25 A. It appears so, ma'am.</p>	<p style="text-align: right;">Page 76</p> <p>1 "forcibly pulled her hands behind her back in order</p> <p>2 to secure Beuhler in handcuffs and then held Beuhler</p> <p>3 in place while a female officer searched her for</p> <p>4 incident to arrest."</p> <p>5 Why do you not -- so that -- that</p> <p>6 concluded the arrest portion of the description.</p> <p>7 Why did you not include in your report</p> <p>8 that you knelt on Buehler's back when she was down on</p> <p>9 the ground?</p> <p>10 A. Because I don't believe I did.</p> <p>11 Q. You state that at the bottom here,</p> <p>12 "Sergeant Campos was notified of the R2R."</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. Where is that report, that R2R report?</p> <p>15 A. I'm not sure.</p> <p>16 Q. What did you tell Sergeant Campos?</p> <p>17 A. That I had an R2R. Sergeant Campos, I</p> <p>18 believe, was the sergeant on duty that was handling</p> <p>19 the notifications of use of force as taking place</p> <p>20 probably due to the fact that the other supervisors</p> <p>21 were busy at the time managing the actual protest</p> <p>22 itself.</p> <p>23 Q. And what do you think about the force</p> <p>24 that Officer Gonzales was given?</p> <p>25 A. That it was reasonable.</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Do you see the part that states</p> <p>2 "Officer Gonzales 7422 had to physically put her down</p> <p>3 to the ground to her knees"?</p> <p>4 Why did you have to physically push</p> <p>5 her down?</p> <p>6 A. One of the common traits of controlling</p> <p>7 a person that's physically resistant against you is a</p> <p>8 technique would be to push them to the ground. As I</p> <p>9 stated earlier, you get a lot of your strength from</p> <p>10 your legs. I think I also reiterated that she was</p> <p>11 using her legs in order to resist of the efforts to</p> <p>12 lawfully arrest her. By doing so in pushing her down</p> <p>13 to the ground and putting her in a position of</p> <p>14 disadvantage, we can use leverage, gravity, weight to</p> <p>15 control her better; and in doing so, we enact the</p> <p>16 arrest with the least amount of force intrusively</p> <p>17 towards her as possible, so that limits the risk of a</p> <p>18 prolonged engagement where she or the officers could</p> <p>19 be hurt.</p> <p>20 Q. Did you feel that you had no other</p> <p>21 option other than to physically push her down to the</p> <p>22 ground to arrest her?</p> <p>23 A. No, there was other options. I just</p> <p>24 felt that was the least intrusive.</p> <p>25 Q. Okay. Let's see. It states that you</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Okay. If you scroll down to -- well,</p> <p>2 first of all, it says, "Sergeant Campos was notified</p> <p>3 of the R2R. I'm unaware of any injuries suffered by</p> <p>4 Beuhler."</p> <p>5 A. Uh-huh.</p> <p>6 Q. And then you state that, "Due to</p> <p>7 Beuhler there and then intentionally prevent or</p> <p>8 obstruct I, APD Officer Smart 8674, a person Beuhler</p> <p>9 knew to be a peace officer from effecting an arrest</p> <p>10 of Beuhler by using force against a" police</p> <p>11 officer -- "a peace officer, Beuhler was officially</p> <p>12 charged with resisting arrest."</p> <p>13 What force did you -- what force did</p> <p>14 Ms. Beuhler use against you that led to this charge?</p> <p>15 A. Physical force.</p> <p>16 Q. Were you -- I want to go down.</p> <p>17 So that concludes your description of</p> <p>18 the use of force with Ms. Beuhler. If you go down to</p> <p>19 page 828, there's a supplement. Do you see this?</p> <p>20 A. Yes, ma'am, I see it.</p> <p>21 Q. Do you recognize that this is a</p> <p>22 supplement to your prior report?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. It states, "Correction to report"?</p> <p>25 A. Yes.</p>

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1 Q. Then it states under the first  
2 sentence, "When grabbing ahold of Beuhler, my BWC,  
3 body-worn camera, deactivated upon contacting her. I  
4 activated my BWC again shortly after when I noticed  
5 it had been deactivated."  
6 Do you see that?  
7 A. Yes, ma'am.  
8 Q. And we talked a little bit about that.  
9 Tell me, where do you wear your body -- your BWC?  
10 A. At that time it was in the center of my  
11 chest area.  
12 Q. And you stated that it had a button on  
13 it that turns it on and off?  
14 A. Yes. So there's two ways. There is a  
15 general power button, and that's not a button  
16 actually, that's a toggle switch that's on the top.  
17 It goes left and right. There was -- by design of  
18 that generation of camera, it could freely go -- that  
19 would power off the camera completely.  
20 The other way to activate and  
21 deactivate the recording function of the camera is  
22 that there's a large circular button that's in the  
23 middle, that when decompressed can deactivate it as  
24 well, and that's just the recording portion at it.  
25 Q. I see. So the camera would still be

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1 on, it just wouldn't be recording?  
2 A. Yes, ma'am, except for that 30-second  
3 buffer, and there will be no audio to it.  
4 Q. I see. Well, I have learned a little  
5 bit about that.  
6 Are there consequences in APB if your  
7 body -- if your BWC gets turned off while you are on  
8 duty?  
9 A. Potentially if it's intentional.  
10 Q. If you had not grabbed Ms. Beuhler,  
11 would the BWC have stayed running?  
12 A. Most likely.  
13 Q. Have you received any discipline with  
14 regard to your actions in effectuating Ms. Beuhler's  
15 arrest?  
16 A. No, ma'am.  
17 Q. You're aware that there are times when  
18 it is justified for an individual to resist arrest,  
19 correct? I believe you earlier you said "never."  
20 A. Not for a lawful arrest where it's --  
21 lawful force is being used against them, no.  
22 Q. I see. Ms. Beuhler was -- wait, tell  
23 me a little bit more about that. You said so if it's  
24 a lawful arrest.  
25 What would be a -- not a lawful --

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1 well, when would -- when would resistance be  
2 justified?  
3 A. When would resistance be justified?  
4 Q. Yes.  
5 MR. BARTON: Object to the form.  
6 Q. (BY MS. MCDANIEL) When would  
7 resistance to an arrest be justified?  
8 A. I would say that I don't know about the  
9 term "resistance to an arrest," but I could  
10 understand a person using force against a police  
11 officer if the police officer was not exercising his  
12 duties in good faith and within the law and was just  
13 intentionally trying to harm the person, in which  
14 case I would say that wouldn't be the person  
15 resisting an arrest but protecting themselves from an  
16 assault.  
17 Q. Ms. Beuhler was responding to the force  
18 that you used in grabbing her and carrying her; isn't  
19 that correct?  
20 MR. BARTON: Object to the form.  
21 THE WITNESS: I don't know, I can't  
22 tell you what she is or not. I haven't picked her  
23 brain on that.  
24 Q. (BY MS. MCDANIEL) Well, you did  
25 state -- I mean, you agreed she did not strike you

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1 prior to grabbing her, she did not physically resist  
2 you prior to grabbing her --  
3 A. She did not --  
4 Q. -- do you fully agree with this?  
5 A. Yes, ma'am.  
6 Q. So it seems like it's fair to say that  
7 the resistance was in response to the force you used  
8 in grabbing her and carrying her; isn't that correct?  
9 A. I don't know. Again, I can't -- I  
10 can't enter her mindset and tell you why or what she  
11 does or what her mindset is.  
12 Q. I guess I just mean chronologically, it  
13 happened after you grabbed her and carried her over  
14 the BO -- BPOT line; isn't that correct?  
15 A. Are you -- just for my clarification,  
16 are you asking is that when her resistance began?  
17 Q. Yes.  
18 A. Then I would say no.  
19 Q. Okay. When would you say her  
20 resistance began?  
21 A. Through her defiance to follow police  
22 lawful orders to exit the street.  
23 Q. Okay. With regard to the individuals  
24 present or protesters who were openly carrying  
25 firearms, did you arrest any of them?

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1 A. I believe so, yes.  
 2 Q. Can you tell me a little bit about  
 3 that?  
 4 A. No one was arrested for openly carrying  
 5 a firearm. There was an incident shortly after that  
 6 I have not reviewed, so kind of the basics and  
 7 understanding of it as far as my mindsets is just off  
 8 of memory, but from what I recall, there was an  
 9 altercation and an individual pointed his rifle at  
 10 officers, I believe two of them; and from what I  
 11 recall is I believe I was considered the arresting  
 12 officer in that for agg assault on two peace  
 13 officers.  
 14 Q. Pointing a rifle at the police officers  
 15 was qualified as an aggravated assault?  
 16 A. Yes, ma'am.  
 17 Q. That makes sense.  
 18 Did you hear Ms. Beuhler say, "You're  
 19 about to break my wrist" during the arrest?  
 20 A. I don't recall hearing it, but upon  
 21 reviewing body camera footage on I believe Officer  
 22 Gonzales' I heard those statements, yes.  
 23 Q. Okay. Did you deescalate your use of  
 24 force at any time during your arrest with  
 25 Ms. Beuhler?

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1 A. Yes, ma'am.  
 2 Q. Can you tell me about your deescalation  
 3 of force?  
 4 A. Upon her being compliant on the ground  
 5 and when I had ahold of her left arm and pinned it in  
 6 place on her lower back, from what I recall is she no  
 7 longer was effectively focused on myself and perhaps  
 8 was more focused on Officer Gonzales, who did not  
 9 have her arm secure at the time of placing the  
 10 handcuffs, so as such, I just held it there in place.  
 11 And which is -- typically when  
 12 speaking with the use of force regarding an arrest,  
 13 once the objective has been achieved, you either keep  
 14 that level of force or lower based off of compliance.  
 15 Q. What did you do to prevent physically  
 16 harming Ms. Beuhler?  
 17 A. So initially when I picked her up, part  
 18 of the goal of that is -- it's two-fold. One is to  
 19 bring her behind the line to be arrested in a safe,  
 20 secure space. There's several other protesters out  
 21 there. I don't know if it's accurately portrayed in  
 22 the video, but there's improvised weapons out there  
 23 they're carrying with the intent purpose to restrict  
 24 police abilities and effects, such as an umbrellas,  
 25 which are used to block, OC spray, and to hit

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1 officers.  
 2 An individual was also arrested for  
 3 carrying a high-capability laser that was used to  
 4 bind us and caused permanent retinal damage, as well  
 5 as obviously the firearms that you mentioned and  
 6 brought up, as well as other little things, maybe  
 7 like clubs and such. I know earlier in the protest,  
 8 not regarding this one, I'd arrested people carrying  
 9 batons and devices used to break and blunt objects.  
 10 So by picking her up over the line, I  
 11 pull her back behind the line, which is a safe,  
 12 secure place to enact her arrest where other people  
 13 don't get involved potentially that might have  
 14 nefarious intentions towards myself and could  
 15 inherently hurt as well.  
 16 Also, by pulling her up and over the  
 17 line, I don't drag her through the officers or the  
 18 bicycles, which means that there's less likely of an  
 19 attempt -- or not attempt, incident that she would  
 20 get caught up in the bicycle, which could cause her  
 21 injury or a cut on the spokes or the chain or the  
 22 gear shafts of it. So that would be the purpose of  
 23 it, to not injure her.  
 24 And then when I walked her back  
 25 towards the -- behind the safe line of officers, I'm

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1 conscious of the fact that we are on concrete -- not  
 2 concrete, asphalt. We are in the roadway. So I set  
 3 her down on her feet and didn't place her down on her  
 4 side or on her back or stomach or anything like that.  
 5 The purpose of that is to obviously  
 6 lessen any potential injury to her, especially being  
 7 cognizant of the head due to the hard surface. So by  
 8 placing her on her feet, she is able to come to a  
 9 safe, secure landing. There's also been several  
 10 seconds that have now presided from picking her up to  
 11 walking her to an area where I place her down. Doing  
 12 so gives her the time to compute what is occurring  
 13 and to not resist and to stop her struggles against  
 14 me as I carry her. So it gives her a potential  
 15 cooldown period and a chance to comply.  
 16 And then when that doesn't work by  
 17 pushing her down to the ground and to a kneeling  
 18 position, again, like I said earlier, I can use  
 19 leverage in order to control her arms through means  
 20 of an arm bar. I can also use my knee. I think I  
 21 placed my knee up against her shoulder in order to  
 22 kind of pin her into place and also to force her  
 23 shoulder to dip so that I can pull her arm behind her  
 24 back without potentially damaging its socket and  
 25 she's not -- I'm taking away her ability to use bone



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1 structure, as well as muscle to resist that.  
 2 Chances are, as you alluded to  
 3 earlier, I am a bigger person than her, so I can  
 4 probably muscle my way through it, but by doing those  
 5 things, it makes it least intrusive towards her, less  
 6 likely for me to strain and injure her and those  
 7 techniques where I'm cautious -- conscious of how the  
 8 body works and the way that joint manipulation works  
 9 is I can move it back there without causing her to  
 10 have the ability to strain against. So she just  
 11 naturally almost has to go with it.  
 12 Q. I appreciate that. And what about  
 13 pushing her down to the ground, how did you prevent  
 14 physical injury to her in that maneuver, if you did?  
 15 A. And so she was just forced down to her  
 16 knees. I'm still maintaining control of her so that  
 17 she -- it's not like she's forced down with such  
 18 speed and strength that she's going all the way down  
 19 her stomach, so she's just dropping to her knees and  
 20 I'm still having to be conscious of her person that  
 21 entire time, where I am in relation to her and to  
 22 what she's doing in her head.  
 23 Like, for instance, I have to be  
 24 conscious of the fact that sometimes when people get  
 25 placed down to the ground, they will start striking

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1 their own head on the ground. I don't really ever  
 2 really know why other potentially to say that we did  
 3 it to them as police officers, so I have to be --  
 4 while focusing on her hands, which are going towards  
 5 work her waist area where she does have the Fanny  
 6 Pack on and I'm not sure to what items she's carrying  
 7 into it, my focus is having to be divided upon her  
 8 entire person, where her hands are potentially going,  
 9 what she has access to, as well as preventing her  
 10 from causing any kind of harm to herself.  
 11 Q. I see. Thank you.  
 12 What is a wrist lock, do you know?  
 13 A. So a wrist lock, when it comes to the  
 14 function of policing would be when you take ahold of  
 15 a person's wrist and manipulate it in a way to -- the  
 16 way -- I guess the best way to describe it is the way  
 17 that joints work is if the joint is centered, such as  
 18 in your wrist, you have more strength than your  
 19 overall hand to where it moves, but if you take it  
 20 off center, even just a little; and the same as what  
 21 the spine is, so if you move the neck just lightly,  
 22 they lose a lot of strength and their grip and  
 23 ability to resist.  
 24 The other function of the wrist lock  
 25 is if you have a person that's resisting, it can be

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1 of use to apply a level of pain in order to try to  
 2 gain -- pain compliance is what we call it.  
 3 Sometimes we do it through that means or through  
 4 pressure points, and we will apply pain compliance  
 5 until the person voluntarily will then comply with  
 6 our now commands, and in which case you can ease up  
 7 on the pressure applied to -- in relation to just  
 8 their compliance, I guess.  
 9 Q. How comfortable do you feel in using  
 10 pain compliance as a -- in effectuating an arrest?  
 11 MR. BARTON: Object to the form.  
 12 THE WITNESS: I personally feel  
 13 comfortable, but it all depends upon the individual  
 14 themselves. I've come into contact with people  
 15 regularly in the course of my duties that are in  
 16 mental health crisis episodes or under the influence  
 17 of a substance or substances, such as narcotics that  
 18 are dis-associative, in which case pain compliance  
 19 does not work.  
 20 As police officers, we have to  
 21 constantly be reevaluating every use of force we  
 22 have. For instance, if I was attempting to use pain  
 23 compliance and I saw that it was ineffective, I would  
 24 try to switch to another technique or a tool on my  
 25 belt in order to achieve my applied goal that I was

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1 trying to achieve, just because the pain compliance  
 2 won't have an effect on the person that in such  
 3 state.  
 4 Q. (BY MS. MCDANIEL) Have you ever use a  
 5 wrist lock in an arrest?  
 6 A. Yes, ma'am.  
 7 Q. Are those documented?  
 8 A. Yes, ma'am.  
 9 Q. One thing I was curious about, with  
 10 regard to your internal affairs history, you seem to  
 11 have none. I don't know if you have seen that sheet  
 12 or not. I don't have it as an exhibit. I could pull  
 13 it up, but it just stated that you have no internal  
 14 affairs history. I found that strange.  
 15 Have you never had any kind of  
 16 investigation by internal affairs?  
 17 A. Yes. I believe what you're referring  
 18 to, I have no sustained internal affairs history  
 19 complaints made against me.  
 20 Q. I wonder why Ms. Buehler's compliance  
 21 with the arrest that's the subject of this lawsuit  
 22 did not make their way onto an internal affairs  
 23 complaint for you.  
 24 A. And they --  
 25 Q. Do you have any idea why that is?

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1 A. I did. They did do a -- an  
 2 investigation through an IA Sergeant reviewed it, and  
 3 a Class D memo was issued to me saying that I was  
 4 exonerated from her claims.  
 5 Q. I see. I do have that Class D memo.  
 6 So -- so as far as you know, the only  
 7 IA activity that occurred with regard to this arrest  
 8 was that Class D memo; is that correct?  
 9 A. I'm not party to that, so I --  
 10 Q. As far as you know?  
 11 A. So it should have been reviewed. If  
 12 that's answering your question is it was reviewed  
 13 initially, as all use of forces are. It's then --  
 14 also the arrest is reviewed by Arrest Review, which  
 15 is a detective or sergeant in place to review it if  
 16 the probable cause of said arrest was met.  
 17 Then it was reviewed by a magistrate,  
 18 who decided to either sign or not sign whether or not  
 19 he believes the probable cause was met with the  
 20 arrest. In this case I believe that the magistrate  
 21 did agree that probable cause was met.  
 22 After that it's reviewed in the sense  
 23 of the report that's written, as well as the  
 24 incident, is reviewed by my immediate supervisors;  
 25 and after such, it's then sent off to a corresponding

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1 detective unit that falls over that specific  
 2 incident. As far as resisting and I believe  
 3 obstructing a highway or passageway, which are the  
 4 charges, I don't recall which units are assigned that  
 5 in my PR sector detective (ph), so it's reviewed by  
 6 them.  
 7 After that, as I said before, the use  
 8 of force is reviewed by the sergeant itself, a  
 9 third-party sergeant. And then finally my  
 10 understanding is after a complaint to the Offices of  
 11 Police Monitor and IA, a report was generated, even  
 12 despite it being exonerated earlier by the use of  
 13 force sergeant. So they re-looked at it and  
 14 re-verified that they concluded that my use of force  
 15 was following the law and policy.  
 16 Q. Well, if there's any documentation  
 17 about that that we don't have, I would really  
 18 appreciate it if we got it. I will -- I'll bring up  
 19 the Class D memo as an exhibit in a bit, because I'm  
 20 curious what you are saying, I can't recall if the  
 21 Class D memo was signed by a magistrate or not. We  
 22 can look at that when I pull it up, but if there are  
 23 any documents that -- that show a review of this by a  
 24 magistrate or any -- anyone else that --  
 25 A. That would just be the probable cause

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1 statement.  
 2 Q. I don't know that I have that, but  
 3 again, perhaps that's on the Class D memo. We'll  
 4 see. But I looked for all the documents, and I just  
 5 thought it was strange there was no IA documentation  
 6 for you. I mean, it's not that it was missing, it  
 7 just states that you have no IA history.  
 8 Anyway, I would like to follow up on  
 9 that if there's anything that we're missing.  
 10 (Information to be supplied)  
 11 Q. (BY MS. MCDANIEL) But for now I'll ask  
 12 you: Did you fear for your physical safety during  
 13 your encounter with Ms. Beuhler?  
 14 A. For mine and then the assisting  
 15 officers, initially when she reached towards her  
 16 waist area just because I know that people often keep  
 17 weapons there and she did have from what I recall I  
 18 think a Fanny Pack there, and so until she was  
 19 secured in handcuffs and searched, there is always  
 20 potential for a person to harm you.  
 21 Q. Is there any reason that you can think  
 22 of to escalate force other than preserving officer  
 23 safety?  
 24 MR. BARTON: Object to the form.  
 25 THE WITNESS: In order to escalate

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1 force, in order to preserve officer safety, I think  
 2 it would go hand in hand with exercising whatever  
 3 lawful duty that you're trying to achieve. I would  
 4 say anytime that you need to escalate force, it's  
 5 probably tied to paramount that there's a potential  
 6 risk to officer safety. Any time officer force is  
 7 used there's the potential risk to officer safety. I  
 8 would say any time you interact with somebody on a  
 9 low level, there is potential officer safety.  
 10 I think the only way to not have a  
 11 risk to officer safety would be to have the  
 12 conversation over somebody via phone or via the  
 13 computer itself. There's always an underlying threat  
 14 to potential violence when in person with somebody,  
 15 but as far as, like I said, to escalate force,  
 16 it's -- and only when reasonably used to achieve your  
 17 objective.  
 18 Q. (BY MS. MCDANIEL) Could your objective  
 19 potentially be -- and maybe -- I'm going to restate  
 20 my question.  
 21 So I asked you: Is there any reason  
 22 to escalate force other than preserving officer  
 23 safety? I'm going to change that question.  
 24 I'm going to say: Is there any reason  
 25 to use force other than officer safety? And I'll

<p style="text-align: right;">Page 94</p> <p>1 give an example. Like, for example, could it further                  2 your objective to control the crowd by using force to                  3 make an arrest, by kind of making an example out of                  4 the person you're arresting?                  5 MR. BARTON: Object to the form.                  6 THE WITNESS: I wouldn't say making an                  7 example of, but I would say that there are times in a                  8 tactical that's used by police officer when a person                  9 is considered an instigator of, they're trying to                  10 entice the crowd, one of those side effects of large                  11 crowds is we lose our individual thought, complective                  12 (ph) thought, we're more influenced. It's something                  13 that I've encountered regular during protests, and                  14 even just seeing it on 6th Street on a nightly basis.                  15 There's nothing more, for lack of a                  16 better term, stupid than a group of males on a                  17 bachelor party that have been drinking. They                  18 wouldn't (sic) do things they wouldn't do otherwise,                  19 such as run around in banana suits everywhere, but --                  20 so that is a tactic that can be employed where a                  21 person that is seen through officer's observations                  22 and surveillance to be an instigator of the crowd can                  23 be targeted for arrest, for violation of --                  24 Q. (BY MS. MCDANIEL) That makes sense.                  25 And I did notice in the videos, and in</p>	<p style="text-align: right;">Page 96</p> <p>1 levels.                  2 Could there be a reason to use force                  3 in effectuating an arrest to deter other individuals                  4 from violating police commands?                  5 A. I would say the force itself is not the                  6 determinant but maybe the actual arrest itself. The                  7 force is all dependent and incumbent upon the person                  8 who's being arrested, the arrestee, and how they're                  9 reacting to it. Everything that we do is in reaction                  10 to the other person.                  11 Q. Why was the force used in Ms. Beuhler's                  12 arrest not excessive?                  13 A. Because I believe it was objectively                  14 reasonable.                  15 Q. Is that a legal term, "objectively                  16 reasonable"? Is that the legal standard?                  17 A. I'm sure that some lawyer has claimed                  18 that at some point, maybe a judge.                  19 Q. Please tell me why you think it was                  20 "objectively reasonable."                  21 A. Because I felt that I had a lawful                  22 reason to arrest her person, and that when faced with                  23 her resistance, I chose the level of force that I                  24 thought was least intrusive to her person in order to                  25 enact that arrest, but still to enact that, a lawful</p>
<p style="text-align: right;">Page 95</p> <p>1 my own experience going to some of those protests,                  2 that people behave very differently than I would                  3 imagine they would in a one-on-one encounter with a                  4 police officer. You know, I saw many, many people,                  5 particularly young people, screaming in very close                  6 proximity to the officer's faces, and that seems like                  7 behavior that, you know, you wouldn't normally go up                  8 to a police officer and scream at them and seeing                  9 links to the protests and being in the crowd.                  10 So it does make sense that -- it's not                  11 unreasonable to think that occasionally you could use                  12 force in an encounter to make an example out of                  13 them --                  14 MR. BARTON: Object to the form.                  15 Q. (BY MS. MCDANIEL) -- is that correct?                  16 MR. BARTON: Object to the form.                  17 THE WITNESS: I would say you would                  18 never use force just to make an example of somebody.                  19 The force would be to exercise whatever lawful arrest                  20 you're making, and then you could only use whatever                  21 force is reasonable to enact that arrest.                  22 Q. (BY MS. MCDANIEL) I see. Would it --                  23 would it potentially then to use force -- and I mean,                  24 we have described the levels of force. I'm not                  25 talking about deadly forces. There's multiple</p>	<p style="text-align: right;">Page 97</p> <p>1 arrest.                  2 Just because a person resists me does                  3 not mean that I let them go just because it's like,                  4 well, I would have to use force against them. I                  5 think society's laws would break down rather quickly                  6 and we'd develop into chaos if we did such.                  7 Q. Well, but you didn't try to just ask                  8 her to turn around and put her hands behind her back                  9 before you grabbed her, correct?                  10 A. No, we tried to actually have her to                  11 leave instead so she wouldn't have to be arrested.                  12 Q. I see. At what point in the arrest did                  13 you Mirandize Ms. Beuhler?                  14 A. I never Mirandized her because I never                  15 did a custodial interrogation of her.                  16 Q. What do you mean by a "custodial                  17 interrogation"?                  18 A. I never asked her while in my custody                  19 direct questions that could lead to incriminating                  20 herself.                  21 Q. Are you familiar with Miranda rights?                  22 A. Yes, ma'am.                  23 Q. Do you receive training on Miranda                  24 rights through APD?                  25 A. Yes, ma'am.</p>

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1 Q. Can you tell me the -- what your sense  
 2 or your understanding of the Miranda rights are?  
 3 A. Your Miranda rights is when you're  
 4 notified of your rights that prior to a custodial  
 5 interrogation that you have.  
 6 The long and the short of it, for a  
 7 layman's term, is that: You have the right to have  
 8 an attorney; you have the right to not make any  
 9 statement at all; any statement you make may be used  
 10 against you at a trial and probably will be used  
 11 against you at a trial; and you also have the right  
 12 to terminate this interview at any time if you so  
 13 wish; and if you don't have an attorney, one could be  
 14 appointed to you.  
 15 Q. Do you believe according to your  
 16 training that the only time that you need to  
 17 provide -- that you need to Mirandize a person that  
 18 you've arrested is when you're going to do a  
 19 custodial interrogation?  
 20 A. Yes, ma'am. I don't Mirandize everyone  
 21 I arrest if I'm not going to question them.  
 22 Q. What if you're speaking to them but  
 23 not -- but not doing an interrogation, would you  
 24 Mirandize someone before you speak to them after they  
 25 have been arrested?

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1 A. It all depends on the conversation at  
 2 which I'm having. If it's simply gathering their  
 3 identifying information, which at that point they are  
 4 required to by law when placed under arrest to  
 5 provide, then, no; but if I'm asking specifics about  
 6 the incident to which it occurred or other instances  
 7 that they could be incriminating to one's self, then  
 8 I will Mirandize.  
 9 Q. Do you think Miranda rights are  
 10 important?  
 11 A. I believe so, yes. I believe the  
 12 public is much more aware of their rights thanks to  
 13 the popularity of TV shows and multimedia over the  
 14 time, but I do believe, especially in the past, that  
 15 they are extremely important; and I think sometimes  
 16 people need a little reminder after being arrested of  
 17 what their rights are, because our legal process is  
 18 important.  
 19 Q. If you have -- if you arrested someone  
 20 and you had not yet custodial-ly -- if you arrested  
 21 someone and you had not performed a custodial  
 22 interrogation and that person demanded an attorney,  
 23 how would you respond?  
 24 MR. BARTON: Object to the form.  
 25 THE WITNESS: So the second I've

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1 arrested somebody, they are in my custody. So any  
 2 interrogation after which would be subject to  
 3 Miranda. As far as if a person's asking for an  
 4 attorney, what I will do is in most tendencies when  
 5 they are transported to the jail, they will have the  
 6 right to a phone call in which they can contact an  
 7 attorney.  
 8 Q. (BY MS. MCDANIEL) Do you think that  
 9 APD believes that Miranda rights are incredibly  
 10 important?  
 11 MR. BARTON: Object to the form.  
 12 THE WITNESS: I do. They spend I  
 13 would consider probably a large amount of money to  
 14 make sure that we all always have several cut-out  
 15 printed cards of them at every single one of our  
 16 equipment places at every single substation and  
 17 police department. So if they're willing to put  
 18 financial assets towards it, despite officers being  
 19 able to just have it on their phone for free, I would  
 20 argue that APD probably does consider it relatively  
 21 important.  
 22 Q. (BY MS. MCDANIEL) Part of the Miranda  
 23 rights state that "anything that you say can and will  
 24 be used against you in a court of law or something  
 25 very similar to that." Do you agree?

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1 A. Yes, ma'am.  
 2 Q. Do you agree that the statement  
 3 "anything that you say can and will be used against  
 4 you in a court of law" applies to statements that are  
 5 an arrestee makes at any time after their arrest?  
 6 MR. BARTON: Object to the form.  
 7 THE WITNESS: There's always  
 8 statements under excited elements as well that can be  
 9 exceptions to the rule.  
 10 Q. (BY MS. MCDANIEL) Can you give me an  
 11 example of one of those?  
 12 A. So an example would be is if I was,  
 13 say, walking Ms. Beuhler to the car and I had no  
 14 questions of her and asked her why she did such  
 15 actions and she decided to just freely "tale" --  
 16 freely me of her own free will, that would  
 17 potentially not be -- and that would be up to people  
 18 like yourself arguing before a -- or debating before  
 19 a judge whether or not those could be admissible in a  
 20 court of law.  
 21 Q. But they arguably are admissible in a  
 22 court of law, correct?  
 23 MR. BARTON: Object to form.  
 24 THE WITNESS: From my understanding  
 25 and from my experience from a court of law is

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1 whatever a judge says is admissible, is admissible in  
 2 a court of law --  
 3 Q. (BY MS. MCDANIEL) I see.  
 4 A. -- and then other judges will disagree  
 5 later.  
 6 Q. I see. I think you've already answered  
 7 this, but what is your policy and practice from  
 8 Mirandizing individuals that you arrest?  
 9 A. For the most part I personally like to  
 10 Mirandize after, because I like to be in control of  
 11 my conversation and investigation after. There are  
 12 times and places where I don't, such as this protest  
 13 where the person is handed off to officers to  
 14 transport, in which case I would argue that even  
 15 Miranda in itself right there would be somewhat hard  
 16 to maintain that she never revokes her right or for  
 17 the officer that she's passed to from -- passed to  
 18 know that she was Mirandized.  
 19 Q. Can you explain that again? I'm sorry,  
 20 I didn't quite follow. That was kind of complicated.  
 21 A. Okay. I'm sorry. So my personal  
 22 arrest is in general terms, and when I'm allotted to  
 23 via I have time and the safety to do so, I like to  
 24 Mirandize people. Because generally I like to  
 25 question them after. However, if it's in a hectic

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1 environment, such as that protest, where she's being  
 2 passed off and there is going to be no questioning of  
 3 her by myself, I will not Mirandize her.  
 4 Q. I see. And thank you. I appreciate  
 5 that.  
 6 What is it the APD's policy, to the  
 7 extent that you know, for officers to Mirandize  
 8 individuals that they arrest?  
 9 A. To the extent I know is prior to a  
 10 custodial investigation (sic) -- a custodial -- I'm  
 11 sorry, my mouth is dry -- a custodial investigation.  
 12 Q. Interrogation, you mean? Is it an  
 13 interrogation?  
 14 A. Yeah, I said, yeah, "investigation." I  
 15 apologize. Before a custodial interrogation begins,  
 16 then you shall Mirandize a person.  
 17 Q. I see. What is a "custodial  
 18 interrogation"?  
 19 A. It's when a person's in custody and  
 20 then they're being interviewed by in this case a law  
 21 enforcement person, peace officer, police officer,  
 22 whichever wording you want to use.  
 23 Q. Is asking someone a question while  
 24 they're handcuffed in a police car a custodial  
 25 interrogation?

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1 A. It can be.  
 2 Q. How would you make that determination?  
 3 A. It depends upon the question.  
 4 Q. A question of: What were you doing at  
 5 that protest?  
 6 A. It could be potentially considered a  
 7 question that could be construed as such. If they  
 8 weren't Mirandized, I doubt the officer would use  
 9 that in a legal finding against them. It could just  
 10 be a layman's term conversation for personal  
 11 knowledge.  
 12 Q. I wonder -- I'm just curious why -- why  
 13 do you think that it's not policy to Mirandize  
 14 someone immediately after the arrested?  
 15 MR. BARTON: Object to the form.  
 16 THE WITNESS: Is not always  
 17 objectively reasonable to do so.  
 18 Q. (BY MS. MCDANIEL) Well, why not to the  
 19 extent possible? The Miranda rights are fairly  
 20 short. It doesn't take long to state them.  
 21 MR. BARTON: Object to the form.  
 22 THE WITNESS: I can't tell you, ma'am.  
 23 Do you have the policy pulled up? I mean, we could  
 24 refer to it together.  
 25 Q. (BY MS. MCDANIEL) I do not, no. And I

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1 looked, I wasn't able to easily find it. I'll look  
 2 at the policy. I just find it curious because it  
 3 seems like it would be helpful to protect officers  
 4 for them to Mirandize someone immediately after  
 5 they're arrested because then you would know that  
 6 you've done it and you wouldn't have to worry about  
 7 whether the question rises to the level of a  
 8 custodial interrogation.  
 9 MR. BARTON: Object to form.  
 10 Q. (BY MS. MCDANIEL) Do you think -- do  
 11 you think it would be fair to say that having a  
 12 policy that you Mirandize someone after you arrest  
 13 them would make your job easier?  
 14 MR. BARTON: Object to form.  
 15 THE WITNESS: Not necessarily, because  
 16 a person can revoke their right -- or invoke their  
 17 right I mean to an attorney at any time and to remain  
 18 silent. And in this case as a person is passed  
 19 off -- I am the arresting officer, but another  
 20 officer searched her and then other officers  
 21 transported her to a booking area, in which case  
 22 another officer took over; and then she was later  
 23 transported to Travis County Jail.  
 24 If I was one of the officers that took  
 25 over her and I was going to ask questions that I

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1 would be using to incriminate her in a probable cause  
 2 statement or later on to achieve beyond a reasonable  
 3 doubt, I would re-Mirandize her just to be safe,  
 4 because there's no feasible way to know during that  
 5 entire time if she was Mirandized and if she ever  
 6 revoked her desire to speak to officers.  
 7 Q. (BY MS. MCDANIEL) I see. And do you  
 8 know if an officer Mirandized Ms. Beuhler?  
 9 A. I do not, no. I have no knowledge of  
 10 such.  
 11 Q. Did you know that she was never  
 12 Mirandized, even though she was driven around for  
 13 about two to three hours after she was arrested?  
 14 A. That sounds reasonable, yeah.  
 15 (Exhibit 15 marked)  
 16 MS. MCDANIEL: I'm going to ask  
 17 Ms. Kirkland to place a plaintiff's Exhibit 15 in the  
 18 Zoom chat. And I'm going to stop sharing my screen.  
 19 MS. KIRKLAND: (Complies).  
 20 Q. (BY MS. MCDANIEL) And we'll wait a  
 21 minute for that to come through.  
 22 A. We have it, ma'am, yes.  
 23 Q. Oh, you do?  
 24 A. Uh-huh.  
 25 Q. Good. Are you one of the officers that

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1 was standing in front of the Austin Police Station  
 2 that's right by 35 during the protest when  
 3 individuals were on the highway, blocking the  
 4 highway, and then also crowded around the front of  
 5 the police station?  
 6 I don't know if you recall which day  
 7 I'm talking about. I happened to be there. It was  
 8 like pretty -- pretty intense.  
 9 A. I did my turn there, yes, ma'am.  
 10 Q. You were at that one? I was --  
 11 A. I don't know if I was there  
 12 specifically when you were there, but, yeah, I took  
 13 my rotation.  
 14 Q. I wasn't -- I'm sure we weren't. I  
 15 wasn't there long. I was there long enough to see  
 16 what was going on and I have to say I was very  
 17 sympathetic towards the officers in that. It seemed  
 18 like it would be very hot and a lot of equipment on  
 19 and I watched them stand in front of the station and  
 20 someone, a protester climbed the side of the police  
 21 station and vandalized, like spray-painted the police  
 22 station at that time, and it seemed like it could be  
 23 an intense situation.  
 24 Was there a lot of talk among officers  
 25 about what going on during this protest?

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1 A. I would imagine so.  
 2 Q. Okay. I'm going to bring up this  
 3 document, and I will share my screen. All right.  
 4 This is Plaintiff's Exhibit 15. It was a two-page  
 5 document produced by the City as COA 000404 to 405.  
 6 Do you recognize this as the Class D  
 7 memo relating to the incident that is the basis of  
 8 this lawsuit?  
 9 A. Yes, ma'am.  
 10 Q. Who wrote this document?  
 11 A. I'm not sure who the author is. It  
 12 looks like it's from Commander Ryan Adam, but I'm not  
 13 sure who the actual officer is to the person -- that  
 14 might be down at the bottom.  
 15 Q. (Complies).  
 16 A. It looks like it was the internal  
 17 affairs commander at the time, or acting commander.  
 18 Q. Okay. Let's see. I'm going to zoom in  
 19 so I can read some of this description here of the  
 20 incident.  
 21 I'm on the top of page two, and it is  
 22 a detailed response to the complaint. The complaint  
 23 is described on page one. Ms. Beuhler had  
 24 complained, "I wasn't told why I was being arrested,  
 25 and they used excessive force towards me. It was

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1 four officers on me, kneeling on me, and I'm  
 2 130 pounds."  
 3 She also stated, "I wasn't" -- that is  
 4 the same statement but a different code section that  
 5 it corresponds with.  
 6 Then she complained, "The officers  
 7 were not going to get a female officer. They said  
 8 they didn't have time to get a female officer, and I  
 9 started to have a panic attack so they got one."  
 10 And then finally the complaint stated,  
 11 "I wasn't read my Miranda rights."  
 12 Now I want to go to the top of page  
 13 two where there's a detailed description of the  
 14 incident. Can you -- are you on the top of page two?  
 15 Can you read that?  
 16 A. Yes, ma'am.  
 17 Q. Okay. Let's see. I'm going to go down  
 18 to the top of the third paragraph. And, well, I'll  
 19 go to the -- I'll just go to the second paragraph,  
 20 the first mention of your name, Officer Smart.  
 21 It states, "Officer Smart issued  
 22 numerous loud commands telling the subject to 'move  
 23 back,' and at least once loudly stated, 'move back or  
 24 you're going to get arrested'. Sydni Beuhler  
 25 remained standing in the roadway with many other

<p style="text-align: right;">Page 110</p> <p>1 protesters either voluntarily moved out of the 2 roadway or were pushed back by officers." 3 "As numerous BPOT officers were moving 4 their bicycles forward to move the crowd, 5 Officer Smart approached Ms. Beuhler and instructed 6 her loudly to move back. Ms. Beuhler remained where 7 she was standing and loudly stated, 'Fuck you!' 8 Then it states, "Officer smart wrapped 9 his arms around Ms. Beuhler while facing her and 10 pulled her back behind the line of BPOT officers." 11 Do you agree with that description? 12 A. Yes, ma'am. 13 Q. It states further, "Officer Smart's BWC 14 appears to have been inadvertently turned off at this 15 point. Beuhler began yelling and struggling with 16 Officer Smart while he tried to control her. Officer 17 Gonzales observed the struggle and approached to 18 assist Officer Smart, who at that point had pushed 19 Ms. Beuhler to the ground on her knees with her upper 20 body over her thighs." 21 Do you agree with that description? 22 A. Yes, ma'am. 23 Q. And then it states, "Officer Gonzales 24 had control of Ms. Beuhler's right arm and Officer 25 Smart had control of her left."</p>	<p style="text-align: right;">Page 112</p> <p>1 clearly are. 2 Q. (BY MS. MCDANIEL) Interesting. 3 A. Sometimes people lie. 4 Q. Sometimes people do that, you said? 5 A. I said, "Sometimes people lie in my 6 experience." 7 Q. Yes. Do you see the sentence that 8 states, "While trying to handcuff Ms. Beuhler, 9 Officer Gonzales placed his right knee on 10 Ms. Buehler's upper right back area and right side, 11 while Officer Smart placed his left knee on the left 12 side of Ms. Buehler's upper back and then left side 13 area"? 14 A. Yes, ma'am. 15 Q. Do you agree with that statement? 16 A. That we placed them in the area, is 17 that what -- yes. 18 Q. Okay. There's a little bit more about 19 meeting a female officer, Ms. Allare, first or -- 20 Officer Allare first Ms. Beuhler. 21 And then it states, "After this, 22 neither Office Smart nor Officer Gonzales had any 23 further involvement with Ms. Beuhler." 24 Do you agree with that statement? 25 A. From what I recall, yes, ma'am.</p>
<p style="text-align: right;">Page 111</p> <p>1 And then it talks briefly about 2 "Officer Allare, briefly held Ms. Beuhler's left hand 3 and Ms. Beuhler offered no resistance to 4 Officer Allare." 5 Do you see that? 6 A. Yes, ma'am. 7 Q. It states, "Ms. Beuhler was yelling." 8 Does yelling constitute resisting? 9 A. It potentially can. It doesn't 10 constitute physical resistance, if that's what you're 11 asking. 12 Q. Does yelling constitute a reason to 13 escalate force? 14 A. I would say yelling in and of itself, 15 inadvertently by itself, no. 16 Q. Is it your experience that yelling 17 often goes along with other types of movements or 18 behaviors that would be considered resistance? 19 MR. BARTON: Object to the form. 20 THE WITNESS: In my experience a 21 person that's yelling, depending on their language, 22 might also be -- if they're emotionally and verbally 23 heightened, they also might be physically heightened; 24 but then I've had plenty of people quietly resist me 25 or state such like, "I'm not resisting," when they</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. What happened to Ms. Beuhler after she 2 was placed in the patrol car? 3 A. I don't have direct knowledge of it. 4 My assumption would be that she was taken to a mobile 5 booking station, which is a couple blocks south of 6 our location, and then eventually transported to the 7 Travis County Jail. 8 Q. At what is your practice with regard to 9 transporting an arrestee to the jail or the police 10 station after an arrest? 11 A. Oh, what do you mean by my "practice"? 12 Q. I mean are there rules that you follow, 13 like, I need to have them there within an hour or I 14 don't -- just in general, I'm just curious about the 15 transport after an arrest. What practices do you 16 follow, if any? 17 MR. BARTON: Object to the form. 18 THE WITNESS: For me personally, the 19 number one practice that I do is secure the person, 20 make sure they're safe back there; and then after 21 that transport them to the jail in a reasonable 22 amount of time. 23 Q. (BY MS. MCDANIEL) Do you try to make 24 sure that the person is comfortable or is it just 25 about safety?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. As comfortable as reasonably possible 2 in the back of a police car while handcuffed. 3 Q. Please tell me about Texas Penal Code 4 Section 42.03 if you know it, obstructing. 5 MR. BARTON: Object to the form. 6 THE WITNESS: What would you like to 7 know about it, ma'am? 8 Q. (BY MS. MCDANIEL) What are the -- what 9 are the elements of obstructing that make it possible 10 to arrest someone for obstructing? 11 A. I don't have it directly in front of me 12 to read, but from recollection it would be if a 13 person is intentionally or knowingly obstructing a 14 passageway or highway and making it unusable for the 15 general public is what I would say. 16 Q. Is there any warning according to your 17 training that you're required to give before 18 arresting someone for obstructing? 19 A. I think, generally speaking, the person 20 has to be given notification that they're doing such 21 and to move. How that notification is done might be 22 in multiple different ways. It could be something as 23 simple as pulling up behind a car and flashing your 24 lights at them. 25 Q. Was anyone else -- is it your</p>	<p style="text-align: right;">Page 116</p> <p>1 THE WITNESS: In regards to the 2 protest, I could -- probably many things as to maybe 3 the incidents at hand, the actions of protesters to 4 long hours to lack of food or transport, and it just 5 all depends on the individual officer and what 6 conversations they had. I can't speak to what they 7 all had. 8 Q. (BY MS. MCDANIEL) Did you feel a 9 heightened threat during your work on the protest? 10 A. For me, relatively not. But that's 11 also -- I have a different experience level as a 12 police officer than a lot of them do. A lot of our 13 department is younger than me, and I have also been 14 in more riotous-like protests prior to this, as well 15 as in College Station I worked at the North Gate Bar 16 District, and now in Austin I work in the 17 entertainment district, which is kind of a small -- 18 or actually, large special event every single day. 19 So I'm used to crowds and used to 20 people being more or less disagreeable with myself 21 just for being a police officer. That's part of my 22 daily routine. 23 Q. And so having people scream at you 24 or -- or curse at you was not unfamiliar to you? 25 A. No. I also have four kids, so I'm okay</p>
<p style="text-align: right;">Page 115</p> <p>1 understanding that Ms. Beuhler was violating Texas 2 Penal Code Section 42.03, Obstruction? 3 A. Yes, ma'am. 4 Q. Was anyone else violating Texas Penal 5 Code 42.03 at the time Ms. Beuhler -- at the same 6 time as Ms. Beuhler? 7 A. Probably. 8 Q. Did you arrest anyone else that day 9 because they were violating Texas Penal Code 42.03? 10 A. I don't recall. 11 Q. What was your experience like as an 12 officer at the Black Lives Matter protest or as you 13 put it the George Floyd protest in May and June and 14 August? 15 MR. BARTON: Object to the form. 16 THE WITNESS: My overall experience? 17 Q. (BY MS. MCDANIEL) Uh-huh. 18 A. I guess it was a protest. There was -- 19 and it's just dependent upon not even just the day 20 but the individual time during the protest. 21 Sometimes there were people and sometimes they turned 22 riotous. 23 Q. What was being discussed inside the 24 department regarding the protests? 25 MR. BARTON: Object to the form.</p>	<p style="text-align: right;">Page 117</p> <p>1 with it. 2 Q. I have two, luckily no cursing, but -- 3 A. It's coming. I have teenagers. 4 Q. I have a 15-year-old. Not that she 5 doesn't curse, she just hasn't cursed at me luckily, 6 luckily for her. 7 Did you have any mandatory trainings 8 during that period regarding protest policing? 9 A. I don't recall other than maybe 10 refresher courses possibly through our online 11 training. They might have sent out a memo and 12 refresher on mobile force. My role in that is a 13 little different in that I have a set role that I 14 have done continuous training throughout this time. 15 Also, on a daily basis we have pop-up 16 protests all the time downtown. So my training was 17 more up-to-date than probably many of the officers. 18 Q. When you said -- I believe you just 19 said you have a set role that you're training for? 20 Did I hear that correctly? And what 21 did you mean by that? 22 A. So generally speaking, most of the 23 downtown officers are on BPOT. You have to be as 24 part of your placement down there. So whenever a 25 mobile field force is activated, that's my role is</p>



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1 that I'm a BPOT officer as that function of mobile  
2 field force.  
3 Q. Were you riding a bike the day of  
4 the -- August 21st, 2020?  
5 A. Yes, ma'am.  
6 Q. Okay. So you were on BPOT that day?  
7 A. Yes, ma'am.  
8 Q. In the video -- or during the arrest,  
9 you did not have a bicycle in your hands, though; is  
10 that correct? Or am I misremembering?  
11 A. No, you're correct. So what had  
12 happened was as we moved forward in order to clear  
13 the street, my understanding of the situation was is  
14 our supervisors had gone and spoke to the protest  
15 leaders prior to and warned them about blocking the  
16 street and told them if they did it again that they  
17 would be subject to arrest.  
18 After that we followed by having our  
19 mounted patrol, the horses, to which you alluded to  
20 earlier, went first, very large, visible horses with  
21 officers on it would lead the way to clearing the  
22 roadway; and then the BPOT officers on bicycle  
23 followed after that with a line of -- a moving line,  
24 a rolling line is what they would call it. I was the  
25 last of the pair in that line, and due to the space

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1 already being filled up, I dismounted my bicycle upon  
2 reaching the area and provided a support role in the  
3 back of them.  
4 Q. Is part of your role to be a hands-free  
5 officer?  
6 A. Yes, that could be -- that could be  
7 part of it, too, and to fill in if another officer  
8 maybe had to engage somebody or a lined opened up is  
9 that I would fill in there or just support in ever  
10 which way I can.  
11 Q. Thank you. Were they doing staff  
12 review during this time at Austin Police Department?  
13 A. What do you mean by "staff review"?  
14 Q. Like, was there any kind of, I don't  
15 know, shakeup or staff review with regard to these  
16 events that were happening or was this -- in my  
17 opinion, I hear what you're saying that, you know,  
18 you worked 6th Street and so every night it's kind of  
19 like, you know, this isn't completely unfamiliar to  
20 you, but for someone who lives in Austin, it was, in  
21 my opinion, like, unprecedented, I'd never seen  
22 protests like that in Austin ever.  
23 So I'm just curious what the  
24 atmosphere was like was there any kind of staff  
25 review going on regarding the protests, dealing with

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1 it?  
2 A. As far as staff --  
3 MR. BARTON: Object to the form. Just  
4 for the record, I just want to object to the form.  
5 THE WITNESS: I'm unaware. Austin is  
6 a department in the last five years that's been  
7 constantly in a state of flux when it comes to  
8 staffing. I think we're plugging holes anywhere we  
9 can meet -- ends meet.  
10 Like I said, I think it's well  
11 documented in both the news and in other aspects that  
12 we're a short-staffed department. So I don't know if  
13 people were being removed around. I would imagine  
14 they probably were. I wasn't -- I would also imagine  
15 that for many people that was a shock to the system.  
16 Q. (BY MS. MCDANIEL) Did it seem -- did  
17 APD have to take any measures to pre -- to make sure  
18 that there was sufficient staff to work?  
19 MR. BARTON: Object to form.  
20 Q. (BY MS. MCDANIEL) -- the protests?  
21 A. In order to meet staffing levels that  
22 they felt the City needed to provide adequate public  
23 safety, they went to a schedule that they call it A/B  
24 schedule where you work either A shift or B shift  
25 morning or night, and all officers worked until told

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1 otherwise.  
2 Q. And was that -- not unusual, but was  
3 that different than your day-to-day shift work?  
4 A. It was. Although at this point in  
5 August, I believe that schedule had ended long prior  
6 to.  
7 Q. I see. Did -- the events of the  
8 protest from May to August the whole, you know, few  
9 months that this going on, did they affect the  
10 training academy? Are you -- do you know?  
11 A. I'm not aware. I would imagine they  
12 weren't training people at the time unless there was  
13 a cadet class going on, which I'm unaware if there  
14 was or wasn't.  
15 Q. Did they -- did the protests affect  
16 training tactics that you were taught?  
17 A. I think the protests placed a lot of  
18 tactics that were taught and trained into a  
19 real-world scenario, and like anything -- and I would  
20 hope that any department would review how -- what  
21 worked and what didn't, in layman's terms, and make  
22 corrections after to see what worked and what didn't.  
23 Q. And I'll just ask: Were you aware of  
24 the media attention surrounding the protests for  
25 mid-August?

<p style="text-align: right;">Page 122</p> <p>1 A. Yes, ma'am.</p> <p>2 Q. And were the other officers?</p> <p>3 A. I can't speak to it, but I would assume</p> <p>4 that every officer knows that in the day and age of</p> <p>5 cell phones, there's always media attention on a big</p> <p>6 event.</p> <p>7 Q. How did that feel, did it change the</p> <p>8 way -- anything about your day-to-day policing?</p> <p>9 A. For me, no. But I have always worked</p> <p>10 in a more public-type environment. Usually not by</p> <p>11 myself in a car arbitrarily in the middle of the</p> <p>12 night driving down the road with no one there. I</p> <p>13 have always been around large crowds in the public</p> <p>14 space. So I have always kind of conducted myself as</p> <p>15 such.</p> <p>16 Q. Okay. Well, let's see.</p> <p>17 MS. MCDANIEL: We're going to take</p> <p>18 another ten-minute break. It's looks like it's 130.</p> <p>19 MR. BARTON: Okay.</p> <p>20 MS. MCDANIEL: I think that will be</p> <p>21 good. I hope we might be able to get you out of here</p> <p>22 by 3:20. I'm not sure. That'll be kind of tough,</p> <p>23 but it's possible.</p> <p>24 THE WITNESS: It is what it is.</p> <p>25 MS. MCDANIEL: Okay. Well, let's take</p>	<p style="text-align: right;">Page 124</p> <p>1 did have an effect.</p> <p>2 Q. That's my understanding. I can't</p> <p>3 remember the exact time either, but I recall them</p> <p>4 being, you know, related in time.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Did you receive any sort of employment</p> <p>7 or administrative discipline of any kind relating to</p> <p>8 the incident that led to this lawsuit?</p> <p>9 A. No, ma'am.</p> <p>10 Q. Did you receive any communications that</p> <p>11 would indicate that your actions with regard to the</p> <p>12 incident that led to this lawsuit met the approval of</p> <p>13 people in your chain of command?</p> <p>14 A. No, other than just the Class D memo</p> <p>15 that was signed by my entire chain of command saying</p> <p>16 that I was exonerated.</p> <p>17 Q. Did you ever receive a commendation for</p> <p>18 your actions with regard to the incident with</p> <p>19 Ms. Beuhler?</p> <p>20 A. No, not individually with her, no,</p> <p>21 ma'am. I believe I received a commendation for just</p> <p>22 general work during the protests, but that might be a</p> <p>23 participation ribbon for all I know.</p> <p>24 Q. Oh. And this is going back to</p> <p>25 something we touched on before.</p>
<p style="text-align: right;">Page 123</p> <p>1 another ten-minute break, please.</p> <p>2 THE VIDEOGRAPHER: Copy that. We are</p> <p>3 now going off the record. It is now 1:35 p.m.</p> <p>4 (Recess taken)</p> <p>5 THE VIDEOGRAPHER: We are now back on</p> <p>6 the record. It is now 1:49 p.m.</p> <p>7 Q. (BY MS. MCDANIEL) Okay. So I think we</p> <p>8 were talking about kind of the atmosphere around the</p> <p>9 time of the protests. Did the department give any</p> <p>10 sense that the protests might affect your job?</p> <p>11 A. I guess in what way, ma'am?</p> <p>12 Q. Like, "We have a close eye on what's</p> <p>13 going on," or, "People can get fired if such and such</p> <p>14 happens," or any memoranda or anything that went out</p> <p>15 that related to --</p> <p>16 A. No more than -- I personally never felt</p> <p>17 my job was in jeopardy no more than it usually is.</p> <p>18 Q. Did -- was there any sense that the</p> <p>19 protests could impact the funding of the Austin</p> <p>20 Police Department?</p> <p>21 A. I don't recall if the funding movement</p> <p>22 started before or after the protests, but I guess it</p> <p>23 clearly did affect the funding. I think from my</p> <p>24 understanding of all that is that Austin's Police</p> <p>25 Department ended up being refunded, but I guess it</p>	<p style="text-align: right;">Page 125</p> <p>1 Do you have any internal affairs</p> <p>2 history? It appears from the City from what was</p> <p>3 produced that you have none.</p> <p>4 A. I think what they provided was just</p> <p>5 that I had no sustained compliance. But I have been</p> <p>6 to internal affairs before, yes, ma'am.</p> <p>7 Q. And when you earlier referred to -- I</p> <p>8 don't know if it was a document or some kind of</p> <p>9 communication that may have been signed by a</p> <p>10 magistrate that related to this or a similar</p> <p>11 incident, have I shown you that document today?</p> <p>12 A. No, ma'am. So that's the probable</p> <p>13 cause document. It's the affidavit for an arrest</p> <p>14 that's signed by a magistrate. I do not believe</p> <p>15 that's internally kept by the police department.</p> <p>16 That is -- oh, and it's a matter of public record</p> <p>17 once it's signed by a magistrate.</p> <p>18 Q. So this would be the probable cause</p> <p>19 affidavit with regard to the arrest of Sydney Beuhler?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. So, to your knowledge, would that be</p> <p>22 something that would be obtainable from like Travis</p> <p>23 County Criminal Court?</p> <p>24 A. It should be at the County Court. So</p> <p>25 either Travis County's County Court of Law or the</p>

<p style="text-align: right;">Page 126</p> <p>1 Sheriff's Office might if they don't purge their 2 system of -- I'm not sure what the outcome of her 3 legal proceedings were. 4 Q. Thank you. Ms. Beuhler complained 5 about her injuries and trauma resulting from your 6 arrest. Why do you think there was no sustained 7 internal affairs investigation or complaint? I'm not 8 sure what terminology you would use. 9 A. So there was a complaint and there was 10 an investigation. What I mean by that there was no 11 sustained -- the allegations against me weren't 12 sustained. 13 Q. Well, on the internal affairs items, I 14 have seen them further offscreen, it will state a 15 description of what happened, similar to what we saw 16 in the Class D memo maybe and it will have the 17 complaint, similar to what we saw in the Class D 18 memo, and then sometimes near the bottom it says 19 something like -- it gives a description of the 20 action taken. It will be like "no action taken." 21 A. Uh-huh. 22 Q. So I guess I'm just confused as to 23 why -- because some of the other officers, his 24 incident did show up in their internal affairs, and 25 I'm surprised it didn't in yours.</p>	<p style="text-align: right;">Page 128</p> <p>1 itself, the headquarters. 2 Q. And do you dock your body-worn camera 3 at the end of every shift? 4 A. Generally speaking, yes, ma'am. 5 (Exhibit 16 marked) 6 MS. MCDANIEL: And I'm going to ask 7 Ms. Kirkland to place a document to be labeled 8 Plaintiff's Exhibit 16. 9 Q. (BY MS. MCDANIEL) You can just let me 10 know when you have that. It's video, so it may be a 11 bit -- take a bit longer. 12 A. We have it. 13 Q. Okay. Great. I have it as well. 14 So this document is titled COA 376 and 15 is produced by the City. It is Smart BWC.mp4. 16 MS. MCDANIEL: Counsel, I know that, 17 you know, it may have been renamed or something, but 18 are you willing to stipulate, I asked for a 19 "confidential" marker, if this is to your knowledge 20 what the City produced as Officer Smart's authentic 21 body camera footage from that day? 22 MR. BARTON: Well, what I can say is 23 if you haven't changed it, yes, it's a copy of what 24 we produced. So I know we produced -- 25 MS. MCDANIEL: Got it.</p>
<p style="text-align: right;">Page 127</p> <p>1 Do you know why it didn't? 2 A. I don't know if they were fully 3 exonerated for everything. I wasn't privy to any of 4 the investigation. 5 Q. I see. All right. 6 A. But I have -- that's what that Class D 7 memo is, it's showing that the investigation took 8 place and what their finding is. 9 Q. I appreciate your patience. It's hard 10 for me, you know, it's -- I'm not an expert on -- on 11 this title stuff. I think we're going to move on to 12 talking about your body camera footage. 13 How did you ensure after your shift 14 that your body camera footage was recorded in the APB 15 system? 16 A. So we have document mechanisms at our 17 substations, for me it's the actual police 18 headquarters, and what we'll do is we'll correspond 19 that footage to whatever incident is assigned this 20 number, its case number. So it will be saved under 21 that case number, and then proper retention years 22 will be set. 23 Q. And where do you physically go to dock 24 your body-worn camera? 25 A. For me, it's the police department</p>	<p style="text-align: right;">Page 129</p> <p>1 MR. BARTON: -- the video and this 2 looks like the video we produced, so -- 3 MS. MCDANIEL: Okay. Thank you. I 4 appreciate it. 5 Q. (BY MS. MCDANIEL) Let's go ahead and 6 watch COA 376. Oh, whoops. Hold on. I forgot to 7 share my screen. I'm going to share my screen and 8 I'm share my sound. 9 Can you see my screen? Can you see my 10 video there? 11 A. Yes, ma'am. 12 Q. Okay. I'm going to play it, and 13 hopefully we'll get the audio. 14 (Video plays) 15 Q. (BY MS. MCDANIEL) You can you hear the 16 audio? 17 A. Yes, ma'am. 18 Q. Okay. Great. 19 (Video plays) 20 Q. (BY MS. MCDANIEL) Officer Smart, is 21 this a camera on the front of your bike as well? 22 A. That's a -- I can't see it, but what 23 I'm assuming you're referring to that says Smart on 24 it, that's a light. 25 Q. A light, oh, okay. Do you have a</p>

<p style="text-align: right;">Page 130</p> <p>1 camera that goes on your bike or is it just your 2 body-worn camera that you -- 3 A. Just the body-worn camera. 4 Q. Was that statement, "Cameras on" -- 5 what was that meaning? What was that about? 6 A. That's reminding the officer to 7 activate their body camera that has not already. 8 Because we're going to be interacting and taking 9 police action with the public potentially. So it's 10 just a friendly reminder from officer to officer to 11 turn on your camera. 12 Q. I see. What orders did you have at 13 this point, do you recall? 14 A. From -- I think we touched on it 15 earlier. The protesters, leaders had already met 16 with our supervisors at the time. I don't recall 17 which ones. They'd already been warned that if they 18 kept intentionally impeding traffic in the roadway 19 and obstructing it that the police department was 20 going to take action to enforce to stop them to do 21 so, and one of said consequences would be potentially 22 being placed under arrest; and as such, upon them 23 doing so, our orders were to go clear the roadway, 24 and we were one element of the resources used to do 25 so.</p>	<p style="text-align: right;">Page 132</p> <p>1 or doing here? You're kind of moving from side to 2 side. What is this? 3 A. How would I say what? 4 Q. In the last few seconds, you're kind 5 of -- 6 A. Uh-huh. 7 Q. -- moving from side to side. 8 A. Oh, what action I'm doing? 9 Q. Yes. 10 A. Yes, so I'm filling in and making sure 11 that there's no gaps in the line and that no officer 12 needs assistance. So that's just me moving back and 13 forth free flowing to see if I need to provide help 14 support or any other action needed. 15 Q. I see. 16 (Video plays) 17 Q. (BY MS. MCDANIEL) And that's the end 18 of the video. So at that moment, what happened? 19 A. At that moment I had grabbed ahold of 20 Ms. Beuhler, and at that point my body camera 21 deactivated. I don't know if that was the power 22 toggle switch or the camera deactivation. I'm not 23 sure which. 24 (Exhibit 17 marked) 25 MS. MCDANIEL: I'm going to ask</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. I see. Who were the protestor leaders? 2 A. I don't know them individually, so I 3 can't tell you. And I don't know how they were 4 identified by the supervisors. Usually they go meet 5 with them beforehand and ask who's in charge. 6 Q. Was there a permit for this purpose, do 7 you know? 8 A. I have no idea. I do not believe so. 9 Q. Do you know how anybody would have 10 known to meet with the protest leaders? 11 A. So through all their experience, 12 generally just through observation as they march, 13 there's generally people leading said march. They 14 seem to be more of the organizers, maybe the Pied 15 Piper, as you would call it; and generally are -- 16 either I have done it myself in the past, been the 17 one assigned to go try to meet and confer with them 18 to ask them which way do they want to go ahead and to 19 just kind of stipulate to the best way that we can 20 ensure that they exercise their First Amendment right 21 peacefully and safely. 22 Q. Okay. Thank you. Appreciate that. 23 Okay. I am going to start again. 24 (Video plays) 25 Q. (BY MS. MCDANIEL) What were you saying</p>	<p style="text-align: right;">Page 133</p> <p>1 Ms. Kirkland to place a document in the dropbox to 2 be labeled Plaintiff's Exhibit 17. 3 Q. (BY MS. MCDANIEL) I'm going to wait a 4 minute for that to get there. 5 You have four children? 6 A. Yes, ma'am. 7 Q. And how old are they? 8 A. Ranging from about to be 15 to a 9 kindergartener. So she's going to be six in a couple 10 of days. 11 Q. Nice gap. 12 A. It is, it's a nice gap. 13 Q. Let's see. Okay, I have it. Do you 14 have that video? 15 A. Yes, ma'am. 16 Q. Okay. And I have this as Plaintiff's 17 Exhibit 17, which is a video produced by the City as 18 COA 377, also Smart BWC MP4. 19 A. Yes, ma'am. 20 MS. MCDANIEL: And, Counsel, I assume 21 the same answer as before that, you know, to the 22 extent that we have not changed it, you would 23 stipulate that this is Officer Smart's authentic body 24 camera footage from the day? 25 MR. BARTON: Yes.</p>

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1 MS. MCDANIEL: Okay. Great.  
 2 Q. (BY MS. MCDANIEL) Again, I believe  
 3 this is when your body camera comes back on, but I'm  
 4 hoping you can help me understand that. So let me  
 5 share my screen again. Can you see this?  
 6 A. Yes, ma'am.  
 7 (Video plays)  
 8 Q. (BY MS. MCDANIEL) Okay. Can you hear  
 9 that audio?  
 10 A. Yes, ma'am.  
 11 (Video plays)  
 12 Q. (BY MS. MCDANIEL) Is that you speaking  
 13 right there?  
 14 A. Yes, ma'am.  
 15 Q. Did you hear yourself?  
 16 A. Yes, ma'am.  
 17 Q. So would you agree that this footage is  
 18 after your arrest with Ms. Beuhler was completed?  
 19 A. Yes, ma'am, I can kind of provide  
 20 detail if you wish.  
 21 Q. Well, is it fair to say that after the  
 22 little bit that we saw in the previous video, there  
 23 is no body camera footage of your arrest with  
 24 Ms. Beuhler from you, from your body camera?  
 25 A. Yes, ma'am.

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1 Q. Okay. And did you formal -- follow the  
 2 normal and customary procedures that day to ensure  
 3 that the video from your body-worn camera was  
 4 uploaded into the City system?  
 5 A. Yes, ma'am. But I can also say that  
 6 based on that, there's no 30-second buffer of footage  
 7 without sound on this that would lead me to conclude  
 8 that it was the power toggle that got switched off  
 9 upon contact with Ms. Beuhler.  
 10 Q. I see what you're saying, because if  
 11 it's just the "play" button, the recording button  
 12 that's turned off, then the camera would have  
 13 maintained its ability to back up 30 seconds from  
 14 when the recording is turned on; is that correct?  
 15 A. Yes, ma'am.  
 16 (Exhibit 18 marked)  
 17 MS. MCDANIEL: Okay. I'm going to ask  
 18 Ms. Kirkland to place a document in the dropbox to be  
 19 labeled Plaintiff's Exhibit 18, and it will probably  
 20 just take a minute.  
 21 THE WITNESS: We have it.  
 22 Q. (BY MS. MCDANIEL) Oh, really? Oh,  
 23 good. Okay. I have it, too.  
 24 Plaintiff's Exhibit 18 is a document  
 25 produced by the City as COA 770. Again, it's labeled

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1 CONF, "Bystander video of arrest 3."  
 2 As far as I know, that's the City's  
 3 label. I'm not sure, that could be our internal  
 4 title of this document.  
 5 MS. MCDANIEL: To the extent that you  
 6 can, Counsel, can you stipulate that this is  
 7 authentic bystander video footage from that day?  
 8 MR. BARTON: Yes, I can stipulate  
 9 that's what we produced to you.  
 10 Q. (BY MS. MCDANIEL) Okay. Do you know,  
 11 Officer Smart, who you provided this bystander video?  
 12 A. No, I don't believe I have seen it  
 13 before.  
 14 Q. Okay. Are you aware of any bystanders  
 15 who did provide video of this event?  
 16 A. I am not. But there was hundreds of  
 17 people out there, and it's, what, 2020 then? I'm  
 18 hope -- I'm sure somebody was running a cellphone.  
 19 Q. Oh, sure, so you see it in a lot of the  
 20 videos there's tons, you know, lots and lots of  
 21 cameras of all types going on.  
 22 Okay. I was just curious. It just  
 23 said "bystander video," it didn't have a name  
 24 associated with it.  
 25 So I'm going to share my screen. It's

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1 COA 770. Can you see that on your screen?  
 2 A. Yes, ma'am, I can see this on there.  
 3 (Video plays)  
 4 Q. (BY MS. MCDANIEL) Okay. And can you  
 5 hear that?  
 6 A. Yes, ma'am.  
 7 Q. Okay. Let me go back to the beginning.  
 8 I believe the incident was at the very beginning.  
 9 (Video plays)  
 10 Q. (BY MS. MCDANIEL) I don't know about  
 11 you, I had a really hard time seeing that one.  
 12 A. Yes, it's not the greatest footage.  
 13 Q. Yeah, that one's -- I thought it was a  
 14 little better. I'm going to try one more time  
 15 with -- maybe this video authorization will turn it  
 16 off see. Let's see if that helps. As I recall, it  
 17 didn't do it. Let's see if this helps. I'm going to  
 18 replay it.  
 19 (Video plays)  
 20 Q. (BY MS. MCDANIEL) It's still pretty  
 21 pixilated. Can you -- can you identify what's  
 22 happening in this video?  
 23 A. Yes, ma'am. This is when she's been  
 24 placed on her knees and she's being put into  
 25 handcuffs, but it is hard to make out. What I can

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1 make out, at least for myself, and then it appears  
 2 the other officers, that we're on our feet, which  
 3 would lead me to conclude that our body weight is not  
 4 fully on her.  
 5 Q. I'm going to play it myself -- I'm  
 6 going to play it one more time because it's so short.  
 7 It's only 20 seconds.  
 8 (Video plays)  
 9 Q. (BY MS. MCDANIEL) Would you agree that  
 10 it appears that Ms. Beuhler is on the ground and  
 11 there is an officer to her back, her left and her  
 12 right?  
 13 MS. MCDANIEL: Object to the form.  
 14 THE WITNESS: There does appear to be  
 15 three officers around her.  
 16 (Exhibit 19 marked)  
 17 MS. MCDANIEL: Okay. I'm going to ask  
 18 Ms. Kirkland to put in the dropbox Plaintiff's  
 19 Exhibit 19.  
 20 MS. KIRKLAND: (Complies).  
 21 MR. BARTON: We have got it.  
 22 MS. MCDANIEL: Okay, great. I have it  
 23 as well.  
 24 Q. (BY MS. MCDANIEL) So I'm going to try  
 25 to share my screen so we can look at this one.

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1 Can you see my screen?  
 2 A. Yes, ma'am.  
 3 Q. So this document is Plaintiff's  
 4 Exhibit 19. It's COA 769, produced by the City.  
 5 Again, it has the CONF label. It has a title of  
 6 "Bystander video of arrest 2 (Sarrestshort).mp4."  
 7 MS. MCDANIEL: Again, Counsel, to the  
 8 extent nothing has been altered on this video, do you  
 9 stipulate that it's authentic bystander video footage  
 10 of -- from this day?  
 11 MR. BARTON: Yes, I mean, if it's what  
 12 we produced to you.  
 13 MS. MCDANIEL: Thank you, yes.  
 14 Q. (BY MS. MCDANIEL) Let's watch Video  
 15 769. So what do you see right here at the very  
 16 beginning?  
 17 A. I see police officers in a line  
 18 formation.  
 19 Q. Okay. Do you see yourself yet? Do you  
 20 know where you are in this video?  
 21 A. That might be me behind them. I can't  
 22 tell though. That's one of the side effects --  
 23 Q. Okay.  
 24 A. -- of uniformity.  
 25 Q. Right. It's definitely hard for me to

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1 tell that line as well.  
 2 (Video plays)  
 3 Q. (BY MS. MCDANIEL) What is this police  
 4 officer?  
 5 A. That -- he's carrying a less lethal  
 6 shotgun.  
 7 Q. Okay.  
 8 A. That's what the orange indicates.  
 9 Q. I see. Did you see yourself yet?  
 10 A. No. That should be me entering frame  
 11 all the way on the left.  
 12 Q. Over here in the left back or the  
 13 left -- not with the bike? You didn't have the bike?  
 14 A. Yeah, it should be -- I believe that's  
 15 me behind him, just because I had longer hair at the  
 16 time.  
 17 Q. Okay. Let's run it back a little bit.  
 18 (Video plays)  
 19 Q. (BY MS. MCDANIEL) Oh, it seemed to  
 20 glitch a little bit there.  
 21 So this is the moment that you grab  
 22 Ms. Beuhler from the line; is that correct?  
 23 A. Yes, ma'am.  
 24 Q. And what in what we have seen so far  
 25 would you consider to be resisting?

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1 A. Her flailing about is how I would  
 2 describe it and then her pulling away once on the  
 3 ground. So it would be her physical resistance to  
 4 it.  
 5 Oh, there's a baseball bat. Huh, I  
 6 didn't see that.  
 7 Q. There's a lot -- these videos have a  
 8 lot of different weapons.  
 9 A. Yeah.  
 10 (Video plays)  
 11 Q. (BY MS. MCDANIEL) Could you see that  
 12 clearly?  
 13 A. Yes, ma'am.  
 14 Q. And where are you in this video?  
 15 A. I'm the gentleman in the shorts.  
 16 Q. To the left?  
 17 A. Yes.  
 18 Q. And this is Officer Gonzales?  
 19 A. I believe so.  
 20 Q. It is. I know from another video.  
 21 (Video plays)  
 22 Q. (BY MS. MCDANIEL) Would you feel  
 23 comfortable with the trainer using this video for  
 24 field training instruction?  
 25 A. Yes, ma'am.

<p style="text-align: right;">Page 142</p> <p>1 Q. Would you use this video and say this 2 is an example of model police behavior on your part 3 or would you use it and say there might be things 4 that you would have done differently? 5 A. I would say that this is a video that 6 followed law and general orders and policy. I would 7 also say that in every action I have ever taken, 8 hindsight being 2020, I can always better myself. 9 Q. What, if anything, might you want to do 10 differently? 11 A. On this standpoint in case, I could 12 have utilized my pepper spray to get multiple people 13 back, it would have tied up less police resources, 14 and probably indicated as well as getting people out 15 of the road, which is an objective. So potentially 16 that was something that -- in hindsight that I could 17 do. Instead of enacting an arrest on one person, 18 deploying pepper spray on several people that are 19 physically and passively resisting and refusing to 20 leave the roadway in preparatory violence. 21 Also, I could keep my head on a swivel 22 a little bit better, because obviously there's people 23 out there to which she's associating herself with 24 that are armed with weapons; and now the pepper 25 spray, that being said, for her would not have been a</p>	<p style="text-align: right;">Page 144</p> <p>1 different cultures and seeing a non-democratic state. 2 Anyway they identify themselves, 3 generally speaking, through their items of clothing, 4 again, a uniformity of sense, which again is 5 interesting to say anti-fascist when you're in 6 uniform. So for her, she's wearing all black. She's 7 associated with everyone else wearing all black, and 8 she's wearing pretty conceived means to stop police 9 from using means to control and deter potential 10 property crime and/or violence. 11 Q. Is Black Bloc in Austin only? 12 A. No. And I don't even know if it's a -- 13 necessarily speaking an overall design kind of like 14 in the sense of that there's an international or 15 national head of said group, but there's a loose 16 affiliation of such across; and through means of 17 social media, they will pass on different techniques 18 and ideology about how to protest and what political 19 ideology they wish to achieve. 20 Q. Do you think that some of their ideas 21 are good ones? 22 A. I haven't sat down and had that 23 conversation with them. Generally speaking, they 24 don't talk to people like me. They more just yell at 25 us. So we don't have that discourse, but I'm sure</p>
<p style="text-align: right;">Page 143</p> <p>1 viable option, because she had taken steps to prepare 2 herself by -- from what I could see, she's wearing 3 goggles. 4 Also, just based off her clothing, she 5 appears to be a member of the Black Bloc, so it makes 6 sense that she would wear goggles because she had 7 more of a planned presence to be prepared for 8 potential pepper spray to be used against her. 9 Q. Anything else? 10 A. Just off that footage. Now, but I'm 11 sure if I sat down anything, I can always think of 12 different ways. It doesn't means that I would 13 necessarily do anything different, but it would just 14 put we call it, more tools in our toolbox, just 15 coming up with ideas how to approach different 16 scenarios. 17 Q. What is a Black Bloc? 18 A. Black Bloc would be a section of 19 protesters, commonly known as Antifa well, they 20 generally identify themselves via their ideology and 21 as being anti-fascist, which is an interesting facet 22 of using violence and property destruction to gain 23 one's political means. From growing up overseas, 24 that's generally more aligned with fascism, but not 25 everybody has the benefit that I have of living in</p>	<p style="text-align: right;">Page 145</p> <p>1 that in every ideology there's something that can be 2 taken that is of worth. 3 Q. And to your knowledge, there is no 4 national or state head of anything called Antifa 5 either, is there? 6 A. I'm not aware, ma'am. That would be a 7 question more directed towards the FBI who monitor 8 such activity. 9 Q. And just a follow-up, after this 10 incident at any time, did you get any indication from 11 someone in your chain of command there was something 12 wrong with the use of force in your interaction with 13 Ms. Beuhler? 14 A. No, ma'am. 15 MS. MCDANIEL: Okay. I am going to 16 pass the witness. 17 MR. BARTON: Okay. I think I just have 18 one quick follow-up question. 19 EXAMINATION 20 Q. (BY MR. BARTON) You mentioned just 21 some general comments about Antifa and Black Bloc, 22 but do you have any knowledge that Ms. Sydney Beuhler 23 is a member Black Bloc or Antifa? 24 A. No, sir, no personal knowledge. 25 Q. So that was just something you observed</p>

Page 146

1 as a -- something within the realm of your  
 2 observation, correct?  
 3 A. Yes, sir.  
 4 MR. BARTON: Okay. I don't have any  
 5 further questions.  
 6 FURTHER EXAMINATION  
 7 MS. MCDANIEL: I have one question.  
 8 Q. (BY MS. MCDANIEL) Were you or other  
 9 officers to your knowledge more likely to arrest  
 10 someone who was potentially identifiable as Antifa or  
 11 Black Bloc?  
 12 A. No more than just in the sense of  
 13 whenever for me personally, and to my knowledge other  
 14 officers, the way that we approach arresting  
 15 somebody's when we see the offense, we address it as  
 16 appropriate.  
 17 THE COURT REPORTER: I think they are  
 18 paused. This is the court reporter. Sorry, I think  
 19 it sure wasn't me that I was paused with my Internet  
 20 up there. They went completely -- did you want to go  
 21 off the record, Ms. McDaniel? Off the record, ma'am?  
 22 MS. MCDANIEL: Yes, please, until they  
 23 come back.  
 24 THE VIDEOGRAPHER: Now going off the  
 25 record. It's 2:25 p.m.

Page 147

1 (Recess taken)  
 2 THE VIDEOGRAPHER: We're now back on  
 3 the record. It is now 2:27 p.m.  
 4 Q. (BY MS. MCDANIEL) I'll just reask my  
 5 last question, Officer Smart, which was: Would you  
 6 be more likely to arrest someone who you identified  
 7 as possibly being Antifa or in Black Bloc?  
 8 A. No, ma'am. It's something that you're  
 9 conscious of for your officer safety and maybe just  
 10 to keep more of a closer eye on, but you wouldn't  
 11 treat them as far as offenses any different. It's  
 12 just whatever offense occurs in front of you that  
 13 needs to be addressed to is what you address.  
 14 Q. My last question is: Did you post  
 15 about or talk about your arrest with Ms. Beuhler  
 16 about this incident?  
 17 A. No, ma'am, not -- I'm not a big social  
 18 media person.  
 19 MS. MCDANIEL: That's all the  
 20 questions that I have for now.  
 21 So I'll pass the witness again.  
 22 MR. BARTON: No questions at this  
 23 time.  
 24 THE VIDEOGRAPHER: All right.  
 25 Anything else we need to declare or state on record

Page 148

1 before I take us off?  
 2 MS. MCDANIEL: I believe we talked  
 3 about their transcripts. I'm sorry. We have a  
 4 standing order with regard to transcripts, I believe.  
 5 MR. BARTON: Yeah, I mean, and I think  
 6 we said that earlier, but I'll be sure to say it  
 7 again. We want to a copy of the video and the  
 8 transcript. And is this video synced with the  
 9 transcript? Is that how that is typically done or is  
 10 that an option?  
 11 THE VIDEOGRAPHER: Yes, sir, I believe  
 12 it will be. I typically -- matter of fact, I can  
 13 probably take us off and we can discuss that off the  
 14 record.  
 15 This will conclude the deposition. It  
 16 is now 2:29 p.m.  
 17 (Proceedings concluded at 2:29 p.m.)  
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Page 149

1 CHANGES AND SIGNATURE  
 2 PAGE LINE CHANGE REASON  
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Page 150

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7 I declare under penalty of perjury that the  
8 foregoing is true and correct.  
9  
10 \_\_\_\_\_  
11 OFFICER GAVIN W. SMART  
12  
13  
14 SUBSCRIBED AND SWORN TO BEFORE ME, the  
15 undersigned authority, by the witness, OFFICER GAVIN  
16 W. SMART, on this the \_\_\_\_ day of  
17 \_\_\_\_\_, 2023.  
18  
19 \_\_\_\_\_  
20 NOTARY PUBLIC IN AND FOR  
21 THE STATE OF \_\_\_\_\_  
22  
23 My Commission Expires: \_\_\_\_\_  
24  
25

Page 152

1 SUBSCRIBED AND SWORN TO under my hand and  
2 seal of office on this \_\_\_\_\_ day of March, 2023.  
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5 \_\_\_\_\_  
6 Michelle Hartman, CSR, RPR  
7 Texas CSR 7093  
8 Expiration: 12/31/23  
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Page 151

1 STATE OF TEXAS  
2 COUNTY OF HARRIS  
3  
4 REPORTER'S CERTIFICATE  
5 ORAL VIDEOTAPED DEPOSITION OF  
6 OFFICER GAVIN W. SMART  
7 February 16, 2023  
8  
9 I, Michelle Hartman, the undersigned  
10 Certified Shorthand Reporter in and for the State of  
11 Texas and Registered Professional Reporter, certify  
12 that the facts stated in the foregoing pages are true  
13 and correct.  
14 I further certify that I am neither  
15 attorney or counsel for, related to, nor employed by  
16 any parties to the action in which this testimony is  
17 taken and, further, that I am not a relative or  
18 employee of any counsel employed by the parties  
19 hereto or financially interested in the action.  
20 That the deposition transcript was duly  
21 submitted on \_\_\_\_\_ to the witness or to  
22 the attorney for the witness for examination,  
23 signature, and returned to me by \_\_\_\_\_.  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**Sydni Beuhler,**  
Plaintiff,  
v.

**City of Austin,**  
**Officer Gavin Smart (AP8674), and**  
**Officer Javier Gonzalez (AP7422)**  
Defendants.

§  
§  
§  
§  
§  
§  
§

**Case no. 1:21-cv-00054-RP**

**PLAINTIFFS’ NOTICE OF DEPOSITION OF OFFICER GAVIN SMART**

TO:	<b>ALL COUNSEL OF RECORD</b>
PERSON TO BE EXAMINED:	<b>OFFICER GAVIN SMART (#8674)</b>
TIME & DATE OF TAKING:	<b>Thursday, February 16, 2023 at 10:30am CT</b>
COURT REPORTER:	<b>Magna Legal Services</b>
VIDEOGRAPHER:	<b>Magna Legal Services</b>
LOCATION:	<b>ZOOM VIDEO CONFERENCE</b>

**PLEASE TAKE NOTICE** that in accordance with Federal Rule of Civil Procedure 30, the video deposition of the above-listed individual will be taken by the Plaintiffs.

This deposition is to be conducted via Zoom Video Conference and will be recorded stenographically before a court reporter and videotaped before a videographer from **Magna Legal Services – 700 Milam Street, #1300, Houston, TX 77002; (832) 871-5100.**

This deposition will continue day to day until complete. You are invited to attend and participate. A zoom link will be sent out prior to the deposition. If you do not receive a zoom link, please contact Alexis Lopez @ [alopez@hendlerlaw.com](mailto:alopez@hendlerlaw.com).

**Dated: January 23, 2023**



**Respectfully submitted,**  
**HENDLER FLORES LAW, PLLC**

/s/ Grayson E. McDaniel

Scott M. Hendler - Texas Bar No. 9445500

[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)

Grayson McDaniel - Texas Bar No. 24078966

[gmcDaniel@hendlerlaw.com](mailto:gmcDaniel@hendlerlaw.com)

901 S. MoPac Expressway

Bldg. 1, Suite #300

Austin, Texas 78746

Telephone: (512) 439-3200

Facsimile: (512) 439-3201

***ATTORNEYS FOR PLAINTIFF***

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing served on all counsel of record via the electronic mail on January 23, 2023.

/s/ Grayson E. McDaniel

Grayson E. McDaniel

**Texas Commission On Law Enforcement**  
**Personal Status Report**

<b>Name</b>	<b>TCOLE ID (P ID)</b>	<b>STATUS</b>
GAVIN W. SMART	414912	

<b>Citizen</b>	<b>Race</b>	<b>Gender</b>
Yes	White	Male

**Education Information**

<b>Institution</b>	<b>Hours</b>	<b>Education</b>
	0	High School
Sam Houston State University	120	Bachelor
<b>Total Hours</b>	120	
<b>Total Training Hours</b>	2400	

**Service History**

<b>Appointed As</b>	<b>Department</b>	<b>Award</b>	<b>Service Start Date</b>	<b>Service End Date</b>	<b>Service Time</b>
Peace Officer (Full Time)	AUSTIN POLICE DEPARTMENT	Peace Officer License	1/8/2017		2 years, 11 months
Peace Officer (Full Time)	COLLEGE STATION POLICE DEPT.	Peace Officer License	6/10/13	9/3/2017	4 years, 3 months

**Total Service Time**

<b>Description</b>	<b>Service Time</b>
Peace Officer	7 years, 2 months
Total officer time	7 years, 2 months

**Award Information**

<b>Award</b>	<b>Type</b>	<b>Action</b>	<b>Action Date</b>
Peace Officer License	License	Granted	6/10/2013
Basic Peace Officer	Certificate	Certification Issued	5/26/2014
Intermediate Peace Officer	Certificate	Certification Issued	6/8/2017

**Academy History**

	<b>Date</b>	<b>Institution</b>	<b>Course Title</b>
Completed	6/7/2013	TEEX Central Texas Police Academy	Basic Peace Officer Course (643)

11/20/2020



Page Number: 1  
COA 000649

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

09/01/2019 - 08/31/2021

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	10/22/2020	8	Austin Police Academy	
3186	86th Legislative Session Legal Update	5/21/2020	3	Austin Police Academy	86th Session State and Federal Law Update
355	Annual Firearms Qualification 1701.355	1/23/2020	0	Austin Police Academy	
<b>Unit Hours</b>			<b>11</b>		

09/01/2017 - 08/31/2019 \*

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3358	Police Bicycle	4/19/2019	40	Austin Police Academy	
3722	Peace Officer Field Training	3/24/2019	160	Austin Police Academy	Peace Officer Field Training
2045	Patrol Procedures	1/31/2019	4	Austin Police Academy	
3517	Suicide Prevention (not 3501)	1/31/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	1/30/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	1/29/2019	2	Austin Police Academy	Civilian Interaction Training Program
3940	Community Policing	1/29/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	1/28/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
3358	Police Bicycle	1/16/2019	20	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/10/2019	0	Austin Police Academy	
3305	Active Shooter Response	10/26/2018	4	Austin Police Academy	
4001	Mental Health Officer Training Course	9/20/2018	40	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

09/01/2017 - 08/31/2019 \*

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3185	85th Legislative Session Legal Update	8/16/2018	4	Austin Police Academy	85th Session State and Federal Law Update
3836	Concealed Carry for Law Enforcement Officers	5/16/2018	10	Austin Police Academy	
2040	Defensive Tactics	5/9/2018	3	Austin Police Academy	
2040	Defensive Tactics	2/6/2018	3	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/30/2018	0	Austin Police Academy	
2055	Firearms	1/30/2018	2	Austin Police Academy	
8158	Body Worn Camera	12/21/2017	2	Austin Police Academy	
3232	Special Investigative Topics	12/21/2017	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3270	Human Trafficking	12/20/2017	4	Austin Police Academy	Human Trafficking
4068	Child Safety Check Alert List (Intermediate/Advance)	12/19/2017	1	Austin Police Academy	Child Safety Check Alert List (Advance) Child Safety Check Alert List (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	12/14/2017	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
2106	Crime Scene Investigation (Intermediate)	12/5/2017	32	Austin Police Academy	Crime Scene Investigation (Intermediate)
2109	Spanish for Law Enforcement (Intermediate)	12/1/2017	28	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3275	Missing and Exploited Children	11/27/2017	4	Austin Police Academy	Missing and Exploited Children Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
3344	Less Lethal Electronic Control Device Training	11/22/2017	8	Austin Police Academy	
2067	S.F.S.T. Practitioner	11/3/2017	24	Austin Police Academy	
4065	Canine Encounters (Intermediate/Advance)	10/30/2017	4	Austin Police Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)
7887	Interacting with drivers deaf or hard of hearing	10/20/2017	4	Austin Police Academy	Interacting with drivers deaf or hard of hearing (Intermediate)
3907	MultiCultural Diversity/Awarness for L.E. Prof.	10/18/2017	4	Austin Police Academy	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

09/01/2017 - 08/31/2019 \*

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2107	Use of Force (Intermediate)	10/13/2017	12	Austin Police Academy	Use of Force (Intermediate)
3841	Crisis Intervention Training	10/12/2017	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
2053	Baton (All)	10/6/2017	6	Austin Police Academy	
3257	Combined Asset Forfeiture and Racial Profiling	9/27/2017	2	Austin Police Academy	Asset Forfeiture (Intermediate) Racial Profiling (Intermediate)
3939	Cultural Diversity	9/26/2017	8	Austin Police Academy	Cultural Diversity (Intermediate)
3845	CPR	9/22/2017	8	Austin Police Academy	
3277	Identity Theft	9/19/2017	3	Austin Police Academy	Identity Theft (Intermediate)
3807	TCIC/NCIC for Less than Full Access Operators	9/18/2017	8	Austin Police Academy	
2108	Arrest, Search, and Seizure (Intermediate)	9/15/2017	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	9/11/2017	4	Austin Police Academy	
3910	Sexual Harassment Recognition	9/6/2017	2	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	9/5/2017	0	Austin Police Academy	Personnel Orientation
			<b>Unit Hours</b>	<b>551</b>	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3257	Combined Asset Forfeiture and Racial Profiling	9/27/2017	2	Austin Police Academy	Asset Forfeiture (Intermediate) Racial Profiling (Intermediate)
3939	Cultural Diversity	9/26/2017	8	Austin Police Academy	Cultural Diversity (Intermediate)
3845	CPR	9/22/2017	8	Austin Police Academy	
3277	Identity Theft	9/19/2017	3	Austin Police Academy	Identity Theft (Intermediate)
3807	TCIC/NCIC for Less than Full Access Operators	9/18/2017	8	Austin Police Academy	
2108	Arrest, Search, and Seizure (Intermediate)	9/15/2017	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	9/11/2017	4	Austin Police Academy	
3910	Sexual Harassment Recognition	9/6/2017	2	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	9/5/2017	0	Austin Police Academy	Personnel Orientation
4068	Child Safety Check Alert List (Intermediate/Advanc	5/27/2017	1	Classen Buck Seminars, Inc.	Child Safety Check Alert List (Advance) Child Safety Check Alert List (Intermediate)
4065	Canine Encounters (Intermediate/Advance)	5/18/2017	8	Capital Area Council of Governments	Canine Encounter (Intermediate) Canine Encouter (Advance)
7887	Interacting with drivers deaf or hard of hearing	4/27/2017	4	Capital Area Council of Governments	Interacting with drivers deaf or hard of hearing (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	3/6/2017	24	Classen Buck Seminars, Inc.	Child Abuse Prevention and Investigation (Intermediate)
3940	Community Policing	1/11/2017	24	COLLEGE STATION POLICE DEPT. (Training Rosters)	
3347	Less Lethal Electronic Control Device Update	10/20/2016	4	College Station Police Dept.	
3939	Cultural Diversity	7/14/2016	8	Classen Buck Seminars, Inc.	Cultural Diversity (Intermediate)
3345	Less Lethal Impact Weapons Training (Bean Bag/Impa	6/16/2016	2	College Station Police Dept.	
2040	Defensive Tactics	6/16/2016	8	College Station Police Dept.	
38763	SABA ( Self Aid, Buddy Aid )	6/15/2016	10	College Station Police Dept.	
4040	Mental Impairment (General)	6/14/2016	7	College Station Police Dept.	
3184	84th Legislative Session Legal Update	6/14/2016	3	College Station Police Dept.	84th Session State and Federal Law Update



**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2108	Arrest, Search, and Seizure (Intermediate)	6/2/2016	15	Classen Buck Seminars, Inc.	Arrest, Search, and Seizure (Intermediate)
3232	Special Investigative Topics	5/28/2016	8	Classen Buck Seminars, Inc.	Special Investigative Topics (Intermediate)
2107	Use of Force (Intermediate)	5/4/2016	13	Classen Buck Seminars, Inc.	Use of Force (Intermediate)
2106	Crime Scene Investigation (Intermediate)	1/24/2016	32	Classen Buck Seminars, Inc.	Crime Scene Investigation (Intermediate)
2109	Spanish for Law Enforcement (Intermediate)	11/10/2015	20	College Station Police Dept.	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
<b>Unit Hours</b>			<b>241</b>		

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3275	Missing and Exploited Children	8/24/2015	5	College Station Police Dept.	Missing and Exploited Children Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
1994	Learn Our TCOLE Site	8/23/2015	1	TCOLE Online	
2055	Firearms	8/21/2015	10	College Station Police Dept.	
2040	Defensive Tactics	8/20/2015	10	College Station Police Dept.	
2046	Driving	7/29/2015	10	College Station Police Dept.	
3150	Law Update	7/28/2015	2	College Station Police Dept.	
3340	Crowd Control	7/28/2015	8	College Station Police Dept.	
3344	Less Lethal Electronic Control Device Training	3/6/2015	11	College Station Police Dept.	
2024	Narcotics/Dangerous Drug Inv.	1/16/2015	16	Tarrant Co. College District Training Center Po	
2024	Narcotics/Dangerous Drug Inv.	1/16/2015	16	Tarrant Co. College District Training Center Po	
3313	ALERRT Terrorism Response Tactics Active Shooter L	7/1/2014	16	Hays Co. Sheriff's Academy	
3322	Patrol Rifle	5/23/2014	40	College Station Police Dept.	
2055	Firearms	5/8/2014	10	College Station Police Dept.	
2040	Defensive Tactics	5/7/2014	10	College Station Police Dept.	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3183	83rd Legislative Session Legal Update	5/6/2014	3	College Station Police Dept.	83rd Session State and Federal Law Update
2178	S.F.S.T. Practitioner Update	5/6/2014	8	Texas Municipal Police Association	
2046	Driving	5/5/2014	10	College Station Police Dept.	
3308	Officer Safety/Survival	4/14/2014	10	College Station Police Dept.	
3270	Human Trafficking	12/30/2013	4	Classen Buck Seminars, Inc.	Human Trafficking
2055	Firearms	12/12/2013	10	College Station Police Dept.	
3843	CIT-Update	12/11/2013	8	College Station Police Dept.	Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 2009-09
2040	Defensive Tactics	12/10/2013		College Station Police Dept.	
2046	Driving	12/9/2013	10	College Station Police Dept.	
3722	Peace Officer Field Training	11/4/2013	160	COLLEGE STATION POLICE DEPT. (Training Rosters)	Peace Officer Field Training
3277	Identity Theft	4/2013	3	College Station Police Dept.	Identity Theft (Intermediate)
<b>Unit hours</b>			<b>401</b>		

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
1999	Personnel Orientation by Dept. Basic Proficiency	7/5/2013	0	College Station Police Dept.	Personnel Orientation
2046	Driving	7/2/2013	10	College Station Police Dept.	
3182	82nd Legislative Session Legal Update	6/26/2013	4	College Station Police Dept.	82nd Session State and Federal Law Update
2055	Firearms	6/12/2013	30	College Station Police Dept.	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
1000643	Basic Peace Officer Course (643)	6/7/2013	728	TEEX Central Texas Police Academy	82nd Session State and Federal Law Update 83rd Session State and Federal Law Update 84th Session State and Federal Law Update 85th Session State and Federal Law Update Asset Forfeiture (Intermediate) Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Cultural Diversity (Mandate) Identity Theft (Intermediate) Racial Profiling (Intermediate) S.F.S.T. NHTSA 24hour Practitioner Special Investigative Topic (Mandate) State and Federal Law Update TCIC/NCIC for Less than Full Access Operators
			<b>U i Hours</b>	772	
			<b>To l Hours</b>	1976	

<b>Total Hours</b>	
<b>Total Training Hours From Education</b>	2400
<b>Total Course Hours</b>	1926
<b>Total Hours</b>	4326

\*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.



**AUSTIN POLICE DEPARTMENT  
NARRATIVE TEXT HARDCOPY  
(3299-0 VIOL CITY ORDINANCE - OTHER)  
GO# 2020-2141073**



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sensitive information.**



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<b>1. ALLARE, ANNE (AP7755), SUPPLEMENTS - SEARCH OF FEMALE</b>  <b>Private</b> .....	<b>2</b>

---

**AUSTIN POLICE DEPARTMENT**  
**NARRATIVE TEXT HARDCOPY**  
(3299-0 VIOL CITY ORDINANCE - OTHER)**Narrative Text**

**This information is Private**

**Type** SUPPLEMENTS

**Subject** SEARCH OF FEMALE

**Author** AP7755 - ALLARE, ANNE

**Related Date** Oct-15-2020 19:19

On 08/01/2020 at approximately 8pm, I, Officer Allare #7755, was working with Region IV Metro Tac Unit and our primary assigned duty was to work as a Quick Reaction Force and deploy as needed during the protests. We responded to the area of 3rd St and Congress Ave to assist with crowd control efforts.

As I was walking up on scene, I observed two officers who appeared to be struggling with a female. I walked over to assist them. Each officer appeared to have control over one of her hands but she appeared to be not allowing the officers to handcuff her. The female dropped to her knees in the middle of Congress Ave. The officer on the left had positioned the female's left hand behind her back. I grabbed the female's left hand and maintained its position behind her back while the other officer attempted to put her right hand behind her back. The two officers were telling her to "Stop resisting". Once she was secured in handcuffs, I walked away to assist my teammates on the sidelines.

I soon heard the female yelling that she needed a female officer. I walked back over and conducted a quick frisk of her person. I took her fanny pack off and placed it on the ground. I did not locate any weapons on her person. I then had the female sit in the patrol vehicle.

EOB  
AP7755



**AUSTIN POLICE DEPARTMENT**

GO# 2020-2141073  
CLEARED BY ARREST

**NARRATIVE TEXT HARDCOPY**  
(3299-0 VIOL CITY ORDINANCE - OTHER)

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\*\*\* END OF HARDCOPY \*\*\*



**AUSTIN POLICE DEPARTMENT  
NARRATIVE TEXT HARDCOPY  
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GO# 2020-2141073**



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sensitive information.**



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1. GONZALEZ, JAVIER (AP7422), SUPPLEMENTS  Private .....	2

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Confidential



# AUSTIN POLICE DEPARTMENT

GO# 2020-2141073  
CLEARED BY ARREST

## NARRATIVE TEXT HARDCOPY (3299-0 VIOL CITY ORDINANCE - OTHER)

### Narrative Text

**This information is Private**

**Type** SUPPLEMENTS

**Subject**

**Author** AP7422 - GONZALEZ, JAVIER

**Related Date** Aug-06-2020 13:02

On August 1, 2020, I, Ofc. Gonzalez #7422 was working with Region 1 Metro Tactical Unit. On this day I was in a patrol vehicle doubled up with Ofc. Stewart #7348. Our assignment for the day was to work as MFF and assist in George sector with riots, protesters and crowd control.

At approximately 8:20PM, I was instructed to go near the 400 Blk of Congress to assist with crowd control. There was a large group of protesters in the intersection of S. Congress and 4th that was blocking traffic. Multiple officers arrived on scene and began to instruct protesters to get out of the road. Officers got in line and some of the crowd began to move back. There were a couple of individuals who were not complying. I stood back and watched the crowd to make sure they were not throwing objects at fellow officers.

I looked to my right and observed an officers who was struggling to detain a white female. I went over to help the officer who was dealing with the female and assisted. I grabbed the right wrist of the female and immediately felt her pull her hands towards the front of her body. In my training and experience of 7 years I have learned that criminals like to carry weapons in the front of their waistlines. When I felt the female pull her hand forward I conducted a wrist lock in order to gain control of her arms and then she was guided to the floor and on to her knees. The females was still pulling her right hand away from me while on the ground. I could feel her strength and her body stiffen as she was resisting. At this point I gave commands to not resist multiple times. I pulled out my handcuffs and was able to place them on the female with the assistance of other officers.

I later identified the officer that I help as Ofc. Smart. Once the female was placed in handcuffs she was placed in a patrol vehicle. The white female was later identified as:

Beuhler, Sydni W/F ( ARRESTED)

I remained on scene in order to assist with the large and aggressive crowd.

Later in the evening around 8:55 PM, I returned back to the 400 Blk of S. Congress where protesters were being violent and noncompliant. At the southwest corner of S. Congress and 5th St. I observed a group of officers face to face with group of about 15 to20 aggressive protesters. I saw a protester using a red bike pushing it with force towards officers. I went to help the officers and was able to pull the red bike away from the protester who was using it against officers. Once I had control of the bike I threw it towards the center of Congress and away from the reach of protesters.



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**NARRATIVE TEXT HARDCOPY**  
**(3299-0 VIOL CITY ORDINANCE - OTHER)**

I looked back at the south west corner of S. Congress and 5th and observe d officers struggling to detain protesters on the ground. The police officers were outnumbered by the aggressive crowd of protesters. I went to where the officers were at and told protesters to move multiple times. The protesters did not comply with my order to move so I pushed two of them away from the officers in order to create a safe work space. I saw some officers on the ground struggling to detain a white female and assisted them by holding her feet down as handcuffs were placed on her.

At about 9:10 PM, I was instructed to arrest all persons at the southwest corner of S. Congress and 4th St for obstruction of passageway. I observed a male in all black and grabbed his right arm. The male pulled away and because he was heavier than me it caused me to lose my balance and we both went down to the ground. On the ground I gave commands for the male to place his hands behind his back and he complied. I placed a set of zip ties on the male and he was properly secured. The Male was later walked towards the intersection of S. congress and 3rd St where he was searched incidental to arrest and transported to the jail.

The male who was dressed in all black was later identified as:

Abdurahman, Ismail B/M DOB: [REDACTED] (ARRESTED)

I later notified Sgt. Candoli about my above police actions.

NOI

Ofc. Gonzalez #7422



**AUSTIN POLICE DEPARTMENT**

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**NARRATIVE TEXT HARDCOPY**  
(3299-0 VIOL CITY ORDINANCE - OTHER)

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\*\*\* END OF HARDCOPY \*\*\*

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**NARRATIVE TEXT HARDCOPY**  
**(3299-0 VIOL CITY ORDINANCE - OTHER)**

**Narrative Text**

**This information is Private**

Type SUPPLEMENTS

Subject

Author AP8674 - SMART, GAVIN

Related Date Aug-02-2020 21:46

On Saturday August 2nd, 2020 at approximately 2000 hours, I, APD Officer Smart 8674 was working as part of a Bicycle Public Order Team (BPOT) and assigned to a protest in the area of 400 Congress Ave, Austin, Travis County, Texas. At this time I was wearing my APD DTAC Polo with badge and patch of officer clearly visible.

At approximately 1917 hours, I, along with other BPOT and APD marked patrol units responded to the intersection at E 4th St and Congress Ave due to a group of protestors had entered into the roadway after Sgt Shaw had previously warned them not to do so. The group of protestors were then again verbally warned to exit the roadway via APD vehicle PA or else they would be subject to arrest. Protestors were given several minutes (a reasonable time) to exit the roadway, however they did not comply.

\*\*\*\*\*R2R LVL 4 Cody Hamm\*\*\*\*\*

Upon arriving I observed several APD Officers struggling on the ground in the bike lane with a male, later identified as Cody Hamm. I ran up to assist the officers with placing Hamm under arrest.

Hamm was initially on his back so I pinned his to legs down and held them in place. Hamm was then rolled onto his stomach. During this time I had to hold his legs down and crossed as he exhibited defensive resistance by trying to push against me with the strength of his legs. An officer then yelled out that Hamm had a knife under his person. During this time I yelled at Hamm that he was under arrest and to not resist officers. Hamm then stopped reciting my efforts to pin his legs down.

I then held Hamm in place until he was secured by other APD officers and then turned him over to the officers. I then re took my place with other BPOT officers and used my bike to form a fence before leaving the area.

Sgt Campos was notified of the R2R.

I am unaware of any injuries suffered by Hamm.

\*\*\*\*\*R2R LVL 3 Sydni Beuhler\*\*\*\*\*

At approximately 2023 hours I, along with other BPOT and APD marked patrol units responded to the intersection at E 4th St and Congress Ave. There a

**AUSTIN POLICE DEPARTMENT**GO# 2020-2141073  
CLEARED BY ARREST**NARRATIVE TEXT HARDCOPY  
(3299-0 VIOL CITY ORDINANCE - OTHER)**

large group of protestors had entered the road as pedestrians and intestinally blocked four lanes of travel, prohibited the freedom of movement for vehicles present in the area. The group of protestors were verbally warned to exit the roadway or else they would be subject to arrest. Protestors were given several minutes (a reasonable time) to exit the roadway, however they did not comply. Upon approaching the group of persons (approximately 150 persons) in the roadway BPOT formed a rolling wedge in order to push the group out the the roadway. I dismounted my bicycle and followed the wedge on foot, acting a support role.

As APD BPOT officers arrived I observed a white female, later identified as Sydney Beuhler to be standing in the middle of the roadway and refusing officers verbal orders to exit the roadway. APD BPOT Officers attempted to push Beuhler out of the roadway with their bicycles, while ordering Beuhler to move back. Beuhler did not comply and refused to exit the roadway. Beuhler was given one last verbal warning to back up and relied by "fuck you" and did not back up.

Due to Beuhler then and there, without legal privilege or authority, intentionally and knowingly obstruct, by rendering impassable or by rendering passage unreasonably inconvenient or hazardous a street, to-wit: 400 block of Congress Ave, to which the public or a substantial group of the public had access, by standing in the roadway with approximately 150 other persons, Beuhler was charged with Obstructing Highway or Other Passageway.

When placing Beuhler under arrest I wrapped both my arms around her and told her she was under arrest. I grabbed Beuhler and carried her over the BPOT line. I then walked Beuhler back and began to attempted to secure her in handcuffs.

Beuhler began to attempt to physically resist my efforts to place her under arrest by attempting to wrestle free from my grasp. Beuhler then began to also push against me, using the strength of her legs and refused to allow her arms to be pulled behind her back, pulling them towards her torso. During this time I yelled at Beuhler to stop resisting, but she did not comply. Due to her physical resistance Officer Gonzalez 7422 and I had to physically push her down to the ground (to her knees) and then forcefully pull her hands behind her back in order to secure the Beuhler in handcuffs.

I then held Beuhler in place while a female officer searched her incident to arrest. As this was being completed Beuhler would squirm and jump up and down, ignoring officers commands to stand still.

Beuhler was then handed over to transport officers and I then took a place in line with other BPOT officers, holding a mobile bicycle fence line.

Sgt Campos was notified of the R2R.

I am un aware of any injuries suffered by by Beuhler.





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Due to Beuhler then and there intentionally prevent or obstruct, I APD Officer Smart 8674, a person Beuhler knew to be a peace officer, from effecting an arrest of Beuhler, by using force against the peace officer, Beuhler was additionally charged with Resisting Arrest.

\*\*\*\*\*R2R LVL 3 UNK SUBJECT  
2\*\*\*\*\*

During the course of the same protest, at approximately 2100 hours, BPOT officers and myself had just completed pushing another group of protestors from the roadway in the 500 block of Congress Ave. At this time, APD over watch officers were directing BPOT officers towards a male along the west adjacent curb line that was carrying a high powered laser light, capable of almost instantly causing permanent damage to APD officers eyes.

The male was located on the southwest corner of W 5th St and Congress Ave. As BPOT officers apprehended the subject a large crowd aggressively charged officers. Other BPOT officers and I then formed a line around officers in order to protect the arrest team.

At this time, I observed several protestors swing and strike APD officers with umbrellas on the south side of the perimeter. As officers moved in to take the agitators into custody I responded due to a crowd began to encroach upon the downed officers who were wrestling with the assaulters on the ground.

At this time I observed a unidentified white male wearing a white shirt and pants with his face covered. Approached the officers on the ground from then blind back side. I pushed the male back and began yelling at persons to back up from the officers. I pushed the male back due to he was encroaching on distracted officers, whose weapons were accessible to him. The white male fell to the ground upon me pushing him back. The male immediately popped back up and ran back at officers, causing another officer to push him back again.

The male would later leave the area and did not complain of pain or injury. There was no opportunity to identify the male as he later left the in crowd.

Sgt Shaw was notified of the R2R.

\*\*\*\*\*R2R LVL 3 UNK SUBJECT  
3\*\*\*\*\*

After pushing back the white male back I formed a line with other BPOT officers to protect the officers arresting the persons whom assaulted them. As I did this persons in the crowd were still within 6 feet of officers, and were actively screaming and moving back and forth towards officers. To my right I observed a male, unknown race wearing black clothing in a mask, refuse to back up to a safe and appropriate distance. I observed the male pushing back against the officer who was attempting to use his bike to force the male back.



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**NARRATIVE TEXT HARDCOPY**  
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The male appeared to be the most agitated of the crowd facing officers. The males continued defiance also appeared to embolden the crowd, causing me to be fearful that the crowd, which was verbally assaultive towards officers could become physically aggressive also. It should be noted that the persons present were with the persons who attacked officers currently in custody.

As such, in order to disperse the male who was refusing commands to "get back", I decided to deploy my MK-9 OC spray. I took out the spray, making it clearly visible and ordered persons back.

When the male did not comply, I targeted the male and sprayed just over his head, a short burst approximately 2 seconds long. I did this to avoid striking the male directly in the face and to allow the agent to settle.

This was an effective tactic as the male left the area and joined the crowd.

This also then provided officers on line with a buffer due to residual agent effects in the air.

I then re holstered my MK-9 and held perimeter until officers left the area with the prisoners.

The male was not identified and Sgt Shaw was notified of the R2R.

This report was completed documenting my arrest and R2Rs

BWC SAVED

GS



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\*\*\* END OF HARDCOPY \*\*\*

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<b>1. SMART, GAVIN (AP8674), SUPPLEMENTS</b>  <b>Private</b> .....	<b>2</b>

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**NARRATIVE TEXT HARDCOPY**  
(3299-0 VIOL CITY ORDINANCE - OTHER)

**Narrative Text**

**This information is Private**

**Type** SUPPLEMENTS

**Subject**

**Author** AP8674 - SMART, GAVIN

**Related Date** Aug-04-2020 1:38

Correction to report:

When grabbing a hold of Beuhler, my BWC deactivated upon contacting her. I activated my BWC again shortly after when I noticed that it had deactivated.

Further Song requested EMS stating that upon falling down that he hit his head on the ground and passed out. He stated such when being searched. I asked Song if that really happened and he stated that it might have. I then spoke with Officer Jimenez and McRae who stated Song never fell down to the point where his head could have struck the floor and that he never passed out. I notified Sgt Shaw of Songs intial claim, Officers observations and then Songs non commitment. Sgt Shaw stated to have Song transported to the Jail along with other prisoners and have the jail nurse check his welfare.

I observed no injuries of any kind on Song's head.



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**NARRATIVE TEXT HARDCOPY**  
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\*\*\* END OF HARDCOPY \*\*\*



**MEMORANDUM**  
 Austin Police Department  
 Region 1 Patrol

**TO:** Joseph Chacon, Assistant Chief  
**FROM:** Ryan Adam, Commander  
**SUBJECT:** Class D Memorandum – IAD Case # 2020-1301

**DATE:** 01/14/2021

Employee Name and EMP#		Gavin Smart #8674			
Incident Date	8/1/2020	Location	400 blk Congress Avenue		
CAD #	20-2141073	Versadex #	20-2141073	DMAV/BWC #	20-2141073
Allegations					
Policies Associated with Allegations			Nature of Complaint		
200.2 De-Escalation of Potential Force Encounters			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
200.3 Response to Resistance			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
306.3.1 Search Protocol			The complainant advised "The officers were not going to get a female officer, they said they didn't have time to get a female officers an I started to have a panic attack, so they got one."		
318.5.1 Miranda Warning			The complainant stated "I wasn't read my Miranda rights . . ."		

The enclosed external complaint was received by Internal Affairs via the OPO from the complainant listed above on Gavin Smart #8674. The complaint documentation provided by the OPO and the complainant is included in the complaint packet.

The complaint regards an employee assigned under our command, and has been designated a Class D Complaint as described in General Order 902.3.1. This case is being sent to you for administrative purposes only. A review of this complaint has indicated no violations of Departmental Policy. Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.





Detailed responses to complaint(s):

Officers Gavin Smart #8674 of the Bicycle Public Order Team (BPOT) and Javier Gonzalez #7422, assigned to Mobile Field Force (MFF) were on-duty in downtown Austin on the evening of August 1, 2020, a day with numerous protests in the area of Congress Avenue and 4th Street, at the site of the Garrett Foster memorial.

At approximately 8:22 PM, officers from Mounted Patrol, BPOT, and MFF began clearing a large crowd of protesters out of Congress Avenue north of its intersection with 4th Street, where this group was blocking all lanes of the roadway. As officers were attempting to clear the roadway, several officers were giving verbal commands to the protesters to back up, while sirens and whistles could be heard in the background. All officers were uniformed, and multiple police vehicles with emergency lights activated were in the immediate area. Officer Smart issued numerous loud commands telling the subjects to "move back," and at least once, loudly stated, "move back or you're gonna get arrested." The complainant, Sydni Beuhler, remained standing in the roadway as many other protesters either voluntarily moved out of the roadway, or were pushed back by officers. As numerous BPOT officers were moving their bicycles forward to move the crowd, Officer Smart approached Ms. Beuhler and instructed her loudly "Move back!" Ms. Beuhler remained where she was standing and loudly stated "Fuck you!"

Officer Smart wrapped his arms around Ms. Beuhler while facing her and pulled her back behind the line of BPOT officers, away from the other protesters. Officer Smart's BWC appears to have been inadvertently turned off at this point. Ms. Beuhler began yelling and struggling with Officer Smart while he tried to control her. Officer Gonzalez observed this struggle and approached to assist Officer Smart, who at that point had pushed Ms. Beuhler to the ground, on her knees, with her upper body over her thighs. Officer Gonzalez had control of Ms. Beuhler's right arm, and Officer Smart had control of her left. At that point, Officer Anne Allare #7755 (MFF, female officer) approached and briefly held Ms. Beuhler's left hand, as Ms. Beuhler offered no resistance to Officer Allare. Ms. Beuhler was yelling while officers were trying to handcuff her while loudly instructing her to "stop resisting." While trying to handcuff Ms. Beuhler, Officer Gonzalez placed his right knee on Ms. Beuhler's upper right back area and right side, while Officer Smart placed his left knee on the left side of Ms. Beuhler's upper back and then left side area. Once they were able to get her handcuffed, Officer Smart immediately stood Ms. Beuhler up and escorted her to a waiting patrol car. Officer Smart loudly asked if there was a female officer in the area. A male officer (Officer N. Martinez) stated that they didn't have time for a female. Officer Allare turned around to assist Officer Smart. At this point, Ms. Beuhler jumped up and down, stating that she needed a female officer. Officer Allare informed Ms. Beuhler that she was a female officer. Officer Allare quickly frisked Ms. Beuhler, who was then placed in the patrol car driven by Officer Martinez. Officer Smart provided information related to Ms. Beuhler's arrest to Officer Martinez. After this, Neither Officer Smart nor Officer Gonzalez had any further involvement with Ms. Beuhler.

The response to resistance incident involving Ms. Beuhler was reviewed by Officer Smart's chain-of-command, and was deemed to be within policy and state law. Internal Affairs (IA) also reviewed the response to resistance and found it to be objectively reasonable. There were other recommended policy violations listed on the Notice of Formal Complaint by the Office of Police Oversight, but IA did not observe any violations by either Officer Smart or Officer Gonzalez related to these additionally-listed policies during IA's investigation.

No Department policies or procedures were violated by the officer in relation to the complaint received.

Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.

<b>Gavin Smart</b>	Digitally signed by Gavin Smart Date: 2021.01.14 21:22:09 -06'00'	01/14/2021
Officer Signature		Date
<b>Thomas Howard</b>	Digitally signed by Thomas Howard Date: 2021.01.14 21:27:07 -06'00'	01/14/2021
Sergeant Signature		Date
<b>Adam Masters</b>	Digitally signed by Adam Masters Date: 2021.01.15 08:52:03 -06'00'	01/15/2021
Lieutenant Signature		Date
<b>CMDR Ryan Adam</b>	Digitally signed by CMDR Ryan Adam Date: 2021.01.17 13:09:25 -06'00'	1/17/2021
Commander Signature		Date
<b>Joseph Chacon</b>	Digitally signed by Joseph Chacon Date: 2021.01.21 10:49:39 -06'00'	1/21/2021
Assistant Chief Signature		Date

*Officer's signature does not imply any wrongdoing on behalf of the subject officer. Signatures are solely intended as documentation that each party in the chain of command, including the subject officer, has reviewed the complaint.*

**No portion of the complaint may be copied.**

**\*\*\*FOR INTERNAL AFFAIRS ONLY\*\*\***

Returned to Internal Affairs on: 1/25/2021

<b>Robert J. Richman #3258</b>	01/25/2021
Commander <del>Jerry Bauzon #2557</del>	Date
Professional Standards	

# **Exhibit 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER, §  
Plaintiff, §  
v. § CASE NO. 1:21-cv-00054-RP  
CITY OF AUSTIN, §  
OFFICER GAVIN SMART §  
(AP8674), and §  
OFFICER JAVIER §  
GONZALEZ (AP7422), §  
Defendants. §

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
OFFICER JAVIER GONZALEZ  
FEBRUARY 9, 2023  
Vol. 1 of 1  
(Reported Remotely)

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
OFFICER JAVIER GONZALEZ, produced as a witness  
at the instance of the Plaintiff, Sydni Beuhler,  
duly sworn, was taken in the above entitled and  
numbered cause on the 9th day of February 2023,  
from 10:35 a.m. to 3:31 p.m., before MENDY T.  
WILLIAMS, HIPAA-Certified and Texas Certified  
Shorthand Reporter, and reported by computerized  
oral stenography at Austin City Hall, 301 West  
2nd Street, Austin, Texas 78701, pursuant to the

<p>1 First Emergency Order Regarding the COVID-19 2 State of Disaster, and the provisions stated on 3 the record or attached hereto. 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 2</p>	<p>1 INDEX 2 PAGE 3 APPEARANCES.....3 4 INDEX.....4 5 EXHIBIT INDEX.....5 6 PROCEEDINGS.....6 7 8 OFFICER JAVIER GONZALEZ: 9 Direct Examination - Ms. McDaniel.....8 10 11 ERRATA.....199 12 JURAT.....200 13 COURT REPORTER'S CERTIFICATE.....201 14 CONCORDANCE.....Attached 15 EXHIBITS.....Attached 16 ASCII CD-R.....Attached to Certified Copy 17 18 19 20 21 22 23 24 25</p>	<p>Page 4</p>
<p>1 APPEARANCES 2 ATTORNEY FOR PLAINTIFF, SYDNI BEUHLER 3 Ms. Grayson McDaniel 4 Hendler Flores Law, PLLC 5 901 S. MoPac Expressway 6 Building 1, Suite #300 7 Austin, Texas 78746 8 Office: (512) 439-3200 9 Fax: (512) 439-3201 10 E-mail: gmcdaniel@hendlerlaw.com 11 12 ATTORNEY FOR DEFENDANTS, CITY OF AUSTIN, 13 OFFICER GAVIN SMART (AP8674) and OFFICER 14 JAVIER GONZALEZ (AP7422) 15 Mr. Monte Barton 16 City of Austin Law Department 17 Austin City Hall 18 301 W. 2nd Street 19 Austin, Texas 78701 20 Office: (512) 974-2268 21 E-mail: monte.barton@austintexas.gov 22 23 ALSO PRESENT: 24 Ms. Alexis Lopez, Paralegal - Hendler Flores 25 Mr. Nate Laningham, Videographer Ms. Mendy T. Williams, Court Reporter</p>	<p>Page 3</p>	<p>1 EXHIBIT INDEX 2 PLAINTIFF'S EXHIBITS 3 Exhibit Description Page 4 5 Plaintiff's Notice of Deposition 6 of Officer Javier Gonzalez.....14 7 5 Texas Commission on Law Enforcement 8 Personal Status Report - Javier 9 Gonzalez.....35 10 6 Austin Police Department - General 11 Offense Report.....91 12 13 7 Austin Police Department - Region 1 14 Patrol - Memorandum.....110 15 8 Internal Affairs Complete History - 16 Javier Gonzalez #7422.....150 17 18 9 Defendant Javier Gonzalez's Responses 19 to Plaintiff's First Set of 20 Requests for Production.....155 21 22 10 Defendant Javier Gonzalez's Responses 23 to Plaintiff's First Set of 24 Interrogatories.....168 25 26 11 Officer Javier Gonzalez - Body Cam 27 Video.....179</p>	<p>Page 5</p>

<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: We are now on the</p> <p>3 record. This begins media file number one in</p> <p>4 the deposition of Officer Javier Gonzalez in the</p> <p>5 matter of Sydni Beuhler verse [sic] City of</p> <p>6 Austin, et al in the United States District</p> <p>7 Court for the Western District of Texas; Austin</p> <p>8 Division; Case Number 1:21-cv-00054-RP.</p> <p>9 Today is Thursday, February 9, 2023,</p> <p>10 and the time is 10:35 a.m. This deposition is</p> <p>11 being taken remotely at the request of Hendler</p> <p>12 Flores Law. The videographer is Nate Laningham</p> <p>13 with Magna Legal Services, and the court</p> <p>14 reporter is Mendy Williams.</p> <p>15 Will counsel please state their</p> <p>16 appearances and whom they represent?</p> <p>17 MS. MCDANIEL: Yes. Good morning.</p> <p>18 My name is Grayson McDaniel. I'm with Hendler</p> <p>19 Flores Law and I represent Sydni Beuhler, the</p> <p>20 plaintiff.</p> <p>21 MR. BARTON: And I'm Monte Barton.</p> <p>22 I represent the defendants in this case,</p> <p>23 including Officer Gonzalez.</p> <p>24 MR. GONZALEZ: I'm Officer Gonzalez</p> <p>25 with the Austin Police Department.</p>	<p style="text-align: right;">Page 8</p> <p>1 BY MS. MCDANIEL:</p> <p>2 Q. Good morning, Officer Gonzalez.</p> <p>3 A. Good morning.</p> <p>4 Q. You and I haven't met. Let me start by</p> <p>5 introducing myself. My name is Grayson McDaniel.</p> <p>6 I'm an attorney with Hendler Flores Law. We</p> <p>7 represent the plaintiff in this suit, Sydni</p> <p>8 Beuhler.</p> <p>9 Could you introduce yourself by</p> <p>10 stating your full name for the record, please?</p> <p>11 A. My name is Javier Gonzalez with a Z at</p> <p>12 the end, no S's.</p> <p>13 Q. And just keep in mind that during this</p> <p>14 deposition you're essentially in front of the</p> <p>15 judge and the jury, so just please be up front.</p> <p>16 Let's see. What is your occupation?</p> <p>17 A. I'm an Austin police officer.</p> <p>18 Q. Do you have an officer number that you</p> <p>19 are identified by?</p> <p>20 A. Yes. I do.</p> <p>21 Q. Can you tell me what the number is,</p> <p>22 please?</p> <p>23 A. 7422.</p> <p>24 Q. Are you represented by an attorney at</p> <p>25 the deposition today?</p>
<p style="text-align: right;">Page 7</p> <p>1 MS. MCDANIEL: And I also have with</p> <p>2 me Alexis Lopez, our senior trial paralegal.</p> <p>3 She will be assisting me. She's also with</p> <p>4 Hendler Flores.</p> <p>5 THE COURT REPORTER: Okay. Officer</p> <p>6 Flores, if you'll raise your right hand.</p> <p>7 (Mr. Gonzalez complies.)</p> <p>8 THE COURT REPORTER: Do you solemnly</p> <p>9 swear that the testimony you are about to give</p> <p>10 in the cause hereinunder shall be the truth, the</p> <p>11 whole truth, and nothing but the truth, so help</p> <p>12 you God?</p> <p>13 THE WITNESS: Yes. I swear. Yes.</p> <p>14 THE COURT REPORTER: I'm sorry?</p> <p>15 THE WITNESS: Yes. I swear.</p> <p>16 THE COURT REPORTER: Thank you. One</p> <p>17 moment. Let me turn on my speaker. Okay. Go</p> <p>18 ahead.</p> <p>19 MS. MCDANIEL: Thank you.</p> <p>20 Whereupon,</p> <p>21 OFFICER JAVIER GONZALEZ, was called as a</p> <p>22 witness by the Plaintiff, Sydni Beuhler, and</p> <p>23 having been first duly sworn, testified upon his</p> <p>24 oath as follows:</p> <p>25 DIRECT EXAMINATION</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Yes. I am.</p> <p>2 Q. Do you recall -- Do you understand that</p> <p>3 you're a defendant in a civil case in this --</p> <p>4 A. I --</p> <p>5 Q. -- matter?</p> <p>6 A. -- understand that.</p> <p>7 Q. Do you recall providing a sworn set of</p> <p>8 responses to interrogatories and to requests for</p> <p>9 production?</p> <p>10 A. Are you asking me, or telling me?</p> <p>11 Q. I'm asking you. Do you recall providing</p> <p>12 a responses to interrogatories and to request</p> <p>13 for production in this case?</p> <p>14 A. I -- I guess. Yes. I would say yes.</p> <p>15 I'm -- I'm here because we have to follow this</p> <p>16 procedure. I've --</p> <p>17 Q. Okay.</p> <p>18 A. I've been made aware. I don't know</p> <p>19 these legal terms. I'm sorry.</p> <p>20 Q. That's okay. We'll --</p> <p>21 A. Yeah.</p> <p>22 Q. -- take a look at them later. Not a --</p> <p>23 not a problem. Are you aware that you must</p> <p>24 supplement your responses to interrogatories or</p> <p>25 requests for production if you realize that</p>

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1 something wasn't included or that you didn't  
 2 provide all the relative documents?  
 3 A. Yes. I understand that.  
 4 Q. And you understand that just a moment  
 5 ago you were sworn in under oath by the court  
 6 reporter?  
 7 A. Yes.  
 8 Q. And you understand that Ms. Williams is  
 9 a court reporter who will be transcribing all  
 10 the words that we are -- that are spoken during  
 11 the deposition today?  
 12 A. Yes.  
 13 Q. And you understand that this deposition  
 14 carries the same seriousness as if we were  
 15 sitting in a court of law right now with a judge  
 16 and jury present?  
 17 A. Yes.  
 18 Q. And do you agree to give your testimony  
 19 today to that degree of seriousness as if we  
 20 were sitting in a court of law?  
 21 A. Yes.  
 22 Q. So as we move forward today, I want to  
 23 be careful to try to create a very clean record  
 24 for anyone who's viewing or reading the  
 25 transcript of this deposition.

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1 Since we're over an electronic  
 2 medium, I'll try to be very careful to let you  
 3 complete your answer before I ask my next  
 4 question, and if you will do the same, allow me  
 5 to finish my question before you start an answer,  
 6 that way we can hopefully not talk over each  
 7 other and we can create a clean record today.  
 8 If there is ever a time that I ask  
 9 you a question that you don't understand what  
 10 I'm asking, please feel free to ask me to  
 11 clarify the question. I am happy to do that at  
 12 any time. Okay?  
 13 A. (Witness moves head up and down.)  
 14 Q. Are you taking any medications that  
 15 would affect your ability to give full and  
 16 accurate testimony today?  
 17 A. No, ma'am.  
 18 Q. Do you have any medical issues that  
 19 would prevent you from providing full and  
 20 accurate testimony today?  
 21 A. No, ma'am.  
 22 Q. If there is ever a time today that you  
 23 need to take a break or that you want to take a  
 24 break, I'm always happy to accommodate you, so  
 25 just please let me know.

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1 The only thing I would ask is that  
 2 if I've just asked you a question, then please  
 3 provide your answer before taking a break. Do  
 4 you have any planned breaks that you need to  
 5 take today?  
 6 A. Do I have any planned breaks? I'm going  
 7 by ear. I'm -- I'm ready to go. I feel --  
 8 Q. Okay.  
 9 A. -- I'm ready --  
 10 Q. I mean, like, any appointments or  
 11 anything specific that --  
 12 A. I have work at four, but they're aware  
 13 that -- that I have this going on, so they're  
 14 being flexible.  
 15 Q. Okay. Thank you. Let's see. Where are  
 16 you located right now?  
 17 A. I'm here at City Hall currently. I  
 18 don't know the exact address, but we're off of  
 19 Cesar Chavez, downtown Austin.  
 20 Q. I know the building. And Mr. Barton is  
 21 in the room with you?  
 22 A. Yes. He is.  
 23 Q. And is anyone else there?  
 24 A. No, ma'am.  
 25 Q. Are you connected to Zoom through a

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1 personal computer?  
 2 A. It's not. It's not personal. It was  
 3 provided to me.  
 4 Q. Do you have a screen that's large enough  
 5 that if we put up some documents that you will  
 6 be able to read the -- the -- read them from the  
 7 screen?  
 8 A. Yes. There's a secondary screen here.  
 9 Q. Okay. Let's see. Do you have any open  
 10 applications or anything running on the computer  
 11 right now other than Zoom?  
 12 A. Not -- not to my knowledge. This is the  
 13 only window up.  
 14 Q. And you're not communicating with anyone  
 15 over a messaging app or any other means of  
 16 communication like that, correct?  
 17 A. (Audio quality interruption.)  
 18 Q. What was that?  
 19 A. No. I'm not.  
 20 Q. How well do you remember the events  
 21 relating to this case?  
 22 A. Decent. Just decent.  
 23 Q. Okay. I want to share the exhibits for  
 24 the deposition today via Dropbox link. Alexis,  
 25 our paralegal is going to put a link or a

<p style="text-align: right;">Page 14</p> <p>1 Dropbox folder as -- that we can -- you can                  2 access as we put exhibits in it to use today.                  3           And so just to kind of get that                  4 process set up, I'm going to ask her to start by                  5 placing plaintiff's Exhibit Number 4 in the                  6 Dropbox folder.                  7           MS. MCDANIEL: Ms. Williams, we are                  8 starting with Plaintiff's Exhibit 4 because we                  9 got to Plaintiff's Exhibit 3 in our prior                  10 deposition in this case and we want to keep                  11 numbering the exhibits consecutively, and so                  12 I'll wait for that exhibit to arrive.                  13           (Plaintiff's Exhibit No. 4 marked                  14           and presented to Witness for                  15           identification.)                  16           Q. (BY MS. MCDANIEL): And Officer                  17 Gonzalez, can you confirm on the record that you                  18 have that access to that Dropbox folder and that                  19 you can see Exhibit 4 now?                  20           A. Something popped up on my window and I'm                  21 no longer seeing it. It's not --                  22           Q. Let's --                  23           A. -- here.                  24           Q. -- wait a minute and make sure we                  25 can, yeah, get that set up. I think you need to</p>	<p style="text-align: right;">Page 16</p> <p>1           Q. (BY MS. MCDANIEL): So let's see. Can                  2 you see my screen?                  3           A. Yes.                  4           Q. And can you see that we're looking at a                  5 document that's stamped Plaintiff's Exhibit 4?                  6           A. Yes.                  7           Q. Okay. And so Plaintiff's Exhibit 4 is                  8 plaintiff's notice of deposition for Officer                  9 Javier Gonzalez. Is this the deposition by --                  10 notice by which you are here -- appearing here                  11 today?                  12           A. Yes, ma'am.                  13           Q. I will take that down off the screen.                  14 So now we know we can do that one. We can do                  15 that. Let's see. So have you had any previous                  16 experience testifying, providing sworn testimony?                  17           A. I've gone to ALR hearings which is more                  18 administrative for DWI's, and I went to I                  19 believe only one deposition in the past.                  20           Q. What's -- What does ALR stand for?                  21           A. It's a -- it's a hearing, a license                  22 revocation. It's an acronym license --                  23           Q. I get it.                  24           A. -- revocation, and I can't think of the                  25 A right now.</p>
<p style="text-align: right;">Page 15</p> <p>1 click on the chat function at the bottom of your                  2 Zoom screen --                  3           A. Got it. It's there. I see the link.                  4           Q. I would go ahead and click on the link                  5 and see if you can see an exhibit in there.                  6           A. It's loading up.                  7           Q. Okay.                  8           MR. BARTON: Can you click that just                  9 to view it, or -- No. I don't guess so, the top                  10 part.                  11           THE WITNESS: Or this one?                  12           MR. BARTON: Yeah, yeah. Okay.                  13           A. I have eyes on that. It's on the page.                  14           Q. (BY MS. MCDANIEL): Okay. Is the type                  15 large enough for you to read the exhibit?                  16           A. Yes, ma'am.                  17           Q. Okay. Let's see. So I'm going to try                  18 to share my screen and display what is                  19 Plaintiff's Exhibit 4. Let's see. Where do I                  20 share my screen?                  21           MR. BARTON: Start -- I just -- I                  22 thought I --                  23           MS. MCDANIEL: There we --                  24           MR. BARTON: -- two monitors in                  25 here.</p>	<p style="text-align: right;">Page 17</p> <p>1           Q. I get it. And you've done one                  2 deposition; was that a criminal case, or a civil                  3 case?                  4           A. Civil.                  5           Q. How long ago was that?                  6           A. Maybe three to five years ago.                  7           Q. Okay. Was that something that you did                  8 as part of your job? Is providing sworn                  9 testimony part of your job?                  10           A. It was related to my job, so therefore I                  11 had to do it.                  12           Q. How many times do you think you've                  13 testified in a -- like, live in a court of law?                  14           A. An actual courtroom, never. Yeah.                  15           Q. Have you ever been party to a civil                  16 lawsuit before?                  17           A. No, ma'am.                  18           Q. The deposition that you gave for the                  19 civil case, what was that in relation to?                  20           A. I made an arrest for a DWI -- and I made                  21 an arrest, and the other party -- there was also                  22 a collision involved. The other party was hurt,                  23 and I made the arrest. Later in the future, the                  24 person that was hurt I believe was trying to sue                  25 the individual that I arrested.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. So you provided testimony about that 2 accident and what occurred? 3 A. Pretty much. 4 Q. How did you prepare for your deposition 5 today? 6 A. I went over my supplement, which some 7 people call reports, and I spoke with the 8 attorney here and that's pretty much it. 9 Q. What else? Anything else? 10 A. Just reviewed the -- the document that 11 you showed me. I've seen that. I spoke to the 12 attorney here. I saw another deposition to 13 Officer Allare's, and that was it. 14 Q. When did you -- 15 A. The transcript. 16 Q. A transcript? 17 A. Yes, ma'am. 18 Q. Did you meet -- When did you meet with 19 your attorney to prepare for the -- our 20 deposition? 21 A. Yesterday. 22 Q. For about how long? 23 A. Right at about two hours. Maybe two 24 hours. 25 Q. Did you meet at City Hall?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I thought, wow, this was so long ago and 2 then I was, like, okay, like -- 3 Q. What else? 4 A. That's it. 5 Q. Did you speak to Officer Smart prior to 6 your deposition about the case? 7 A. No, ma'am. 8 Q. So as part of your police training, have 9 you learned how to provide testimony? 10 A. Not in -- not -- To my knowledge, not an 11 actual course. It was probably talked about a 12 couple a times throughout the academy, but I 13 don't remember, like, a training block where 14 they taught us or we did role play or anything 15 like that. 16 Q. What about courtroom demeanor; have you 17 had any training in that? 18 A. Same thing. It -- it was try to dress 19 professional, look sharp. That's probably all I 20 can recall. 21 Q. Let's see. As part of your officer 22 training, have you had, like, training on how to 23 present your testimony as being persuasive or 24 anything like that? 25 A. No, ma'am.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Yes. 2 Q. Did you speak with Anne -- I think she's 3 former Officer Anne Allare before your 4 deposition? 5 A. I've spoke to her. Not today. Not 6 recently. 7 Q. I should say in connection with this 8 case. 9 A. Yes. 10 Q. You have. When would -- When did you 11 most recently speak with her? 12 A. Months ago. Probably two, three -- more 13 than two, three months ago when she got a notice 14 and asked me about it, and I didn't know about 15 it and she brought it up to me, and then shortly 16 after that, then somehow, I found out via email. 17 I don't remember, but she found out 18 before I did somehow. 19 Q. What -- what did y'all think when you 20 found out that this was a -- going to be a -- a 21 civil case? 22 A. I was, like, you know, my -- It's not -- 23 I don't know what she thought. I know what I 24 thought -- 25 Q. What did you --</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. And what about completeness; is it 2 important to disclose all the important facts 3 related to whatever you're testifying about? 4 Have you got any training about that? 5 A. No, but I would say it's important. 6 Yes. 7 Q. If you were asked a question under oath 8 and there was a bad fact or something that you 9 didn't want to talk about but it was relevant, 10 would you agree that it's important to mention 11 those things even if they're not something that 12 you would like to discuss? 13 A. I've been -- Going back to the academy, 14 I was told always tell the truth, so I'd be 15 telling the truth. Either I know or I don't 16 know. 17 Q. What about personal knowledge? Have you 18 ever been taught about or trained in what it 19 means to have personal knowledge of something? 20 A. I don't remember learning that exact 21 definition. I mean, in my head I can come up 22 with maybe what that means to me, but I don't -- 23 that's not a term that I use daily or recall, 24 like, daily, you know, personal knowledge, 25 personal knowledge.</p>



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1 Like, I'm not familiar with -- with  
2 that.  
3 Q. Well, when you say you can come up in  
4 your head with what it would mean to you, can  
5 you describe kind of what that would mean?  
6 A. Personal knowledge. Something that I  
7 either know previously or I know in the moment  
8 that I'm -- I'm assessing with my eyes.  
9 Q. Right. Absolutely. Like, as opposed to  
10 something that someone else told you, for  
11 example?  
12 A. Yes.  
13 Q. And -- and something that's -- Do you  
14 agree that personal knowledge is different than  
15 an opinion?  
16 A. I would say yes. Like, my personal  
17 knowledge is my individual to me. Then also my  
18 opinion is individual to me, but then your  
19 opinion is individual to you. So that's kinda  
20 [ph.] three things somewhat.  
21 Q. Sure. Like, we could have personal  
22 knowledge -- we could both have personal  
23 knowledge of the same thing like what's  
24 happening here but have two opinions about, you  
25 know, how fun it is?

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1 A. I agree.  
2 Q. Okay. So -- Okay. And are you familiar  
3 or have you had training or experience with  
4 using documents or video to refresh your  
5 knowledge of things that happened in the past?  
6 A. Just basic stuff. Nothing like I went  
7 to, like, a training block, but I know being a  
8 police officer for almost 10 years, I -- I know  
9 I've learned my way around on how to touch up on  
10 reports and videos and stuff like that.  
11 Q. I'm really surprised that you have not  
12 had a lot of courtroom testimony. Why is that?  
13 A. I don't pick that. I don't decide that.  
14 Q. Oh. Is it common for officers in  
15 your -- your group -- whatever group that you're  
16 assigned to cannot -- Y'all don't do a lot of  
17 testifying? Is that correct?  
18 A. I don't know what they do. I've been on  
19 multiple shifts. I don't really keep up. I  
20 know that officers do go to court for, like,  
21 traffic citations. I know that is more common.  
22 I've been called up for traffic citations a  
23 couple a times but then they just dismiss you at  
24 times. That's -- that's my memories.  
25 Q. I've done that. I've been there. I've

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1 done -- I've served as a volunteer prosecutor  
2 before on those trials and I do know they often  
3 get dismissed because the person won't -- the  
4 person who got the traffic citation will decide  
5 not to have a trial.  
6 Do you not give a lot of traffic  
7 citations?  
8 A. As needed. I don't -- As needed.  
9 That's if I need to give a ticket. If I think  
10 there's something that's a -- warrants a -- a  
11 citation I will.  
12 Q. What's your day-to-day -- Like, are --  
13 Do you do a lot of traffic work, or what is your  
14 day-to-day kind of responsibilities and  
15 duties --  
16 A. I work in Edward sector. I'm a patrol  
17 officer. We're a -- what they call a call-  
18 driven sector which means a lot of people call  
19 us and we go to them.  
20 So as far as running traffic and  
21 things like that, that's gonna [ph.] -- that  
22 time is limited because there's -- where I work,  
23 there's other things that are taking place like  
24 violent crimes and other stuff of that nature  
25 that has higher priority.

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1 Q. Where is Edward sector?  
2 A. Northeast Austin.  
3 Q. And with those violent crimes, you  
4 haven't had a lot of experience when they go to  
5 trial and you're asked to be a witness?  
6 A. I can't think of any at this moment. I  
7 know that they sometimes issue subpoenas and  
8 they either call you or they don't and then  
9 somehow, they -- they take care of them on their  
10 own and then I don't know what happens after  
11 that.  
12 Q. Has there been any change in the way  
13 that operations are conducted now that there's  
14 a -- José Garcia is the DA for Travis County now?  
15 A. Yeah. I don't know what you're asking  
16 me.  
17 Q. I guess I just know that in the last  
18 couple of years that José Garcia has become the  
19 Travis County District Attorney, he was a  
20 prosecutor for the city, and I'm just wondering  
21 if you've noticed if there's been any change  
22 like more trials, fewer trials. I'm just  
23 curious.  
24 A. I don't pay --  
25 Q. I know that Margaret Moore was the prior

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1 district attorney.  
 2 A. I don't pay -- I don't pay attention to  
 3 that.  
 4 Q. Okay. I'm just curious.  
 5 A. I know -- I know who you're speaking of,  
 6 but I don't pay attention to -- to that -- those  
 7 numbers.  
 8 Q. Okay. I just was curios. What made you  
 9 want to become a police officer?  
 10 A. I -- I -- When I was a kid, I wanted to  
 11 do two things. I wanted to be in the military,  
 12 and I wanted to be a police officer. One of my  
 13 dad's friends, my dad actually built his house,  
 14 was a very well-known Austin police officer and  
 15 I thought it was cool.  
 16 It was -- I'd see him here in the  
 17 city. He'd go to my school, do presentations  
 18 and stuff like that and I grew up in a house  
 19 that was by the book, you know. We follow the  
 20 rules. Police officers are by the book.  
 21 They follow the rules and it just  
 22 seemed like something I wanted to do.  
 23 Q. And you got to do both, right; military  
 24 and --  
 25 A. Yes --

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1 Q. -- police officer?  
 2 A. Yes. I did.  
 3 Q. And was your -- Did you say your father  
 4 built his friend's house?  
 5 A. Yeah.  
 6 Q. So your father built houses here in  
 7 Austin?  
 8 A. Yeah. My dad did construction. He  
 9 still does. He's still working.  
 10 Q. Wow. And so how long have you been a  
 11 police officer?  
 12 A. With the Austin Police Department I've  
 13 been here almost 10 years on the street, not  
 14 counting the academy. Prior to that I was a  
 15 police officer at Austin Community College. I  
 16 was there about three and a half years.  
 17 So whenever I was 25, which it may  
 18 be O9-ish [sic] or 2010-ish, somewhere around  
 19 that.  
 20 Q. Did you grow up  
 -- so you grew up in  
 21 Austin; is that correct?  
 22 A. Yes, ma'am.  
 23 Q. And where did you go to high school?  
 24 A. I went to McCallum High School.  
 25 Q. I know that high school well. And did

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1 you go into the military after high school, or  
 2 did you go to college, or did you work?  
 3 A. I was a senior when September 11  
 4 happened, and I went immediately that -- that  
 5 summer that July. I graduated in May 2002, and  
 6 I was already in boot camp July of 2002.  
 7 Q. And what branch of the military did you  
 8 go into?  
 9 A. Marine Corps. I was in a reserve unit.  
 10 Q. Did you serve, or did you -- Was your  
 11 service mainly here in Austin, or where did you  
 12 have boot camp?  
 13 A. I had boot camp in San Diego, then after  
 14 that I went to my specialized school, my MOS  
 15 school in Camp Pendleton, and then after that I  
 16 was put back on reserve status. We would do our  
 17 monthly drills and then our yearly training in  
 18 the summer and then I was activated one time to  
 19 go to Iraq.  
 20 That was I think O5, O6 [sic].  
 21 That's off memory. I think 2005 to O6.  
 22 Q. And how long were you deployed to Iraq?  
 23 A. I was there around seven months.  
 24 Q. Did you already know how to operate  
 25 firearms when you entered the military, or did

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1 you learn firearms in the military?  
 2 A. I -- I -- Real firearms, I had never  
 3 shot any prior to the military. I had, you know,  
 4 through friends and family and we had at one  
 5 time either a BB gun or a pellet gun. That --  
 6 that's all I knew.  
 7 I didn't -- I didn't know any --  
 8 anything more or anything less. A sling shot --  
 9 Q. So you learned about firearm safety in  
 10 the military?  
 11 A. Yes.  
 12 Q. How long were you in the Marine Corps?  
 13 A. The contract -- the -- the -- the  
 14 contract was a six-year reserve contract and  
 15 then you had two years of IRR. Those two years  
 16 of IRR is time that they can call you back up,  
 17 but after I -- I met -- I did my six years, I  
 18 want to say I stayed about another year to year  
 19 and a half on my own.  
 20 And then I -- I left on -- on my  
 21 terms, but I -- I stayed -- I exceeded the six-  
 22 year limit. I do know that.  
 23 Q. Did you feel like you achieved what you  
 24 wanted to achieve in the military?  
 25 A. I think I -- I don't -- I don't think --

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1 There was nothing -- I don't think there was  
 2 anything I wanted to achieve. I just knew that  
 3 it was time to move forward and just that was  
 4 a -- just a different chapter in my life.  
 5 Q. It seems like it would be hard to join  
 6 after 9/11. It just seems like that's -- you  
 7 know, I hope that you were able to accomplish  
 8 whatever it was that you wanted to accomplish  
 9 after that horrible event happened.  
 10 A. I'm happy to be here.  
 11 Q. I'm glad you're here, too. Tell me  
 12 about any law enforcement experience that you  
 13 have had from the time you graduated from  
 14 McCallum until the time that you went to the  
 15 police academy?  
 16 A. From high school all the way to the  
 17 police academy?  
 18 Q. (Ms. McDaniel moves head up and down.)  
 19 A. I -- While I was in the reserve, I took  
 20 criminal justice courses and then I became a  
 21 police officer through the academic route and  
 22 pretty much what it consists of is you gotta  
 23 [ph.] -- Can you hear me?  
 24 The Internet shows that it's  
 25 unstable.

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1 Q. I can hear you really well, but it does  
 2 seem like we're having a little bit of tech  
 3 issues 'cause you're a little -- I can't -- your  
 4 picture is muted.  
 5 A. I think we're good again. So -- And I  
 6 took the academic route to become a police  
 7 officer. So you have to get a associates in  
 8 criminal justice. Then after that, there's a  
 9 course that Austin Community College offers.  
 10 They call it the peace officer  
 11 sequence, and those are four other courses that  
 12 you take on top of that. So those four courses  
 13 prepare you to become a basic police officer in  
 14 the state of Texas, the most minimal  
 15 requirements, and then --  
 16 Q. And what's your -- Oh, go ahead.  
 17 A. I was gonna say so -- so basic  
 18 requirements. Then you apply to different  
 19 police departments and then they train you on  
 20 either their policy or their tactics, whatever  
 21 that specific department uses.  
 22 Q. And what was your father's friend's name  
 23 who was the officer?  
 24 A. Robert Martinez.  
 25 Q. Did Mr. Martinez advise you as you were

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1 beginning to start your career as a police  
 2 officer?  
 3 A. Towards my adult life we didn't see him  
 4 as much, but while I was in -- in my specialized  
 5 school, he was dying of cancer, and he relayed  
 6 to my mom and my dad that he was very proud of  
 7 me.  
 8 Q. That must've meant a lot. So is the  
 9 associate program -- To get the associates  
 10 degree in criminal justice and then to the next  
 11 part, how long of a process is that?  
 12 A. It can be immediate, next semester, just  
 13 depending on availability of classes if there's  
 14 room or not.  
 15 Q. And so how did you get employed by  
 16 Austin Community College as an officer?  
 17 A. Once I completed my peace officer  
 18 license, I applied with them because I'm a  
 19 certified peace officer in the state of Texas  
 20 and then they did a interview application oral  
 21 board and I got hired.  
 22 Q. And is -- is Austin Community College  
 23 the -- Did they sponsor you to go to the police  
 24 academy?  
 25 A. No. I -- I paid on my own either G.I.

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1 bill or my own money.  
 2 Q. Okay. And did you go to the police  
 3 academy before you were hired by Austin  
 4 Community College?  
 5 A. I went the academic route to become a  
 6 police officer, but later when I went -- joined  
 7 Austin police, I still went through the full  
 8 eight-month police academy. Because it was not  
 9 considered a municipality, I had to go to the  
 10 full academy like I had zero experience.  
 11 Q. Oh, I see. I see.  
 12 A. Yeah.  
 13 Q. And did you first come to APD -- You  
 14 said it was about two years that you were with  
 15 Austin Community College. So would that be  
 16 about 2010 that you came to APD, or what year  
 17 was that?  
 18 A. I -- I'm going off memory. I can tell  
 19 you off memory, but I know that I did more than  
 20 two years at ACC. You said two years. I said  
 21 earlier maybe three and a half, four, somewhere  
 22 around there.  
 23 Q. What kind of work did you do at ACC?  
 24 A. There was a -- a lot of police presence  
 25 answering questions. Helping students from all

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1 walks of life get from point A to point B most  
2 of the time.  
3 Q. And why did you decide to go to AP -- to  
4 Austin Police Department from ACC?  
5 A. Because I had completed my bachelor's  
6 degree and I had friends that were there and  
7 it's the biggest agency and it's my hometown and  
8 I no longer needed a flexible schedule because  
9 college was done now.  
10 So now I could -- I was flexible to  
11 work whenever.  
12 Q. Do you just still do -- So it sounds  
13 like -- Did you start out doing street-level  
14 policing, or did you start out in a call based  
15 move?  
16 A. Well, street level is everybody, but  
17 when I said the term call-driven sector, you're  
18 still a street level police officer. It's  
19 just -- depends on the demand of that sector.  
20 So you can go to other sectors where, like --  
21 For example, if I go to work today at four p.m.,  
22 I look at my screen.  
23 There's a cue of all the people that  
24 have called 911. Now in my sector, I might go  
25 in there at four p.m. and there might be 15 to

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1 20 calls holding of people that need us that  
2 have been waiting for us to help.  
3 I can go to another sector within  
4 the city where there might be two or three calls  
5 holding, or none at all. So that's what -- what  
6 the term call-driven sector is.  
7 Q. I see. Interesting. So let's see.  
8 MS. MCDANIEL: I'm gonna ask Alexis  
9 to please pull up -- place Plaintiff's Exhibit  
10 Number 5 in the Dropbox folder, and once she  
11 does that, I will share my screen. There it is.  
12 (Plaintiff's Exhibit No. 5 marked  
13 and presented to Witness for  
14 identification.)  
15 Q. (BY MS. MCDANIEL): Are you able to pull  
16 up this document and view it? That --  
17 A. Yeah. There -- there's one. Actually,  
18 I don't know if the newest one is here. The old  
19 one is here from 10:43. There's nothing fresh  
20 here.  
21 Q. Oh, really? It's already in my folder,  
22 but --  
23 A. Here. I'll -- I'll hit the chat and see  
24 if it refreshes it.  
25 Q. Yes. Try that.

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1 A. There is a --  
2 Q. That's what I did.  
3 A. There is a 10:43, but I see your page.  
4 Q. But you don't have this exhibit yet?  
5 A. No, ma'am. Give me a second.  
6 Q. Okay.  
7 A. Yeah. It's -- I'm not seeing it here.  
8 The same one from 10:43 is here in the call text,  
9 the chat box, but nothing from eleven a.m. is  
10 here.  
11 MS. LOPEZ: It wouldn't be a new  
12 link in the chat box. If your browser is open  
13 and you can see the first exhibit, you can just  
14 refresh your browser --  
15 THE WITNESS: Okay.  
16 MS. LOPEZ: -- it will appear.  
17 MS. MCDANIEL: Thank you, Alexis.  
18 MS. LOPEZ: Absolutely.  
19 MR. BARTON: That's the Zoom link.  
20 We were in that. You need to click that arrow  
21 to the left.  
22 THE WITNESS: Right here?  
23 MR. BARTON: Yeah, and then  
24 Exhibit --  
25 THE WITNESS: This is the same one

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1 from earlier, the --  
2 MR. BARTON: Oh, it just doesn't  
3 look -- Yeah. Maybe do the refresh here.  
4 A. There's Exhibit 5 now. It -- it's here.  
5 I see it.  
6 Q. (BY MS. MCDANIEL): Okay. Excellent.  
7 I'll share my screen. Is this the same document  
8 that you can see? I'll try and make it a little  
9 bigger.  
10 A. It appears to be the same one. Yes,  
11 ma'am.  
12 Q. And do you recognize this document  
13 that's -- we're going to mark Plaintiff's  
14 Exhibit Number 5?  
15 A. Let me zoom in a little bit.  
16 Q. And I know it's only the first page.  
17 It's a 26-page document and you should have the  
18 entire document. I just meant that you might  
19 just be looking at the first page.  
20 A. I'm trying to make --  
21 MR. BARTON: I don't know. It's  
22 not --  
23 THE WITNESS: It's --  
24 MR. BARTON: -- operating.  
25 A. I can somewhat see it now if I scoot

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1 my -- my head towards it.  
 2 THE WITNESS: Oh, this one is hers.  
 3 This one is mine. Oh, actually, this one is  
 4 mine.  
 5 A. Yes, ma'am. I can see the Exhibit 5.  
 6 Q. (BY MS. MCDANIEL): Okay. Do you  
 7 recognize that as your Texas Commission on Law  
 8 Enforcement personal status report?  
 9 A. Correct. That's what it says up top.  
 10 Q. Okay.  
 11 MS. MCDANIEL: And Counsel, are you  
 12 willing to stipulate that this file produced by  
 13 the city as COA7298 to 7323 that states in all  
 14 caps CONF which means it's confidential, and  
 15 then the -- the file is titled Gonzalez Training  
 16 Record?  
 17 Can you stipulate that the document  
 18 is Officer Gonzalez's personal status report and  
 19 that it is authentic?  
 20 MR. BARTON: Yes.  
 21 MS. MCDANIEL: Thank you.  
 22 Q. (BY MS. MCDANIEL): Let's go through a  
 23 couple of things on the document. It shows here  
 24 that you received your peace officer license in  
 25 2008; is that correct?

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1 A. According to this document, yes.  
 2 Q. Okay. Did you do ride-along field  
 3 training for your employment as a peace officer?  
 4 A. Where? Austin Community College, or  
 5 Austin police?  
 6 Q. Austin Community College first.  
 7 A. They had a -- a entry-level FTO program  
 8 a couple of months, you know, where they taught  
 9 us basics. Yes.  
 10 Q. Is FTO -- What does that stand for?  
 11 A. Field training officer.  
 12 Q. And then did you do ride-along training  
 13 in -- when you went to Austin Police Department?  
 14 A. I did a ride-out as a civilian and then  
 15 later I was on the FTO program, and it was one  
 16 ride-out as a civilian.  
 17 Q. And I'm going to -- I'm scrolling down  
 18 to the second page. It states that you have  
 19 been awarded multiple licenses: Peace officer  
 20 license in 2008, basic peace officer in 2009,  
 21 immediate peace officer in 2013, advanced peace  
 22 officer in 2014, and master peace officer in  
 23 2018.  
 24 Are those all accurate to your  
 25 knowledge?

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1 A. According to this document, yes.  
 2 Q. Is -- is master peace officer the -- the  
 3 highest that you can achieve as far as getting  
 4 awarded a peace officer's certificate?  
 5 A. That's it. That's the highest.  
 6 Q. And what were some changes in your role  
 7 and responsibilities that came with becoming a  
 8 basic peace officer instead of a peace officer?  
 9 A. Repeat the question, please.  
 10 Q. What -- Were there any changes in your  
 11 role or responsibilities when you became a basic  
 12 peace officer in 2009 coming from being just a  
 13 peace officer?  
 14 A. So from -- You're asking from basic  
 15 peace officer --  
 16 Q. From -- from just peace officer and then  
 17 it looks like the first -- the first certificate  
 18 that you got -- first award was that you became  
 19 a basic peace officer.  
 20 A. Correct.  
 21 Q. What changes in your role and  
 22 responsibilities came with that?  
 23 A. That I'm a licensed police officer in  
 24 the state of Texas from -- from a civilian.  
 25 Then the next level up would be basic peace

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1 officer in the state of Texas. Now I'm a peace  
 2 officer and I can make arrests and enforce the  
 3 law.  
 4 Q. Okay.  
 5 A. So I'm a police officer now.  
 6 Q. And -- and then when you went to  
 7 intermediate peace officer, were there any  
 8 changes that come with that change in your role?  
 9 A. Throughout all these different titles  
 10 that they have here, I'm a police officer.  
 11 That's something that they use internally.  
 12 Sometimes I know it's -- I don't even know that  
 13 it's happening.  
 14 They -- The reason those things  
 15 change behind the scenes with TCOLE is they're  
 16 gathering how many hours of training I have or  
 17 how much time I've been a police officer. So  
 18 sometimes I didn't find out that I was getting  
 19 these `til [ph.] months or years later.  
 20 Q. I see.  
 21 A. Yeah. So this is -- I don't even -- I  
 22 don't -- I never just randomly log in and look  
 23 at this form. The only time I was aware of the  
 24 master peace officer license was when I  
 25 completed my master's degree and I submitted

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1 that, and I knew that it -- I was gonna be  
 2 getting that.  
 3 Q. So you -- What master's degree did --  
 4 How -- What degrees do you have?  
 5 A. I have an associates in criminal  
 6 justice, then I have a bachelor's in criminal  
 7 justice and then I have a master's in criminal  
 8 justice.  
 9 THE VIDEOGRAPHER: Pardon my  
 10 interruption really quick. This is the  
 11 videographer. Mr. Gonzalez, can I just get you  
 12 to angle the -- the camera down a little bit  
 13 `cause we're just getting the top of your head  
 14 right now? Thank you so much.  
 15 THE WITNESS: Sorry about that.  
 16 THE VIDEOGRAPHER: All good.  
 17 MS. MCDANIEL: Thank you.  
 18 Q. (BY MS. MCDANIEL): Where did you  
 19 receive your master's degree?  
 20 A. Lamar University. It's a -- a credit  
 21 college, but it was a online program. They're  
 22 out of --  
 23 Q. Okay.  
 24 A. -- Beaumont, Texas.  
 25 Q. And what about your bachelor's degree?

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1 A. Texas State in San Marcus.  
 2 Q. I have a degree from there. And so I'm  
 3 scrolling down a little bit. It looks like this  
 4 document provides either all or a lot of your  
 5 training records. It looks like you have over  
 6 5,000 hours of training; does that sound correct?  
 7 A. Where is the 5,000? Way at the bottom?  
 8 Q. I'm way at the bottom. Total hours.  
 9 It's, like, if you -- if you add these two up, I  
 10 believe they say total hours, 5,645.  
 11 A. Correct. According to this document,  
 12 yes.  
 13 Q. Do you -- How do you decide which  
 14 trainings you take?  
 15 A. Well, there's -- there's basic training  
 16 that the department requires that are must haves  
 17 and then you have certain hours that you have to  
 18 do per year that you have to do through the  
 19 department.  
 20 And then some officers, if there's  
 21 a -- a training of something that -- an  
 22 interesting type of training that they want to  
 23 learn, they can ask for permission to take that  
 24 training.  
 25 Q. Well, what -- what courses have you

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1 asked for permission to take?  
 2 A. I can't recall any. Maybe a few. I --  
 3 I -- I think there was a -- I -- I don't know.  
 4 Q. Do you have any particular areas you  
 5 wanted to get more training on that you can  
 6 recall?  
 7 A. No, but I -- I want to say maybe I -- I  
 8 signed up for maybe -- I -- I -- I can't  
 9 remember. I -- I know I probably volunteered  
 10 for one or two and I was, like, hey, that sounds  
 11 interesting, I'm gonna go, but I -- I can't tell  
 12 you those. I don't know.  
 13 Q. Not sure. I understand. And so some of  
 14 your trainings are mandatory and some are  
 15 elective; is that correct?  
 16 A. Yes.  
 17 Q. Let's see. I noticed that for -- So  
 18 let's see. It goes by years. It's 2015 to 2017,  
 19 2017 to 2019, continuing 27 [sic] to 2019. I  
 20 noticed that you had this 10 hours of crowd  
 21 control training in 2018, but that was the only  
 22 crowd control training that I saw in this record.  
 23 Does -- Have you not taken any other  
 24 crowd control courses because none have been  
 25 offered?

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1 A. I'm trying to find what you said here  
 2 first.  
 3 Q. Sure. Absolutely. Take your time. I'm  
 4 looking -- I was on page 3 about midway through,  
 5 course number 3340, crowd control, 10 hours.  
 6 MR. BARTON: Can you give the Bates  
 7 number?  
 8 MS. MCDANIEL: Sure. It's page  
 9 7300. COA00730 [sic] --  
 10 A. I found it. I found it. 11/26/2018.  
 11 Q. (BY MS. MCDANIEL): Uh-huh. I just  
 12 noticed that that was the only crowd control  
 13 training that appears on this record. Have you  
 14 only taken one crowd control course because that  
 15 was the only time it was offered?  
 16 A. Well, this is on paper something that I  
 17 took. I do recall maybe a few times throughout  
 18 training -- Well, every day when we go to work  
 19 sometimes, we'll go over PowerPoints or  
 20 trainings that just get you kinda more like a  
 21 Cliff Notes of what the training -- prior  
 22 training was in order to prepare just for it to  
 23 be fresh knowledge again.  
 24 So I remember maybe seeing one to three  
 25 PowerPoints at some point throughout my career

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1 where they go over formations and things like  
 2 that, but that's just more, like, something that  
 3 the supervisor is, like, hey, guys, let's touch  
 4 up on this training `cause you might need it and  
 5 this is -- this -- these are the basics, do  
 6 y'all remember this. That's it.  
 7 Q. And when they say that you took 10 hours  
 8 of training, so how does that work? Is it kind  
 9 of -- Like, do you go to the academy every year  
 10 and it's kinda like three weeks or six weeks of  
 11 school and you go every day, and you have  
 12 different courses --  
 13 A. How often --  
 14 Q. -- or do you take these trainings at  
 15 home, or --  
 16 A. Some -- something like this, I -- I -- I  
 17 would imagine it was in person at the academy.  
 18 That sounds like -- I don't see that -- I  
 19 don't -- I don't see me doing that from home.  
 20 Q. Are some of these trainings that you can  
 21 do remotely from home like a -- like, I noticed  
 22 that some of them are only an hour for example.  
 23 I noticed that you had many courses on --  
 24 A. So --  
 25 Q. -- firearms but almost all of them were

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1 just an hour long.  
 2 A. So if it's something that's gonna be  
 3 hands-on --  
 4 Q. Uh-huh.  
 5 A. -- something where you actually use your  
 6 body, some type of -- you use your -- your  
 7 physical, it's probably gonna be at the academy.  
 8 If it's something that's just information, let's  
 9 just say I want to get trained on juveniles, I  
 10 might do something where I can go through the  
 11 actual TCOLE website and do a training on  
 12 juveniles.  
 13 And then I can just be at home or at  
 14 work and I'm reading, I don't know, X amount of  
 15 chapters or pages about juveniles so then I get  
 16 credit for that.  
 17 Q. And do they -- So when it says -- I'm  
 18 going -- I'm going back to the crowd control  
 19 thing, the crowd control course. When it says  
 20 10 hours, does that literally mean you sat or --  
 21 or -- or participated in the training for 10  
 22 hours, or does -- is that more abstract, or --  
 23 A. I -- I can't go back at -- to that to  
 24 that specific day. I'm -- I'm sure, you know,  
 25 we -- we had a introduction training and then

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1 maybe a recap at the end. So that's kinda how  
 2 training goes, you know.  
 3 We get there. They talk about the  
 4 subject at hand. You go out there. You -- you  
 5 learn the -- the skill or -- or subject, and  
 6 then at the end, you know, it's like a debrief,  
 7 any questions, and that kinda wraps up the  
 8 training.  
 9 Q. So for some of these trainings, do you  
 10 role play like you would go out in the street or  
 11 in the -- you know, you would physically try to  
 12 create -- try to -- sorry -- try to act out what  
 13 you're learning?  
 14 Like, for example you mentioned  
 15 formations, that you would act those out in real  
 16 life --  
 17 A. Yeah --  
 18 Q. -- like with your body.  
 19 A. Yeah. Possibly. I just can't go back  
 20 to this exact training and, like, oh, that --  
 21 this day I remember exactly this.  
 22 Q. No. I understand.  
 23 A. It'd be like us training for traffic  
 24 stops. We're gonna get a car. We're gonna put  
 25 someone in the seat and pretend it's a traffic

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1 stop and get training out of it.  
 2 Q. I see. Let's see. I wanted to ask you  
 3 about another one, too. On the same page 7300,  
 4 I noticed that you took -- Higher up, this is in  
 5 2019, September 24, it states there's a de-  
 6 escalation techniques training for eight hours.  
 7 A. What page is that on?  
 8 Q. Same page, 7300, but it's -- it's higher  
 9 up on the page.  
 10 A. That's the course number, correct?  
 11 Q. The course number is 1849.  
 12 A. I see it.  
 13 Q. That was the only de-escalation training  
 14 that I saw on here. Is that because another de-  
 15 escalation techniques has never been offered?  
 16 A. So once again, this is something that  
 17 they gave me actual credit for which is --  
 18 Q. Uh-huh.  
 19 A. -- considered TCOLE credit. Throughout  
 20 the academy there was -- I remember there was  
 21 training where we did -- I don't -- The -- I  
 22 want to say the term de-escalation is a -- kind  
 23 of somewhat of a newer term.  
 24 But, like, de-escalation training,  
 25 but there's -- was training that I recall in the

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1 academy that was de-escalating training. So I  
 2 remember --  
 3 Q. I see.  
 4 A. -- it being taught to us during the  
 5 academy. So just throughout the academy maybe  
 6 they didn't give me, like, credit like this, but  
 7 it was talked about.  
 8 Q. I see. I see. And so you do these  
 9 police academy hours every year; is that correct?  
 10 A. Yes, ma'am.  
 11 Q. How -- When do you do these hours? Is  
 12 it all in a block and do you do them in person,  
 13 or are some of them like you said, you can --  
 14 you can read about juveniles, and you can do  
 15 something from home?  
 16 A. Some of the stuff that we do that is  
 17 mandatory, we're -- do our firearms training,  
 18 our yearly quals and that's mandatory and we get  
 19 TCOLE credit for that, and then there's other  
 20 training throughout the year that we do in order  
 21 to keep up with our hours for the year.  
 22 And sometimes the supervisor will  
 23 be, like, hey, guys, there's such and such  
 24 training on this day, two of you guys can go  
 25 take this training, and then depending on

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1 vacation, who's available, we sign up for the  
 2 training and take it.  
 3 Q. I see. I did notice that you had many  
 4 courses in firearms. Like, going to page 7302  
 5 [sic], so the next page, it looked like in 20 --  
 6 between 2014 and 2015 it looks like you took 11  
 7 different courses on firearms, and I was  
 8 wondering if those are all mandatory.  
 9 A. I'm on page 7302.  
 10 Q. Uh-huh.  
 11 A. If this was during the -- which appears  
 12 to be during the police academy, these were  
 13 mandatory that I had to take.  
 14 Q. I see.  
 15 A. If it's anything after I graduated,  
 16 which -- which would probably be after 2013,  
 17 that was as a police officer.  
 18 Q. And would those be mandatory, or are  
 19 those elective ones for a police officer?  
 20 A. It could be most likely mandatory due to  
 21 being new and staying up with hours and all that.  
 22 When you're new, you don't really have a freedom  
 23 to take classes. I mean, it's not a freedom.  
 24 It's more like it's a priority.  
 25 Like, hey, let's make sure you're a

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1 good squared away cop first, take care of the  
 2 basics, then later down the road maybe we can  
 3 send you to some training that you might want.  
 4 Q. I see. Kinda like undergrad where you  
 5 have to get the requirements out of the way and  
 6 then you can take some electives?  
 7 A. Yeah.  
 8 Q. Okay. I think we're done with that one  
 9 for now. Thank you for answering my questions.  
 10 I'm gonna stop sharing my screen. Okay. Let's  
 11 see. So have you received training with respect  
 12 to law enforcement ethics and police conduct?  
 13 A. It's probably been brought up in the  
 14 academy. I can't think of an actual course, but  
 15 I know it's part of policing. I can't recall,  
 16 like, sitting down in a classroom with that off  
 17 memory, but I know it's important to policing.  
 18 Q. What about, like, officer safety; is  
 19 that something that's very important?  
 20 A. Officer safety is very important.  
 21 Q. And police ethics and code of conduct,  
 22 are those very important?  
 23 A. Very important.  
 24 Q. And from your point of view, do you  
 25 think that the city of Austin believes that

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1 police ethics and police conduct are extremely  
 2 important?  
 3 A. I would assume so. It is important.  
 4 Q. If you had a situation where you wanted  
 5 to preserve officer safety but you also had a  
 6 conflict where you wanted to be ethical or  
 7 follow the code of conduct, how can you make  
 8 those kinds of decisions?  
 9 A. As a professional, you -- you have --  
 10 you have to, you know, keep your code of conduct  
 11 and be ethical at all times, and sometimes our  
 12 job is dangerous. Sometimes we're not safe, so  
 13 you gotta be professional at all times.  
 14 Q. How was it during those 2020 protests?  
 15 Was that a difficult time for maintaining  
 16 officer safety and also following the code of  
 17 conduct?  
 18 A. I can -- For me, I -- I can only speak  
 19 for myself. I'm a professional. I'm, you know,  
 20 30, almost 40 years old, so to me, like, I know  
 21 how to remain professional and calm.  
 22 Q. Were those -- Was that a difficult time  
 23 to be a police officer?  
 24 A. It's -- Policing is difficult at all  
 25 times, so to me, it's -- it's work. I -- I



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1 can't answer for anybody else.  
 2 Q. Did you have to work exceptionally long  
 3 hours during the 2020 protests?  
 4 A. Not to my knowledge. If anything, our  
 5 shifts are normally ten-hour shifts. I possibly  
 6 worked maybe a few 12 hour shifts. I don't know  
 7 the exact number, but I don't think I -- I don't  
 8 think I went over 12 hours.  
 9 Q. Were you present at the protest where  
 10 the -- Do you know the downtown Austin police  
 11 building -- police --  
 12 A. Yes.  
 13 Q. -- station I should say?  
 14 A. Yes, ma'am.  
 15 Q. The one that's right by I-35?  
 16 A. Yes. It's 15 East 8th Street. Yes,  
 17 ma'am.  
 18 Q. Okay. It's right west of I-35, I guess.  
 19 A. Yeah.  
 20 Q. Did you happen to be at the protest  
 21 that -- that occurred, and it was large? It was  
 22 kind of right in front of the police station and  
 23 then also seemed to spill over onto the actual  
 24 highway, and during the protest, the police  
 25 officers were standing about three deep in front

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1 of the station while protesters were at the foot  
 2 of the stairs leading up to the station? Were  
 3 you present at that protest?  
 4 A. That -- The protest went for a couple a  
 5 days, maybe even a couple a weeks. I was  
 6 downtown. I did go to the main police station.  
 7 There was multiple days where that -- where  
 8 that -- what you're explaining took place, but I  
 9 don't recall, like, an exact date that I was  
 10 there.  
 Oh, the picture --  
 11 Q. So --  
 12 A. The picture you're painting is kinda  
 13 what I saw almost every time I went downtown, so  
 14 I can't say it was Monday, it was Wednesday.  
 15 Q. Okay.  
 16 A. What you're describing, I remember  
 17 seeing pictures online seeing it, but I -- I  
 18 can't say this one specific incident.  
 19 Q. Do you recall being one of those  
 20 officers who had to stand out front?  
 21 A. I remember being an officer that was on  
 22 standby and maybe going outside every now and  
 23 then, but there was officers that were there a  
 24 very long time and I'm talking about hours or  
 25 the full day, and I don't recall doing that.

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1 Q. I see. That's interesting. I think  
 2 we've been going for about an hour. Do we want  
 3 to take a short five, ten-minute break?  
 4 MR. BARTON: That's fine with me.  
 5 A. Sure.  
 6 Q. (BY MS. MCDANIEL): How about let's take  
 7 a 10-minute break and be back at 11:45?  
 8 A. Perfect.  
 9 Q. Okay.  
 10 A. Thank you.  
 11 THE VIDEOGRAPHER: All right. We're  
 12 off the video record. It's 11:35 a.m.  
 13 (Off the record at 11:35 a.m.)  
 14 (On the record at 11:45 a.m.)  
 15 THE VIDEOGRAPHER: We're back on the  
 16 video record. The time is 11:45 a.m.  
 17 MS. MCDANIEL: Thank you.  
 18 Q. (BY MS. MCDANIEL): So Officer Gonzalez,  
 19 have you received training on the concept of  
 20 action beats reaction?  
 21 A. I've heard the term. I don't remember  
 22 sitting down for an actual -- like, class that  
 23 was called that, but I'm familiar with the  
 24 terminology.  
 25 Q. I did not notice a class called that

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1 although I could have missed it on your long  
 2 training record, but can you tell me what the  
 3 concept means to you?  
 4 A. Just that the person taking action is  
 5 more at an advantage than the person reacting.  
 6 Q. Why is that?  
 7 A. Because in order to react, you have to  
 8 see the action, process the action, and decide  
 9 so you're more delayed in reacting. Yeah.  
 10 Q. And so how does that apply to police  
 11 officers? How did -- What does mean for your  
 12 work?  
 13 A. I don't --  
 14 Q. Like, what would that be referring to?  
 15 Like, if somebody told you, you know, like, just  
 16 remember action beats reaction, like, what do  
 17 you take that to mean in terms of your policing?  
 18 A. I never go to work and people use that  
 19 term. Like, that --  
 20 Q. Uh-huh.  
 21 A. Yeah.  
 22 Q. Well, does it have any reference to,  
 23 like, if someone was -- I guess to me it's,  
 24 like -- it sounds like if someone was armed, you  
 25 don't want to be reacting to them pulling out a

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1 firearm.  
 2 A. That's a -- that's very gray area.  
 3 That's too -- What you're saying is, like,  
 4 there's not a one size fits all for that.  
 5 Q. Okay. So the term doesn't  
 6 necessarily --  
 7 A. You can give me another example, but  
 8 I -- That one's a -- I just think that's, like,  
 9 a gray area.  
 10 Q. Can you think of a better example?  
 11 A. We use sports. If I'm playing  
 12 basketball and maybe you're the defense and the  
 13 time is running out and you -- all I'll -- all I  
 14 need is two points to -- to win the game, right,  
 15 and I have the ball, so you think I'm gonna go  
 16 for a layup or a foul, but guess what.  
 17 Surprise. I shot a three-pointer,  
 18 and I made it and I win the game. So you're  
 19 gonna have to react to all that, so I'm at -- at  
 20 the advantage.  
 21 Q. So it's kind of, like, more about  
 22 keeping your options open maybe?  
 23 A. I think the person that's doing the  
 24 action is most likely gonna be at the advantage,  
 25 but you reacted to me. You're less of a

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1 disadvantage `cause you -- you don't know what  
 2 I'm gonna do so it benefits me to do whatever  
 3 I'm gonna do.  
 4 Q. Interesting. Are there ever times that  
 5 an officer might need to, like, protect their --  
 6 like, do things to protect their safety that  
 7 would conflict with the officer code of conduct?  
 8 A. Clarify that, please.  
 9 Q. Well, have you ever been in a situation  
 10 where you had to protect your own safety and it  
 11 meant, you know, not meeting in some way the  
 12 officer code of conduct?  
 13 A. No, ma'am. I'm a professional. I --  
 14 Code of conduct and ethics are all the time.  
 15 Q. About how many hours would you say that  
 16 you think you've received training in  
 17 interacting with, I don't want to just say crowd  
 18 control, but let's say interactions with  
 19 citizens in a variety of situations like  
 20 training in how to deal with the citizenry?  
 21 A. I'd go back to the training schedule  
 22 that you said, the crowd control, but I did work  
 23 downtown as a police officer so there was times  
 24 where I was downtown with -- during throughout  
 25 the whole year during different city events,

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1 very diverse crowd, different people.  
 2 So I had a lot of, you know, a face-  
 3 to-face interactions with the public, so I've  
 4 been around the public a lot. I was downtown  
 5 maybe three to four years doing that on a daily  
 6 basis.  
 7 Q. What kind of things do you keep an eye  
 8 out for when you're working with a large diverse  
 9 group of people or a crowd?  
 10 A. The -- the closer the person is, the  
 11 more I'm gonna watch their waistline or their  
 12 hands. That's something that I pay attention to  
 13 because you always want to keep your distance  
 14 from people to -- one, for respect, and two, for  
 15 safety.  
 16 So the closer somebody gets to you  
 17 that's maybe not, like, a reasonable space,  
 18 you -- you're gonna start watching, hey, what --  
 19 why does everybody stand three to five feet from  
 20 me, but this guy is two feet, you know.  
 21 I'm -- I'm -- I'm -- That's an  
 22 explanation.  
 23 Q. Uh-huh.  
 24 A. So then that's not normal for most  
 25 people so I'm watching hands and I'm watching

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1 waistlines because people can hurt you with  
 2 their hands or they can carry weapons in their  
 3 waistlines.  
 4 Q. Have you ever been -- Has anyone ever  
 5 tried to attack you in a crowded situation?  
 6 A. No, but I had a incident where someone  
 7 that I was detaining had a gun in their  
 8 waistline and they were somewhat stiffening up  
 9 and putting their hands kinda towards the front  
 10 of their body and we later -- we detained them  
 11 and later found the gun in their waistline which  
 12 was very hard to see.  
 13 Q. That would be very scary. What -- what  
 14 did you do in that situation?  
 15 A. Well, at -- at the time you don't --  
 16 Luckily, we didn't find out that he had a gun on  
 17 him until he -- we secured his hands which  
 18 was -- that's the most important thing and then  
 19 we -- we did a quick frisk for weapons and the  
 20 gun was found.  
 21 Q. What is the mobile field force, MFF?  
 22 A. Yes, ma'am.  
 23 Q. I said what is that.  
 24 A. It's pretty much a -- a training that's  
 25 put on by the department which is used for crowd

<p style="text-align: right;">Page 62</p> <p>1 control, and they talk about commands and basic 2 formations. 3 Q. Will you tell me more about it? 4 A. It's pretty much formations where we 5 have maybe -- we use formations which are either 6 wedges, echelon left, echelon right, lines. 7 Just different lines in order to either protect 8 ourselves as officers, protect the public, or 9 maybe protect even property. 10 Q. In your experience, are they very 11 useful? 12 A. I would say yes. 13 Q. Are you a member of the mobile field 14 force and were you the day of the incident in 15 this case? 16 A. So everybody -- It's not like a team. 17 People go to the training and then you might get 18 assigned to help with those tactics, with those 19 formations. 20 Q. Were you part of that on the day of the 21 incident relating to this lawsuit? 22 A. That day I was working as a metro 23 tactical police officer, my specialized unit. 24 We were called to go downtown which is not my 25 area --</p>	<p style="text-align: right;">Page 64</p> <p>1 what have you, and you keep the crowd separated 2 from whatever you're trying to protect or just 3 to control them from possibly attacking someone, 4 vandalizing a building or hurting a police 5 officer, or just -- situation dictates. 6 Q. Does that create a hostile kind of 7 environment between the individuals in the crowd 8 and the police when you use the bikes as a form 9 of crowd control? 10 A. For compliant civilians there's -- 11 there's -- there's no issue. With people that 12 are noncompliant, I -- I can see it giving them 13 a hard time. 14 Q. And what -- what -- what's your opinion 15 of the -- the right for people to freely 16 assemble versus needing to be controlled as a 17 crowd? Like, how do you decide the difference 18 between free assembly and a crowd that needs to 19 be controlled? 20 A. Well, you got, you know, your freedom of 21 speech, which everybody has that right, and then 22 you have, you know, state laws or city 23 ordinances that have to be enforced at times. 24 So you can still enforce city ordinances or 25 state laws at times and people can still voice</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Uh-huh. 2 A. -- my normal area. We went to assist, 3 and once I went out there, that's pretty much 4 what they were -- what we were called to help at 5 the moment with. Yes. 6 Q. And were you one of the cops that used 7 bikes on that day? 8 A. No bike that day. 9 Q. Have you ever used a bike as a crowd 10 control method? 11 A. I went to the beat -- BPOT training 12 which is pretty much crowd control with bicycles. 13 In the past I've helped out with events with 14 bikes. 15 Q. How do you use a bike to help crowd 16 control? 17 A. You place it -- 18 Q. Are you riding through the crowd, or -- 19 A. No. You don't ride through the crowd. 20 Once again, you have a leader, a supervisor that 21 calls a command. You set up whatever line they 22 want. You hold the -- the bike in front of you 23 as a barrier. 24 You keep the bikes connected with 25 other bikes to somewhat of a, you know, wall,</p>	<p style="text-align: right;">Page 65</p> <p>1 their opinion and whatever their beliefs are. 2 They both can be hand-in-hand. They 3 both can work together. 4 Q. Well, did you feel that those worked 5 hand-in-hand on the day that this incident 6 occurred? 7 A. That -- that day was a very long day. 8 Q. Is that a -- is that a yes, or a no? 9 A. I don't know what you're asking me. 10 Q. Are you aware of what the assembly was 11 that day, what it was for? 12 A. The -- When my incident took place? 13 Q. Yes. August 1, 2020. 14 A. Yes. We -- we were given the order from 15 someone, either possibly -- I -- I always have 16 the radio in my ear, so people are giving orders 17 through the radio, and at some point, they 18 wanted the roadway cleared. They wanted people 19 off the roadway. 20 Q. And do you know why those people were in 21 the roadway and what they were there for? 22 A. They were -- Some -- some were 23 protesting. Some were rioting. It was a mix. 24 I don't know what they were for or against. I 25 don't know.</p>

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1 Q. Were you aware that there was a -- a  
 2 memorial for an individual named Garrett Foster  
 3 and that was the reason that the people were  
 4 there that day?  
 5 A. I do know of that incident. Some --  
 6 some people might have been there for that.  
 7 They might have been there for other reasons.  
 8 Q. When you say riot, can you provide a  
 9 definition for that word?  
 10 A. I don't have a textbook definition, but  
 11 it would -- it would -- I would throw in the  
 12 words like using violence, destruction, non-  
 13 obedient, threatening. Did I say violent  
 14 already?  
 15 Q. Uh-huh.  
 16 A. That's pretty much it. Those are the  
 17 keywords that I would use.  
 18 Q. Would you agree though that you're not  
 19 an expert in defining what is a riot as far as  
 20 when people --  
 21 A. Yes. That's -- You asked me my  
 22 definition and that's not from anything else but  
 23 mine.  
 24 Q. Fair. It's one of those words that's --  
 25 you know, has a -- can have a legal meaning.

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1 MR. BARTON: Object to --  
 2 Q. (BY MS. MCDANIEL): Before the --  
 3 MR. BARTON: -- form.  
 4 MS. MCDANIEL: I'm sorry?  
 5 MR. BARTON: I just did an objection  
 6 to the form.  
 7 MS. MCDANIEL: Yes. I understand.  
 8 Q. (BY MS. MCDANIEL): Before the May 2020  
 9 protest and going on into August, what type of  
 10 training did you receive on protest policing?  
 11 A. Say again.  
 12 Q. Did you receive any training regarding  
 13 policing protests before the May 2020 protest  
 14 began?  
 15 A. Whatever was included in the -- that  
 16 TCOLE roster, that, and then like I said, any  
 17 other PowerPoints that were presented during  
 18 workdays.  
 19 Q. Were you aware of the murder of George  
 20 Floyd?  
 21 A. Yes.  
 22 Q. Did you anticipate that there would be  
 23 protests or actions relating to the murder of  
 24 George Floyd here in Austin?  
 25 A. Well, when a accident like that takes

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1 place, I don't really look into it too much  
 2 because the first stuff that the news ever puts  
 3 out is not the full story, so I don't -- I want  
 4 to be a positive person.  
 5 I want to come to work. I want to  
 6 do my job, so I don't pay attention to -- to  
 7 the -- Normally when I find something out, it's,  
 8 like, everything is complete. There's --  
 9 there's been a -- you know, a autopsy report and  
 10 all the facts.  
 11 I'm -- It's a black and white thing.  
 12 It's in the sense of no gray area because  
 13 there's a lot of gray that's put out when an  
 14 incident takes place, so I knew about it. I  
 15 didn't think of how the town would react.  
 16 Q. Did you receive any notification that  
 17 there could be these protests relating to that  
 18 before they began?  
 19 A. Possibly.  
 20 Q. So did -- Maybe you received some kinda  
 21 notification that might be something to look out  
 22 for?  
 23 A. Possibly. Sometimes they tell us to  
 24 wear a certain uniform and that's kinda the  
 25 heads up.

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1 Q. Do you recall being asked to wear a  
 2 certain uniform at any particular time around  
 3 then?  
 4 A. Multiple times throughout my -- my  
 5 career I've been -- I've been asked to use a  
 6 particular uniform possibly during those times,  
 7 yes.  
 8 Q. And who would make that request?  
 9 A. It'd be probably the commanders, higher-  
 10 ups, and then they just send it down to the  
 11 supervisors and it gets to us either -- Normally  
 12 there's an email and then they also tell it  
 13 to -- tell -- tell us in person and remind us.  
 14 Q. And is an individual subject to  
 15 detainment or arrest by attending a protest?  
 16 A. No.  
 17 Q. What about participating in the protest?  
 18 A. No.  
 19 Q. What about if their participation  
 20 includes yelling?  
 21 A. It's alright to yell. No.  
 22 Q. What -- what if their participation  
 23 includes yelling at a police officer?  
 24 A. That's -- that's okay.  
 25 Q. That's not an arrestable offense?

<p style="text-align: right;">Page 70</p> <p>1 A. Yelling? I've never arrested anyone for 2 yelling. 3 Q. What about cursing at a police officer 4 and using profanity, is that an arrestable 5 offense? 6 A. No, ma'am. 7 Q. What about using violence towards a 8 police officer? 9 A. Using violence towards a police officer? 10 Q. (Ms. McDaniel moves head up and down.) 11 A. Yes. That -- that's an arrestable 12 offense. 13 Q. Yes. When is -- when does an individual 14 become subject to detainment or arrest in a 15 protest situation? 16 A. There can be a lot of ways. Two -- 17 two -- the first two that come to mind is some 18 type of assault towards another person, a third 19 party or an officer, or be noncompliant to 20 lawful orders that are being repeated multiple 21 times. 22 Q. If an individual is arrested or detained 23 for one of those reasons, are they entitled to 24 be free from force during that arrest? 25 A. If they're compliant, there's not gonna</p>	<p style="text-align: right;">Page 72</p> <p>1 resources, things like that, but that just 2 depends on the situation. 3 Q. What would be a way that you could de- 4 escalate possible conflict in making and 5 effectuating an arrest? 6 A. There's different type of arrests, so 7 there's not a one size fits all, so. . . 8 Q. Is asking someone to put up their hands 9 a way to de-escalate conflict? 10 A. Once again, possibly, depending on the 11 situation. 12 Q. What about asking someone to turn around 13 and put their hands behind their back, is that a 14 way to de-escalate conflict during an arrest? 15 A. Well, at that point, if some -- if a 16 police officer is telling someone to turn around 17 and put their hands behind their back, a 18 decision has been made to possibly detain, I 19 would assume, so that's not even de-escalation 20 at that force -- at that point. 21 Q. Have you received training on when it's 22 acceptable to escalate force in a citizen 23 encounter? 24 A. Never. 25 Q. Okay. Never?</p>
<p style="text-align: right;">Page 71</p> <p>1 be any force. If they're resisting, there will 2 be a reasonable force that is used to gain the 3 control and detention. 4 Q. When in your understanding is it 5 acceptable for someone to use physical 6 resistance to an arrest? 7 A. If -- This is kinda like a -- They -- 8 they -- that's been mentioned. If the person 9 truly believes that the police officer is using 10 unreasonable force, that's the only one time I 11 can think of, but they have to be able to later 12 explain that in court this was unreasonable 13 force because XYZ, 123. 14 Q. I understand. Interesting. And have 15 you receiving training on controlling people's 16 movements when you interact with them? 17 A. A basic -- basic training at the police 18 academy. 19 Q. And what about de-escalation? 20 A. Once again, there was a -- my training 21 said there was de-escalation class and then 22 there was other things that were brought up 23 in -- throughout the police academy that had to 24 do with de-escalation, things as in verbal 25 commands, presence, maybe create space, finding</p>	<p style="text-align: right;">Page 73</p> <p>1 A. To escalate? Like me putting -- 2 Q. Like, when is it appropriate to use 3 force and how to use it? 4 A. Yeah. You -- you just -- Ask that 5 question again and I'll answer it. 6 Q. Okay. Have you received training on the 7 proper ways to use force in a citizen encounter? 8 A. Yes. I have, but prior to that you 9 asked me have I used -- have I learned how to -- 10 Q. Escalate. 11 A. -- escalate like I'm -- I'm the -- like 12 I'm participating in making this a bigger 13 problem. No. 14 Q. I understand. That was a -- that was a 15 misstatement on my part. I meant -- I want to 16 go into your training about use of force and 17 when -- 18 A. Okay. 19 Q. -- it's appropriate and how to do it. 20 When is it appropriate for a person -- for an 21 officer to use force in a citizen encounter? 22 A. To use force, or detain? There's a -- 23 To use force? 24 Q. Well, I imagine sometimes you can detain 25 someone without using any force whatsoever just</p>

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1 by verbal commands and they cooperate with you.  
 2 A. Yes.  
 3 Q. So when is it -- When do you use force  
 4 in a citizen encounter?  
 5 A. If they're -- That -- that's kinda -- I  
 6 just feel like that's kinda just a --  
 7 Q. A weird question?  
 8 A. Yeah, yeah. I don't --  
 9 Q. Let me try again. Let me try again.  
 10 I'm not trying to be confusing. So let's say  
 11 you're making a traffic stop --  
 12 A. Okay.  
 13 Q. -- and you determined that this  
 14 individual, say, has a warrant out for their  
 15 arrest or is somehow in other ways arrestable  
 16 and that you --  
 17 A. Okay.  
 18 Q. -- are obligated to make an arrest --  
 19 A. Okay.  
 20 Q. -- in what situation would you ever need  
 21 to use any physical force to effectuate that  
 22 arrest?  
 23 A. To -- Reasonable force to make an arrest  
 24 or detain, protect a third party, or protect  
 25 property or other police officers.

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1 Q. And is there a scale that you start with  
 2 one level of force and then you can use  
 3 different or more force depending on the  
 4 situation?  
 5 A. Reasonable force is reasonable force. I  
 6 know there's multiple charts out there, ladders,  
 7 you got circles of use of force, but reasonable  
 8 force is reasonable force.  
 9 Q. I guess I'd like to know more about that  
 10 from you. So you said there's ladders, there --  
 11 So what do you use? What's your scale? What's  
 12 your guide -- your handbook on --  
 13 A. It's pretty much if -- if a person is  
 14 using this much force (indicating). In order to  
 15 gain compliance, I gotta just use (indicating).  
 16 That's it. Just enough to get the job done.  
 17 Reasonable amount of force.  
 18 Q. Can you give me an example of when  
 19 you've had to use any force -- when you've used  
 20 reasonable force to do your job?  
 21 A. Placing people in handcuffs that are  
 22 pulling their hands forward, that are being  
 23 noncompliant, I have to, you know, use  
 24 reasonable amount of force to control their  
 25 hands and prevent them from possibly reaching

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1 their waistline and grabbing a weapon, possibly  
 2 destroying evidence, or taking off from me and  
 3 hurting somebody else.  
 4 Q. And when else have you ever used any  
 5 reasonable force?  
 6 A. Making arrests downtown when there's  
 7 a -- you know, a -- a fight between two subjects  
 8 and officers are trying to detain someone, if  
 9 they're placing someone in handcuffs, you know,  
 10 either creating a perimeter around them to keep  
 11 the police officer safe, or if they're kicking,  
 12 I'm controlling their feet.  
 13 Q. So you've had experience where you had  
 14 to hold someone's feet down?  
 15 A. Yes. I have.  
 16 Q. And have you ever picked anyone up off  
 17 the ground to effectuate an arrest?  
 18 A. Not to make an arrest, but I believe  
 19 there was once where I had to conduct a takedown  
 20 to make the arrest where I had to grab the  
 21 person and take them to the ground because -- in  
 22 order to get proper control.  
 23 That's not, like, a go-to all the  
 24 time, but I remember doing that years ago.  
 25 Q. And how did you know how to do that? Is

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1 there some specific method that you use to take  
 2 someone to the ground?  
 3 A. Well, if you're trying to control  
 4 someone, one, you're gonna -- if you're gonna  
 5 detain them, you don't want them to run away so  
 6 you're gonna have to grab a good control of them.  
 7 Secondly, while you're doing that if  
 8 you can control the arms with it at the same  
 9 time to conduct a takedown, it's even safer --  
 10 there -- therefore they can't grab for any  
 11 weapons, strike you, and then once you're on the  
 12 ground, conduct a -- the handcuffing from there.  
 13 It's --  
 14 Q. Did you feel in physical danger when you  
 15 had to take someone down in that way?  
 16 A. Yes. I would say yes because if  
 17 someone's -- if I have to go to that extreme,  
 18 that means that they weren't possibly complying  
 19 with put your hands behind your back or maybe  
 20 already made an attempt, or they know that  
 21 they're gonna go to jail so then their reaction  
 22 is to not comply, especially --  
 23 Q. Is it --  
 24 A. Go ahead.  
 25 Q. Oh, no. You go ahead.

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1 A. And if it's a one-on-one situation,  
2 that's probably the safest at that time.  
3 Q. But that does seem like it would be  
4 pretty scary to be one-on-one that close. Like  
5 you said, it's -- it's dangerous to be close,  
6 right?  
7 A. Yeah. It -- it -- it -- it depends on  
8 the individual. I mean, a lot of things can be  
9 scary, but if you're in control and you believe  
10 in your training and, you know, keep your calm,  
11 I think you're gonna be okay.  
12 Q. Would you feel comfortable trying to  
13 take someone to the ground to an -- effectuate  
14 an arrest if they were larger than you, like,  
15 you felt that they were significantly larger  
16 than you?  
17 A. Control -- controlling someone and --  
18 and making an arrest on the ground is probably  
19 gonna be better than on your feet regardless of  
20 size I would say in my opinion.  
21 Q. Was there anything else that -- that  
22 would be preferable to use? Like, for example,  
23 if someone was significantly larger than you,  
24 would you prefer to try to take them down  
25 physically, or would you prefer to, like, use a

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1 taser to take them down --  
2 A. I mean is there --  
3 Q. -- and maintain --  
4 A. Is -- is there -- There's so many  
5 factors that go into that. Is it -- is it -- is  
6 it me by myself? Is there another officer? Is  
7 there a wall? Maybe I can use a wall to help me  
8 maybe pin them against the wall and place them  
9 in handcuffs.  
10 It just depends what I'm dealing  
11 with at that moment. It's not a one size fits  
12 all.  
13 Q. And what are you thinking about when  
14 you're in a situation like that? Like, what are  
15 your priorities?  
16 A. A --  
17 Q. As a police officer.  
18 A. A situation like what?  
19 Q. A situation where you have to make a  
20 decision like I have a person, they're larger  
21 than me, I need to an -- effectuate an arrest  
22 and what are my priorities.  
23 A. Get them in handcuffs as quick as  
24 possible in a reasonable manner and that way,  
25 you know, I'm safe and everybody else is safe.

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1 Q. I appreciate it. Have you ever kneeled  
2 on an individual to detain or arrest them?  
3 A. Not to my knowledge.  
4 Q. And does APD train officers to kneel on  
5 people like to put them on the ground and kneel  
6 on top of them to -- to arrest them?  
7 (Audio/video quality interruption.)  
8 MS. MCDANIEL: I think we're maybe  
9 having a little technical difficulties.  
10 THE VIDEOGRAPHER: You want me to  
11 take us off record?  
12 MS. MCDANIEL: (Moves head up and  
13 down.)  
14 THE VIDEOGRAPHER: All right.  
15 We're --  
16 MS. MCDANIEL: Thank you.  
17 THE VIDEOGRAPHER: -- off the video  
18 record. It's 12:16 p.m.  
19 (Off the record at 12:16 p.m.)  
20 (On the record at 12:17 p.m.)  
21 THE VIDEOGRAPHER: We're back on the  
22 video record. It's 12:17 p.m.  
23 Q. (BY MS. MCDANIEL): So we had a little  
24 technical difficulty, so I'll go back and re-ask,  
25 just go back a couple of -- So have you ever

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1 kneeled on an individual when you're detaining  
2 or arresting them?  
3 A. Not to my memory. No.  
4 Q. And does APD train officers to kneel on  
5 someone to arrest them by taking them to the  
6 ground and then kneeling on their back?  
7 A. Not to my knowledge. Not that I recall.  
8 Q. What is your general method of  
9 effectuating an arrest? Like, run-of-the-mill,  
10 what's the most common?  
11 A. I give a verbal command. I say, hey,  
12 turn around, please put your hands behind your  
13 back and I place them in handcuffs. That's --  
14 you know, that's how I hope every detention goes,  
15 every arrest goes.  
16 Unfortunately, when people resist  
17 and don't comply with your lawful order,  
18 sometimes you end up in funny situations,  
19 awkward positions that are -- are just -- come  
20 with -- with that -- with that specific  
21 situation.  
22 It -- it's -- You just don't know  
23 how you're gonna land. You know what I mean?  
24 I -- Sometimes I place the cuffs. Sometimes  
25 I -- I place a cuff on one hand and the other.

<p style="text-align: right;">Page 82</p> <p>1 Sometimes the other officer has to place the 2 second cuff. 3           It just depends. Once it goes to 4 the ground, it's very dynamic and it's -- we 5 just gotta deal with what we have at that moment. 6       Q. I understand. It seems like it would be 7 really, you know, unpredictable, so I appreciate 8 you giving me a -- a basic example of the most 9 common way. How important is it to mirandize 10 someone once they have been arrested in your -- 11 in your opinion? 12       A. Based on my training, if I'm gonna ask 13 incriminatory questions, investigatory 14 incriminating questions, I would mirandize then, 15 but if I see that the person has committed a 16 crime and it meets all the elements, that's all 17 I need. 18       Q. To -- to arrest them. You're saying you 19 don't need to mirandize them in order -- 20       A. No. 21       Q. -- to make the arrest but that you would 22 mirandize them if you were going to ask 23 potentially incriminating questions after an 24 arrest? 25       A. Yes, ma'am.</p>	<p style="text-align: right;">Page 84</p> <p>1 learned throughout reading other reports how to 2 write reports. 3       Q. When do you have to write them? Do you 4 have to write a report after every shift? 5       A. Yes. You gotta do them best -- The best 6 way to do it, it just depends, is immediately 7 after or the next reasonable time to write it, 8 but immediately. 9       Q. And even if nothing happened on your 10 shift, like, let's say you were -- I know that 11 probably there's never a time that nothing 12 happens on one of your shifts, let's say you 13 were in a traffic stop situation and nothing 14 happened, like, you didn't pull anyone over, no 15 one was speeding, just finished your shift and 16 went home, are you still required to write a 17 report of what happened? 18       A. I didn't take police action so there's 19 no report to write. 20       Q. Oh, okay. So it's when you take police 21 action that you write a report? 22       A. Yeah. 23       Q. And do you have to write a report on 24 every action that's taken? Like, I don't mean 25 moving your hand type of action, but I mean what</p>
<p style="text-align: right;">Page 83</p> <p>1       Q. Okay. Does -- How important do you 2 think it is to Austin Police Department that 3 officers mirandize individuals who are arrested 4 after their arrest? 5       A. It's -- it's individual to the officer. 6 I mean, I don't -- I don't know -- I'm gonna 7 mirandize someone as an individual if I'm gonna 8 ask incriminating questions. That's what I'm 9 gonna do and I would assume that that's what the 10 majority of officers would probably do. 11       Q. If you fail to mirandize someone before 12 you ask incriminating questions, would you then 13 be worried that you might be penalized by the 14 department for failing to mirandize them? 15       A. Then I'd be in -- probably in bigger 16 trouble than the department if I'm not 17 mirandizing someone when I should. 18       Q. Let's see. Okay. I'll just move on. 19 In your training, is it part of the training in 20 specific -- Sorry. So I'm gonna start over. In 21 your training have you been trained to write 22 reports about various events? 23       A. I was -- learned throughout FTO. I 24 don't remember taking an exact report writing 25 course throughout the academy. Just kinda just</p>	<p style="text-align: right;">Page 85</p> <p>1 you mean, like -- 2       A. If -- if I'm -- 3       Q. -- someone? 4       A. Sorry. If I interact with the public 5 and I took police action, I will document that 6 and write a report. 7       Q. And what's the difference between a -- a 8 report, and there may be no difference, and a 9 Class B [sic] memo; do you know? 10       A. A report and a Class D memo? 11       Q. Uh-huh. 12       A. I know what a report is to me. I know 13 I've heard the -- the term Class D memo. I 14 don't remember exactly what it is, but it has 15 something to do with the way the chain of 16 command reviews certain police mistakes or 17 errors and it's a way of categorizing something. 18       Q. Okay. I appreciate that. Are you 19 always required -- So it's -- I would imagine 20 the answer is yes because you said any police 21 action you need to write a report on. So if you 22 ever use force in the line of duty, are you 23 required to write a report on that incident? 24       A. Yes. 25       Q. Is it a special type of report, or is it</p>



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1 just your regular report that you would use?  
 2 A. You go into the same system. You write  
 3 the report and there's a special tab that you  
 4 click which kinda flags it and it says R2R,  
 5 response to resistance, therefore the  
 6 supervisors or -- there's a review -- force  
 7 review board.  
 8 They -- Somehow it get -- gets  
 9 relayed to them and they read my report.  
 10 Q. Is ever a use of force by a police  
 11 officer a response to resistance?  
 12 A. Say that again.  
 13 Q. You said there's a tab that says R2R  
 14 response to resistance and that's where you  
 15 record any force, so I'm asking -- I find that  
 16 an interesting title. Is it considered that any  
 17 use of force by a police officer is a response  
 18 to resistance?  
 19 A. We -- If we use force, then we're gonna  
 20 document -- document it at -- as that. There's  
 21 been instances where if it's kind of borderline,  
 22 we still document that and we let -- let the  
 23 higher-ups decide whether it was or wasn't. We  
 24 don't make that call.  
 25 Q. I understand. I understand. Can you

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1 fill out a report while you're actually sitting  
 2 in your police cruiser?  
 3 A. Repeat please.  
 4 Q. Are you -- Do you have the capability  
 5 of -- of filling out your report while being in  
 6 your police car?  
 7 A. Yes.  
 8 Q. How soon after a use of force event are  
 9 you required to make a report?  
 10 A. As I would imagine, the next reasonable  
 11 time that permits. Sooner than later.  
 12 Immediately after would be the perfect world.  
 13 Q. That's tough to do. I -- That's a lot  
 14 of reporting in my opinion. That's a lot --  
 15 A. It is a lot.  
 16 Q. Is -- is reporting a big part of your  
 17 job?  
 18 A. Yes. It is.  
 19 Q. For lawyers, we are required to enter  
 20 time. It's kind of similar, and again, yes,  
 21 it's, like, in a perfect world, it would be  
 22 contemporaneous. Sometimes it's not.  
 23 Sometimes -- Anyway, not -- it's not something  
 24 that people generally enjoy.  
 25 Who do you expect to read your

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1 reports when you're offering them?  
 2 A. Who do I -- Repeat, please.  
 3 Q. Who do you expect to read the reports  
 4 that you write?  
 5 A. My immediate chain of command, corporal  
 6 and sergeant. That's for just every day to day  
 7 reports. If it's a -- anything higher than that  
 8 like a response to resistance, possibly up to  
 9 the lieutenant, and depending on the level,  
 10 maybe even higher.  
 11 Q. Is the highest chief?  
 12 A. There's assistant chiefs. I don't  
 13 know -- That far behind the scenes, I don't  
 14 really know who reads them and who doesn't.  
 15 Q. Is Joseph -- is -- is Officer Chacon --  
 16 Chief Chacon still the chief of Austin Police  
 17 Department?  
 18 A. Yes. He is.  
 19 Q. Why is that funny? Did I mispronounce  
 20 his name?  
 21 A. No. You're fine.  
 22 Q. Okay. Have you ever met him before?  
 23 A. I actually just saw him downstairs a  
 24 little while ago.  
 25 Q. Oh, okay. I see. So according to your

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1 training, is it your job to write down what  
 2 happened with regard to an event exactly as it  
 3 happened, or is it a better idea to create a  
 4 story that kind of justifies whatever force was  
 5 used?  
 6 A. All -- I've been told multiple times and  
 7 what I've always done is been truthful on all my  
 8 reports as everything happened.  
 9 Q. And did you create a report after the  
 10 events of August 1, 2020?  
 11 A. I wrote a report.  
 12 Q. Wrote a report. Okay.  
 13 A. Yeah. I didn't create anything, but I  
 14 wrote a report.  
 15 Q. Okay. Okay. Well, I'm gonna look at  
 16 your report. I'm gonna ask Ms. Lopez to place  
 17 Plaintiff's Exhibit number 6 in the Dropbox  
 18 folder --  
 19 A. And just to --  
 20 Q. -- and I guess -- Go ahead.  
 21 A. Just to clarify, it's a supplement which  
 22 some people call reports, but it's  
 23 report/supplement.  
 24 Q. I appreciate that. Is there any  
 25 significant difference, or is it just a

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1 different name?  
 2 A. I'll give you an example. The -- Me and  
 3 my partner go to a house for two neighbors  
 4 fighting. The -- He arrives there before I do.  
 5 He gathers all the intel. He gets the story.  
 6 He does the majority of the work.  
 7 I'm there as a backup. I'm helping  
 8 out. So once you create the front page of the  
 9 report which has the title of the report, the  
 10 location and the time, then he would write an  
 11 initial report.  
 12 So if anybody ever had to go to the  
 13 meat and potatoes, it would be the initial  
 14 report and then any -- anybody else that got  
 15 there after the fact would write a supplement,  
 16 but it looks the exact same thing. It's just  
 17 titled different.  
 18 Q. I see. So this one, let's see, you're  
 19 saying it's a supplement?  
 20 A. Yes.  
 21 Q. I wonder if we have the actual report.  
 22 Anyhow, I'm going to share my screen again. You  
 23 should -- I -- I have Plaintiff's Exhibit 6 now.  
 24 You should have Plaintiff's Exhibit 6 in your  
 25 Dropbox.

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1 (Plaintiff's Exhibit No. 6 marked  
 2 and presented to Witness for  
 3 identification.)  
 4 A. I think the -- the conversation from  
 5 earlier deleted so it might have to be sent to  
 6 me back in the chat box because it's clean right  
 7 now. Remember we went off, so --  
 8 Q. Ah, yes.  
 9 A. -- it needs to get sent to me again. It  
 10 was here, but we lost it --  
 11 MR. BARTON: Yeah.  
 12 Q. (BY MS. MCDANIEL): Still not there?  
 13 A. I will refresh --  
 14 MS. MCDANIEL: Ms. Lopez, will you  
 15 please resend that to him if you have it?  
 16 A. Actually, it's -- it's here now. I just  
 17 saw it.  
 18 Q. (BY MS. MCDANIEL): Okay.  
 19 A. I thought I saw it.  
 20 MR. BARTON: Yeah. It'll be -- I  
 21 think do -- do this Google web browser.  
 22 Well, --  
 23 THE WITNESS: I'll just try it  
 24 again, this one. It'll go back to the front  
 25 page and then I'll have the. . .

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1 Q. (BY MS. MCDANIEL): Are you able to view  
 2 that document yet?  
 3 A. No, ma'am. The last one that was on  
 4 there was Exhibit 5.  
 5 Q. Maybe try to refresh it again.  
 6 A. (Audio/video quality interruption.)  
 7 Q. What was that?  
 8 A. I can see Exhibit 6 now -- Audio/video  
 9 quality interruption.)  
 10 Q. I'm getting a little -- coming in and  
 11 out on audio and I hear I have audio.  
 12 THE COURT REPORTER: Yeah. I didn't  
 13 get that.  
 14 MS. MCDANIEL: Is my sound so bad?  
 15 THE VIDEOGRAPHER: It's better.  
 16 MS. MCDANIEL: Okay.  
 17 Q. (BY MS. MCDANIEL): Officer Gonzalez,  
 18 how is your sound? It sounded a little funny.  
 19 A. We are back on. The document is  
 20 uploaded now. I'm on Exhibit 6, I believe.  
 21 Q. Okay. I'm going to try to share my  
 22 screen. Okay. I'm sharing my screen. Can you  
 23 see that this document is marked Plaintiff's  
 24 Exhibit Number 6?  
 25 A. Yes, ma'am.

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1 Q. And do you recognize this document?  
 2 It's a two-page document.  
 3 A. Yes, ma'am. I do.  
 4 MR. BARTON: This is Monte Barton.  
 5 Can you identify the Bates numbers just for the  
 6 record?  
 7 MS. MCDANIEL: Yes, sir. This is a  
 8 two-page document produced by the city in this  
 9 case as COA098 and 099.  
 10 Q. (BY MS. MCDANIEL): From what you've  
 11 seen, Officer Gonzalez, do you recognize this as  
 12 your report on the incident that's the basis of  
 13 this lawsuit?  
 14 A. (Audio/video quality interruption.)  
 15 Q. Did you respond? I could not hear you.  
 16 MS. MCDANIEL: It looks like Officer  
 17 Gonzalez and Mr. Barton are off again so I guess  
 18 we should go off the record.  
 19 THE VIDEOGRAPHER: All right. We're  
 20 off the video record. It's 12:34.  
 21 (Off the record at 12:34 p.m.)  
 22 (On the record at 12:35 p.m.)  
 23 THE VIDEOGRAPHER: We are back on  
 24 the video record. The time is 12:35.  
 25 MS. MCDANIEL: Thank you.

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1 Q. (BY MS. MCDANIEL): We had a little bit  
 2 of Internet issues but now we're back. I've got  
 3 my screen shared. Officer Gonzalez, can still  
 4 see the report that's on the screen that is  
 5 Bates labeled COA000098?  
 6 A. Yes, ma'am.  
 7 Q. Okay. And I believe you stated on the  
 8 record that you do recognize this as your report  
 9 of the accident that happened on August 1, 2020  
 10 that's the basis of this lawsuit; is that  
 11 correct?  
 12 A. Yes, ma'am.  
 13 Q. Okay. Let's see. So here it states  
 14 that you were working as MFF on this day. Can  
 15 you tell me what MFF means there?  
 16 A. Mobile field force.  
 17 Q. But that does not necessarily mean that  
 18 you were using a bicycle; is that correct?  
 19 A. No, ma'am.  
 20 Q. And you stated on the record that you  
 21 were not on a bike that day; is that correct?  
 22 A. Not that day.  
 23 Q. Okay. So I want to go to the third  
 24 paragraph. It states I looked to my right and  
 25 observed an officer or officers -- looks like

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1 you meant to say officer --  
 2 A. Yes, ma'am.  
 3 Q. -- who was struggling to detain a white  
 4 female. I went over to help the officer who was  
 5 dealing with the female and assisted. I grabbed  
 6 the right wrist of the female and immediately  
 7 felt her pull her hands toward the front of her  
 8 body.  
 9 In my training and experience of  
 10 seven years, I have learned that criminals like  
 11 to carry weapons in the front of their  
 12 waistlines. When I felt the female pull her  
 13 hand forward, I conducted a wrist lock in order  
 14 to gain control of her arms and then she was  
 15 guided to the floor and onto her knees.  
 16 The female was still pulling her  
 17 right hand away from me while on the ground. I  
 18 could feel her strength and her body stiffen as  
 19 she was resisting. At this point, I gave  
 20 commands to not resist multiple times.  
 21 I pulled out my handcuffs and was  
 22 able to place them on the female with the  
 23 assistance of the other -- of other officers. I  
 24 later identified the officer that I helped as  
 25 Officer Smart.

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1 Once the female was placed in  
 2 handcuffs, she was placed in a patrol vehicle.  
 3 I'm gonna stop there. Did I read that  
 4 accurately?  
 5 A. Yes, ma'am. Couple of little errors on  
 6 my end, S's and stuff like that, but --  
 7 Q. No problem. I'm the queen of typos, so  
 8 you're good. I want to go to where you stated I  
 9 could feel the strength in her body -- her  
 10 strength and her body stiffen as she was  
 11 resisting.  
 12 What made you write that she was  
 13 resisting?  
 14 A. The fact that, one, I saw the officer  
 15 trying to gain control of her on his own. Also,  
 16 once I grabbed her hand, I could feel, you  
 17 Know, I use the word stiffen and resisting here,  
 18 her -- her strength and her body stiffen, like,  
 19 just hard like holding her ground.  
 20 Q. This is while she was already on the  
 21 ground?  
 22 A. It's all kinda happening together, but I  
 23 felt it from -- from as soon as I grabbed her  
 24 arm I could -- I could feel the -- I wrote here  
 25 I felt her strength. So when I grabbed her --

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1 her arm I felt the strength.  
 2 She was standing up at this point  
 3 and I felt her stiffen as she was resisting and  
 4 then at some point within all that we ended up  
 5 on the ground.  
 6 Q. I see. And where you wrote, going to  
 7 the first sentence of that paragraph, an officer  
 8 was struggling -- or officer who was struggling  
 9 to detain a white female, you observed the  
 10 officer was struggling to detain, what made you  
 11 write that statement?  
 12 A. Because I looked over and it was a one-  
 13 on-one situation and also, at some point I  
 14 remember, like, kind of seeing, like, her -- her  
 15 legs kick up or pull -- like, just pulling away.  
 16 It just didn't look controlled.  
 17 Q. What made you believe that the  
 18 individual was a white female?  
 19 A. I could kinda see her face, like,  
 20 shape -- shaped like a woman.  
 21 Q. What made you -- So -- so it was from  
 22 the shape of her face that you could see that  
 23 she looked like a woman?  
 24 A. Well, I wrote this report afterwards.  
 25 I -- I mean, I know that she's a -- a white

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1 female then, so I got a better descriptor. So  
 2 if I -- you know, I know she's a white female.  
 3 Q. So she resembled a female even though  
 4 her head was covered?  
 5 A. Well, I would guess a reasonable person  
 6 would assume that she was a female and her skin  
 7 looked white.  
 8 Q. Okay. Did you have the sense that this  
 9 female or this individual was physically  
 10 overpowering you and the other officers?  
 11 A. That she was overpowering?  
 12 Q. Uh-huh.  
 13 A. She was being noncompliant which can  
 14 turn into -- or in the same hand be overpowering.  
 15 He doesn't have a hundred percent control, so I  
 16 would say yes.  
 17 Q. But you had the sense that she was  
 18 overpowering you and the other officer?  
 19 A. No. You just asked me the other  
 20 officer. Now you're including me. So who --  
 21 who --  
 22 Q. Ah. I'm sorry. I'm misunderstanding.  
 23 I -- I meant -- I think I asked you the first  
 24 time you the other officer, so I'll just ask it  
 25 again. Did you have the sense that the

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1 individual was overpowering you and the other  
 2 officers physically?  
 3 A. She was resisting and with --  
 4 Q. That's not what I'm asking.  
 5 A. So -- so let me paint the picture and  
 6 then I'll let you -- I'll -- I'll let you get  
 7 what you want from it. She was resisting and if  
 8 I didn't use reasonable force, she would have  
 9 overpowered us.  
 10 I -- I don't know -- I don't use the  
 11 word overpower all the time, but I would say she  
 12 could've overpowered, and we would have lost  
 13 control of her if we didn't use our reasonable  
 14 force.  
 15 It could have been now we're dealing  
 16 with other extremes like it happened. If -- I  
 17 don't know. Anything could happen after that.  
 18 Q. I think I understand what you mean. So  
 19 to -- to ask a different question, you may have  
 20 had the sense that she -- her resistance could  
 21 lead to a loss of control over her by the  
 22 officer and yourself?  
 23 A. It could -- it could -- it could -- I --  
 24 I would say it could lead to loss -- loss of  
 25 control for the officers and also become a

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1 danger to the officers.  
 2 Q. Okay. I understand. Going back to  
 3 overpowering though, did you get the sense that  
 4 she was physically capable of overpowering you  
 5 and the other officer?  
 6 A. I think sense and knowing and experience  
 7 are all different things. I mean, you can look  
 8 at someone and -- and not know that they're an  
 9 Olympic power lifter or they -- black belt  
 10 jujitsu, so I don't -- I don't know what I'm  
 11 dealing with.  
 12 Q. Did you have the sense at that time that  
 13 she was capable of physically overpowering you  
 14 or the other officer?  
 15 A. At that time when something like that's  
 16 happening, I'm gonna use all reasonable force to  
 17 control the subject at hand.  
 18 Q. Was -- was Ms. Beuhler -- Ms. Beuhler,  
 19 if you know, was she carrying a weapon?  
 20 A. I -- I do not recall. Not to my  
 21 knowledge. I didn't see anything in her hand,  
 22 but that -- Not to my knowledge. No.  
 23 Q. Okay. So there were individuals --  
 24 There's videotape, you know, in this case and  
 25 there were individuals that I saw carrying --

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1 openly carrying firearms. Did you notice that  
 2 that day?  
 3 A. People do that in Austin, exercise  
 4 their -- their rights. They did it during  
 5 protests. They've done it. I wouldn't be  
 6 surprised if I saw somebody downtown exercising  
 7 their rights.  
 8 I don't remember that specific day,  
 9 but there was days where people did have weapons,  
 10 correct, but I don't remember that specific day  
 11 if I did or did not see weapons.  
 12 Q. I understand. Do you recall if you  
 13 arrested anyone that day who was carrying --  
 14 openly carrying a firearm?  
 15 A. To my knowledge, no.  
 16 Q. During your participation in the arrest  
 17 of Ms. Beuhler, did you hear her say you're  
 18 going to break my wrist or something similar to  
 19 that?  
 20 A. I heard her yelling. She could have  
 21 said that. I just heard a lot of yelling, and I  
 22 don't remember the exact words.  
 23 Q. Is it important to try to listen to what  
 24 a individual is saying in that situation to give  
 25 you guidance as to how much force you are using?

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1 A. It -- it is important, but when  
 2 everything is happening so quick and so fast and  
 3 people's lives might be in danger, my most  
 4 important thing is to control those hands  
 5 because people are known to carry weapons in  
 6 their waistline.  
 7 So to me, you know, I gotta use  
 8 reasonable amount of force to control that hand  
 9 and accomplish the detention, and sometimes  
 10 people might say something. The crowd might say  
 11 something, but I have to continue with my task,  
 12 make sure that I'm safe and that other officers  
 13 are safe.  
 14 Q. It seems like it was a -- a difficult  
 15 situation.  
 16 A. Yeah, and it was, you know, also almost  
 17 two or three years ago so, you know --  
 18 Q. Hard to remember.  
 19 A. Yeah.  
 20 Q. I understand. Do you recall if you de-  
 21 escalated the force that you were using because  
 22 Ms. Beuhler stated that her wrist might be  
 23 breaking?  
 24 A. Well, I'm gonna go by feel, whatever I'm  
 25 feeling at the time. So if you're -- someone is

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1 pulling, I'm gonna still use reasonable force to  
 2 control that hand. My goal is not to hurt  
 3 anyone. My goal is not to break bones.  
 4 My goal is to place that person in  
 5 handcuffs, so that was my main goal at that  
 6 moment.  
 7 Q. I understand.  
 8 A. And that's not -- My goal is to get  
 9 someone detained as quick as possible.  
 10 Q. What -- what is a wrist lock? I see it  
 11 here in the statement. It says when I felt the  
 12 female forward -- hand forward, I conducted a  
 13 wrist lock in order to gain control of her arms  
 14 and then she was guided to the floor and onto  
 15 her knees. What is a wrist lock?  
 16 A. A wrist lock is a technique where you  
 17 use the joints of the body in order to apply  
 18 pressure and not allow -- make it uncomfortable  
 19 or get proper control of that person's body and  
 20 get them in a position where you can detain them.  
 21 Q. Do you use a wrist lock in every arrest  
 22 that you effectuate?  
 23 A. No. The -- the hands might be  
 24 positioned in a -- in a manner that might appear  
 25 to be one, but it's all depending if they're

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1 resisting or not. No. To answer your question,  
 2 no.  
 3 Q. When you talked about force when you  
 4 said the individual, if they're using this much  
 5 force then you want to use this much force, how  
 6 much force is a wrist lock? Is that, like, a  
 7 entry-level amount of force, or is that --  
 8 A. It's a reasonable amount of force for  
 9 that situation.  
 10 Q. I see. Is there any other method that  
 11 you're aware of for controlling hands other than  
 12 using a wrist lock?  
 13 A. There might be. There might be other  
 14 methods. There is a method that was done I'm  
 15 not familiar with that was taught with the PR24  
 16 to kinda get, like, a leverage type deal. I've  
 17 probably practiced it a couple times.  
 18 I didn't do it, but for that moment,  
 19 that was the best technique I could use.  
 20 Q. How many times have you used a wrist  
 21 lock in effectuating an arrest?  
 22 A. I don't have an exact number. On that  
 23 one was -- clearly, I felt her resisting, so I  
 24 used a wrist lock. I -- I did apply, you know,  
 25 some pressure and controlled her arm. I can't

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1 give you a number.  
 2 Q. Would you say it's more than 10 times?  
 3 A. Wrist lock ten times? No.  
 4 Q. Would you say it's more than five times?  
 5 A. Maybe. I don't -- I don't know these  
 6 numbers. I don't -- You know, I do my job. I  
 7 properly document. I let my supervisors know  
 8 what I did, and I move on. I don't, like --  
 9 Q. I --  
 10 A. -- a chart of this stuff, but --  
 11 Q. But you think --  
 12 A. -- I'd say -- I'd say --  
 13 Q. -- fewer than ten times --  
 14 A. -- five or less times. Off memory, five  
 15 or less times may --  
 16 Q. Five or less times --  
 17 A. Five --  
 18 Q. Okay. Thank you.  
 19 A. I don't know. Maybe five.  
 20 Q. Let's see. When you use a wrist lock,  
 21 is that something that you would document in a  
 22 report?  
 23 A. Yes. It's a technique, so yes. And  
 24 it's a use of force, so yes.  
 25 Q. Okay. Do officers sometimes say,

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1 like -- like, for example, I mean, it wouldn't  
 2 be the right thing to do and I -- I know you  
 3 wouldn't do this, but, I mean, is it kind of  
 4 like -- could an officer say, well, I didn't use  
 5 a -- Like, is that a special term where it's,  
 6 like, if you use a wrist lock and that's a  
 7 technique and you have to write a report about  
 8 it, if you didn't use that term but you still  
 9 used the force, would that mean that you don't  
 10 have to write a report about it?  
 11 A. With any type of force, you're gonna --  
 12 you're gonna document it. So, I mean, I'll --  
 13 I'll -- I'll -- If I -- if I -- if I -- if anybody gave  
 14 me resistance, stiffening up their body, pulling  
 15 their hand, anything like that, I'm gonna use a  
 16 reasonable amount of force.  
 17 I'm gonna go talk to the supervisor  
 18 immediately, paint the picture, and I'll let  
 19 them decide because that's what they do. They  
 20 decide what it is or it isn't.  
 21 Q. Did you fear for your physical safety  
 22 during this encounter that you described in your  
 23 report? Not -- not the bottom part 'cause we  
 24 haven't read it yet, but the part that I read.  
 25 A. With her, or the crowd? Can you be more

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1 specific?  
 2 Q. With her.  
 3 A. Ask the question again.  
 4 Q. I said did you fear for your physical  
 5 safety during this encounter with her?  
 6 A. I -- Yeah. I -- Yes. I got a -- I got  
 7 a subject that's resisting. They're pulling  
 8 their hands. They're -- I'm feeling them not  
 9 being compliant. I don't know what they have.  
 10 Some people carry bags.  
 11 Some people have different items in  
 12 their waistline, so I -- I -- I feel in danger  
 13 for myself and my partners.  
 14 Q. Okay. Do you think that there's ever  
 15 any reason to escalate force that doesn't have  
 16 to do with the officer's safety like, for  
 17 example, to make an example out of someone?  
 18 A. That's unprofessional, unethical, and  
 19 no.  
 20 Q. Well, but if you're in a situation like  
 21 this one where you've got, you know, I think it  
 22 stated -- at the beginning it states that you're  
 23 assisting with riots, protesters, and crowd  
 24 control, is part of your training to make an  
 25 example out of some people to maybe deter people

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1 in the crowd from doing the thing that that  
 2 person was doing?  
 3 A. I'm a -- I'm a peace officer in the  
 4 state of Texas. I'm a -- I'm a professional, so  
 5 anything -- I don't let personal matters get to  
 6 me. I do what's asked of me. I protect the  
 7 public and if I have to make an arrest, I make  
 8 an arrest.  
 9 Q. Well, would you state that that's not  
 10 part of your training being -- making an example  
 11 out of someone in order to --  
 12 A. No. It's not.  
 13 Q. -- deter --  
 14 A. That -- that sounds personal, and no,  
 15 it's not.  
 16 Q. Okay. I appreciate that. Because I do  
 17 know that I can imagine that it's, like, well,  
 18 you know, if we arrest one people -- one person  
 19 and make a show out of it, then the rest of the  
 20 people will disperse.  
 21 That's not a -- that's not a tactic  
 22 that you would use?  
 23 A. That's not -- nothing that I've used.  
 24 Q. Okay. I'm just curious. Let me see. I  
 25 think I asked you that. What other force, if

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1 any, did you use against Ms. Buehler other than  
 2 the wrist lock?  
 3 A. That's it.  
 4 Q. Okay. Well, I think we're almost ready  
 5 for another break. Would that be okay with you?  
 6 We're already --  
 7 A. That's fine.  
 8 Q. Yeah. We've -- It's almost one. We've  
 9 been going about an hour and a half. I have a  
 10 fair amount to get through.  
 11 MS. MCDANIEL: What are y'all  
 12 wanting to do for eating? I guess should we  
 13 take a 15-minute break, Monte? What do you  
 14 think?  
 15 MR. BARTON: Well, I -- I think  
 16 we're pretty prepared to go forward, but really  
 17 whatever --  
 18 MS. MCDANIEL: Okay.  
 19 MR. BARTON: -- you want to do. If  
 20 you want to take 15 minutes or 30 --  
 21 MS. MCDANIEL: I'm prepared to go  
 22 forward --  
 23 MR. BARTON: -- I mean --  
 24 MS. MCDANIEL: -- and I know that  
 25 Officer Gonzalez said he had work at four. I

<p style="text-align: right;">Page 110</p> <p>1 know they're being flexible, but I don't know if 2 we'll be done by four, but, you know, might as 3 well give it a shot. 4 So you want to meet again in 10 5 minutes? 6 THE WITNESS: That's fine with me. 7 MR. BARTON: Yep. 8 MS. MCDANIEL: Okay. Let's go off 9 the record for 10 minutes, please. 10 THE WITNESS: Thank you. 11 THE VIDEOGRAPHER: Okay. We are off 12 the video record. It's 12:55 p.m. 13 (Off the record at 12:55 p.m.) 14 (On the record at 1:10 p.m.) 15 THE VIDEOGRAPHER: We are back on 16 the video record. The time is 1:10 p.m. 17 MS. MCDANIEL: Thank you. Well, I 18 am going to ask Ms. Lopez to please place 19 Plaintiff's Exhibit Number 7 in the Dropbox 20 folder and I already have it. Thank you, Alexis. 21 Q. (BY MS. MCDANIEL): Will you see if you 22 can locate and pull up that document, 23 Plaintiff's Exhibit Number 7? 24 (Plaintiff's Exhibit No. 7 marked 25 and presented to Witness for</p>	<p style="text-align: right;">Page 112</p> <p>1 A. So -- so these -- to my knowledge, these 2 Class D's are -- I could be -- any officer could 3 be working their shift or patrol and there could 4 be a Class D investigation going on on them and 5 they would never even know `til maybe three to 6 six months later. 7 And then at some point in your city 8 mailbox they'll give you a hard copy of one of 9 these and you're like, what's this, and it's, 10 like, dated from, like, three months ago, six 11 months ago and it's pretty much just telling you, 12 hey, you were being investigated and nothing 13 came of it, or it's been taken care of in the 14 sense of you're okay, but you never knew. 15 Q. I see. How many of these would you say 16 you've received? 17 A. Maybe two. No more than three just off 18 memory. 19 Q. Sure. I appreciate that information. 20 Let's see. And so at the top it states subject, 21 Class D Memorandum, IAD case number 2020-1301. 22 What does IAD stand for? 23 A. I'm not sure. Maybe I would guess 24 internal affairs D. That's what I would guess. 25 I don't know what that means.</p>
<p style="text-align: right;">Page 111</p> <p>1 identification.) 2 A. I located Exhibit 7. I have eyes on. 3 Q. Okay. Let me share my screen. There we 4 go. Well, this document that's marked 5 Plaintiff's Exhibit 7 is a four-page document. 6 It was produced by the city in this case as 7 COA0004O2 through 0004O5 [sic], and do you 8 recognize this document, Officer Gonzalez? 9 A. I -- I'm seeing it before me. Maybe 10 I've seen it in the past. I don't recall. 11 Q. Okay. This is, I believe, and let me 12 know if you think it's accurate, the Class D 13 Memorandum that relates to the incident 14 that's -- is the basis of this lawsuit. Does 15 that sound accurate to you? 16 A. Correct. 17 Q. So you stated that you may have seen 18 this at some point in the past, but you don't 19 recall? 20 A. Yes. 21 Q. Do you recall that there was a Class B 22 Memorandum made about this incident? 23 A. Class D? 24 Q. I just said Class B. I don't know all 25 the different classes --</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. What does internal affairs do? 2 A. They investigate police officers. 3 Q. Okay. So it's kind of like a -- I guess 4 for attorneys, that's kind of -- The State Bar 5 does a lot of things, but one thing they can do 6 is investigate lawyers. Is that all that IAD 7 does to your knowledge, or do they do other 8 things, too? 9 A. Internal -- internal affairs 10 investigates Austin police officers or city 11 employees that work -- 12 Q. Uh-huh. 13 A. -- under the city of Austin under all 14 umbrellas, and to my knowledge, they're the ones 15 that are responsible for policy violations and 16 complaints. 17 Q. Does it sometimes seem unfair if you, 18 like, receive one of these months later and you, 19 you know, you didn't think that you should have 20 been investigated? 21 A. I'm okay with them. They don't -- 22 Somebody has the right to complain on me as much 23 as they want. That's fine. 24 Q. Is that usually -- is that -- Well, I 25 shouldn't say usually. Is that what happens?</p>

<p style="text-align: right;">Page 114</p> <p>1 Is it that somebody complains and then there's 2 an investigation? 3 A. It depends on the level of complaint and 4 the avenue that it was given. It's gonna play 5 out how -- how long, where it goes, and how it's 6 investigated. I -- I don't control that. I 7 don't know. 8 Sometimes it can be an anonymous 9 complaint, so that's behind the scenes. Nothing 10 that I have to do with or truly understand the 11 full process of. 12 Q. I think for attorneys it's similar. If 13 somebody -- I think anybody can file a grievance 14 against any attorney with the State Bar. It 15 doesn't even necessarily have to have been an 16 event that actually happened. 17 You know, it can be a variety of 18 circumstances. So let's see. So there's a 19 detailed portion here that's quite small. Do 20 you have an -- a large enough screen to be able 21 to read any of this type that I'm -- 22 A. I can read it. 23 Q. -- here? Okay. And this is a four-page 24 document, but it appears to be two sets kind of 25 of the same document. So I want to go to -- So</p>	<p style="text-align: right;">Page 116</p> <p>1 panic attack, so they got one. And then finally 2 it states 318.5.1 Miranda warning. It says the 3 complainant stated I wasn't read my Miranda 4 right. 5 And then there is some statement 6 about the enclosed external complaint was 7 received by internal affairs via the OPO from 8 the complainant listed above on Javier Gonzalez, 9 number 74422, and the complainant is listed 10 at -- I don't see where the complainant is 11 listed yet. 12 Complaint has been described as a 13 designated Class D complaint. A review of this 14 complaint has indicated no violations of 15 departmental policy. 16 Internal affairs will be provided 17 this original memo in order to close the 18 complaint administratively and no further 19 investigation will occur. Does that all -- Did 20 I read that all accurately? 21 A. Yes, ma'am. 22 Q. Okay. So I want to go to page 2 which 23 is 004O3 [sic] and go to some of this small type 24 which is called detailed responses to complaints. 25 Do you see that section?</p>
<p style="text-align: right;">Page 115</p> <p>1 there are four allegations at the top, and these 2 are associated with certain numbers. 3 So 200.2, de-escalation of police 4 force encounters; what does 200.2 refer to? 5 A. I would assume it -- it goes back to 6 Austin -- Austin police policy -- our policy. 7 Q. Okay. So in this situation, they're 8 associating one Austin police policy regarding 9 de-escalation with this allegation where it says 10 the complainant stated, quote, I wasn't told why 11 I was being arrested and they used excessive 12 force towards me. 13 It was four officers on me kneeling 14 on me and I'm 130 pounds. Then it states 200.3, 15 response to resistance, the -- and then it has 16 the same quote, complainant stated exactly what 17 I had stated before. 18 So that apparently, might -- might 19 correspond with two different quote sections, I 20 suppose, and then it states 306.3.1 [sic], 21 search protocol. The complainant advised, quote, 22 the officers were not going to get a female 23 officer. 24 They said they didn't have time to 25 get a female officer and I started to have a</p>	<p style="text-align: right;">Page 117</p> <p>1 A. Yes, ma'am. 2 Q. Let's see. So this states -- I'll just 3 read the whole thing. Officers Gavin smart, 4 number 8674 of the bicycle public order team, 5 BPOT, and Javier Gonzalez number 7422 assigned 6 to mobile field force, MFF were on duty in 7 downtown Austin on the evening of August 1, 2020, 8 a day with numerous protests in the area of 9 Congress Avenue and 4th Street at the site of 10 the Garrett Foster Memorial. 11 At approximately 8:22 p.m., officers 12 from mounted patrol, BPOT, and MFF began 13 clearing a large crowd of protesters out of 14 Congress Avenue north of its intersection with 15 4th Steet where this group was blocking all 16 lanes of the roadway. 17 As officers were attempting to clear 18 the roadway, several officers were giving verbal 19 commands to the protesters to back up while 20 sirens and whistles could be heard in the 21 background. 22 All officers were uniformed and 23 multiple police vehicles with emergency lights 24 activated were in the immediate area. Officer 25 Smart issued numerous loud commands telling</p>



<p style="text-align: right;">Page 118</p> <p>1 subjects to move back and at least once loudly 2 stated move back or you're gonna get arrested. 3           The complainant, Sydni Beuhler 4 remained standing in the roadway as many other 5 protesters either voluntarily moved out of the 6 roadway or were pushed back by officers. 7           As numerous BPOT officers were 8 moving their bicycles forward to move the crowd, 9 Officer Smart approached Ms. Beuhler and 10 asked -- instructed her loudly, move back. Ms. 11 Beuhler remained where she was standing and 12 loudly stated fuck you. 13           Officer Smart wrapped his arms 14 around Beuhler while facing her and pulled her 15 back behind the line of BPOT officers away from 16 the other protesters. Officer Smart's BWC 17 appears to have been inadvertently turned off at 18 this point. 19           Ms. Beuhler began yelling and 20 struggling with Officer Smart while he tried to 21 control her. Officer Gonzalez observed the 22 struggle and approached to assist Officer Smart 23 who at this point had pushed Ms. Beuhler to the 24 ground on her knees with her upper body over her 25 thighs.</p>	<p style="text-align: right;">Page 120</p> <p>1 Beuhler jumped up and down stating that she 2 needed a female officer. 3           Officer Allare informed Ms. Beuhler 4 that she was a female officer. Officer Allare 5 quickly frisked Ms. Beuhler who was then placed 6 in a patrol car driven by Officer Martinez. 7 Officer Smart provided information related to Ms. 8 Beuhler's arrest to Officer Martinez. 9           After this, neither Officer Smart 10 nor Officer Gonzalez had any further involvement 11 with Ms. Beuhler. Does that -- Did I read that 12 accurately? 13        A. Yes, ma'am. 14        Q. Does that refresh your recollection as 15 to this incident? 16        A. That's, whoever wrote this, their point 17 of view and that's their writing, not mine. 18        Q. I see. When somebody writes this, how 19 do they get all of this information? Where is 20 all this information coming from? 21        A. I would imagine from reports, 22 supplements, and video cameras. 23        Q. Okay. Do you see in the document in 24 that paragraph, this -- the -- I read three 25 paragraphs, going to the third one where it</p>
<p style="text-align: right;">Page 119</p> <p>1           Officer Gonzalez had control of Ms. 2 Beuhler's right arm and Officer Smart had 3 control of her left. At that point, Officer 4 Anne Allare, number 7755, MFF female officer 5 approached and briefly held Ms. Beuhler's left 6 hand as Ms. Beuhler offered no resistance to 7 Officer Allare. 8           Ms. Beuhler was yelling while 9 officers were trying to handcuff her while 10 loudly instructing her stop -- to stop resisting. 11 While trying to handcuff Ms. Beuhler, Officer 12 Gonzalez placed his right knee on Ms. Beuhler's 13 upper right back arm area and right side while 14 Officer Smart placed his left knee on the left 15 side of Ms. Beuhler's upper back and in the left 16 side area. 17           Once they were able to get her 18 handcuffed, Officer Smart immediately stood Ms. 19 Beuhler up and escorted her to a waiting patrol 20 car. Officer Smart loudly asked if there was a 21 female officer in the area. 22           A male officer, an officer N. 23 Martinez stated that they didn't have time for 24 a female. Officer Allare turned around to 25 assist Officer Smart. At this point, Ms.</p>	<p style="text-align: right;">Page 121</p> <p>1 describes the arrest of Ms. Beuhler? 2           Do you see that on the one, two, 3 three, fourth line down there is a sentence that 4 states Officer Gonzalez had control of Ms. 5 Beuhler's right arm? 6        A. Yes. I see that. 7        Q. And do you agree that you had control of 8 her right arm? 9        A. I was controlling her right arm. 10 There's never -- it's never, like, oh, it's 11 controlled, we're good from here forward. I was 12 controlling her right arm. 13        Q. Do you notice that nowhere in this 14 description does it describe your use of a wrist 15 lock? 16        A. I don't think you read that, and I don't 17 think that I see that. 18        Q. Why do you think that is? 19        A. Different people wrote two different 20 things and people articulate different 21 situations with different wording. Different 22 people have different level of being a police 23 officer. 24           Some people have been a police 25 officer for one year. Some people have been</p>

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1 a -- have been a police officer for 15 years.  
 2 Some people haven't been on patrol in 10 years.  
 3 Some people have been on patrol for one year.  
 4 So I can't control what this  
 5 document says. I don't know why.  
 6 Q. So your -- In your -- like, based on  
 7 what you think about writing reports and  
 8 refraining and writing reports, do you think  
 9 omitting the fact that a wrist lock was used is  
 10 a -- is a significant omission?  
 11 MR. BARTON: Object to the form.  
 12 MS. MCDANIEL: I'll try to rephrase  
 13 my question.  
 14 Q. (BY MS. MCDANIEL): Is this report  
 15 incomplete in failing to include that a wrist  
 16 lock was used?  
 17 A. He's -- Whoever wrote this is  
 18 articulate -- they articulated it in their own  
 19 words, so maybe that's the picture that they  
 20 painted. So I can't speak for this person.  
 21 Q. I appreciate that. I'm going down. So  
 22 we were at Officer Gonzalez gaining control of  
 23 Ms. Beuhler's right arm, then I want to go to  
 24 the sentence, I think it's two lines down.  
 25 It states while trying to handcuff

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1 Ms. Beuhler, do you see that that sentence  
 2 states that you placed your knee on Ms.  
 3 Beuhler's upper right back area?  
 4 A. Yes. I'm reading that on this document.  
 5 Q. Is putting your knee on someone's back  
 6 area a police action you would normally include  
 7 a report -- in your report or your supplement as  
 8 you described?  
 9 A. If I did it -- if I intentionally did  
 10 it, that is very important that I would put that  
 11 on there --  
 12 Q. Okay.  
 13 A. -- especially -- especially with the  
 14 climate of everything going on. Yes.  
 15 Q. Do you agree with the report's statement  
 16 that you placed your knee on her upper right  
 17 back area and right side?  
 18 A. Based on the videos that I've seen and  
 19 my memory, I -- I disagree with this. This  
 20 is -- this sounds too firm. Like, this person  
 21 is saying that -- and now they worded something  
 22 like their -- his knee maybe touched her upper  
 23 back, rubbed her upper shoulder.  
 24 I -- I would agree that this is  
 25 too -- this is too -- this just -- that's plays

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1 an -- it's either, you know, I did, or I didn't.  
 2 So this person is saying it, that I did. That  
 3 just sounds very strong, very firm.  
 4 Q. And so do you think that that's  
 5 incorrect?  
 6 A. That's how -- that's how they're  
 7 articulating it. I didn't write this. They're  
 8 probably correct in their mind. I wouldn't  
 9 articulate it like this and if -- if it was  
 10 something that I did, I would put it on my  
 11 report.  
 12 That simple. Everything is on  
 13 camera.  
 14 Q. That's true. Do you agree with the  
 15 statement at the end that you had no further --  
 16 It says -- states after this, neither Officer  
 17 Smart and nor Officer Gonzalez had any further  
 18 involvement with Ms. Beuhler. Is that accurate?  
 19 A. I agree. I -- I never saw her again to  
 20 my knowledge. Is it possible that I was at the  
 21 jail later and she was there, maybe, but not to  
 22 my knowledge. I -- I -- She was taken away and  
 23 that was it.  
 24 Q. As -- a far -- If you know or don't  
 25 know, I'm curious. What happened to Ms. Beuhler

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1 after she was placed in the police car?  
 2 A. What happens? Either she goes to jail,  
 3 or she goes to a detention area -- temporary  
 4 detention area. It just depends what -- what  
 5 was going on, the operation that they had going  
 6 on for the time being.  
 7 Either she can put her in the  
 8 transport van. They even have an area where  
 9 they're arresting people, or they can just take  
 10 her straight to the jail. It just all depends.  
 11 Too many circumstances to say what happened.  
 12 Q. What is a temporary detention area?  
 13 A. It's someplace that if multiple arrests  
 14 are being made, it's a -- it's a point where  
 15 prisoners are detained temporarily and later  
 16 transported to the actual jail itself.  
 17 Q. Do you know if there were any --  
 18 THE VIDEOGRAPHER: Pardon my  
 19 interruption. Sir, could you move the camera  
 20 down again?  
 21 THE WITNESS: Sorry.  
 22 THE VIDEOGRAPHER: You're good.  
 23 Thanks.  
 24 Q. (BY MS. MCDANIEL): It's probably 'cause  
 25 this small type I'm asking you to read. Do you

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1 recall if there were any temporary detention  
 2 areas being used for the protests on that day?  
 3 A. Not that day. Possibly there all  
 4 these -- We're talking about two or three years  
 5 ago. I know they were used. I don't know if  
 6 that day are not. Maybe yes, maybe no, but they  
 7 were used during the weeks of or the days of.  
 8 Q. What would be an example of one?  
 9 A. There's a building that we used to use  
 10 downtown located off of Natchez and 7th Street.  
 11 It was called a -- it was a building called  
 12 Carita's across the street from the ARCH  
 13 homeless shelter.  
 14 And when we would make arrests  
 15 because a lot a -- From downtown, if you're on  
 16 foot patrol or bike patrol, you can't take  
 17 someone to the jail, walk them two or three  
 18 miles, or put them on your bike.  
 19 You would take them in there. You'd  
 20 do the paperwork. You'd do a search, and then  
 21 there would be a transport vehicle that will  
 22 later transport them to the jail for you.  
 23 Q. I see. Thank you for that example. Is  
 24 there any policy that you're aware of regarding  
 25 the amount of time that someone should be

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1 detain -- like, if they're being arrested, then  
 2 is there an amount of time in which they should  
 3 be taken to the jail?  
 4 A. There is a -- I've never seen a -- an  
 5 exact time written anywhere. Different arrests  
 6 are made at different locations, therefore the  
 7 distances would vary, traffic, the amount of  
 8 officers.  
 9 There's a lot of factors that go  
 10 into it, so I would -- just sooner rather than  
 11 later.  
 12 Q. Do you know, like, what's the longest  
 13 amount of time do you think that you've had  
 14 someone that you arrested kind of in transit  
 15 with you before you got them to the station or  
 16 the jail, whatever the correct term is?  
 17 A. I can't think of a time. I mean,  
 18 everything varies so much, and then it's, like,  
 19 when are we counting the time. So I could go to  
 20 the jail -- I could -- I can arrest someone from  
 21 north Austin and by the time I shut the door and  
 22 put the car in drive, I can be there in 15, 20  
 23 minutes, but once I'm in the jail, I'm -- I'm --  
 24 I'm waiting in a line.  
 25 There's 15 cars in front of me.

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1 Maybe there's only one jail nurse. Maybe the  
 2 jailers inside of the actual jail, the people  
 3 that search the people, maybe instead of having  
 4 four people, they might be down to one or two.  
 5 So there's so many factors that --  
 6 that have to do with the amount of time, but the  
 7 sooner the better.  
 8 Q. I imagine that with these protests, it  
 9 probably complicated some of those --  
 10 A. Absolutely.  
 11 Q. -- factors.  
 12 A. Absolutely. And there's also something  
 13 else to throw in consideration is officers are  
 14 gonna be familiar with their backyard where they  
 15 work.  
 16 So if I had a officer that works in  
 17 south Austin, he's not gonna come to north  
 18 Austin and know it like the back of his hands,  
 19 might not know the -- the -- the best route,  
 20 might not just -- I can't -- You know, there's  
 21 no set time.  
 22 Q. Well, would you feel like if you had  
 23 somebody in your car for, you know, more than an  
 24 hour that it would be appropriate to see if they  
 25 need to use the restroom, or is it policy to not

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1 allow anyone to use the restroom when they're in  
 2 transit to being --  
 3 A. I -- I've never -- To my knowledge, I've  
 4 never had someone in my backseat for an hour, so  
 5 I've never had to make that decision.  
 6 Q. If you did, do you think that would be  
 7 something that you think about, or is that --  
 8 A. I'd -- I'd probably call a -- a  
 9 supervisor and say, hey, this is what's going on  
 10 and -- and that's it.  
 11 Q. Would you think about --  
 12 A. Or --  
 13 Q. -- maybe giving the person some water  
 14 or, like -- like, if you had a person in your  
 15 car, I know you said you never did and I -- I  
 16 understand that.  
 17 I'm just saying as an officer if you  
 18 had a person in your car and it was two or three  
 19 hours, would you consider possibly asking them  
 20 if they needed to use the restroom or -- or  
 21 would that be a --  
 22 A. I --  
 23 Q. -- out of --  
 24 A. Two to --  
 25 Q. -- bounds?

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1 A. Two to three hours is -- is a long time.  
 2 That's almost like a third of a -- of a shift.  
 3 I -- I just -- One, I don't -- I wouldn't give  
 4 water. I'm not -- I don't want to get accused  
 5 of poisoning someone.  
 6 I don't know if they have medical  
 7 conditions. I don't want to have anything to do  
 8 with that, but if I felt that there was a time  
 9 that was more than normal, I would call a  
 10 supervisor and go from there and --  
 11 Q. And is that one of the reasons why you  
 12 would want to get someone to the jail or the  
 13 station, you know, like you said, sooner rather  
 14 than later as to avoid those kinds of issues?  
 15 A. Yeah. I would -- I would say yes, but  
 16 that would be me speaking for myself.  
 17 Q. And I -- I understand I'm asking you to  
 18 speculate on something that's not within your  
 19 personal knowledge because you never had anybody  
 20 in your car longer than an hour, but I'm just  
 21 curious.  
 22 As to in your opinion, do you think  
 23 that -- Is APD policy -- Would APD policy  
 24 support having an -- a detainee in transit for  
 25 two to three hours with no bathroom and no

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1 water -- In your understanding, is that APD  
 2 policy?  
 3 A. I don't -- I don't -- I've never written  
 4 that anywhere, so -- I've never read that  
 5 anywhere, so I would say no, and I've never seen  
 6 times. I've never seen anything of policy that  
 7 you have X amount of time to do this.  
 8 Q. But is it encouraged maybe, like, do not  
 9 allow anyone to go to the bathroom even if you  
 10 have them in your car for two to three hours?  
 11 A. I would have to be in that situation  
 12 to -- to make the decision. You know, I -- I'd  
 13 have to --  
 14 Q. Yeah.  
 15 A. You see -- you see what I'm saying?  
 16 Q. But I mean, have you ever been taught  
 17 that? I'm saying is that like something --  
 18 A. Well --  
 19 Q. -- that is taught --  
 20 A. -- we --  
 21 Q. -- by APD --  
 22 A. I'll -- I'll talk about -- I'll talk  
 23 about a normal transport --  
 24 THE COURT REPORTER: One at a time,  
 25 please. One at a time, please. I missed that

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1 question, and I missed the answer.  
 2 MS. MCDANIEL: Okay. I'll re-ask  
 3 the question.  
 4 Q. (BY MS. MCDANIEL): I was asking does  
 5 APD teach or encourage officers to have a person  
 6 who has been arrested in the car for multiple  
 7 hours with no bathroom break?  
 8 A. I don't see that being encouraged  
 9 because if it was encouraged, that would be  
 10 violating people's rights and we want to get  
 11 people to the jail as soon as possible.  
 12 Q. Again, I would ask kind of like I did  
 13 earlier. Would that be something that you think  
 14 any -- that a reasonable officer would do to set  
 15 an example or, you know, to -- to be tough on a  
 16 arrestee or detainee? Is that an appropriate  
 17 tactic?  
 18 MR. BARTON: Object to form.  
 19 MS. MCDANIEL: Okay. I'm kinda  
 20 rambling.  
 21 Q. (BY MS. MCDANIEL): Do you think that a  
 22 reasonable officer would have an arrestee in  
 23 their car for two to three hours with no  
 24 bathroom break?  
 25 A. I just -- I don't -- I don't see that

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1 happening. I've never seen it -- Two to three  
 2 hours is a long time. I've never seen that  
 3 happen. As far as using the restroom, if we  
 4 allow people to use the restroom, there's a  
 5 possibility that maybe they might have a weapon  
 6 that we missed.  
 7 Maybe they might be disposing of a  
 8 contraband or drugs. Maybe they might consume  
 9 of something and -- and, you know, maybe swallow  
 10 some drugs, so that's not encouraged. So once  
 11 they're detained, we take them to the jail.  
 12 They get a second search depending  
 13 on the type of arrest. They get searched  
 14 thoroughly. Sometimes they have to change over  
 15 on clothes and that's the best search that can  
 16 be done is at the jail.  
 17 Q. Thank you. I appreciate that. Did you  
 18 hear about anything that happened after Ms.  
 19 Beuhler was placed in the police car?  
 20 A. No -- (Audio/video quality  
 21 interruption.)  
 22 MS. MCDANIEL: I think we may be  
 23 having a little technical difficulty again.  
 24 Q. (BY MS. MCDANIEL): Officer Gonzalez,  
 25 can you hear me?

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1 A. (No response.)  
 2 (Connection to Witness lost.)  
 3 (Momentarily off the record while  
 4 connection is restored at 1:39 p.m.)  
 5 THE VIDEOGRAPHER: We're back on the  
 6 video record. It's 1:41 p.m.  
 7 Q. (BY MS. MCDANIEL): All right. Thank  
 8 you for your patience with this technology stuff.  
 9 I will take this one down. So tell me about  
 10 Texas Penal Code section 42.03 [sic] which is  
 11 called obstructing.  
 12 A. Hello? Are you there?  
 13 Q. Yes. Can you hear me?  
 14 A. Yes, ma'am.  
 15 Q. Are you familiar with Texas Penal Code  
 16 section 42.03 which is about obstructing?  
 17 A. As obstruction of a passageway, or just  
 18 obstructing?  
 19 Q. Yes.  
 20 A. Off memory, somewhat. Yes, ma'am.  
 21 Q. Is it your understanding that Sydni  
 22 Beuhler was charged with violating Texas Penal  
 23 Code 42.03?  
 24 A. I didn't know the exact charge. I know  
 25 she was being arrested. I had nothing to do

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1 with what was decided for her charge. So  
 2 whoever did the -- the report or PC affidavit  
 3 for that, I -- I never saw that. Didn't know  
 4 anything about it.  
 5 Q. Okay. Did you arrest anybody else that  
 6 day because they were violating Texas Penal Code  
 7 42.03?  
 8 A. I'd have to refer back to my supplement  
 9 and see that. Can I look at it? Is that fine?  
 10 Q. Sure. We can bring it back up. Give  
 11 me --  
 12 A. I can take a look here also.  
 13 Q. I brought up Plaintiff's Exhibit 6  
 14 again. I'm gonna share my screen.  
 15 A. Yes. It's saying here that I later  
 16 arrested someone at 9:10 p.m. which was --  
 17 sorry -- I guess almost -- almost an hour later.  
 18 Q. I see. At the bottom of page 00098?  
 19 A. Yeah. Huh. I -- I thought there was a  
 20 bigger gap of time. Huh. Now I'm wondering --  
 21 Q. I guess it was about --  
 22 A. I'm wondering if it was 8:20 a.m. but  
 23 it's saying here 8:20 p.m., 9:10 p.m. Okay.  
 24 Yeah. Well, if this is what it says here, it  
 25 says 9:10 p.m.

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1 Q. Okay. And there I see it states at or  
 2 about 9:10 p.m., I was instructed to arrest all  
 3 persons at the southwest corner of South  
 4 Congress and 4th Street for obstruction of  
 5 passageway which is I guess Texas Penal Code  
 6 42.03.  
 7 I observed a male in all black and  
 8 grabbed his right arm. The male pulled away,  
 9 and because he was heavier than me, it caused me  
 10 to lose my balance and we both went down to the  
 11 ground.  
 12 On the ground I gave commands for  
 13 the male to place his hands behind his back and  
 14 he complied. I placed a set of zip ties on the  
 15 male, and he was properly secured. The male was  
 16 later walked toward the intersection of South  
 17 Congress and 3rd Street where he was searched  
 18 incidental to arrest and transported to the jail.  
 19 With the description that I just  
 20 read, did I read that accurately?  
 21 A. Yes, ma'am.  
 22 Q. With the description that I just read,  
 23 would there be a report that you would need to  
 24 file about that arrest?  
 25 A. This -- this is a supplement. It's all

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1 one day. It's all documented.  
 2 Q. I mean would you have to do R2 -- an RTR  
 3 report regarding that arrest?  
 4 A. In here I'm not stating -- on here I'm  
 5 not stating him resisting or anything like that  
 6 and I'm not stating any force, let me read this,  
 7 that I used, so therefore no.  
 8 Q. Well, it does state that he pulled away  
 9 and then you both fell over. That would not  
 10 count as needing an R2 -- TR report?  
 11 A. I wrote the words pulling away. I'd  
 12 have to see the video to -- to kinda go hand-in-  
 13 hand. Based on my training experience, it's  
 14 very possible that maybe he was already walking  
 15 away afterwards and he didn't know I was there.  
 16 I -- I'd have to look at the video.  
 17 Q. That makes sense. I understand. But  
 18 that is an arrest for obstructing. I see. So  
 19 thank you for answering. So according to your  
 20 training, is there any warning or statement that  
 21 an APD officer must make prior to arresting  
 22 someone for violating Texas Penal Code 42.03?  
 23 A. Ask the question again.  
 24 Q. If you were making arrest or before  
 25 making an arrest under 42.03, is there any

<p style="text-align: right;">Page 138</p> <p>1 warning or statement that an APD officer must 2 make to the person who might get arrested? 3 A. To my knowledge, no. Due to my training 4 and experience for -- for arrests like this, we 5 normally give verbal commands and warnings, and 6 then if we give the people a reasonable amount 7 of time to comply, and then arrests are made. 8 And based on here, I stated I was 9 instructed to arrest all persons at the 10 southwest corner of South Congress and 4th 11 Street for obstruction of passageway. I didn't 12 write who told me that, but we do have a radio 13 to our ear, and it can be a sergeant. 14 It can be a lieutenant. It can be a 15 chief, I -- and we follow those orders. 16 Q. Okay. Let's see. We kinda talked about 17 this already but I do want to ask. So were you 18 involved on -- in responding to the black lives 19 matter related protests on May 1, 2020 and June 20 1, 2020? 21 A. I'd have to look at a calendar. I -- I 22 don't know. It's -- Those are just dates to me. 23 Those are dates. 24 Q. Sure. 25 A. I -- I did go downtown during that time</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. That makes sense. Was it frustrating? 2 A. Busy. 3 Q. Busy. And you -- Did you find it 4 upsetting what people were saying to the police 5 at these events? 6 A. To me, it's nothing that -- to upset me. 7 It's just people exercising their rights and 8 beliefs. 9 Q. What was being discussed inside the 10 department during these protests? 11 A. Nothing. If anything was happening 12 inside, it was take breaks, drink your water, 13 here's some sandwiches, and just more troop 14 welfare type stuff. That's it. I can't -- 15 There was nobody inside telling us anything. 16 Q. Was there any -- was there any training 17 in how to deal with these protests that was 18 happening around that time? 19 A. Well, once again, the training that -- 20 that you mentioned was on my TCOLE roster, the 21 MFF, and then other PowerPoints that had been 22 brought up at work throughout, you know, just 23 randomly, and these techniques are pretty much 24 very traditional that can be applied in many 25 situations.</p>
<p style="text-align: right;">Page 139</p> <p>1 maybe three to six days. I don't know the exact 2 number. 3 Q. So you may have been in your 4 recollection present at some of the large 5 protests in 2020 maybe three to six days? 6 A. Yeah. There was -- there was also days 7 where once again at the time, I was on 8 specialized unit. I was on Metro tact, and at 9 times, we were just standing by nowhere near the 10 protests and just waiting if they needed us. 11 Some -- And there was times where 12 they didn't need us at all. 13 Q. So there were times during the protest 14 where you weren't there watching them, you were 15 on call, but you weren't there? 16 A. Yes, ma'am. We were on the clock in our 17 patrol vehicles waiting to come in to assist. 18 Q. Sure. The times that you did go in and 19 were in, you know, in the midst of a protest as 20 you were on August 1, 2020, what was your 21 experience like as an officer at those events? 22 A. Ask that question again, please. 23 Q. What was your experience like on the 24 days that you were involved in these protests? 25 A. Busy.</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. Do you recall by this time that Brian 2 Manley ceased being chief of APD? 3 A. I don't know the time, but I know we had 4 a change. I don't -- I don't know when. I 5 don't keep up with that. 6 Q. Was there talk in the department about 7 that or his response to the protests? 8 A. I don't keep up with that. I just do my 9 job. I show up and I do my job. 10 Q. Do you recall there being, like, any 11 staff review in APD during the time of these 12 protests? 13 A. Staff review? I -- I don't know what 14 that means. That -- that's staff that's -- 15 I'm -- I'm a police officer. I'm not staff. So 16 whatever goes on behind closed doors, that's 17 something they do. I -- I know nothing about it. 18 Q. Did you -- Were you aware or did you 19 hear of any talk about overhauling the APD 20 police department? 21 A. Once again, I -- I go to work, I do my 22 job, and I'm not, you know, behind closed doors. 23 I don't know what happens with people that make 24 decisions. I -- I'm at the bottom of the food 25 chain.</p>

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1 I'm doing my job. I follow orders  
2 and that's it.  
3 Q. What about the training academy; do you  
4 recall that there were any changes that were  
5 effects on the training academies at the time of  
6 these protests?  
7 A. I don't know what happens at the  
8 training academy. I'm -- I'm a police officer.  
9 The only time I go there is for mandatory  
10 training or my yearly qualifications.  
11 Q. I understand. Were -- were you as an  
12 officer aware of, like, the media attention that  
13 was occurring due to these protests and police  
14 involvement in the protests?  
15 A. Once again, I -- I really don't watch  
16 the media. I like to keep my mind clear and  
17 positive, so I -- I -- that's something I don't  
18 really pay attention to.  
19 Q. It was kind of hard to avoid though,  
20 right?  
21 A. I mean, people bring it up, but it's,  
22 like, you need to just, you know -- I don't --  
23 It's, you know, any -- anything. It's just like  
24 a -- I -- I can't keep up with everything. If I  
25 keep up with every single thing that's on the

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1 media, I'm never gonna have a life.  
2 I'm never -- You know, I'm sure it  
3 was out there, but I -- I don't keep up with it.  
4 Like I said earlier, I might -- once everything  
5 is said and done, I might go to the facts and --  
6 and that's it, but while it's happening, I don't  
7 pay attention to that stuff.  
8 Q. Well, you -- Had you ever been -- have  
9 you ever seen or been involved with protests of  
10 the magnitude that occurred in May to August  
11 2020?  
12 A. I've been involved with protests, but  
13 it -- it's -- it's -- I mean, there was multiple  
14 groups throughout the city. So what do you  
15 consider a protest? You know, what -- what do  
16 you consider? I mean, I don't -- I don't know.  
17 What's the definition of a protest?  
18 We -- You know, at that day, I'm sure there was  
19 people at 35 in front of the police department,  
20 people at City Hall, people on Congress, people  
21 on Red River, so it's not like a hundred percent  
22 of the people there are -- are grouped up in one  
23 place.  
24 So I've been around large crowds,  
25 but they're just large crowds.

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1 Q. Well, I will just say in my experience,  
2 I've lived in Austin since '94 pretty much, you  
3 know, with a couple a years out and I have never  
4 seen any protests even approaching the magnitude  
5 of these protests in my experience in Austin.  
6 Have -- have -- But you have been  
7 around protests that large in Austin?  
8 A. Well, once again, I've been around large  
9 crowds. I did work downtown, so I've been there  
10 for Pecan Festivals, South by Southwest. I've  
11 been there for Texas Relay weekend, so -- so to  
12 me, they're just big crowds. I mean, they're  
13 crowds.  
14 Q. In big crowds, are you used to having  
15 people screaming obscenities at the police?  
16 A. It happens even on a daily weekend, you  
17 know. People exercise how they feel about us  
18 and that's okay. Some love us. Some don't.  
19 Q. I will say in my limited experience at  
20 these protests, 'cause I saw some, I was  
21 surprised and -- and I did feel like it would be  
22 difficult if I were an officer to deal with  
23 the -- the situation. It seemed very hot.  
24 It seemed like the officers would be  
25 very hot, that they were working long hours, and

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1 that there was a lot of screaming and the  
2 screaming was often happening fairly close to  
3 the officer's faces.  
4 So it seemed to me like it would be  
5 difficult to, you know, take that in stride.  
6 But for you, that was -- that was not -- not  
7 something that you either -- Did you experience  
8 that, long hours in the heat with people  
9 screaming really close to your face?  
10 MR. BARTON: Object to form.  
11 MS. MCDANIEL: I'll just ask a  
12 different question.  
13 Q. (BY MS. MCDANIEL): Did any of the  
14 officers discuss the protests that you recall?  
15 A. What officers?  
16 Q. Any officers that you talk to, do you  
17 recall there being any statements about this  
18 really is great and I think these protests are  
19 really great, or these protests are stupid or  
20 anything?  
21 A. Well, when -- when we're there, we're  
22 there to do our job, and maybe people talk  
23 amongst themselves. I talk to the people that I  
24 know, and I didn't hear any of that. We're just  
25 there to do our job and that's protect the

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1 community and keep everybody safe.  
 2 Q. Okay. What were officers doing -- You,  
 3 sure. I mean, you or anybody else, what were  
 4 officers doing to keep themselves safe from  
 5 possible claims of excessive force?  
 6 A. Repeat please.  
 7 Q. What did you or any officers do to  
 8 protect yourself against possible claims of  
 9 excessive force?  
 10 A. I mean, if someone's saying that it's  
 11 excessive force, that's -- that's their opinion,  
 12 but everything is on camera, which I like, and I  
 13 love the cameras, and as long as I do my job,  
 14 I'm gonna be okay.  
 15 So there's nothing different that  
 16 I'm gonna do. I'm not -- I'm not worried about  
 17 what someone might say. Watch my camera. Watch  
 18 the cameras.  
 19 Q. That makes sense. Do you recall if  
 20 anyone was worried about the possibility that  
 21 there would be excessive force claims arising  
 22 out of these protests?  
 23 A. I -- I work around professionals and  
 24 people that know their job and I never talk to  
 25 them about anything like that.

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1 Q. Would you consider Gavin Smart --  
 2 Officer Smart a professional?  
 3 A. I've seen him around. I don't  
 4 personally know him. I -- I've seen him around.  
 5 It's like going to high school. You see faces,  
 6 and kinda like that. I don't -- I don't know  
 7 anything about him.  
 8 Q. I understand. Did you feel tension  
 9 between the officers and the protesters?  
 10 A. No.  
 11 Q. Did the department give any sense that  
 12 the protests could affect your job?  
 13 A. Not to my knowledge. If anything, just  
 14 document, document, document, write your reports,  
 15 and be honest just like any -- any other time.  
 16 Q. Did the department give any sense that  
 17 there could be an impact on the funding of the  
 18 department due to the protests?  
 19 A. I don't -- I don't know, and that's all,  
 20 like, political. I don't keep up with that. I  
 21 don't even think they're allowed to talk to us  
 22 about that.  
 23 Q. I recall hearing city council meetings  
 24 where many people were dialing in and discussing  
 25 police funding and that the police had too much

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1 funding, and I even think that there was some  
 2 action taken on police funding, but I understand  
 3 that wasn't something that you discussed within  
 4 the office.  
 5 A. No, ma'am.  
 6 Q. Did you receive any sort of discipline  
 7 with regard to the incident that is the subject  
 8 of this lawsuit?  
 9 A. I got a -- a copy of that Class D that  
 10 you showed me and that's about it. I mean, I  
 11 did my job.  
 12 Q. But that Class D, I believe it stated,  
 13 and we read it together, that it stated there  
 14 was no finding of wrongdoing, right?  
 15 A. According to them. That's what it says.  
 16 Q. So that doesn't -- that's not  
 17 discipline, right? That's not a disciplinary --  
 18 A. This is all -- this is all part of the  
 19 process internally that they do. I have no say  
 20 on this. They can -- people can put -- put --  
 21 put in as many as they want anonymously or, you  
 22 know, saying who they are.  
 23 So I go to work, I do my job, and I  
 24 don't let these things bother me.  
 25 Q. But nobody ever told you, for example,

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1 you know, you shouldn't have done a wrist lock  
 2 on that protester?  
 3 A. I mean, I -- I don't tell people what to  
 4 do, you know, where -- you know. It's -- You  
 5 know, I -- I -- I used reasonable force. I did  
 6 my job. It got taken care of. Nobody was hurt  
 7 and our task was accomplished.  
 8 Q. Did you receive any communications that  
 9 what you did was met with the approval of the  
 10 department? Kinda like the opposite of  
 11 discipline, were you either complemented or  
 12 rewarded for your actions taken in that arrest?  
 13 A. When actions like the ones that I  
 14 document on a report are -- are taken, I notify  
 15 a supervisor. They're aware of the situation,  
 16 and I continue with my -- the rest of my duty  
 17 and we just notify a supervisor, make sure  
 18 they're aware of it, and then they do what they  
 19 gotta do.  
 20 Q. I understand.  
 21 MS. MCDANIEL: I am gonna stop  
 22 sharing this document and I'm gonna ask Ms.  
 23 Lopez to please add Plaintiff's Exhibit Number 8  
 24 to the Dropbox link. And I can see it.  
 25 THE WITNESS: I got eyes on. I'm



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1 here.  
 2 (Plaintiff's Exhibit No. 8 marked  
 3 and presented to Witness for  
 4 identification.)  
 5 Q. (BY MS. MCDANIEL): You can see it, too?  
 6 A. Yeah.  
 7 Q. Okay. I'm gonna share my screen and  
 8 this document is referred to -- designated as  
 9 Plaintiff's Exhibit 8. It is a seven-page  
 10 document produced by the city as COA008664 to  
 11 008670, and I know that you may have only seen  
 12 this first page, but from what you've seen, do  
 13 you recognize this document to be your complete  
 14 history with internal affairs?  
 15 A. If this is accurate and up to date, I  
 16 would say yes. I didn't -- You know, this is  
 17 your copy. I would -- I would say yes, it is.  
 18 If it's the most --  
 19 Q. Okay.  
 20 A. -- updated one, I mean, that's what it  
 21 is.  
 22 Q. Is this a record that you've ever seen  
 23 before?  
 24 A. I've maybe seen it, but I maybe haven't  
 25 read it line for line. It's -- I don't think

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1 it's anything I have immediate access to. I  
 2 think I -- maybe one time I requested it for  
 3 SWAT school and then all I did was I requested  
 4 it and I had to send it to whoever's in charge  
 5 of SWAT school and they got a copy of it and  
 6 that was it.  
 7 It -- it's something that's required  
 8 for SWAT school. I didn't -- I'm sorry. This  
 9 is a IA, right? I'm sorry. I'm mixing this up  
 10 with the TCOLE.  
 11 Q. Oh, training?  
 12 A. Yeah. And you know what? They might  
 13 actually ask for this, too. I -- I think they  
 14 ask for it, too. It was 2017. I don't -- I  
 15 know they asked for a TCOLE training, I believe,  
 16 and this one, I believe.  
 17 Q. So you received SWAT training?  
 18 A. I went to the --  
 19 Q. You call it a SWAT school?  
 20 A. I went to the school.  
 21 Q. Okay. Let's see.  
 22 MS. MCDANIEL: Oh, and Counsel, are  
 23 you willing to stipulate this -- this document  
 24 is -- is COA8664 to 8670 [sic] and then it  
 25 states in all caps in the file name, CONF, C-O-

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1 N-F meaning that it's confidential?  
 2 Can you stipulate that this document  
 3 is Officer Gonzalez's internal affairs complete  
 4 history and that it is authentic?  
 5 MR. BARTON: Yes. I'll stipulate as  
 6 far as the document we produced. I mean, if  
 7 anything has changed since this document was  
 8 produced, I obviously don't know anything about  
 9 it, but yes.  
 10 As of the date that we produced that  
 11 document, I -- I think it was exactly what it  
 12 says it is, the internal affairs complete  
 13 history for Officer Gonzalez.  
 14 MS. MCDANIEL: Okay. Thank you.  
 15 Q. (BY MS. MCDANIEL): Let's see. I was  
 16 hoping we could go to 8/29/2020. So let's see.  
 17 It's the number two and these are -- these --  
 18 these items on your history are listed by number  
 19 and this is number two and it states case number  
 20 2020-1443. Can you see that?  
 21 A. Yes, ma'am.  
 22 Q. And it states at the top reported date  
 23 August 21, 2020, and then it states  
 24 Classification A. What does Classification A  
 25 mean?

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1 A. That's something that IA internally  
 2 categorizes complaints as. I don't know exactly  
 3 what it is. That's something in-house that they  
 4 classify things as.  
 5 Q. Okay. I don't know what it means  
 6 either. I was curious. Going down to the  
 7 second box, it states case description 8/29/2020,  
 8 10:20 a.m., the OPO. What does OPO mean?  
 9 A. Office of police monitors office.  
 10 Q. Oversight maybe?  
 11 A. Oversight police office. There we go.  
 12 Q. Okay. The OPO received an email from an  
 13 anonymous complainant that included a photo of  
 14 an APD officer and the alleged officer's social  
 15 media posts that included comments about  
 16 protesting and then it's -- states at the end  
 17 that it's written by Mia Demers, parentheses,  
 18 OPO. Can you tell me about this incident?  
 19 A. Sure. I posted something on my private  
 20 Instagram page. Somebody within my private  
 21 Instagram page who -- who I thought was possibly  
 22 a friend didn't like certain things that I said,  
 23 and they later somehow filed a complaint --  
 24 anonymous complaint.  
 25 Q. And then what happened?

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1 A. It was investigated, and they went  
 2 through everything. They went back, reviewed  
 3 everything. I was interviewed. Due to the fact  
 4 that I was not on the clock, that I was in  
 5 another country, that I wasn't in a police  
 6 capacity and I didn't make statements or attack  
 7 any particular group or anything like that, I  
 8 was cleared from it.  
 9 Q. I understand. I appreciate you letting  
 10 me know about that. And it states at the next  
 11 box that the allegation is chapter 9; is that  
 12 referring to chapter 9 of the -- what -- what  
 13 is -- what chapter 9 is that referring to --  
 14 A. Whatever -- whatever chapters are in  
 15 policy. That's what they're thinking that I  
 16 violated, those three, and later throughout the  
 17 investigation, I didn't violate any of them.  
 18 Q. I see. Yes. It says at the bottom,  
 19 disposition, it's administratively closed,  
 20 there's no discipline, and the retention period  
 21 three years. So it looks like it will be --  
 22 Does that mean it will be dropped from your --  
 23 A. I -- I --  
 24 Q. -- report on this date --  
 25 A. I don't know what that means. I'm

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1 not -- It's -- it's in my past. I don't -- I'm  
 2 not worried about it.  
 3 Q. I understand. Let's see. I guess this  
 4 is all just the same and it's including  
 5 different little conduct. I -- I do want to ask  
 6 now --  
 7 MS. MCDANIEL: So I want to ask Ms.  
 8 Lopez to place a document in the Dropbox to be  
 9 Plaintiff's Exhibit Number 9.  
 10 Q. (BY MS. MCDANIEL): Yeah. I would say  
 11 if -- you know, it does seem like, you know,  
 12 you're entitled to have your own freedom of  
 13 speech as well, right?  
 14 A. Everyone is.  
 15 Q. Let's see. I want to go back and find  
 16 Plaintiff's Exhibit 9, so I'm gonna stop sharing  
 17 that for a moment. Are you able to open  
 18 Plaintiff's Exhibit Number 9?  
 19 (Plaintiff's Exhibit No. 9 marked  
 20 and presented to Witness for  
 21 identification.)  
 22 A. It's open now.  
 23 Q. Okay. I'm going to share my screen. So  
 24 this document is not Bates labeled. It is  
 25 designated Plaintiff's Exhibit Number 9. Do you

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1 recognize this document?  
 2 A. Yes, ma'am. I have --  
 3 Q. And please tell me what it is.  
 4 A. The top states Defendant Officer  
 5 Gonzalez response to plaintiff's first request  
 6 for production and then it has multiple  
 7 questions with answers on them.  
 8 Q. Did you prepare this document?  
 9 A. Partially, yes.  
 10 Q. Was it -- Who -- who helped you prepare  
 11 it?  
 12 A. It was emailed to me and I -- I did some  
 13 of it and then later, one of the, I guess,  
 14 clerks here or one of the employees here helped  
 15 me type it up due to timeline issues and just  
 16 not knowing when it was due.  
 17 Just pretty much put my words on  
 18 here.  
 19 Q. I understand that, but you reviewed it  
 20 and it -- to your -- to your knowledge at the  
 21 time it was accurate?  
 22 A. Yeah. I've actually reviewed it earlier  
 23 today and it's the same one that I have.  
 24 Q. Okay. Good.  
 25 A. I'm -- I'm okay with everything on it.

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1 Q. Okay. I do want to go to number four,  
 2 RP number four, and it's on page whatever --  
 3 page 3. Well, RFP, request for production.  
 4 Sorry. We have a lot of acronyms in our line of  
 5 work as well.  
 6 In request for production number  
 7 four, it states produce all documents related to  
 8 statements or communications including social  
 9 media posts, emails, texts, private messages,  
 10 etcetera you have made related to the topic of  
 11 police accountability, groups or organizations  
 12 advocating for police accountability, and/or  
 13 individuals who advocate for the cause of police  
 14 accountability. And please read your response.  
 15 A. I'm gonna read the question first.  
 16 Q. Okay.  
 17 A. I say none on there for number four.  
 18 Q. Correct. So upon looking at the last  
 19 document that we looked up and your answer  
 20 regarding your private Instagram post, would you  
 21 like to change your response to this question  
 22 and/or supplement your response to this question?  
 23 A. This says a topic of police  
 24 accountability. Based on the previous document  
 25 of the IA complaint, is that what you're saying?

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1 Q. Yes.  
 2 A. The stuff that I said on there had  
 3 nothing to do with the Austin Police Department.  
 4 It had to do with Mexico. It had to do with  
 5 that it's a third world country, and it had to  
 6 do with nothing happening in the United States  
 7 of America or Austin, Texas.  
 8 Q. Okay. Did it happen to do with  
 9 protesters?  
 10 A. The paper that you read had the word  
 11 protesters --  
 12 Q. Uh-huh.  
 13 A. Later during the -- I guess the internal  
 14 affairs investigation, I clarified that the word  
 15 I should have -- the word at hand was protesters  
 16 but the word that I meant to say was rioters, so  
 17 that was --  
 18 Q. I see.  
 19 A. -- clarified there. So there's a  
 20 difference between -- you know, I clarified  
 21 there's a difference between rioters and  
 22 protesters, and once --  
 23 Q. I understand.  
 24 A. -- again -- Yeah. Once -- once again,  
 25 here to me when I read this document, I'm

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1 thinking U.S. I'm thinking my job. It's  
 2 related to my job and that's why I put none.  
 3 Q. I see. And I see that the next request  
 4 for production provides similar asks. It's  
 5 asking for all the documents, messages, etcetera,  
 6 made regarding to the city of Austin's and/or  
 7 APD's response to the black lives matter protest  
 8 in Austin in 2020.  
 9 Would you also still say that your  
 10 answer is none?  
 11 A. I would say none. If you're talking  
 12 about the previous IA complaint, I never used  
 13 the word black lives matter. I never said city  
 14 of Austin, and I never said APD.  
 15 This is more somebody somehow tried  
 16 to make a connection between certain things that  
 17 I said, and it had nothing to do with a city of  
 18 Austin, my job, black lives matter. It was  
 19 fully investigated and that was it. That's why  
 20 I put none on there.  
 21 Q. Okay. I appreciate that. Let's return  
 22 to -- Oh, I'll say is it your position that  
 23 you've never made any comments in any of these  
 24 mediums related to the protests?  
 25 A. Where?

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1 Q. I'm asking you have you ever -- Is --  
 2 I'm asking you is it -- is it -- what you're  
 3 saying, you've never made any comments through  
 4 text, email, social media, private messages  
 5 regarding the protests that you attended or that  
 6 you worked at?  
 7 A. I never recall talking about it or  
 8 messaging it -- messaging anything with the word  
 9 black lives matter protest. It's just, like,  
 10 protest our protests.  
 11 So maybe I -- in the past I talked  
 12 to people about, hey, were you working at the  
 13 protest today and maybe they said yes or no, but  
 14 this is, like, very specific to black lives  
 15 matter protest, not to -- that I recall, so I  
 16 put none.  
 17 Q. I see. Okay. And you've never -- it's  
 18 your position, correct, that you have never made  
 19 any statements or communications, emails, texts,  
 20 private messages, social media relating to Ms.  
 21 Beuhler, her arrest?  
 22 A. I've never mentioned Ms. Mueller [sic]  
 23 on any social media anything.  
 24 Q. Okay. Let's go back to number eight.  
 25 I'm sorry. Let's go back to Plaintiff's Exhibit

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1 Number 8. I'm gonna stop sharing the --  
 2 A. I'm here.  
 3 Q. -- Exhibit Number 9. Okay. Give me one  
 4 second. Where are we at? Okay. I'll share my  
 5 screen. So now I would like to go -- Are you --  
 6 Can you see what's on my screen as Plaintiff's  
 7 Exhibit Number 8?  
 8 A. Oh, yes. I'm back over here. Yes,  
 9 ma'am.  
 10 Q. Okay. Can we please go down to item  
 11 number three? It's on page COA008665. It's  
 12 called case number 2020-1301, reported date  
 13 August 4, 2020, Classification A.  
 14 A. I'm here. I can see it.  
 15 Q. Okay. Let's see. We kinda talked about  
 16 this before, but it states case description.  
 17 I'm in the second box, 8/4/2020, 1:23 p.m.  
 18 That's interesting. That does -- 1:23 p.m.  
 19 I know you said earlier that you  
 20 thought it was strange that those events  
 21 happened so close together. Maybe there's some  
 22 inaccuracy. So it says case description. It  
 23 states I wasn't read my Miranda rights -- Wait  
 24 this is the -- Sorry.  
 25 Excuse me. I wasn't read my Miranda

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1 rights. I wasn't told why I wasn't being  
 2 arrested, probably that should be was, and they  
 3 used excessive force toward me. It was four  
 4 officers on me kneeling on me and I'm a hundred  
 5 and thirty pounds.  
 6 The officers were not going to get a  
 7 female officer. They said they didn't have time  
 8 to get a female officer and I started to have a  
 9 panic attack, so they got one. The arresting  
 10 officer was Swart, it should state Smart, number  
 11 8674.  
 12 Officers in the car that transported  
 13 threatened me and they were mouthing things to  
 14 one another and one wouldn't talk to me at all,  
 15 and then it states that it was written by  
 16 Mallory Scott, parentheses OPO. Who is Mallory  
 17 Scott?  
 18 A. I don't know who that is.  
 19 Q. And I see down here it says  
 20 administratively closed, no discipline, no  
 21 suspension review, administratively closed. As  
 22 I'm going down the page, there's multiple little  
 23 code sections and for every one, it says  
 24 administratively closed.  
 25 Why do you think there was no review

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1 taken of this incident?  
 2 A. I don't make that decision. I don't  
 3 know.  
 4 Q. Why do you think that APD is not  
 5 concerned with someone not being read their  
 6 Miranda rights?  
 7 A. I don't -- I don't know. I don't -- I  
 8 don't make that call.  
 9 MR. BARTON: Object to the form.  
 10 Q. (BY MS. MCDANIEL): Is it APD practice  
 11 to not mirandize people who are being arrested?  
 12 A. We talked about this earlier and I  
 13 stated as far as me as an individual, I  
 14 mirandize people when I ask incriminating  
 15 questions.  
 16 Q. Do you think that it's important to  
 17 inform individuals who are being arrested that  
 18 they have a right to an attorney?  
 19 MR. BARTON: Object to the form.  
 20 MS. MCDANIEL: I'll rephrase my  
 21 question.  
 22 Q. (BY MS. MCDANIEL): Do you think that  
 23 APD believes that it is important to inform  
 24 people who are being arrested that they have  
 25 an -- a right to an attorney?

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1 MR. BARTON: Object to the form.  
 2 Q. (BY MS. MCDANIEL): You can respond.  
 3 MR. BARTON: To the extent you can,  
 4 yeah.  
 5 A. Ask me again, please.  
 6 Q. (BY MS. MCDANIEL): Do you think that  
 7 APD thinks that it is important for officers to  
 8 inform a person who's being arrested that they  
 9 have a right to an attorney?  
 10 A. I think the -- the Austin Police  
 11 Department would want everybody to have rights  
 12 when needed. Once again, if they're not being  
 13 asked the -- we're not asking -- if I'm not  
 14 asking incriminating questions, there's nothing,  
 15 you know -- there's -- there's -- there's  
 16 nothing at that moment that I would think a  
 17 person would need an attorney for.  
 18 Q. Okay. Have you had a few car accidents  
 19 during your time as an officer?  
 20 A. I've had a few and --  
 21 Q. Can you tell me a little bit about  
 22 those?  
 23 A. The majority are -- you know, when you  
 24 drive 40 hours a week, you gotta get to places  
 25 quick, car accidents happen and minor collisions

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1 or damage to city property, however you want to  
 2 word it. There's been a few. Yes.  
 3 Q. Have you ever received any discipline  
 4 regarding any vehicular collision you've been  
 5 involved with when you were working as an  
 6 officer?  
 7 A. I know that I can -- There's only so  
 8 many you can have. I know you're rewarded for  
 9 not having any, and then if you get some within  
 10 the -- a time limit, which I'm not sure of, you  
 11 get given, like, a little pin or a token or  
 12 something or certificate, and then based on your  
 13 last one, you gotta go so much time without it.  
 14 So I know there's a reward for it.  
 15 I want to say there was probably for sure talk,  
 16 maybe training at the academy. I'm -- And  
 17 I'm -- I'm not too sure. I'm going off memory,  
 18 and two -- one -- How many do you have there?  
 19 Q. Let's see. It looks like number four is  
 20 that APD administrative chokehold and had a knee  
 21 on someone's neck. That one is not a vehicle  
 22 accident. Do you recall this event number four?  
 23 A. I don't even know what that is.  
 24 Q. It doesn't even have your name. It  
 25 said -- I mean, it is in your history, but it

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1 says APD administrated.  
 2 A. I don't --  
 3 Q. What does that mean? Do you know?  
 4 A. I don't -- I don't know what that means.  
 5 That's not something I deal with.  
 6 Q. Down to number five is about complainant  
 7 stated that Officer Gonzalez became upset after  
 8 she requested to see what she was signing.  
 9 Let's see. Number six involves a --  
 10 A. I -- I remember this.  
 11 Q. -- some kind of --  
 12 A. I remember this one.  
 13 Q. You remember that one? Like, turn into  
 14 a private driveway. What happened in that one?  
 15 That -- that one looks like you might have had a  
 16 collision with a different officer.  
 17 A. That's exactly what it was. You know,  
 18 multi --  
 19 Q. Was everybody okay?  
 20 A. -- tasking -- Yeah. Everybody -- It was  
 21 minor. No repairs. Just a little scuff mark.  
 22 Q. I get it. Yeah. I have a 15-year-old.  
 23 You have no idea how scary it is. Let's see. I  
 24 don't know. I think there were maybe -- There's  
 25 one from 2014 and it looks like 2013 there's

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1 some --  
 2 A. If you --  
 3 Q. -- scuff marks --  
 4 A. If you go -- if you go back up -- Can  
 5 you go back up, please?  
 6 Q. Sure. Uh-huh.  
 7 A. See, the -- This one right here was I  
 8 backed into a rock that was on my -- I was at  
 9 apartment complex, and I backed up into a small  
 10 rock. It was on my blind spot. It was about  
 11 license plate height, and that was it.  
 12 Q. Sure. I guess even if it's a little  
 13 scuff, you have to --  
 14 A. City property --  
 15 Q. -- you have to report that?  
 16 A. Absolutely.  
 17 Q. Let's see. All right.  
 18 MS. MCDANIEL: Well, I'm going to  
 19 ask Ms. Lopez to place Plaintiff's Exhibit 10 in  
 20 the Dropbox, please.  
 I'm gonna stop sharing the  
 21 screen.  
 22 THE WITNESS: You think it's  
 23 appropriate if I need a restroom break?  
 24 MR. BARTON: Yeah. Hey, while  
 25 you're bringing that up, we'd like to take a --

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1 a break -- a five-minute break.  
 2 MS. MCDANIEL: Sure. Why don't we  
 3 go ahead and take another 10-minute break?  
 4 MR. BARTON: Okay.  
 5 THE WITNESS: Perfect. Thank you.  
 6 THE VIDEOGRAPHER: All right. We're  
 7 off the video record. It's 2:27 p.m.  
 8 (Off the record at 2:27 p.m.)  
 9 (On the record at 2:37 p.m.)  
 10 THE VIDEOGRAPHER: We are back on  
 11 the video record. The time is 2:37 p.m.  
 12 MS. MCDANIEL: Thank you.  
 13 Q. (BY MS. MCDANIEL): Let's see. I  
 14 believe I was going to ask Ms. Lopez to add  
 15 Plaintiff's Exhibit Number 10 to the Dropbox and  
 16 I believe that she already did so. Were you  
 17 able to view Plaintiff's Exhibit Number 10?  
 18 (Plaintiff's Exhibit No. 10 marked  
 19 and presented to Witness for  
 20 identification.)  
 21 A. I have eyes on Exhibit 10.  
 22 Q. Okay. I'm gonna share my screen. So  
 23 here I have a document that is designated  
 24 Plaintiff's Exhibit 10. Do you recognize this  
 25 document, Officer Gonzalez?

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1 A. Yes, ma'am. I've seen it before. We  
 2 saw it a little bit before the break.  
 3 Q. Can you please tell me what it is?  
 4 A. It states that defendant, Javier  
 5 Gonzalez's response to plaintiff's first set of  
 6 interrogatories.  
 7 Q. Yes, yes. Interrogatories we call them,  
 8 or ROGS. That's our jargon. Let's see. Did  
 9 you prepare this document?  
 10 A. Yes, and I was helped on it.  
 11 Q. Let's see. I think I'm gonna look at --  
 12 I'm curious. I'm sorry. I'm gonna look at  
 13 something at the end of the document.  
 14 Interesting. I believe interrogatories should  
 15 be sworn, but we can take it up at some other  
 16 time.  
 It might be something to supplement.  
 17 Anyhow, I did want to see -- So who helped you  
 18 prepare this document?  
 19 A. Someone that works here at the  
 20 attorney's office, Carol.  
 21 Q. Carol. And did you review it before it  
 22 was filed?  
 23 A. Yes.  
 24 Q. And did you provide the information

<p style="text-align: right;">Page 170</p> <p>1 that's included in the document?</p> <p>2 A. I believe some was typed and the rest</p> <p>3 was told via cell phone -- via the phone and I</p> <p>4 later reviewed it and I -- I agreed with it.</p> <p>5 Q. Sure. Absolutely. I wanted to look at</p> <p>6 interrogatory number 11, please. Is that going</p> <p>7 to be -- On page 5.</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. The interrogatory asks you --</p> <p>10 interrogatory number 11: Identify and describe</p> <p>11 any actions you took on August 1, 2020 with</p> <p>12 respect to plaintiff Sydney Beuhler to attempt to</p> <p>13 gain her compliance without resorting to your</p> <p>14 use of physical force.</p> <p>15 And so this specifically states</p> <p>16 actions you took to attempt to gain her</p> <p>17 compliance without resorting to your use of</p> <p>18 physical force, so pretty specific, and it</p> <p>19 states answer: At approximately 8:20 p.m., I</p> <p>20 was instructed to go near the 400 block of</p> <p>21 Congress to assist with crowd control.</p> <p>22 There was a large group of</p> <p>23 protesters in the intersection of South Congress</p> <p>24 and 4th that was blocking traffic. Multiple</p> <p>25 officers arrived on scene and began to instruct</p>	<p style="text-align: right;">Page 172</p> <p>1 resorting physical force. That could be why</p> <p>2 it's --</p> <p>3 A. That, too. That, too. I -- I see that</p> <p>4 there.</p> <p>5 Q. Yeah. I do want to look at</p> <p>6 interrogatory number 13 as well. Sorta [ph.]</p> <p>7 similar. It states the interrogatory provides</p> <p>8 if you contend that Sydney Beuhler posed an</p> <p>9 imminent danger to the health or safety or</p> <p>10 view -- of you or any other person at or around</p> <p>11 the time of her arrest on August 1, 2020, state</p> <p>12 the reasons for your contention and identify all</p> <p>13 facts and evidence supporting your contention.</p> <p>14 And the -- the answer states: See my</p> <p>15 response to interrogatory 11 which we -- which</p> <p>16 we just read. Then it states: Also, when I</p> <p>17 attempted to place handcuffs on the right wrist</p> <p>18 of the female, I immediately felt her pull her</p> <p>19 hands toward the front of her body.</p> <p>20 In my experience and training of</p> <p>21 seven years, I have learned that individuals</p> <p>22 resisting arrest often carry weapons in the</p> <p>23 front of their waistlines. When I felt the</p> <p>24 female pull her hand forward, I attempted to</p> <p>25 gain control of her arms and then she was guided</p>
<p style="text-align: right;">Page 171</p> <p>1 protesters to get out of the road.</p> <p>2 Officers got in line and some of the</p> <p>3 crowd began to move back. There were a couple</p> <p>4 of individuals who were not complying. I stood</p> <p>5 back and watched the crowd. I looked to my</p> <p>6 right and observed an officer who was</p> <p>7 encountering a white female who appeared to be</p> <p>8 resisting.</p> <p>9 I went over to assist the officer.</p> <p>10 I gave commands to not resist multiple times. I</p> <p>11 pulled out my handcuffs and was able to place</p> <p>12 them on her with the assistance of other</p> <p>13 officers. Did I read that correctly?</p> <p>14 A. That was correct.</p> <p>15 Q. Okay. Why -- why in this answer do you</p> <p>16 not mention that you used a wrist lock on Ms.</p> <p>17 Beuhler?</p> <p>18 A. Can I read the question? Go up to the</p> <p>19 question where 11 is at. Thank you.</p> <p>20 Q. Sure.</p> <p>21 A. Possibly it was copy pasted and that's</p> <p>22 maybe just not copied all the way and pasted.</p> <p>23 That could have been it.</p> <p>24 Q. I think it might be -- also be because</p> <p>25 the -- the question states that it -- without</p>	<p style="text-align: right;">Page 173</p> <p>1 to her knees.</p> <p>2 She continued to resist and pull her</p> <p>3 right hand away from me. I gave commands to not</p> <p>4 resist multiple times. I pulled out my</p> <p>5 handcuffs and was able to place them on her with</p> <p>6 the assistance of other officers. Is that</p> <p>7 accurate, what I read?</p> <p>8 A. That's what you read. Yes, ma'am.</p> <p>9 Q. Why did you believe -- as this</p> <p>10 interrogatory states, why did you believe that</p> <p>11 Ms. Beuhler posed an imminent danger to the</p> <p>12 health or safety of you or any other person at</p> <p>13 or around the time of her arrest?</p> <p>14 A. As stated before, she was being</p> <p>15 noncompliant. I see -- I see one officer</p> <p>16 struggling with her to detain her. I went to</p> <p>17 assist the officer. I grabbed her right arm.</p> <p>18 At that time, I felt her tensing up and her body</p> <p>19 stiffen and her pull an arm forward.</p> <p>20 I -- In order to detain her and</p> <p>21 prevent her from possibly escaping or possibly</p> <p>22 reaching for a weapon that she might have, the</p> <p>23 immediate action was to place her in handcuffs.</p> <p>24 Q. And why don't you mention here that you</p> <p>25 put a wrist lock on Sydney Beuhler?</p>

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1 A. Maybe the main focus there is imminent  
2 danger and I'm focusing on -- on the why and not  
3 the techniques. I might have focused on why I  
4 did what I did versus the specific technique.  
5 Q. And why don't -- why do you think that  
6 you didn't mention that you knelt on Ms.  
7 Beuhler's back or placed your knee on her back?  
8 A. Because I never placed my knee on her  
9 back. The document where it was said was  
10 something -- one of the other persons that  
11 reviewed it. I never intentionally put my knee  
12 on her. That's not something that I do.  
13 If I would have -- would've done it  
14 intentionally, I would've documented that. Now  
15 there's a possibility while placing her in  
16 handcuffs that my knee could -- touched her  
17 shoulder, touched her upper back, but not  
18 purposely putting pressure on her.  
19 If you watch the video, you can see  
20 my left knee touching the ground. You can also  
21 see my right foot touching the ground, so, I  
22 mean, my feet can only spread when I'm on the  
23 ground maybe a foot, foot and a half while I'm  
24 placing handcuffs on her.  
25 So due to the fact that this wasn't

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1 a normal arrest in the sense of her standing up  
2 and complying, the -- the body and the  
3 positioning is not gonna be traditional. So  
4 there's a possibility that maybe my -- my knee  
5 did touch her back.  
6 So based on the videos that I saw  
7 here, there's a lot a blind spots on those  
8 videos. If I would have intentionally put my  
9 knee on her back, that is something that I  
10 would've documented.  
11 Q. I appreciate that. Is it possible that  
12 you wouldn't include that you put a wrist lock  
13 on Sydney Beuhler in these responses because you  
14 were concerned that it might be considered  
15 excessive force?  
16 A. All my force is reasonable. I answered  
17 these questions. A lot of them are repetitive  
18 kinda almost asking the same thing. There's  
19 probably some copy pasting going on here.  
20 To me, I -- I -- The most important  
21 document that I make, these are all important,  
22 is my police report and immediately after the  
23 incident I documented everything that I did and  
24 notified my supervisor.  
25 Q. I understand.

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1 MS. MCDANIEL: I am going to ask to  
2 strike the answer as nonresponsive after he said  
3 I -- the first part about the use of my force  
4 was reasonable.  
5 Q. (BY MS. MCDANIEL): So is it accurate  
6 that you were not concerned that including that  
7 you used a wrist lock would be viewed as  
8 possible excessive force?  
9 A. By who?  
10 Q. By you against Ms. Beuhler.  
11 A. Ask the question again, please.  
12 Q. I -- I -- I'm curious as to the fact  
13 that you -- that you used a wrist lock which you  
14 documented appropriately and you've included it  
15 in reports is not included in these  
16 interrogatory responses.  
17 Is it possible that you did not  
18 include the fact that you used a wrist lock  
19 because you were concerned that that might be  
20 seen as excessive force?  
21 A. I would not purposely do that. It's on  
22 my report. For some reason it's not on here.  
23 Once again, when this was filled out, I did some  
24 of it. The rest of it was done on the phone via  
25 telephone in order to meet the deadline. So

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1 it's a possibility that certain things were left  
2 out not --  
3 Q. I appreciate that.  
4 A. -- intentionally -- not intentionally,  
5 but possibly.  
6 Q. You can always supplement your  
7 responses. Let's see. I want to go to -- Okay.  
8 I'm gonna take this one down, and we don't have  
9 very much left, so hopefully we can be done by  
10 four if we're lucky.  
11 On the day of the incident in  
12 question, were you wearing a body camera?  
13 A. Yes, ma'am. To my knowledge, yes.  
14 Q. How did you ensure after your shift that  
15 your body camera footage was recorded in the APD  
16 system?  
17 A. Depending on where we're at, we classify  
18 our videos on our body camera and we later  
19 upload them at our designated station where we  
20 work. There's a -- You actually grab the camera.  
21 You physically dock it on -- on this dock and it  
22 uploads the information.  
23 Q. Where does the body -- Where do you wear  
24 it?  
25 A. My body camera is pretty much -- it was

<p style="text-align: right;">Page 178</p> <p>1 close to my -- about right breast pocket kinda                  2 in that area which is within policy where they                  3 want us to wear it.                  4 Q. Sure. Okay. Let's --                  5 MS. MCDANIEL: Please, Ms. Lopez,                  6 could you add to the Dropbox folder Plaintiff's                  7 Exhibit 11, and it might take a minute because                  8 it is a video and it's -- it's larger than the                  9 other file.                  10 Q. (BY MS. MCDANIEL): Let me see. Well,                  11 mine is already there.                  12 A. It's there. It's here.                  13 Q. Okay. Okay. Hopefully, I can work this                  14 technology without messing up. Okay. So I am                  15 gonna -- Whoops. Don't want to do that. I'm                  16 gonna share my screen. Now this document which                  17 is designated Plaintiff's Exhibit 11, I don't                  18 see a stamp on it.                  19 I'm not sure how you do that with                  20 videos, but this is Plaintiff's Exhibit 11. It                  21 is titled COA. It's -- it's produced by the                  22 city of Austin as document 378 or -- not                  23 document -- and then it is -- in brackets states                  24 CONF, which means it is confidential, and then                  25 it states that it is Gonzalez BWC.mp4.</p>	<p style="text-align: right;">Page 180</p> <p>1 I -- I -- I'm trying to follow the protective                  2 order, but protective orders are persnickety so                  3 I may not even need to ask it. No. I don't                  4 mean to say any -- Well, yeah. To the best of                  5 your knowledge, of course.                  6 Q. (BY MS. MCDANIEL): Well, let's watch --                  7 This is almost 20 minutes long. I think we'll                  8 probably watch about the first 10 minutes, but                  9 we may watch the whole thing, but I'm gonna go                  10 ahead and play it.                  11 Let me know if you can see it                  12 playing.                  13 (Ms. McDaniel begins playing video.)                  14 A. It's playing.                  15 Q. Okay. Right now it is silent. Is that                  16 because you -- it has not yet been activated?                  17 A. It's on. The camera is -- records 30                  18 seconds back after the patrol door is open or                  19 you manually activate the camera.                  20 Q. Oh.                  21 A. Just some cars activate the camera.                  22 Some don't. It just depends on what vehicle                  23 you're in.                  24 (Video paused by Ms. McDaniel.)                  25 Q. I see. Did your car on this day</p>
<p style="text-align: right;">Page 179</p> <p>1 (Plaintiff's Exhibit No. 11 marked                  2 and presented to Witness for                  3 identification.)                  4 MS. MCDANIEL: Counsel, are you                  5 willing to stipulate that the file produced by                  6 the city as COA378CONF is Officer Gonzalez's                  7 authentic body camera footage from the day of                  8 the incident that led to this lawsuit?                  9 MR. BARTON: Yes. And I'm not                  10 trying to be smart or clever. We produced that.                  11 I will authenticate that that is true, but if                  12 when you -- when someone in your office renamed                  13 it and changed it, if -- if that were to happen,                  14 I -- I can't authenticate that, but yeah.                  15 We certainly produced COA378 and                  16 however else it's described.                  17 MS. MCDANIEL: Absolutely. I'm not                  18 trying to be smart either. I just ask because                  19 of the protective order that's in this case. My                  20 understanding is that these are -- if these are                  21 labeled confidential, then I need to ask that.                  22 I -- I may not need to --                  23 MR. BARTON: Oh, okay. I -- I                  24 wasn't --                  25 MS. MCDANIEL: If so, I apologize.</p>	<p style="text-align: right;">Page 181</p> <p>1 activate the camera?                  2 A. It's a --                  3 Q. You don't know --                  4 A. -- patrol car. It's a 50-50 chance.                  5 It's not a regular patrol car, so maybe yes,                  6 maybe no, but if you're hearing me talking,                  7 that's when the camera is full -- fully                  8 functioning.                  9 Q. And how do you know for sure that this                  10 is your body camera footage? Is it because you                  11 remember the day, or you just -- Does it record                  12 it based on your badge number? It looks like                  13 your badge number might be at the top.                  14 A. The -- the camera is individually issued                  15 to me. I recognize my forearms and that's my                  16 camera.                  17 Q. Okay. I'm gonna keep playing. I'll                  18 pause it anytime you want me to though. If you                  19 have anything to include, I'm -- I'm very                  20 interested.                  21 (Ms. McDaniel resumes video play.)                  22 A. This has been going on for probably more                  23 than 30 seconds. Volume should be on. I don't                  24 know if it's something here internally within us                  25 that's not -- doesn't have sound.</p>



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1 (Ms. McDaniel pauses video.)  
 2 Q. Oh, you can't hear it?  
 3 A. No, ma'am.  
 4 MS. MCDANIEL: Can anyone else hear  
 5 it? Court reporter?  
 6 THE COURT REPORTER: (Moves head  
 7 back and forth.)  
 8 THE VIDEOGRAPHER: No.  
 9 MS. MCDANIEL: Ms. Williams? No?  
 10 Hmm.  
 11 THE VIDEOGRAPHER: If we go off  
 12 record, I can show you how.  
 13 MS. MCDANIEL: Okay. Let's please  
 14 go off the record 'cause I can hear it.  
 15 THE VIDEOGRAPHER: Okay. It's 2:56  
 16 p.m. We are off the video record.  
 17 (Off the record at 2:56 p.m.)  
 18 (On the record at 2:57 p.m.)  
 19 THE VIDEOGRAPHER: We're back on the  
 20 video record. The time is 2:57 p.m.  
 21 Q. (BY MS. MCDANIEL): All right. And  
 22 thank you for letting me know that. I'm gonna  
 23 rewind it back to about where the sound turns on.  
 24 (Ms. McDaniel resumes video play.) You can hear  
 25 that video?

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1 (Ms. McDaniel pauses video.)  
 2 A. Yes, ma'am.  
 3 Q. Okay. (Ms. McDaniel resumes video  
 4 play.) Do you know what -- (Ms. McDaniel pauses  
 5 video.) -- that officer said right there,  
 6 Officer Gonzalez?  
 7 A. He said something, stay with BPOT or  
 8 behind D -- BPOT, one of those two.  
 9 Q. What kind of -- What do you think that  
 10 means?  
 11 A. To stay behind and not be on the line  
 12 with BPOT.  
 13 Q. What's BPOT?  
 14 A. The -- the police officers on bikes.  
 15 Q. Oh, I see. Okay. Thank you. (Ms.  
 16 McDaniel resumes video play.) Do you know what  
 17 he said -- (Ms. McDaniel pauses video.) -- just  
 18 there?  
 19 A. He said take a less lethal, and take a  
 20 less lethal, and that's it. I don't know  
 21 clearly what he said, but he's telling us to  
 22 grab --  
 23 Q. What is --  
 24 A. -- pretty much grab equipment. Less --  
 25 Q. Okay.

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1 A. -- lethal. It's a less lethal shotgun,  
 2 if I -- if that's what he said.  
 3 Q. And did he say a hands-free? Is that  
 4 one -- Did he mention that?  
 5 A. He -- he maybe said that. I know what  
 6 that is. I didn't really hear him clearly.  
 7 Maybe a better sound --  
 8 Q. What is a hands-free? I'm just curious.  
 9 A. Hands-free means the officers that are  
 10 available with free hands to assist with  
 11 detentions or arrests.  
 12 Q. Oh, okay. (Ms. McDaniel resumes video  
 13 play.) Do you happen to know -- (Ms. McDaniel  
 14 pauses video.) -- what that chant is, Officer  
 15 Gonzalez? I can't --  
 16 A. I --  
 17 Q. -- quite make it out.  
 18 A. I can't either.  
 19 Q. Okay. I was just curious. (Ms.  
 20 McDaniel resumes video play.) Okay. What is  
 21 happening here -- (Ms. McDaniel pauses  
 22 video.) -- with this line of bicycles?  
 23 A. It's a formation and they're lined up  
 24 to, I guess, possibly prepare to get open --  
 25 clear the roadway.

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1 Q. And what road -- Is this a -- Which  
 2 street is this? Do you remember?  
 3 A. That's -- We're face -- we're on  
 4 Congress facing north.  
 5 Q. And that's a busy road, isn't it?  
 6 A. Yes. It is.  
 7 Q. And there were protesters in the road at  
 8 that time?  
 9 A. To my knowledge based on this blurry  
 10 picture, it looks like there was.  
 11 Q. All right. I'm gonna keep playing.  
 12 (Ms. McDaniel resumes video play.) I'm sorry --  
 13 (Ms. McDaniel pauses video.) -- to keep pausing,  
 14 but I'm interested. So is this tactic that  
 15 they're using a -- a tactic that you're trained  
 16 on?  
 17 A. Yes. They are trained on that.  
 18 Q. And what is it -- Are they shielding  
 19 themselves with the bikes and then using them to  
 20 push --  
 21 A. It's --  
 22 Q. -- people out of the way?  
 23 A. It's -- it's just creating a barrier.  
 24 Q. Creating a barrier. I see. (Ms.  
 25 McDaniel resumes video play.) And what was that

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1 that your -- (Ms. McDaniel pauses video.) --  
 2 hand seemed to pick up there?  
 3 A. I picked up a possible weapon which was  
 4 a -- a metal umbrella stick missing the -- I  
 5 guess the plastic portion --  
 6 Q. Aha. So that was not your weapon?  
 7 A. No, ma'am.  
 8 Q. I thought that might have been something  
 9 of yours. Okay. Thank you. (Ms. McDaniel  
 10 resumes video play.) And do you -- (Ms.  
 11 McDaniel pauses video.) -- do you hear that Ms.  
 12 Beuhler seems to be stating I'm not resisting?  
 13 A. Here I can -- right now as I'm in this  
 14 office I can -- I can clearly hear this while  
 15 I'm not doing police work.  
 16 Q. Uh-huh. Is it important do you think in  
 17 your opinion to listen if somebody's saying I'm  
 18 not resisting, I'm not resisting?  
 19 A. Saying I'm not resisting and the body  
 20 telling me different are two different things.  
 21 Q. I see. And I'm gonna go back just ten  
 22 seconds. Is this -- Are we seeing here the  
 23 example of a wrist lock?  
 24 A. Yes, ma'am.  
 25 Q. That you're applying where you're

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1 bending her wrist?  
 2 A. Yes, ma'am.  
 3 Q. Okay. (Ms. McDaniel resumes video  
 4 play.) So she sounds really -- (Ms. McDaniel  
 5 pauses video.) -- frightened in that video;  
 6 would you agree?  
 7 A. Yes. She sounds like that. I also saw  
 8 there that's a good angle where it shows that my  
 9 knee is up and not on her. I just caught that  
 10 right there.  
 11 Q. Do you agree though that she does sound  
 12 frightened?  
 13 A. I -- I don't know what a frightened --  
 14 Everybody is -- Frightened can be different.  
 15 You know what I mean?  
 16 Q. I do. I want to look at the knee  
 17 things, so that's a good --  
 18 A. Yeah.  
 19 (Ms. McDaniel resumes video play.)  
 20 Q. Officer Gonzalez, do you know why these  
 21 individuals in -- (Ms. McDaniel pauses  
 22 video.) -- this video are wearing goggles?  
 23 A. I -- I don't know. Sometimes people  
 24 wear goggles for different reasons.  
 25 Q. What might one of those reasons be?

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1 A. They might -- Maybe one can be they  
 2 might plan an a top -- an -- some type of attack  
 3 or assault on a police officer with a -- maybe  
 4 a -- throwing an object or something like that,  
 5 or they might just be a peaceful -- peaceful  
 6 protester that might be standing next to  
 7 somebody else that is doing that and -- and  
 8 maybe they might have avoid a pepper spray or --  
 9 or some type a OC gas. So it's either or.  
 10 Q. Okay. (Ms. McDaniel resumes video  
 11 play.) Were you -- were you and your fellow  
 12 officers -- (Ms. McDaniel pauses video ) --  
 13 aware of how many individuals were filming these  
 14 events on their phone cameras?  
 15 A. I -- I -- I don't pay attention to that.  
 16 I mean, there's -- if there's --  
 17 Q. I can't help but notice it myself  
 18 looking at that. Is that something that -- So  
 19 that's just something you don't pay attention to?  
 20 A. I -- I worked downtown 6th Street Austin  
 21 for at least four years, and I'm used to cameras,  
 22 so that's something that's nothing to me.  
 23 It's -- it's --  
 24 Q. I see. I understand.  
 25 A. -- not -- not of this world.

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1 Q. It seemed pretty stressful. The -- I  
 2 guess the tambourine playing is equally  
 3 stressful. (Ms. McDaniel resumes video play.)  
 4 So at this point are you standing -- (Ms.  
 5 McDaniel pauses video.) -- facing the individual  
 6 with the red bicycle?  
 7 A. Based on the way my camera is facing,  
 8 I'm standing facing that side of the road  
 9 holding my position. He just happens to be  
 10 there and that's my place --  
 11 Q. Right. No. I don't mean, like you're  
 12 targeting -- I'm just -- I'm just asking, like,  
 13 it looks to me like you're straight ahead  
 14 standing there --  
 15 A. I -- I would --  
 16 Q. -- right?  
 17 A. -- say yes. That's my 12 o'clock. Yes.  
 18 I'm looking forward.  
 19 Q. And -- and was your role, it's, like --  
 20 is it kind of, like, now the street is cleared  
 21 and you're going to keep it clear?  
 22 A. Now that that's probably -- they didn't  
 23 tell me that, but we just conducted a task which  
 24 was clearing the roadway. It's clear so I'm  
 25 just gonna hold my position and be there with --

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1 Q. Okay.  
2 A. -- my presence and wait for the next  
3 order.  
4 Q. Sure. Okay. (Ms. McDaniel resumes  
5 video play.) Well, Officer Gonzalez, like, can  
6 you -- (Ms. McDaniel pauses video.) -- would you  
7 describe the scene that we're seeing here as a  
8 riot?  
9 A. At that moment right now after the  
10 initial arrival, I would -- I wouldn't say it's  
11 a riot, but what I'm looking at right now, the  
12 picture, I would say no.  
13 Q. Well, your whole body cam video so far,  
14 had -- I mean, like, what -- what you were  
15 seeing from your perspective, was any of that  
16 what you would consider a riot? I'm not saying  
17 that you might not think there was rioting  
18 happening somewhere else, but from your personal  
19 knowledge.  
20 A. I would not use the word riot for this  
21 right here that I'm currently seeing.  
22 Q. Okay. (Ms. McDaniel resumes video  
23 play.) I'm curious. Do you see at the -- (Ms.  
24 McDaniel pauses video.) -- right hand of the  
25 screen there, there appears to be someone

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1 carrying a gun?  
2 A. I see it on the screen. Yes, ma'am.  
3 (Ms. McDaniel resumes video play.)  
4 Q. Well, did you happen to see in the back  
5 there -- (Ms. McDaniel pauses video.) -- that  
6 looks like another gentleman with a -- or a  
7 individual with a firearm?  
8 A. I was -- While I'm looking at this  
9 video, I was watching the two guys in the center  
10 of the camera. There's a lot of people  
11 everywhere.  
12 Q. True, true. (Ms. McDaniel resumes video  
13 play.) So it looks now like you're leaving --  
14 (Ms. McDaniel pauses video.) -- the scene; is  
15 that correct?  
16 A. Yes. Seems like it.  
17 Q. And did that individual say something  
18 like we're gonna mount up and we're gonna go,  
19 like, I guess you'd accomplished this order  
20 perhaps?  
21 A. Possibly. I'm not -- It's -- The sound  
22 is not the best, but most likely.  
23 Q. I think it's almost over. (Ms. McDaniel  
24 resumes video play.) And do you have any idea  
25 at this -- (Ms. McDaniel pauses video.) -- point

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1 where Sydney Beuhler is?  
2 A. Well, by that time, she was placed in  
3 handcuffs. There was a car there and -- Not  
4 there.  
5 Q. Do you think she's in that car that you  
6 can see --  
7 A. I -- I --  
8 Q. -- the --  
9 A. I don't --  
10 Q. -- shot or -- or you just wouldn't know,  
11 right?  
12 A. I -- I don't know what car. There's --  
13 All the cars look the same by that time --  
14 Q. It may show on a different video. I was  
15 just curious --  
16 A. Yeah. I'm not sure. I'm not sure if  
17 she stayed there or not. I'm not -- My -- my  
18 job was to stay there and watch the line.  
19 Once she's secured --  
20 Q. Yes.  
21 A. -- I -- I didn't -- I don't know where  
22 she is.  
23 THE COURT REPORTER: One at a time,  
24 please.  
25 (Ms. McDaniel resumes video play.)

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1 Q. (BY MS. MCDANIEL): So who is that  
2 officer?  
3 A. That's my old sergeant, Sergeant -- (Ms.  
4 McDaniel pauses video.) -- Candoli.  
5 Q. Oh, okay. And -- and I heard you say  
6 something about you -- you telling -- you put a  
7 wrist lock on the girl that got snatched up and  
8 that there were no strikes. Do you know what  
9 you mean by there were no strikes?  
10 A. You -- you want to clarify whether you  
11 strike someone or not. Did you punch? Did you  
12 kick? Did you knee? I did none of that so  
13 they get --  
14 Q. So you felt the need to inform him right  
15 away that -- that you did at least do a wrist  
16 lock?  
17 A. Because -- Yes. That's -- I use -- It  
18 was a response to resistance. That was the  
19 first --  
20 Q. Uh-huh.  
21 A. -- chance that I had a one-on-one in a  
22 safe condition to let him know what was going on.  
23 Q. That makes sense. (Ms. McDaniel resumes  
24 video play.) And so it sounds like he's just  
25 awaiting backup BPOT. (Ms. McDaniel pauses

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1 video.) Does that mean you're gonna back up the  
2 police on bicycles?  
3 A. Yeah. And I think our role was more of  
4 a hands-on unit because we didn't have bikes, so  
5 kinda more of like hands-on for whatever.  
6 Q. So, like, what you said was hands-free,  
7 like, you have your hands-free so you can make  
8 arrests since --  
9 A. Yeah, yeah.  
10 Q. I see. (Ms. McDaniel resume video  
11 play.) What did you say there? Do you -- do  
12 you recall?  
13 (Ms. McDaniel pauses video.)  
14 A. End of police activity.  
15 Q. Oh, okay. Is that something that you  
16 say regularly?  
17 A. Yeah. Just kinda -- I probably say it  
18 on 90, 95 percent of my videos at the end of my  
19 police action, that way for the record it's  
20 shown that I'm done with police activity at that  
21 moment, and it wasn't like a accidental turn off  
22 or something like that.  
23 Q. Oh, I see. I think that's the end. I'm  
24 gonna go -- So I think we're gonna replay just  
25 this one little part. (Ms. McDaniel resumes

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1 video play.) What is that that you're doing  
2 right there with your hand -- (Ms. McDaniel  
3 pauses video.) -- and the handcuff?  
4 A. There is a mechanism or a little piece  
5 on the cuffs that locks the handcuffs in place  
6 so they don't tighten up anymore and -- and hurt  
7 the person.  
8 Q. Oh, I see. (Ms. McDaniel resumes video  
9 play.) I think that's the last time that we  
10 see -- (Ms. McDaniel pauses video.) -- Ms.  
11 Beuhler. So I wanted to ask would you be  
12 comfortable with a trainer using the video of  
13 that arrest for field training instruction?  
14 A. A trainer, like, where?  
15 Q. In the police academy.  
16 A. That's a good video.  
17 Q. And would you use this video to tell the  
18 officers that you're instructing this is model  
19 police behavior, or would you show this video  
20 and say maybe there's some things that we should  
21 have done a little bit differently?  
22 A. Say again, please.  
23 Q. I'm saying if you -- if you showed this  
24 video to a training class, would you provide it  
25 as an example of model behavior, or might you

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1 say that there were things that should've been  
2 done differently?  
3 A. Based on the circumstances, I think we  
4 did the best we could do with what we had.  
5 Q. Now that you've seen the video, would  
6 you like to retract anything where you said I  
7 did not witness any of my co-defendants engage  
8 in any wrongful conduct?  
9 A. I just saw what you saw right now in  
10 this video, and I don't see any wrongdoing from  
11 my point of view.  
12 Q. And just to ask one more time, like,  
13 after this event, did you get any response or  
14 indication from anyone up the chain of command  
15 that should have -- there -- there was anything  
16 wrong with your actions or the force that you  
17 used with Ms. Beuhler?  
18 A. No. Not to my knowledge. I immediately  
19 told my supervisor and I -- I detained someone  
20 and gave him the information that I did. No.  
21 MS. MCDANIEL: All right. Well, at  
22 this point, I will pass the witness. I  
23 appreciate --  
24 MR. BARTON: We have no questions at  
25 this time.

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1 THE VIDEOGRAPHER: All right. That  
2 concludes our deposition. It's 3:31 p.m., and  
3 we're off the video record.  
4 THE COURT REPORTER: One moment.  
5 MR. BARTON: All right. Thank you.  
6 THE COURT REPORTER: One moment.  
7 MR. BARTON: We'll be in touch.  
8 THE COURT REPORTER: One moment.  
9 MS. MCDANIEL: Thank you very  
10 much --  
11 THE COURT REPORTER: One moment.  
12 MS. MCDANIEL: -- for your time  
13 today, Officer Gonzalez. I really, really  
14 appreciate it and I --  
15 THE COURT REPORTER: One moment,  
16 please.  
17 MS. MCDANIEL: -- I appreciate  
18 your --  
19 THE COURT REPORTER: One moment.  
20 MS. MCDANIEL: -- all the work that  
21 you do.  
22 THE WITNESS: Thank you. Drive  
23 safe --  
24 THE COURT REPORTER: One moment.  
25 THE WITNESS: Goodbye.

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1 THE COURT REPORTER: Are we gonna  
 2 read and sign?  
 3 MS. MCDANIEL: Oh, I'm sorry. Go  
 4 ahead.  
 5 MR. BARTON: No. I guess let -- The  
 6 court reporter wants to ask us for --  
 7 THE COURT REPORTER: Are we going to  
 8 read and sign?  
 9 THE WITNESS: Yes, ma'am?  
 10 THE COURT REPORTER: Are we going  
 11 to --  
 12 MR. BARTON: Yes, yes --  
 13 THE WITNESS: I'm here.  
 14 MR. BARTON: -- we want to read and  
 15 sign, and we want copies of everything, video  
 16 and transcript.  
 17 (Off the record at 3:31 p.m.)  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 ERRATA  
 2 WITNESS NAME: JAVIER GONZALEZ DATE:02/09/23  
 3 PAGE LINE CHANGE REASON  
 4 \_\_\_\_\_  
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 25 JAVIER GONZALEZ TODAY'S DATE

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1 JURAT  
 2 I, JAVIER GONZALEZ, have read the foregoing  
 3 deposition transcript and hereby affix my  
 4 signature that same is true and correct, except  
 5 as noted above.  
 6  
 7 JAVIER GONZALEZ  
 8 THE STATE OF )  
 9 COUNTY OF )  
 10  
 11 Before me, , on this day  
 12 personally appeared JAVIER GONZALEZ, who, known  
 13 to me [or proved to me under oath or through  
 14 ) (description of identity card  
 15 or other document) to be the person whose name  
 16 is subscribed to the foregoing instrument and  
 17 acknowledged to me that they executed the same  
 18 for the purposes and consideration therein  
 19 expressed.  
 20 Given under my hand and seal of office this  
 21 day of , .  
 22 Notary Public in and for  
 23 The State of Texas  
 24 My Commission Expires:  
 25

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1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE WESTERN DISTRICT OF TEXAS  
 3 AUSTIN DIVISION  
 4 SYDNI BEUHLER, §  
 5 Plaintiff, §  
 6 v. § CASE NO. 1:21-cv-00054-RP  
 7 §  
 8 CITY OF AUSTIN, §  
 9 OFFICER GAVIN SMART §  
 10 (AP8674), and §  
 11 OFFICER JAVIER §  
 12 GONZALEZ (AP7422), §  
 13 Defendants. §  
 14 \*\*\*\*\*  
 15 ORAL AND VIDEOTAPED DEPOSITION OF  
 16 OFFICER JAVIER GONZALEZ  
 17 FEBRUARY 9, 2023  
 18 Vol. 1 of 1  
 19 (Reported Remotely)  
 20 \*\*\*\*\*  
 21 I, MENDY T. WILLIAMS, HIPAA-Certified  
 22 and Certified Shorthand Reporter in and for the  
 23 State of Texas, hereby certify to the following:  
 24 THAT the witness, OFFICER JAVIER  
 25 GONZALEZ, was duly sworn by me and that the  
 transcript of the oral deposition is a true  
 record of the testimony given by the witness;  
 THAT the deposition transcript was  
 submitted on \_\_\_\_\_, 2023, to the  
 witness or to the attorney for the witness for

<p>1 examination, signature, and return to me by                  2 _____, 2023.                  3 THAT the amount of time used by each                  4 party at the deposition is as follows:                  5 Ms. Grayson E. McDaniel - 4:19:00                  6 Mr. Monte Barton - 0:00:00                  7 THAT pursuant to information given to                  8 the deposition officer at the time said                  9 testimony was taken, the following includes                  10 counsel for all parties of record:                  11 Ms. Grayson E. McDaniel                  Attorney for Plaintiff, Sydni Beuhler                  12                  Mr. Monte Barton                  13 Attorney for Defendants, City of Austin,                  Officer Gavin Smart (AP8674), and                  14 Officer Javier Gonzalez (AP7422)                  15 I further certify that I am neither                  16 counsel for, related to, nor employed by any of                  17 the parties or attorneys in the action in which                  18 this proceeding was taken, and further that I am                  19 not financially or otherwise interested in the                  20 outcome of the action.                  21 Further certification requirements                  22 pursuant to Rule 203 of the TRCP will be                  23 certified to after they have occurred.                  24 Certified to by me this ____ day of                  25 _____, 2023.</p>	<p>Page 202</p>
<p>1                  2 Mendy T. Williams                  Texas CSR #CSR-8055                  Certification Expires: 07/31/23                  3                  4 FURTHER CERTIFICATION UNDER RULE 203 TRCP                  5 The original deposition was/was not                  6 returned to the deposition officer on                  7 _____, 2023;                  8 If returned, the attached Changes and                  9 Signature page contains any changes and the                  10 reasons therefore;                  11 If returned, the original deposition was                  12 delivered to _____, Custodial                  13 Attorney;                  14 That \$_____ is the deposition                  15 officer's charges to the Plaintiff, Sydni                  16 Beuhler, for preparing the original deposition                  17 transcript and any copies of exhibits;                  18 That the deposition was delivered in                  19 accordance with Rule 203.3, and that a copy of                  20 this certificate was served on all parties shown                  21 herein and filed with the Clerk.                  22 Certified to by me this ____ day of                  23 _____, 2023.                  24 Mendy T. Williams                  Texas CSR #CSR-8055                  25 Certification Expires: 07/31/23</p>	<p>Page 203</p>

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Sydni Beuhler,  
Plaintiff,  
v.

City of Austin,  
Officer Gavin Smart (AP8674), and  
Officer Javier Gonzalez (AP7422)  
Defendants.

§  
§  
§  
§  
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§  
§

Case no. 1:21-cv-00054-RP

**PLAINTIFFS' NOTICE OF DEPOSITION OF OFFICER JAVIER GONZALEZ**

TO: ALL COUNSEL OF RECORD  
PERSON TO BE EXAMINED: OFFICER JAVIER GONZALEZ (#7422)  
TIME & DATE OF TAKING: Thursday, February 9, 2023 at 10:30am CT  
COURT REPORTER: Magna Legal Services  
VIDEOGRAPHER: Magna Legal Services  
LOCATION: ZOOM VIDEO CONFERENCE

PLEASE TAKE NOTICE that in accordance with Federal Rule of Civil Procedure 30, the video deposition of the above-listed individual will be taken by the Plaintiffs.

This deposition is to be conducted via Zoom Video Conference and will be recorded stenographically before a court reporter and videotaped before a videographer from Magna Legal Services – 700 Milam Street, #1300, Houston, TX 77002; (832) 871-5100.

This deposition will continue day to day until complete. You are invited to attend and participate. A zoom link will be sent out prior to the deposition. If you do not receive a zoom link, please contact Alexis Lopez @ [alopez@hendlerlaw.com](mailto:alopez@hendlerlaw.com).

Dated: January 23, 2023



**Respectfully submitted,**  
**HENDLER FLORES LAW, PLLC**

/s/ Grayson E. McDaniel

Scott M. Hendler - Texas Bar No. 9445500

[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)

Grayson McDaniel - Texas Bar No. 24078966

[gmcDaniel@hendlerlaw.com](mailto:gmcDaniel@hendlerlaw.com)

901 S. MoPac Expressway

Bldg. 1, Suite #300

Austin, Texas 78746

Telephone: (512) 439-3200

Facsimile: (512) 439-3201

***ATTORNEYS FOR PLAINTIFF***

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing served on all counsel of record via the electronic mail on January 23, 2023.

/s/ Grayson E. McDaniel

Grayson E. McDaniel



**Texas Commission On Law Enforcement  
Personal Status Report**

<b>Name</b>	<b>TCOLE ID (P ID)</b>	<b>STATUS</b>
JAVIER M. GONZALEZ	364796	

<b>Citizen</b>	<b>Race</b>	<b>Gender</b>
Yes	Hispanic	Male

**Career/Professional Training**

<b>Institution</b>	<b>Hours</b>	<b>Education</b>	<b>From</b>	<b>To</b>
	0	High School		
Austin Community College	87	Associate		
Texas State University	61	Bachelor		
Lamar University	30	Master		
Total Higher Education Hours	<u>178</u>			
Total Higher Education Points	3560			
Total Military Training Hours	<u>0</u>			
<b>Total</b>	<u><u>3560</u></u>			

**Service History**

<b>Appointed As</b>	<b>Department</b>	<b>Award</b>	<b>Service Start Date</b>	<b>Service End Date</b>	<b>Service Time</b>
Peace Officer (Full Time)	AUSTIN POLICE DEPARTMENT	Peace Officer License	3/20/2013		9 years, 2 months
Peace Officer	AUSTIN COMM COL DIST POLICE	Peace Officer License	10/20/2008	8/7/2012	3 years, 10 months

**Total Service Time**

<b>Description</b>	<b>Service Time</b>
Peace Officer	12 years, 11 months
Total officer time	12 years, 11 months



## Texas Commission On Law Enforcement

### Personal Status Report

#### Award Information

Award	Type	Action	Action Date
Peace Officer License	License	Granted	10/21/2008
Basic Peace Officer	Certificate	Certification Issued	10/5/2009
Intermediate Peace Officer	Certificate	Certification Issued	3/27/2013
Advanced Peace Officer	Certificate	Certification Issued	5/5/2014
Master Peace Officer	Certificate	Certification Issued	5/4/2018

#### Academy History

	Date	Institution	Course Title
Completed	2/26/2013	Austin Police Academy	Basic Peace Officer
Completed	8/16/2008	Austin Community College	Transfer Curriculum & Tex. P. O. Sequence

#### Courses Completed

**09/01/2021 - 08/31/2023**

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
355	Annual Firearms Qualification 1701.355	4/4/2022	0	Austin Police Academy	
		<b>Unit Hours</b>	<b>0</b>		

**09/01/2019 - 08/31/2021**

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3341	Police K9 Training	7/13/2021	3	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	6/15/2021	0	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	5/31/2021	2	Austin Police Academy	
3344	Less Lethal Electronic Control Device Training	11/20/2020	12	Austin Police Academy	
3186	86th Legislative Session Legal Update	11/13/2020	3	Austin Police Academy	86th Session State and Federal Law Update
355	Annual Firearms Qualification 1701.355	1/28/2020	0	Austin Police Academy	
3038	Agency Operations (General)	9/26/2019	4	Austin Police Academy	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2019 - 08/31/2021**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3517	Suicide Prevention (not 3501)	9/26/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	9/25/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	9/24/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
3940	Community Policing	9/23/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	9/23/2019	2	Austin Police Academy	Civilian Interaction Training Program
<b>Unit Hours</b>			<b>54</b>		

**09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
1850	Crisis Intervention Training 40hr	6/20/2019	40	Austin Police Academy	Crisis Intervention Training (Mandate) Crisis Intervention Training 40hr (Intermediate)
3304	Hostage and Barricade Suspect Situations	5/9/2019	7	Austin Police Academy	
54011	Incident Resp. Terror Bombing NMTech	5/1/2019	8	Austin Police Academy	
3860	Prevention and response to Suicide Bombings(NMIMT)	4/24/2019	8	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/31/2019	0	Austin Police Academy	
2042	Mechanics of Arrest & Search	12/18/2018	20	Austin Police Academy	
3340	Crowd Control	11/26/2018	10	Austin Police Academy	
3185	85th Legislative Session Legal Update	11/12/2018	4	Austin Police Academy	85th Session State and Federal Law Update
8158	Body Worn Camera	10/25/2018	2	Austin Police Academy	
3305	Active Shooter Response	8/1/2018	4	Austin Police Academy	
2040	Defensive Tactics	6/6/2018	3	Austin Police Academy	
3305	Active Shooter Response	4/5/2018	20	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	4/3/2018	10	Austin Police Academy	
3390	Ballistic Shield Training	4/2/2018	10	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	2/23/2018	0	Austin Police Academy	
2055	Firearms	2/23/2018	2	Austin Police Academy	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2017 - 08/31/2019 \***

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2040	Defensive Tactics	2/20/2018	3	Austin Police Academy	
3301	Basic S.W.A.T. Course	11/15/2017	80	Austin Police Academy	
9909	Officer Involved Shooting	9/27/2017	10	Austin Police Academy	
			<b>Unit Hours</b>	241	

**09/01/2015 - 09/30/2017**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
9909	Officer Involved Shooting	9/27/2017	10	Austin Police Academy	
3358	Police Bicycle	7/19/2017	20	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	6/26/2017	0	Austin Police Academy	
2055	Firearms	6/26/2017	3	Austin Police Academy	
3342	Tactical Firearms Training	4/10/2017	10	Austin Police Academy	
3907	MultiCultural Diversity/Awarness for L.E. Prof.	3/3/2017	10	Austin Police Academy	
3184	84th Legislative Session Legal Update	1/17/2017	4	Austin Police Academy	84th Session State and Federal Law Update
3258	Racial Profiling Update	7/30/2016	2	Austin Police Academy	
2057	Courtroom Demeanor/Testimony	5/6/2016	6	Texas District & County Attorneys Association	
3362	All Terrain Vehicle Operation	5/5/2016	7	Austin Police Academy	
4100	Information Technology (General)	4/14/2016	10	Austin Police Academy	
4100	Information Technology (General)	4/13/2016	10	Austin Police Academy	
3322	Patrol Rifle	3/31/2016	40	Austin Police Academy	
3836	Concealed Carry for Law Enforcement Officers	3/1/2016	10	Austin Police Academy	
2055	Firearms	10/28/2015	10	Austin Police Academy	
2046	Driving	9/30/2015	10	Austin Police Academy	
			<b>Unit Hours</b>	162	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2013 - 08/31/2015**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2055	Firearms	8/5/2015	10	Austin Police Academy	
2055	Firearms	7/23/2015	1	Austin Police Academy	
3183	83rd Legislative Session Legal Update	6/29/2015	4	Austin Police Academy	83rd Session State and Federal Law Update
2055	Firearms	5/12/2015	1	Austin Police Academy	
2055	Firearms	11/18/2014	1	Austin Police Academy	
2055	Firearms	10/20/2014	1	Austin Police Academy	
3835	Tactical Trauma Care	9/15/2014	4	Austin Police Academy	
2055	Firearms	7/22/2014	1	Austin Police Academy	
3722	Peace Officer Field Training	6/23/2014	160	Austin Police Academy	Peace Officer Field Training
2055	Firearms	6/13/2014	1	Austin Police Academy	
4100	Information Technology (General)	4/23/2014	10	Austin Police Academy	
2055	Firearms	4/18/2014	1	Austin Police Academy	
2055	Firearms	11/15/2013	1	Austin Police Academy	
3358	Police Bicycle	11/7/2013	40	Austin Police Academy	
2055	Firearms	10/17/2013	1	Austin Police Academy	
2055	Firearms	9/4/2013	1	Austin Police Academy	
			<b>Unit Hours</b>	238	

**09/01/2011 - 08/31/2013**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2055	Firearms	8/16/2013	1	Austin Police Academy	
3182	82nd Legislative Session Legal Update	8/15/2013	4	Austin Police Academy	82nd Session State and Federal Law Update
6030	Tactical Vehicle Traffic Stops & Extractions	8/2/2013	3	Austin Police Academy	
2055	Firearms	7/19/2013	1	Austin Police Academy	
2055	Firearms	6/25/2013	1	Austin Police Academy	
2055	Firearms	5/24/2013	1	Austin Police Academy	
2055	Firearms	5/6/2013	1	Austin Police Academy	
2055	Firearms	4/15/2013	1	Austin Police Academy	
2108	Arrest, Search, and Seizure (Intermediate)	3/21/2013	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2011 - 08/31/2013**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3270	Human Trafficking	3/21/2013	4	Austin Police Academy	Human Trafficking
3255	Asset Forfeiture	3/18/2013	2	Austin Police Academy	Asset Forfeiture (Intermediate)
3277	Identity Theft	3/18/2013	3	Austin Police Academy	Identity Theft (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	3/15/2013	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
2106	Crime Scene Investigation (Intermediate)	3/7/2013	32	Austin Police Academy	Crime Scene Investigation (Intermediate)
66094	FEMA Intro ICS Law Enf (FEMA IS-100LEb)	3/4/2013	3	Austin Police Academy	
1000	Basic Peace Officer	2/26/2013	618	Austin Police Academy	82nd Session State and Federal Law Update Crisis Intervention Training (Mandate) Cultural Diversity (Mandate) S.F.S.T. NHTSA24hour Practitioner Special Investigative Topic (Mandate)
4043	Mobile Video Training	2/25/2013	8	Austin Police Academy	
3232	Special Investigative Topics	2/22/2013	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3939	Cultural Diversity	2/20/2013	8	Austin Police Academy	Cultural Diversity (Intermediate)
3256	Racial Profiling	2/18/2013	4	Austin Police Academy	Racial Profiling (Intermediate)
66800	FEMA National Resp Plan Intro (FEMA IS-800b)	2/5/2013	3	Austin Police Academy	
66201	FEMA ICS Single Res/Initial Incident (FEMA IS-200b)	2/5/2013	3	Austin Police Academy	
3841	Crisis Intervention Training	2/4/2013	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2011 - 08/31/2013**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
66700	FEMA National ICS (FEMA IS-700a)	2/1/2013	3	Austin Police Academy	
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	12/29/2012	5	Austin Police Academy	
2067	S.F.S.T. Practitioner	12/7/2012	24	Austin Police Academy	
3270	Human Trafficking	11/19/2012	4	Austin Police Academy	Human Trafficking
3344	Less Lethal Electronic Control Device Training	11/18/2012	10	Austin Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	11/16/2012	20	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
2107	Use of Force (Intermediate)	10/26/2012	13	Austin Police Academy	Use of Force (Intermediate)
3300	Patrol/Tactical	9/30/2012	4	Austin Community College District Police	
3807	TCIC/NCIC for Less than Full Access Operators	9/19/2012	8	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	8/14/2012	0	Austin Police Academy	Personnel Orientation
3910	Sexual Harassment Recognition	8/14/2012	1	Austin Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	1/12/2012	24	Austin Community College District Police	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
2040	Defensive Tactics	1/3/2012	1	Austin Community College District Police	
2055	Firearms	1/3/2012	3	Austin Community College District Police	
3300	Patrol/Tactical	1/3/2012	4	Austin Community College District Police	
3308	Officer Safety/Survival	12/12/2011	8	Travis Co. Sheriff's Academy	
<b>Unit Hours</b>			<b>896</b>		

**09/01/2009 - 08/31/2011**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
1014	Basic Instructor Course	2/25/2011	40	Austin Community College District Police	

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2009 - 08/31/2011**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2107	Use of Force (Intermediate)	1/12/2011	24	Austin Community College District Police	Use of Force (Intermediate)
3320	Terrorism & Homeland Security (General)	1/6/2011	3	Austin Community College District Police	
3320	Terrorism & Homeland Security (General)	1/6/2011	4	Austin Community College District Police	
3342	Tactical Firearms Training	11/11/2010	7	Austin Community College District Police	
2109	Spanish for Law Enforcement (Intermediate)	5/27/2010	24	Austin Community College District Police	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3300	Patrol/Tactical	2/22/2010	8	Austin Community College District Police	
2105	Child Abuse Prevention and Investigation (Interm.)	11/20/2009	24	Austin Community College District Police	Child Abuse Prevention and Investigation (Intermediate)
3181	81st Legislative Session Legal Update	10/27/2009	4	Austin Community College District Police	State and Federal Law Update
			<b>Unit Hours</b>	138	

**09/01/2007 - 08/31/2009**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2108	Arrest, Search, and Seizure (Intermediate)	7/28/2009	16	Capital Area Council of Governments	Arrest, Search, and Seizure (Intermediate)
3277	Identity Theft	7/21/2009	4	TCOLE Online	Identity Theft (Intermediate)
3256	Racial Profiling	7/21/2009	7	TCOLE Online	Racial Profiling (Intermediate)
3255	Asset Forfeiture	7/21/2009	4	TCOLE Online	Asset Forfeiture (Intermediate)
2053	Baton (All)	7/3/2009	4	Austin Community College District Police	
2055	Firearms	6/18/2009	4	Austin Community College District Police	
2106	Crime Scene Investigation (Intermediate)	6/12/2009	40	Austin Community College District Police	Crime Scene Investigation (Intermediate)
3801	TCIC/NCIC (not 3807 or 3802)	5/22/2009	4	Austin Community College District Police	
3342	Tactical Firearms Training	4/21/2009	4	Austin Community College District Police	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	4/18/2009	8	Austin Community College District Police	



**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2007 - 08/31/2009**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
2040	Defensive Tactics	4/17/2009	2	Austin Community College District Police	
2040	Defensive Tactics	4/17/2009	4	Austin Community College District Police	
3200	Investigations	4/17/2009	4	Austin Community College District Police	
1999	Personnel Orientation by Dept. Basic Proficiency	3/30/2009	0	Austin Community College District Police	Personnel Orientation
3722	Peace Officer Field Training	3/30/2009	160	Austin Community College District Police	Peace Officer Field Training
3841	Crisis Intervention Training	1/7/2009	16	Texas Alcoholic Beverage Commission LEA	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3398	Patrol/Tactical Seminar_2	12/16/2008	1	Austin Community College District Police	
3300	Patrol/Tactical	12/16/2008	6	Austin Community College District Police	
3300	Patrol/Tactical	12/15/2008	6	Austin Community College District Police	
3300	Patrol/Tactical	12/11/2008	6	Austin Community College District Police	
2053	Baton (All)	12/11/2008	8	Austin Community College District Police	
3300	Patrol/Tactical	12/4/2008	8	Austin Community College District Police	
3244	Sexual Assault Web with Exercises	11/1/2008	8	TCOLE Online	Part 3 of 4 (POSEIT) Special Investigative Topics
394	Cultural Diversity Web with Exercises	10/31/2008	8	TCOLE Online	Cultural Diversity (Intermediate)
3214	Family Violence Web w/ Exercises	10/31/2008	8	TCOLE Online	Part 1 of 4 (POSEIT) Special Investigative Topics
3224	Child Abuse (POSEIT)	10/28/2008	8	TCOLE Online	Part 2 of 4 (POSEIT) Special Investigative Topics

**Texas Commission On Law Enforcement**  
**Personal Status Report**

**Courses Completed**

**09/01/2007 - 08/31/2009**

<b>Course No.</b>	<b>Course Title</b>	<b>Course Date</b>	<b>Course Hours</b>	<b>Institution</b>	<b>Training Mandates</b>
3254	Sex Offender Characteristics Web with Exercises	10/23/2008	8	TCOLE Online	Part 4 of 4 (POSEIT) Special Investigative Topics
1011	Transfer Curriculum & O. Sequence	Tex. P. 8/16/2008	0	Austin Community College	Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Cultural Diversity (Intermediate) Special Investigative Topics (Intermediate)
2176	S.F.S.T. NHTSA 24hour Practitioner - BPOC	8/12/2008	0	Austin Community College	
			<b>Unit Hours</b>	356	
			<b>Total Hours</b>	2085	

**Total Hours**

<b>Total Career/Professional Hours</b>	3560
<b>Total TCOLE Course Hours</b>	2085
<b>Total Hours</b>	5645

\*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

Student transcript for: **Javier M. Gonzalez**  
 Student ID: **10130123**  
 Date of Printing: **05/05/2022**

### Online Courses

<u>Course ID</u>	<u>Class Name</u>	<u>Start Date</u>	<u>Stop Date</u>	<u>Progress</u>	<u>Finished</u>	<u>Passed</u>	<u>Score</u>
GOREV07062021	APD General Orders Revisions - 415-317-922.3.2 - Effective Date 07062021	12/23/2021 9:47 PM	12/23/2021 9:50 PM	Completed	Yes	Yes	100
MRISafety202108272021	MRI Safety for Emergency Responders	12/23/2021 9:35 PM	12/23/2021 9:43 PM	Completed	Yes	Yes	100
GOREV11022021	APD General Orders Policy Revisions - Effective November 2 2021	12/23/2021 9:46 PM	12/23/2021 9:47 PM	Completed	Yes	Yes	100
GOREV11192021	APD General Orders Revisions - Effective Date 11192021	12/23/2021 9:48 PM	12/23/2021 9:49 PM	Completed	Yes	Yes	100
2021916Narcn	Opioid Overdose and Response 2021	12/23/2021 9:43 PM	12/23/2021 9:45 PM	Completed	Yes	Yes	100
GOREV11192021B	APD General Orders Revisions - Effective Date 11192021 B	12/23/2021 9:49 PM	12/23/2021 9:50 PM	Completed	Yes	Yes	100
Pol122921	Updates released 1212921 in effect 1522	04/04/2022 3:10 PM	04/04/2022 3:11 PM	Completed	Yes	Yes	100
CEU11722	Lake Patrol Unit Response Protocols	04/04/2022 3:08 PM	04/04/2022 3:09 PM	Completed	Yes	Yes	100
ACitizen02052022	AXON CITIZEN Reference Module - 2022	04/04/2022 2:58 PM	04/04/2022 3:08 PM	Completed	Yes	Yes	100
TELEWORK0222v1	APD Telework Request Portal Orientation	04/04/2022 2:46 PM	04/04/2022 2:58 PM	Completed	Yes	Yes	100
051004	DNA Submission and Priority Policy	06/29/2016 8:18 PM	06/29/2016 8:24 PM	Completed	Yes	Yes	100
102315	Swift Water Refresher	08/24/2016 9:12 PM	08/24/2016 9:14 PM	Completed	Yes	Yes	100
03081699	2016 MobilePD Overview	08/26/2016 12:34 PM	08/26/2016 12:36 PM	Completed	Yes	Yes	100
APDPOL2015-4	APD Policy Manual 2015-4	01/07/2016 3:54 PM	01/07/2016 3:58 PM	Completed	Yes	Yes	100
04080515	Autism and Law Enforcement Recognition and Response	06/29/2016 8:52 PM	08/26/2016 12:36 PM	Completed	Yes	Yes	100
049915	Two Factor Authentication Hard Token Activation	08/24/2016 9:14 PM	08/24/2016 9:15 PM	Completed	Yes	Yes	100
049972015	Emergency Breaching for PATROL	06/29/2016 8:52 PM	06/29/2016 8:59 PM	Completed	Yes	Yes	100
09181504	2015 Blood Exposure Prevention	06/29/2016 5:54 PM	06/29/2016 6:01 PM	Completed	Yes	Yes	100

140677	2014 83rd Legislative Update 4 of 4	PM 06/24/2015 10:23	PM 06/24/2015 10:30	Completed	Yes	Yes	100
140678	2014 83rd Legislative Update 3 of 4	PM 06/24/2015 10:17	PM 06/24/2015 10:23	Completed	Yes	Yes	100
140680	2014 83rd Legislative Update 1 of 4	PM 06/24/2015 10:02	PM 06/24/2015 10:06	Completed	Yes	Yes	100
140681	Protocol for OIS and Public Safety Statement	AM 06/27/2015 00:38	PM 08/24/2016 8:47	Completed	Yes	Yes	100
140698	2014 Blood Borne Pathogen	PM 11/11/2014 11:29	PM 11/11/2014 11:30	Completed	Yes	Yes	100
140699	2014 Property Entry Refresher for Versadex	AM 06/27/2015 00:38	PM 06/29/2016 5:49	Completed	Yes	Yes	100
140699EBOLA	2014 Ebola Training Module 101614	PM 06/24/2015 10:36	PM 06/24/2015 10:38	Completed	Yes	Yes	100
150488	2015 Reduced 10 Codes	AM 06/27/2015 00:37	PM 08/26/2016 12:32	Completed	Yes	Yes	100
CEU140601	Private Property Towing 2014	PM 11/11/2014 10:49	PM 11/11/2014 11:13	Completed	Yes	Yes	100
150491	2015 Lifting and Moving	AM 06/27/2015 00:37	PM 06/29/2016 7:45	Completed	Yes	Yes	100
150495	2015 ADA Police and People with Disabilities	PM 06/29/2016 5:49	PM 06/29/2016 5:52	Completed	Yes	Yes	100
150499	2015 Tier 1 Personal Protection Equipment	AM 06/27/2015 00:37	PM 06/29/2016 6:28	Completed	Yes	Yes	100
150601	2015 AVS Procedures Update	AM 06/27/2015 00:38	PM 06/29/2016 5:54	Completed	Yes	Yes	100
150679	2014 83rd Legislative Update 2 of 4 rev	PM 06/24/2015 10:06	PM 06/24/2015 10:16	Completed	Yes	Yes	100
CEU100	Assault Victim Statement Update 2013	PM 08/14/2013 9:50	PM 08/14/2013 9:52	Completed	Yes	Yes	100
CEU1000	LE Encounters with Dogs 2013	PM 08/14/2013 9:30	PM 08/14/2013 9:43	Completed	Yes	Yes	100
CEU122214	Distracted driving	PM 06/24/2015 10:47	PM 06/24/2015 10:48	Completed	Yes	Yes	100
CEU130699	PC2201 UPDATE Emergency Services Personnel Definition	PM 11/22/2013 10:05	PM 11/22/2013 10:06	Completed	Yes	Yes	100
CEU140199	Deaf Services 2014	PM 11/11/2014 10:37	PM 11/11/2014 10:47	Completed	Yes	Yes	100
CEU140499	NIGHT SHIFT DETECTIVE UNIT NDU 2014	PM 11/11/2014 11:17	PM 11/11/2014 11:22	Completed	Yes	Yes	100
CEU140602	Sound Enforcement Training 2014	PM 02/12/2014 7:49	PM 02/12/2014 7:54	Completed	Yes	No	0
POL081817	2017 APD Policy Manual Revision_081817	PM 09/28/2017 7:17	PM 09/28/2017 7:18	Completed	Yes	Yes	100

CEU140603	Resisting Arrest Search or Transport 2014	PM 11/11/2014 10:22	PM 11/11/2014 10:29	Completed	Yes	Yes	100
CEU140604	2014 UCR Updates	PM 11/11/2014 11:13	PM 11/11/2014 11:17	Completed	Yes	Yes	100
CEU140612	Taser X26P Familiarization	PM 06/24/2015 10:31	PM 06/24/2015 10:36	Completed	Yes	Yes	100
CEU140698	2014 CMV Loading and Unloading	PM 11/11/2014 11:31	PM 11/11/2014 11:32	Completed	Yes	Yes	100
CEU140699	Tire Pressure 072114	PM 11/11/2014 11:27	PM 11/11/2014 11:29	Completed	Yes	Yes	100
CEU140701	Critical Refresher Police Driving 042114	PM 11/11/2014 10:34	PM 11/11/2014 10:37	Completed	Yes	Yes	100
CEU149903	Announcement Acevedo 040914	PM 11/11/2014 10:29	PM 11/11/2014 10:34	Completed	Yes	Yes	100
CEU3182a	82nd Legislative Updates Section 1 of 4	PM 08/14/2013 9:55	PM 08/14/2013 10:09	Completed	Yes	Yes	100
CEU3182b	82nd Legislative Updates Section 2 of 4	PM 08/14/2013 10:09	PM 08/14/2013 10:19	Completed	Yes	Yes	100
CEU3182c	82nd Legislative Updates Section 3 of 4	PM 08/14/2013 10:19	PM 08/14/2013 10:25	Completed	Yes	Yes	100
CEU3182d	82nd Legislative Updates Section 4 of 4	PM 08/14/2013 10:25	PM 08/14/2013 10:40	Completed	Yes	Yes	100
CEU56151	PIU Transition PowerPoint	PM 08/14/2013 9:09	PM 08/14/2013 9:14	Completed	Yes	Yes	100
CEU71013	Cell Phone Search Incident to arrest	PM 08/14/2013 9:21	PM 08/14/2013 9:30	Completed	Yes	Yes	100
CIT130601	CIT Updates from 83rd Legislation	PM 09/30/2013 9:14	PM 09/30/2013 9:14	Completed	Yes	Yes	100
CIT140699	JAIL DIVERSION 2014	PM 11/11/2014 11:22	PM 11/11/2014 11:27	Completed	Yes	Yes	100
121818BWC	Wing Clip Mount BWC	PM 08/12/2019 10:09	PM 08/12/2019 10:12	Completed	Yes	Yes	100
CRS130631	CRS Misdemeanor Citations	PM 11/22/2013 10:04	PM 11/22/2013 10:05	Completed	Yes	Yes	75
CRS140601	CRS Care and Control of Property and Evidence	PM 02/12/2014 7:33	PM 02/12/2014 7:39	Completed	Yes	Yes	100
FAS140602	Frisk and Search Training 2014	PM 02/12/2014 7:39	PM 02/12/2014 7:49	Completed	Yes	Yes	100
FV140601	Electronic Submission of Family Violence Statements 2014	PM 02/12/2014 7:54	PM 02/12/2014 7:55	Completed	Yes	Yes	100
LSU5179	Shotgun Patrol car recording	PM 08/14/2013 9:14	PM 08/14/2013 9:20	Completed	Yes	Yes	100
LSU5179R	Shotgun Patrol Car Recording Refresher 111014	PM 06/24/2015 10:39	PM 06/24/2015 10:43	Completed	Yes	Yes	100

LSU7813	Leg Restraints	PM 08/14/2013 9:02	PM 08/14/2013 9:07	Completed	Yes	Yes	100
PatSOP2015One	2015 Patrol SOP Revisions	PM 06/24/2015 10:31	PM 06/24/2015 10:31	Completed	Yes	Yes	100
Pol2013Four	APD Policy 2013-4 Revision Training	PM 02/12/2014 7:28	PM 02/12/2014 7:28	Completed	Yes	Yes	100
Pol2014One	APD Policy Manual 2014-1 Revisions	PM 11/11/2014 9:51	PM 11/11/2014 10:11	Completed	Yes	Yes	100
Pol2014Three	APD Policy Manual 2014-3 Revisions Issues 8-10-2014	PM 11/11/2014 10:17	PM 11/11/2014 10:21	Completed	Yes	Yes	100
Pol2014Two	APD Policy Manual 2014-2 Revisions	PM 11/11/2014 10:12	PM 11/11/2014 10:16	Completed	Yes	Yes	100
POL2015ONE	APD Policy Manual 2015-1 Revisions Issues 1-1-2015	PM 06/24/2015 10:30	PM 06/24/2015 10:31	Completed	Yes	Yes	100
POL2015THREE	POL2015THREE	PM 06/26/2015 11:02	PM 06/26/2015 11:02	Completed	Yes	Yes	100
POL2015TWO	POL2015TWO	PM 06/26/2015 11:03	PM 06/26/2015 11:04	Completed	Yes	Yes	100
RM134001	Beneficiary Training	PM 11/22/2013 9:29	PM 11/22/2013 9:29	Completed	Yes	Yes	100
RM57007	Blood Borne Pathogens 2013	PM 08/14/2013 9:52	PM 08/14/2013 9:54	Completed	Yes	Yes	100
TACINT140699	2014 Cellular Device PING	PM 11/11/2014 11:33	PM 11/11/2014 11:37	Completed	Yes	Yes	100
MMABRADY2132	Michael Morton Part 2	PM 04/02/2020 2:17	PM 04/02/2020 2:35	Completed	Yes	Yes	100
TCOLE3186	2019 2021 State and Federal Law Update Module 1	AM 11/13/2020 10:37	AM 11/13/2020 10:40	Completed	Yes	Yes	50
TCOLE3186part4	2019 2021 State and Federal Law Update Module 4	PM 11/13/2020 12:58	PM 11/13/2020 1:07	Completed	Yes	Yes	100
TCOLE3186part5	2019 2021 State and Federal Law Update Module 5	PM 11/13/2020 1:07	PM 11/13/2020 1:12	Completed	Yes	Yes	100
MMABRADY2133	Michael Morton Part 3	PM 04/02/2020 2:35	PM 04/02/2020 2:53	Completed	Yes	Yes	100
MMABRADY2138	Michael Morton Part 8	PM 04/02/2020 3:39	PM 04/02/2020 3:47	Completed	Yes	Yes	100
MMABRADY21310	Michael Morton part 10	PM 04/02/2020 3:53	PM 04/02/2020 4:05	Completed	Yes	Yes	100
MMABRADY21312	Michael Morton Part 12	PM 04/02/2020 4:14	PM 04/02/2020 4:16	Completed	Yes	Yes	100
MMABRADSY21315	Michael Morton part 15	PM 04/02/2020 4:19	PM 04/02/2020 4:20	Completed	Yes	Yes	100
392020	Hemp vs Marijuana	PM 04/02/2020 1:33	PM 04/02/2020 1:40	Completed	Yes	Yes	100

42220	Spok Mobile Messaging app	PM 11/13/2020 12:00	PM 11/13/2020 12:01	Completed	Yes	Yes	100
3252020	Agitated Chaotic Event	PM 04/02/2020 1:40	PM 04/02/2020 1:57	Completed	Yes	Yes	100
CEDEAF071920	2020 APD Deaf Services Refresher	PM 11/13/2020 12:29	PM 11/13/2020 12:36	Completed	Yes	Yes	100
CEU111204	2015 Combative Blood Draw	PM 06/29/2016 6:01	PM 06/29/2016 6:10	Completed	Yes	Yes	100
20151204	2015 Versadex Upgrade	PM 06/29/2016 6:10	PM 06/29/2016 6:14	Completed	Yes	Yes	100
2015120204	2015 Open Carry Disarming	PM 06/29/2016 6:14	PM 06/29/2016 6:25	Completed	Yes	Yes	100
02021699	2016 Safeguarding Children	PM 06/30/2016 4:32	PM 06/30/2016 4:50	Completed	Yes	Yes	100
CEU953182c	Section 3 of 5 for the 85th Legislative Update	PM 11/12/2018 10:21	PM 11/12/2018 10:32	Completed	Yes	Yes	20
CEU953182d	Section 4 of 5 for the 85th Legislative Update	PM 11/12/2018 10:32	PM 11/12/2018 10:41	Completed	Yes	Yes	20
GO061818	APD General Orders Revisions_061818	PM 11/12/2018 10:07	PM 11/12/2018 10:08	Completed	Yes	Yes	100
GO072618	APD General Orders Rvisions 072618	PM 11/12/2018 10:08	PM 11/12/2018 10:09	Completed	Yes	Yes	100
GO072718	APD General Orders Revisions 072718	PM 11/12/2018 10:03	PM 11/12/2018 10:05	Completed	Yes	Yes	100
PTUBWC_PT2M1	Module 1 of 3 - Body Worn Camera Training Pt 2	PM 08/07/2018 3:01	PM 08/07/2018 3:10	Completed	Yes	Yes	100
CEU953182e	Section 5 of 5 for the 85th Legislative Update	PM 11/12/2018 10:41	PM 11/12/2018 11:02	Completed	Yes	Yes	20
CEDEAF071918	2018 APD Deaf Services	PM 10/17/2018 5:27	PM 10/17/2018 5:51	Completed	Yes	Yes	100
GO309_081318	2018 GO 309 Handling Publicly Intoxicated Persons	PM 10/28/2018 6:05	PM 10/28/2018 6:12	Completed	Yes	Yes	100
0317160499	Risk Management - Tuberculosis Exposure	PM 08/26/2016 12:37	PM 08/26/2016 12:37	Completed	Yes	Yes	100
APD Policy Manual 051216 BWC	2016 APD Policy Manual Body Worn Cameras	PM 06/30/2016 4:31	PM 06/30/2016 4:31	Completed	Yes	Yes	100
2016DeafSvc	2016 Deaf Services	PM 06/29/2016 7:57	PM 06/29/2016 8:18	Completed	Yes	Yes	100
APDPol2016-1	APD Policy Manual 2016-1 Revisions effective 32016	PM 06/29/2016 8:59	PM 06/29/2016 9:04	Completed	Yes	Yes	100
040120162	VTR Part 2	PM 08/26/2016 5:26	PM 08/26/2016 5:47	Completed	Yes	No	100
12081599	2016 Emergency Management Policy	PM 06/29/2016 9:08	PM 08/26/2016 12:34	Completed	Yes	Yes	100

040120161	VTR Part 1	PM	PM	08/26/2016 12:37	08/26/2016 12:52	Completed	Yes	Yes	100
2016POL4	2016 APD Policy Manual Revisions 4	PM	PM	02/26/2017 7:36	02/26/2017 7:37	Completed	Yes	Yes	100
06232016	VTR Communication Skills	PM	PM	08/24/2016 9:15	08/24/2016 9:26	Completed	Yes	Yes	100
APD Policy Manual 2016 - PIT POLICY V1	APD Policy Manual 2016 - PIT POLICY	PM	PM	06/29/2016 9:05	06/29/2016 9:06	Completed	Yes	Yes	100
2016 Acevedo dwi policy	2016 A Message From The Chief_DWI POLICY	PM	PM	06/29/2016 7:45	06/29/2016 7:49	Completed	Yes	Yes	100
201610171	2016 APD Policy Manual Revisions 902.2.52	PM	PM	02/26/2017 7:37	02/26/2017 7:38	Completed	Yes	Yes	100
20161011	2016 Crisis Intervention Policy Update	PM	PM	01/23/2017 11:07	02/26/2017 8:06	Completed	Yes	Yes	100
POL083016	2016 APD Policy Manual Revisions - 3	PM	PM	02/26/2017 7:35	02/26/2017 7:36	Completed	Yes	Yes	100
RMBEP120716	2016 Blood Exposure	PM	PM	01/23/2017 10:53	01/23/2017 11:00	Completed	Yes	Yes	100
2016 APD Policy Manual Revision 2	2016 APD Policy Manual Revision 2	PM	PM	06/30/2016 4:29	06/30/2016 4:30	Completed	Yes	Yes	100
0914165207a	How to Use Informa	PM	PM	01/23/2017 11:01	01/23/2017 11:03	Completed	Yes	Yes	100
POL20163	2016 DRH Dress and Weapons Policy	PM	PM	08/26/2016 12:33	08/26/2016 12:33	Completed	Yes	Yes	100
TCOLE3184_3	2015-2017 STATE AND FEDERAL LAW UPDATE 84TH LEGISLATIVE SESSION part3	PM	PM	01/01/2017 8:51	01/01/2017 8:57	Completed	Yes	Yes	100
TCOLE3184_4	2015-2017 STATE AND FEDERAL LAW UPDATE 84TH LEGISLATIVE SESSION part4	PM	PM	01/01/2017 8:57	01/01/2017 9:09	Completed	Yes	Yes	10
8182016	Racial Profiling 2016	PM	PM	08/24/2016 8:47	08/24/2016 9:11	Completed	Yes	Yes	100
TCOLE3184_1	2015-2017 STATE AND FEDERAL LAW UPDATE 84TH LEGISLATIVE SESSION part1	PM	PM	01/01/2017 8:17	01/01/2017 8:25	Completed	Yes	Yes	100
TCOLE3184_2	2015-2017 STATE AND FEDERAL LAW UPDATE 84TH LEGISLATIVE SESSION part2	PM	PM	01/01/2017 8:26	01/01/2017 8:50	Completed	Yes	Yes	100
TCOLE3184part5	2015-2017 STATE AND FEDERAL LAW UPDATE 84TH LEGISLATIVE SESSION quiz	PM	PM	02/26/2017 7:32	02/26/2017 7:34	Completed	Yes	Yes	100
2017ROWAssess	2017 Rowing Assessment	PM	PM	01/23/2017 11:03	01/23/2017 11:07	Completed	Yes	Yes	100
3184TCOLE21062quiz	84th session of the Texas Legislature update quiz	PM	PM	01/01/2017 9:30	01/01/2017 9:32	Completed	Yes	Yes	100
1241752071	Sexual Harassment	PM	PM	02/26/2017 7:38	02/26/2017 7:38	Completed	Yes	Yes	100
2017APDPolicyManRev03071	2017 Policy Manual Revisions - 030717	PM	PM	04/12/2017 2:08	04/12/2017 2:09	Completed	Yes	Yes	100



041917 2017PolicyRevisions	2017 APD Policy Revisions 041917	PM 06/05/2017 8:33	PM 06/05/2017 8:33	Completed	Yes	Yes	100
TECOLE8158	Training on Body Cameras	PM 08/03/2017 5:34	PM 08/03/2017 5:50	Completed	Yes	Yes	200
041917 NEW EXPOSURE AFFIDIAVIT	2017 APD New Exposure Affidavit	PM 06/05/2017 8:33	PM 06/05/2017 8:34	Completed	Yes	Yes	100
2017Bicycle1	2017 Bicycle and Motor Vehicle Laws 1	PM 07/26/2017 8:22	PM 07/26/2017 8:32	Completed	Yes	Yes	99
060217PolicyRev	APD Policy Manual 2017_1.2	PM 06/05/2017 8:33	PM 06/05/2017 8:33	Completed	Yes	Yes	100
2017Bicycle 2	2017 Bicycle and Motor Vehicle Laws 2	PM 07/26/2017 8:33	PM 07/26/2017 8:38	Completed	Yes	Yes	100
2017Bicycle 3	2017 Bicycle and Motor Vehicle Laws 3	PM 07/26/2017 8:38	PM 07/26/2017 8:47	Completed	Yes	Yes	100
630175207	Frisking and Searching review 2017	PM 08/03/2017 5:14	PM 08/03/2017 5:24	Completed	Yes	Yes	120
APDPolicyRev418	APD Policy Manual additions and revisions effective July 20, 2017	PM 08/03/2017 5:24	PM 08/03/2017 5:26	Completed	Yes	Yes	100
PU072817	2017 Procedural Update Arrest Entry Report	PM 08/03/2017 5:27	PM 08/03/2017 5:31	Completed	Yes	Yes	100
1686	Taser, DMAV, Body Worn Camera...	PM 09/28/2017 7:23	PM 09/28/2017 7:26	Completed	Yes	Yes	100
0830175207	APD Policy Updates to Ensure Compliance with Senate Bill 4	PM 09/28/2017 7:16	PM 09/28/2017 7:35	Completed	Yes	Yes	100
AUTOTHEFT082217	2017 Auto Theft Refresher	PM 09/28/2017 7:16	PM 02/21/2018 4:26	Completed	Yes	Yes	100
CEU953182a	Section 1 of 5 for the 85th Legislative Update	PM 07/17/2018 7:12	PM 07/17/2018 7:24	Completed	Yes	Yes	30
APDPolicy102817	APD Policy Manual 2017-3 Revisions	PM 09/28/2017 7:18	PM 09/28/2017 7:21	Completed	Yes	Yes	100
APDPOL092717	APD Policy Revisions SB 4	PM 09/28/2017 7:21	PM 09/28/2017 7:22	Completed	Yes	Yes	100
RMBBP2017	2017 Blood Exposure Prevention	PM 09/28/2017 7:52	PM 09/28/2017 7:59	Completed	Yes	Yes	100
RMTB2017	2017 How to prevent TB or Tuberculous Exposures during Contact and Transporting	PM 09/28/2017 7:16	PM 09/28/2017 7:51	Completed	Yes	Yes	100
103017ADA	2017 Police And People With Disabilities ADA	PM 02/21/2018 4:26	PM 02/21/2018 4:35	Completed	Yes	Yes	100
APDGO20174	APD General Orders 2017-4 Revisions	PM 02/21/2018 4:38	PM 02/21/2018 4:44	Completed	Yes	Yes	100
120717LiveScanGB	Live Scan - Gardner Betts Finger Printing Procedures	PM 10/28/2018 6:36	PM 10/28/2018 6:41	Completed	Yes	Yes	100
GO217043	APD General Orders 2017-4 3 Revisions	PM 02/21/2018 4:35	PM 02/21/2018 4:36	Completed	Yes	Yes	100

CBD08182020	2020 Combative Blood Draw	PM 11/13/2020 12:36	PM 11/13/2020 12:43	Completed	Yes	Yes	100
1207175207	Placing handcuffed resisting subjects into APD SUV	PM 03/26/2018 5:17	PM 03/26/2018 5:31	Completed	Yes	Yes	100
GO121317	APD General Orders 2017-4 - 2 Revisions	PM 02/21/2018 4:37	PM 02/21/2018 4:38	Completed	Yes	Yes	100
012918Title6	2018 Title VI - FMCSA_MCSAP Program Assurances	PM 07/18/2018 6:56	PM 07/18/2018 7:06	Completed	Yes	Yes	100
2018CMonox0221	2018 Carbon Monoxide What you need to know.	AM 02/22/2018 10:18	AM 02/22/2018 10:35	Completed	Yes	Yes	100
040418	2018 General Order Revisions effective 040418	PM 11/12/2018 10:00	PM 11/12/2018 10:03	Completed	Yes	Yes	100
20183647	2018 LEO Encounters with Dogs	PM 07/17/2018 7:25	PM 07/17/2018 7:50	Completed	Yes	Yes	80
GO031918	2018 APD General Order Revisions effective date March 19 2018	PM 03/26/2018 4:51	PM 03/26/2018 5:17	Completed	Yes	Yes	100
GO042318	APD General Orders Revisions_042318	PM 11/12/2018 10:05	PM 11/12/2018 10:06	Completed	Yes	Yes	100
GO042418	APD General Orders Revisions_042418	PM 11/12/2018 10:06	PM 11/12/2018 10:07	Completed	Yes	Yes	100
CEU953182b	Section 2 of 5 for the 85th Legislative Update	PM 11/12/2018 10:09	PM 11/12/2018 10:21	Completed	Yes	Yes	30
PTU070618	Cell Phone Training	PM 07/18/2018 7:10	PM 07/18/2018 7:21	Completed	Yes	Yes	100
121318BB	Building Bridges Community	PM 08/12/2019 9:56	PM 04/16/2021 10:07	Completed	Yes	Yes	100
GOREV121818	General Orders Revisions Effective Date December 18, 2018	PM 08/16/2019 5:50	PM 08/16/2019 5:50	Completed	Yes	Yes	100
11119	2019 APD General Orders Revisions Effective January 11 2019	PM 08/16/2019 6:05	PM 08/16/2019 6:09	Completed	Yes	Yes	100
GOREV011119B	2019 General Orders Revisions - 011119	AM 08/13/2019 00:14	AM 08/13/2019 00:15	Completed	Yes	Yes	100
NIBRS2019	2019 APD Case Clearance	PM 08/12/2019 10:04	PM 08/12/2019 10:08	Completed	Yes	Yes	100
PTUBWC_PT2M2	Module 2 of 3 - Body Worn Camera Training Pt 2	PM 10/25/2018 6:18	PM 10/25/2018 6:26	Completed	Yes	Yes	100
PTUECITE8118	2018 Electronic Ticket Writer	PM 08/07/2018 2:57	PM 08/07/2018 3:01	Completed	Yes	Yes	100
82118BBL	Building Bridges Leadership	PM 10/28/2018 6:23	PM 10/28/2018 6:36	Completed	Yes	Yes	100
GOREV100318C	2018 APD General Orders Revisions - Effective 100318 Part3	PM 10/28/2018 6:55	PM 10/28/2018 6:55	Completed	Yes	Yes	100
POLUPOV102218	POLICY UPDATE OVERVIEW 308 THROUGH 318	PM 10/28/2018 6:42	PM 10/28/2018 6:44	Completed	Yes	Yes	100

1023185207	Building Bridges Communication	PM 10/28/2018 6:13	PM 10/28/2018 6:23	Completed	Yes	Yes	100
PTUBWC_PT2M3	Module 3 of 3 - Body Worn Camera Training Pt 2	PM 10/25/2018 6:26	PM 10/25/2018 6:42	Completed	Yes	Yes	75
GO_082118	2018 APD General Orders Revisions - Effective 08_21_18	PM 10/25/2018 4:13	PM 10/25/2018 4:14	Completed	Yes	Yes	100
GOREV100318b	2018 APD General Orders Revisions - Effective 100318 Part2	PM 10/28/2018 6:52	PM 10/28/2018 6:53	Completed	Yes	Yes	100
GOREV110118	2018 APD General Orders Revisions - Effective 1101118	PM 11/12/2018 9:57	PM 11/12/2018 9:59	Completed	Yes	Yes	100
GOREV110118A	2018 APD General Orders Revisions - Effective 1101118A	PM 11/12/2018 9:59	PM 11/12/2018 10:00	Completed	Yes	Yes	100
GOREV091018	2018 APD General Orders Revisions - Effective 091018	PM 11/12/2018 9:56	PM 11/12/2018 9:57	Completed	Yes	Yes	100
GOREV100318	2018 APD General Orders Revisions - Effective 100318	PM 10/28/2018 6:54	PM 10/28/2018 6:55	Completed	Yes	Yes	100
RMBBP121218	2018 Blood Borne Pathogens	PM 08/12/2019 9:57	PM 08/12/2019 10:03	Completed	Yes	Yes	100
GOREV0100819B	2018 APD General Orders Revisions - Effective 011119	AM 08/13/2019 00:12	AM 08/13/2019 00:12	Completed	Yes	Yes	100
GOREV020119	APD General Orders Revisions_Effective Date Feb. 1, 2019	AM 08/13/2019 00:13	AM 08/13/2019 00:14	Completed	Yes	Yes	100
GOREV030719	2019 General Orders Revisions - 030719	PM 08/16/2019 5:58	PM 08/16/2019 5:59	Completed	Yes	Yes	100
030519DV	The Crime of Domestic Violence	PM 08/12/2019 10:14	AM 11/25/2020 10:46	Completed	Yes	Yes	100
GOREV032519B	APD General Orders Revisions 2019 - 032519B	PM 08/16/2019 5:53	PM 08/16/2019 5:56	Completed	Yes	Yes	100
GOREV042419REV	APD General Orders Revisions 2019 - 042519 REVISION	PM 08/16/2019 5:50	PM 08/16/2019 5:51	Completed	Yes	Yes	100
627195207	Tactical Communication Refresher	PM 08/12/2019 10:14	PM 04/24/2021 3:11	Completed	Yes	Yes	100
GOREV_032519	2019 General Orders Revisions - 032519	PM 08/16/2019 5:56	PM 08/16/2019 5:57	Completed	Yes	Yes	100
GOREV042419	APD General Orders Revisions 2019 - 042519	PM 08/16/2019 5:51	PM 08/16/2019 5:53	Completed	Yes	Yes	100
CEU060419	2019 Combative Blood Draw	PM 08/12/2019 10:13	PM 11/13/2020 1:28	Completed	Yes	Yes	100
GOREV062019	2019 APD General Orders Revisions - Effective 062019	PM 08/16/2019 5:56	AM 11/25/2020 10:48	Completed	Yes	Yes	100
CEU061419	Hate Crimes Update	PM 08/12/2019 9:52	AM 11/13/2020 11:27	Completed	Yes	Yes	100
071119ROB	2019 Procedural Update - ROBBERY	PM 08/13/2019 00:10	PM 11/13/2020 1:30	Completed	Yes	Yes	100

72419LSU	10-41 Shotgun Refresher	AM 09/07/2019 4:49 PM	PM 11/13/2020 12:15 PM	Completed	Yes	Yes	100
POLREV308to318	Policy Review - Policy 308 - 318	AM 08/13/2019 00:15 AM	AM 08/13/2019 00:21 AM	Completed	Yes	Yes	100
CATTQ090619	Combat Application Tourniquet Gen 6 and Gen 7	AM 04/02/2020 4:35 PM	AM 11/13/2020 10:54 AM	Completed	Yes	Yes	100
GOREV092519	2019 APD General Orders Revisions - Effective 092519	AM 04/06/2020 11:06 AM	AM 11/25/2020 10:49 AM	Completed	Yes	Yes	100
GOREV110419	2019 APD General Orders Revisions - Effective 110419	AM 04/06/2020 11:05 AM	AM 11/25/2020 10:50 AM	Completed	Yes	Yes	100
GOREV120219	2019 APD General Orders Revisions - Effective 120219	AM 04/06/2020 11:03 AM	AM 11/25/2020 10:51 AM	Completed	Yes	Yes	100
81319	211 to 1004 Policy Update and revisions Effective August 2019	AM 08/16/2019 5:56 PM	AM 11/25/2020 10:59 AM	Completed	Yes	Yes	100
RMTB2019	How to prevent TB or Tuberculous Exposures during Contact and Transporting	AM 04/02/2020 4:33 PM	AM 11/13/2020 11:53 AM	Completed	Yes	Yes	100
RMBBP121019	2019 Blood Borne Pathogens	AM 11/13/2020 1:12 PM	AM 11/13/2020 1:22 PM	Completed	Yes	Yes	100
342.3.2	SUFFICIENT SUBJECT IDENTIFICATION	AM 04/02/2020 4:21 PM	AM 04/02/2020 4:21 PM	Completed	Yes	Yes	100
MMABRADY2131	Michael Morton part 1	AM 04/02/2020 1:57 PM	AM 04/02/2020 2:04 PM	Completed	Yes	Yes	100
MMABRADY2134	Michael Morton part 4	AM 04/02/2020 2:53 PM	AM 04/02/2020 3:04 PM	Completed	Yes	Yes	100
MMABRADY2135	Michael Morton Part 5	AM 04/02/2020 3:04 PM	AM 04/02/2020 3:09 PM	Completed	Yes	Yes	100
MMABRADY2136	Michael Morton Part 6	AM 04/02/2020 3:09 PM	AM 04/02/2020 3:16 PM	Completed	Yes	Yes	100
MMABRADY2137	Michael Morton Part 7	AM 04/02/2020 3:17 PM	AM 04/02/2020 3:39 PM	Completed	Yes	Yes	100
MMABRADY2139	Michael Morton part 9	AM 04/02/2020 3:47 PM	AM 04/02/2020 3:52 PM	Completed	Yes	Yes	100
MMABRADY21311	Michael Morton part 11	AM 04/02/2020 4:05 PM	AM 04/02/2020 4:14 PM	Completed	Yes	Yes	100
MMABRADY21313	Michael Morton Part 13	AM 04/02/2020 4:16 PM	AM 04/02/2020 4:17 PM	Completed	Yes	Yes	100
GOREV04192021C	APD General Order Policy Revisions 206.6 , 208.7.1 , 319.2.1 , 350 , 405.2.5 , 609.2 , 804.5 , 902.2.3 , 942.8 , 958.3.1	AM 04/16/2021 10:13 PM	AM 04/19/2021 9:19 PM	Completed	Yes	Yes	100
MMABRADY21314	Michael Morton part 14	AM 04/02/2020 4:18 PM	AM 04/02/2020 4:19 PM	Completed	Yes	Yes	100
POL03042020	Photo Lineups and Field ID Confidence Statements	AM 04/02/2020 4:27 PM	AM 04/02/2020 4:29 PM	Completed	Yes	Yes	100

GOREV03162020	2020 APD General Orders Revisions_03162020	04/02/2020 4:38 PM	11/25/2020 10:54 AM	Completed	Yes	Yes	100
GOREV01302020	2020 APD General Orders Revisions - Effective 02062020	11/25/2020 10:51 AM	11/25/2020 10:52 AM	Completed	Yes	Yes	100
GOREV01312020	2020 APD General Orders Revisions 2 - Effective 02062020	11/25/2020 10:53 AM	11/25/2020 10:54 AM	Completed	Yes	Yes	100
4142020	Kinetic Energy projectiles, Level 2 and 3 UOF, Mental Health Response, Utilization of Canine Unit, Personal Equipment, Employee Awards, On-Duty Injury and Illness.	11/25/2020 11:03 AM	11/25/2020 11:03 AM	Completed	Yes	Yes	100
TCOLE3186part2	2019 2021 State and Federal Law Update Module 2	11/13/2020 12:17 PM	11/13/2020 12:27 PM	Completed	Yes	Yes	100
TCOLE3186part3	2019 2021 State and Federal Law Update Module 3	11/13/2020 12:52 PM	11/13/2020 12:58 PM	Completed	Yes	Yes	100
GOREV06012020	APD General Orders Revisions _ Effective Date_06012020	11/25/2020 10:59 AM	11/25/2020 11:00 AM	Completed	Yes	Yes	100
NIBIN02192020	NIBIN_NATIONAL INTEGRATED BALLISTIC INFORMATION NETWORK	04/02/2020 4:32 PM	11/13/2020 11:57 AM	Completed	Yes	Yes	100
GOREV07032020	2020 Austin Police Department General Order Revisions _ effective date 07032020	11/25/2020 10:56 AM	11/25/2020 10:57 AM	Completed	Yes	Yes	100
GOREV07222020	2020 Austin Police Department General Order Revisions _ effective date 07222020	11/25/2020 10:57 AM	11/25/2020 10:58 AM	Completed	Yes	Yes	100
07282020AXON3	APD AXON 3 Body Camera Familiarization 07282020	11/13/2020 12:44 PM	11/13/2020 12:50 PM	Completed	Yes	Yes	100
GOREV_09082020	2020 APD Policy Revisions 09082020	11/25/2020 10:55 AM	11/25/2020 10:56 AM	Completed	Yes	Yes	100
VERS11232020	Versadex 8.1 Query Browse Changes and Enhancements	12/23/2020 10:29 AM	04/19/2021 8:11 PM	Completed	Yes	Yes	100
HEC01052021	2021 Highway Enforcement Policy and Procedure Update	04/16/2021 5:27 PM	04/16/2021 10:11 PM	Completed	Yes	Yes	100
GOREV_10212020	2020 APD General Orders Revisions - Effective 10212020	11/25/2020 10:53 AM	11/25/2020 10:53 AM	Completed	Yes	Yes	100
LSUPU-10222020	Procedural Update - Load Bearing Vest - Rifle and Shotgun	11/13/2020 11:57 AM	11/13/2020 12:00 PM	Completed	Yes	Yes	100
GOREV11122020	APD General Orders Revisions Effective Date 11122020	11/25/2020 11:01 AM	11/25/2020 11:02 AM	Completed	Yes	Yes	100
GM10262020	Donning and Doffing AVON C50 Gas Mask	11/13/2020 10:54 AM	11/13/2020 11:06 AM	Completed	Yes	Yes	100
GOREV01272021	APD G.O. Revision January 27 2021 342.9 Uniform Traffic Enforcement Chart - 801.3.4 Class D - Deployment Uniform	04/24/2021 3:11 PM	04/24/2021 3:33 PM	Completed	Yes	Yes	100
662020	Heat safety	11/13/2020 11:30 AM	11/13/2020 11:42 AM	Completed	Yes	Yes	100
AXON201212021	Axon Fleet 2 in-car camera Training	04/16/2021 10:12	12/23/2021 9:35	Completed	Yes	Yes	100

VERSA811012020	Versadex 8.1 - New Features and Enhancements	PM 11/13/2020 12:50	PM 11/13/2020 12:52	Completed	Yes	Yes	100
03222021SS	2021 Safe Sleep	PM 12/23/2021 9:12	PM 12/23/2021 9:25	Completed	Yes	Yes	100
GOREV04192021	APD General Order Revisions 118.7.2 206.5.2 300.3.1 303.4.2 306.5 346.6.1 350.2.2 916.5 1000.5 1002.4	PM 04/19/2021 8:12	PM 04/19/2021 8:19	Completed	Yes	Yes	100
GOREV06102021	2021 APD General Orders Revisions Effective 06102021-344 Automatic License Plate Reader-801.4.8 Service-Unit Pin-924.3.4 Facial Hair	PM 12/23/2021 9:45	PM 12/23/2021 9:46	Completed	Yes	Yes	100
GOREV07062021UFN	APD General Order Revisions - Effective 07062021 - UFN - 317 Handling Juveniles	PM 12/23/2021 9:46	PM 12/23/2021 9:46	Completed	Yes	Yes	100
BPP5521	2021 Blood Exposure Prevention	PM 12/23/2021 9:02	PM 12/23/2021 9:11	Completed	Yes	Yes	100
GOREV07232021	APD GO Policy Revisions Effective Date 07232021 - 117 Critical Incident - Public Release - 902.2 Complaint Acceptance Process	PM 12/23/2021 9:51	PM 12/23/2021 9:51	Completed	Yes	Yes	100
2021_taser_5207	2021 Taser Tilt Select 9 1 21 Firmware update	PM 12/23/2021 9:25	PM 12/23/2021 9:30	Completed	Yes	Yes	100
GOREV03172021	APD General Orders Revisions Effective 03172021 _ 206.5 _ 214.6.4 _ 918.6 _ 949.3 _ 957	PM 04/19/2021 8:11	PM 04/19/2021 8:12	Completed	Yes	Yes	100
GOREV03142022	APD General Order Revisions _ 03142022	PM 04/04/2022 3:10	PM 04/04/2022 3:10	Completed	Yes	Yes	100
CJIS2022_04042022	2022 CJIS Security Awareness Training			Enrolled	No	No	0
2021_8_3_FamViolence	2021 Family Violence reporting Refresher	PM 12/23/2021 9:11	PM 12/23/2021 9:12	Completed	Yes	Yes	100
GOREV03082022	APD General Order Revisions - 03082022	PM 04/04/2022 3:09	PM 04/04/2022 3:10	Completed	Yes	Yes	100
GOREV04142022	APD General Orders Revisions - Effective 04142022			Enrolled	No	No	0
GOREV03172021B	APD General Orders Revisions Effective 03172021 - 214.6.4 - Corrected	PM 04/19/2021 8:12	PM 04/19/2021 8:12	Completed	Yes	Yes	100

**Live Courses**

<u>Course ID</u>	<u>Class ID</u>	<u>Class Name</u>	<u>Agency</u>	<u>Credits</u>	<u>Date</u>	<u>Time</u>	<u>Progress</u>	<u>Finished</u>	<u>Passed</u>	<u>Score</u>
712174604	2979	SFST Refresher	Austin Police Department		06/03/2022	8:00AM	Enrolled	No	No	0
LSU_2022Quals_LL	2904	2022 Annual Qualifications Low Light			04/04/2022	6:00PM	Enrolled	No	No	0
LSU_2021Quals_LL	2584	2021 Annual Qualifications	Austin Police Department		06/15/2021	6:00PM	Not Completed	No	No	0

CEU_Taser7Transition	2393	Low Light TASER 7 Transition Course	Austin Police Department	11/20/2020	12:30PM	Enrolled	No	No	0
LSU_20QUALS	2121	2020 Annual Qualifications	Austin Police Department	01/28/2020	9:00AM	Completed	Yes	Yes	0
3038-a	1945	40 HR MANDATORY Training 2018 2019		09/23/2019	7:30AM	Not Completed	No	No	0
TCOLE1850CIT	1903	CIT Training for Intermediate Proficiency Certificate	Austin Police Department	06/17/2019	7:00AM	Completed	Yes	Yes	0
54011	1937	Incident Response to Terrorist Bombings/Explosives Familiarization Course		05/01/2019	8:00AM	Enrolled	No	No	0
3860	1936	Prevention of and Response to Suicide Bombing Incidents	Austin Police Department	04/24/2019	8:00AM	Enrolled	No	No	0
LSU_19QUAL	1791	2019 Annual Qualifications	Austin Police Department	01/31/2019	5:30PM	Completed	Yes	Yes	0
LSU_18ArrestControl	1802	2018 Intermediate Arrest and Control Tactics	Austin Police Department	12/17/2018	9:00AM	Completed	Yes	Yes	0
LSU3305	1570	Mandatory Active Attack Training		08/01/2018	12:00PM	Completed	Yes	Yes	0
TCOLE 2040	1444	2018 DT Quarterly Training 2	Austin Police Department	06/06/2018	7:00PM	Completed	Yes	Yes	0
1192018	1271	2018 Austin Police Department Fitness Assessment	Austin Police Department	03/02/2018	1:30PM	Enrolled	No	No	0
1958361	1157	Annual Qualification	Austin Police Department	02/23/2018	7:00PM	Completed	Yes	Yes	0
LSUDTQTR1_122217	1227	Defensive Tactics Quarterly Training 1	Austin Police Department	02/20/2018	7:00PM	Completed	Yes	Yes	0
3301 SWAT	929		Austin Police Department	11/08/2017	8:00AM	Enrolled	No	No	0
091317BWCDEP	968		Austin Police Department	10/20/2017	7:30PM	Completed	Yes	Yes	0
2226	915			09/27/2017	8:00AM	Enrolled	No	No	0

2049	907	Austin Police Department	09/04/2017	8:00AM	Enrolled	No	No	0
1958361	843	Austin Police Department	06/19/2017	7:00PM	Completed	Yes	Yes	0
11817Row	556	Austin Police Department	03/03/2017	8:15AM	Enrolled	No	No	0
3907-OCD	630	Austin Police Department	03/02/2017	8:00AM	Completed	Yes	Yes	0
1958361	455	Austin Police Department	12/01/2016	6:00PM	Enrolled	No	No	0
1958361	444	Austin Police Department	11/15/2016	12:00PM	Enrolled	No	No	0

**Notes**

<u>Course ID</u>	<u>Class ID</u>	<u>Class Name</u>	<u>Notes</u>
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**Curricula**

<u>Curriculum ID</u>	<u>Code</u>	<u>Name</u>	<u>Description</u>	<u>CEU Hours</u>	<u>Finished</u>	<u>Completion Date</u>
34	CEU3182	82nd Legislative Updates	TCLEOSE Mandated 82nd Legislative Updates - 4 section course.	8	Yes	08/14/2013
38	3184TCOLE2106	3184 State and Federal Law Update	This material is a general summary of selected court cases and changes to Texas' criminal law as wrought by the 84th session of the Texas Legislature	4	Yes	01/01/2017

<u>Course ID</u>	<u>Course Name</u>	<u>Start Date</u>	<u>Stop Date</u>	<u>Score</u>	<u>Finished</u>	<u>Passed</u>	<u>CEU Hours</u>
TCOLE3184_1	2015-2017 STATE AND FEDERAL LAW UPDATE 84TH LEGISLATIVE SESSION part1	01/01/2017	01/01/2017	100	Yes	Yes	4
TCOLE3184_2	2015-2017 STATE AND FEDERAL LAW UPDATE 84TH LEGISLATIVE SESSION part2	01/01/2017	01/01/2017	100	Yes	Yes	4
TCOLE3184_3	2015-2017 STATE AND FEDERAL LAW UPDATE 84TH LEGISLATIVE SESSION part3	01/01/2017	01/01/2017	100	Yes	Yes	4



TCOLE3184_4	2015-2017 STATE AND FEDERAL LAW UPDATE 84TH LEGISLATIVE SESSION part4	01/01/2017	01/01/2017	10	Yes	Yes	4		
41	2017BicycleLaws123	2017 Bicycle and Motor Vehicle Laws	This is a three module series on Bicycle and Motor Vehicle Laws	4	Yes		07/26/2017		
	<b><u>Course ID</u></b>	<b><u>Course Name</u></b>		<b><u>Start Date</u></b>	<b><u>Stop Date</u></b>	<b><u>Score</u></b>	<b><u>Finished</u></b>	<b><u>Passed</u></b>	<b><u>CEU Hours</u></b>
	2017Bicycle1	2017 Bicycle and Motor Vehicle Laws 1		07/26/2017	07/26/2017	99	Yes	Yes	0
	2017Bicycle 2	2017 Bicycle and Motor Vehicle Laws 2		07/26/2017	07/26/2017	100	Yes	Yes	0
	2017Bicycle 3	2017 Bicycle and Motor Vehicle Laws 3		07/26/2017	07/26/2017	100	Yes	Yes	0
45	CEU853185c	85th legislative updates	TCOLE mandated 85th Legislative Updates 2017 to 2019 cycle	3	Yes		11/12/2018		
	<b><u>Course ID</u></b>	<b><u>Course Name</u></b>		<b><u>Start Date</u></b>	<b><u>Stop Date</u></b>	<b><u>Score</u></b>	<b><u>Finished</u></b>	<b><u>Passed</u></b>	<b><u>CEU Hours</u></b>
	CEU953182a	Section 1 of 5 for the 85th Legislative Update		07/17/2018	07/17/2018	30	Yes	Yes	0.5
	CEU953182b	Section 2 of 5 for the 85th Legislative Update		11/12/2018	11/12/2018	30	Yes	Yes	0.5
	CEU953182c	Section 3 of 5 for the 85th Legislative Update		11/12/2018	11/12/2018	20	Yes	Yes	0.5
	CEU953182d	Section 4 of 5 for the 85th Legislative Update		11/12/2018	11/12/2018	20	Yes	Yes	0.5
	CEU953182e	Section 5 of 5 for the 85th Legislative Update		11/12/2018	11/12/2018	20	Yes	Yes	0
48	PTUBWC_PT2Cur	2018 Body Worn Camera Training	This curriculum contains three modules which cover evidence.com.	3	Yes		10/25/2018		
	<b><u>Course ID</u></b>	<b><u>Course Name</u></b>		<b><u>Start Date</u></b>	<b><u>Stop Date</u></b>	<b><u>Score</u></b>	<b><u>Finished</u></b>	<b><u>Passed</u></b>	<b><u>CEU Hours</u></b>
	PTUBWC_PT2M1	Module 1 of 3 - Body Worn Camera Training Pt 2		08/07/2018	08/07/2018	100	Yes	Yes	0
	PTUBWC_PT2M2	Module 2 of 3 - Body Worn Camera Training Pt 2		10/25/2018	10/25/2018	100	Yes	Yes	0
	PTUBWC_PT2M3	Module 3 of 3 - Body Worn Camera Training Pt 2		10/25/2018	10/25/2018	75	Yes	Yes	0
59	MMABRADY21320	Michael Morton Brady Act	What evidence must be disclosed to the defense to ensure a fair trial. What issues prosecutors face when complying with their legal and ethical duty to disclose. When and how to	2	Yes		04/02/2020		

disclose information to the defense including current practices around the state. Current technologies that can make your job easier. Potential consequences of failing to provide discovery as required by law.

<u>Course ID</u>	<u>Course Name</u>	<u>Start Date</u>	<u>Stop Date</u>	<u>Score</u>	<u>Finished</u>	<u>Passed</u>	<u>CEU Hours</u>
MMABRADY2131	Michael Morton part 1	04/02/2020	04/02/2020	100	Yes	Yes	0
MMABRADY2132	Michael Morton Part 2	04/02/2020	04/02/2020	100	Yes	Yes	0
MMABRADY2133	Michael Morton Part 3	04/02/2020	04/02/2020	100	Yes	Yes	0
MMABRADY2134	Michael Morton part 4	04/02/2020	04/02/2020	100	Yes	Yes	0
MMABRADY2135	Michael Morton Part 5	04/02/2020	04/02/2020	100	Yes	Yes	0
MMABRADY2136	Michael Morton Part 6	04/02/2020	04/02/2020	100	Yes	Yes	0
MMABRADY2137	Michael Morton Part 7	04/02/2020	04/02/2020	100	Yes	Yes	0
MMABRADY2138	Michael Morton Part 8	04/02/2020	04/02/2020	100	Yes	Yes	0
MMABRADY2139	Michael Morton part 9	04/02/2020	04/02/2020	100	Yes	Yes	0
MMABRADY21310	Michael Morton part 10	04/02/2020	04/02/2020	100	Yes	Yes	0
61	TCOLE3186	2019 2021 State and Federal Law Update	2019 2021 State and Federal Law Updates	2	Yes	11/13/2020	
<u>Course ID</u>	<u>Course Name</u>	<u>Start Date</u>	<u>Stop Date</u>	<u>Score</u>	<u>Finished</u>	<u>Passed</u>	<u>CEU Hours</u>
TCOLE3186	2019 2021 State and Federal Law Update Module 1	11/13/2020	11/13/2020	50	Yes	Yes	0
TCOLE3186part2	2019 2021 State and Federal Law Update Module 2	11/13/2020	11/13/2020	100	Yes	Yes	0
TCOLE3186part3	2019 2021 State and Federal Law Update Module 3	11/13/2020	11/13/2020	100	Yes	Yes	0
TCOLE3186part4	2019 2021 State and Federal Law Update Module 4	11/13/2020	11/13/2020	100	Yes	Yes	0
TCOLE3186part5	2019 2021 State and Federal Law Update Module 5	11/13/2020	11/13/2020	100	Yes	Yes	0



**AUSTIN POLICE DEPARTMENT**

GO# 2020-2141073  
NOT APPROVED

**GENERAL OFFENSE HARDCOPY**  
**LAW ENFORCEMENT USE ONLY**  
(\*\*LITIGATION HOLD\*\*)

**Narrative Text**

Type SUPPLEMENTS

Author AP7422 - GONZALEZ, JAVIER

Related Date Aug-06-2020 13:02

On August 1, 2020, I, Ofc. Gonzalez #7422 was working with Region 1 Metro Tactical Unit. On this day I was in a patrol vehicle doubled up with Ofc. Stewart #7348. Our assignment for the day was to work as MFF and assist in George sector with riots, protesters and crowd control.

At approximately 8:20PM, I was instructed to go near the 400 Blk of Congress to assist with crowd control. There was a large group of protesters in the intersection of S. Congress and 4th that was blocking traffic. Multiple officers arrived on scene and began to instruct protesters to get out of the road. Officers got in line and some of the crowd began to move back. There were a couple of individuals who were not complying. I stood back and watched the crowd to make sure they were not throwing objects at fellow officers.

I looked to my right and observed an officers who was struggling to detain a white female. I went over to help the officer who was dealing with the female and assisted. I grabbed the right wrist of the female and immediately felt her pull her hands towards the front of her body. In my training and experience of 7 years I have learned that criminals like to carry weapons in the front of their waistlines. When I felt the female pull her hand forward I conducted a wrist lock in order to gain control of her arms and then she was guided to the floor and on to her knees. The females was still pulling her right hand away from me while on the ground. I could feel her strength and her body stiffen as she was resisting. At this point I gave commands to not resist multiple times. I pulled out my handcuffs and was able to place them on the female with the assistance of other officers.

I later identified the officer that I help as Ofc. Smart. Once the female was placed in handcuffs she was placed in a patrol vehicle. The white female was later identified as:

XXXXXXXXXXXX

I remained on scene in order to assist with the large and aggressive crowd.

Later in the evening around 8:55 PM, I returned back to the 400 Blk of S. Congress where protesters were being violent and noncompliant. At the southwest corner of S. Congress and 5th St. I observed a group of officers face to face with group of about 15 to20 aggressive protesters. I saw a protester using a red bike pushing it with force towards officers. I went to help the officers and was able to pull the red bike away from the protester who was using it against officers. Once I had control of the bike I threw it towards the center of Congress and away from the reach of protesters.

I looked back at the south west corner of S. Congress and 5th and observe d officers struggling to detain protesters on the ground. The police officers were outnumbered by the aggressive crowd of protesters. I went to where the officers were at and told protesters to move multiple times. The protesters did not comply with my order to move so I pushed two of them away from the officers in order to create a safe work space. I saw some officers on the ground struggling to detain a white female and assisted them by holding her feet down as handcuffs were placed on her.

At about 9:10 PM, I was instructed to arrest all persons at the southwest corner of S. Congress and 4th St for obstruction of passageway. I observed a male in all black and grabbed his right arm. The male pulled





**AUSTIN POLICE DEPARTMENT**

GO# 2020-2141073  
NOT APPROVED

**GENERAL OFFENSE HARDCOPY**  
**LAW ENFORCEMENT USE ONLY**  
**(\*\*LITIGATION HOLD\*\*)**

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away and because he was heavier than me it caused me to lose my balance and we both went down to the ground. On the ground I gave commands for the male to place his hands behind his back and he complied. I placed a set of zip ties on the male and he was properly secured. The Male was later walked towards the intersection of S. congress and 3rd St where he was searched incidental to arrest and transported to the jail.

The male who was dressed in all black was later identified as:

Abdurahman, Ismail B/M DOB: [REDACTED] (ARRESTED)

I later notified Sgt. Candoli about my above police actions.

NOI

Ofc. Gonzalez #7422

Confidential



**MEMORANDUM**  
 Austin Police Department  
 Region 1 Patrol

**TO:** Robin Henderson, Assistant Chief  
**FROM:** Jason Staniszewski, Commander  
**SUBJECT:** Class D Memorandum – IAD Case # 2020-1301

**DATE:** 01/14/2021

Employee Name and EMP#		Javier Gonzalez #7422			
Incident Date	8/1/2020	Location	400 blk Congress Avenue		
CAD #	20-2141073	Versadex #	20-2141073	DMAV/BWC #	20-2141073
Allegations					
Policies Associated with Allegations			Nature of Complaint		
200.2 De-Escalation of Potential Force Encounters			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
200.3 Response to Resistance			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
306.3.1 Search Protocol			The "complainant advised "The officers were not going to get a female officer, they said they didn't have time to get a female officer and I started to have a panic attack, so they got one."		
318.5.1 Miranda Warning			The complainant stated "I wasn't read my Miranda rights . . ."		

The enclosed external complaint was received by Internal Affairs via the OPO from the complainant listed above on Javier Gonzalez #7422. The complaint documentation provided by the OPO and the complainant is included in the complaint packet.

The complaint regards an employee assigned under our command, and has been designated a Class D Complaint as described in General Order 902.3.1. This case is being sent to you for administrative purposes only. A review of this complaint has indicated no violations of Departmental Policy. Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.



Detailed responses to complaint(s):

Officers Gavin Smart #8674 of the Bicycle Public Order Team (BPOT) and Javier Gonzalez #7422, assigned to Mobile Field Force (MFF) were on-duty in downtown Austin on the evening of August 1, 2020, a day with numerous protests in the area of Congress Avenue and 4th Street, at the site of the Garrett Foster memorial.

At approximately 8:22 PM, officers from Mounted Patrol, BPOT, and MFF began clearing a large crowd of protesters out of Congress Avenue north of its intersection with 4th Street, where this group was blocking all lanes of the roadway. As officers were attempting to clear the roadway, several officers were giving verbal commands to the protesters to back up, while sirens and whistles could be heard in the background. All officers were uniformed, and multiple police vehicles with emergency lights activated were in the immediate area. Officer Smart issued numerous loud commands telling the subjects to "move back," and at least once, loudly stated, "move back or you're gonna get arrested." The complainant, Sydni Beuhler, remained standing in the roadway as many other protesters either voluntarily moved out of the roadway, or were pushed back by officers. As numerous BPOT officers were moving their bicycles forward to move the crowd, Officer Smart approached Ms. Beuhler and instructed her loudly "Move back!" Ms. Beuhler remained where she was standing and loudly stated "Fuck you!"

Officer Smart wrapped his arms around Ms. Beuhler while facing her and pulled her back behind the line of BPOT officers, away from the other protesters. Officer Smart's BWC appears to have been inadvertently turned off at this point. Ms. Beuhler began yelling and struggling with Officer Smart while he tried to control her. Officer Gonzalez observed this struggle and approached to assist Officer Smart, who at that point had pushed Ms. Beuhler to the ground, on her knees, with her upper body over her thighs. Officer Gonzalez had control of Ms. Beuhler's right arm, and Officer Smart had control of her left. At that point, Officer Anne Allare #7755 (MFF, female officer) approached and briefly held Ms. Beuhler's left hand, as Ms. Beuhler offered no resistance to Officer Allare. Ms. Beuhler was yelling while officers were trying to handcuff her while loudly instructing her to "stop resisting." While trying to handcuff Ms. Beuhler, Officer Gonzalez placed his right knee on Ms. Beuhler's upper right back area and right side, while Officer Smart placed his left knee on the left side of Ms. Beuhler's upper back and then left side area. Once they were able to get her handcuffed, Officer Smart immediately stood Ms. Beuhler up and escorted her to a waiting patrol car. Officer Smart loudly asked if there was a female officer in the area. A male officer (Officer N. Martinez) stated that they didn't have time for a female. Officer Allare turned around to assist Officer Smart. At this point, Ms. Beuhler jumped up and down, stating that she needed a female officer. Officer Allare informed Ms. Beuhler that she was a female officer. Officer Allare quickly frisked Ms. Beuhler, who was then placed in the patrol car driven by Officer Martinez. Officer Smart provided information related to Ms. Beuhler's arrest to Officer Martinez. After this, Neither Officer Smart nor Officer Gonzalez had any further involvement with Ms. Beuhler.

The response to resistance incident involving Ms. Beuhler was reviewed by Officer Smart's chain-of-command, and was deemed to be within policy and state law. Internal Affairs (IA) also reviewed the response to resistance and found it to be objectively reasonable. There were other recommended policy violations listed on the Notice of Formal Complaint by the Office of Police Oversight, but IA did not observe any violations by either Officer Smart or Officer Gonzalez related to these additionally-listed policies during IA's investigation.

No Department policies or procedures were violated by the officer in relation to the complaint received.

Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.

Javier Gonzalez <small>Digitally signed by Javier Gonzalez Date: 2021.01.14 15:06:11 -06'00'</small>	01/14/2021
Officer Signature	Date
Louis Candoli <small>Digitally signed by Louis Candoli Date: 2021.01.14 14:32:10 -06'00'</small>	01/14/2021
Sergeant Signature	Date
Karl Haverland <small>Digitally signed by Karl Haverland Date: 2021.01.15 10:32:21 -06'00'</small>	01/15/2021
Lieutenant Signature	Date
Commander Jason Staniszewski #3961 <small>Digitally signed by Commander Jason Staniszewski #3961 Date: 2021.01.15 10:42:49 -06'00'</small>	01/15/2021
Commander Signature	Date
Robin J. Henderson #3441 <small>Digitally signed by Robin J. Henderson #3441 Date: 2021.01.15 10:50:05 -06'00'</small>	01/15/2021
Assistant Chief Signature	Date

*Officer's signature does not imply any wrongdoing on behalf of the subject officer. Signatures are solely intended as documentation that each party in the chain of command, including the subject officer, has reviewed the complaint.*

**No portion of the complaint may be copied.**

**\*\*\*FOR INTERNAL AFFAIRS ONLY\*\*\***

Returned to Internal Affairs on: 01/15/2021

Jerry Bauzon <small>Digitally signed by Jerry Bauzon Date: 2021.01.15 11:53:52 -06'00'</small>	1/15/2021
Commander Jerry Bauzon #2557	Date
Professional Standards	



**MEMORANDUM**  
 Austin Police Department  
 Region 1 Patrol

**TO:** Joseph Chacon, Assistant Chief  
**FROM:** Ryan Adam, Commander  
**SUBJECT:** Class D Memorandum – IAD Case # 2020-1301

**DATE:** 01/14/2021

Employee Name and EMP#		Gavin Smart #8674			
Incident Date	8/1/2020	Location	400 blk Congress Avenue		
CAD #	20-2141073	Versadex #	20-2141073	DMAV/BWC #	20-2141073
Allegations					
Policies Associated with Allegations			Nature of Complaint		
200.2 De-Escalation of Potential Force Encounters			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
200.3 Response to Resistance			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
306.3.1 Search Protocol			The complainant advised "The officers were not going to get a female officer, they said they didn't have time to get a female officers an I started to have a panic attack, so they got one."		
318.5.1 Miranda Warning			The complainant stated "I wasn't read my Miranda rights . . ."		

The enclosed external complaint was received by Internal Affairs via the OPO from the complainant listed above on Gavin Smart #8674. The complaint documentation provided by the OPO and the complainant is included in the complaint packet.

The complaint regards an employee assigned under our command, and has been designated a Class D Complaint as described in General Order 902.3.1. This case is being sent to you for administrative purposes only. A review of this complaint has indicated no violations of Departmental Policy. Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.

Detailed responses to complaint(s):

Officers Gavin Smart #8674 of the Bicycle Public Order Team (BPOT) and Javier Gonzalez #7422, assigned to Mobile Field Force (MFF) were on-duty in downtown Austin on the evening of August 1, 2020, a day with numerous protests in the area of Congress Avenue and 4th Street, at the site of the Garrett Foster memorial.

At approximately 8:22 PM, officers from Mounted Patrol, BPOT, and MFF began clearing a large crowd of protesters out of Congress Avenue north of its intersection with 4th Street, where this group was blocking all lanes of the roadway. As officers were attempting to clear the roadway, several officers were giving verbal commands to the protesters to back up, while sirens and whistles could be heard in the background. All officers were uniformed, and multiple police vehicles with emergency lights activated were in the immediate area. Officer Smart issued numerous loud commands telling the subjects to "move back," and at least once, loudly stated, "move back or you're gonna get arrested." The complainant, Sydni Beuhler, remained standing in the roadway as many other protesters either voluntarily moved out of the roadway, or were pushed back by officers. As numerous BPOT officers were moving their bicycles forward to move the crowd, Officer Smart approached Ms. Beuhler and instructed her loudly "Move back!" Ms. Beuhler remained where she was standing and loudly stated "Fuck you!"

Officer Smart wrapped his arms around Ms. Beuhler while facing her and pulled her back behind the line of BPOT officers, away from the other protesters. Officer Smart's BWC appears to have been inadvertently turned off at this point. Ms. Beuhler began yelling and struggling with Officer Smart while he tried to control her. Officer Gonzalez observed this struggle and approached to assist Officer Smart, who at that point had pushed Ms. Beuhler to the ground, on her knees, with her upper body over her thighs. Officer Gonzalez had control of Ms. Beuhler's right arm, and Officer Smart had control of her left. At that point, Officer Anne Allare #7755 (MFF, female officer) approached and briefly held Ms. Beuhler's left hand, as Ms. Beuhler offered no resistance to Officer Allare. Ms. Beuhler was yelling while officers were trying to handcuff her while loudly instructing her to "stop resisting." While trying to handcuff Ms. Beuhler, Officer Gonzalez placed his right knee on Ms. Beuhler's upper right back area and right side, while Officer Smart placed his left knee on the left side of Ms. Beuhler's upper back and then left side area. Once they were able to get her handcuffed, Officer Smart immediately stood Ms. Beuhler up and escorted her to a waiting patrol car. Officer Smart loudly asked if there was a female officer in the area. A male officer (Officer N. Martinez) stated that they didn't have time for a female. Officer Allare turned around to assist Officer Smart. At this point, Ms. Beuhler jumped up and down, stating that she needed a female officer. Officer Allare informed Ms. Beuhler that she was a female officer. Officer Allare quickly frisked Ms. Beuhler, who was then placed in the patrol car driven by Officer Martinez. Officer Smart provided information related to Ms. Beuhler's arrest to Officer Martinez. After this, Neither Officer Smart nor Officer Gonzalez had any further involvement with Ms. Beuhler.

The response to resistance incident involving Ms. Beuhler was reviewed by Officer Smart's chain-of-command, and was deemed to be within policy and state law. Internal Affairs (IA) also reviewed the response to resistance and found it to be objectively reasonable. There were other recommended policy violations listed on the Notice of Formal Complaint by the Office of Police Oversight, but IA did not observe any violations by either Officer Smart or Officer Gonzalez related to these additionally-listed policies during IA's investigation.

No Department policies or procedures were violated by the officer in relation to the complaint received.

Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.

<b>Gavin Smart</b>	Digitally signed by Gavin Smart Date: 2021.01.14 21:22:09 -06'00'	01/14/2021
Officer Signature		Date
<b>Thomas Howard</b>	Digitally signed by Thomas Howard Date: 2021.01.14 21:27:07 -06'00'	01/14/2021
Sergeant Signature		Date
<b>Adam Masters</b>	Digitally signed by Adam Masters Date: 2021.01.15 08:52:03 -06'00'	01/15/2021
Lieutenant Signature		Date
<b>CMDR Ryan Adam</b>	Digitally signed by CMDR Ryan Adam Date: 2021.01.17 13:09:25 -06'00'	1/17/2021
Commander Signature		Date
<b>Joseph Chacon</b>	Digitally signed by Joseph Chacon Date: 2021.01.21 10:49:39 -06'00'	1/21/2021
Assistant Chief Signature		Date

*Officer's signature does not imply any wrongdoing on behalf of the subject officer. Signatures are solely intended as documentation that each party in the chain of command, including the subject officer, has reviewed the complaint.*

**No portion of the complaint may be copied.**

**\*\*\*FOR INTERNAL AFFAIRS ONLY\*\*\***

Returned to Internal Affairs on: 1/25/2021

<b>Robert J. Richman #3258</b>	01/25/2021
Commander <del>Jerry Bauzon #2557</del>	Date
Professional Standards	



# Internal Affairs Complete History

## Internal Affairs Division

**Javier Gonzalez #7422**

**Date of Commission: 03/22/2013**

<b>1. Case # 2020-1660</b>	Reported Date: 11/05/2020	Classification: B
<b>Case Description:</b> 11/05/2020 10:25 AM On September 24, 2020 Officer Gonzalez was driving NB on Bennett Ave approaching Wilks Ave. Officer Gonzalez's vehicle collided with another vehicle. Officer Gonzalez may have violated policy.  This complaint is my request for Internal Affairs to initiate an administrative investigation in order to determine if the employee's conduct complied with Department policy, Civil Service Rules, Municipal Civil Service Rules, and State law. - Sylvia Maldonado (IAD)		
<b>Allegation:</b> Chapter: Chapter 8 Section: 804 Department Vehicles Section Sub 1: 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES		
<b>Allegation Description:</b>		
<b>Disposition:</b> Chain of Command Decision: Sustained Discipline Decision: Written Reprimand Suspension Period: -- Retention Period: 15 Years Retention Date: 11/13/2035		
<b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --		
<b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --		
<u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None		
Review Completed: No Review Date: None Effective written reprimand: None		

<b>2. Case # 2020-1443</b>	Reported Date: 08/21/2020	Classification: A
<b>Case Description:</b> 08/29/2020 10:20 AM The OPO received an email from an anonymous complainant that included the photo of an APD officer and the alleged officers social media posts that included comments about protesters. - Mia Demers (OPO)		
<b>Allegation:</b> Chapter: Chapter 9 Section: 900 General Conduct and Responsibilities Section Sub 1: 900.3 GENERAL CONDUCT Section Sub 2: 900.3.2 Acts Bringing Discredit Upon the Department		
<b>Allegation Description:</b>		
<b>Disposition:</b> Chain of Command Decision: Administratively Closed Discipline Decision: No Discipline Suspension Period: -- Retention Period: 3 Years Retention Date: 02/01/2024		
<b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --		
<b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --		
<u>APA Suspension Review:</u>		



COA 008664

Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None	Review Completed: No Review Date: None Effective written reprimand: None
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**Allegation:**  
 Chapter: Chapter 3  
 Section: 301 Responsibility to the Community  
 Section Sub 1: 301.1 PURPOSE AND SCOPE

**Allegation Description:**

**Disposition:**  
 Chain of Command Decision: Administratively Closed  
 Discipline Decision: No Discipline  
 Suspension Period: --  
 Retention Period: 3 Years  
 Retention Date: 02/01/2024

**Post Appeal Decision:** --  
 Discipline Decision: --  
 Suspension Period: --

**Settlement Agreement:** --  
 Discipline Decision: --  
 Suspension Period: --

APA Suspension Review:  
 Eligible: Not Reviewed  
 Approved: Not Reviewed  
 Update History: Not Reviewed  
 APA Comment (Describe why eligible/ineligible): None

Review Completed: No  
 Review Date: None  
 Effective written reprimand: None

**Allegation:**  
 Chapter: Chapter 9  
 Section: 972 Employee Speech, Expression, and Social Networking  
 Section Sub 1: 972.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

**Allegation Description:**

**Disposition:**  
 Chain of Command Decision: Administratively Closed  
 Discipline Decision: No Discipline  
 Suspension Period: --  
 Retention Period: 3 Years  
 Retention Date: 02/01/2024

**Post Appeal Decision:** --  
 Discipline Decision: --  
 Suspension Period: --

**Settlement Agreement:** --  
 Discipline Decision: --  
 Suspension Period: --

APA Suspension Review:  
 Eligible: Not Reviewed  
 Approved: Not Reviewed  
 Update History: Not Reviewed  
 APA Comment (Describe why eligible/ineligible): None

Review Completed: No  
 Review Date: None  
 Effective written reprimand: None

**3. Case # 2020-1301**                      Reported Date: 08/04/2020                      Classification: A

**Case Description:**  
 08/04/2020 01:23 PM  
 I wasn't read my Miranda rights, I wasn't told why I wasn't being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds. The officers were not going to get a female officer, they said they didn't have time to get a female officer and I started to have a panic attack, so they got one. The arresting officer was Swart, #8674. Officers in the car that transported, threatened me, and they were mouthing things to one another and one wouldn't talk to me at all. - Mallory Scott (OPO)

**Allegation:**  
 Chapter: Chapter 3  
 Section: 318 Detentions, Field Interviews, and Field Photographs  
 Section Sub 1: 318.5 FIELD INTERVIEWS, STATEMENTS, AND CONFESSIONS  
 Section Sub 2: 318.5.1 Miranda Warning

**Allegation Description:**

**Disposition:**  
 Chain of Command Decision: Administratively Closed  
 Discipline Decision: No Discipline

**Post Appeal Decision:** --  
 Discipline Decision: --

<p>Suspension Period: -- Retention Period: 3 Years Retention Date: 01/25/2024</p> <p><u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None</p>	<p>Suspension Period: -- <b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --</p> <p>Review Completed: No Review Date: None Effective written reprimand: None</p>
<p><b>Allegation:</b> Chapter: Chapter 3 Section: 306 Search and Seizure Section Sub 1: 306.3 DEFINITIONS Section Sub 2: 306.3.1 Search Protocol</p> <p><b>Allegation Description:</b></p> <p><b>Disposition:</b> Chain of Command Decision: Administratively Closed Discipline Decision: No Discipline Suspension Period: -- Retention Period: 3 Years Retention Date: 01/25/2024</p> <p><u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None</p>	<p><b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --</p> <p><b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --</p> <p>Review Completed: No Review Date: None Effective written reprimand: None</p>
<p><b>Allegation:</b> Chapter: Chapter 2 Section: 200 Response to Resistance Section Sub 1: 200.3 RESPONSE TO RESISTANCE</p> <p><b>Allegation Description:</b></p> <p><b>Disposition:</b> Chain of Command Decision: Administratively Closed Discipline Decision: No Discipline Suspension Period: -- Retention Period: 3 Years Retention Date: 01/25/2024</p> <p><u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None</p>	<p><b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --</p> <p><b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --</p> <p>Review Completed: No Review Date: None Effective written reprimand: None</p>
<p><b>Allegation:</b> Chapter: Chapter 2 Section: 200 Response to Resistance Section Sub 1: 200.2 DE-ESCALATION</p> <p><b>Allegation Description:</b></p> <p><b>Disposition:</b> Chain of Command Decision: Administratively Closed Discipline Decision: No Discipline Suspension Period: -- Retention Period: 3 Years Retention Date: 01/25/2024</p> <p><u>APA Suspension Review:</u> Eligible: Not Reviewed</p>	<p><b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --</p> <p><b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --</p> <p>Review Completed: No</p>

Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None	Review Date: None Effective written reprimand: None
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<b>4. Case # 2020-1012</b>	Reported Date: 06/16/2020	Classification: D
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**Case Description:**  
06/16/2020 11:01 AM  
It appears APD administrated a choke hold and had a knee on someones neck, this is after the vote on Thursday. - Mallory Scott (OPO)

**Allegation:**  
Chapter: Chapter 2  
Section: 200 Response to Resistance

**Allegation Description:**  
Class D

**Disposition:**  
Chain of Command Decision: Administratively Closed  
Discipline Decision: No Discipline  
Suspension Period: --  
Retention Period: 3 Years  
Retention Date: 11/23/2023

**Post Appeal Decision:** --  
Discipline Decision: --  
Suspension Period: --

**Settlement Agreement:** --  
Discipline Decision: --  
Suspension Period: --

APA Suspension Review:  
Eligible: Not Reviewed  
Approved: Not Reviewed  
Update History: Not Reviewed  
APA Comment (Describe why eligible/ineligible): None

Review Completed: No  
Review Date: None  
Effective written reprimand: None

<b>5. Case # 2018-1217</b>	Reported Date: 12/21/2018	Classification: Citizen
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**Case Description:**  
12/27/2018, Complainant stated that Officer Gonzales AP#7422 became upset after she requested to see what she was signing.  
12/27/18, CC written by RH  
Officer: Gonzalez AP#7422  
Warning# E16885097

Additional Information: Ms. Schak stated that she was pulled over for using an electronic device while operating a motor vehicle. After a brief conversation with Officer Gonzalez, he told Ms. Schak that she would be receiving a written warning. Officer Gonzalez handed Ms. Schak a device requesting her signature. According to Ms. Schak, she was unable to scroll up on the device and failed to identify what she was signing. Ms. Schak requested that Officer Gonzalez scroll up for her to see what she was signing. Ms. Schak claims that after she asked Officer Gonzalez to scroll up, his demeanor changed. Ms. Schak describes the Officer's demeanor at this point as abrasive and rude.

Desired Resolution: Ms. Schak suggests possible training.

**Allegation:**  
Chapter: Chapter 3  
Section: 301 Responsibility to the Community

**Allegation Description:**

**Disposition:**  
Chain of Command Decision: Citizen Concern  
Discipline Decision: --  
Suspension Period: --  
Retention Period: --  
Retention Date: --

**Post Appeal Decision:** --  
Discipline Decision: --  
Suspension Period: --

**Settlement Agreement:** --  
Discipline Decision: --  
Suspension Period: --

APA Suspension Review:

Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None	Review Completed: No Review Date: None Effective written reprimand: None
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<b>6. Case # 2015-0598</b>	Reported Date: 07/06/2015	Classification: B
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**Case Description:**

On the above date and time, Officer Javier Gonzalez was driving southbound in the 9000Blk of N. Lamar Blvd in a marked APD patrol unit. Officer Gonzalez was following behind a marked patrol unit driven by Officer Daniel Levine. Officer Levine had to slow due to traffic ahead of him making a right turn into a private driveway. Officer Gonzalez did not observe the unit ahead of him slowing down and the front of Officer Gonzalez's unit struck the rear of Officer Levine's unit.

Officer Gonzalez may have violated APD policy on the operation of police vehicle in this incident and I am requesting that an Internal Affairs investigation be opened to review this incident.

**Allegation:**

Chapter: Chapter 8  
 Section: 804 Department Vehicles  
 Section Sub 1: 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES

**Allegation Description:**

804.2 General operation of department vehicles  
 OFCA  
 EBD in lieu of 1 day suspension.  
 Gonzalez - EDB completed per date TCOLE Roster 09/30/2015.

**Disposition:**

Chain of Command Decision: Sustained  
 Discipline Decision: Written Reprimand (EBD Completed)  
 Suspension Period: --  
 Retention Period: --  
 Retention Date: --  
APA Suspension Review:  
 Eligible: Not Reviewed  
 Approved: Not Reviewed  
 Update History: Not Reviewed  
 APA Comment (Describe why eligible/ineligible): None

**Post Appeal Decision: --**

Discipline Decision: --  
 Suspension Period: --

**Settlement Agreement: --**

Discipline Decision: --  
 Suspension Period: --

Review Completed: No  
 Review Date: None  
 Effective written reprimand: None

<b>7. Case # 2014-0883</b>	Reported Date: 10/07/2014	Classification: I
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**Case Description:**

10/07/2014 Complainant alleges that officer was using profanity in public RG

**Allegation:**

Chapter: Chapter 3  
 Section: 301 Responsibility to the Community  
 Section Sub 1: 301.2 IMPARTIAL ATTITUDE AND COURTESY

**Allegation Description:**

**Disposition:**

Chain of Command Decision: --  
 Discipline Decision: --  
 Suspension Period: --  
 Retention Period: 2 Years  
 Retention Date: --

**Post Appeal Decision: --**

Discipline Decision: --  
 Suspension Period: --

**Settlement Agreement: --**

Discipline Decision: --  
 Suspension Period: --

APA Suspension Review:

Eligible: Not Reviewed  
 Approved: Not Reviewed

Review Completed: No  
 Review Date: None

Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None	Effective written reprimand: None
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<b>8. Case # 2014-0406</b>	Reported Date: 05/15/2014	Classification: B
<b>Case Description:</b> On the above date and time, Ofc. Javier Gonzalez had just completed a call for service at the apartment complex located at 12151 N. IH 35. Ofc. Gonzalez was backing his patrol unit so that he could then exit the complex. While backing ofc. Gonzalez did not see that there was a large rock in a concrete median of the complex. The back right side of Ofc. Gonzalez's bumper struck the rock causing minor damage to the patrol unit consisting of scratches and a small tear in the bumper. The rock did not appear to be damaged and ofc. Gonzalez was not injured.		
<b>Allegation:</b> Chapter: Chapter 8 Section: 804 Department Vehicles Section Sub 1: 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES		
<b>Allegation Description:</b> 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES (a) Employees will operate Department vehicles in a careful and prudent manner within the guidelines of the law and Department policy. Unsafe or negligent driving is prohibited.  OFCA - Written Reprimand given 06/15/14 3:00am		
<b>Disposition:</b> Chain of Command Decision: Sustained Discipline Decision: Written Reprimand Suspension Period: -- Retention Period: 15 Years Retention Date: 06/12/2029		
<b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --		
<b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --		
<u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None		
Review Completed: No Review Date: None Effective written reprimand: None		

<b>9. Case # 2013-0846</b>	Reported Date: 08/20/2013	Classification: B
<b>Case Description:</b> On Sunday, July 28, 2013, Ofc. Javier Gonzalez was in the parking lot of the Wal-Mart located at 1030 Norwood Park to investigate a possible DWI. Ofc. Gonzalez needed to re-position his vehicle in order to record the SFST tests and began to back up. Upon backing, Ofc. Gonzalez struck a parked police unit with the left back quarter of his police unit. Damage consisted of scuff marks to Ofc. Gonzalez's unit and a dent and paint scrapes to the parked police unit.		
<b>Allegation:</b> Chapter: Chapter 8 Section: 804 Department Vehicles Section Sub 1: 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES		
<b>Allegation Description:</b> Department Vehicles 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES (a) Employees will operate Department vehicles in a careful and prudent manner within the guidelines of the law and Department policy. Unsafe or negligent driving is prohibited. 1. Vehicles will be operated in such a manner and at a rate of speed that the driver, by use of ordinary care, can avoid colliding with another vehicle, object, or person. 2. Employees will wear a seatbelt in the front or back seat while operating or riding inside of a Department vehicle unless there is an operational, tactical, or medical need to be unsecured. OFCA oral reprimand given - 09/29/2013 12:40		
<b>Disposition:</b> Chain of Command Decision: Sustained Discipline Decision: Oral Reprimand Suspension Period: -- Retention Period: 5 Years Retention Date: 09/25/2018		
<b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --		
<b>Settlement Agreement:</b> -- Discipline Decision: --		

<u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None	Suspension Period: --  Review Completed: No Review Date: None Effective written reprimand: None
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For Department Use Only.

Confidential

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**SYDNI BEUHLER**  
*Plaintiff*

v.

**CITY OF AUSTIN,  
OFFICER GAVIN SMART,  
OFFICER JAVIER GONZALEZ,  
and OFFICER ANNE ALLARE**  
*Defendants*

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**Civil Action No. 1:21-CV-00054-RP**

**DEFENDANT OFFICER JAVIER GONZALEZ RESPONSES TO  
PLAINTIFF'S FIRST REQUEST FOR PRODUCTION**

TO: Plaintiffs, Sydni Beuhler, by and through her attorney of record, Scott M. Hendler and Donald Puckett, HENDLER FLORES LAW, PLLC, 901 S. MoPac Expressway, Bldg. 1, Suite #300, Austin, Texas 78746.

Pursuant to The Rules of Civil Procedure, Defendant Javier Gonzalez, serves his Responses to Plaintiff Sydni Beuhler's First Requests for Production.

RESPECTFULLY SUBMITTED,  
ANNE M. MORGAN, CITY ATTORNEY  
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ Monte L. Barton, Jr.  
MONTE L. BARTON JR.  
State Bar No. 24115616  
[monte.barton@austintexas.gov](mailto:monte.barton@austintexas.gov)  
City of Austin  
P. O. Box 1546  
Austin, Texas 78767-1546  
Telephone (512) 974-2409  
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANTS**





**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Civil Procedure, this 21st day of December, 2022.

**Via CM/ECF:**

Scott M. Hendler

SBN: 09445500

[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)

Donald Puckett

SBN:24013358

[dpuckett@hendlerlaw.com](mailto:dpuckett@hendlerlaw.com)

**HENDLER FLORES LAW, PLLC**

901 S. MoPac Expressway

Bldg. 1, Suite #300

Austin, Texas 78746

Telephone: (512) 439-3202

Facsimile: (512) 439-3201

**ATTORNEY FOR PLAINTIFF**

/s/ Monte L. Barton Jr.  
MONTE L. BARTON JR.

**DEFENDANT JAVIER GONZALEZ RESPONSES**  
**TO FIRST REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Produce all documents related to the Incident giving rise to this lawsuit.

**ANSWER:** *See* documents previously produced COA 001-326 (Incident report); 376-382 (APD videos); 383-830 (IA #2020-1301); 1198-1989 (APD General Orders).

**REQUEST FOR PRODUCTION NO. 2:** Produce all documents related to statements or communications (including social media posts, emails, texts, private messages, etc.) You have made related to the Incident giving rise to this lawsuit.

**ANSWER:** *See* documents previously produced COA 098-099 (Gonzalez statement).

**REQUEST FOR PRODUCTION NO. 3:** Produce all documents related to statements or communications (including social media posts, emails, texts, private messages, etc.) You have made related to Black Lives Matter and/or the Black Lives Matter protests and gatherings.

**ANSWER:** None.

**REQUEST FOR PRODUCTION NO. 4:** Produce all documents related to statements or communications (including social media posts, emails, texts, private messages, etc.) You have made related to the topic of police accountability, groups or organizations advocating for increased police accountability, and/or individuals who advocate for the cause of police accountability.

**ANSWER:** None.

**REQUEST FOR PRODUCTION NO. 5:** Produce all documents related to statements or communications (including social media posts, emails, texts, private messages, etc.) You have made regarding the City of Austin's and/or APD's response to the Black Lives Matter protests in Austin in 2020.

**ANSWER:** None.

**REQUEST FOR PRODUCTION NO. 6:** Produce all documents related to statements or communications (including social media posts, emails, texts, private messages, etc.) You have made regarding the Austin city council's response to the Black Lives Matter protests in Austin in 2020.

**ANSWER:** None.

**REQUEST FOR PRODUCTION NO. 7:** Produce all documents related to Your complete law enforcement service record.

**ANSWER:** *See* documents Bates labeled COA 7298-7404 (Gonzalez training and personnel record); 8664-8672 (Gonzalez IA histories).

**REQUEST FOR PRODUCTION NO. 8:** Produce all documents that you obtain from any third party (via subpoena or otherwise) related to the Incident or the issues involved in this lawsuit.

**ANSWER:** None. This response will be supplemented if any such documents are received.

**REQUEST FOR PRODUCTION NO. 9:** Produce all documents you intend to use for any purpose in this lawsuit.

**ANSWER:** Without waiving objections, Defendant references all documents produced by any party in this lawsuit for its potential use. Defendant objects to this request as vague and confusing. Defendant further objects to this request as premature.

**REQUEST FOR PRODUCTION NO. 10:** Produce all documents supporting, contradicting, or related to any response You provide to Plaintiff's Interrogatories to You.

**ANSWER:** Defendant relied on his personal memory and any documents referenced in his interrogatory responses. Specifically, Defendant reviewed documents Bates labeled COA 001-326 (Incident Report #20-2141073) and COA 378 (Gonzalez BWC).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**SYDNI BEUHLER**  
*Plaintiff*

v.

**CITY OF AUSTIN,  
OFFICER GAVIN SMART,  
OFFICER JAVIER GONZALEZ,  
and OFFICER ANNE ALLARE**  
*Defendants*

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§

**Civil Action No. 1:21-CV-00054-RP**

**DEFENDANT JAVIER GONZALEZ’S RESPONSE TO  
PLAINTIFF’S FIRST SET OF INTERROGATORIES**

TO: Plaintiffs, Sydni Beuhler, by and through her attorney of record, Scott M. Hendler and Donald Puckett, HENDLER FLORES LAW, PLLC, 901 S. MoPac Expressway, Bldg. 1, Suite #300, Austin, Texas 78746.

Pursuant to the Rules of Civil Procedure, Defendant Javier Gonzalez serves his Objections and Responses to Plaintiff Sydni Beuhler’s First Set for Interrogatories.

RESPECTFULLY SUBMITTED,

ANNE M. MORGAN, CITY ATTORNEY  
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ Monte L. Barton Jr.  
MONTE L. BARTON JR.  
State Bar No. 24115616  
[monte.barton@austintexas.gov](mailto:monte.barton@austintexas.gov)  
City of Austin  
P. O. Box 1546  
Austin, Texas 78767-1546  
Telephone (512) 974-2409  
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANTS**



**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Civil Procedure, this 21st day of December 2022.

**Via CM/ECF:**

Scott M. Hendler

SBN: 09445500

[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)

Donald Puckett

SBN:24013358

[dpuckett@hendlerlaw.com](mailto:dpuckett@hendlerlaw.com)

**HENDLER FLORES LAW, PLLC**

901 S. MoPac Expressway

Bldg. 1, Suite #300

Austin, Texas 78746

Telephone: (512) 439-3202

Facsimile: (512) 439-3201

**ATTORNEY FOR PLAINTIFF**

/s/ Monte L. Barton Jr.  
MONTE L. BARTON JR.

**DEFENDANT JAVIER GONZALEZ RESPONSES**  
**TO FIRST SET OF INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify and describe Your complete history of unit and shift assignments since You were first employed by the Austin Police Department.

**ANSWER:** Approximately:

- 2013-2015 – Edward 700s
- 2016-2018 – George 600s
- 2019-2020 – Region 1 Metro Tactical Unit
- 2020-present – Edward 300s

**INTERROGATORY NO. 2:** Identify and describe Your patrol assignment on August 1, 2020.

**ANSWER:** On August 1, 202 I was working with Region 1 Metro Tactical Unit. On this day I was in a patrol vehicle double up with Ofc. Stewart #7348. Our assignment for the day was to work as MFF (Mobile Field Force) and assist in George sector with riots, protesters and crowd control.

**INTERROGATORY NO. 3:** Identify and describe Your chain of command on August 1, 2020.

**ANSWER:** Cpl. Scott Popham, AP6310  
Sgt. Louis Candoli, AP2558 (retired)

**INTERROGATORY NO. 4:** Describe any briefing, instructions, or other information you were given on August 1, 2020 regarding your response to crowds, gatherings and protests. Your response should include any information and instructions you were given regarding the disbursement of crowds, clearing of roadways, and/or arrest of protestors.

**ANSWER:** I do not remember specific instructions, but my assignment for the day was to work as MFF & assist in George sector with riots, protesters and crowd control.

**INTERROGATORY NO. 5:** Describe Your law enforcement training, prior to August 1, 2020, regarding proper policing for crowd control situations (including, but not limited to, use of force in crowd control situations and de-escalation in crowd control situations). Your response should include an identification of particular classes or courses, training events, instructors, and training materials used.

**ANSWER:** Please see documents Bates labeled COA 7298-7323 for Defendant's training record.

**INTERROGATORY NO. 6:** Describe Your law enforcement training, prior to August 1, 2020, regarding forcible removal of pedestrians from a roadway. Your response should include an identification of particular classes or courses, training events, instructors, and training materials used.

**ANSWER:** Please see documents Bates labeled COA 7298-7323 for Defendant's training record.

**INTERROGATORY NO. 7:** Describe Your law enforcement training, prior to August 1, 2020, regarding use of bicycle formations to clear a roadway. Your response should include an identification of particular classes or courses, training events, instructors, and training materials used.

**ANSWER:** I was BPOT (Bicycle Public Order Team) trained, but that was not my assignment on August 1, 2020. Additionally, please see documents Bates labeled COA 7298-7323 for Defendant's training record.

**INTERROGATORY NO. 8:** Describe Your law enforcement experience, prior to August 1, 2020, in responding to crowd control situations. Your response should include an identification of specific crowd control events in which you were involved.

**ANSWER:** I have experience in crowd control. I worked 3-4 years in the downtown area. Additionally, please see documents Bates labeled COA 7298-7323 for Defendant's training record.

**INTERROGATORY NO. 9:** Describe Your law enforcement experience, prior to August 1, 2020, with forcibly removing pedestrians from a roadway. Your response should include an identification of specific events in which you were involved.

**ANSWER:** My only experience with removing pedestrians from roadways occurred during the Summer of 2020 with the protests. Additionally, please see documents Bates labeled COA 7298-7323 for Defendant's training record.

**INTERROGATORY NO. 10:** Describe Your law enforcement training and/or experience, prior to August 1, 2020, related to Your participation in APD's Special Response Team and/or Mobile Field Force.

**ANSWER:** I have not been trained for SRT, but I have been trained for MFF. Additionally, please see documents Bates labeled COA 7298-7323 for Defendant's training record.

**INTERROGATORY NO. 11:** Identify and describe any actions You took on August 1, 2020 with respect to Plaintiff Sydni Beuhler to attempt to gain her compliance without resorting to Your use of physical force.

**ANSWER:** At approximately 8:20pm, I was instructed to go near the 400 Blk of Congress to assist with crowd control. There was a large group of protesters in the intersection of S. Congress and 4<sup>th</sup> that was blocking traffic. Multiple officers arrived on scene and began to instruct protesters to get out of the road. Officers got in line and some of the crowd began to move back. There were a couple of individuals who were not complying. I stood back and watched the crowd.

I looked to my right and observed an officer who was encountering a white female who appeared to be resisting. I went over to assist the officer. I gave commands to not resist multiple times. I pulled out my handcuffs and was able to place them on her with the assistance of other officers.

**INTERROGATORY NO. 12:** Identify and describe any actions You took on August 1, 2020 with respect to Plaintiff Sydni Beuhler to attempt to de-escalate the situation prior to and/or during Your use of physical force.

**ANSWER:** See my response to Interrogatory No. 11.

**INTERROGATORY NO. 13:** If You contend that Sydni Beuhler posed an imminent danger to the health or safety of You or any other person at or around the time of her arrest on August 1, 2020, state the reasons for Your contention and identify all facts and evidence supporting Your contention.

**ANSWER:** See my response to Interrogatory No. 11. Also, when I attempted to place handcuffs on the right wrist of the female I immediately felt her pull her hands toward the front of her body. In my training and experience of 7 years I have learned that individuals resisting arrest often carry weapons in the front of their waistlines. When I felt the female pull her hand forward I attempted to gain control of her arms and then she was guided to her knees. She continued to resist and pull her right hand away from me. I gave commands to not resist multiple times. I pulled out my handcuffs and was able to place them on her with the assistance of other officers.

**INTERROGATORY NO. 14:** If You contend that Plaintiff's injuries or damages were caused (in whole or in part) by any wrongful conduct or action of any one or more of Your co-defendants (the other Defendant Officers and/or the City of Austin), identify and describe any such wrongful conduct or action and identify all facts and evidence supporting Your contention.

**ANSWER:** I did not witness any of my co-defendants engage in any wrongful conduct. Defendant does not at this time contend that the other Defendant Officers and/or the City of Austin, in whole or in part, caused any injuries or damages to Plaintiffs in this matter. Discovery is ongoing and this response may be supplemented in accordance with the rules of civil procedure. Defendant



reserves all rights at trial pursuant to the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Title 2, Subtitle C, Chapter 33, for any determination of percentage of responsibility by the jury or other trier of fact.

**INTERROGATORY NO. 15:** If You contend that Plaintiff Sydni Beuhler was responsible (in whole or in part) for her own injuries or damages, identify and describe the reasons for Your contention and identify all facts and evidence supporting Your contention.

**ANSWER:** I did not witness Ms. Beuhler's initial interactions with officers. See response to interrogatory 11 and interrogatory 13. Discovery is ongoing and this response may be supplemented in accordance with the rules of civil procedure. Defendant reserves all rights at trial pursuant to the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Title 2, Subtitle C, Chapter 33, for any determination of percentage of responsibility by the jury or other trier of fact.

**INTERROGATORY NO. 16:** If you contend that any third party was responsible (in whole or in part) for Plaintiff's injuries or damages, identify and describe the reasons for Your contention and identify all facts and evidence supporting Your contention.

**ANSWER:** I am not aware of any third party in this case. Discovery is ongoing and this response may be supplemented in accordance with the rules of civil procedure. Defendant reserves all rights at trial pursuant to the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Title 2, Subtitle C, Chapter 33, for any determination of percentage of responsibility by the jury or other trier of fact.

# **Exhibit 5**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF TEXAS  
3 AUSTIN DIVISION

3 SYDNI BEUHLER )  
4 VS. ) CASE NO.  
5 ) 1:21-CV-00054-RP  
6 CITY OF AUSTIN, )  
OFFICER GAVIN SMART (AP8674), )  
7 OFFICER JAVIER GONZALEZ )  
(AP7422), AND OFFICER ANNE )  
ALLARE (AP7755) )

8

9

10 -----  
11 VIDEOTAPED DEPOSITION OF  
12 ANNE ALLARE  
13 DECEMBER 15, 2022  
14 (REPORTED REMOTELY)  
15 -----

13

14

15

16 ANSWERS AND DEPOSITION OF ANNE ALLARE,

17 produced as a witness at the instance of the  
18 Plaintiff, taken in the above-styled and -numbered  
19 cause on DECEMBER 15, 2022, at 9:05 a.m., before  
20 CHARIS M. HENDRICK, a Certified Shorthand Reporter  
21 in and for the State of Texas, witness located in  
22 Austin, Texas, pursuant to the Federal Rules of  
23 Civil Procedure, the current emergency order  
24 regarding the COVID-19 State of Disaster, and the  
25 provisions stated on the record or attached hereto.

Page 2

1 APPEARANCES  
 2 FOR THE PLAINTIFF:  
 3 MS. GRAYSON MCDANIEL  
 MR. DONALD PUCKETT  
 4 HENDLER FLORES LAW, PLLC  
 901 S. MoPac Expressway  
 5 Building 1, Suite 300  
 Austin, Texas 78746  
 6 (512) 439-3200  
 gmcdaniel@hendlerlaw.com  
 7 dpuckett@hendlerlaw.com  
 8

FOR THE DEFENDANT:  
 9  
 10 MR. MONTE BARTON  
 CITY OF AUSTIN LAW DEPARTMENT  
 301 W. 2nd Street  
 11 Austin, Texas 78767  
 (512) 974-2268  
 12 monte.barton@austintexas.gov  
 13

14 ALSO PRESENT: MR. JOSEPH ALVAREZ - VIDEOGRAPHER  
 15  
 16  
 17  
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Page 4

1 PROCEEDINGS  
 2 THE VIDEOGRAPHER: We are now on the  
 3 record. This begins Recording Number 1 in the  
 4 deposition of Anne Allare in the matter of Beuhler  
 5 versus City of Austin, et al., in the US District  
 6 Court for the Western District of Texas, Austin  
 7 Division. Cause Number 1:21-cv-00054-RP. Today is  
 8 Thursday, December 15th, 2022 and the time is 9:05  
 9 a.m. Central.  
 10 This deposition is being taken  
 11 remotely at the request of Hendler Flores Law, LLC.  
 12 Videographer is Joseph Alvarez of Magna Legal  
 13 Services and the court reporter is Charis Hendrick  
 14 of Magna Legal Services. Will counsel and all  
 15 parties present state their appearances and whom  
 16 they represent?  
 17 MS. MCDANIEL: My name is Grayson  
 18 McDaniel; I am with Hendler Flores -- Hendler  
 19 Flores Law and I represent Sydni Beuhler,  
 20 plaintiff. I am also accompanied by lead counsel  
 21 for plaintiff in this case, Donald Puckett, who is  
 22 also with Hendler Flores Law.  
 23 MR. BARTON: And I am Monte Barton  
 24 representing the City of Austin and the individual  
 25 defendants, including Ms. Anne Allare.

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1 THE REPORTER: Will the court reporter  
 2 please swear in the witness?  
 3 ANNE ALLARE,  
 4 having been first duly sworn, testified as follows:  
 5 EXAMINATION  
 6 BY MS. MCDANIEL:  
 7 Q. All right. Good morning, Officer Allare.  
 8 A. Good morning.  
 9 Q. Would you -- hi. You and I haven't met  
 10 before, but I just wanted to say my name is Grayson  
 11 McDaniel and I am an attorney with Hendler Flores  
 12 Law. And we represent Sydni Beuhler, who is the  
 13 plaintiff in this -- in this case -- in this civil  
 14 suit. Can you introduce yourself by stating your  
 15 full name for the record, please?  
 16 A. My name is Anne Allare.  
 17 Q. Thank you. And what is your occupation?  
 18 A. I am currently a Realtor with JBGGoodwin  
 19 Realtors.  
 20 Q. And have you ever testified in a  
 21 deposition before?  
 22 A. We were discussing and I think I have been  
 23 in one. Not a Zoom one, but an in-person one. Not  
 24 as the defendant or whatever I am; just as a -- as  
 25 the officer, like, who responded to the scene.

Page 6

1 Q. What was that case about?  
 2 A. It was a 18-wheeler had pulled out of a  
 3 construction zone. And a husband and wife riding  
 4 on a motorcycle had to, basically, turn the  
 5 motorcycle in order to not get decapitated, but his  
 6 wife ended up paralyzed. So I was -- I was  
 7 discussing if -- you know, if there were lights  
 8 that were blinding from the construction zone and  
 9 that kind of stuff, is what they were asking me  
 10 about.  
 11 Q. Wow. Were you a witness to that accident?  
 12 A. Yes.  
 13 Q. And was that a civil suit?  
 14 A. I believe so.  
 15 Q. And you were testifying on behalf of the  
 16 couple that avoided getting hurt?  
 17 A. I -- I guess so. I think -- I mean, I  
 18 don't know who -- I was just answering their  
 19 questions. I don't know who I was --  
 20 Q. Right. I know; I understand -- so you  
 21 have had the experience of being sworn under oath  
 22 before, like you just were sworn in by the court  
 23 reporter?  
 24 A. Oh, yes. DWI cases quite often.  
 25 Q. And do you understand that you've sworn to

Page 7

1 tell the truth and nothing but the truth during  
 2 this deposition?  
 3 A. Yes, ma'am.  
 4 Q. And the testimony that you give is the  
 5 same as if we're sitting in front of a judge and  
 6 jury; do you understand that?  
 7 A. Yes, ma'am.  
 8 Q. And you understand that this video could  
 9 be played in court in this case?  
 10 A. Yes, ma'am.  
 11 Q. Okay. And do you understand the video is  
 12 being -- this deposition is being video recorded?  
 13 A. Yes.  
 14 Q. Now, you said you are a realtor now. When  
 15 did you leave the Austin Police Department?  
 16 A. I officially resigned in April of this  
 17 year.  
 18 Q. April of 2022?  
 19 A. Yes, ma'am.  
 20 Q. Did you have an officer number or badge  
 21 number that you were known by when you were in APD?  
 22 A. Yes. My number was 7755.  
 23 Q. Now, we're going to be making a record in  
 24 this case. And since -- in this deposition. And  
 25 since we're over Zoom, I am going to try to be

Page 8

1 really careful to let you finish all of your  
 2 answers of your sentences completely before I start  
 3 talking. And if you try -- if you can, to the best  
 4 of your ability, try to let me finish my sentences  
 5 before you say anything just so we can, hopefully,  
 6 get as clean of a record as possible; is that all  
 7 right?  
 8 A. Yes, ma'am.  
 9 Q. And, also, before I start asking  
 10 questions, I wanted to let you know that if there  
 11 is a time that you don't understand what I am  
 12 saying or you didn't understand my question, please  
 13 ask me to repeat anything and I am happy to do  
 14 that, all right?  
 15 A. Okay.  
 16 Q. And do you understand that Ms. Hendrick is  
 17 the court reporter who is going to be transcribing  
 18 everything that is stated in this deposition today?  
 19 A. Yes.  
 20 Q. And do you have any -- are you, by any  
 21 chance, taking any medication that could affect  
 22 your ability to give accurate testimony today?  
 23 A. No.  
 24 Q. And do you have any medical condition or  
 25 illness or anything that could be affecting your

Page 9

1 ability to give accurate testimony today?  
 2 A. I am nine months pregnant, but that's all  
 3 I got.  
 4 Q. Do you feel like you are able to give  
 5 testimony --  
 6 A. Yes.  
 7 Q. -- today? All right.  
 8 A. Yes, I do.  
 9 Q. Well, I understand how that is. Anytime  
 10 you need to take a break, please let us know and  
 11 you can take a break.  
 12 A. Okay.  
 13 Q. And I am happy to do that. Just as long  
 14 -- if you -- if you don't mind, please wait to take  
 15 a break until after you finish answering a  
 16 question. Like, please don't ask for a break right  
 17 after I ask a question, before you answer; does  
 18 that make sense?  
 19 A. Yes.  
 20 Q. Okay. Thank you. And congratulations.  
 21 A. Thank you.  
 22 Q. Let's see. Where are you located right  
 23 now today?  
 24 A. Currently, right now?  
 25 Q. Yes.

Page 10

1 A. In the Austin City Hall.  
 2 Q. Are you in a conference room?  
 3 A. Yes.  
 4 Q. And who is with you in that conference  
 5 room?  
 6 A. Mr. Barton.  
 7 Q. Is there anyone else?  
 8 A. No, ma'am.  
 9 Q. And I see where he is. Could you just  
 10 look at him so I can see where he is in the room?  
 11 MR. BARTON: I am just right next to  
 12 her.  
 13 Q. (By Ms. McDaniel) Okay. Are you  
 14 connected to Zoom through a personal computer?  
 15 A. Me?  
 16 Q. Yes.  
 17 A. This is their computer.  
 18 Q. Okay. Do you have a screen that's large  
 19 enough that if I put up a document, you will be  
 20 able to read it, do you think?  
 21 A. Yes, ma'am.  
 22 Q. Okay. Great. Do you have any  
 23 applications or any chat function running on the  
 24 computer at this time?  
 25 A. The chat for the meeting.

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1 Q. With Zoom?  
 2 A. Yes.  
 3 Q. Okay. Any other applications open on the  
 4 computer?  
 5 A. There --  
 6 MR. BARTON: The only other thing  
 7 that's pulled up is the link for the exhibits that  
 8 you presented to us.  
 9 MS. MCDANIEL: Okay. Thank you.  
 10 Q. (By Ms. McDaniel) Preliminarily, how well  
 11 do you remember the events that led to this case?  
 12 A. Not very well.  
 13 Q. What day did the arrest of Sydney Beuhler  
 14 take place?  
 15 A. I would have to reference my report to get  
 16 the exact date.  
 17 Q. Okay. I want to share the exhibits today  
 18 through this Dropbox folder.  
 19 MS. MCDANIEL: I am asking my -- the  
 20 lead counsel in this case, Don Puckett, who is on  
 21 the call, to place Exhibit 1 in the Dropbox folder  
 22 if it's not there already. It likely is. So I  
 23 just want to try to do this technology part really  
 24 quick.  
 25 Q. (By Ms. McDaniel) So I'm going to just

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1 share my screen with you and see if you can view  
 2 exhibit -- what I'm going to offer as Plaintiff's  
 3 Exhibit 1; is that all right?  
 4 A. Yes.  
 5 (Exhibit 1 marked.)  
 6 Q. (By Ms. McDaniel) Can you see the  
 7 document that is on my screen?  
 8 A. Yes, ma'am.  
 9 Q. And do you recognize this document?  
 10 A. If -- if that's the first one y'all sent,  
 11 then, yes. But I can't tell just from looking at  
 12 it right now.  
 13 Q. But the -- is the type large enough so you  
 14 can -- you can review the document?  
 15 A. I can see it, yes, ma'am.  
 16 Q. Exhibit 1 is Plaintiff's Notice of  
 17 Deposition for Ann Allare. Is this the Deposition  
 18 Notice by which you are appearing here today?  
 19 A. Yes.  
 20 Q. To the best of your knowledge?  
 21 A. Yes.  
 22 Q. Okay. I will stop sharing the screen.  
 23 Officer, so -- do you mind if I call you Officer  
 24 Allare?  
 25 A. That's fine.

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1 Q. Thank you. So you said you have some  
 2 experience testifying in providing sworn testimony  
 3 in a deposition. How much testimony -- how much  
 4 experience testifying in court in criminal cases  
 5 would you say you have?  
 6 A. I have been in one criminal case and then  
 7 the -- I can't even remember the name for them, but  
 8 whatever is the pre-DWI where they see if you're  
 9 going -- if they are going to suspend your license  
 10 or not; I went to a lot of those.  
 11 Q. And that involved testifying in court?  
 12 A. Yes, ma'am.  
 13 Q. So is that something that you did  
 14 routinely as part of your job?  
 15 A. Yes, ma'am, in -- in my first four years  
 16 before I switched out of patrol because I wasn't --  
 17 Q. Tell me a little bit about that -- excuse  
 18 me. Please finish your answer. I am sorry.  
 19 A. Oh, that's okay. I wasn't making any DWI  
 20 arrests once I switched out of patrol.  
 21 Q. So let's talk about your -- your -- the  
 22 span of your employment with -- as a police officer  
 23 first. So where did you first work as a police  
 24 officer?  
 25 A. I worked patrol on the -- it was called

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1 the David 700s; it was a night shift in south  
 2 Austin.  
 3 Q. Was that for the Austin Police Department?  
 4 A. Yes, ma'am.  
 5 Q. And when did you start working with the  
 6 Austin Police Department?  
 7 A. I started the academy in May of 2014. And  
 8 then started that patrol shift in December of 2014.  
 9 Q. And then you were an officer until April  
 10 of 2022?  
 11 A. Yes. Well, I had a baby in August of 2021  
 12 -- 2021. And then I never went back to work after  
 13 I had her. So I just used my vacation and sick  
 14 time until April, when everything -- I ran out,  
 15 basically.  
 16 Q. Okay. So you essentially worked actively  
 17 with the Austin Police Department on duty from May  
 18 2014 to August 2021; is that correct?  
 19 A. About that. They had me -- after I told  
 20 them that I was pregnant, around 12 weeks, they had  
 21 me sit at a desk.  
 22 Q. Okay. I see. So you stopped working  
 23 active duty and -- and went to desk duty around,  
 24 maybe, January 2021?  
 25 A. Yes, ma'am. Probably about that time.

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1 Q. We do not have a TC -- Texas Commission on  
 2 Law Enforcement personal status report for you.  
 3 City of Austin produced those for some of the other  
 4 officers in this case. Do you know why we would  
 5 not have that report for you?  
 6 A. No, ma'am.  
 7 Q. Could you send it to me?  
 8 MR. BARTON: This is Monte Barton just  
 9 jumping in. We will check on that. I -- I don't  
 10 know why that wasn't sent to you, but we will check  
 11 and give that to you.  
 12 MS. MCDANIEL: Yeah. That will be  
 13 helpful because we don't have much information  
 14 about training and, therefore, I am going to  
 15 probably ask you some more questions than I might  
 16 have otherwise if we had that document. But that's  
 17 okay.  
 18 Q. (By Ms. McDaniel) So how many times do  
 19 you think that you testified in a court of law?  
 20 A. No -- no idea.  
 21 Q. More than 10?  
 22 A. Yes.  
 23 Q. More than --  
 24 A. For --  
 25 Q. -- 100?

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1 A. No. Just for those -- for the little DWI  
 2 license suspensions, but I would say more than 10,  
 3 but definitely not into the hundreds.  
 4 Q. Is this the first case that you have been  
 5 involved with that's dealt with excessive force?  
 6 A. Yes.  
 7 Q. Have you ever -- so with the case -- have  
 8 you ever testified in a civil case before? Is that  
 9 the case involving the --  
 10 A. I believe that was a civil case --  
 11 Q. -- 18-wheeler?  
 12 A. -- yes, ma'am.  
 13 Q. Okay. Okay. I think you mentioned that.  
 14 You -- I think you said it was civil. How did you  
 15 prepare for this deposition today?  
 16 A. I watched my body-worn camera video and I  
 17 read over my supplement.  
 18 Q. Anything else?  
 19 A. No, ma'am.  
 20 Q. Did you meet with your attorney prior to  
 21 the deposition?  
 22 A. We had a Zoom call yesterday.  
 23 Q. And for how long?  
 24 A. An hour and a half.  
 25 Q. And did you meet again?

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1 A. No, ma'am.  
 2 Q. As part of your training, have you  
 3 received testimony on how to -- have you received  
 4 training on how to present testimony?  
 5 A. I don't believe so.  
 6 Q. Can you explain?  
 7 A. Unless they gave it to us in the academy,  
 8 but I cannot remember that far back, if we were  
 9 given any training.  
 10 Q. So have you received any -- you don't  
 11 recall receiving any training on courtroom  
 12 demeanor?  
 13 A. I don't recall.  
 14 Q. Do you recall any training on how to be  
 15 persuasive in providing testimony?  
 16 A. I don't think so.  
 17 Q. Okay. What about are you aware -- okay.  
 18 So it sounds like you haven't necessarily had any  
 19 formal training, but in your understanding, you  
 20 understand that -- in testimony, that it's  
 21 important to be complete in providing all the facts  
 22 that are related to the questions asked?  
 23 A. Yes, ma'am.  
 24 Q. And if you were asked questions under  
 25 oath, whether you remember something or there was

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1 something bad or potentially unpleasant, it  
 2 wouldn't be truthful to say that you don't remember  
 3 it; is that accurate?  
 4 A. If I remember it, right. Yes.  
 5 Q. Okay. And do you understand what I mean  
 6 when I ask you if you have personal knowledge of  
 7 something? Like, personal knowledge of what you  
 8 ate for breakfast, for example?  
 9 A. Just, like, being able to recall something  
 10 from my memory; is that what you mean?  
 11 Q. That's -- that's correct. Like, as  
 12 opposed to an opinion or a thought about something,  
 13 from your personal knowledge, your -- something you  
 14 experienced; something that you saw; something you  
 15 know to be true.  
 16 A. Okay.  
 17 Q. Okay. Is that -- getting some kind of,  
 18 like, preliminary usual questions out of the way.  
 19 I think that's good. Thank you.  
 20 Why did you want to become a police  
 21 officer?  
 22 A. I initially, in high school, wanted to  
 23 join the FBI after -- after 9/11 happened. And  
 24 then into high school, I decided that I wanted to  
 25 do the FBI. I met with an FBI agent who told me to

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1 -- to take Arabic or Mandarin. So I went to  
 2 college; I took Arabic. And the college that I  
 3 went to didn't have, like, criminal justice or  
 4 anything, so I did marketing as well. And then I  
 5 wanted to work in counterterrorism, which is why I  
 6 did the Arabic.  
 7 And then I graduated from college.  
 8 And by that time, the FBI wasn't hiring. So I  
 9 ended up applying to APD thinking that I could get  
 10 some skills, you know, with firearms because I had  
 11 never dealt with firearms or any of that kind of  
 12 stuff. So I decided to apply with them and then  
 13 kind of wait it out and then move to the FBI, but I  
 14 -- I really loved being a police officer, so I  
 15 stayed with APD.  
 16 Q. Do you plan to return to your work as a  
 17 police officer?  
 18 A. No, not now that I have two children -- or  
 19 about to have two children.  
 20 Q. Okay. So some of that, you answered a  
 21 couple of my questions. That is really  
 22 interesting. How do you get in contact with the  
 23 FBI to find out how -- how they are hiring? Do you  
 24 just look them up on -- on the --  
 25 A. Uh-huh. They have, like -- there is a

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1 government website and it said that they weren't  
 2 taking any applications at that time.  
 3 Q. Wow, that's interesting. Did you grow up  
 4 in Texas?  
 5 A. Yes, ma'am.  
 6 Q. Where did you grow up?  
 7 A. In Tyler, Texas.  
 8 Q. Where did you go to high school?  
 9 A. TK Gorman. It's a small Catholic high  
 10 school.  
 11 Q. Is that in Tyler?  
 12 A. Yes, ma'am.  
 13 Q. And you already said you went to college.  
 14 Where did go to college? Did you do that right  
 15 after high school, go to college?  
 16 A. Yes, ma'am. I went to Notre Dame.  
 17 Q. And you graduated from Notre Dame with,  
 18 like, a degree in marketing and Arabic and  
 19 Mandarin?  
 20 A. Not Mandarin, no. I just did marketing  
 21 and Arabic majors.  
 22 Q. Wow. Very impressive. What did you do  
 23 next after graduating from Notre Dame?  
 24 A. I went and worked at a orphanage in South  
 25 Africa for six months. And I went and worked for

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1 my dad's dealership briefly while I tried to find  
 2 another job. I met a lady who lived in Dubai whose  
 3 son went to Notre Dame and she offered to help me  
 4 get, like, assistant teaching job in Dubai, so I  
 5 went and did that to try to brush up on my Arabic.  
 6 But, in Dubai, you speak so much English, it didn't  
 7 help.  
 8 And then once I came home from Dubai,  
 9 that's when I applied to the police department and  
 10 then to other jobs in Austin. And I received a job  
 11 offer from a place in Austin called uShip. And  
 12 then it was, like, my first week at uShip, I got  
 13 the call from APD saying, hey, we will -- we would  
 14 like you to try out.  
 15 Q. Wow.  
 16 A. So I did a lot of things.  
 17 Q. No kidding.  
 18 A. Yeah.  
 19 Q. What -- what year did you work in the  
 20 orphanage in South Africa?  
 21 A. 2011.  
 22 Q. So you graduated college around 2011,  
 23 2010?  
 24 A. In May of 2011. And then I went right, I  
 25 think, in June for six months.



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1 Q. Wow. Let's see. And so before you went  
 2 to the -- so you said that Austin Police Department  
 3 called you to try out; that would have been in  
 4 2014, I believe?  
 5 A. Yes, ma'am.  
 6 Q. And -- and did you have any law  
 7 enforcement experience prior to trying out with  
 8 Austin Police Department?  
 9 A. No, ma'am.  
 10 Q. And did you receive training when you  
 11 began your employment with Austin Police  
 12 Department?  
 13 A. Yes, ma'am. We had an eight- or  
 14 nine-month academy.  
 15 Q. Where was that?  
 16 A. At the -- I think it's called Public  
 17 Safety Training Center. It's on the east side of  
 18 Austin.  
 19 Q. And when you were at the police academy,  
 20 did you do a ride-along field training?  
 21 A. We did -- yes. We did a ride-out. And  
 22 then after you graduate from the academy, then you  
 23 have, I believe, three months of field training in  
 24 which a field training officer sits next to you in  
 25 the car and discusses everything you do, basically.

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1 Q. All right. We're going to talk more about  
 2 training quite a bit. In addition to your peace  
 3 officer license, did you receive any additional  
 4 licenses or certificates or qualifications from  
 5 APD?  
 6 A. I -- I don't know if I received -- I mean,  
 7 I have -- yes, I have training certificates, but it  
 8 didn't, like, license me as anything else besides a  
 9 patrol officer.  
 10 Q. What kind of training certificates did you  
 11 receive?  
 12 A. I did -- since I was on night shift, I did  
 13 a low-light training at the ALERRT Center. I did a  
 14 breaching training at the ALERRT Center. I did  
 15 sheep dog -- two sheep dog response trainings; I  
 16 don't know if those gave certificates. I did -- I  
 17 think I did more trainings at ALERRT, but I can't  
 18 recall which ones, but it should be in the TCOLE  
 19 training history.  
 20 Q. Can you tell me, what's the ALERRT Center?  
 21 A. It's a center down in San Marcos. I think  
 22 it's put on by the -- what's the school in San  
 23 Marcos called? That college --  
 24 Q. Southwest -- University of Southwest?  
 25 A. Yes, yes. I believe that it's either put

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1 on or sponsored by them. And they have former  
 2 officers or military who put on training for police  
 3 officers. And --  
 4 Q. Those were separate trainings -- I am  
 5 sorry -- than -- than what you received at the  
 6 Public Safety -- Public Safety Training Center in  
 7 Austin?  
 8 A. Yes, ma'am.  
 9 Q. Can you remember any more of those that  
 10 you completed?  
 11 A. I -- I can't -- I can't remember more  
 12 ALERRT ones. I may have done a shotgun training at  
 13 ALERRT. I also went through the Austin Police  
 14 Department SWAT school and tried out for their team  
 15 multiple times. And, finally, made their part-time  
 16 team. So I did a lot of training with them that  
 17 patrol officers cannot do without passing SWAT  
 18 school.  
 19 Q. So were there any changes in your roles  
 20 and responsibilities that went along with that?  
 21 A. Yes. So as a part-time SWAT member, you  
 22 are placed on call every -- kind of depends how  
 23 many officers they have at that time, how many  
 24 part-time officers. But you are placed on call.  
 25 And if you're on call and a SWAT situation arises,

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1 then you respond. And those are just -- like, I  
 2 don't -- I am not sure if you're aware, but a SWAT  
 3 situation would be, like, a barricaded subject with  
 4 a weapon; a hostage situation; those are the two  
 5 main things that they respond to.  
 6 Q. Did you ever respond to a SWAT situation  
 7 when you were with APD?  
 8 A. Yes, ma'am.  
 9 Q. Can you tell us more about that -- tell me  
 10 more about that?  
 11 A. Went to a lot of them. The one that  
 12 sticks in my mind a lot was a hostage situation of  
 13 a -- at a pediatrician's office. A male went in  
 14 and took a lot of nurses and doctors hostage and  
 15 ended up releasing everyone except one doctor. And  
 16 by the time we made entry into the building, he had  
 17 already killed her and himself.  
 18 Q. My, when did that occur?  
 19 A. That was -- that was in January because  
 20 that was when I was, like, 11 weeks pregnant.  
 21 Q. January of 2021?  
 22 A. '21, yes, ma'am.  
 23 Q. What other SWAT situations did you respond  
 24 to?  
 25 A. The majority were barricaded subjects.

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1 And it kind of differed. There was one where a guy  
 2 had -- was -- I think he had threatened his  
 3 neighbor with a weapon, maybe. And then went into  
 4 his house. And that one lasted 36 hours. There  
 5 was -- there was another hostage situation that I  
 6 responded to just as -- like, once I was -- once  
 7 they, basically, told me I could not respond in  
 8 full capacity anymore; I just responded to help the  
 9 lieutenants and just stay organized. And that one  
 10 was another hostage situation.  
 11 And, luckily, the officers were able  
 12 to enter using -- they were able to see with a  
 13 drone into the apartment and they entered before  
 14 the suspect killed the victim. But there is --  
 15 there is a lot and I can't remember them all. But  
 16 those are the -- those are probably the biggest  
 17 ones in my head.  
 18 Q. Wow. What -- what year did you start --  
 19 what year did you become on the part-time team for  
 20 SWAT?  
 21 A. I believe, in March of 2020.  
 22 Q. Were the other officers, Officer Smart or  
 23 Gonzalez, on the SWAT team with you?  
 24 A. Officer Gonzalez went through the SWAT  
 25 school with me, which is, like, an eight -- I think

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1 it's an eight-day training. And then once you pass  
 2 the school, you are able to attend there, the SWAT  
 3 team's trainings as additional training that you  
 4 wouldn't be able to receive normally. So he went  
 5 through that school with me, but he never joined  
 6 the team or tried out for the team.  
 7 Q. Thank you. So you received a lot of  
 8 training in your career with APD. I want to ask  
 9 you some about your training on arrests and  
 10 de-escalation, if that's all right.  
 11 A. Okay.  
 12 Q. And, first, have -- have you received  
 13 training with respect to law enforcement ethics and  
 14 the police officer code of conduct?  
 15 A. I believe that we had an ethics course. I  
 16 know we did in the academy, and then, I believe, we  
 17 had one after the academy as well.  
 18 Q. How important are the standards of police  
 19 ethics in the code of conduct in APD?  
 20 A. Extremely important.  
 21 Q. From your experience and training, do you  
 22 think that Austin, the city, viewed it as very  
 23 important?  
 24 A. Yes.  
 25 Q. Can you explain why you think that?

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1 A. I think that because the City of Austin  
 2 has the police oversight. So that shows me that  
 3 they want to make sure that officers are, you know,  
 4 following the rules and being ethical.  
 5 Q. In your experience and training, have you  
 6 ever seen any examples of officers being required  
 7 to meet a certain standard of conduct?  
 8 A. Yes. Any -- any disciplinary action over  
 9 -- over a certain -- so, basically, how discipline  
 10 at APD goes, I believe, is you can just have -- if  
 11 you're in discipline, you can have a discussion;  
 12 like, oral reprimand. Then it goes to written.  
 13 Then -- then, I believe, you get time off.  
 14 And any time off that's issued out to  
 15 officers for breaking policy is sent out to  
 16 everyone, so you are able to read those. And on  
 17 patrol, we would -- if anyone was -- if any officer  
 18 was -- I can't even remember the word I just used  
 19 -- had -- was sentenced to time off, you -- they  
 20 would -- the supervisor would read through it; that  
 21 way, you didn't make the same mistakes as that  
 22 person.  
 23 Q. Read through it to who? I am sorry. I  
 24 wasn't quite --  
 25 A. Sorry. To the patrol shift. So, like,

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1 before you go out on patrol every night, you would  
 2 have a meeting and discuss, you know, what -- if --  
 3 if we're going to focus on any -- anything in  
 4 particular. You know, like, if there was -- the  
 5 commanders wanted us to look at running traffic on  
 6 the highway at night because there is lots of DWIs,  
 7 something like that; they would just go over our  
 8 plan for the night. And then they would also go  
 9 over any disciplinary actions; that way -- because  
 10 if you are issued time off, it does go through and  
 11 say, like, the policy that was broken and what the  
 12 person did when they broke that policy. And then  
 13 that way, you don't go make that same mistake.  
 14 Q. To what extent do you feel that -- that  
 15 officer safety -- is it more or less important than  
 16 meeting the code of conduct?  
 17 A. It's less important. There is a -- they  
 18 changed the name for it at the end of my time as an  
 19 officer, but there is a -- I am not sure if the  
 20 current proper name is Priority of Life Scale, but  
 21 it's victims and civilians, officers and suspects  
 22 and property.  
 23 Q. And explain more what that is, Priority of  
 24 Life Scale?  
 25 A. Right. So you are -- as a police officer,

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1 you are putting yourself in danger in order to help  
 2 the civilians or victims.  
 3 Q. But there is -- but what is the scale? I  
 4 am sorry. So I think you said civilians, then  
 5 officers; does that mean that the priority of life  
 6 is, first, civilians, then officers?  
 7 A. Yes. And then property. And you -- so,  
 8 typically, you wouldn't -- here is an example. If  
 9 -- if you think that someone is flushing a bunch of  
 10 drugs in -- down a toilet, you are not going to  
 11 enter that house and risk your life in order to  
 12 save that property because it's just not worth it.  
 13 Q. Okay. What about another example  
 14 involving an officer having to deal with, for  
 15 example, an armed subject?  
 16 A. What do -- what do you mean by that?  
 17 Q. I am trying to think of an example that  
 18 would involve officer safety, like the officer's  
 19 concern for their own safety versus the safety of  
 20 the subject.  
 21 A. The officer is still concerned about the  
 22 public and who the suspect -- the armed suspect  
 23 could injure, so that's why --  
 24 Q. So about --  
 25 A. -- even --

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1 Q. Go ahead.  
 2 A. -- even -- even if -- like, even if -- I  
 3 have been to a call where we arrived on scene and  
 4 you could hear the gunshots going off, and so we  
 5 ran to that situation totally blind in the middle  
 6 of the night just listening to gunshots. We ran in  
 7 order to go protect the civilians and risking our  
 8 lives; not -- you know, not waiting around and  
 9 making it safe and all that kind of stuff; does  
 10 that make sense?  
 11 Q. Yes, it does. Thank you. And -- and when  
 12 you are in situation with, for example, a protest  
 13 where there is potential property -- property  
 14 involved, city property, can -- what's your  
 15 experience with having to prioritize in a situation  
 16 like that?  
 17 A. So we -- the -- I will give you an  
 18 example. The first -- the first night of the  
 19 protest, we were stationed outside of the  
 20 headquarters in order to, basically, protect it, as  
 21 well, and make sure that it wasn't rushed and  
 22 burned like other cities. And so that was what we  
 23 were responsible for, but I did not use any force  
 24 in order to do that. We just, basically, made a  
 25 wall and stood our ground.

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1 Q. Did you receive training, prior to doing  
 2 that, on using force to protect city property?  
 3 A. No, ma'am.  
 4 Q. What -- you said the first night of the  
 5 protest; what -- what night are you referring to?  
 6 I know there were quite a few.  
 7 A. I don't know the exact day. I know --  
 8 Q. Was that August, May, June 2020?  
 9 A. I -- I don't know when it was.  
 10 Q. Okay.  
 11 A. I believe they started in May.  
 12 Q. Okay. If you were -- so along the same  
 13 lines, if you were having a question or -- or  
 14 confusion about priorities or ethics or code of  
 15 conduct in a certain situation that you had to  
 16 respond to, what -- what information or guidance  
 17 would you turn to as your source of authority for  
 18 looking at issues relating to conduct?  
 19 A. I would talk to my teammates, and then,  
 20 also, my corporal and sergeant.  
 21 Q. And then what else; anything else?  
 22 A. No, ma'am.  
 23 Q. Let's see. Is there anything in  
 24 particular you would look at in terms of policy or  
 25 you would look to your corporal and sergeant to --

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1 to figure out what the APD policy is?  
 2 A. Well, yes, ma'am. We could -- I could  
 3 definitely pull out my policy book, but I -- I  
 4 would usually go to them for questions. And then  
 5 we could look at it together if needed.  
 6 Q. Is one reason for that that sometimes  
 7 those books or codes written -- written rules or  
 8 systems, are those sometimes out of date and you  
 9 need to get fresh information from your -- from  
 10 your teammates and your supervisors?  
 11 A. They send out any updated policies in  
 12 emails. And it's on -- it was posted on a officer  
 13 website, as well, that we were able to access. So  
 14 it -- either way, I could turn to -- turn to that  
 15 or to the sergeant.  
 16 Q. Is there any system where it's ensured  
 17 that you are reviewing any emails like that?  
 18 A. Yes. So on our city training, if there  
 19 was a policy update, they would put it in the  
 20 training and you would have to do it. And they  
 21 will send you an email if you don't end up doing it  
 22 in the allotted time. So they -- they keep record  
 23 of that.  
 24 Q. And so is that something that you would  
 25 routinely do in your daily practice or is that more

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1 occasional?  
 2 A. Yes, ma'am. No, it's -- they update  
 3 things all the time.  
 4 Q. Do you recall updates that were  
 5 contemporaneous with the protests of 2020?  
 6 A. I don't recall if they were.  
 7 Q. Okay. So how important is the officer  
 8 safety aspect of police officer training?  
 9 A. It's very important.  
 10 Q. And how does that compare with the  
 11 training regarding ethics and the code of conduct;  
 12 is it more important or less important?  
 13 A. It's different. I would say the officer  
 14 training -- or officer safety training is more of  
 15 the hands-on, physical type. And then the officer  
 16 ethics and code of conduct is more of sit in a  
 17 classroom, have a lecture or PowerPoint type of  
 18 training. So they were just different.  
 19 Q. Tell me about your training about action  
 20 meets reaction; does that ring -- does that mean  
 21 anything to you, that phrase?  
 22 A. Yes. That's often said; that, typically,  
 23 police officers are reacting.  
 24 Q. What does action meets reaction mean?  
 25 A. So it means, for example, if I pulled a

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1 gun on Monte, Monte would be reacting to me pulling  
 2 that gun and he would be behind, you know -- like,  
 3 seconds behind me. His mind would have to process,  
 4 oh, my gosh, she just pointed a gun at me; let me  
 5 get my gun and point it back at her. So it's --  
 6 you are behind the curve, I guess.  
 7 Q. And is part of your training to make sure  
 8 that you are acting first rather than reacting?  
 9 A. Most -- most of the training is learning  
 10 how to react to other people.  
 11 Q. Are there any times or -- are there  
 12 situations that you are aware of that an officer  
 13 might need to take steps to protect their own  
 14 safety that could conflict with the code of  
 15 conduct?  
 16 A. I don't really know how to answer that  
 17 question. Are you able to tell me what your --  
 18 your -- what you believe is the, like, code of  
 19 conduct?  
 20 Q. Well, like, for example, not violating the  
 21 state or federal law.  
 22 A. You -- as a police officer, you wouldn't  
 23 -- you wouldn't put your own safety above the law.  
 24 Q. That must be hard to do.  
 25 A. It is. It's a very hard job.

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1 Q. Yes. That seems like really, really  
 2 difficult. A lot of tough calls.  
 3 A. Yes. And very -- often they are made very  
 4 quickly, which makes them even harder.  
 5 Q. Have you ever had to make a tough call  
 6 that -- you know, that you can recall?  
 7 A. Well, like, there was -- there was one  
 8 time -- I don't know that this really counts  
 9 because the suspect -- the victim was going to die  
 10 no matter what, but we came to a shooting victim  
 11 lying in the middle of the street and his brains,  
 12 basically, were coming out of his head. And  
 13 instead of staying with him and trying to, you know  
 14 -- like, it -- it appeared to me like it was --  
 15 there was no saving that victim. So instead of,  
 16 you know, like, stopping with the victim, I ran  
 17 back to my car to get the medical equipment just in  
 18 case, but it -- it's like those kind of things. I  
 19 don't really have any of where I recall, you know,  
 20 wondering if I should protect myself versus the  
 21 law.  
 22 Q. Wow. Well, we've almost gone an hour.  
 23 Would you like to keep going? We're probably not  
 24 going to go -- we still have a fair amount to get  
 25 through. Anyway, would you like to take a short

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1 break?  
 2 A. It's okay. We can keep going.  
 3 Q. Okay. Let's see. Now, tell me about  
 4 reporting -- like, for example, if you had a tough  
 5 call like that, are there -- and that may not be an  
 6 appropriate example, but I am sure you know many  
 7 more. Are there reports that are -- or reports or  
 8 actions that you are required to take to describe  
 9 what happened or describe the choice that you made  
 10 to your -- to the police department?  
 11 A. Yes, ma'am. You -- you write a report or  
 12 a supplement. And then, like, in the case of a use  
 13 of force, then there is something called a details  
 14 page, which goes further into detail about what the  
 15 -- what the suspect was doing, your actions, why  
 16 you responded with that resistance, that sort of  
 17 thing.  
 18 Q. Tell me more about that. So what -- what  
 19 do you mean by use of force; what is that defined  
 20 as?  
 21 A. A response to resistance. So if -- if  
 22 someone resists whatever commands or actions you  
 23 are trying to take, then you have to document how  
 24 you responded to that resistance.  
 25 Q. How do you have to document it? Tell me

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1 about the process.  
 2 A. So you write the report like you normally  
 3 would. Then you, basically, like, block out a  
 4 section so that when it goes to the response to  
 5 resistance, like, review board or to your  
 6 supervisors, they are able to -- just looking at  
 7 that -- the main portion and not all the details  
 8 about before and after. And then complete the  
 9 report and then you fill out the details page, like  
 10 I was saying.  
 11 Q. How many use-of-force reports did you  
 12 create in your time at the Austin Police  
 13 Department --  
 14 A. I have no idea.  
 15 Q. More than 10?  
 16 A. Yes, ma'am.  
 17 Q. More than 20?  
 18 A. I -- I really don't -- don't know. It  
 19 would be less than 50, I would say, for sure.  
 20 Q. Was there a use-of-force report completed  
 21 after the arrest in question in this case?  
 22 A. I do not know if Officer Gonzalez or  
 23 Officer Smart did -- did that. I did not.  
 24 Q. Why did you not?  
 25 A. Because what I did was just maintain

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1 control of her hand.  
 2 Q. And that does not constitute use of force  
 3 that rises to the level of creating a report?  
 4 A. Right. I still had to document it in the  
 5 supplement, but -- not have to do a details page.  
 6 Q. What -- what does rise to the level of  
 7 needing to complete a report on use of force?  
 8 A. I am not sure what the exact standards are  
 9 now or a year ago when I was still an officer, but  
 10 if -- yeah, I -- I really -- I do not know what --  
 11 what constituted you needing to do a details page.  
 12 And I also don't know if it's just one officer has  
 13 to do the details page and everyone else has to  
 14 write a report; I can't remember that either.  
 15 Q. Do you remember -- is it kind of up to the  
 16 individual officer on whether or not they submit  
 17 the report or is it done based on a supervisor  
 18 telling them to -- to do that?  
 19 A. No. It's -- it's in policy. So you have  
 20 to do it if you, you know, respond to that level,  
 21 but I just can't remember what the level actually  
 22 is because there are different levels than use of  
 23 force.  
 24 Q. Can you tell me, what are the different  
 25 levels of use of force? Let's start with that.

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1 A. Like, I believe, if my memory is serving  
 2 me right, Level 3 is, like, pressure points; that  
 3 sort of thing. I believe Level 2 is something like  
 4 strikes, closed-fist strikes. And then Level 1 use  
 5 of force would be, like, a baton to the head or a  
 6 gun; like, shooting. I think that those are --  
 7 were whenever I was officer. And I don't know if  
 8 they have been updated since, which they probably  
 9 have.  
 10 Q. Do you recall there just being the three  
 11 -- like, three levels?  
 12 A. Yes, ma'am.  
 13 Q. What do you mean by pressure point?  
 14 A. That -- in the academy, we were trained --  
 15 different pressure points just as a pain compliance  
 16 technique.  
 17 Q. Can you explain that a little bit more?  
 18 A. I never used them on the street because  
 19 it's kind of difficult to get into their right --  
 20 you know, like, you're -- basically, trying to put  
 21 pressure on a nerve. So I never -- I never used  
 22 them, but I do recall, in the academy, getting --  
 23 there is one that's on your -- kind of like near  
 24 your IT band. And I remember, during training,  
 25 they -- they did each pressure point on us so that

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1 we would know how effective they were and, you  
 2 know, how -- also, how to do it ourselves. And I  
 3 remember that the one on your IT band is extremely  
 4 effective because the next day, it's still, like,  
 5 felt like I had had a dead leg.  
 6 Q. Wow.  
 7 A. But I never used them because that's --  
 8 that was -- it's a difficult -- unless you maintain  
 9 training -- pressure points all the time, then it's  
 10 going to be hard for you to get that exact spot  
 11 since it's just a small nerve that you are  
 12 targeting, I guess.  
 13 Q. And so what if an officer grabbed someone  
 14 hard, like, around the wrist; does that count as a  
 15 pressure point where they would need to write a  
 16 report or does it -- how would that fall on the  
 17 scale?  
 18 A. It doesn't -- it's definitely not a  
 19 pressure point, but I don't -- I don't recall if --  
 20 like, I think, anything in which you have to use  
 21 force in response to what the other -- what the  
 22 subject is doing, you know, starts at a Level 3 and  
 23 then goes up.  
 24 Q. And it seems like it would be hard to  
 25 report all those things in addition to doing your

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1 regular job and having your life. How scrupulous  
 2 or how strict are officers, in your experience,  
 3 about completing these reports?  
 4 A. It's very strict. Typically, on patrol,  
 5 after every call that you go to, you take a break  
 6 and write the report. If you end up, like, hopping  
 7 from call to call because there is so many calls  
 8 holding because we don't have enough police  
 9 officers, then, you know, at 4:00 a.m., you are  
 10 stuck writing a bunch of reports at once. But,  
 11 yes, I mean, every -- almost every call, you -- you  
 12 have to write a report.  
 13 Q. But you don't always have to write a  
 14 use-of-force report?  
 15 A. Right, no. Only if you use force or  
 16 respond to someone's resistance.  
 17 Q. What would happen if an officer used force  
 18 and didn't write a report?  
 19 A. They would get reprimanded.  
 20 Q. That doesn't sound too bad.  
 21 A. I think it depends -- I think it depends.  
 22 But, typically, you call your supervisor as well  
 23 and the supervisor responds on scene. So it's -- I  
 24 don't know how many, like, use-of-force situations  
 25 go unreported at all. Like, they have safety

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1 checks in place; like, calling your supervisor and  
 2 all that kind of stuff.  
 3 Q. But isn't there kind of an incentive not  
 4 to report it?  
 5 A. No. You would get fired, I would say, for  
 6 something like that, for use of -- not reporting  
 7 use of force. It would definitely -- I would think  
 8 -- be days off or getting terminated.  
 9 Q. Did you ever have any experience where you  
 10 saw that happen to someone?  
 11 A. Not that I recall.  
 12 Q. So in your experience, officers,  
 13 generally, were not getting reprimanded for not  
 14 reporting their actions?  
 15 A. Right.  
 16 Q. Okay. Thank you for the information.  
 17 Let's see. So you have received training on  
 18 street-level interactions with individuals in a  
 19 variety of situations --  
 20 A. Yes, ma'am.  
 21 Q. -- is that correct? And you said that you  
 22 worked on night patrol; is that correct?  
 23 A. Yes, ma'am, for four years. And then I  
 24 moved to another team.  
 25 Q. So did you receive training on how to --

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1 how to interact with individuals in nighttime  
 2 situations?  
 3 A. Like, the low-light training that I went  
 4 to was, basically, all dark training and how to  
 5 manipulate your flashlight in the dark to where you  
 6 are not getting -- you are, basically, not holding  
 7 it right in front of your face so you don't get  
 8 shot because it's an easy target if your flashlight  
 9 is right here. That -- I did that.  
 10 Q. Wow. Did you receive any training with  
 11 regard to protesting?  
 12 A. Yes, ma'am.  
 13 Q. Like, interacting with individuals in  
 14 protests?  
 15 A. Yes, ma'am. I believe we had training  
 16 during the academy on formations during a protest.  
 17 And then we also had during the protests of 2020.  
 18 Q. Okay. I definitely want to ask you some  
 19 more about that.  
 20 MS. MCDANIEL: So let's go ahead and  
 21 take a short break.  
 22 THE WITNESS: Okay.  
 23 MS. MCDANIEL: We would like to go off  
 24 the record for a few minutes, please. Let's take a  
 25 10-minute break, please.

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1 THE VIDEOGRAPHER: Copy that. We are  
 2 now going off the record. It is now 10:05 a.m.  
 3 (Recess taken.)  
 4 THE VIDEOGRAPHER: We are now back on  
 5 the record. It is now 10:20 a.m.  
 6 Q. (By Ms. McDaniel) Thank you. All right.  
 7 Officer Allare, I am going to get something out of  
 8 the way pretty quick just while it's on my mind.  
 9 On the day of the incident that led to this case,  
 10 were you wearing a body camera?  
 11 A. Yes, ma'am.  
 12 Q. And did you ensure that after the shift,  
 13 that your body camera footage was recorded in the  
 14 APD system?  
 15 A. Yes, ma'am. Every night, you dock it and  
 16 it should upload.  
 17 Q. And did you do that that night?  
 18 A. I believe so.  
 19 MS. MCDANIEL: And, Counsel, are you  
 20 willing to stipulate that the file produced by the  
 21 City as -- and I am going to read this name -- it's  
 22 COA379, and then in brackets, it says in all caps,  
 23 CONF, so it's confidential. And then it says  
 24 Allare-R2R\_witness reviewed by AP5370. That's the  
 25 file name. Are you -- are you willing to stipulate

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1 that that is the body camera footage from Officer  
 2 Allare that day and that it is authentic?  
 3 MR. BARTON: I -- I believe so. Let  
 4 me take a look right quick, but is that -- I mean,  
 5 that's what we have produced previously?  
 6 MS. MCDANIEL: Yes.  
 7 MR. BARTON: Yeah. I mean, it's --  
 8 it's -- I will stipulate that's what is in the  
 9 police file that we've produced as to authenticity,  
 10 yeah, sure.  
 11 MS. MCDANIEL: Okay. I just wanted to  
 12 get that out of the way.  
 13 Q. (By Ms. McDaniel) So going back to where  
 14 we were, basically, you said that you have received  
 15 training regarding protest situations and you  
 16 mentioned formations. Can you tell me a little bit  
 17 about training with regard to formations and what  
 18 that means?  
 19 A. Yes, ma'am. So in order to disperse  
 20 crowds, you can do formations. Like, basically,  
 21 line up in a triangle; begin walking towards the  
 22 crowd in the triangle. And then this half of  
 23 officers shift this way, this half of officers  
 24 shifts this way, then the roadway is open. The  
 25 officers have, basically, made a wall and the

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1 protesters are on the side; that way, cars can get  
 2 through without injuring protesters; you know,  
 3 medical ambulances, all that kind of stuff.  
 4 Q. Is that the only kind of formation that  
 5 you were trained on?  
 6 A. That's the main one that I remember  
 7 actually utilizing.  
 8 Q. How effective is that?  
 9 A. It's actually pretty effective even in  
 10 large crowds. It works pretty well.  
 11 Q. How many times have you had to use that  
 12 formation?  
 13 A. We did that the first night, was mainly  
 14 the night that we used formations. After that --  
 15 after -- I don't want to say just after the first  
 16 night, but soon after, our team was -- was,  
 17 basically, utilized in a different manner rather  
 18 than -- rather than, like, the bicycle officers or  
 19 the patrol officers were.  
 20 Q. Okay. So the first night, I believe you  
 21 testified that you were a wall; that you had  
 22 created a wall with the other officers. So can you  
 23 tell me just what happened that first night and  
 24 where you were and what was the nature of the  
 25 protest? Just kind of describe the first night.

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1 And I think that you testified that was, maybe, May  
 2 2020. But anything you can tell me about that  
 3 first night from the beginning of your shift to  
 4 when, you know, it was over.  
 5 A. Okay. I believe that the first day they  
 6 anticipated protests, so our team was stationed at  
 7 the new Target, I think, on -- on the east side of  
 8 35 -- I can't tell you what street, but they had  
 9 just built a -- I think, a new Target and Whole  
 10 Foods. So we were asked by -- basically, by Target  
 11 to, like, deter any protesters from throwing rocks  
 12 through their new building, basically, or burning  
 13 it down; whatever; spray painting. So for 12  
 14 hours, we stood outside of Target and nothing  
 15 happened at all to us.  
 16 At -- while we were there, we could  
 17 see 35 from where we were stationed and you could  
 18 see all of the protesters up on 35 blocking the  
 19 highway. And I also remember we continually got  
 20 pages on our city phones, say, like, requesting  
 21 more and more -- like, I need this shift to come in  
 22 early; I need this shift to come in because there  
 23 were so many protesters and we did not have enough  
 24 officers, basically, there. So I just remember  
 25 hearing so many sirens and seeing all the police

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1 cars coming to downtown from -- you know, like,  
 2 leaving their patrol positions to come downtown to  
 3 assist.  
 4 So after our 12-hour shift at the  
 5 Target ended, then we -- it was nighttime by then,  
 6 but we were sent, I think, to the east sub, which  
 7 is, like, a substation on the east side. Everyone  
 8 got into buses and then we were shipped down to the  
 9 headquarters where the majority of the protesters  
 10 were actually doing, you know, property or physical  
 11 harm.  
 12 So when we first got there, we -- we  
 13 took -- we took shifts with other teams and we  
 14 would, basically, stand on the front steps of the  
 15 headquarters and get berated, basically, for hours.  
 16 And then they would replace us, probably, every  
 17 hour, maybe. And then we would go back in and get  
 18 berated or thrown -- you know, like, cement water  
 19 bottles and stuff thrown at us, but it was a lot of  
 20 just standing and getting berated, basically.  
 21 Q. So you worked over 13 hours that first  
 22 day?  
 23 A. The first night, it was 17 hours; I  
 24 remember that.  
 25 Q. You worked 17 hours straight?

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1 A. Yes.

2 Q. Wow. Until when about -- when -- when did

3 your shift begin and end?

4 A. I don't know the exact hours. I know that

5 it was nighttime when we went on the bus. And

6 then, I think, it was, like, basically, close to

7 morning; like, 4:00 or 5:00 when we were sent back

8 home to get some sleep before doing it again the

9 next day.

10 Q. And how did y'all feel standing in front

11 of -- I will start with the beginning -- standing

12 in front of Target for 12 hours with nothing

13 happening?

14 A. That -- that was way more pleasant than

15 standing and getting berated the whole time, but --

16 yeah, it -- I mean, that was our job. We were

17 requested to do that, so we had to. I am sure, you

18 know, it seemed kind of pointless since nothing

19 actually did happen, but, I guess, we were the

20 deterrent, hopefully, I guess. That's a good way

21 to think about it is that we deterred people from

22 ruining that building. And then -- then we moved

23 on to the worst part of it, I guess.

24 Q. When you were -- when you were at the

25 Target, did you have to use any of the formation

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1 training?

2 A. Oh, no. It was -- it was very casual.

3 Like, all of the protesters were over on 35 or on

4 the west side of 35. So on the east side, we

5 didn't -- we didn't encounter people at all,

6 really.

7 Q. And what -- what do you remember the

8 officers thinking about the protesters?

9 A. Like, what did we think about the protests

10 going on?

11 Q. Yes.

12 A. Oh, I remember thinking, like, holy --

13 this is way bigger than, I think, anyone expected.

14 Like, with the amount of pages we were getting and

15 all the officers arriving, I just remember

16 thinking, like, oh, my gosh, this is way bigger

17 than, I think, expected.

18 Q. And is that, like, scary or exciting or

19 how -- like, how emotionally -- what -- what was

20 the mood?

21 A. I -- it's not -- it's not really exciting

22 at all. And then after -- I will tell you that for

23 two weeks straight, I went home crying and I woke

24 up crying. And -- sorry. I am pregnant too.

25 Q. Oh, I am --

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1 A. But, yeah --

2 Q. -- so sorry.

3 A. -- it was an awful time. Like, I only

4 called my mom. I didn't want to go to work, which

5 was the first time ever. I loved my job. And I

6 hated -- like, for two weeks, I just -- all I did

7 was cry. And then, I think, I kind of got

8 calloused and, you know, it didn't bother me as

9 much. But, yeah, it was -- it was a terrible time.

10 I hated it. We didn't get to do our actual job,

11 you know, so we didn't get to actually help anyone

12 or -- so I'll tell you that my team's job was to

13 arrest violent felons. So we would -- half the

14 time would be undercover, half the team would be in

15 police uniform.

16 And the undercover people would --

17 like, say, we're looking for a violent felon who is

18 in an apartment complex. They would wait in

19 different locations around the apartment complex;

20 wait until the suspect came out; made sure he was

21 alone and not, you know, like, around a -- in a

22 park with kids or whatever. And then the team that

23 had on uniforms would go up and arrest that violent

24 felon. And it was very, very effective having the

25 undercover people be the -- basically, be our eyes

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1 and very safe dealing with very unsafe people.

2 So we didn't -- for -- for months, we

3 worked 50 hours a week doing protests and only

4 protests. We did not do our job for, I think,

5 like, three or four months. All we did was

6 protests. So it was -- it was a terrible time.

7 And there is not -- there was not a person on my

8 team who enjoyed one single bit of that; I can tell

9 you that.

10 Q. Well --

11 A. Sorry I am crying.

12 Q. No. I am sorry that it was so stressful.

13 And I -- I can only imagine how that was. I am

14 going to ask you some more questions about it.

15 A. Sure.

16 Q. First, I will just ask: You mentioned our

17 team. Going back to -- when we were talking about

18 when you were at the Target; I don't think that was

19 the team that you are talking about now, the -- the

20 dangerous felon team. So going back to the first

21 night of protest, what team were you with?

22 A. So from -- so for the first four years of

23 my policing, I was on the night shift patrol. And

24 then after that, I applied to be on the metro tac

25 team; and that's what -- that was our duty -- was,



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1 basically, we were -- we would deal with violent  
 2 felons; people who had warrants who were violent;  
 3 and then trying to get drugs and guns off the  
 4 street. So those were our main focuses.  
 5 And then we also were the commander's,  
 6 like -- which is -- I don't know a better word than  
 7 that. But whatever the commander needed, like, if  
 8 he was getting a bunch of reports about, like, this  
 9 one area has a bunch of drug activity, we would go  
 10 try to deal with that area. So part of the reason  
 11 that we were tasked to do the protests is because  
 12 the commander needed teams for that.  
 13 And so I kind of started to get into  
 14 it earlier, but our job during the protests after  
 15 those first few days was kind of to do what we were  
 16 -- what we typically do, but we -- the lieutenants  
 17 or chain of command would be watching either from  
 18 CCTV or helicopters or drones. And they would say,  
 19 you know, at the -- at the back end of all the  
 20 protesters, you know, like, closest towards 35 on  
 21 the northwest corner, you can see a guy making  
 22 Molotov cocktails in the corner. He's got a red  
 23 hat on, a black sweatshirt and a black backpack.  
 24 And our team would mobilize usually in  
 25 vehicles. And so we'd pull around and then get rid

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1 of the instigators from the -- you know, if -- if  
 2 it was a peaceful crowd, from the peaceful crowd.  
 3 So I can't even remember what your question was,  
 4 but that's what --  
 5 Q. No, no. You are answering it completely.  
 6 So it sounds like it was your metro tac team --  
 7 A. Yes, at Target.  
 8 Q. -- was involved in the protests as a unit  
 9 kind of, or as a group or -- and that y'all would  
 10 still get to utilize some of your skills that you  
 11 had and your training involved in neutralizing a  
 12 more dangerous individual in the protest situation  
 13 and -- so that was your group. Was Officer  
 14 Gonzalez in that metro tac grouping?  
 15 A. He was not in my -- on my team. And I  
 16 don't -- there are four teams in the city. And I  
 17 don't know if he's on another team or not. And I  
 18 don't even know who Officer Smart is, so I don't  
 19 know about him.  
 20 Q. Oh, okay. You -- have you ever met  
 21 Officer Smart?  
 22 A. I don't believe so.  
 23 Q. Okay. But you have met Officer Gonzalez?  
 24 A. Yes, ma'am. Just through that SWAT  
 25 school.

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1 Q. Okay. Let's see. So what happened -- so  
 2 you worked 17 hours the first day. And then what  
 3 happened the next day? You said you were doing  
 4 this for months? This --  
 5 A. Yes.  
 6 Q. -- kind of what was the schedule?  
 7 A. So I believe that they had us on 12-hour  
 8 shifts. So half of the department was the daytime  
 9 shift, half of the department was the nighttime  
 10 shift. And we did that for a while. And then I  
 11 don't know when it switched to -- I think,  
 12 probably, because they still -- it -- like, patrol  
 13 still had calls they needed to answer, but everyone  
 14 was being utilized for the protests. So they ended  
 15 up pushing most of the patrol back -- back to do  
 16 their normal jobs. And then they utilized metro  
 17 tac once the crowds were much smaller, but I don't  
 18 -- I couldn't tell you how long -- when that was.  
 19 Q. Would you say that over those, say, three  
 20 -- three months or so, that you worked more than  
 21 you normally would?  
 22 A. Oh, yes. Absolutely.  
 23 Q. Consistently?  
 24 A. Yes.  
 25 Q. Like, every week, you were working more

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1 than you normally would have?  
 2 A. Yes, ma'am. Normally, we did 40 hours a  
 3 week, and they had us doing 50 hours.  
 4 Q. And would you say that the officers were  
 5 under a great deal of stress?  
 6 A. Yes, ma'am. At least I was. I can't tell  
 7 you how everyone else took it, but it was -- I did  
 8 not enjoy that time.  
 9 Q. And were you aware of -- the first night,  
 10 was there -- did you witness any violence between  
 11 officers and protesters? I know you mentioned  
 12 berating and cement water bottles and Molotov  
 13 cocktails. Did you see any physical altercations?  
 14 A. I observed one officer pepper spray some  
 15 people, but I don't recall. That was, like, right  
 16 in front of me, but I don't recall any other  
 17 officers being violent or using force, I guess is a  
 18 better way to say it.  
 19 Q. What about over the course of the next  
 20 months; were there -- was there -- in addition to  
 21 all the work you were doing, was there also updates  
 22 or training from the department regarding how to  
 23 handle these protests? Were they giving you  
 24 guidance on -- or extra training?  
 25 A. Yes, ma'am. I think I mentioned earlier

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1 that we did have another training on formations  
 2 during the protests. And they just would do that  
 3 group by group. And we did a little bit of  
 4 PowerPoint on that one and then went outside and  
 5 practiced formations.  
 6 Q. Do you recall there being any training  
 7 about officers being at risk of being personally  
 8 liable for potential excessive force?  
 9 A. I don't think there was additional  
 10 training on that.  
 11 Q. Was there any emotional support or  
 12 training, like, to deal with the frustration of  
 13 being on long shifts during stressful protests?  
 14 A. I don't think it was provided. I probably  
 15 would have gone. There also just wasn't time.  
 16 Like, it lasted so long and I kind of feel like we  
 17 were a little bit forgotten about, like -- because  
 18 the patrol shifts were doing, maybe, like, once a  
 19 week. And we were every day -- I mean, five days a  
 20 week. So I don't think -- I don't know that people  
 21 understood how taxing it was for our teams.  
 22 Q. I had some experience myself with seeing  
 23 some of these protests during these times. And I  
 24 saw young people yelling at the police officers and  
 25 they were very, very close to their faces. And the

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1 police officers -- I thought it seemed -- looked  
 2 very difficult for them to remain calm -- or I  
 3 thought it would have been hard for me to remain  
 4 calm in that situation. How did the officers deal  
 5 with that without -- without, for example, lashing  
 6 out physically or arresting people for yelling at  
 7 them, I should say?  
 8 A. Well, you can't arrest people just for  
 9 yelling. So you are just kind of stuck with it.  
 10 Mentally, like, I remember at some point during it  
 11 -- during those three months, I was, basically,  
 12 targeted by this guy. He was calling me a Nazi, a  
 13 scared little bitch; all kinds of stuff because I  
 14 was holding a pepper spray. And after a black  
 15 officer came up and said, do you have something to  
 16 say to me? he stopped and walked away. But it was  
 17 probably -- it was minutes of it -- of him just  
 18 going after me.  
 19 And after that, I called my mom and I  
 20 was, like, I have got to go on vacation. So my  
 21 husband and I went to Mexico for a little bit  
 22 because I was like, I have got to get out of here.  
 23 Like, I never wanted to -- or -- yeah, I never  
 24 wanted to physically lash out. I really just  
 25 wanted to cry all the time. But I think -- I am

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1 sure it was difficult for some people not to  
 2 because it is -- it's hard -- I mean, it's hard to  
 3 be called all that stuff for that many hours. But  
 4 everyone handles it differently. So, personally, I  
 5 went on vacation and I came back rejuvenated and  
 6 had my patience back.  
 7 Q. That's good. I am glad. Did the officers  
 8 -- was there an understanding of what was being  
 9 protested?  
 10 A. By the officers?  
 11 Q. Yeah. Yes.  
 12 A. Yes, ma'am.  
 13 Q. What -- what were the nature of the  
 14 protests?  
 15 A. The initial cause was the George Floyd  
 16 death.  
 17 Q. So, specifically, about police brutality?  
 18 A. Yes, ma'am.  
 19 Q. And how did that make officers feel; like,  
 20 not necessarily you, but in the department, was  
 21 there approval or disapproval of those protests?  
 22 A. I think their -- I guess, let me speak for  
 23 myself. I believe that those officers did things  
 24 wrong. I also believe that the civilians who were  
 25 protesting could have done it differently. So

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1 that's -- that was my belief; that definitely the  
 2 officers did things wrong and their actions; and  
 3 then, also, I think that the protesters could have  
 4 handled the protesting differently. But, you know,  
 5 that's -- they -- there were peaceful ones and then  
 6 there were definitely not peaceful ones, so I think  
 7 that's just on a person-to-person basis as well.  
 8 Q. How many people did you personally arrest  
 9 during the three months?  
 10 A. I have no idea.  
 11 Q. More than 10?  
 12 A. Probably.  
 13 Q. Were there more arrests going on than  
 14 normal during these protests?  
 15 A. For my team, no. We -- or at least -- at  
 16 least the arrests were -- like, one -- one lady I  
 17 arrested asked me, do you -- are you enjoying this?  
 18 And I told her, absolutely not. I would love to be  
 19 arresting the guy who just raped a child rather  
 20 than you who -- all you were doing was blocking the  
 21 street. But my job right now is to get you off the  
 22 street. And you did not listen to our commands, so  
 23 then I had to arrest you.  
 24 So it wasn't -- I mean, it wasn't  
 25 enjoyable and it wasn't -- it wasn't the type of

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1 criminal that we would prefer to be getting off the  
2 street.  
3 Q. You said you -- you don't know Officer  
4 Smart. I just was wanting to make it clear, I  
5 think. Your -- your interaction or your  
6 involvement with the arrest of the plaintiff, Sydni  
7 Beuhler, you approached and she was already on her  
8 knees on Congress; is that correct?  
9 A. Yes, ma'am.  
10 Q. Was the first time that you saw her, she  
11 was already on the ground on her knees with her  
12 hands behind her back?  
13 A. I remember hearing the commotion and  
14 that's why I walked over there, but I don't recall  
15 if I -- if I, like, recognized if she was standing  
16 up or on the ground. But I know, based on my  
17 camera, that when I walked up, she was already on  
18 her knees on the ground.  
19 Q. So that's kind of your -- your sight --  
20 what your personal knowledge of her arrest was was  
21 that she -- what -- what -- what would it have  
22 been?  
23 A. That she was already on the ground and I  
24 went to assist them since it seemed like they were  
25 having a struggle getting her into handcuffs.

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1 Q. Okay. And I do want to pull up -- well,  
2 I'll get back to it.  
3 First, were any of the officers that  
4 you know of afraid for their safety at these  
5 protests?  
6 A. I think, probably, everyone. It was --  
7 you know, in the -- in the -- at the start, it was  
8 very violent with Molotov cocktails, cement water  
9 bottles, bricks being thrown at us. Like, I  
10 personally know an officer whose facemask was  
11 shattered by a brick even though we were wearing  
12 helmets.  
13 So that was when -- whenever they had  
14 us enter into big crowds, it's always, you know, a  
15 dangerous place because you're -- any of your  
16 weapons can get taken off of your belt and used  
17 against you. So, yes, I would say it was a  
18 dangerous time.  
19 Q. Do you think the officers became less  
20 concerned about needing to record or report any use  
21 of force during the protests?  
22 A. I don't think so. They have -- they have  
23 made our body-worn cameras even -- even more --  
24 they activate even more. It used to be you had to  
25 turn it on yourself, which was kind of difficult in

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1 a quick situation. You know, like, if you pull  
2 someone over and then they jump out, start running,  
3 then you have to think, oh, let me turn this on  
4 real quick, but they updated our cameras to where  
5 anyone opening a car door, it activates your  
6 camera. Anyone pulling their gun or Taser out, it  
7 activates your camera. So I -- I feel like it was  
8 very hard to not have your camera activated,  
9 especially with all those officers in one area.  
10 Q. Do you think that the stress led people to  
11 be more -- use excessive force more than -- more  
12 than it may have been used in normal day-to-day  
13 policing?  
14 A. So I think that my team -- you know how I  
15 said we were the main ones doing it after the first  
16 however long. We were the ones there every single  
17 day. So I would say our stress levels were  
18 probably higher than the people who got to go back  
19 to their normal job. And I never saw any of -- any  
20 of my teammates or the other teams that we worked  
21 with, the other three teams do anything excessive  
22 at all. I feel like we were very patient and used  
23 our training and tactics properly.  
24 Q. Let's see. Are you aware that the City  
25 has paid out settlements to plaintiffs regarding

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1 force used in the protests in that period?  
2 A. No, ma'am.  
3 Q. Are you aware of how much the city has  
4 paid out in settlements for injured protesters?  
5 A. No, ma'am.  
6 Q. Are you aware that some protesters were  
7 injured by officers during the protests?  
8 A. Yes, ma'am.  
9 Q. And how -- what kind of injuries are you  
10 aware of?  
11 A. I was aware of a lady who was -- I believe  
12 they said she was pregnant; I am not sure if she  
13 ended up being pregnant or not, but she was injured  
14 by a less-lethal shotgun; I know that one.  
15 Q. What else?  
16 A. I don't know of many more. I do not watch  
17 the news and I moved out of the city, so I don't --  
18 I don't know much about that.  
19 Q. Do you recall if you were getting email  
20 updates or bulletins from APD regarding  
21 excessive-force violations that were -- that  
22 occurred during the time?  
23 A. I don't believe we got any updates about  
24 excessive force.  
25 Q. And did you get any training -- I think I

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1 may have asked you this already, but I will ask  
 2 you: Did you get any additional training during  
 3 this time -- or not even -- it doesn't have to be a  
 4 formal training, but just discussions, group --  
 5 like, on your team or from your supervisors  
 6 regarding not using excessive force during these  
 7 protests due to their stressful nature? Like --  
 8 like, we want to give you guys a refresh just  
 9 because we know you are working 17-hour days and  
 10 people are screaming in your face. Did you receive  
 11 training on how to keep calm or not use excessive  
 12 force?  
 13 A. The one thing I remember they had all of  
 14 us do was check the less-lethal shotguns and ensure  
 15 that none of the rounds that were entered into them  
 16 were actual lethal rounds. And then, also, they  
 17 had us replace them with newer rounds because there  
 18 were lots of old rounds, but that was the -- that  
 19 was the -- what I remember besides the formation  
 20 training.  
 21 Q. Thanks. And do you remember officers  
 22 being mad about these protesters, angry?  
 23 A. I remember people did not want to continue  
 24 to be there. They wanted to do their actual job,  
 25 but I don't -- I never saw any of my teammates be

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1 mad or anything. We were just frustrated, I think,  
 2 that it continued and we couldn't do what we are  
 3 trained and liked to do.  
 4 Q. So you -- are you aware of anyone, like,  
 5 you know, wanting to beat up the protesters?  
 6 Like --  
 7 A. No, ma'am.  
 8 Q. No?  
 9 A. Maybe in their head, but they never said  
 10 it out loud to me.  
 11 Q. Really?  
 12 A. No.  
 13 Q. I find that surprising.  
 14 A. No. It -- no. Especially with your  
 15 camera being on all the time, no one is saying  
 16 anything. Or at least not -- me and my team  
 17 weren't.  
 18 Q. Okay. I got you. All right. Let's see.  
 19 I am going to go to -- okay. So what is the  
 20 quick-reaction force? I can -- well, I guess I  
 21 will go ahead and ask -- pull up Exhibit Number 2.  
 22 (Exhibit 2 marked.)  
 23 Q. (By Ms. McDaniel) Let me see if I -- I am  
 24 going to share my screen and show you what I am --  
 25 and this one does not have the sticker on it.

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1 MS. MCDANIEL: I apologize, Don. I'm  
 2 working with the ones that I had on my --  
 3 Q. (By Ms. McDaniel) But this is going to be  
 4 in your Dropbox. It should be marked Plaintiff's  
 5 Exhibit Number 2. I am going to share my screen  
 6 and see if you can see it. Can you see that  
 7 document?  
 8 A. Yes, ma'am.  
 9 Q. And do you recognize this document?  
 10 A. Yes, ma'am.  
 11 Q. Can you say what this is?  
 12 A. That's the supplement that I wrote.  
 13 Q. The supplement that you wrote --  
 14 A. Regarding Ms. Beuhler.  
 15 Q. Okay. And do you see on the second line  
 16 of -- main text that says that you were working as  
 17 a quick-reaction force?  
 18 A. Yes, ma'am.  
 19 Q. All right. I am going to stop sharing  
 20 here a minute. So does that refresh your  
 21 recollection of what I have just said about what is  
 22 a quick-reaction force?  
 23 A. Yes, ma'am. So, basically, it's what I  
 24 had talked about earlier where the metro tac teams  
 25 would be called on by the chains of command to

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1 respond to wherever there was a need.  
 2 Q. Okay. So I think you had a colorful term  
 3 for that earlier. Is that, basically, a  
 4 quick-reaction force would be another way of saying  
 5 that you are doing special work for the commander?  
 6 A. Yes. Yes, but then I -- I don't -- I  
 7 think -- I think, also, it wasn't just the metro  
 8 tac teams. I think that they also had some patrol  
 9 and bike officers also you -- responding as QRFs.  
 10 Q. Is there special training for a QRF; does  
 11 that entail, like, only certain officers can be on  
 12 QRF because they have been trained to do that?  
 13 A. No, ma'am.  
 14 Q. It's more just a term for get out there  
 15 quickly --  
 16 A. Yes.  
 17 Q. -- and --  
 18 A. Exactly.  
 19 Q. -- help with something? Okay. Okay. I  
 20 slightly -- you know, a little bit different. Oh,  
 21 yeah, according to your training with Austin Police  
 22 Department specifically, are individuals who  
 23 protest committing an offense?  
 24 A. It depends how they protest.  
 25 Q. How did -- how did the department

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1 distinguish who would or would not be committing an  
 2 offense while protesting?  
 3 A. So I believe that -- I don't know if it  
 4 was my team or if the department sent it out, but  
 5 we went over the certain city ordinances and laws  
 6 that could possibly be break -- broken or were  
 7 being, you know, broken in the first month the  
 8 majority of the time, including, like, blocking a  
 9 roadway. And we -- most of the time, that's what  
 10 our team would be called to is a big -- large group  
 11 walking in the middle of Congress or wherever; we  
 12 would be called there. We would respond in a  
 13 police car, issue commands to leave the roadway  
 14 with the PA system. And then if they did not leave  
 15 the roadway, then we were tasked with beginning to  
 16 arrest whoever was walking the roadway still after  
 17 not listening to our commands.  
 18 Q. Was that called a -- is -- what is that  
 19 called when you give the command? Is there a legal  
 20 term for that, to your knowledge?  
 21 A. I -- I don't know.  
 22 Q. Okay. Do you happen to know the statute  
 23 that describes the offense of blocking a roadway?  
 24 A. No, ma'am.  
 25 Q. Like, what the code number is?

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1 A. No, ma'am.  
 2 Q. So your -- but your training -- you were  
 3 trained that it is an offense to block the roadway?  
 4 A. Yes, ma'am.  
 5 Q. And what step by step -- like, you're an  
 6 officer; you're at protest; you see these  
 7 individuals in the middle of the roadway. What,  
 8 according to your training, is your course of  
 9 conduct that you are supposed to take as a police  
 10 officer?  
 11 A. So on my team, that's what we did; we  
 12 would respond in vehicles, issue the commands  
 13 through the PA system. And then if the crowd was  
 14 not dispersed onto the sidewalks where they're  
 15 legally allowed to be, then we would get out and  
 16 start making arrests. Or if the chain of command  
 17 saw certain instigators within a crowd, then we  
 18 would just focus on the instigators and arrest the  
 19 instigators.  
 20 Q. And how many people -- say, if you have a  
 21 lot of people in the roadway, how do you choose --  
 22 and say there is -- well, I'll just -- how do you  
 23 choose who to arrest? Is it first come, first  
 24 served? Or is it more --  
 25 A. A little bit. The ones who were on the

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1 front end or the back end where the police cars had  
 2 access to more easily -- because, you know, you  
 3 can't come in on a sidewalk; so we either had the  
 4 front of the roadway or the back of the roadway --  
 5 it was usually those persons that ended up getting  
 6 arrested because --  
 7 Q. Did the --  
 8 A. -- had access --  
 9 Q. I am sorry. I am sorry. Go ahead. You  
 10 said --  
 11 A. Just -- just because we had access to  
 12 them. And then, typically, after arrests were  
 13 made, the rest of the crowd would disperse because  
 14 they, obviously, don't want to get arrested.  
 15 Q. Interesting. That's something I am not --  
 16 not aware of. So if people didn't disperse, would  
 17 you continue arresting individuals until they were  
 18 all out of the roadway?  
 19 A. Yes, ma'am. If we had enough manpower,  
 20 but, oftentimes, we were way outnumbered, but it  
 21 was a good deterrent that usually when we started  
 22 arresting whoever was accessible, then the rest of  
 23 the crowd would go off into the sidewalks.  
 24 Q. Okay. And according to APD training, is  
 25 it an offense to yell at a police officer?

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1 A. No, ma'am. We get yelled at all the time  
 2 -- or we did -- or I did. Not anymore.  
 3 Q. Is it an offense -- is it an offense to  
 4 curse or use insulting language towards police?  
 5 A. No, ma'am.  
 6 Q. When is an individual subject to arrest or  
 7 detaining during their participation in a  
 8 protest --  
 9 A. When they were --  
 10 Q. -- according to your understanding?  
 11 A. When they were breaking the law.  
 12 Q. What laws did you witness being broken  
 13 that led to arrests?  
 14 A. Typically, the blocking of the roadway.  
 15 Also, there were people breaking -- like,  
 16 vandalizing buildings; breaking into a liquor store  
 17 multiple times and shooting fireworks or Molotov  
 18 cocktails at us -- that's assaulting a police  
 19 officer -- but those were the main ones that I  
 20 observed or conducted myself.  
 21 Q. And what, according to your training, is  
 22 excessive force in arresting someone?  
 23 A. The way I would describe it is instead of  
 24 responding to the resistance that that person is  
 25 providing, it would be -- or, like, on the same

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1 level as that person is providing, going way above  
 2 whatever that person is doing. So let's say I am  
 3 trying to handcuff someone and they are, you know,  
 4 keeping their arms out here instead of how a  
 5 peaceful citizen would do, just put it behind their  
 6 back. If -- if they have their arms out here, my  
 7 first -- what I technically should do is, you know,  
 8 assist them in bringing their hands behind their  
 9 back.  
 10 Excessive force would be, you know,  
 11 whacking their head with a baton because that's  
 12 just way over the top of the force that they are  
 13 providing. If they -- if they take your baton and  
 14 start whacking you with the baton in -- in your  
 15 head, then, technically, that rises to a much  
 16 higher level of force where I could kick them in  
 17 the face or whatnot.  
 18 Q. Like, Level 2 --  
 19 A. So it's --  
 20 Q. -- or Level 1?  
 21 A. Yes. It's responding to the same level  
 22 that they are providing.  
 23 Q. What if someone is screaming; does that  
 24 count as resisting?  
 25 A. Ab- -- no.

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1 Q. Screaming does not count as resisting  
 2 arrest?  
 3 A. No. You can scream all you want.  
 4 Q. What about cursing?  
 5 A. That's fine too.  
 6 Q. Is it department -- it is department  
 7 policy, according to your knowledge and training,  
 8 to pick someone up when you arrest them, like, off  
 9 the ground?  
 10 A. I think it depends on the -- the person,  
 11 the level of resistance that they are providing;  
 12 their size; and then the officer's size, as well.  
 13 Like, I would -- I would choose to do different --  
 14 choose -- yeah, choose to do different tactics than  
 15 someone, like, a guy on my team who was 250 pounds,  
 16 you know.  
 17 Q. Right.  
 18 A. I am going to have to use a different type  
 19 of force than he would to deal with the same  
 20 person. So it depends on the officer, it depends  
 21 on the suspect and then the level of resistance  
 22 that they are providing.  
 23 Q. Are -- is it training -- is it considered,  
 24 like, something that you get trained on that that's  
 25 an acceptable way to detain or arrest someone is to

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1 pick them up off the ground?  
 2 A. I don't think it's not -- like, I don't  
 3 know that it was trained as acceptable, but I think  
 4 -- like, I don't think it's not acceptable if -- if  
 5 necessary --  
 6 Q. When --  
 7 A. -- to --  
 8 Q. -- would that be necessary? Sorry.  
 9 A. That's okay. I think it depends on the  
 10 situation.  
 11 Q. If someone was running away, would it be  
 12 potentially reasonable to pick them up off the  
 13 ground to arrest them if they were small enough,  
 14 you know, for someone to pick them up?  
 15 A. Yes. I think, you know, I have seen  
 16 officers tackle people running away. I have seen  
 17 officers use less-lethal shotguns. I have seen  
 18 officers use Tasers. So it just depends on your  
 19 level of training and what -- what is accessible, I  
 20 guess, at that time.  
 21 Q. And according to the department, for  
 22 example, like, with my -- with my thought, like,  
 23 say someone -- someone relatively small -- like,  
 24 say, Ms. Beuhler -- was running away. An officer  
 25 might tackle, like you said, or pick them up to

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1 arrest them. Would that officer then need to file  
 2 a use-of-force report?  
 3 A. Yes. If -- if they used force in -- yes.  
 4 Q. Well, if you just put someone's hands  
 5 behind their back and put handcuffs on them, is --  
 6 do you have to file a use-of-force report?  
 7 A. If -- if, like I said, they are  
 8 restraining and not allowing you to do it, then,  
 9 yes.  
 10 Q. Okay. Just curious. Have you received  
 11 training on de-escalation of conflict --  
 12 A. Yes, ma'am.  
 13 Q. -- in citizen interactions? What a kind  
 14 of training have you received; how many hours and  
 15 -- and what were -- can you give just a basic  
 16 summary?  
 17 A. No. I -- I know that I have taken it. I  
 18 can't even remember if it -- if we had it in person  
 19 or if it was one of the online trainings. And I  
 20 have no idea how many hours of de-escalation I have  
 21 taken.  
 22 Q. What are -- what is an important part of  
 23 de-escalation; what does it mean?  
 24 A. I would describe it as using your words, I  
 25 guess, to try to change someone's mind before it

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1 turns violent, I guess.  
 2 Q. Have you ever used those tactics?  
 3 A. Yes, ma'am.  
 4 Q. Are they effective, in your opinion?  
 5 A. I think it depends on the person. If --  
 6 if someone is on drugs and completely out of their  
 7 mind, then nothing is going to work, you know.  
 8 Like, no words that I say is going to help the guy  
 9 on PCP to put his hands behind his back, but it's  
 10 -- if -- if you have time, it's always worth a try,  
 11 I guess.  
 12 Q. Was there a lot of de-escalation being  
 13 used during the protest by the officers, would you  
 14 say?  
 15 A. So for my team, I would say our use of  
 16 de-escalation was going out and giving the --  
 17 giving the civilians who were breaking the law,  
 18 marching in the middle of the street, giving them  
 19 ample time and a warning. Like, we gave them  
 20 multiple warnings before we would ever go try to  
 21 arrest. So that was our form of de-escalation  
 22 because they had the option at that point to either  
 23 listen to our commands and stop breaking the law or  
 24 to resume what they were doing and continue  
 25 breaking the law. So that -- we did that every --

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1 every time before we would go make an arrest.  
 2 Q. When you got -- when people were arrested  
 3 during a protest, was there, like, a general amount  
 4 of time that they were detained?  
 5 A. What -- what do you mean? Like --  
 6 Q. Like --  
 7 A. -- for --  
 8 Q. -- overnight? Like, would they get  
 9 arrested and then have their mug shot taken and  
 10 stay overnight or stay for days or hours?  
 11 A. Oh, I have no idea -- that; that's up to  
 12 the courts. Once -- once we get them to jail, the  
 13 judge decides how long people stay based on our  
 14 reports.  
 15 Q. All right. Did you arrest anyone else the  
 16 day of the events here for violating the roadway --  
 17 obstructing the roadway?  
 18 A. On the day of Ms. Beuhler's arrest?  
 19 Q. Yes.  
 20 A. I have no idea. All the days run  
 21 together.  
 22 Q. What record would -- would there be of,  
 23 like, everyone you ever arrested; does that record  
 24 exist?  
 25 A. I believe that -- that you are able to

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1 access -- at least you are able to access for every  
 2 arrest. I don't know if it says every person, but  
 3 I know that when I went onto metro tac, they asked  
 4 -- or they research and see how many, like, drug  
 5 arrests I had made and how many gun arrests I had  
 6 made. So there is a way to look at that, but I  
 7 don't know if it actually tells you person by  
 8 person.  
 9 Q. Interesting.  
 10 MS. MCDANIEL: It looks like your  
 11 computer is having a tiny bit of difficulty or mine  
 12 is. Let's take another 10-minute break since it's  
 13 been about an hour and maybe our computers will get  
 14 refreshed and we will have better feed.  
 15 THE WITNESS: Yes. Mine did say  
 16 internet --  
 17 THE VIDEOGRAPHER: That sounds good.  
 18 Go off the record?  
 19 MS. MCDANIEL: Yeah, let's take a  
 20 10-minute break and, hopefully, we will have better  
 21 luck when we come back.  
 22 THE VIDEOGRAPHER: Copy that.  
 23 MS. MCDANIEL: So let's go off the  
 24 record.  
 25 THE VIDEOGRAPHER: Copy that. We are

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1 now going off the record. It is now 11:11 a.m.  
 2 (Recess taken.)  
 3 THE VIDEOGRAPHER: We are now back on  
 4 the record. It is now 11:22 a.m.  
 5 Q. (By Ms. McDaniel) We got off earlier --  
 6 when we took our break --  
 7 THE REPORTER: Oh, hold on. It sounds  
 8 different. Did it sound different to y'all?  
 9 THE WITNESS: Yes, ma'am.  
 10 THE REPORTER: Like a robot?  
 11 THE VIDEOGRAPHER: Yeah, I believe  
 12 distorted. I heard it too.  
 13 THE REPORTER: Let's go off the record  
 14 real quick.  
 15 THE VIDEOGRAPHER: Copy that. We are  
 16 now going off the record. It is now 11:23 a.m.  
 17 (Off-the-record discussion.)  
 18 THE VIDEOGRAPHER: We are now back on  
 19 the record. It is now 11:25 a.m.  
 20 Q. (By Ms. McDaniel) Okay. So when we took  
 21 our break, we were discussing the protest  
 22 situation. I am curious -- I have a few more  
 23 questions -- what were officers doing during that  
 24 three months to protect themselves from claims of  
 25 excessive force?

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1 A. I -- I do not know.  
 2 Q. Have you ever -- do you ever think about  
 3 possibilities of excessive force and is that  
 4 something that you take precautions to avoid?  
 5 A. I really didn't use force a lot. I tried  
 6 to talk and reason with people as much as I could.  
 7 And then I also would try to wait for other  
 8 officers to respond; that way, I didn't have to go  
 9 one-on-one with someone because I know I am small  
 10 and not -- not going to be great in a fight. So I  
 11 -- I -- I never worried about excessive force. And  
 12 I don't know -- I can't say that other officers  
 13 did.  
 14 Q. Okay. So was anyone worried in your -- to  
 15 your knowledge, that there would be excessive-force  
 16 claims that would come out of the events of the  
 17 protests?  
 18 A. No, ma'am.  
 19 Q. Did the department -- did APD give any  
 20 sense that the protests could impact your job in  
 21 any way?  
 22 A. What do you mean?  
 23 Q. Did you -- did you -- did -- did you or,  
 24 to your knowledge, did anyone that you know feel  
 25 pressured about performing a certain way during the

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1 protests?  
 2 A. No, ma'am. We were just -- we were told  
 3 to do our job and stop people from breaking the  
 4 law, but that's what we do normally, just in a  
 5 different way, I guess.  
 6 Q. Okay. What about the things that were  
 7 happening during this period regarding possible  
 8 funding -- the department; do you recall any  
 9 discussion about funding the department?  
 10 A. Defunding, but, yes, they -- I think,  
 11 during -- at some point during this or after, they  
 12 defunded us. And then the academy class that was  
 13 supposed to start was canceled. And then,  
 14 basically, it ended up a bunch of teams were  
 15 dismantled, including my team, and sent back to  
 16 patrol. So, yes, I -- I remember that.  
 17 Q. Was that after the events that led to this  
 18 lawsuit?  
 19 A. I -- I couldn't tell you.  
 20 Q. Do you -- did you get the sense that the  
 21 protest had anything to do with the defunding?  
 22 A. I don't -- I don't know if I correlated  
 23 them together.  
 24 Q. Some people think that it's because of,  
 25 like, the excessive-force accusations; that that

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1 was a big part of why the -- why some of the  
 2 funding from the police department was ruined; do  
 3 you have that sense?  
 4 A. No. I thought it was going on nationwide;  
 5 you know, just a general dis- -- dislike of police  
 6 and thinking that we needed defunding.  
 7 Q. Oh, really? So -- so was there a sense in  
 8 the department that it was, like, defunding because  
 9 there is a general sense of disliking police?  
 10 A. Oh, I think that was, like -- that's how  
 11 it seemed nationwide.  
 12 Q. But -- but in your sense, it wasn't linked  
 13 to disliking police because of excessive force; it  
 14 was just disliking police?  
 15 A. No. I think -- like, I recall them  
 16 talking about how the -- I believe that the reason  
 17 they canceled one of -- the class was because they  
 18 needed to do some investigations on if we were  
 19 racist police officers; I remember that from  
 20 Austin, but I don't -- I don't really remember  
 21 anything about excessive force.  
 22 Q. Who was the head of APD at the time of the  
 23 protest?  
 24 A. Chacon is who it is now. Manley. Brian  
 25 Manley, I believe.

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1 Q. And when -- and he left; is that correct?  
 2 Do you recall that?  
 3 A. Yes, ma'am. Because when I was still  
 4 there, I think Joseph Chacon took -- took over, but  
 5 I don't remember when -- before I left, that  
 6 happened.  
 7 Q. All right. I am going to jump over a  
 8 little bit. Talk to you more about the -- the  
 9 actual arrest of the -- of the -- August 1st. I am  
 10 going to share my screen, again, really quick and  
 11 bring back up Plaintiff's Exhibit Number 2. Let's  
 12 see if I can -- okay. Can you see my screen?  
 13 A. Yes, ma'am.  
 14 Q. So do you have personal recollection of --  
 15 of what you wrote about here in this report, this  
 16 arrest?  
 17 A. Not much. I had to go back and rewatch my  
 18 video to help jog my memory.  
 19 Q. Okay. So on the second paragraph, Line 3  
 20 -- 2 to 3, it says, each officer appeared to have  
 21 control over one of her hands, but she appeared to  
 22 not be allowing the officers to handcuff her. And  
 23 then it states later that you grabbed the female's  
 24 left hand and held it, maintained its position  
 25 behind her back while the other officer attempted



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1 to put her right hand behind her back; why would  
 2 that be considered resisting?  
 3 A. So, typically, how -- how it should go or  
 4 the -- I guess, the best outcome for an officer is  
 5 it can be done with one officer. Like, only one  
 6 officer needed. And you just -- you are able to  
 7 ask the person, please put your hands behind your  
 8 back; and they do it. And then you are -- with one  
 9 hand, grab their two hands; then with the other  
 10 hand, you put on the handcuffs. And it's -- that's  
 11 how it should be. If someone is resisting or not  
 12 allowing that to happen, then multiple officers are  
 13 sometimes needed, so that --  
 14 Q. And I am going to go ahead and pull up  
 15 Exhibit Number 3 -- Plaintiff's Exhibit Number 3  
 16 while I am sharing my screen, if I can figure out  
 17 how to do it. Okay.  
 18 (Exhibit 3 marked.)  
 19 Q. (By Ms. McDaniel) Can you see my screen?  
 20 A. Yes, ma'am.  
 21 Q. This is Plaintiff's Exhibit Number 3.  
 22 It's a Class D Memorandum. Do you recognize this  
 23 document?  
 24 A. No, ma'am.  
 25 Q. Okay. Do you recognize what a Class D

Page 87

1 Memorandum is?  
 2 A. No, ma'am.  
 3 Q. Okay. Let's see. So I will just ask you  
 4 about the facts -- sorry. I am having a little  
 5 trouble getting this to -- oh, also, is it --  
 6 MS. MCDANIEL: Do I have counsel's  
 7 permission to share this document? It is marked  
 8 confidential from the City of Austin document  
 9 production. I can take it away if I should not  
 10 show it.  
 11 MR. BARTON: No. And you have  
 12 permission to ask her questions about it for the  
 13 purposes of -- of this deposition, particularly,  
 14 since she's a party to the lawsuit. But we  
 15 probably will need to address whether this portion  
 16 of the deposition remains confidential if, you  
 17 know, the exhibit needs to be filed with the court  
 18 or something like that.  
 19 MS. MCDANIEL: Okay. Great. Well, I  
 20 do have just one small question. Where is it?  
 21 Q. (By Ms. McDaniel) It's on Page 2, there  
 22 is a description of the arrest. All I wanted to  
 23 ask about is one little part where it says, at that  
 24 -- so I'm looking at the box on the second page,  
 25 three paragraphs down. About halfway through that

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1 paragraph, it says that Officer Allare approached  
 2 and that Ms. Beuhler offered no resistance to  
 3 Officer Allare.  
 4 All I wanted to ask is if you agree  
 5 with that statement; that Ms. Beuhler -- yes,  
 6 Ms. Beuhler did not offer resistance to you?  
 7 A. Yes, ma'am. I agree.  
 8 Q. Okay. That's all I wanted to ask you  
 9 about. Okay. I have some more -- a few more  
 10 questions about the day of, but we're getting close  
 11 to the end. Probably will be done well before  
 12 1:00. Who activated the quick-reaction force that  
 13 day?  
 14 A. I don't -- I don't know.  
 15 Q. Okay. What -- what was said during your  
 16 supervisor's pre-event briefing before you went to  
 17 this protest on August 1st and with the  
 18 quick-reaction force?  
 19 A. I -- I -- I do not know one day from  
 20 another, but our general role was to, you know --  
 21 what I have said; to respond to wherever the chain  
 22 of command is sending us. And then to make arrests  
 23 based either what they have seen on the cameras or  
 24 what we see.  
 25 Q. So to your recollection, you don't recall

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1 getting, like, briefed before you went out there?  
 2 A. No, ma'am. I have no idea.  
 3 Q. Okay. What were the rules of engagement  
 4 for your conduct at this event -- or for your --  
 5 for the QR -- for the quick-reaction force?  
 6 A. Well, we -- it depended on what -- like,  
 7 what was being done or what the supervisors were  
 8 seeing on the cameras, you know. Because sometimes  
 9 all we were supposed to do was just drive behind  
 10 the group and issue commands and then wait.  
 11 Sometimes it was, you know, I need y'all to enter  
 12 into this group and grab the one guy who has the  
 13 megaphone or whatever. So it -- it really depended  
 14 on the -- the situation and what the supervisors  
 15 were seeing.  
 16 Q. So when you say the supervisors are -- are  
 17 speaking to you about the -- what they are seeing  
 18 on the camera, how does that work; does the  
 19 supervisor speak to the whole group or whole team  
 20 or do they just speak to individual people?  
 21 A. It was to the -- whatever metro tac teams  
 22 were working that day. We would be sent out and it  
 23 was -- they would tell us over the radio. Like,  
 24 this -- the guy in the red jacket is throwing  
 25 rocks.

Page 90

1 Q. And everyone who was out there could hear  
 2 it? Like, for example, was Officer Gonzalez  
 3 hearing the same commands that you were hearing?  
 4 A. I don't know if we were on the same radio  
 5 station or not. I would assume that we weren't  
 6 because they were -- they had their own, like,  
 7 patrol or bike function, whatever they had; and we  
 8 were -- metro tac. So I don't -- I don't think we  
 9 were, but I can't say for sure if we were on the  
 10 same radio channel.  
 11 Q. And what about Officer Smart; were you on  
 12 the same radio channel as he?  
 13 A. I don't believe so.  
 14 Q. Did anyone on your channel indicate that  
 15 Ms. Beuhler should be arrested?  
 16 A. No, ma'am. We -- we had just walked up.  
 17 Q. And would you have any knowledge of  
 18 whether anyone commanded Officer Smart or Gonzalez  
 19 or any other officer to arrest Ms. Beuhler?  
 20 A. I have no idea what they were told.  
 21 Q. Is there a record of communication?  
 22 A. I don't know. There is record of anything  
 23 typed in, but if -- I really don't know how -- how  
 24 patrol was being informed, but we were being  
 25 informed over the radio. And I don't know if there

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1 is record of radio if it's not on your body cam.  
 2 Q. Was there ever any commands to, like,  
 3 really show the protesters, like, who is boss?  
 4 A. No, ma'am.  
 5 Q. No?  
 6 A. No.  
 7 Q. Was that an attitude some of the officers  
 8 had?  
 9 A. Maybe. I don't know.  
 10 Q. Really? You never -- I am sure you have  
 11 heard at least a few --  
 12 A. Like --  
 13 Q. -- statements to that effect; like, that  
 14 this was not -- not cool what the protesters were  
 15 doing or the -- you know, they needed to stop it or  
 16 y'all are going to -- somebody was going to need to  
 17 show them who was boss.  
 18 A. No. I mean, it -- it was not cool, but  
 19 there was no -- I don't feel like anyone on my team  
 20 had -- was feeling like they needed to be a macho  
 21 man. And I can really only speak for my team since  
 22 that was who I was around all day every day. But,  
 23 no, everyone just want to get back to our normal  
 24 jobs.  
 25 Q. Did anyone declare that there was unlawful

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1 assembly on Congress that day?  
 2 A. I do not know.  
 3 Q. How would you describe what was happening  
 4 on Congress that day?  
 5 A. I -- I don't know why we were called there  
 6 and I don't remember what day was what. I know we  
 7 went to that general area one day because there was  
 8 -- there was a protest going on near the Garrett  
 9 Foster Memorial. And then another day, we were  
 10 called to the similar area because there was a  
 11 bunch of -- I forget their -- their names, but they  
 12 wear Hawaiian shirts and they have rifles,  
 13 something boy --  
 14 Q. Boogaloo boys; is that it?  
 15 A. Yeah, something -- what --  
 16 Q. Boogaloo boys.  
 17 THE REPORTER: I'm sorry, say it  
 18 again. Blue boys?  
 19 MS. MCDANIEL: Boogaloo --  
 20 THE WITNESS: Yes.  
 21 MS. MCDANIEL: -- b-u-g-a-l-o-o (sic).  
 22 A. Yes. They were -- they were out one day,  
 23 so we were just called there to ensure that -- you  
 24 know, that everyone walking around with a rifle was  
 25 just being safe and not pointing it at other people

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1 or, you know -- or that no one else was taking  
 2 action against them because they had rifles. So I  
 3 don't know what day was what; I have no idea.  
 4 Q. (By Ms. McDaniel) So the officers were  
 5 kind of protecting those -- those people with  
 6 rifles?  
 7 A. We were protecting everyone. Who knew --  
 8 I mean, who knew if -- if they were going to be  
 9 violent or if -- if it was going to stay completely  
 10 peaceful. So it was their protection and any other  
 11 civilian around's protection.  
 12 Q. Do you know what that term means, boogaloo  
 13 boys?  
 14 A. I don't think so.  
 15 Q. Do you know what their -- their ideology  
 16 is?  
 17 A. No. All I know is they -- we were sent  
 18 there because they had -- were walking around with  
 19 rifles.  
 20 Q. Let's see. So -- oh, yeah, I remember.  
 21 So we were talking about -- I asked whether it was  
 22 an unlawful assembly declared. Then I asked what  
 23 was -- what the situation was. And you mentioned  
 24 you were at Foster memorial. Can you tell me who  
 25 Garrett Foster is?

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1 A. Garrett Foster was a protester who was  
 2 shot and killed, I believe, amidst the protests.  
 3 Q. Who -- who shot and killed him?  
 4 A. It was not an officer; it was, I believe,  
 5 a man in a vehicle.  
 6 Q. And so that assembly that day was near his  
 7 memorial, near where it had happened?  
 8 A. I don't know if it -- if it -- that was  
 9 the day of Ms. Beuhler's incident or if it was a  
 10 different day, but, yes, after he died, they did  
 11 set up a memorial. And then one day, we were  
 12 called over to that area. And, I think, it was in  
 13 the same general block range of Congress as the  
 14 boogaloo boy day too, so I don't know what was  
 15 what.  
 16 Q. And how long were you out there that day?  
 17 Like, do you recall, like, how long your shift was  
 18 and what point in time the arrest of Sydni Beuhler  
 19 came in your shift?  
 20 A. No. Can I look at the report and see the  
 21 date and time?  
 22 Q. Absolutely.  
 23 A. If -- well, if -- if the protest started  
 24 in May, then we were not doing the 12-hour  
 25 on-and-off thing anymore. We were just doing the

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1 10 hours.  
 2 Q. This was August.  
 3 A. Right. So, yeah, if -- in August, we  
 4 weren't -- it would have been a 10-hour shift. I  
 5 don't know what time -- what time we started, so I  
 6 don't know when 8:00 p.m. is relative to when our  
 7 shift started. Yeah, I really have no idea.  
 8 Q. Okay. And who were you riding with that  
 9 day?  
 10 A. I don't even know who I was with.  
 11 Q. Okay. Did you see -- well, we already  
 12 talked about -- so when -- you had testified  
 13 earlier, if I remember, that when you -- when you  
 14 first encountered Sydni Beuhler, she was already  
 15 either standing or kneeling on the ground on  
 16 Congress; is that right?  
 17 A. Yes, ma'am.  
 18 Q. And she was already in the -- in the  
 19 custody of the police officer -- the other police  
 20 officers; is that correct?  
 21 A. I wouldn't say she was in custody yet  
 22 because she wasn't handcuffed.  
 23 Q. But they were -- they had her in --  
 24 A. Yes.  
 25 Q. -- their grasp, right?

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1 A. They were attempting to detain her, yes.  
 2 Q. Right. Okay. Would you -- you already  
 3 said that was where you came in. Did you  
 4 personally hear any dispersal orders made to her  
 5 prior to her arrest?  
 6 A. I don't recall.  
 7 Q. Okay. Do you remember hearing any words  
 8 exchanged between Ms. Beuhler and any other officer  
 9 prior to her arrest?  
 10 A. They -- I do remember the officer saying,  
 11 stop resisting. And then from my video, as I am  
 12 walking up, you can hear commotion, but I don't  
 13 know exactly what was said because I was still far  
 14 away, but you can definitely hear, like, a  
 15 commotion of sorts.  
 16 Q. Let's see. And are you aware of any  
 17 discipline that came out of that arrest --  
 18 discipline of an officer, I should say?  
 19 A. No, ma'am.  
 20 Q. Okay. Did you receive any kind of  
 21 employment or administrative discipline of any type  
 22 regarding that arrest?  
 23 A. No, ma'am.  
 24 Q. And did you receive any communications or  
 25 feedback that what you did was -- was proper?

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1 A. No, ma'am. I never received any feedback.  
 2 Q. Okay. Do you have any opinion as to  
 3 whether Officer Smart or Officer Gonzalez used  
 4 excessive force in this arrest?  
 5 A. I have no idea what happened before. I  
 6 don't know her -- Ms. Beuhler's level of resistance  
 7 and I don't know what they did before I got there  
 8 and put my hand on her hand. But from what I could  
 9 see once I got down there, they -- there was no  
 10 excessive force in trying to get her handcuffed.  
 11 Q. Okay. Have you ever had any interactions  
 12 with Sydni Beuhler other than that -- that  
 13 interaction?  
 14 A. I don't believe so.  
 15 Q. Not before or after?  
 16 A. I don't think so.  
 17 Q. And, like, what do you -- what can you  
 18 tell me about the other officers, Smart and  
 19 Gonzalez? I think I asked you if you knew what  
 20 team either one of them was on, but I can't recall.  
 21 Do you know anything about what teams they -- they  
 22 are working with?  
 23 A. No, ma'am. I -- I don't -- I can't even,  
 24 like, picture Officer Smart's face; and I don't  
 25 know if I've ever met him. Officer Gonzalez, I am

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1 not sure if he was on -- I know, at one point, he  
 2 worked on the downtown -- they're called DTAC  
 3 officers, but I know he -- at one point, he was a  
 4 DTAC officer. I am not sure if he was with DTAC or  
 5 if he was on one of the north metro teams at that  
 6 time.  
 7 Q. Okay. Are you aware of either of them  
 8 having any administrative discipline --  
 9 disciplinary record?  
 10 A. Oh, no, ma'am. I have no idea.  
 11 Q. Have you ever had any disciplinary action  
 12 against you for any kind of excessive force? Did I  
 13 already ask you that?  
 14 A. No, ma'am, not for excessive force. I  
 15 have had other disciplinary action.  
 16 Q. Can you describe it for me, please?  
 17 A. I have had two crashes that were -- that  
 18 oral reprimand on the first collision and a written  
 19 reprimand on the second collision. They were both  
 20 with -- like, "less than 10 mile an hour"  
 21 collisions. I was poorly driving.  
 22 And then the other disciplinary action  
 23 that I had was a written reprimand for right after  
 24 I got off the field training period. I went to  
 25 search a suspect who I was arresting. And another

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1 officer searched, like, his right half; I searched  
 2 the left half. And once we got to the jail, he had  
 3 a knife in the middle of his pants, which we did  
 4 not find because we searched him improperly. The  
 5 way you're supposed to search is one officer  
 6 searches the entire body; that way, you are able to  
 7 get the full waistband and that kind of stuff  
 8 doesn't happen. So I was definitely in the wrong  
 9 there in how I searched him.  
 10 Q. How many -- is there any, like, number of  
 11 times that you can receive reprimands? How does  
 12 the -- how does that system work; like, does it go  
 13 from oral to written to suspension or --  
 14 A. Yes, ma'am.  
 15 Q. Okay. Can you tell me a little bit about  
 16 it?  
 17 A. I don't know about number that you can  
 18 get, but, yes, it does go from oral, written. And  
 19 then, like I had said earlier, I think -- I think,  
 20 then it goes to days off, but I am not sure -- I am  
 21 not sure if there is anything in between. Luckily,  
 22 I never got -- got more than a written.  
 23 Q. Do you know of any officers who got  
 24 reprimanded because of events that took place  
 25 during the protests?

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1 A. I don't know of any.  
 2 Q. Really?  
 3 A. Uh-huh.  
 4 Q. You don't know of any, like -- like,  
 5 just -- I am not saying on your team, but any?  
 6 There were none, to your knowledge, that  
 7 received any discipline regarding the protest  
 8 action?  
 9 A. I don't -- I don't recall any. I am sure  
 10 -- I am sure people did something wrong, but I  
 11 don't know if there was any or not.  
 12 Q. Is that kind of thing made available --  
 13 that information made available to you-all?  
 14 A. If --  
 15 Q. Like, if someone -- like, for a lawyer, if  
 16 you -- if you get sanctioned, they usually write  
 17 your -- your name is usually put in a -- in a  
 18 journal and other people can read it. Like, every  
 19 month, the journal comes out and it says who got  
 20 disbarred and sanctioned. It's -- it's not the --  
 21 it's, like, in the back, but it's still -- you  
 22 don't want your name to be in there.  
 23 A. Right.  
 24 Q. Is there an equivalent of that for police  
 25 officers in the department?

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1 A. There was -- like I said, how on patrol,  
 2 we used to go over the -- the people who received  
 3 days off. So there were those notices sent out,  
 4 but I don't know.  
 5 Q. Did you feel like you had enough  
 6 information about what would be considered, for  
 7 example, excessive force such that you knew what to  
 8 do to not get reprimanded or disciplined?  
 9 A. Yes, ma'am. I feel like our use-of-force  
 10 training was -- was good.  
 11 Q. Well, when was the last time you had  
 12 use-of-force training that you can recall?  
 13 A. I have no idea when it was.  
 14 Q. Long time ago?  
 15 A. Oh, I couldn't tell you. I -- I really --  
 16 I wish I had my training stuff because then I would  
 17 be able to tell you more, but I haven't seen it  
 18 since, probably, I applied to SWAT. So it's been a  
 19 bunch of years. I don't know when the last time I  
 20 would have had that was.  
 21 Q. Okay. Has Austin -- has APD changed the  
 22 policies for arresting protesters or viewing  
 23 protesters after the events that took place in  
 24 August -- May to August, I should say?  
 25 A. I -- I don't know if they have.

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1 Q. Where would you go if you had to figure  
2 that out?  
3 A. When I was an officer, I would check the  
4 policy updates because that's where it would be.  
5 But, now, I don't have access to anything.  
6 Q. Okay. Yes. And let's see. Let me --  
7 okay. So when you -- I have just a little bit more  
8 on the arrest. So when you -- what you saw with  
9 your -- with your eyes -- and -- and, I guess, you  
10 said you watched the video, as well. Like, what  
11 would you say that was in that situation that was  
12 resisting arrest? In what way was -- was Sydni  
13 Beuhler resisting the officers arresting her?  
14 A. She was not allowing them to put her hands  
15 behind her back in order to get the handcuffs on  
16 her.  
17 Q. Were her --  
18 A. That's what I saw.  
19 Q. -- hands in front of her body?  
20 A. No, ma'am.  
21 Q. Where were her hands?  
22 A. So the left -- the left one I was -- wait  
23 -- yes, her left hand, I was holding on to, but  
24 then the right one, it appeared that the officer on  
25 the right was struggling to get that hand into a

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1 position in which he could put the handcuff on and  
2 secure it behind her back.  
3 Q. And how was he struggling; what was  
4 he doing that made it look like he was  
5 struggling?  
6 A. It's -- like, from my angle on the video,  
7 it's hard to see exactly what is going on, but he  
8 -- I remember them saying, stop resisting. I don't  
9 know what they were feeling; you know, like, if she  
10 was tugging or just not bending her wrist. I don't  
11 know what exactly was going on, on her end or on  
12 their end. From my -- on the hand that I was  
13 holding, she was being compliant. It was behind  
14 her back where it needed to be and it wasn't  
15 moving.  
16 Q. Okay. Is it possible that you thought she  
17 was resisting because they were saying, stop  
18 resisting?  
19 A. I -- I would assume if they are saying it,  
20 that she is, but, again, I -- I don't know what  
21 they were seeing or feeling; and then, also, what  
22 they were trying to do in order to accomplish  
23 getting her into handcuffs.  
24 Q. And everything is happening really fast,  
25 of course?

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1 A. Right.  
2 Q. Well, let's see if I have anything else I  
3 need to ask. I believe, with that, I don't have  
4 any further questions.  
5 MS. MCDANIEL: And I am going to go  
6 ahead and pass the witness. Thank you very much  
7 for your help.  
8 THE WITNESS: Thank you.  
9 MS. MCDANIEL: Thank you for your  
10 service.  
11 THE WITNESS: Thank you.  
12 MR. BARTON: We don't have any  
13 questions.  
14 THE REPORTER: And, Mr. Barton, did  
15 you need to order a copy of the transcript?  
16 MR. BARTON: Yes. I have been  
17 instructed by the paralegal here to get everything.  
18 So we want the video, the -- the synced transcript  
19 and the transcript.  
20 THE REPORTER: Yes, sir.  
21 MS. MCDANIEL: And I believe we have a  
22 standing order with regard to transcript. We will  
23 follow that.  
24 THE REPORTER: Okay. Thank you.  
25 THE VIDEOGRAPHER: Okay. All right.

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1 This will conclude the deposition. It is now 11:57  
2 a.m.  
3 (End of proceedings.)  
4  
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1 CHANGES AND SIGNATURE  
 2 WITNESS NAME: ANNE ALLARE  
 3 DATE OF DEPOSITION: DECEMBER 15, 2022  
 4 PAGE LINE CHANGEREASON  
 5 \_\_\_\_\_  
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1 REPORTER'S CERTIFICATION  
 2 IN THE UNITED STATES DISTRICT COURT  
 3 FOR THE WESTERN DISTRICT OF TEXAS  
 4 AUSTIN DIVISION  
 4 SYDNI BEUHLER )  
 )  
 5 VS. ) CASE NO.  
 ) 1:21-CV-00054-RP  
 6 CITY OF AUSTIN, )  
 OFFICER GAVIN SMART (AP8674), )  
 7 OFFICER JAVIER GONZALEZ )  
 (AP7422), AND OFFICER ANNE )  
 8 ALLARE (AP7755) )  
 9 )  
 10 -----  
 11 DEPOSITION OF ANNE ALLARE  
 DECEMBER 15, 2022  
 12 (REPORTED REMOTELY)  
 13 -----  
 14 I, CHARIS M. HENDRICK, Certified Shorthand  
 15 Reporter in and for the State of Texas, do hereby  
 16 certify to the following:  
 17 That the witness, ANNE ALLARE, was by me  
 18 duly sworn and that the transcript of the oral  
 19 deposition is a true record of the testimony given  
 20 by the witness.  
 21 I further certify that pursuant to Federal  
 22 Rules of Civil Procedure, Rule 30(e)(1)(A) and (B)  
 23 as well as Rule 30(e)(2), that review of the  
 24 transcript and signature of the deponent:  
 25 \_\_\_XX\_\_\_ was requested by the deponent and/or a

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1 I, ANNE ALLARE, have read the foregoing  
 deposition and hereby affix my signature that same  
 2 is true and correct, except as noted above.  
 3  
 4  
 5 \_\_\_\_\_  
 ANNE ALLARE  
 6  
 7 THE STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_  
 8  
 9 Before me, \_\_\_\_\_, on this day  
 personally appeared ANNE ALLARE, known to me (or  
 10 proved to me under oath or through \_\_\_\_\_) to  
 be the person whose name is subscribed to the  
 11 foregoing instrument and acknowledged to me that  
 they executed the same for the purposes and  
 12 consideration therein expressed.  
 13  
 14 Given under my hand and seal of office this \_\_\_\_\_  
 day of \_\_\_\_\_, 202\_\_.  
 15  
 16  
 17 \_\_\_\_\_  
 NOTARY PUBLIC IN AND FOR THE  
 18 STATE OF \_\_\_\_\_  
 19  
 20 MY COMMISSION EXPIRES: \_\_\_\_\_  
 21  
 22  
 23  
 24  
 25

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1 party before completion of the deposition.  
 2 \_\_\_\_\_ was not requested by the deponent and/or  
 3 a party before the completion of the deposition.  
 4 I further certify that I am neither  
 5 attorney nor counsel for, nor related to or  
 6 employed by any of the parties to the action in  
 7 which this deposition is taken and further that I  
 8 am not a relative or employee of any attorney of  
 9 record in this cause, nor am I financially or  
 10 otherwise interested in the outcome of the action.  
 11 The amount of time used by each party at  
 12 the deposition is as follows:  
 13 Ms. McDaniel - 2:24 hours/minutes  
 14  
 15 Subscribed and sworn to on this 28th day  
 16 of December, 2022.  
 17  
 18  
 19 \_\_\_\_\_  
 CHARIS M. HENDRICK, CSR # 3469  
 20 Certification Expires: 10-31-23  
 MAGNA LEGAL SERVICES  
 21 (866) 624-6221  
 Firm Registration No. 633  
 22  
 23  
 24  
 25



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Sydni Beuhler,  
Plaintiff,  
v.

City of Austin,  
Officer Gavin Smart (AP8674),  
Officer Javier Gonzalez (AP7422),  
and Officer Anne Allare (AP7755),  
Defendants.

§  
§  
§  
§  
§  
§  
§  
§

Case no. 1:21-cv-00054-RP

**PLAINTIFFS' NOTICE OF DEPOSITION OF ANNE ALLARE**

TO: ALL COUNSEL OF RECORD  
PERSON TO BE EXAMINED: ANNE ALLARE  
TIME & DATE OF TAKING: Thursday, December 15, 2022 at 9:00am CT  
COURT REPORTER: Magna Legal Services  
VIDEOGRAPHER: Magna Legal Services  
LOCATION: ZOOM VIDEO CONFERENCE

PLEASE TAKE NOTICE that in accordance with Federal Rule of Civil Procedure 30, the video deposition of the above-listed individual will be taken by the Plaintiffs.

This deposition is to be conducted via Zoom Video Conference and will be recorded stenographically before a court reporter and videotaped before a videographer from Magna Legal Services – 700 Milam Street, #1300, Houston, TX 77002; (832) 871-5100.

This deposition will continue day to day until complete. You are invited to attend and participate.

**Deposition Link:**  
<https://magnals.zoom.us/j/99674872974?pwd=U2ZBM1R4VjNLb3JOcDRQa21GZ21HZz09>

**Meeting ID:** 996 7487 2974  
**Password:** 127299

**Dated: November 21, 2022**

**Respectfully submitted,  
HENDLER FLORES LAW, PLLC**

*/s/ Donald Puckett*

Scott M. Hendler - Texas Bar No. 9445500

[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)

Donald Pucket - Texas Bar No. 24013358

[dpuckett@hendlerlaw.com](mailto:dpuckett@hendlerlaw.com)

901 S. MoPac Expressway

Bldg. 1, Suite #300

Austin, Texas 78746

Telephone: (512) 439-3200

Facsimile: (512) 439-3201

***ATTORNEYS FOR PLAINTIFFS***

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing served on all counsel of record via the electronic mail on November 21, 2022.

*/s/ Donald Puckett*

Donald Puckett



**AUSTIN POLICE DEPARTMENT**GO# 2020-2141073  
NOT APPROVED**GENERAL OFFENSE HARDCOPY**

LAW ENFORCEMENT USE ONLY

(\*\*LITIGATION HOLD\*\*)

**Narrative Text**

Type SUPPLEMENTS

Subject SEARCH OF FEMALE

Author AP7755 - ALLARE, ANNE

Related Date Oct-15-2020 19:19

On 08/01/2020 at approximately 8pm, I, Officer Allare #7755, was working with Region IV Metro Tac Unit and our primary assigned duty was to work as a Quick Reaction Force and deploy as needed during the protests. We responded to the area of 3rd St and Congress Ave to assist with crowd control efforts.

As I was walking up on scene, I observed two officers who appeared to be struggling with a female. I walked over to assist them. Each officer appeared to have control over one of her hands but she appeared to be not allowing the officers to handcuff her. The female dropped to her knees in the middle of Congress Ave. The officer on the left had positioned the female's left hand behind her back. I grabbed the female's left hand and maintained its position behind her back while the other officer attempted to put her right hand behind her back. The two officers were telling her to "Stop resisting". Once she was secured in handcuffs, I walked away to assist my teammates on the sidelines.

I soon heard the female yelling that she needed a female officer. I walked back over and conducted a quick frisk of her person. I took her fanny pack off and placed it on the ground. I did not locate any weapons on her person. I then had the female sit in the patrol vehicle.

EOR  
AP7755



**MEMORANDUM**  
Austin Police Department  
Region 1 Patrol

**TO:** Robin Henderson, Assistant Chief  
**FROM:** Jason Staniszewski, Commander  
**SUBJECT:** Class D Memorandum – IAD Case # 2020-1301

**DATE:** 01/14/2021

Employee Name and EMP#		Javier Gonzalez #7422			
Incident Date	8/1/2020	Location	400 blk Congress Avenue		
CAD #	20-2141073	Versadex #	20-2141073	DMAV/BWC #	20-2141073
Allegations					
Policies Associated with Allegations			Nature of Complaint		
200.2 De-Escalation of Potential Force Encounters			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
200.3 Response to Resistance			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
306.3.1 Search Protocol			The "complainant advised "The officers were not going to get a female officer, they said they didn't have time to get a female officer and I started to have a panic attack, so they got one."		
318.5.1 Miranda Warning			The complainant stated "I wasn't read my Miranda rights . . ."		

The enclosed external complaint was received by Internal Affairs via the OPO from the complainant listed above on Javier Gonzalez #7422. The complaint documentation provided by the OPO and the complainant is included in the complaint packet.

The complaint regards an employee assigned under our command, and has been designated a Class D Complaint as described in General Order 902.3.1. This case is being sent to you for administrative purposes only. A review of this complaint has indicated no violations of Departmental Policy. Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.

Detailed responses to complaint(s):

Officers Gavin Smart #8674 of the Bicycle Public Order Team (BPOT) and Javier Gonzalez #7422, assigned to Mobile Field Force (MFF) were on-duty in downtown Austin on the evening of August 1, 2020, a day with numerous protests in the area of Congress Avenue and 4th Street, at the site of the Garrett Foster memorial.

At approximately 8:22 PM, officers from Mounted Patrol, BPOT, and MFF began clearing a large crowd of protesters out of Congress Avenue north of its intersection with 4th Street, where this group was blocking all lanes of the roadway. As officers were attempting to clear the roadway, several officers were giving verbal commands to the protesters to back up, while sirens and whistles could be heard in the background. All officers were uniformed, and multiple police vehicles with emergency lights activated were in the immediate area. Officer Smart issued numerous loud commands telling the subjects to "move back," and at least once, loudly stated, "move back or you're gonna get arrested." The complainant, Sydni Beuhler, remained standing in the roadway as many other protesters either voluntarily moved out of the roadway, or were pushed back by officers. As numerous BPOT officers were moving their bicycles forward to move the crowd, Officer Smart approached Ms. Beuhler and instructed her loudly "Move back!" Ms. Beuhler remained where she was standing and loudly stated "Fuck you!"

Officer Smart wrapped his arms around Ms. Beuhler while facing her and pulled her back behind the line of BPOT officers, away from the other protesters. Officer Smart's BWC appears to have been inadvertently turned off at this point. Ms. Beuhler began yelling and struggling with Officer Smart while he tried to control her. Officer Gonzalez observed this struggle and approached to assist Officer Smart, who at that point had pushed Ms. Beuhler to the ground, on her knees, with her upper body over her thighs. Officer Gonzalez had control of Ms. Beuhler's right arm, and Officer Smart had control of her left. At that point, Officer Anne Allare #7755 (MFF, female officer) approached and briefly held Ms. Beuhler's left hand, as Ms. Beuhler offered no resistance to Officer Allare. Ms. Beuhler was yelling while officers were trying to handcuff her while loudly instructing her to "stop resisting." While trying to handcuff Ms. Beuhler, Officer Gonzalez placed his right knee on Ms. Beuhler's upper right back area and right side, while Officer Smart placed his left knee on the left side of Ms. Beuhler's upper back and then left side area. Once they were able to get her handcuffed, Officer Smart immediately stood Ms. Beuhler up and escorted her to a waiting patrol car. Officer Smart loudly asked if there was a female officer in the area. A male officer (Officer N. Martinez) stated that they didn't have time for a female. Officer Allare turned around to assist Officer Smart. At this point, Ms. Beuhler jumped up and down, stating that she needed a female officer. Officer Allare informed Ms. Beuhler that she was a female officer. Officer Allare quickly frisked Ms. Beuhler, who was then placed in the patrol car driven by Officer Martinez. Officer Smart provided information related to Ms. Beuhler's arrest to Officer Martinez. After this, Neither Officer Smart nor Officer Gonzalez had any further involvement with Ms. Beuhler.

The response to resistance incident involving Ms. Beuhler was reviewed by Officer Smart's chain-of-command, and was deemed to be within policy and state law. Internal Affairs (IA) also reviewed the response to resistance and found it to be objectively reasonable. There were other recommended policy violations listed on the Notice of Formal Complaint by the Office of Police Oversight, but IA did not observe any violations by either Officer Smart or Officer Gonzalez related to these additionally-listed policies during IA's investigation.

No Department policies or procedures were violated by the officer in relation to the complaint received.

Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.

<b>Javier Gonzalez</b>	Digitally signed by Javier Gonzalez Date: 2021.01.14 15:06:11 -06'00'	01/14/2021
Officer Signature		Date
<b>Louis Candoli</b>	Digitally signed by Louis Candoli Date: 2021.01.14 14:32:10 -06'00'	01/14/2021
Sergeant Signature		Date
<b>Karl Haverland</b>	Digitally signed by Karl Haverland Date: 2021.01.15 10:32:21 -06'00'	01/15/2021
Lieutenant Signature		Date
<b>Commander Jason Staniszewski #3961</b>	Digitally signed by Commander Jason Staniszewski #3961 Date: 2021.01.15 10:42:49 -06'00'	01/15/2021
Commander Signature		Date
<b>Robin J. Henderson #3441</b>	Digitally signed by Robin J. Henderson #3441 Date: 2021.01.15 10:50:05 -06'00'	01/15/2021
Assistant Chief Signature		Date

*Officer's signature does not imply any wrongdoing on behalf of the subject officer. Signatures are solely intended as documentation that each party in the chain of command, including the subject officer, has reviewed the complaint.*

**No portion of the complaint may be copied.**

**\*\*\*FOR INTERNAL AFFAIRS ONLY\*\*\***

Returned to Internal Affairs on: 01/15/2021

<b>Jerry Bauzon</b>	Digitally signed by Jerry Bauzon Date: 2021.01.15 11:53:52 -06'00'	1/15/2021
Commander Jerry Bauzon #2557		Date
Professional Standards		



**MEMORANDUM**  
Austin Police Department  
*Region 1 Patrol*

**TO:** Joseph Chacon, Assistant Chief  
**FROM:** Ryan Adam, Commander  
**SUBJECT:** Class D Memorandum – IAD Case # 2020-1301

**DATE:** 01/14/2021

Employee Name and EMP#		Gavin Smart #8674			
Incident Date	8/1/2020	Location	400 blk Congress Avenue		
CAD #	20-2141073	Versadex #	20-2141073	DMAV/BWC #	20-2141073
Allegations					
Policies Associated with Allegations			Nature of Complaint		
200.2 De-Escalation of Potential Force Encounters			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
200.3 Response to Resistance			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
306.3.1 Search Protocol			The complainant advised "The officers were not going to get a female officer, they said they didn't have time to get a female officers an I started to have a panic attack, so they got one."		
318.5.1 Miranda Warning			The complainant stated "I wasn't read my Miranda rights . . ."		

The enclosed external complaint was received by Internal Affairs via the OPO from the complainant listed above on Gavin Smart #8674. The complaint documentation provided by the OPO and the complainant is included in the complaint packet.

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Officer Smart wrapped his arms around Ms. Beuhler while facing her and pulled her back behind the line of BPOT officers, away from the other protesters. Officer Smart's BWC appears to have been inadvertently turned off at this point. Ms. Beuhler began yelling and struggling with Officer Smart while he tried to control her. Officer Gonzalez observed this struggle and approached to assist Officer Smart, who at that point had pushed Ms. Beuhler to the ground, on her knees, with her upper body over her thighs. Officer Gonzalez had control of Ms. Beuhler's right arm, and Officer Smart had control of her left. At that point, Officer Anne Allare #7755 (MFF, female officer) approached and briefly held Ms. Beuhler's left hand, as Ms. Beuhler offered no resistance to Officer Allare. Ms. Beuhler was yelling while officers were trying to handcuff her while loudly instructing her to "stop resisting." While trying to handcuff Ms. Beuhler, Officer Gonzalez placed his right knee on Ms. Beuhler's upper right back area and right side, while Officer Smart placed his left knee on the left side of Ms. Beuhler's upper back and then left side area. Once they were able to get her handcuffed, Officer Smart immediately stood Ms. Beuhler up and escorted her to a waiting patrol car. Officer Smart loudly asked if there was a female officer in the area. A male officer (Officer N. Martinez) stated that they didn't have time for a female. Officer Allare turned around to assist Officer Smart. At this point, Ms. Beuhler jumped up and down, stating that she needed a female officer. Officer Allare informed Ms. Beuhler that she was a female officer. Officer Allare quickly frisked Ms. Beuhler, who was then placed in the patrol car driven by Officer Martinez. Officer Smart provided information related to Ms. Beuhler's arrest to Officer Martinez. After this, Neither Officer Smart nor Officer Gonzalez had any further involvement with Ms. Beuhler.

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No Department policies or procedures were violated by the officer in relation to the complaint received.

Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.

**Gavin Smart** Digitally signed by Gavin Smart  
Date: 2021.01.14 21:22:09 -06'00'

01/14/2021

Officer Signature

Date

*Officer's signature does not imply any wrongdoing on behalf of the subject officer. Signatures are solely intended as documentation that each party in the chain of command, including the subject officer, has reviewed the complaint.*

**Thomas Howard** Digitally signed by Thomas Howard  
Date: 2021.01.14 21:27:07 -06'00'

01/14/2021

Sergeant Signature

Date

**Adam Masters** Digitally signed by Adam Masters  
Date: 2021.01.15 08:52:03 -06'00'

01/15/2021

Lieutenant Signature

Date

**CMDR Ryan Adam** Digitally signed by CMDR Ryan Adam  
Date: 2021.01.17 13:09:25 -06'00'

1/17/2021

Commander Signature

Date

**No portion of the complaint may be copied.**

**Joseph Chacon** Digitally signed by Joseph Chacon  
Date: 2021.01.21 10:49:39 -06'00'

1/21/2021

Assistant Chief Signature

Date

**\*\*\*FOR INTERNAL AFFAIRS ONLY\*\*\***

Returned to Internal Affairs on: 1/25/2021

**Robert J. Richman #3258**

01/25/2021

Commander ~~Jerry Bauzon #2557~~

Date

Professional Standards

# **Exhibit 6**

Transcript of the Testimony of  
**Sydni Beuhler**

March 22, 2023

Sydni Beuhler v. City of Austin, Officer Gavin Smart, and  
Officer Javier Martinez

Givens Court Reporting  
sgivens@austin.rr.com  
(512) 301-7088

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER, §  
§  
Plaintiff, §  
§  
v. § CIVIL ACTION NO.  
§ 1:21-CV-00054-RP  
§  
CITY OF AUSTIN, OFFICER §  
GAVIN SMART, and OFFICER §  
JAVIER GONZALEZ, §  
§  
Defendants. §

\* \* \* \* \*

THE VIDEOTAPED ORAL DEPOSITION OF  
SYDNI BEUHLER,  
March 22, 2023

\* \* \* \* \*

ORAL DEPOSITION OF SYDNI BEUHLER, produced as a witness at the instance of the Defendants and duly sworn, was taken in the above styled and numbered cause on the 22nd day of March 2023, from 10:11 a.m. to 12:37 p.m. and from 1:32 p.m. to 3:34 p.m., respectively, before Sandra S. Givens, CSR, in and for the State of Texas, reported by machine shorthand method, at Austin City Hall, 301 W. 2nd Street, 4th floor, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure.

Page 1

I N D E X

1  
2  
3 Appearances - - - - - 2  
4 Exhibits - - - - - 3  
5 SYDNI BEUHLER  
6 Examination by Mr. Barton - - - - - 5  
7 Examination by Ms. McDaniel - - - - - 178  
8  
9 Changes and Signature - - - - - 190  
10  
11 Reporter's Certification - - - - - 192  
12

E X H I B I T S

NO.	DESCRIPTION	PAGE
13		
14	Exhibit 11 - - - - -	40
15	Previously Entered Body-Camera Footage from Officer Gonzalez's Deposition, COA378	
16	Exhibit 16 - - - - -	14
17	Previously Entered Body-Camera Footage from Officer Smith's Deposition, COA376	
18	Exhibit 20 - - - - -	59
19	Body-Camera Footage from Officer Allare, COA379 (Introduced but not included with transcript, as all parties have copies.)	
20		
21	Exhibit 21 - - - - -	62
22	Video Footage from Micalah Mullins, COA770 (Introduced but not included with transcript, as all parties have copies.)	
23	Exhibit 22 - - - - -	63
24	Video Footage from a Bystander, COA769 (Introduced but not included with transcript, as all parties have copies.)	
25		

Page 3

A P P E A R A N C E S

1  
2  
3 FOR THE PLAINTIFF:  
4 Ms. Grayson E. McDaniel  
5 HENDLER FLORES LAW, PLLC  
6 901 S. MoPac Expressway  
7 Building 1, Suite 300  
8 Austin, Texas 78746  
9 (512) 439-3200  
10 gmcdaniel@hendlerlaw.com

11 FOR THE DEFENDANTS:

12 Mr. Monte L. Barton, Jr.  
13 Assistant City Attorney  
14 Ms. Carol Smith  
15 Legal Assistant  
16 CITY OF AUSTIN  
17 P.O. Box 1546  
18 Austin, Texas 78767  
19 (512) 974-2409  
20 monte.barton@austintexas.gov  
21 carol.smith@austintexas.gov

22 VIDEOGRAPHER:

23 Mr. Walter Bryan  
24 Captis Legal Video  
25

Page 2

1	Exhibit 23 - - - - -	69
2	Video Footage from a Bystander, COA768	
3	(Introduced but not included with transcript, as all parties have copies.)	
4		
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Page 4



1 VIDEOPHOTOGRAPHER: This is media  
2 number 1. We're now on the record, the time is 10:11  
3 a.m. Today's date is March 22nd, 2023. This is the  
4 video deposition of Ms. Sydney Beuhler, Plaintiff,  
5 versus the City of Austin. We're in the United States  
6 District Court for the Western District of Texas,  
7 Austin Division. This is Civil Action Number  
8 1:21-CV-00054-RP. Madam court reporter, would you  
9 please swear in the witness?  
10 SYDNI BEUHLER,  
11 At this time being duly sworn, testified as follows:  
12 EXAMINATION  
13 BY MR. BARTON:  
14 Q All right. Will you please state your  
15 complete name for the record?  
16 A Sydney Estelle Beuhler.  
17 Q And your current age?  
18 A 26.  
19 Q Your current home address?  
20 A 340 Apache Plum Drive, Kyle, Texas.  
21 THE REPORTER: What was the street  
22 name?  
23 THE WITNESS: Apache Plum. It's  
24 two separate, yeah, words.  
25 Q How do you spell that?

1 A A-P-A-C-H-E and them Plum.  
2 Q Plum, Kyle. Okay. And your current business  
3 address?  
4 A It's on Ben White. Palazzo.  
5 Q Palazzo? How do you spell that? Just for  
6 the (inaudible).  
7 A P-A-L-A-Z-I-O.  
8 Q Okay. My name is Monte Barton. I'm the  
9 lawyer for all the defendants here today. The purpose  
10 of this deposition is to have your testimony under oath  
11 to some questions I'm going to ask about the lawsuit  
12 that you have filed. And this is a standard  
13 checklist -- I can even give you a copy of it -- I go  
14 through every time. So I'm just following this  
15 checklist right now.  
16 Do you understand that you have been put  
17 under oath by the court reporter and that you have  
18 sworn to tell the truth?  
19 A Yes.  
20 Q And do you understand that everything said in  
21 this room will be taken down by the court reporter and  
22 then typed into a transcript?  
23 A Yes.  
24 Q It's very important, then, because you're  
25 essentially making a book -- all of us are here

1 today -- to give a verbal response to all of my  
2 questions. And so in a normal conversation very often  
3 I will say uh-huh or huh-uh --  
4 A Hm-mm.  
5 Q -- or nod my head. And I'm going to do my  
6 best not to do that today, and I need to ask you the  
7 same thing, to always give a verbal response --  
8 A Okay.  
9 Q -- to whatever the question is. And it might  
10 be that if both of us end up having problems with that,  
11 that Sandy will remind us from time to time.  
12 A Okay.  
13 Q And that's her job kind of. She's a referee  
14 of sorts for the deposition here today. Throughout the  
15 course of this deposition I'll be asking a series of  
16 questions. If I ask any question that you do not  
17 understand, will you please let me know that you do not  
18 understand the question?  
19 A Yes.  
20 Q Okay. The same thing applies if I mumble my  
21 words or there's a big loud noise of some sort and you  
22 don't hear the question. If there's anything you don't  
23 hear clearly, will you let us know that as well?  
24 A Yeah.  
25 Q Okay. Do you have any medical problem that

1 might keep you from answering fully any question that I  
2 ask you today?  
3 A No.  
4 Q And if you need to stop for some reason  
5 during this deposition, a little refreshment break or  
6 what have you, we can certainly do that. I'd just ask  
7 that you go ahead and answer. For instance, if I've  
8 asked a question of you, if you'll go ahead and answer  
9 that question before the break and there won't be any  
10 trouble doing that.  
11 You have the option, and this is really  
12 directed more towards your lawyer, to read and sign the  
13 transcript once it's been typed up, and that's an  
14 option that you have. Do you have any preference?  
15 MR. BARTON: Or does your lawyer  
16 have a preference on reading and signing?  
17 MS. McDANIEL: Sure.  
18 MR. BARTON: Okay.  
19 Q Okay. Ms. Beuhler, you have filed a lawsuit  
20 that was just mentioned at the beginning of the  
21 deposition against the City of Austin, Officer Gavin  
22 Smart, and Officer Javier Gonzalez; is that correct?  
23 A Yes.  
24 Q And are you familiar with the words and the  
25 allegations in the lawsuit?

1 A Yes.

2 Q And previously there had also been another

3 defendant named Anne Allare, and I understand she's

4 been dismissed from the lawsuit.

5 A Yes.

6 Q You're aware of that whole --

7 A Yes.

8 Q -- process? Okay. Well, a lot of what I'm

9 going to do today, then, is to ask you questions about

10 the complaint and the facts and circumstances leading

11 up to that. And then you've also asked to recover

12 damages for personal injuries, and so I'll necessarily

13 ask you a lot about your personal medical history and,

14 and that sort of thing as well. So I'm just telling

15 you where I'm going.

16 A Yeah.

17 Q And I hop around and jump and skip, so again,

18 if you get kind of dazed or confused about what I'm

19 asking, don't hesitate to slow me down and I can --

20 A Okay.

21 Q -- go back and pick that up. So from the

22 complaint I understand that you are suing the city and

23 these police officers out of an event that happened

24 on --

25 A August 1st.

1 Q -- August 1st, thank you, 2020. That was on

2 a Saturday, and was it approximately 7 o'clock p.m.?

3 A Yeah. Around that time.

4 Q Okay. And do I understand that this incident

5 in its entirety happened in or on Congress Avenue?

6 A Yes.

7 Q Okay. And then I've read somewhere that it

8 was near the intersection of 4th Street. Do you recall

9 whatever street was sort of near?

10 A I think may- I'm not a hundred percent sure,

11 but it was on the intersection of a street. I think it

12 was probably -- that's probably accurate.

13 Q Okay. But in any event, all the events we're

14 going to talk about today happened on Congress Avenue.

15 A Yeah.

16 Q Okay. Well, I think there's a lot of the

17 video in this case. I wasn't really sure how to

18 approach it. So my initial thought is just to watch it

19 first and then ask some questions about it.

20 A Okay.

21 Q And so there's about four videos, and I may

22 stop while that's going on and ask you some questions.

23 A Okay.

24 Q I guess the first one to watch will be

25 Officer Smart's --

1 MS. SMITH: Smart?

2 MR. BARTON: -- video. And this

3 big screen right here I hope will show everything.

4 VIDEOGRAPHER: Would you like the

5 camera on the screen, sir?

6 MR. BARTON: Yeah. Does that work

7 pretty well?

8 VIDEOGRAPHER: Yes, sir.

9 MR. BARTON: Okay. Yeah. I think

10 so.

11 Q While we're setting that up let me ask you,

12 have you seen any of the videos?

13 A I've seen a couple of them. Yeah.

14 Q Okay.

15 A Some of them I sent -- I had from friends on

16 the -- are you talking about the body-cam footage?

17 Q Well, really all of it. That's a --

18 A Yeah.

19 Q -- good thing before we start. I'll just ask

20 you, in preparation for your deposition here today did

21 you watch any videos?

22 A Only one with the body cam, and then the

23 other videos I've seen, like, all of them, because they

24 were, like, my friends at the protests --

25 Q Okay.

1 A -- took videos.

2 Q Which one of the body cam did you see?

3 A I'm not sure. It might have been Smart.

4 THE WITNESS: Was it Smart, do you

5 know (addressing Ms. McDaniel)?

6 A It was the first body cam. Yeah. I think it

7 maybe was, but I'm not a hundred percent.

8 Q Did it cut off in the middle? In other

9 words, his video I think we'll see cuts off at some

10 point. Do you recall if the video you saw cut off?

11 A It was the one that went through being in the

12 cop car and transporting.

13 Q Transporting you?

14 A Yeah. It was before the transport and then,

15 like, into the transport.

16 Q Okay. Well, I don't think that's one we're

17 going to watch today, but we might. What other

18 videos -- you saw a video of the body-worn cam that

19 you've just mentioned, and then how many others did you

20 watch?

21 A I don't know exactly how many others, but a

22 lot of the ones that were taken from video footage from

23 outsiders were people I knew. So I watched them a long

24 time ago right when the incident occurred. But yeah, I

25 would say I viewed most of the ones that were taken by

1 protesters or...

2 Q Okay. And did you review anything else other

3 than videos in preparation for your deposition here

4 today? Any materials?

5 A Could you clarify?

6 Q Documents of any sort, photos?

7 A I don't believe so.

8 Q Okay.

9 MR. BARTON: So we have water and

10 can get more.

11 Q All right. Ms. Beuhler, I think we're going

12 to watch --

13 MR. BARTON: Carol, can I ask you

14 to state for the record the identification of this

15 video?

16 MS. SMITH: This is Defendant's

17 Exhibit -- or production COA 376, body-worn camera of

18 Officer Gavin Smart.

19 MR. BARTON: And a little side

20 note before we start, I'm not sure if these have

21 already been made as exhibits to previous depositions?

22 MS. McDANIEL: I know that we used

23 several in previous depositions, and I believe this is

24 one.

25 MR. BARTON: Okay.

Page 13

1 MS. McDANIEL: I'm fairly certain

2 we used this in Officer Smart's deposition.

3 MS. SMITH: It was number 16.

4 MR. BARTON: Number 16?

5 MS. McDANIEL: Plaintiff's Exhibit

6 16.

7 MR. BARTON: Yeah. So we'll just

8 refer to it as that.

9 MS. McDANIEL: Officer (inaudible).

10 MS. SMITH: Do you want it in its

11 entirety?

12 MR. BARTON: Yeah. I think let's

13 just watch it in its entirety.

14 (Video Played)

15 Q Okay. That stops there. Before we go to the

16 next video let me just ask you a couple of questions

17 about that. Do you recall hearing officers say, "Get

18 out of the street"?

19 A Yes.

20 Q And do you also recall them saying, "You're

21 going to get arrested"?

22 A I don't remember, but I would imagine that's

23 what they were saying.

24 Q And did you hear it right there on the

25 video --

Page 14

1 A Yeah.

2 Q -- at some point they said, "You're going to

3 get arrested"? Okay. And you saw officers with

4 bicycles kind of pushing towards the crowd and moving

5 the crowd?

6 A Oh, yes.

7 Q And what did you take that to mean when they

8 were using the bikes to push people off of Congress

9 Avenue?

10 A That they were using unnecessary use of force

11 to push people out of the road, and then they, like,

12 unleashed a whole bottle of pepper spray on the girl,

13 like, right next to me. And that's initially what

14 triggered me to where I was, like, no, this is uncalled

15 for.

16 Q Okay. But as far as your understanding of

17 the purpose of using the bicycles, was it to move

18 people out of the street?

19 A Yeah. I would imagine so. Yeah.

20 Q And that's exactly what they said they were

21 going to do, right? The police officers said, "Move

22 out of the street"?

23 A Yeah. They said, "Move out of the street."

24 Q Why didn't you move out of the street?

25 A Because I was upset. At that point I was in

Page 15

1 a version of fight or flight mode, and I saw them

2 literally unleash a whole can of pepper spray on this

3 girl next to me. And to be honest, I have had that

4 happen to me in the past where someone has sprayed a

5 whole can of pepper spray, and it triggered me to stand

6 up for her, and that was my way of standing up for her.

7 The girl that I couldn't stand up for when it happened

8 to me.

9 Q Okay. Was there anything that --

10 VIDEOGRAPHER: Your microphone

11 fell, counselor.

12 MR. BARTON: Oh, I'm sorry. Let

13 me put that back on.

14 VIDEOGRAPHER: You might want to

15 put it up a little higher on your tie, sir.

16 MR. BARTON: Okay. I'm bad about

17 these.

18 VIDEOGRAPHER: That's okay.

19 Q All right. Let me ask you another question.

20 Was there anything other than what you've just talked

21 about that prevented you from stepping out of the

22 street?

23 A Could you -- I don't believe so. I don't --

24 no. Like, you mean, like, physically or --

25 Q Yeah. Yeah. Just anything at all. Like,

Page 16

4 (Pages 13 to 16)

1 you physically were able to walk --

2 A Yeah.

3 Q -- away?

4 A Yeah.

5 Q Okay. And so you just chose not to?

6 A Mm-hm.

7 Q And was that yes?

8 A Yeah. Oh, yeah. Sorry.

9 Q It's just an example of --

10 A I did the -- yeah.

11 Q Yeah, yeah.

12 A Thank you.

13 Q Do you know the name of the girl that got

14 sprayed by the pepper spray?

15 A I don't know.

16 Q Okay. Did you -- have you seen her after

17 that event?

18 A No, I haven't.

19 Q Have you ever spoken with her?

20 A No.

21 Q So she's just someone who was near you --

22 A Yes.

23 Q -- or even right next to you that you saw get

24 sprayed by a whole bottle of pepper spray?

25 A Yes.

Page 17

1 Q Did you see her in the video we just watched?

2 A Yes, she was.

3 Q Okay.

4 MR. BARTON: Let's, if we can,

5 Carol, back that up.

6 Q And it's going to -- we don't quite have the

7 ability to stop it --

8 A I believe --

9 Q -- immediately.

10 A -- it was her. I'm almost positive it was

11 her. The blonde girl I'll show you. I'm almost

12 positive she was in the video.

13 THE WITNESS: She was in one of the

14 videos, wasn't she, Grayson?

15 (Video Played)

16 A Can you rewind it? I thought she was walking

17 in the background at the beginning.

18 (Video Played)

19 A I don't see her. I thought I saw her.

20 MS. McDANIEL: There's a number of

21 different videos it might have been in.

22 THE WITNESS: Yeah.

23 MS. McDANIEL: Next one or --

24 MR. BARTON: We'll watch more.

25 MS. McDANIEL: There are definitely

Page 18

1 more.

2 MR. BARTON: But in --

3 MS. McDANIEL: I remember you

4 mentioning that. I don't see it in that video.

5 MR. BARTON: Okay.

6 Q And let me just ask you just to clarify, did

7 you see her in the video we just watched?

8 A I thought I saw her in the video when we

9 first watched it.

10 Q Did you see it just --

11 A But I didn't see her just now.

12 Q Okay.

13 MR. BARTON: And now, Carol, I

14 know you're -- driving you crazy. Can we watch the

15 video again, like, midway through towards the end?

16 A I remember she had blonde...

17 (Video Sporadically Played)

18 Q Yeah. Probably about there, and be prepared

19 to stop it if you can. Maybe a little further.

20 MS. McDANIEL: It might have been

21 the bystander video where you can see the horses.

22 THE WITNESS: Yeah.

23 MR. BARTON: Yeah. About there

24 would be good.

25 (Video Played)

Page 19

1 MR. BARTON: And if you'll stop

2 it, Carol, right now.

3 Q What I'm going to ask you, Ms. Beuhler, in

4 this video I think I see you a couple of times.

5 A Yeah.

6 Q And so I'm just going to point that out as to

7 where you are, and so...

8 MR. BARTON: Go ahead, Carol.

9 (Video Played)

10 A And really --

11 MR. BARTON: Stop it.

12 Q Wherever you see yourself can you point that

13 out too in case I happen to miss it?

14 (Video Scrolling)

15 A Yeah. I think it was a little bit back on

16 the left.

17 Q Okay.

18 A Right back -- yeah. Wait. Go forward a

19 little bit. I think it was me. Yeah. There, right

20 there.

21 MS. SMITH: This right here?

22 THE WITNESS: No. Behind them

23 right there.

24 MS. SMITH: Ah.

25 Q Okay. So that's -- I see. I see that image.

Page 20

1 MR. BARTON: And what's the number  
2 on that, Carol, the last --  
3 MS. SMITH: 1:45.  
4 Q So at about 1:45 is you, and you're wearing  
5 a kind of a black outfit with a pink --  
6 A Fanny pack.  
7 Q -- fanny pack, and looks like you have  
8 goggles on?  
9 A Yeah.  
10 Q And, like, a black hood?  
11 A Yeah. Like, green, dark green.  
12 Q Dark green. Okay. Do you have any other  
13 items with you that you recall at that time?  
14 A Yeah. In my fanny pack, yeah.  
15 Q What did you have in the fanny pack?  
16 A I had my glasses, I had a taser, and I  
17 don't -- oh, my vape, my nicotine.  
18 Q Vape. Okay. So you personally had a TASER?  
19 A Yeah. I've had a TASER for -- since I  
20 started my job.  
21 Q Okay. I'll make a note and probably ask you  
22 about that a little later. Did you have any other  
23 items with you on this day?  
24 A And my phone.  
25 Q Phone.

Page 21

1 A Okay.  
2 Q -- I think that's pretty clear.  
3 MR. BARTON: So Carol, I don't  
4 know if it's best for you to scroll through or play it.  
5 (Video Scrolling)  
6 A There's me -- oh, there's the girl who  
7 got -- she's walking off. I'm pretty sure that's her.  
8 MS. McDANIEL: This one  
9 (crosstalk)?  
10 A The girl right who's walking off right now,  
11 I'm pretty that's her who got pepper-sprayed, but I'm  
12 not a hundred percent, so I don't want to, like --  
13 Q Can you have Carol move the cursor around,  
14 like, if --  
15 A If we can, like, slide it you can see her  
16 coming to my shoulder, I think is what happened. Yeah.  
17 We're kind of going off now.  
18 MR. BARTON: Back, let's go back.  
19 Backwards.  
20 A I think that's her.  
21 Q Okay. Well, I guess let's continue. So this  
22 is you again?  
23 A Yeah.  
24 Q And that looks to be 1:50.  
25 A Yeah. And that's my best friend.

Page 23

1 A And that's, I think that's about -- that  
2 covers about all of it.  
3 Q Okay. I've seen a couple people had, like,  
4 umbrellas?  
5 A Oh, I didn't have one.  
6 Q You didn't have an umbrella? Did you see  
7 people with umbrellas in the crowd?  
8 A I saw someone just now on the video.  
9 Q Okay.  
10 A I was kind of in the back of the protests  
11 until the point where I was arrested, but yeah. I saw  
12 they were, like, lined up in the front kind of.  
13 Q Okay. Did you see more than one person with  
14 an umbrella?  
15 A I just saw that one person in the video.  
16 Q Oh, just on the video right now --  
17 A Yeah.  
18 Q -- you saw.  
19 A Like, I don't recall who all had umbrellas  
20 or --  
21 Q I see. Okay.  
22 A Yeah.  
23 Q Well, I guess I want to go forward and  
24 identify you if there's any other times other than, you  
25 know, right at the very end of the video --

Page 22

1 Q Oh, the lady in red?  
2 A Yeah.  
3 Q What is her name?  
4 A Micalah.  
5 Q Micalah. All right. What is Micalah's last  
6 name?  
7 A Oh, Micalah (indistinct). Micalah Mullins.  
8 Q Mullins?  
9 A Mm-hm.  
10 Q All right. Had you come to this protest with  
11 Micalah?  
12 A Yeah. We went together often.  
13 THE REPORTER: Would you spell  
14 Micalah?  
15 THE WITNESS: M-I-C-A-L-A-H. You  
16 type so fast, I'm, like, talking waiting, but you're  
17 waiting on me.  
18 Q And when you say you went together often was  
19 that just to all sorts of events or protests --  
20 A Yeah.  
21 Q -- or what?  
22 A We're best friends. She lives down the  
23 street from me.  
24 Q Okay.  
25 A We have houses next to each other.

Page 24

6 (Pages 21 to 24)

1 Q I see. All right. Had you previously been  
2 to protests with her?  
3 A Yeah. Before this one? Yeah. We actually  
4 reconnected at a protest, and then -- yeah. So I was,  
5 like, best friends with her sister, and then we  
6 reconnected at a protest, and then we started going  
7 regularly together.  
8 Q Okay. About how many protests do you think  
9 y'all have been to?  
10 A Oh, gosh. For a few months there we were  
11 going, like, anywhere from three to five times a week.  
12 Q So would that have been following the May  
13 George Floyd --  
14 A Yeah.  
15 Q -- kind of event that --  
16 A Yeah.  
17 Q -- started everything off? So from that  
18 period of time, roughly May up through August, y'all  
19 had gone to several protests?  
20 A Yeah.  
21 Q Two to three times a week for a period of  
22 time anyway?  
23 A (Nodding head)  
24 Q Okay. Had Micalah been at most of those with  
25 you?

Page 25

1 A Yeah. Majority of them.  
2 Q So Micalah lives in Kyle as well?  
3 A Mm-hm.  
4 Q Okay.  
5 MR. BARTON: All right. And I  
6 guess let's continue going forward.  
7 (Video Scrolling)  
8 MR. BARTON: And so I guess stop  
9 it right there.  
10 Q Does it look like Micalah is just walking to  
11 the sidewalk?  
12 A Yeah.  
13 Q Okay.  
14 MR. BARTON: Go forward, please,  
15 Carol.  
16 (Video Scrolling)  
17 Q So then -- and so that's you again.  
18 MR. BARTON: I guess that's at,  
19 what time marker is that?  
20 MS. SMITH: 2:07.  
21 Q 2:07. So at this point at 2:07, which is  
22 just the elapsed time, not the time of the day, it  
23 looks like Micalah had already gone to the sidewalk; is  
24 that correct?  
25 A Yeah.

Page 26

1 Q And so you and a few others are still in the  
2 street though?  
3 A Yeah.  
4 MR. BARTON: Go forward, please,  
5 Carol.  
6 (Video Played)  
7 Q Okay. And so at the very end right there,  
8 that is you, correct?  
9 A Mm-hm.  
10 Q With the fanny pack and the --  
11 A Yeah.  
12 MR. BARTON: And I guess that's at  
13 2...  
14 MS. SMITH: 10.  
15 Q 2:10, 2:11, something like that. And it  
16 looks like you may have something in your hand, but I'm  
17 not sure.  
18 A It's a water bottle.  
19 Q Water bottle. Okay. And --  
20 A I was drinking it. It wasn't, like...  
21 Q Okay. So that's clearly you. You aren't  
22 throwing water bottles though.  
23 A No.  
24 Q Okay.  
25 A No. No.

Page 27

1 Q Have you ever thrown a water bottle --  
2 A No.  
3 Q -- at any of the protests? Okay.  
4 A No.  
5 Q Have you ever thrown anything at any of --  
6 A No.  
7 Q -- the protests? All right. Okay. So  
8 that's you and you've got on some, looks like some  
9 protective goggles?  
10 A Yes.  
11 Q And black kind of mask of some sort?  
12 A Yes.  
13 Q And what is that kind of mask called?  
14 A I don't even know the name of it.  
15 Q But -- okay. And then your hood, is that  
16 just attached to a hoodie, or is that a special hood of  
17 some sort?  
18 A No. It's literally just, like, I guess a  
19 hunting mask. So it's just, like, a -- you can take it  
20 off I guess.  
21 Q Okay.  
22 A I don't know. You know, like the ones that  
23 have the openings right here?  
24 Q Yeah. Kind of like a ski mask?  
25 A Yeah.

Page 28

1 Q Okay. So in other words, that whole piece of  
 2 clothing on your head is one, one piece of clothing.  
 3 A Yeah.  
 4 Q Okay. I gotcha.  
 5 A It's not connected to the jacket.  
 6 Q And then the rest of your attire is what?  
 7 You've got on kind of a dark shirt?  
 8 A Yeah. With Cardi B.  
 9 Q Okay. And is that a sweatshirt or is it --  
 10 A Yeah.  
 11 Q Yeah. And then what are -- about your pants?  
 12 A I think I was wearing black leggings.  
 13 Q Black leggings. Okay. And then what kind of  
 14 shoes did you have on?  
 15 A I think I was wearing white tennis shoes,  
 16 maybe Adidas. I'm not sure at that time.  
 17 Q Okay. Why did you have those goggles on?  
 18 A Because they had unleashed pepper spray at a  
 19 lot of the previous protests, and honestly, that was  
 20 my first time wearing the goggles and the hood. I had  
 21 never worn that at a protest before, but we knew our  
 22 friend Garrett Foster had passed away, so we kind of  
 23 had a feeling that there was going to be a  
 24 counter-protest going on and that the police were going  
 25 to probably pepper-spray us or do whatever they usually

Page 29

1 do. So we came more prepared for that to happen.  
 2 Q Okay. So the goggles then were in  
 3 anticipation that someone might spray pepper spray at  
 4 you?  
 5 A Yeah.  
 6 Q Was it your anticipation it would be the  
 7 police spraying pepper spray or some counter-  
 8 protesters?  
 9 A Either/or.  
 10 Q Did anyone spray pepper spray on you on this  
 11 day of August 1, 2020?  
 12 A I, like, maybe got the remnants, but no. The  
 13 police sprayed the whole crowd, though, a lot of people  
 14 in the crowd. Like, my -- one of my friends had to  
 15 get -- go out on, like, a stretcher, because she got  
 16 pepper-sprayed really bad.  
 17 Q Okay. But you personally, other than --  
 18 A No.  
 19 Q -- getting some drift or some remnants --  
 20 A No.  
 21 Q -- were not --  
 22 A And I wouldn't --  
 23 Q -- directly sprayed?  
 24 A Yeah.  
 25 Q Okay. Who's your friend that got pulled out

Page 30

1 on the stretcher?  
 2 A Yumz. I don't know her full -- like, she  
 3 goes by Yumz. She's with -- Family for Justice was,  
 4 like, the group we were a part of, and it was like a  
 5 small family. And yeah, and her whole family was in  
 6 the group. It's her mom, her cousin, her sister.  
 7 Q And help me with the spelling. It sounds  
 8 like you said Yums --  
 9 A Yeah.  
 10 Q -- like Y-U-M-S?  
 11 A Z.  
 12 Q Y-U-M-Z. Okay.  
 13 A Yes.  
 14 Q And do you know the name of her mother or  
 15 sisters?  
 16 A We call her Mama. I mean, I have her Ebony  
 17 Phoenix, is what her -- on Facebook I believe. I  
 18 wouldn't know how to spell that, but we --  
 19 Q Ebony Phoenix?  
 20 A Yeah.  
 21 Q Is that the mother's --  
 22 A Yeah.  
 23 Q -- name on Facebook or social media? What  
 24 about the sisters?  
 25 A Yumz, I don't know. I would have to look at

Page 31

1 the social media.  
 2 Q Okay.  
 3 A Shae is the cousin's name, and then Jen is  
 4 the other sister. Yumz, I don't think that's her,  
 5 like, real...  
 6 Q Real name?  
 7 A Yeah. Yeah.  
 8 Q Do you have any idea -- is Shae, like, her  
 9 real sister's name?  
 10 A Yeah. Shae is her cousin, and that's her  
 11 real name. And then Jen, I'm pretty sure that's her  
 12 real -- yeah.  
 13 THE REPORTER: Jen, J-E-N?  
 14 THE WITNESS: J-E-N. Yeah.  
 15 Q As the sister?  
 16 A It's probably short for, you know, Jenny or  
 17 something, or Jennifer.  
 18 Q Shae, would your best idea for spelling  
 19 that --  
 20 A S-H-A-E.  
 21 Q A-E. Okay.  
 22 A I actually ran into her, like, a couple days  
 23 ago, ironically.  
 24 Q And so what was the name of this group you  
 25 were with?

Page 32

8 (Pages 29 to 32)

1 A Family for Justice.

2 Q Family for Justice. Okay. And does it have,

3 like, a structure with a web page and mailing list and

4 any of that sort of stuff, or how do you, how do you

5 become a member of the group, Family --

6 A We kind of just got together, and we'd, like,

7 register people to vote. We would, like, feed the

8 homeless. It was kind of just a very small close-knit

9 group, and we would, like, go to, like, lower-income

10 areas and, like, give people instructions on how to

11 vote. So I don't think there's a website or anything.

12 Q How did you get involved with Family for

13 Justice?

14 A You kind of go -- when you went to the

15 protests you kind of start off alone, and then you

16 find, like, you find, like, the group of people you fit

17 in with the most, and then you just -- you get close.

18 I got really close to them really fast and -- I was

19 close to everyone out there, but, like, mainly them.

20 And we stuck together through all of it, so that's kind

21 of how we became, like, a group.

22 Q Okay. And when do you think you first met

23 the Family for Justice people?

24 A I think I met them through my friend Micalah.

25 Q Okay.

Page 33

1 A Yeah. Once me and Micalah started going to

2 the protests together she introduced me to them, and

3 then we started going with them.

4 Q And do you think that was -- I'm just trying

5 to get a timeframe of sorts. You think that would have

6 been May, June, July, August, or when?

7 A Probably in June.

8 Q June? And do you recall any other people who

9 were in Family for Justice?

10 A There's another guy Jay who was in it. I

11 don't remember everyone who was a part of it. It was

12 very small though. I think it was generally just us

13 and -- yeah.

14 Q Okay. And when you say "generally just us,"

15 correct me if I misspeak on any of this, it would be,

16 like, you and Micalah, Jay, and then --

17 A The family, their family. Yeah.

18 Q -- the mother and the cousin and the sister

19 and then Yumz?

20 A Yeah.

21 Q Okay. Any others that were frequent

22 participants?

23 A Maybe, like, the sister's girlfriend and,

24 like -- but that's about it. Yeah.

25 Q Okay. So in other words, a group of -- and

Page 34

1 I've lost count, quite frankly, of the number, but a

2 group of 10 or less?

3 A Yeah.

4 Q Not --

5 A Very small.

6 Q -- not a hundred or more.

7 A Yeah.

8 Q Yeah. Okay. And do you know the names of

9 any other groups similar to that that were

10 participating in this event on August 1?

11 MS. McDANIEL: Objection, form.

12 You can answer.

13 THE WITNESS: What?

14 MS. McDANIEL: Go ahead. I'm

15 just...

16 A I don't necessarily know the names of all the

17 groups that were out there, and I don't want to, like,

18 give a wrong, you know -- I know there's a group in

19 Dallas, but yeah.

20 Q (By Mr. Barton) Okay. And yeah. I mean,

21 you're not -- I'm just asking you what you know.

22 A Yeah.

23 Q So if you don't know fully, that's, that's

24 fine. I'm just --

25 A Yeah.

Page 35

1 Q -- asking what you do have any recollection

2 of. And so you recall a group from Dallas that was

3 there on August 1?

4 A Yeah.

5 Q And do you recall their name?

6 A I don't remember the name of their group.

7 They were who I was, like, arrested -- like, I was on

8 the bus with them, that's how I remember them. But I

9 don't remember the name. They were cool. They were

10 nice. They were very peaceful.

11 Q What about any other groups on this

12 particular day other than Family for Justice and the

13 Dallas group? Like, do you recall any other people out

14 there that you knew?

15 A I think I probably knew more people. I just,

16 I don't remember everyone. It's been two years, and I

17 stopped protesting after this situation, so...

18 Q Okay.

19 A Yeah.

20 Q I guess I'm just getting at, like, as you've

21 been to several of these protests, you know, were there

22 some regulars? So like, for instance, you would go,

23 Oh, well, there's --

24 A Yeah. That's --

25 Q -- whoever.

Page 36



1 A We were actually protesting Garrett Foster,  
2 and he was a regular. But he got killed, and that's  
3 what this protest -- it was Black Lives Matter, but it  
4 was also, like, in remembrance of him. So I think a  
5 lot of people were out there too in remembrance of him.  
6 So it wasn't just protest groups. It was, like,  
7 probably, like, family, friends of him. It was where  
8 his memorial was set up.

9 Q Okay. So the reason you were there on this  
10 particular day was primarily, would it be fair to say,  
11 to --

12 A Protect his memorial.

13 Q Garrett Foster.

14 A Yeah.

15 Q And then as you also said, it was -- that was  
16 in part an offshoot also of the --

17 A Black Lives Matter.

18 Q -- Black Lives Matter.

19 A Yeah.

20 Q And so you personally knew Garrett Foster.

21 A Yeah. From the protests.

22 Q Before the -- and I'm just going to refer to  
23 them generally as the George Floyd protests, because I  
24 think that's how most of the world refers to them.  
25 Before the George Floyd protests that began in May of

Page 37

1 2020 had you been to any other protests?  
2 A Yes, I did. I did. I would do -- I didn't  
3 protest as much as I did after this occurred, but I  
4 will say I was out there. Like, every women's march  
5 there was; any Pride, like, Pride protests or any of  
6 that I was out there when there was.

7 Q Prior to --

8 A Yes.

9 Q -- 2020.

10 A Yeah.

11 Q Prior to August 1.

12 A So I would say, like, a few times a year.

13 Q Okay. And this is just a complete guess, I  
14 mean, whatever guess you can put down: How many  
15 protests do you think you had been to prior to May  
16 2020?

17 A Oh, like, my whole life?

18 Q Yeah.

19 A I'd probably say 10 to 15.

20 Q Okay. And for the topics that you just  
21 mentioned?

22 A Yes. Or like, you know -- yeah. Mainly that  
23 or the election, you know, that kind of thing.

24 Q Okay. And where were most of the protests  
25 you attended?

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1 A Most of them were at the capitol.

2 Q Okay.

3 THE REPORTER: Monte, when you get  
4 to a place where we can take a short break...

5 MR. BARTON: Yes. Now is a  
6 perfect time for me.

7 VIDEOGRAPHER: This is the end of  
8 media number 1. We're now off the record. The time is  
9 10:57 a.m.

10 (At 10:57 a.m. the proceedings  
11 recessed, continuing at 11:09 a.m.)

12 VIDEOGRAPHER: This is media number  
13 2. We're now back on the record, the time is 11:09  
14 a.m.

15 Q (By Mr. Barton) Okay, Ms. Beuhler, just a  
16 couple more questions I think about this, and then  
17 we'll probably move on to another video. But do I  
18 understand that, from what you said a few minutes ago,  
19 this was the first protest you had been to where you  
20 wore goggles and --

21 A Yeah.

22 Q Okay. And you mentioned just briefly that  
23 you knew Garrett Foster?

24 A (Nodding head)

25 Q And did you know him personally?

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1 A We talked a few times at the protests, but  
2 mostly being out there with everyone was, like, enough  
3 to know each other, you know? Yeah.

4 Q Were you at the protest or the event where he  
5 was shot?

6 A I arrived, like, after just to help everyone,  
7 like, get back on their feet and, like, be there for  
8 everyone. But I wasn't there whenever it happened.

9 Q Okay. All right. I think let's move on to  
10 the next video, and I think at this point it'll be the  
11 Gonzalez video.

12 MR. BARTON: And has that -- it's  
13 been made a --

14 MS. SMITH: Yes.

15 MR. BARTON: -- exhibit already?

16 MS. SMITH: The Gonzalez video was  
17 Exhibit 11 --

18 MR. BARTON: Okay.

19 MS. SMITH: -- to Officer  
20 Gonzalez's deposition. It is from defendant's  
21 production Bates-stamped COA (inaudible) -78.

22 THE REPORTER: I didn't hear the  
23 number.

24 THE WITNESS: COA378.

25 MS. SMITH: Yeah. Bates-number

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1 COA378.  
 2 Q (By Mr. Barton) And so, Ms. Beuhler, I'll  
 3 just ask you to watch this for the next -- actually,  
 4 let's, let's watch a little bit of it, I guess up to  
 5 the point where the horses come out, and then watch  
 6 that --  
 7 MS. SMITH: Right here?  
 8 MR. BARTON: Yeah. Back that up,  
 9 and then we may skip forward. I guess just start right  
 10 here, that'd be fine.  
 11 (Video Played)  
 12 Q And while it's playing I'll ask you this.  
 13 Have you seen this video previously, Ms. Beuhler?  
 14 A No. I don't believe so.  
 15 MR. BARTON: Okay. I guess let's  
 16 stop it there to ask a question or two.  
 17 Q So Ms. Beuhler, do you now see from watching  
 18 the video right now the horses come out and then the  
 19 bicycles?  
 20 A (Nodding head)  
 21 Q And do you recall seeing the horses and  
 22 bicycles on the day of the incident, August 1, 2020?  
 23 A When they were, like, right in the crowd.  
 24 Yes.  
 25 Q Yeah. I mean --

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1 A Yeah.  
 2 Q -- you were obviously down the street, but  
 3 you recall seeing the horses and the bicycles.  
 4 A Yeah.  
 5 Q And was it your understanding that the  
 6 purpose of the horses and the bicycles was to clear the  
 7 street, clear Congress Avenue?  
 8 MS. McDANIEL: Objection, form.  
 9 A I don't -- I mean, we were just out there,  
 10 like, literally just trying to grieve our friend who  
 11 just passed, and watching the behind-the-scenes is,  
 12 like, really blowing my mind. Because I'm, like, we  
 13 were just grieving. We were so sad and they're  
 14 preparing for battle right now. Like, that's what's  
 15 just blowing my mind right now. It kind of, like, made  
 16 me a little -- like, they're getting all the -- all  
 17 these weapons. I don't know. I'm sorry. It's just,  
 18 like, yeah. Sorry. But I just...  
 19 Q (By Mr. Barton) No. That's fine to say all  
 20 that, but I guess my question is, did you have an  
 21 understanding that the people on the bicycles and the  
 22 horses were clearing Congress Avenue?  
 23 A I mean, I would imagine that's I guess what  
 24 they're doing, but yeah. Yeah.  
 25 Q Okay.

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1 MR. BARTON: Carol, can we go  
 2 forward a little bit to -- yeah. That now is probably  
 3 good.  
 4 MS. SMITH: How's that?  
 5 MR. BARTON: Yeah.  
 6 (Video Played)  
 7 MR. BARTON: Can you stop it  
 8 there?  
 9 Q Did you see somebody with an umbrella to the  
 10 right?  
 11 A I couldn't really watch it right then. Can  
 12 you rewind?  
 13 Q We can certainly take a break.  
 14 A (Nodding head)  
 15 MS. McDANIEL: Do you need a break?  
 16 THE WITNESS: Yeah. I'm going to  
 17 use the restroom real quick.  
 18 VIDEOGRAPHER: This is the end of  
 19 recording number 2. We're now off the record, the time  
 20 is 11:19 a.m.  
 21 (At 11:19 a.m. the proceedings  
 22 recessed, continuing at 11:23 a.m.)  
 23 VIDEOGRAPHER: This is the  
 24 beginning of media number 3. We're back on the record,  
 25 the time is 11:23 a.m.

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1 Q (By Mr. Barton) Okay. Ms. Beuhler, we took  
 2 a break just a couple minutes ago while we were  
 3 watching the video, and so I'll ask you a little bit  
 4 about, you know, how that was upsetting to you. But  
 5 also, know if something else comes up where we need to  
 6 take a break, we can certainly do that. And I am  
 7 planning on going through these video.  
 8 A Yeah.  
 9 Q Is that okay?  
 10 A Yeah. I kind of figured.  
 11 Q Okay. All right.  
 12 VIDEOGRAPHER: I need you to put  
 13 your microphone on, please, ma'am.  
 14 THE WITNESS: Oh, I didn't. Oh,  
 15 gosh.  
 16 VIDEOGRAPHER: Thank you.  
 17 Q Okay. I think -- well, let me just ask you.  
 18 Was there something in particular about the video you  
 19 were watching that upset you?  
 20 A I was just getting sad because of -- about  
 21 my friend. And then just, like, seeing all the  
 22 behind-the-scenes and what takes place when they're  
 23 going to get ready to go to a protest just kind of,  
 24 like, triggered me a little bit. But yeah. That's  
 25 really what it was.

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1 Q Okay. But nothing about this particular  
2 scene on the screen right now? Or is it just the fact  
3 that there are police officers --  
4 A Honestly --  
5 Q -- on the screen?  
6 A -- it's all going to be a little bit, it's  
7 all going to be emotional. So it's okay.  
8 Q Okay.  
9 A Yeah.  
10 Q Well, let me ask you one other question  
11 before we go further. I think I'd asked you if you saw  
12 somebody carrying an umbrella.  
13 A I missed that part.  
14 Q Okay.  
15 A Yeah.  
16 Q That's fine.  
17 MR. BARTON: Well, let's continue  
18 forward, Carol.  
19 (Video Played)  
20 A I see them now.  
21 Q Okay.  
22 MR. BARTON: Okay. Let's stop  
23 right there and then back up to where that begins.  
24 Q And Ms. Beuhler, I'll ask you if you identify  
25 yourself on this bit of video. Okay. Do you see

1 an iPhone?  
2 A I'm not sure. Not that I can recognize in  
3 the video.  
4 MS. McDANIEL: You're talking about  
5 the man in the middle with the bike helmet on?  
6 MR. BARTON: Yeah. Because  
7 they're both holding iPhones, aren't they?  
8 Q Well, yeah. There's a guy holding a red bike  
9 with a bike helmet on, and looks like he's filming. Do  
10 you -- have you seen him before?  
11 A I don't recognize him from the video.  
12 Q Okay.  
13 A I don't believe so.  
14 Q And then there's a guy next to him that may  
15 or may not also have a camera. Looks like he's wearing  
16 an old-style army helmet and a green vest. Do you  
17 recognize him?  
18 A I don't, I don't know who that is.  
19 Q And then there's a woman on the other side of  
20 the red bicycle with her hand up. Do you know her?  
21 A I don't believe so.  
22 Q Okay.  
23 A I can't see her face, but, but yeah.  
24 Q But leading up to that I think you mentioned  
25 there's Micalah, or mik-AY-la.

1 yourself?  
2 A Yeah, I do.  
3 MR. BARTON: And let's stop right  
4 there, Carol. The count number looks like it's  
5 about --  
6 MS. SMITH: 5:32.  
7 Q 5:32, and a second or two leading up to that  
8 you're able to identify yourself in that video,  
9 correct?  
10 A (Nodding head)  
11 Q And you're on Congress Avenue, and it looks  
12 like --  
13 A Yeah.  
14 Q -- an officer is holding you; is that  
15 correct?  
16 A Yeah.  
17 Q Okay.  
18 MR. BARTON: We can go forward.  
19 (Video Continuing)  
20 A My best...  
21 MR. BARTON: Okay. Let's stop  
22 right there.  
23 Q I just have a couple questions leading up to  
24 that. Do you happen to know the guy in the photo right  
25 now -- it looks like it's at 7:30 -- and he's holding

1 A Yeah. She was in the video too.  
2 Q She's in the video leading up to this point  
3 and -- okay. So she was on the sidewalk, right?  
4 A Yeah.  
5 Q As these other people on the sidewalk and  
6 saying whatever they wanted to say, right, on the  
7 sidewalk?  
8 A Yeah. She was -- yeah.  
9 Q Okay. So if you would, describe -- even  
10 though we've seen the video, but I'd like your  
11 description to the extent you can give it, of what  
12 happened right before the officer and you were pulled  
13 away from the crowd and you were handcuffed.  
14 A So from the beginning I saw them coming in  
15 with horses and, and bikes, and I was in the back  
16 because Micalah was on this side with another one of  
17 our friends, and then on the other side was the rest of  
18 the Family for Justice.  
19 So I was in the back of the protests  
20 pacing, making sure all of them were okay. And then at  
21 some point the crowd dispersed, and I did -- like, that  
22 was whenever they pepper-sprayed the girl and she came  
23 over to my shoulder, and then that's whenever I got  
24 angry and, like, went back into the crowd or back into  
25 the street.

1 Q Okay. And again, you didn't know the girl.  
2 A No. I did not.  
3 Q Okay. She was not part of Family for  
4 Justice.  
5 A No. I don't think so.  
6 Q Okay. So then you stepped forward you said,  
7 and then what happened? Just your recollection of the  
8 events.  
9 A And then I yelled, and then they picked me up  
10 and brought me into the street and then put me on the  
11 ground. Three of the officers were, like, on top of me  
12 doing the -- breaking my -- felt like they were  
13 breaking my wrist. Whenever I was being arrested I  
14 thought my wrist was about to break. And then they  
15 picked me up and they were, like, "We have a female,  
16 but we don't have time for a female officer."  
17 But as y'all previously met, the other  
18 officer was a woman who was a part of it, and that's  
19 whenever I started getting really scared and frantic,  
20 because I did not -- I had been searched by a male  
21 officer before unwarranted, and I did not want that to  
22 happen to me again.  
23 And so that's whenever I started saying,  
24 "I need a female officer, I need a female officer."  
25 And then they got a -- she came in my face and she was,

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1 like, "Look, I'm right here." And she was very kind to  
2 do that, to be, like, "Look, I'm right here." I mean,  
3 that was kind of how it should be, but she was, like,  
4 "Look, I'm right here," and she comforted me and then  
5 she, like, searched me. And then they brought me to  
6 the cop car and set me in the cop car with, like, no  
7 air condition.  
8 Q Okay. And so just to be clear, you were  
9 searched by a female officer.  
10 A Yes, I was, after I, I asked for it.  
11 Q Yeah. And then leading up to that you -- do  
12 I understand correctly, you decided instead of leaving  
13 the street to go into the sidewalk, you decided to take  
14 steps toward the officers and --  
15 A Yeah.  
16 Q -- stay in the street?  
17 A Yes.  
18 Q Okay. And then part of that to show that you  
19 weren't moving, I think the video says that you said  
20 "fuck you" to the --  
21 A Yeah.  
22 Q -- police officers? Okay. Why did you say  
23 that?  
24 A Because I was mad that they pepper-sprayed  
25 that girl, and I was mad at everything that was going

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1 on.  
2 Q Okay. Did you ever consider just walking  
3 over to the sidewalk and then saying the same words  
4 from the sidewalk?  
5 A Everything was happening so fast. When  
6 you're, when you're in, like, something like that I  
7 don't think you really have enough time to think.  
8 You're just, like, kind of doing, because you're in an  
9 area where it kind of seems like a lot of people are in  
10 fight or flight mode out there, including the police I  
11 guess. I don't frickin' know.  
12 Q Okay. So for that sequence right there, the  
13 allegations of your complaint are that that was  
14 excessive force.  
15 A Yes.  
16 Q I get to ask questions, so I'm going to ask  
17 this one. What about that did you consider to be  
18 excessive force?  
19 A Because instead of saying, Ma'am, can you  
20 turn around, you're being arrested for being in the  
21 streets, instead they aggressively grabbed me and  
22 brought me into the streets with two other officers.  
23 And that's what I think is excessive force, because had  
24 they come up to me in a manner of, like, Hey, you're  
25 being arrested, which is usually how arrests should go,

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1 from my understanding, is you get, like, Hey, you're  
2 being arrested, and then you turn around. You have to,  
3 like, get the option.  
4 And I think also with the wrist-bending,  
5 he even went back -- I was, like, I couldn't even watch  
6 that. I was the one who experienced it and I could  
7 even watch that. And he went back and bent my wrist  
8 again on top of that. I don't know, it's just I don't  
9 think it was right. And for them to all be, like, on  
10 top of me? No.  
11 Q Okay. So you would say that in effecting the  
12 arrest of you, you know, not clearing the street, that  
13 they used too much force.  
14 A Yes.  
15 Q Okay.  
16 A I wasn't, like, throwing anything, I wasn't,  
17 like -- you know, like, there was no reason for them to  
18 think that I was going to attack them physically.  
19 Q Okay. Anything else from what you've just  
20 seen that you think was done improperly by the police?  
21 A Not that I -- I mean, I think they should  
22 have not went immediately to, "We have a female, we  
23 don't have a female officer," when there was a female  
24 officer in the premises. Literally one of them was one  
25 of the ones assisting in my arrest. So that was

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1 another thing that threw me off. Like, they don't even  
 2 check and see if there was a woman right by y'all. Why  
 3 did y'all just go straight to assuming, Oh, she's a  
 4 woman, I'm going to search her? Why didn't they  
 5 call -- why didn't they check and see? Because  
 6 obviously there was a woman.

7 Q Okay. Anything, any other things that you  
 8 see that you disagree with?

9 A I mean, just the entire situation, but how it  
 10 was handled. But no, not -- I think I've listed pretty  
 11 much all of it.

12 Q Okay. Okay. Did you talk with Micalah about  
 13 this incident?

14 A Yeah.

15 Q And when's the first time you spoke with her  
 16 about it?

17 A She's the one who got me -- I talked to her  
 18 while I was -- I finally -- I think I talked to her in  
 19 the jail, or it might have been right after. She's  
 20 the one who got an attorney once she noticed that it  
 21 was me, got someone to come, like, get me out. Or  
 22 what's it called where they bail you out? The, the  
 23 not a --it's like the --

24 MS. McDANIEL: Bondsman?

25 A Bondsman. Yeah.

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1 Q How were you transported to the -- was it to  
 2 the jail you went or, or were you --

3 A I went to so many locations.

4 Q Okay.

5 A Yeah. I sat in that car for about 30 minutes  
 6 parked in front of the protests, and they went -- they  
 7 were standing outside of the car. And they would,  
 8 like, crack the window a little bit every once in  
 9 awhile to let me get, like, air or whatever, and then  
 10 they, like, drove me to another location where they  
 11 searched me again. And it was, like, in a carport, and  
 12 I was there for about I guess 30 minutes. That was  
 13 another 30-minute process. And then they drove me to  
 14 another location, parked on a street -- I forgot which  
 15 street it was.

16 And then they took me out of the car,  
 17 took my cuffs off and put me in zip ties and then put  
 18 me on a metal bus, and I sat there for about another 30  
 19 minutes. And within that 30 minutes two girls came on  
 20 the metal bus and were taken off the metal bus. And  
 21 then they took me off the metal bus and put me on a big  
 22 bus with the rest of the protestors, and then that's  
 23 when they proceeded to take me to the jail. So I think  
 24 going to the jail was, like, probably about a two-hour  
 25 process, just transporting.

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1 Q Okay. And did you talk to anybody in that  
 2 process from when you got into the patrol car until --

3 A The officer.

4 Q Okay.

5 A And the two girls who were on the metal bus.  
 6 We both had similar -- we all three had similar  
 7 experiences. Yeah.

8 Q Do you know the names of those two girls?

9 A No, I don't. I just met them on the bus, and  
 10 they were telling me about their experience, and I was,  
 11 like, "Oh, my God, that happened to me." That was just  
 12 kind of how that --

13 Q What, what was their experience, to the  
 14 extent --

15 A They were --

16 Q -- you recall?

17 A -- yelling "stop resisting" over them when  
 18 they weren't resisting arrest, and that was similar to  
 19 what happened with me when they were yelling and I was  
 20 on the ground and they were yelling "stop resisting."  
 21 But there's no literal no way I could have resisted,  
 22 and that's what we were talking about.

23 Q Okay. So you -- is it your testimony you  
 24 were not resisting at all?

25 A I don't feel like I was resisting. I don't

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1 feel like I was resisting. Like, I was just taken up  
 2 into -- and then they put me -- I wasn't resisting.  
 3 Like, if anything -- if anything, I would say, like,  
 4 when they said I -- "We don't have time for a female,"  
 5 that maybe triggered me, but I wasn't resisting.

6 And, like, even before they got me on  
 7 the ground they weren't saying stop resisting, so  
 8 clearly I wasn't resisting. I was yelling, but I  
 9 wasn't resisting. And then it was once they got me on  
 10 the ground and were cuffing me already they start  
 11 saying, "Stop resisting." That doesn't make sense with  
 12 me.

13 Q Okay. Did you, you let your arms just go  
 14 limp, or did you kind of --

15 A I don't remember.

16 Q -- struggle with your arms?

17 A I don't remember. Everything was happening  
 18 so fast. Like, I really honestly -- there are portions  
 19 of it that my memory is, like, in and out.

20 Q Okay. So Micalah got the bondsman for you.

21 A Yes.

22 Q And then when did you first speak with her  
 23 after, after the bail was posted?

24 A I don't recall if I talked to her on the  
 25 phone in the jail, because I remember I was having a

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1 lot of trouble getting through to people, and I finally  
 2 got through to my brother. And I think he may have  
 3 relayed a message, but I think -- I know for a fact I  
 4 talked to her after the jail, I want to say probably  
 5 the next day at least.  
 6 **Q Okay.**  
 7 A And that's when she told me -- yeah. It was  
 8 right after I got out of jail. That's when she told me  
 9 about Hendler law firm, Hendler Flores law firm. And  
 10 that's when she told me to reach out to them.  
 11 **Q Okay. So what -- so Micalah's the one that**  
 12 **put you in touch with your current lawyers.**  
 13 A Mm-hm. She put me in touch with the bondsman  
 14 and then the -- she's going to law school, so she's,  
 15 she's good.  
 16 **Q Is Micalah in law school?**  
 17 A She's going, she's going to go to --  
 18 **Q Planning on it?**  
 19 A -- law school. She's in school right now  
 20 getting her B6 and stuff.  
 21 **Q I see. Okay.**  
 22 A Mm-hm.  
 23 **Q Did you and Micalah discuss the facts? You**  
 24 **know, what'd y'all talk about as far as what happened?**  
 25 A Oh, gosh. I'm not going to remember, like,

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1 verbatim, but do I remember I told her about, like,  
 2 me being -- I was, like, "Did you see me?" I was  
 3 asking her that stuff and then told her about the  
 4 arrest and about how I, like, was taken and, like, put  
 5 on the ground. And then I told her about mostly my  
 6 experience in the jail and then, like, the  
 7 transportation and -- yeah. I mean, I can go through  
 8 all of it. It's pretty lengthy.  
 9 **Q Well, I may ask you a few questions going**  
 10 **forward.**  
 11 A Okay.  
 12 **Q I was just curious what, what did she say to**  
 13 **you, just any observations she had.**  
 14 A She said, "Did you get the badge number from  
 15 any of the police? You can call and, like, make a  
 16 statement to them." And then she told me --  
 17 recommended me to go Hendler Flores law firm --  
 18 **Q Okay.**  
 19 A -- pretty much. And then she sent me -- she  
 20 was, like, "I have videos." And she sent me all the  
 21 videos she had. I think some of the videos we have are  
 22 from her.  
 23 **Q Okay. Has, has she done anything else in**  
 24 **this matter?**  
 25 A Emotional support.

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1 **Q Okay. I think we just have one more video of**  
 2 **officers.**  
 3 MR. BARTON: Go ahead and pull up  
 4 the Anne Allare video.  
 5 MS. SMITH: I do not show this as  
 6 an exhibit prior. This is City of Austin production  
 7 Bates-stamped COA379.  
 8 MR. BARTON: Okay.  
 9 MS. SMITH: Do you want it as a new  
 10 exhibit?  
 11 MR. BARTON: Yeah. We're doing a  
 12 continuous list of exhibits, I think was our agreement.  
 13 So this would be number 20.  
 14 MS. SMITH: 20.  
 15 MR. BARTON: This will be Exhibit  
 16 No. 20, deposition -- or body-worn camera of Officer  
 17 Anne Allare.  
 18 MS. McDANIEL: This one was not  
 19 used during her deposition?  
 20 MS. SMITH: I'm not showing it  
 21 as --  
 22 MS. McDANIEL: Okay.  
 23 MR. BARTON: I think it was used,  
 24 but I maybe just never (crosstalk) --  
 25 MS. McDANIEL: That's fine with me.

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1 I'm just checking. You said the Bates-number was  
 2 COA...  
 3 MS. SMITH: 379.  
 4 MS. McDANIEL: 379. Thank you.  
 5 MS. SMITH: And we showed three  
 6 exhibits from that deposition.  
 7 (Video Played)  
 8 A Right there. She was right there.  
 9 MR. BARTON: Okay.  
 10 **Q So after watching that does that refresh your**  
 11 **recollection that there was a female officer who**  
 12 **searched you and --**  
 13 A Oh, yeah.  
 14 **Q Yeah.**  
 15 A That's what -- I was saying she did, but the  
 16 fact that they said they don't, they have a female and  
 17 they don't have, is what I was, like -- they don't have  
 18 time for a female officer, that's kind of what took me  
 19 back whenever there was a female right there.  
 20 **Q Okay. But she did actually, she was --**  
 21 A She did --  
 22 **Q -- the one that --**  
 23 A -- search me.  
 24 **Q -- searched you. Yeah.**  
 25 A But he was, like, "We have a female. We

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1 don't have time for a female officer."  
 2 Q Okay. I see.  
 3 A And then there was a female right there  
 4 though.  
 5 Q And so I think you mentioned a little earlier  
 6 in your fanny pack there was a TASER? Or was it pepper  
 7 spray?  
 8 A It was a TASER.  
 9 Q TASER. Okay. And where did you get that  
 10 TASER?  
 11 A On Amazon.  
 12 Q And you carried it to most of the protests I  
 13 guess, or --  
 14 A I carry it with me everywhere.  
 15 Q Okay. And what else was in your fanny pack?  
 16 A Glasses, my nicotine vape, and my phone, and  
 17 probably my keys too I would imagine.  
 18 Q Okay. All right. Well, I think we have just  
 19 one last video to watch, and probably you feel like  
 20 you're seeing it all, but these are the big ones that  
 21 have been shown before in depositions. That's why I'm  
 22 going through them.  
 23 MR. BARTON: Can you pull up,  
 24 Carol, that last witness deposition, I guess,  
 25 third-party witness?

1 A Yeah.  
 2 Q And she's on the sidewalk I guess --  
 3 A Yeah.  
 4 Q -- zooming in. Okay.  
 5 MR. BARTON: Let's look at the  
 6 other video I think.  
 7 MS. SMITH: Okay. The next one is  
 8 Bystander Video 2 marked as Bates-number COA769. Will  
 9 be Exhibit 22.  
 10 (Video Played)  
 11 A This one might show her. Can you rewind?  
 12 Q Yeah.  
 13 MR. BARTON: Stop.  
 14 A To the beginning, the very beginning.  
 15 MR. BARTON: Back it up I guess.  
 16 (Video Scrolling)  
 17 Q Maybe if we push it up manually forward.  
 18 A Yeah. I think this is right after. There  
 19 she is. There she is getting carried off right here.  
 20 I'm on the other side over there.  
 21 Q Okay.  
 22 A That's her. She got -- that's the one who  
 23 got pepper-sprayed with the blonde hair.  
 24 Q Oh, so if I see correctly -- and the  
 25 Bates-mark here is --

1 MS. SMITH: So there's two that I  
 2 found. I don't know which one --  
 3 MR. BARTON: Well, I guess let's  
 4 show them both.  
 5 Q And what I'm getting at is, as far as seeing  
 6 the person that was pepper-sprayed that came up on your  
 7 shoulder, I'm just trying to see if you can see her in  
 8 either one of these two videos. You haven't seen her  
 9 so far though; is that correct?  
 10 A No, I haven't.  
 11 MS. SMITH: Okay. This is  
 12 defendant's production Bates-stamped COA770 and what  
 13 would be Exhibit 21.  
 14 (Video Played)  
 15 A This is not her. She's not on that one.  
 16 Q Okay. Let me stop it right there and just  
 17 ask you a question. So do you recognize this video?  
 18 A Yeah.  
 19 Q And when had you seen this video previously?  
 20 A I believe that's the video Micalah took.  
 21 Q Okay. And it does not show the lady that got  
 22 pepper-sprayed?  
 23 A No. That's after.  
 24 Q Okay. So this is taken from your friend  
 25 Micalah while you're being handcuffed.

1 MS. SMITH: Three seconds.  
 2 Q Zero-zero --  
 3 A I think there's one with her in it.  
 4 Q -- colon zero-three. And the blonde person,  
 5 it means just her head sort of there on the right side?  
 6 A Yeah. That's her.  
 7 MR. BARTON: If you can put the  
 8 cursor on that, Carol, up above.  
 9 Q So I guess that's the -- you think that's the  
 10 head of the person --  
 11 A Yeah.  
 12 Q -- who came up to you?  
 13 A I'm almost positive.  
 14 Q And, okay, so what was your interaction with  
 15 her?  
 16 A She kind of -- there was another person with  
 17 her, and she kind of, like, put her head right here and  
 18 I -- and she was with the other person too. And I got  
 19 so upset, because I had saw her get pepper-sprayed and  
 20 how much pain she was in, but that's pretty much the  
 21 interaction.  
 22 Q Did you speak with her at all?  
 23 A We weren't really talking. It was so crazy I  
 24 would say.  
 25 Q And did you -- how do you know she got

1 pepper-sprayed?  
2 A I saw it.  
3 Q Okay. Where, where was she pepper-sprayed?  
4 A Right in the street over there.  
5 Q And what part of her body was pepper-sprayed?  
6 A Her eyes.  
7 Q So it's your recollection that someone  
8 sprayed her --  
9 A Yeah.  
10 Q -- in the, in the eyes? And did you see who  
11 sprayed her?  
12 A No. I did not. I don't know.  
13 MS. McDANIEL: I think if you look  
14 at Bystander -- at COA768 that you'd get a much better  
15 video.  
16 MR. BARTON: Yeah. We'll look at  
17 that too. 768?  
18 MS. McDANIEL: Uh-huh, 68.  
19 MR. BARTON: Okay. Well, Let's go  
20 ahead and march forward on this one. We'll look at  
21 that one in a few minutes.  
22 (Video Played)  
23 MR. BARTON: Okay. Stop right  
24 there.  
25 Q And so do you recognize yourself in that

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1 frame? Which I guess is --  
2 A Yeah.  
3 Q -- elapsed time 11 seconds and probably  
4 leading up to that elapsed time 9 to 11 and --  
5 A Yeah.  
6 Q Okay. And this video showed -- I mean, would  
7 you agree the video shows the bicycles coming up and  
8 the people moving away from the bicycles but you stayed  
9 right there and did not move?  
10 A Yes. I -- yeah.  
11 Q And then at some point right in that  
12 timeframe you shouted "fuck you"?  
13 A "Fuck you." Yeah.  
14 Q And then the officer picked you up?  
15 A Mm-hm.  
16 Q Okay. And do you have any disagreement with  
17 that being the sequence of events?  
18 A No. He was just, like, "All right. We're  
19 arresting this one," and bear-hugged me and picked me  
20 up.  
21 Q Okay. And you understood that you had  
22 disobeyed the direct police orders to clear the street,  
23 right?  
24 A Yes.  
25 Q Okay.

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1 MR. BARTON: Well, let's continue,  
2 Carol, I guess a little bit more on that one.  
3 (Video Played)  
4 THE WITNESS: (Inaudible)  
5 MR. BARTON: Okay. I guess we can  
6 stop right there.  
7 Q I'm not sure I caught your last comment.  
8 What was your last comment?  
9 A Like, I'm just, I'm just, I'm just, like, how  
10 could I resist two grown men? Like...  
11 Q Okay. So you're, you're saying that you  
12 weren't resisting?  
13 A No.  
14 Q Okay.  
15 A I wasn't.  
16 Q At some point I think there's an allegation  
17 that you say the officers put their knees on your back?  
18 A Yeah.  
19 Q Have you seen anything so far that would  
20 indicate the officers putting their knees on your back?  
21 A I'm not -- I don't think so.  
22 MR. BARTON: Okay. Let's go  
23 forward, Carol.  
24 (Video Continuing)  
25 MR. BARTON: Okay. I guess

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1 that's -- must be the end of it.  
2 Q Okay. Do you recall, separate from whether  
3 you'd seen an officer putting a knee on your back from  
4 the video, do you recall an officer putting his knee on  
5 your back?  
6 A All I know is I felt a lot of things going on  
7 at once, and my main focus of pain was definitely in my  
8 wrist. But I definitely thought, appearing from the  
9 video that I saw from the outskirts, that they had  
10 kneeled on my back. I don't know if that's exactly the  
11 case now. Like, I just -- that's what I had thought  
12 happened from the prior video.  
13 Q Okay.  
14 A Yeah.  
15 Q So you felt -- the most you really know is  
16 that you felt pressure --  
17 A On my wrist.  
18 Q -- on your wrist and, and your back --  
19 A Yeah.  
20 Q -- holding you down, but you don't know --  
21 A Yeah.  
22 Q -- what parts of officers' bodies were  
23 used --  
24 A Yeah.  
25 Q -- to exert that. Okay.

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1 MR. BARTON: Well, let's look at  
 2 COA768, Carol, if you'll pull that up.  
 3 MS. SMITH: So this is defendant  
 4 production marked Bates-stamp COA768, will be  
 5 Exhibit 23.  
 6 (Video Played)  
 7 A There's the girl that gets pepper-sprayed.  
 8 She's right there.  
 9 Q Which one?  
 10 A She's getting hit with the bike.  
 11 Q Okay. Would you -- so does she have  
 12 something printed on her shirt?  
 13 A I guess. I don't know what it says. Yeah.  
 14 Q Okay.  
 15 MR. BARTON: Carol, let's go back  
 16 maybe to that.  
 17 (Video Scrolling)  
 18 MR. BARTON: Stop right there.  
 19 A Yeah.  
 20 Q Yeah.  
 21 A She's the one who ends up getting  
 22 pepper-sprayed. This is the video where it showed  
 23 that, I'm pretty sure, too.  
 24 Q Okay. So let me see what video --  
 25 MR. BARTON: What's the elapsed

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1 time on that?  
 2 MS. SMITH: 30 seconds.  
 3 Q 30 seconds.  
 4 A They're, like, hitting her too.  
 5 Q And it's a blonde female, and her arms are up  
 6 high; is that correct?  
 7 A Mm-hm.  
 8 Q Raised both arms? Looks like words or  
 9 something on a black T-shirt.  
 10 A Yeah.  
 11 Q And she has on shorts it appears.  
 12 A Yeah.  
 13 Q And so you recall her --  
 14 A Yes.  
 15 Q -- later putting her head on your shoulder  
 16 and being sprayed?  
 17 A Yeah. After being sprayed.  
 18 MR. BARTON: Carol, if you can  
 19 kind of move that forward slowly, please.  
 20 (Video Scrolling)  
 21 A There's me.  
 22 Q Where?  
 23 A Right there.  
 24 MS. SMITH: This one?  
 25 A That's me.

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1 Q Oh, okay. With the -- you've got some  
 2 green --  
 3 A Yeah.  
 4 Q -- marks on your sleeves?  
 5 MS. McDANIEL: Didn't realize that  
 6 was (inaudible).  
 7 THE WITNESS: Yeah.  
 8 A And I'm right by her. That's me pacing in  
 9 the background.  
 10 Q (By Mr. Barton) Okay. So your mask was  
 11 green.  
 12 A Yeah.  
 13 Q Yeah. Okay.  
 14 A And, like, here we go. She's tough. I'm,  
 15 like, whoa, (inaudible) hit with that bike I  
 16 would've -- oh, I like her shirt.  
 17 MS. McDANIEL: Looks like her leg  
 18 is bleeding.  
 19 THE WITNESS: Yeah. She -- they  
 20 were hitting the fuck out of her. Oh, my God, it is.  
 21 A This is where she's about to get -- I was  
 22 getting so mad at that point.  
 23 MR. BARTON: Okay. Let's back  
 24 that up just a little bit.  
 25 MS. McDANIEL: At some point I saw

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1 spray. Might show better if you played it back here.  
 2 THE WITNESS: It might have been  
 3 when she --  
 4 (Crosstalking)  
 5 MR. BARTON: Yeah. Maybe we'll  
 6 play it, but --  
 7 (Video Played)  
 8 MS. McDANIEL: (Inaudible)  
 9 MR. BARTON: But let me stop it  
 10 right there.  
 11 A Oh, that might have been when she got sprayed  
 12 when she turned around.  
 13 Q Oh, well, let's, let's back that up again to  
 14 the --  
 15 A It might have been, let's see...  
 16 MS. SMITH: (Inaudible)  
 17 MR. BARTON: Let's just, yeah,  
 18 play it all the way through.  
 19 A They sprayed her so bad.  
 20 (Video Played)  
 21 A That, see?  
 22 Q Okay.  
 23 A She's on my shoulder --  
 24 MR. BARTON: Okay. Back that up.  
 25 A -- right there. She had just got sprayed.

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1 MS. McDANIEL: (Crosstalk) sprayed,  
2 but it was hard to see.  
3 A Right there.  
4 Q (By Mr. Barton) Can you --  
5 A And there's my white Adidas and my black  
6 leggings.  
7 MS. SMITH: 58.  
8 Q Okay. So time elapse mark 58 it shows her  
9 kind of embracing you.  
10 A Yes.  
11 Q And do you also recall from watching this  
12 video that they were telling her to move back and she  
13 was not moving back?  
14 A I don't know everything that's happened. I  
15 just -- everything was so crazy out there. Like, you  
16 really can't keep track of every little thing, I'm not  
17 going to lie. And I do know that they were telling us  
18 to get out of the streets.  
19 Q Okay.  
20 A Like, that's for sure. I know they were  
21 telling us to get out of the streets, and I know they  
22 were hitting her with the bike.  
23 Q And it looks like she stayed there, though,  
24 so --  
25 A Yeah.

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1 Q -- she didn't move after the bike made  
2 contact with her.  
3 A Yeah.  
4 Q Okay.  
5 A Yeah.  
6 Q Then it looks like they pepper-sprayed her  
7 and she moved after being pepper-sprayed?  
8 A Yeah.  
9 Q Okay.  
10 MR. BARTON: I guess continue from  
11 this point forward, Carol.  
12 (Video Continuing)  
13 A And then he grabbed her and that's  
14 whenever...  
15 Q And then do you recognize you?  
16 A Yeah.  
17 Q And that's about the 1 minute 19 mark?  
18 MR. BARTON: Okay. I think that's  
19 all on that one.  
20 Q Those were really the only videos that I  
21 planned on showing, but have you seen other videos that  
22 add more to the, to the event line? Like, is there  
23 some video you're, like, Well, this video shows it  
24 better? Because if so, I'd like to go over it with  
25 you.

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1 A I think we didn't really have that many -- I  
2 don't -- I think this is about pretty much what  
3 we -- what I've seen as far as before the cop car.  
4 Q Okay. And that's what I'm getting at is, if  
5 there's, you know, for whatever reason some video  
6 you're, like, Well, why didn't y'all show me that one?  
7 That's what I'm getting at, but if you don't know of  
8 any other video about this incident leading up to the  
9 cop car.  
10 A No.  
11 Q Okay.  
12 THE WITNESS: Did you have  
13 anything?  
14 MS. McDANIEL: No. I'm just  
15 checking to see if there's -- I think the other ones  
16 are shorter, you know, but...  
17 THE WITNESS: Mm-hm.  
18 MS. McDANIEL: Oh, there is the  
19 video of Officer Smart, the second part of Officer  
20 Smart's video.  
21 MS. SMITH: His second one?  
22 MS. McDANIEL: Remember when we --  
23 there's one video of him, he grabs her and his camera  
24 turns off?  
25 MR. BARTON: Yeah.

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1 MS. McDANIEL: And then there's a  
2 second. So just for continuity -- or for completeness  
3 we could watch that one since it's the same, it's the  
4 same incident as the second part.  
5 MR. BARTON: Yeah. I don't mind  
6 pulling that up. I don't know --  
7 MS. McDANIEL: I think that --  
8 MR. BARTON: -- that it shows --  
9 MS. McDANIEL: -- was an exhibit in  
10 Smart's --  
11 MS. SMITH: 317 is (inaudible).  
12 MS. McDANIEL: I'm pretty sure we  
13 showed that in his deposition.  
14 MR. BARTON: Yeah. I don't know  
15 that we need that right now, though, because that's  
16 totally -- it doesn't show any aspect leading up to the  
17 arrest, though, does it?  
18 MS. McDANIEL: It's after. It's  
19 when his body-worn camera turns back on.  
20 MR. BARTON: Yeah. Yeah. I don't  
21 think --  
22 MS. McDANIEL: And it's already in  
23 the --  
24 MR. BARTON: In the --  
25 MS. McDANIEL: -- record I believe.

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1 MR. BARTON: -- in the record.  
2 Q Okay. Now, I didn't realize it was quite  
3 this late. It is, you know, after 12, so I'm very  
4 flexible. If y'all want to take a break for lunch or  
5 just a refreshment break, that's fine with me, or we  
6 can push forward.  
7 A I'm fine --  
8 Q Okay.  
9 A -- to keep on going.  
10 Q Yeah. All right. And if you want to take  
11 another one, but I expect -- I'm really bad at guessing  
12 how much time things take, but at least probably  
13 another two hours.  
14 A Okay.  
15 Q You know, but you can take refreshment breaks  
16 anytime you need.  
17 A Okay.  
18 MS. McDANIEL: Maybe wait, maybe go  
19 another half hour?  
20 THE WITNESS: Yeah.  
21 MS. McDANIEL: Or another hour or  
22 something?  
23 THE WITNESS: Yeah. Like a half --  
24 MS. McDANIEL: Let me grab some  
25 more water. Do you want some more water?

1 it made my bond go longer, so I had to stay in the  
2 jail, like, a couple more hours versus getting out  
3 right then.  
4 Q Okay. And it -- and you contend that you  
5 were not resisting arrest.  
6 A No.  
7 Q But you don't -- you can't testify whether or  
8 not you were resisting with your arms, right?  
9 MS. McDANIEL: Objection, form.  
10 A I would say, like, with everything going on  
11 around and all the stimulation and stuff I don't think  
12 necessarily my intent, if it did come off that way, was  
13 to resisting. More so I was just over-stimulated.  
14 Q (By Mr. Barton) Okay. Well, tell me, then,  
15 from the point that you got into the car until the time  
16 you were released generally what happened. Now, we've  
17 discussed that a little bit, so I understand you went  
18 from the squad car to a metal bus to a bigger bus --  
19 A Yeah.  
20 Q -- and then ultimately -- all right. So you  
21 don't necessarily have to go through that again, but it  
22 is a broad question.  
23 So tell me what you recall and mainly  
24 anything you complain about from the time you were put  
25 into the squad car until the time you were released.

1 THE WITNESS: Sure.  
2 MS. McDANIEL: Anybody else want a  
3 glass of water?  
4 MR. BARTON: Mr. Videographer?  
5 VIDEOGRAPHER: We're still on the  
6 record.  
7 Q Okay. So ultimately you were arrested --  
8 A Yeah.  
9 Q -- correct? And do you understand that the  
10 charges for your arrest were that you were obstructing  
11 a highway or other passageway and you were resisting  
12 arrest?  
13 A Yes.  
14 Q And from what I understand, you really don't  
15 have any disagreement that you were obstructing a  
16 highway or other passageway.  
17 A Yeah.  
18 Q Okay. And then as far as resisting arrest,  
19 you would say --  
20 A They added -- oh, sorry.  
21 Q No. You go, go ahead. What --  
22 A They added resisting arrest at around, like,  
23 5 a.m. I want to say. So after my arrest when I was  
24 about to get bailed out, right before I was about to  
25 get bailed out they came back and added resisting. So

1 A Well, I would say they didn't have AC on for,  
2 like, the first hour of my transportation in the back.  
3 It wasn't until I got to, like, the little garage that  
4 a guy, one of the cops came back and was, like, "Whoa,  
5 there's no air condition back here," and he turned on  
6 the air condition for me.  
7 And then one of the officers would not  
8 speak to me at all. No matter what I said to him he  
9 just completely ignored me, and he would only whisper  
10 to the officer in the passenger seat and then they  
11 would talk. And they took me in a circle, like,  
12 around -- under I-35 and then came back around, and I  
13 kept asking them where they were taking me, and they  
14 wouldn't tell me where they were taking me.  
15 I don't even think, after watching the  
16 body-cam footage, I don't even think they knew where  
17 they were taking me. But from my point of view as a  
18 woman, that's very scary, because you could be taken  
19 somewhere to get, like, molested or -- I mean, it can  
20 happen to a man too, but, like, being a woman that's  
21 very scary for me, but especially when I'm going from  
22 place to place to place and nobody really knows where  
23 I'm going. So that was my first thought in my mind,  
24 was, like, they're taking me somewhere and they're  
25 going to have their way with me, and that really scared

1 me.

2 And then I will say whenever we got

3 to -- so then they searched me again and then they

4 changed officers who were driving the car, and so the

5 officer that was ignoring me, he completely got out

6 of the car and they switched to another one. And then

7 we went to the other location, and I mean, that

8 other -- the other officer, we had conversation, you

9 know. Like, he talked about how he was, like, a

10 constitutionalist or whatever, and we had, like,

11 conversation or whatever leading up.

12 But then we got on the bus and we were

13 getting into the jail. There was a girl in a dress,

14 and one of the guy -- male officers was being really

15 weird, and we commented on him being weird. So they

16 covered up the girl in the dress while her -- she was

17 zip-tied. They put a jail outfit over her while she

18 was zip-tied. Like, she couldn't move her hands

19 through the holes.

20 And then they didn't have masks on us,

21 so we were, like, "Y'all don't even have masks on and

22 we don't even have masks on, and it's the mid of the

23 epidemic." So then they went and got someone, because

24 they were about to let us in and, like, they went and

25 got someone to put masks on the officers as well as put

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1 masks on us.

2 And then when we got in the jail they

3 were, like, "Let me ask you some mental health

4 questions." And I was, like -- well, I noticed when

5 they were asking me these questions that they had all

6 the people of color in these, like, soundproof rooms,

7 and so I was, like, "Well, can I ask you a question?

8 Why are the people of color in soundproof rooms?" And

9 she looked up and she looked around, and you could tell

10 she was, like, Oh, fuck. But then she was, like, "No.

11 You have to answer these questions," and, like, told me

12 I needed to answer their questions, and then they put

13 me in the soundproof room.

14 And then, yeah, we went to the back and,

15 I don't know, my bondsman said they were messing with

16 my phone calls, that's why my phone calls wouldn't go

17 through. And then whenever I went to the back to the

18 actual, like, jail cell they forgot my breakfast, and I

19 was the only one who didn't get breakfast. And me and

20 all the other -- the protestors that were there, we had

21 to, like, yell for my breakfast. And when I got it, it

22 was, like, a brown paper bag that was, like, soaked in

23 a liquid. So I don't even know what was on it, but I

24 just know there was, like, an unknown substance on the

25 brown paper bag.

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1 And then, yeah, that's when they added

2 resisting, and then I had two more hours extra. But

3 yeah, that's pretty much in general the fucked up or,

4 you know, the messed up things that I felt were wrong

5 as far as in the transition and being booked.

6 **Q Okay. I'm going to ask a few questions about**

7 **that. So you were in the car initially, and we've seen**

8 **the video where you get put into the squad car, the**

9 **patrol car, and were there -- these -- the officer who**

10 **ignored you you mentioned, was he in the car at that**

11 **time?**

12 **A** He was standing -- they were all -- at the

13 beginning when I was just in the car by myself for,

14 like, 30 minutes-ish they were -- one of them was

15 standing right outside my window, and that was the one

16 who would ignore me. And he would go and roll down the

17 window a little crack and then roll it back up for,

18 like, a few minutes, and then he'd roll it back up, and

19 he would just stand right outside that window. And

20 then I would ask him, like, "Hey, where are my glasses?"

21 Did you get my glasses?" Like -- and he wouldn't

22 answer me. Or, like, "What am I being arrested for?"

23 Nothing.

24 **Q Okay. And so you specifically asked what you**

25 **were being arrested for?**

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1 **A** Yeah. I asked multiple questions that he

2 just ignored me.

3 **Q Did anybody answer those questions?**

4 **A** One -- the officer finally that got in the

5 passenger seat that drove with us, he finally answered

6 questions, but yeah. No, he told me if I didn't give

7 my name he basically was, like, "All right,"

8 insinuating that I would get a felony if I didn't give

9 him my information. And he was, like, "All right," and

10 he, like, slowly closed the laptop. And I was, like,

11 "Wait, wait," and I gave him my name.

12 **Q Okay.**

13 **A** They were just manipulative. It was just

14 manipulative, the whole situation.

15 **Q So the first officer never talked to you. He**

16 **just ignored --**

17 **A** No.

18 **Q -- all your --**

19 **A** He didn't --

20 **Q -- questions?**

21 **A** -- say anything. He just whispered to the

22 guy in the front.

23 **Q And then the second officer that got in the**

24 **car asked you for your name?**

25 **A** Yeah.

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1 Q And you didn't give it to him; is --  
2 A Yeah.  
3 Q -- that correct?  
4 A He was asking me for my identification.  
5 Q Okay. And you --  
6 A And I was, like, "I don't have to give you my  
7 identification." And then he was, like, "Well, you can  
8 get a felony if you don't give me your information,"  
9 and then so then I ended up giving it to him.  
10 Q Okay. And was that the extent of that right  
11 there, just kind of breaking it all down?  
12 A Yeah.  
13 Q The first issue I guess would be that  
14 they -- after, after you were arrested -- understanding  
15 you disagree with the handcuffing and all of that, so  
16 my questions really just relate from being in the car  
17 going forward. The first problem of being in the car  
18 going forward was they asked you for your personal  
19 information?  
20 A Probably no AC in the car.  
21 Q Okay.  
22 A And then the second one was, which I was,  
23 like, still in fight or flight mode, kind of scared,  
24 but they -- but I wasn't hurting myself, and he was,  
25 like -- and at this point they had already drove in a

1 Q And how did they go about asking that?  
2 A I don't recall the exact words he used, but I  
3 know he was asking me for my name and my identification  
4 number and -- or my license number. I ended up giving  
5 it to him.  
6 Q Yeah. Initially, though, you refused.  
7 A Yeah. I was, like, I don't have -- like, I  
8 was, like, "I don't have to give you my information,"  
9 and then he was, like, "Okay." And then that's  
10 whenever I gave him the information.  
11 Q And what did he say specifically when you  
12 said he kind of insinuated --  
13 A I don't --  
14 Q -- it would be a felony if you didn't, but  
15 did he say that?  
16 A He didn't -- I don't know if he said that,  
17 but he was just, like, insinuating that I was going to  
18 get in more trouble. And that's when he was, like,  
19 "All right," and then he, like, started closing the  
20 laptop slowly.  
21 Q Okay.  
22 A Like: All right, well, once I close this  
23 laptop you're in trouble.  
24 Q And so you went ahead and gave him your  
25 information.

1 circle once, and he was, like, "You'd better calm down  
2 or you're really going to hurt yourself." And that's  
3 when I was, like -- looked at the camera in the car and  
4 was, like, "If I get hurt, it was them, not me." Like,  
5 I'm not going to hurt myself. I was, like, "If I get  
6 hurt in any way, it's them." And I just kept repeating  
7 that, because I was scared, again, after being  
8 transported in a circle and nobody telling me where I  
9 was going. I thought, oh, they're going to hurt me now  
10 if they're saying "you're gonna hurt yourself."  
11 Q Okay. And was -- did they drive you in the  
12 circle before they asked for your name or after?  
13 A Oh, they asked for my name way after, when we  
14 were, like, walking -- not walking. We were driving  
15 pulling into -- right before pulling into the second  
16 location, the garage, or I guess not way after but  
17 minutes after --  
18 Q Okay.  
19 A -- they asked for my identification.  
20 Q Okay. So y'all had already moved from the  
21 first location --  
22 A Yeah.  
23 Q -- driven under I-35, gone to the second  
24 location?  
25 A It was when entering the second location.

1 A Yeah.  
2 Q What happened after that, like, the next  
3 thing you recall?  
4 A We were in -- they searched me again, and  
5 then --  
6 Q Was that by --  
7 A -- I asked him for the --  
8 Q -- a female officer?  
9 A Yes.  
10 Q Okay.  
11 A I asked him for the badge number of the  
12 officer who was in the driver's seat. He was, like, "I  
13 don't know his badge number. You can get it at the  
14 jail." I still never got that guy's badge number. I  
15 don't even know who was driving.  
16 But yeah, and then he started telling  
17 me about constitutionalism and how he's a  
18 constitutionalist and he believes in his right to  
19 carry. And then I started telling him my views and  
20 stuff, and that's kind of how the conversation went.  
21 Q Okay. Did y'all -- did he just listen, or  
22 did y'all discuss --  
23 A We kind of --  
24 Q -- your views and his views or --  
25 A Yeah. We kind of went back and forth a

1 little bit. Yeah.

2 Q Was he at any point impolite?

3 A I don't think so, but I was in kind of a

4 position where I had to listen to him, you know? Like,

5 I had to listen to what he was saying. He's an officer

6 and he's arresting me.

7 Q Yeah.

8 A So, like, there's no way I can get out of

9 listening to him about him being a constitutionalist,

10 you know? Like, I can't just walk away from this.

11 Q Yeah. Did he listen to you when you started

12 giving your views on things?

13 A Yeah. He did for the most part. Yeah.

14 Q Okay. Okay. Then after that what happened?

15 A That's when he drove me to the next location

16 and they took me out of the car, and actually after we

17 talked he started being nicer after we talked, and he,

18 like, was, like, "Oh, I'm going to trade out your

19 cuffs," and he traded them for zip ties and then put me

20 on the, like, metal bus.

21 And I sat there for awhile, and that's

22 whenever the two girls got added. Then they took the

23 two girls off and they put them on the big bus and they

24 left me on the metal bus for a little bit longer. And

25 then they took me off the metal bus and they put me on

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1 the big bus with probably about 15 other protesters at

2 least.

3 Q Okay.

4 A But until that point, which that's whenever

5 we actually started really heading to the jail, until

6 that, up until that point I was, like, alone in the cop

7 car.

8 Q Okay. With the two officers?

9 A Yeah.

10 Q When you were on the metal bus, which I'm

11 assuming is a smaller bus than the big bus you

12 described --

13 A Yeah.

14 Q -- once those other two girls were pulled off

15 were you alone, or were there other people on it?

16 A I was alone.

17 Q Okay. And you said that y'all's stories were

18 very similar in the way that they --

19 A Yeah.

20 Q Had they also refused to get out of the

21 street, or do you know why they were arrested?

22 A I don't know the exact details. All I know

23 is that they had a similar experience where they yelled

24 "stop resisting" whenever they weren't resisting.

25 Q Okay. But you don't know what --

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1 A And they were yelling (obscured) them.

2 THE REPORTER: They were yelling

3 what?

4 THE WITNESS: Yelling over them.

5 A When they were trying to say, like, "I'm not

6 resisting," they were just yelling stop --

7 Q The police were yell --

8 A Yeah.

9 Q But you don't know the circumstances that led

10 to them being arrested?

11 A No. I -- no. I would assume it was probably

12 similar reasoning.

13 Q Okay. And then once you got off the metal

14 bus and onto the big bus and you said there were, like,

15 15 people there on the big bus, what -- were they all

16 in zip ties or --

17 A Yes.

18 Q -- were some in handcuffs? So everybody on

19 the big bus was --

20 A In zip ties.

21 Q -- in zip ties. And did you talk to anybody

22 on the big bus?

23 A Yeah, I did. They took -- finally someone,

24 could, like, back up and, like, took my little mask

25 thing off that I was, like, dying in. So they kind of

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1 helped me with that, and then, and then we mostly sang

2 hymns, like, driving to the jail. And that's pretty

3 much -- there wasn't much talking. It was just, like,

4 singing.

5 Q Okay.

6 A And -- yeah.

7 Q Did you learn the stories of any of the other

8 people? Like, for instance, the two girls were

9 arrested similarly to you. Did you talk to anyone else

10 on the big bus to learn their circumstances?

11 A I actually talked to the people from Dallas a

12 lot.

13 Q Okay.

14 A I don't know exactly, like, all the details

15 of their arrest, but they said they're never protesting

16 in Austin again, because this is not the same in

17 Dallas. They can actually, like, walk through the

18 streets and, like, go through, like, targets and, like,

19 go through -- as long as they keep it peaceful they're

20 fine on the streets. And so they were, like, "We're

21 never coming back here again. We have never been

22 arrested for this." Like -- yeah.

23 Q Do you know why they were arrested, the

24 (crosstalk) --

25 A I --

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1 Q -- from Dallas?

2 A They were the ones who initially -- we,

3 honestly, we weren't going to get in -- they were the

4 ones who initially got in the streets, and then we

5 were, like, "Well, we're not going to let them go out

6 there alone." So that's when we all got in the

7 streets. It was, like, a group of 15 of them, and they

8 were all -- they, they didn't -- they never protested

9 in Austin. They protested in Dallas and it was a

10 different story, you know? But we were, like, "We're

11 not going to let them take this, this alone." Totally,

12 like -- but yeah.

13 Q Okay. So the group from Dallas got into the

14 streets.

15 A Yeah, first.

16 Q And then you with your family group and

17 others --

18 A Yeah.

19 Q -- all joined them in the street.

20 A Yeah.

21 Q Okay. Had you ever protested in the street

22 before in Austin?

23 A Maybe, like, walking in the streets. We had

24 protested a little bit walking through, but yeah.

25 Yeah. I would say yeah.

1 Q -- of the capitol on -- I don't know the name

2 of the road that goes directly.

3 A Yeah.

4 Q But you would say it wasn't part of the

5 capitol complex.

6 A No.

7 Q It was on the public road. And when, when

8 did that occur?

9 A In the intersection. It was probably a

10 little bit before this, maybe, like, a month.

11 Q Okay. Did anything happen at that --

12 A No.

13 Q -- incident? Was it your general

14 understanding that you can't just stop in the street

15 though?

16 A It's obviously circumstantial. If we were

17 allowed to, like, stop in front of the, the capitol in

18 the four -- it's like a three-section intersection

19 right in front of the capitol and -- but we weren't

20 allowed to there.

21 Q You weren't allowed to where?

22 A On Congress, but we were allowed to --

23 Q Yeah. Other than in front of the capitol had

24 you on any of your other protests over the years stayed

25 in the street, or had they been marches or on the

1 Q But would that have been more like -- you

2 know, there's, as I understand it, a lot of different

3 ways to give presentations, but for a lot of them it's

4 a march.

5 A Yeah.

6 Q And marches go down the street and the police

7 usually follow behind.

8 A Yeah.

9 Q Is that what you've done previously?

10 A We have done marches. Yes.

11 Q Had you ever, like, done an actual protest in

12 the street where you weren't marching, you weren't

13 moving on down the street?

14 A Yeah. At the capitol I would say that when

15 we all took a knee everyone was just standing in the

16 front, and we took a knee and nothing happened. The

17 police were there for that one too.

18 Q Was that on the capitol grounds?

19 A It was right in the road in front of the

20 capitol.

21 Q Okay. Now, there's, like, a driveway that

22 goes up to the capitol.

23 A Yeah. No, it was outside the gates.

24 Q Outside the gates --

25 A Yeah.

1 sidewalk?

2 A I would say it's a few times in front of the

3 capitol and then, yeah, marches, sidewalk.

4 Q Okay. So the capitol, then, on a couple of

5 occasions is the only other place that you recall --

6 A Yes.

7 Q -- standing in the street?

8 A Yes.

9 Q And do you know if on those occasions the

10 street had been blocked off and it was permissible to

11 stand in the street?

12 A No. It wasn't blocked off.

13 Q Okay. On any of your previous incidents --

14 A No.

15 Q -- with the capitol?

16 A No.

17 Q Okay. Had you on any previous occasions been

18 told by the police to get out of the street, to clear

19 the street?

20 A Honestly in -- honestly no, I haven't. In

21 general even when we were in front of the police

22 station I typically did stay on the sidewalk.

23 Q Okay. And why was that?

24 A Because I would see, I guess, what they would

25 do to one person even if you walk across the sidewalk

1 multiple times back and forth. They still don't -- I  
 2 don't know, I've seen some people get swarmed and  
 3 didn't want that to happen to me.  
 4 Q When do you recall seeing one getting  
 5 swarmed?  
 6 A A few times. I would say I don't know what  
 7 exact date is, but it's happened a good few times where  
 8 they've had, like, 10 officers around one person.  
 9 Q And when that person is in the street I  
 10 guess?  
 11 A The one time it happened and they were in the  
 12 street, but they had left the street and the officer  
 13 came, like, later on to arrest them for being in the  
 14 street. They didn't do it when they were in the  
 15 street.  
 16 Q Okay.  
 17 A That's the time that I recall, and there was,  
 18 like, 10 officers around her and she was just standing  
 19 on the sidewalk.  
 20 Q So would it be fair to say that your general  
 21 understanding, though, was, from your previous  
 22 protests, do it on the sidewalk?  
 23 A Yeah. I would say, like, for the most part.  
 24 Yeah.  
 25 Q Yeah.

1 ago.  
 2 Q Okay.  
 3 A Before body cams were a thing. It was my  
 4 friend, she was driving and she wouldn't let me drive.  
 5 And I was not 21 at the time, but she had been drinking  
 6 and her tags were out, and she was not going to let me  
 7 drive. So I knew it, and then they pulled her over,  
 8 and when they pulled her over they also, like, pulled  
 9 me out of the car, put us in separate cop cars, and  
 10 searched me and stuck their hands in my pants and then  
 11 my top, which I had no, like, bra on or anything.  
 12 Q Okay. And was that any- anything beyond  
 13 that? I mean, I understand your concern with that, but  
 14 did they do anything after --  
 15 A No.  
 16 Q -- they finished the search?  
 17 A No. They just did -- and they just searched  
 18 me like that and then...  
 19 Q Okay. And that was seven years or so ago?  
 20 Have you ever had any other encounter with the police  
 21 where you claim they sexually assaulted you in some  
 22 fashion?  
 23 A When I was at the protest one of the officers  
 24 touched my boob while we were at the protest, and I  
 25 was, like, getting his badge number and stuff.

1 A Obviously it's circumstantial, but I would  
 2 say for the most part generally on the sidewalk. And  
 3 it definitely wasn't going to be on the feeder, you  
 4 know, in front of the police station.  
 5 Q Okay. Well, was there anything else about  
 6 your trip to the jail from -- that you wanted -- that  
 7 you think was improper other than what we've already  
 8 discussed?  
 9 A I don't think so, not that I can recall.  
 10 Q Okay. Did you tell any of these officers at  
 11 any time that you had been sexually assaulted by other  
 12 police officers?  
 13 A Yes.  
 14 Q And when did you tell them that?  
 15 A About right after -- like, probably in the  
 16 cop car right after my arrest, a little bit after.  
 17 Q Okay. But those officers that you mentioned  
 18 that to, they did not sexually assault you.  
 19 A No.  
 20 Q Okay. But you, you told them about an event.  
 21 A Yeah, I did.  
 22 Q And -- okay. When was that event, the --  
 23 A It happened --  
 24 Q -- previous sexual assault?  
 25 A -- I would say probably, like, seven years

1 Q Was that on August 1, 2020?  
 2 A No. It was, like, actually the same protest  
 3 where that girl got swarmed, but I just don't know the  
 4 exact date.  
 5 Q Okay.  
 6 A It's another protest where they brought in  
 7 the horses, and I have a video of when the horses come  
 8 in and kind of right after.  
 9 Q Okay. And with that protest where did it  
 10 occur?  
 11 A In front of the police station.  
 12 Q Okay. And you were not in the street on that  
 13 one.  
 14 A No, I wasn't.  
 15 Q What -- how did you make -- why were you  
 16 encountered by the police on that event?  
 17 A I don't know.  
 18 Q Were you arrested? I mean, why did you  
 19 have --  
 20 A I wasn't arrested.  
 21 Q Okay.  
 22 A I don't know. They were just -- I don't know  
 23 why they were upset. We were outside of the police  
 24 station, and we weren't in the street and we were  
 25 protesting. I really don't, I don't know why they came



1 at us with horses. Maybe it was because of the one  
 2 girl who did go off and then come back. I don't know.  
 3 But yeah, they just, like, trampled us with the horses,  
 4 and, yeah, I don't -- I really don't -- we weren't in  
 5 the street, so I don't know why that happened.  
 6 Q Did the horses come up on the sidewalk?  
 7 A Yeah. They were on the sidewalk.  
 8 Q Okay. And when you say trampled, I mean --  
 9 A I mean, like, you hear me scream when I turn  
 10 around in the video.  
 11 Q Okay. But were you stepped on by a horse?  
 12 A I wasn't stepped on.  
 13 Q But they moved you out of the way.  
 14 A Yeah.  
 15 Q And so at what point did the officer touch  
 16 your breast?  
 17 A It was before that.  
 18 Q Okay. And what -- how did that happen?  
 19 A We were just, like, holding -- we were  
 20 holding our signs. We were, like, standing there, and  
 21 I don't really know why or, like -- I guess he was,  
 22 like, pushing me back or something, but it was, like,  
 23 right on my boob, and it was just really uncomfortable,  
 24 because I wasn't really doing anything --  
 25 Q Okay.

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1 A -- to be pushed back.  
 2 Q And so did you complain about that?  
 3 A I did.  
 4 Q Yeah. And do you think he was doing anything  
 5 other than pushing you and it was just the wrong place  
 6 to touch you to push you?  
 7 A I don't know why he would have even had his  
 8 hands on me, because he didn't have his hands on any  
 9 other protestors around me. So that's where I think it  
 10 was because of my boob.  
 11 Q Okay. All right. Were you searched on that  
 12 occasion?  
 13 A Hm-mm.  
 14 Q And not arrested?  
 15 A Hm-mm.  
 16 Q Okay. Then other than the two incidents  
 17 we've just talked about, have you ever had any other  
 18 incidents of some sort of sexual assault against you  
 19 in, in your life? Not just by police, but by anybody?  
 20 MS. McDANIEL: Objection, form.  
 21 A Yeah.  
 22 Q (By Mr. Barton) Okay. I'm going to get to  
 23 that a little bit later. That's...  
 24 A Can we take a break?  
 25 Q Yeah. Absolutely.

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1 VIDEOGRAPHER: This is the end of  
 2 recording number 3. We're now off the record. The  
 3 time is 12:37 p.m.  
 4 (At 12:37 p.m. the proceedings  
 5 recessed, continuing at 1:32 p.m.)  
 6 VIDEOGRAPHER: This is the  
 7 beginning of media number 4. We're back on the record  
 8 at 1:32 p.m.  
 9 Q (By Mr. Barton) Okay. Ms. Beuhler, I'm not  
 10 exactly sure where we left off, but I do want to ask is  
 11 there anything else about the events of the day, August  
 12 1, 2020, that you want to talk about as far as  
 13 complaining about the police officers' conduct? I  
 14 think we've gone through a lot of that.  
 15 A Yeah.  
 16 Q That's what I'm trying to figure out. Is  
 17 there anything else that you haven't talked about that  
 18 you think you should mention?  
 19 A No. I feel like we've addressed pretty much  
 20 all of it.  
 21 Q Okay. I think you had mentioned somewhere  
 22 that you had been pepper-sprayed previously?  
 23 A Yes.  
 24 Q When did that happen?  
 25 A It happened when I was in high school. My

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1 dad was dressed up in, like, a cop outfit, and he  
 2 pepper-sprayed me with the whole can of pepper spray.  
 3 Q Okay. So it was not an actual police  
 4 officer --  
 5 A No.  
 6 Q -- that -- is your father, just by chance, an  
 7 Austin Police Department officer?  
 8 A No.  
 9 Q Has he ever been a police officer?  
 10 A (Shaking head)  
 11 Q Okay. So he was dressed up in a uniform,  
 12 like for Halloween or something like --  
 13 A Yeah. It was like a Halloween...  
 14 Q Okay. And during that time years ago he  
 15 sprayed you with pepper spray?  
 16 A (Nodding head)  
 17 Q So no police officer has ever sprayed you  
 18 with pepper spray.  
 19 A (Shaking head)  
 20 Q Did you ever talk with anybody from the  
 21 Family for Justice, just the members that we discussed  
 22 earlier, about this incident?  
 23 A I would say probably in brief.  
 24 Q And do you recall any specifics of those  
 25 conversations?

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1 A I don't recall any specifics.  
2 Q Have you continued to be part of that group  
3 or associate with that group?  
4 A Still friends, we still keep in contact on  
5 social media. I ran into one of them the other day.  
6 Q Okay. Have you attended any other protests  
7 with --  
8 A No.  
9 Q -- them?  
10 A No.  
11 Q So this would be the last protest that you  
12 were associated with Family for Justice as far as a  
13 protest-in-the-street sort of thing?  
14 A Yeah.  
15 Q Okay. Are you a member of any other groups  
16 or organizations?  
17 A I don't believe so. I mean, I was a part of  
18 Safe Alliance for awhile, but then COVID happened and  
19 that kind of changed.  
20 Q What is Safe Alliance?  
21 A It's for battered women and children. It's  
22 an organization.  
23 Q And it's a wide net that I've cast, so any,  
24 any other clubs or groups of any sort? Social clubs,  
25 labor unions, I mean just anything, any other organized

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1 group that you're a member of?  
2 A I don't believe so.  
3 Q Churches? I mean just any- anything.  
4 A Oh, like, I have an acting class, but I'm  
5 quitting this month.  
6 Q Okay.  
7 A But I have done that for, like, six years.  
8 Q Where's the acting class?  
9 A It's on Stassney Lane.  
10 Q All right. And what is the name of that?  
11 A In the Moment Acting Studio.  
12 Q And how long have you been taking classes  
13 there?  
14 A About six years.  
15 Q And what do you do? Like, what would be just  
16 a day in the life of being there?  
17 A So we have one month is repetition and one  
18 month is scene month. So with repetition it's more of,  
19 like, reading behavior and, like, responding naturally.  
20 So, like, if I was jittering my leg, you'd be, like,  
21 "You're nervous," and then I would have to repeat, "I'm  
22 nervous," and it would invoke emotional response. And  
23 then the scene month is just we get scenes, we learn  
24 our lines, and we go and do it in class.  
25 Q Okay. So have you been in plays or various

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1 presentations?  
2 A I've been in, like, films. I went to -- I  
3 took a theater class, and I just produced, wrote, and  
4 starred in my own short film. Yeah.  
5 Q Okay. What is the name of that short film?  
6 A It's named Porcelain.  
7 Q Porcelain?  
8 A Yeah.  
9 Q And was that -- like, how recent is that?  
10 A I filmed it in September, the end of  
11 September.  
12 Q Of 2022?  
13 A Yeah.  
14 Q And so just what is that? I mean, how long  
15 is the film?  
16 A It's 10 minutes.  
17 Q And it has actors?  
18 A Yeah. It's --  
19 Q Script and all of that like a real --  
20 A Yeah. Like I'm --  
21 Q -- real movie? Yeah.  
22 A -- lead actress, and then there's another  
23 actor, and there's, like, a couple extras. And then I  
24 had, like, a DP and, like, the behind-the-scenes crew.  
25 Q Okay.

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1 A And I did set design.  
2 Q Was that film -- and I'm speaking in terms I  
3 really don't understand, is filmed on location? Is  
4 that filmed in a theater? What --  
5 A It was filmed in four different locations,  
6 one being a car, one being Cherrywood Coffeehouse,  
7 another being a hotel, and then the other would be in  
8 my house.  
9 Q Okay. And have you had any other acting  
10 roles in the last five years other than that?  
11 A Yeah. I've done -- I was on this film,  
12 feature film where I played, like, a bad guy or  
13 whatever, and then I did a -- I was like a -- I was in  
14 a Netflix show briefly, like kind of co-star briefly.  
15 And let me see. Yeah. And then I've done, like,  
16 YouTube stuff.  
17 Q Do you have any ongoing kind of regular  
18 presentations on YouTube? Like I hear about people  
19 that have their own YouTube channel and people tune in,  
20 watch whatever they're doing. Do you have anything  
21 like that?  
22 A No.  
23 Q What feature film was that you mentioned?  
24 A It's called Aura.  
25 Q And when was that done?

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1 A That was started shooting. It just wrapped,  
 2 like, a month ago, but it started shooting last  
 3 December.  
 4 Q Okay. And what did you do with that film?  
 5 A I was just playing, like, a villain in that  
 6 film, and I was kind of like a co-star. Yeah.  
 7 Q Okay. And how long is that film?  
 8 A It's probably close to in between an hour and  
 9 two hours.  
 10 Q And so you had an established role where  
 11 you --  
 12 A Yeah. I was, like, an action -- it was,  
 13 like, kind of actiony.  
 14 Q Okay. Like, how many lines did you have or  
 15 would you guess your --  
 16 A Oh, probably --  
 17 Q -- amount of time is?  
 18 A -- only, like, a few lines. Most of mine was  
 19 actions.  
 20 Q Okay. And so what's the status of this film  
 21 Aura? Like, can I watch it somewhere, or is it going  
 22 to be put on YouTube, or is it going to be put on  
 23 Netflix?  
 24 A I actually don't know what he's going to do  
 25 with it. I would imagine probably submitting it to

1 club, and I just, like, laughed at his joke, and he  
 2 made a joke about me or whatever.  
 3 Q Okay. When was that done?  
 4 A That was filmed last year in I want to say  
 5 probably, like, October or November.  
 6 Q And did you get paid for that?  
 7 A Yeah.  
 8 Q And, like, how much do you get paid? I know  
 9 it varies on projects.  
 10 A It varies. Yeah. I probably got, like,  
 11 about \$300 for that.  
 12 Q Okay. But it's the type of work where  
 13 someone probably sends you some sort of tax document?  
 14 A Yeah.  
 15 Q 1099 or --  
 16 A Yeah.  
 17 Q -- something like that and --  
 18 A Also with commercials. I forgot. I did do,  
 19 like, a couple commercials too.  
 20 Q And is that something you're continuing to  
 21 pursue, is acting?  
 22 A Yes.  
 23 Q Okay. Have you gotten any projects you're  
 24 working on right now?  
 25 A Yeah. I'm writing two short films. My

1 film festivals. And if --  
 2 Q Okay.  
 3 A -- you do that, you can't really release it  
 4 anywhere else, because the film festivals require you  
 5 to release there. So you can't, like, have -- you can  
 6 have, like, private releases, but I have no idea what  
 7 he's -- post-production could take a year sometimes.  
 8 Q Okay.  
 9 A You never know.  
 10 Q Did you get paid to be in this film?  
 11 A It was a very small percentage, like \$20 a  
 12 day. So a little bit. Yeah.  
 13 Q Yeah. So I mean, this is the type of film  
 14 that could end up at, like, Sundance Film Festival or,  
 15 or some sort of film festival?  
 16 A Yeah. It could go to a film festival.  
 17 Q Then win an Academy Award next year.  
 18 A Yeah. You never know.  
 19 Q Yeah. So -- all right. What about this  
 20 Netflix show?  
 21 A I was just -- it was just actions. I mean, I  
 22 had a name, but it was just actions. It was Mo. Have  
 23 you seen the show Mo? It's filmed in Houston.  
 24 Q And what did you do in Mo?  
 25 A I was basically playing, like, a dancer at a

1 film's almost done in post-production. It should be  
 2 done in about a month. Yeah, I am. Actually the next  
 3 short film I'm writing is about fight, flight, freeze,  
 4 fawn response, because a lot of people don't understand  
 5 those responses. So I decided to write them into a  
 6 short film.  
 7 Q And for instance, like with your films that  
 8 you've just finished and, and ones that you're going to  
 9 work on, what's your plan for that as far as  
 10 distribution or selling? Or how does that work?  
 11 A I want to submit it to film festivals.  
 12 Q Okay. I guess part of my question is, is  
 13 there -- are you generating any revenue off of it right  
 14 now, or would you consider it more of a hobby?  
 15 A I'm not generating any -- with film you kind  
 16 of spend a lot of money, especially if you're making  
 17 your own films, unless you do, like, crowd-funding  
 18 campaigns.  
 19 Q Okay. Like the Mo Netflix show, did you make  
 20 more than one appearance, or, like, was that an ongoing  
 21 show?  
 22 A Just one appearance. Yeah.  
 23 Q And where was that filmed?  
 24 A That's filmed in Houston.  
 25 Q Okay. And then, like, the feature film Aura,

1 was that filmed where?  
2 A In Austin.  
3 Q In Austin.  
4 A In multiple locations.  
5 Q And then your films that you're working on I  
6 guess are local --  
7 A Yeah.  
8 Q -- here in Austin? How long have you been in  
9 the acting business? And I cast a wide net on that as  
10 well. All, all forms of acting, whether it's on stage  
11 or in film or what have you.  
12 A Probably, like, around the time I started the  
13 class. I kind of did a little bit before that, so  
14 maybe, like, seven years. And then in high school I  
15 did, like -- like, I would tell stories with, like,  
16 exaggeration, but it wasn't so much of, like, acting or  
17 theater. It was just, like, competing with telling  
18 stories.  
19 So that kind of led me there, and then I  
20 went to school for music, and so I decided -- I was  
21 going to go for theater acting, but I decided that my  
22 class was, like, a really good class. So I was, like,  
23 I can just take this class and then go to school for  
24 music so I can get both.  
25 Q Okay. And what is the -- oh, I think you

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1 told me, but I may not have written it down -- the name  
2 of this acting class?  
3 A In the Moment Acting --  
4 Q In the Moment. Yeah. So is that a, like a  
5 school, an acting school? What would you call In the  
6 Moment?  
7 A It's like an acting class. I would say not  
8 really a school, but you go, like, every week.  
9 There's, like, two months out of the year that you take  
10 a break, one month in the summer, one month in  
11 December. Yeah. She's really good at what she does.  
12 Q Who is the main person?  
13 A Laura Vauvray.  
14 Q How do you spell that last name?  
15 A V-A-U-V-R-A-Y.  
16 Q All right. And do you have to pay money for  
17 this acting class?  
18 A (Nodding head)  
19 Q How much is that?  
20 A It's about, like, \$185 a month.  
21 Q Okay. And so you've been paying that roughly  
22 for the last six years?  
23 A (Nodding head)  
24 Q And you think you're going to continue with  
25 that, or you may --

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1 A No. I'm doing -- this is my last month  
2 for --  
3 Q Okay.  
4 A Yeah.  
5 Q And then as far as the music school, where  
6 was that?  
7 A That was at ACC.  
8 Q Okay. And have you pursued any additional  
9 music education?  
10 A I graduated with my degree in music business,  
11 and since then I've built, like, a studio in my house  
12 and I do, like -- I've recorded other artists, but I  
13 mostly focus on making my own music. And I've dropped  
14 two LPs since then, so, like, small albums.  
15 Q And when did you drop those albums?  
16 A One of them was more recent, like, December.  
17 The other one was right before COVID.  
18 Q And, like, for the most recent one, for  
19 instance, if I wanted to hear that but you didn't give  
20 me, you know, the music, where would I find that? Is  
21 that something you can get on Spotify or --  
22 A Yeah.  
23 Q -- something like that? Wow. Okay. Have  
24 you received any money from your albums?  
25 A Maybe, like, a couple dollars in my, like,

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1 CD Baby account, but not, like, anything crazy.  
2 Q Yeah.  
3 A Yeah. Or significant.  
4 Q Okay. Well, I guess that kind of leads to a  
5 change somewhat in our deposition. I'm going to just  
6 start asking some personal questions, like your  
7 educational and occupational history. And so we've  
8 just discussed some of that.  
9 But if you would, just generally tell  
10 me, like, where'd you grow up? Where'd you go to  
11 school?  
12 A I grew up in southeast Texas, and I went to  
13 Bridge City High School, Middle School, Elementary.  
14 Q What was the name of the town?  
15 A Bridge City.  
16 Q And where is Bridge City?  
17 A It's, like, right by Orange, kind of by  
18 the -- it's by Lake Charles, like, right on southeast  
19 Texas.  
20 Q Okay.  
21 A The Golden Triangle/Beaumont area.  
22 Q I got you. And where'd you go to high  
23 school?  
24 A Bridge City High School.  
25 Q Bridge City? And what'd you do after high

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1 school?  
2 A I moved here, like, immediately after.  
3 Q Did you move here just by yourself or with  
4 family or why?  
5 A Well, my parents, like, drove me up here.  
6 And yeah, I was -- I lived here by myself for awhile,  
7 but now my parents live in Wimberley and my brother --  
8 one of my brothers lives back home and one of them  
9 lives in Austin.  
10 Q Okay. So your parents live in Austin now.  
11 A Yeah. They all, like, moved up here.  
12 Q And so when you moved to Austin did you  
13 enroll in school at ACC?  
14 A (Nodding head)  
15 Q Okay.  
16 A Yeah. I had, like, a scholarship. So I had,  
17 like, a time limit between when I needed to use it, so  
18 I did. I went straight to school.  
19 Q Yeah. And then what did you -- once you went  
20 to ACC and I guess you enrolled in music?  
21 A No. I actually went from psychology to  
22 writing to theater to music.  
23 Q When did you begin your time at ACC?  
24 A I started probably, like, within the first  
25 year, the first year I moved here, and then -- yeah.

1 A (Nodding head)  
2 Q What kind of jobs were you doing at that  
3 time?  
4 A I worked at -- my first job was Baby  
5 Acapulco. I waited tables there, and then I think the  
6 next one I went to Shady Grove. And then I worked  
7 remotely from home selling solar, and then after that I  
8 went to -- there's another couple restaurants before  
9 Kerbey Lane, but I just can't remember what the  
10 restaurants were. But I went to Kerbey Lane at some  
11 point in that time.  
12 Q And I heard you say earlier that at some  
13 point you managed the --  
14 A Yeah.  
15 Q -- downtown location or some location?  
16 A The UT one.  
17 Q UT location? And do you think that was  
18 before COVID or after COVID?  
19 A Before.  
20 Q And so after Kerbey Lane where'd you go?  
21 A I went to Palazzo. Oh, wait. No. Actually  
22 no. Wrong. I went to Ojos Locos, and then I went  
23 to -- there's a bar that's like a gaming bar that I  
24 helped open up called Valhalla, it's downtown; and then  
25 I went to Iron Cactus. And then I went to Palazzo and

1 So that'd be, like, 2015.  
2 Q Okay. So you moved to Austin in 2015.  
3 A Yeah.  
4 Q Okay. And when did you finish your degree at  
5 ACC?  
6 A I don't -- I can pull up the picture.  
7 Q No. That's okay. I just --  
8 A I don't know the exact date, but I would say  
9 it's probably, like, three years ago. Let's see.  
10 Q Okay.  
11 A Maybe, like, a year before COVID. So maybe,  
12 like, 2019.  
13 Q And so you got a degree from there; is that  
14 correct?  
15 A Yeah.  
16 Q Yeah. So it's an associate's degree or  
17 something?  
18 A Yeah.  
19 Q Okay. And it's in music?  
20 A Business. Yeah.  
21 Q Music business.  
22 A It will be under, like, I think science and  
23 math, but it's music business.  
24 Q Okay. During the time that you were at ACC  
25 were you doing any jobs of any sort?

1 I got my job back at Kerbey Lane at the same time as a  
2 host, so I worked both of those jobs.  
3 Q Okay. And when did all of that occur? Was  
4 that pre-COVID or some of that after COVID? And when I  
5 say COVID I mean 2019.  
6 A After -- no. All of it was pre-COVID. I  
7 jointed Palazzo right before COVID, and then I was  
8 still at Kerbey Lane right at the beginning of COVID  
9 and I quit --  
10 Q Okay.  
11 A -- during COVID.  
12 Q And so during COVID what did you do? Did you  
13 have any employment?  
14 A Not really. I worked --  
15 Q From 2019 really up to the present what have  
16 you done, I guess would be the question.  
17 A I mean, I worked at Palazzo, but of course,  
18 you know, it was all shut down, so I wasn't really  
19 doing much. I mean, there was, like, Only Fans, but --  
20 THE REPORTER: There was what?  
21 THE WITNESS: Only Fans.  
22 Q And did have an account with Only Fans?  
23 A Yeah.  
24 Q Okay. And that would have been, like, during  
25 COVID I guess?

30 (Pages 117 to 120)

1 A Yeah.

2 Q Kind of the whole stay-at-home time. What

3 about after that?

4 A After that I continued working at Palazzo.

5 Q Okay. And is that where you are today?

6 A (Nodding head)

7 Q So from really 2018 or whenever you first

8 began work at Palazzo you've continued working with

9 them up through the present?

10 A Yeah.

11 Q And then, like, Kerbey Lane, you no longer

12 work for Kerbey Lane?

13 A No.

14 Q And what about Only Fans, do you still

15 have --

16 A No.

17 Q -- anything going on with that?

18 A (Shaking head)

19 Q Is all of your employment currently from

20 Palazzo?

21 A Mm-hm.

22 Q Okay. And then if some of your movies and

23 stuff take off, then...

24 A Mm-hm.

25 Q All right. Have you been to any other

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1 schooling after ACC --

2 A No.

3 Q -- other than the acting classes? And have

4 you taken any other types of sort of certifications, or

5 have you received any- anything along those lines?

6 A I took, like, voice lessons and, like, piano

7 lessons.

8 Q Okay.

9 A Mostly music-involved.

10 Q Well, tell me about your time at Palazzo.

11 Like, when you first started what were you doing

12 there?

13 A Oh, I forgot I actually did work there --

14 somewhere in the midst of all that I worked there as a

15 cocktail waitress.

16 Q Okay.

17 A And that was back in -- it was -- I don't

18 even know what job it was in between, but it was for,

19 like, a month.

20 Q Okay. And so after your cocktail experience

21 what have you done at Palazzo ever since?

22 A Now I'm a dancer there.

23 Q Okay. How long have you been a dancer?

24 A Since I started in -- it was, like, three and

25 a half years.

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1 Q Okay. And what is your schedule there?

2 Like, what would be a normal day of you working?

3 A Well, actually we don't really have a

4 schedule, so we kind of just go in whenever we want.

5 So I mean, it really depends.

6 Q Okay.

7 A Usually I'll try to get there at least

8 before, like, 10 p.m.

9 Q Okay. And, like, how long do you work, from,

10 like, 10 p.m. till when?

11 A On the weekends it's 4 a.m., and on the

12 weekdays it's 2 a.m.

13 Q Okay.

14 A But I can leave whenever pretty much, as long

15 as it's, like, three hours of actually being there. So

16 sometimes I leave because it's not good or there's

17 nobody there.

18 Q Yeah. There's not a lot of people?

19 A Yeah.

20 Q Do you have, like, any scheduled times? In

21 other words, are there times people come just because

22 they want to see you, or are you there -- is it just

23 kind of a nebulous schedule as far as that goes?

24 A For the most part, yeah. I mean, sometimes

25 there are, like, customers that will be, like, Hey, go

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1 in, but other than that mostly it's, like, nebulous

2 schedule.

3 Q Okay. And what is the general work there? I

4 know you said dancer, but just what's the location? Is

5 it -- it's on a stage I guess?

6 A Yeah. There's, like, three stages, and then

7 there's pretty much basic strip club setup. And you

8 have to go on stage or they'll shift to pay to skip,

9 and then you can give, like, dances on the side. And

10 then there's a private area where you can, like, drink

11 champagne and give dances in, like, a private area.

12 Q Okay. And so how does your money come in I

13 guess? Because you've asked -- I think that there's a

14 decrease in earning capacity as a result of this police

15 accident. So I'm just wondering, is your income

16 different now than it was before this, before August 1,

17 2020?

18 A I would say, like, at first I was kind

19 of -- it was affected a lot because of my lack of being

20 able to go straight back to work from being, like,

21 injured and stuff. I don't know that it's still -- I

22 would say I still get, like, flare-ups in my body,

23 but -- if that's what you're asking. You're asking

24 about...

25 Q Well, I'm just asking has there been any

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1 difference in your income as of August 1, 2020, before  
 2 that date versus after that date? You know, is your  
 3 income more or less than it was before this police  
 4 incident?  
 5 A I would say it's changed a little bit now,  
 6 but I don't know that it's, like -- I don't know. It  
 7 fluctuates a lot --  
 8 Q Okay.  
 9 A -- because of the industry. So I would say,  
 10 I mean, now it's kind of, like, always kind of  
 11 fluctuating.  
 12 Q Is it -- I mean, would you say generally it's  
 13 either about the same as it was before August 1, 2020,  
 14 or are you making more money or less money now, or is  
 15 it about the same?  
 16 A It's probably less now, but...  
 17 Q But you don't -- you can't just directly say,  
 18 After this incident I was no longer --  
 19 A No.  
 20 Q -- able to earn money?  
 21 A No.  
 22 Q Okay. So --  
 23 A I mean --  
 24 Q -- generally your income it sounds like is  
 25 close to the same --

1 THE REPORTER: Could you verbalize  
 2 when you're --  
 3 THE WITNESS: Oh, no. Yeah. No.  
 4 Q All right. Now, you have included in your  
 5 complaint that you were personally injured and that you  
 6 have some ongoing medical problems as a result of that.  
 7 So that's really what I want to talk about now, is just  
 8 kind of --  
 9 A Okay.  
 10 Q -- your medical history. Do you have any  
 11 ongoing problems right now as you sit there from this  
 12 August 1, 2020 incident?  
 13 A I will say there's, like, my back right here  
 14 flares up a little bit, and then that's pretty much the  
 15 main spot in my back.  
 16 Q Okay. And when you say your back, what part  
 17 of your back?  
 18 A It's, like, right there.  
 19 Q So looks to me like it's your left shoulder?  
 20 A Yeah.  
 21 Q And it's the back of your left shoulder?  
 22 A Like there.  
 23 Q Would you describe that as your upper back?  
 24 A Yeah.  
 25 Q Okay. And how long have you had problems

1 A Yeah.  
 2 Q -- at least. And is that income -- does,  
 3 like, Palazzo pay you a check or you get money from  
 4 people, you know, through tips, or is it combination of  
 5 the two? Or how does that work?  
 6 A I mean, you leave with cash every time, but  
 7 sometimes the customers purchase these ticket that are  
 8 called Funny Money tickets, and then you turn in the  
 9 ticket at the end and then they give you cash. So  
 10 you're still --  
 11 Q So it's pretty much always cash? Like, you  
 12 don't get a check and have --  
 13 A No. I --  
 14 Q -- taxes withheld?  
 15 A -- get a 1090 form.  
 16 Q Okay.  
 17 A Or 1099.  
 18 Q All right. And so as far as occupation and  
 19 employment history, have we pretty much covered that?  
 20 A Yes.  
 21 Q Okay. And as far as any other little side  
 22 businesses, whatever they may be, selling ceramics or  
 23 something, you're not doing anything else like that?  
 24 A (Shaking head)  
 25 Q Okay.

1 with your upper back?  
 2 A I really did not have any problems as far  
 3 as, like, sitting and stuff before my arrest, and  
 4 after my arrest even, like, sitting in a chair I  
 5 started -- like, my toes would start tingling. And so  
 6 that definitely did -- was a main factor in where that  
 7 came from. But I would say no, I didn't really have  
 8 back problems before.  
 9 Q Okay. When's the last time you received  
 10 treatment for your back?  
 11 A Actually, like, a couple days ago I think I  
 12 went to my massage lady.  
 13 Q And who, who was that?  
 14 A Her name's Bri. She's with Austin Holistic  
 15 Health. It's Rolfing.  
 16 Q And what does she do, what type of therapy?  
 17 A It's Rolfing.  
 18 Q Do what?  
 19 A Rolfing. So it's like fascia --  
 20 Q Rolfing. Okay. What is Rolfing?  
 21 A It's like maneuvering your fascia, because  
 22 fascia can build up around your muscles and tendons and  
 23 keep them locked in different places where they don't  
 24 necessarily go. So she maneuvers your fascia to where  
 25 it, like, loosens up those tendons to where they can,

32 (Pages 125 to 128)

1 like, move into the right place, and then she forms the  
2 fascia around where the right position is, where you're  
3 aligned.  
4 Q Okay.  
5 A And fascia is, like, emotion buildup and,  
6 like, that kind of thing too.  
7 Q And is that effective for you?  
8 A Oh, yeah.  
9 Q And so, like, are you currently having upper  
10 back pain right now?  
11 A (Shaking head)  
12 Q How long is a Rolfing therapy session?  
13 A An hour and a half.  
14 Q It takes about an hour and a half?  
15 A (Nodding head)  
16 Q And how long does -- are the effects good,  
17 you know, after that?  
18 A Usually for -- if I can really stay in tune  
19 with my body and feel whenever something's going off as  
20 soon as it's hit off, I can keep it good for a good  
21 period of time. But it's whenever I, like -- it  
22 depends, but usually it will last about a couple weeks  
23 at least. I definitely feel like an increased -- like,  
24 I feel way better and more in tune with my body now, so  
25 I feel like I don't actually even need it as much,

1 have to, but yeah.  
2 Q Okay. So when did you first seek medical  
3 treatment after this August 1, 2020 incident?  
4 A I don't know. I think it was pretty close  
5 to, pretty close in the timeframe after, but I'm not  
6 exactly sure on the date.  
7 Q Okay. But at the time, at least from what  
8 I've seen on the police report, you didn't really  
9 complain of any medical issues to the police. Is  
10 that --  
11 A Yeah. I think I don't necessarily think that  
12 you feel everything right off the bat either.  
13 Q Okay. So I mean, you would agree it was  
14 sometime after the day of the event, after you were  
15 released from the hospital that you first -- or after  
16 you were released from the police station that you  
17 first sought medical care?  
18 A Yeah.  
19 Q Okay. And just off records that we've been  
20 produced, it looks like maybe your first medical  
21 treatment after the incident was September 6. So,  
22 like, maybe a month later? Would that -- you wouldn't  
23 have any reason to disagree that you sought medical  
24 treatment a month later?  
25 A Yeah. I mean, if that's what it says.

1 because she's, like, aligned my body so much and I'm in  
2 tune whenever I feel off. But yeah, it's actually  
3 getting less and less as I've been going.  
4 Q Okay. And how much does it cost for a  
5 Rolfing session?  
6 A It's, like, \$240.  
7 Q Other than this Rolfing, have you -- are you  
8 undergoing any other type of medical or health-related  
9 treatment for your --  
10 A I went to --  
11 Q -- back or any other part of your body?  
12 A I did go to, like, previous other healthcare  
13 providers before I ended up at Austin Holistic Health  
14 over the last couple years. I definitely had been to a  
15 chiropractor, I've done physical therapy, I've had -- I  
16 had a doctor tell me I needed to get back surgery, and  
17 so I went and got -- after getting a C -- what is it, a  
18 CT? No, not CT. What is the --  
19 Q CT scan maybe?  
20 A Yeah.  
21 Q Okay.  
22 A After getting one of those -- I got one of  
23 those after my arrest, and they had told me that I was  
24 going to need surgery, but I didn't want to do surgery  
25 at all. I don't want to go down that road unless I

1 Q Okay. Is there anyone other than -- this is  
2 at Joint Chiropractic. Like, did you go anywhere  
3 before Joint --  
4 A Do y'all have --  
5 Q -- Chiropractic?  
6 A -- San Marcos Family Medicine on there?  
7 Q There is San Marcos Family Medicine, and it  
8 looks like it started 8/28/20. Okay. Would that have  
9 probably been -- I misread the date. Would that have  
10 been the first time --  
11 A Yes.  
12 Q -- you can recall? And then after August 28  
13 then you started going to Joint Chiropractic?  
14 A Yes.  
15 Q Okay. And do you think the pain that you  
16 attribute to the police incident is really just your  
17 upper back, left shoulder upper back?  
18 A Definitely right after it was my lower back  
19 too.  
20 Q Okay.  
21 A And there was, like, tingling that would go  
22 into my toes and they would go numb, and then these two  
23 fingers sometimes would go numb.  
24 Q And then at some point it seems that the  
25 lower back and the tingling went away, no longer is an



1 issue?  
 2 A Yeah. It's not been an issue. It actually  
 3 just recently, like a few months ago, got to a point to  
 4 where it only comes up, like, if it's really been -- if  
 5 I, like, fell and hurt -- you know, it doesn't -- it's  
 6 not something that comes up all the time anymore.  
 7 But right after, it was something that  
 8 was, like, if I was sitting, if I sat on the toilet too  
 9 long, if I was, like, doing anything, it would just  
 10 flare up.  
 11 Q Okay. And then our notes reflect that it  
 12 looks like maybe by the end of February '21 you were no  
 13 longer receiving treatment.  
 14 A I definitely was still receiving some form of  
 15 treatment, maybe not -- is that when the massages, say  
 16 the massages stopped?  
 17 Q Well, it looks like you were at Victory  
 18 Medical Physical Therapy.  
 19 A Yeah. I was there.  
 20 Q From 10/30/20 all the way to February 10 of  
 21 '21?  
 22 A Yeah.  
 23 Q And then it looks like there's a substantial  
 24 gap of several months with no --  
 25 A Yeah.

1 Q -- broken fracture or anything?  
 2 A They told me C-something. What is it when  
 3 you have a displaced -- my San Marcos Family Medicine  
 4 had told me that it was a displaced disc or bulging  
 5 disc, and she gave me, like, the numbers, but I don't  
 6 know the difference in the numbers.  
 7 Q Okay. I do see a reference here to "L5-S1,"  
 8 which would be lower back, "mild disc space narrowing,"  
 9 which they noted. Is that --  
 10 A Yeah.  
 11 Q You think it's what she's talking about?  
 12 A Yeah.  
 13 Q Narrowing? And then I also see that there's  
 14 a reference about a scoliotic, or scoliosis, scoliotic,  
 15 curvature. Has anyone ever talked to you about a  
 16 scoliotic or scoliosis curvature?  
 17 A I'm not sure. I've been, like, tested for  
 18 scoliosis, but they've never told me that it was  
 19 positive.  
 20 Q Okay. So then would you agree, anyway, that  
 21 it looks like you had stopped receiving medical  
 22 treatment other than maybe this massage therapist after  
 23 February 10, '21?  
 24 A (Nodding head)  
 25 Q And who was the massage therapist?

1 Q -- treatment of any sort. I mean, so would  
 2 you agree that there was that gap of time?  
 3 A Yeah. I mean, I was still seeing the massage  
 4 person every once in awhile, but it wasn't -- I wasn't  
 5 doing with the regul- regular physical therapy that I  
 6 was doing before.  
 7 Q Okay. And has anybody -- you mentioned a  
 8 little earlier that someone said you may need to do --  
 9 A Yeah.  
 10 Q -- surgery?  
 11 A It was San Marcos Family Medicine, which was  
 12 the first place I went to.  
 13 Q Okay.  
 14 A And I didn't want to do surgery, because my  
 15 mom had back surgery prior to that year, and so I was  
 16 looking for other options.  
 17 Q And then I just see some findings from MRIs,  
 18 and it looks like particularly at Victory Medical  
 19 there's a radiology report that says "lumbar spine no  
 20 acute fracture or dislocation." Has -- does that sound  
 21 about right to you?  
 22 A Yeah.  
 23 Q I mean, has anyone ever told you that you,  
 24 like, had a broken back or had a --  
 25 A No. They just --

1 A It's called -- massage. She's very -- she  
 2 uses crystals.  
 3 Q It's not the holistic --  
 4 A It's out of her house.  
 5 Q -- lady that you --  
 6 A It's a --  
 7 Q -- just mentioned?  
 8 A -- different one. It's, like, right down the  
 9 street from here.  
 10 Q Oh, wow.  
 11 A It's out of her house, and her husband was in  
 12 my acting class. Massage -- I know I'm, like,  
 13 (inaudible).  
 14 Q Oh, well, you can look if you can find it  
 15 quickly.  
 16 A Okay. Pure (indistinct) Massage.  
 17 THE REPORTER: What's that?  
 18 A Actually she lives 2016 Jesse E. Segovia  
 19 Street.  
 20 Q Okay. What's the name of the company or the  
 21 business?  
 22 A Pure Om Massage.  
 23 Q How do you spell that?  
 24 A P-U-R-E and then O-M -- it's a separate  
 25 word -- and Massage.

1 Q Massage. Okay. And then it looks like on  
2 March 10, '21 that you were in a car wreck.  
3 A Yes.  
4 Q And it looks like there that you complained  
5 of pain and loss of range of motion, and you slammed  
6 into a concrete wall in your car maybe?  
7 A Yeah.  
8 Q Tell me a little bit about that accident,  
9 what happened.  
10 A I was driving and it was actually right in  
11 front of my job. It was -- but I was leaving from  
12 getting a cone for my dog because he had just got  
13 fixed, and so we were in the car and I was driving,  
14 and then I was, I was in the -- you know how there's,  
15 like, one lane that kind of gets backed up on the Waco  
16 and San Antonio exit and there's one lane, like,  
17 goes -- that's not usually backed up? I was in the  
18 lane that wasn't backed up, and then a girl tried to  
19 swerve into that lane, and I was already coming and  
20 then she swerved back into the other lane. And it was  
21 too late and she hit someone, so she just swerved back  
22 into me and that's whenever I went into the concrete  
23 wall.  
24 Q Okay. So she hit you --  
25 A You.

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1 Q -- and your car hit the concrete wall.  
2 A Yeah.  
3 Q What was the damage to the car?  
4 A It was totaled.  
5 Q Okay. Was the impact to the front or the  
6 back or the side or...  
7 A I think it was the front.  
8 Q Okay. And so what happened there? Like, you  
9 had the wreck, and how'd you get home?  
10 A My older brother came and got me, and I kind  
11 of got out of the car. Yeah. He came and picked me  
12 up. I ended up going to the FastMed Urgent Care and --  
13 yeah. I mean, I had, like, a mild concussion.  
14 Q Okay. Had a concussion, mild one, and then  
15 looks like you complained of pain to your back?  
16 A Yeah.  
17 Q Lower back? Upper back?  
18 A Yeah.  
19 Q All over?  
20 A Every -- I had it retriggered everything.  
21 Yeah.  
22 Q Where was that wreck?  
23 A Right in front of Palazzo on that exit, the  
24 Waco and San Antonio exit I think it is.  
25 MS. McDANIEL: On 290?

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1 THE WITNESS: I think it's Ben  
2 White.  
3 A Ben White, and then there's an exit that,  
4 like, curves around or goes this way.  
5 Q (By Mr. Barton) Okay. And then just  
6 looking at the treatment history from Family First  
7 Chiropractic, it looks like you received treatment  
8 there and at Joint Chiropractic really up through  
9 November of -- or, or September of 2022?  
10 A Mm-hm.  
11 Q Finished up maybe at Victory Medical Physical  
12 Therapy last year, September '22?  
13 A Mm-hm.  
14 Q And so when that treatment was finished, I  
15 mean, you think that took care of all the injuries you  
16 had with the car wreck?  
17 A No. I think, I think I necessarily left  
18 Victory Medical not necessarily because I felt, like,  
19 healed or anything, but I felt like I needed something  
20 else. But I will say it helped. It definitely helps.  
21 The ultimate thing that really helped me was Austin  
22 Holistic Health. Like, that changed my entire life.  
23 Q Okay. And then it looks like you began with  
24 Austin Holistic Health --  
25 A Mm-hm.

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1 Q -- November 14, '22 and have continued doing  
2 that through the present?  
3 A Yes.  
4 Q And so that followed the car wreck --  
5 A Mm-hm.  
6 Q -- is that correct? And you described  
7 earlier that those sessions can leave you feeling good  
8 or pain-free for two weeks at a time or more --  
9 A Yes.  
10 Q -- and that you've kind of learned your own  
11 body to avoid pain I guess?  
12 A Yeah.  
13 Q Yeah. So, like, as you're sitting there  
14 right now are you in any particular pain?  
15 A No. Not -- no.  
16 Q And you're able to continue your job with  
17 Palazzo?  
18 A Yeah.  
19 Q And your acting and some of those action  
20 scenes you've done?  
21 A Yeah.  
22 Q So would you say you have -- has anything  
23 kept you from being able to run and dance and walk and  
24 bend and do anything you need to do for any of your  
25 work?

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1 A Initially with both incidences, yes, it did.  
2 But I'm doing my job now, you know. Like, I'm fine.  
3 Q Okay. And then let me see.  
4 A Can I go to the restroom real quick?  
5 Q Oh, sure. This is a good time to take it.  
6 VIDEOGRAPHER: This is the end of  
7 media number 4. We're now off the record, the time is  
8 2:18 p.m.  
9 (At 2:18 p.m. the proceedings  
10 recessed, continuing at 2:27 p.m.)  
11 VIDEOGRAPHER: This is media number  
12 5. We're back on the record, the time is 2:26 p.m.  
13 Q (By Mr. Barton) All right, Ms. Beuhler, so  
14 I think we've talked about your physical injuries,  
15 right?  
16 A Yeah.  
17 Q And brought that up to where you are  
18 presently.  
19 A Yeah.  
20 Q And then you have also included claims for  
21 past and future mental anguish, emotional distress, and  
22 loss of enjoyment of life and, you know, that kind of  
23 mental-related type injuries. So that, that's what I  
24 want to talk about right now.  
25 When do you recall first receiving any

1 type of counseling for mental anguish? And not  
2 necessarily related to this August 1, 2020 incident.  
3 Just any time what's the first treatment you recall  
4 ever receiving?  
5 A I think 2015.  
6 Q Okay.  
7 A Either 2015 or 2016 I did for, like, a month.  
8 Q And what were the circumstances of that?  
9 A It was through Safe Alliance. Actually I  
10 have a case --  
11 THE REPORTER: What was that, I'm  
12 sorry?  
13 THE WITNESS: Through Safe  
14 Alliance.  
15 A And I have a case through the DA for a rape  
16 situation. And so Safe Alliance is where they did,  
17 like, the kit, and they, like, offered me therapy. And  
18 so I went to therapy through them for, like, a month.  
19 Q Okay. And how -- did you receive any therapy  
20 following that for that month or so?  
21 A No. No.  
22 Q Okay. And I'm sure that's a very traumatic  
23 situation, so I won't go into that much at all, but let  
24 me ask you, was there a criminal investigation or a  
25 prosecution or arrest or anything as a result of that?

1 A They still haven't done anything about it.  
2 Q But you filed charges I guess --  
3 A (Nodding head)  
4 Q -- for rape obviously.  
5 A (Nodding head)  
6 Q Okay. And following that have you received  
7 any treatment or therapy along these lines?  
8 A No. I believe I started therapy I believe  
9 in, like, 2021, but I'm not a hundred percent.  
10 Q And where was that?  
11 A With Onyx -- actually I start -- actually I  
12 did do therapy before that through the police over  
13 COVID. Through the police who were doing my case there  
14 was -- like, they had called me and they had, like,  
15 offered a program where you can meet with a therapist  
16 through the -- through, like, that whole thing. And I  
17 went with her for a little bit, and then, like, one or  
18 two sessions. But we didn't, like, mesh well, so I  
19 gave up on that too. And then that's whenever -- in  
20 2021 was whenever I met my therapist.  
21 Q Okay. So this kind of police therapy thing,  
22 I just want to find out a little more about that. Was  
23 that -- when did that first begin?  
24 A I think it was, like, 2020-ish. I know it  
25 was over COVID, because they called me and they were,

1 like, hey, like, asking me how much time or something  
2 or what I wanted from everything. And they were --  
3 like, offered this program that there's, like,  
4 therapists that will do free therapy for people who  
5 were in the -- I don't know, have a case with, like,  
6 rape or something I guess.  
7 Q Okay. So this is related back to the  
8 incident with the -- that was on file with the DA?  
9 A Yeah.  
10 Q The case you had with the DA in from 2015,  
11 2016?  
12 A Yeah.  
13 Q And so this police therapy was associated  
14 with that?  
15 A Yeah. It was -- yeah.  
16 Q Okay. It was not associated with the  
17 protest --  
18 A No. This --  
19 Q -- on August 1?  
20 A -- was before the protest.  
21 Q Okay.  
22 A Yeah.  
23 Q Okay. And you went a couple of times, met  
24 with the therapist, and then what's the next counseling  
25 that you recall receiving?

1 A Onyx Counseling. It was with Courtney. I  
2 forgot her last name.  
3 Q And are you still receiving counseling at  
4 Onyx?  
5 A I was with Courtney and then moved to --  
6 because she went on maternity leave I moved to Jordan,  
7 and then kind of, like, a couple weeks ago Jordan was,  
8 like, leaving, so I decided I was going to take a  
9 break.  
10 Q Okay.  
11 A Mainly financial reasons.  
12 Q From our records, and that's all we do, we  
13 get records and pull out dates and that sort of thing,  
14 it looks like maybe you began being treated at Onyx  
15 prior to this August 1, 2020 incident. Does that seem  
16 to be right --  
17 A Yeah.  
18 Q -- you going to Onyx?  
19 A Or, like, right around.  
20 Q But --  
21 A Is it right around?  
22 Q Yeah. Looks -- the first date we have is  
23 July '20.  
24 A Yeah. I know it was kind of, like, close to  
25 the date.

1 Q Okay. And describe that for me just quickly.  
2 I don't know that I really understand that. Was it  
3 something you were doing to yourself?  
4 A No.  
5 Q No?  
6 A So people who are, like, highly empathetic or  
7 highly sensitive can sometimes attract -- because  
8 they're very, like, giving can attract people who are  
9 takers, which tend to be narcissists, which tend to be,  
10 like, more in their ego. And so in that situation  
11 narcissistic abuse can happen where you get, like,  
12 verbally abused, emotional abuse, that kind of thing,  
13 like, tear you down.  
14 Q Okay. And you were experiencing that at that  
15 time?  
16 A I would say yeah.  
17 Q Was there any particular person, like a  
18 boyfriend or somebody, that was doing that, or, or how?  
19 How was that coming into your life?  
20 A I guess right before COVID happened, right  
21 before COVID happened the guy I was talking to I kind  
22 of realized he was a narcissist. And then I started to  
23 analyze, like, other people in my life and in my  
24 surrounding areas who are narcissistic, and so that's  
25 kind of how that played out.

1 Q Okay. So --  
2 A It was when I was protesting and stuff.  
3 Q Why did you go to Onyx the first time?  
4 A You know, I think there was a lot of reasons,  
5 one being the midst of everything that happened with  
6 the George Floyd, and that was just taking a whole  
7 emotional toll. And then being COVID and, like, I was  
8 still protesting. And then also there was, like, the  
9 narcissism type thing, narcissistic abuse thing. So  
10 all of that kind of.  
11 Q Okay. Let me just break down a few questions  
12 on that to separate them. So the first time you went  
13 to Onyx certainly had nothing to do with the August  
14 1 --  
15 A No.  
16 Q -- 2020 incident. Okay. And but you went  
17 for the reasons you just mentioned. Just kind of the  
18 whole, the whole year was tough, wasn't it?  
19 A (Nodding head)  
20 Q Just everybody I've ever met it was a tough  
21 year. And then the -- for the protest-type-related  
22 things and then the COVID situation. And then what's  
23 the narcissism component of it?  
24 A Oh, just, like, dealing with narcissistic  
25 abuse.

1 Q Okay. And so then it looks like your therapy  
2 with Onyx really has continued from July '21 up till  
3 the present.  
4 A Yeah.  
5 Q And has it been for those same issues?  
6 A Yeah.  
7 Q Okay. So it's still the narcissism situation  
8 is --  
9 A Yeah.  
10 Q -- there?  
11 A That, the police of course, and then -- yeah.  
12 Pretty much any- anything that's happened that's been  
13 pretty traumatic over the past year.  
14 Q Okay. And so --  
15 A Two years.  
16 Q -- of this kind of ball -- may not be the  
17 right way to describe it, but this, this set of  
18 circumstances that you're being treated for, where  
19 would you put the August 1, 2020 police incident? Is  
20 that part of it, or --  
21 A Yeah. I would put --  
22 Q -- is it concluded, or is it ongoing or --  
23 A Oh, it's, yeah, it's still ongoing. I'm  
24 trying to -- but I'm really working on trying to find  
25 peace for myself, because I know, like, nobody else --

1 VIDEOGRAPHER: Watch your  
2 microphone, ma'am.  
3 A -- that's not going to happen, you know? But  
4 yeah.  
5 Q Okay. Well, I know it's hard to break down  
6 figures and percentages on something like this, but my  
7 job is to ask the questions, right? So I'm asking.  
8 A Yeah.  
9 Q What, what is the main problem you have that  
10 you are seeing Onyx for? Like, in other words, is it  
11 the narcissistic situation? Is it family life? The  
12 police matter? Or can you, can you even separate any  
13 of that out?  
14 A I don't think I can, because I think all of  
15 them come up at different moments.  
16 Q Okay.  
17 A And they're all pretty significantly -- I  
18 think not one traumatic experience can be, like, the  
19 main reason, because I think a lot of them are  
20 connected in a way, and I think when one comes up the  
21 others come up too. And so I do think, like, it's been  
22 very vast. Obviously she specializes in narcissistic  
23 abuse, but I wouldn't, I wouldn't say what the cops did  
24 was not narcissistic abuse at the same time too.  
25 Q Okay. And I haven't read all those notes,

1 but -- so I don't know her perspective on it, but has  
2 she ever mentioned the police as part of the  
3 narcissistic abuse, or like, for instance, when you  
4 talk about narcissistic abuse who are you talking  
5 about?  
6 A She doesn't -- she can't really, like, say  
7 straight up there are narcissists. Like, you kind of  
8 have to come to terms with that on your own.  
9 Q Okay.  
10 A And she'll, like, validate you in that  
11 experience, you know, but you kind of have to come to  
12 terms with that and, like -- but she won't straight up  
13 be like, Oh -- but I can, like, name things that  
14 narcissists typically would do, you know.  
15 Q Okay. I'm just thinking that, like, really  
16 since 2020 you've not had any contact with police, have  
17 you?  
18 A I mean, I -- no. No. I've definitely --  
19 Q So any, like, ongoing narcissistic abuse  
20 would have to be from some source other than the  
21 police.  
22 A Yeah. I mean --  
23 Q Okay.  
24 A I mean, it's not like something traumatic  
25 happens and it goes away.

1 Q Yeah.  
2 A It's still there. Like, your body keeps  
3 score.  
4 Q And there've been a lot of bills presented,  
5 and we haven't gone through all that in great detail,  
6 but I guess part of my question is, is for instance,  
7 you did receive some specific medical treatment after  
8 the car wreck and MRIs and all that sort of stuff. And  
9 you wouldn't attribute any of that to the police  
10 incident, right?  
11 A No. I mean, I would say, like, obviously it  
12 can retrigger past, but obviously that injury wasn't  
13 directly from the police, you know. It can retrigger  
14 past injuries.  
15 Q Yeah. Like treatment for the concussion --  
16 A Yeah. The con --  
17 Q -- treatment for all of those related that  
18 happened immediately after the car wreck --  
19 A Yeah.  
20 Q -- which seemed to be related to the car  
21 wreck.  
22 A Yeah.  
23 Q Okay. Other than the sexual assault comments  
24 about the police on those two occasions and then this  
25 incident in 2015 or 2016 that you reported, has

1 there -- have you had any other times of sexual assault  
2 that you recall?  
3 A Yeah.  
4 MS. McDANIEL: Objection, form.  
5 Q (By Mr. Barton) Well, I guess, I guess my  
6 question was, other -- you've discussed the two matters  
7 with the police and then this incident with the DA.  
8 Any other sexual assaults that you have experienced?  
9 A Yes.  
10 Q Okay. Can -- without a lot of detail  
11 necessarily, but when? Like, when was the first one  
12 and when was the last one?  
13 A Oh, God. Oh, fuck. Man, fucking (inaudible)  
14 this today, y'all. God. The first one I was, I was a  
15 little kid, I don't know how old I was, and the last  
16 one was in January.  
17 Q Okay. And is that -- have there been  
18 numerous of those or --  
19 A Yes.  
20 Q And so the nature of that is, it's been  
21 unwanted I'm sure?  
22 A Yeah. Fuck, yeah. God. Oh, my God.  
23 Q And --  
24 A Is that really a question?  
25 Q Well, probably a poorly phrased question,

1 absolutely.

2 A Yeah.

3 Q And so I withdraw that. And yeah. I

4 withdraw that question if it's even possible.

5 But what I'm saying is, these have been

6 traumatic experiences similar to the rape incident that

7 you reported to the DA I'm assuming?

8 A Yeah.

9 Q And, and so it's probably needless to say

10 those have been -- have caused mental anguish and

11 emotional distress, right?

12 A Yeah. This is causing mental anguish and

13 emotional distress.

14 Q Well, the discussion, but I mean --

15 A Yes.

16 Q -- those incidents that you've just mentioned

17 certainly did.

18 A Yeah. Yeah.

19 Q Have any of those incidents involved reports

20 to the district attorney?

21 A No. Just the one.

22 Q Or reporting to the police or --

23 A No. Just the one.

24 Q Or have you talked about these incidents with

25 therapists?

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1 A Yeah. But I don't see how if my 2015

2 complaint wasn't even addressed yet, how anything else

3 that's ever happened to me that involved sexual assault

4 would be addressed.

5 Q And I guess the 2015, 2016 incident, was that

6 report made to the police?

7 A Yes.

8 Q And then made it to the DA?

9 A (Nodding head)

10 Q And --

11 A I can't get ahold of the DA, though, so if

12 y'all can --

13 Q Oh, was it Austin Police Department?

14 A Yeah.

15 Q And...

16 THE WITNESS: Is the DA here?

17 Because I'd like to talk to the DA too (addressing

18 Ms. McDaniel).

19 Q All right. I'm going to have a few more

20 questions, but I think we're getting to the point where

21 things wind down. So bear with me, I'm going to look

22 through my notes and hop around a little bit.

23 Here's a question a lot of people wonder

24 about, and so I'll just tell you on the front end I'm

25 going to ask you about the members of your family that

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1 live in central Texas, just to identify them because

2 they could end up on the jury and I'm entitled to know

3 who you're related to.

4 So that would be question number one.

5 Here in central Texas, Austin, Kyle, Round Rock, this

6 whole area, who are your immediate family members, like

7 parents -- brother, you've mentioned both of them.

8 A My brother Alec Beuhler; mom Lisa Beuhler;

9 dad Jason Beuhler; my cousin Jazmine Culbreath, J-A-Z.

10 Q J -- what is that?

11 A J-A-Z-M-I-N-E.

12 Q Oh. What's her last name?

13 A Oh, Culbreath.

14 Q Cobra?

15 A Culbreath, C-U-L breath, B-R-E-A-T-H.

16 Q Ah, okay.

17 A And I think that's it.

18 Q Okay. And where does Alec live?

19 A South Austin.

20 Q And what does he do?

21 A He works downtown at the Blind Pig.

22 Q Okay. And what does he do there?

23 A He's a bartender.

24 Q All right. And then your parents. Lisa

25 Beuhler, where does she live?

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1 A She lives in Wimberley -- or San Marcos. San

2 Marcos.

3 Q Okay. Your dad there too?

4 A Yeah.

5 Q And are they employed?

6 A Mom does hair, and my dad works at UT for

7 maintenance.

8 Q Okay. And what about Jazmine?

9 A I don't know what my cousin does.

10 Q But she -- where does she live?

11 A I don't know where she lives either.

12 Q Oh, okay. You just --

13 A She's --

14 Q -- know you have a cousin here in the area.

15 A Yeah.

16 Q Yeah. And you have another brother that

17 still lives in --

18 A He --

19 Q -- Louisiana or --

20 A He's in southeast Texas.

21 Q Bridge, Bridge City area.

22 A Yeah.

23 Q What's his name?

24 A Michael Beuhler, although I don't think he...

25 Q Do you have any other close family members?

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1 Like you mentioned Jazmine, I'm assuming that's  
2 probably your closest other relative, but do you have  
3 an aunt, an uncle, grandmother?  
4 A Yeah. But they are all in the southeast  
5 Texas area.  
6 Q Not to the -- I don't really know the jury  
7 range of this court, and that's really what I'm --  
8 there's a bunch of different counties.  
9 MR. BARTON: Do you have --  
10 A It's, like four and a half...  
11 MR. BARTON: Do you happen to know  
12 counties that are made up in this --  
13 A It's Orange County.  
14 MR. BARTON: -- jury pool?  
15 Q Tell me the counties they live in.  
16 A Orange County.  
17 Q All of them would live in Orange County?  
18 A Yeah.  
19 Q Okay.  
20 MS. SMITH: Travis, Williamson,  
21 Hays, Caldwell. Is it Burnet?  
22 MR. BARTON: Is Orange?  
23 MS. SMITH: Oh, no. Orange is way  
24 down --  
25 MR. BARTON: Okay.

1 I can go down the list of my kind of, like, close  
2 friends.  
3 Q I don't know that it's really necessary. I  
4 don't want to pry too much, but it would be someone  
5 like I guess the members -- you've already given me  
6 their names -- of the Family --  
7 A Yeah.  
8 Q -- for Justice; Micalah obviously was part of  
9 that, she's a witness.  
10 A Maybe Micalah's sister Quinn.  
11 Q Quinn?  
12 A Yeah.  
13 Q All right. And just any- anybody -- anyway,  
14 I think we've probably discussed it enough, but is  
15 anyone kind of in this whole series of events from May  
16 through August that you got really close to and you  
17 know that, you know, you would think they shouldn't be  
18 on the jury? Or maybe you would think they should be  
19 on the jury, but I'd be interested in knowing.  
20 A No. No.  
21 Q Okay. Here's a question I always ask. Have  
22 you ever been convicted of a felony?  
23 A No.  
24 Q Have you ever served time in the military?  
25 A No.

1 A It's, like, four and a half --  
2 MR. BARTON: Then that's all --  
3 MS. SMITH: -- Louisiana.  
4 MR. BARTON: -- all we need to  
5 know.  
6 Q All right. And other than your friend  
7 Micalah, who are some other close friends, like your  
8 three best friends that you talk to? If there are any.  
9 I mean, I'm just talking about friends that are almost  
10 like sisters. You know, Micalah sounds like she's a  
11 neighbor and a friend. Anyone else like that?  
12 A I don't think anyone really like, like  
13 sisters.  
14 Q Well, what I'm getting at is, like, if  
15 theoretically someone were to work their way on the  
16 jury, what I want to avoid is them going, Yeah, she's  
17 my neighbor and my best friend, and then they just have  
18 to be struck, you know. So I'd like to figure that out  
19 in advance.  
20 You know, do you know any- anyone that  
21 if they were on the jury you'd be, like, No, you can't  
22 sit on the jury because we're too close, it wouldn't be  
23 fair. You know --  
24 A I think anyone I knew personally, knew me  
25 personally, probably would not be fitting. But I mean,

1 Q Have you ever been married?  
2 A No.  
3 Q Do you have any children?  
4 A No.  
5 Q Is there a manager or some employment-related  
6 person -- employer, boss, manager -- that you have?  
7 A Yeah. Mike. I have, like, three managers at  
8 my job, or four.  
9 Q Okay. What are their names?  
10 A Mike, Tony, Jesse, and Hobby.  
11 Q Hobby?  
12 A Yeah.  
13 Q As in H-O-B-B-I-E?  
14 A B-B-Y.  
15 Q B-B-Y. What are their last names?  
16 A I have no clue.  
17 Q Okay. But they work at --  
18 A Yes.  
19 Q Okay. Palazzo, and what do they -- what are  
20 their -- what's their management function with you?  
21 A They just, like, try to tell you what to do I  
22 guess. But they're, like, I guess -- they run your  
23 Funny Money and they, like, make sure you're doing what  
24 needs to be done I guess.  
25 Q Okay. But they're -- so Mike, Tony, Jesse --

40 (Pages 157 to 160)

1 A Fire people.  
2 Q -- and Hobby.  
3 A They fire people, hire them.  
4 Q Okay. So they do, they have hiring and  
5 firing --  
6 A Yeah.  
7 Q -- ability.  
8 A Hiring and firing ability. Why, are you  
9 going to get me fired?  
10 Q No. I'm just curious --  
11 A I'm just kidding.  
12 Q -- in case they show up --  
13 A I know.  
14 Q -- on the jury.  
15 A Oh, if they show up oh, boy. I'd really get  
16 them out of here, bye.  
17 Q Other than Micalah and the family members  
18 that you mentioned, Family for Justice, do you know of  
19 any other witness to this incident that we haven't  
20 talked about?  
21 THE WITNESS: Cesar Rocha, isn't  
22 he one -- y'all have a case with him. I think he  
23 was -- he has a -- he gave me a video. You know, he's  
24 deaf.  
25 MS. McDANIEL: I do not know him,

1 eyewitness to you being arrested?  
2 A I think he was. I think he was. He  
3 definitely was -- I think he was the video that we saw  
4 where it goes over to the other. I think he took that  
5 video.  
6 Q Is that the one that shows the blonde-haired  
7 lady?  
8 A The girl getting -- yeah.  
9 Q Okay. Cesar Rocha may have done that video?  
10 A Yeah. If it wasn't him, it was this other  
11 guy who has red hair. I don't remember his name, but  
12 he was another person who witnessed. I don't remember  
13 his name though.  
14 Q Okay. Have you ever been involved in any  
15 other lawsuits of any type?  
16 A No. I don't think so. No.  
17 Q Like this one, you know, you're the plaintiff  
18 in this lawsuit and have filed a lawsuit against City  
19 of Austin. Have you ever sued anyone else?  
20 A Besides the case I have ongoing from 2015,  
21 no.  
22 Q Okay. With the district attorney?  
23 A Yeah.  
24 Q I was also thinking maybe that car wreck you  
25 were in, like, did you make a claim --

1 but I don't doubt you.  
2 THE WITNESS: I think he's got a  
3 case, got the case with y'all. He actually sent me a  
4 video, I'm pretty sure, or was one of the videos.  
5 Yeah. Cesar Rocha, he's the one who got hit with all  
6 the bullets.  
7 MS. McDANIEL: Oh. I'm not  
8 familiar enough with it at this time. He sent you a  
9 video?  
10 THE WITNESS: Yeah.  
11 A I think he's one of the videos that we sent  
12 in with everyone, all the other ones.  
13 Q (By Mr. Barton) Okay. Well, tell me a  
14 little bit about Mr. Rocha, what -- how do you know  
15 him, and was he there on August 1, 2020?  
16 A Yeah. I believe, yeah, he was. And he's  
17 really nice. He just was always at the protests. I  
18 always -- like, we, we would, like, talk, you know.  
19 And he's deaf, so we would talk in, like, message and  
20 stuff. He's a very good person.  
21 Q Did you ever communicate with him about this  
22 incident from August 1?  
23 A I think maybe when I was, like, seeing the  
24 videos.  
25 Q Was he in that general area? Like, was he an

1 A No. I wish I would have. No.  
2 Q -- against the person or sue the person?  
3 A No.  
4 Q Have you ever been sued, named --  
5 A No.  
6 Q -- as a defendant? Did you ever give a  
7 statement following this incident of any type? And  
8 either to the police? Did you write up some notes in  
9 your own diary? Did you tell -- you know, did you  
10 prepare any kind of written summary of the August 1  
11 incident?  
12 A I mean, yeah, I have spoken at events I think  
13 for --  
14 THE WITNESS: What was that? It  
15 was for -- you remember when they -- it was -- it was  
16 for the --  
17 A They were trying to pass a law, and it was  
18 against -- kind of, like, two years ago or, like, a few  
19 months after the incident.  
20 Q Okay.  
21 A And Beto was there, and so I think I spoke  
22 there. I forgot what we were --  
23 Q Beto --  
24 A He just --  
25 Q -- O'Rourke?



1 A -- ended up being there. It was during,  
 2 like --  
 3 Q Campaign?  
 4 A Yeah.  
 5 Q What was that event? Was it a --  
 6 A They were voting on Prop -- was it Prop E or  
 7 Prop A or something? Prop -- they were voting on a  
 8 proposition, on multiple propositions, and it was --  
 9 he -- you know, it wasn't here. It was at the capitol.  
 10 And there was a bunch of people who had -- who were  
 11 there who had either family members who were victims of  
 12 police brutality or were victims of police brutality  
 13 themselves, and they all, like, got up and spoke about  
 14 their experience and why we needed to, like, change the  
 15 law.  
 16 Q Okay. And so you participated in that?  
 17 A Yeah.  
 18 Q And was it recorded --  
 19 A Yeah.  
 20 Q -- do you recall?  
 21 A Yeah. I believe so. I mean, I have -- I  
 22 know there was a recording definitely of the statement  
 23 I gave.  
 24 Q How could I get a copy of that?  
 25 MR. BARTON: Other than I can ask

1 MS. McDANIEL: Yes.  
 2 Q (By Mr. Barton) Any other statements or  
 3 presentations or interviews that you can think of  
 4 regarding this incident?  
 5 A I mean, of course I, like, write a lot, so of  
 6 course I probably wrote something down, you know. I  
 7 definitely make music; I write a lot of things in my  
 8 music. I definitely made a song about this.  
 9 Q Is that a song you would mind sharing --  
 10 A Yeah.  
 11 Q -- with us?  
 12 A You can share it. I mean, there's a couple  
 13 of actual -- you can listen to the LP. A lot of it  
 14 starts off, because the beginning of it was about the  
 15 protests and stuff. It's called Dreams of Utopia. The  
 16 main single that is going to have me talking about my  
 17 experience is going to be Find the Peace.  
 18 Q Okay. And how would I find that?  
 19 A Spotify, Apple Music, YouTube, and then it's  
 20 under my name Sydni.  
 21 Q And just Sydni Beuhler?  
 22 A Just S-Y-D-N-I.  
 23 Q S-Y-D-N-I? And --  
 24 A Yeah.  
 25 Q -- does that just pull you up, or will it

1 you, right?  
 2 MS. McDANIEL: I'm, I'm fairly sure  
 3 I've seen it.  
 4 THE WITNESS: I think it might be  
 5 on my TikTok too.  
 6 MS. McDANIEL: Maybe that's, maybe  
 7 that's where I saw it.  
 8 THE WITNESS: Yeah.  
 9 MS. McDANIEL: Maybe you could send  
 10 it to me.  
 11 THE WITNESS: Yeah.  
 12 Q (By Mr. Barton) Okay. Just for the sake of  
 13 the record --  
 14 MR. BARTON: And I'll send you a  
 15 formal request.  
 16 MS. McDANIEL: Sure.  
 17 Q (By Mr. Barton) But as a reminder, I'll  
 18 note that there's a video recording of you on this  
 19 police brutality presentation, and I request a copy.  
 20 A Okay.  
 21 MS. McDANIEL: On the video that I  
 22 saw it's, it's from the back.  
 23 THE WITNESS: From behind? Yeah.  
 24 MS. McDANIEL: Yes.  
 25 THE WITNESS: And I'm -- yeah.

1 pull up a lot of other people?  
 2 A Sometimes, sometimes I'm at the top before  
 3 you type in the song, but sometimes there's another  
 4 person.  
 5 Q Okay.  
 6 A But if you type in my name and the song,  
 7 it'll pull it up.  
 8 Q Dreams of Utopia and Find the Peace?  
 9 A Yeah.  
 10 Q And it'll, like -- it's an album, so I guess  
 11 it'll --  
 12 A Yeah.  
 13 Q -- direct you to that? Okay. Okay. Any  
 14 other types of interviews or presentations relating to  
 15 this August 1 incident?  
 16 A I don't believe so. No.  
 17 Q Did you assert a claim of any type with  
 18 regard to the car wreck that followed this incident?  
 19 A You mean like --  
 20 Q Make a claim against the drivers?  
 21 A I definitely got some, like, reimbursement.  
 22 Like, I didn't make a case, but I, yeah, I agreed and  
 23 signed for them to pay me.  
 24 Q Repairs to your car?  
 25 A Yeah.

1 Q And medical bills I guess associated with  
2 that?  
3 A Yeah.  
4 Q Okay. And that had been with Progressive  
5 Insurance Company?  
6 A They had -- did they have Progressive? They  
7 get -- what's the --  
8 Q Who did you have insurance with?  
9 A I think I had Allstate at the time.  
10 Q Okay. We've seen a reference to Progressive,  
11 so --  
12 A Yeah.  
13 Q -- I'm assuming (crosstalk) --  
14 A I think it was Progressive. I think, like,  
15 three of the people involved have Progressive, and then  
16 Allstate. I always wonder how that happens if someone  
17 wrecks into someone and they have the same insurance.  
18 Like, are they going to sue their own insurance  
19 company?  
20 Q Okay. I'd like to take just a three-minute  
21 break, review some notes, and I think we're very close  
22 to wrapping this up.  
23 VIDEOGRAPHER: This is the end of  
24 media number 5. We're now off the record, the time is  
25 3:01 p.m.

1 back, like, I think maybe a week later, and that's  
2 whenever they had, like, two officers on the phone or  
3 an officer and someone else.  
4 Q Okay.  
5 A And then they talked to me. It's like when  
6 you make a complaint on an officer --  
7 Q Yeah.  
8 A -- and they do, like, an investigation.  
9 Q Okay. So you talked with them and they --  
10 A Yeah.  
11 Q -- recorded it and there's --  
12 A Yeah.  
13 Q -- a file, a statement in the file.  
14 A Yeah.  
15 Q And as I gather from looking at that, your  
16 primary complaint at that point was just that they  
17 didn't listen to you or didn't respond when you said  
18 that you had been sexually assaulted by a police  
19 officer previously?  
20 MS. McDANIEL: Objection, form.  
21 A I'm trying to think if this was, I'm trying  
22 to think if this is the day I got out of jail or if it  
23 was from the prior incident that happened when I called  
24 them, if this was before jail or --  
25 Q (By Mr. Barton) Okay.

1 (At 3:01 p.m. the proceedings  
2 recessed, continuing at 3:14 p.m.)  
3 VIDEOGRAPHER: This is the  
4 beginning of media number 6. We're back on the record,  
5 the time is 3:14 p.m.  
6 Q (By Mr. Barton) Okay. I just want to be  
7 clear on this incident that you reported to the police  
8 and to the district attorney in 2015, 2016 that that  
9 did not involve a police officer; is that correct?  
10 A Yeah. No, it didn't.  
11 Q Okay. So it was reported to the police but  
12 not involve the police.  
13 A No. It did not.  
14 Q Okay. Then after this incident -- and I  
15 think I asked the question unclearly about whether  
16 you'd given statements or presentations. You did give  
17 a statement to the police following August 1, 2020. Do  
18 you recall that?  
19 A Are you talking about, about the badge  
20 numbers where I called the -- I called in and I got an  
21 interview. They -- so --  
22 Q Yeah.  
23 A -- you know how you, you can make a  
24 complaint? I did. Like, right as soon as I got out of  
25 jail I called and made a complaint, and they called me

1 A -- after. That's what I don't know.  
2 Q But the only sexual assault by a police  
3 officer --  
4 A Was --  
5 Q -- would have been the same year --  
6 A Would have been --  
7 Q -- a month earlier or so; is that --  
8 A Oh, yeah, so the -- are you asking about --  
9 you're asking about -- the case 2015 has nothing to do  
10 with the other incident where my friend got pulled  
11 over and they searched me. That was two separate  
12 incidents.  
13 Q Okay. Yeah. That's what I'm getting at.  
14 A Yeah.  
15 Q The, the rape incident is totally --  
16 A Totally completely --  
17 Q -- unrelated to the police --  
18 A Yes.  
19 Q -- incident. Okay.  
20 A Yes.  
21 Q Are you and Micalah still friends?  
22 A Yes.  
23 Q And when did you get your house?  
24 A I think end of September, beginning of  
25 October --

1 Q Of this year?  
2 A -- is when I closed on it. Yeah.  
3 Q In Kyle?  
4 A Yeah.  
5 Q In 2020?  
6 A Yeah.  
7 Q And she has a house there too?  
8 A Yeah.  
9 Q Did y'all plan that, or was it just happen to  
10 be that you moved in her neighborhood?  
11 A She got a house there, and then I was looking  
12 for a house, and then I was, like, okay. It's, like a  
13 new-build area, so I was, like, okay. Yeah. I was  
14 planning on moving to Kyle.  
15 Q Yeah.  
16 A So kind of.  
17 Q It's a nice area.  
18 A Yeah.  
19 Q And good to have friends in your  
20 neighborhood.  
21 A Yeah. It is nice.  
22 Q Did you know that Officer Allare, Anne Allare  
23 was one of the three officers that handcuffed you?  
24 A No. I did not.  
25 Q You didn't know that till later?

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1 A No. Not till later. Yeah.  
2 Q Okay. Because just as far as a female  
3 officer being present, she was there.  
4 A Yeah. I was -- I didn't know she was there.  
5 Q Okay. And could you tell -- I'm just  
6 wondering, like, did you think perhaps she was a man  
7 just the way they were dressed, or what? Like, why --  
8 A No.  
9 Q -- didn't you know she was there?  
10 A Because they literally said, "We've got a  
11 female and we don't have enough time for a female  
12 officer." And then she grabbed me, and that's when I  
13 started freaking out, and she grabbed me in my face and  
14 she was, like, "Hey, I'm right here."  
15 Q Okay. And that --  
16 A And that's when I calmed down a little more,  
17 because I was, like, okay.  
18 Q Okay. And that happened pretty quickly,  
19 right? I mean --  
20 A Yes.  
21 Q -- her appearance was --  
22 A Yeah.  
23 Q -- made known very quickly.  
24 A Yes.  
25 Q Do you know -- and these are two officers --

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1 Navar Martinez?  
2 A I don't know which one is which.  
3 Q I think Navar Martinez and Greg Gently were  
4 officers in the car with you.  
5 A I think that it -- were they both the  
6 original officers in the car? Because I thought it was  
7 just two white men at first, and then it changed to  
8 someone -- it was a Hispanic man who switched out when  
9 they took me to the second location, but I might have  
10 been wrong. But they changed out who was driving the  
11 car when they took me to the location under the -- in  
12 the parking garage.  
13 Q Okay.  
14 A So I'm not sure which is which.  
15 Q As for any of those officers, though, that  
16 were in the car other than what we've discussed, I  
17 mean, do you have any complaint against them other than  
18 one was kind of rude, maybe you think, and didn't  
19 acknowledge you or ignored you; and then the other one  
20 you talked with a little bit?  
21 A Yeah.  
22 Q Do you have any complaint against those  
23 officers?  
24 A Mine was mostly with the original officer  
25 before it switched out. He didn't make me feel safe at

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1 all. He made me feel like I was in a danger -- I was  
2 in danger. Like, my fight or flight mode was amplified  
3 when he was in the car, because I felt like I was in  
4 danger because of his energy and overall vibe when I  
5 was asking him questions and the fact that he didn't  
6 give me AC or would crack the window a little bit for  
7 me to breathe. That -- he gave me bad -- I didn't like  
8 him.  
9 Q Okay. And I understand your reason for not  
10 liking him, but is that the extent of it that, you  
11 know, he ignored you and kept you in the car?  
12 A Yes.  
13 Q Because he never said anything to you, right?  
14 A Yeah. He never said anything to me.  
15 Q And he never touched you, did he?  
16 A Not that I know of. Never said anything, and  
17 I don't think he was the one that put the -- I guess he  
18 was one of the ones that put the cuffs on, I don't  
19 know. No. He just ignored me and acted like I wasn't  
20 a person.  
21 Q Okay.  
22 A And didn't give me AC in the back seat.  
23 Q And then the other officer, do you have any  
24 complaints against him?  
25 A No.

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1 Q The one that was a constitutionalist?  
2 A No.  
3 Q And any other officers other than the three,  
4 you know, that arrested you, but for all these  
5 subsequent officers is there any complaint you have  
6 against them for any reason?  
7 A It's such a broad statement, like, I can't  
8 go -- there's a lot I can complain about, but no. No.  
9 Q As far as them either being rude or touching  
10 you or being --  
11 A No.  
12 Q -- forceful with you or anything like that?  
13 A No.  
14 Q Okay. Well, I believe, Ms. Beuhler -- it's  
15 taken longer than I expected, and I apologize for that,  
16 but I believe that's my last question. Except I do  
17 have one that I always finish up with, which is just,  
18 the purpose of this deposition is for you to have your  
19 opportunity to tell my clients anything you want to  
20 tell them personally. And so is there any other fact  
21 relevant to this matter which I have not asked about  
22 but which may have a bearing on this case that you want  
23 to say or talk about?  
24 A I just want to say that I would like people  
25 to be more mindful, specifically police officers to be

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1 more mindful when they're arresting or making arrests  
2 and just be, like, gosh, more gracious or something.  
3 Because man, I have to live with this my whole life.  
4 They -- it was just another day for them in the life of  
5 what they're doing. Like, for me this is something  
6 that's going to follow me. You know, am I going to  
7 tell my grandkids about this, you know? And I don't  
8 know, that's just really -- I just want them to take in  
9 some, like, consideration and not view us as not one of  
10 them. We're all human. That's where I would like them  
11 to know.  
12 Q Okay.  
13 MR. BARTON: Well, with that, I  
14 pass the witness to you, Grayson.  
15 MS. McDANIEL: Thank you.  
16 EXAMINATION  
17 BY MS. McDANIEL:  
18 Q I have just a few questions for you. Have  
19 you ever been deposed before?  
20 A No.  
21 Q This is your first deposition?  
22 A Yes.  
23 Q I'm going to just ask you a few questions  
24 about things that Mr. Barton already asked you about.  
25 So do you recall that Mr. Barton asked you about the

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1 manner in which you were arrested?  
2 A Yes.  
3 Q Like, he asked you about being bear-hugged  
4 by --  
5 A Oh, no.  
6 Q -- Officer Smart?  
7 A There wasn't really any questions about the  
8 bear hug.  
9 Q Now, tell me about that. How did Officer  
10 Smart bear-hug you? I do think you used that term at  
11 one point.  
12 A Yeah. He, like, wrapped both of his arms  
13 around me and then -- well, first off he said, "All  
14 right, we're arresting this one," already implying that  
15 I'm not a human. And then he wrapped his arms around  
16 me and carried me into the middle of the street, and  
17 that's when they put me on the ground.  
18 Q And how did that feel when he grabbed you  
19 like that?  
20 A Well, it felt like powerless, like there's  
21 nothing I can do. And a grown man had just picked me  
22 up and brought me into the middle of the street. I  
23 didn't know what was going to happen, you know, but  
24 yeah.  
25 Q Was it painful when he grabbed you?

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1 A Yeah. I would say it was very tense.  
2 Q Before Officer Smart grabbed you had you hit  
3 him or any other officer?  
4 A No. Never.  
5 Q Had you grabbed him or any other officer?  
6 A No.  
7 Q Do you recall were you running away from --  
8 A No.  
9 Q -- Officer Smart before he grabbed you? Do  
10 you recall if you had touched him or any other officer?  
11 A No.  
12 Q Mr. Barton stated that you stayed in the  
13 street a few times, that you were in the roadway or in  
14 the street. Would you agree that you were only in the  
15 street for a short time?  
16 A I would agree.  
17 MR. BARTON: Object to the form.  
18 Q (By Ms. McDaniel) You testified that you had  
19 protested in the street before and had not been  
20 arrested; is that correct?  
21 A Yes.  
22 Q At the capitol I think you said?  
23 A Yes.  
24 Q Do you recall seeing anyone else get arrested  
25 that day?

Page 180

1 A No.

2 Q Were there other people in the street that

3 day?

4 A Yes.

5 Q And was there a police presence? Were police

6 there?

7 A Yes.

8 Q When you said during the discussions and a

9 couple of the times that you were triggered -- you used

10 that word a few times -- does that mean to you that you

11 were upset?

12 A Yeah.

13 Q What is, what is -- when you say that you're

14 triggered what does that mean to you?

15 A When I say triggered it means that something

16 happened that invalidated me emotionally or physically

17 that created an emotional response out of me.

18 Q Okay. A negative response?

19 A I don't think, I don't think negative. I

20 don't think there's any -- I don't think it's negative,

21 positive. I would say just a valid response in

22 general.

23 Q An emotional response?

24 A Yeah.

25 Q Did Officer Smart read you your Miranda

Page 181

1 rights when he arrested you?

2 A I don't recall being read my Miranda rights.

3 Q Do you know what I mean when I refer to

4 Miranda right?

5 A "You have the right to remain silent,

6 anything you say can and will be used against you in a

7 court of law. You have the right to an attorney. If

8 you cannot afford one, one will be provided for you."

9 Yeah.

10 Q So you kind of already answered this, but

11 I'll, I'll ask it. When were you read your Miranda

12 rights that day?

13 A I think, I think that maybe happened in one

14 of the videos, but I don't recall when. Did we watch a

15 video --

16 Q (Shaking head)

17 A -- where -- yeah. I don't, I don't recall

18 being read my Miranda rights, but I'm not sure.

19 Q Did Officer Gonzalez, the officer who was

20 effectuating the bent wrist, do you recall him reading

21 you --

22 A No.

23 Q -- your Miranda rights?

24 A I definitely didn't get read before I was in

25 the cop car.

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1 Q Do you recall being asked any questions by a

2 police officer before you had been read your Miranda

3 rights?

4 A No -- yeah. Yeah.

5 Q Yes? What's a question that you recall being

6 asked?

7 A My personal identification.

8 Q And you testified that that particular

9 officer was closing his laptop?

10 A Yes.

11 Q Can you, can you describe that again, please?

12 A So after I was refusing to give him my

13 personal information he was, like, "Okay, well..." And

14 he, like, started slowly closing it like as if my time

15 was running out to avoid getting, like, a worse charge.

16 Q Did he state or say that he was going to give

17 you a charge?

18 A I recall him threatening me with a charge,

19 but I don't know -- like, that's what I remember. I

20 don't know how, like -- I don't know how descriptive it

21 was.

22 Q Mm-hm. Did you feel that if you did not

23 provide him with your personal information before he

24 closed the laptop that you were risking being --

25 A Yes.

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1 Q -- charged with a further charge?

2 MR. BARTON: Object to the form.

3 Q (By Ms. McDaniel) Do you recall if that

4 officer had read you your Miranda rights?

5 A I don't think he did.

6 Q What other questions do you recall being

7 asked?

8 A He asked me where I was from. He asked me my

9 views on something, but I forgot. I think that's about

10 it.

11 Q When you were admitted to the jail you

12 testified regarding crowdedness, that there was an

13 issue with masks, y'all were concerned about possible

14 COVID expos- or sickness exposure. In that holding, in

15 that first holding area, I think maybe it was a --

16 A Yeah.

17 Q -- holding area, do you recall any officers

18 reading you your Miranda rights?

19 A No.

20 Q Do you recall any officer asking you if you

21 had an attorney?

22 A No.

23 Q Do you remember that Mr. Barton asked you

24 some questions about why you were standing in the

25 road --

Page 184

1 A Yes.

2 Q -- before you were arrested? Why'd you think

3 it was important to stand in the road?

4 MR. BARTON: Object to the form.

5 A I think it was important because I had just

6 lost a very close friend, and then I watched people be

7 killed and nobody is listening or doing nothing.

8 Nobody's doing nothing. Like, what else can we do?

9 Why can't people just listen? Like, it's literally all

10 we want, is to be heard, and nobody will listen. Like,

11 nobody will listen, nothing is changing. Like, I

12 shouldn't be sitting here right now. I shouldn't be

13 sitting here. This should not have happened.

14 But nothing is changing, and I felt like

15 the only way that we could be heard is if we stay in

16 the street, because nothing else -- and I can't go --

17 like I can't just start throwing stuff or -- like, that

18 is violent, you know? I would never. But that's the

19 only peaceful way to go about it, and I feel like it's

20 very peaceful, so I don't see the problem in it.

21 Q Had you ever committed any acts of

22 vandalism --

23 A No.

24 Q -- during a protest? Had you ever committed

25 any violence during a protest?

Page 185

1 A No.

2 Q When you were standing in the road were there

3 any emergency vehicles trying to get through?

4 A No.

5 Q If you had seen a ambulance --

6 A Yes.

7 Q -- or fire truck, would you have moved out of

8 the road?

9 A Yes.

10 Q Or would you have moved to let that vehicle

11 through?

12 A Yes. Yes, of course.

13 Q Were you the only one who was standing in the

14 street at the time of your arrest?

15 A No.

16 Q In one video that we watched, I think it was

17 the 376, the one where we could see the blonde woman

18 most clearly that we were talking about earlier, did

19 you notice that people were in the street being hit by

20 bikes?

21 A Yes.

22 Q And did you notice that those people were not

23 immediately arrested?

24 A Yes.

25 Q Earlier I wanted to clear up this one little

Page 186

1 thing that I thought was unclear. Mr. Barton asked you

2 a specific question. He said, "Do you contend that you

3 were not resisting arrest?" You responded, "No." Does

4 that mean that you are saying you weren't -- that

5 you -- it was a little confusing.

6 A Yeah. No. I wasn't resisting arrest.

7 Q Okay. So you would contend that you were not

8 resisting arrest --

9 A Yes.

10 Q -- is that --

11 MR. BARTON: Object to the form.

12 Q -- correct?

13 MR. BARTON: Object to the form.

14 Q (By Ms. McDaniel) You testified that you

15 have not attended any protests after this accident on

16 August 1, 2020; is that correct?

17 A I haven't attended -- I've attended, like,

18 one women's march protest, but no, I haven't been.

19 Q Why not?

20 A Because I tried to attend one after the

21 incident, and as soon as the cops came out on the bikes

22 I, like, ran straight to my car, because I just, I

23 couldn't do it. I was scared.

24 Q What were you scared of?

25 A Of the same thing happening that happened on

Page 187

1 August 1st.

2 Q Would you have stood in the street again

3 or --

4 A No.

5 Q Were you afraid that you might be -- that the

6 same thing might happen even if you weren't standing in

7 the street?

8 A Yes.

9 Q Has this incident made you feel differently

10 about exercising your First Amendment rights?

11 A Yes.

12 MR. BARTON: Object to the form.

13 Q (By Ms. McDaniel) In what way?

14 A Well, I just feel like not being validated

15 whenever I have exercised in this situation and being

16 punished for exercising my right was kind of, like, a

17 really big setback for me. I kind of just avoid the

18 police in general, because you don't -- I feel like now

19 I feel like we don't really have a right to even say

20 what we feel, and I feel like there's, like, a power

21 imbalance, and I don't feel -- yeah. I just don't feel

22 comfortable voicing how I feel about things anymore.

23 MS. McDANIEL: I think those are

24 all my questions at this time. I'll pass the witness.

25 MR. BARTON: No further questions.

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1 VIDEOGRAPHER: This is the end of  
 2 media number 6. We're now off the record, the time is  
 3 3:34 p.m. This concludes today's deposition.  
 4 (At 3:34 p.m. the proceedings  
 5 adjourned.)  
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Page 189

1 CHANGES AND INSERTIONS  
 2 SYDNI BEUHLER  
 3 March 22, 2023  
 4  
 5 PAGE LINE CHANGE REASON  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
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Page 190

1 ACKNOWLEDGMENT OF DEPONENT  
 2  
 3 I, SYDNI BEUHLER, do hereby certify that I have  
 4 read the foregoing pages and that the same is a correct  
 5 transcription of the answers given by me to the  
 6 questions therein propounded, except for the  
 7 corrections or changes in form or substance, if any,  
 8 noted in the attached Changes and Signature Page  
 9 (Errata).  
 10  
 11  
 12  
 13 SYDNI BEUHLER  
 14  
 15 DATE  
 16  
 17  
 18  
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Page 191

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE WESTERN DISTRICT OF TEXAS  
 3 AUSTIN DIVISION  
 4 SYDNI BEUHLER, §  
 5 Plaintiff, §  
 6 v. § CIVIL ACTION NO.  
 7 CITY OF AUSTIN, OFFICER § 1:21-CV-00054-RP  
 8 GAVIN SMART, and OFFICER §  
 9 JAVIER GONZALEZ, §  
 10 Defendants. §  
 11  
 12 REPORTER'S CERTIFICATION OF THE  
 13 ORAL DEPOSITION OF SYDNI BEUHLER  
 14 March 22, 2023  
 15 I, Sandra S. Givens, Certified Shorthand Reporter  
 16 in and for the State of Texas, hereby certify to the  
 17 following:  
 18 That the witness, SYDNI BEUHLER, was duly sworn by  
 19 the officer and that the transcript of the oral  
 20 deposition is a true record of the testimony given by  
 21 the witness;  
 22 That the original deposition transcript was  
 23 submitted to: SYDNI BEUHLER in care of her attorney,  
 24 Grayson E. McDaniel  
 25 That a copy of this certificate was served on all  
 parties and/or the witness shown herein on March 30,  
 2023.  
 I further certify that pursuant to FRCP Rule

Page 192


48 (Pages 189 to 192)

1 30(f)(1) that the signature of the deponent was  
2 requested by the deponent or a party before the  
3 completion of the deposition and that the transcript be  
4 returned within 30 days from the date of receipt. If  
5 returned, the attached Changes and Insertions page  
6 contains any changes and the reasons therefor:  
7 That \$ 1,727.65 is the deposition officer's  
8 charges to the Defendants for preparing the original  
9 deposition transcript, videographer, and any copies of  
10 exhibits;  
11 That the amount of time used by each party at the  
12 deposition is as follows:  
13 Monte L. Barton, Jr. - 3 hours, 41 minutes  
14 Grayson E. McDaniel - 10 minutes  
15  
16 That pursuant to information given to the  
17 deposition officer at the time said testimony was  
18 taken, the following includes counsel for all parties  
19 of record:  
20 Monte L. Barton, Jr. - Attorney for Defendants  
21 Grayson E. McDaniel - Attorney for Plaintiff  
22  
23 I further certify that I am neither counsel for,  
24 related to, nor employed by any of the parties or  
25 attorneys in the action in which this proceeding was  
taken, and further, that I am not financially or  
otherwise interested in the outcome of the action.

Page 193

1  
2 Certified to by me this 30th day of March 2023.  
3  
4 GIVENS COURT REPORTING  
5 6549 Fair Valley Trail  
6 Austin, Texas 78749  
7 (512) 301-7088  
8  
9 # sg-2014  
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SANDRA S. GIVENS, CSR  
Certification No. 5000  
Certificate Expires 1/31/24



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## **Exhibit 7**

### **APD Body-worn Camera Video – Officer Gavin Smart [Bates No. COA 376]**

This video exhibit will be hand delivered to the Court

Please contact paralegal Carol Smith at 512-974-2147 or [carol.smith@austintexas.gov](mailto:carol.smith@austintexas.gov) for assistance with video exhibits.

# **Exhibit 7**

## **Exhibit 8**

**APD Body-worn Camera Video –  
Officer Javier Gonzalez  
[Bates No. COA 378]**

This video exhibit will be hand delivered to the Court

Please contact paralegal Carol Smith at 512-974-2147 or [carol.smith@austintexas.gov](mailto:carol.smith@austintexas.gov) for assistance with video exhibits.

# **Exhibit 8**

## **Exhibit 9**

### **APD Body-worn Camera Video – Officer Anne Allare [Bates No. COA 379]**

This video exhibit will be hand delivered to the Court

Please contact paralegal Carol Smith at 512-974-2147 or [carol.smith@austintexas.gov](mailto:carol.smith@austintexas.gov) for assistance with video exhibits.

# **Exhibit 9**

## **Exhibit 10**

### **Bystander Video**

**[Bates No. COA 770; Beuhler 488]**

This video exhibit will be hand delivered to the Court

Please contact paralegal Carol Smith at 512-974-2147 or [carol.smith@austintexas.gov](mailto:carol.smith@austintexas.gov) for assistance with video exhibits.

# **Exhibit 10**

# **Exhibit 11**

## **Bystander Video**

**[Bates No. COA 769; Beuhler 491 & 492]**

This video exhibit will be hand delivered to the Court

Please contact paralegal Carol Smith at 512-974-2147 or [carol.smith@austintexas.gov](mailto:carol.smith@austintexas.gov) for assistance with video exhibits.

# **Exhibit 11**

## **Exhibit 12**

### **Bystander Video**

**[Bates No. COA 768; Beuhler 489]**

This video exhibit will be hand delivered to the Court

Please contact paralegal Carol Smith at 512-974-2147 or [carol.smith@austintexas.gov](mailto:carol.smith@austintexas.gov) for assistance with video exhibits.

# **Exhibit 12**

# **Exhibit 13**



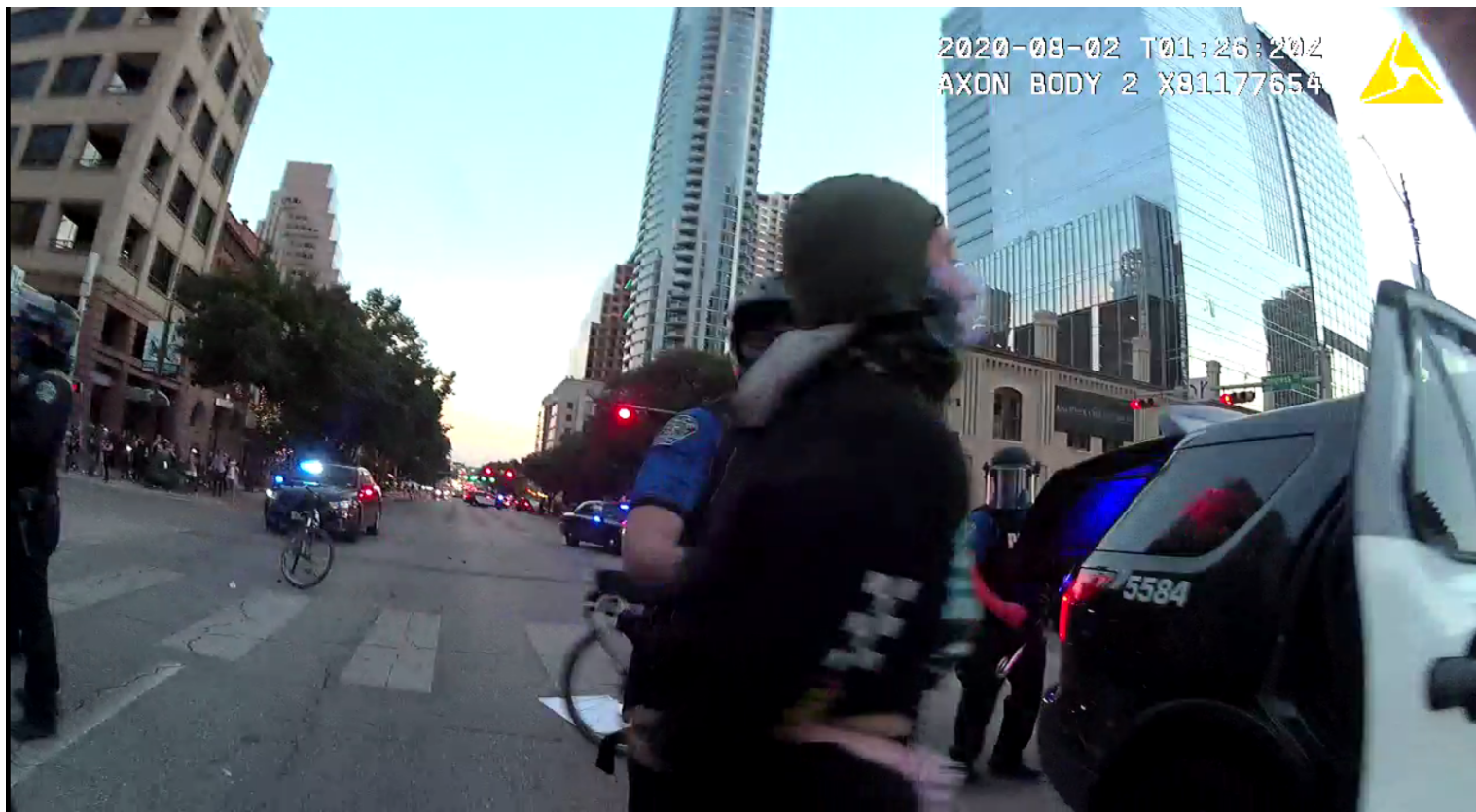






# **Exhibit 14**







# **Exhibit 15**





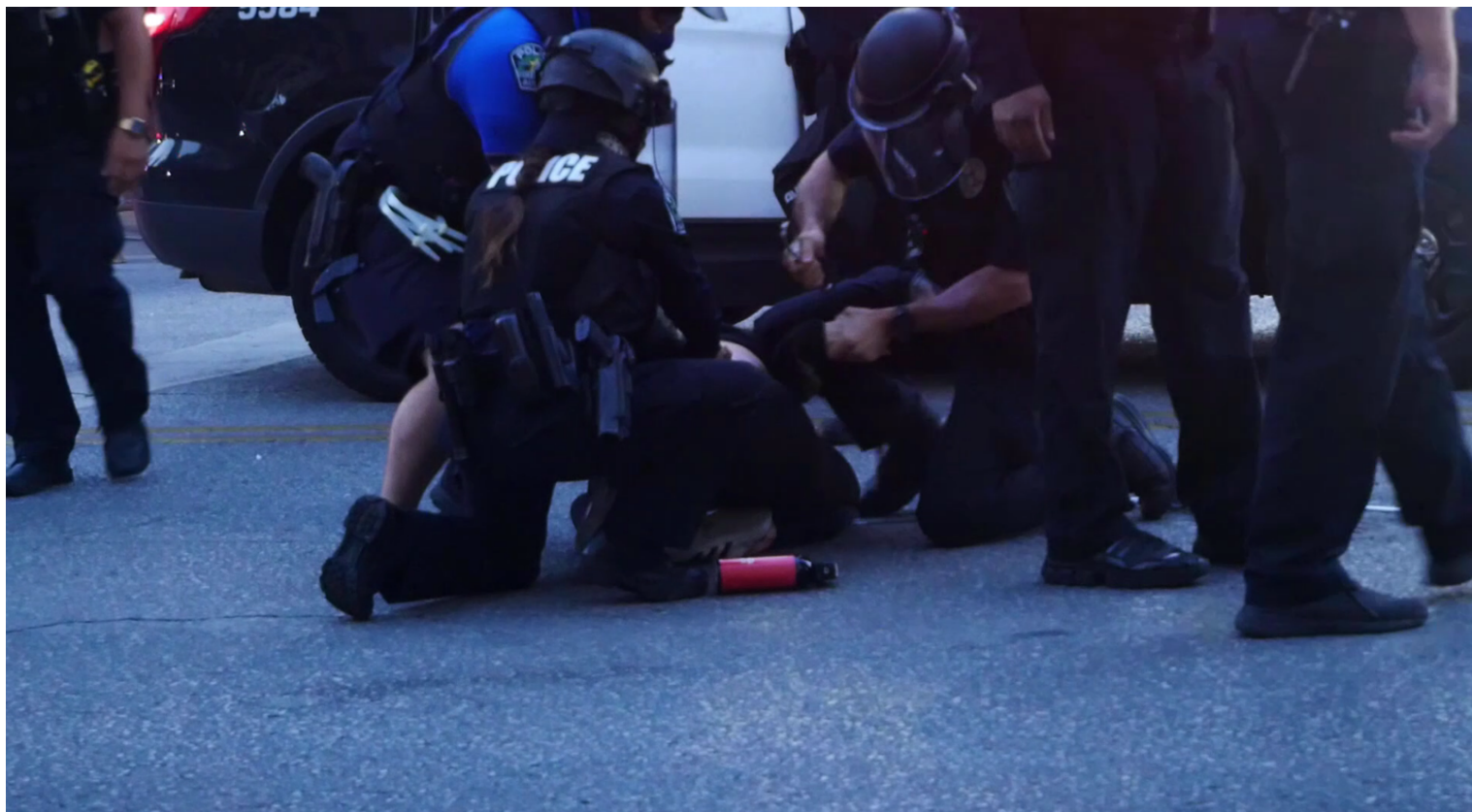
# **Exhibit 16**











IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**SYDNI BEUHLER,**  
**Plaintiff,**

v.

**CITY OF AUSTIN,**  
**Officer Gavin Smart (AP8674),**  
**Officer Javier Gonzalez (AP7422),**  
**Defendants.**

§  
§  
§  
§  
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§  
§

**CIVIL ACTION NO. 1:21-CV-00054-RP**

**DEFENDANT CITY OF AUSTIN’S MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Defendant City of Austin, Texas *adopts and fully incorporates herein the Motion for Summary Judgment filed earlier on behalf of the Defendant Officers Smart and Gonzalez*, and the City also files this Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure as follows:

**I. INTRODUCTION**

Plaintiff, Sydni Beuhler, brings a §1983 claim for alleged violations of her First, Fourth and Fourteenth Amendment rights against Officers Smart and Gonzalez and a §1983 *Monell* claim against the City of Austin as a result of her arrest on August 1, 2020, in Austin, Texas. Video evidence conclusively shows all relevant events. There is no genuine dispute as to any material fact and all of the defendants are entitled to judgment as a matter of law.

All of Plaintiff’s claims fail and should be dismissed with prejudice. The Defendant Officers had probable cause to arrest Plaintiff, and the application of Qualified Immunity bars this lawsuit against them.

The available video footage clearly shows that Plaintiff intentionally refused to comply

with police verbal commands to exit the roadway and resisted arrest. She was arrested with probable cause for Obstruction of Highway or Other Passageway and Resisting Arrest after she and a large group of protesters had been repeatedly instructed to clear Congress Avenue near its intersection with 4th Street and to stop blocking the roadway. Instead of simply leaving the street as instructed by police officers the Plaintiff remained in place, continued to obstruct passage, and refused to move even though most of the other protesters had voluntarily stepped from the roadway onto the sidewalks.

In accordance with Austin Police Department training and policies, the plaintiff was restrained and placed in handcuffs, and Officer Anne Allare performed a safety frisk (pat-down) search for weapons before removing the plaintiff from the roadway and securing her in a police vehicle.

Plaintiff brings a *Monell* claim against the City of Austin alleging excessive use of force by Officer Smart and Officer Gonzalez, and failure of training and supervision. Plaintiff alleges that the City had inadequate policies and tolerated excessive force, violations of free speech and due process by arresting, detaining, stopping, and searching the plaintiff. The City denies Plaintiff's claims and maintains that Plaintiff cannot meet her considerable evidentiary burden to establish liability against the City under 42 U.S.C. §1983.

It is undisputed that the City provides extensive training to its officers (which exceeds state minimums) and specific training—both in practical application and in the law—on the use of force, as well as arrest procedures, that comply with every person's clearly established rights under the United States Constitution. APD Academy taught Officer Smart and Officer Gonzalez the procedures for making arrests and searching prisoners. APD teaches officers probable cause for making arrests.



With respect to Plaintiffs' claim that the City failed to supervise Officer Smart and Officer Gonzalez, the undisputed evidence shows that the City has comprehensive policies and procedures in place to ensure that complaints are investigated, including any complaints about use of force, arrests, searches, seizures, and other complaints of alleged misconduct, and that officers are disciplined when appropriate and that the Austin Police Department followed these policies and procedures. Moreover, Plaintiff cannot show that any failure to train, discipline, or supervise was the moving force behind Plaintiff's alleged constitutional deprivations and injuries. Additionally, Plaintiff's claim that the City violated her constitutional rights fails because the evidence shows that the City subjected the Defendant officers to a vigorous pre-hiring review which did not turn up any evidence that either of them posed a significant risk of engaging in excessive force or engaging in the inappropriate conduct as alleged in Plaintiff's Amended Complaint, or that they were otherwise unfit for law enforcement work.

## **II. SUMMARY JUDGMENT EVIDENCE**

NOTE - The following Exhibits are included with the Motion for Summary Judgment filed by the Defendant Officers, Smart and Gonzalez (Doc. 42), and are incorporated herein by reference.

Exhibit 01	Declaration of Chief Joseph Chacon;
Exhibit 02	Declaration of Commander Wade Lyons;
Exhibit 03	Deposition of Officer Gavin Smart (Feb 16, 2023) with exhibits;
Exhibit 04	Deposition of Officer Javier Gonzalez (Feb 9, 2023) with exhibits;
Exhibit 05	Deposition of Officer Anne Allare (Dec 15, 2022) with exhibits;
Exhibit 06	Deposition of Sydni Beuhler (March 22, 2023) with exhibits;
Exhibit 07	Smart (BWC) Body Worn Camera Video, Bates # COA 376;
Exhibit 08	Gonzalez (BWC) Body Worn Camera Video, Bates # COA 378;
Exhibit 09	Allare (BWC) Body Worn Camera Video, Bates # COA 379;
Exhibit 10	Bystander Video, Bates COA 770 [Beuhler Bates#488];
Exhibit 11	Bystander Video, Bates COA 769 [Beuhler Bates#491 & 492];
Exhibit 12	Bystander Video, Bates COA 768 [Beuhler Bates#489];
Exhibit 13	Screen Shots from Smart (BWC), Bates # COA 376; Time stamp:

- Exhibit 14 T01:25:08Z;  
T01:25:16Z;  
T01:25:33Z;  
Screen Shots from Gonzalez (BWC), Bates # COA 378;  
Time stamp:  
T01:26:20Z;  
T01:25:34Z;  
T01:25:55Z
- Exhibit 15 Screen Shot from Bystander Video, [Beuhler Bates#489], Bates COA 768  
Time elapsed 00:04;
- Exhibit 16 Screen shots from Bystander Video, [Beuhler Bates#491 & 492], Bates  
COA 769, Time elapsed:  
00:08  
00:11,  
00:20,  
00:21,  
00:28

### III. FACTS

The facts of the underlying event are detailed in the motion for summary judgment filed by the Defendant Officers, and incorporated by reference.

In relevant part, for the purposes of this Motion for summary judgment, the City of Austin points out that this lawsuit arises out of the arrest of Plaintiff Sydni Beuhler on August 1, 2020. She was arrested with probable cause for Obstruction of Highway or Other Passageway (TX Penal Code § 42.03) and Resisting Arrest (TX Penal Code § 38.03) after she and a large group of protesters had been repeatedly instructed to clear Congress Avenue near its intersection with 4th Street and to stop blocking the roadway. Instead of simply leaving the street as instructed by police officers the Plaintiff remained in place, verbally cursed the officers and refused to cooperate and physically refused to comply with police instructions, and continued to obstruct passage. She refused to move even though most of the other protesters had voluntarily stepped from the roadway onto the sidewalks.

In accordance with Austin Police Department training and policies, the plaintiff was

restrained and placed in handcuffs, and Officer Anne Allare performed a safety frisk (pat-down) search for weapons before removing the plaintiff from the roadway and securing her in a police vehicle. See *Exhibit 03 - Smart deposition transcript* pages 65-77, 81-85, 90-92, 109-111, 115 and the documents referenced in the deposition: COA 000822-823; COA 000405; *Exhibit 04 - Gonzalez deposition transcript*, pages 62-65, 92-99, 103-107, 117-124, and the documents referenced in the deposition: COA 000098, COA 000402-000403; *Exhibit 05 - Allare deposition transcript*, pages 67, 68, 85, 86, 95-97, 102-104; and the documents referenced in the deposition: COA 000105; *Exhibit 06 - Beuhler deposition transcript*, pages 15, 50, 66, 73; *Exhibit 07 - Smart (BWC)* Time stamps: T01:23:36 [elapsed 00:12], T01:24:26 [elapsed 01:03], T01:24:43 [elapsed 01:20], T01:24:47 [elapsed 01:23], T01:24:58 [elapsed 01:34], T01:25:05 [elapsed 01:42], T01:25:13 [elapsed 01:49] (“Move back. You’re going to get arrested.”), T01:25:34 [elapsed 2:10] (Plaintiff approaches Officer Smart); *Exhibit 08 - Gonzales (BWC)* Time stamps: T01:25:18 [elapsed 05:10] - T01:26:33 [elapsed 06:25]; *Exhibit 09 - Allare (BWC)* Time stamps: T01:25:03 [elapsed 00:40] - T01:27:04 [elapsed 02:41]; *Exhibit 10 - Bystander Video*, Bates COA 770 [Beuhler Bates#488]; *Exhibit 11 - Bystander Video*, Bates COA 769 [Beuhler Bates#491 & 492]; *Exhibit 12 - Bystander Video*, Bates COA 768 [Beuhler Bates#489].

The response to resistance incident involving Ms. Beuhler was reviewed by Officer Smart’s chain of command, and was deemed to be within policy and state law. Internal Affairs (IA) also reviewed the response to resistance and found it to be objectively reasonable. No APD policies or procedures were violated. See *Exhibit 01 - Declaration of Chief Joseph Chacon*; *Exhibit 03 - Smart deposition transcript* and the documents referenced in the deposition: COA 000822-823; COA 000405; *Exhibit 04 - Gonzalez deposition transcript*, and the documents referenced in the deposition: COA 000098, COA 000402-000403.

**A. APD Policies and Investigation**

The City of Austin's Police Department (APD) maintains extensive and detailed policies and procedures regarding all facets of police work, including the use of force, proper search and seizure, and investigation of incidents involving allegations of police officer misconduct. This includes the allegations of Plaintiff's Amended Complaint (including violations of free speech, due process, and/or assembly and/or retaliating for the exercise of these constitutional rights). (Exhibit 01-Declaration of Chief Joseph Chacon). These policies and procedures were followed in this incident.

Additionally, APD has numerous policies and procedures to ensure that officers accused of wrongdoing are properly investigated and, if appropriate, disciplined. (Exhibit 01-Declaration of Chief Joseph Chacon) There is considerable citizen oversight of APD and IAD. The City established the Office of Police Monitor, now known as the Office of Police Oversight (OPO) in 2002 to exercise independent, citizen oversight of APD internal affairs investigations. At the time of this incident in 2020, the OPO monitored APD in several ways. It received citizen complaints, reviewed internal affairs files, reviewed APD policies and procedures, and made recommendations to the Chief of Police regarding discipline, policies, and procedures.

On August 29, 2020, the Office of Police Oversight sent a Notice of Formal Complaint regarding this incident to the APD Internal Affairs Division (IAD). The OPO made a request for Internal Affairs to initiate an investigation in order to determine if the conduct of Officers Smart and Gonzalez was within compliance of APD policy. IAD conducted its investigation to determine if the Officers violated any APD policies with respect to use of force and otherwise. IAD and

APD chain of command concluded that Smart and Gonzalez did not violate any of APD's policies during the encounter with plaintiff.

As noted above, the allegations of misconduct against Officer Smart and Officer Gonzalez were closely investigated by APD on its own, and also at the request of the Office of Police Oversight. The investigation revealed that they did not violate any APD policies. (Exhibit 01-Declaration of Chief Joseph Chacon)

**B. APD Hiring and Training**

In addition, APD has rigorous hiring standards and carefully screens its potential employees to determine that they do not pose any unusual risk of using excessive force, or that they are otherwise unfit for law enforcement work. *Id.* APD also trains all of its cadets and officers on all facets of police work, including the use of force, proper search and seizure, and mental health. (Exhibit 02 - Declaration of Commander Wade Lyons). APD's training requirements far exceed the minimum standards required by the state. *Id.*

All of APD's policies and procedures were followed with respect to the hiring, screening, and training of Officers Smart and Gonzalez. (Exhibit 01-Declaration of Chief Joseph Chacon); (Exhibit 02 - Declaration of Commander Wade Lyons)

**STANDARD OF REVIEW**

Summary judgment is proper against a party who bears the ultimate burden of proof and fails to establish the existence of an element essential to its case by raising an issue of material fact. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323. The moving party satisfies its burden by "pointing out to the district court . . . that there is an absence of evidence to support the non-moving party's case." *Id.* at 326. The plaintiff may not rest on allegations in pleadings, but must produce competent, tangible evidence to survive summary judgment. *Id.* at 325.

Moreover, “conclusory allegations, speculation, and unsubstantiated assertions are inadequate to satisfy the non-movant’s burden.” *Douglass v. United Services Automobile Ass’n*, 79 F.3d 1415, 1429 (5th Cir. 1996).

#### IV. ARGUMENT & AUTHORITIES

##### A. Claims against Municipalities under 42 U.S.C. §1983

The general contours of municipal liability for the conduct of its employees under 42 U.S.C. §1983 are well-defined in the Fifth Circuit. A city may not be held liable if the court finds that the plaintiff’s constitutional rights were not violated. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Mace v. City of Palestine*, 333 F.3d 621, 625 (5<sup>th</sup> Cir. 2003). Even if a city employee or police officer violated a plaintiff’s constitutional rights, a city may not be found liable under §1983 under a theory of *respondeat superior*. *Monell v. Dept. of Social Services*, 436 U.S. 658, 694 (1978); *Johnson v. Deep East Texas Regional Narcotics Trafficking Task Force*, 379 F.3d 293, 308 (5<sup>th</sup> Cir. 2004). Cities are almost never liable under §1983 for the isolated actions of their employees, and they can only be held liable for acts that are directly attributable to it “through some official action or imprimatur.” *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5<sup>th</sup> Cir. 2001).

To establish municipal liability under §1983, a plaintiff must show: (1) an official policy (2) promulgated by the municipal policy maker (3) which was the moving force behind the violation of a constitutional right. *Id.* A policy or custom is official only “when it results from the decision or acquiescence of the municipal officer or body with final policymaking authority over the subject of the offending policy.” *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 737 (1989); *Peterson v. City of Fort Worth, Texas*, 588 F.3d 838, 847 (5<sup>th</sup> Cir. 2009). To establish the

“moving force” element, a plaintiff must show a direct causal link between the policy and the constitutional violation. *Piotrowski*, 237 F.3d at 580; *Peterson*, 588 F.3d at 848.

Where a plaintiff alleges that his or her injury resulted from the lack of an appropriate policy, instead of from a facially unconstitutional policy, a plaintiff must establish municipal liability by showing that the city’s failure to adopt a policy needed to circumvent predictable violations of federal law amounted to deliberate indifference. *James v. Harris County*, 577 F.3d 612, 617 (5<sup>th</sup> Cir. 2009); *see also City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989) (discussing city liability for lack of training); *Piotrowski*, 237 F.3d at 579-80 (municipal liability for lack of supervision). To show “moving force” causation based on a municipality’s alleged failure to train, supervise, investigate, or otherwise adopt appropriate hiring or retention policies, a plaintiff must show that the decision not to adopt appropriate policies or procedures amounts to deliberate indifference. *Valle v. City of Houston*, 613 F.3d 536, 542 (5<sup>th</sup> Cir. 2010). In other words, “the plaintiff must demonstrate that a municipal decision reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision. Deliberate indifference is a high standard—a showing of simple or even heightened negligence will not suffice.” *Id.* (internal quotes and citations omitted).

The Fifth Circuit has emphasized the need for *Monell* plaintiffs to establish both the causal link (“moving force”) and a city’s degree of culpability (“deliberate indifference” to federally protected rights.) *Snyder v. Trepagnier*, 142 F.3d 791, 796 (5<sup>th</sup> Cir. 1998); *Piotrowski*, 237 F.3d at 580. “These requirements must not be diluted, for “[w]here a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into respondeat superior liability.” *Snyder*, 142 F.3d at 796.

**B. Plaintiff's §1983 claim against the City should be dismissed.**

Plaintiff contends that the City is liable because the alleged violations that Ms. Beuhler endured were caused by policies, practices, customs, and training by the City of Austin, including using excessive force, failure to adequately train officers regarding civil rights protected by the United States Constitution, failure to adequately train officers in crowd control, failure to intervene to stop excessive force, policies not to investigate excessive violence, policy not to adequately discipline and deter officers from using excessive force. (Doc. 21). Plaintiff also alleges that the City and Chief Manly failed to supervise the officers, and permitted officers to violate demonstrators' free speech and assembly rights and other constitutional rights. In addition, the Plaintiff claims that the City's failure to adequately supervise, train, and stop APD officers from violating protestors' first amendment and equal protection rights was a proximate cause of Plaintiff's deprivation of rights and injuries.

Plaintiff has not produced sufficient evidence to raise an issue of material fact to demonstrate that: (1) the City is liable for failing to train APD officers or (2) the City is liable for failing to adequately supervise or discipline APD officers.

**1. No Constitutional Violation**

First, Plaintiff's claims should be dismissed because Officer Smart and Officer Gonzalez did not violate her constitutional rights by arresting her. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986). An officer may arrest a person in public without a warrant if the officer has probable cause to believe that person has violated the law. *Atwater v. City of Lago Vista*, 532 U.S. 318, 354, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001) ("If an officer has probable cause that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."); *Favela v. City of Las Cruces ex rel. Las*



*Cruces Police Dep't*, 398 F. Supp. 3d 858, 927–31 (D.N.M. 2019). For the reasons set forth in the Officers’ Motion for Summary Judgment, which is incorporated herein by reference, the arrest of Plaintiff was lawful and based on probable cause. *Haggerty v. Tex. Southern Univ.*, 391 F.3d 653, 655-656 (5th Cir.2004).

It is well-established that a municipality may not be held liable if a plaintiff’s constitutional rights were not violated. *Heller*, 475 U.S. at 799 (“[I]f the [police officer] inflicted no constitutional injury on [the plaintiff], it is inconceivable that [the city] could be liable to [plaintiff].”). As a result, since Officers Smart and Gonzalez inflicted no constitutional harm on the Plaintiff, the Plaintiff does not have a viable claim against the City of Austin. Accordingly, summary judgment in favor of the City of Austin is proper as a matter of law.

**2. APD Policies are not facially unconstitutional.**

Each policy which allegedly caused constitutional violations must be specifically identified by a plaintiff, and it must be determined whether each one is facially constitutional or unconstitutional. *Piotrowski v. City of Houston*, 237 F.3d 567, 579-580 (5<sup>th</sup> Cir. 2001). Although APD policies are readily available and included with the Austin Police Department General Orders ([https://www.austintexas.gov/sites/default/files/files/Police/General\\_Orders.pdf](https://www.austintexas.gov/sites/default/files/files/Police/General_Orders.pdf)), Plaintiff simply alleges a generic and undefined list of “policies, practices, or customs” in her Amended Complaint (Doc. 21) and she baldly asserts that the City is also liable directly for its policymakers’ misconduct and failure to adequately supervise, train, and stop APD officers from violating protestors’ first amendment and equal protection rights, which was a proximate cause of Plaintiff’s deprivation of rights and injuries. But she she does not cite any specific APD policy which she claims allegedly caused a violation of her constitutional rights.

A review of the videos of the officers on duty that day clearly show that the Plaintiff's erratic behavior warranted her immediate restraint, handcuffing, and a search of the Plaintiff for weapons in compliance with APD policies. Plaintiff has produced no evidence to support a claim that any of the policies are unconstitutional.

A facially innocuous policy will support municipal liability if it was promulgated with deliberate indifference to the "known or obvious consequences" that constitutional violations would result. *Bd. of Comm'rs of Bryan County v. Brown*, 520 U.S.397, 403, 117 S. Ct. 1382, 1388 (1997). If actions of city employees are to be used to prove a custom for which the municipality is liable, those actions must have occurred for so long or so frequently that the course of conduct warrants the attribution to the governing body of knowledge that the objectionable conduct is the expected, accepted practice of city employees. *Webster v. City of Houston*, 735 F.2d 838, 842 (5<sup>th</sup> Cir. 1984). To establish that prior incidents constitute a pattern, a plaintiff must show that the incidents have occurred for so long or with such frequency that policymakers must know that the improper conduct is the ordinary and accepted practice of the municipal employees. *Peterson v. City of Fort Worth, Texas*, 588 F.3d 838, 850 (5<sup>th</sup> Cir. 2009)

Plaintiff has produced no evidence of deliberate indifference on the part of the City to support her *Monell* claim. As a result, Plaintiff's *Monell* claims should be dismissed.

**3. The Plaintiff's Inadequate Training Claim should be Dismissed.**

"A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Connick v. Thompson*, 563 U.S. 51, 131 S. Ct. 1350, 1359 (2011). For a plaintiff to prevail on a failure to train claim, he must allege with specificity how a city's training program is inadequate. *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5<sup>th</sup> Cir. 2005). A plaintiff seeking to recover on a theory of failure to train must prove that: "(1) [the city's] training policy

or procedures were inadequate, (2) [the city] was deliberately indifferent in adopting its training policy, and (3) the inadequate training policy directly caused [the plaintiff's injury]." *Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5<sup>th</sup> Cir. 2010).

To show deliberate indifference in the context of a failure to train allegation, a plaintiff may pursue two paths. *Kitchen v. Dallas Cty., Tex.*, 759 F.3d 468, 484 (5<sup>th</sup> Cir. 2014). The first, and more common path, involves proving that the city had notice of a pattern of prior violations which involved events similar to what transpired when the plaintiff's rights were allegedly violated. *Id.*, citing *Sanders-Burns*, 594 F.3d at 381. Alternatively, a plaintiff can show, based on a single-incident alone, that "in light of the duties assigned to specific officers or employees, the need for more or different training is obvious, and the inadequacy so likely to result in violations of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Sanders-Burns*, 594 F.3d at 381, quoting *Estate of Davis ex rel. McCully v. City of North Richland Hills*, 406 F.3d 375, 386 (5<sup>th</sup> Cir. 2005). This "single-incident" path is "difficult, although not impossible," for plaintiffs to successfully follow. *Id.* This is because it is not sufficient for a plaintiff to show that additional training may have avoided the injury, but a plaintiff (following either path) must show that the training was so inadequate that it would pose a "patently obvious risk of recurring constitutional violations." *Kitchen*, 759 F.3d at 485.

As part of her failure to train claim, Plaintiff contends that the City failed to adequately supervise, train, and stop APD officers from violating protestors' first amendment and equal protection rights, which was a proximate cause of Plaintiff's deprivation of rights and injuries. (Doc. 21). Plaintiff provides no specific factual details as to how she claims the City's training of its officers is constitutionally inadequate.

Plaintiff has no evidence to support her inadequate training claim. APD provides comprehensive training to its cadets and police officers. (Exhibit 01-Declaration of Chief Joseph Chacon); (Exhibit 02 - Declaration of Commander Wade Lyons). In fact, APD provides training that actually exceeds what is required by TCOLE. *see Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 171 (5th Cir. 2010) (finding that compliance with state training minimums “counsels against” finding a failure to train). This training includes comprehensive instruction on arrest, search and seizure, the Penal Code, family violence as well as APD’s policies. This training includes hours of classroom instruction and numerous practical exercises. (Exhibit 01-Declaration of Chief Joseph Chacon); (Exhibit 02 - Declaration of Commander Wade Lyons) Accordingly, Plaintiff cannot show that the City was deliberately indifferent to the need for more or different training.

The weakness of Plaintiff’s training claim is demonstrated by the fact that she fails to identify any specific training deficiencies on the part of the City other than bare allegations that the City failed to provide adequate training. Plaintiff has identified no specific failure of the City’s training policies. Plaintiff also has not produced evidence why different training procedures should have been obvious to the City. At its essence, Plaintiff’s training claim against the City is little more than bare assertions, unsupported by the type of detailed allegations and evidence that are mandated by cases like *Monell* and *Connick*. Accordingly, Plaintiff’s failure to train claim should be dismissed.

**4. Plaintiff’s Inadequate Supervision Claim is without merit.**

Plaintiff alleges that the City is liable for providing inadequate supervision and discipline to Officers Smart and Gonzalez. (Doc. 21). Plaintiff cannot establish that the City has a policy or practice of failing to supervise and discipline its officers. These claims are analyzed under virtually

the same stringent, deliberate indifference standard as the failure to train claim. *See Porter v. Epps*, 659 F.3d 440, 446-47 (5<sup>th</sup> Cir. 2011) (requiring a plaintiff to prove deliberate indifference for failure to promulgate policy, train, and supervise claims); *Gros v. City of Grand Prairie, Texas*, 34 Fed. Appx. 150 \*6 (5<sup>th</sup> Cir. 2002) (per curiam) (requiring a plaintiff to prove deliberate indifference for hiring, training, and supervision claims); and *Barrios-Barrios v. Clipps*, 825 F.Supp.2d 730, 744 (E.D. La. 2011) (citing *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 410-11 (1997) (analyzing hiring, training, and supervision claims under a deliberate indifference standard). A showing of even heightened negligence does not suffice to demonstrate deliberate indifference. *Brown*, 520 U.S. at 407.

To prove deliberate indifference in the context of a claim that a city failed to supervise or discipline a police officer, a plaintiff must identify the individual supervisor who failed to supervise or discipline and demonstrate that the supervisor had subjective knowledge that the police officer posed a serious risk to commit constitutional violations. *James v. Harris Cty.*, 508 F.Supp.2d 535, 551-52 (S.D. Tex. 2011). In essence, for all of these types of claims, a plaintiff must prove (usually through demonstrating a pattern of prior similar violations) that the risk of the officer committing constitutional violations was obvious to policymakers. *Id.*

In this case, Beuhler again only makes a bare allegation that the City did not properly supervise or discipline officers who presented an obvious risk of committing constitutional violations. It is undisputed that Officer Smart and Officer Gonzalez each passed an extensive background check prior to hiring, and successfully completed the training academy. Moreover, the undisputed evidence shows that APD had a program in place to screen officers based on uses of force, citizen complaints, and other criteria. (Exhibit 01-Declaration of Chief Joseph Chacon); (Exhibit 02 - Declaration of Commander Wade Lyons).

Simply put, Plaintiff has produced no evidence that Officer Smart or Officer Gonzalez were inadequately supervised on the date of this incident and that any alleged failure to supervise was done so with deliberate indifference to the risk of a constitutional violation. As a result, Plaintiff's inadequate supervision, training, and discipline claims are without merit and should be dismissed.

**5. Plaintiff has not established a policy or practice or custom of using excessive force or violations of free speech, due process, and/or assembly and/or retaliating for the exercise of these constitutional rights.**

Plaintiff alleges that the City of Austin authorized, and/or tolerated excessive and unnecessary force against peaceful, non-violent protesters by its police officers. (Doc. 21). This allegation is not supported by the evidence. It is undisputed that APD had policies in place forbidding excessive force. These policies, in considerable detail, discussed the standards for the application of both lethal and non-lethal force. (Exhibit 01-Declaration of Chief Joseph Chacon); (Exhibit 02 - Declaration of Commander Wade Lyons). Plaintiff does not make any specific allegations about how APD's use of force policies are deficient. To prove her claim, Plaintiff must establish that there is some pattern in the use of excessive force that demonstrates that the City had an unwritten policy permissive of excessive force. *Peterson*, 588 F.3d at 850. Simply put, Plaintiff has produced no evidence to support these allegations.

Plaintiff also has not established any pattern that could constitute official policy. A pattern amounts to an official policy "when it is so common and well-settled as to constitute a custom that fairly represents municipal policy." *Peterson*, 588 F.3d at 850 (internal quotes and citations omitted). To establish that prior incidents constitute a pattern, a plaintiff must show that the incidents have occurred for so long or with such frequency that policymakers must know that the improper conduct is the ordinary and accepted practice of the municipal employees. *Id.* A pattern will not be established based on isolated incidents. Instead, the pattern must be composed of

incidents that are numerous and similar to the specific violation alleged. *Id.* at 850-851. To meet these criteria, a plaintiff must place the prior incidents in context. For instance, the mere existence of 27 complaints of excessive force over a four-year period does not show a pattern of allowing excessive force when the city has a large police force that makes thousands of arrests per year. *Id.* at 851. Here, Plaintiff has produced no evidence of any prior similar incidents in which deadly force was used sufficient to constitute any policy or practice.

The undisputed evidence is that APD has enforced its policies. Plaintiff's complaints of officer misconduct were investigated for this incident in compliance with APD policy that requires the investigation of complaints against officers. (Exhibit 01-Declaration of Chief Joseph Chacon); (Exhibit 02 - Declaration of Commander Wade Lyons).

In sum, Plaintiff has no evidence to demonstrate a pattern of prior incidents that are sufficiently numerous and similar to this incident to show that the City tolerates the use of improper force or other improper conduct by its officers. Furthermore, because APD ensures that officers accused of violating APD policies are investigated and, if appropriate, disciplined, Plaintiff cannot prove that any alleged policy permissive of excessive force or other alleged improper conduct was the moving force behind the alleged violations in this case. *See James v. Harris Cty.*, 577 F.3d 612, 618-19 (finding that alleged policies of lax investigation and discipline in officer-involved shootings could not have been the moving force behind the violations because the officer did not have any knowledge of such policies). Accordingly, Plaintiff's §1983 claim against the City should be dismissed.

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant City of Austin respectfully requests that the Court grant its Motion for Summary Judgment and dismiss all of the Plaintiff's

claims against it with prejudice with all costs assessed to the Plaintiff. Defendant further requests that it recover any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY  
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

/s/ Monte L. Barton  
MONTE L. BARTON  
Assistant City Attorney  
H. GRAY LAIRD III  
State Bar No. 24087054  
MONTE L. BARTON, JR.  
State Bar No. 24115616  
[monte.barton@austintexas.gov](mailto:monte.barton@austintexas.gov)  
City of Austin-Law Department  
Post Office Box 1546  
Austin, Texas 78767-1546  
Telephone: (512) 974-2268  
Direct: (512) 974-2409  
Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANT CITY OF AUSTIN**



**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 14th day of April, 2023.

**Via CM/ECF:**

Scott M. Hendler

SBN: 09445500

shendler@hendlerlaw.com

Grayson McDaniel

SBN: 24078966

gmcdaniel@hendlerlaw.com

Stephen Demik (pro hac vice)

sdemik@hendlerlaw.com

HENDLER FLORES LAW, PLLC

901 S. MoPac Expressway

Bldg. 1, Suite #300

Austin, Texas 78746

Telephone: (512) 439-3202

Facsimile: (512) 439-3201

**ATTORNEYS FOR PLAINTIFF**

/s/ Monte L. Barton Jr.  
MONTE L. BARTON JR.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**Sydni Beuhler,**  
Plaintiff,

v.

**City of Austin,  
Officer Gavin Smart (AP8674), and  
Officer Javier Gonzalez (AP7422)**  
Defendants.

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**Case no. 1:21-cv-00054-RP**

**PLAINTIFF’S UNOPPOSED MOTION TO FILE RESPONSE TO DEFENDANT  
OFFICERS’ MOTION FOR SUMMARY JUDGMENT UNDER SEAL**

COMES NOW Plaintiff Sydni Beuhler and respectfully requests leave to file her response to Defendant Officers’ Motion for Summary Judgment [Doc. 42] with its exhibits under seal. Plaintiff’s response and its exhibits contain information protected by Order of this Court. [Doc. 24]. Pursuant to local rule CV-5.2, the documents intended to be kept under seal are filed as an exhibit to this sealing motion. Counsel for Defendants is unopposed to this motion.

**Dated: May 12, 2023**

**Respectfully submitted,  
HENDLER FLORES LAW, PLLC**

/s/ Laura A. Goettsche  
Scott M. Hendler - Texas Bar No. 9445500  
[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)  
Laura A. Goettsche - Texas Bar No. 24091798  
[lgoettsche@hendlerlaw.com](mailto:lgoettsche@hendlerlaw.com)  
Grayson E. McDaniel- Texas Bar No. 24078966  
[gmcDaniel@hendlerlaw.com](mailto:gmcDaniel@hendlerlaw.com)  
Stephen Demik - *PHV*  
[sdemik@hendlerlaw.com](mailto:sdemik@hendlerlaw.com)  
901 S. MoPac Expressway  
Bldg. 1, Suite #300  
Austin, Texas 78746  
Telephone: (512) 439-3200  
Facsimile: (512) 439-3201

***ATTORNEYS FOR PLAINTIFF***

**CERTIFICATE OF CONFERENCE**

I certify that counsel for defendants is unopposed to this Motion, per our email exchange on May 12, 2023.

/s/ Laura A. Goettsche  
Laura A. Goettsche

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was filed via the court's CM/ECF system on May 12, 2023, which will serve all counsel of record.

/s/ Laura A. Goettsche  
Laura A. Goettsche

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**Sydni Beuhler,**  
Plaintiff,

v.

**City of Austin,  
Officer Gavin Smart (AP8674), and  
Officer Javier Gonzalez (AP7422)**  
Defendants.

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**Case no. 1:21-cv-00054-RP**

**PLAINTIFF’S RESPONSE TO DEFENDANT OFFICERS’  
MOTION FOR SUMMARY JUDGEMENT**

COMES NOW Plaintiff Sydni Beuhler and respectfully files her *Response to Defendant Officers’ Motion for Summary Judgement* [Doc. 42], and in support would show the Court the following:

**I. Procedural Background**

This case arises out of Defendants Officers’ Smart’s and Gonzalez’s (“Defendants”) improper and unlawful actions in arresting Plaintiff Sydni Beuhler to punish her for participating in a peaceful protest against police brutality on or near the intersection of 4th Street and Congress Avenue. When Sydni was arrested by Officer Smart, she was peacefully exercising her constitutional right to assemble with like-minded people and protest the government and police misconduct.

On April 14, 2023, Defendants filed a Motion for Summary Judgment [Doc. 42]. On April 27, 2023, this Court granted Plaintiff’s Unopposed Motion for an Extension of Time to file her Response and ordered Plaintiff to file her Response by May 12, 2023. This Response is, accordingly, timely filed.

## **II. Standard of Review**

Summary judgment is proper when the moving party conclusively establishes that there are no genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986). In deciding a motion for summary judgment, the Court must view the evidence in the light most favorable to the nonmoving party, and indulge all reasonable inferences in favor of the nonmoving party—in this case, Plaintiff. *Dillon v. Rogers*, 596 F.3d 260, 266 (5th Cir. 2010). Qualified immunity shields law enforcement officers from liability if their conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The two-step inquiry of qualified immunity provides that a Plaintiff must show that there: (1) was a constitutional right was violated, and (2) was the right “clearly established.” *McClendon v. City of Columbia*, 305 F.3d 314, 322–23 (5th Cir. 2002). If a reasonable officer would have understood that what he was doing violated a constitutional right, the officer is not entitled to qualified immunity. *Reichle v. Howards*, 566 U.S. 658, 664 (2012).

## **III. Relevant Facts**

On August 1, 2020, Plaintiff attended a protest on Congress Avenue in Austin. Beuhler Dep. Tr: 9:21–10:6 (Exhibit A). She was protesting both the recent murder of her friend, Garrett Foster, and in support of Black Lives Matter. Beuhler Dep. Tr: 37:1–21 (Ex. A). At some point during the protest, officers arrived. The officers were in the process of clearing protestors from a roadway with a triangle formation of bicycles. Miller Dep. Tr: 36:6–21 (Exhibit B). The officers used pepper spray and bicycles to physically push several protestors out of the roadway. COA 768 (Exhibit C). Plaintiff did not interact with the bicycles nor was she pepper sprayed. Miller Dep. Tr: 81:8–13 (Ex. B).

At this time, the City of Austin had expanded its sidewalks to allow for COVID-19 social distancing. Staniszewski dep. Tr: 193:18–194:7 (Exhibit D); also *Austin City Council Resolution 20200611-051*, CITY OF AUSTIN, June 11, 2020, [https:// see services.austintexas.gov/edims/document.cfm?id=342167](https://services.austintexas.gov/edims/document.cfm?id=342167) (describing adoption of the “Imagination Austin Comprehensive Plan,” which included creating protected bicycle lanes on Congress). The expanded sidewalks were marked by orange traffic markers. Staniszewski dep. Tr: 194:8–23 (Ex. D). At one point Plaintiff was in the street:



COA 376, Officer Smart’s Body-Worn Camera Footage at 1:25:087 (Plaintiff circled in green) Exhibit E. However, when she was arrested, Plaintiff had moved away from the street and was standing just inches away from the expanded sidewalk:



BEU 000491, Bystander video 4 (Exhibit F). Plaintiff was in the process of complying with officer orders, having walked within inches of the expanded sidewalk, when she appeared to say something to the helmeted officers as they began to push the demonstrators backwards. *See* BEU 000559 – 000568 (Expert Report of John Lenoir) (Exhibit G). She was then singled out for arrest. *See id.* (stating that “[a] large officer standing behind the front-line officers holding bicycles lunged forward just as the police bicycle barricade line reached Buehler.”). Plaintiff was arrested moments after officers began clearing the road. There were other protestors in the roadway at that moment, but only Plaintiff was arrested. *See id.* at 5 (The videos reviewed showed Buehler being the only person arrested from the line of demonstrators with whom she was standing.”); Miller Dep. Tr: 79:23–80:10 (Ex. B). Officer Smart arrested Plaintiff by grabbing her, lifting her off the ground. Then bringing her to her knees in the street. His unreasonable decision to pick Ms. Beuhler up not only applied disproportional and unlawful force, but also caused his body-worn camera (“BWC”) to turn off—a further confirmation that the arrest was improper. Rather than arrest, lower levels of force were used on other protestors; they were pushed with bicycles and pepper sprayed. Miller

Dep. Tr: 80:8–24 (Ex. B). Plaintiff however, was grabbed in a “take down” by Officer Smart. Miller Dep. Tr: 80:8–17 (Ex. B). Additionally, Officer Gonzalez used a level two pain-compliance technique when arresting Plaintiff, known as a wrist lock, on Plaintiff’s right wrist, which resulted in Beuhler being in so much pain she thought her wrist was breaking. *See* Miller Dep. Tr: 127:23–129:12 (Ex. B); Gonzalez Dep. Tr. 95:4–25 (Exhibit H) (describing performing a wrist lock on Plaintiff despite her offering no resistance except reflexive “stiffening”). This pain-compliance technique was used despite Plaintiff offering no resistance. *See* Allare Dep. Tr. 87:21–88:7 (Exhibit I) (testifying that Plaintiff was not resisting when Officer Allare held one of her hands in pace during the arrest); Beuhler Dep. Tr: 55:13–56:12 (Ex. A).

#### **IV. Legal Argument and Analysis**

##### **1. Material Fact Questions Persist as to Whether Officers Smart and Gonzalez Violated Plaintiff’s Clearly Established First Amendment Rights.**

Defendants argue that Plaintiff’s claims “should be dismissed because Officers Smart and Gonzales did not violate plaintiff’s constitutional rights.” Doc. 42 at 6. Plaintiff disagrees. In truth, Defendants did violate Plaintiff’s constitutional rights when they (1) singled her out for arrest because she was engaged in constitutionally protected conduct; (2) charged her with resisting arrest despite her conduct being protected by Texas Penal Code Section 9:31(c), which provides that the use of force to resist an arrest or search is justified if the peace officer uses or attempts to use greater force than necessary to make the arrest or search before the actor offers any resistance, which is what happened in this case; and (3) used unreasonable, excessive, and unnecessary force to effectuate her arrest.

To establish a First Amendment retaliation claim, a Plaintiff must show that “(1) [she was] engaged in constitutionally protected activity, (2) the defendants’ actions caused to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3)



the defendants' adverse actions were substantially motivated against exercise of constitutionally protected conduct." *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002).

As stated by Defendants' expert, Defendants arrested Plaintiff while she "exercis[ed] [her] First Amendment right[] to protest the police." Miller Dep. Tr: 105:17–25 (Ex. B). The Constitution protects the right of citizens to assemble and to exercise their free search. *See* Miller Dep. Tr: 60:7–15 (Ex. B). Defendants' unreasonable use of force in carrying out this unjustified arrest caused Plaintiff physical and mental injury, fear, pain, anguish, and chilled her future exercise of her First Amendment rights, just as such force would chill a person of ordinary firmness from continuing to engage in their constitutionally-protected right of assembly. Plaintiff herself, who had been protesting three-to-five times a week for months prior to this event stopped protesting after this incident. *See* Beuhler Dep. Tr: 36:11–17; 187:14–188:22 (Ex. A).

Defendants did not have probable cause to arrest Plaintiff, because she was in the process of exiting the roadway. They singled her out for arrest because she engaged in constitutionally-protected speech. As detailed below, Defendants' actions were substantially motivated against exercise of Plaintiff's constitutionally-protected conduct.

**i. Plaintiff was singled out for arrest because she engaged in constitutionally protected speech.**

It is indisputable that an individual may not be arrested for cursing at an officer. Miller Dep. Tr: 112:23–113:15 (Ex. B); Smart Dep. Tr: 52:1–5 (Exhibit J), Gonzalez Dep. Tr: 7:3–6 (Ex. H). The First Amendment “protects a significant amount of verbal criticism and challenge directed at police officers.” *City of Houston, Tex. v. Hill*, 482 U.S. 451, 455(1987) (ruling that a Houston ordinance that made it unlawful to “in any manner oppose, molest, abuse or interrupt any policeman in the execution of his duty” was substantially overbroad and facially invalid because it punished spoken words.) The Court held that speech is protected against censorship or punishment even if it is provocative and challenging, unless it is likely to produce a “clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.” *Id.* at 461. The Court noted that the “freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” *Id.* at 462–63.

In this case, Austin police began forcing protestors to retreat using bicycles “[m]oments before [Plaintiff’s] arrest.” BEU 000550-51 (Expert Report of John Lenoir) (Ex. G). Many protestors at the bottom of the triangle formation had physically interacted with the bicycles. Plaintiff, who was at the top of triangle, had not yet interacted with the bicycles at all. She was in the process of complying with officer instructions to exit the roadway and she was emotionally upset and frightened because a woman near her had just been sprayed with pepper spray in the face. *See* Beuhler Dep. Tr. at 69:1–73:10 (Ex. A) (describing bystander video depicting officers hitting with bike near Ms. Beuhler and pepper spraying her, after which the woman laid her head on Ms. Beuhler’s shoulder.)

Far from instigating or perpetuating any threat to any officers' safety, Ms. Beuhler was mere inches from the expanded sidewalk when she was violently singled out for arrest, seconds after voicing a complaint." BEU 000551 (Expert Report of John Lenoir) (Ex. G). ("A large officer standing behind the front-line officers holding bicycles lunged forward just as the police bicycle barricade line reached Buehler"). Because Ms. Beuhler was leaving the roadway; was not running, fleeing, or threatening any officer; and instead only engaged in constitutionally protected speech, a genuine question exists as to whether Officer Smart's and Gonzalez's arrest tactics were substantially motivated by Plaintiff's exercise of her constitutionally-protected conduct. *Id.* at BEU000556–57 (opining that "If Sydni Beuhler said or shouted something to or about the police that upset Officer Smart, that would in no respect justify his forceful seizure of her.>").

Discovery in this case has led Plaintiff to the reasonable conclusion that Officer Smart's and Gonzalez's arrest tactics were substantially motivated by Plaintiff's exercise of her constitutionally-protected conduct. For example, Officer Gonzalez has spoken openly on social media, under the color of uniform, that he does not respect the First Amendment right to protest. In a rant comparing protestors in Mexico to those in the United States, he said as follows:

Man, boys in blue over there holding it down. Where these punk-ass protestors at, man? Get slapped in the fucking face over here—those lazy bum motherfuckers. There ain't no unemployment over here in this third-world country. All you cry-baby bitches, come to this third-world country, see how far you get begging and crying and getting government assistance. You motherfuckers will die, you weak bitches.

*See* COA 13303 (Exhibit O). Though his comments were the subject of a complaint from the community, he received no discipline. *See* COA 8664–70 [CONF] (Exhibit K) (Internal Affairs documentation reflecting no discipline for incident); Gonzalez Dep. Tr. at 153:5–154:8 (Ex. H) (confirming no discipline). There remains a genuine question of material

fact as to whether the excessive force employed by Defendants stemmed from personal animus toward individuals exercising their First Amendment rights.

**ii. There is a genuine dispute as to whether there was probable cause to arrest Plaintiff, which is a question of fact.**

The validity of a First Amendment claim hinges on probable cause for the arrest. *Westfall v. Luna*, 903 F.3d 534, 550 (5th Cir. 2018). When there is a disputed question of fact on whether there was probable cause, a First Amendment claim cannot be resolved on summary judgment. *Mesa v. Prejean*, 543 F.3d 264, 273 (5th Cir. 2008). In *Mesa v. Prejean*, there was a fact question regarding whether the plaintiff's arrest was truly because of her refusal to comply with instruction or "prompted by constitutionally protected speech." *Id.* Conversely, in *Carthon v. Prator*, the Court held that there was no fact question regarding probable cause because there was "no evidence to suggest that [plaintiff] manifested any intension of complying with [officer's] command to leave." 408 F. App'x 779, 783 (5th Cir. 2010). Unlike in *Carthon* and similar to *Mesa*, there is evidence that Plaintiff was complying with orders by walking to the sidewalk, from which she was merely inches away, when she was arrested immediately after engaging in constitutionally protected speech. There is thus a fact question on whether probable cause existed to arrest Plaintiff and summary judgment is inappropriate.

**iii. There is a genuine dispute as to whether there was probable cause to charge Plaintiff with resisting arrest, which is a question of fact.**

There is ample evidence in this case reflecting that Plaintiff was not resisting arrest, and instead was legally reacting to unreasonable force. Texas Penal Code Section 9:31(c) provides: "*The use of force to resist an arrest or search is justified: (1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and (2) when and to the degree the actor*

reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary." (emphasis added). In this case, Officer Smart "lunged" at Plaintiff and violently arrested her, and Officer Gonzalez applied Level 2 force, before Plaintiff ever offered any resistance at all—as stated before, all she had done was engage in constitutionally protected speech. BEU 000551 (Expert Report of John Lenoir) (Ex. G).

Officer Gonzalez testified that he is aware of an individual's right, under Texas law, to react with resistance when an officer uses unreasonable force first. *See* Gonzalez Dep. Tr. 71:4-13 (Ex. H) (testifying, "If the person truly believes that the police officer is using unreasonable force, that's the only one time I can think of [that the person may lawfully resist], but they have to be able to later explain that in court this was unreasonable force because XYZ, 123."). Plaintiff is prepared to provide ample evidence that Defendants both used unreasonable force before she ever presented any resistance. As a result, there is a disputed question of material fact regarding Defendants' unlawful decision to charge Plaintiff with "Resisting Arrest."

## **2. Defendants Violated Plaintiff's Clearly-Established Fourth and Fourteenth Amendment Rights.**

To establish the first step of the two-part test to overcome qualified immunity, Plaintiff must show that she "suffer[ed] an injury that result[ed] directly and only from a clearly excessive and objectively unreasonable use of force." *Cloud v. Stone*, 993 F.3d 379, 384 (5th Cir. 2021). This objective standard provides that defendants' use of force is not excessive and unreasonable if "the officer[s'] actions are objectively reasonable in light of the facts and circumstances confronting [them], without regard to their underlying intent or motivation." *Id.* The Supreme Court in *Graham v. Connor* identifies several factors bearing on the reasonableness of force: "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others,

and whether he is actively resisting arrest or attempting to evade arrest by flight” with “careful attention to the facts and circumstances of each particular case.” 490 U.S. 386, 396, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989).

The Fifth Circuit in *Westfall v. Luna* reversed the grant of qualified immunity to a police officer who force plaintiff Westfall to the ground for disobeying an order. 903 F.3d 534, 549 (5th Cir. 2018). Westfall was a woman who was five-feet-five inches and of a “small build.” *Id.* at 541. The officer defendant instructed Westfall not to follow her son into her home. *Id.* at 540–41. Westfall disobeyed the order and reached for the front door. *Id.* at 540. The defendant officer then “body-slammed” Westfall to the ground. *Id.* at 540. Although the *Westfall* plaintiff disobeyed police instructions, the Fifth Circuit held that the police officer was not entitled to qualified immunity for using excessive force. *Id.* at 549. In applying the *Graham* factors, the *Westfall* Court found that the officer’s use of force was objectively unreasonable because Westfall was arrested for a minor offense, no reasonable officer could conclude that Westfall posed a threat, and Westfall was not trying to flee. *Id.* at 547–48.

**iv. There is a genuine dispute as to whether Officer Smart used excessive force, which is a question of fact.**

While Plaintiff was in the process of leaving the roadway, like Westfall, she had not yet fully complied with an instruction when she was seized by Officer Smart. Officer Smart claimed he was arresting Plaintiff with obstruction of a highway or other passageway under Texas Penal Code 42.03, a Class B misdemeanor. *See* COA 000021–22 (Exhibit L). Like the Class B misdemeanor in *Westfall*, this is a minor offense. *Westfall*, 903 F.3d at 547–48. Also like the *Westfall* plaintiff, “no reasonable officer could conclude that [Plaintiff Beuhler] posed a threat to [Officer Smart] or the other officers by [standing near the sidewalk].” *Id.* at 748. Plaintiff’s expert Dr. Lenoir opined that “[n]othing in the videos reviewed suggests that Beuhler posed an

actual or reasonably perceived threat to the police officers or others.” BEU 000553–55 (Expert Report of John Lenoir) (Ex. G). As in *Westfall*, “it [was] clear that [plaintiff Beuhler] was not trying to flee” the scene. *Westfall*, 903 F.3d at 548. As Dr. Lenoir noted, “Sydni Beuhler does not appear to actively resist arrest or attempt to evade arrest by flight.” BEU 000556 (Expert Report of John Lenoir) (Ex. G); *See also* Miller Dep. Tr: 148:2–11 (Ex. B); *see also* Smart Dep. Tr: 69:1–4 (Ex. J) (stating that Plaintiff did not try to run away before he arrested her). Dr. Lenoir stated, “The videos show no apparent reason for this particular officer to have violently arrested one of the demonstrators from the line of people with whom she was standing; nor is there any apparent reason why the officer singled out this particular demonstrator for arrest.” BEU 000552–53 (Ex. G). Therefore, Dr. Lenoir opines that Officer Smart’s actions were not reasonable, and that Officer Smart’s forcible arrest of Plaintiff Beuhler was not justified. *Id.* at 000565–67.

Courts consider “not only the need for force, but also the relationship between the need and the amount of force used.” *Joseph on behalf of Est. of Joseph v. Bartlett*, 981 F.3d 319, 332 (5th Cir. 2020). “Officers may consider a suspect's refusal to comply with instructions . . . in assessing whether physical force is needed to effectuate the suspect's compliance.” *Darden v. City of Fort Worth*, 880 F.3d 722, 729 (5th Cir. 2018). “However, officers must assess not only the need for force, but also the relationship between the need and the amount of force used.” *Id.* Plaintiff is of small build, much smaller than the defendant officers. Miller Dep. Tr: 141: 18–22 (Ex. B). Plaintiff did not resist her arrest before force was used against her. Smart Dep. Tr: 69:5–9 (Ex. J). Officer Smart made no prior attempt to de-escalate, or ask Plaintiff to comply with officer’s commands before grabbing her. Miller Dep. Tr: 152:9–16 (Ex. B). He did not tell her she was under arrest or ask her to turn around and place her hands behind her back. Smart Dep. Tr: 69:20–22 (Ex. J). His first interaction with Plaintiff was a “takedown.” A “takedown” is a level three force

on APD's four-level, use-of-force continuum. Smart Dep. Tr: 58:21–59:3, 59:21–23 (Ex. J). The officer defendants then forced Plaintiff to her knees. COA 000130 (Exhibit M).

**v. There is a genuine dispute as to whether Officer Gonzalez used excessive force against Plaintiff, which is a question of fact.**

Officer Gonzalez used a wrist lock on her right arm and kneeled on her back. This is despite Plaintiff's repeated insistence that she was not resisting. COA 378 (Exhibit N). Officer Allare, who controlled Plaintiff's left arm, stated that she did not encounter any resistance. Allare Dep. Tr: 88:4–7 (Ex. I). Further, a reasonable juror could find that Plaintiff was not resisting, and that Officer Gonzalez repeatedly shouted "stop resisting" as a pretext for using a pain-compliance technique. The amount of force the officer defendants used far exceeded the need and was unreasonable. BEU 000554, 556 (Expert Report of John Lenoir) (Ex. G).

**V. Conclusion**

Viewing the facts in the light most favorable to Plaintiff, the nonmovant, a genuine question of material fact exists regarding whether the officer defendants violated Plaintiff's clearly-established constitutional rights under the First, Fourth, and Fourteenth Amendments. For the reasons described herein, Plaintiff respectfully requests that the Officer Defendants' summary judgment motion be denied.

**Dated: May 12, 2023**



**Respectfully submitted,  
HENDLER FLORES LAW, PLLC**

*/s/ Laura A. Goettsche* \_\_\_\_\_

Scott M. Hendler - Texas Bar No. 9445500

[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)

Laura A. Goettsche - Texas Bar No. 24091798

[lgoettsche@hendlerlaw.com](mailto:lgoettsche@hendlerlaw.com)

Grayson E. McDaniel- Texas Bar No. 24078966

[gmdaniel@hendlerlaw.com](mailto:gmdaniel@hendlerlaw.com)

Stephen Demik - *PHV*

[sdemik@hendlerlaw.com](mailto:sdemik@hendlerlaw.com)

901 S. MoPac Expressway

Bldg. 1, Suite #300

Austin, Texas 78746

Telephone: (512) 439-3200

Facsimile: (512) 439-3201

***ATTORNEYS FOR PLAINTIFF***

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was filed via the court's CM/ECF system on May 12, 2023, which will serve all counsel of record.

*/s/ Laura A. Goettsche* \_\_\_\_\_

Laura A. Goettsche

Transcript of the Testimony of  
**Sydni Beuhler**

March 22, 2023

Sydni Beuhler v. City of Austin, Officer Gavin Smart, and  
Officer Javier Martinez

Givens Court Reporting  
sgivens@austin.rr.com  
(512) 301-7088

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER, §  
§  
Plaintiff, §  
§  
v. § CIVIL ACTION NO.  
§ 1:21-CV-00054-RP  
§  
CITY OF AUSTIN, OFFICER §  
GAVIN SMART, and OFFICER §  
JAVIER GONZALEZ, §  
§  
Defendants. §

\* \* \* \* \*

THE VIDEOTAPED ORAL DEPOSITION OF  
SYDNI BEUHLER,  
March 22, 2023

\* \* \* \* \*

ORAL DEPOSITION OF SYDNI BEUHLER, produced as a witness at the instance of the Defendants and duly sworn, was taken in the above styled and numbered cause on the 22nd day of March 2023, from 10:11 a.m. to 12:37 p.m. and from 1:32 p.m. to 3:34 p.m., respectively, before Sandra S. Givens, CSR, in and for the State of Texas, reported by machine shorthand method, at Austin City Hall, 301 W. 2nd Street, 4th floor, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure.

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A P P E A R A N C E S

FOR THE PLAINTIFF:

Ms. Grayson E. McDaniel  
HENDLER FLORES LAW, PLLC  
901 S. MoPac Expressway  
Building 1, Suite 300  
Austin, Texas 78746  
(512) 439-3200  
gmcdaniel@hendlerlaw.com

FOR THE DEFENDANTS:

Mr. Monte L. Barton, Jr.  
Assistant City Attorney  
Ms. Carol Smith  
Legal Assistant  
CITY OF AUSTIN  
P.O. Box 1546  
Austin, Texas 78767  
(512) 974-2409  
monte.barton@austintexas.gov  
carol.smith@austintexas.gov

VIDEOGRAPHER:

Mr. Walter Bryan  
Captis Legal Video

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1 A Yes.  
2 Q And previously there had also been another  
3 defendant named Anne Allare, and I understand she's  
4 been dismissed from the lawsuit.  
5 A Yes.  
6 Q You're aware of that whole --  
7 A Yes.  
8 Q -- process? Okay. Well, a lot of what I'm  
9 going to do today, then, is to ask you questions about  
10 the complaint and the facts and circumstances leading  
11 up to that. And then you've also asked to recover  
12 damages for personal injuries, and so I'll necessarily  
13 ask you a lot about your personal medical history and,  
14 and that sort of thing as well. So I'm just telling  
15 you where I'm going.  
16 A Yeah.  
17 Q And I hop around and jump and skip, so again,  
18 if you get kind of dazed or confused about what I'm  
19 asking, don't hesitate to slow me down and I can --  
20 A Okay.  
21 Q -- go back and pick that up. So from the  
22 complaint I understand that you are suing the city and  
23 these police officers out of an event that happened  
24 on --  
25 A August 1st.

Page 9

1 Q -- August 1st, thank you, 2020. That was on  
2 a Saturday, and was it approximately 7 o'clock p.m.?  
3 A Yeah. Around that time.  
4 Q Okay. And do I understand that this incident  
5 in its entirety happened in or on Congress Avenue?  
6 A Yes.  
7 Q Okay. And then I've read somewhere that it  
8 was near the intersection of 4th Street. Do you recall  
9 whatever street was sort of near?  
10 A I think may- I'm not a hundred percent sure,  
11 but it was on the intersection of a street. I think it  
12 was probably -- that's probably accurate.  
13 Q Okay. But in any event, all the events we're  
14 going to talk about today happened on Congress Avenue.  
15 A Yeah.  
16 Q Okay. Well, I think there's a lot of the  
17 video in this case. I wasn't really sure how to  
18 approach it. So my initial thought is just to watch it  
19 first and then ask some questions about it.  
20 A Okay.  
21 Q And so there's about four videos, and I may  
22 stop while that's going on and ask you some questions.  
23 A Okay.  
24 Q I guess the first one to watch will be  
25 Officer Smart's --

Page 10

1 MS. SMITH: Smart?  
2 MR. BARTON: -- video. And this  
3 big screen right here I hope will show everything.  
4 VIDEOGRAPHER: Would you like the  
5 camera on the screen, sir?  
6 MR. BARTON: Yeah. Does that work  
7 pretty well?  
8 VIDEOGRAPHER: Yes, sir.  
9 MR. BARTON: Okay. Yeah. I think  
10 so.  
11 Q While we're setting that up let me ask you,  
12 have you seen any of the videos?  
13 A I've seen a couple of them. Yeah.  
14 Q Okay.  
15 A Some of them I sent -- I had from friends on  
16 the -- are you talking about the body-cam footage?  
17 Q Well, really all of it. That's a --  
18 A Yeah.  
19 Q -- good thing before we start. I'll just ask  
20 you, in preparation for your deposition here today did  
21 you watch any videos?  
22 A Only one with the body cam, and then the  
23 other videos I've seen, like, all of them, because they  
24 were, like, my friends at the protests --  
25 Q Okay.

Page 11

1 A -- took videos.  
2 Q Which one of the body cam did you see?  
3 A I'm not sure. It might have been Smart.  
4 THE WITNESS: Was it Smart, do you  
5 know (addressing Ms. McDaniel)?  
6 A It was the first body cam. Yeah. I think it  
7 maybe was, but I'm not a hundred percent.  
8 Q Did it cut off in the middle? In other  
9 words, his video I think we'll see cuts off at some  
10 point. Do you recall if the video you saw cut off?  
11 A It was the one that went through being in the  
12 cop car and transporting.  
13 Q Transporting you?  
14 A Yeah. It was before the transport and then,  
15 like, into the transport.  
16 Q Okay. Well, I don't think that's one we're  
17 going to watch today, but we might. What other  
18 videos -- you saw a video of the body-worn cam that  
19 you've just mentioned, and then how many others did you  
20 watch?  
21 A I don't know exactly how many others, but a  
22 lot of the ones that were taken from video footage from  
23 outsiders were people I knew. So I watched them a long  
24 time ago right when the incident occurred. But yeah, I  
25 would say I viewed most of the ones that were taken by

Page 12

3 (Pages 9 to 12)

1 A Family for Justice.

2 Q Family for Justice. Okay. And does it have,

3 like, a structure with a web page and mailing list and

4 any of that sort of stuff, or how do you, how do you

5 become a member of the group, Family --

6 A We kind of just got together, and we'd, like,

7 register people to vote. We would, like, feed the

8 homeless. It was kind of just a very small close-knit

9 group, and we would, like, go to, like, lower-income

10 areas and, like, give people instructions on how to

11 vote. So I don't think there's a website or anything.

12 Q How did you get involved with Family for

13 Justice?

14 A You kind of go -- when you went to the

15 protests you kind of start off alone, and then you

16 find, like, you find, like, the group of people you fit

17 in with the most, and then you just -- you get close.

18 I got really close to them really fast and -- I was

19 close to everyone out there, but, like, mainly them.

20 And we stuck together through all of it, so that's kind

21 of how we became, like, a group.

22 Q Okay. And when do you think you first met

23 the Family for Justice people?

24 A I think I met them through my friend Micalah.

25 Q Okay.

Page 33

1 A Yeah. Once me and Micalah started going to

2 the protests together she introduced me to them, and

3 then we started going with them.

4 Q And do you think that was -- I'm just trying

5 to get a timeframe of sorts. You think that would have

6 been May, June, July, August, or when?

7 A Probably in June.

8 Q June? And do you recall any other people who

9 were in Family for Justice?

10 A There's another guy Jay who was in it. I

11 don't remember everyone who was a part of it. It was

12 very small though. I think it was generally just us

13 and -- yeah.

14 Q Okay. And when you say "generally just us,"

15 correct me if I misspeak on any of this, it would be,

16 like, you and Micalah, Jay, and then --

17 A The family, their family. Yeah.

18 Q -- the mother and the cousin and the sister

19 and then Yumz?

20 A Yeah.

21 Q Okay. Any others that were frequent

22 participants?

23 A Maybe, like, the sister's girlfriend and,

24 like -- but that's about it. Yeah.

25 Q Okay. So in other words, a group of -- and

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1 I've lost count, quite frankly, of the number, but a

2 group of 10 or less?

3 A Yeah.

4 Q Not --

5 A Very small.

6 Q -- not a hundred or more.

7 A Yeah.

8 Q Yeah. Okay. And do you know the names of

9 any other groups similar to that that were

10 participating in this event on August 1?

11 MS. McDANIEL: Objection, form.

12 You can answer.

13 THE WITNESS: What?

14 MS. McDANIEL: Go ahead. I'm

15 just...

16 A I don't necessarily know the names of all the

17 groups that were out there, and I don't want to, like,

18 give a wrong, you know -- I know there's a group in

19 Dallas, but yeah.

20 Q (By Mr. Barton) Okay. And yeah. I mean,

21 you're not -- I'm just asking you what you know.

22 A Yeah.

23 Q So if you don't know fully, that's, that's

24 fine. I'm just --

25 A Yeah.

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1 Q -- asking what you do have any recollection

2 of. And so you recall a group from Dallas that was

3 there on August 1?

4 A Yeah.

5 Q And do you recall their name?

6 A I don't remember the name of their group.

7 They were who I was, like, arrested -- like, I was on

8 the bus with them, that's how I remember them. But I

9 don't remember the name. They were cool. They were

10 nice. They were very peaceful.

11 Q What about any other groups on this

12 particular day other than Family for Justice and the

13 Dallas group? Like, do you recall any other people out

14 there that you knew?

15 A I think I probably knew more people. I just,

16 I don't remember everyone. It's been two years, and I

17 stopped protesting after this situation, so...

18 Q Okay.

19 A Yeah.

20 Q I guess I'm just getting at, like, as you've

21 been to several of these protests, you know, were there

22 some regulars? So like, for instance, you would go,

23 Oh, well, there's --

24 A Yeah. That's --

25 Q -- whoever.

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9 (Pages 33 to 36)

1 A We were actually protesting Garrett Foster,  
 2 and he was a regular. But he got killed, and that's  
 3 what this protest -- it was Black Lives Matter, but it  
 4 was also, like, in remembrance of him. So I think a  
 5 lot of people were out there too in remembrance of him.  
 6 So it wasn't just protest groups. It was, like,  
 7 probably, like, family, friends of him. It was where  
 8 his memorial was set up.

9 Q Okay. So the reason you were there on this  
 10 particular day was primarily, would it be fair to say,  
 11 to --

12 A Protect his memorial.

13 Q Garrett Foster.

14 A Yeah.

15 Q And then as you also said, it was -- that was  
 16 in part an offshoot also of the --

17 A Black Lives Matter.

18 Q -- Black Lives Matter.

19 A Yeah.

20 Q And so you personally knew Garrett Foster.

21 A Yeah. From the protests.

22 Q Before the -- and I'm just going to refer to  
 23 them generally as the George Floyd protests, because I  
 24 think that's how most of the world refers to them.  
 25 Before the George Floyd protests that began in May of

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1 2020 had you been to any other protests?  
 2 A Yes, I did. I did. I would do -- I didn't  
 3 protest as much as I did after this occurred, but I  
 4 will say I was out there. Like, every women's march  
 5 there was; any Pride, like, Pride protests or any of  
 6 that I was out there when there was.

7 Q Prior to --

8 A Yes.

9 Q -- 2020.

10 A Yeah.

11 Q Prior to August 1.

12 A So I would say, like, a few times a year.

13 Q Okay. And this is just a complete guess, I  
 14 mean, whatever guess you can put down: How many  
 15 protests do you think you had been to prior to May  
 16 2020?

17 A Oh, like, my whole life?

18 Q Yeah.

19 A I'd probably say 10 to 15.

20 Q Okay. And for the topics that you just  
 21 mentioned?

22 A Yes. Or like, you know -- yeah. Mainly that  
 23 or the election, you know, that kind of thing.

24 Q Okay. And where were most of the protests  
 25 you attended?

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1 A Most of them were at the capitol.

2 Q Okay.

3 THE REPORTER: Monte, when you get  
 4 to a place where we can take a short break...

5 MR. BARTON: Yes. Now is a  
 6 perfect time for me.

7 VIDEOGRAPHER: This is the end of  
 8 media number 1. We're now off the record. The time is  
 9 10:57 a.m.

10 (At 10:57 a.m. the proceedings  
 11 recessed, continuing at 11:09 a.m.)

12 VIDEOGRAPHER: This is media number  
 13 2. We're now back on the record, the time is 11:09  
 14 a.m.

15 Q (By Mr. Barton) Okay, Ms. Beuhler, just a  
 16 couple more questions I think about this, and then  
 17 we'll probably move on to another video. But do I  
 18 understand that, from what you said a few minutes ago,  
 19 this was the first protest you had been to where you  
 20 wore goggles and --

21 A Yeah.

22 Q Okay. And you mentioned just briefly that  
 23 you knew Garrett Foster?

24 A (Nodding head)

25 Q And did you know him personally?

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1 A We talked a few times at the protests, but  
 2 mostly being out there with everyone was, like, enough  
 3 to know each other, you know? Yeah.

4 Q Were you at the protest or the event where he  
 5 was shot?

6 A I arrived, like, after just to help everyone,  
 7 like, get back on their feet and, like, be there for  
 8 everyone. But I wasn't there whenever it happened.

9 Q Okay. All right. I think let's move on to  
 10 the next video, and I think at this point it'll be the  
 11 Gonzalez video.

12 MR. BARTON: And has that -- it's  
 13 been made a --

14 MS. SMITH: Yes.

15 MR. BARTON: -- exhibit already?

16 MS. SMITH: The Gonzalez video was  
 17 Exhibit 11 --

18 MR. BARTON: Okay.

19 MS. SMITH: -- to Officer  
 20 Gonzalez's deposition. It is from defendant's  
 21 production Bates-stamped COA (inaudible) -78.

22 THE REPORTER: I didn't hear the  
 23 number.

24 THE WITNESS: COA378.

25 MS. SMITH: Yeah. Bates-number

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1 another thing that threw me off. Like, they don't even  
2 check and see if there was a woman right by y'all. Why  
3 did y'all just go straight to assuming, Oh, she's a  
4 woman, I'm going to search her? Why didn't they  
5 call -- why didn't they check and see? Because  
6 obviously there was a woman.

7 **Q Okay. Anything, any other things that you**  
8 **see that you disagree with?**

9 A I mean, just the entire situation, but how it  
10 was handled. But no, not -- I think I've listed pretty  
11 much all of it.

12 **Q Okay. Okay. Did you talk with Micalah about**  
13 **this incident?**

14 A Yeah.

15 **Q And when's the first time you spoke with her**  
16 **about it?**

17 A She's the one who got me -- I talked to her  
18 while I was -- I finally -- I think I talked to her in  
19 the jail, or it might have been right after. She's  
20 the one who got an attorney once she noticed that it  
21 was me, got someone to come, like, get me out. Or  
22 what's it called where they bail you out? The, the  
23 not a --it's like the --

24 MS. McDANIEL: Bondsman?

25 A Bondsman. Yeah.

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1 **Q Okay. And did you talk to anybody in that**  
2 **process from when you got into the patrol car until --**

3 A The officer.

4 **Q Okay.**

5 A And the two girls who were on the metal bus.  
6 We both had similar -- we all three had similar  
7 experiences. Yeah.

8 **Q Do you know the names of those two girls?**

9 A No, I don't. I just met them on the bus, and  
10 they were telling me about their experience, and I was,  
11 like, "Oh, my God, that happened to me." That was just  
12 kind of how that --

13 **Q What, what was their experience, to the**  
14 **extent --**

15 A They were --

16 **Q -- you recall?**

17 A -- yelling "stop resisting" over them when  
18 they weren't resisting arrest, and that was similar to  
19 what happened with me when they were yelling and I was  
20 on the ground and they were yelling "stop resisting."  
21 But there's no literal no way I could have resisted,  
22 and that's what we were talking about.

23 **Q Okay. So you -- is it your testimony you**  
24 **were not resisting at all?**

25 A I don't feel like I was resisting. I don't

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1 **Q How were you transported to the -- was it to**  
2 **the jail you went or, or were you --**

3 A I went to so many locations.

4 **Q Okay.**

5 A Yeah. I sat in that car for about 30 minutes  
6 parked in front of the protests, and they went -- they  
7 were standing outside of the car. And they would,  
8 like, crack the window a little bit every once in  
9 awhile to let me get, like, air or whatever, and then  
10 they, like, drove me to another location where they  
11 searched me again. And it was, like, in a carport, and  
12 I was there for about I guess 30 minutes. That was  
13 another 30-minute process. And then they drove me to  
14 another location, parked on a street -- I forgot which  
15 street it was.

16 And then they took me out of the car,  
17 took my cuffs off and put me in zip ties and then put  
18 me on a metal bus, and I sat there for about another 30  
19 minutes. And within that 30 minutes two girls came on  
20 the metal bus and were taken off the metal bus. And  
21 then they took me off the metal bus and put me on a big  
22 bus with the rest of the protestors, and then that's  
23 when they proceeded to take me to the jail. So I think  
24 going to the jail was, like, probably about a two-hour  
25 process, just transporting.

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1 feel like I was resisting. Like, I was just taken up  
2 into -- and then they put me -- I wasn't resisting.  
3 Like, if anything -- if anything, I would say, like,  
4 when they said I -- "We don't have time for a female,"  
5 that maybe triggered me, but I wasn't resisting.

6 And, like, even before they got me on  
7 the ground they weren't saying stop resisting, so  
8 clearly I wasn't resisting. I was yelling, but I  
9 wasn't resisting. And then it was once they got me on  
10 the ground and were cuffing me already they start  
11 saying, "Stop resisting." That doesn't make sense with  
12 me.

13 **Q Okay. Did you, you let your arms just go**  
14 **limp, or did you kind of --**

15 A I don't remember.

16 **Q -- struggle with your arms?**

17 A I don't remember. Everything was happening  
18 so fast. Like, I really honestly -- there are portions  
19 of it that my memory is, like, in and out.

20 **Q Okay. So Micalah got the bondsman for you.**

21 A Yes.

22 **Q And then when did you first speak with her**  
23 **after, after the bail was posted?**

24 A I don't recall if I talked to her on the  
25 phone in the jail, because I remember I was having a

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14 (Pages 53 to 56)

1 MR. BARTON: Well, let's look at  
2 COA768, Carol, if you'll pull that up.  
3 MS. SMITH: So this is defendant  
4 production marked Bates-stamp COA768, will be  
5 Exhibit 23.  
6 (Video Played)  
7 A There's the girl that gets pepper-sprayed.  
8 She's right there.  
9 Q Which one?  
10 A She's getting hit with the bike.  
11 Q Okay. Would you -- so does she have  
12 something printed on her shirt?  
13 A I guess. I don't know what it says. Yeah.  
14 Q Okay.  
15 MR. BARTON: Carol, let's go back  
16 maybe to that.  
17 (Video Scrolling)  
18 MR. BARTON: Stop right there.  
19 A Yeah.  
20 Q Yeah.  
21 A She's the one who ends up getting  
22 pepper-sprayed. This is the video where it showed  
23 that, I'm pretty sure, too.  
24 Q Okay. So let me see what video --  
25 MR. BARTON: What's the elapsed

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1 time on that?  
2 MS. SMITH: 30 seconds.  
3 Q 30 seconds.  
4 A They're, like, hitting her too.  
5 Q And it's a blonde female, and her arms are up  
6 high; is that correct?  
7 A Mm-hm.  
8 Q Raised both arms? Looks like words or  
9 something on a black T-shirt.  
10 A Yeah.  
11 Q And she has on shorts it appears.  
12 A Yeah.  
13 Q And so you recall her --  
14 A Yes.  
15 Q -- later putting her head on your shoulder  
16 and being sprayed?  
17 A Yeah. After being sprayed.  
18 MR. BARTON: Carol, if you can  
19 kind of move that forward slowly, please.  
20 (Video Scrolling)  
21 A There's me.  
22 Q Where?  
23 A Right there.  
24 MS. SMITH: This one?  
25 A That's me.

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1 Q Oh, okay. With the -- you've got some  
2 green --  
3 A Yeah.  
4 Q -- marks on your sleeves?  
5 MS. McDANIEL: Didn't realize that  
6 was (inaudible).  
7 THE WITNESS: Yeah.  
8 A And I'm right by her. That's me pacing in  
9 the background.  
10 Q (By Mr. Barton) Okay. So your mask was  
11 green.  
12 A Yeah.  
13 Q Yeah. Okay.  
14 A And, like, here we go. She's tough. I'm,  
15 like, whoa, (inaudible) hit with that bike I  
16 would've -- oh, I like her shirt.  
17 MS. McDANIEL: Looks like her leg  
18 is bleeding.  
19 THE WITNESS: Yeah. She -- they  
20 were hitting the fuck out of her. Oh, my God, it is.  
21 A This is where she's about to get -- I was  
22 getting so mad at that point.  
23 MR. BARTON: Okay. Let's back  
24 that up just a little bit.  
25 MS. McDANIEL: At some point I saw

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1 spray. Might show better if you played it back here.  
2 THE WITNESS: It might have been  
3 when she --  
4 (Crosstalking)  
5 MR. BARTON: Yeah. Maybe we'll  
6 play it, but --  
7 (Video Played)  
8 MS. McDANIEL: (Inaudible)  
9 MR. BARTON: But let me stop it  
10 right there.  
11 A Oh, that might have been when she got sprayed  
12 when she turned around.  
13 Q Oh, well, let's, let's back that up again to  
14 the --  
15 A It might have been, let's see...  
16 MS. SMITH: (Inaudible)  
17 MR. BARTON: Let's just, yeah,  
18 play it all the way through.  
19 A They sprayed her so bad.  
20 (Video Played)  
21 A That, see?  
22 Q Okay.  
23 A She's on my shoulder --  
24 MR. BARTON: Okay. Back that up.  
25 A -- right there. She had just got sprayed.

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1 MS. McDANIEL: (Crosstalk) sprayed,  
2 but it was hard to see.  
3 A Right there.  
4 Q (By Mr. Barton) Can you --  
5 A And there's my white Adidas and my black  
6 leggings.  
7 MS. SMITH: 58.  
8 Q Okay. So time elapse mark 58 it shows her  
9 kind of embracing you.  
10 A Yes.  
11 Q And do you also recall from watching this  
12 video that they were telling her to move back and she  
13 was not moving back?  
14 A I don't know everything that's happened. I  
15 just -- everything was so crazy out there. Like, you  
16 really can't keep track of every little thing, I'm not  
17 going to lie. And I do know that they were telling us  
18 to get out of the streets.  
19 Q Okay.  
20 A Like, that's for sure. I know they were  
21 telling us to get out of the streets, and I know they  
22 were hitting her with the bike.  
23 Q And it looks like she stayed there, though,  
24 so --  
25 A Yeah.

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1 Q -- she didn't move after the bike made  
2 contact with her.  
3 A Yeah.  
4 Q Okay.  
5 A Yeah.  
6 Q Then it looks like they pepper-sprayed her  
7 and she moved after being pepper-sprayed?  
8 A Yeah.  
9 Q Okay.  
10 MR. BARTON: I guess continue from  
11 this point forward, Carol.  
12 (Video Continuing)  
13 A And then he grabbed her and that's  
14 whenever...  
15 Q And then do you recognize you?  
16 A Yeah.  
17 Q And that's about the 1 minute 19 mark?  
18 MR. BARTON: Okay. I think that's  
19 all on that one.  
20 Q Those were really the only videos that I  
21 planned on showing, but have you seen other videos that  
22 add more to the, to the event line? Like, is there  
23 some video you're, like, Well, this video shows it  
24 better? Because if so, I'd like to go over it with  
25 you.

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1 A I think we didn't really have that many -- I  
2 don't -- I think this is about pretty much what  
3 we -- what I've seen as far as before the cop car.  
4 Q Okay. And that's what I'm getting at is, if  
5 there's, you know, for whatever reason some video  
6 you're, like, Well, why didn't y'all show me that one?  
7 That's what I'm getting at, but if you don't know of  
8 any other video about this incident leading up to the  
9 cop car.  
10 A No.  
11 Q Okay.  
12 THE WITNESS: Did you have  
13 anything?  
14 MS. McDANIEL: No. I'm just  
15 checking to see if there's -- I think the other ones  
16 are shorter, you know, but...  
17 THE WITNESS: Mm-hm.  
18 MS. McDANIEL: Oh, there is the  
19 video of Officer Smart, the second part of Officer  
20 Smart's video.  
21 MS. SMITH: His second one?  
22 MS. McDANIEL: Remember when we --  
23 there's one video of him, he grabs her and his camera  
24 turns off?  
25 MR. BARTON: Yeah.

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1 MS. McDANIEL: And then there's a  
2 second. So just for continuity -- or for completeness  
3 we could watch that one since it's the same, it's the  
4 same incident as the second part.  
5 MR. BARTON: Yeah. I don't mind  
6 pulling that up. I don't know --  
7 MS. McDANIEL: I think that --  
8 MR. BARTON: -- that it shows --  
9 MS. McDANIEL: -- was an exhibit in  
10 Smart's --  
11 MS. SMITH: 317 is (inaudible).  
12 MS. McDANIEL: I'm pretty sure we  
13 showed that in his deposition.  
14 MR. BARTON: Yeah. I don't know  
15 that we need that right now, though, because that's  
16 totally -- it doesn't show any aspect leading up to the  
17 arrest, though, does it?  
18 MS. McDANIEL: It's after. It's  
19 when his body-worn camera turns back on.  
20 MR. BARTON: Yeah. Yeah. I don't  
21 think --  
22 MS. McDANIEL: And it's already in  
23 the --  
24 MR. BARTON: In the --  
25 MS. McDANIEL: -- record I believe.

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19 (Pages 73 to 76)

1 A Yes.

2 Q -- before you were arrested? Why'd you think

3 it was important to stand in the road?

4 MR. BARTON: Object to the form.

5 A I think it was important because I had just

6 lost a very close friend, and then I watched people be

7 killed and nobody is listening or doing nothing.

8 Nobody's doing nothing. Like, what else can we do?

9 Why can't people just listen? Like, it's literally all

10 we want, is to be heard, and nobody will listen. Like,

11 nobody will listen, nothing is changing. Like, I

12 shouldn't be sitting here right now. I shouldn't be

13 sitting here. This should not have happened.

14 But nothing is changing, and I felt like

15 the only way that we could be heard is if we stay in

16 the street, because nothing else -- and I can't go --

17 like I can't just start throwing stuff or -- like, that

18 is violent, you know? I would never. But that's the

19 only peaceful way to go about it, and I feel like it's

20 very peaceful, so I don't see the problem in it.

21 Q Had you ever committed any acts of

22 vandalism --

23 A No.

24 Q -- during a protest? Had you ever committed

25 any violence during a protest?

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1 thing that I thought was unclear. Mr. Barton asked you

2 a specific question. He said, "Do you contend that you

3 were not resisting arrest?" You responded, "No." Does

4 that mean that you are saying you weren't -- that

5 you -- it was a little confusing.

6 A Yeah. No. I wasn't resisting arrest.

7 Q Okay. So you would contend that you were not

8 resisting arrest --

9 A Yes.

10 Q -- is that --

11 MR. BARTON: Object to the form.

12 Q -- correct?

13 MR. BARTON: Object to the form.

14 Q (By Ms. McDaniel) You testified that you

15 have not attended any protests after this accident on

16 August 1, 2020; is that correct?

17 A I haven't attended -- I've attended, like,

18 one women's march protest, but no, I haven't been.

19 Q Why not?

20 A Because I tried to attend one after the

21 incident, and as soon as the cops came out on the bikes

22 I, like, ran straight to my car, because I just, I

23 couldn't do it. I was scared.

24 Q What were you scared of?

25 A Of the same thing happening that happened on

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1 A No.

2 Q When you were standing in the road were there

3 any emergency vehicles trying to get through?

4 A No.

5 Q If you had seen a ambulance --

6 A Yes.

7 Q -- or fire truck, would you have moved out of

8 the road?

9 A Yes.

10 Q Or would you have moved to let that vehicle

11 through?

12 A Yes. Yes, of course.

13 Q Were you the only one who was standing in the

14 street at the time of your arrest?

15 A No.

16 Q In one video that we watched, I think it was

17 the 376, the one where we could see the blonde woman

18 most clearly that we were talking about earlier, did

19 you notice that people were in the street being hit by

20 bikes?

21 A Yes.

22 Q And did you notice that those people were not

23 immediately arrested?

24 A Yes.

25 Q Earlier I wanted to clear up this one little

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1 August 1st.

2 Q Would you have stood in the street again

3 or --

4 A No.

5 Q Were you afraid that you might be -- that the

6 same thing might happen even if you weren't standing in

7 the street?

8 A Yes.

9 Q Has this incident made you feel differently

10 about exercising your First Amendment rights?

11 A Yes.

12 MR. BARTON: Object to the form.

13 Q (By Ms. McDaniel) In what way?

14 A Well, I just feel like not being validated

15 whenever I have exercised in this situation and being

16 punished for exercising my right was kind of, like, a

17 really big setback for me. I kind of just avoid the

18 police in general, because you don't -- I feel like now

19 I feel like we don't really have a right to even say

20 what we feel, and I feel like there's, like, a power

21 imbalance, and I don't feel -- yeah. I just don't feel

22 comfortable voicing how I feel about things anymore.

23 MS. McDANIEL: I think those are

24 all my questions at this time. I'll pass the witness.

25 MR. BARTON: No further questions.


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47 (Pages 185 to 188)

1 30(f)(1) that the signature of the deponent was  
2 requested by the deponent or a party before the  
3 completion of the deposition and that the transcript be  
4 returned within 30 days from the date of receipt. If  
5 returned, the attached Changes and Insertions page  
6 contains any changes and the reasons therefor:  
7 That \$ 1,727.65 is the deposition officer's  
8 charges to the Defendants for preparing the original  
9 deposition transcript, videographer, and any copies of  
10 exhibits;  
11 That the amount of time used by each party at the  
12 deposition is as follows:  
13 Monte L. Barton, Jr. - 3 hours, 41 minutes  
14 Grayson E. McDaniel - 10 minutes  
15  
16 That pursuant to information given to the  
17 deposition officer at the time said testimony was  
18 taken, the following includes counsel for all parties  
19 of record:  
20 Monte L. Barton, Jr. - Attorney for Defendants  
21 Grayson E. McDaniel - Attorney for Plaintiff  
22  
23 I further certify that I am neither counsel for,  
24 related to, nor employed by any of the parties or  
25 attorneys in the action in which this proceeding was  
taken, and further, that I am not financially or  
otherwise interested in the outcome of the action.

Page 193

1  
2 Certified to by me this 30th day of March 2023.  
3  
4 GIVENS COURT REPORTING  
5 6549 Fair Valley Trail  
6 Austin, Texas 78749  
7 (512) 301-7088  
8  
9 # sg-2014  
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GIVENS COURT REPORTING  
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Austin, Texas 78749  
(512) 301-7088  
  
SANDRA S. GIVENS, CSR  
Certification No. 5000  
Certificate Expires 1/31/24



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49 (Pages 193 to 194)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER,	§	
Plaintiff,	§	
	§	
VS.	§	CASE NO. 1:21-CV-00053-RP
	§	
CITY OF AUSTIN ET AL.,	§	
Defendants.	§	

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VIDEOTAPED AND ORAL DEPOSITION VIA ZOOM OF  
CRAIG R. MILLER  
MARCH 14, 2023  
VOLUME 1

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VIDEOTAPED AND ORAL DEPOSITION VIA ZOOM OF  
CRAIG R. MILLER, produced as a witness at the instance of  
the Plaintiff, and duly sworn, was taken in the  
above-styled and numbered cause on March 14, 2023, from  
9:12 a.m. to 1:25 p.m., via Zoom, before Jamie C. Carroll,  
CSR 9379, in and for the State of Texas, reported by my  
original shorthand notes, remotely pursuant to the Texas  
Rules of Civil Procedure and the provisions stated on the  
record or attached hereto.

Job No. 904801

1 squad car was 47 seconds?

2 A. Correct.

3 Q. So when you reviewed these videos you reviewed  
4 it down to the second, fair?

5 A. Yes, sir.

6 Q. Okay. What was the time between Officer Smart's  
7 first engagement of Sydni Buehler, and when he forcibly  
8 picked her up and dragged her behind the police line; do  
9 you recall the number of seconds in that window?

10 A. It would have been very brief, just a few  
11 seconds, but I don't -- I can't really answer that I don't  
12 think. I mean, I saw the third-party video that shows  
13 that. I can say this, that Ms. Buehler and the other  
14 protesters that were on the road for a very good period of  
15 time observed the mounted-squad horses come out onto the  
16 street, and observe the bicycles, and observed the  
17 officers with the bicycles moving protesters out the way.  
18 I know they had a good amount of time in that scenario to  
19 know that the officers were coming and their intent, and  
20 their desire, and their instructions were for people to  
21 get out of the road.

22 Q. Let me come back to my question. What was the  
23 time period between Officer Smart first engaging  
24 Ms. Buehler? Let's say getting within 4 feet of her, and  
25 him picking her up, and forcibly dragging her behind the

1 and comply with every person's clearly established rights  
2 under the United States and Texas Constitutions, correct?

3 A. Correct.

4 Q. And those rights would include every one's First  
5 Amendment rights; would you agree?

6 A. Correct.

7 Q. And would you agree that there is, pardon my  
8 language, but I think it is important that we be exact.  
9 Would you agree with me that there is a First Amendment  
10 right for someone to say fuck you to a police officer?

11 A. Yes, sir.

12 Q. That is covered by the First Amendment?

13 A. Correct.

14 Q. And it is every person's right?

15 A. Yes, it is.

16 Q. I think you stated that one of the things --  
17 well, you mentioned that some police departments have use  
18 of force definitions and terms that are very broad or  
19 general, others have much more specific in detail?

20 A. Correct.

21 Q. And that contributes, or that is a factor in  
22 your opinion, because the more specific in detail is the  
23 better practice; would you say that?

24 A. Well, I really think it comes down to more the  
25 instruction that the officers get on it rather than

1 primary method. Did you review anything -- I am not  
2 asking you for your ultimate opinion. I understand what  
3 your ultimate opinion is, is that this was reasonable a  
4 reasonable use of force. I understand that.

5 A. Yes, sir.

6 Q. So I'm not asking for your ultimate opinion and  
7 I'm not asking for a Perry-Mason moment where I get you to  
8 break down and say that it was an excessive use of force.  
9 I'm not looking for that.

10 A. Okay.

11 Q. I am saying if you're looking at the facts that  
12 you assembled in your analysis did you see anything that  
13 indicated that officers, in fact, used the power of arrest  
14 as the primary method?

15 A. They did in fact use their power of arrest as  
16 their primary method based upon the facts, correct, that  
17 they observed?

18 Q. Okay. Did you see anything that indicated  
19 officers used arrest as an exclusive method?

20 A. Based upon the scenario, as it is observed on  
21 the video and in the reports I think it was their  
22 option -- their best option at that point.

23 Q. Okay. You would agree with me that there were  
24 other individuals -- the moment that Officer Smart  
25 forcibly lifted Sydni Buehler -- and that moment we know

1 what I'm talking about, right?

2 A. Yes.

3 Q. There were other people in the roadway?

4 A. Correct.

5 Q. There were other people in the roadway that were  
6 not arrested?

7 A. Correct.

8 Q. There were other people in the roadway that were  
9 not arrested who eventually moved to the sidewalk?

10 A. Correct.

11 Q. There were people who had bicycles pushed up  
12 against them who in response moved to the sidewalk?

13 A. Correct.

14 Q. There were individuals who were tear gassed who,  
15 in response, moved to the sidewalk?

16 A. In this instance they were tear gassed?

17 Q. Yes.

18 A. Pepper sprayed?

19 Q. Yes. Pepper sprayed I guess. I don't know the  
20 difference, but let me change it. You know, lawyers we've  
21 got to use the right words. There were individuals who  
22 were pepper sprayed in the roadway who, in response, moved  
23 to the sidewalk?

24 A. Correct.

25 Q. There were individuals who were made physical



1 contact with, in other words, the police officers, you  
2 know, making physical contact who, in response, moved to  
3 the sidewalk?

4 A. There could have been. I just don't recall  
5 exactly, you know, where their bikes touched someone or  
6 they didn't touch them someone. I am sorry. When we look  
7 at the video we will be able to see that.

8 Q. Okay. Well, Sydni Buehler, from the videos that  
9 you reviewed multiple times as you testified several  
10 times, was not touched by a bike, was she?

11 A. No. I don't believe so.

12 Q. She was not pepper sprayed?

13 A. No, sir.

14 Q. She -- before Officer Smart forcibly lifted her  
15 she was not physically touched by an APD officer in any of  
16 those videos, was she?

17 A. No, sir.

18 Q. Let me ask you out of curiosity, moving on to  
19 something else, different topic, page 17. If you can get  
20 there.

21 A. I'm here. Yes, sir.

22 Q. About halfway through the page the sentence that  
23 begins on August 29th, 2020?

24 A. Are we -- yeah, under 39 -- paragraph 39?

25 Q. Yes, sir.

1           A.    I just have to go back and look through my cases  
2 and see which one.

3           Q.    It was a suburb of San Antonio I believe you  
4 said?

5           A.    Mmm-hmm, yeah.

6           Q.    Okay.  So in that suburb of San Antonio case you  
7 referred to them as professional protesters, and you  
8 already told us what that meant to you.  In this case and  
9 in part of your analysis of this case, Mr. Miller, were  
10 the individuals in the roadway including Ms. Buehler  
11 professional protesters?

12          A.    I don't -- I would have no way of knowing that.  
13 I honestly don't know where Ms. Buehler is from.  So I  
14 really didn't take into consideration whether they were  
15 local people or whether they were from outside.  So I just  
16 don't know the answer to that.

17          Q.    Well, I can tell you Ms. Buehler is from the  
18 Austin area, Kyle, Texas specifically now.  But at the  
19 time she lived in the Austin area.  Did you collect any  
20 information or do you have an opinion of whether as  
21 opposed to the suburb of San Antonio case that you handled  
22 in this case were these professional protesters?

23          A.    I believe from what I have seen they were just  
24 people exercising their First Amendment rights to protest  
25 the police, and to say things about the police, and

1 Q. So use of force continuum -- basically the  
2 proposition is there is a spectrum of force, right? And I  
3 guess over here would be -- what would be the least amount  
4 of force under the use of continuum -- the use of force  
5 continuum?

6 A. And officer's presence, him in his uniform  
7 standing there.

8 Q. And on this end of the spectrum is, I imagine --

9 A. Deadly force.

10 Q. Go ahead.

11 A. Deadly force.

12 Q. Deadly force, shooting a firearm for example?

13 A. Correct.

14 Q. And the use of force continuum is everything in  
15 between and the varying degrees, right? Sort of from  
16 least to the most which is deadly force, right?

17 A. If they do this then it warrants grips or locks.  
18 If they resist at this level it rises to the pepper spray.  
19 If they resist at this level it rises to the Taser. If  
20 they resist at this level it could result in a night stick  
21 or baton. If it rises to this level it is here. So it is  
22 based upon an action versus reaction.

23 Q. Gotcha. And in that use of force continuum,  
24 this may seem like a silly question but an important one I  
25 think, someone saying fuck you to a police officer would

1 not factor into the use of force continuum, just the  
2 words. Now, I understand if they say those words and they  
3 have a knife in their hand it's a totally different  
4 scenario, but just isolating the use of the words whether  
5 they are derogatory or insulting and someone is exercising  
6 their First Amendment rights those would not be taken into  
7 account in the use of force continuum, would they?

8 A. Correct. Police officers cannot have their  
9 peace breached. In other words, someone calling you dirty  
10 names is never a justification for using force or to make  
11 an arrest.

12 Q. And that is because police officers have a tough  
13 job, right?

14 A. Well, that is because the force isn't warranted  
15 because someone calls you a name. That is just the fact.

16 Q. Right. I guess I was sympathizing. You know,  
17 police officers have to remain professional even in the  
18 face of people who are demeaning them, or trying to shame  
19 them, or insulting them, don't they?

20 A. That is correct.

21 Q. And we ask a lot police officers to not take  
22 those words personally, don't we?

23 A. Correct.

24 Q. They have to remain professional, follow policy  
25 and procedure, even in the face of somebody who is just

1 A. Yes.

2 Q. And Ms. Buehler was towards the spear point of  
3 that V, right?

4 A. Yes.

5 Q. Okay. And the idea of a wedge formation is that  
6 you eventually when you push forward down the road you  
7 force people to the sides, right?

8 A. Yes.

9 Q. And so just talking general physics people who  
10 are already closer to the roadway are going to go to the  
11 roadway faster than people at the tip of the V by the  
12 definition of physics, right?

13 A. If they elect to move, yes.

14 Q. Not everyone in the roadway elected to move  
15 voluntarily, did they?

16 A. I think you are referencing that some of them  
17 made contact with bikes then they moved to the side?

18 Q. Yes.

19 A. Yes, that took place.

20 Q. Some of them were given pepper spray, and they  
21 moved after they were given pepper spray, right?

22 A. Correct.

23 Q. Let me ask you about the -- what is it called a  
24 wrist lock that I think you mentioned?

25 A. Yeah. That Gonzalez did to try to get

1 Ms. Buehler's hand behind her.

2 Q. So officer -- can you explain what a wrist lock  
3 is?

4 A. Well, it is what you say it is, and you see in  
5 the video where he bends her hand back at the mark there.  
6 And it is kind of a pain-compliance technique to get the  
7 person to put their hand behind their back. Because both  
8 Officer Smart and Officer Gonzalez said that they could  
9 feel the tension in her as her hands moved forward instead  
10 of it coming back. And obviously officers are concerned  
11 because from our experience people hide things in their  
12 waistbands in front, and so rather than have her move her  
13 hands forward they forced her hands to the back against  
14 her tension rather than -- it's just easier to get the  
15 wrist lock to bring it back to help get the hand cuffed.

16 Q. When you say a pain-compliance technique the  
17 intention there is compliance, right?

18 A. Correct.

19 Q. Through use of pain, right?

20 A. Minimal pain, yeah, to achieve your objective.  
21 Yes.

22 Q. Well, a wrist lock hurts, doesn't it?

23 A. It wouldn't be applied if you just complied with  
24 the officers so yeah. It is designed to get people to  
25 comply with them and the Penal Code allows officers to use

1 force to effect an arrest.

2 Q. It is designed to cause pain?

3 A. Yes.

4 Q. All right. In the video Officer Gonzalez  
5 applies a wrist lock to Sydni Buehler's right wrist --

6 A. Correct.

7 Q. -- do you recall that? There is no wrist lock  
8 applied to Sydni Buehler's left wrist, correct?

9 A. Not that I observed. No, sir.

10 Q. So Officer Gonzalez chose to use wrist lock,  
11 correct?

12 A. I am -- yes, he did.

13 Q. Officer Smart and Officer Allare did not elect  
14 or choose to use the wrist lock?

15 A. Correct. I am not sure if Ms. Buehler was  
16 right-handed or left-handed, or she was exerting more  
17 force with her right hand or her left hand. And officers  
18 used the force they felt was necessary for the hand they  
19 were controlling.

20 Q. Okay. Let me ask you about John Lenoir; are you  
21 aware of who that is --

22 A. Not by the --

23 Q. I'm sorry, go ahead.

24 A. No, sir. Not right off. I am sorry.

25 Q. L-E-N-O-I-R. He is another expert in this case.

1 really don't know that she is not armed. They don't see a  
2 gun pointed at them or a gun on her hip.

3 Q. That's entirely reasonable, and I understand  
4 your point. They couldn't know at that point, but just  
5 asking about what they could observe, and you make a valid  
6 point which is they cannot make that assumption because  
7 that is a dangerous assumption. Let me isolate the  
8 question to where I think we can agree. They didn't see  
9 her armed, like, visualize, they didn't have a visual of  
10 her being armed, correct?

11 A. I did not read anywhere that anyone saw her with  
12 a weapon.

13 Q. Okay. Or again throwing her water bottle, or  
14 punching, or kicking at the officers. I'm talking about  
15 before the bear hug. There is no visual of that or  
16 recorded anywhere in the video, correct?

17 A. Correct.

18 Q. The third factor is Officer Subject Factors.  
19 And I won't spend too long on this because, again, I just  
20 want to ask you about the facts. The facts are that  
21 Officer Smart is much larger than Sydni Buehler, right?

22 A. Correct.

23 Q. And that is, I mean, that is something you take  
24 in as a factor in analyzing whether use of force is  
25 objectively reasonable or not, right? So in the Mills



1 A. Sure. Absolutely.

2 Q (By Mr. Demik) Sorry, there was an objection,  
3 just for the record. Other Exigent Circumstances,  
4 Ms. Buehler was not attempting to flee or escape, correct?

5 A. No. She was just refusing to follow  
6 instructions.

7 Q. So you would agree that she was not attempting  
8 to flee, or destroy evidence, or other exigent  
9 circumstances that you are trained to know under law  
10 enforcement rationale?

11 A. I would agree.

12 Q. Okay. I'm almost done. What about the kneeling  
13 and Officer Smart's knee in Ms. Buehler's back; is it in  
14 your opinion that was reasonable?

15 A. Well, I see officer Gonzalez' knee off to the  
16 side of Ms. Buehler. I see, I believe it is Smart with  
17 his hands pressed on her shoulders. Do I think it is  
18 reasonable to control her when she is resisting for the  
19 time and manner in which he did it. Yeah. I think that  
20 that is reasonable.

21 Q. Watching the video did Ms. Buehler lunge at the  
22 officers or attempt to threaten them in anyway?

23 A. I think the officers say that when they  
24 instructed her to put her hands behind her back you  
25 could -- which we can't see from any video, they felt the

1 make that assumption without speaking to her, can we?

2 A. Well, you can't miss the officers that are  
3 standing in front of her when she was grabbed by Officer  
4 Smart. She has to see that line of officers, and has to  
5 be able to hear their instructions to clear the roadway.  
6 Other people are doing that. And so I don't think that is  
7 a point of argument. I think she is in the road, and she  
8 knows they are coming towards her.

9 Q. In your review of the video did you see any  
10 attempt by Officer Smart to de-escalate the situation by  
11 specifically referring to Sydni Buehler, and asking her  
12 specifically and individually to comply with the officer's  
13 commands before he grabbed her around her body in a bear  
14 hug, and picked her up, and dragged her behind the  
15 barricade?

16 A. No. I did not.

17 Q. Did you see any attempt by Officer Smart or  
18 Gonzalez to talk Ms. Buehler down; do you understand what  
19 I mean by that term?

20 A. I know what you mean, but I didn't see that.

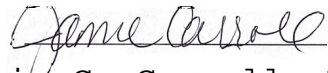
21 Q. In fact, from the time that Officer Smart  
22 approaches Ms. Buehler, and I think we covered this in the  
23 beginning so maybe this is a bookend, is you said a few  
24 seconds maybe?

25 A. 47 --

1 attorneys in the action in which this proceeding was  
2 taken, and further that I am not financially or otherwise  
3 interested in the outcome of the action.

4 Further certification requirements pursuant to Rule  
5 203 of TRCP will be certified to after they have occurred.

6 Certified to by me on this the 29th day of March,  
7 2023.



8 Jamie C. Carroll, Texas CSR 9379  
9 Expiration Date: June 30, 2024  
10 Magna Legal Serives  
11 (866)624-6221  
12 <https://magnals.com>  
13 [customerservice@magnals.com](mailto:customerservice@magnals.com)

14 FURTHER CERTIFICATION UNDER RULE 203 TRCP

15 The original deposition was/was not returned to the  
16 deposition officer on \_\_\_\_\_.

17 If returned, the attached Changes and Signature page  
18 contains any changes and the reasons therefor;

19 If returned, the original deposition was delivered to  
20 Monte Barton, Custodial Attorney;

21 Certified to by me on this the 29th day  
22 of March, 2023.

23 Jamie C. Carroll, Texas CSR 9379  
24 Expiration Date: June 30, 2024  
25 Magna Legal Serives  
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<https://magnals.com>  
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**COA 768 [CONF]**  
**(Bystander video of arrest 1)**

**FILED UNDER SEAL**

\*Sent to the Court via electronic mail to courtroom deputy Julie Golden  
[Julie\\_Golden@txwd.uscourts.gov](mailto:Julie_Golden@txwd.uscourts.gov)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Sydni Beuhler,	*
Plaintiff,	*
	*
v.	* Case No. 1:21-cv-00054-RP
	*
City of Austin,	*
Officer Gavin Smart (AP8674)	*
and Officer Javier Gonzalez	*
(AP7422),	*
Defendants.	*

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VIDEOTAPED/ORAL DEPOSITION OF  
JASON SCOTT STANISZEWSKI  
April 27, 2023  
(via Zoom)

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VIDEOTAPED/ORAL DEPOSITION of JASON SCOTT STANISZEWSKI, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 27th day of April, 2023, from 9:37 a.m. to 4:01 p.m., before Lydia L. Edwards, CSR in and for the State of Texas, by machine shorthand from Plano, Texas and the witness located in Austin, Texas, pursuant to the Texas Federal Civil Procedure and any provisions stated on the record or attached hereto.

1 Exhibit 39 on my screen?

2 A. Yes.

3 Q. Okay. Great. Let's see. Plaintiff's  
4 Exhibit 39 is Austin City Council Resolution  
5 20200611-051. It discusses the City of Austin adopting  
6 the Imagine Austin Comprehensive Plan, and it provides a  
7 number of items that are going to be implemented with  
8 regard to the plan. Do you recall those items?

9 A. I would have to read this document. Which  
10 items are you referring to? Are you talking about  
11 the -- I see a bike lane.

12 Q. What do you remember about this resolution, if  
13 anything?

14 A. Let's see. I don't -- it looks like a lot of  
15 that is transportation-related and not police-related.  
16 So I can't -- I can't say I recognize any -- anything  
17 from that.

18 Q. It also is related to COVID-19 --

19 A. Okay.

20 Q. -- and social distancing. It seems like it's a  
21 temporary, potentially, resolution.

22 It does provide for increased bike lanes  
23 on Congress Avenue. Do you see that?

24 A. Yes.

25 Q. Okay. And do you recall that there was -- this

1 resolution was in place in August 1st, 2020, correct?

2 A. The -- you got a box covering the date, so  
3 June, 2020, yes.

4 Q. Ah, sorry. Yes. And do you recall that there  
5 were increased bike lanes on Congress at this time on  
6 August, 2020?

7 A. There was.

8 Q. And do you recall that they were marked by  
9 cones?

10 A. They were -- I wouldn't say the traffic cones.  
11 They were traffic markers that -- that stood above  
12 ground. A cone to me represents something that's  
13 movable. This was actually glued to the street.

14 Q. Okay. And do you recall that in the videos  
15 that these cones are visible -- or you said not cones.  
16 So I'm sorry.

17 Would you recall that in the videos that  
18 the larger bike lanes -- the markers are visible?

19 A. Yes.

20 Q. And do you recall that in the videos  
21 Ms. Beuhler is standing close to those markers?

22 A. Yes. She is in the right lane of traffic next  
23 to the bike lane.

24 Q. And she's standing closer in the videos to  
25 those markers and the sidewalk than she is to the middle

1 THE STATE OF TEXAS )

2 COUNTY OF TRAVIS )

3 I, LYDIA L. EDWARDS, a Certified Shorthand  
4 Reporter in and for the State of Texas, do hereby  
5 certify that the facts as stated by me in the caption  
6 hereto are true; and that the above and foregoing  
7 answers of the Witness, JASON SCOTT STANISZEWSKI, were  
8 made before by said Witness, after having been first  
9 administered an oath or affirmation to testify to the  
10 truth, the whole truth, and nothing but the truth, and  
11 the same were reduced to computer transcription under my  
12 direction; and that the above and foregoing deposition,  
13 as set forth in computer transcription, is a full, true,  
14 and correct transcript of the proceedings had at the  
15 time of the taking of said deposition.

16 I further certify that the amount of time  
17 used for examination is as follows:

18 Grayson McDaniel - 5 hours, 3 minutes

19 Monte Barton - 0 hours, 0 minutes


20 I further certify that the costs to  
21 prepare the original transcript of the deposition came  
22 to \$\_\_\_\_\_.

23 I further certify that I am not in any capacity  
24 a regular employee of the party on whose behalf this  
25 deposition is taken, nor in the regular employ of any



1 attorney; and I further certify that I am not interested  
2 in the cause, nor a kin or counsel to any of the  
3 parties.

4 GIVEN UNDER my hand and seal of office on  
5 this, the \_\_\_\_\_ day of May, 2023.

6  
7 

8 LYDIA L. EDWARDS  
9 Certification No. 2567  
Expiration Date: 04-30-25

10 JOB NO. 960655

11 MAGNA LEGAL SERVICES  
12 1635 Market Street, Eighth Floor  
13 Seven Penn Center  
14 Philadelphia, Pennsylvania 19103  
15 866.624.6221  
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**COA 376 [CONF]**  
**(Smart BWC)**

**FILED UNDER SEAL**

**\*Sent to the Court via electronic mail to courtroom deputy Julie Golden**  
[Julie\\_Golden@txwd.uscourts.gov](mailto:Julie_Golden@txwd.uscourts.gov)

**BEUHLER 000491**  
**(Bystander video 4)**

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\*Sent to the Court via electronic mail to courtroom deputy Julie Golden  
[Julie\\_Golden@txwd.uscourts.gov](mailto:Julie_Golden@txwd.uscourts.gov)

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Sydni Beuhler,

Plaintiff,

v.

City of Austin and John Does,

Defendants.

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Case No. 1:21-cv-00054

EXPERT REPORT OF JOHN D. LENOIR, PhD, JD

1. John D. Lenoir respectfully files this Expert Report on behalf of Plaintiff, Sydni Beuhler, on the issues of (a) was the arrest of Sydni Beuhler justified, and (b) was the use of force to affect the arrest necessary or reasonable.
2. QUALIFICATIONS.
  - a. I am an attorney licensed to practice in the States of New York and Texas and admitted to practice in the Federal Courts of the Second and Fifth Circuits, and the District Courts of Southern Texas, Southern New York and Eastern New York.
  - b. I have over forty years' experience as an attorney specializing in criminal prosecutions (six years as an Assistant District Attorney in New York County, twenty-two years as an Assistant United States Attorney in the Southern District of Texas and the Eastern District of New York), internal investigations (six years as Managing Director, Investigations Services Group of Kroll Government Services), and civil rights litigation (seven years of private practice). My Curriculum Vitae is included as Attachment A.
3. EXPERIENCE RELATED TO LAW ENFORCEMENT.
  - a. I have been involved in the law-enforcement aspects of the law for over sixty years. During three-years in the U.S. Army from 1959 to 1962, I was trained as a military police officer and assigned to the Armed Forces Police in Washington

D.C. as a patrol officer and later an investigator. During that assignment I attended and graduated from the Fairfax County, Virginia Police Academy.

- b. As an Assistant District Attorney in Manhattan from 1979 to 1985, I reviewed arrests as part of the Early Case Assessment Bureau to determine the legality of the officers' actions and the sufficiency of the evidence available before accepting cases for prosecution.
- c. As a federal prosecutor in the Southern District of Texas from 1985 to 2001, I continued my day-to-day activities in law enforcement. During that time, I also developed and taught courses on federal civil rights law to local law enforcement departments throughout South Texas and initiated a computer-based file sharing system among municipal police departments.
- d. I served one year as Counsel to the Director of the United States Marshals Service on a special assignment as an Assistant U.S. Attorney, 2001-02. In that capacity I counselled the Director on operations and management issues and led initiatives to enhance interagency intelligence sharing.

4. EXPERIENCE IN INVESTIGATION AND ANALYSIS OF POLICE USE OF FORCE AND ALLEGATIONS OF CIVIL RIGHTS ABUSE.

- a. As Chief of the Civil Rights Division, U.S. Attorney's Office, Southern District of Texas, I reviewed all police-involved homicides and complaints of excessive use of force by law enforcement for possible criminal violations.
- b. Among many other matters of note, I led the prosecution of a Laredo, Texas police sergeant who raped and later attempted to kill a woman he encountered while on duty. *United States v. Contreras*, 950 F.2d 232, (5<sup>th</sup> Cir. 1991).
- c. On my retirement from the U.S. Department of Justice in 2007, I joined the Kroll Investigative Services Group and was appointed to the Federal Monitor team for the Los Angeles Police Department for a two-year term where we reviewed arrests and search warrants for compliance with policy and law.
- d. In 2007 and 2009, I conducted independent investigations on behalf of the City of Austin to review the Austin police department's internal homicide and internal affairs investigation of two separate police-involved shooting deaths.
- e. As Administrative Assistant U.S. Attorney for the Eastern District of New York, one of my collateral duties was to become certified as an investigator by the U.S. Commission on Civil Rights and in that capacity, I conduct investigations of allegations of civil rights abuses at U.S. Attorney offices throughout the nation.
- f. As Practice Leader in the Investigative Services of Kroll (later Keypoint) Government Services, I conducted internal investigation of civil rights abuse

allegations at Federal Law Enforcement Training Centers and within the police department of the United States Mint.

- g. In private practice I was trial counsel in *Schoolcraft v. City of New York, et al* which involved New York Police officials taking unlawful retaliatory actions against an officer who reported abuses of “stop and frisk” and other enforcement actions.

#### 5. MATERIALS REVIEWED IN PREPARATION OF THIS REPORT.

- a. The arrest affidavit and bond sheet. (Attachment B)
- b. Four separate [videos](#) of the arrest taken by bystanders:
  - (1) 0:20
  - (2) 1:54
  - (3) 1:04
  - (4) 0:58
- c. The Complaint. (Attachment C)
- d. The Austin Police Department General Orders (Attachment D)
- e. The Austin Police Department Policy Manual re Use of Force (Attachment E)
- f. Title 8, Texas Penal Code, Chapter 38, Obstructing Government Operations. (Attachment F)
- g. Texas Penal Code Title 9 re Arrest and Seizure. (Attachment G)
- h. Texas Penal Code, Section 42.03. Obstructing Highway or Other Passageway. (Attachment H)
- i. Texas Code of Criminal Procedure, Title 1, Chapter 14. (Attachment I)
- j. Photographs of injury to Plaintiff, Sydni Beuhler. (Attachment J)
- k. Case law regarding police use of force in arrests.

6. This report is based on materials reviewed to date. I will supplement this report if any material information becomes available to me and, as appropriate, I will expand, add to or revise any of my opinions. The opinions that follow are made within a reasonable degree of professional certainty within the field of police arrest and use-of-force practices.

7. My fee for preparation of this report is an hourly fee of \$250. My fee for deposition and trial testimony is \$450 per hour, plus travel time and expenses.

#### 8. BACKGROUND FOR THIS REPORT

- a. In the summer of 2020, there were numerous demonstrations in the City of Austin as well as throughout the United States, protesting police practices after the death of George Floyd on May 25, 2020.
- b. In the early Saturday evening of August 1, 2020, Plaintiff Sydni Beuhler was participating in a protest demonstration by standing with many others near a

memorial for a protester who had been fatally shot during a demonstration in Austin the previous Saturday.

- c. According to the Affidavit of Arrest, the Complaint and the video evidence, Buehler had gathered with a crowd of others in the northbound lane of Congress Avenue near the intersection of 4<sup>th</sup> Street.
- d. Austin police arrived in force with vehicles, horses and bicycles and began to force the crowd of protesters to move backwards up the northbound lane and out of the street, according to the Affidavit of Arrest and the video evidence.
- e. The police officers employed canisters of pepper spray and used their bicycles held in a forward line as they marched against the protesters forcing them to retreat backwards, according to the Complaint and the video evidence. One officer appears in the videos reviewed to be armed with a shotgun-type weapon.

#### 9. THE ARREST OF SYDNI BUEHLER.

- a. Buehler is seen in the videos reviewed standing with her arms to her side as the police line approached. She is of slight build, standing erect and holding a water bottle in her right hand, nothing in her left hand. Buehler appeared to say something to the helmeted officers as they began to push the demonstrators backwards with their bicycles arrayed end-to-end as a moving barricade. The videos reviewed do not capture any conversation between Buehler and the officers.
- b. A large officer standing behind the front-line officers holding bicycles lunged forward just as the police bicycle barricade line reached Buehler. This officer grabbed Buehler around her waist with both arms in a bear hug. He lifted her high off the ground and carried her behind the police line as other officers looked on. The officer who grabbed Buehler is significantly bigger than Buehler. Buehler dropped her water bottle and held her left arm out as if to plead for assistance. She does not appear from the video to resist by kicking or pushing against the officer as he attempted to force her to the pavement.
- c. The arresting officer continued to hold Buehler and was quickly assisted by a second officer who also grabbed Buehler and the two officers pushed her to the pavement, face down.
- d. The two officers appear to initially have their knees on Buehler's back pressing her to the pavement despite the apparent lack of resistance or attempted flight by Buehler, as indicated in the video.
- e. There were dozens of officers near where the two officers held Buehler to the pavement, and a marked unit pulled next to where the officers held Buehler to the pavement. A third officer holding a cannister of apparent pepper spray joined as

the second officer held Buehler to the pavement with his knee to her back, pulled her arms behind her back and placed metal handcuffs on Buehler.

- f. The videos reviewed showed Buehler being the only person arrested from the line of demonstrators with whom she was standing.
- g. The videos show no apparent reason for this particular officer to have violently arrested one of the demonstrators from the line of people with whom she was standing; nor is there any apparent reason why the officer singled out this particular demonstrator for arrest.
- h. Buehler was brought before an Austin Magistrate Court judge at 4:30 am the following morning, Sunday, August 2, 2020. APD Officer Smart filed an affidavit of arrest that incorrectly stated that he arrested Plaintiff on August 2, 2020, at 2023 hours.
- i. Officer Smart's affidavit states that "a large group of protesters had entered the road as pedestrians and intestinally [sic] blocked four lanes of travel..." He charged Buehler, who he states was among "approximately 150 other persons," with Obstructing Highway or Other Passageway," a class B misdemeanor.
- j. Officer Smart added the charge of Resisting Arrest, a class A misdemeanor, with the justification that Buehler "began to attempt to physically resist my efforts to place her under arrest by attempting to wrestle free from my grasp." Officer Smart further described Buehler's offense as: "she began to also push against me, using the strength of her legs and refused to allow her arms to be pulled behind her back, pulling them towards her torso."

10. OPINION: APD Officer Smart's forcible arrest of Sydni Beuhler was not justified.

- a. Neither the video evidence nor the affidavit of Officer Smart demonstrates why Officer Smart singled out Beuhler from the approximately 150 demonstrators to arrest for obstructing the intersection of Congress Avenue and 4<sup>th</sup> Street. The demonstrators were being pushed backwards and off the roadway by the barricade of police bicycles being pressed forward by a line of police officers. Buehler was standing still and had not been touched by the bicycle barricade to be forced back when Officer Smart moved from behind the bicycle line to grab Plaintiff in a bear hug to hoist her off the ground. It is not clear from the video evidence or the arrest affidavit if Plaintiff said or yelled something that triggered Officer Smart to seize her. Whether she said something that upset Officer Smart or not, nothing said by a demonstrator to the police would justify an officer's violent seizure of a demonstrator for "standing in the roadway with approximately 150 other persons." (Smart Affidavit, Attachment B). Police officers, when properly trained, do not exercise their police powers to arrest a person merely because a person has taunted them or used offensive words. Nothing in the videos reviewed



suggests that Buehler posed an actual or reasonably perceived threat to the police officers or others.

- b. Officer Smart added the charge of Resisting Arrest which raised the offence from a Class B Misdemeanor to a Class A Misdemeanor. The video evidence, however, does not support and appears to contradict Officer Smart's affidavit recounting Plaintiff's "physical resistance" to his bear hug seizure. (Smart Affidavit, Attachment B).

11. OPINION: Officer Smart's use of force to arrest Sydni Beuhler was neither necessary nor reasonable.

- a. The foundation for examining the legality of police use of force is still the U.S. Supreme Court test set forth in *Graham v. Connor* (490 U.S. 386 (1989)). The Court recognized that any police seizure of a person necessarily carries the right to use some degree of physical coercion or threat of force. To determine whether the force used was reasonable must be judged by Fourth Amendment standards using what the Court termed the "objective reasonableness test." Such a test requires consideration of 1) the severity of the crime, 2) whether the suspect poses an immediate threat to the safety of the officers or others, and 3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight.
- b. Sydni Beuhler's alleged offense was being among 150 other people who had gathered on and around Congress Avenue in an expression of protest against police violence. Public demonstrations are generally a constitutionally protected right in the United States. They can, of course, be a nuisance to motorists and pedestrians, and devolve into conduct that can be regarded as a violation of law. So, while expressive activity can sometimes involve conduct that may constitute an offense, it is a different genre of activity from a gathering of people for the intent and purpose of pursuing criminal activity. Reasonable policing recognizes the difference and responds appropriately.
- c. Sydni Beuhler did not pose a threat to the safety of the officers or others. She appears to be about 5'7" tall and weighs about 145 pounds. At the time of her arrest, she was holding a water bottle. The police force that arrived to confront her and others included a unit mounted on horseback, and dozens of officers helmeted in black riot gear, armed and carrying truncheons and pepper spray canisters. One officer is seen carrying a shotgun-type weapon. Marked police vehicles followed behind officers as they moved toward the demonstrators. Officers on foot were led by a line of officers pressing forward holding police bicycles as a barricade. The police show of force was effective in clearing people off the street with no threat to the safety of the officers.
- d. Sydni Beuhler does not appear to actively resist arrest or attempt to evade arrest by flight. The arrest of Sydni Beuhler involved her being grabbed in a bear hug by a large officer, hoisted high in the air and wrestled to the ground. She was held

face down on the pavement by officers kneeling on her back while being handcuffed.

- e. The Supreme Court's Fourth Amendment analysis rests on the concept of reasonableness. Thus, would a reasonable officer on the scene of Sydney Beuhler's crime have acted in the same manner as Officer Smart? In my opinion, no. Indeed, no other officer can be seen in the videos violently grabbing demonstrators doing what Sydney Beuhler was doing and throwing them to the pavement to handcuff and arrest them. The point of the police action was to clear the people off the street. The arrest of Sydney Beuhler was completely unnecessary to accomplish that law enforcement mission.
- f. The Texas Penal Code provides no justification for Officer Smart's use of violent force to arrest Sydney Beuhler. With respect to the use of force by peace officers in the performance of an arrest or search, Section 9.51 provides the following: (a) a peace officer ... is justified in using force against another when and to the degree the actor reasonably believes the force is *immediately necessary* (my emphasis) to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:
  - (1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and
  - (2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested. (Attachment G).
- g. There was no apparent reason for Officer Smart to tackle Sydney Beuhler to the ground in order to place her under arrest for the offense of obstructing the highway. De minimis force would have been reasonably appropriate to arrest a slight young woman standing erect, arms to her side holding only a water bottle. Officers could have simply walked up to her, told her she was under arrest for obstructing the street, grabbed her arms and handcuffed her. Here, Officer Smart was in close proximity of dozens of other armed officers confronting Beuhler so any violent resistance or flight on her part would have been futile. The only force that would likely have been necessary would have been to hold her arms behind her back so she could be handcuffed. There is no indication from the videos that Officer Smart announced to Beuhler his intent or purpose to arrest her before he grabbed her around the waist, hoisted her off the ground and wrestled her to the pavement.
- h. The Austin Police Department General Orders in effect on August 1, 2020 provided a more specific test for officers to determine the objective reasonableness of the use of force in making an arrest. Section 200.3.1(a) spelled out "a number of factors should be taken into consideration. These factors include, but are not limited to:
  - (1) Reasonable opportunity for the officer to engage in de-escalation;

- (2) The conduct of the individual being confronted as reasonably perceived by the officer at the time;
- (3) Officer and subject factors such as age, size, relative strength, skill level, injury/level of exhaustion and number of officers versus subjects.
- (4) Influence of drugs, alcohol or mental capacity;
- (5) Proximity of weapons;
- (6) The degree to which the subject has been effectively restrained and his ability to resist despite being restrained;
- (7) Time and circumstances permitting, the reasonable availability of other resources to the officer;
- (8) Seriousness of the suspected offence or reason for contact with the individual;
- (9) Training and experience of the officer;
- (10) Potential for injury to citizens, officers and subjects;
- (11) Risk of escape;
- (12) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others; or
- (13) Other exigent circumstances. (Attachment D).

i. Officer Smart's use of force in the arrest of Sydney Beuhler fails each of the reasonableness factors of the Austin Police Department Manual.

- (1) *Reasonable opportunity for the officer to engage in de-escalation?* The engagement of the police contingent was clearly to force the demonstrators off the roadway. The confrontation of police and demonstrators was, in essence, an exercise in de-escalation in that the demonstrators were moving away from the police as they advanced along the street. Officer Smart's precipitous arrest of Sydney Beuhler ignored the de-escalation in process.
- (2) *The conduct of the individual?* She was standing still, unarmed, as part of a demonstration against police violence. Beuhler was part of group of people gathered for expressive, not criminal activity. She was arguably manifesting passive resistance by not immediately and quickly moving out of the street as the police approached.
- (3) *Officer/subject factors?* Officer Smart was part of a large police contingent armed for riot control and included mounted unit. Officer Smart is a very large man who was able to effortlessly grab 5'7" - 145-pound Sydney Beuhler high off the ground.
- (4) *Influence of drugs, alcohol or mental capacity?* Not an apparent factor here.
- (5) *Proximity of weapons?* Sydney Beuhler was holding a water bottle.
- (6) *The degree to which the subject has been effectively restrained and his ability to resist despite being restrained?* Sydney Beuhler was restrained prior to her being arrested. Officer Smart essentially tackled her as she stood erect in the street. Officer Smart and two other officers held Plaintiff face down on the pavement despite the absence of apparent resistance or attempt to escape.

- (7) *Resources reasonably available to the officer?* Officer Smart was one of a large group of Austin police officers, including a mounted unit and motor vehicles moving towards the people gathered on Congress Avenue. Officer Smart did not appear to call on other officers to assist him as he grabbed Sydni Beuhler and hoisted her into the air. He acted on his own by lunging forward of the bicycle barricade line, grabbing Beuhler and carrying her behind the line of police officers. Other officers assisted him in wrestling her to the pavement and holding her face down with knees to her back and handcuffing her.
- (8) *Seriousness of the suspected offence or reason for contact with the individual?* Sydni Beuhler was part of a demonstration protesting police violence. She was among approximately 150 other people gathered on and near Congress Avenue and Fourth Street. From the videos reviewed, Beuhler was the only person in the line of demonstrators with whom she was standing who was tackled to the ground for the ostensible offense of obstructing the road.
- (9) *Training and experience of the officer?* No information available regarding Officer Smart's training and experience.
- (10) *Potential for injury to citizens, officers and subjects?* The police force deployed against the demonstrators was overwhelming. The greatest potential for injury appeared to be to the subject demonstrators.
- (11) *Risk of escape?* It would have been infeasible for Sydni Beuhler to escape from the overwhelming police presence that was forcing the people on the street to move. That she did not run away from the police was apparently the rationale for Officer Smart to arrest her in the first place.
- (12) *Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others?* Sydni Beuhler was never a threat to Officer Smart or anyone else.
- (13) *Other exigent circumstances?* The possible circumstance under which Officer Smart decided to use force to arrest Sydni Beuhler was that she may have said something to or about the police that angered him. Such a circumstance would fail to justify a police officer's use of force against a subject.

## 12. CONCLUSION

- a. Based on the totality of the evidence and circumstances reviewed above, I am of the opinion that the forcible arrest of Sydni Beuhler was not justified, and the use of force to affect her arrest was excessive and unreasonable. It is not clear why Officer Smart singled out Beuhler to tackle her and place her under arrest out of the approximately 150 demonstrators who had gathered at the intersection of Congress Avenue and 4<sup>th</sup> Street in Austin. What is clear is that Sydni Beuhler was not a threat to the safety of the officers or others, was arguably committing a minor offense in context of expressive activity along with some 150 other people standing on a public street, and was not attempting to evade arrest by flight or

resistance. If Sydni Beuhler said or shouted something to or about the police that upset Officer Smart, that would in no respect justify his forceful seizure of her.

- b. I submit this report with the understanding that there will be further discovery and depositions in this matter. Insofar as any new evidence may be material and relevant to my findings so far, I will review and update this report as appropriate.



04/26/2022

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John D. Lenoir

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER, §  
Plaintiff, §  
v. § CASE NO. 1:21-cv-00054-RP  
CITY OF AUSTIN, §  
OFFICER GAVIN SMART §  
(AP8674), and §  
OFFICER JAVIER §  
GONZALEZ (AP7422), §  
Defendants. §

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ORAL AND VIDEOTAPED DEPOSITION OF  
OFFICER JAVIER GONZALEZ  
FEBRUARY 9, 2023

Vol. 1 of 1

(Reported Remotely)

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
OFFICER JAVIER GONZALEZ, produced as a witness  
at the instance of the Plaintiff, Sydni Beuhler,  
duly sworn, was taken in the above entitled and  
numbered cause on the 9th day of February 2023,  
from 10:35 a.m. to 3:31 p.m., before MENDY T.  
WILLIAMS, HIPAA-Certified and Texas Certified  
Shorthand Reporter, and reported by computerized  
oral stenography at Austin City Hall, 301 West  
2nd Street, Austin, Texas 78701, pursuant to the

1 MS. MCDANIEL: And I also have with  
2 me Alexis Lopez, our senior trial paralegal.  
3 She will be assisting me. She's also with  
4 Hendler Flores.

5 THE COURT REPORTER: Okay. Officer  
6 Flores, if you'll raise your right hand.

7 (Mr. Gonzalez complies.)

8 THE COURT REPORTER: Do you solemnly  
9 swear that the testimony you are about to give  
10 in the cause hereinunder shall be the truth, the  
11 whole truth, and nothing but the truth, so help  
12 you God?

13 THE WITNESS: Yes. I swear. Yes.

14 THE COURT REPORTER: I'm sorry?

15 THE WITNESS: Yes. I swear.

16 THE COURT REPORTER: Thank you. One  
17 moment. Let me turn on my speaker. Okay. Go  
18 ahead.

19 MS. MCDANIEL: Thank you.

20 Whereupon,

21 OFFICER JAVIER GONZALEZ, was called as a  
22 witness by the Plaintiff, Sydni Beuhler, and  
23 having been first duly sworn, testified upon his  
24 oath as follows:

25 DIRECT EXAMINATION

1 be any force. If they're resisting, there will  
2 be a reasonable force that is used to gain the  
3 control and detention.

4 Q. When in your understanding is it  
5 acceptable for someone to use physical  
6 resistance to an arrest?

7 A. If -- This is kinda like a -- They --  
8 they -- that's been mentioned. If the person  
9 truly believes that the police officer is using  
10 unreasonable force, that's the only one time I  
11 can think of, but they have to be able to later  
12 explain that in court this was unreasonable  
13 force because XYZ, 123.

14 Q. I understand. Interesting. And have  
15 you receiving training on controlling people's  
16 movements when you interact with them?

17 A. A basic -- basic training at the police  
18 academy.

19 Q. And what about de-escalation?

20 A. Once again, there was a -- my training  
21 said there was de-escalation class and then  
22 there was other things that were brought up  
23 in -- throughout the police academy that had to  
24 do with de-escalation, things as in verbal  
25 commands, presence, maybe create space, finding



1 you meant to say officer --

2 A. Yes, ma'am.

3 Q. -- who was struggling to detain a white  
4 female. I went over to help the officer who was  
5 dealing with the female and assisted. I grabbed  
6 the right wrist of the female and immediately  
7 felt her pull her hands toward the front of her  
8 body.

9 In my training and experience of  
10 seven years, I have learned that criminals like  
11 to carry weapons in the front of their  
12 waistlines. When I felt the female pull her  
13 hand forward, I conducted a wrist lock in order  
14 to gain control of her arms and then she was  
15 guided to the floor and onto her knees.

16 The female was still pulling her  
17 right hand away from me while on the ground. I  
18 could feel her strength and her body stiffen as  
19 she was resisting. At this point, I gave  
20 commands to not resist multiple times.

21 I pulled out my handcuffs and was  
22 able to place them on the female with the  
23 assistance of the other -- of other officers. I  
24 later identified the officer that I helped as  
25 Officer Smart.

1           A. That's something that IA internally  
2 categorizes complaints as. I don't know exactly  
3 what it is. That's something in-house that they  
4 classify things as.

5           Q. Okay. I don't know what it means  
6 either. I was curious. Going down to the  
7 second box, it states case description 8/29/2020,  
8 10:20 a.m., the OPO. What does OPO mean?

9           A. Office of police monitors office.

10          Q. Oversight maybe?

11          A. Oversight police office. There we go.

12          Q. Okay. The OPO received an email from an  
13 anonymous complainant that included a photo of  
14 an APD officer and the alleged officer's social  
15 media posts that included comments about  
16 protesting and then it's -- states at the end  
17 that it's written by Mia Demers, parentheses,  
18 OPO. Can you tell me about this incident?

19          A. Sure. I posted something on my private  
20 Instagram page. Somebody within my private  
21 Instagram page who -- who I thought was possibly  
22 a friend didn't like certain things that I said,  
23 and they later somehow filed a complaint --  
24 anonymous complaint.

25          Q. And then what happened?

1           A. It was investigated, and they went  
2 through everything. They went back, reviewed  
3 everything. I was interviewed. Due to the fact  
4 that I was not on the clock, that I was in  
5 another country, that I wasn't in a police  
6 capacity and I didn't make statements or attack  
7 any particular group or anything like that, I  
8 was cleared from it.

9           Q. I understand. I appreciate you letting  
10 me know about that. And it states at the next  
11 box that the allegation is chapter 9; is that  
12 referring to chapter 9 of the -- what -- what  
13 is -- what chapter 9 is that referring to --

14           A. Whatever -- whatever chapters are in  
15 policy. That's what they're thinking that I  
16 violated, those three, and later throughout the  
17 investigation, I didn't violate any of them.

18           Q. I see. Yes. It says at the bottom,  
19 disposition, it's administratively closed,  
20 there's no discipline, and the retention period  
21 three years. So it looks like it will be --  
22 Does that mean it will be dropped from your --

23           A. I -- I --

24           Q. -- report on this date --

25           A. I don't know what that means. I'm

*Mendy Williams*

Mendy T. Williams  
Texas CSR #CSR-8055  
Certification Expires: 07/31/23

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on \_\_\_\_\_, 2023;

If returned, the attached Changes and Signature page contains any changes and the reasons therefore;

If returned, the original deposition was delivered to \_\_\_\_\_, Custodial Attorney;

That \$\_\_\_\_\_ is the deposition officer's charges to the Plaintiff, Sydni Beuhler, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Mendy T. Williams  
Texas CSR #CSR-8055  
Certification Expires: 07/31/23

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER )  
)  
VS. ) CASE NO.  
) 1:21-CV-00054-RP  
CITY OF AUSTIN, )  
OFFICER GAVIN SMART (AP8674), )  
OFFICER JAVIER GONZALEZ )  
(AP7422), AND OFFICER ANNE )  
ALLARE (AP7755) )

-----  
VIDEOTAPED DEPOSITION OF  
ANNE ALLARE  
DECEMBER 15, 2022  
(REPORTED REMOTELY)  
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ANSWERS AND DEPOSITION OF ANNE ALLARE,  
produced as a witness at the instance of the  
Plaintiff, taken in the above-styled and -numbered  
cause on DECEMBER 15, 2022, at 9:05 a.m., before  
CHARIS M. HENDRICK, a Certified Shorthand Reporter  
in and for the State of Texas, witness located in  
Austin, Texas, pursuant to the Federal Rules of  
Civil Procedure, the current emergency order  
regarding the COVID-19 State of Disaster, and the  
provisions stated on the record or attached hereto.

1 Memorandum is?

2 A. No, ma'am.

3 Q. Okay. Let's see. So I will just ask you  
4 about the facts -- sorry. I am having a little  
5 trouble getting this to -- oh, also, is it --

6 MS. MCDANIEL: Do I have counsel's  
7 permission to share this document? It is marked  
8 confidential from the City of Austin document  
9 production. I can take it away if I should not  
10 show it.

11 MR. BARTON: No. And you have  
12 permission to ask her questions about it for the  
13 purposes of -- of this deposition, particularly,  
14 since she's a party to the lawsuit. But we  
15 probably will need to address whether this portion  
16 of the deposition remains confidential if, you  
17 know, the exhibit needs to be filed with the court  
18 or something like that.

19 MS. MCDANIEL: Okay. Great. Well, I  
20 do have just one small question. Where is it?

21 Q. (By Ms. McDaniel) It's on Page 2, there  
22 is a description of the arrest. All I wanted to  
23 ask about is one little part where it says, at that  
24 -- so I'm looking at the box on the second page,  
25 three paragraphs down. About halfway through that

1 paragraph, it says that Officer Allare approached  
2 and that Ms. Beuhler offered no resistance to  
3 Officer Allare.

4 All I wanted to ask is if you agree  
5 with that statement; that Ms. Beuhler -- yes,  
6 Ms. Beuhler did not offer resistance to you?

7 A. Yes, ma'am. I agree.

8 Q. Okay. That's all I wanted to ask you  
9 about. Okay. I have some more -- a few more  
10 questions about the day of, but we're getting close  
11 to the end. Probably will be done well before  
12 1:00. Who activated the quick-reaction force that  
13 day?

14 A. I don't -- I don't know.

15 Q. Okay. What -- what was said during your  
16 supervisor's pre-event briefing before you went to  
17 this protest on August 1st and with the  
18 quick-reaction force?

19 A. I -- I -- I do not know one day from  
20 another, but our general role was to, you know --  
21 what I have said; to respond to wherever the chain  
22 of command is sending us. And then to make arrests  
23 based either what they have seen on the cameras or  
24 what we see.

25 Q. So to your recollection, you don't recall

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REPORTER'S CERTIFICATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER )  
 )  
VS. ) CASE NO.  
 ) 1:21-CV-00054-RP  
CITY OF AUSTIN, )  
OFFICER GAVIN SMART (AP8674), )  
OFFICER JAVIER GONZALEZ )  
(AP7422), AND OFFICER ANNE )  
ALLARE (AP7755) )

-----  
DEPOSITION OF ANNE ALLARE  
DECEMBER 15, 2022  
(REPORTED REMOTELY)

-----  
I, CHARIS M. HENDRICK, Certified Shorthand  
Reporter in and for the State of Texas, do hereby  
certify to the following:

That the witness, ANNE ALLARE, was by me  
duly sworn and that the transcript of the oral  
deposition is a true record of the testimony given  
by the witness.

I further certify that pursuant to Federal  
Rules of Civil Procedure, Rule 30(e)(1)(A) and (B)  
as well as Rule 30(e)(2), that review of the  
transcript and signature of the deponent:

\_\_XX\_\_ was requested by the deponent and/or a



1 party before completion of the deposition.

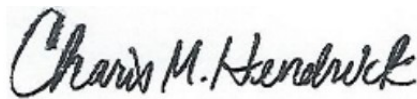
2 \_\_\_\_\_ was not requested by the deponent and/or  
3 a party before the completion of the deposition.

4 I further certify that I am neither  
5 attorney nor counsel for, nor related to or  
6 employed by any of the parties to the action in  
7 which this deposition is taken and further that I  
8 am not a relative or employee of any attorney of  
9 record in this cause, nor am I financially or  
10 otherwise interested in the outcome of the action.

11 The amount of time used by each party at  
12 the deposition is as follows:

13 Ms. McDaniel - 2:24 hours/minutes

14  
15 Subscribed and sworn to on this 28th day  
16 of December, 2022.

17  
18 

19 \_\_\_\_\_  
20 CHARIS M. HENDRICK, CSR # 3469  
21 Certification Expires: 10-31-23  
22 MAGNA LEGAL SERVICES  
23 (866) 624-6221  
24 Firm Registration No. 633  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER,	ï¿½	
	ï¿½	
Plaintiff,	ï¿½	
	ï¿½	
vs.	ï¿½	CASE NO.1:21-cv-00054-RP
	ï¿½	
CITY OF AUSTIN, OFFICER	ï¿½	
GAVIN SMART (AP8674), AND	ï¿½	
OFFICER JAVIER GONZALEZ	ï¿½	
(AP7422),	ï¿½	
	ï¿½	
Defendants.	ï¿½	

ORAL ZOOM VIDEOTAPED DEPOSITION

OFFICER GAVIN W. SMART

February 16, 2023

ORAL ZOOM VIDEOTAPED DEPOSITION OF OFFICER GAVIN W. SMART, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 16th day of February, 2023, from 10:35 a.m. to 2:29 p.m., before Ms. Michelle Hartman/A.S., Certified Shorthand Reporter in and for the State of Texas and Registered Professional Reporter, reported by computerized stenotype machine/mask at the offices of via Zoom videoconference, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

1 Q. What if their participation includes  
2 cursing or using insulting language towards police  
3 officers, does that make them subject to arrest or  
4 containment?

5 A. No, ma'am.

6 Q. When is an individual subject to arrest  
7 or detainment due to their participation in a  
8 protest?

9 A. When they violate State law.

10 Q. Let's see. Does an individual give up  
11 their right to be free from excessive force if they  
12 participate in a protest?

13 A. No, ma'am.

14 Q. What if they are yelling at a police  
15 officer, does that mean they are no longer -- I'm  
16 sorry, I will rephrase that.

17 If they are yelling at a police  
18 officer, are they no longer free to be -- free from  
19 excessive force?

20 A. No, I cannot think of anything that  
21 would free you from excessive force.

22 Q. What was your experience -- I saw that  
23 you stated in your interrogatory responses that you  
24 had experience policing the George Floyd protest.

25 A. Uh-huh.

1 to a level two if the subject that has been tased  
2 suffers injury to the point that they require  
3 hospitalization, actually actual admission, not just  
4 to an ER.

5 Q. And so level two you said it sounded  
6 like strikes to the head and I believe you used the  
7 term like "some kind of weapon"?

8 A. An impact weapon.

9 Q. Does that mean like a baton?

10 A. It can, depending where the strikes  
11 are, you can rise to that.

12 Q. What if you hit someone, on the videos  
13 that we are going to see with regards to this case,  
14 the use of bikes and using bikes to move people, is  
15 that considered an impact weapon that would be a  
16 level two force?

17 MR. BARTON: Objection: Form.

18 THE WITNESS: That's not considered an  
19 impact weapon. It could be used potentially as one,  
20 though.

21 Q. (BY MS. MCDANIEL) I see. I see. What  
22 about level three force, what is that? How is that?

23 A. A level three force can range from  
24 anything from taking a subject to the ground, which  
25 we would call it "takedown," or if during the

1 response to resistance is what we call our use of  
2 forces, they have a prolonged complaint of pain or  
3 injury.

4 Q. I see. And what is level four force?

5 A. Level four force would be the lowest  
6 level, and that's just your basics. Such as an  
7 example would be if they are pulling away from you  
8 while you're securing them in handcuffs, so any  
9 physical resistance that does meet the other  
10 criteria.

11 Q. You're saying that the resistance is  
12 level four, or you're saying that -- can you describe  
13 that again? I'm sorry, I did not quite understand.

14 A. Yes. So if a person is resisting by  
15 just pulling away from you while you are trying to  
16 secure their hands into handcuffs and all you have to  
17 do is overcome it through strength or technique and  
18 pull them together and no one is injured, that that  
19 would be a level four.

20 Q. I see. What level of force did you use  
21 to arrest Ms. Beuhler?

22 A. I believe the highest level was a  
23 three.

24 Q. And why did you use level three force?

25 A. Because she went from a standing

1 Q. Had Ms. Beuhler tried to run away  
2 before you arrested her?

3 A. No, I don't believe we gave her the  
4 opportunity.

5 Q. And had Ms. Beuhler physically resisted  
6 you before you wrapped your arms around her, grabbed  
7 her, and carried her over the BPOT line?

8 A. No. She could not, in definition,  
9 physically resist me before I touched her.

10 Q. Let's see. Let me continue reading.

11 It says, "I then walked Beuhler back  
12 and began to attempt to secure her in handcuffs.  
13 Beuhler began to attempt to physically resist my  
14 efforts to place her under arrest by attempting to  
15 wrestle free from my grasp."

16 Why did you state that she began to  
17 resist?

18 A. Because she did.

19 Q. In what -- after you say she began to  
20 also -- what did she do to physically resist your  
21 efforts that you recall?

22 A. I guess she would use her body to  
23 wiggle, wrestle free. And then she also used her  
24 legs, as I kind of referred to before, which I assume  
25 that's what the question was allotting to, to push

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STATE OF TEXAS  
COUNTY OF HARRIS

REPORTER'S CERTIFICATE  
ORAL VIDEOTAPED DEPOSITION OF  
OFFICER GAVIN W. SMART  
February 16, 2023

I, Michelle Hartman, the undersigned  
Certified Shorthand Reporter in and for the State of  
Texas and Registered Professional Reporter, certify  
that the facts stated in the foregoing pages are true  
and correct.

I further certify that I am neither  
attorney or counsel for, related to, nor employed by  
any parties to the action in which this testimony is  
taken and, further, that I am not a relative or  
employee of any counsel employed by the parties  
hereto or financially interested in the action.

That the deposition transcript was duly  
submitted on \_\_\_\_\_ to the witness or to  
the attorney for the witness for examination,  
signature, and returned to me by \_\_\_\_\_.



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SUBSCRIBED AND SWORN TO under my hand and  
seal of office on this \_\_\_\_\_ day of March, 2023.

*Michelle Hartman*

---

Michelle Hartman, CSR, RPR  
Texas CSR 7093  
Expiration: 12/31/23



# Internal Affairs Complete History

## Internal Affairs Division

Javier Gonzalez #7422

Date of Commission: 03/22/2013

<b>1. Case # 2020-1660</b>	Reported Date: 11/05/2020	Classification: B
<b>Case Description:</b> 11/05/2020 10:25 AM On September 24, 2020 Officer Gonzalez was driving NB on Bennett Ave approaching Wilks Ave. Officer Gonzalez's vehicle collided with another vehicle. Officer Gonzalez may have violated policy.  This complaint is my request for Internal Affairs to initiate an administrative investigation in order to determine if the employee's conduct complied with Department policy, Civil Service Rules, Municipal Civil Service Rules, and State law. - Sylvia Maldonado (IAD)		
<b>Allegation:</b> Chapter: Chapter 8 Section: 804 Department Vehicles Section Sub 1: 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES		
<b>Allegation Description:</b>		
<b>Disposition:</b> Chain of Command Decision: Sustained Discipline Decision: Written Reprimand Suspension Period: -- Retention Period: 15 Years Retention Date: 11/13/2035		
<b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --		
<b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --		
<u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None		
Review Completed: No Review Date: None Effective written reprimand: None		

<b>2. Case # 2020-1443</b>	Reported Date: 08/21/2020	Classification: A
<b>Case Description:</b> 08/29/2020 10:20 AM The OPO received an email from an anonymous complainant that included the photo of an APD officer and the alleged officers social media posts that included comments about protesters. - Mia Demers (OPO)		
<b>Allegation:</b> Chapter: Chapter 9 Section: 900 General Conduct and Responsibilities Section Sub 1: 900.3 GENERAL CONDUCT Section Sub 2: 900.3.2 Acts Bringing Discredit Upon the Department		
<b>Allegation Description:</b>		
<b>Disposition:</b> Chain of Command Decision: Administratively Closed Discipline Decision: No Discipline Suspension Period: -- Retention Period: 3 Years Retention Date: 02/01/2024		
<b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --		
<b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --		
<u>APA Suspension Review:</u>		

Eligible: Not Reviewed  
Approved: Not Reviewed  
Update History: Not Reviewed  
APA Comment (Describe why eligible/ineligible): None

Review Completed: No  
Review Date: None  
Effective written reprimand: None

**Allegation:**  
Chapter: Chapter 3  
Section: 301 Responsibility to the Community  
Section Sub 1: 301.1 PURPOSE AND SCOPE

**Allegation Description:**

**Disposition:**  
Chain of Command Decision: Administratively Closed  
Discipline Decision: No Discipline  
Suspension Period: --  
Retention Period: 3 Years  
Retention Date: 02/01/2024

**Post Appeal Decision:** --  
Discipline Decision: --  
Suspension Period: --

**Settlement Agreement:** --  
Discipline Decision: --  
Suspension Period: --

APA Suspension Review:  
Eligible: Not Reviewed  
Approved: Not Reviewed  
Update History: Not Reviewed  
APA Comment (Describe why eligible/ineligible): None

Review Completed: No  
Review Date: None  
Effective written reprimand: None

**Allegation:**  
Chapter: Chapter 9  
Section: 972 Employee Speech, Expression, and Social Networking  
Section Sub 1: 972.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

**Allegation Description:**

**Disposition:**  
Chain of Command Decision: Administratively Closed  
Discipline Decision: No Discipline  
Suspension Period: --  
Retention Period: 3 Years  
Retention Date: 02/01/2024

**Post Appeal Decision:** --  
Discipline Decision: --  
Suspension Period: --

**Settlement Agreement:** --  
Discipline Decision: --  
Suspension Period: --

APA Suspension Review:  
Eligible: Not Reviewed  
Approved: Not Reviewed  
Update History: Not Reviewed  
APA Comment (Describe why eligible/ineligible): None

Review Completed: No  
Review Date: None  
Effective written reprimand: None

**3. Case # 2020-1301**      Reported Date: 08/04/2020      Classification: A

**Case Description:**  
08/04/2020 01:23 PM  
I wasn't read my Miranda rights, I wasn't told why I wasn't being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds. The officers were not going to get a female officer, they said they didn't have time to get a female officer and I started to have a panic attack, so they got one. The arresting officer was Swart, #8674. Officers in the car that transported, threatened me, and they were mouthing things to one another and one wouldn't talk to me at all. - Mallory Scott (OPO)

**Allegation:**  
Chapter: Chapter 3  
Section: 318 Detentions, Field Interviews, and Field Photographs  
Section Sub 1: 318.5 FIELD INTERVIEWS, STATEMENTS, AND CONFESSIONS  
Section Sub 2: 318.5.1 Miranda Warning

**Allegation Description:**

**Disposition:**  
Chain of Command Decision: Administratively Closed  
Discipline Decision: No Discipline

**Post Appeal Decision:** --  
Discipline Decision: --

<p>Suspension Period: -- Retention Period: 3 Years Retention Date: 01/25/2024</p> <p><u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None</p>	<p>Suspension Period: -- <b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --</p> <p>Review Completed: No Review Date: None Effective written reprimand: None</p>
<p><b>Allegation:</b> Chapter: Chapter 3 Section: 306 Search and Seizure Section Sub 1: 306.3 DEFINITIONS Section Sub 2: 306.3.1 Search Protocol</p> <p><b>Allegation Description:</b></p> <p><b>Disposition:</b> Chain of Command Decision: Administratively Closed Discipline Decision: No Discipline Suspension Period: -- Retention Period: 3 Years Retention Date: 01/25/2024</p> <p><u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None</p>	<p><b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --</p> <p><b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --</p> <p>Review Completed: No Review Date: None Effective written reprimand: None</p>
<p><b>Allegation:</b> Chapter: Chapter 2 Section: 200 Response to Resistance Section Sub 1: 200.3 RESPONSE TO RESISTANCE</p> <p><b>Allegation Description:</b></p> <p><b>Disposition:</b> Chain of Command Decision: Administratively Closed Discipline Decision: No Discipline Suspension Period: -- Retention Period: 3 Years Retention Date: 01/25/2024</p> <p><u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None</p>	<p><b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --</p> <p><b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --</p> <p>Review Completed: No Review Date: None Effective written reprimand: None</p>
<p><b>Allegation:</b> Chapter: Chapter 2 Section: 200 Response to Resistance Section Sub 1: 200.2 DE-ESCALATION</p> <p><b>Allegation Description:</b></p> <p><b>Disposition:</b> Chain of Command Decision: Administratively Closed Discipline Decision: No Discipline Suspension Period: -- Retention Period: 3 Years Retention Date: 01/25/2024</p> <p><u>APA Suspension Review:</u> Eligible: Not Reviewed</p>	<p><b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --</p> <p><b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --</p> <p>Review Completed: No</p>

Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None	Review Date: None Effective written reprimand: None
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<b>4. Case # 2020-1012</b>	Reported Date: 06/16/2020	Classification: D
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**Case Description:**  
 06/16/2020 11:01 AM  
 It appears APD administrated a choke hold and had a knee on someones neck, this is after the vote on Thursday. - Mallory Scott (OPO)

**Allegation:**  
 Chapter: Chapter 2  
 Section: 200 Response to Resistance

**Allegation Description:**  
 Class D

**Disposition:**  
 Chain of Command Decision: Administratively Closed  
 Discipline Decision: No Discipline  
 Suspension Period: --  
 Retention Period: 3 Years  
 Retention Date: 11/23/2023

**Post Appeal Decision:** --  
 Discipline Decision: --  
 Suspension Period: --

**Settlement Agreement:** --  
 Discipline Decision: --  
 Suspension Period: --

APA Suspension Review:  
 Eligible: Not Reviewed  
 Approved: Not Reviewed  
 Update History: Not Reviewed  
 APA Comment (Describe why eligible/ineligible): None

Review Completed: No  
 Review Date: None  
 Effective written reprimand: None

<b>5. Case # 2018-1217</b>	Reported Date: 12/21/2018	Classification: Citizen
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**Case Description:**  
 12/27/2018, Complainant stated that Officer Gonzales AP#7422 became upset after she requested to see what she was signing.  
 12/27/18, CC written by RH  
 Officer: Gonzalez AP#7422  
 Warning# E16885097

Additional Information: Ms. Schak stated that she was pulled over for using an electronic device while operating a motor vehicle. After a brief conversation with Officer Gonzalez, he told Ms. Schak that she would be receiving a written warning. Officer Gonzalez handed Ms. Schak a device requesting her signature. According to Ms. Schak, she was unable to scroll up on the device and failed to identify what she was signing. Ms. Schak requested that Officer Gonzalez scroll up for her to see what she was signing. Ms. Schak claims that after she asked Officer Gonzalez to scroll up, his demeanor changed. Ms. Schak describes the Officer's demeanor at this point as abrasive and rude.

Desired Resolution: Ms. Schak suggests possible training.

**Allegation:**  
 Chapter: Chapter 3  
 Section: 301 Responsibility to the Community

**Allegation Description:**

**Disposition:**  
 Chain of Command Decision: Citizen Concern  
 Discipline Decision: --  
 Suspension Period: --  
 Retention Period: --  
 Retention Date: --

**Post Appeal Decision:** --  
 Discipline Decision: --  
 Suspension Period: --

**Settlement Agreement:** --  
 Discipline Decision: --  
 Suspension Period: --

APA Suspension Review:

Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None	Review Completed: No Review Date: None Effective written reprimand: None
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<b>6. Case # 2015-0598</b>	Reported Date: 07/06/2015	Classification: B
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**Case Description:**  
 On the above date and time, Officer Javier Gonzalez was driving southbound in the 9000Blk of N. Lamar Blvd in a marked APD patrol unit. Officer Gonzalez was following behind a marked patrol unit driven by Officer Daniel Levine. Officer Levine had to slow due to traffic ahead of him making a right turn into a private driveway. Officer Gonzalez did not observe the unit ahead of him slowing down and the front of Officer Gonzalez's unit struck the rear of Officer Levine's unit.

Officer Gonzalez may have violated APD policy on the operation of police vehicle in this incident and I am requesting that an Internal Affairs investigation be opened to review this incident.

**Allegation:**  
 Chapter: Chapter 8  
 Section: 804 Department Vehicles  
 Section Sub 1: 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES

**Allegation Description:**  
 804.2 General operation of department vehicles  
 OFCA  
 EBD in lieu of 1 day suspension.  
 Gonzalez - EDB completed per date TCOLE Roster 09/30/2015.

**Disposition:**  
 Chain of Command Decision: Sustained  
 Discipline Decision: Written Reprimand (EBD Completed)  
 Suspension Period: --  
 Retention Period: --  
 Retention Date: --

APA Suspension Review:  
 Eligible: Not Reviewed  
 Approved: Not Reviewed  
 Update History: Not Reviewed  
 APA Comment (Describe why eligible/ineligible): None

**Post Appeal Decision:** --  
 Discipline Decision: --  
 Suspension Period: --

**Settlement Agreement:** --  
 Discipline Decision: --  
 Suspension Period: --

Review Completed: No  
 Review Date: None  
 Effective written reprimand: None

<b>7. Case # 2014-0883</b>	Reported Date: 10/07/2014	Classification: I
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**Case Description:**  
 10/07/2014 Complainant alleges that officer was using profanity in public RG

**Allegation:**  
 Chapter: Chapter 3  
 Section: 301 Responsibility to the Community  
 Section Sub 1: 301.2 IMPARTIAL ATTITUDE AND COURTESY

**Allegation Description:**

**Disposition:**  
 Chain of Command Decision: --  
 Discipline Decision: --  
 Suspension Period: --  
 Retention Period: 2 Years  
 Retention Date: --

APA Suspension Review:  
 Eligible: Not Reviewed  
 Approved: Not Reviewed

**Post Appeal Decision:** --  
 Discipline Decision: --  
 Suspension Period: --

**Settlement Agreement:** --  
 Discipline Decision: --  
 Suspension Period: --

Review Completed: No  
 Review Date: None

Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None	Effective written reprimand: None
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<b>8. Case # 2014-0406</b>	Reported Date: 05/15/2014	Classification: B
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**Case Description:**  
On the above date and time, Ofc. Javier Gonzalez had just completed a call for service at the apartment complex located at 12151 N. IH 35. Ofc. Gonzalez was backing his patrol unit so that he could then exit the complex. While backing ofc. Gonzalez did not see that there was a large rock in a concrete median of the complex. The back right side of Ofc. Gonzalez's bumper struck the rock causing minor damage to the patrol unit consisting of scratches and a small tear in the bumper. The rock did not appear to be damaged and ofc. Gonzalez was not injured.

**Allegation:**  
Chapter: Chapter 8  
Section: 804 Department Vehicles  
Section Sub 1: 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES

**Allegation Description:**  
804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES  
(a) Employees will operate Department vehicles in a careful and prudent manner within the guidelines of the law and Department policy. Unsafe or negligent driving is prohibited.  
  
OFCA - Written Reprimand given 06/15/14 3:00am

<p><b>Disposition:</b> Chain of Command Decision: Sustained Discipline Decision: Written Reprimand Suspension Period: -- Retention Period: 15 Years Retention Date: 06/12/2029</p> <p><u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None</p>	<p><b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --</p> <p><b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --</p> <p>Review Completed: No Review Date: None Effective written reprimand: None</p>
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<b>9. Case # 2013-0846</b>	Reported Date: 08/20/2013	Classification: B
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**Case Description:**  
On Sunday, July 28, 2013, Ofc. Javier Gonzalez was in the parking lot of the Wal-Mart located at 1030 Norwood Park to investigate a possible DWI. Ofc. Gonzalez needed to re-position his vehicle in order to record the SFST tests and began to back up. Upon backing, Ofc. Gonzalez struck a parked police unit with the left back quarter of his police unit. Damage consisted of scuff marks to Ofc. Gonzalez's unit and a dent and paint scrapes to the parked police unit.

**Allegation:**  
Chapter: Chapter 8  
Section: 804 Department Vehicles  
Section Sub 1: 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES

**Allegation Description:**  
Department Vehicles 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES  
(a) Employees will operate Department vehicles in a careful and prudent manner within the guidelines of the law and Department policy. Unsafe or negligent driving is prohibited.  
1. Vehicles will be operated in such a manner and at a rate of speed that the driver, by use of ordinary care, can avoid colliding with another vehicle, object, or person.  
2. Employees will wear a seatbelt in the front or back seat while operating or riding inside of a Department vehicle unless there is an operational, tactical, or medical need to be unsecured.  
OFCA oral reprimand given - 09/29/2013 12:40

<p><b>Disposition:</b> Chain of Command Decision: Sustained Discipline Decision: Oral Reprimand Suspension Period: -- Retention Period: 5 Years Retention Date: 09/25/2018</p>	<p><b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --</p> <p><b>Settlement Agreement:</b> -- Discipline Decision: --</p>
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<u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None	Suspension Period: --  Review Completed: No Review Date: None Effective written reprimand: None
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For Department Use Only.

Confidential



**AUSTIN POLICE DEPARTMENT**

GO# 2020-2141073  
NOT APPROVED

**GENERAL OFFENSE HARDCOPY**

LAW ENFORCEMENT USE ONLY

(\*\*LITIGATION HOLD\*\*)

**11. ARRESTED # 10 - BEUHLER, SYDNI ESTELLE**

**CASE SPECIFIC INFORMATION**

**Sex** FEMALE  
**Race** WHITE  
**Date Of Birth** [REDACTED]  
**Address** 1728 TIMBER RIDGE DR  
**Municipality** AUSTIN  
**State** TEXAS  
**ZIP Code** 78741  
**District HE Beat 2 Grid 482**  
**CELL PHONE** (409) 960-9691  
**Email** SYDNI.BEUHLER@G.AUSTINCC.EDU

**PERSON PARTICULARS**

**Ethnicity** NON-HISPANIC

**MASTER NAME INDEX REFERENCE**

**Name** BEUHLER, SYDNI ESTELLE  
**Sex** FEMALE  
**Race** WHITE  
**Date Of Birth** [REDACTED]  
**Ethnicity** NON-HISPANIC  
**Address** 1728 TIMBER RIDGE DR  
**Municipality** AUSTIN  
**State** TEXAS  
**County** TRAVIS COUNTY  
**ZIP Code** 78741  
**District HE Beat 2 Grid 482**

**PHONE NUMBERS**

**CELL PHONE** (409) 767-4276  
**Email** SYDNI.BEUHLER@G.AUSTINCC.EDU

**CHARGE SUMMARY**

**CHARGE # 1**

**Offense Date** AUG-02-2020 2211  
**Offense** RESIST ARREST SEARCH OR TRANSPORT - COMPLETED  
**Charge Statute** MA 38.03(A)  
**Charge Count** 1  
**Domestic Violence** NO





**AUSTIN POLICE DEPARTMENT**

GO# 2020-2141073  
NOT APPROVED

**GENERAL OFFENSE HARDCOPY**

LAW ENFORCEMENT USE ONLY

(\*\*LITIGATION HOLD\*\*)

**CHARGE # 2**

**Offense Date** AUG-02-2020 2211

**Offense** RESIST ARREST SEARCH OR TRANSPORT - COMPLETED

**Charge Statute** MA 38.03(A)

**Charge Count** 1

**Domestic Violence** NO

**CHARGE # 3**

**Offense Date** AUG-02-2020 2211

**Offense** OBSTRUCT HIGHWAY PASSAGEWAY - COMPLETED

**Charge Statute** MB 42.03

**Charge Count** 1

**Domestic Violence** NO

**Remarks** ORG CHARGED PED IN RDWY CLASS C

**LINKAGE FACTORS**

**Resident Status** RESIDENT OF AUSTIN

**Age Range** 22-29 YEARS

**Armed With** NONE (MUTUALLY EXCLUSIVE)

**Offense** 0905- 0 RESISTING ARREST OR SEARCH - COMPLETED

**Arrest Date** AUG-02-2020 (SUN.)

**Arrest Type** ON VIEW ARREST (LOCAL  
ARREST NO WARRANT)

**12. ARRESTED # 11 - TRIMBLE, ALYSSA BRIANNE**

**CASE SPECIFIC INFORMATION**

**Sex** FEMALE

**Race** WHITE

**Date Of Birth** [REDACTED]

**Address** 1707 LEONA ST

**Municipality** AUSTIN

**State** TEXAS

**ZIP Code** 78702

**District CH Beat 3 Grid 391**

**HOME** (512) 934-0236

**PERSON PARTICULARS**

**Place Of Birth** TEXAS

**Ethnicity** NON-HISPANIC

**MASTER NAME INDEX REFERENCE**



# AUSTIN POLICE DEPARTMENT

GO# 2020-2141073  
NOT APPROVED

## GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(\*\*LITIGATION HOLD\*\*)

roadway or else they would be subject to arrest. Protestors were given several minutes (a reasonable time) to exit the roadway, however they did not comply. Upon approaching the group of persons (approximately 150 persons) in the roadway BPOT formed a rolling wedge in order to push the group out the the roadway. I dismounted my bicycle and followed the wedge on foot, acting a support role.

As APD BPOT officers arrived I observed a white female, later identified as Sydni Beuhler to be standing in the middle of the roadway and refusing officers verbal orders to exit the roadway. APD BPOT Officers attempted to push Beuhler out of the roadway with their bicycles, while ordering Beuhler to move back. Beuhler did not comply and refused to exit the roadway. Beuhler was given one last verbal warning to back up and relied by "fuck you" and did not back up.

Due to Beuhler then and there, without legal privilege or authority, intentionally and knowingly obstruct, by rendering impassable or by rendering passage unreasonably inconvenient or hazardous a street, to-wit: 400 block of Congress Ave, to which the public or a substantial group of the public had access, by standing in the roadway with approximately 150 other persons, Beuhler was charged with Obstructing Highway or Other Passageway.

When placing Beuhler under arrest I wrapped both my arms around her and told her she was under arrest. I grabbed Beuhler and carried her over the BPOT line. I then walked Beuhler back and began to attempted to secure her in handcuffs.

Beuhler began to attempt to physically resist my efforts to place her under arrest by attempting to wrestle free from my grasp. Beuhler then began to also push against me, using the strength of her legs and refused to allow her arms to be pulled behind her back, pulling them towards her torso. During this time I yelled at Beuhler to stop resisting, but she did not comply. Due to her physical resistance Officer Gonzalez 7422 and I had to physically push her down to the ground (to her knees) and then forcefully pull her hands behind her back in order to secure the Beuhler in handcuffs.

I then held Beuhler in place while a female officer searched her incident to arrest. As this was being completed Beuhler would squirm and jump up and down, ignoring officers commands to stand still.

Beuhler was then handed over to transport officers and I then took a place in line with other BPOT officers, holding a mobile bicycle fence line.

Sgt Campos was notified of the R2R.

I am un aware of any injuries suffered by by Beuhler.

Due to Beuhler then and there intentionally prevent or obstruct, I APD Officer Smart 8674, a person Beuhler knew to be a peace officer, from effecting an

**COA 378 [CONF]  
(Gonzalez BWC)**

**FILED UNDER SEAL**

**\*Sent to the Court via electronic mail to courtroom deputy Julie Golden  
[Julie\\_Golden@txwd.uscourts.gov](mailto:Julie_Golden@txwd.uscourts.gov)**

**COA 13303 [CONF]**  
**(Suavier 22 Instagram Story Post)**

**FILED UNDER SEAL**

**\*Sent to the Court via electronic mail to courtroom deputy Julie Golden**  
[Julie\\_Golden@txwd.uscourts.gov](mailto:Julie_Golden@txwd.uscourts.gov)

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Sydni Beuhler,  
Plaintiff,  
v.

City of Austin,  
Officer Gavin Smart (AP8674), and  
Officer Javier Gonzalez (AP7422)  
Defendants.

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Case no. 1:21-cv-00054-RP

**PROPOSED ORDER**

BEFORE THE COURT is *Plaintiff's Unopposed Motion to File Response to Defendant Officers' Motion for Summary Judgment Under Seal*. The Court, having read and considered the Motion, finds that the Motion should be and is hereby **GRANTED**.

**IT IS ORDERED** that Doc. 47-1 to 47-16 be filed under seal by the Clerk of Court.

**SO ORDERED.**

**SIGNED AND ENTERED** this \_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
**HONORABLE ROBERT PITMAN**  
**UNITED STATES DISTRICT JUDGE**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**Sydni Beuhler,**  
Plaintiff,

v.

**City of Austin,  
Officer Gavin Smart (AP8674), and  
Officer Javier Gonzalez (AP7422)**  
Defendants.

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**Case no. 1:21-cv-00054-RP**

**PLAINTIFF’S UNOPPOSED MOTION TO FILE RESPONSE TO THE CITY OF  
AUSTIN’S MOTION FOR SUMMARY JUDGMENT UNDER SEAL**

COMES NOW Plaintiff Sydni Beuhler and respectfully requests leave to file her response to The City of Austin’s Motion for Summary Judgment [Doc. 43] with its exhibits under seal. Plaintiff’s response and its exhibits contain information protected by Order of this Court. [Doc. 24]. Pursuant to local rule CV-5.2, the documents intended to be kept under seal are filed as an exhibit to this sealing motion. Counsel for Defendants is unopposed to this motion.

**Dated: May 12, 2023**

**Respectfully submitted,  
HENDLER FLORES LAW, PLLC**

/s/ Laura A. Goettsche  
Scott M. Hendler - Texas Bar No. 9445500  
[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)  
Laura A. Goettsche - Texas Bar No. 24091798  
[lgoettsche@hendlerlaw.com](mailto:lgoettsche@hendlerlaw.com)  
Grayson E. McDaniel- Texas Bar No. 24078966  
[gmcDaniel@hendlerlaw.com](mailto:gmcDaniel@hendlerlaw.com)  
Stephen Demik - *PHV*  
[sdemik@hendlerlaw.com](mailto:sdemik@hendlerlaw.com)  
901 S. MoPac Expressway  
Bldg. 1, Suite #300  
Austin, Texas 78746  
Telephone: (512) 439-3200  
Facsimile: (512) 439-3201

***ATTORNEYS FOR PLAINTIFF***

**CERTIFICATE OF CONFERENCE**

I certify that counsel for defendants is unopposed to this Motion, per our email exchange on May 12, 2023.

/s/ Laura A. Goettsche  
Laura A. Goettsche

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was filed via the court's CM/ECF system on May 12, 2023, which will serve all counsel of record.

/s/ Laura A. Goettsche  
Laura A. Goettsche

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**Sydni Beuhler,**  
Plaintiff,

v.

**City of Austin,  
Officer Gavin Smart (AP8674), and  
Officer Javier Gonzalez (AP7422)**  
Defendants.

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**Case no. 1:21-cv-00054-RP**

**PLAINTIFF’S RESPONSE TO DEFENDANT CITY OF AUSTIN’S  
MOTION FOR SUMMARY JUDGEMENT**

COMES NOW Plaintiff Sydni Beuhler and respectfully files her *Response to Defendant City of Austin’s Motion for Summary Judgement* [Doc. 43], and in support would show the Court the following:

**I. Procedural Background**

This case arises out of Defendant City of Austin’s (“Defendants”) practices of permitting City police officers to use excessive force against protestors and violate protestors’ constitutional rights, its practices and policies of allowing City officers to fail to inform individuals under arrest of their legal rights (particularly their right to remain silent and their right to an attorney), and ongoing practices and policies of not disciplining City officers for using unnecessary and excessive use of force or making violent and unprofessional public statements. All of Defendant’s policies and practices resulted in Plaintiff Sydni Beuhler being arrested by City officers to punish her for participating in a peaceful protest against police brutality, being subjected to excessive force during the arrest, being unlawfully charged with resisting arrest, and not being Mirandized during her entire hours-long recorded arrest and detention.



Defendant's policies and practices at issue in this case caused Plaintiff damages. Defendant's policies and practices at issue in this case need to change to prevent similar or worse outcomes for other individuals exercising their constitutional rights and to prevent the chilling of individuals exercising their constitutional rights. Defendant argues that Plaintiff has not "produced sufficient evidence to raise an issue of material fact to demonstrate that: (1) the City is liable for failing to train APD officers or (2) the City is liable for failing to adequately supervise or discipline APD officers." Doc. 43 at 10. But this is false. A number of material fact issues persist regarding Plaintiff's claims against Defendant and, accordingly, Defendant's motion should be denied.

On April 14, 2023, Defendant filed a Motion for Summary Judgment [Doc. 43]. On April 27, 2023, this Court granted Plaintiff's Unopposed Motion for an Extension of Time to file her Response and ordered Plaintiff to file her Response by May 12, 2023. This Response is, accordingly, timely filed.

## **II. Standard of Review**

Summary judgment is proper when the moving party conclusively establishes that there are no genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986). In deciding a motion for summary judgment, the Court must view the evidence in the light most favorable to the nonmovant and indulge all reasonable inferences in favor of the nonmovant—in this case, Plaintiff. *Dillon v. Rogers*, 596 F.3d 260, 266 (5th Cir. 2010). A local government entity is subject to suit under 42 U.S.C. § 1983 "if it is alleged to have caused a constitutional tort through 'a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.'" *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121 (1988) (quoting *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978)). A local governmental entity may also be liable where the constitutional violation is caused by a governmental custom or practice, even

if such custom was not formally adopted. *See Monell*, 436 U.S. at 690–91 (“[L]ocal governments . . . may be sued for constitutional deprivations visited pursuant to governmental ‘custom’ even though such a custom has not received formal approval through the body’s official decisionmaking channels.”).

“[M]unicipal liability under Section 1983 requires proof of three elements: a policymaker; an official policy; and a violation of constitutional rights whose moving force is the policy or custom.” *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001). Liability for failure to promulgate policy, failure to train, and failure to supervise “require that the defendant have acted with deliberate indifference.” *Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011). A “pattern of similar constitutional violations by untrained employees” can establish “deliberate indifference.” *Connick v. Thompson*, 563 U.S. 51, 62 (2011). If the defendant city’s “policy of inaction” persists despite actual or constructive notice that its program will cause constitutional violations, that “is the functional equivalent of a decision by the city itself to violate the Constitution.” *Canton v. Harris*, 489 U.S. 378, 395(1989) (O’Connor, J., concurring in part).

### **III. Relevant Facts**

On August 1, 2020, Plaintiff attended a protest on Congress Avenue in Austin. Beuhler Dep. Tr: 9:21–10:6 (Exhibit A). She was protesting both the recent murder of her friend, Garrett Foster, and in support of Black Lives Matter. Beuhler Dep. Tr: 37:1–21 (Ex. A). At some point during the protest, officers arrived. The officers began clearing protestors from a roadway with a triangle formation of bicycles. Miller Dep. Tr: 36:6–21 (Exhibit B). The officers used pepper spray and bicycles to physically push several protestors out of the roadway. COA 768 (Exhibit C). Plaintiff did not interact with the bicycles nor was she pepper sprayed. Miller Dep. Tr: 81:8–13 (Ex. B).

At this time, the City of Austin had expanded its sidewalks to allow for COVID-19 social distancing. Staniszewski dep. Tr: 193:18–194:7 (Exhibit D); also *Austin City Council Resolution 20200611-051*, CITY OF AUSTIN, June 11, 2020, [https:// see services.austintexas.gov/edims/document.cfm?id=342167](https://services.austintexas.gov/edims/document.cfm?id=342167) (describing adoption of the “Imagination Austin Comprehensive Plan,” which included creating protected bicycle lanes on Congress). The expanded sidewalks were marked by orange traffic markers. Staniszewski dep. Tr: 194:8–23 (Ex. D). At one point Plaintiff was in the street:



COA 376, Officer Smart’s Body-Worn Camera Footage at 1:25:087 (Plaintiff circled in green) (Exhibit E). However, when she was arrested, Plaintiff had moved away from the street and was standing just inches away from the expanded sidewalk:



BEU 000491, Bystander video 4 (Exhibit F). Plaintiff was in the process of complying with officer orders, having walked within inches of the expanded sidewalk, when she appeared to say something to the helmeted officers as they began to push the demonstrators backwards. *See* BEU 000559 - 000568 (Expert Report of John Lenoir) (Exhibit G). She was then singled out for arrest. *See id.* (stating that “[a] large officer standing behind the front-line officers holding bicycles lunged forward just as the police bicycle barricade line reached Buehler.”). Plaintiff was arrested moments after officers began clearing the road. There were other protestors in the roadway at that moment, but only Plaintiff was arrested. *See id.* at 5 (The videos reviewed showed Buehler being the only person arrested from the line of demonstrators with whom she was standing.”); Miller Dep. Tr: 79:23–80:10 (Ex. B). Officer Smart arrested Plaintiff by grabbing her, lifting her off the ground. Then bringing her to her knees in the street. His unreasonable decision to pick Ms. Beuhler up not only applied disproportional and unlawful force, but also caused his body-worn camera (“BWC”) to turn off—a further confirmation that the arrest was improper. Rather than arrest, lower levels of force were used on other protestors; they were pushed with bicycles and pepper sprayed. Miller

Dep. Tr: 80:8–24 (Ex. B). Plaintiff, however, was grabbed in a “take down” by Officer Smart. Miller Dep. Tr: 80:8–17 (Ex. B). Additionally, Officer Gonzalez used a level two pain-compliance technique when arresting Plaintiff, known as a wrist lock, on Plaintiff’s right wrist, which resulted in Beuhler being in so much pain she thought her wrist was breaking. *See* Miller Dep. Tr: 127:23–129:12 (Ex. B); Gonzalez Dep. Tr. at 95:4-25 (Exhibit H) (describing performing a wrist lock on Plaintiff despite her offering no resistance except reflexive “stiffening”). This pain-compliance technique was used despite Plaintiff offering no resistance. *See* Allare Dep. Tr. at 87:21–88:7 (Exhibit K) (testifying that Plaintiff was not resisting when Officer Allare held one of her hands in place during the arrest); Beuhler Dep. Tr. Tr: 55:13–56:12 (Ex. A).

Plaintiff formally complained to Defendant that she was subjected to unnecessary and excessive force during her arrest. *See, e.g.*, Gonzalez Dep. Tr. at 161:10–163:3 (Ex. H) (describing complaint and lack of discipline). Defendant took no disciplinary action against any officer, including Officer Smart, whose unprofessional actions led to this BWC being shut off during Plaintiff’s arrest. Smart Dep. Tr. at 79:13–16 (Exhibit I) (testifying he received “no” discipline with regard to his actions during Plaintiff’s arrest); *id.* at 79:10–12 (testifying that his BWC would have “[m]ost likely” continued running had he not grabbed and picked up Plaintiff).

Undisputedly, at no point during Plaintiff’s arrest and hours-long transport to jail was she given a Miranda warning by any officer. Smart Dep. Tr. at 97:12–14 (Ex. I) (“I never Mirandized her[.]”); Beuhler Dep. Tr. at 182:10-184:22 (Ex. A) (describing that throughout arrest and detention she was never Mirandized); Martinez Dep. Tr. at 83:16–19 (Exhibit J) (officer who transported Plaintiff for hours never Mirandized her). She was never advised of her right to remain silent, and she was never informed that she was entitled to an attorney. One officer threatened her with an additional felony during transport without Mirandizing Plaintiff. Martinez Dep. Tr. at 99:10–15

(Ex. J) (discussing that Plaintiff was threatened with additional criminal charge while in custody and without her having been Mirandized). Plaintiff formally complained that she was never Mirandized. *See, e.g.*, Gonzalez Dep. Tr. at 161:10–163:3 (Ex. H) (describing complaint and lack of discipline). Defendant took no disciplinary action regarding any of the officers. *Id.* The City’s inaction will perpetuate a practice and policy that will lead to the deprivation of individuals’ constitutional rights.

#### **IV. Legal Argument and Analysis**

##### **1. Material Fact Questions Persist as to Whether Defendant Violated Plaintiff’s Constitutional Rights**

Defendant argues that Plaintiff has not “produced sufficient evidence to raise an issue of material fact to demonstrate that: (1) the City is liable for failing to train APD officers or (2) the City is liable for failing to adequately supervise or discipline APD officers.” Doc. 43 at 10. But this is false. A number of material fact issues persist regarding Plaintiff’s claims against Defendant and, accordingly, Defendant’s motion should be denied.

###### **a. Officer Defendants Violated Plaintiff’s First Amendment Rights.**

The validity of a First Amendment claim hinges on probable cause for the arrest. *Westfall v. Luna*, 903 F.3d 534, 550 (5th Cir. 2018). When there is a disputed question of fact on whether there was probable cause, a First Amendment claim cannot be resolved on summary judgment. *Mesa v. Prejean*, 543 F.3d 264, 273 (5th Cir. 2008). For the reasons set forth in Plaintiff’s Response to Officers’ Motion for Summary Judgment, which is incorporated by reference herein, the arrest of Plaintiff was not based on probably cause but rather on her exercise of her constitutionally-protected rights. Thus, whether officer defendants violated Plaintiff’s First Amendment rights is a genuine issue of material fact.

###### **b. Officer Defendants Violated Plaintiff’s Fourth and Fourteenth Amendment Rights.**

“When the arrest occurred, [Plaintiff] had a clearly established right to be free from excessive force, and it was clearly established that the permissible degree of force depends on the *Graham* factors.” See *Westfall v. Luna*, 903 F.3d at 549. For the reasons set forth in Plaintiff’s Response to Officers’ Motion for Summary Judgment, which is incorporated by reference herein, the arrest of Plaintiff was not objectively reasonable under the *Graham* factors. Accordingly, officer defendants are not entitled to qualified immunity on Plaintiff’s excessive-force claim and an issue of material fact exists as to whether Plaintiff’s Fourth and Fourteenth Amendment rights were violated.

## **2. Material Fact Questions Persist as to Whether the City Maintains Unconstitutional Policies**

a. The City Has a Policy of Using Excessive Force Against Protestors and Violating Protestor’s Rights.

The City and Austin Police Department (“APD”) maintain a policy of violating protestor’s rights. APD trains its officers to arrest individuals in a crowd that the officer considers to be an “instigator.” Smart Dep. Tr. at 93:21–94:23 (Ex. I). This practice encourages officers to single out protestors for arrest who are vocalizing their views louder than the other protestors. At the time of this incident, there were protestors in the street that had not attempted to move towards the sidewalk. There were protestors that had been pepper sprayed, and there were protestors that were pushed with bikes. But the only protestor that was arrested was Plaintiff, the individual who exercised her First Amendment by cursing at Officer Smart. Further, there is evidence that Plaintiff was complying with orders by walking to the sidewalk, from which she was merely inches away, when she was arrested immediately after engaging in constitutionally protected speech. BEU 000551 (Expert Report of John Lenoir) (Ex. G). Officer Smart was following APD’s policy and practice of permitting the arrest of protestors based on the content of their speech. There is a

genuine question of material question on whether APD's policy led to the violation of Plaintiff's constitutional rights.

b. APD Maintains a Policy of Not Investigating and Disciplining Officers.

Officer Smart received no discipline of any kind relating to his actions in effectuating Plaintiff's arrest. Smart Dep. Tr. at 80:13–16, 124:6–9 (Ex. I). Officer Gonzalez did not receive any discipline relating to his actions in arresting Plaintiff. Gonzalez Dep. Tr: 148:6–15 (Ex. H). Officer Allare received no discipline from Plaintiff's arrest. On the contrary, she never received any communications or feedback regarding the arrest. Allare Dep. Tr: 96:16–97:1 (Ex. K). In fact, Officer Allare did not know of any officers who got reprimanded because of events that took place during the protests. Allare Dep. Tr: 99:23–100:1 (Ex. K). APD has a history of not reprimanding officers for failure to report their actions. Allare Dep. Tr: 30:12–15 (Ex. K) (“Q. So in your experience, officers, generally, were not getting reprimanded for not reporting their actions? A. Right.”). Officer Gonzalez testified that failing to include a use of force in his report—in this case, failing to mention that he knelt on Plaintiff's back—would only be important if he used that force “intentionally.” Gonzalez Dep. Tr: 122:25–123:11 (Ex. H). Officer Gonzalez had previously been investigated for kneeling on an individual, but also had no memory of that incident. Gonzalez Dep. Tr: 165:19–23 (Ex. H).<sup>1</sup>

Further, Officer Gonzalez posted a social media video in which he compared protestors in Mexico to those in the United States, he said as follows:

Man, boys in blue over there holding it down. Where these punk-ass protestors at, man? Get slapped in the fucking face over here—those lazy bum motherfuckers. There ain't no unemployment over here in this third-world country. All you cry-baby bitches, come to this third-world country, see how far you get begging and

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<sup>1</sup> Notably, Officer Gonzalez also referred to the murder of George Floyd, who died by being knelt on, as an “accident.” Gonzalez Dep. Tr. at 67:19–68:4 (Ex. H).



crying and getting government assistance. You motherfuckers will die, you weak bitches.

COA 13303 (Exhibit L). A civilian complained about this post, and it was ostensibly investigated by APD and administratively closed with no discipline. COA 008664–65 (Exhibit M); *see also* Gonzalez Dep. Tr. at 151:22-154:8 (Ex. H) (testifying that he received no discipline for complaint regarding the above post). APD was put on notice of this Officer’s extremely negative sentiment towards protestors and propensity to knell on individuals when arresting them and failed to take any action to discipline him. APD’s policy of not investigating and disciplining officers raises a genuine issue of material fact on whether APD investigations are cursory “rubber stamps” designed not to investigate, but only to exculpate Officers of any wrongdoing, leading to the violation of individual’s constitutional rights.

### **3. Material Fact Questions Persist as to Whether the City Was Deliberately Indifferent to Their Unconstitutional Practices**

a. The City Failed to Train and Supervise Officers Control a Crowd During Protests. APD failed to train and adequately supervise its officers to avoid using excessive force when arresting individuals and controlling crowds during a protest. APD trains its officers to pick individual’s up to effectuate an arrest. Smart Dep. Tr: 71:4–9 (Ex. I). APD trained officers on how to use this force without training them on when to use it appropriately and without adequately supervising officer’s use of this force. Plaintiff is of small build, much smaller than the Defendant Officers. Miller Dep. Tr: 141: 18–22 (Ex. B). Plaintiff did not resist her arrest before force was used against her. Smart Dep. Tr: 69:5–9 (Ex. I). Officer Smart made no prior attempt to de-escalate or ask Plaintiff to comply with officer’s commands before grabbing her. Miller Dep. Tr: 152:9–16 (Ex. B). He did not tell her she was under arrest or ask her to turn around and place her hands behind her back. Smart Dep. Tr: 69:20–22 (Ex. I). His first interaction with Plaintiff was a “takedown.” A “takedown” is a level three force on APD’s five-level, use-of-force continuum. *Id.*

at 58:21–59:3, 59:21–23). Officer Smart did not use or attempt to use a level four force, basic physical restraint, to arrest Plaintiff. *Id.* at 59:4–19. He did not attempt to use “zero” force against Plaintiff by simply asking her to turn around and put her hands behind her back. Plaintiff used no force to resist her arrest and in response Officer Smart used an excessive, level three force against her. The amount of force used by Officer Smart far exceeded the need and was unreasonable. *See* BEU 000553-55 (Expert Report of John Lenoir) (Ex. G) (“Nothing in the videos reviewed suggests that Beuhler posed an actual or reasonably perceived threat to the police officers or others.”). APD’s failure to train and adequately supervise officers to avoid using excessive force resulted in the violation of Plaintiff’s constitutional right to be free of excessive force.

APD trains its officers to kneel on an individual to effectuate an arrest. Smart Dep. Tr: 56:10–21 (Ex. I). The officer Defendants forced Plaintiff to her knees. *See* COA 000130 (Exhibit N). APD trained officers on how to use this force without training them on when to use it appropriately and without adequately supervising officer’s use of this force. For example, Officer Gonzalez claimed both that APD does not train officers to kneel on someone to arrest them and that he has never kneeled on an individual when arresting them. Gonzalez Dep. Tr: 80:25–81:7 (Ex. H). Despite Officer Gonzalez’s repeated assertion that he has “never placed [his] knee on [Plaintiff’s] back” and that the only force he used against Plaintiff was a level two wrist lock, the evidence in the record is clear that Officer Gonzalez knelt on Plaintiff’s back when arresting her. *Compare* Gonzalez Dep. Tr: 80:25–81:7 (Ex. H); 108:24–109:3; 174:5–12; *with* COA 769 (bystander video); COA 402–405 (exhibit O) (Internal Affairs Class D Memorandum finding that “Officer Gonzalez placed his right knee on Ms. Beuhler’s upper right back arm area and right side”); Miller Dep. Tr: 148:12–20 (Ex. B); *see also* BEU 000551, 553–54 (Expert Report of John

Lenoir) (Ex. G) (“She was held face down on the pavement by officers kneeling on her back while being handcuffed.”).

Further, Officer Gonzalez also used a wrist lock on her right arm. COA 098 (Exhibit P); *see also* Miller Dep. Tr. 129:4–6 (Ex. B). This is despite Plaintiff’s repeated insistence that she was not resisting. COA 378. Officer Allare, who controlled Plaintiff’s left arm, stated that she did not encounter any resistance. Allare Dep. Tr. 88:4–7 (Ex. K). Officer Gonzalez used excessive and unnecessary force against Plaintiff. BEU 000554, 556 (Expert Report of John Lenoir) (Ex. G). Using a pain-compliance technique against an individual who was not resisting exceeds the need and is an unreasonable force to effectuate an arrest. APD’s failure to train and adequately supervise its officers to avoid using excessive force resulted in the violation of Plaintiff’s constitutional right to be free of excessive force.

b. Defendant and APD failed to train its officers on when the individuals they arrest may use justified force against the officers effectuating the arrest, and to adequately supervise their officers to ensure the same.

The Texas Penal Code Section 9:31(c) provides that “The use of force to resist an arrest or search is justified: (1) *if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search;* and (2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer’s (or other person’s) use or attempted use of greater force than necessary.” (emphasis added). However, APD has failed to train its officers on when an individual’s use of force in resisting an arrest is justified. Officer Smart believed that an individual is only justified in using force to resist their arrest if the officer is “not exercising [their] duties in good faith and within the law and was just intentionally trying to harm the person.” Smart Dep. Tr. 80:6–16 (Ex. I). Officer Gonzalez believed that the only time an individual could use force to

resist their arrest was when they “truly believe[d] that the police officer is using unreasonable force.” Gonzalez Dep. Tr: 71:4–13 (Ex. H).

In this case, Officer Smart “lunged” at Plaintiff and violently arrested her, using Level Three force, and Officer Gonzalez applied level two force, before Plaintiff ever offered any resistance at all—as stated before, all she had done was engage in constitutionally protected speech. BEU 000551 (Expert Report of John Lenoir) (Ex. G). A jury could reasonably find the Plaintiff used the force reasonably necessary to protect herself against the Officer’s use of greater-than-necessary force. APD did not train or adequately supervise its officers regarding when the individuals they arrest may use force against them, leading to additional excessive force being used against individuals in violation of their constitutional rights.

#### **4. These failures continued after APD was put on notice that their practices caused constitutional violations.**

The murder of George Floyd began a series of unprecedented protests. Miller Dep. Tr: 26:19–27:25 (Ex. B). Protestors in Austin were injured by law enforcement during the George Floyd protests. *See* Allare Dep. Tr: 65:6–8 (Ex. K); Staniszewski Dep. Tr: 185:14–186:2 (Ex. D). The City of Austin did not enact any change in policy in response to these injuries or any change in policy that would have impacted “what these officers did regarding [Plaintiff].” Miller Dep. Tr: 29:4–8, 32:14–16 (Ex. B). Apart from changing its policies regarding the use of bean-bag rounds, the City did not take any measures with regards to personnel, resources, and tools during this time. Miller Dep. Tr: 35:3–17 (Ex. B). Austin Police Department did not change or provide any additional training apart from changing the way they utilize beanbag rounds and tear gas. *Id.* at 49:9–50:2.

The City and Chief Manley were deliberately indifferent to the constitutional violation their policies caused. The City made no changes in policy between May 30th protests and August 1st.

Miller Dep. Tr. 29:4–8, 32:14–16 (Ex. B). APD failed to train officers how to not needlessly injure protestors after protestors were injured. *See* Allare Dep. Tr. 65:6–66:20 (Ex. K). Officer Smart could not recall any training mandated by APD regarding protest policing during that time. Smart Dep. Tr. 117:7–17 (Ex. I). Thus, by their policy of inaction, the City and Chief Manley condoned and ratified the civil rights violations and the conduct that caused injuries to Sydni Beuhler and others on August 1, 2020 by continuing the practices and policies that lead to similar and more severe injuries earlier in the year.

## V. Conclusion

The evidence in the record raises genuine questions of material fact regarding whether the City’s polices and practices that violate the constitutional rights of individuals. The City’s summary judgment motion should respectfully be denied.

**Dated: May 12, 2023**

**Respectfully submitted,**  
**HENDLER FLORES LAW, PLLC**

/s/ Laura A. Goettsche  
Scott M. Hendler - Texas Bar No. 9445500  
[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)  
Laura A. Goettsche - Texas Bar No. 24091798  
[lgoettsche@hendlerlaw.com](mailto:lgoettsche@hendlerlaw.com)  
Grayson E. McDaniel- Texas Bar No. 24078966  
[gmcDaniel@hendlerlaw.com](mailto:gmcDaniel@hendlerlaw.com)  
Stephen Demik - PHV  
[sdemik@hendlerlaw.com](mailto:sdemik@hendlerlaw.com)  
901 S. MoPac Expressway  
Bldg. 1, Suite #300  
Austin, Texas 78746  
Telephone: (512) 439-3200  
Facsimile: (512) 439-3201

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was filed via the court's CM/ECF system on May 12, 2023, which will serve all counsel of record.

/s/ Laura A. Goettsche  
Laura A. Goettsche

Transcript of the Testimony of  
**Sydni Beuhler**

March 22, 2023

Sydni Beuhler v. City of Austin, Officer Gavin Smart, and  
Officer Javier Martinez

Givens Court Reporting  
sgivens@austin.rr.com  
(512) 301-7088

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER, §  
§  
Plaintiff, §  
§  
v. § CIVIL ACTION NO.  
§ 1:21-CV-00054-RP  
§  
CITY OF AUSTIN, OFFICER §  
GAVIN SMART, and OFFICER §  
JAVIER GONZALEZ, §  
§  
Defendants. §

\* \* \* \* \*

THE VIDEOTAPED ORAL DEPOSITION OF  
SYDNI BEUHLER,  
March 22, 2023

\* \* \* \* \*

ORAL DEPOSITION OF SYDNI BEUHLER, produced as a witness at the instance of the Defendants and duly sworn, was taken in the above styled and numbered cause on the 22nd day of March 2023, from 10:11 a.m. to 12:37 p.m. and from 1:32 p.m. to 3:34 p.m., respectively, before Sandra S. Givens, CSR, in and for the State of Texas, reported by machine shorthand method, at Austin City Hall, 301 W. 2nd Street, 4th floor, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure.

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A P P E A R A N C E S

FOR THE PLAINTIFF:

Ms. Grayson E. McDaniel  
HENDLER FLORES LAW, PLLC  
901 S. MoPac Expressway  
Building 1, Suite 300  
Austin, Texas 78746  
(512) 439-3200  
gmcdaniel@hendlerlaw.com

FOR THE DEFENDANTS:

Mr. Monte L. Barton, Jr.  
Assistant City Attorney  
Ms. Carol Smith  
Legal Assistant  
CITY OF AUSTIN  
P.O. Box 1546  
Austin, Texas 78767  
(512) 974-2409  
monte.barton@austintexas.gov  
carol.smith@austintexas.gov

VIDEOGRAPHER:

Mr. Walter Bryan  
Captis Legal Video

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1 A Yes.

2 Q And previously there had also been another

3 defendant named Anne Allare, and I understand she's

4 been dismissed from the lawsuit.

5 A Yes.

6 Q You're aware of that whole --

7 A Yes.

8 Q -- process? Okay. Well, a lot of what I'm

9 going to do today, then, is to ask you questions about

10 the complaint and the facts and circumstances leading

11 up to that. And then you've also asked to recover

12 damages for personal injuries, and so I'll necessarily

13 ask you a lot about your personal medical history and,

14 and that sort of thing as well. So I'm just telling

15 you where I'm going.

16 A Yeah.

17 Q And I hop around and jump and skip, so again,

18 if you get kind of dazed or confused about what I'm

19 asking, don't hesitate to slow me down and I can --

20 A Okay.

21 Q -- go back and pick that up. So from the

22 complaint I understand that you are suing the city and

23 these police officers out of an event that happened

24 on --

25 A August 1st.

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1 Q -- August 1st, thank you, 2020. That was on

2 a Saturday, and was it approximately 7 o'clock p.m.?

3 A Yeah. Around that time.

4 Q Okay. And do I understand that this incident

5 in its entirety happened in or on Congress Avenue?

6 A Yes.

7 Q Okay. And then I've read somewhere that it

8 was near the intersection of 4th Street. Do you recall

9 whatever street was sort of near?

10 A I think may- I'm not a hundred percent sure,

11 but it was on the intersection of a street. I think it

12 was probably -- that's probably accurate.

13 Q Okay. But in any event, all the events we're

14 going to talk about today happened on Congress Avenue.

15 A Yeah.

16 Q Okay. Well, I think there's a lot of the

17 video in this case. I wasn't really sure how to

18 approach it. So my initial thought is just to watch it

19 first and then ask some questions about it.

20 A Okay.

21 Q And so there's about four videos, and I may

22 stop while that's going on and ask you some questions.

23 A Okay.

24 Q I guess the first one to watch will be

25 Officer Smart's --

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1 MS. SMITH: Smart?

2 MR. BARTON: -- video. And this

3 big screen right here I hope will show everything.

4 VIDEOGRAPHER: Would you like the

5 camera on the screen, sir?

6 MR. BARTON: Yeah. Does that work

7 pretty well?

8 VIDEOGRAPHER: Yes, sir.

9 MR. BARTON: Okay. Yeah. I think

10 so.

11 Q While we're setting that up let me ask you,

12 have you seen any of the videos?

13 A I've seen a couple of them. Yeah.

14 Q Okay.

15 A Some of them I sent -- I had from friends on

16 the -- are you talking about the body-cam footage?

17 Q Well, really all of it. That's a --

18 A Yeah.

19 Q -- good thing before we start. I'll just ask

20 you, in preparation for your deposition here today did

21 you watch any videos?

22 A Only one with the body cam, and then the

23 other videos I've seen, like, all of them, because they

24 were, like, my friends at the protests --

25 Q Okay.

Page 11

1 A -- took videos.

2 Q Which one of the body cam did you see?

3 A I'm not sure. It might have been Smart.

4 THE WITNESS: Was it Smart, do you

5 know (addressing Ms. McDaniel)?

6 A It was the first body cam. Yeah. I think it

7 maybe was, but I'm not a hundred percent.

8 Q Did it cut off in the middle? In other

9 words, his video I think we'll see cuts off at some

10 point. Do you recall if the video you saw cut off?

11 A It was the one that went through being in the

12 cop car and transporting.

13 Q Transporting you?

14 A Yeah. It was before the transport and then,

15 like, into the transport.

16 Q Okay. Well, I don't think that's one we're

17 going to watch today, but we might. What other

18 videos -- you saw a video of the body-worn cam that

19 you've just mentioned, and then how many others did you

20 watch?

21 A I don't know exactly how many others, but a

22 lot of the ones that were taken from video footage from

23 outsiders were people I knew. So I watched them a long

24 time ago right when the incident occurred. But yeah, I

25 would say I viewed most of the ones that were taken by

Page 12

3 (Pages 9 to 12)

1 A We were actually protesting Garrett Foster,  
2 and he was a regular. But he got killed, and that's  
3 what this protest -- it was Black Lives Matter, but it  
4 was also, like, in remembrance of him. So I think a  
5 lot of people were out there too in remembrance of him.  
6 So it wasn't just protest groups. It was, like,  
7 probably, like, family, friends of him. It was where  
8 his memorial was set up.

9 Q Okay. So the reason you were there on this  
10 particular day was primarily, would it be fair to say,  
11 to --

12 A Protect his memorial.

13 Q Garrett Foster.

14 A Yeah.

15 Q And then as you also said, it was -- that was  
16 in part an offshoot also of the --

17 A Black Lives Matter.

18 Q -- Black Lives Matter.

19 A Yeah.

20 Q And so you personally knew Garrett Foster.

21 A Yeah. From the protests.

22 Q Before the -- and I'm just going to refer to  
23 them generally as the George Floyd protests, because I  
24 think that's how most of the world refers to them.  
25 Before the George Floyd protests that began in May of

Page 37

1 2020 had you been to any other protests?  
2 A Yes, I did. I did. I would do -- I didn't  
3 protest as much as I did after this occurred, but I  
4 will say I was out there. Like, every women's march  
5 there was; any Pride, like, Pride protests or any of  
6 that I was out there when there was.

7 Q Prior to --

8 A Yes.

9 Q -- 2020.

10 A Yeah.

11 Q Prior to August 1.

12 A So I would say, like, a few times a year.

13 Q Okay. And this is just a complete guess, I  
14 mean, whatever guess you can put down: How many  
15 protests do you think you had been to prior to May  
16 2020?

17 A Oh, like, my whole life?

18 Q Yeah.

19 A I'd probably say 10 to 15.

20 Q Okay. And for the topics that you just  
21 mentioned?

22 A Yes. Or like, you know -- yeah. Mainly that  
23 or the election, you know, that kind of thing.

24 Q Okay. And where were most of the protests  
25 you attended?

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1 A Most of them were at the capitol.

2 Q Okay.

3 THE REPORTER: Monte, when you get  
4 to a place where we can take a short break...

5 MR. BARTON: Yes. Now is a  
6 perfect time for me.

7 VIDEOGRAPHER: This is the end of  
8 media number 1. We're now off the record. The time is  
9 10:57 a.m.

10 (At 10:57 a.m. the proceedings  
11 recessed, continuing at 11:09 a.m.)

12 VIDEOGRAPHER: This is media number  
13 2. We're now back on the record, the time is 11:09  
14 a.m.

15 Q (By Mr. Barton) Okay, Ms. Beuhler, just a  
16 couple more questions I think about this, and then  
17 we'll probably move on to another video. But do I  
18 understand that, from what you said a few minutes ago,  
19 this was the first protest you had been to where you  
20 wore goggles and --

21 A Yeah.

22 Q Okay. And you mentioned just briefly that  
23 you knew Garrett Foster?

24 A (Nodding head)

25 Q And did you know him personally?

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1 A We talked a few times at the protests, but  
2 mostly being out there with everyone was, like, enough  
3 to know each other, you know? Yeah.

4 Q Were you at the protest or the event where he  
5 was shot?

6 A I arrived, like, after just to help everyone,  
7 like, get back on their feet and, like, be there for  
8 everyone. But I wasn't there whenever it happened.

9 Q Okay. All right. I think let's move on to  
10 the next video, and I think at this point it'll be the  
11 Gonzalez video.

12 MR. BARTON: And has that -- it's  
13 been made a --

14 MS. SMITH: Yes.

15 MR. BARTON: -- exhibit already?

16 MS. SMITH: The Gonzalez video was  
17 Exhibit 11 --

18 MR. BARTON: Okay.

19 MS. SMITH: -- to Officer  
20 Gonzalez's deposition. It is from defendant's  
21 production Bates-stamped COA (inaudible) -78.

22 THE REPORTER: I didn't hear the  
23 number.

24 THE WITNESS: COA378.

25 MS. SMITH: Yeah. Bates-number

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1 another thing that threw me off. Like, they don't even  
2 check and see if there was a woman right by y'all. Why  
3 did y'all just go straight to assuming, Oh, she's a  
4 woman, I'm going to search her? Why didn't they  
5 call -- why didn't they check and see? Because  
6 obviously there was a woman.

7 Q Okay. Anything, any other things that you  
8 see that you disagree with?

9 A I mean, just the entire situation, but how it  
10 was handled. But no, not -- I think I've listed pretty  
11 much all of it.

12 Q Okay. Okay. Did you talk with Micalah about  
13 this incident?

14 A Yeah.

15 Q And when's the first time you spoke with her  
16 about it?

17 A She's the one who got me -- I talked to her  
18 while I was -- I finally -- I think I talked to her in  
19 the jail, or it might have been right after. She's  
20 the one who got an attorney once she noticed that it  
21 was me, got someone to come, like, get me out. Or  
22 what's it called where they bail you out? The, the  
23 not a --it's like the --

24 MS. McDANIEL: Bondsman?

25 A Bondsman. Yeah.

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1 Q Okay. And did you talk to anybody in that  
2 process from when you got into the patrol car until --

3 A The officer.

4 Q Okay.

5 A And the two girls who were on the metal bus.  
6 We both had similar -- we all three had similar  
7 experiences. Yeah.

8 Q Do you know the names of those two girls?

9 A No, I don't. I just met them on the bus, and  
10 they were telling me about their experience, and I was,  
11 like, "Oh, my God, that happened to me." That was just  
12 kind of how that --

13 Q What, what was their experience, to the  
14 extent --

15 A They were --

16 Q -- you recall?

17 A -- yelling "stop resisting" over them when  
18 they weren't resisting arrest, and that was similar to  
19 what happened with me when they were yelling and I was  
20 on the ground and they were yelling "stop resisting."  
21 But there's no literal no way I could have resisted,  
22 and that's what we were talking about.

23 Q Okay. So you -- is it your testimony you  
24 were not resisting at all?

25 A I don't feel like I was resisting. I don't

Page 55

1 Q How were you transported to the -- was it to  
2 the jail you went or, or were you --

3 A I went to so many locations.

4 Q Okay.

5 A Yeah. I sat in that car for about 30 minutes  
6 parked in front of the protests, and they went -- they  
7 were standing outside of the car. And they would,  
8 like, crack the window a little bit every once in  
9 awhile to let me get, like, air or whatever, and then  
10 they, like, drove me to another location where they  
11 searched me again. And it was, like, in a carport, and  
12 I was there for about I guess 30 minutes. That was  
13 another 30-minute process. And then they drove me to  
14 another location, parked on a street -- I forgot which  
15 street it was.

16 And then they took me out of the car,  
17 took my cuffs off and put me in zip ties and then put  
18 me on a metal bus, and I sat there for about another 30  
19 minutes. And within that 30 minutes two girls came on  
20 the metal bus and were taken off the metal bus. And  
21 then they took me off the metal bus and put me on a big  
22 bus with the rest of the protestors, and then that's  
23 when they proceeded to take me to the jail. So I think  
24 going to the jail was, like, probably about a two-hour  
25 process, just transporting.

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1 feel like I was resisting. Like, I was just taken up  
2 into -- and then they put me -- I wasn't resisting.  
3 Like, if anything -- if anything, I would say, like,  
4 when they said I -- "We don't have time for a female,"  
5 that maybe triggered me, but I wasn't resisting.

6 And, like, even before they got me on  
7 the ground they weren't saying stop resisting, so  
8 clearly I wasn't resisting. I was yelling, but I  
9 wasn't resisting. And then it was once they got me on  
10 the ground and were cuffing me already they start  
11 saying, "Stop resisting." That doesn't make sense with  
12 me.

13 Q Okay. Did you, you let your arms just go  
14 limp, or did you kind of --

15 A I don't remember.

16 Q -- struggle with your arms?

17 A I don't remember. Everything was happening  
18 so fast. Like, I really honestly -- there are portions  
19 of it that my memory is, like, in and out.

20 Q Okay. So Micalah got the bondsman for you.

21 A Yes.

22 Q And then when did you first speak with her  
23 after, after the bail was posted?

24 A I don't recall if I talked to her on the  
25 phone in the jail, because I remember I was having a

Page 56

14 (Pages 53 to 56)

1 A No.

2 Q Were there other people in the street that

3 day?

4 A Yes.

5 Q And was there a police presence? Were police

6 there?

7 A Yes.

8 Q When you said during the discussions and a

9 couple of the times that you were triggered -- you used

10 that word a few times -- does that mean to you that you

11 were upset?

12 A Yeah.

13 Q What is, what is -- when you say that you're

14 triggered what does that mean to you?

15 A When I say triggered it means that something

16 happened that invalidated me emotionally or physically

17 that created an emotional response out of me.

18 Q Okay. A negative response?

19 A I don't think, I don't think negative. I

20 don't think there's any -- I don't think it's negative,

21 positive. I would say just a valid response in

22 general.

23 Q An emotional response?

24 A Yeah.

25 Q Did Officer Smart read you your Miranda

Page 181

1 rights when he arrested you?

2 A I don't recall being read my Miranda rights.

3 Q Do you know what I mean when I refer to

4 Miranda right?

5 A "You have the right to remain silent,

6 anything you say can and will be used against you in a

7 court of law. You have the right to an attorney. If

8 you cannot afford one, one will be provided for you."

9 Yeah.

10 Q So you kind of already answered this, but

11 I'll, I'll ask it. When were you read your Miranda

12 rights that day?

13 A I think, I think that maybe happened in one

14 of the videos, but I don't recall when. Did we watch a

15 video --

16 Q (Shaking head)

17 A -- where -- yeah. I don't, I don't recall

18 being read my Miranda rights, but I'm not sure.

19 Q Did Officer Gonzalez, the officer who was

20 effectuating the bent wrist, do you recall him reading

21 you --

22 A No.

23 Q -- your Miranda rights?

24 A I definitely didn't get read before I was in

25 the cop car.

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1 Q Do you recall being asked any questions by a

2 police officer before you had been read your Miranda

3 rights?

4 A No -- yeah. Yeah.

5 Q Yes? What's a question that you recall being

6 asked?

7 A My personal identification.

8 Q And you testified that that particular

9 officer was closing his laptop?

10 A Yes.

11 Q Can you, can you describe that again, please?

12 A So after I was refusing to give him my

13 personal information he was, like, "Okay, well..." And

14 he, like, started slowly closing it like as if my time

15 was running out to avoid getting, like, a worse charge.

16 Q Did he state or say that he was going to give

17 you a charge?

18 A I recall him threatening me with a charge,

19 but I don't know -- like, that's what I remember. I

20 don't know how, like -- I don't know how descriptive it

21 was.

22 Q Mm-hm. Did you feel that if you did not

23 provide him with your personal information before he

24 closed the laptop that you were risking being --

25 A Yes.

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1 Q -- charged with a further charge?

2 MR. BARTON: Object to the form.

3 Q (By Ms. McDaniel) Do you recall if that

4 officer had read you your Miranda rights?

5 A I don't think he did.

6 Q What other questions do you recall being

7 asked?

8 A He asked me where I was from. He asked me my

9 views on something, but I forgot. I think that's about

10 it.

11 Q When you were admitted to the jail you

12 testified regarding crowdedness, that there was an

13 issue with masks, y'all were concerned about possible

14 COVID expos- or sickness exposure. In that holding, in

15 that first holding area, I think maybe it was a --

16 A Yeah.

17 Q -- holding area, do you recall any officers

18 reading you your Miranda rights?

19 A No.

20 Q Do you recall any officer asking you if you

21 had an attorney?

22 A No.

23 Q Do you remember that Mr. Barton asked you

24 some questions about why you were standing in the

25 road --

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1 30(f)(1) that the signature of the deponent was  
2 requested by the deponent or a party before the  
3 completion of the deposition and that the transcript be  
4 returned within 30 days from the date of receipt. If  
5 returned, the attached Changes and Insertions page  
6 contains any changes and the reasons therefor:  
7 That \$ 1,727.65 is the deposition officer's  
8 charges to the Defendants for preparing the original  
9 deposition transcript, videographer, and any copies of  
10 exhibits;  
11 That the amount of time used by each party at the  
12 deposition is as follows:  
13 Monte L. Barton, Jr. - 3 hours, 41 minutes  
14 Grayson E. McDaniel - 10 minutes  
15  
16 That pursuant to information given to the  
17 deposition officer at the time said testimony was  
18 taken, the following includes counsel for all parties  
19 of record:  
20 Monte L. Barton, Jr. - Attorney for Defendants  
21 Grayson E. McDaniel - Attorney for Plaintiff  
22  
23 I further certify that I am neither counsel for,  
24 related to, nor employed by any of the parties or  
25 attorneys in the action in which this proceeding was  
taken, and further, that I am not financially or  
otherwise interested in the outcome of the action.

Page 193

1  
2 Certified to by me this 30th day of March 2023.  
3  
4 GIVENS COURT REPORTING  
5 6549 Fair Valley Trail  
6 Austin, Texas 78749  
7 (512) 301-7088  
8  
9 # sg-2014  
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GIVENS COURT REPORTING  
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Austin, Texas 78749  
(512) 301-7088  
SANDRA S. GIVENS, CSR  
Certification No. 5000  
Certificate Expires 1/31/24



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49 (Pages 193 to 194)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER,	§	
Plaintiff,	§	
	§	
VS.	§	CASE NO. 1:21-CV-00053-RP
	§	
CITY OF AUSTIN ET AL.,	§	
Defendants.	§	

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VIDEOTAPED AND ORAL DEPOSITION VIA ZOOM OF  
CRAIG R. MILLER  
MARCH 14, 2023  
VOLUME 1

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VIDEOTAPED AND ORAL DEPOSITION VIA ZOOM OF  
CRAIG R. MILLER, produced as a witness at the instance of  
the Plaintiff, and duly sworn, was taken in the  
above-styled and numbered cause on March 14, 2023, from  
9:12 a.m. to 1:25 p.m., via Zoom, before Jamie C. Carroll,  
CSR 9379, in and for the State of Texas, reported by my  
original shorthand notes, remotely pursuant to the Texas  
Rules of Civil Procedure and the provisions stated on the  
record or attached hereto.

Job No. 904801

1 organization, but I think all of our documents are living  
2 documents and can be changed on the fly. And I think that  
3 happened in the City of Austin.

4 Q. Would you agree that it is important for law  
5 enforcement to adapt their policies and procedures to the  
6 immediate needs and circumstances of the day?

7 A. I think that law enforcement needs to be  
8 conscious of what is going on in the communities, and what  
9 our mission really is. To control -- in this case to  
10 control behavior that is kind of an outlier, if you will.  
11 And so I think that -- yeah, I think that is fair. That  
12 we need to work -- in law enforcement to work with our  
13 communities.

14 Q. So I think -- did you include this portion in  
15 your report because the George Floyd protests -- I guess  
16 we will just call them that. Do you know what I am  
17 talking about when I say George Floyd protests?

18 A. I do.

19 Q. Okay. The George Floyd protests presented a new  
20 and novel situation for law enforcement?

21 A. Well, it presented a different set of -- in 1984  
22 we had the Democratic Convention in the city of Dallas,  
23 and we had riotous behavior where I was a young officer.  
24 We had sticks and helmets, and we were put in situation  
25 where we had to effect a lot of arrests. During my career

1 I was the security coordinator for both the Reunion Arena  
2 and then the American Airlines Center, and every year when  
3 Ringling Brothers came to town there were PETA protesters  
4 who laid in the street to prevent the elephants from  
5 walking into the arena. And so there has been calm and  
6 peaceful, passive resistance during my career. In my  
7 experience I do think that from things that I have seen,  
8 and read, and observed about the protests following George  
9 Floyd that they were more violent, and there were a  
10 greater number of people in law enforcement across the  
11 country had ever experienced. And that -- you know, it  
12 was a challenge.

13 Q. And specifically in the city of Austin did it  
14 present a new and novel -- the George Floyd protests, did  
15 they present a new and novel situation for law  
16 enforcement?

17 A. Well, Austin has a very rigorous  
18 mobile-field-force-training manual and special-response  
19 teams that were already established, and they had trained  
20 in alpha bravo, but when the officers were sent and people  
21 started taking over freeways sometimes the number of  
22 protesters compared to the number of officers weren't  
23 consistent with the training that we had received  
24 previously. And we did not, in Austin and other parts of  
25 the country, had not experienced that.



1 searches in General Order 306, Search and Seizure,  
2 correct?

3 A. Yeah.

4 Q. Was there any change in that policy and  
5 procedure that was precipitated by the George Floyd  
6 protests?

7 A. I don't recall. It didn't impact what these  
8 officers did regarding Ms. Buehler.

9 Q. But generally speaking as it pertains to  
10 policies and procedures relevant to this case? So not  
11 beanbag-rounds, of course, because that is not at issue  
12 here, right?

13 A. Correct.

14 Q. With regard to the policies and procedures that  
15 you evaluated in your report and in your work in this case  
16 was there any change in those between May 25th, 2020 and  
17 August 1st, 2020?

18 A. I only used to formulate my opinions policies  
19 and procedures that were in place on August 1st of 2020,  
20 and so whatever that change would have been it would have  
21 been what I relied upon in my report.

22 Q. Did you look at the -- sorry. The chronology of  
23 the policies and procedures applicable to this case going  
24 back to May 25th, 2020?

25 A. Not that I recall.

1 Q. So I guess what I'm asking, and it's okay if  
2 you're not aware, but are you aware of any change in the  
3 Austin City Police Department's policies and procedures  
4 relevant to this case, not to the beanbag rounds -- are  
5 you aware of any change, or modification, or adaptation  
6 between May 25th, 2020 and August 1st, 2020?

7 A. Regarding obstruction of the passageway or  
8 resisting arrest which is what this one was?

9 Q. Well, sure. If it's a policy and procedure not  
10 the statutes. We have covered the statutes, but the  
11 policies and procedures. Yes, sir.

12 A. I would have relied upon what was provided to me  
13 by the City of Austin.

14 Q. Okay. Are you aware of any change in policy and  
15 procedure in the two or three-month window?

16 A. I just don't recall. No, sir.

17 Q. In paragraph 13 of your report on page five you  
18 write that in cities such as Dallas, New York, Los  
19 Angeles, Chicago, and Austin police commanders were quote  
20 "challenged with personnel, resources, and tools to  
21 control the crowds." Could you explain that a little bit  
22 more?

23 A. Sure. In our training that all of us did --  
24 when I was with the Dallas Police Department we were -- we  
25 had 3,600 officers. We were the eighth largest police

1 paragraph 14 on page five of your report?

2 A. Yes, sir.

3 Q. All right. In those 72 days are you aware of  
4 Austin City Police Department taking any measures with  
5 regards to personnel, resources, and tools?

6 A. Outside of the beanbag change?

7 Q. Yes. And thank you for being precise and  
8 helping me drill down my question. Let's take the beanbag  
9 rounds and let's shelve that because that may be  
10 applicable to other cases, but not this one. So you can  
11 assume that I am not asking about that policy change. Are  
12 you aware of any other policy change with regards to  
13 personnel and tools by the Austin City Police Department  
14 during this time?

15 A. I don't recall any that -- I know there were  
16 none that I considered in this case that happened on  
17 August 1st.

18 Q. Okay. In paragraph -- well, let me ask you, in  
19 paragraph 21 -- I am moving forward now through your  
20 report just so we have all got it in front of us and we  
21 can go through it together. On page eight --

22 A. Yes.

23 Q. -- in paragraph 21 you state the entire arrest  
24 incident when Officer Smart initially contacted  
25 Ms. Buehler until she was handcuffed and placed in the

1 squad car was 47 seconds?

2 A. Correct.

3 Q. So when you reviewed these videos you reviewed  
4 it down to the second, fair?

5 A. Yes, sir.

6 Q. Okay. What was the time between Officer Smart's  
7 first engagement of Sydni Buehler, and when he forcibly  
8 picked her up and dragged her behind the police line; do  
9 you recall the number of seconds in that window?

10 A. It would have been very brief, just a few  
11 seconds, but I don't -- I can't really answer that I don't  
12 think. I mean, I saw the third-party video that shows  
13 that. I can say this, that Ms. Buehler and the other  
14 protesters that were on the road for a very good period of  
15 time observed the mounted-squad horses come out onto the  
16 street, and observe the bicycles, and observed the  
17 officers with the bicycles moving protesters out the way.  
18 I know they had a good amount of time in that scenario to  
19 know that the officers were coming and their intent, and  
20 their desire, and their instructions were for people to  
21 get out of the road.

22 Q. Let me come back to my question. What was the  
23 time period between Officer Smart first engaging  
24 Ms. Buehler? Let's say getting within 4 feet of her, and  
25 him picking her up, and forcibly dragging her behind the

1 hypothetically if someone were to provide an expert  
2 opinion and they said that all police academies, and I  
3 understand you talked about the school district so maybe  
4 if it is okay can we leave the school district out of this  
5 and just talk about police departments sort of policing  
6 the citizens; does that make sense?

7 A. Okay.

8 Q. If someone were to have an opinion that a  
9 particular academy was outstanding or professional I am  
10 asking you what you would compare that to. So if all  
11 police academies are outstanding and professional then you  
12 would agree with me that those words don't really carry  
13 much weight, right?

14 A. No. I wouldn't agree with that.

15 Q. Okay.

16 A. So in Texas with more than 100,000 police  
17 officers, active police officers, in the state the vast  
18 majority of those officers go to community colleges and  
19 get their training, they get their license. It's only  
20 that those, I said ten or 12 departments, who have their  
21 own academies that get the excessive training. So it is  
22 not just school districts as you said. This is any police  
23 officer in a municipality whose officers obtained their  
24 degree or their training through the regional training  
25 centers or through community colleges, their training in

1 any of those departments which make up a vast majority of  
2 the state. The training that the people of Austin get far  
3 exceeds the training that those guys get. So I do think  
4 that their training is far superior to what the average  
5 police officer gets in the state of Texas and across the  
6 country.

7 Q. I don't think we are disagreeing. We are just  
8 talking form. What I was trying to get at is if somebody  
9 were to offer -- or let's say you were to review an  
10 expert's opinion, and their opinion was that every police  
11 department across the country was professional and very  
12 advanced, every single one, that evaluation would not hold  
13 much weight because every police department is  
14 professional and advanced. That is what I was asking you,  
15 and I think I was more asking it to ask you what you would  
16 compare the Austin Police Department to, right? So maybe  
17 I can give you an example. If I were to say McDonald's is  
18 the best fast food, if you would ask me for the basis of  
19 me saying that I would say, well, it's better than Taco  
20 Bell, it's better than Burger King, or something of that  
21 nature. So maybe that example will help clarify my  
22 question. What would you compare the Austin Police  
23 Department to? Can you give us any examples of other  
24 municipalities that you used as a comparison in your  
25 opinion?

1 primary method. Did you review anything -- I am not  
2 asking you for your ultimate opinion. I understand what  
3 your ultimate opinion is, is that this was reasonable a  
4 reasonable use of force. I understand that.

5 A. Yes, sir.

6 Q. So I'm not asking for your ultimate opinion and  
7 I'm not asking for a Perry-Mason moment where I get you to  
8 break down and say that it was an excessive use of force.  
9 I'm not looking for that.

10 A. Okay.

11 Q. I am saying if you're looking at the facts that  
12 you assembled in your analysis did you see anything that  
13 indicated that officers, in fact, used the power of arrest  
14 as the primary method?

15 A. They did in fact use their power of arrest as  
16 their primary method based upon the facts, correct, that  
17 they observed?

18 Q. Okay. Did you see anything that indicated  
19 officers used arrest as an exclusive method?

20 A. Based upon the scenario, as it is observed on  
21 the video and in the reports I think it was their  
22 option -- their best option at that point.

23 Q. Okay. You would agree with me that there were  
24 other individuals -- the moment that Officer Smart  
25 forcibly lifted Sydni Buehler -- and that moment we know

1 what I'm talking about, right?

2 A. Yes.

3 Q. There were other people in the roadway?

4 A. Correct.

5 Q. There were other people in the roadway that were  
6 not arrested?

7 A. Correct.

8 Q. There were other people in the roadway that were  
9 not arrested who eventually moved to the sidewalk?

10 A. Correct.

11 Q. There were people who had bicycles pushed up  
12 against them who in response moved to the sidewalk?

13 A. Correct.

14 Q. There were individuals who were tear gassed who,  
15 in response, moved to the sidewalk?

16 A. In this instance they were tear gassed?

17 Q. Yes.

18 A. Pepper sprayed?

19 Q. Yes. Pepper sprayed I guess. I don't know the  
20 difference, but let me change it. You know, lawyers we've  
21 got to use the right words. There were individuals who  
22 were pepper sprayed in the roadway who, in response, moved  
23 to the sidewalk?

24 A. Correct.

25 Q. There were individuals who were made physical



1 contact with, in other words, the police officers, you  
2 know, making physical contact who, in response, moved to  
3 the sidewalk?

4 A. There could have been. I just don't recall  
5 exactly, you know, where their bikes touched someone or  
6 they didn't touch them someone. I am sorry. When we look  
7 at the video we will be able to see that.

8 Q. Okay. Well, Sydney Buehler, from the videos that  
9 you reviewed multiple times as you testified several  
10 times, was not touched by a bike, was she?

11 A. No. I don't believe so.

12 Q. She was not pepper sprayed?

13 A. No, sir.

14 Q. She -- before Officer Smart forcibly lifted her  
15 she was not physically touched by an APD officer in any of  
16 those videos, was she?

17 A. No, sir.

18 Q. Let me ask you out of curiosity, moving on to  
19 something else, different topic, page 17. If you can get  
20 there.

21 A. I'm here. Yes, sir.

22 Q. About halfway through the page the sentence that  
23 begins on August 29th, 2020?

24 A. Are we -- yeah, under 39 -- paragraph 39?

25 Q. Yes, sir.

1 A. Yes.

2 Q. And Ms. Buehler was towards the spear point of  
3 that V, right?

4 A. Yes.

5 Q. Okay. And the idea of a wedge formation is that  
6 you eventually when you push forward down the road you  
7 force people to the sides, right?

8 A. Yes.

9 Q. And so just talking general physics people who  
10 are already closer to the roadway are going to go to the  
11 roadway faster than people at the tip of the V by the  
12 definition of physics, right?

13 A. If they elect to move, yes.

14 Q. Not everyone in the roadway elected to move  
15 voluntarily, did they?

16 A. I think you are referencing that some of them  
17 made contact with bikes then they moved to the side?

18 Q. Yes.

19 A. Yes, that took place.

20 Q. Some of them were given pepper spray, and they  
21 moved after they were given pepper spray, right?

22 A. Correct.

23 Q. Let me ask you about the -- what is it called a  
24 wrist lock that I think you mentioned?

25 A. Yeah. That Gonzalez did to try to get

1 Ms. Buehler's hand behind her.

2 Q. So officer -- can you explain what a wrist lock  
3 is?

4 A. Well, it is what you say it is, and you see in  
5 the video where he bends her hand back at the mark there.  
6 And it is kind of a pain-compliance technique to get the  
7 person to put their hand behind their back. Because both  
8 Officer Smart and Officer Gonzalez said that they could  
9 feel the tension in her as her hands moved forward instead  
10 of it coming back. And obviously officers are concerned  
11 because from our experience people hide things in their  
12 waistbands in front, and so rather than have her move her  
13 hands forward they forced her hands to the back against  
14 her tension rather than -- it's just easier to get the  
15 wrist lock to bring it back to help get the hand cuffed.

16 Q. When you say a pain-compliance technique the  
17 intention there is compliance, right?

18 A. Correct.

19 Q. Through use of pain, right?

20 A. Minimal pain, yeah, to achieve your objective.  
21 Yes.

22 Q. Well, a wrist lock hurts, doesn't it?

23 A. It wouldn't be applied if you just complied with  
24 the officers so yeah. It is designed to get people to  
25 comply with them and the Penal Code allows officers to use

1 force to effect an arrest.

2 Q. It is designed to cause pain?

3 A. Yes.

4 Q. All right. In the video Officer Gonzalez  
5 applies a wrist lock to Sydni Buehler's right wrist --

6 A. Correct.

7 Q. -- do you recall that? There is no wrist lock  
8 applied to Sydni Buehler's left wrist, correct?

9 A. Not that I observed. No, sir.

10 Q. So Officer Gonzalez chose to use wrist lock,  
11 correct?

12 A. I am -- yes, he did.

13 Q. Officer Smart and Officer Allare did not elect  
14 or choose to use the wrist lock?

15 A. Correct. I am not sure if Ms. Buehler was  
16 right-handed or left-handed, or she was exerting more  
17 force with her right hand or her left hand. And officers  
18 used the force they felt was necessary for the hand they  
19 were controlling.

20 Q. Okay. Let me ask you about John Lenoir; are you  
21 aware of who that is --

22 A. Not by the --

23 Q. I'm sorry, go ahead.

24 A. No, sir. Not right off. I am sorry.

25 Q. L-E-N-O-I-R. He is another expert in this case.

1 really don't know that she is not armed. They don't see a  
2 gun pointed at them or a gun on her hip.

3 Q. That's entirely reasonable, and I understand  
4 your point. They couldn't know at that point, but just  
5 asking about what they could observe, and you make a valid  
6 point which is they cannot make that assumption because  
7 that is a dangerous assumption. Let me isolate the  
8 question to where I think we can agree. They didn't see  
9 her armed, like, visualize, they didn't have a visual of  
10 her being armed, correct?

11 A. I did not read anywhere that anyone saw her with  
12 a weapon.

13 Q. Okay. Or again throwing her water bottle, or  
14 punching, or kicking at the officers. I'm talking about  
15 before the bear hug. There is no visual of that or  
16 recorded anywhere in the video, correct?

17 A. Correct.

18 Q. The third factor is Officer Subject Factors.  
19 And I won't spend too long on this because, again, I just  
20 want to ask you about the facts. The facts are that  
21 Officer Smart is much larger than Sydni Buehler, right?

22 A. Correct.

23 Q. And that is, I mean, that is something you take  
24 in as a factor in analyzing whether use of force is  
25 objectively reasonable or not, right? So in the Mills

1 A. Sure. Absolutely.

2 Q (By Mr. Demik) Sorry, there was an objection,  
3 just for the record. Other Exigent Circumstances,  
4 Ms. Buehler was not attempting to flee or escape, correct?

5 A. No. She was just refusing to follow  
6 instructions.

7 Q. So you would agree that she was not attempting  
8 to flee, or destroy evidence, or other exigent  
9 circumstances that you are trained to know under law  
10 enforcement rationale?

11 A. I would agree.

12 Q. Okay. I'm almost done. What about the kneeling  
13 and Officer Smart's knee in Ms. Buehler's back; is it in  
14 your opinion that was reasonable?

15 A. Well, I see officer Gonzalez' knee off to the  
16 side of Ms. Buehler. I see, I believe it is Smart with  
17 his hands pressed on her shoulders. Do I think it is  
18 reasonable to control her when she is resisting for the  
19 time and manner in which he did it. Yeah. I think that  
20 that is reasonable.

21 Q. Watching the video did Ms. Buehler lunge at the  
22 officers or attempt to threaten them in anyway?

23 A. I think the officers say that when they  
24 instructed her to put her hands behind her back you  
25 could -- which we can't see from any video, they felt the

1 make that assumption without speaking to her, can we?

2 A. Well, you can't miss the officers that are  
3 standing in front of her when she was grabbed by Officer  
4 Smart. She has to see that line of officers, and has to  
5 be able to hear their instructions to clear the roadway.  
6 Other people are doing that. And so I don't think that is  
7 a point of argument. I think she is in the road, and she  
8 knows they are coming towards her.

9 Q. In your review of the video did you see any  
10 attempt by Officer Smart to de-escalate the situation by  
11 specifically referring to Sydni Buehler, and asking her  
12 specifically and individually to comply with the officer's  
13 commands before he grabbed her around her body in a bear  
14 hug, and picked her up, and dragged her behind the  
15 barricade?

16 A. No. I did not.

17 Q. Did you see any attempt by Officer Smart or  
18 Gonzalez to talk Ms. Buehler down; do you understand what  
19 I mean by that term?

20 A. I know what you mean, but I didn't see that.

21 Q. In fact, from the time that Officer Smart  
22 approaches Ms. Buehler, and I think we covered this in the  
23 beginning so maybe this is a bookend, is you said a few  
24 seconds maybe?

25 A. 47 --

1 I, Jamie C. Carroll, Certified Shorthand Reporter in  
2 and for the State of Texas, do hereby certify to the  
3 following:

4 That the witness, CRAIG R. MILLER, was duly sworn by  
5 the officer and that the transcript of the oral deposition  
6 is a given by the witness;

7 That the deposition transcript was submitted on  
8 \_\_\_\_\_, to the witness or to the attorney for the  
9 witness for examination, signature, and return by  
10 \_\_\_\_\_;

11 That the amount of time used by each party at the  
12 deposition is as follows:

13 BY MR. DEMIK: 03:57:10

14 That pursuant to infofficer at the time said  
15 testimony was taken, the following includes counsel for  
16 all parties of record:

17 HENDLER FLORES LAW, PLLC  
18 Stephen Demik  
19 901 S. MoPac Expressway  
20 Suite 300 Bldg 1  
Austin, Texas 78746  
Attorney for Plaintiff

21 MONTE L. BARTON JR  
22 City of Austin  
23 P. O. Box 1546  
Austin, Texas 78767-1546  
Attorney for Defendants

24 I further certify that I am neither counsel for,  
25 related to, nor employed by any of the parties or



1 attorneys in the action in which this proceeding was  
2 taken, and further that I am not financially or otherwise  
3 interested in the outcome of the action.

4 Further certification requirements pursuant to Rule  
5 203 of TRCP will be certified to after they have occurred.

6 Certified to by me on this the 29th day of March,  
7 2023.



8 Jamie C. Carroll, Texas CSR 9379  
9 Expiration Date: June 30, 2024  
10 Magna Legal Serives  
11 (866)624-6221  
12 <https://magnals.com>  
13 [customerservice@magnals.com](mailto:customerservice@magnals.com)

14 FURTHER CERTIFICATION UNDER RULE 203 TRCP

15 The original deposition was/was not returned to the  
16 deposition officer on \_\_\_\_\_.

17 If returned, the attached Changes and Signature page  
18 contains any changes and the reasons therefor;

19 If returned, the original deposition was delivered to  
20 Monte Barton, Custodial Attorney;

21 Certified to by me on this the 29th day  
22 of March, 2023.

23 Jamie C. Carroll, Texas CSR 9379  
24 Expiration Date: June 30, 2024  
25 Magna Legal Serives  
(866)624-6221  
<https://magnals.com>  
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**COA 768 [CONF]**  
**(Bystander video of arrest 1)**

**FILED UNDER SEAL**

**\*Sent to the Court via electronic mail to courtroom deputy Julie Golden**  
[Julie\\_Golden@txwd.uscourts.gov](mailto:Julie_Golden@txwd.uscourts.gov)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Sydni Beuhler,	*
Plaintiff,	*
	*
v.	* Case No. 1:21-cv-00054-RP
	*
City of Austin,	*
Officer Gavin Smart (AP8674)	*
and Officer Javier Gonzalez	*
(AP7422),	*
Defendants.	*

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VIDEOTAPED/ORAL DEPOSITION OF  
JASON SCOTT STANISZEWSKI  
April 27, 2023  
(via Zoom)

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VIDEOTAPED/ORAL DEPOSITION of JASON SCOTT STANISZEWSKI, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 27th day of April, 2023, from 9:37 a.m. to 4:01 p.m., before Lydia L. Edwards, CSR in and for the State of Texas, by machine shorthand from Plano, Texas and the witness located in Austin, Texas, pursuant to the Texas Federal Civil Procedure and any provisions stated on the record or attached hereto.

1 SRT teams, which are two different concepts. After the  
2 protests, we -- of course, we had after-action reports  
3 and seeing what we can improve on, and changes were  
4 revamped and a lot more training has taken place. The  
5 SOPs have been changed. The SRT team in itself has  
6 taken a different direction. And so I would say after  
7 the protests we have had major overhaul of the SRT team  
8 and our -- how we respond.

9 Q. And why was that overhaul taken?

10 A. I think it was because when the protest  
11 happened we were so overwhelmed and unprepared for --  
12 for what had occurred that we obviously recognized, hey,  
13 we need to revamp this and so this doesn't happen again.

14 Q. "This doesn't happen again," are you saying the  
15 protest wouldn't happen again?

16 A. No. The -- the results of the protests, so  
17 many injuries, 76 straight days of protests, the -- all  
18 the property, the vandalism, the -- it's just how  
19 everything evolved. So we looked at our process and  
20 tried to come up with a better process so this doesn't  
21 happen again. And we are protecting the people's First  
22 Amendment rights with a new process and a better way so  
23 that the people can actually -- you know, we can  
24 separate the actual -- people that are there for  
25 unlawful reasons compared to the ones that are there for

1 lawful because that's what -- we really want to protect  
2 the safety of the -- the lawful protesters.

3 Q. And also to protect the safety of the officers,  
4 correct, because there were some numerous incidents of  
5 officers being -- having objects thrown at them and  
6 other items like that; is that correct?

7 A. Correct.

8 Q. I know it was a very, very stressful and an  
9 unusual time.

10 MS. McDANIEL: I'm going to ask Ms. Lopez  
11 to place Plaintiff's Exhibit 38 in the Dropbox link, and  
12 I'm going to pull that up and share my screen.

13 Q. (BY MS. McDANIEL) And can you see Plaintiff's  
14 Exhibit 38 on my screen?

15 A. Yes.

16 Q. Okay. This document is an Austin City Council  
17 Resolution No. 20200611-095, and it is dated June 11th,  
18 2020. What, if anything, do you remember about this  
19 resolution?

20 A. That directed the City Manager to enact certain  
21 policies.

22 Q. Okay. Why was this resolution passed?

23 A. The resolution was a result of the -- the  
24 initial response on -- during the protests. And that  
25 kind of goes into what we were saying before, that, you

1 Exhibit 39 on my screen?

2 A. Yes.

3 Q. Okay. Great. Let's see. Plaintiff's  
4 Exhibit 39 is Austin City Council Resolution  
5 20200611-051. It discusses the City of Austin adopting  
6 the Imagine Austin Comprehensive Plan, and it provides a  
7 number of items that are going to be implemented with  
8 regard to the plan. Do you recall those items?

9 A. I would have to read this document. Which  
10 items are you referring to? Are you talking about  
11 the -- I see a bike lane.

12 Q. What do you remember about this resolution, if  
13 anything?

14 A. Let's see. I don't -- it looks like a lot of  
15 that is transportation-related and not police-related.  
16 So I can't -- I can't say I recognize any -- anything  
17 from that.

18 Q. It also is related to COVID-19 --

19 A. Okay.

20 Q. -- and social distancing. It seems like it's a  
21 temporary, potentially, resolution.

22 It does provide for increased bike lanes  
23 on Congress Avenue. Do you see that?

24 A. Yes.

25 Q. Okay. And do you recall that there was -- this

1 resolution was in place in August 1st, 2020, correct?

2 A. The -- you got a box covering the date, so  
3 June, 2020, yes.

4 Q. Ah, sorry. Yes. And do you recall that there  
5 were increased bike lanes on Congress at this time on  
6 August, 2020?

7 A. There was.

8 Q. And do you recall that they were marked by  
9 cones?

10 A. They were -- I wouldn't say the traffic cones.  
11 They were traffic markers that -- that stood above  
12 ground. A cone to me represents something that's  
13 movable. This was actually glued to the street.

14 Q. Okay. And do you recall that in the videos  
15 that these cones are visible -- or you said not cones.  
16 So I'm sorry.

17 Would you recall that in the videos that  
18 the larger bike lanes -- the markers are visible?

19 A. Yes.

20 Q. And do you recall that in the videos  
21 Ms. Beuhler is standing close to those markers?

22 A. Yes. She is in the right lane of traffic next  
23 to the bike lane.

24 Q. And she's standing closer in the videos to  
25 those markers and the sidewalk than she is to the middle

1 THE STATE OF TEXAS )

2 COUNTY OF TRAVIS )

3 I, LYDIA L. EDWARDS, a Certified Shorthand  
 4 Reporter in and for the State of Texas, do hereby  
 5 certify that the facts as stated by me in the caption  
 6 hereto are true; and that the above and foregoing  
 7 answers of the Witness, JASON SCOTT STANISZEWSKI, were  
 8 made before by said Witness, after having been first  
 9 administered an oath or affirmation to testify to the  
 10 truth, the whole truth, and nothing but the truth, and  
 11 the same were reduced to computer transcription under my  
 12 direction; and that the above and foregoing deposition,  
 13 as set forth in computer transcription, is a full, true,  
 14 and correct transcript of the proceedings had at the  
 15 time of the taking of said deposition.

16 I further certify that the amount of time  
 17 used for examination is as follows:

18	Grayson McDaniel	- 5 hours, 3 minutes
19	Monte Barton	- 0 hours, 0 minutes


20 I further certify that the costs to  
 21 prepare the original transcript of the deposition came  
 22 to \$\_\_\_\_\_.

23 I further certify that I am not in any capacity  
 24 a regular employee of the party on whose behalf this  
 25 deposition is taken, nor in the regular employ of any



1 attorney; and I further certify that I am not interested  
2 in the cause, nor a kin or counsel to any of the  
3 parties.

4 GIVEN UNDER my hand and seal of office on  
5 this, the \_\_\_\_\_ day of May, 2023.

6  
7 

8 LYDIA L. EDWARDS  
9 Certification No. 2567  
Expiration Date: 04-30-25

10 JOB NO. 960655

11 MAGNA LEGAL SERVICES  
12 1635 Market Street, Eighth Floor  
13 Seven Penn Center  
14 Philadelphia, Pennsylvania 19103  
15 866.624.6221  
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**COA 376 [CONF]**  
**(Smart BWC)**

**FILED UNDER SEAL**

**\*Sent to the Court via electronic mail to courtroom deputy Julie Golden**  
[Julie\\_Golden@txwd.uscourts.gov](mailto:Julie_Golden@txwd.uscourts.gov)

**EXHIBIT E**

**BEUHLER 000491**  
**(Bystander video 4)**

**FILED UNDER SEAL**

\*Sent to the Court via electronic mail to courtroom deputy Julie Golden  
[Julie\\_Golden@txwd.uscourts.gov](mailto:Julie_Golden@txwd.uscourts.gov)

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Sydni Beuhler,

Plaintiff,

v.

City of Austin and John Does,

Defendants.

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Case No. 1:21-cv-00054

EXPERT REPORT OF JOHN D. LENOIR, PhD, JD

1. John D. Lenoir respectfully files this Expert Report on behalf of Plaintiff, Sydni Beuhler, on the issues of (a) was the arrest of Sydni Beuhler justified, and (b) was the use of force to affect the arrest necessary or reasonable.
2. QUALIFICATIONS.
  - a. I am an attorney licensed to practice in the States of New York and Texas and admitted to practice in the Federal Courts of the Second and Fifth Circuits, and the District Courts of Southern Texas, Southern New York and Eastern New York.
  - b. I have over forty years' experience as an attorney specializing in criminal prosecutions (six years as an Assistant District Attorney in New York County, twenty-two years as an Assistant United States Attorney in the Southern District of Texas and the Eastern District of New York), internal investigations (six years as Managing Director, Investigations Services Group of Kroll Government Services), and civil rights litigation (seven years of private practice). My Curriculum Vitae is included as Attachment A.
3. EXPERIENCE RELATED TO LAW ENFORCEMENT.
  - a. I have been involved in the law-enforcement aspects of the law for over sixty years. During three-years in the U.S. Army from 1959 to 1962, I was trained as a military police officer and assigned to the Armed Forces Police in Washington

D.C. as a patrol officer and later an investigator. During that assignment I attended and graduated from the Fairfax County, Virginia Police Academy.

- b. As an Assistant District Attorney in Manhattan from 1979 to 1985, I reviewed arrests as part of the Early Case Assessment Bureau to determine the legality of the officers' actions and the sufficiency of the evidence available before accepting cases for prosecution.
- c. As a federal prosecutor in the Southern District of Texas from 1985 to 2001, I continued my day-to-day activities in law enforcement. During that time, I also developed and taught courses on federal civil rights law to local law enforcement departments throughout South Texas and initiated a computer-based file sharing system among municipal police departments.
- d. I served one year as Counsel to the Director of the United States Marshals Service on a special assignment as an Assistant U.S. Attorney, 2001-02. In that capacity I counselled the Director on operations and management issues and led initiatives to enhance interagency intelligence sharing.

4. EXPERIENCE IN INVESTIGATION AND ANALYSIS OF POLICE USE OF FORCE AND ALLEGATIONS OF CIVIL RIGHTS ABUSE.

- a. As Chief of the Civil Rights Division, U.S. Attorney's Office, Southern District of Texas, I reviewed all police-involved homicides and complaints of excessive use of force by law enforcement for possible criminal violations.
- b. Among many other matters of note, I led the prosecution of a Laredo, Texas police sergeant who raped and later attempted to kill a woman he encountered while on duty. *United States v. Contreras*, 950 F.2d 232, (5<sup>th</sup> Cir. 1991).
- c. On my retirement from the U.S. Department of Justice in 2007, I joined the Kroll Investigative Services Group and was appointed to the Federal Monitor team for the Los Angeles Police Department for a two-year term where we reviewed arrests and search warrants for compliance with policy and law.
- d. In 2007 and 2009, I conducted independent investigations on behalf of the City of Austin to review the Austin police department's internal homicide and internal affairs investigation of two separate police-involved shooting deaths.
- e. As Administrative Assistant U.S. Attorney for the Eastern District of New York, one of my collateral duties was to become certified as an investigator by the U.S. Commission on Civil Rights and in that capacity, I conduct investigations of allegations of civil rights abuses at U.S. Attorney offices throughout the nation.
- f. As Practice Leader in the Investigative Services of Kroll (later Keypoint) Government Services, I conducted internal investigation of civil rights abuse

allegations at Federal Law Enforcement Training Centers and within the police department of the United States Mint.

- g. In private practice I was trial counsel in *Schoolcraft v. City of New York, et al* which involved New York Police officials taking unlawful retaliatory actions against an officer who reported abuses of “stop and frisk” and other enforcement actions.

#### 5. MATERIALS REVIEWED IN PREPARATION OF THIS REPORT.

- a. The arrest affidavit and bond sheet. (Attachment B)
- b. Four separate [videos](#) of the arrest taken by bystanders:
  - (1) 0:20
  - (2) 1:54
  - (3) 1:04
  - (4) 0:58
- c. The Complaint. (Attachment C)
- d. The Austin Police Department General Orders (Attachment D)
- e. The Austin Police Department Policy Manual re Use of Force (Attachment E)
- f. Title 8, Texas Penal Code, Chapter 38, Obstructing Government Operations. (Attachment F)
- g. Texas Penal Code Title 9 re Arrest and Seizure. (Attachment G)
- h. Texas Penal Code, Section 42.03. Obstructing Highway or Other Passageway. (Attachment H)
- i. Texas Code of Criminal Procedure, Title 1, Chapter 14. (Attachment I)
- j. Photographs of injury to Plaintiff, Sydni Beuhler. (Attachment J)
- k. Case law regarding police use of force in arrests.

6. This report is based on materials reviewed to date. I will supplement this report if any material information becomes available to me and, as appropriate, I will expand, add to or revise any of my opinions. The opinions that follow are made within a reasonable degree of professional certainty within the field of police arrest and use-of-force practices.

7. My fee for preparation of this report is an hourly fee of \$250. My fee for deposition and trial testimony is \$450 per hour, plus travel time and expenses.

#### 8. BACKGROUND FOR THIS REPORT

- a. In the summer of 2020, there were numerous demonstrations in the City of Austin as well as throughout the United States, protesting police practices after the death of George Floyd on May 25, 2020.
- b. In the early Saturday evening of August 1, 2020, Plaintiff Sydni Beuhler was participating in a protest demonstration by standing with many others near a

memorial for a protester who had been fatally shot during a demonstration in Austin the previous Saturday.

- c. According to the Affidavit of Arrest, the Complaint and the video evidence, Buehler had gathered with a crowd of others in the northbound lane of Congress Avenue near the intersection of 4<sup>th</sup> Street.
- d. Austin police arrived in force with vehicles, horses and bicycles and began to force the crowd of protesters to move backwards up the northbound lane and out of the street, according to the Affidavit of Arrest and the video evidence.
- e. The police officers employed canisters of pepper spray and used their bicycles held in a forward line as they marched against the protesters forcing them to retreat backwards, according to the Complaint and the video evidence. One officer appears in the videos reviewed to be armed with a shotgun-type weapon.

#### 9. THE ARREST OF SYDNI BUEHLER.

- a. Buehler is seen in the videos reviewed standing with her arms to her side as the police line approached. She is of slight build, standing erect and holding a water bottle in her right hand, nothing in her left hand. Buehler appeared to say something to the helmeted officers as they began to push the demonstrators backwards with their bicycles arrayed end-to-end as a moving barricade. The videos reviewed do not capture any conversation between Buehler and the officers.
- b. A large officer standing behind the front-line officers holding bicycles lunged forward just as the police bicycle barricade line reached Buehler. This officer grabbed Buehler around her waist with both arms in a bear hug. He lifted her high off the ground and carried her behind the police line as other officers looked on. The officer who grabbed Buehler is significantly bigger than Buehler. Buehler dropped her water bottle and held her left arm out as if to plead for assistance. She does not appear from the video to resist by kicking or pushing against the officer as he attempted to force her to the pavement.
- c. The arresting officer continued to hold Buehler and was quickly assisted by a second officer who also grabbed Buehler and the two officers pushed her to the pavement, face down.
- d. The two officers appear to initially have their knees on Buehler's back pressing her to the pavement despite the apparent lack of resistance or attempted flight by Buehler, as indicated in the video.
- e. There were dozens of officers near where the two officers held Buehler to the pavement, and a marked unit pulled next to where the officers held Buehler to the pavement. A third officer holding a cannister of apparent pepper spray joined as

the second officer held Buehler to the pavement with his knee to her back, pulled her arms behind her back and placed metal handcuffs on Buehler.

- f. The videos reviewed showed Buehler being the only person arrested from the line of demonstrators with whom she was standing.
- g. The videos show no apparent reason for this particular officer to have violently arrested one of the demonstrators from the line of people with whom she was standing; nor is there any apparent reason why the officer singled out this particular demonstrator for arrest.
- h. Buehler was brought before an Austin Magistrate Court judge at 4:30 am the following morning, Sunday, August 2, 2020. APD Officer Smart filed an affidavit of arrest that incorrectly stated that he arrested Plaintiff on August 2, 2020, at 2023 hours.
- i. Officer Smart's affidavit states that "a large group of protesters had entered the road as pedestrians and intestinally [sic] blocked four lanes of travel..." He charged Buehler, who he states was among "approximately 150 other persons," with Obstructing Highway or Other Passageway," a class B misdemeanor.
- j. Officer Smart added the charge of Resisting Arrest, a class A misdemeanor, with the justification that Buehler "began to attempt to physically resist my efforts to place her under arrest by attempting to wrestle free from my grasp." Officer Smart further described Buehler's offense as: "she began to also push against me, using the strength of her legs and refused to allow her arms to be pulled behind her back, pulling them towards her torso."

10. OPINION: APD Officer Smart's forcible arrest of Sydni Beuhler was not justified.

- a. Neither the video evidence nor the affidavit of Officer Smart demonstrates why Officer Smart singled out Beuhler from the approximately 150 demonstrators to arrest for obstructing the intersection of Congress Avenue and 4<sup>th</sup> Street. The demonstrators were being pushed backwards and off the roadway by the barricade of police bicycles being pressed forward by a line of police officers. Buehler was standing still and had not been touched by the bicycle barricade to be forced back when Officer Smart moved from behind the bicycle line to grab Plaintiff in a bear hug to hoist her off the ground. It is not clear from the video evidence or the arrest affidavit if Plaintiff said or yelled something that triggered Officer Smart to seize her. Whether she said something that upset Officer Smart or not, nothing said by a demonstrator to the police would justify an officer's violent seizure of a demonstrator for "standing in the roadway with approximately 150 other persons." (Smart Affidavit, Attachment B). Police officers, when properly trained, do not exercise their police powers to arrest a person merely because a person has taunted them or used offensive words. Nothing in the videos reviewed



suggests that Buehler posed an actual or reasonably perceived threat to the police officers or others.

- b. Officer Smart added the charge of Resisting Arrest which raised the offence from a Class B Misdemeanor to a Class A Misdemeanor. The video evidence, however, does not support and appears to contradict Officer Smart's affidavit recounting Plaintiff's "physical resistance" to his bear hug seizure. (Smart Affidavit, Attachment B).

11. OPINION: Officer Smart's use of force to arrest Sydni Beuhler was neither necessary nor reasonable.

- a. The foundation for examining the legality of police use of force is still the U.S. Supreme Court test set forth in *Graham v. Connor* (490 U.S. 386 (1989)). The Court recognized that any police seizure of a person necessarily carries the right to use some degree of physical coercion or threat of force. To determine whether the force used was reasonable must be judged by Fourth Amendment standards using what the Court termed the "objective reasonableness test." Such a test requires consideration of 1) the severity of the crime, 2) whether the suspect poses an immediate threat to the safety of the officers or others, and 3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight.
- b. Sydni Beuhler's alleged offense was being among 150 other people who had gathered on and around Congress Avenue in an expression of protest against police violence. Public demonstrations are generally a constitutionally protected right in the United States. They can, of course, be a nuisance to motorists and pedestrians, and devolve into conduct that can be regarded as a violation of law. So, while expressive activity can sometimes involve conduct that may constitute an offense, it is a different genre of activity from a gathering of people for the intent and purpose of pursuing criminal activity. Reasonable policing recognizes the difference and responds appropriately.
- c. Sydni Beuhler did not pose a threat to the safety of the officers or others. She appears to be about 5'7" tall and weighs about 145 pounds. At the time of her arrest, she was holding a water bottle. The police force that arrived to confront her and others included a unit mounted on horseback, and dozens of officers helmeted in black riot gear, armed and carrying truncheons and pepper spray canisters. One officer is seen carrying a shotgun-type weapon. Marked police vehicles followed behind officers as they moved toward the demonstrators. Officers on foot were led by a line of officers pressing forward holding police bicycles as a barricade. The police show of force was effective in clearing people off the street with no threat to the safety of the officers.
- d. Sydni Beuhler does not appear to actively resist arrest or attempt to evade arrest by flight. The arrest of Sydni Beuhler involved her being grabbed in a bear hug by a large officer, hoisted high in the air and wrestled to the ground. She was held

face down on the pavement by officers kneeling on her back while being handcuffed.

- e. The Supreme Court's Fourth Amendment analysis rests on the concept of reasonableness. Thus, would a reasonable officer on the scene of Sydney Beuhler's crime have acted in the same manner as Officer Smart? In my opinion, no. Indeed, no other officer can be seen in the videos violently grabbing demonstrators doing what Sydney Beuhler was doing and throwing them to the pavement to handcuff and arrest them. The point of the police action was to clear the people off the street. The arrest of Sydney Beuhler was completely unnecessary to accomplish that law enforcement mission.
- f. The Texas Penal Code provides no justification for Officer Smart's use of violent force to arrest Sydney Beuhler. With respect to the use of force by peace officers in the performance of an arrest or search, Section 9.51 provides the following: (a) a peace officer ... is justified in using force against another when and to the degree the actor reasonably believes the force is *immediately necessary* (my emphasis) to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:
  - (1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and
  - (2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested. (Attachment G).
- g. There was no apparent reason for Officer Smart to tackle Sydney Beuhler to the ground in order to place her under arrest for the offense of obstructing the highway. De minimis force would have been reasonably appropriate to arrest a slight young woman standing erect, arms to her side holding only a water bottle. Officers could have simply walked up to her, told her she was under arrest for obstructing the street, grabbed her arms and handcuffed her. Here, Officer Smart was in close proximity of dozens of other armed officers confronting Beuhler so any violent resistance or flight on her part would have been futile. The only force that would likely have been necessary would have been to hold her arms behind her back so she could be handcuffed. There is no indication from the videos that Officer Smart announced to Beuhler his intent or purpose to arrest her before he grabbed her around the waist, hoisted her off the ground and wrestled her to the pavement.
- h. The Austin Police Department General Orders in effect on August 1, 2020 provided a more specific test for officers to determine the objective reasonableness of the use of force in making an arrest. Section 200.3.1(a) spelled out "a number of factors should be taken into consideration. These factors include, but are not limited to:
  - (1) Reasonable opportunity for the officer to engage in de-escalation;

- (2) The conduct of the individual being confronted as reasonably perceived by the officer at the time;
- (3) Officer and subject factors such as age, size, relative strength, skill level, injury/level of exhaustion and number of officers versus subjects.
- (4) Influence of drugs, alcohol or mental capacity;
- (5) Proximity of weapons;
- (6) The degree to which the subject has been effectively restrained and his ability to resist despite being restrained;
- (7) Time and circumstances permitting, the reasonable availability of other resources to the officer;
- (8) Seriousness of the suspected offence or reason for contact with the individual;
- (9) Training and experience of the officer;
- (10) Potential for injury to citizens, officers and subjects;
- (11) Risk of escape;
- (12) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others; or
- (13) Other exigent circumstances. (Attachment D).

i. Officer Smart's use of force in the arrest of Sydney Beuhler fails each of the reasonableness factors of the Austin Police Department Manual.

- (1) *Reasonable opportunity for the officer to engage in de-escalation?* The engagement of the police contingent was clearly to force the demonstrators off the roadway. The confrontation of police and demonstrators was, in essence, an exercise in de-escalation in that the demonstrators were moving away from the police as they advanced along the street. Officer Smart's precipitous arrest of Sydney Beuhler ignored the de-escalation in process.
- (2) *The conduct of the individual?* She was standing still, unarmed, as part of a demonstration against police violence. Beuhler was part of group of people gathered for expressive, not criminal activity. She was arguably manifesting passive resistance by not immediately and quickly moving out of the street as the police approached.
- (3) *Officer/subject factors?* Officer Smart was part of a large police contingent armed for riot control and included mounted unit. Officer Smart is a very large man who was able to effortlessly grab 5'7" - 145-pound Sydney Beuhler high off the ground.
- (4) *Influence of drugs, alcohol or mental capacity?* Not an apparent factor here.
- (5) *Proximity of weapons?* Sydney Beuhler was holding a water bottle.
- (6) *The degree to which the subject has been effectively restrained and his ability to resist despite being restrained?* Sydney Beuhler was restrained prior to her being arrested. Officer Smart essentially tackled her as she stood erect in the street. Officer Smart and two other officers held Plaintiff face down on the pavement despite the absence of apparent resistance or attempt to escape.

- (7) *Resources reasonably available to the officer?* Officer Smart was one of a large group of Austin police officers, including a mounted unit and motor vehicles moving towards the people gathered on Congress Avenue. Officer Smart did not appear to call on other officers to assist him as he grabbed Sydni Beuhler and hoisted her into the air. He acted on his own by lunging forward of the bicycle barricade line, grabbing Beuhler and carrying her behind the line of police officers. Other officers assisted him in wrestling her to the pavement and holding her face down with knees to her back and handcuffing her.
- (8) *Seriousness of the suspected offence or reason for contact with the individual?* Sydni Beuhler was part of a demonstration protesting police violence. She was among approximately 150 other people gathered on and near Congress Avenue and Fourth Street. From the videos reviewed, Beuhler was the only person in the line of demonstrators with whom she was standing who was tackled to the ground for the ostensible offense of obstructing the road.
- (9) *Training and experience of the officer?* No information available regarding Officer Smart's training and experience.
- (10) *Potential for injury to citizens, officers and subjects?* The police force deployed against the demonstrators was overwhelming. The greatest potential for injury appeared to be to the subject demonstrators.
- (11) *Risk of escape?* It would have been infeasible for Sydni Beuhler to escape from the overwhelming police presence that was forcing the people on the street to move. That she did not run away from the police was apparently the rationale for Officer Smart to arrest her in the first place.
- (12) *Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others?* Sydni Beuhler was never a threat to Officer Smart or anyone else.
- (13) *Other exigent circumstances?* The possible circumstance under which Officer Smart decided to use force to arrest Sydni Beuhler was that she may have said something to or about the police that angered him. Such a circumstance would fail to justify a police officer's use of force against a subject.

## 12. CONCLUSION

- a. Based on the totality of the evidence and circumstances reviewed above, I am of the opinion that the forcible arrest of Sydni Beuhler was not justified, and the use of force to affect her arrest was excessive and unreasonable. It is not clear why Officer Smart singled out Beuhler to tackle her and place her under arrest out of the approximately 150 demonstrators who had gathered at the intersection of Congress Avenue and 4<sup>th</sup> Street in Austin. What is clear is that Sydni Beuhler was not a threat to the safety of the officers or others, was arguably committing a minor offense in context of expressive activity along with some 150 other people standing on a public street, and was not attempting to evade arrest by flight or

resistance. If Sydni Beuhler said or shouted something to or about the police that upset Officer Smart, that would in no respect justify his forceful seizure of her.

- b. I submit this report with the understanding that there will be further discovery and depositions in this matter. Insofar as any new evidence may be material and relevant to my findings so far, I will review and update this report as appropriate.



04/26/2022

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John D. Lenoir

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER, §  
Plaintiff, §  
v. § CASE NO. 1:21-cv-00054-RP §  
CITY OF AUSTIN, §  
OFFICER GAVIN SMART §  
(AP8674), and §  
OFFICER JAVIER §  
GONZALEZ (AP7422), §  
Defendants. §

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ORAL AND VIDEOTAPED DEPOSITION OF  
OFFICER JAVIER GONZALEZ  
FEBRUARY 9, 2023

Vol. 1 of 1

(Reported Remotely)

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ORAL AND VIDEOTAPED DEPOSITION OF  
OFFICER JAVIER GONZALEZ, produced as a witness  
at the instance of the Plaintiff, Sydni Beuhler,  
duly sworn, was taken in the above entitled and  
numbered cause on the 9th day of February 2023,  
from 10:35 a.m. to 3:31 p.m., before MENDY T.  
WILLIAMS, HIPAA-Certified and Texas Certified  
Shorthand Reporter, and reported by computerized  
oral stenography at Austin City Hall, 301 West  
2nd Street, Austin, Texas 78701, pursuant to the

1 MR. BARTON: Object to --

2 Q. (BY MS. MCDANIEL): Before the --

3 MR. BARTON: -- form.

4 MS. MCDANIEL: I'm sorry?

5 MR. BARTON: I just did an objection  
6 to the form.

7 MS. MCDANIEL: Yes. I understand.

8 Q. (BY MS. MCDANIEL): Before the May 2020  
9 protest and going on into August, what type of  
10 training did you receive on protest policing?

11 A. Say again.

12 Q. Did you receive any training regarding  
13 policing protests before the May 2020 protest  
14 began?

15 A. Whatever was included in the -- that  
16 TCOLE roster, that, and then like I said, any  
17 other PowerPoints that were presented during  
18 workdays.

19 Q. Were you aware of the murder of George  
20 Floyd?

21 A. Yes.

22 Q. Did you anticipate that there would be  
23 protests or actions relating to the murder of  
24 George Floyd here in Austin?

25 A. Well, when a accident like that takes

1 place, I don't really look into it too much  
2 because the first stuff that the news ever puts  
3 out is not the full story, so I don't -- I want  
4 to be a positive person.

5 I want to come to work. I want to  
6 do my job, so I don't pay attention to -- to  
7 the -- Normally when I find something out, it's,  
8 like, everything is complete. There's --  
9 there's been a -- you know, a autopsy report and  
10 all the facts.

11 I'm -- It's a black and white thing.  
12 It's in the sense of no gray area because  
13 there's a lot of gray that's put out when an  
14 incident takes place, so I knew about it. I  
15 didn't think of how the town would react.

16 Q. Did you receive any notification that  
17 there could be these protests relating to that  
18 before they began?

19 A. Possibly.

20 Q. So did -- Maybe you received some kinda  
21 notification that might be something to look out  
22 for?

23 A. Possibly. Sometimes they tell us to  
24 wear a certain uniform and that's kinda the  
25 heads up.



1 be any force. If they're resisting, there will  
2 be a reasonable force that is used to gain the  
3 control and detention.

4 Q. When in your understanding is it  
5 acceptable for someone to use physical  
6 resistance to an arrest?

7 A. If -- This is kinda like a -- They --  
8 they -- that's been mentioned. If the person  
9 truly believes that the police officer is using  
10 unreasonable force, that's the only one time I  
11 can think of, but they have to be able to later  
12 explain that in court this was unreasonable  
13 force because XYZ, 123.

14 Q. I understand. Interesting. And have  
15 you receiving training on controlling people's  
16 movements when you interact with them?

17 A. A basic -- basic training at the police  
18 academy.

19 Q. And what about de-escalation?

20 A. Once again, there was a -- my training  
21 said there was de-escalation class and then  
22 there was other things that were brought up  
23 in -- throughout the police academy that had to  
24 do with de-escalation, things as in verbal  
25 commands, presence, maybe create space, finding

1 Q. I appreciate it. Have you ever kneeled  
2 on an individual to detain or arrest them?

3 A. Not to my knowledge.

4 Q. And does APD train officers to kneel on  
5 people like to put them on the ground and kneel  
6 on top of them to -- to arrest them?

7 (Audio/video quality interruption.)

8 MS. MCDANIEL: I think we're maybe  
9 having a little technical difficulties.

10 THE VIDEOGRAPHER: You want me to  
11 take us off record?

12 MS. MCDANIEL: (Moves head up and  
13 down.)

14 THE VIDEOGRAPHER: All right.  
15 We're --

16 MS. MCDANIEL: Thank you.

17 THE VIDEOGRAPHER: -- off the video  
18 record. It's 12:16 p.m.

19 (Off the record at 12:16 p.m.)

20 (On the record at 12:17 p.m.)

21 THE VIDEOGRAPHER: We're back on the  
22 video record. It's 12:17 p.m.

23 Q. (BY MS. MCDANIEL): So we had a little  
24 technical difficulty, so I'll go back and re-ask,  
25 just go back a couple of -- So have you ever

1 kneeled on an individual when you're detaining  
2 or arresting them?

3 A. Not to my memory. No.

4 Q. And does APD train officers to kneel on  
5 someone to arrest them by taking them to the  
6 ground and then kneeling on their back?

7 A. Not to my knowledge. Not that I recall.

8 Q. What is your general method of  
9 effectuating an arrest? Like, run-of-the-mill,  
10 what's the most common?

11 A. I give a verbal command. I say, hey,  
12 turn around, please put your hands behind your  
13 back and I place them in handcuffs. That's --  
14 you know, that's how I hope every detention goes,  
15 every arrest goes.

16 Unfortunately, when people resist  
17 and don't comply with your lawful order,  
18 sometimes you end up in funny situations,  
19 awkward positions that are -- are just -- come  
20 with -- with that -- with that specific  
21 situation.

22 It -- it's -- You just don't know  
23 how you're gonna land. You know what I mean?  
24 I -- Sometimes I place the cuffs. Sometimes  
25 I -- I place a cuff on one hand and the other.

1 you meant to say officer --

2 A. Yes, ma'am.

3 Q. -- who was struggling to detain a white  
4 female. I went over to help the officer who was  
5 dealing with the female and assisted. I grabbed  
6 the right wrist of the female and immediately  
7 felt her pull her hands toward the front of her  
8 body.

9 In my training and experience of  
10 seven years, I have learned that criminals like  
11 to carry weapons in the front of their  
12 waistlines. When I felt the female pull her  
13 hand forward, I conducted a wrist lock in order  
14 to gain control of her arms and then she was  
15 guided to the floor and onto her knees.

16 The female was still pulling her  
17 right hand away from me while on the ground. I  
18 could feel her strength and her body stiffen as  
19 she was resisting. At this point, I gave  
20 commands to not resist multiple times.

21 I pulled out my handcuffs and was  
22 able to place them on the female with the  
23 assistance of the other -- of other officers. I  
24 later identified the officer that I helped as  
25 Officer Smart.

1 in the crowd from doing the thing that that  
2 person was doing?

3 A. I'm a -- I'm a peace officer in the  
4 state of Texas. I'm a -- I'm a professional, so  
5 anything -- I don't let personal matters get to  
6 me. I do what's asked of me. I protect the  
7 public and if I have to make an arrest, I make  
8 an arrest.

9 Q. Well, would you state that that's not  
10 part of your training being -- making an example  
11 out of someone in order to --

12 A. No. It's not.

13 Q. -- deter --

14 A. That -- that sounds personal, and no,  
15 it's not.

16 Q. Okay. I appreciate that. Because I do  
17 know that I can imagine that it's, like, well,  
18 you know, if we arrest one people -- one person  
19 and make a show out of it, then the rest of the  
20 people will disperse.

21 That's not a -- that's not a tactic  
22 that you would use?

23 A. That's not -- nothing that I've used.

24 Q. Okay. I'm just curious. Let me see. I  
25 think I asked you that. What other force, if

1 any, did you use against Ms. Buehler other than  
2 the wrist lock?

3 A. That's it.

4 Q. Okay. Well, I think we're almost ready  
5 for another break. Would that be okay with you?  
6 We're already --

7 A. That's fine.

8 Q. Yeah. We've -- It's almost one. We've  
9 been going about an hour and a half. I have a  
10 fair amount to get through.

11 MS. MCDANIEL: What are y'all  
12 wanting to do for eating? I guess should we  
13 take a 15-minute break, Monte? What do you  
14 think?

15 MR. BARTON: Well, I -- I think  
16 we're pretty prepared to go forward, but really  
17 whatever --

18 MS. MCDANIEL: Okay.

19 MR. BARTON: -- you want to do. If  
20 you want to take 15 minutes or 30 --

21 MS. MCDANIEL: I'm prepared to go  
22 forward --

23 MR. BARTON: -- I mean --

24 MS. MCDANIEL: -- and I know that  
25 Officer Gonzalez said he had work at four. I

1 a -- have been a police officer for 15 years.  
2 Some people haven't been on patrol in 10 years.  
3 Some people have been on patrol for one year.

4 So I can't control what this  
5 document says. I don't know why.

6 Q. So your -- In your -- like, based on  
7 what you think about writing reports and  
8 refraining and writing reports, do you think  
9 omitting the fact that a wrist lock was used is  
10 a -- is a significant omission?

11 MR. BARTON: Object to the form.

12 MS. MCDANIEL: I'll try to rephrase  
13 my question.

14 Q. (BY MS. MCDANIEL): Is this report  
15 incomplete in failing to include that a wrist  
16 lock was used?

17 A. He's -- Whoever wrote this is  
18 articulate -- they articulated it in their own  
19 words, so maybe that's the picture that they  
20 painted. So I can't speak for this person.

21 Q. I appreciate that. I'm going down. So  
22 we were at Officer Gonzalez gaining control of  
23 Ms. Beuhler's right arm, then I want to go to  
24 the sentence, I think it's two lines down.

25 It states while trying to handcuff

1 Ms. Beuhler, do you see that that sentence  
2 states that you placed your knee on Ms.  
3 Beuhler's upper right back area?

4 A. Yes. I'm reading that on this document.

5 Q. Is putting your knee on someone's back  
6 area a police action you would normally include  
7 a report -- in your report or your supplement as  
8 you described?

9 A. If I did it -- if I intentionally did  
10 it, that is very important that I would put that  
11 on there --

12 Q. Okay.

13 A. -- especially -- especially with the  
14 climate of everything going on. Yes.

15 Q. Do you agree with the report's statement  
16 that you placed your knee on her upper right  
17 back area and right side?

18 A. Based on the videos that I've seen and  
19 my memory, I -- I disagree with this. This  
20 is -- this sounds too firm. Like, this person  
21 is saying that -- and now they worded something  
22 like their -- his knee maybe touched her upper  
23 back, rubbed her upper shoulder.

24 I -- I would agree that this is  
25 too -- this is too -- this just -- that's plays



1 funding, and I even think that there was some  
2 action taken on police funding, but I understand  
3 that wasn't something that you discussed within  
4 the office.

5 A. No, ma'am.

6 Q. Did you receive any sort of discipline  
7 with regard to the incident that is the subject  
8 of this lawsuit?

9 A. I got a -- a copy of that Class D that  
10 you showed me and that's about it. I mean, I  
11 did my job.

12 Q. But that Class D, I believe it stated,  
13 and we read it together, that it stated there  
14 was no finding of wrongdoing, right?

15 A. According to them. That's what it says.

16 Q. So that doesn't -- that's not  
17 discipline, right? That's not a disciplinary --

18 A. This is all -- this is all part of the  
19 process internally that they do. I have no say  
20 on this. They can -- people can put -- put --  
21 put in as many as they want anonymously or, you  
22 know, saying who they are.

23 So I go to work, I do my job, and I  
24 don't let these things bother me.

25 Q. But nobody ever told you, for example,

1 it's anything I have immediate access to. I  
2 think I -- maybe one time I requested it for  
3 SWAT school and then all I did was I requested  
4 it and I had to send it to whoever's in charge  
5 of SWAT school and they got a copy of it and  
6 that was it.

7 It -- it's something that's required  
8 for SWAT school. I didn't -- I'm sorry. This  
9 is a IA, right? I'm sorry. I'm mixing this up  
10 with the TCOLE.

11 Q. Oh, training?

12 A. Yeah. And you know what? They might  
13 actually ask for this, too. I -- I think they  
14 ask for it, too. It was 2017. I don't -- I  
15 know they asked for a TCOLE training, I believe,  
16 and this one, I believe.

17 Q. So you received SWAT training?

18 A. I went to the --

19 Q. You call it a SWAT school?

20 A. I went to the school.

21 Q. Okay. Let's see.

22 MS. MCDANIEL: Oh, and Counsel, are  
23 you willing to stipulate this -- this document  
24 is -- is COA8664 to 8670 [sic] and then it  
25 states in all caps in the file name, CONF, C-O-

1 N-F meaning that it's confidential?

2 Can you stipulate that this document  
3 is Officer Gonzalez's internal affairs complete  
4 history and that it is authentic?

5 MR. BARTON: Yes. I'll stipulate as  
6 far as the document we produced. I mean, if  
7 anything has changed since this document was  
8 produced, I obviously don't know anything about  
9 it, but yes.

10 As of the date that we produced that  
11 document, I -- I think it was exactly what it  
12 says it is, the internal affairs complete  
13 history for Officer Gonzalez.

14 MS. MCDANIEL: Okay. Thank you.

15 Q. (BY MS. MCDANIEL): Let's see. I was  
16 hoping we could go to 8/29/2020. So let's see.  
17 It's the number two and these are -- these --  
18 these items on your history are listed by number  
19 and this is number two and it states case number  
20 2020-1443. Can you see that?

21 A. Yes, ma'am.

22 Q. And it states at the top reported date  
23 August 21, 2020, and then it states  
24 Classification A. What does Classification A  
25 mean?

1           A. That's something that IA internally  
2 categorizes complaints as. I don't know exactly  
3 what it is. That's something in-house that they  
4 classify things as.

5           Q. Okay. I don't know what it means  
6 either. I was curious. Going down to the  
7 second box, it states case description 8/29/2020,  
8 10:20 a.m., the OPO. What does OPO mean?

9           A. Office of police monitors office.

10          Q. Oversight maybe?

11          A. Oversight police office. There we go.

12          Q. Okay. The OPO received an email from an  
13 anonymous complainant that included a photo of  
14 an APD officer and the alleged officer's social  
15 media posts that included comments about  
16 protesting and then it's -- states at the end  
17 that it's written by Mia Demers, parentheses,  
18 OPO. Can you tell me about this incident?

19          A. Sure. I posted something on my private  
20 Instagram page. Somebody within my private  
21 Instagram page who -- who I thought was possibly  
22 a friend didn't like certain things that I said,  
23 and they later somehow filed a complaint --  
24 anonymous complaint.

25          Q. And then what happened?

1           A. It was investigated, and they went  
2 through everything. They went back, reviewed  
3 everything. I was interviewed. Due to the fact  
4 that I was not on the clock, that I was in  
5 another country, that I wasn't in a police  
6 capacity and I didn't make statements or attack  
7 any particular group or anything like that, I  
8 was cleared from it.

9           Q. I understand. I appreciate you letting  
10 me know about that. And it states at the next  
11 box that the allegation is chapter 9; is that  
12 referring to chapter 9 of the -- what -- what  
13 is -- what chapter 9 is that referring to --

14           A. Whatever -- whatever chapters are in  
15 policy. That's what they're thinking that I  
16 violated, those three, and later throughout the  
17 investigation, I didn't violate any of them.

18           Q. I see. Yes. It says at the bottom,  
19 disposition, it's administratively closed,  
20 there's no discipline, and the retention period  
21 three years. So it looks like it will be --  
22 Does that mean it will be dropped from your --

23           A. I -- I --

24           Q. -- report on this date --

25           A. I don't know what that means. I'm

1 Number 8. I'm gonna stop sharing the --

2 A. I'm here.

3 Q. -- Exhibit Number 9. Okay. Give me one  
4 second. Where are we at? Okay. I'll share my  
5 screen. So now I would like to go -- Are you --  
6 Can you see what's on my screen as Plaintiff's  
7 Exhibit Number 8?

8 A. Oh, yes. I'm back over here. Yes,  
9 ma'am.

10 Q. Okay. Can we please go down to item  
11 number three? It's on page COA008665. It's  
12 called case number 2020-1301, reported date  
13 August 4, 2020, Classification A.

14 A. I'm here. I can see it.

15 Q. Okay. Let's see. We kinda talked about  
16 this before, but it states case description.  
17 I'm in the second box, 8/4/2020, 1:23 p.m.  
18 That's interesting. That does -- 1:23 p.m.

19 I know you said earlier that you  
20 thought it was strange that those events  
21 happened so close together. Maybe there's some  
22 inaccuracy. So it says case description. It  
23 states I wasn't read my Miranda rights -- Wait  
24 this is the -- Sorry.

25 Excuse me. I wasn't read my Miranda

1 rights. I wasn't told why I wasn't being  
2 arrested, probably that should be was, and they  
3 used excessive force toward me. It was four  
4 officers on me kneeling on me and I'm a hundred  
5 and thirty pounds.

6 The officers were not going to get a  
7 female officer. They said they didn't have time  
8 to get a female officer and I started to have a  
9 panic attack, so they got one. The arresting  
10 officer was Swart, it should state Smart, number  
11 8674.

12 Officers in the car that transported  
13 threatened me and they were mouthing things to  
14 one another and one wouldn't talk to me at all,  
15 and then it states that it was written by  
16 Mallory Scott, parentheses OPO. Who is Mallory  
17 Scott?

18 A. I don't know who that is.

19 Q. And I see down here it says  
20 administratively closed, no discipline, no  
21 suspension review, administratively closed. As  
22 I'm going down the page, there's multiple little  
23 code sections and for every one, it says  
24 administratively closed.

25 Why do you think there was no review

1 taken of this incident?

2 A. I don't make that decision. I don't  
3 know.

4 Q. Why do you think that APD is not  
5 concerned with someone not being read their  
6 Miranda rights?

7 A. I don't -- I don't know. I don't -- I  
8 don't make that call.

9 MR. BARTON: Object to the form.

10 Q. (BY MS. MCDANIEL): Is it APD practice  
11 to not mirandize people who are being arrested?

12 A. We talked about this earlier and I  
13 stated as far as me as an individual, I  
14 mirandize people when I ask incriminating  
15 questions.

16 Q. Do you think that it's important to  
17 inform individuals who are being arrested that  
18 they have a right to an attorney?

19 MR. BARTON: Object to the form.

20 MS. MCDANIEL: I'll rephrase my  
21 question.

22 Q. (BY MS. MCDANIEL): Do you think that  
23 APD believes that it is important to inform  
24 people who are being arrested that they have  
25 an -- a right to an attorney?



1 or damage to city property, however you want to  
2 word it. There's been a few. Yes.

3 Q. Have you ever received any discipline  
4 regarding any vehicular collision you've been  
5 involved with when you were working as an  
6 officer?

7 A. I know that I can -- There's only so  
8 many you can have. I know you're rewarded for  
9 not having any, and then if you get some within  
10 the -- a time limit, which I'm not sure of, you  
11 get given, like, a little pin or a token or  
12 something or certificate, and then based on your  
13 last one, you gotta go so much time without it.

14 So I know there's a reward for it.  
15 I want to say there was probably for sure talk,  
16 maybe training at the academy. I'm -- And  
17 I'm -- I'm not too sure. I'm going off memory,  
18 and two -- one -- How many do you have there?

19 Q. Let's see. It looks like number four is  
20 that APD administrative chokehold and had a knee  
21 on someone's neck. That one is not a vehicle  
22 accident. Do you recall this event number four?

23 A. I don't even know what that is.

24 Q. It doesn't even have your name. It  
25 said -- I mean, it is in your history, but it

1           A. Maybe the main focus there is imminent  
2 danger and I'm focusing on -- on the why and not  
3 the techniques. I might have focused on why I  
4 did what I did versus the specific technique.

5           Q. And why don't -- why do you think that  
6 you didn't mention that you knelt on Ms.  
7 Beuhler's back or placed your knee on her back?

8           A. Because I never placed my knee on her  
9 back. The document where it was said was  
10 something -- one of the other persons that  
11 reviewed it. I never intentionally put my knee  
12 on her. That's not something that I do.

13                         If I would have -- would've done it  
14 intentionally, I would've documented that. Now  
15 there's a possibility while placing her in  
16 handcuffs that my knee could -- touched her  
17 shoulder, touched her upper back, but not  
18 purposely putting pressure on her.

19                         If you watch the video, you can see  
20 my left knee touching the ground. You can also  
21 see my right foot touching the ground, so, I  
22 mean, my feet can only spread when I'm on the  
23 ground maybe a foot, foot and a half while I'm  
24 placing handcuffs on her.

25                         So due to the fact that this wasn't

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER, §  
Plaintiff, §  
v. § CASE NO. 1:21-cv-00054-RP §  
CITY OF AUSTIN, §  
OFFICER GAVIN SMART §  
(AP8674), and §  
OFFICER JAVIER §  
GONZALEZ (AP7422), §  
Defendants. §

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
OFFICER JAVIER GONZALEZ

FEBRUARY 9, 2023

Vol. 1 of 1

(Reported Remotely)

\*\*\*\*\*

I, MENDY T. WILLIAMS, HIPAA-Certified  
and Certified Shorthand Reporter in and for the  
State of Texas, hereby certify to the following:

THAT the witness, OFFICER JAVIER  
GONZALEZ, was duly sworn by me and that the  
transcript of the oral deposition is a true  
record of the testimony given by the witness;

THAT the deposition transcript was  
submitted on \_\_\_\_\_, 2023, to the  
witness or to the attorney for the witness for

1 examination, signature, and return to me by  
2 \_\_\_\_\_, 2023.

3 THAT the amount of time used by each  
4 party at the deposition is as follows:

5 Ms. Grayson E. McDaniel - 4:19:00  
6 Mr. Monte Barton - 0:00:00

7 THAT pursuant to information given to  
8 the deposition officer at the time said  
9 testimony was taken, the following includes  
10 counsel for all parties of record:

11 Ms. Grayson E. McDaniel  
12 Attorney for Plaintiff, Sydni Beuhler

13 Mr. Monte Barton  
14 Attorney for Defendants, City of Austin,  
Officer Gavin Smart (AP8674), and  
Officer Javier Gonzalez (AP7422)

15 I further certify that I am neither  
16 counsel for, related to, nor employed by any of  
17 the parties or attorneys in the action in which  
18 this proceeding was taken, and further that I am  
19 not financially or otherwise interested in the  
20 outcome of the action.

21 Further certification requirements  
22 pursuant to Rule 203 of the TRCP will be  
23 certified to after they have occurred.

24 Certified to by me this \_\_\_\_\_ day of  
25 \_\_\_\_\_, 2023.

*Mendy Williams*

Mendy T. Williams  
Texas CSR #CSR-8055  
Certification Expires: 07/31/23

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on \_\_\_\_\_, 2023;

If returned, the attached Changes and Signature page contains any changes and the reasons therefore;

If returned, the original deposition was delivered to \_\_\_\_\_, Custodial Attorney;

That \$\_\_\_\_\_ is the deposition officer's charges to the Plaintiff, Sydni Beuhler, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Mendy T. Williams  
Texas CSR #CSR-8055  
Certification Expires: 07/31/23

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER,	ï¿½	
	ï¿½	
Plaintiff,	ï¿½	
	ï¿½	
vs.	ï¿½	CASE NO.1:21-cv-00054-RP
	ï¿½	
CITY OF AUSTIN, OFFICER	ï¿½	
GAVIN SMART (AP8674), AND	ï¿½	
OFFICER JAVIER GONZALEZ	ï¿½	
(AP7422),	ï¿½	
	ï¿½	
Defendants.	ï¿½	

ORAL ZOOM VIDEOTAPED DEPOSITION

OFFICER GAVIN W. SMART

February 16, 2023

ORAL ZOOM VIDEOTAPED DEPOSITION OF OFFICER GAVIN W. SMART, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 16th day of February, 2023, from 10:35 a.m. to 2:29 p.m., before Ms. Michelle Hartman/A.S., Certified Shorthand Reporter in and for the State of Texas and Registered Professional Reporter, reported by computerized stenotype machine/mask at the offices of via Zoom videoconference, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

1 to walk or leave a situation or you have to remove  
2 them over an obstacle.

3 Q. And is that considered a use of force  
4 to pick someone up off the ground?

5 A. For Austin, a use of force is  
6 considered when I have to overcome a person's  
7 physical resistance through physical means, through  
8 force. So if that could potentially be a use of  
9 force, yes.

10 Q. Have you ever kneeled, knelt on an  
11 individual when detaining or arresting?

12 A. Yes, ma'am.

13 Q. Why would you do that?

14 A. In order to control them and their  
15 body.

16 Q. Does APD train officers to kneel on  
17 individuals when arresting them?

18 A. Yes. I don't know if it is exactly  
19 that terminology, but yes, it is a handcuffing  
20 position that's taught both at APD and other  
21 universal agencies.

22 Q. Tell me about the levels of force that  
23 are in the APD general orders. Do you remember what  
24 they are?

25 A. I don't have it directly in front of

1 Q. Had Ms. Beuhler tried to run away  
2 before you arrested her?

3 A. No, I don't believe we gave her the  
4 opportunity.

5 Q. And had Ms. Beuhler physically resisted  
6 you before you wrapped your arms around her, grabbed  
7 her, and carried her over the BPOT line?

8 A. No. She could not, in definition,  
9 physically resist me before I touched her.

10 Q. Let's see. Let me continue reading.

11 It says, "I then walked Beuhler back  
12 and began to attempt to secure her in handcuffs.  
13 Beuhler began to attempt to physically resist my  
14 efforts to place her under arrest by attempting to  
15 wrestle free from my grasp."

16 Why did you state that she began to  
17 resist?

18 A. Because she did.

19 Q. In what -- after you say she began to  
20 also -- what did she do to physically resist your  
21 efforts that you recall?

22 A. I guess she would use her body to  
23 wiggle, wrestle free. And then she also used her  
24 legs, as I kind of referred to before, which I assume  
25 that's what the question was allotting to, to push



1 way to prevent that. I think that's why they changed  
2 the physical makeup of the cameras for the newer  
3 generation. I think it was a common problem.

4 Q. Did APD train you in picking people up  
5 to arrest them?

6 A. They trained me in a multitude of ways  
7 to obtain and then enact arrest of people, yes.

8 Q. Is one of them to pick people up?

9 A. Yes, ma'am.

10 Q. Is that risk that picking someone up  
11 would cause your camera to get turned off?

12 A. Not specifically, no. Again, like I  
13 said, the drawback of the camera is -- and I don't  
14 think accounted for it at the time, it's just when it  
15 was used on the street in a more user friendly and  
16 data was created through -- you could argue through  
17 science, means of real world scenarios that the  
18 physical contact with the camera was persons or  
19 objects can cause it to deactivate.

20 Q. Is it fair or reasonable to say that  
21 had you asked Ms. Beuhler to turn around and put her  
22 hands behind her back to arrest her that your  
23 body-worn camera would have continued running as  
24 opposed to being shut off?

25 MR. BARTON: Object to the form.

1 on, it just wouldn't be recording?

2 A. Yes, ma'am, except for that 30-second  
3 buffer, and there will be no audio to it.

4 Q. I see. Well, I have learned a little  
5 bit about that.

6 Are there consequences in APB if your  
7 body -- if your BWC gets turned off while you are on  
8 duty?

9 A. Potentially if it's intentional.

10 Q. If you had not grabbed Ms. Beuhler,  
11 would the BWC have stayed running?

12 A. Most likely.

13 Q. Have you received any discipline with  
14 regard to your actions in effectuating Ms. Beuhler's  
15 arrest?

16 A. No, ma'am.

17 Q. You're aware that there are times when  
18 it is justified for an individual to resist arrest,  
19 correct? I believe you earlier you said "never."

20 A. Not for a lawful arrest where it's --  
21 lawful force is being used against them, no.

22 Q. I see. Ms. Beuhler was -- wait, tell  
23 me a little bit more about that. You said so if it's  
24 a lawful arrest.

25 What would be a -- not a lawful --

1 well, when would -- when would resistance be  
2 justified?

3 A. When would resistance be justified?

4 Q. Yes.

5 MR. BARTON: Object to the form.

6 Q. (BY MS. MCDANIEL) When would  
7 resistance to an arrest be justified?

8 A. I would say that I don't know about the  
9 term "resistance to an arrest," but I could  
10 understand a person using force against a police  
11 officer if the police officer was not exercising his  
12 duties in good faith and within the law and was just  
13 intentionally trying to harm the person, in which  
14 case I would say that wouldn't be the person  
15 resisting an arrest but protecting themselves from an  
16 assault.

17 Q. Ms. Beuhler was responding to the force  
18 that you used in grabbing her and carrying her; isn't  
19 that correct?

20 MR. BARTON: Object to the form.

21 THE WITNESS: I don't know, I can't  
22 tell you what she is or not. I haven't picked her  
23 brain on that.

24 Q. (BY MS. MCDANIEL) Well, you did  
25 state -- I mean, you agreed she did not strike you

1 force, in order to preserve officer safety, I think  
2 it would go hand in hand with exercising whatever  
3 lawful duty that you're trying to achieve. I would  
4 say anytime that you need to escalate force, it's  
5 probably tied to paramount that there's a potential  
6 risk to officer safety. Any time officer force is  
7 used there's the potential risk to officer safety. I  
8 would say any time you interact with somebody on a  
9 low level, there is potential officer safety.

10 I think the only way to not have a  
11 risk to officer safety would be to have the  
12 conversation over somebody via phone or via the  
13 computer itself. There's always an underlying threat  
14 to potential violence when in person with somebody,  
15 but as far as, like I said, to escalate force,  
16 it's -- and only when reasonably used to achieve your  
17 objective.

18 Q. (BY MS. MCDANIEL) Could your objective  
19 potentially be -- and maybe -- I'm going to restate  
20 my question.

21 So I asked you: Is there any reason  
22 to escalate force other than preserving officer  
23 safety? I'm going to change that question.

24 I'm going to say: Is there any reason  
25 to use force other than officer safety? And I'll

1 give an example. Like, for example, could it further  
2 your objective to control the crowd by using force to  
3 make an arrest, by kind of making an example out of  
4 the person you're arresting?

5 MR. BARTON: Object to the form.

6 THE WITNESS: I wouldn't say making an  
7 example of, but I would say that there are times in a  
8 tactical that's used by police officer when a person  
9 is considered an instigator of, they're trying to  
10 entice the crowd, one of those side effects of large  
11 crowds is we lose our individual thought, complective  
12 (ph) thought, we're more influenced. It's something  
13 that I've encountered regular during protests, and  
14 even just seeing it on 6th Street on a nightly basis.

15 There's nothing more, for lack of a  
16 better term, stupid than a group of males on a  
17 bachelor party that have been drinking. They  
18 wouldn't (sic) do things they wouldn't do otherwise,  
19 such as run around in banana suits everywhere, but --  
20 so that is a tactic that can be employed where a  
21 person that is seen through officer's observations  
22 and surveillance to be an instigator of the crowd can  
23 be targeted for arrest, for violation of --

24 Q. (BY MS. MCDANIEL) That makes sense.

25 And I did notice in the videos, and in

1 arrest.

2 Just because a person resists me does  
3 not mean that I let them go just because it's like,  
4 well, I would have to use force against them. I  
5 think society's laws would break down rather quickly  
6 and we'd develop into chaos if we did such.

7 Q. Well, but you didn't try to just ask  
8 her to turn around and put her hands behind her back  
9 before you grabbed her, correct?

10 A. No, we tried to actually have her to  
11 leave instead so she wouldn't have to be arrested.

12 Q. I see. At what point in the arrest did  
13 you Mirandize Ms. Beuhler?

14 A. I never Mirandized her because I never  
15 did a custodial interrogation of her.

16 Q. What do you mean by a "custodial  
17 interrogation"?

18 A. I never asked her while in my custody  
19 direct questions that could lead to incriminating  
20 herself.

21 Q. Are you familiar with Miranda rights?

22 A. Yes, ma'am.

23 Q. Do you receive training on Miranda  
24 rights through APD?

25 A. Yes, ma'am.

1 with it.

2 Q. I have two, luckily no cursing, but --

3 A. It's coming. I have teenagers.

4 Q. I have a 15-year-old. Not that she  
5 doesn't curse, she just hasn't cursed at me luckily,  
6 luckily for her.

7 Did you have any mandatory trainings  
8 during that period regarding protest policing?

9 A. I don't recall other than maybe  
10 refresher courses possibly through our online  
11 training. They might have sent out a memo and  
12 refresher on mobile force. My role in that is a  
13 little different in that I have a set role that I  
14 have done continuous training throughout this time.

15 Also, on a daily basis we have pop-up  
16 protests all the time downtown. So my training was  
17 more up-to-date than probably many of the officers.

18 Q. When you said -- I believe you just  
19 said you have a set role that you're training for?

20 Did I hear that correctly? And what  
21 did you mean by that?

22 A. So generally speaking, most of the  
23 downtown officers are on BPOT. You have to be as  
24 part of your placement down there. So whenever a  
25 mobile field force is activated, that's my role is

1 did have an effect.

2 Q. That's my understanding. I can't  
3 remember the exact time either, but I recall them  
4 being, you know, related in time.

5 A. Uh-huh.

6 Q. Did you receive any sort of employment  
7 or administrative discipline of any kind relating to  
8 the incident that led to this lawsuit?

9 A. No, ma'am.

10 Q. Did you receive any communications that  
11 would indicate that your actions with regard to the  
12 incident that led to this lawsuit met the approval of  
13 people in your chain of command?

14 A. No, other than just the Class D memo  
15 that was signed by my entire chain of command saying  
16 that I was exonerated.

17 Q. Did you ever receive a commendation for  
18 your actions with regard to the incident with  
19 Ms. Beuhler?

20 A. No, not individually with her, no,  
21 ma'am. I believe I received a commendation for just  
22 general work during the protests, but that might be a  
23 participation ribbon for all I know.

24 Q. Oh. And this is going back to  
25 something we touched on before.



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STATE OF TEXAS  
COUNTY OF HARRIS

REPORTER'S CERTIFICATE  
ORAL VIDEOTAPED DEPOSITION OF  
OFFICER GAVIN W. SMART  
February 16, 2023

I, Michelle Hartman, the undersigned  
Certified Shorthand Reporter in and for the State of  
Texas and Registered Professional Reporter, certify  
that the facts stated in the foregoing pages are true  
and correct.

I further certify that I am neither  
attorney or counsel for, related to, nor employed by  
any parties to the action in which this testimony is  
taken and, further, that I am not a relative or  
employee of any counsel employed by the parties  
hereto or financially interested in the action.

That the deposition transcript was duly  
submitted on \_\_\_\_\_ to the witness or to  
the attorney for the witness for examination,  
signature, and returned to me by \_\_\_\_\_.

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SUBSCRIBED AND SWORN TO under my hand and  
seal of office on this \_\_\_\_\_ day of March, 2023.

*Michelle Hartman*

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Michelle Hartman, CSR, RPR  
Texas CSR 7093  
Expiration: 12/31/23

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER,	)	
	)	
Plaintiff,	)	
v.	)	CIVIL ACTION
	)	
CITY OF AUSTIN, OFFICER GAVIN	)	NO.: 1:21-cv-00054-RP
SMART (AP8674), AND OFFICER	)	
JAVIER GONZALEZ (AP7422),	)	
	)	
Defendants.	)	
	)	

ORAL AND ZOOM DEPOSITION OF  
OFFICER NAVOR MARTINEZ  
APRIL 3, 2023  
VOLUME 1

-----

ORAL AND ZOOM DEPOSITION OF OFFICER NAVOR MARTINEZ,  
produced as a witness at the instance of the PLAINTIFF, and  
duly sworn, was taken in the above-styled and numbered cause on  
April 3, 2023, from 10:50 a.m. to 3:46 p.m., via Zoom before  
Wendy Schreiber, CSR No. 9383, in and for the State of Texas,  
reported by machine shorthand, at the law offices of the  
Assistant City Attorney, Austin, Texas, pursuant to the Federal  
Rules of Civil Procedure and the provisions stated on the  
record or attached hereto.

Job No. 945034



1 A. Yeah, I didn't know that she was frisked by a female.  
2 I didn't know that Allare was there.

3 Q. Did you know that she had been frisked at all?

4 A. Yes, I knew that she had been frisked because I was  
5 there next to her.

6 Q. But you just didn't know that the officer who frisked  
7 her was a female?

8 A. Yeah, I didn't know.

9 Q. Because you couldn't really tell?

10 A. I couldn't tell. It could be the mask, the shield --  
11 face shield that people were wearing, helmet. I just remember  
12 it being an officer from the Special Response Team who just  
13 happened to be there when it occurred.

14 Q. Oh, okay. All right. I'm going to take that one  
15 down and stop sharing my screen.

16 Can you tell me about how you -- oh, can you  
17 tell me if you recall providing Ms. Beuhler her Miranda warning  
18 during your transport?

19 A. I did not issue Ms. Beuhler a Miranda right.

20 Q. Is it normal for you not to issue a Miranda warning  
21 when you are transporting an individual?

22 A. I'd say it depends on the situation. If you're  
23 questioning the arrestee in respect to the -- the offense that  
24 he's being charged for, then I would Mirandize that person.

25 Q. I see. Well, I do see it says 1:20. I have just a

1 Q. Would you charge an individual who didn't provide  
2 their name in transport with failure to identify?

3 A. After a person is placed under arrest, which this  
4 female at this point was, she has the obligation to identify  
5 herself. If a person who has been placed under arrest doesn't  
6 identify themselves, they can be charged with a failure to  
7 identify.

8 Q. And did you do anything to ensure that she understood  
9 her rights with regard to her failure to identify?

10 A. Officer Gentry gave her several opportunities. Even  
11 explained to her that if she didn't identify herself she could  
12 be charged with that offense.

13 Q. Do you see that it could be seen as coercive to  
14 threaten someone to give them an additional charge if they  
15 don't provide their name?

16 A. No, it's more of informing that person that he or she  
17 is committing a violation of the law.

18 Q. (Video played.) Is it fair to say that Ms. Beuhler  
19 did provide her name to Officer Gentry?

20 A. At this point, yes.

21 Q. (Video played.) And it looks like you're putting on  
22 gloves. What does that mean?

23 A. At this point I'm going to go ahead and do a search  
24 incidental to arrest of Ms. Beuhler's property.

25 Q. I see. Of her fanny pack?

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION
	)	
CITY OF AUSTIN, OFFICER GAVIN	)	NO.: 1:21-cv-00054-RP
SMART (AP8674), AND OFFICER	)	
JAVIER GONZALEZ (AP7422),	)	
	)	
Defendants.	)	
	)	
	)	
	)	

REPORTER'S CERTIFICATION  
DEPOSITION OF OFFICER NAVOR MARTINEZ  
APRIL 3, 2023

I, Wendy Schreiber, Certified Shorthand Reporter No. 9383,  
in and for the State of Texas, hereby certify to the following:

That the witness, OFFICER NAVOR MARTINEZ, was duly sworn  
by the officer and that the transcript of the oral deposition  
is a true record of the testimony given by the witness;

That the deposition transcript was submitted on  
\_\_\_\_\_ to the witness or to the attorney for the  
witness for examination, signature and return to me by  
\_\_\_\_\_;

That the amount of time used by each party at the  
deposition is as follows:

GRAYSON E. McDANIEL, ESQ.....03 HOUR(S):47 MINUTE(S)  
MONTE BARTON, ESQ.....00 HOUR(S):00 MINUTE(S)

1           That pursuant to information given to the deposition  
2 officer at the time said testimony was taken, the following  
3 includes counsel for all parties of record:

4 FOR THE PLAINTIFF:

5           GRAYSON E. McDANIEL, ESQ. (Attending Remotely)  
6           HENDLER FLORES LAW, PLLC  
7           901 S. MoPac Expressway  
8           Building 1, Suite #300  
9           Austin, Texas 78746  
10          Phone: (512) 439-3200  
11          Fax: (512) 439-3201  
12          gmcdaniel@hendlerlaw.com

13 FOR THE DEFENDANTS:

14           MONTE BARTON, ESQ. (Attending Remotely)  
15           ASSISTANT CITY ATTORNEY  
16           CITY OF AUSTIN  
17           301 W. 2nd Street  
18           Fourth Floor  
19           Austin, Texas 78701  
20           Phone: (512) 974-2268  
21           Monte.barton@austintexas.gov

22           That \$\_\_\_\_\_ is the deposition officer's charges to  
23 the Plaintiff for preparing the original deposition transcript  
24 and any copies of exhibits;

25           I further certify that I am neither counsel for, related  
to, nor employed by any of the parties or attorneys in the  
action in which this proceeding was taken, and further that I  
am not financially or otherwise interested in the outcome of  
the action.

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Certified to by me this 11th day of April, 2022.



---

Wendy Schreiber, Texas CSR 9383  
Expiration Date: 05/30/24  
MAGNA LEGAL SERVICES  
Magna Registration No. 631  
16414 San Pedro, Suite 900  
San Antonio, Texas 78232  
Phone: 866-672-7880

Job No. 945034



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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER )  
)  
VS. ) CASE NO.  
) 1:21-CV-00054-RP  
CITY OF AUSTIN, )  
OFFICER GAVIN SMART (AP8674), )  
OFFICER JAVIER GONZALEZ )  
(AP7422), AND OFFICER ANNE )  
ALLARE (AP7755) )

-----  
VIDEOTAPED DEPOSITION OF  
ANNE ALLARE  
DECEMBER 15, 2022  
(REPORTED REMOTELY)  
-----

ANSWERS AND DEPOSITION OF ANNE ALLARE,  
produced as a witness at the instance of the  
Plaintiff, taken in the above-styled and -numbered  
cause on DECEMBER 15, 2022, at 9:05 a.m., before  
CHARIS M. HENDRICK, a Certified Shorthand Reporter  
in and for the State of Texas, witness located in  
Austin, Texas, pursuant to the Federal Rules of  
Civil Procedure, the current emergency order  
regarding the COVID-19 State of Disaster, and the  
provisions stated on the record or attached hereto.

1 you are putting yourself in danger in order to help  
2 the civilians or victims.

3 Q. But there is -- but what is the scale? I  
4 am sorry. So I think you said civilians, then  
5 officers; does that mean that the priority of life  
6 is, first, civilians, then officers?

7 A. Yes. And then property. And you -- so,  
8 typically, you wouldn't -- here is an example. If  
9 -- if you think that someone is flushing a bunch of  
10 drugs in -- down a toilet, you are not going to  
11 enter that house and risk your life in order to  
12 save that property because it's just not worth it.

13 Q. Okay. What about another example  
14 involving an officer having to deal with, for  
15 example, an armed subject?

16 A. What do -- what do you mean by that?

17 Q. I am trying to think of an example that  
18 would involve officer safety, like the officer's  
19 concern for their own safety versus the safety of  
20 the subject.

21 A. The officer is still concerned about the  
22 public and who the suspect -- the armed suspect  
23 could injure, so that's why --

24 Q. So about --

25 A. -- even --

1 force used in the protests in that period?

2 A. No, ma'am.

3 Q. Are you aware of how much the city has  
4 paid out in settlements for injured protesters?

5 A. No, ma'am.

6 Q. Are you aware that some protesters were  
7 injured by officers during the protests?

8 A. Yes, ma'am.

9 Q. And how -- what kind of injuries are you  
10 aware of?

11 A. I was aware of a lady who was -- I believe  
12 they said she was pregnant; I am not sure if she  
13 ended up being pregnant or not, but she was injured  
14 by a less-lethal shotgun; I know that one.

15 Q. What else?

16 A. I don't know of many more. I do not watch  
17 the news and I moved out of the city, so I don't --  
18 I don't know much about that.

19 Q. Do you recall if you were getting email  
20 updates or bulletins from APD regarding  
21 excessive-force violations that were -- that  
22 occurred during the time?

23 A. I don't believe we got any updates about  
24 excessive force.

25 Q. And did you get any training -- I think I

1 may have asked you this already, but I will ask  
2 you: Did you get any additional training during  
3 this time -- or not even -- it doesn't have to be a  
4 formal training, but just discussions, group --  
5 like, on your team or from your supervisors  
6 regarding not using excessive force during these  
7 protests due to their stressful nature? Like --  
8 like, we want to give you guys a refresh just  
9 because we know you are working 17-hour days and  
10 people are screaming in your face. Did you receive  
11 training on how to keep calm or not use excessive  
12 force?

13 A. The one thing I remember they had all of  
14 us do was check the less-lethal shotguns and ensure  
15 that none of the rounds that were entered into them  
16 were actual lethal rounds. And then, also, they  
17 had us replace them with newer rounds because there  
18 were lots of old rounds, but that was the -- that  
19 was the -- what I remember besides the formation  
20 training.

21 Q. Thanks. And do you remember officers  
22 being mad about these protesters, angry?

23 A. I remember people did not want to continue  
24 to be there. They wanted to do their actual job,  
25 but I don't -- I never saw any of my teammates be

1 Memorandum is?

2 A. No, ma'am.

3 Q. Okay. Let's see. So I will just ask you  
4 about the facts -- sorry. I am having a little  
5 trouble getting this to -- oh, also, is it --

6 MS. MCDANIEL: Do I have counsel's  
7 permission to share this document? It is marked  
8 confidential from the City of Austin document  
9 production. I can take it away if I should not  
10 show it.

11 MR. BARTON: No. And you have  
12 permission to ask her questions about it for the  
13 purposes of -- of this deposition, particularly,  
14 since she's a party to the lawsuit. But we  
15 probably will need to address whether this portion  
16 of the deposition remains confidential if, you  
17 know, the exhibit needs to be filed with the court  
18 or something like that.

19 MS. MCDANIEL: Okay. Great. Well, I  
20 do have just one small question. Where is it?

21 Q. (By Ms. McDaniel) It's on Page 2, there  
22 is a description of the arrest. All I wanted to  
23 ask about is one little part where it says, at that  
24 -- so I'm looking at the box on the second page,  
25 three paragraphs down. About halfway through that

1 paragraph, it says that Officer Allare approached  
2 and that Ms. Beuhler offered no resistance to  
3 Officer Allare.

4 All I wanted to ask is if you agree  
5 with that statement; that Ms. Beuhler -- yes,  
6 Ms. Beuhler did not offer resistance to you?

7 A. Yes, ma'am. I agree.

8 Q. Okay. That's all I wanted to ask you  
9 about. Okay. I have some more -- a few more  
10 questions about the day of, but we're getting close  
11 to the end. Probably will be done well before  
12 1:00. Who activated the quick-reaction force that  
13 day?

14 A. I don't -- I don't know.

15 Q. Okay. What -- what was said during your  
16 supervisor's pre-event briefing before you went to  
17 this protest on August 1st and with the  
18 quick-reaction force?

19 A. I -- I -- I do not know one day from  
20 another, but our general role was to, you know --  
21 what I have said; to respond to wherever the chain  
22 of command is sending us. And then to make arrests  
23 based either what they have seen on the cameras or  
24 what we see.

25 Q. So to your recollection, you don't recall

1 A. They were attempting to detain her, yes.

2 Q. Right. Okay. Would you -- you already  
3 said that was where you came in. Did you  
4 personally hear any dispersal orders made to her  
5 prior to her arrest?

6 A. I don't recall.

7 Q. Okay. Do you remember hearing any words  
8 exchanged between Ms. Beuhler and any other officer  
9 prior to her arrest?

10 A. They -- I do remember the officer saying,  
11 stop resisting. And then from my video, as I am  
12 walking up, you can hear commotion, but I don't  
13 know exactly what was said because I was still far  
14 away, but you can definitely hear, like, a  
15 commotion of sorts.

16 Q. Let's see. And are you aware of any  
17 discipline that came out of that arrest --  
18 discipline of an officer, I should say?

19 A. No, ma'am.

20 Q. Okay. Did you receive any kind of  
21 employment or administrative discipline of any type  
22 regarding that arrest?

23 A. No, ma'am.

24 Q. And did you receive any communications or  
25 feedback that what you did was -- was proper?

1 A. No, ma'am. I never received any feedback.

2 Q. Okay. Do you have any opinion as to  
3 whether Officer Smart or Officer Gonzalez used  
4 excessive force in this arrest?

5 A. I have no idea what happened before. I  
6 don't know her -- Ms. Beuhler's level of resistance  
7 and I don't know what they did before I got there  
8 and put my hand on her hand. But from what I could  
9 see once I got down there, they -- there was no  
10 excessive force in trying to get her handcuffed.

11 Q. Okay. Have you ever had any interactions  
12 with Sydni Beuhler other than that -- that  
13 interaction?

14 A. I don't believe so.

15 Q. Not before or after?

16 A. I don't think so.

17 Q. And, like, what do you -- what can you  
18 tell me about the other officers, Smart and  
19 Gonzalez? I think I asked you if you knew what  
20 team either one of them was on, but I can't recall.  
21 Do you know anything about what teams they -- they  
22 are working with?

23 A. No, ma'am. I -- I don't -- I can't even,  
24 like, picture Officer Smart's face; and I don't  
25 know if I've ever met him. Officer Gonzalez, I am



1 officer searched, like, his right half; I searched  
2 the left half. And once we got to the jail, he had  
3 a knife in the middle of his pants, which we did  
4 not find because we searched him improperly. The  
5 way you're supposed to search is one officer  
6 searches the entire body; that way, you are able to  
7 get the full waistband and that kind of stuff  
8 doesn't happen. So I was definitely in the wrong  
9 there in how I searched him.

10 Q. How many -- is there any, like, number of  
11 times that you can receive reprimands? How does  
12 the -- how does that system work; like, does it go  
13 from oral to written to suspension or --

14 A. Yes, ma'am.

15 Q. Okay. Can you tell me a little bit about  
16 it?

17 A. I don't know about number that you can  
18 get, but, yes, it does go from oral, written. And  
19 then, like I had said earlier, I think -- I think,  
20 then it goes to days off, but I am not sure -- I am  
21 not sure if there is anything in between. Luckily,  
22 I never got -- got more than a written.

23 Q. Do you know of any officers who got  
24 reprimanded because of events that took place  
25 during the protests?

1 A. I don't know of any.

2 Q. Really?

3 A. Uh-huh.

4 Q. You don't know of any, like -- like,  
5 just -- I am not saying on your team, but any?  
6 There were none, to your knowledge, that  
7 received any discipline regarding the protest  
8 action?

9 A. I don't -- I don't recall any. I am sure  
10 -- I am sure people did something wrong, but I  
11 don't know if there was any or not.

12 Q. Is that kind of thing made available --  
13 that information made available to you-all?

14 A. If --

15 Q. Like, if someone -- like, for a lawyer, if  
16 you -- if you get sanctioned, they usually write  
17 your -- your name is usually put in a -- in a  
18 journal and other people can read it. Like, every  
19 month, the journal comes out and it says who got  
20 disbarred and sanctioned. It's -- it's not the --  
21 it's, like, in the back, but it's still -- you  
22 don't want your name to be in there.

23 A. Right.

24 Q. Is there an equivalent of that for police  
25 officers in the department?

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REPORTER'S CERTIFICATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER )  
 )  
VS. ) CASE NO.  
 ) 1:21-CV-00054-RP  
CITY OF AUSTIN, )  
OFFICER GAVIN SMART (AP8674), )  
OFFICER JAVIER GONZALEZ )  
(AP7422), AND OFFICER ANNE )  
ALLARE (AP7755) )

-----  
DEPOSITION OF ANNE ALLARE  
DECEMBER 15, 2022  
(REPORTED REMOTELY)

-----  
I, CHARIS M. HENDRICK, Certified Shorthand  
Reporter in and for the State of Texas, do hereby  
certify to the following:

That the witness, ANNE ALLARE, was by me  
duly sworn and that the transcript of the oral  
deposition is a true record of the testimony given  
by the witness.

I further certify that pursuant to Federal  
Rules of Civil Procedure, Rule 30(e)(1)(A) and (B)  
as well as Rule 30(e)(2), that review of the  
transcript and signature of the deponent:

\_\_XX\_\_ was requested by the deponent and/or a



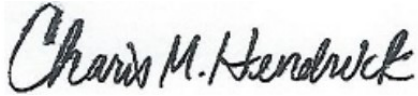
1 party before completion of the deposition.  
2 \_\_\_\_\_ was not requested by the deponent and/or  
3 a party before the completion of the deposition.

4 I further certify that I am neither  
5 attorney nor counsel for, nor related to or  
6 employed by any of the parties to the action in  
7 which this deposition is taken and further that I  
8 am not a relative or employee of any attorney of  
9 record in this cause, nor am I financially or  
10 otherwise interested in the outcome of the action.

11 The amount of time used by each party at  
12 the deposition is as follows:

13 Ms. McDaniel - 2:24 hours/minutes

14  
15 Subscribed and sworn to on this 28th day  
16 of December, 2022.

17  
18   
19 \_\_\_\_\_  
20 CHARIS M. HENDRICK, CSR # 3469  
21 Certification Expires: 10-31-23  
22 MAGNA LEGAL SERVICES  
23 (866) 624-6221  
24 Firm Registration No. 633  
25

**COA 13303 [CONF]**  
**(Suavier 22 Instagram Story Post)**

**FILED UNDER SEAL**

**\*Sent to the Court via electronic mail to courtroom deputy Julie Golden**  
[Julie\\_Golden@txwd.uscourts.gov](mailto:Julie_Golden@txwd.uscourts.gov)

# Internal Affairs Complete History

## Internal Affairs Division

Javier Gonzalez #7422

Date of Commission: 03/22/2013

<b>1. Case # 2020-1660</b>	Reported Date: 11/05/2020	Classification: B
<b>Case Description:</b> 11/05/2020 10:25 AM On September 24, 2020 Officer Gonzalez was driving NB on Bennett Ave approaching Wilks Ave. Officer Gonzalez's vehicle collided with another vehicle. Officer Gonzalez may have violated policy.  This complaint is my request for Internal Affairs to initiate an administrative investigation in order to determine if the employee's conduct complied with Department policy, Civil Service Rules, Municipal Civil Service Rules, and State law. - Sylvia Maldonado (IAD)		
<b>Allegation:</b> Chapter: Chapter 8 Section: 804 Department Vehicles Section Sub 1: 804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES		
<b>Allegation Description:</b>		
<b>Disposition:</b> Chain of Command Decision: Sustained Discipline Decision: Written Reprimand Suspension Period: -- Retention Period: 15 Years Retention Date: 11/13/2035		
<b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --		
<b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --		
<u>APA Suspension Review:</u> Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None		
Review Completed: No Review Date: None Effective written reprimand: None		

<b>2. Case # 2020-1443</b>	Reported Date: 08/21/2020	Classification: A
<b>Case Description:</b> 08/29/2020 10:20 AM The OPO received an email from an anonymous complainant that included the photo of an APD officer and the alleged officers social media posts that included comments about protesters. - Mia Demers (OPO)		
<b>Allegation:</b> Chapter: Chapter 9 Section: 900 General Conduct and Responsibilities Section Sub 1: 900.3 GENERAL CONDUCT Section Sub 2: 900.3.2 Acts Bringing Discredit Upon the Department		
<b>Allegation Description:</b>		
<b>Disposition:</b> Chain of Command Decision: Administratively Closed Discipline Decision: No Discipline Suspension Period: -- Retention Period: 3 Years Retention Date: 02/01/2024		
<b>Post Appeal Decision:</b> -- Discipline Decision: -- Suspension Period: --		
<b>Settlement Agreement:</b> -- Discipline Decision: -- Suspension Period: --		
<u>APA Suspension Review:</u>		

Eligible: Not Reviewed Approved: Not Reviewed Update History: Not Reviewed APA Comment (Describe why eligible/ineligible): None	Review Completed: No Review Date: None Effective written reprimand: None
--	--

**Allegation:**  
 Chapter: Chapter 3  
 Section: 301 Responsibility to the Community  
 Section Sub 1: 301.1 PURPOSE AND SCOPE

**Allegation Description:**

**Disposition:**  
 Chain of Command Decision: Administratively Closed  
 Discipline Decision: No Discipline  
 Suspension Period: --  
 Retention Period: 3 Years  
 Retention Date: 02/01/2024

**Post Appeal Decision:** --  
 Discipline Decision: --  
 Suspension Period: --

**Settlement Agreement:** --  
 Discipline Decision: --  
 Suspension Period: --

APA Suspension Review:  
 Eligible: Not Reviewed  
 Approved: Not Reviewed  
 Update History: Not Reviewed  
 APA Comment (Describe why eligible/ineligible): None

Review Completed: No  
 Review Date: None  
 Effective written reprimand: None

**Allegation:**  
 Chapter: Chapter 9  
 Section: 972 Employee Speech, Expression, and Social Networking  
 Section Sub 1: 972.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

**Allegation Description:**

**Disposition:**  
 Chain of Command Decision: Administratively Closed  
 Discipline Decision: No Discipline  
 Suspension Period: --  
 Retention Period: 3 Years  
 Retention Date: 02/01/2024

**Post Appeal Decision:** --  
 Discipline Decision: --  
 Suspension Period: --

**Settlement Agreement:** --  
 Discipline Decision: --  
 Suspension Period: --

APA Suspension Review:  
 Eligible: Not Reviewed  
 Approved: Not Reviewed  
 Update History: Not Reviewed  
 APA Comment (Describe why eligible/ineligible): None

Review Completed: No  
 Review Date: None  
 Effective written reprimand: None

**3. Case # 2020-1301**                      Reported Date: 08/04/2020                      Classification: A

**Case Description:**  
 08/04/2020 01:23 PM  
 I wasn't read my Miranda rights, I wasn't told why I wasn't being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds. The officers were not going to get a female officer, they said they didn't have time to get a female officer and I started to have a panic attack, so they got one. The arresting officer was Swart, #8674. Officers in the car that transported, threatened me, and they were mouthing things to one another and one wouldn't talk to me at all. - Mallory Scott (OPO)

**Allegation:**  
 Chapter: Chapter 3  
 Section: 318 Detentions, Field Interviews, and Field Photographs  
 Section Sub 1: 318.5 FIELD INTERVIEWS, STATEMENTS, AND CONFESSIONS  
 Section Sub 2: 318.5.1 Miranda Warning

**Allegation Description:**

**Disposition:**  
 Chain of Command Decision: Administratively Closed  
 Discipline Decision: No Discipline

**Post Appeal Decision:** --  
 Discipline Decision: --



# AUSTIN POLICE DEPARTMENT

GO# 2020-2141073  
NOT APPROVED

## GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(\*\*LITIGATION HOLD\*\*)

roadway or else they would be subject to arrest. Protestors were given several minutes (a reasonable time) to exit the roadway, however they did not comply. Upon approaching the group of persons (approximately 150 persons) in the roadway BPOT formed a rolling wedge in order to push the group out the the roadway. I dismounted my bicycle and followed the wedge on foot, acting a support role.

As APD BPOT officers arrived I observed a white female, later identified as Sydni Beuhler to be standing in the middle of the roadway and refusing officers verbal orders to exit the roadway. APD BPOT Officers attempted to push Beuhler out of the roadway with their bicycles, while ordering Beuhler to move back. Beuhler did not comply and refused to exit the roadway. Beuhler was given one last verbal warning to back up and relied by "fuck you" and did not back up.

Due to Beuhler then and there, without legal privilege or authority, intentionally and knowingly obstruct, by rendering impassable or by rendering passage unreasonably inconvenient or hazardous a street, to-wit: 400 block of Congress Ave, to which the public or a substantial group of the public had access, by standing in the roadway with approximately 150 other persons, Beuhler was charged with Obstructing Highway or Other Passageway.

When placing Beuhler under arrest I wrapped both my arms around her and told her she was under arrest. I grabbed Beuhler and carried her over the BPOT line. I then walked Beuhler back and began to attempted to secure her in handcuffs.

Beuhler began to attempt to physically resist my efforts to place her under arrest by attempting to wrestle free from my grasp. Beuhler then began to also push against me, using the strength of her legs and refused to allow her arms to be pulled behind her back, pulling them towards her torso. During this time I yelled at Beuhler to stop resisting, but she did not comply. Due to her physical resistance Officer Gonzalez 7422 and I had to physically push her down to the ground (to her knees) and then forcefully pull her hands behind her back in order to secure the Beuhler in handcuffs.

I then held Beuhler in place while a female officer searched her incident to arrest. As this was being completed Beuhler would squirm and jump up and down, ignoring officers commands to stand still.

Beuhler was then handed over to transport officers and I then took a place in line with other BPOT officers, holding a mobile bicycle fence line.

Sgt Campos was notified of the R2R.

I am un aware of any injuries suffered by by Beuhler.

Due to Beuhler then and there intentionally prevent or obstruct, I APD Officer Smart 8674, a person Beuhler knew to be a peace officer, from effecting an





**MEMORANDUM**  
 Austin Police Department  
 Region 1 Patrol

**TO:** Robin Henderson, Assistant Chief  
**FROM:** Jason Staniszewski, Commander  
**SUBJECT:** Class D Memorandum – IAD Case # 2020-1301

**DATE:** 01/14/2021

Employee Name and EMP#		Javier Gonzalez #7422			
Incident Date	8/1/2020	Location	400 blk Congress Avenue		
CAD #	20-2141073	Versadex #	20-2141073	DMAV/BWC #	20-2141073
Allegations					
Policies Associated with Allegations			Nature of Complaint		
200.2 De-Escalation of Potential Force Encounters			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
200.3 Response to Resistance			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
306.3.1 Search Protocol			The "complainant advised "The officers were not going to get a female officer, they said they didn't have time to get a female officer and I started to have a panic attack, so they got one."		
318.5.1 Miranda Warning			The complainant stated "I wasn't read my Miranda rights . . ."		

The enclosed external complaint was received by Internal Affairs via the OPO from the complainant listed above on Javier Gonzalez #7422. The complaint documentation provided by the OPO and the complainant is included in the complaint packet.

The complaint regards an employee assigned under our command, and has been designated a Class D Complaint as described in General Order 902.3.1. This case is being sent to you for administrative purposes only. A review of this complaint has indicated no violations of Departmental Policy. Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.

Detailed responses to complaint(s):

Officers Gavin Smart #8674 of the Bicycle Public Order Team (BPOT) and Javier Gonzalez #7422, assigned to Mobile Field Force (MFF) were on-duty in downtown Austin on the evening of August 1, 2020, a day with numerous protests in the area of Congress Avenue and 4th Street, at the site of the Garrett Foster memorial.

At approximately 8:22 PM, officers from Mounted Patrol, BPOT, and MFF began clearing a large crowd of protesters out of Congress Avenue north of its intersection with 4th Street, where this group was blocking all lanes of the roadway. As officers were attempting to clear the roadway, several officers were giving verbal commands to the protesters to back up, while sirens and whistles could be heard in the background. All officers were uniformed, and multiple police vehicles with emergency lights activated were in the immediate area. Officer Smart issued numerous loud commands telling the subjects to "move back," and at least once, loudly stated, "move back or you're gonna get arrested." The complainant, Sydni Beuhler, remained standing in the roadway as many other protesters either voluntarily moved out of the roadway, or were pushed back by officers. As numerous BPOT officers were moving their bicycles forward to move the crowd, Officer Smart approached Ms. Beuhler and instructed her loudly "Move back!" Ms. Beuhler remained where she was standing and loudly stated "Fuck you!"

Officer Smart wrapped his arms around Ms. Beuhler while facing her and pulled her back behind the line of BPOT officers, away from the other protesters. Officer Smart's BWC appears to have been inadvertently turned off at this point. Ms. Beuhler began yelling and struggling with Officer Smart while he tried to control her. Officer Gonzalez observed this struggle and approached to assist Officer Smart, who at that point had pushed Ms. Beuhler to the ground, on her knees, with her upper body over her thighs. Officer Gonzalez had control of Ms. Beuhler's right arm, and Officer Smart had control of her left. At that point, Officer Anne Allare #7755 (MFF, female officer) approached and briefly held Ms. Beuhler's left hand, as Ms. Beuhler offered no resistance to Officer Allare. Ms. Beuhler was yelling while officers were trying to handcuff her while loudly instructing her to "stop resisting." While trying to handcuff Ms. Beuhler, Officer Gonzalez placed his right knee on Ms. Beuhler's upper right back area and right side, while Officer Smart placed his left knee on the left side of Ms. Beuhler's upper back and then left side area. Once they were able to get her handcuffed, Officer Smart immediately stood Ms. Beuhler up and escorted her to a waiting patrol car. Officer Smart loudly asked if there was a female officer in the area. A male officer (Officer N. Martinez) stated that they didn't have time for a female. Officer Allare turned around to assist Officer Smart. At this point, Ms. Beuhler jumped up and down, stating that she needed a female officer. Officer Allare informed Ms. Beuhler that she was a female officer. Officer Allare quickly frisked Ms. Beuhler, who was then placed in the patrol car driven by Officer Martinez. Officer Smart provided information related to Ms. Beuhler's arrest to Officer Martinez. After this, Neither Officer Smart nor Officer Gonzalez had any further involvement with Ms. Beuhler.

The response to resistance incident involving Ms. Beuhler was reviewed by Officer Smart's chain-of-command, and was deemed to be within policy and state law. Internal Affairs (IA) also reviewed the response to resistance and found it to be objectively reasonable. There were other recommended policy violations listed on the Notice of Formal Complaint by the Office of Police Oversight, but IA did not observe any violations by either Officer Smart or Officer Gonzalez related to these additionally-listed policies during IA's investigation.

No Department policies or procedures were violated by the officer in relation to the complaint received.

Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.

Javier Gonzalez Digitally signed by Javier Gonzalez  
Date: 2021.01.14 15:06:11 -06'00'

01/14/2021

Officer Signature

Date

Louis Candoli Digitally signed by Louis Candoli  
Date: 2021.01.14 14:32:10 -06'00'

01/14/2021

Sergeant Signature

Date

Karl Haverland Digitally signed by Karl Haverland  
Date: 2021.01.15 10:32:21 -06'00'

01/15/2021

Lieutenant Signature

Date

Commander Jason Staniszewski #3961 Digitally signed by Commander Jason Staniszewski #3961  
Date: 2021.01.15 10:42:49 -06'00'

01/15/2021

Commander Signature

Date

Robin J. Henderson #3441 Digitally signed by Robin J. Henderson #3441  
Date: 2021.01.15 10:50:05 -06'00'

01/15/2021

Assistant Chief Signature

Date

*Officer's signature does not imply any wrongdoing on behalf of the subject officer. Signatures are solely intended as documentation that each party in the chain of command, including the subject officer, has reviewed the complaint.*

**No portion of the complaint may be copied.**

**\*\*\*FOR INTERNAL AFFAIRS ONLY\*\*\***

Returned to Internal Affairs on: 01/15/2021

Jerry Bauzon Digitally signed by Jerry Bauzon  
Date: 2021.01.15 11:53:52 -06'00'

1/15/2021

Commander Jerry Bauzon #2557

Date

Professional Standards



**MEMORANDUM**  
 Austin Police Department  
 Region 1 Patrol

**TO:** Joseph Chacon, Assistant Chief  
**FROM:** Ryan Adam, Commander  
**SUBJECT:** Class D Memorandum – IAD Case # 2020-1301

**DATE:** 01/14/2021

Employee Name and EMP#		Gavin Smart #8674			
Incident Date	8/1/2020	Location	400 blk Congress Avenue		
CAD #	20-2141073	Versadex #	20-2141073	DMAV/BWC #	20-2141073
Allegations					
Policies Associated with Allegations			Nature of Complaint		
200.2 De-Escalation of Potential Force Encounters			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
200.3 Response to Resistance			The complainant stated "I wasn't told why I was being arrested and they used excessive force towards me. It was four officers on me, kneeling on me and I'm 130 pounds."		
306.3.1 Search Protocol			The complainant advised "The officers were not going to get a female officer, they said they didn't have time to get a female officers an I started to have a panic attack, so they got one."		
318.5.1 Miranda Warning			The complainant stated "I wasn't read my Miranda rights . . ."		

The enclosed external complaint was received by Internal Affairs via the OPO from the complainant listed above on Gavin Smart #8674. The complaint documentation provided by the OPO and the complainant is included in the complaint packet.

The complaint regards an employee assigned under our command, and has been designated a Class D Complaint as described in General Order 902.3.1. This case is being sent to you for administrative purposes only. A review of this complaint has indicated no violations of Departmental Policy. Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.

Detailed responses to complaint(s):

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No Department policies or procedures were violated by the officer in relation to the complaint received.

Internal Affairs will be provided this original memo in order to close the complaint administratively and no further investigation will occur.

Gavin Smart Digitally signed by Gavin Smart  
Date: 2021.01.14 21:22:09 -06'00'

01/14/2021

Officer Signature

Date

*Officer's signature does not imply any wrongdoing on behalf of the subject officer. Signatures are solely intended as documentation that each party in the chain of command, including the subject officer, has reviewed the complaint.*

Thomas Howard Digitally signed by Thomas Howard  
Date: 2021.01.14 21:27:07 -06'00'

01/14/2021

Sergeant Signature

Date

Adam Masters Digitally signed by Adam Masters  
Date: 2021.01.15 08:52:03 -06'00'

01/15/2021

Lieutenant Signature

Date

CMDR Ryan Adam Digitally signed by CMDR Ryan Adam  
Date: 2021.01.17 13:09:25 -06'00'

1/17/2021

Commander Signature

Date

**No portion of the complaint may be copied.**

Joseph Chacon Digitally signed by Joseph Chacon  
Date: 2021.01.21 10:49:39 -06'00'

1/21/2021

Assistant Chief Signature

Date

**\*\*\*FOR INTERNAL AFFAIRS ONLY\*\*\***

Returned to Internal Affairs on: 1/25/2021

Robert J. Richman #3258

01/25/2021

Commander ~~Jerry Bauzon #2557~~

Date

Professional Standards



# AUSTIN POLICE DEPARTMENT

GO# 2020-2141073  
NOT APPROVED

## GENERAL OFFENSE HARDCOPY LAW ENFORCEMENT USE ONLY (\*\*LITIGATION HOLD\*\*)

### Narrative Text

Type SUPPLEMENTS

Author AP7422 - GONZALEZ, JAVIER

Related Date Aug-06-2020 13:02

On August 1, 2020, I, Ofc. Gonzalez #7422 was working with Region 1 Metro Tactical Unit. On this day I was in a patrol vehicle doubled up with Ofc. Stewart #7348. Our assignment for the day was to work as MFF and assist in George sector with riots, protesters and crowd control.

At approximately 8:20PM, I was instructed to go near the 400 Blk of Congress to assist with crowd control. There was a large group of protesters in the intersection of S. Congress and 4th that was blocking traffic. Multiple officers arrived on scene and began to instruct protesters to get out of the road. Officers got in line and some of the crowd began to move back. There were a couple of individuals who were not complying. I stood back and watched the crowd to make sure they were not throwing objects at fellow officers.

I looked to my right and observed an officers who was struggling to detain a white female. I went over to help the officer who was dealing with the female and assisted. I grabbed the right wrist of the female and immediately felt her pull her hands towards the front of her body. In my training and experience of 7 years I have learned that criminals like to carry weapons in the front of their waistlines. When I felt the female pull her hand forward I conducted a wrist lock in order to gain control of her arms and then she was guided to the floor and on to her knees. The females was still pulling her right hand away from me while on the ground. I could feel her strength and her body stiffen as she was resisting. At this point I gave commands to not resist multiple times. I pulled out my handcuffs and was able to place them on the female with the assistance of other officers.

I later identified the officer that I help as Ofc. Smart. Once the female was placed in handcuffs she was placed in a patrol vehicle. The white female was later identified as:

XXXXXXXXXXXX

I remained on scene in order to assist with the large and aggressive crowd.

Later in the evening around 8:55 PM, I returned back to the 400 Blk of S. Congress where protesters were being violent and noncompliant. At the southwest corner of S. Congress and 5th St. I observed a group of officers face to face with group of about 15 to20 aggressive protesters. I saw a protester using a red bike pushing it with force towards officers. I went to help the officers and was able to pull the red bike away from the protester who was using it against officers. Once I had control of the bike I threw it towards the center of Congress and away from the reach of protesters.

I looked back at the south west corner of S. Congress and 5th and observe d officers struggling to detain protesters on the ground. The police officers were outnumbered by the aggressive crowd of protesters. I went to where the officers were at and told protesters to move multiple times. The protesters did not comply with my order to move so I pushed two of them away from the officers in order to create a safe work space. I saw some officers on the ground struggling to detain a white female and assisted them by holding her feet down as handcuffs were placed on her.

At about 9:10 PM, I was instructed to arrest all persons at the southwest corner of S. Congress and 4th St for obstruction of passageway. I observed a male in all black and grabbed his right arm. The male pulled

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Sydni Beuhler,  
Plaintiff,  
v.

City of Austin,  
Officer Gavin Smart (AP8674), and  
Officer Javier Gonzalez (AP7422)  
Defendants.

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Case no. 1:21-cv-00054-RP

**PROPOSED ORDER**

BEFORE THE COURT is *Plaintiff's Unopposed Motion to File Response to the City of Austin's Motion for Summary Judgment Under Seal*. The Court, having read and considered the Motion, finds that the Motion should be and is hereby **GRANTED**.

**IT IS ORDERED** that Doc. 48-1 to 48-17 be filed under seal by the Clerk of Court.

**SO ORDERED.**

**SIGNED AND ENTERED** this \_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
**HONORABLE ROBERT PITMAN**  
**UNITED STATES DISTRICT JUDGE**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**SYDNI BEUHLER,  
Plaintiff,**

v.

**CITY OF AUSTIN,  
Officer Gavin Smart (AP8674),  
Officer Javier Gonzalez (AP7422),  
Defendants.**

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**CIVIL ACTION NO. 1:21-CV-00054-RP**

**DEFENDANT CITY OF AUSTIN’S REPLY  
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Defendant City of Austin, Texas files this Reply in Support of its Motion for Summary Judgment. Defendant, City of Austin, adopts and fully incorporates the Defendant Officers’ Reply in Support of their Motion for Summary Judgment, and renews the arguments of its Motion for Summary Judgment [Doc #43]

**I. INTRODUCTION**

Defendant, City of Austin (hereinafter sometimes referred to as “The City” or “COA” or “APD”) moves for summary judgment as to all of Plaintiff’s claims of any sort, including a §1983 *Monell* claim against the City of Austin as a result of her arrest on August 1, 2020, in Austin, Texas. There are no issues for a jury to decide. The evidence is clear. There is no genuine dispute as to any material fact and this Defendant is entitled to judgment as a matter of law on all of plaintiff’s claims. Indeed, video evidence conclusively shows the only relevant events. Plaintiff’s bald allegations fail and this lawsuit should be dismissed with prejudice.

Plaintiff brings a *Monell* claim against the City of Austin alleging excessive use of force by Officers Smart and Gonzalez during the arrest, inadequate and improper policies, practices

and customs, and failure of training and supervision. Plaintiff alleges that the City had inadequate policies and tolerated excessive force, and violations of free speech and due process. The City denies Plaintiff's claims and maintains that Plaintiff cannot meet her considerable evidentiary burden to establish liability under 42 U.S.C. §1983.

It is undisputed that the City provides extensive training to its officers (which exceeds state minimums) and specific training—both in practical application and in the law—on the use of force, as well as arrest procedures, that comply with every person's clearly established rights under the United States Constitution. APD Academy taught Officers Smart and Gonzalez the procedures for making arrests. APD teaches officers probable cause for making arrests to all officers. Additionally, APD officers and cadets are trained on APD's General Orders.

With respect to Plaintiffs' claim that the City failed to supervise Officers Smart and Gonzalez, the undisputed evidence shows that the City has comprehensive policies and procedures in place to ensure that complaints are investigated, including any complaints about use of force, arrests, searches, seizures, and other complaints of alleged misconduct, and that officers are disciplined when appropriate and that the Austin Police Department followed these policies and procedures. Moreover, Plaintiff cannot show that any failure to train, discipline, or supervise was the moving force behind Plaintiff's alleged constitutional deprivations and injuries. Additionally, Plaintiff's claim that the City violated her constitutional rights fails because the evidence shows that the City subjected the Defendant officers to a vigorous pre-hiring review which did not turn up any evidence that either of them posed a significant risk of engaging in excessive force or engaging in the inappropriate conduct as alleged in Plaintiff's Amended Complaint, or that they were otherwise unfit for law enforcement work.

Plaintiff's arguments ignore the clear facts of this situation, as conclusively shown by



the video footage. Defendant Smart unquestionably had probable cause to arrest Plaintiff and he and Officer Gonzalez properly followed the APD training. All of Plaintiff's claims must be dismissed, including all of plaintiff's alleged constitutional claims of any sort. Plaintiff has not met her burden regarding liability on the City.

## II. ARGUMENT & AUTHORITIES

### **Plaintiffs Claim that APD's Training, Supervision, Policies, Procedures, Customs and/or Practices Caused Her Alleged Constitutional Violations Must be Disregarded.**

Plaintiff's assertions that APD training and supervision were lacking are not supported. As explained in the City's Motion for Summary Judgment [Doc #43], the City of Austin's Police Department (APD) maintains extensive and detailed policies and procedures regarding all facets of police work, including the use of force, proper search and seizure, and investigation of incidents involving allegations of police officer misconduct. This includes the allegations of Plaintiff's Amended Complaint. Additionally, APD has numerous policies and procedures to ensure that officers accused of wrongdoing are properly investigated and, if appropriate, disciplined. These policies and procedures were followed in this incident.

As explained in the City's Motion for Summary Judgment [Doc #43], the allegations of misconduct against Officers Smart and Gonzalez were closely investigated by APD. The investigation revealed that they did not violate any APD policies.

All of APD's policies and procedures were followed with respect to the hiring, screening, and training of Officer Smart and Officer Gonzalez. For a plaintiff to prevail on a failure to train claim, she must allege with specificity how a city's training program is inadequate. *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5<sup>th</sup> Cir. 2005). Plaintiff has not met this burden, and has not produced evidence why different training procedures should have been obvious to the City.

Further, Plaintiff has produced no evidence that Officer Smart or Officer Gonzalez were inadequately supervised on the date of this incident and that any alleged failure to supervise was done so with deliberate indifference to the risk of a constitutional violation. To prove deliberate indifference in the context of a claim that a city failed to supervise or discipline a police officer accused of excessive force, a plaintiff must identify the individual supervisor who failed to supervise or discipline and demonstrate that the supervisor had subjective knowledge that the police officer posed a serious risk to cause harm by using excessive force. *James v. Harris Cty.*, 508 F.Supp.2d 535, 551-52 (S.D. Tex. 2011).

Here, Plaintiff does not identify an individual supervisor who failed to supervise or discipline Officer Smart or Officer Gonzalez. Plaintiff fails to provide any evidence that the City had a policy or practice of inadequately supervising its police officers and that any alleged failure to supervise was done so with deliberate indifference to the risk of a constitutional violation.

**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant City of Austin respectfully requests that the Court grant its Motion for Summary Judgment and dismiss the Plaintiff's claims against it with prejudice with all costs assessed to the Plaintiff. Defendant further requests that it recover any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY  
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

/s/ Monte L. Barton  
MONTE L. BARTON  
Assistant City Attorney  
H. GRAY LAIRD III  
State Bar No. 24087054  
MONTE L. BARTON, JR.  
State Bar No. 24115616  
monte.barton@austintexas.gov

City of Austin-Law Department  
Post Office Box 1546  
Austin, Texas 78767-1546  
Telephone: (512) 974-2268  
Direct: (512) 974-2409  
Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANT CITY OF AUSTIN**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 19th day of May, 2023.

**Via CM/ECF:**

Scott M. Hendler

SBN: 09445500

[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)

Grayson McDaniel

SBN: 24078966

[gmcDaniel@hendlerlaw.com](mailto:gmcDaniel@hendlerlaw.com)

Stephen Demik (pro hac vice)

[sdemik@hendlerlaw.com](mailto:sdemik@hendlerlaw.com)

Laura A. Goettsche

SBN: 24091798

[lgoettsche@hendlerlaw.com](mailto:lgoettsche@hendlerlaw.com)

HENDLER FLORES LAW, PLLC

901 S. MoPac Expressway

Bldg. 1, Suite #300

Austin, Texas 78746

Telephone: (512) 439-3202

Facsimile: (512) 439-3201

**ATTORNEYS FOR PLAINTIFF**

/s/ Monte L. Barton Jr.  
MONTE L. BARTON JR.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Sydni Beuhler,  
Plaintiff,

v.

City of Austin,  
Officer Gavin Smart (AP8674), and  
Officer Javier Gonzalez (AP7422)  
Defendants.

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Case no. 1:21-cv-00054-RP

**PLAINTIFF’S RESPONSE TO DEFENDANT CITY OF AUSTIN’S  
MOTION FOR SUMMARY JUDGEMENT**

COMES NOW Plaintiff Sydni Beuhler and respectfully files her *Response to Defendant City of Austin’s Motion for Summary Judgement* [Doc. 43], and in support would show the Court the following:

**I. Procedural Background**

This case arises out of Defendant City of Austin’s (“Defendants”) practices of permitting City police officers to use excessive force against protestors and violate protestors’ constitutional rights, its practices and policies of allowing City officers to fail to inform individuals under arrest of their legal rights (particularly their right to remain silent and their right to an attorney), and ongoing practices and policies of not disciplining City officers for using unnecessary and excessive use of force or making violent and unprofessional public statements. All of Defendant’s policies and practices resulted in Plaintiff Sydni Beuhler being arrested by City officers to punish her for participating in a peaceful protest against police brutality, being subjected to excessive force during the arrest, being unlawfully charged with resisting arrest, and not being Mirandized during her entire hours-long recorded arrest and detention.

Defendant's policies and practices at issue in this case caused Plaintiff damages. Defendant's policies and practices at issue in this case need to change to prevent similar or worse outcomes for other individuals exercising their constitutional rights and to prevent the chilling of individuals exercising their constitutional rights. Defendant argues that Plaintiff has not "produced sufficient evidence to raise an issue of material fact to demonstrate that: (1) the City is liable for failing to train APD officers or (2) the City is liable for failing to adequately supervise or discipline APD officers." Doc. 43 at 10. But this is false. A number of material fact issues persist regarding Plaintiff's claims against Defendant and, accordingly, Defendant's motion should be denied.

On April 14, 2023, Defendant filed a Motion for Summary Judgment [Doc. 43]. On April 27, 2023, this Court granted Plaintiff's Unopposed Motion for an Extension of Time to file her Response and ordered Plaintiff to file her Response by May 12, 2023. This Response is, accordingly, timely filed.

## **II. Standard of Review**

Summary judgment is proper when the moving party conclusively establishes that there are no genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986). In deciding a motion for summary judgment, the Court must view the evidence in the light most favorable to the nonmovant and indulge all reasonable inferences in favor of the nonmovant—in this case, Plaintiff. *Dillon v. Rogers*, 596 F.3d 260, 266 (5th Cir. 2010). A local government entity is subject to suit under 42 U.S.C. § 1983 "if it is alleged to have caused a constitutional tort through 'a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.'" *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121 (1988) (quoting *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978)). A local governmental entity may also be liable where the constitutional violation is caused by a governmental custom or practice, even

if such custom was not formally adopted. *See Monell*, 436 U.S. at 690–91 (“[L]ocal governments . . . may be sued for constitutional deprivations visited pursuant to governmental ‘custom’ even though such a custom has not received formal approval through the body’s official decisionmaking channels.”).

“[M]unicipal liability under Section 1983 requires proof of three elements: a policymaker; an official policy; and a violation of constitutional rights whose moving force is the policy or custom.” *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001). Liability for failure to promulgate policy, failure to train, and failure to supervise “require that the defendant have acted with deliberate indifference.” *Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011). A “pattern of similar constitutional violations by untrained employees” can establish “deliberate indifference.” *Connick v. Thompson*, 563 U.S. 51, 62 (2011). If the defendant city’s “policy of inaction” persists despite actual or constructive notice that its program will cause constitutional violations, that “is the functional equivalent of a decision by the city itself to violate the Constitution.” *Canton v. Harris*, 489 U.S. 378, 395(1989) (O’Connor, J., concurring in part).

### III. Relevant Facts

On August 1, 2020, Plaintiff attended a protest on Congress Avenue in Austin. Beuhler Dep. Tr: 9:21–10:6 (Exhibit A). She was protesting both the recent murder of her friend, Garrett Foster, and in support of Black Lives Matter. Beuhler Dep. Tr: 37:1–21 (Ex. A). [REDACTED]

[REDACTED]

[REDACTED] (Exhibit B). [REDACTED]

[REDACTED] (Exhibit C).

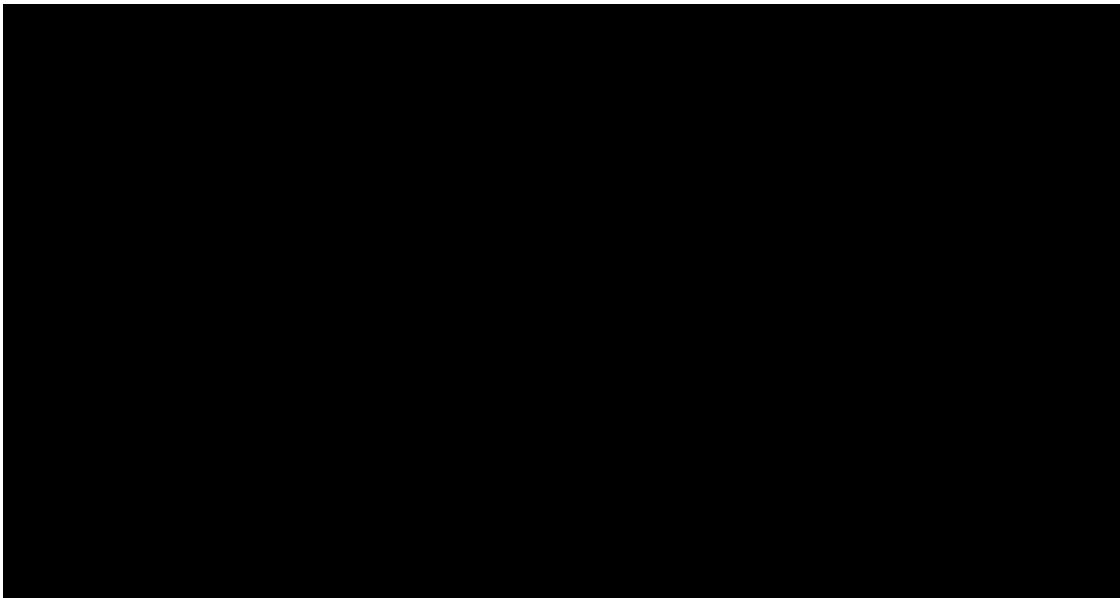
[REDACTED]

(Ex. B).

[REDACTED]

[REDACTED] (Exhibit D); also *Austin City Council Resolution 20200611-051*, CITY OF AUSTIN, June 11, 2020, [https:// see services.austintexas.gov/edims/document.cfm?id=342167](https://services.austintexas.gov/edims/document.cfm?id=342167) (describing adoption of the “Imagination Austin Comprehensive Plan,” which included creating protected bicycle lanes on Congress). [REDACTED]

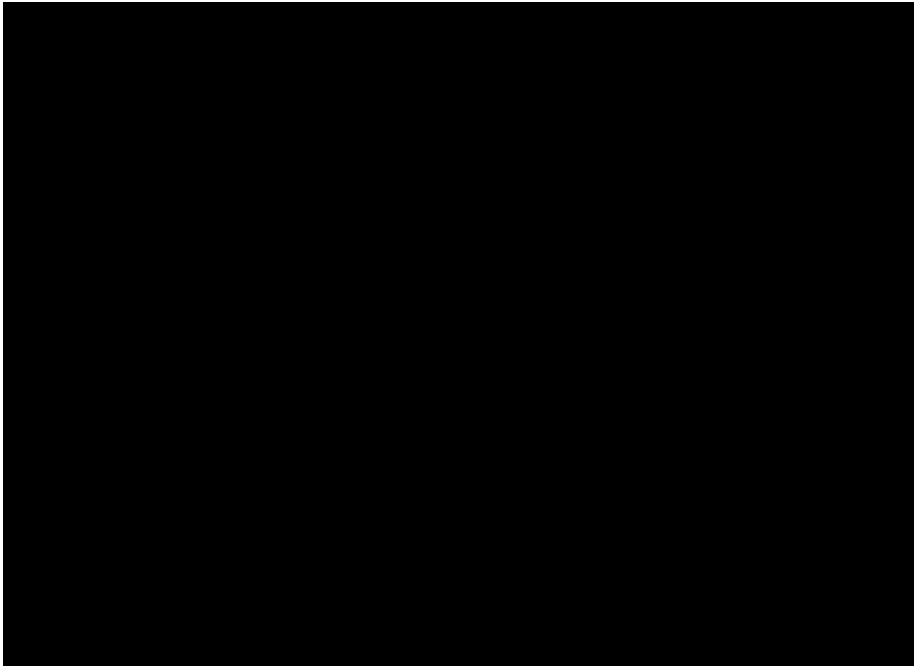
[REDACTED] (Ex. D). At one point Plaintiff was in the street:



[REDACTED]

(Exhibit E). However, when she was arrested, Plaintiff had moved away from the street and was standing just inches away from the expanded sidewalk:





[REDACTED] (Exhibit F). Plaintiff was in the process of complying with officer orders, having walked within inches of the expanded sidewalk, when she appeared to say something to the helmeted officers as they began to push the demonstrators backwards. *See* BEU 000559 - 000568 (Expert Report of John Lenoir) (Exhibit G). She was then singled out for arrest. *See id.* (stating that “[a] large officer standing behind the front-line officers holding bicycles lunged forward just as the police bicycle barricade line reached Buehler.”). Plaintiff was arrested moments after officers began clearing the road. There were other protestors in the roadway at that moment, but only Plaintiff was arrested. *See id.* at 5 [REDACTED]

[REDACTED]

[REDACTED] (Ex. B). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. B). [REDACTED]

[REDACTED] (Ex. B). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. B); [REDACTED] (Exhibit H) [REDACTED]

[REDACTED] This pain-compliance

technique was used despite Plaintiff offering no resistance. *See* Allare Dep. Tr. at 87:21–88:7

(Exhibit K) [REDACTED]

[REDACTED]; Beuhler Dep. Tr. Tr: 55:13–56:12 (Ex. A).

[REDACTED]

[REDACTED] (Ex. H) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Exhibit I) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. I) [REDACTED]

[REDACTED] Beuhler Dep. Tr. at 182:10-184:22 (Ex. A) [REDACTED]

[REDACTED] (Exhibit J) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Ex. J) [REDACTED]

[REDACTED]

[REDACTED] (Ex. H) [REDACTED]

[REDACTED]. *Id.* The City's inaction will perpetuate a practice and policy that will lead to the deprivation of individuals' constitutional rights.

#### IV. Legal Argument and Analysis

##### 1. **Material Fact Questions Persist as to Whether Defendant Violated Plaintiff's Constitutional Rights**

Defendant argues that Plaintiff has not "produced sufficient evidence to raise an issue of material fact to demonstrate that: (1) the City is liable for failing to train APD officers or (2) the City is liable for failing to adequately supervise or discipline APD officers." Doc. 43 at 10. But this is false. A number of material fact issues persist regarding Plaintiff's claims against Defendant and, accordingly, Defendant's motion should be denied.

###### a. Officer Defendants Violated Plaintiff's First Amendment Rights.

The validity of a First Amendment claim hinges on probable cause for the arrest. *Westfall v. Luna*, 903 F.3d 534, 550 (5th Cir. 2018). When there is a disputed question of fact on whether there was probable cause, a First Amendment claim cannot be resolved on summary judgment. *Mesa v. Prejean*, 543 F.3d 264, 273 (5th Cir. 2008). For the reasons set forth in Plaintiff's Response to Officers' Motion for Summary Judgment, which is incorporated by reference herein, the arrest of Plaintiff was not based on probable cause but rather on her exercise of her constitutionally-protected rights. Thus, whether officer defendants violated Plaintiff's First Amendment rights is a genuine issue of material fact.

###### b. Officer Defendants Violated Plaintiff's Fourth and Fourteenth Amendment Rights.

“When the arrest occurred, [Plaintiff] had a clearly established right to be free from excessive force, and it was clearly established that the permissible degree of force depends on the *Graham* factors.” See *Westfall v. Luna*, 903 F.3d at 549. For the reasons set forth in Plaintiff’s Response to Officers’ Motion for Summary Judgment, which is incorporated by reference herein, the arrest of Plaintiff was not objectively reasonable under the *Graham* factors. Accordingly, officer defendants are not entitled to qualified immunity on Plaintiff’s excessive-force claim and an issue of material fact exists as to whether Plaintiff’s Fourth and Fourteenth Amendment rights were violated.

**2. Material Fact Questions Persist as to Whether the City Maintains Unconstitutional Policies**

a. The City Has a Policy of Using Excessive Force Against Protestors and Violating Protestor’s Rights.

[REDACTED]

[REDACTED]

[REDACTED] (Ex. I). This practice encourages officers to single out protestors for arrest who are vocalizing their views louder than the other protestors. At the time of this incident, there were protestors in the street that had not attempted to move towards the sidewalk. There were protestors that had been pepper sprayed, and there were protestors that were pushed with bikes. But the only protestor that was arrested was Plaintiff, the individual who exercised her First Amendment by cursing at Officer Smart. Further, there is evidence that Plaintiff was complying with orders by walking to the sidewalk, from which she was merely inches away, when she was arrested immediately after engaging in constitutionally protected speech. BEU 000551 (Expert Report of John Lenoir) (Ex. G). Officer Smart was following APD’s policy and practice of permitting the arrest of protestors based on the content of their speech. There is a

genuine question of material question on whether APD’s policy led to the violation of Plaintiff’s constitutional rights.

b. APD Maintains a Policy of Not investigating and Disciplining Officers.

[REDACTED]

[REDACTED] (Ex. I). [REDACTED]

[REDACTED] (Ex. H). [REDACTED]

[REDACTED]

[REDACTED] (Ex. K). [REDACTED]

[REDACTED]

[REDACTED] (Ex. K). [REDACTED]

[REDACTED] (Ex. K) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. H). [REDACTED]

[REDACTED]

[REDACTED] (Ex. H).<sup>1</sup>

Further, Officer Gonzalez [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED] (Ex. H).

[REDACTED]

[REDACTED] (Exhibit L). [REDACTED]

[REDACTED] (Exhibit M); *see also*

[REDACTED] (Ex. H) [REDACTED]

[REDACTED] APD was put on notice of this Officer’s extremely negative sentiment towards protestors and propensity to knell on individuals when arresting them and failed to take any action to discipline him. APD’s policy of not investigating and disciplining officers raises a genuine issue of material fact on whether APD investigations are cursory “rubber stamps” designed not to investigate, but only to exculpate Officers of any wrongdoing, leading to the violation of individual’s constitutional rights.

**3. Material Fact Questions Persist as to Whether the City Was Deliberately Indifferent to Their Unconstitutional Practices**

a. The City Failed to Train and Supervise Officers Control a Crowd During Protests.

[REDACTED]

[REDACTED] (Ex. I). [REDACTED]

[REDACTED]

[REDACTED] (Ex. B). [REDACTED]

[REDACTED] (Ex. I). [REDACTED]

[REDACTED]

(Ex. B). [REDACTED]

[REDACTED] (Ex. I). [REDACTED]

[REDACTED] *Id.*

at 58:21–59:3, 59:21–23). [REDACTED]  
[REDACTED] *Id.* at 59:4–19. He did not attempt to use “zero” force against Plaintiff by simply asking her to turn around and put her hands behind her back. Plaintiff used no force to resist her arrest and in response Officer Smart used an excessive, level three force against her. The amount of force used by Officer Smart far exceeded the need and was unreasonable. *See* BEU 000553-55 (Expert Report of John Lenoir) (Ex. G) (“Nothing in the videos reviewed suggests that Beuhler posed an actual or reasonably perceived threat to the police officers or others.”). APD’s failure to train and adequately supervise officers to avoid using excessive force resulted in the violation of Plaintiff’s constitutional right to be free of excessive force.

[REDACTED]  
[REDACTED] (Ex. I). [REDACTED] (Exhibit N). APD trained officers on how to use this force without training them on when to use it appropriately and without adequately supervising officer’s use of this force. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. H); 108:24–109:3; 174:5–12; *with* COA 769 (bystander video); COA 402–405 (exhibit O) [REDACTED]

[REDACTED] (Ex. B); *see also* BEU 000551, 553–54 (Expert Report of John

Lenoir) (Ex. G) [REDACTED]

[REDACTED]

[REDACTED] (Exhibit P);

see also [REDACTED] (Ex. B). [REDACTED]

[REDACTED]

[REDACTED] (Ex. K). Officer Gonzalez used excessive and unnecessary force against Plaintiff. BEU 000554, 556 (Expert Report of John Lenoir) (Ex. G). Using a pain-compliance technique against an individual who was not resisting exceeds the need and is an unreasonable force to effectuate an arrest. APD's failure to train and adequately supervise its officers to avoid using excessive force resulted in the violation of Plaintiff's constitutional right to be free of excessive force.

b. Defendant and APD failed to train its officers on when the individuals they arrest may use justified force against the officers effectuating the arrest, and to adequately supervise their officers to ensure the same.

The Texas Penal Code Section 9:31(c) provides that "The use of force to resist an arrest or search is justified: (1) *if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search;* and (2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary." (emphasis added). However, APD has failed to train its officers on when an individual's use of force in resisting an arrest is justified. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. I). [REDACTED]



[REDACTED]

[REDACTED] (Ex. H).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. G). A jury could reasonably find the Plaintiff used the force reasonably necessary to protect herself against the Officer's use of greater-than-necessary force. APD did not train or adequately supervise its officers regarding when the individuals they arrest may use force against them, leading to additional excessive force being used against individuals in violation of their constitutional rights.

**4. These failures continued after APD was put on notice that their practices caused constitutional violations.**

[REDACTED]

[REDACTED] (Ex. B). [REDACTED]

[REDACTED] (Ex. K); [REDACTED] (Ex. D).

[REDACTED]

[REDACTED]

[REDACTED] (Ex. B). [REDACTED]

[REDACTED]

[REDACTED] (Ex. B). [REDACTED]

[REDACTED]. *Id.* at

49:9–50:2.

[REDACTED]

[REDACTED]

[REDACTED] (Ex. B). [REDACTED]

[REDACTED] (Ex. K). [REDACTED]

[REDACTED]

[REDACTED] (Ex. I). Thus, by their policy of inaction, the City and Chief Manley condoned and ratified the civil rights violations and the conduct that caused injuries to Sydni Beuhler and others on August 1, 2020 by continuing the practices and policies that lead to similar and more severe injuries earlier in the year.

**V. Conclusion**

The evidence in the record raises genuine questions of material fact regarding whether the City's polices and practices that violate the constitutional rights of individuals. The City's summary judgment motion should respectfully be denied.

**Dated: May 12, 2023**

**Respectfully submitted,  
HENDLER FLORES LAW, PLLC**

/s/ Laura A. Goettsche  
Scott M. Hendler - Texas Bar No. 9445500  
[shendler@hendlerlaw.com](mailto:shendler@hendlerlaw.com)  
Laura A. Goettsche - Texas Bar No. 24091798  
[lgoettsche@hendlerlaw.com](mailto:lgoettsche@hendlerlaw.com)  
Grayson E. McDaniel- Texas Bar No. 24078966  
[gmcDaniel@hendlerlaw.com](mailto:gmcDaniel@hendlerlaw.com)  
Stephen Demik - PHV  
[sdemik@hendlerlaw.com](mailto:sdemik@hendlerlaw.com)  
901 S. MoPac Expressway  
Bldg. 1, Suite #300  
Austin, Texas 78746  
Telephone: (512) 439-3200  
Facsimile: (512) 439-3201

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was filed via the court's CM/ECF system on May 12, 2023, which will serve all counsel of record.

/s/ Laura A. Goettsche  
Laura A. Goettsche

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER,

Plaintiff,

v.

CITY OF AUSTIN, *Officer* GAVIN SMART  
(AP8674), and *Officer* JAVIER GONZALEZ  
(AP7422),

Defendants.

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1:21-CV-0054-RP

**ORDER**

Before the Court is Defendants Gavin Smart (“Smart”) and Javier Gonzalez’s (“Gonzalez”) (the “Officers”) Motion for Summary Judgment, (Dkt. 42), and Defendant City of Austin’s (the “City”) Motion for Summary Judgment, (Dkt. 43). Plaintiff Sydni Beuhler (“Beuhler”) filed responses to each motion, (Dkts. 49, 50), and Defendants filed replies, (Dkts. 51, 52). Having considered the parties’ submissions, the record, and the applicable law, the Court will grant the motions for summary judgment.

**I. BACKGROUND**

This case arises out of the actions surrounding Beuhler’s arrest during a protest in the summer of 2020. On August 1, 2020, Beuhler attended a protest on Congress Avenue in Austin. (Beuhler Depo., Dkt. 49-1, at 5). Police officers arrived to clear the protestors. (Miller Depo., Dkt. 49-1, at 12). Police officers told Beuhler and other protestors to “Move out of the street.” (Beuhler Depo., Dkt. 42-6, at 6). Beuhler alleges that she was in the process of complying with the instructions. (Beuhler’s Resp., Dkt. 49, at 4). However, video evidence shows that at some point she stopped moving and cursed at the police. (*E.g.*, Bystander Video, Dkt. 42-11; *see also* Beuhler Depo., Dkt. 42-6, at 6 (admitting she did not move out of the street)). Defendant Smart wrapped his arms

around Beuhler and lifted her off the ground, removing her from the road. (Beuhler Depo., Dkt. 42-6, at 15). Beuhler struggled against Smart and another officer. (Bystander Video, Dkt. 42-11, at 0:10–0:17). Smart put Beuhler on her knees on the ground, and he and Defendant Gonzalez pulled her arms back and handcuffed her. (*Id.* at 0:15–0:40, Allare Depo., Dkt. 42-5, 23–24). Beuhler was arrested for Obstruction of Highway or Other Passageway and Resisting Arrest. (Mot., Dkt. 42, at 1–2).

Based on these events, Beuhler filed a complaint on January 15, 2021. (Dkt. 1). She filed her First Amended Complaint, on May 11, 2022. (Dkt. 21). Beuhler brings a claim under 42 U.S.C. § 1983 for First Amendment retaliation and Fourth Amendment and Fourteenth Amendment excessive force against the Officers, and a *Monell* claim against the City for First, Fourth, and Fourteenth Amendment violations. (*Id.* at 4–9).

## II. LEGAL STANDARDS

Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986). A dispute regarding a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “A fact is material if its resolution in favor of one party might affect the outcome of the lawsuit under governing law.” *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 326 (5th Cir. 2009) (quotations and footnote omitted). When reviewing a summary judgment motion, “[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson*, 477 U.S. at 255. Further, a court may not make credibility determinations or weigh the evidence in ruling on a motion for summary judgment. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000).

Once the moving party has made an initial showing that there is no evidence to support the nonmoving party's case, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986). Unsubstantiated assertions, improbable inferences, and unsupported speculation are not competent summary judgment evidence, and thus are insufficient to defeat a motion for summary judgment. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007). Furthermore, the nonmovant is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his claim. *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006). Rule 56 does not impose a duty on the court to “sift through the record in search of evidence” to support the nonmovant's opposition to the motion for summary judgment. *Id.* After the nonmovant has been given the opportunity to raise a genuine factual issue, if no reasonable juror could find for the nonmovant, summary judgment will be granted. *Miss. River Basin Alliance v. Westphal*, 230 F.3d 170, 175 (5th Cir. 2000).

### III. DISCUSSION

Beuhler argues that Defendants violated her constitutional rights by: (1) arresting her when she was engaged in constitutionally protected conduct, (2) charging her with resisting arrest, and (3) using excessive force. (Resp., Dkt. 49, at 5). In their Motion for Summary Judgment, Defendants argue that the § 1983 claims against them should be dismissed because Beuhler's arrest was lawful and based on probable cause, and because their actions did not constitute excessive force. (Dkt. 42, at 6–7).<sup>1</sup> The Officers also argue that they are entitled to qualified immunity. (*Id.* at 8–9).

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<sup>1</sup> The City's Motion incorporates the Officers' motion by reference before addressing Beuhler's *Monell* claims. (Mot., Dkt. 43, at 5). Therefore, citations to any joint arguments will reference the Officers' motion, (Dkt. 42).

### A. First Amendment Retaliation Claim

The First Amendment protects the “freedom of individuals verbally to oppose or challenge police action without thereby risking arrest.” *City of Houston, Tex. v. Hill*, 482 U.S. 451, 462–63 (1987). However, “[t]he presence of probable cause should generally defeat a First Amendment retaliatory arrest claim.” *Nieves v. Bartlett*, 139 S. Ct. 1715, 1726 (2019). Absent a showing of no probable cause, “a retaliatory arrest claim fails.” *Id.* at 1725; *Westfall v. Luna*, 903 F.3d 534, 550 (5th Cir. 2018).

Here, Beuhler argues that she was singled out for voicing a complaint to the police. (Resp., Dkt. 49, at 8). However, a person’s contemporaneous criticism of the police does not taint a proper arrest when a person’s conduct gives an officer probable cause. *Mesa v. Prejean*, 543 F.3d 264, 273 (5th Cir. 2008). The evidence shows that the Officers had probable cause to arrest Beuhler. Although she claims she was “leaving the roadway; was not running, fleeing, or threatening any officer,” (Resp., Dkt. 49, at 8), the evidence shows her coming to a full stop and confronting the police officers after being ordered to clear the street multiple times. (*See, e.g.*, Smart Body Camera Video, Dkt. 42-7; Bystander Video, Dkt. 42-11; *see also* Beuhler Depo., Dkt. 42-6, at 6 (admitting she did not move out of the street)). Even when viewed in the light most favorable to Beuhler, there is no issue of fact because no evidence suggests that plaintiff “manifested any intention of complying with [Officers’] commands.” *Carthon v. Prator*, 408 F. App’x 779, 783 (5th Cir. 2010).

Beuhler’s arguments about Gonzalez’s subjective motivations are unavailing. Once a plaintiff establishes the absence of probable cause, the Court must evaluate whether “the retaliation was a substantial or motivating factor behind the [arrest].” *Nieves*, 139 S. Ct. at 1725 (citations omitted). However, “because there was probable cause to arrest [Beuhler, her] retaliatory arrest claim fails as a matter of law.”

Finally, Beuhler also argues that the Officers had no probable cause to arrest her for resisting arrest because, under Texas law, she was legally reacting to unreasonable force. (Resp., Dkt. 49, at 9). Section 9:31(c) of the Texas Penal Code provides that a person may use force to resist an arrest: (1) if an officer uses or attempt to use unreasonable force before the person offers resistance, and (2) when the person reasonably believes force is immediately necessary to protect herself against the officer's use or attempted use of unreasonable force. However, as the Court explains below, Beuhler has not raised a fact question as to whether the Officers used excessive force. Therefore, she has not raised an issue of fact as to whether there was probable cause for charging her with resisting arrest.

### **B. Excessive Force Claims**

A plaintiff claiming excessive force must establish that she “suffers an injury that results directly and only from a clearly excessive and objectively unreasonable use of force.” *Joseph ex rel. Estate of Joseph v. Bartlett*, 981 F.3d 319, 332 (5th Cir. 2020). A defendant's use of force is not excessive and unreasonable if “the officer[s] actions are objectively reasonable in light of the facts and circumstances confronting [them], without regard to their underlying intent or motivation.” *Cloud v. Stone*, 993 F.3d 379, 384 (5th Cir. 2021) (citations omitted). In evaluating reasonableness, courts pay “careful attention to the facts and circumstances of each particular case,” focusing on “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham v. Connor*, 490 U.S. 386, 395 (1989).

Beuhler argues that Defendants' use of force was unreasonable, and that the City's policies caused the alleged constitutional violation. In support of her argument, she cites *Westfall v. Luna*, in which the Fifth Circuit reversed a grant of qualified immunity to a police officer who forced Westfall to the ground for disobeying an order. 903 F.3d 534, 549 (5th Cir. 2018). In *Westfall*, the plaintiff was



a woman of “small build” who did not follow instructions when defendant instructed her to not follow her son into her home. *Id.* at 540–41. The Fifth Circuit found that the officer’s use of force was objectively unreasonable because Westfall was arrested for a minor offense, no reasonable officer could conclude that Westfall posed a threat, and Westfall was not trying to flee. *Id.* at 547–48.

Beuhler argues that, like plaintiff in *Westfall*, she was arrested for a minor offense and did not pose a threat because she was attempting to comply and trying to flee. But in *Westfall*, questions of fact remained because the record did not clearly show who had started the confrontation that ended with plaintiff’s arrest, or what exactly had transpired during the altercation. *Westfall*, 903 F.3d at 548–49. Furthermore, the record “[did] not indicate how, if at all, Westfall physically resisted the officers’ alleged attempts to restrain her.” *Id.* at 549. In contrast, the record here shows that Beuhler repeatedly disobeyed police orders, failed to clear the street, and defiantly confronted police officers. Based on this record, no reasonable jury would find that the Officers reacted unreasonably by removing Beuhler from the street and handcuffing her, or that the use of a wristlock was excessive given the circumstances. Therefore, the Court will grant the Officers’ motion for summary judgment. Finally, because the Court has found that no constitutional violation has occurred, Beuhler’s § 1983 claim against the City must likewise fail, and the Court will grant the City’s motion for summary judgment.

#### IV. CONCLUSION

For the reasons stated above, **IT IS ORDERED** that Officers Gavin Smart and Javier Gonzalez’s Motion for Summary Judgment, (Dkt. 42), is **GRANTED**. The Officers are entitled to summary judgment as to all of Beuhler’s claims against them.

**IT IS FURTHER ORDERED** that the City of Austin's Motion for Summary Judgment, (Dkt. 43), is **GRANTED**. City of Austin is entitled to summary judgment as to all of Beuhler's claims against it.

Final judgment will be entered in a separate order.

**SIGNED** on June 26, 2023.

A handwritten signature in blue ink, appearing to read "R. Pitman", is written above a horizontal line.

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SYDNI BEUHLER,

Plaintiff,

v.

CITY OF AUSTIN, *Officer* GAVIN SMART  
(AP8674), and *Officer* JAVIER GONZALEZ  
(AP7422),

Defendants.

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**FINAL JUDGMENT**

On this date, the Court entered an order granting Defendants' motions for summary judgment. As nothing remains to resolve, the Court renders Final Judgment pursuant to Federal Rule of Civil Procedure 58.

**IT IS ORDERED** that Plaintiff's claims against Defendants Gavin Smart, Javier Gonzalez, and City of Austin are **DISMISSED** with prejudice.

**IT IS FURTHER ORDERED** that the case is **CLOSED**.

**SIGNED** on June 26, 2023.



ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE