



Addressing Sexual Offenses and Misconduct by Law Enforcement:

EXECUTIVE GUIDE



Table of Contents

Introduction	1
How To Use This Guide	1
Background	2
Overview	2
The Reality Facing Law Enforcement	2
Definitions	3
The Culture of Law Enforcement	4
Leadership Actions	5
Considering A Policy	5
Hiring	7
Training	8
Evaluations and Early Intervention Systems ..	9
Incidents and Investigations	10
Reports or Complaints	10
The Investigation	11
Dispositions	12
Victims	13
Collaboration	14
Criminal Justice System Collaboration	14
Community Collaboration	15
Conclusion	15

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“It is imperative to the protection of citizens’ civil rights and the trust communities place in law enforcement that policies be adopted as part of a clear statement that sexual misconduct will not be tolerated.”

—Chief David Nye, Fredericksburg Police Department, VA

Introduction

The problem of sexual misconduct by officers warrants the full attention of law enforcement leadership. It represents a grave abuse of authority and a violation of the civil rights of those victimized.* Law enforcement agencies and executives have a duty to prevent sexual victimization, to ensure it is not perpetrated by their officers, and to take every step possible to ensure the safety and dignity of everyone in the community.

When an incident of sexual misconduct involving a law enforcement officer is reported, it presents one of the most difficult challenges a law enforcement executive can face. Therefore, it is imperative that executives prepare through agency mission, policy, and training to proactively address and prevent incidents. Leaders must demonstrate to their officers and their community a consistent, focused effort to identify and eliminate misconduct through the institutionalization of a zero tolerance position.

Sexual misconduct within an agency may be indicative of a need for systemic and cultural changes. Creating and implementing a policy are key steps to ensure an agency is prepared to respond to allegations, reinforce officer accountability, and ultimately prevent abuses of power.

Accountability of Law Enforcement: Under the ‘Color of Law’

* According to 18 U.S.C. § 241, it is unlawful for two or more persons to conspire to injure, oppress, threaten or intimidate another person in the free exercise of any right or privilege provided to another by the Constitution or laws of the United States. Similarly, 18 U.S.C. § 242 makes it a crime for a person who is acting under the color of law to willfully deprive another person of any right or privilege provided to another by the Constitution or laws of the United States. Under § 242, acts performed under the “color of law” include those conducted by federal, state, and local law enforcement officials within their lawful authority and any act conducted while the official is pretending to act in accordance with his or her official duties. The types of misconduct covered by these laws include: excessive force, sexual assault, intentional false arrest, and the intentional fabrication of evidence resulting in a loss of liberty to another. Enforcement of these provisions does not require that any racial, religious, or other discriminatory motive exists.

How to Use this Guide

This guide has been created to promote an understanding of the complexities of sexual offense and misconduct cases involving officers and to encourage the proactive adoption of policy and prevention efforts within law enforcement agencies.

Within this guide, references to misconduct are intended to encompass criminal offenses as well as non-criminal sexual conduct that is inappropriate, unprofessional, and damaging to the public confidence in the department.

This guide’s reference to officers is intended as an inclusive term for all sworn agency employees. Departments are encouraged to apply these strategies to all employees, civilian and sworn, as appropriate.

Background

Recurring accusations of sexual offenses implicating law enforcement officers were noted with concern by the Office on Violence Against Women of the U.S. Department of Justice which funded the IACP to examine the problem of sexual offenses and misconduct and to develop resources to assist law enforcement leaders in investigating and preventing incidents.

IACP's work in the 1990's to address domestic violence committed by law enforcement officers uniquely situated the Association to explore this serious problem and issue recommendations to the field. In 2007 the IACP hosted a roundtable discussion during the Association's 114th Annual Conference in New Orleans to learn from department leaders about situations they confronted and the resulting problems. Over seventy executives chose to attend this moderated discussion that was closed to the media. The range of concerns and incidents many had faced in their own agencies made it clear that sexual offenses and sexual misconduct committed while officers were on or off duty necessitated focused attention and a proactive response.

As a leadership organization with a history of addressing difficult issues in law enforcement including civil rights, racial profiling, immigration, and the use of force, the IACP took on the work of addressing sexual offenses and sexual misconduct committed by officers with an intent to develop tools to assist the profession and prevent abuses of power. Building from a variety of tools created to address the crime of sexual assault including Sexual Assault Investigative Guidelines, a Model Policy on Sexual Assault, and a roll call training video on preparing sexual assault cases for effective prosecution, the IACP assembled a multidisciplinary working group to guide efforts to examine sexual offenses committed by law enforcement officers. Through a process of study and discussion, the working group drafted this guide to assist executives. Following outside review by victim advocacy and criminal justice professionals, including some law enforcement leaders who attended a 2007 roundtable discussion on this matter and others who are alumni of the IACP's National Law Enforcement Leadership Institute on Violence Against Women, recommendations were explored and this guide finalized.

Overview

The Reality Facing Law Enforcement

While the vast majority of law enforcement personnel perform honorable and conscientious work on a daily basis, the reputation of their respected profession is tarnished by just one incident of sexual misconduct.

Cases of sexual misconduct committed by law enforcement grab the attention of the public and media because such offenses are particularly egregious violations of trust and authority. Situations where officers engage in sexual misconduct and victimize those they are sworn to protect and serve amount to civil rights violations. Reported and investigated cases of sexual misconduct by officers appear all too frequently in the news. Regardless of the rate of occurrence, the problem is real.

Headlines

The following sample of 2009 and 2010 cases in the news highlights the variety of ways sexual misconduct by law enforcement can manifest itself.

- After a sheriff from an agency in a great plains state was sentenced to 79 years in prison for sexually abusing numerous female inmates and drug court defendants, the municipality was found liable for \$10 million in damages.
- A police chief and assistant chief from a small department in the midwest were each sentenced to 25 years in prison for raping a woman in a bar after hours while off duty. The convictions, which

were supported by evidence including admissions, require them to serve at least 14 years before being eligible for parole, and they will be on the state sex offender registry for the rest of their lives.

- Following an investigation by the FBI, an officer with a west coast agency received a nine year federal prison sentence for sexually assaulting a motorist and violating her civil rights. The officer admitted in court that he took the victim in his patrol car to an isolated parking lot away from the traffic stop and assaulted her while armed and in his full police uniform. The victim left her job after the officer twice went to her workplace to warn her he was watching her.
- A police officer from an agency in the west received one year in jail for fondling a woman he had in custody and was transporting to a hospital for a psychiatric evaluation. The department had previously received a complaint that this officer made sexual comments to a woman during a traffic stop.
- A major city police department in the eastern United States settled a lawsuit alleging that an off-duty officer who was in uniform working security at a nightclub lifted a woman's skirt and "offensively touched" and assaulted her while escorting her from the club.
- A small western department suspended an officer for inappropriate conduct after he sent text messages and a picture of himself to a rape victim. Prior to being suspended, he had been assigned to investigate sex crimes and was demoted for having an intimate relationship with a victim.

This list of cases is troubling and indicates that this problem can and does occur in every section of the country.

Definitions

Sexual misconduct by law enforcement is defined as any behavior by an officer that takes advantage of the officer's position in law enforcement to misuse authority and power (including force) in order to commit a sexual act, initiate sexual contact with another person, or respond to a perceived sexually motivated cue (from a subtle suggestion to an overt action) from another person. It also includes any communication or behavior by an officer that would likely be construed as lewd, lascivious, inappropriate, or conduct unbecoming an officer and violates general principles of acceptable conduct common to law enforcement.¹

The limited research to date has focused on criminal sexual misconduct committed by officers while on duty. However, in recent years concern has extended to additional forms of sexual misconduct that include adult consensual sexual contact while on duty, voyeuristic behavior, and non-sexual contacts (e.g., unnecessary call backs to crime victims and witnesses).

The various forms of sexual misconduct by law enforcement, some of which are criminal acts, may be directed at colleagues, citizens, detainees, juveniles, and crime victims or witnesses.² Forms may include, but are not limited to, the following:

1. sexual contact by force (e.g., sexual assault, rape);
2. sexual shakedowns (e.g., extorting sexual favors in exchange for not ticketing or arresting a citizen);

¹ This definition is adapted from one developed by Timothy M. Maher, professor of criminology and criminal justice at the University of Missouri at St. Louis.

² In 1994, researcher Allen Sapp developed seven individual categories of police sexual offenses (Sapp, Allen, D., "Sexual Misconduct by Police Officers," *Police Deviance*, Cincinnati, OH: Anderson Publishing, 1994), and Timothy Maher added an eighth based on his research. (Maher, Timothy M., "Police Sexual Misconduct," *Contemporary Policing: Controversies, Challenges and Solutions*, Los Angeles, CA, Roxbury Publishing Company, 2004, pp. 327-338).

"There are hundreds of thousands of police officers doing a wonderful job out there, and to protect them, we need to respond aggressively when officers violate the community's trust."

**— Chief Bernadette DiPino,
Ocean City Police Department, MD**

3. gratuitous physical contact with suspects (e.g., inappropriate or unnecessary searches, frisks or pat-downs);
4. officer-initiated sexual contacts while on duty;
5. sexual harassment of colleagues/co-workers;
6. engaging in citizen-initiated sexual contact while on duty;
7. sexual behavior while on duty (e.g., masturbation, viewing and/or distributing pornographic images, sexting);
8. voyeuristic actions that are sexually motivated (e.g., looking in windows of residences for sexually motivated reasons);
9. unnecessary contacts/actions taken by officers for personally and/or sexually motivated reasons (e.g., unwarranted call backs to crime victims, making a traffic stop to get a closer look at the driver for non-professional reasons); and
10. inappropriate and unauthorized use of department resources and/or information systems for other than legitimate law enforcement purposes.

Further complicating a full understanding of the scope of the problem is due in part to the reluctance of victims to report to authorities. In addition to experiencing the trauma of the violation, victims struggle with feelings of humiliation and fear retaliation or not being believed. Another reason it is difficult to gauge the extent of the problem is because accused officers will resign, expecting to avoid a complete administrative investigation. These officers might then be hired by another agency where they may continue to commit offenses against colleagues and/or citizens. Therefore, it is imperative that a complete investigation is carried out whether or not the accused officer resigns.

Putting the scope of the problem aside, it is certainly clear that sexual misconduct by officers requires the attention of law enforcement leaders. Law enforcement executives are responsible for establishing and maintaining a healthy culture within their agencies and need to recognize that elements of law enforcement culture can contribute to the proliferation of sexual misconduct and its subsequent minimization. This requires leaders to consistently look to identify and prevent even the most subtle forms of misconduct which left unchecked can encourage widespread abuses and adversely affect the law enforcement agency and profession. Through their own words and actions, leaders must embody the highest standard of professionalism for their officers.

The Culture of Law Enforcement

Within the policing profession some conditions of the job may inadvertently create opportunities for sexual misconduct. Law enforcement officers (1) have power and authority over others; (2) work independently; (3) sometimes function without direct supervision; (4) often work late into the night when their conduct is less in the public eye³; and (5) engage with vulnerable populations who lack power and are often perceived as less credible (e.g., juveniles, crime victims, undocumented people, and those with addictions and mental illness). Furthermore, some people are so impressed by and attracted to the authority the uniform and badge represent that they will seek to engage officers in sexual relations in order to have a vicarious connection to the power of the profession.⁴

“It is the agency executive’s responsibility to foster an environment in which ethical behavior is expected and each member of the department is held accountable for meeting those standards.”

**—Chief Russ Martin,
Delaware Police Department, OH**

³ Lettner, Kimberly S., “Developing Policies to Address Police Sexual Misconduct,” Richmond, VA, University of Richmond, 2004, pp. 12-13; and Maher, Timothy M., “Police Sexual Misconduct: Female Police Officers’ Views Regarding its Nature and Extent,” *Woman and Criminal Justice*, Vol. 20, Issue 3, 2010, pp. 263-282.

⁴ Discussion at IACP Focus Group, Alexandria, VA, March 15, 2010.

Within the profession, the existence of a law enforcement culture of allegiance and loyalty forms an important backdrop against which officers risk personal safety to protect and serve the public. While admirable in circumstances that are legitimate to effective policing, these principles may lead to the belief that fellow officers will protect or provide cover in questionable circumstances. This could result in situations where unprofessional and even illegal behavior is tolerated out of a misplaced sense of loyalty. Over the past decade, work by professional leadership organizations, including the IACP, with law enforcement officials on ethics, accountability, and peer-to-peer mentoring have done much to mitigate this potential.

Sexual misconduct within the ranks must be recognized so agencies can then take appropriate administrative and criminal actions to deter and prevent future incidents⁵, promote healthy environments and build community trust. Failure to identify misconduct and enforce accountability for even seemingly minor indiscretions may not only empower the officer, but may also encourage those who have knowledge of, or were witness to, the behavior to commit similar or more serious offenses. Tolerance at any level will invite more of the same conduct. Therefore, it is critical that law enforcement executives ensure that every reported incident of sexual misconduct is investigated thoroughly and all employees with knowledge of sexual offense(s) who fail to report it are held accountable.

Sexual Harassment in the Ranks

Historically law enforcement has been a male-dominated profession; today women comprise just 18% of state and local law enforcement (LEMAS, 2007). As a minority within the profession, women are sometimes subjected to sexually harassing behavior from colleagues that seems designed to challenge their right to work in law enforcement. Legal liability for sexual harassment in the workplace was established in the 1980's and, as a result, once an employer is informed about actions of an employee, they can be held accountable if they fail to stop such behavior or allow the creation of a hostile work environment. Agency leadership needs to be aware of subtle as well as overt aspects of internal agency culture directed at those in the minority, whether along the lines of gender, race, religion, sexual orientation, or nationality, that may negatively shape the job climate. The potential for these attitudes to spill over and affect the perception and treatment of members of the public should also be recognized and addressed. In addition to shaping the culture with their priorities, standards, and expectations, leaders need to proactively monitor the culture within their agencies and establish employee reporting mechanisms that provide protections from retaliation.

Leadership Actions

Considering a Policy

Any type of officer misconduct erodes trust in, and respect for, the profession. When a leader fails to ensure the adequate monitoring of officer actions or disregards complaints or concerns about officer conduct, the department in effect condones the misconduct and enables it to proliferate. It is the leader's responsibility to ensure that policies to address and prevent sexual offenses are implemented; that all employees regularly receive effective training (*see page 11*); and that roles, responsibilities, and professional standards are communicated clearly and reinforced consistently throughout the department.⁶ Through strong leadership and policies, agency employees at all levels can be held accountable for their actions.

While strong policies prohibiting sexual harassment are necessary, relying on existing sexual harassment policies to cover matters of sexual misconduct involving members of the public is

⁵ Maher, "Police Sexual Misconduct" pp. 327-338, citing Sapp.

⁶ Walker, Samuel and Dawn Irlbeck, "Driving While Female: A National Problem in Police Misconduct," Omaha, NE, University of Nebraska, 2002, p. 3

completely inadequate. Similarly, provisions covering conduct unbecoming an officer are generally insufficient, for example, to address the full range of predatory or stalking behaviors that can be precursors to assaults but may appear to be reasonable surveillance actions as part of an investigation.

Two reasons are commonly offered by executives as to why they would resist instituting a sexual misconduct policy or program. First, they report that there is no sexual misconduct problem in their agency. This may be an indicator of an undetected or denied problem. Leaders must be aware of the potential and willing to implement policy and procedures for monitoring and intervening proactively. Second, because policies are typically “incident driven,” they admit they are unlikely to develop a policy until one is absolutely necessary.⁷ To merely address issues and behaviors after they arise is an ineffective operating model and a lapse in critical oversight that can create significant liability while risking the public’s trust and confidence.

As the profession has learned through community policing, proactive problem solving is much more effective than reactive problem solving. Therefore, it is incumbent on law enforcement leaders to pro-actively implement a well-crafted policy and clear plan to ensure that everyone understands the agency’s position and their specific roles and responsibilities. An agency leader may choose to make a public statement about the agency’s position by posting the policy on the department website as part of a transparency effort that will serve to reinforce a commitment to accountability.

Law Enforcement Authority

In order to combat the abuse of authority by employees, the community corrections field has adopted the principle that no on-duty sexual activity by corrections staff is permissible. All 50 states, the District of Columbia, Guam, and Puerto Rico have laws criminalizing sexual contact between corrections staff and jailed/imprisoned individuals, and many community corrections agencies have implemented internal policies on the subject.⁸

Given law enforcement’s authority to detain and arrest citizens, a profession-wide position prohibiting on-duty sexual activity seems fundamental. Agencies already addressing this problem specifically prohibit all on-duty sexual conduct. In addition, agencies should also restrict consensual off-duty sexual activity from occurring on department property (e.g., within buildings or vehicles). A number of departments, including the Colorado State Patrol, Maryland State Police, Pennsylvania State Police, and Virginia Capitol Police, have instituted comprehensive policies that prohibit employees from engaging in any on-duty sexual behavior or off-duty sexual behavior on workplace premises.

Because off-duty conduct by officers can potentially undermine the efficiency and effectiveness of an agency and lead to abuse of authority, agency leaders have a vested interest in setting parameters and managing agency risk. Court rulings support reasonable and appropriate efforts to regulate off duty behavior and activities.

Agency Authority

Law enforcement leaders should directly address the problem of sexual misconduct by instituting a zero-tolerance standard and demonstrating that allegations will be promptly and thoroughly investigated. Any meaningful policy addressing sexual misconduct and offenses should state that an abuse of authority is grounds for disciplinary action, up to and including termination.⁹ In keeping with efforts undertaken by the corrections field, local law enforcement executives should establish an agency wide culture of accountability and seek commitments from key stakeholders, including their governing body, police unions and their members, to support this standard.

⁷ Maher, Timothy M., “Police Chiefs’ Views on the Nature, Extent and Causes of Police Sexual Misconduct,” *Police Practice and Research: an International Journal*, Vol. 9, 2008, pp. 239-250.

Maheer, Timothy M., “Police Sexual Misconduct: Female Police Officers’ Views Regarding its Nature and Extent,” *Woman and Criminal Justice*, Vol. 20, Issue 3, 2010, p. 265.

⁸ *Preventing and Responding to Corrections-based Sexual Abuse: A Guide for Community Corrections Professionals*, Washington, DC, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2009, p. 10.

⁹ Lonsway, Kimberly A., “Preventing and Responding to Police Sexual Misconduct,” *Law and Order*, Herndon Publishing Co., 2009, p. 8.

An agency's policy should be written with input from the state licensing board or Peace Officer Standards and Training Board (POST), a local prosecutor, CALEA, and victim service providers in the community.

An effective department policy aimed at deterring sexual misconduct should include:

1. the reason for the written policy;
2. definitions of various sexual offenses;
3. strategies to prevent sexual misconduct (e.g., applicant screening and accountability standards);
4. specific measures the agency will take to foster professional behavior (e.g., supervision and training);
5. a structured process for accepting, documenting, and responding to reported incidents and conducting administrative and criminal investigations; and
6. the range of possible disciplinary sanctions, should allegations of sexual misconduct be sustained.¹⁰

A written policy should include provisions to protect employees who report allegations from any retaliation. It also should stipulate disciplinary action for any employee who has knowledge of and fails to report sexual misconduct by a member of the department, except when the officer is the victim. The policy should affirm the department's intent to conduct a thorough investigation of every reported allegation even when the victim is reluctant to participate.

Agency policy can be augmented with specific preventive/protective strategies that can serve as deterrents. For example, some agencies require that traffic stops be recorded or videotaped and that officers provide dispatch with timing for the start and finish when transporting a citizen/arrestee. Additionally, a policy should specify that employee electronic communication and internet postings, which affect professional credibility, will be regularly conducted.¹¹

Prison Rape Elimination Act and Custodial Situations

Because offenses often occur when an individual is in custody, it is essential that police agencies, especially those with holding facilities, be aware of the 2003 Prison Rape Elimination Act (PREA). PREA was enacted to address sexual misconduct in all custodial settings, including police lock-ups, holding facilities and jails*. According to recent statistics, "25 percent of local police departments operate temporary lockup facilities for overnight detention of adults in a location separate from a jail, 13 percent operate juvenile lockups, and 9 percent of local police departments are responsible for operating a jail."** Under PREA, numerous national standards have been drafted for the prevention, detection, response, and monitoring of sexual misconduct in lock-ups. These standards, when finalized, will apply to law enforcement. It is critical that all law enforcement executives are cognizant of the standards and aware of the implications of PREA for their agencies.

* For more information, log on to www.ojp.usdoj.gov/programs/prisonrapeelimination.htm.

** McCampbell, Michael S., "Update and on the Prison Rape Elimination Act," *The Police Chief Magazine*, International Association of Chiefs of Police, Alexandria, VA, March 2011.

Hiring

Through a rigorous selection process, law enforcement agencies should recruit and hire individuals who demonstrate high standards of integrity by screening out those who do not exhibit the ethical characteristics necessary for the profession. This can be achieved through a combination of (1) medical, psychiatric, psychological, polygraph and integrity testing; (2) detailed personal interviews; and (3) thorough background investigations that include a review of social networking websites.

¹⁰ Lettner, "Developing Policies to Address Police Sexual Misconduct," pp. 8-9.

¹¹ For more information, logon to www.theiacp.org and see IACP Social Media Project and Model Policy.

The professionals conducting the examinations and interviews should be knowledgeable about and specifically screen for patterns of inappropriate behavior or attitude as well as prior sexual offenses. Any candidate found through these processes to have a history of sexual misconduct or unacceptable sexual activities should be deemed ineligible for employment.

When considering experienced personnel for hire from other agencies, the hiring agency should require candidates to sign a full-disclosure waiver that enables previous places of employment to provide in-depth references and copies of the officer's complete internal affairs file and all employment files, including details contained in any non-disclosure agreement and circumstances surrounding separations from service. This practice can prevent experienced officers who are facing potential charges from moving to another agency prior to being disciplined or terminated. Additionally, agencies should contact the state licensing boards or POSTs¹² in the states where the officers previously worked to determine whether the officer had been disciplined.

Forty-four state POSTs have the authority to revoke peace officer certification due to misconduct. In some states, there must be a criminal conviction in order to revoke; in others, certification may be revoked for misconduct after a hearing before an administrative law judge. Issues arise when an accused officer who has engaged in misconduct is either terminated or allowed to resign from his or her current agency, and that department does not report the reasons for the termination or resignation. The result is that the officer may be hired by another agency in the state that is unaware of the problems in the prior department. Also, these officers may seek employment in other states, which raises the problem of interstate movement of unfit officers. Currently, the International Association of Directors of Law Enforcement Standards and Training (IADLEST) operates the National Decertification Index (NDI). The NDI includes the names of officers who have been decertified. Currently only twenty-nine state POSTs contribute names to the NDI. All state POSTs may query the NDI, and POST directors may authorize law enforcement executives to query the NDI. Since the NDI only gathers information concerning de-certifications, information on discipline of a less serious nature, such as a suspension of the certificate, must be gathered by contacting the state POST directly. Some states, like Florida, publish quarterly the names of the officers and any disciplinary action taken by POST against the officer. This allows other jurisdictions to check the list before hiring an officer from Florida.

Training

Ethical considerations should be woven into all aspects of training, education, policies, and procedures, along with law enforcement's role in upholding civil rights. Initial academy instruction on the ethics of appropriate conduct should be reinforced at in-service opportunities and training for new supervisors and field training officers (FTO).

It is the responsibility of law enforcement leadership to ensure that training, including academy curricula, covers the definition of sexual misconduct to include criminal and non-criminal behavior. Department-specific training should cover a review of the policy, response to sexual misconduct, and information on behaviors that are prohibited by the policy. Discussions using hypothetical scenarios and role-playing exercises can help officers anticipate and think through situations that warrant an ethical response and understand when their responsibilities under agency policy come into play. The administration of pre- and post-training tests will help the agency gauge the increased knowledge and understanding imparted through the training.

“Training in ethics, integrity and discretion should begin in the police academy and continue on a regular basis until the officer retires.”

—International Association of Chiefs of Police,
“Building Trust between the Police and the Citizens they Serve: An Internal Affairs Promising Practices Guide for Law Enforcement,” Washington, DC, U.S. Department of Justice, Office of Community Oriented Policing Services, 2010, p. 11

¹² For the name of the licensing body or POST in any state, logon to www.iadlest.org.

Because FTOs help shape the character of individual officers, each FTO must receive in-depth training on: (1) the agency policy, procedures, and discipline related to sexual misconduct; (2) indicators of sexual misconduct; (3) how to support the department's zero-tolerance stance on sexual misconduct; and (4) how to respect boundaries and confront challenging circumstances that may be encountered on the job.

When under consideration for a promotion, an officer's direct supervisor and the agency's human resources staff should be consulted for input. With supervisory positions, including Field Training, newly promoted employees must receive training on: (1) the department's sexual misconduct policy; (2) guidelines for how to respond to sexual misconduct by employees;¹³ (3) criminal and civil liability for the department and governing body; (4) public relations and protocol for dealing with the media; and (5) criminal and administrative investigations.

Evaluations and Early Intervention Systems

Supervisors are in a unique position to detect warning signs and patterns of sexual misconduct by officers. Specific training on indicators of sexual misconduct and strategies for effective oversight of officer conduct should be provided to those with supervisory responsibilities. Consistent employee reviews and follow-up are essential to monitoring behavior. However, if an officer is demonstrating problematic behavior, the supervisor should not wait for the officer's scheduled review to address the situation. The supervisor must act immediately to address the behavior in question, offer support and/or referrals, fully document the situation, and provide required notification up the chain of command. Supervisors should periodically remind officers of their professional obligation to report knowledge of sexual misconduct by a member of the department.

Since part of the authority with which law enforcement is entrusted involves access to systems of information, supervisors should be tasked with monitoring officer access for non-professional, personally-motivated reasons. Additionally, periodic audits of each officer's traffic stops and final call dispositions are essential for identifying problematic patterns. Random checks of department-issued cell phones and computers should be built into oversight plans in accordance with contracts governing officer rights. Agencies can incorporate into existing systems newly available software designed to identify pornographic images on electronic devices, as feasible, and assign monitoring responsibilities to internal investigations. Periodic reviews of personal information and pages on social networking websites should be conducted to ensure nothing potentially compromising or questionable is posted on the internet.

Early intervention systems are helpful for monitoring, identifying, and preventing problem behavior and electronic communications (e.g., email, text messaging). These systems come in many forms, but generally they collect, review, and analyze data on each officer, thereby enabling the identification of troubling patterns of behavior or suspicious trends that might otherwise go undetected. Such was the case in a midwestern state capital city where a police officer was disciplined and received special training after a review of his traffic stops revealed that 89 percent over a four-month period were of female drivers.¹⁴

When an officer demonstrates any inappropriate or suspicious behavior (*see ten forms of sexual misconduct and offenses, pp. 3-4*), a psychological fitness-for-duty examination should be required and arranged promptly. This is particularly important when the conduct does not rise to the level of termination or criminal conduct but for which sufficient cause for concern exists. Examination conclusions will need to be addressed in terms of the officer's assignments and supervision.

¹³ Lonsway, "Preventing and Responding to Police Sexual Misconduct," p. 3.

¹⁴ Walker and Irlbeck, "Driving While Female," p. 3

Incidents and Investigations

Any and all allegations or suspicions of sexual misconduct must be accepted by the designated authority within the agency and investigated in a timely fashion. Dispatchers along with all members of the department need specific direction and training on protocols for accepting, documenting, forwarding, and processing reports or complaints against an officer. Officers approached with

complaints should be required by department policy to provide citizens with complaint forms, document the information received, and pass the complaint through proper channels.

“[S]exual misconduct that is not documented, investigated and adjudicated often escalates.”

—Lonsway, Kimberly A., “Preventing and Responding to Police Sexual Misconduct,” Law and Order, Herndon Publishing Co., 2009, p. 2

Reports or Complaints

It is imperative to have procedures in place in order to effectively handle incident reports or complaints concerning officers. The process¹⁵ must be:

1. comprehensive, where an agency investigates all complaints received, including those that are anonymous or from third parties;
2. accessible, where the procedures for making a report or filing a complaint are streamlined and not burdensome to the individual complainant and information about the rights of law enforcement personnel and the public to file a complaint and the procedures for doing so are widely available;
3. fair, where the officer accused of misconduct is treated respectfully and receives a detailed investigation into the allegation;
4. thorough, where the investigation is complete enough to determine validity of complaints and identify and unfound those that are false; and
5. transparent, where a formal process to accept complaints exists, and all personnel know how to handle a complaint.

Once a report or complaint is received, it should be documented (preferably electronically) and protected in a secure file, apart from regular personnel records.¹⁶ Documentation and preservation of findings in personnel and internal affairs files, even with unfounded or exonerated outcomes, is necessary for future investigations in order to support the identification of patterns of behavior and progressive discipline as necessary.

Having comprehensive cross-jurisdictional memoranda of understanding in place with surrounding agencies will ensure timely notification of an incident involving a department employee in another jurisdiction. It will also provide guidance to officers responding to reports involving employees from other departments, including provisions for notifying the employing agency.

With transparency as a goal, the subject officer should be notified promptly of the complaint either in writing or by other means of communication unless the criminal investigation would prohibit it or be compromised. This notification should include the nature of the allegation, a copy of the complaint, and the name and contact information of the assigned investigator. The confidentiality of the victim's information should be protected to the maximum extent possible by law and department policy. All parties who are interviewed, including witnesses, as part of the investigation should be cautioned about the potential for retaliation and instructed how to report such actions to the department.

¹⁵ Adapted from the following: Commission on Accreditation for Law Enforcement Agencies' (CALEA) Standard No. 52.1.1; CALEA Accreditation Standard No. 52.1.4; *Preventing and Responding to Community Corrections Based Sexual Abuse*, p. 48; and IACP, “Building Trust between the Police and the Citizens they Serve,” p. 21.

¹⁶ CALEA Accreditation Standard No. 52.1.2.

The Investigation

Complaints of officer sexual misconduct will be received directly or tracked into the Internal Investigations Unit or to a member of the command staff who handles internal investigations. Upon initial assessment, if it is evident that criminal allegations are involved, an immediate referral should be made to the criminal investigations unit or lead criminal investigator.

Reports of incidents or crimes alleging officer sexual misconduct may come to the agency through communications (e.g., 9-1-1 or non-emergency systems) and should result in immediate notification of criminal investigations and internal investigations by the supervisor in charge.

All criminal cases will require an administrative investigation also be conducted. In order to preserve the integrity of investigations, especially in high-profile cases, the chief may want to seek the services of a neighboring department or state police to conduct either the administrative or criminal investigation. The propriety of the investigation is less likely to be questioned when an outside investigative agency is involved. The administrative and criminal investigations can be conducted simultaneously as separate, parallel investigations. The agency leader should ensure a firewall is maintained between the administrative and criminal investigations and that the accused officer's rights are upheld especially in accordance with *Garrity v. New Jersey*.¹⁷

The investigative process should be transparent to both the complainant and the accused officer. All procedures should be victim-centered and include periodic updates, and uphold the accused officer's rights set forth in collective bargaining agreements. A member of the command staff should serve as the principal point of contact for the complainant to share information and respond to questions.

Victims may be reluctant to report an incident and/or participate in the investigation for a variety of reasons, including trauma of the incident; fear of not being believed; retaliation from the perpetrator or other officers; and previous bad experiences with law enforcement. These same reasons may account for why a victim recants or seeks to withdraw a complaint. A victim's reluctance to participate in an investigation is neither indicative of a false allegation nor reason to forego a thorough investigation. A detailed investigation should uncover unethical or illegal conduct just as it will reveal unfounded claims.

As part of the investigation, efforts should be made to identify and interview any additional victims. Following the initial filing of criminal charges against the accused officer, an agency can seek to identify additional victims through the use of media outlets. All subsequent reports of incidents will require documentation and investigation.

The agency leader must monitor the investigation for signs of retaliation and harassment directed against a complainant or an employee who reported knowledge of sexual misconduct, including abuse of the complaint procedure and violations of confidentiality guidelines.¹⁸ Parties to the case must be cautioned about the possibility of intimidation, retaliation, and/or coercion and advised on steps to take to report such actions (e.g., immediate notification of the department, preservation of evidence). Within a designated time period (usually after a few weeks and again after 60 days), the complainant should be asked by the point of contact about any intimidation or retaliation. Victims should be provided with information and referrals to the court to petition for orders of protection as needed.

If the accused officer is not placed on administrative leave pending the outcome of the administrative and/or criminal investigations, the officer's assignments should be considered carefully. In the event of administrative leave, a transfer of the accused officer's case knowledge will be important to the continuation of official agency business. Arrangements should be undertaken to reassign the subject officer's cases.

Law enforcement executives have a range of administrative options and tools available to reduce the likelihood of further sexual misconduct or retaliation. Employing these options in a consistent

¹⁷ 385 U.S. 493 (1967).

¹⁸ Lonsway, "Preventing and Responding to Police Sexual Misconduct," p. 8.

and timely manner is crucial to victim safety and community confidence, as well as the well-being of the officer and the efficient operation of the department. The executive should consider issuing an Administrative Order of Protection¹⁹ to support clear communication with the accused officer(s) and reinforce accountability.

If an employee resigns during the investigation, the investigation must still be completed and decisions regarding the findings and administrative sanctions that would have otherwise been imposed should be documented in the employee's personnel and internal affairs files.

The agency leader should track the complaint through to its conclusion(s).

Dispositions

Affirming the findings of the investigations is the responsibility of the law enforcement executive. When an administrative investigation is sustained, even if the misconduct was not determined to have been criminal or the criminal outcome has not yet been determined, the accused officer should be informed in person and in writing and offered the opportunity to respond to the administrative findings.

Following the officer's response to the administrative findings, the executive should consider the full range of sanctions for the officer found to have violated department policy. Before deciding how to address the issue with the officer, an examination of human resource policies, state and local laws, and collective bargaining agreements that may be in effect should ensure compliance with legal and contractual rights. It is important to understand in determining discipline that the confidence in the officer may have been severely compromised by a violation of department policy and, therefore, termination may be the most appropriate option. Disciplinary decisions should be communicated to the officer in person and in writing.

When an allegation of sexual misconduct is sustained but termination is not warranted, demotions, re-assignment, and/or unpaid leave are possible administrative sanctions the law enforcement executive can impose. Sanctions should be severe enough to reinforce the agency's zero-tolerance position. Discipline short of termination should include a warning of termination for any subsequent misconduct and be referenced in writing as part of an employee's regularly scheduled review.

Criminal investigation findings should conform to one of the following determinations in keeping with the FBI's Uniform Crime Report:

1. Unfounded: the allegation was investigated and found devoid of fact or false;
2. Exonerated: the act occurred but was lawful and consistent with policy;
3. Not sustained: the evidence was insufficient to either prove or disprove the allegation; or
4. Sustained: the evidence was sufficient to prove the allegation.

Once a finding concerning the criminal investigation is reached, the agency leader or designated principal point of contact should ensure the complainant is notified. The accused officer should be notified in writing.²⁰ If the criminal allegation is upheld through the investigation, the prosecutor will need to be consulted concerning charging actions.

“Behavior that violates power, authority and ethical standards generally associated with law enforcement undermines the criminal justice system and betrays the public trust.”

—Timothy M. Maher,

“Police Sexual Misconduct: Female Police Officers' Views Regarding its Nature and Extent,” *Woman and Criminal Justice*, Vol. 20, Issue 3, 2010, pp. 263-282

¹⁹ Valle, Glenn, Chief Counsel, New York State Police, Albany, NY, “Administrative Orders of Protection: A Chief's Best Tool for Victim Safety”, *The Police Chief Magazine*, November 2000, <http://www.theiacp.org/LinkClick.aspx?fileticket=RNf31dIKLFk%3d&tabid=372>

²⁰ CALEA Standard 52.2.8.

Any officer who has been found guilty of committing a sexual offense must be terminated immediately. In the event of a termination, the officer should be notified by the executive in person and in writing. Because of the heightened risk for violence at the point of termination, the department should ensure a lethality assessment is conducted and adequate precautions taken to protect against violence in the workplace or retaliatory violence against those who reported the allegations. It is critical that the officer be given information and referrals on available support services.

Some states may require reporting to the state licensing board or POST even when the officer is not terminated but has resigned or been given discipline short of termination. To prevent the officer from continuing in law enforcement, the state licensing board or POST should be notified promptly about the officer's termination to pursue decertification, as applicable.²¹

Victims

All levels of law enforcement should treat anyone who alleges sexual misconduct with professionalism and dignity. From the onset, it is essential that citizens making reports or filing complaints are shown respect and their allegations are taken seriously throughout the investigative process. The way an agency receives and responds to each complaint or report will impact the willingness of other crime victims to come forward and will be noted by members of the department.

The reasons why authority figures may engage in inappropriate and sometimes criminal behavior are varied, and each case is unique. Predators select victims based on vulnerabilities and a perceived lack of credibility, and therefore, victimization is often higher among certain populations including: (1) minors; (2) individuals in prostitution and/or the commercial sex industry; (3) individuals under the influence of drugs or alcohol; (4) immigrants and undocumented persons; (5) individuals with limited English proficiency; (6) people with mental illness or developmental challenges; (7) individuals with physical disabilities; and (8) those who have been victimized previously. Agencies should not query the criminal history of the complainant, and references about the complainant's criminal history should not be included in internal agency reports.

It is important to note that although a majority of the victims are female, men and boys are also victimized. Some victims of sexual offenses may not view themselves as victims. Conduct that a victim may deem to be flattering attention or empathetic concern may be inappropriate, nonetheless. A 16-year-old in an Explorer Program may not think that a "romantic relationship" with the 25-year-old sworn officer who oversees the program is inappropriate. Whether or not a minor feels that the interaction is consensual, a state's statutory rape laws may make any sexual contact illegal. A victim who is compromised due to alcohol, drugs, mental illness, or disability may under state law be unable to give consent for sexual contact. In every case, the investigator must actively attempt to engage the victim in the investigation and offer contacts and referrals for services available in the community. It should also be recommended to a victim that an order of protection be sought from the court if safety concerns exist.

The law enforcement executive should designate a principal point of contact to address the needs and concerns of the victim. These include: (1) Safety: law enforcement must protect victims from intimidation and educate them on how to decrease their likelihood of re-victimization; (2) Support: law enforcement must ensure that victims receive current and accurate referral information about victims' services; (3) Information: law enforcement must provide victims with information about their

"I feel that I have been given a life sentence... I frequently have intrusive memories of the assault... I cringe every time I see... a male officer in uniform, or a law enforcement vehicle. I am not the same person I was before the assault and I might never be that person again."

—Survivor of Sexual Assault by Law Enforcement

²¹ For more information about POSTs or decertification, see Resources section of this publication.

rights, the criminal justice process, and resources available to them; (4) Access: law enforcement agencies must ensure that information is readily available in languages that represent the populations in the community and attend to the special needs and circumstances of various victims; (5) Continuity: law enforcement must have sustained partnerships with victim service providers and allied criminal justice professionals; (6) Voice: law enforcement must empower victims by encouraging a dialogue with them; and (7) Justice: law enforcement must work in the best interests of victims to protect their safety and rights.²²

The zero-tolerance sexual offense policy should set forth clear guidelines of how to support victims and provide a setting/environment in which a victim can feel safe reporting the victimization. Some victims have reported that although his or her complaint was taken by a compassionate officer, the environment of the cubicle in which the information was taken was uncomfortable due to the close proximity of others or the presence of pornographic images. Another victim complained that while she was being taken into custody and handcuffed, she was asked out on a date by a member of the department. A good example of how to educate officers in these and other important areas is the “Tools for Tolerance for Law Enforcement” (Simon Wiesenthal Center- www.toolsfortolerance.com) curriculum which is designed to train officers on how to deliver a more effective level of service to members of the public. Awareness training such as TTLE enables law enforcement to identify and address problems before they may become criminal in nature. Nonetheless, in order to establish an environment in which a victim feels secure enough to report mistreatment, law enforcement should receive ethics and sensitivity training as a matter of course.

Collaboration

Criminal Justice System Collaboration

Collaboration among criminal justice system partners and allied professionals is of utmost importance. Following the adoption of a policy to address sexual misconduct, agency leaders should reach out to prosecutors and victim assistance personnel to inform them of the agency’s position of zero tolerance and plan for responding to reported incidents and complaints.

One of the most important criminal justice partnerships is between law enforcement and victim assistance representatives who work within the criminal justice system. These representatives can include victim-witness coordinators, victim advocates, or department-based victim service personnel. Although department advocates cannot provide confidentiality to victims because they are required to discuss relevant information obtained from the victims with investigators, these advocates can provide much needed services to victims by guiding them through the maze of the criminal justice system, securing resources they need, and providing counseling referrals. Specifically, the department’s victim advocates not only help victims navigate the process of filing a complaint and ensure follow-up, but they can also act as liaisons between victims and the agency and educate officers about the impact of trauma on crime victims. Departments that cannot afford to employ advocates should work closely with community-based victim service agencies.

Additionally, during any criminal investigation of an officer, the agency should appoint a liaison to work closely with the prosecutor’s office and follow processes established for working on any high-profile case (*see p. 11 for cross-jurisdictional assistance with case investigation*).

²² IACP, “Enhancing Law Enforcement Response to Victims: A 21st Century Strategy,” Washington, DC, U.S. Department of Justice, Office for Victims of Crime, 2008, pp. 23-24.

Community Collaboration

Once a policy has been implemented, law enforcement leadership should support continuous dialogue and working relationships with victim service agencies in order to promote an understanding of the department's zero-tolerance position. Collaboration with victim service agencies in the community can encourage the reporting of incidents. Victim advocates need to know that the department takes allegations seriously and wants to receive information about any incidents or offenses, with the consent of the victim, even if communicated through a third party.

Although confidentiality laws may prohibit the sharing of information, community-based advocates can provide long-term counseling and support for victims, as necessary. When working with these advocates, whether or not a department has its own victim advocates, it is recommended that the department establish a memorandum of understanding with each organization to which it subsequently refers victims.

Law enforcement personnel and allied professionals should seek opportunities for cross training and other types of information exchanges. For example, prosecutors, sworn personnel, and victim advocates should participate in one another's specialized trainings (e.g., statewide conferences) and meetings (e.g., roll calls) to obtain a broader perspective on the issues of sexual assault, harassment, and misconduct. Additionally, they should spend time with one another on their respective "turfs." In order to understand the intense nature of police work, victim advocates should accompany officers on ride-alongs. In turn, officers can use this extended time with the advocate to obtain information about the advocate's role in assisting victims. When possible, officers should be involved in training victim service agency staff and volunteers, and they should be included in the drafting of a department's position and policy addressing sexual misconduct.

To get out the message that a law enforcement department takes incidents of sexual misconduct seriously and encourages those with information about offenses to come forward, agency leaders need to actively engage the community. Law enforcement leaders should build awareness of the department's policy and zero-tolerance position, including the posting of the policy on the agency's website. Information shared should include the methods and procedures for reporting an incident and filing a complaint (*see pg. 10*). Proactive outreach can happen through multiple avenues, including citizen academies, town hall meetings, and public relations efforts. These efforts at transparency will not only combat inappropriate behavior but also contribute to building community trust and confidence.

Conclusion

Members of law enforcement are in a unique and visible position in the communities they serve. They are entrusted with the authority to enforce laws and protect citizens' civil rights. Central to the executive's responsibility to the community is the proactive enforcement of ethical standards of conduct and officer accountability. Leaders must establish zero-tolerance policies to address and prevent sexual misconduct and reinforce the expectation of integrity through meaningful training and effective supervision.

"Along with effective supervision, agency guidelines can reinforce standards of conduct and accountability and provide necessary safeguards."

—Major Charles J. Skurkis, Pennsylvania State Police, PA Director, Bureau of Integrity and Professional Standards

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Websites/Resources

International Association of Directors of Law Enforcement Standards and Training (IADLEST)
www.iadlest.org

National Decertification Index (NDI)
<https://www.pocis.net/NDI/default.php>

Prison Rape Elimination Act (2003)
<http://www.ojjdp.gov/about/PubLNo108-79.txt>

IACP Tools and Policies

Sexual Assault Incident Reports: Investigative Strategies
<http://www.theiacp.org/LinkClick.aspx?fileticket=PxEJMvQbU7c%3d&tabid=392>

Sexual Assault Supplemental Report Form
<http://www.theiacp.org/LinkClick.aspx?fileticket=CHt0qVEWYus%3d&tabid=392>

Sexual Assault Model Policy
<http://www.theiacp.org/tabid/299/Default.aspx?id=1133&v=1>

Domestic Violence by Police Officers Model Policy
<http://www.theiacp.org/tabid/299/Default.aspx?id=1130&v=1>

Enhancing Law Enforcement Response to Victims: A 21st Century Strategy
www.responsetovictims.org

Guidelines to Address Officers Under Orders of Protection
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