

December 8, 2004

Los Angeles Gay and Lesbian Police Advisory Task Force—Curriculum Addendum

## Supervisors and Managers

### **Section 8.0** “Cultural Awareness Training Guideline” for Supervisors

Learning Goal: The supervisor will understand the purpose of Guideline #2, “The law enforcement executive should consider the need for training supervisors in techniques of managing and supervising a diverse work force.”

- a. The workplace includes employees with different sexual orientation:  
 Managing diversity in the workplace requires an understanding on part of the supervisor that there are three interrelated aspects of human behavior—gender, sexual orientation, and gender roles. In all societies, specific gender roles are prescribed with associated behavioral patterns on the basis of the person’s biological sex. Biological females are expected to behave, dress, work and have interests in a manner appropriate for being a female. Likewise male roles exist for biological males. However, many people do not fit neatly into a societies’ gender role expectations. Each society has developed ways of dealing with people who do not conform to their gender roles. Some societies are very accepting and through religious practices, have created a reverence for diversity. Other societies, such as Western culture, have been less tolerant. For example, in Western culture, gay and lesbians do not fit the heterosexual definition of gender role appropriate for males and females respectively. Likewise, males who act like females, and females who act like males violate Western culture standards of appropriate behavior.

Not all law enforcement employees will meet the social expectations of their gender role. Managers in law enforcement environments need to be aware and understand that employee behavior not adhering to expected gender roles is unrelated to professional behavior. Police agencies will include employees who are gay and lesbian, effeminate males and masculine females, and that these differences are to be accepted.

- b. Employees open about their sexual orientation require understanding and sensitivity from their supervisors:  
 Heterosexual employees are almost always open about their sexual orientation. For the law enforcement manager, problems may arise when gay, lesbian and bisexual employee also become open—either by choice or by discovery—about their sexual orientation. Heterosexuality is the social norm in Western culture. Employees who do not adhere to heterosexuality may be subjected to adverse discrimination. The law enforcement manager needs to be accepting of gay, lesbian and bisexual employees and be sensitive that the work environment is safe and conducive to all employees.

## Section 9.0 Terms for Supervisors

Learning Goal: The supervisor will understand the definition of key terms and the legal basis for sexual orientation training.

- a. Terms as related to law enforcement shall include: (Art, I don't know what is wanted in this section.)
  1. Values—?
  2. Ethics—?
  3. Principles—?
  4. Culture—?
  
- b. The need for law enforcement agency policies concerning the guarantee of civil rights of gay, lesbian and bisexual individuals both in the agency and the community:
  1. National Status on Homosexuality—  
 The U.S. Constitution protects free speech and the right of dissent and sets as a goal the elimination of prejudice against many groups of people. Because the discriminations and protections afforded lesbian/gay/bisexual (LGB) people are inconsistent from state-to-state, gays and lesbians have used a multitude of methods to educate and change social structure.  
  
 Much of the case law dealing with homosexuality involves the municipal police force, U.S. intelligence agencies or the armed forces. It is in some of these cases that the courts have dealt with the issue as to whether homosexuality *per se* can be used as just cause to fire an employee or refuse to hire an applicant. In virtually all cases, the question as to whether sexual orientation enjoys constitutional protection is the major issue.  
  
 At the municipal police level, the courts have decided that openly gay personnel can be denied employment (*Childers v. Dallas Police*<sup>1</sup>, 1981; later overturned by Texas Supreme Court 2/5/92) because of three reasons: (1) the activities of the employee must reflect the community values and homosexuality is not a community value; (2) a homosexual must be discreet and being openly gay would impair the functioning of the governmental body; and, (3) the employee would sustain harassment from his/her fellow employees which would result in disharmony in the department. The third reason is of particular interest since it puts the burden of harassment onto the person being harassed, not the harasser—contrary to our cultural and legal defense of hate crimes.
  
  2. California Constitution—California decriminalized sodomy in 1975. In September of 1992, AB2601 was signed into law that included sexual orientation as a protected class for cases of employment discrimination. This allowed for the State Labor Commissioner, under Labor Code Section 1101 & 1102, to investigate claims of discrimination based on sexual

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<sup>1</sup> *Childer v. Dallas Police*, 513 F. Supp. 134 (N.D. Tex. 1981)

orientation against employers. Small businesses and religious organizations were exempted from the law.

3. California and Los Angeles City Laws—For city of Los Angeles, sexual orientation was included as a protected class through a 1979 City Ordinance #152,458, with regards to Employment (Sec. 49.72), Housing (Sec. 49.73), Business Establishments (Sec. 49.74), City Facilities and Services (Sec. 49.75), and Educational Institutions (Sec. 49.75). Also see, the Municipal Code, Chapter 4, Vol. 1, Sections 49.70.

- a. Hate Crimes—  
The Law: California Penal Code — Title 11.6, Section 422.6 “Civil Rights”

Subsection A: “No person shall, whether or not acting under color of law, by force or threat of force, willfully injure, intimidate, or interfere with, oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the constitution or laws of this state, or by the Constitution or laws of the United State, because of the other person’s race, color, religion, ancestry, national origin or sexual orientation.”

Subsection B: “No person shall, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise of any right or privilege . . .etc.”

Simply Put: “All persons in this state have the right to be free from violence or intimidation against their person or property, because of their race, color, religion, ancestry, national origin, sex, sexual orientation, political affiliation, age, disability, or position in a labor dispute.”

Punishment:

Any person convicted of violating California Penal Code, Section 422.6 may be punished by:

- a. Up to six months in jail.
- b. Up to \$5,000 in fines
- c. or both

Aggravated Circumstances: If the violator commits a Hate Crime and:

- a. The victim is PHYSICALLY INJURED or the violator has the present ABILITY to commit a violent (injurious) act;
- b. There is property damage in EXCESS of \$1,000;
- c. The criminal is a REPEAT OFFENDER who has been previously convicted of Hate Crimes

Then the crime becomes a FELONY and the punishment

DOUBLES:

- a. Up to one year in prison.
- b. up to \$10,000 in fines
- c. or both.

Examples of Hate Crimes:

Verbal Harassment (Name calling)  
 Graffiti (Swastikas on Temples)  
 Hate Mail (Threats, derogatory)  
 Vandalism (Window smash, etc.)  
 Bomb Threat (Targeting)  
 Arson (Molotov cocktail, auto)  
 Assault and Battery (Up to murder)

Los Angeles Hate Crime Law

The goals of the Los Angeles hate crime ordinances included: tracking—gather and record hate crime incidence, evaluate—to use the data to analysis the problem and make recommendations, and educate—bring this information to the attention of the media and citizenry. In 1987, California made crimes based on sexual orientation a crime under Penal Code. Note: The City of Los Angeles Standard is higher fines than the state. Also, the Los Angeles City and District Attorney’s have issued opinions that verbal harassment is not filable since there is no physical evidence.

- b. Domestic Violence—Domestic Violence  
 Domestic violence is a serious problem and affects many women and men. Laws have been enacted that make it mandatory to arrest the aggressor that has caused injury on the victim. However, the law pertains only to male/female relationships [*Spousal Abuse 273.5 P.C.*—applies to men and women living together, married, recently separated, or have a child together.]

In gay or lesbian domestic violence situations, the dynamics of violence and the emotional responses are virtually identical to heterosexual spousal abuse. Because the spousal abuse laws do not cover gays or lesbians, mandatory arrests is not required. Instead, two laws are used to protect the victim. If a threat of violence is made against another person, a written report can be taken [*Domestic Violence 13700 P.C.*—applies to cohabitants or former cohabitants, not gender specified and no romantic relationship required. This is not a crime report, only informational]. If actual battery occurs, then a private person’s arrest can be made [*Battery 242 (e) P.C.*— applies to people who live or have lived together, previously married or dating, or has had an engagement relationship, and not gender specified]. When there is “serious bodily injury” or a weapon was used, it is a felony and does not require a private person’s arrest.

## Section 10.0 Managing Organizational Diversity

Learning Goal: The supervisor will understand the inclusion of gays, lesbians, and bisexuals within the cultural diversity policy of their agency.

- a. Monitoring subordinate's professional behavior as it relates to gay, lesbian, and bisexual issues relative to providing police services to the community is a responsibility of the supervisor:
  1. It is the supervisor's responsibility to ensure that appropriate police services are provided during common police contacts with the gay, lesbian and bisexual community.
  2. It is the supervisor's responsibility to ensure that hate crime statutes are correctly applied.
  3. It is the supervisor's responsibility to ensure that adequate documentation for these activities (a & b) for appropriate follow-up with employees.
- b. Monitoring subordinate's professional behavior as it relates to gay, lesbian, and bisexual agency employees is a responsibility of the supervisor:

This is the area of Misconduct. —

“The reporting of misconduct and prevention of the escalation of misconduct are areas that demand an officer to exercise courage, integrity, and decisiveness. Department Manual Section 3/815.05 requires that when an employee who is not a supervisor becomes aware of possible misconduct by another member of this Department, the employee shall immediately notify a sworn supervisor. Furthermore, an employee who observes serious misconduct shall take appropriate action to cause the misconduct does not relieve the other officers present from this obligation.

An officer's obligation to report and prevent misconduct begins the moment the officer is sworn in as a member of the Los Angeles Police Department. Experience, rank, or tenure are not factors in knowing the difference between right and wrong, and they do not provide an excuse for failing to take appropriate action. Although supervisors are responsible for investigating allegations of misconduct, all Department employees are responsible for preventing and reporting misconduct.”<sup>2</sup>

1. Identify sexually offensive language and behavior in the workplace.
2. Provide documentation of incidents contrary to agency police for appropriate follow-up with employees.
3. Providing support/referrals to gay, lesbian and bisexual officers as needed.
4. Understand the potential difficulties and concerns of gay, lesbian, and bisexual employees in revealing their personal sexual orientation.

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<sup>2</sup> Daryl F. Gates, “Police Offices’ Duty To Report Misconduct,” *Memorandum No. 2*, April 17, 1991

To effect these four steps, the following Disciplinary Procedures are to be used:

Supervisors:

A supervisor who becomes aware of an alleged act of misconduct shall (§ 815.10):

1. Take appropriate action to prevent aggravation of the incident.
2. Prepare a Personnel Complaint, Form 1.81, without unnecessary delay.
3. Conduct a complete preliminary investigation at the time of the initial interview.
4. Immediately forward the original Form 1.81 to the concerned employee's commanding officer, who shall review the Form 1.81 and promptly forward it to Internal Affairs Division.
5. When immediate action is necessary or the alleged misconduct is such that it may subject the Department to severe criticism or liability, ensure that the following notifications are made without delay;
  - a. The concerned employee's watch commander, or OIC, shall notify the employee's commanding officer.
  - b. Internal Affairs Division.

Watch Command:

A watch commander who becomes aware of an alleged act of misconduct shall (§815.15):

1. Ensure that a Personnel Complaint, Form 1.81, is prepared without unnecessary delay (3/810.20).
2. When the personnel complaint has been prepared, cause it to be forwarded to the commanding officer of the concerned employee without delay.
3. Cause an investigation as necessary to be conducted.
4. Notify the commanding officer if the misconduct is such that immediate action by the commanding officer is necessary.
5. Notify the Watch Commander, Detective Headquarters Division, if the misconduct is such that immediate action by the concerned commanding officer is necessary and the commanding officer is not available.

The primary responsibility for investigating allegation of misconduct shall rest with the concerned employee's commanding officer (§815.20). If the commanding Officer wishes Internal Affairs Division to conduct the investigation, the Commanding Officers, Internal Affairs Division, shall be contacted and provided

with the reasons for the request. The involved employee's commanding officer shall notify the employee every 30 days of the status of the investigation.

Investigation of personnel complaint, including the recommendations and conclusions of the commanding officer, the accused employee's review when applicable, and review through channels, shall be complete and the report submitted to the Commanding Officer, Internal Affairs, within 30 days after the date the complaint was initiated. (§820.01)

When an administrative interrogation focuses on or involves possible criminal misconduct by an employee, the employee shall be advised of his/her Miranda rights before questioning begins. If the employee waives his/her Miranda rights, no further admonition is necessary. (§820.07)