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NCJRS

OCT 26 1994



## COMMONWEALTH of VIRGINIA

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### ACQUISITIONS

October 28, 1993

To: Law Enforcement Executive  
From: Robert Hicks, Law Enforcement Section, 804-786-8421  
Subject: Revisions and Additions to the Virginia Model Law  
Enforcement Policies Manual

We are pleased to send you the first package of revisions and additions to our model law enforcement policy manual since 1988. We intended to develop, print, and distribute updates periodically, but in recent years budget cuts defeated our efforts. We hope to announce the availability of revisions annually hereafter.

Please note that the enclosed package does not update the model manual completely: many topics need re-examination. In some cases, state law references have changed, or police techniques or methods have evolved. We will continue to revise model orders, first addressing issues that have high liability ramifications, important changes in constitutional procedure, or other concerns of pressing significance.

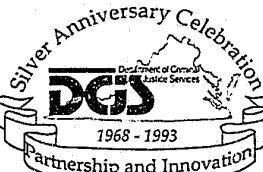
We may or may not have funding next year to print and distribute policy materials. If so, we will print and distribute a package similar to this one. If not, we will announce the availability of a revisions package to users of Wordperfect. We will ask that agencies send us a blank diskette for the updates package.

Over the last few years, an increasing number of agencies has asked for the model manual in Wordperfect. We converted the manual from our in-house word processing system to Wordperfect, and have to date provided agencies with dozens of copies of the manual in Wordperfect. Unfortunately, some agencies have found the Wordperfect version difficult to use.

For your information, we have typed anew the model manual in Wordperfect. In fact, our Wordperfect version is the third edition of the manual, which we will print when funds become available. The third edition contains corrections of typographical errors and other minor mistakes of grammar, plus a few small changes that

-over-

Coordination



Cooperation

would be too expensive to print and distribute with the revisions package. If you wish to obtain a copy of the third edition--at present only available on a computer diskette--or wish to update an earlier Wordperfect copy of the manual, please send me three formatted, blank, high-density diskettes. Further, send a blank double density or high density formatted diskette to receive the enclosed updates package in Wordperfect.

As funds permit, we hope to print extra copies of the entire manual before the end of 1993.

Thank you for your interest and patience. Please call me if you have questions or comments. Remember that we maintain a large library of policy-related materials, so if you seek information on a given topic, call.

**Did We Send the Policy Manual Revisions to the Correct Person?**

Our mailing list might be in error: if we sent the manual to the wrong person, please complete this form and send it to:

Robert Hicks  
Law Enforcement Section  
Department of Criminal Justice Services  
805 E. Broad Street  
Richmond, Virginia 23219

Incorrect name and address shown on the mailing label:

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Thank you.

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(INSERT AFTER TITLE PAGE)

REVISIONS AND ADDITIONS

<u>Page Numbers of Revised/Added Orders</u>	<u>Subject</u>	<u>Effective Date</u>
I	Acknowledgement	6/88
VIII	Contents	6/88
IX-XVI	Index	6/88
1-1.1 to 1-1.2	RR 1-1 (Organization of manual)	6/88
1-2.1, 1-2.17	RR 1-2 (General rules)	6/88
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1-8.1, 1-8.2	RR 1-8 (Sexual harassment)	6/88
1-18.1	RR 1-18 (Firearms - general)	6/88
2-1.1 to 2-1.16	GO 2-1 (Limits of authority)	6/88
2-5.1, 2-5.3	GO 2-5 (Search incident to arrest)	6/88
2-6.1 to 2-6.9	GO 2-6 (Use of force)	6/88
2-19.1, 2-19.15 to 2-19.19	GO 2-19 (Traffic law enforcement)	6/88
2-20.1 to 2-20.3	GO 2-20 (Accident investigation)	6/88
2-32.1 to 2-32.9	GO 2-32 (Domestic violence)	6/88
2-34.1 to 2-34.12	GO 2-34 (Communicable diseases)	6/88
1-5.1 to 1-5.6	RR 1-5 (Hiring sworn personnel)	10/93
1-6.1 to 1-6.15	RR 1-6 (Performance evaluation)	10/93
2-1.1 to 2-1.21	GO 2-1 (Limits of authority/ Constitutional safeguards)	10/93
2-6.1 to 2-6.11	GO 2-6 (Use of force)	10/93
2-32.1 to 2-32.13	GO 2-32 (Domestic violence)	10/93
2-34.1 to 2-34.18	GO 2-34 (Communicable diseases)	10/93

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2-35.1 to 2-35.18	GO 2-35 (Drug testing)	10/93
2-36.1 to 2-36.4	GO 2-36 (Asset forfeitures)	10/93
2-37.1 to 2-37.4	GO 2-37 (McGruff House program)	10/93
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POLICE/SHERIFF'S DEPARTMENT		RULES AND REGULATIONS	
SUBJECT: HIRING SWORN PERSONNEL		NUMBER: 1-5	
EFFECTIVE DATE: October 1993		REVIEW DATE:	
AMENDS/SUPERSEDES:		APPROVED: <u>Chief of Police/Sheriff</u>	
CALEA STANDARDS: 22.3, 31.1, 31.5-7, 32.1-3, 5-7, 42.2.14			

**NOTE:**

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

**INDEX WORDS:**

Adverse impact  
Hiring  
Lateral entry  
Personnel records  
Probation  
Re-application (hiring)  
Records  
Validity of selection procedures

**I. POLICY:**

It is the policy of the [your agency] to obtain the best police officers possible. To that end, the department shall practice a regimented, rigorous selection procedure while simultaneously affording equal opportunity to everyone regardless of race, creed, color, sex, national origin, or age. The department does not discriminate against people with disabilities and affords them the same access to employment provided to all citizens. Where possible, the department provides reasonable accommodation to the known disabilities of qualified people.

**II. PURPOSE:**

The purpose of this order is to outline minimum hiring

requirements for police officers.

### III. DEFINITIONS:

- A. Disability: a physical or mental impairment that substantially limits one or more of the major life activities.
- B. Reasonable accommodation: the modification of existing facilities to render them more accessible to and usable by people with disabilities. Also refers to restructuring the job or modifying work schedules to assist assignment of a disabled employee.

### IV. PROCEDURES:

- A. The minimum qualifications that all applicants for the position of police officer must meet include:

- 1. Minimum age of 21.
- 2. High school graduate or equivalent.
- 3. Passing a written examination.
- 4. Passing a background investigation which includes a check of school records, credit history, inquiry as to character and reputation, and a fingerprint-based criminal records check.\*
- 5. Passing an interview.
- 6. Passing a physical examination.\*
- 6. Any other standards set by law (15.1-131.8, 9-169 Code of Virginia) or by policy of the Criminal Justice Services Board.

- \* The medical screening shall not take place--nor shall the background investigation be completed--until after a conditional offer of employment has been accepted.

(NOTE - Polygraph examinations shall not be required as part of the screening process because of the high rate of error associated with their use.)

- B. The applicant must perform the following:

- 1. Complete a written application and submit it to the chief of police.

2. Arrange with the chief of police to take the written test and appear for an interview.
- C. The officer assigned to investigate the applicant shall:
1. Obtain the applicant's driving record from DMV.
  2. Have applicant sign appropriate release forms.
  3. If applicant has recently lived outside [your county], request records checks through agencies in applicant's previous communities.
  4. Obtain references from applicant's current and past employers.
  5. Obtain NCIC/VCIN records check.
  6. Conduct interviews of neighbors near applicant's residences over the past three years.
  7. Provide a complete background investigation file to the chief of police.
  8. Administer the written examination.
    - a. The written exam includes a reading/writing comprehensive component. The applicant must achieve a score no less than the minimum score established for the test. The department shall maintain documentation of the exam's validity, utility, and adverse impact. The department shall maintain examination results.
  9. Present findings to the hiring committee. The hiring committee consists of the chief of police, another senior member of the department, and a town official.
- D. The chief of police shall:
1. Interview all applicants and make the final selection upon recommendation of the hiring committee.
  2. Ensure that the applicant fully understands the selection process and the conditions and procedures for re-application.
  3. Make a conditional offer of employment. The candidate must then undergo a physical examination (mandated by law) and a related inquiry, required

by all entering employees in sworn positions. The inquiry may consist of questions about the ability of the applicant to perform job-related functions.

- a. Further, no conditional offer will be considered final until after a satisfactory medical evaluation and completion of the background investigation.
- 4. Ensure that the appointee understands job benefits, health plans, administrative matters concerning overtime and off-duty employment plus conditions of employment, pension, and disability.
- E. Re-application: Unsuccessful applicants may re-apply after 90 days from the date of last application if a vacancy exists.
- F. Lateral entry.
  - 1. An already-commissioned police officer in another Virginia agency must meet the criteria set forth above. If accepted for employment, the officer will not be assigned to attend a basic academy, subject to the status of the officer's certification and training.

V. VALIDATION OF SELECTION PROCEDURES:

The department's hiring procedures meet standard tests of validity. The department must be able to validate any selection criteria by showing proof that the process either will predict job performance or detect aspects of candidates' work behavior as related to the position of police officer. The chief, in consultation with the town manager, shall review selection procedures for their validity and utility at least every two years. Departmental hiring procedures meet the following tests of validity:

- A. Validity related to criteria: The selection procedure correlates written test scores with pre-determined criteria. A high correlation of the two demonstrates that the test scores predict job performance.
- B. Validity related to construct: The selection procedure measures the degree to which the candidate has certain required traits or characteristics important in police work.
- C. Validity related to content: The selection process is validated by showing that it represents actual job

behavior.

- D. Utility: The department's selection processes also demonstrate utility, which refers to the practical value of a component of the selection process based on validity, selection ratio, number of candidates to be selected, and the nature of the job.
- E. Adverse impact.
  - 1. Adverse impact refers to a selection procedure that works to the disadvantage of a racial or ethnic group, or of a sex.
    - a. The department shall reduce adverse impact as much as possible in its hiring procedures.
    - b. The department retains records of hiring tests to monitor adverse impact.

#### VI. PROBATION:

- A. All newly-hired officers shall be considered on probation for one year from date of employment. The same probationary period applies to officers hired through lateral entry.
- B. The date of employment for officers shall never exceed 30 days before the beginning of a basic academy class to which the appointee has been assigned. If the officer begins work before a basic academy, he shall perform non-police duties only, and will accompany experienced officers as an observer.
- C. At the end of the probationary year, the chief of police shall write a performance evaluation in which he must rate the appointee at least a "3" (minimum acceptable performance) in each category of behavior (see the evaluation form in RR 1-6). The chief reserves the right to extend the probationary period an extra 90 days because of an unsatisfactory rating. A second unsatisfactory rating, at the end of 90 days, in any category shall provide cause for dismissal.
- D. The work performance of each probationary employee shall be evaluated using valid, non-discriminatory procedures.
- E. Probationary employees who wish to protest their ratings have no grievance rights except to request an interview with the chief of police.

## VII. RECORDS:

- A. The department maintains, for each employee, a personnel record which includes all forms completed during the hiring process, all evaluations, complaints, commendations, and assignments.
- B. The chief of police maintains and controls all personnel records.
- C. Employees may review their records at any reasonable time upon request. The chief may release a record from file upon obtaining a signed receipt from the authorized person with a need to review it.
- D. All personnel records are considered sensitive information available for review to supervisory or investigative personnel who have a need, as determined by the chief of police.
- E. If the chief deems necessary to include derogatory information in a personnel file, he shall notify the employee of the fact in writing. The employee may protest the inclusion of such information in writing to the chief. Probationary employees have no right of protest in such matters.
  - 1. Grievances are discussed under RR 1-10.
- F. Personnel records are permanent property of the department.

POLICE/SHERIFF'S DEPARTMENT		RULES AND REGULATIONS	
SUBJECT: PERFORMANCE EVALUATION		NUMBER: 1-6	
EFFECTIVE DATE: October 1993		REVIEW DATE:	
AMENDS/SUPERSEDES:		APPROVED: <u>Chief of Police/Sheriff</u>	
CALEA STANDARDS: 35.1, 35.2, 35.3			

**NOTE:**

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

**INDEX WORDS:**

Evaluation  
Performance evaluation  
Scale value application

**I. POLICY:**

The department bears an obligation to the public and its own personnel to hire and maintain the best qualified police officers. To that end, the department regularly and formally evaluates the performance of officers and other employees. The evaluation system discussed herein serves both the interests of management and the department's employees. The purposes of the evaluation system are to (1) allow fair and impartial personnel decisions; (2) maintain and improve performance; (3) provide a basis and a medium for personnel counseling; (4) assist decisions about the tenure of probationary employees; and (5) identify training needs.

**II. PURPOSE:**

The purpose of this order is to outline and describe the departmental evaluation process.



### III. PROCEDURES:

#### A. General

1. All police officers shall be evaluated using the form located in the appendix to this order.
2. Evaluations reflect observations and perceptions by rating personnel, and are, therefore, inherently subjective. Nevertheless, personnel shall be rated according to unacceptable, acceptable or superior behavior. Specific guidelines for rating behavior are found in the appendix to this order.
3. At the discretion of the chief of police, each officer shall be evaluated either every six months or annually. To constitute a satisfactory score, an officer must receive an overall 3.0 (or satisfactory). Officers who fail to receive an overall 3.0 shall be placed on probation for a period determined by the chief of police. Within the probation period, an officer shall receive remedial training in deficient areas, demonstrate proficiency (or satisfactory improvement) in deficient areas, the training and improved behavior documented on the evaluation form. During a probationary period for remedial training, an officer shall receive evaluations weekly or bi-weekly, at the chief's discretion.
4. All evaluations shall be placed in employees' personnel files.
5. All newly-hired officers in their probationary year shall receive monthly written evaluations if no significant deficiencies are observed.
6. Officers promoted or transferred to new assignments shall receive evaluations at least every six months for the first year of assignment or promotion, or more often at the chief's discretion.
7. Police officers shall be evaluated formally by the sergeant; the sergeant and the investigator by the chief of police.
8. An officer who receives an unsatisfactory mark he or she perceives unjust may protest same to the chief of police. The officer concerned must rebut the comments or marks in writing, submitted through the chain of command to the chief of police. In any case, final appeal extends to the town manager,

in writing, through the chief of police.

B. Scale Value Application:

1. The most difficult task facing the rater is applying the numerical scale which accompanies categories of behavior. Two raters might not apply the same numerical values to the person under evaluation. To reduce such differences, the appendix to this instruction clearly defines what constitutes unacceptable, acceptable, and superior behavior.
2. The philosophy of the evaluation form focuses on observations of demonstrated proficiency in behavior relevant to the job. Proficiency may be demonstrated in a variety of ways:
  - a. Performing the behavior in the field.
  - b. Performing the behavior in a practical exercise or simulation, accompanied by written or oral testing.
  - c. Written or oral testing (for subjects not amenable to field demonstration).
3. Any numerical rating below 3 must be documented. Deficiencies in behavior must receive precise documentation. For example, an officer might receive a "1" (unacceptable) under category six, officer safety. In the comments section, the rater would write, "Officer consistently presents his gun to traffic violators and approaches stopped vehicles with objects in both hands."
4. The categories of behavior represent key areas of police behavior. The categories are aligned in four subjects: critical performance tasks, knowledge, attitude/relations, and appearance.

C. Evaluation of sergeant and detective and civilian employees.

1. Civilian employees shall be evaluated on forms used by the town office for the purpose.
2. The detective shall be evaluated using the same form as that for officers. Under "comments," the rater shall specifically refer to the accomplishments, training, behavior as an investigator.

3. The sergeant shall be evaluated using the same form as that for officers. Under "comments" the chief of police shall refer to an attached page containing, in a narrative, comments concerning the sergeant's supervisory performance. The chief shall address, at a minimum, the following points:
  - a. Ability to instill in officers a high regard and respect for the rule of law, civil rights, and concern for victims.
  - b. Ability to perceive performance weakness in his officers, conduct remedial training, and document improved proficiency.
  - c. Command of patrol techniques, methods, and investigative procedures.
  - d. Ability to reprimand, counsel, praise, or otherwise discipline his officers.
  - e. Ability to take responsibility for the performance of his officers.

*[The performance evaluation program defined in this order derives from the field training officer (FTO) model. The FTO evaluation system identifies key behaviors performed by police officers, defines the minimum acceptable performance in each, and expects officers to demonstrate proficiency in all key behaviors. For more information about the FTO model, or to obtain copies of similar FTO evaluation programs, contact the Law Enforcement Section, DCJS.]*

PERFORMANCE EVALUATION

NAME \_\_\_\_\_

RANK/ASSIGNMENT \_\_\_\_\_

EVALUATION PERIOD \_\_\_\_\_

DATE OF EVALUATION \_\_\_\_\_

**PERFORMANCE RATING INSTRUCTIONS:**

The narrative portion of the evaluation follows the scale ratings. Refer to the rating guide for an explanation of the rated behaviors. Raters may comment on any observed behavior, but specific comments are required to justify ratings of "1," "2," or "5."

Not Acceptable	2	Acceptable	4	Superior	Not Observed
1		3		5	_____

CRIMINAL PERFORMANCE TASKS

(1) Driving skills (stress conditions)	1	2	3	4	5	N.O. _____
(2) Driving Skills (non-stress conditions)	1	2	3	4	5	N.O. _____
(3) Orientation skills (stress conditions)	1	2	3	4	5	N.O. _____
(4) Field performance (stress conditions)	1	2	3	4	5	N.O. _____
(5) Field performance (non-stress cond.)	1	2	3	4	5	N.O. _____
(6) Officer safety (general)	1	2	3	4	5	N.O. _____
(7) Officer safety (with suspicious persons and prisoners)	1	2	3	4	5	N.O. _____
(8) Control of conflict (voice command)	1	2	3	4	5	N.O. _____
(9) Control of conflict (physical skill)	1	2	3	4	5	N.O. _____
(10) Investigative procedures	1	2	3	4	5	N.O. _____
(11) Report writing (organization/details)	1	2	3	4	5	N.O. _____
(12) Proper form selection (accuracy and details)	1	2	3	4	5	N.O. _____
(13) Radio (listens and comprehends transmissions)	1	2	3	4	5	N.O. _____
(14) Radio (articulation of transmissions)	1	2	3	4	5	N.O. _____

	Not Acceptable 1	2	Acceptable 3	4	Superior 5	Not Observed _____	
(15) Orientation skill (non-stress cond.)	1	2	3	4	5	N.O.	_____
(16) Report writing (grammar/spelling/ neatness)	1	2	3	4	5	N.O.	_____
(17) Report writing (appropriate time used)	1	2	3	4	5	N.O.	_____
(18) Self-initiated activity	1	2	3	4	5	N.O.	_____
(19) Problem-solving/decision-making	1	2	3	4	5	N.O.	_____

#### KNOWLEDGE

(20) Knowledge of department rules and orders	1	2	3	4	5	N.O.	_____
(21) Knowledge of criminal law	1	2	3	4	5	N.O.	_____
(22) Knowledge of traffic law	1	2	3	4	5	N.O.	_____

#### ATTITUDE/RELATIONS

(23) Acceptance of feedback	1	2	3	4	5	N.O.	_____
(24) Relationship with citizens	1	2	3	4	5	N.O.	_____
(25) Relationship with co-workers/super.)	1	2	3	4	5	N.O.	_____
(26) General demeanor	1	2	3	4	5	N.O.	_____

#### APPEARANCE

(27) General appearance	1	2	3	4	5	N.O.	_____
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Overall Average Score \_\_\_\_\_

PRINCIPAL STRENGTHS OBSERVED DURING THE EVALUATION PERIOD:

PRINCIPAL WEAKNESSES OBSERVED DURING THE EVALUATION PERIOD:

SUPERVISOR'S SUGGESTIONS FOR IMPROVEMENT:

EMPLOYEE'S REMARKS:

WHAT ACTIONS HAVE BEEN TAKEN SINCE THE LAST EVALUATION TO IMPROVE PERFORMANCE:

Rating Authority \_\_\_\_\_ Date \_\_\_\_\_  
(Print name and sign)

Employee's Signature \_\_\_\_\_ Date \_\_\_\_\_

Chief of Police's Signature \_\_\_\_\_ Date \_\_\_\_\_

Form Rev. 10/93

APPENDIX TO RR 1-6  
RATING SCALE VALUES

( Rev. 10/93)

The task of evaluating and rating an officer trainee's performance shall be based on the following numerical scale value definitions. These definitions serve as a means of standardizing the evaluation process.

(1) DRIVING SKILLS: STRESS CONDITIONS

1. Unacceptable: Involved in accident(s). Overuses red lights and siren. Excessive and unnecessary speed. Fails to slow for intersections or loses control on corners.
3. Acceptable: Maintains control of vehicle. Evaluates driving situations and reacts properly. Proper speed for conditions.
5. Superior: High degree of reflex ability and competence in driving skills. Superior judgment shown in use of light and siren. Controls speed skillfully.

(2) DRIVING SKILLS: NON-STRESS CONDITIONS

1. Unacceptable: Continually violates traffic law (red lights, speed, stop signs, etc.). Involved in chargeable accidents. Lacks dexterity and coordination during vehicle operation.
3. Acceptable: Able to maintain control of vehicle while being alert to activity outside vehicle. Practices good defensive driving techniques.
5. Superior: Sets good examples of lawful, courteous driving while exhibiting good manipulative skill required of an officer, i.e., operate radio, use street index, etc.

(3) ORIENTATION SKILL: STRESS CONDITIONS

1. Unacceptable: Becomes disoriented when responding to stressful situations. Unable to relate his/her location to their destination. Unable to use map under stress. Unable to determine compass directions during stressful situations.
3. Acceptable: Aware of his/her location. Able to use map effectively under stress. Demonstrates good sense of direction when responding to stressful situations.
5. Superior: Always responds quickly to stressful calls by the most appropriate route. Does not have to refer to map. Does not become disoriented during stressful situations.

(4) FIELD PERFORMANCE: STRESS CONDITIONS

1. Unacceptable: Becomes emotional and panic stricken. Unable to function; loses temper. Endangers safety of self and other officers and citizens by inattention to the demands of the job.
2. Acceptable: Exhibits a calm and controlled attitude. Can perform reasonably well at least in preventing a situation from deteriorating. Reasonably conscious of officer safety measures and protection of citizens from further harm.
3. Superior: Maintains control and brings order under virtually any circumstances without assistance. Remembers and carries out key police duties properly.

(5) FIELD PERFORMANCE: NON-STRESS CONDITIONS

1. Unacceptable: Confused and disoriented as to what action should be taken in a given situation. Numerous specific examples of bad judgment can be shown.
3. Acceptable: Able to assess situation and take proper action.
5. Superior: Requires no assistance and always takes proper action. Excellent field judgment.

(6) OFFICER SAFETY: GENERAL

1. Unacceptable: Frequently fails to exercise basic officer safety precautions, i.e.:
  - a. Exposes weapons (baton, handgun, etc) to suspect.
  - b. Fails to keep gun hand free during enforcement situations.
  - c. Stands directly in from of violator's car door.
  - d. Fails to control suspect's movements.
  - e. Does not maintain sight of violator while writing citation.
  - f. Fails to use illumination when necessary.
  - g. Fails to advise radio when leaving vehicle.
  - h. Fails to maintain good physical condition.
  - i. Fails to use and/or maintain personal safety equipment properly.
  - j. Does not foresee potentially dangerous situations.
  - k. Points weapon at other officers.
  - l. Stands too close to vehicular traffic.
  - m. Stands in front of door when knocking.
  - n. Fails to have weapon ready when appropriate.
  - o. Fails to cover other officers.
  - p. Fails to search police vehicle before duty or after transporting prisoners.
  - q. Fails to check equipment.
  - r. Fails to properly search and/or handcuff prisoners.



3. Acceptable: Understand principles of officer safety and generally applies them.
5. Superior: Always maintains position of safety and advantage. Does not become unduly anxious or apprehensive, over-cautious or overconfident.

(7) OFFICER SAFETY: WITH SUSPICIOUS PERSONS AND PRISONERS

1. Unacceptable: Frequently violates officer safety standards. Fails to "pat search" or confronts suspicious persons while seated in patrol vehicle. Fails to handcuff prisoners. Fails to thoroughly search prisoners and/or vehicles. Fails to maintain position of advantage with prisoners.
3. Acceptable: Generally displays awareness of potential danger from suspicious persons and prisoners. Maintains position of advantage.
5. Superior: Always maintains position of advantage and is alert to changing conditions.

(8) CONTROL OF CONFLICT: VOICE COMMAND

1. Unacceptable: Improper voice inflection, i.e., too soft, too loud, indecisive, confused commands, etc. Few problems resolved as result of officer's oral direction.
3. Acceptable: Speaks with authority in a calm, clear voice.
5. Superior: Always appears to be in complete command through voice tone and bearing.

(9) CONTROL OF CONFLICT: PHYSICAL SKILL

1. Unacceptable: Cowardly, physically unable to handle most situations, or uses too much or too little force for given situations.
3. Acceptable: Maintains control without excessive force. Maintains self in good physical condition.
5. Superior: Excellent knowledge of and ability to use restraining holds. Always ready to use necessary force. Maintains above average physical condition.

(10) INVESTIGATIVE PROCEDURES

1. Unacceptable: Does not plan an investigative strategy. Cannot define investigative goals, i.e., successful prosecution, arrest, recovery of property, development of informants. Leaves out important steps in investigations. Fails to connect legal and departmental guidelines while conducting investigation. Cannot coordinate aspects of the investigation, i.e., interviews, searches,

notetaking, report-writing.

3. Acceptable: Maintains command of a crime scene. Able to assess the requirements of the situation concerning collection and preservation of evidence, interviews and interrogations. Undertakes most of these functions with little or no direction.
5. Superior: Requires no supervision in organizing and undertaking an investigation. Identifies all possible sources of physical evidence. Identifies all potential witnesses and victims. Conducts complete interview. Uses time efficiently.

(11) REPORT WRITING: ORGANIZATION AND DETAILS

1. Unacceptable: Incapable of organizing events into written form. Leaves out many important details. Puts in inappropriate information. Much of the work will have to be redone.
3. Acceptable: Converts field events into a logical sequence of thought to include all elements of the situation. The narrative leaves the reader with a good understanding of what took place.
5. Superior: A complete and detailed account of what occurred from beginning to end. Written and organized so that any reader has a clear understanding of what occurred. Full consideration is given to the needs of investigator/prosecutor.

(12) PROPER FORM SELECTION: ACCURACY AND DETAILS

1. Unacceptable: Unable to determine proper form for given situation. Forms filled out incorrectly or incomplete.
3. Acceptable: Knows most standard forms and understands format. Completes forms with reasonable accuracy.
5. Superior: Consistently and rapidly completes detailed forms with no assistance. High degree of accuracy.

(13) RADIO: LISTENS AND COMPREHENDS TRANSMISSIONS

1. Unacceptable: Repeatedly misses call sign and is unaware of radio traffic in adjoining beats. Frequently has to ask dispatcher to repeat transmissions or does not understand message.
3. Acceptable: Copies most radio transmissions directed at him/her. Generally aware of adjoining beat radio traffic.
5. Superior: Always comprehends radio transmissions and makes a written record. Always aware of and reacts to radio traffic in adjoining beats.

(14) RADIO: ARTICULATION OF TRANSMISSIONS

1. Unacceptable: Does not plan before transmitting message. Under or over modulation, resulting in dispatcher or other units constantly asking for a repeat.
3. Acceptable: Uses proper procedure with short, clear, concise transmissions.
5. Superior: Always uses proper procedure with clear, calm voice, even under stress conditions.

(15) ORIENTATION SKILL: NON-STRESS CONDITIONS

1. Unacceptable: Unaware of his/her location while on patrol. Unable to relate location to destination. Not familiar with beat structure.
3. Acceptable: Reasonable knowledge of his/her location in most situations. Can quickly use street index to find streets and then use map to get location.
5. Superior: Remembers street locations. Able to get to destination without referring to street index or town map.

(16) REPORT WRITING: GRAMMAR/SPELLING/NEATNESS

1. Unacceptable: Illegible, misspelled words, incomplete sentence structure.
3. Acceptable: Grammar, spelling, and neatness are satisfactory in that errors are rare and do not impair understanding.
5. Superior: Very neat and legible. No spelling mistakes and excellent grammar.

(17) REPORT WRITING: APPROPRIATE TIME USED

1. Unacceptable: Requires 2-3 hours to correctly complete a basic simple report.
3. Acceptable: Correctly completes simple basic reports in thirty minutes.
5. Superior: Correctly completes simple basic reports in no more time than that of a skilled veteran officer. (Depending on the type of report, the time will vary.)

(18) SELF-INITIATED ACTIVITY

1. Unacceptable: Does not see or avoids activity. Does not follow up on situations, rationalizes suspicious circumstances. Gets involved inappropriately too often. Ignores departmentally defined problems.

3. Acceptable: Recognizes and identifies suspected criminal activity. Makes cases from routine activity.
5. Superior: Catalogs, maintains, and uses information given at briefings and from bulletins or crime reports for reasonable cause to stop persons or vehicles. Makes quality arrests. Shows balance in type and extent of self-initiated activity.

(19) PROBLEM SOLVING/DECISION-MAKING ABILITY

1. Unacceptable: Acts without thought or is indecisive. Relies on others to make decisions. Numerous examples of bad decisions, or indecision, can be shown.
3. Acceptable: Able to reason out problems and relate them to what he/she was taught. Has good perception and ability to make own decisions.
5. Superior: Excellent perception in foreseeing problems and arriving at advanced decisions. Makes timely, quality decisions.

(20) KNOWLEDGE OF DEPARTMENTAL RULES AND PROCEDURES

1. Unacceptable: Has no knowledge of departmental rules, procedures and orders. Makes no attempt to learn them. Frequent violations of rules, procedures, and orders.
3. Acceptable: Familiar with most commonly applied rules and procedures, and is able to apply them to most field situations.
5. Superior: Exceptional working knowledge of rules, procedures, and orders.

(21) KNOWLEDGE OF CRIMINAL LAW

1. Unacceptable: Does not know elements of basic sections. Reports and performance continually show inability to apply criminal law to field situations.
3. Acceptable: Has a working knowledge of commonly used sections of code. Relates elements to observed criminal behavior.
5. Superior: Outstanding knowledge of criminal law. Able to apply laws to normal and unusual criminal activity.

(22) KNOWLEDGE OF TRAFFIC LAW

1. Unacceptable: Does not know the elements of basic sections. Reports or actions continually show inability to apply traffic law to field situations.
3. Acceptable: Has a working knowledge of commonly used sections of

code. Relates elements to observed traffic activity.

5. Superior: Outstanding knowledge of traffic law. Able to apply laws to normal and unusual traffic related activity.

(23) ACCEPTANCE OF FEEDBACK: VERBAL/BEHAVIOR

1. Unacceptable: Argumentative, rationalizes, refuses to admit mistakes, refuses to make corrections. Always considers feedback negative.
3. Acceptable: Accepts criticism in a positive manner and applies it to further learning. Accepts responsibility for his or her mistakes.
5. Superior: Solicits feedback and criticism in order to improve performance. Never argues with or blames others.

(24) RELATIONSHIPS WITH CITIZENS

1. Unacceptable: Abrupt, belligerent, overbearing, officious, introverted or uncommunicative.
2. Acceptable: Courteous, friendly, and empathetic. Communicates in a professional and unbiased manner.
3. Superior: Establishes rapport and is always fair.

(25) RELATIONSHIPS WITH SUPERVISORS, CO-WORKERS

1. Unacceptable: Constantly argues with other officers or other superior officers. Belittles other officers or supervisors in front of other people. Fails to adhere to chain of command. Insubordinate.
3. Acceptable: Able to establish a good relationship with other officers and supervisors. Understands and adheres to chain of command. Respects other officers.
5. Superior: Establishes excellent relationships with other officers and supervisors. Possesses thorough understanding of chain of command, and adheres to it. Utmost respect shown to superior officers and peers as well.

(26) GENERAL Demeanor

1. Unacceptable: Officer cannot be depended upon to produce routine work without close supervision. Does not adapt readily to new situations, work hours, changing assignments. Tardy, complains about assignments, days off, duties.
3. Acceptable: Officer generally displays initiative, interest in the job, willingness to take on new challenges or schedule changes.

Dependable.

5. Superior: Attentive beyond requirements of job. Constantly analyzes own work performance and devises and tries new approaches to problems. Consistently outstanding overall performance. High interest in welfare and image of department. Exemplary.

(27) GENERAL APPEARANCE

- (1) Unacceptable: Overweight, dirty shoes, uniforms, and leather. Long messy hair. Offensive body odor.
- (3) Acceptable: Neat, clean, and well-pressed uniform. Cleaned and shined shoes and leather. Well groomed hair.
- (5) Superior: Tailored uniforms, spit-shined shoes and leather. Command bearing.

POLICE/SHERIFF'S DEPARTMENT		GENERAL ORDERS	
SUBJECT: LIMITS OF AUTHORITY, CONSTITUTIONAL SAFEGUARDS		NUMBER: 2-1	
EFFECTIVE DATE: October 1993		REVIEW DATE:	
AMENDS/SUPERSEDES:		APPROVED: <u>Chief of Police/Sheriff</u>	
CALIA STANDARDS: 1.2, 42.2, 51.1, 72.12			

**NOTE:**

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

**INDEX WORDS:**

Abandoned property  
 Authority; limitations  
 Consent to search  
 Confessions  
 Constitutional safeguards  
 Discretion  
 Emergency searches  
 Eyewitnesses  
 Hearsay  
 Interrogations  
 Interviews  
 Line-ups

Miranda rights  
 Plain view search  
 Probable cause  
 Reasonable suspicion  
 Search and seizure;  
     limitations  
     of vehicles (custodial  
         arrests)  
     of vehicles (generally)  
     of vehicles (inventory)  
 Warrants;  
     executing  
     protective sweeps

**I. POLICY:**

The U.S. Constitution and the Bill of Rights guarantee every citizen certain safeguards from government intrusion into their lives. These safeguards have become the cornerstone for the application of criminal justice in America. Consequently, these safeguards have placed limitations on the authority of

police to enforce the laws of the nation, state, and the town of (\_\_\_\_\_). The department expects its officers to act with due regard for citizens' civil liberties.

## II. PURPOSE:

The purpose of this general order is to define the legally mandated authority for the enforcement of laws, to establish procedures for ensuring compliance with constitutional requirements during criminal investigations, to set forth guidelines concerning the use of discretion by officers, and to define the authority, guidelines and circumstances when officers should exercise alternatives to arrests and pretrial confinement.

## III. PROCEDURES - GENERAL

### A. LAW ENFORCEMENT AUTHORITY TO ENFORCE LAWS:

1. Section 15.1-138 of the Code of Virginia gives police officers of cities and towns the authority to enforce the criminal laws of the Commonwealth and ordinances and regulations of the city in which they are appointed.
2. Section 49-1 of the Code of Virginia requires that all officers, upon entering their office, take an oath whereby they swear to support the Constitution of the United States and the Commonwealth of Virginia.

### B. LIMITATIONS ON LAW ENFORCEMENT AUTHORITY:

Limitations on law enforcement authority are derived from statutes, federal, state, and local judicial interpretation of laws, opinions of the attorney general and commonwealth's attorney, departmental policies/rules and regulations, and town administrative decisions.

#### 1. Statutory limitations:

These limitations include, but are not limited to:

- a. Enforcement of laws outside of the town limits. Section 19.2-250 of the Code of Virginia grants authority to enforce state laws one mile beyond the boundaries of the city.
- b. Section 15.1-142.1 of the Code of Virginia grants authority to enforce laws on any town-owned property located outside of its



boundaries. Examples include: sewage treatment plants and the town's water source.

- c. Section 15.1-138 prohibits officers from enforcing the civil laws of the Commonwealth.

2. Judicial limitations:

Courts constantly interpret laws that place limitations on the authority of law enforcement officers. The more common include: Miranda rights/warnings, rulings on search and seizure, eyewitness identification, lineups.

#### IV. INTERVIEWS AND INTERROGATIONS

##### A. DEFINITIONS:

1. An interview, as opposed to an interrogation, may be construed as any conversation with a suspect, witness, victim, or the citizen.
2. An interrogation, according to the Supreme Court, includes the following, per Rhode Island v. Innis, ". . . express questioning or its functional equivalent . . . any words or conduct on the part of police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."
3. Officers are reminded that an interrogation does not rely solely or exclusively on words: conduct can be the "functional equivalent" of asking questions.

##### B. RIGHTS ADMONITION:

1. In order to achieve uniformity in administering Miranda warnings, police officers will be issued cards with the Miranda warnings and waiver on them. Officers will advise suspects, verbatim:
  - a. "You have the right to remain silent."
  - b. "Anything you say can and will be used against you in a court of law."
  - c. "You have the right to talk to a lawyer and have him present with you while you are being questioned."

- d. "If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one."
- e. "You may cease talking at any time."
- 2. After the warning, in order to secure a waiver, the officer shall ask and receive affirmative replies to the following questions:
  - a. "Do you understand each of these rights I have explained to you?"
  - b. "Having these rights in mind, do you wish to talk to us now?"
- 3. After the rights have been read, understood, and the person wishes to waive them, the officer will have the suspect sign the waiver of rights form. Officers must cease questioning whenever the suspect invokes the right to silence or requests the presence of counsel.
  - a. After the suspect has been charged, officers shall not try to elicit incriminating evidence unless the suspect waives the right to counsel.
  - b. If a suspect, once in custody, requests counsel after being advised of Miranda rights, he or she cannot be interrogated again unless (1) the counsel is present during the interrogation or (2) the suspect himself initiates the interrogation. Officers therefore cannot obtain a waiver under these circumstances unless the suspect initiates interrogation.
- 4. Officers will take care when advising juveniles of their rights to ensure that the rights are understood before obtaining a waiver. Officers should honor a child's request to speak to a parent or guardian before waiving his or her rights. Whenever possible, the child's parents should be present while the child's rights are explained and the waiver obtained.

C. The Fifth Amendment right against self-incrimination:

- 1. When Miranda applies:

The voluminous case law covering Miranda (Miranda

v. Arizona) warnings has established several guidelines for officers to help decide when warnings must be administered. Miranda applies only to custodial interrogation. Interrogation is defined below. As to what constitutes custody, if a reasonable person in the suspect's position believes that he or she is not free to leave, then Miranda applies. Note that the officer's view of what constitutes custody and that of the suspect may differ. Officers must remember that the reasonable belief of the suspect is what counts.

2. Circumstances for administering Miranda:

In determining whether a suspect is free to leave the police officer's presence, a court will look at the circumstances of the interrogation: if police questioning is conducted in a police car or at a police station, the environment may be construed a coercive one, and the interview custodial. Practically speaking, an arrest or physical restraint of a suspect places him or her in custody, and Miranda warnings must be administered before the officer asks questions about the offense. In short, then, Miranda warnings must be given when:

- a. The suspect reasonably believes that he/she is in custody, and
- b. The suspect is interrogated.

3. Voluntariness of confessions:

The courts have provided officers with much latitude in interrogating suspects. If a suspect claims that he or she was coerced into confessing, the courts will examine the interrogation according to the totality of the circumstances. If interrogation methods appear to overcome the suspect's will, then the courts will find any resulting confession to be involuntary. If officers use trickery, threats, or offer promises to obtain confessions, they must:

- a. carefully assess the suspect's background, age, education, mental impairment, and physical condition to determine vulnerability to coercion; and
- b. coupled with the background characteristics, choose an appropriate mix of interrogation

tactics and environmental factors to convince the suspect to confess without overbearing the suspect's will. Note that Miranda warnings would have been given before the interrogation takes place, in most instances.

D. EXEMPTIONS/SPECIAL CASES:

1. Miranda warnings do not apply to the following situations:

- a. brief on-scene questioning;
- b. identification procedures such as fingerprinting, conducting a line-up, sobriety tests;
- c. volunteered, spontaneous statements (Once the officer has heard the suspect express spontaneous incriminating statements, the officer shall then advise the suspect of Miranda rights and obtain a waiver before undertaking additional questions.);
- d. brief investigative detention;
- e. roadside questioning during routine traffic stops;
- f. routine booking questions attendant to arrest;
- g. questioning by private persons.

2. Public safety exception:

When an officer urgently needs information from a suspect because lives are in imminent danger, officers may delay giving Miranda warnings until the officers have received information sufficient to dispel the emergency. Officers are advised that a genuine, life-threatening emergency must exist.

3. No firm guidelines exist governing when fresh warnings must be given. In considering whether previously-administered Miranda rights have become legally stale, investigators must consider:

- a. the length of time between first warnings and later interrogation;
- b. whether warnings and later interrogation were given in the same place;

- c. whether warnings and later interrogation were by the same or different officers;
- d. the extent to which the later statement differed from a previous one;
- e. the apparent intellectual and emotional state of the suspect.

V. SEARCH AND SEIZURE:

- A. **Definition:** Police action is termed a search where (1) there is a "prying into hidden places by the police officer" which (2) the person whose premises or person is being searched has a reasonable expectation of privacy.
- B. The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, persons and things. The Supreme Court is continuously interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits under the Civil Rights Act. In order to ensure that Fourth Amendment rights are protected, officers will obtain search warrants upon probable cause in all appropriate criminal cases except for the following circumstances. Search warrants are discussed under GO 2-2.
  - 1. Consent searches
  - 2. Emergency searches
  - 3. Plain view
  - 4. Abandoned property and open fields
  - 5. Inventory searches of vehicles
  - 6. When executing arrest warrants
  - 7. Incident to arrest (see GO 2-4)
  - 8. Pat-downs of suspicious persons (see GO 2-3)

As a general rule, no arrest warrant or search warrant is required for an arrest in a public place, as long as probable cause exists.

C. CONSENT:

- 1. A search warrant is not necessary where a person who has authority or control over the thing or place searched consents to the search. Note that the officer doesn't have to have reasonable suspicion nor probable cause to make a consent search: he or she may merely ask for permission

from someone with control over the premises. If that person grants permission, the search may take place. The sole justification for a consent search is the existence of voluntary consent.

Consent searches must observe the following rules:

- a. Generally, the person grant consent must use, access, or control the property.
  - b. If two people have joint ownership of property, either may give consent.
  - c. A landlord, including a hotel or motel manager, cannot consent to a search of a tenant's premises, unless the tenant has been evicted or has abandoned the property.
  - d. A husband or wife, or one member of a cohabiting unmarried couple, may consent to a search of areas in common ownership or use.
  - e. A parent may consent to a search of premises occupied by a dependent child.
  - f. An employee cannot give valid consent to a search of his employer's premises unless he has been left in custody of the premises.
  - g. An employer may generally consent to a search of premises used by employees, except premises used solely by an employee (e.g., a locker).
2. Consent must be given voluntarily. If an officer requests consent from a citizen under circumstances which a reasonable person would consider coercive, then officers must seek a warrant. The officer may have the burden of demonstrating voluntariness (Schneckloth v. Bustamonte).
  3. A person who initially gives consent may withdraw it at any time. Officers shall then secure the premises and seek a warrant.

D. EMERGENCY SEARCHES:

1. A search warrant is not necessary in an emergency. An emergency is sometimes termed "exigent circumstances."
2. The Virginia Supreme Court, in Verez v. Commonwealth, 337 S.E. 2d 749, 1985, gave ten

considerations in evaluating whether an emergency exists:

- a. The degree of urgency involved and the time required to get a warrant.
  - b. Officer's reasonable belief that contraband is about to be removed or destroyed. [Note that not all crimes are serious enough to create exigent circumstances. See "e" below.]
  - c. The possibility of danger to others including officers left to guard the site.
  - d. Information that the possessors of contraband are aware that police are on their trail.
  - e. Whether the offense is serious, or involves violence.
  - f. Whether officers reasonably believe the suspects are armed.
  - g. Whether the officers have probable cause.
  - h. Whether the officers have strong reason to believe the suspects are present on the premises.
  - i. The likelihood that the suspects will escape.
  - j. The suspects' entry onto premises after hot pursuit.
3. If officers enter premises with probable cause to believe that critical evidence may be destroyed or removed unless immediate action is taken, they may enter without a warrant, secure premises, and obtain a search warrant before proceeding further **unless** they have obtained consent to search, or some new circumstances arise necessitating another warrantless search.

E. PLAIN VIEW:

1. A plain view seizure is, technically, not a search. To make a plain view seizure of property (contraband, fruits or instrumentalities' of the crime), two requirements must be met:
  - a. The seizure must take place where the officer has legally observed the property; and

- b. It must be immediately apparent to the officer that the items he or she observes may be evidence of a crime, contraband, or otherwise subject to seizure.
- c. The officer may not move items, look inside or underneath or behind them for serial numbers or other identifying marks. If such movement is necessary, officers shall obtain a warrant.

*[Note that the plain view provisions in General Orders 2-2.V.C.3 and 2-5.III.G.1.c are no longer consistent with Supreme Court decisions and are therefore obsolete. The provision under "E" above gives the correct reading. The other orders will be revised during 1994.]*

F. ABANDONED PROPERTY AND OPEN FIELDS:

- 1. A search warrant is not required for property that has been abandoned.
- 2. To constitute abandoned property, two conditions must apply:
  - a. Property was voluntarily abandoned.
  - b. Property was discarded outside the area in which someone has a reasonable expectation of privacy.
- 3. Open fields are not protected by the Fourth Amendment, but officers must distinguish them from curtilage, which essentially is a yard where private residences are concerned. Curtilage has no absolute definition that officers can apply under all circumstances. The extent of curtilage of a private residence, for instance, is determined by whether the area is enclosed; the nature and use of the area; the proximity of the area to the home; and any measures taken by the owner to protect the area from observation.

G. INVENTORY SEARCHES OF VEHICLES:

The department requires officers to inventory any lawfully impounded vehicle, or a vehicle removed from the street and placed in police custody. Any evidence or contraband found during the inventory may be used to formulate probable cause for a subsequent search or arrest. Vehicles shall be inventoried per departmental procedure which requires an inventory of the entire contents, including closed containers (provided they can be opened without breakage). The purpose of an inventory



is to ensure safekeeping of private property and to protect the department from liability. To repeat, in order to justify an inventory of a vehicle:

1. Officers must have lawful custody of it.
2. The inventory shall be conducted pursuant to departmental policy.
3. The scope of the inventory shall be limited to those parts of a vehicle likely to conceal important or valuable items. Closed containers may be examined if they are likely to contain valuable property.
4. The vehicle and its closed containers shall not be damaged.

H. WHEN EXECUTING ARREST WARRANTS:

1. General guidance:

An officer with an arrest warrant may search for the defendant in his or her own home **provided that** the warrant was valid; the officer searches the defendant's home (and not someone else's); and probable cause exists that the defendant is home at the time of the search. The search for the defendant must be limited to places where he or she might be found.

2. Protective sweep:

The U.S. Supreme Court recently ruled (Maryland v. Buie) that officers may undertake a "protective sweep" of premises, without a warrant, following the arrest upon a warrant. Certain limitations must be observed, however:

- a. The purpose of the protective sweep is to discover persons on the premises who might present a danger to officers.
- b. Incident to arrest, officers may, without probable cause or reasonable suspicion, look into closets or other spaces immediately adjoining the place of arrest where threatening persons might be located.
- c. In order to extend the protective sweep beyond closets and adjoining spaces, officers must have reasonable suspicion for fearing that

persons may be on the premises who pose a threat. In such cases, the sweep is limited to examining places where a person might hide.

(1) Officers shall carefully document their reasonable suspicion.

- d. During a protective sweep, evidence discovered in plain view may be seized.
- e. The sweep must cease when officers have dispelled a reasonable suspicion of danger.

(Note: With a search warrant, a protective sweep is always justified.)

## VI. PROBABLE CAUSE AND REASONABLE SUSPICION:

### A. PROBABLE CAUSE:

Searches (with the few important exceptions outlined in this order) and all arrests are based on the police officer's perception of probable cause. According to the Supreme Court, "Probable cause exists where the facts and circumstances within their [the arresting officer's] knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed."

- 1. An officer must have probable cause to undertake a search or make an arrest.
- 2. When an officer has probable cause, he or she may undertake a complete body search, record the suspect's fingerprints, take the suspect's photograph, and jail him. The aim of probable cause is to make a formal charge.

### B. REASONABLE SUSPICION:

Reasonable suspicion involves a standard less than probable cause, generally defined by the courts as a circumstance or collection of circumstances that would lead a trained, experienced officer to believe that criminal activity may be afoot.

- 1. An officer must have reasonable suspicion to temporarily detain a citizen.
- 2. When an officer has reasonable suspicion, he or she may undertake a pat-down of a suspect's outer

clothing for weapons and record the circumstances of the encounter. The aim of reasonable suspicion is to resolve an ambiguous situation.

C. ELEMENTS:

1. Probable cause may be established through investigation and observation, witnesses, confidential informants, or through anonymous sources provided that the information is backed by investigation.
2. Unnamed informants may be used in an affidavit for a search warrant if information is included about why the informant is credible (reliability) and he has information of specific use in the investigation (knowledge). See GO 2-11 for further information on informants.

VII. EYEWITNESSES:

A. Eyewitness identifications generally do not provide reliable evidence during criminal investigations. Consequently, the Supreme Court has addressed this issue in numerous cases and set forth guidelines to be followed when eyewitness identifications are solicited by officers. Eyewitness identifications may take the following form.

1. On-scene investigation:

One-on-one identifications have been held constitutional so long as the period of time between the offense and the identification is brief. One to three hours would be a reasonable amount of time.

2. Line-ups:

Line-ups should be conducted using a minimum of six persons having similar physical characteristics as the suspect. The accused has the right to have an attorney present during the line-up and the line-up may not take place until the attorney is present. The attorney may not offer any suggestions concerning the conduct of the line-up, but may merely observe. Officers shall document the date, time, place, name of participants and witnesses, and the location of suspect/participants in the line-up.

3. Photo line-ups:

In conducting photo line-ups, the photos must depict persons displaying similar physical characteristics as the suspect. Simply showing an eyewitness a single photo of the suspect has been ruled unconstitutional. As a general rule, a photo line-up containing 6-8 photos would be reasonable. Photographs shown to witnesses will not contain any identifying information. Photo line-ups will be documented as under (2) above.

B. HEARSAY:

1. Officers must understand the rules by which hearsay can be considered evidence and therefore of use in an investigation.
  - a. According to the Virginia Supreme Court, hearsay is "evidence not proceeding from the personal knowledge of the witness, but from the mere repetition of what he has heard others say."
2. Hearsay is generally inadmissible in court.
3. Some hearsay is useful as evidence. Exceptions to the Hearsay Rule, and therefore admissible, include:
  - a. A dying declaration or a statement, oral or written, made by a mortally wounded person who knows that he is about to die and has abandoned hope of recovery.
  - b. Spontaneous declarations, or exclamations of a participant or bystander concerning an incident, made without time for reflection.
  - c. Public records, or reports prepared by public officials under a duty imposed by law or regulation.

VIII. VEHICLES:

In recent years, the U.S. Supreme Court has modified and expanded the conditions under which officers may search vehicles. Preferably, officers shall search vehicles under the authority of a warrant whenever sufficient time exists to obtain one. Nevertheless, warrantless searches of vehicles may take place under many conditions and circumstances. It is imperative that officers understand the different types of

vehicle searches and their limitations.

A. DEFINITIONS:

1. For the purposes of this section, a motor vehicle is any vehicle operating or capable of being operated on public streets or highways, from trucks to automobiles to mobile homes. A vehicle that has been immobilized in one location for use as a storage facility or home is not a motor vehicle for 4th Amendment purposes.
2. For the purposes of this section, a search is an examination of a motor vehicle with an investigative motive, that is, to discover evidence or to examine the vehicle identification number (VIN) to ascertain ownership.

B. WHEN WARRANTLESS VEHICLE SEARCHES MAY BE PERFORMED:

As noted earlier, warrants shall be obtained to search vehicles, if feasible, unless an emergency exists. Any vehicle that has been disabled with little chance of its being driven away shall be searched with a warrant. In all other cases, vehicles may be searched without a warrant:

1. when probable cause exists;
2. with the driver's consent;
3. incident to the arrest of the occupants;
4. to frisk for weapons;
5. when necessary to examine the VIN or to otherwise ascertain ownership; or
6. under emergencies or exigent circumstances.

C. Searches may be conducted within the following limitations:

1. With a warrant, a search may extend anywhere within the vehicle, unless limited by the warrant itself.
2. When probable cause exists, a search may extend anywhere within the vehicle, unless the probable cause is limited to a specific part of the vehicle.
3. When consent has been obtained from the driver, officers may search the vehicle subject to any

limitations specified by the consenting person. Consent shall be obtained in writing, if feasible.

4. Searches incident to the arrest of an occupant shall be limited to any area within reach of the arrestee. The area within reach is deemed to be the passenger compartment. The trunk, engine compartment, and any locked compartments shall not be searched. (See GO 2-4 for a fuller treatment of searches incident to arrests.)
5. Frisks for weapons shall be confined to the passenger area. Any place not immediately accessible to the occupants, such as a locked glove compartment, shall not be frisked. If the contents of a container are immediately accessible to the subject, a closed container may be searched for weapons.
  - a. Note that an officer can order the suspect from the vehicle and frisk both the suspect and the vehicle.
6. An entry into the vehicle to examine the VIN or otherwise determine ownership must be limited to these purposes.
7. An emergency search of the vehicle may be conducted but the extent of the search must not exceed whatever is necessary to respond to the emergency.

**Note:** If the initial search under the above conditions gives rise to probable cause that evidence, contraband, fruits or instrumentalities of the crime might be found elsewhere in the vehicle, officers may search those areas that might reasonably contain such items.

**D. CONTAINERS WITHIN THE VEHICLE**

As a rule, no container within a vehicle shall be searched unless it might contain the item(s) sought.

1. Procedures for unlocked containers:
  - a. In a probable cause search, containers may be opened wherever found in the vehicle.
  - b. When the passenger area is searched incident to an arrest, containers within the passenger area may be opened.
  - c. During a consent search, containers may be

opened provided that the terms of the consent either so permit or reasonably imply permission.

- d. Containers found in or discarded from a vehicle under circumstances not amounting to probable cause or in connection with a search incident to an arrest shall not be searched but shall be secured until a warrant is obtained.

2. Procedures for locked containers:

- a. Locked containers shall be opened only under a warrant or
- b. Under consent.

E. CONDUCT OF THE VEHICLE SEARCH:

1. When possible, searches of vehicles shall be conducted contemporaneous with the stopping or discovery of the vehicle. As a general rule, vehicle searches shall be conducted as soon as reasonably possible.
2. When possible, officers shall avoid damaging a vehicle or its contents, and shall minimize the intrusiveness of the search and any inconvenience suffered by the passengers or owner.
3. As vehicles may contain sharp or pointed objects, and perhaps even syringes or other materials with body fluids on them, officers shall take precautions to minimize exposure to communicable diseases. See GO 2-34.

IX. LIMITATIONS ON AUTHORITY:

A. LIMITATIONS ON LAW ENFORCEMENT AUTHORITY BY LOCAL COURTS:

Occasionally, the local courts may limit law enforcement authority to enforce state statutes and local ordinances. The department manual shall contain relevant orders offering appropriate guidance to officers. These limitations include, but are not limited to:

1. The enforcement of certain parking ordinances.
2. The handling of juvenile offenders.
3. The issuance of summonses as opposed to

arrests/incarceration.

4. Restrictions relating to the animal control ordinance.

B. LIMITATIONS ON POLICE AUTHORITY BY COMMONWEALTH'S ATTORNEY:

Occasionally, the commonwealth's attorney may issue opinions to the department imposing limitations on officers. These areas include, but are not limited to:

1. Prosecution of certain cases.
2. Extradition.
3. Enforcement of certain statutes pending opinions from the Attorney General's Office.

C. LIMITATIONS ON POLICE AUTHORITY BY THE TOWN MANAGER AND CHIEF OF POLICE:

Limitations on police enforcement actions by town council, town manager or the chief of police include, but are not limited to:

1. City/town tag violations.
2. Parking violations.

D. CHANGES IN LAWS/INTERPRETATIONAL LIMITATIONS:

Periodically, changes take place which may impose new limitations on police authority or remove or alter existing limitations. Normally, annual updates on such changes are provided to all personnel by the commonwealth's attorney. In case immediate changes in departmental operations are required, the commonwealth's attorney's office may provide information orally and confirm it in writing.

X. CONSTITUTIONAL REQUIREMENTS: GENERAL:

A. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS DURING CRIMINAL INVESTIGATIONS:

1. All officers when conducting criminal investigations shall take all precautions necessary to ensure that all persons involved are afforded their constitutional safeguards. Officers will ensure that:



- a. All statements or confessions are voluntary and non-coercive.
- b. All persons are advised of their rights in accordance with this general order.
- c. All arrested persons are taken promptly before a magistrate for formal charging.
- d. All persons accused or suspected of a criminal violation for which they are being interrogated are afforded an opportunity to consult with an attorney.
- e. Prejudicial pre-trial publicity of the accused is avoided so as not to interfere with a defendant's right to a fair and impartial trial. See RR 1-13, Media Relations.

B. THE USE OF DISCRETION BY OFFICERS:

- 1. Officers, by the nature of their job, are required to exercise discretion in the performance of their duties. The department provides officers with written policies, rules, departmental orders, directed patrol assignments, and training in order to aid them in making decisions which govern discretion in performing their duties.
- 2. With the exception of departmental rules and regulations, departmental policy generally gives officers guidelines to consider in exercising their discretion. It is up to the individual officer to consider the relevant facts, the situation, and then, using knowledge, training, and good judgment, make appropriate decisions. Supervisors must closely observe the use of discretion by their subordinates and point out factual errors or alternatives that may be more appropriate.

C. ALTERNATIVES TO ARREST/PREARRAIGNMENT CONFINEMENT:

- 1. Under certain circumstances, officers are faced with situations where an arrest and prearrest confinement will not be possible. In this case, officers may elect to exercise certain alternatives such as the issuance of summonses, referral to a social service agency, or simply a warning. Examples may include:
  - a. Mentally or emotionally disturbed persons.

- b. Domestic situations where counseling may be appropriate. (Except where probable cause requires an arrest, as detailed in GO 2-32.)
  - c. Juvenile offenders. See General Order 2-29, Juvenile Procedures.
  - d. Transient persons who need shelter and food.
  - e. Certain misdemeanor cases.
2. Authority to issue summonses in lieu of arrest/confinement:
- a. Section 19.2-74 of the Code of Virginia authorizes police officers to issue a summons in lieu of arrest for persons charged with a misdemeanor criminal offense except D.U.I. and drunk in public. Additionally, Section 19.2-74 authorizes the use of summonses when enforcing city ordinances.
  - b. The use of summonses by officers:  
  
In determining whether a summons should be used, the officer should:
    - (1) Decide whether the offense committed is serious.
    - (2) Make a judgment as to whether the accused poses a danger to the public or himself.
    - (3) Decide, based on circumstances, whether the person may disregard a summons.
3. Informal handling of criminal matters:
- Officers often deal with situations where the public interest would be better served by social service agencies or crisis and professional organizations. When in the judgment of the officer a better solution to the problem will be achieved by use of alternatives to enforcement, he or she should refer the citizen to a social services agency.
4. Use of warnings as an alternative to arrest:
- The use of warnings may sometimes provide a satisfactory solution to a problem and may enhance the public perception of the department. Normally,

the use of a warning occurs in traffic offenses, but occasionally may be applied to criminal offenses. In determining if a warning should be issued, the officer should consider:

- a. The seriousness of the offense.
- b. The likelihood that the violator will heed the warning.
- c. The reputation of the violator, i.e., known repeat offender, has received previous warnings, etc.

5. Limitations on intelligence activity:

- a. Departmental intelligence gathering activities shall be limited to that information concerning criminal conduct that presents a threat to the community.
- b. Departmental personnel and equipment will only be used in conjunction with intelligence gathering activities, as defined above, in full compliance with all law, and only with the advance approval of the chief of police/sheriff.
- c. Intelligence information will be collected, used and processed in full compliance with all laws.
- d. Informants, see GO 2-11.

POLICE/SHERIFF'S DEPARTMENT		GENERAL ORDERS	
SUBJECT: USE OF FORCE		NUMBER: 2-6	
EFFECTIVE DATE: October 1993		REVIEW DATE:	
AMENDS/SUPERSEDES: GO 2-6, Issued 6/88		APPROVED: <u>Chief of Police/Sheriff</u>	
CALEA STANDARDS: 1.3, 41.2			

**NOTE:**

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

**INDEX WORDS:**

Choke holds  
Firearms  
Qualification  
Force  
Deadly  
Excessive  
Non-deadly  
Prohibited acts  
Reporting use of  
Use of (general)

Force (cont'd)  
Vehicles (firing at/from)  
Oleoresin capsicum (OC)  
Pepper spray  
PR-24  
Shotguns  
Tear gas  
Weapons  
Off-duty  
On-duty

**I. POLICY:**

Officers are confronted daily with situations requiring the use of force to effect an arrest or ensure public safety. The degree of force used depends on what the officer perceives as reasonable and necessary under the circumstances at the time he or she decides to use force. Except for deadly force, the application of any degree of force is only justified when the officer reasonably believes that it is necessary

- A. to prevent the escape from custody, make an arrest or an investigative detention of a person the officer believes has committed a crime; or

- B. to defend himself or herself or another from what the officer believes is the use of force while trying to arrest another, prevent his or her escape, or otherwise lawfully take the person into custody.

Facts or circumstances unknown to the officer shall not be considered in later determining whether the force was justified. The department expects officers to observe the following two guidelines in all applications of force:

- A. Employ the minimum force reasonably necessary to accomplish a legal purpose.
- B. Officers may resort to more severe methods of force to overcome either increasing resistance or an increasingly dangerous threat to public safety.

The escalation in the use of force typically follows a pattern: verbal control, compliance techniques (control holds), chemical weapons, defensive tactics (e.g., PR-24), and finally deadly force. Officers must understand how to recognize increasing or decreasing levels of threat and respond appropriately.

When applying deadly force, officers' objective must be to stop or incapacitate the suspect, not to kill, unless no other choice presents itself. The objective of the use of any force is to overcome the suspect's resistance to an officer's lawful purpose: officers shall avoid unnecessary or excessive applications of force.

Police officers shall not unreasonably or unnecessarily endanger themselves or the public when applying this policy.

## II. PURPOSE:

To establish guidelines governing the use of force and its limitations, and to clearly describe prohibited activities.

## III. DEFINITIONS:

### A. DEADLY FORCE INCLUDES:

1. The firing of a firearm, even though no intent exists to kill or inflict bodily harm.
2. Any force applied in any manner by any means that could reasonably be expected to cause death or great bodily harm.

- a. "Great bodily harm" means bodily injury which creates a substantial risk of death or which is likely to cause serious permanent disfigurement or loss, or extended impairment of the function of any body member or organ.

B. NON-DEADLY FORCE:

Force employed which is neither likely nor intended to cause death or serious physical injury.

C. FIREARMS:

Any weapon from which a projectile is forcibly ejected by an explosive.

D. REASONABLE BELIEF:

When facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

E. SERIOUS PHYSICAL INJURY:

A physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, or impairment of the function of any bodily organ or limb.

F. EXCESSIVE FORCE:

Force is excessive when its application is inappropriate to the circumstances, resulting in serious physical injury or death to a suspect. The U.S. Supreme Court, in Graham v. Connor, recently set forth guidelines for determining whether force has been excessively applied: the primary concern is **reasonableness** in its application, as judged by the on-scene officer. Based on the reasonableness standard, the following considerations contribute to a determination of excessive force:

1. the severity of the crime;
2. the nature and extent of the threat posed by the suspect;
3. the degree to which the suspect resists arrest or detention; and
4. any attempts by the suspect to evade arrest by flight.

In evaluating the reasonable application of force, officers must consider their own age, size, strength, skill level with department weapons, state of health, and the number of officers opposing the number of suspects.

#### IV. PROCEDURES FOR APPLICATION OF NON-DEADLY FORCE:

The department trains officers in the use-of-force continuum, emphasizing the recognition of and response to increasing levels of threat. Most instances in which force is applied are non-deadly. Officers shall assess the incident to determine which technique will best defuse the situation and bring it under control. The following discussion reinforces key principles from training.

##### A. VERBAL CONTROL:

Verbal control refers to the manner in which the officer speaks to a person, which of itself can effectively manage a situation. Verbal control includes advice, persuasion, admonitions, or orders. The volume and tone of the officer's speech may also contribute to control without having to resort to another method of force. The department urges the use of verbal commands without the use of profanity or disrespectful or argumentative behavior.

##### B. COMPLIANCE TECHNIQUES:

At times, uncooperative people who refuse to be taken into custody may only respond to a combination of strength, leverage, take-downs, control holds, or come-alongs with sufficient force to make the lawful arrest without aggravating tension or a suspect's combativeness. The object of this level of force is to gain control and enforce the suspect's compliance while minimizing the risk of injury to officers, bystanders, or the person being placed in custody. Where lesser levels of force appear ineffective, officers may employ hands, fists, feet, knees, and so on in striking an adversary, according to methods sanctioned through training.

*[The next level of force is that of electronic stunning devices. Contact the Law Enforcement Section at DCJS for sample policy material relating to these weapons.]*

##### C. CHEMICAL AGENTS:

The use of chemical agents is restricted to situations where higher levels of force are unnecessary and lesser levels are inappropriate or ineffective. The only chemical weapon authorized for patrol personnel is the

oleoresin capsicum (OC) or "pepper spray." Chemical agents shall be used only to the extent necessary to overcome the resistance of the suspect, and within training standards. Specialized chemical agents, such as concussion grenades or tear gas, shall be used only by personnel trained in their application, and then only under direct orders of the on-scene supervisor upon consultation with the chief of police/sheriff.

1. Chemical sprays shall not be used to threaten to elicit information or persuade people to comply with orders, nor will they be used on people who are handcuffed, secured, and properly in custody.
2. Keep the application to the absolute minimum required to effectively control the subject.
3. Do not use on persons who are sick, intoxicated or who are not in possession of their normal protective reflexes, (such as being able to turn away from the applied spray). NOTE: Applying a chemical agent to such persons can result in injury out of proportion to the threat they may present.
4. If the use of tear gas is authorized by the on-scene supervisor, observe the following:
  - a. These chemicals are used primarily in dealing with unruly crowds and armed barricaded subjects.
  - b. Gas grenades are used to disperse unruly crowds and induce the surrender of barricaded subjects when negotiations have failed.
  - c. Tear gas gun is used to fire projectiles into the area of an armed barricaded subject when the use of hand-tossed grenades would be unsafe or impractical.

*[The 1988 version of this order outlined guidelines for the use of Mace. Mace has been dropped from this model order because "pepper spray" has become a common chemical spray within law enforcement agencies. Agencies wishing additional information on policy guidance regarding Mace should contact the Law Enforcement Section, DCJS.]*

D. DEFENSIVE TACTICS:

The department authorizes the carrying and use of the PR-24 as the only striking weapon for officers: all other forms of striking or punching weapons are prohibited for carrying or use, including but not limited to saps,



blackjacks, slapjacks, nunchaku and similar sticks, and brass knuckles. Officers must be certified in the use of the PR-24. The weapon may be used in quelling confrontations involving physical violence where higher levels of force are unnecessary or inappropriate, and lesser levels are inappropriate or ineffective.

1. PR-24's shall not be used to strike handcuffed individuals, nor to threaten or intimidate people.

- a. The PR-24 is mainly useful as an instrument to manage various control holds, not as a club or prod. Officers shall not raise the PR-24 above the head to strike a blow.

## V. DEADLY FORCE:

### A. FIREARMS - GENERAL:

1. Firearms may be used:

- a. In defense of the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily harm; or

- b. To prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant threat to human life should escape occur.

- (1) In evaluating a "significant threat," the officer must reasonably believe that the person has either used deadly force in the commission of a crime or may inflict death or serious harm to the officer or others if apprehension is delayed.

- (2) Where feasible, officers shall identify themselves and give a warning before shooting.

- d. To kill seriously injured or dangerous animals when no other disposition is reasonably practical. A supervisor's approval should be sought when possible.

- e. In routine firearm training or practice at an approved range.

### B. SHOTGUN:

1. Due to its wide shot dispersion, the shotgun will

only be used when a possibility exists that the officer will be dealing with an armed suspect, e.g., armed robbery in progress, searching for armed suspects, answering calls when complainant has indicated a person is armed.

2. The chief of police/sheriff may approve the use of shotguns on raids and stakeouts when he believes that a threat to human life exists.
3. Shotguns will be encased and carried in patrol units.
4. Shotguns will be removed from vehicles before leaving them at any garage or service department.
5. Before beginning a tour of duty or immediately thereafter officers will inspect the shotgun assigned to the patrol car.
6. During regular firearms qualification, each officer will be required to demonstrate proficiency with it.
7. The range officer or armorer will develop a shotgun maintenance schedule. He will clean and inspect shotguns according to schedule.
8. The general rules for the use of firearms above apply to shotguns.

#### VI. LIMITATIONS ON FORCE:

The following acts associated with the use of force are prohibited.

- A. Firing into crowds.
- B. Firing a warning shot.
- C. Firing at or from a moving vehicle, except where the officer reasonably believes that:
  1. an occupant of the other vehicle is using, or threatening to use, deadly force by a means other than the vehicle; or
  2. a vehicle is operated in a manner deliberately intended to strike an officer or a citizen, and all other reasonable means of defense have been exhausted (or are not present), which includes moving out of the path of the vehicle, and the

safety of innocent persons would not be unduly jeopardized by the officer's action.

- D. Firing into a building or through doors when the person fired at is not clearly visible unless officers are being fired upon from such building or through such door.
- E. Firing at a suspect when lesser force could be used and the officer believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force, or when there is any substantial danger to innocent bystanders. (When in doubt, don't shoot.)
- F. Application of choke hold or carotid control holds, except when the officer reasonably believes such holds are the only means of protecting him/herself or another person from an imminent threat of serious physical injury or death.
- G. Use of Streamlites or Kel-lites or other flashlights as batons. An officer may use a flashlight or other object designed for a use other than as a weapon ONLY to defend himself or another from imminent serious physical injury or death and then ONLY if departmentally sanctioned methods are not available or are impractical. The use of a flashlight under such circumstances shall be deemed an application of deadly force.
- H. Carrying or use of a second back-up firearm.
- I. The carrying or use of saps, blackjacks, slapjacks.
- J. Use of deadly force against unarmed, non-dangerous fleeing felons, fleeing misdemeanants, or traffic offenders.
- K. Any use of force not reasonably necessary in the light of the circumstances confronting the officer.
- L. Any forcible enforcement action when off duty except in circumstances which seriously threaten life, valuable property, or public order.

## VII. WEAPONS

- A. DUTY WEAPON: While on duty, an officer shall carry a department issued or approved weapon, either a .357 revolver or a .9mm semiautomatic pistol. The department shall issue ammunition for the weapon.
  - 1. Any officer who wishes to carry a personally-owned weapon on duty must request permission, in writing,

from the chief of police/sheriff. Weapons must be inspected and approved by the range instructor/armorer. In addition, the weapon must fire department-issued ammunition and the officer must qualify with the weapon as well as with department-issued weapons. Officers must buy ammunition for their personally-owned off-duty weapons.

2. The chief of police shall maintain a record of all weapons used by officers either on or off duty. The record lists weapon descriptions, ammunition type issued, date of issue, and information pertaining to qualifications. Officers shall annually review the records to ensure that they are up to date.

B. OFF-DUTY WEAPONS: Officers are encouraged, but not required, to carry a handgun when off duty. An officer who elects not to carry a handgun while off duty shall not be subject to disciplinary action if an occasion should arise in which he could have taken police action if he were armed.

1. (Exception) Off-duty officers while operating a department vehicle shall be armed with an approved weapon.
2. Officers who carry off-duty weapons must understand that in some social situations (e.g., sports) the carrying of a firearm would be inappropriate.
3. Officers who have consumed alcoholic beverages shall not carry an off-duty weapon under any circumstances.
3. All officers shall submit off-duty weapons to the range instructor for inspection and ballistics testing before carrying them.

C. QUALIFICATION:

Firearms qualification procedures are discussed under RR 1-18. No officer shall carry or use any firearm, chemical agent, or PR-24 unless he or she has received training in the use of the weapon and demonstrated proficiency in its use.

1. Officers who fail to pass the qualification shall be relieved of their police powers and immediately reassigned to non-enforcement duties.

2. Officers who have taken extensive leave or suffered an illness or injury that could affect the use of firearms shall requalify before returning to enforcement duties.

#### VIII. REPORTING USE OF FORCE:

- A. Officers shall document any application of force, except for those arising in training or departmental demonstrations.
- B. If officers have employed chemical weapons or any higher degree of force, they shall:
  1. Immediately notify the sergeant or the chief of police (if the sergeant is unavailable) of any use of physical force.
  2. Submit a memorandum to the chief of police/sheriff within 24 hours describing the incident, substantiating the force used, and any medical services rendered. The memorandum shall be in addition to any other reports.
- C. Depending on the seriousness of any injury resulting from the application of force, whether to a citizen or officer, the chief of police shall notify the town manager and, in case of death, the commonwealth's attorney and the medical examiner.

#### IX. DEPARTMENTAL RESPONSE

##### A. Assignment

Pending administrative review, any officer who has taken the life of another person will be removed from line-duty assignment. This action protects both the officer's and the community's interests until the situation is resolved.

##### B. Review

1. All reported uses of force will be reviewed by the chief of police/sheriff to determine whether:
  - a. departmental orders were violated;
  - b. relevant departmental policy was clearly understandable and effective to cover the situation; and
  - c. departmental training was adequate.

2. The chief of police/sheriff may convene a board of inquiry to examine an incident in which force was applied.

a. The board of inquiry will also ascertain training and policy needs.

3. The chief of police/sheriff shall compile a summary of use-of-force incidents, at least annually, to be made available to the public.

C. Internal investigations

Internal investigations of serious applications of force (usually of compliance techniques and more severe methods) shall be of two types conducted simultaneously; first, an administrative investigation to determine whether department standards were followed; second, a criminal one to detect lawbreaking. A criminal investigation shall be discontinued whenever the department is satisfied that no misconduct occurred. RR 1-9 details the two types of investigations.

1. Dual internal investigations shall be conducted on all shootings.

D. Psychological Services

Psychological follow-up of post-shooting trauma will normally be directed by the chief of police/sheriff whenever deemed appropriate. During an internal investigation, the department will do all within its power to avoid placement of a stigma on the officer who shoots in performance of duty. Following a shooting resulting in a death, the officer shall not return to duty until a psychological evaluation has been conducted, and the officer has received counseling.

[NOTE: The use of trade names such as PR-24 for a side-handled baton does not imply endorsement of any product. Rather, this general order refers to trade names to convey the degree of specificity required by written policy.]

## NOTE CONCERNING GENERAL ORDER 2-32, DOMESTIC VIOLENCE

Domestic violence (spouse abuse) recently has received widespread public attention as a serious social problem affecting people in all economic, social, and ethnic groups. Many law enforcement agencies consider violence within the family to be the most frequent and under-reported crime in the United States. Further, police officers have found spouse abuse to be a difficult and frustrating problem for the criminal justice system to handle effectively. Some people have become frustrated, indifferent or even hostile after encountering victims who are repeatedly abused and either do not press charges or return to the battering relationship. Still others hold onto faulty beliefs that victims really provoke the attack or masochistically enjoy beatings.

Persons who resort to violence do not lack self-control: they try to dominate their partners. Stress, isolation, and family circumstances usually contribute to violence. Many researchers have described a cycle of violence involving three phases:

1. During tension-building, the victim tries to keep the peace, but is subjected to increasing verbal threats.
2. The acute battering phase occurs when the perpetrator violently assaults the victim.
3. In the loving respite phase, the abuser changes behavior, and acts remorseful and loving. Both abuser and victim may believe the abuse will never recur. As the cycle continues, this phase becomes shorter and may entirely disappear.

The patrol officer who responds may find the disputants in any one of these phases. The officer must be aware of this cycle in order to respond appropriately and effectively. Alcohol and drug abuse frequently figure in cases reported to the police.

Policy-makers should know that recent studies of police responses to domestic violence do not necessarily agree on the appropriate guidance to communicate to officers through written policy. For example, one recent study has concluded that victims of domestic violence are less likely to be repeat victims if they seek help through the legal system. Law enforcement officers must know that abuse often begins as a threat or a shove, but escalates into repeated beatings causing serious physical injury. If effective intervention does not occur, the abuse continues and, in some cases, it may lead to homicide.

Yet the precise nature of police intervention is not easy to gauge: different approaches, whether mediation, arrest, or

some other solution all appear to have different outcomes depending on the particular suspects, communities, and other characteristics. Some studies have revealed that the deterrent effect of arrest is least among the unemployed. Although the political trend supports mandatory arrest policies, law enforcement executives should know that research does not necessarily support the effectiveness of such a view.

Whatever policy guidance executives provide for their personnel, they should regard as experimental and subject to change. A community with low unemployment might benefit from a mandatory arrest policy; one with high unemployment might explore alternatives along with the arrest option. Whatever course administrators take, they must remain aware of research findings.

The best basis upon which to devise policy is to analyze past domestic violence cases: field officers are best served by accurate information. Officers dispatched to domestic violence incidents should know whether they are dealing with chronically violent people: they should respond fully aware of a violent household's history so that they can adjust their behavior accordingly.

The DCJS model order promotes a policy of arrest when the legal elements of the offense are present. Officers are not precluded from making additional decisions concerning the victim or future incidents involving the same people. Law enforcement administrators who wish to learn more about the major domestic violence research projects around the country, or who wish to examine other policy-related materials on the topic should contact the Law Enforcement Section or the Victims Services Section, DCJS.



<b>POLICE/SHERIFF'S DEPARTMENT</b>		<b>GENERAL ORDERS</b>	
<b>SUBJECT: DOMESTIC VIOLENCE</b>		<b>NUMBER: 2-32</b>	
<b>EFFECTIVE DATE: October 1993</b>		<b>REVIEW DATE:</b>	
<b>AMENDS/SUPERSEDES: GO 2-32, Issued 6/88</b>		<b>APPROVED: <u>Chief of Police/Sheriff</u></b>	
<b>CALEA STANDARDS: 41.2, 42.2, 55</b>			

**NOTE:**

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

**INDEX WORDS:**

Arrests; in domestic disputes  
 Dispatcher responsibilities (re domestic violence)  
 Domestic violence  
 Interviewing (participants of domestic disputes)  
 Patrol officer's responsibilities (re domestic violence)  
 Protective orders  
 Search of premises  
 Stalking  
 Victims; of domestic violence

**I. POLICY:**

The department assigns domestic violence (domestic disturbance) calls a high priority. The nature and seriousness of crimes committed between family or household members are not mitigated because of the relationships or living arrangements of those involved. Therefore, law enforcement must exercise leadership in the community in responding to domestic violence. An immediate legal response can make a major difference in the disputants' lives. With all due consideration for their own safety, department personnel responding to a domestic disturbance call shall (1) end the conflict, (2) arrest persons when probable cause exists that a crime has occurred, (3) provide safety and

security for the crime victim(s), and (4) refer participants to appropriate agencies to help prevent future occurrences.

## II. PROCEDURES:

### A. Definitions

1. "Domestic violence" means: (1) the use, or threatened use, of physical force to inflict physical harm, bodily injury or assault, (2) intimidation, or (3) forceful detention (interference with personal liberty) by one family or household member on another. (See Virginia Code 16.1-228, Spouse Abuse and Child Abuse.)
2. "Intimidation" means: to compel or deter another person or to make fearful through the use of threats, force, and/or menacing annoyances (harassment).
3. "Assault": See Virginia Code 18.2-51. See Also 18.2-57.2 ("Assault and Battery Against a Family or Household Member," which at a third or subsequent conviction within a ten-year period shall be treated as a Class 6 felony).
4. "Family abuse" means any act of violence, including forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person's family or household member.
5. "Family or Household Member," per Virginia Code 16.1-228, includes:

spouses;  
former spouses;  
persons who have a child in common,  
(whether or not they reside in the same home;)  
parents/children;  
stepparents/stepchildren;  
grandparents/grandchildren;  
parents-in-law/children-in-law;  
siblings;  
siblings-in-law who reside in the same home;  
persons who cohabit (includes same-sex couples);  
the children of either cohabiting person, who  
currently reside together or have resided together  
within the previous 12 months.

[Note: Warrants against family/household members are heard by Juvenile and Domestic Relations Court.]

6. "Protective order" is a court order of protection on behalf of an abused family/household member that restrains the abuser from further acts of violence, and may order the abuser to refrain from further contact and/or vacate the residence (see Virginia Code 16.1-279.1). Three types of protective orders exist:

- a. An emergency protective order (see Virginia Code 16.1-253.4) may be requested by a law enforcement officer by telephone or in person from a judge or a magistrate. The emergency protective order may be oral or written. It must be put in writing as soon as possible by the officer on form DC-626. This order expires at 5:00 p.m. on the next business day. The officer must serve a copy of this order on the respondent, and give a copy to the abused family/household member. The officer must forward the original to the issuing judge or magistrate for verification, who then files it with the Juvenile and Domestic Relations Court within five days of issuance.
- b. An abused/family household member may petition for a preliminary protective order (see Virginia Code 16.1-253.1) through the Court Services Unit. After an ex parte hearing, the court may issue a preliminary protective order which is good for 15 days. Officers shall issue the order as soon as possible on the abusing person and shall specify a date for the full hearing.
- c. The court may issue a permanent protective order after a preponderance of the evidence pursuant to Section 16.1-279.1 for up to 12 months.

Any person violating a protective order shall be guilty of a Class 1 misdemeanor under Section 16.1-253.2.

7. "Domestic violence shelters/programs" means services that are provided (usually 24 hours a day) for women and their children who have been physically or emotionally abused, or who have been threatened with abuse by their spouses or partners.

Services include crisis intervention, counseling, shelter, escort to court, food, clothing, and transportation.

8. "Stalking" means any person who on more than one occasion engages in conduct with the intent to cause emotional distress to another person by placing that person in fear of death or bodily harm shall be guilty of a Class 2 misdemeanor (Section 18.2-60.3). A person who violates this section when there is a protective order in effect or for a second time within five years of the first offense will be guilty of a Class 1 misdemeanor. A third conviction within five years of the first one will be a Class 6 felony.

- a. Stalking behaviors include following a person to home, work, and other places, parking outside home or office, threatening notes or telephone calls, threats.

#### B. General Responsibilities

1. Department personnel shall refer victims of domestic violence to appropriate community resources (mental health agencies, medical doctors, legal assistance agencies, victim/witness assistance programs, and domestic violence shelters/programs. Referrals help prevent future disturbances.
2. Department personnel shall be trained about domestic violence and its impact. Personnel must be well trained to confront unexpected violence. Disturbance calls can be dangerous to responding officers. Officers are encouraged to consult community resources such as the local domestic violence shelter and the local victim/witness advocacy program.

#### C. Dispatcher (communications center) responsibilities

1. Because the dispatcher is likely to be the first person to receive the call, he or she is instrumental in determining the type of response.
2. The dispatcher is responsible for deciding whether a police officer is needed at the scene. To make that decision, the dispatcher shall determine the following, if possible:

- a. Who is complaining?
- b. Is the crime (incident) in progress?
- c. Is a weapon involved?
- d. Have people at the scene been injured? Is an ambulance needed?
- e. Name of caller and location of incident?

At this point, if evidence of injury or a weapon exists, or someone has threatened violence, dispatch an officer immediately, and an ambulance, if needed. Keep the complainant on the telephone, if possible, and obtain additional information:

- f. Assailant's whereabouts? If not known, obtain direction of travel and elapsed time.
  - g. Were alcohol or drugs involved?
  - h. A history of calls to this address?
  - i. A history of previous arrests?
  - j. A protective order in effect?
- 3. Maintain telephone contact until the officers arrive in order to monitor the incident and provide support to the victim. Advise the victim of the intended department response. Use crisis intervention skills. (See Appendix to GO 2-28.)
  - 4. The dispatcher shall provide the responding officer with as much information as possible to identify risks at the scene.
  - 5. See Victim Services, GO 2-28, dispatcher responsibilities.

#### D. Patrol responsibilities

- 1. Arrival at scene.
  - a. Obtain all available information from the dispatcher upon arrival.
- 2. Approaching the scene.
  - a. When possible, officers should arrive in pairs;

- b. Avoid the use of sirens and other alarms in the vicinity of the scene. The assailant might be dangerous and could turn a weapon upon arriving officers;
- c. Observe the location of the dispute before contacting the complainant. Consider the surroundings. Park the marked car a short distance away.
- d. Before knocking on the door, listen and look in any nearby window to obtain additional information about the situation (e.g., layout of the house, number of people, weapons).
- e. Officers must be concerned for their own safety as well as the disputants'. To minimize the possibility of injury, stand to the side of the door when knocking. The unexpected may occur when the door opens.

3. Initial contact with occupant(s)

- a. Identify selves as police officers by name, give an explanation of the police presence, and request entry into the home (when conditions permit). Ascertain identity of complainant, and ask to see him or her.
- b. If entry is refused, officers must explain that they must make sure there are no injured persons inside.
- c. Refusal of entry or no response to a knock at the door may require a forced entrance only if officers have a reasonable suspicion that the safety of people inside may be in jeopardy.
  - (1) In making the decision to make a forced warrantless entry, officers shall evaluate the following elements: (a) the degree of urgency involved and the time required to get a warrant; (b) the possibility of danger to others, including officers left to guard the site; (c) whether the suspected offense involved violence; and (d) whether officers reasonably believe that persons may be armed.
- d. Officers may conduct a search of the premises if consent has been given to do so. Although

a consent search eliminates the need for a warrant and for probable cause, such consent must be freely and voluntarily given. If two people have joint ownership or possession of a place or thing, either one may give a valid consent.

- (1) A spouse can consent to the search of premises used jointly by both husband and wife. This also applies if the man and woman are unmarried cohabitants. If one of them exercises sole control over part of the premises, the other cannot give valid consent to search that part.

e. Officers may also make a warrantless entry to conduct a search if an emergency exists. Officers must have a reasonable belief that such an emergency does exist (example: The police believe that someone is in distress and in need of assistance).

- (1) Officers shall evaluate the following elements when considering a warrantless entry: (a) the degree of urgency involved and the time required to get a warrant; (b) the possibility of danger to others, including police officers left to guard the site; (c) whether the suspected offense is serious or involves violence; (d) whether officers reasonably believe that persons may be armed. Finally, officers are reminded that they have a lawful right to investigate any situation which they might reasonably believe to be an emergency.

f. Once inside, establish control by:

- (1) Inquiring about the nature of the dispute;
- (2) Identifying disputants;
- (3) Being aware of potential weapons in surroundings;
- (4) Determining if persons are in other rooms, whether children or adults, and the extent of their injuries. These persons should be separated from the parties involved and kept out of hearing

range (so their status as possible witnesses won't be compromised).

- (5) Protecting the victim from further abuse. Separate from the assailant and arrange for medical attention if victim is hurt. If the victim appears injured and yet refuses medical assistance, carefully document any observed injuries, as well as the refusal of medical treatment.
  - (6) Ascertain whether a protective order has been violated. If so, see paragraph 8.b.(2).
- 4. Transporting family/household members to the hospital, safe shelter, or magistrate. See Virginia Code 16.1-253.2, and GO 2-28, transportation services for victims.
  - 5. Interviewing the parties (disputants)
    - a. Ensure safety and privacy by interviewing the victim in a place separate from the assailant, if identifiable.
    - b. Critical to the success of the interview is the police officer's manner. Officers must listen, show interest in the disputants and their problem, and remain aware of nonverbal communications signals (see appendices to GO 2-28).
    - c. Officers shall attempt a low-key approach in domestic violence cases. Maintain good eye contact through natural, spontaneous glances. (Fixed gazes or staring increase fear and hostility.) A relaxed stance along with appropriate facial and head movements demonstrates interest and encourages the victim to continue speaking.
    - d. If possible, separate the parties so that they can individually describe the incident without interruption. (This may help the parties relieve emotional tension.)
    - e. After the parties have given their statements, the officers should ask about details for clarification, and summarize the stated accounts (which allows the parties to point out anything that might be misrepresented).



6. Interviewing witnesses

- a. Interview any witnesses to the incident--children, other family members, neighbors--as soon as possible.
- b. Remember that witnesses may be experiencing significant emotional crises that might influence the accuracy of their accounts.
- c. If witnesses provide information about prior assaults, document them to help establish a pattern.
- d. Children of disputants should be interviewed with care and kindness. Sit, kneel, or otherwise be at their level when speaking to them. Signs of trauma or abuse should be noted.

7. Issuing an emergency protective order

- a. If an officer has at least a reasonable belief that an assault has been committed or that a probable danger exists of an assault to a family or household member, the officer may petition a judge or magistrate to issue an emergency protective order.
- b. An officer can petition for an emergency protective order by telephone or in person.
- c. The order will be valid until 5:00 p.m. on the next business day. The officer will attempt to serve the order as soon as practicable to the assailant.
- d. The officer must complete form DC-626 and serve a copy to the respondent as soon as possible.
- e. The officer must submit the original order to the issuing judge or magistrate, provide a copy to the victim, and file a copy with the incident report.

8. Decision to arrest

- a. Once officers have assessed the situation, they must make a determination whether or not to arrest the assailant. If so, the arrest will follow the requirements of GO 2-4.

- b. Officers can make an arrest without a warrant if there has been probable cause to believe that a misdemeanor or a felony has been committed (Virginia Code 19.2-81). Further, the department promotes a policy of arrest when the elements of an appropriate offense are present. The probable cause standard for domestic disputes is no different from that standard as applied to other offenses (see GO 2-1, "probable cause and reasonable suspicion.")
- (1) When the complainant or victim does not want the offender arrested or otherwise communicates a reluctance to prosecute, the officer must decide, within his or her discretion, whether to arrest.
  - (2) In cases where the trespassing conditions of a protective order have been violated (Section 18.2-119), officers shall review the victim's copy of the order, checking it for validity and ensuring that the order grants the complainant sole access to the residence, and that the order was issued in [the local jurisdiction], and signed by the appropriate authority. When these conditions are satisfied, the officer may take enforcement action for trespassing. Officers cannot enforce trespassing if the violator has not been served with the order.
  - (3) In determining probable cause, the officer shall not consider:
    - (a) whether the parties are married or living together;
    - (b) whether the complainant has not sought or obtained a legal restraining order;
    - (c) his or her own preference to reconcile the parties despite the complainant's insistence that an arrest be made;
    - (d) that the complainant has called for police protection previously and has not pursued or withdrawn the criminal complaint against the

abuser; or

- (e) that the complainant has not begun divorce proceedings.

c. Arrest is the most appropriate response when these factors are present:

- (1) serious, intense conflict;
- (2) use of a weapon;
- (3) previous injury or damage;
- (4) previous court appearance against the offending party;
- (5) previous attempt to sever the relationship;
- (6) second call for police;
- (7) when a felony has occurred;
- (8) evidence of drugs or alcohol at the assault;
- (9) offenses committed with the officer present;
- (10) valid warrants on file for other crimes;
- (11) a protective order has been violated. Charge as a Class 1 misdemeanor under Virginia Code 16.1-253.2.

d. If the abusive person is not arrested:

- (1) complete an incident report;
- (2) inform the victim that he or she can begin criminal proceedings at a later time. Provide information about how to file a criminal charge, including time, location, and case number, if available;
- (3) advise the victim of the importance of preserving evidence;
- (4) explain to the victim about protective orders and restraining orders and how to obtain them (obtain information from the

commonwealth's attorney);

- (5) if the victim wants to leave the premises to ensure safety, remain at the scene while the victim packs essentials. Advise the victim to take only personal items plus important papers;
- (6) give the victim telephone numbers of emergency shelters in the area and the police emergency number;
- (7) assure the victim that the police department will assist in future emergencies but that he or she must become responsible for their own safety.

- e. If an arrest is made, advise the victim that the case may be prosecuted even if the victim later declines to press charges.

9. Gathering evidence

- a. Physical evidence takes three forms in domestic violence cases: the injuries of the victim; evidentiary articles that substantiate an attack; and the crime scene itself.
- b. The victim's account of injuries sustained should be corroborated by a physician.
- c. When feasible, take photographs of injuries.
- d. Photograph the crime scene to show that a struggle occurred; if photography is not possible, write a description of it.
- e. Collect evidence according to the same principles as applied to any crime scene (see the appendix to GO 2-14).

10. Documenting the incident

- a. All incident reports on domestic violence shall follow general reporting procedures, with special attention to the victims services crime report procedure in GO 2-28.
- b. Include in all incidents of domestic violence:
  - (1) facts and circumstances of domestic violence;

- (2) victim's statements as to the frequency and severity of prior incidents of abuse by the same family member;
- (3) the victim's statements as to the number of prior calls for police assistance;
- (4) the disposition of the investigation.

c. If an arrest is not made, the incident must still be documented, either where no probable cause existed, or circumstances dictated another course of action. In such cases, in addition to the above considerations, officers shall note:

- (1) what referral information was given;
- (2) the name of any counselor contacted;
- (3) why no arrest was made, nor any warrant issued.

## NOTE CONCERNING GENERAL ORDER 2-34, COMMUNICABLE DISEASES

Sections VI.A and B of General Order 2-34 concern a department's handling of employees who may become infected with a communicable disease in the line of duty. As this order is written, departments may require employees to submit to testing after an accident has occurred in which an employee was bitten, cut, injured, or otherwise came into contact with body fluids of another person. Note that the order presumes that the department's health care insurer may require such testing. Law enforcement executives should understand, however, that the legality of such a requirement--that employees must undergo testing following an incident--is open to question. Executives must review, with competent legal help, the provision of their health care contract to decide whether or not they have the authority to order employees to submit to tests for communicable diseases.

Similarly, Section V.F.12 requires officers, before releasing a crime scene to the owner of the property, to advise the owner of an infection risk and request that the owner contact the local health department for advice. Some law enforcement executives may feel that this provision as written may not go far enough to ensure that the owner does not become infected from fluids or materials left at the scene. Executives, then, should modify this provision to suit their own notions of appropriateness. At a minimum, however, officers should always advise property owners or occupiers of the health risks.

Since this order was first published in 1988, the federal government has levied on 23 states--including Virginia--new requirements to minimize employees' occupational exposure to bloodborne pathogens. The 1991 regulations, published by the Occupational Safety and Health Administration (OSHA) require law enforcement managers, among others, to limit occupational exposure to blood and other fluids or materials that might aid the transmission of pathogens which cause disease or death. The regulations cover all employees who could be "reasonably anticipated" to come into contact with blood or other infectious materials. "Infectious materials" includes, for policy purposes, virtually any body fluid. To comply, law enforcement executives must undertake the following:

1. Develop a written exposure control plan. The plan must identify not only tasks and procedures but also job positions where occupational exposure to blood occurs, without regard to protective equipment or clothing. The plan must also include a schedule for implementing other provisions of the OSHA standard, and describe procedures for evaluating exposure incidents. The plan must be made available to employees--though not necessarily included in a policy--and it should be reviewed and updated at least annually.

2. Develop universal precautions. Universal precautions refer to treating all body fluids and associated materials as potentially infectious. Workplace controls should be articulated and

implemented. Such controls include a requirement that employees wash hands, for example, when exposed to fluids. These controls should set forth procedures to require employees to undertake certain measures to minimize infection risks, such as when punctured with needles, splashed with blood, as well as to ensure proper packaging and labeling of fluids and related materials. Employers must provide appropriate facilities for employees to exercise these controls.

3. Provide employees with personal protective equipment, at no cost, including gloves, masks, mouthpieces, and bags.

4. Develop a written schedule for cleaning and decontamination of equipment, specifying procedures to be followed upon contact with fluids or blood.

5. Provide vaccinations, at no cost to employees, against hepatitis B. The vaccinations must be made available to all employees who have occupational exposure to blood within 10 working days of assignment. Employees who refuse this service must sign a declination form, but may later opt to receive the vaccination.

6. Specify procedures to be made available to all employees who have had an exposure incident with the further proviso that any laboratory tests must be conducted by an accredited laboratory at no cost to the employee. The follow-up must include a confidential medical evaluation documenting the circumstances of the exposure, identifying and testing the source person, if available, plus testing of the employee's blood if he or she consents, and counseling and evaluation of any reported illnesses.

7. Affix warning labels or biohazard symbols to any containers or waste involving body fluids or associated materials.

8. Provide training initially upon assignment of personnel, and at least annually on bloodborne pathogens. The training must include making accessible a copy of the OSHA regulations, and explanation of them, discussion of bloodborne diseases and their transmission, the exposure control plan, workplace controls, personal protective equipment, exposure procedures, hepatitis B vaccinations, and labeling of materials. The training must include a question-answer session.

9. Maintain medical records for each employee with occupational exposure for the duration of their employment plus 30 years. The files must be strictly confidential and must include name, Social Security number, hepatitis B vaccination status (including dates), a copy of the healthcare professional's written opinion; and a copy of the information provided to the healthcare professional for evaluation. Further, medical records must be made available to the subject employee. Training records must also be kept for a minimum of three years and must include dates, contents of the training program or a summary, trainer's name and qualifications, names and job titles of all employees attending the sessions.

[Most of the above information on the OSHA regulations comes from "Occupational Exposure to Bloodborne Pathogens; Final Rule--1910.1030, as adopted by the Virginia Occupational Safety and Health Codes Board, February 25, 1992.]

10/93



<b>POLICE/SHERIFF'S DEPARTMENT</b>		<b>RULES AND REGULATIONS</b>	
<b>SUBJECT: COMMUNICABLE DISEASES</b>		<b>NUMBER: 2-34</b>	
<b>EFFECTIVE DATE: October 1993</b>		<b>REVIEW DATE:</b>	
<b>AMENDS/SUPERSEDES: GO 2-34, issued 6/88</b>		<b>APPROVED: <u>Chief of Police/Sheriff</u></b>	
<b>CALEA STANDARDS: 22.2, 22.3</b>			

**NOTE:**

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

**INDEX WORDS:**

AIDS  
 Acquired Immune Deficiency Syndrome  
 Communicable Diseases  
 Diseases  
 Evidence  
     possibly contaminated  
 Exposure control program (communicable diseases)  
 HBV  
 Hepatitis B  
 HIV  
 Human Immunodeficiency Virus  
 Infectious diseases  
 Training;  
     responsibilities concerning infectious diseases  
 Tuberculosis

**I. POLICY:**

The department bears an obligation to the public and to its own personnel to increase awareness about risks, modes of transmission, and procedures for handling communicable diseases such as hepatitis B, tuberculosis, HIV (Human Immunodeficiency Virus) and AIDS (Acquired Immune Deficiency Syndrome), and AIDS-related infections. Although, of the

diseases are mentioned, AIDS has received the most notoriety, all present hazards to law enforcement officers: hepatitis B and tuberculosis are more infectious than HIV, for example.

All personnel must understand that the focus of the news media on AIDS has dealt with so-called "high risk" groups, i.e., homosexual men, intravenous drug users, and prostitutes. As a matter of practice, the department does not recognize high-risk groups since health and legal experts maintain that the actual risk of contagion comes from high-risk behavior. Anyone--including members of the department--might conceivably behave in a way that promotes risk of infection. Further, the long incubation periods associated with diseases such as HIV (years) render testing difficult. Accordingly, officers shall act responsibly in minimizing the risk of infection when dealing with any person, male or female, child or adult or with any body fluids. A few simple precautions, however, will avoid the risk of infection almost entirely. The appendix to this general order details common AIDS concerns of personnel plus relevant medical information.

Officers cannot refuse to work with or handle anyone--victim, complainant, or suspect--because of the officer's fears of possible infection. Personnel shall not refuse to arrest or otherwise refuse to handle any person in a legitimate law enforcement context, provided that appropriate protective equipment is available. The measures provided herein will assist officers in carrying out their duties while simultaneously minimizing health risks.

The most likely danger from contact with HIV or other communicable diseases comes from handling blood or other body fluids as evidence or at the scene of injury or death. The department does expect officers to exercise caution when handling evidence, to which end the following procedures are set forth. One point bears repeating, however: officers have no way to determine with certainty if a citizen is infected with a communicable disease.

The department shall provide employees, continuously, with information and education on prevention of communicable diseases, as well as safety equipment and procedures to minimize their risks of exposure. The department has instituted post-exposure reporting, evaluation, and treatment for all members exposed to communicable diseases.

Finally, the department advises all personnel that they shall not receive discriminatory treatment nor bear any stigma if they contract a communicable disease which becomes known to the department. Legally, a communicable disease is a handicap under Federal law so discrimination against infected persons is illegal.

The department expects officers to become educators in their law enforcement work. Officers can advise children, drug users, or prostitutes of the risks of infection and can further distribute educational literature. Additionally, officers may refer citizens to health agencies such as the American Red Cross and the local health department. Department personnel, then, may set an example in demonstrating rationality and confidence in dealing with communicable diseases.

## II. PURPOSE:

The purpose of this order is to establish guidelines and procedures to be followed when a member of the department is exposed to a communicable disease with a risk of major illness or death and to establish procedures for handling of evidence or property that may be contaminated.

## III. DEFINITIONS:

- A. Communicable disease - an infectious disease capable of being passed to another by contact with an infected person or his/her body fluids.
- B. AIDS (Acquired Immune Deficiency Syndrome) - is a blood-borne and sexually-transmitted disease that attacks and destroys the body's immune system. It makes people susceptible to infections, malignancies, and diseases not generally life-threatening to persons with normal immune systems. AIDS also causes disorders of the central nervous system. There is no vaccine against the virus. Personnel are advised that AIDS is not transmitted through any of the following (according to the Centers for Disease Control):
  - 1. Sneezing, coughing, spitting;
  - 2. Handshakes, hugging, or other nonsexual physical contact;
  - 3. Toilet seats, bathtubs, or showers;
  - 4. Various utensils, dishes, or linens used by persons with AIDS;
  - 5. Articles worn or handled by persons with AIDS, i.e., doorknobs, pens, or cups;
  - 6. Being near someone with AIDS frequently or over a long period of time;
  - 7. Riding the same transportation;

8. Eating in the same public place with an AIDS-infected person; or
  9. Working in the same office.
- C. ARC (AIDS-Related Complex) - is a condition caused by the aids virus (HIV) and has a specific set of symptoms. Such symptoms include persistent fever, weight loss, skin rashes, diarrhea, and swollen lymph nodes. Although these symptoms may be debilitating, they are generally not life-threatening.
  - D. HIV (Human Immunodeficiency Virus) - is the virus that causes AIDS. HIV infects and destroys certain white blood cells, undermining the body's ability to combat infection. (Also named HTLV-III or LAV). Technically speaking, this general order aims to reduce the chance of HIV transmission, the virus that causes AIDS.
  - E. Seropositivity - refers to a person having antibodies to HIV, meaning that infection has occurred at some time in the past. A seropositive person can be infected with HIV for years with out ever developing symptoms of AIDS. Infected persons can transmit the virus even though they may not have symptoms of AIDS.
  - F. Hepatitis B (HBV) - is a viral infection that can result in jaundice, cirrhosis, and, sometimes, cancer of the liver. The virus is transmitted through exposure to blood, semen, or vaginal secretions. Two vaccines are currently available against hepatitis B [Recombivax (synthetic) or Heptivax (serum derived)].
  - G. Tuberculosis - is a bacterial disease that can be transmitted through saliva, urine, blood, and other body fluids by persons infected with it. Tuberculosis is spread primarily by inhaling airborne droplets from infected coughing people. It can enter the body through infected mucous on the skin (as from coughing) or from droplets that are inhaled. It is an airborne, opportunistic disease and it primarily causes lung infection. Although no vaccine against tuberculosis exists, medications are available to treat the disease.
  - H. Exposure control program - is a written agency plan, available to all employees, which details the steps taken to eliminate or minimize exposure incidents, and identifies at-risk tasks and assignments.
  - I. Personal protective equipment (PPE) - consists of specialized clothing or equipment worn or used by employees for protection against infection. PPE does not

include uniforms or work clothes without special protective qualities.

- J. Universal precautions - includes controls or procedures advised by the Centers for Disease Control (CDC) that emphasize precautions based on the assumption that blood and body fluids are potentially infectious.

#### IV. GENERAL RESPONSIBILITIES:

- A. The chief of police shall develop a written exposure control plan which provides the overall strategy for limiting exposure to HIV and HBV viruses, and for handling exposure incidents. The plan is available to all employees and may be reviewed upon request to their immediate supervisor.
1. The plan adheres to the principles and procedures for the prevention of HIV and HBV exposure as detailed in the universal precautions prescribed by the CDC plus other federal agencies.
  2. All employees, and supervisors particularly, are responsible for the maintenance of a clean, sanitary workplace, and shall inspect workplaces daily to ensure that these conditions are met.
    - a. All supervisors shall develop and implement written schedules for cleaning and decontamination of equipment and workplaces.
- B. The chief of police shall ensure that adequate supplies are available for communicable disease control within the department. Supervisors are responsible for maintaining continuously an adequate supply of disease control supplies for all affected personnel within their purview. Further, supervisors must ensure that
1. personal protective equipment (PPE) can be found in sufficient quantities at advertised locations; and
  2. hypoallergenic gloves and other materials are available for employees allergic to standard-issue gear; and
  3. supplies are routinely inspected, replaced, cleaned; and
  4. First Aid supplies and disinfectants are available always.
- C. The chief of police, through his subordinate supervisors,

shall ensure that the department vehicles will each contain the following PPE supplies at all times:

- 3 pairs of disposable latex gloves
- 1 pair leather gloves
- 1 disposable face mask
- 6 absorbent disposable towels
- 3 disposable plastic bags with contaminated material seals
- 1 bottle of alcohol-based cleanser
- 1 CPR shield (with a 1-way valve to prevent the patient's saliva from entering the caregiver's mouth)
- 1 pair of wrap-around safety goggles
- 1 carrying bag with zipper closure
- 1 pair disposable shoe coverings
- 2 puncture-resistant, leakproof containers for needles and other sharp objects
- 1 box of waterproof bandages
- "Isolation Area--Do Not Enter" signs

D. Officers using supplies in their vehicles shall replace them or arrange to have them replaced as soon as possible. Officers shall maintain disposable gloves in their personal possession at all times.

E. The chief of police or his designee shall cause to be maintained at the department office the following:

- 3 pair coveralls (different sizes)
- supply of disposable latex gloves
- orange/red plastic biohazard bags and tape, or plastic bags and sealing ties
- liquid household bleach
- disposable towels/towelettes
- "Isolation Area - Do Not Enter" signs
- buckets, mops

F. Personnel shall use protective equipment under all appropriate circumstances unless the officer can justify otherwise.

- 1. Officers who, for whatever reason, do not use protective gear when appropriate shall document the incident as soon as practicable for department review.

G. All personnel whose skin comes into contact with body fluids of another shall begin disinfection procedures immediately: these procedures range from simple soap-and-water washing to the use of alcohol or antiseptic towelettes. All open cuts and abrasions shall be covered

with waterproof bandages before personnel report for duty.

V. **GENERAL PRECAUTIONS:**

A. **GENERAL:** Whenever possible, officers shall wear disposable latex gloves when doing any of the following:

1. Handling persons or items with any blood or body fluid products (hypodermic needles, syringes, or surfaces soiled with blood or body fluids, gun or knife wounds).
2. Packaging and handling such items as evidence.
3. Cleaning up blood or other secretions which appear on floors, seats, equipment, handcuffs, shoes, clothing, pens, pencils, etc.

B. **SPECIALIZED DEVICES:**

1. Masks shall be worn whenever splashes, spray, spatter, or droplets of potentially infectious fluids endanger contamination through the eyes, nose, or mouth. Masks may be worn with other protective devices such as goggles.
2. Gowns, jackets, coats, aprons shall be worn as determined by the degree of exposure anticipated.

A. **HANDLING PEOPLE:**

1. Wash hands thoroughly for thirty seconds with warm water and soap after removing gloves (when handling evidence) or after contact with the subject (if bleeding or vomiting). If water is unavailable, use pre-moistened towelettes found in the communicable disease control kit to decontaminate skin.
2. Leather gloves or their equivalent shall be worn when searching persons or dealing in environments, such as accident scenes, where sharp objects and bodily fluids may reasonably be encountered. Search techniques shall be used that require suspects to empty their own pockets or purses and remove sharp objects from their persons.
3. When transporting prisoners:
  - a. Do not put fingers in or near any person's mouth.

- b. Transport persons with body fluids on their persons in separate vehicles from other persons. A person who is bleeding or producing a fluid may have to wear a protective covering.
- c. Notify other support personnel or law enforcement officers during a transfer of custody that the suspect has fluids on his or her person, or that the suspect has stated that he or she has a communicable disease. Booking forms should so state.

B. HANDLING OBJECTS:

- 1. Objects contaminated with body fluids shall be completely dried, double bagged, and marked to identify possible disease contamination.
- 2. Contaminated items to be disposed of shall be autoclaved.
  - a. To autoclave, items must be treated in special (biohazard) bags at a high temperature. Local laboratories or hospitals can assist.
  - b. Before burning, the bags must be closed with autoclave tape, which turns purple when the microbes are dead.
- 3. Officers shall use extra care when handling any sharp objects. If officers find syringes, they shall not bend, recap, or otherwise manipulate the needle in any way, but shall place them in puncture-resistant containers provided by the department.

C. HANDLING FLUIDS:

- 1. Clean up blood spills or other body fluids with regular household bleach diluted 1 part bleach to 10 parts water (or use undiluted bleach, if easier). Bleach dilutions should be prepared at least every 24 hours to retain effectiveness.
  - a. Wear latex gloves during this procedure.
  - b. A soiled uniform (by blood or body fluids) should be changed as soon as possible. Wash in hot water and detergent or dispose of after autoclaving.



2. Departmental vehicles within which body fluids are spilled require immediate disinfection procedures. Employees who have the vehicles assigned to them shall notify their supervisor of the spill and arrange for a thorough cleaning as soon as possible. Affected vehicles should bear an "Infectious Disease Contamination" sign upon arrival at a service center and while awaiting disinfection.
  - a. All police vehicles will be cleaned with disinfectant as part of a routine, scheduled washing and maintenance check.

D. PRECAUTIONS WHEN BITTEN:

The danger of infection through bites is low. The victim cannot be infected with HIV through the blood of the biting person unless that person has blood in his or her mouth which comes into contact with the victim's blood. HIV cannot be transmitted through saliva. With HBV, however, transmission takes place through infected blood or blood-derived body fluids. Infection takes place by exposure of the eyes, mouth, or mucous membranes to the virus. Precautionary procedures to minimize the risk of infection include:

1. Encouraging the wound to bleed by applying pressure and gently "milking" the wound.
2. Washing the area thoroughly with soap and hot water.
3. Seeking medical attention at the nearest hospital.
4. Advising your supervisor, make a report, or follow any other policy for reporting injuries, including the filing of appropriate Worker's Compensation forms.

E. PRECAUTIONS WHEN PUNCTURED BY NEEDLES OR KNIVES:

If an officer is cut or punctured by a needle or a knife or other instrument while searching a suspect or handling contaminated evidence, follow these general guidelines:

1. Allow the wound to bleed (unless severe bleeding occurs) until all flow ceases. Then cleanse the wound with alcohol-based cleanser (or pre-moistened towelettes) and then with soap and water. Do not rely exclusively on towelettes: wash wounds thoroughly with soap and water.

2. Seek medical attention as soon as possible after the injury. A physician will then decide the proper treatment.
3. Advise your supervisor, make a report, or follow any other policy for reporting injuries, including the filing of appropriate Worker's Compensation forms.

F. PRECAUTIONS AT MAJOR CRIME SCENES:

At the crime scene, officers and crime scene technicians confront unusual hazards, especially when the crime scene involves violent behavior such as homicides where large amounts of blood have been shed.

1. No person at any crime scene shall eat, drink, smoke, or apply make-up.
2. The best protection is to wear disposable latex gloves. Any person with a cut, abrasion, or any other break in the skin on the hands should never handle blood or other body fluids without protection.
3. Latex gloves should be changed when they become torn or heavily soiled or if an officer leaves the crime scene (even temporarily).
4. If cotton gloves are worn when working with items having potential latent fingerprint value, wear cotton gloves over latex gloves.
5. Hands should be washed after gloves are removed, even if the gloves appear to be intact.
6. Always keep a plastic bag in the communicable disease control kit to be used only to collect contaminated items (gloves, masks, etc.) until they can be disposed of properly. Clearly mark the bag "Contaminated Material."
7. Shoes and boots can become contaminated with blood. Wash with soap and water when leaving the crime scene, or use protective disposable shoe coverings.
8. Wrap-around eye safety goggles and face masks should be worn when the possibility exists that dried or liquid particles of body fluids may strike the face. Particles of dried blood, when scraped, fly in many directions, so wear goggles and masks when removing the stain for laboratory analysis.

9. While processing the crime scene, be constantly on the alert for sharp objects, such as hypodermic needles, razors, knives, broken glass, nails, etc. Use of mirrors may be appropriate while looking under car seats, beds, etc.
10. Use tape--never metal staples--when packaging evidence.
11. If practicable, use only disposable items at a crime scene where blood or other body fluids are present. Even those items (gloves, masks, shoe coverings, pens, pencils, etc.) must be decontaminated before disposal. If autoclaving is not possible contaminated items must be covered with a bleach solution (one part bleach to ten parts water, or undiluted bleach).
12. Before releasing the crime scene, advise the owner of the potential infection risk and suggest that the owner contact the local health department for advice.
13. Warning labels must be placed on all plastic evidence bags to go to the crime laboratory.

## VI. VACCINATIONS

- A. The department affords all employees who have occupational exposure to hepatitis B the opportunity to take the HBV vaccination series at no cost within 10 working days of assignment to an occupationally exposed duty. The vaccination shall be provided only after the employee has received departmental training in communicable diseases, is medically fit for the vaccinations, and has not previously received them.

## VII. OCCUPATIONAL EXPOSURE TO COMMUNICABLE DISEASES:

### A. NOTIFICATION:

1. All employees shall, as soon as practicable, document possible exposure to infectious fluids or materials. In any case, employees shall immediately notify their supervisor of possible exposure. Virginia Code Section 32.1-45.2 requires public safety employees to immediately notify their agencies "of any possible exposure prone incident."
2. Examples of such exposure are:
  - a. Direct contact with body fluids on chapped or

open areas (cuts, scratches) on the skin or on mucous membranes (i.e., eyes, mouth).

- b. Direct mouth-to-mouth resuscitation (CPR) without use of a one-way valve.
- c. Receiving a cut or puncture wound as a result of searching or arresting a suspect or handling contaminated evidence.

B. TESTING:

If a member of the department is exposed to the body fluids of a person who has or is suspected to have a communicable disease, the member must be evaluated for evidence of infection by the department physician.

- 1. The person whose body fluids came into contact with an officer may state that he or she has AIDS. Often, a person may try to prevent police from withdrawing blood for drug screening (as in a DUI arrest), although, in fact, he or she is not infected at all. While the department cannot coerce a citizen--suspect or otherwise--to take periodic tests for infection, the department will try to convince the citizen who may have transmitted infection to do so.

- a. Virginia Code 32.1-45.2 states that if any person or employee has been exposed to body fluids, the person or employee whose fluids were involved will be requested by the agency to consent to HBV or HIV testing and disclosure of results.

- b. Virginia Code 18.2-62 provides measures whereby a person charged with any crime involving sexual assault, or particular offenses against children may be ordered to submit to HIV testing.

- 2. Personnel should understand the difficulty of transmitting HIV and hepatitis B. If infection control measures have been followed, the risk is very low.

- C. Testing for presence of infection shall be done if indicated by a medical assessment (after an incident involving the possible transfer of blood or other body fluids). The following information details testing methods and their reliability.

1. AIDS/ARC/HIV:

- a. Blood tests can detect HIV antibodies (produce by the body's immune system).
- b. The two common tests for HIV antibodies are the ELISA (Enzyme-Linked Immunosorbent Assay) and the Western Blot. Since the ELISA is less expensive and easier to perform, it is usually used as a first screen for HIV. If the ELISA identifies the person as seropositive, a second ELISA is performed. If the second test is also positive, a Western Blot is usually performed to confirm the results.
- c. Since HIV antibodies may not develop for some months after a person has been infected, an initial negative result may not mean freedom from infection. High false positive rates also occur with the use of only ELISA test.
- d. One must be tested, then, immediately following the incident (for a baseline) and then six and twelve months later.
- e. The department shall ensure that the employee receives qualified counseling during the testing period.
- f. The Virginia State Public Health Department provides free confidential or anonymous testing (both ELISA and Western Blot) in every health district. The results are given only to the person tested. State law, under Section 32.1-36.1, provides confidentiality and prescribes a penalty.

2. Hepatitis B - A blood test can confirm the presence of hepatitis B virus six to eight weeks after exposure. See Section VI above.

3. Tuberculosis - This disease is detected first by a skin test, then confirmed by an x-ray. The department physician can order this test for the department employee. (Some local health departments may do the test.)

D. CONFIDENTIALITY:

Confidentiality of information concerning test results is paramount. The victim has a right to privacy in employer-maintained information about his/her health. No

need exists for a supervisor routinely to know that a person tests positive (for HIV or hepatitis B). The department views a breach of confidentiality as a serious disciplinary problem which may result in suspension or termination of employment.

1. Under most circumstances, medical authorities will retain confidential records unless the employee tested or state law requires it.

E. POSITIVE TEST RESULTS:

1. Any person who tests positive for HIV or hepatitis B shall not be summarily removed from duty. The department shall make no restrictions simply because of diagnosis. These diseases are not spread by casual contact (as between coworkers in the department). The department shall alter an employee's assignment only when he or she can no longer perform the required duties.
  - a. The department shall ensure continued testing, if necessary, of members for evidence of infection, and shall provide psychological counseling if necessary.
2. Any person who tests positive for tuberculosis may be restricted from working for a period of time. The medical evaluation will determine the stage and type of disease the person has contracted and if he/she is contagious. A tuberculosis-infected person requires medication and shall not return to work until the doctor says he/she is non-communicable. (Tuberculosis is easily transmitted and incidence in Virginia has recently shown a slight increase. After exposure to tuberculosis, a person may, after a medical evaluation, take medicine to help prevent the disease.)

F. JOB PERFORMANCE:

1. Communicable disease-infected employees shall continue working as long as they maintain acceptable performance and do not pose a safety or health threat to themselves or others in the department.
  - a. Where feasible, an employee who has medical complications from a communicable disease will either be reassigned to another job or have his/her job restructured so that he/she can remain employed. As necessary, medical

documentation shall support requests for job restructure or reassignment. All personnel shall treat such employees in the same manner as employees who suffer from other serious diseases or handicaps: that is, fairly, courteously, and with dignity.

- b. The department may require an employee to be examined by the department physician to determine if he/she is able to perform his/her duties without hazard to him/herself or others.

G. FEDERAL LAW:

Employees infected by communicable diseases are generally protected by the federal Rehabilitation Act of 1973. (A medical standard that is not job-related constitutes a prohibited personnel practice.)

H. DISCRIMINATION:

The department expects all personnel to continue working relationships with any fellow employee recognized as having AIDS/ARC, hepatitis B, or non-communicable tuberculosis. The department will consider appropriate corrective or disciplinary action against an employee who threatens or refuses to work with an infected employee or who disrupts the department's mission.

I. RECORDS

The agency maintains a record for each employee detailing incidents of occupational exposure, including information on vaccination status; the results of examinations and tests; health care professionals' written opinion; and any other relevant information. These records are retained by the chief/sheriff in secure storage for the duration of tenure of employees plus 30 years, and shall not be disclosed or reported without the express written consent of the employee.

VIII. TRAINING:

- A. Education on communicable diseases shall be continuous in the department. The training officer shall ensure that all members of the agency with occupational exposure shall receive a course of instruction on bloodborne diseases before their initial assignment. Further, each affected employee will receive annual refresher training plus any additional training appropriate to the particular employee assignment.

- B. The training officer shall retain complete records on instruction of employees to include dates of training; content of sessions; names and qualifications of trainers; names and job titles of attending employees.
- C. The training officer is responsible for dissemination of updated information to all personnel and for appropriate educational programs about communicable diseases. These programs shall include at a minimum:
  - 1. Written information concerning AIDS/ARC/HIV, hepatitis B, and tuberculosis in the form of brochures, bulletins, memorandums, or fact sheets.
  - 2. Group and/or individual presentations and discussions provided by adequately trained personnel or experts from outside the department.
  - 3. Local resources for further medical and law enforcement information.
  - 4. For more information, personnel may at any time contact:
    - a. National Hotline for AIDS - 1-800-342-AIDS
    - b. Virginia AIDS Info Hotline - 1-800-533-4148
    - c. AIDS Update (Dept. of Health and Human Services)  
1-202-245-6867
    - d. AIDS Clearinghouse (America Responds to AIDS)  
1-800-342-7514
    - e. National Institute of Justice AIDS Clearinghouse  
1-301-251-5500
    - f. State and local public health department
    - g. Local American Red Cross
    - h. Forensic laboratories
    - i. Vendors -

EXAMPLES:

--Gall's (vendor for Communicable Disease Control Kit)

Gall's, Incorporated  
333 Murray Drive  
Post Office Box 55268  
Lexington, KY 40555-5268  
1-800-524-4255

--Baxter Healthcare Corporation (vendor for autoclave bags and tape)



Baxter Healthcare Corporation  
8855 McGraw Road  
Columbia, MD 21045  
1-800-638-2813

[Note #1 - The Department of Criminal Justice Services does not endorse the products of either vendor listed. Agencies must find their own sources for medical equipment.]

[Note #2 - In adopting this policy, the department must explore with its insurance company the health benefits plan as it concerns health care services for an employee who contracts a serious communicable disease.]

AIDS-RELATED CONCERNS OF PERSONNEL

ISSUE

INFORMATION

Human Bites

A person who bites is typically the one who gets the blood; viral transmission through saliva is highly unlikely. If bitten by anyone, gently milk wound to make it bleed, wash the area, and seek medical attention.

Spitting

Viral transmission through saliva is highly unlikely.

Urine/feces

Virus isolated in only very low concentrations in urine; not at all in feces; no cases of AIDS or HIV infection associated with either urine or feces.

CPR/first aid

To eliminate the already minimal risk associated with CPR, use masks/airways; avoid blood-to-blood contact by keeping open wounds covered and wearing gloves when in contact with bleeding wounds.

Body removal

Observe crime scene rule: do not touch anything; those who must come into contact with blood or other body fluids should wear gloves.

Casual contact

No cases of AIDS or HIV infection attributed to casual contact.

Any contact with blood or body fluids

Wash thoroughly with soap and water; clean up spills with 1:10 solution of household bleach.

\*Source: Adapted from:

AIDS and the Law Enforcement Officer: Concerns and Policy Responses by Theodore M. Hammett, Ph.D., National Institute of Justice, U.S. Department of Justice, June, 1987

## NOTE CONCERNING GENERAL ORDER 2-35, DRUG TESTING

Perhaps no issue under the topic of management-employee relations sparks debate between strongly opposing viewpoints as much as drug testing. Although the Department of Criminal Justice Services model policy was first crafted in 1988, we awaited the outcome of several court decisions to help determine the scope of the model order. Since 1988, two major Supreme Court decisions, *Skinner v. Railway Labor Executives* and *National Treasury Employees v. Von Raab*, have encouraged many agencies to begin random drug-testing programs.

The DCJS model takes the stance that drug testing must be based on a reasonable suspicion, and that testing must not be a substitute for responsible supervision. Since the model policy on drug testing produced by the National Law Enforcement Policy Center (International Association of Chiefs of Police) supports random testing, simply to offer an alternative, the DCJS order does not. Some states, such as New Jersey, have mandated drug-testing programs for police officers that similarly do not rely on random drug tests. The DCJS model also discusses employees' 14th Amendment rights; current procedural guarantees; specific employee behaviors that would occasion a reasonable suspicion of drug-taking or alcohol abuse; the mechanics of the drug-testing process; confirmation of test results; chain of custody issues; disciplinary procedures; drug use counseling; plus sample forms for applicant consent and drug screening medical information.

A few specific issues need to be raised concerning the complexity of writing policy on drug testing.

1. Some agencies (including the federal government) give applicants notice--ten days--before appearing to take a drug test. Job advertisements must note the waiting period as well. The DCJS model policy does not include a waiting period.
2. Some agencies' drug-testing policies do not require that samples be coded before sent to a testing laboratory, that is, coded to avoid labeling the sample with identifying information. The DCJS policy supports coded labeling on analogy with state HIV testing procedures.
3. The DCJS policy requires that confirmed positive results on tests be evaluated by a physician or other medical expert before the agency can discipline an officer.
4. Some agencies have mandated incident testing, that is, mandatory testing for drugs upon a serious vehicle accident or discharge of a firearm. This practice may present legal problems: agencies should consult legal advice before mandating such testing. The DCJS policy does not address the issue. Nevertheless, agencies that wish to word an order on incident testing might insert

the following wording as IV.C.3:

3. Employee testing in other circumstances

- a. In the interest of the department and for the protection of the individual officer from subsequent allegations of impaired performance, the department shall require a urinalysis as soon as possible after any incident in which the officer is involved concerning:
  - (1) the discharge of a firearm;
  - (2) a motor vehicle accident causing serious injury or death in which he/she is the driver, or
  - (3) a similar serious mishap.
5. Drug-testing plans must be reasonable. That fact that a threat to public safety by drug-taking officers justifies a testing program does not make the program reasonable. An unreasonable plan will be found unconstitutional.
6. Agencies might wish to add a section on emergency procedures for immediately relieving an officer from duty in case of drug impairment.
7. Agencies should carefully consider whether a drug-testing policy is even justified. Does the agency have evidence that a significant drug problem among officers exists? Has the agency tried alternatives to strict drug testing, such as creating employee assistance programs? Testing for substance abuse should occupy only a small percentage of an agency's substance abuse education and counseling program.
8. Section IV.G.2.e.1 requires a suspension without pay, but agencies may experience difficulties with officers who have sick leave available to cover the period of rehabilitation.

The following people and organizations deserve thanks for helping to develop this model order:

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U.S. Dept. of Health and Human Services

A. W. Tiedemann, Jr., Ph.D.  
Division of Consolidated Laboratories

<b>POLICE/SHERIFF'S DEPARTMENT</b>		<b>GENERAL ORDERS</b>	
<b>SUBJECT: DRUG TESTING</b>		<b>NUMBER: 2-35</b>	
<b>EFFECTIVE DATE: October 1993</b>		<b>REVIEW DATE:</b>	
<b>AMENDS/SUPERSEDES:</b>		<b>APPROVED:</b> <u>Chief of Police/Sheriff</u>	
<b>CALEA STANDARDS:</b>			

**NOTE:**

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

**INDEX WORDS:**

Alcohol abuse  
Drug testing  
Reasonable suspicion  
Searches; of employee workplaces  
Urinalysis

**I. POLICY:**

Some citizens as well as some law enforcement personnel use drugs, whether legally or illegally. The department, however, shall not tolerate employees' use of illegal drugs nor the abuse of legally and commercially available ones. In fact, courts have ruled that the threat to public safety by police officers who use drug or abuse alcohol is a legitimate reason for mandating drug/alcohol testing.

Drug abuse is a medical condition: employees should seek medical assistance if they perceive a problem. Similarly, supervisors should know the working habits of their subordinates in order to observe anomalies in behavior that might flag substance abuse. Supervisors bear a responsibility to their subordinates to instruct, guide, and counsel them, and to the department to ensure high standards of performance.

Whenever possible, the department will assist employees to get help. The primary method for ensuring a drug-free workplace shall be the proper performance of duties under proper supervision. As one court has remarked, the department "do[es] not have to rely on across-the-board drug tests . . . Information concerning drug problems can be acquired by physical observation of police officers, citizens' complaints, tips from other law enforcement agencies and other means" [Penny v. Kennedy, 1 IER Cases 1047, 1048 (E.D. Tenn. 11/11860)].

The department, however, must maintain a professional image before the community and shall relieve from law enforcement duties--temporarily or permanently--those afflicted by substance abuse. Law enforcement officers who are drug abusers threaten the community. Illegal drug use breaks the law: employees who experiment with or routinely use illegal drugs have no place in law enforcement. To maintain the department's credibility and reputation, applicants shall undergo drug testing as part of a pre-employment physical examination. Further, routine scheduled physical examinations shall include drug testing. In cases of suspected or confirmed drug use, the chief shall order an internal investigation. Most important, employees about whom the department has formulated a well-grounded, documented suspicion of illegal drug use (or abuse of legally available ones) shall submit to drug testing. The department shall not conduct random testing upon reassignment or promotion as such an action creates an atmosphere of suspicion, poor morale, and decreased productivity.

## **II. PURPOSE:**

The purpose of this general order is to offer guidelines to ensure an employee's drug-free status as a condition of employment, to ensure drug alcohol tests are ordered for employees based on reasonable suspicion, and to provide procedures for drug/alcohol testing and the handling of cases of suspected drug use within the department. (The term "employees" in this order means sworn personnel only, or applicants for sworn positions).

## **III. DEFINITIONS:**

- A. Drug use/drug abuse: illegally-used controlled substances (as defined by state and federal laws, encompassing the use of narcotic and non-narcotic drugs, and prescription drugs used abusively), and non-controlled (over-the-counter) substances if they impair one's work performance.

- B. Drug test: a urinalysis test to detect drugs, administered under approved medical conditions and procedures.
- C. Reasonable suspicion: a ground for belief linked to articulable, objective facts or circumstances to warrant submitting an employee to testing. Reasonable suspicion must be documented before ordering testing.

#### IV. PROCEDURES:

##### A. General guidelines

1. Department employees shall not take any controlled substances unless prescribed by a person licensed to practice medicine.
  - a. Employees who are required to take any drugs (prescriptions or over-the-counter) which may impair job performance must disclose this information to their immediate supervisor.
  - b. Any statutorily defined illegal use of drugs by an employee, whether on or off duty, is prohibited.
  - c. Employees shall report evidence of suspected drug use by another employee to their supervisors.
2. All property belonging to the department may be inspected under certain circumstances. Law enforcement personnel have a reasonable expectation of privacy in the workplace (pertaining to desks, lockers, offices).
  - a. If the department develops a reasonable suspicion that a search of an employee's workplace (or locker) will reveal evidence of work-related misconduct, the department may conduct a search related in scope to the reasonable suspicion.
  - b. Workplace searches may occur:
    - (1) to secure agency property;
    - (2) to retrieve a file or agency documents;
    - (3) to seize evidence of work-related misconduct or poor performance;



(4) or to gather evidence of criminal misconduct. In all cases, the searches must be reasonable. Any searches undertaken for reasons (3) and (4) require a reasonable suspicion of misconduct.

c. Workplace searches, conducted under reasonable suspicion, will take place upon reasonable notice to the employee who may be present at the time of the search.

3. Failure to comply with this general order may be grounds for discipline.

B. Legal issues

1. Fourth Amendment:

According to the courts, the threat to public safety posed by police employees who are drug users or alcohol abusers is a legitimate factor in determining the reasonableness of a urinalysis, a search of urine. Therefore, a urinalysis is not prohibited by the Fourth Amendment to the Constitution. In fact, at least seven significant department interests justify a drug testing program. Note that these factors do not completely outweigh employees' Fourth Amendment rights. A reasonable suspicion to require drug testing, however, is based on these factors:

- a. public safety;
- b. public trust and integrity;
- c. potential for corruption;
- d. presentation of credible testimony;
- e. co-worker morale and safety;
- f. loss of productivity;
- g. civil liability (negligent hiring and retention).

2. Fourteenth Amendment:

The department observes the due process rights of employees as guaranteed by the Fourteenth Amendment to the Constitution in the drug/alcohol testing program. The department uses adequate procedural safeguards consistent with the Law Enforcement Officers' Procedural Guarantees (Virginia Code 2.1-116.1 (Chapter 10.1)) to include:

- a. employee notification;

- b. reliable tests;
- c. chain of custody of specimen;
- d. confidentiality of test results;
- e. right to appeal the findings.

(1) Note that probationary employees maintain no Fourth Amendment property rights to employment. [NOTE: Agencies must stipulate under terms of employment that probationary employees may be dismissed any time without cause in order for (1) to be valid.]

3. Federal Rehabilitation Act: Under this statute, drug abuse is considered a handicap but employees are protected only if the current use of drugs/alcohol does not impair job performance. It does not include any person whose drug use "would constitute a threat to the property or safety of others" [Section 706 (7)(B)]. Drug abusers who are neither rehabilitated nor in treatment are not handicapped persons within the meaning of this act.

C. When to require drug test/urinalysis

1. Applicant testing before hiring

a. To further the objective of a drug-free workplace, applicants shall be tested routinely for drug and alcohol use as a part of their pre-employment physical exam. (See Attachment A.)

(1) Such drug testing shall only be required after a conditional offer of employment has been given.

(2) Since providing a urine sample for routine medical testing and screening is a normal part of a physical exam, no privacy interests are violated.

(3) The drug test/urinalysis shall be administered by the department physician at a medical site. An approved laboratory shall perform the analysis. See Section IV.E.

(4) The results of drug tests of applicants shall be kept confidential. Employees who breach confidentiality of testing

information shall be disciplined up to and perhaps including dismissal.

- b. Refusal to take the test or positive test results shall be cause for excluding an applicant from consideration. The applicant may re-apply after one year.
- c. If the applicant admits to prior involvement with drugs, the department shall ascertain the type and extent of drug use before making an employment decision.

2. Employee testing warranted by conduct

- a. When reasonable suspicion exists that an employee may be using drugs or abusing alcohol, and such suspicion has been documented, the chief of police may require the employee to undergo a urinalysis.
- b. Specific behaviors or deviations from expected performance that may justify ordering a urinalysis to include any of the following:
  - (1) frequent absences/tardiness;
  - (2) serious errors in judgment;
  - (3) numerous accidents both on and off duty;
  - (4) excessive force complaints;
  - (5) chronic missed deadlines;
  - (6) mood swings and unpredictable hostility;
  - (7) repeated instances of violations of conduct.

Any one of the above diminished capabilities may not alone justify testing. Supervisors must consider the employee's overall work performance.

- c. If another member of the department reports evidence of drug use/alcohol abuse or makes an allegation of suspected drug use to a supervisor, that shall constitute reasonable suspicion.

- (1) The supervisor shall obtain a written statement from the employee alleging drug use (or alcohol abuse) including all circumstances surrounding the complaint. Generally, the statement of another employee will constitute reasonable suspicion.
- (2) The supervisor shall then prepare a report to be submitted for an internal investigation.
- (3) The accused employee will be requested to read and sign the notification of allegations form found in the appendix to RR 1-9.
- (4) The supervisor, with the chief's permission, shall order the employee to undergo a urinalysis. He/she shall transport the employee to the department physician, if available, or to the nearest emergency medical treatment center. The employee may provide a blood test in lieu of a urinalysis.

D. Drug testing/urinalysis process

1. Urinalysis will be the primary method for the screening of drug use/alcohol abuse in employees.
  - a. The employee or applicant designated for a drug test must be positively identified by photograph with accompanying name and social security number before obtaining any sample.
  - b. The employee's supervisor shall notify the employee that drug screening through urinalysis will be required in accordance with the specifications in Section III. C. of this order.
  - c. Skilled, trained personnel shall supervise and conduct all tests.
  - d. Both applicants and employees shall be sampled at a medical site, preferably by the department physician, contract medical examiner, or medical technician. Specimen collection should not demean, embarrass, or cause physical discomfort to the person

tested.

- e. Before the test, the employee must list all medication currently taken under medical supervision. (See Attachment B.) This form is NOT retained in any police records, nor is it reviewed by police personnel. This form will be completed and submitted to the medical examiner reviewing the test results, and retained in medical files only.

## 2. Initial screening test

- a. The urine sample is first tested using a screening procedure. The department provides the EMIT (Enzyme Multiplied Immunoassay Technique) because of its accuracy and relative low cost.
- b. The EMIT can test for most drugs, including marijuana, cocaine, amphetamines, barbiturates and opiates.
- c. False positives are possible on the initial screening because of any number of human, technological, or procedural errors. The initial screening test alone is insufficient as a basis for personnel decisions. The screening only eliminates drug-free specimens.
- d. An initial positive report should not be considered positive; rather it should be classified as "confirmation pending."
- e. Notification of positive test results to the supervisor or internal affairs investigator or the person tested will be withheld until the confirmation test results are obtained.

## 3. Confirmation tests

- a. The confirmation procedure shall be technologically different from the initial screening test. It is a highly reliable, sophisticated technique.
- b. The GC/MS (Gas Chromatography/Mass Spectrometry) shall constitute the confirmation step. The test distinguishes between closely related compounds and its results are conclusive. Although the test is expensive, the department wishes to ensure

that the initial EMIT results are correct.

- c. In those cases where the GC/MS test confirms the presence of a drug or drugs in the urine sample, the testing laboratory shall notify the chief of police, who will notify both the internal affairs commander and the employee's supervisor, and the investigation shall continue. The sample shall be retained for six months to allow further testing in case of dispute. The internal affairs commander shall provide a copy of the positive confirmation test to the medical examiner who, upon consultation with the employee and upon reviewing the employee's medical history, will verify the confirmed test results.

4. Sample splitting

- a. As a safeguard for disputed results, the employee will have the option of submitting two samples. The urine samples must be taken at the same time and placed in two like specimen containers by the physician or medical technician. The physician or technician will write a code number on the sample, corresponding to an entry on a confidential list giving the appropriate employee/applicant's social security number, date and place specimen was taken, and will write his/her own initials on the label. The laboratory will only receive samples so coded.
- b. One sample will be submitted for drug screening. The other sample will be stored frozen at the department or the medical facility or the laboratory for six months. This second sample shall be accessible to the employee or his/her attorney if the person disputes the results or may be tested if the chain of custody is broken.

5. Chain of custody

- a. For the drug testing methods to be of value to the department and to be fair to the employee, chain of custody procedures and security measures shall be followed.
- b. When the department receives a positive urinalysis report, the evidence custodian shall maintain the urine specimen under

secured storage.

- c. All samples must be properly labeled with a code. The same holds true for samples retained in police custody: the evidence custodian will maintain a confidential list giving the codes and the corresponding personal information about employees. The confidential list will include employee's names, social security numbers, date and place specimens were taken, and name and title of person(s) responsible for specimen collection.
- d. Each step in the collecting and processing of the specimen shall be documented to establish procedural integrity and the chain of custody (evidence). The evidence record in the appendix to GO 2-16 shall be used for the purpose.
- e. All persons who handle, transport, and conduct tests of samples shall sign for their receipt and release.
- f. The department shall make every effort to minimize the number of persons handling specimens.
- g. Collection site personnel shall arrange to ship the specimens to the drug testing laboratory. Collection site personnel shall ensure that the chain of custody documentation is attached to each container sealed for shipment to the drug testing laboratory.
- h. Access to information about test results shall be given only to persons with a legitimate need to know, per order of the chief of police. Employee or applicant identity shall be protected. No forms forwarded to the laboratory will contain the test subject's name.
- i. Employees/applicants who are tested for drugs or alcohol abuse with negative results shall receive a letter stating that no illegal drugs nor excessive quantity of alcohol were found. A copy of the letter shall be placed in the employee's personnel file, if the employee so elects.

E. Selecting a laboratory

1. The testing laboratory must be certified by the National Institute for Drug Abuse (NIDA), or otherwise approved by the Department of Health and Human Services. The sample collection facility and the laboratory must meet chain-of-custody procedures established by federal regulations.
2. As a periodic check on laboratory performance, a random number of samples will be split and the two portions sent to the laboratory with unique and different identification numbers so that the laboratory is not aware that the samples are duplicates. The police department, as part of an on-going quality assurance program, will ensure that at least 20% of all samples tested by the laboratory are blind quality control samples.

F. Drug test results

1. The laboratory will notify the chief of police immediately upon completion of analysis of the results, whether positive or negative.
2. The lab shall report as positive only those samples which have been confirmed to be positive for the presence of drugs.
3. All persons tested shall be notified by the chief of police as soon after notification by the lab as possible. The department shall provide a copy of the lab report to the person tested.
4. A medical examiner, a licensed physician, will review all test results. In the case of positive results, the physician will meet with the employee, discuss the results of the test, and review the employee's biomedical history before verifying a positive test result. The chief of police will not impose any discipline until receiving verification by the medical examiner.

G. Disciplinary action

1. Applicant testing for sworn positions
  - a. Refusal to take the drug screening test at the pre-employment physical or having positive confirmed test results shall disqualify an applicant in the selection process.



- (1) Applicants may not appeal or grieve the hiring process. If disqualification is based solely on a positive drug test, the chief of police may permit an applicant to have further laboratory analysis of specimen performed. If a split sample was taken, the second specimen may be tested at the applicant's expense.
  - (2) After one year, the applicant may re-apply for employment with evidence of negative retest and/or rehabilitation. Applicants shall undergo department drug testing.
- b. Applicants admitting to prior involvement with drugs shall be treated case by case. The department may consider the nature of drug use and the intensity of drug involvement.

2. Employees

- a. Every employee has due process rights under the department's disciplinary and grievance procedures. (See G.O. 1.7)
- b. In the case of an employee's confirmed positive drug test results, the department shall pursue an internal investigation. (See G.O. 1-9)
- c. Based on the internal investigation, disciplinary action may result.
- d. The disciplinary actions available for drug violations are extended suspension with rehabilitation or termination.
- e. The chief of police may suspend with rehabilitation employees who abuse legally obtained prescription or over-the-counter drugs, or who come forward before being tested to seek help for their drug problems or who have mitigating factors to explain the temporary use of an illegal drug. This last consideration--the temporary use of an illegal drug--may subject the employee to a criminal prosecution. Any decision about illegal drug use not leading to prosecution will only be made in consultation with the department legal advisor or Commonwealth's Attorney.

- (1) This alternative applies to the first offense only. Suspension shall be without pay and the department shall recommend community agencies for private rehabilitation.
  - (2) To return to duty, the employee must take the following steps:
    - (a) Complete a physical exam after treatment to determine fitness for duty.
    - (b) Authorize the release of the treatment facility's case files to the department for the purpose of further evaluating the employee's fitness for duty.
    - (c) Submit to periodic, unannounced drug screening tests for one year after return to duty.
  - (3) Treatment records and reason for suspension shall remain confidential.
- f. The chief of police shall terminate employment of any member who has a documented history of drug use, who uses drugs with no mitigating circumstances, and for a repeated offense after a suspension for drug use.
- (1) After one year, an employee may re-apply for employment with the department with evidence of a negative drug test and/or rehabilitation. [See e.(2)]
- g. An employee may request a hearing from the chief of police if he/she wants to dispute the department decision. If a split sample was taken, the second specimen may be tested at the employee's expense.

#### H. Drug abuse training

1. Drug abuse and drug testing training shall be developed and implemented for all members of the department. Training may be in the form of lectures, films, videos, or printed materials. The training officer shall be responsible for such training which includes:

- a. Physiological and psychological aspects of addiction and specific information about major drugs of abuse, such as marijuana and cocaine, and abuse of alcohol;
  - b. How to detect deteriorating work performance that may be related to drug or alcohol use;
  - c. Special issues surrounding drug abuse in the workplace--testing, drug trafficking, etc.;
  - d. Prevention and education strategies;
  - e. Stress management.
2. The chief shall ensure special training for the command staff to include:
    - a. Orientation about drug and alcohol abuse programs in other workplaces;
    - b. Statistics and evaluations of existing programs;
    - c. National drug/alcohol use and abuse information;
    - d. Evaluation strategies for the department;
    - e. How to encourage an atmosphere in which drug and alcohol use/abuse is not tolerated;
    - f. Prevention planning ideas.
3. The department shall train supervisors, both in general drug and alcohol abuse information, as well as about their functions in the referral process, to include:
    - a. Observing and documenting unsatisfactory job performance;
    - b. Notifying employees when their job performance is unacceptable;
    - c. Referral of employee for drug testing and rehabilitative resources;
    - d. Encouraging an atmosphere in which drug use and alcohol abuse are not tolerated.

I. Resources for rehabilitation and information

1. Within the department (describe):

- a. Existing psychological services;
- b. Health insurance benefits for drug abuse treatment;
- c. Trained supervisors;
- d. Existing employee assistance program;
- e. Existing peer assistance program.

2. Within the community (describe):

- a. Inpatient chemical dependency programs (independent or associated with hospitals or medical centers);
- b. Outpatient treatment centers;
- c. Halfway houses and other residential treatment programs;
- d. Volunteer and self-help organizations;
- e. City or county-funded drug abuse prevention and education centers;
- f. Local community mental health centers.

3. State and national services

- a. Virginia Department of Mental Health/Mental Retardation

Office of Substance Abuse Services  
109 Governor Street  
Post Office Box 3797  
Richmond, VA 23214  
804-786-3906

- b. Data Center and Clearinghouse for Drugs and Crime

1600 Research Boulevard  
Rockville, MD 20850  
1-800-666-3332

- c. National Institute on Drug Abuse, Drug-Free

Workplace Helpline  
1-800-843-4971

ATTACHMENT A TO GO 2-35  
DRUG SCREENING THROUGH URINALYSIS  
APPLICANT CONSENT

I, \_\_\_\_\_, understand that as part of the pre-employment process, the [your department] will conduct a comprehensive background investigation in an effort to determine my suitability to fill the position for which I have applied. I further understand that as a part of the pre-employment process, I will be required to submit to and perform certain medical and physical examinations. In accordance with the efforts of the [your department] to select only those most qualified for law enforcement, I do hereby consent to the sampling and submission for testing of my urine for the purpose of drug or alcohol screening. I understand that a negative result is a condition of employment. A negative result is a determination by a medical authority that drugs, alcohol, or other similar substances producing drug-like effects are not detectable in my metabolic systems, or are below legal limits.

I also understand that refusing to supply the required samples or producing a positively confirmed test result for the presence of prohibited drugs (illegal, controlled, or abused prescription drugs, as defined by General Order 2-35) will result in the rejection of my application for employment. I understand that a confirmed positive test result indicating the presence of drugs (as determined by medical authority) will bar me from securing future law enforcement employment for a period of one year. I understand that after this one year period, a positive test result may be considered in evaluating my fitness for future law enforcement employment.

I understand that the results of the urinalysis will be provided to me as soon as possible after receipt by the [your department] Police Department.

I hereby acknowledge receipt of a copy of the methods and procedures for drug screening applicants for sworn law enforcement positions.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTACHMENT B TO GO 2-35

DRUG SCREENING

MEDICATION INFORMATION

In order to ensure the accuracy of established urine screening and confirmation procedures, I am providing the following information:

- A. During the past 30 days I have taken the following prescription medications:

NAME OF MEDICATION	PRESCRIBING PHYSICIAN	DATE	LAST TAKEN
--------------------	-----------------------	------	------------

1.

2.

3.

If you do not know the exact name of medication, indicate illnesses for which medication was prescribed in space designed for name of medication.

- B. During the past 30 days, I have taken the following non-prescription medications (cough medicine, cold tablets, aspirin, etc.).

NON-PRESCRIPTION MEDICATION	DATE	LAST TAKEN
-----------------------------	------	------------

1.

2.

3.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

<b>POLICE/SHERIFF'S DEPARTMENT</b>		<b>GENERAL ORDERS</b>	
<b>SUBJECT: ASSET FORFEITURES</b>		<b>NUMBER: 2-36</b>	
<b>EFFECTIVE DATE: October 1993</b>		<b>REVIEW DATE:</b>	
<b>AMENDS/SUPERSEDES:</b>		<b>APPROVED:</b> <u>Chief of Police/Sheriff</u>	
<b>CALEA STANDARDS:</b>			

**NOTE:**

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

**INDEX WORDS:**

Asset forfeiture  
Drug enforcement  
Narcotics

**I. POLICY:**

A recent constitutional amendment to state law permits law enforcement agencies to benefit directly from the seizures made in narcotics or drug investigations. Formerly, in order to receive financial assistance through seized assets, law enforcement agencies had to use the federal forfeiture process. We intend to aggressively enforce narcotics and dangerous drugs laws, and where our personnel make a substantial seizure of property according to state law, we will begin forfeiture proceedings. Whatever assets we recover through the forfeiture process, whether money or property, will be applied to legitimate enforcement needs, primarily to carry out other drug enforcement strategies. Under no circumstances will personnel select enforcement targets because of the expected financial gain accruing to the department: enforcement strategies are not dictated by profit.



## II. PURPOSE:

To outline the department's participation in asset forfeitures from drug enforcement cases, and to state responsibilities of the asset forfeiture coordinator.

## III. DEFINITIONS:

- A. Asset forfeiture coordinator (AFC): the officer designated by the chief/sheriff to be conversant in state forfeiture law (to wit, Virginia Code Chapter 22.1, particularly Sections 19.2-386.1 through .14), to identify assets in case records and implement legal process to appropriate these assets for department use. The AFC will also perform as liaison to the Forfeiture Asset Dispute Committee, Criminal Justice Research Board, to other state and federal agencies, and to the courts, as needed.
- B. Designated seizing agency: the agency or office which initiates the seizure, or which retains possession of the seized property. The designated seizing agency may be the agency chosen by mutual decision of the participating agencies.
- C. Assets: Includes both in-kind property and proceeds. In-kind property consists of whatever an agency can put to immediate use. Anything of value seized in association with a drug transaction is an asset for purposes of this order. Proceeds refer to whatever money is raised through sale of property of a kind not immediately useful.

## IV. PROCEDURES:

- A. Responsibilities of the asset forfeiture coordinator (AFC).
  - 1. Reviews all police reports to identify property subject to forfeiture.
  - 2. Ensures that all seizures for forfeitures are reported to the Department of Criminal Justice Service
  - 3. Reports to the assistant chief of police/chief deputy on all matters pertaining to forfeiture proceedings.
  - 4. Chooses and coordinates with vendors hired to

manage seized property.

5. Coordinates, where possible, with other agency representatives, as designated by the chief/sheriff, for "pre-seizure" planning meetings to evaluate target assets to ascertain ownership and the existence of liens or encumbrances.
  - a. The planning effort will make every reasonable effort to identify innocent lienholders to avoid inconveniencing them.

**If the agency wishes to participate in state forfeiture procedures, the AFC shall:**

6. Coordinate with the commonwealth's attorney to enter a default judgment against persons who fail to respond to the court within 30 days to defend against seizure of their property.
7. Apply to DCJS for return of in-kind property for legitimate law enforcement use.
8. Coordinate with the commonwealth's attorney, or other officials as necessary to obtain a commercial sale of property in appropriate cases.
9. Coordinate with other agencies participating in a regional drug enforcement task force to agree on which agency will become the designated seizing agency for purposes of forfeiture proceedings. Negotiate with participating law enforcement agencies for a suitable division of assets.
  - a. Where agencies seize property pursuant to membership in a regional task force, the AFC will forward to DCJS a copy of the interagency agreement or contract that authorizes the task force.
  - b. The AFC will assist inter-jurisdictional coordination to ensure that localities maintain separate forfeitures accounts and auditing procedures. Similarly, the AFC will track cases in which the department is involved but is not the primary seizing agency.
10. Ensure that the locality's certification (that the proceeds will be used for law enforcement purposes only and will not supplant existing resources) is submitted to DCJS, and renewed annually by the

county/city manager.

11. Ensure that money seized is forwarded to DCJS in check form. Coordinate with the locality finance officer, as necessary.

*[NOTE: If the finance officer is a member of the law enforcement agency, the following responsibilities should be included in the agency order. If the finance officer serves the town or county, then the following responsibilities should be included in a job description or other town/county document.]*

B. The agency finance officer shall:

1. Prepare checks to DCJS as soon as possible upon receipt by the agency of forfeited funds from drug transactions.
2. Prepare and maintain records on all property accruing to the agency through drug forfeitures and retain these records for a minimum of three years.
3. Annually conduct an audit of all property seized attendant to drug transactions, including an audit of all property subjected to forfeiture proceedings. Forward a copy of all audits to DCJS upon request.
4. Compile and retain a file of all receipts for cash or property obtained and sold or otherwise disposed of through asset forfeitures procedures.

C. If the agency elects to pursue forfeiture through federal proceedings, then the AFC will not notify DCJS.

<b>POLICE/SHERIFF'S DEPARTMENT</b>		<b>GENERAL ORDERS</b>	
<b>SUBJECT:MCGRUFF HOUSE PROGRAM</b>		<b>NUMBER: 2-37</b>	
<b>EFFECTIVE DATE: October 1993</b>		<b>REVIEW DATE:</b>	
<b>AMENDS/SUPERSEDES:</b>		<b>APPROVED:</b> <u>Chief of Police/Sheriff</u>	
<b>CALEA STANDARDS:</b>			

**NOTE:**

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

**INDEX WORDS:**

Crime prevention  
McGruff House

**I. POLICY:**

The McGruff House Program is a residentially-based program where a child in immediate emotional or physical danger or who is in immediate fear of abuse or neglect may seek temporary refuge for assistance. The policy of the department is to promote the McGruff House Program using department employees to develop and implement procedures, monitor program progress, and carry out activities to insure the safety of children.

**II. PURPOSE:**

The purpose of this order is to set forth procedures for the delivery of the McGruff House Program.

### III. PROCEDURES:

A. The chief/sheriff shall designate a McGruff House Program officer to:

1. Assist the sheriff/chief of police in obtaining an agreement with the Virginia Department of Criminal Justice Services (DCJS) to sponsor the program by filing a letter of intent to participate.
2. Follow regulations promulgated by DCJS regarding program establishment and operations. DCJS administers the program and offers ongoing technical assistance to local law enforcement agencies which sponsor the program.
3. Develop internal policy guidelines which shall include at a minimum the following procedures: recruitment; participant background investigation; training; and monitoring and record keeping. These minimum requirements may be exceeded at the option of the department. All guidelines shall be developed in compliance with regulations promulgated by DCJS.
4. File the annual report required by DCJS by February 1st of each year.
5. Provide knowledgeable, instructive advice to the public concerning the program.
6. Provide block captains in Neighborhood Watch areas with the names and addresses of participating McGruff Houses.
7. Incorporate the GO 2-18 (crime prevention) into program activities.

B. Responsibilities of officers generally:

All sworn personnel shall:

1. Receive periodic training in the aims and goals of McGruff House, all appropriate department orders, and their responsibilities for assisting the program. Supervisors shall ensure that their subordinates are well acquainted with program principles and procedures.
2. Make referrals to the appropriate resource either within or outside the department in response to requests which exceed their knowledge or capability

to accommodate.

3. Report activities undertaken on the appropriate forms.

C. Program Regulations:

1. Persons interested in participating in the program must apply directly with the sponsoring law enforcement agency.
2. All persons over the age of 18 residing in a home wishing to be designated a McGruff House must pass a background investigation which is conducted by the sponsoring law enforcement agency. The investigation shall include criminal history records checks; child and domestic abuse complaints; a check of outstanding arrest warrants at the local, state, and federal level; and an on-site neighborhood check of no fewer than three households in the immediate area.
3. Requests to participate must be refused to any applying residence where any resident has been convicted of a felony, convicted of a narcotic drug law offense, or convicted of any domestic or child abuse related charges, or convicted of any charge involving an offense committed against a juvenile.
4. A McGruff House sign, issued by the National Crime Prevention Coalition and available from DCJS, is given to each designated McGruff House. This sign is the only sign authorized for use in the McGruff House Program, and each sign has a unique serial number. The sign is to be displayed at all times in a prominent location so that it can be seen from the most frequently traveled public area adjoining the property of the residence.
5. The participating residences must have a working telephone which can be used to make emergency or referral telephone calls.
6. Participants must have a valid homeowner's or renter's liability insurance policy in effect.
7. Participants provide the following assistance to children who call upon them for aid:
  - a. Telephone appropriate authorities for help.
  - b. Reassure and aid children who are frightened

or lost.

- c. Assist children who have medical emergencies by getting appropriate assistance.
  - d. Assist children who are in immediate fear of becoming victims of personal crimes or thefts, or who are in immediate fear of child abusers, gangs, or bullies.
  - e. Immediately report to the law enforcement agency details of all incidents where children request assistance.
  - f. Immediately report crimes and suspicious activities to law enforcement officials.
8. McGruff House Program participants are not to do any of the following for children requesting assistance:
- a. Personally provide first aid or administer medication, except in case of emergencies, and then only if qualified.
  - b. Act as an escort service or provide transportation.
  - c. Enforce laws.
  - d. Provide baby-sitting or child care services.
  - e. Provide food or beverages.

#### IV. MCGRUFF HOUSE PROGRAM ASSISTANCE

Assistance in promoting the McGruff House Program may be obtained from the following:

- A. Virginia Crime Prevention Center  
Department of Criminal Justice Services  
805 East Broad Street, 10th Floor  
Richmond, Virginia 23219  
(804) 786-4001
- B. National McGruff House Program  
1879 South Main Street, Suite 180  
Salt Lake City, Utah 84115  
(801) 486-8768