

## **Attachment D**

IACP National Law Enforcement Policy Center

Standards of Conduct

Concepts and Issues Paper

October, 1998

### **I. INTRODUCTION**

#### **A. Purpose of the Document**

This document was designed to accompany the Model Policy on Standards of Conduct developed by the IACP National Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide greater understanding of the developmental philosophy and implementation requirements for the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their community and their law enforcement agency.

Unlike many of the policies developed by the National Law Enforcement Policy Center, law enforcement agencies should regard the present policy as pertinent to all members of their agency, not solely to sworn officers. While sworn personnel may be at greater risk with regard to many of the issues addressed herein, all members of police agencies should be cognizant of and may be held equally accountable for the mandates set forth in this policy.

#### **B. Background**

It has been said that policing is a morally dangerous occupation. Most officers who have been in line operations for even a limited period of time can affirm this view. The public is not totally unaware of this fact either. Indeed, most popular literature and movie depictions of police work deal extensively with the moral and ethical dilemmas that officers face on the job. Police officers confront many temptations and difficult decisions that often involve conflicting notions of what is right and wrong and what is expected from them. There are several issues in the police environment that set the stage for such moral and ethical dilemmas.

Probably the most common among these is the fact that police officers possess substantial power that can be exerted for the benefit or detriment of many individuals. The legal right to employ coercive force to gain compliance of individuals, up to and including the use of deadly force, makes law enforcement unique among occupations. Such power is attractive to some persons who wittingly or unwittingly attempt to coopt police authority for their own advantage. From the seemingly benign offer of a free cup of coffee for an officer on the beat to a substantial financial inducement for an officer to “look the other way,” law enforcement authority is a source of many temptations that can strain the limits of personal and professional integrity.

There are other, maybe not so obvious, sources of moral and ethical conflict in police work. For example, most police officers are required to deal with many persons and situations that reflect some of the more demeaning and dehumanizing aspects of life. These situations can and often do have negative long-term side effects on the attitudes, opinions, and philosophy of officers who are forced to deal with them on a day-to-day basis. The impressionable, idealistic young recruit may, over time, become disillusioned, cynical, or frustrated, feeling that his or her efforts are ineffectual and unappreciated. Such officers may be more tempted to adopt a “who cares?” attitude, to lose the ethical and moral focus that they originally brought to police work, to bend the rules and possibly become involved in questionable or illegal conduct.

Frustrations arise from a variety of other sources. For example, many officers perceive the legal system as being weighted far too heavily against law enforcement and in favor of criminal suspects. Further, police officers often see other individuals or segments of society as flouting or “stretching” the law and getting away with or even being rewarded for it, while honest cops labor years in relatively low-paying, often dangerous, and many times thankless jobs.

Finally, one cannot overlook the fact that officers are often caught in a moral dilemma by the very nature of their profession. Society asks police officers to control crime and to apprehend perpetrators

while at the same time placing severe restrictions on the manner in which these can be accomplished. On the one hand, for example, officers are rewarded for their effectiveness in apprehending criminals, but, should their zeal cross the bounds established by law, these same efforts can be punished. These seemingly conflicting demands may lead some officers to feel that the courts, prosecutors, defense attorneys, and others in the criminal justice system are working at odds with them and the good of society. The need to find the proper balance between protection of society and adherence to the dictates of individual rights and liberties can be a difficult effort for many officers, one that often pits means against ends and involves them in organizational, professional, and personal dilemmas.

In this context, the police officers' standards of conduct can become unclear. Matters regarding agency policy, acceptable practices, and appropriate behavior can be interpreted by officers in differing ways. Therefore, police agencies must clearly define what is and is not acceptable conduct. It has long been acknowledged that, to do their job properly, law enforcement officers must accept and abide by a high ethical and moral standard that is consistent with the rule of law they are sworn to uphold. They must also back up those beliefs and demonstrate their adherence to those values by consistently employing propriety and discretion in their personal lives that reflects favorably on themselves as professionals and the law enforcement agency that they represent. Without this, police agencies cannot expect to gain the respect and cooperation of citizens that is essential to the success of policing.

Personal integrity, a conscious decision to do the right thing even in the face of overwhelming pressure, and recognition of personal responsibility for one's actions are all indispensable ingredients in achieving high levels of professional conduct. Developing formal values and institutionalizing ethical standards within the police agency are also essential to this end. These norms and ethical precepts should serve as guidance to officers when making decisions about the propriety of specific types of behavior or actions absent express agency policy. But, while values, codes of conduct, and ethical standards are important guides, it is also important that agencies make clear what is acceptable police conduct under specific situations so that there are no misunderstandings. This is particularly the case in highly sensitive areas of police operations. With this in mind, the IACP National Law Enforcement Policy Center developed the Model Policy on Standards of Conduct, the components of which are discussed here.

The model policy deals with a limited number of issues from the large number of possible concerns relating to police conduct. The rules of conduct addressed in the model policy are not intended to serve as an exhaustive treatment of requirements, limitations, or prohibitions on officer conduct and activities. Rather, the issues discussed here are among those that have traditionally presented the most trouble for police agencies and officers and are among the most sensitive traditionally in terms of their impact on law enforcement agencies and the community.

The model policy's statement of purpose also notes that it is intended to specify, where possible, actions and inactions that are contrary to and that conflict with the duties and responsibilities of law enforcement officers. And, it is meant to guide officers in conducting themselves and their affairs in a manner that reflects standards of deportment and professionalism as required of law enforcement officers. Not all matters of conduct can be addressed in a single policy on conduct. Expectations with regard to conduct cut across many aspects of law enforcement operations. Therefore, officers should not overlook guidance available through specific policies, procedures, and directives as well as through the guidance and recommendations of supervisory and command officers.

## II. PROCEDURES

### A. Policy Rationale

A succinct justification and rationale for the development of the policy on standards of conduct is found in the model policy statement:

Actions of officers that are inconsistent, incompatible, or in conflict with the values established by this agency negatively affect its reputation and that of its officers. Such actions and inactions thereby detract from the agency's overall ability to effectively and efficiently protect the public, maintain peace and order, and conduct other essential business. Therefore, it is the policy of this law enforcement agency that officers conduct themselves at all times in a manner that reflects the ethical standards consistent with the rules contained in this policy and otherwise disseminated by this agency.

As in the above statement, it is important in any policy to lay the groundwork or the premise upon which the policy and procedures are built. This baseline information is perhaps nowhere more important than in a policy that deals with personal and professional conduct of officers. Standards of conduct often involve personal liberties, including freedom of association, freedom of speech, and related matters that are among the more closely guarded of individual rights. Most persons feel strongly that these and other matters of personal conduct should be, within reason, the subject of their own choice and personal preference. Many resent an employer's attempts to dictate the terms of what is deemed appropriate and inappropriate conduct.

In virtually all working environments and areas of employment, there are limitations upon an employer's capacity to dictate the terms of employment with regard to personal conduct of employees. Of course, it is reasonable for employers to require that their personnel conduct themselves with decorum and good taste. However, when it comes to matters that are perceived to be of a more personal nature, employees are far more sensitive. In these matters, employers must be even more sure that the restrictions or limitations they wish to impose are legally grounded, reasonable, and justifiable as job related.

The courts have, in many cases, upheld the notion that law enforcement work carries certain unique features that distinguish it from other types of employment. As such, certain types of conduct and employee activities are deemed inimical to the efficient and effective operation of police agencies and can be limited, curtailed, or modified in some manner. For example, almost every police agency desires to regulate, at least to some degree, the personal appearance of its officers, to include hairstyles. Predictably, policies on these and similar issues have been and are still subjected to legal challenge. While the subject of personal appearance is not covered in the present policy on standards of conduct, case law in this regard carries some lessons that form a good backdrop to the discussion in this concepts and issues paper. Specifically, police agencies desiring to regulate hairstyles, especially hair length, have received considerable support from the courts. The landmark decision in this area is the 1976 Supreme Court case of *Kelley v. Johnson*, [1] in which officers challenged a regulation of the Suffolk County, New York, Police Department.

The regulation at issue in *Kelley* governed the style and length of officers' hair, sideburns, and mustaches, and also prohibited beards. The regulation was challenged on the grounds that it violated the officers' rights of free expression under the First Amendment and guarantees of due process and equal protection under the 14th Amendment. The department contended that the regulations were necessary to ensure uniformity of appearance, thereby making officers readily recognizable by the public, and that it also contributed to the agency's esprit de corps.

The U.S. Supreme Court upheld the police department's regulation. The Court noted that the officers might indeed have a "liberty interest" in their hairstyles that could not be curtailed by the department absent rational justification. However, the Court held that uniformity of appearance and the maintenance of esprit de corps were sufficient rational justifications for imposing the regulations. Therefore, under *Kelley*, a hairstyle regulation will be upheld as long as the department has a "rational justification" for its enforcement. In this case, the rational justification is based on the logical connection between the policy and the promotion of legitimate agency interests (and those of the public) to protect property and persons.

Clearly from the above example, police policies generally, and particularly those that have bearing on liberty interests of personnel, must be based on rational, articulably justifiable grounds that relate to the promotion of legitimate law enforcement agency and/or public interests. In addition to meeting these tests, a policy on employee conduct as well as any other agency policy cannot be overly broad or overreaching so as to unfairly or unnecessarily impact personnel. In the same manner, the policy must be specific enough that officers can reasonably be expected to understand what is expected of them and to follow its mandates. For example, a hair regulation for officers should indicate the length and style of hair that is acceptable and state any exceptions to those rules that may be applicable, such as in the case of officers who may be working in undercover capacities. Finally, the policy must be uniformly applied. There should be no unjustified exceptions to the application of the policy to individuals within the agency, or it may be reasonably argued that the policy is arbitrary, capricious, and discriminatory. These principles should be reemphasized whenever police policies of any type are formulated and enforced and particularly in cases that deal with standards of conduct.

## B. Obedience to Laws

The model policy states that officers are responsible for observance of all laws, regulations, and orders. This may appear at first glance to be a matter of such a fundamental nature as not to deserve specific mention in an agency policy. Certainly, police officers are as subject to the law as any other person. But reality dictates and history has shown that some officers, whether through misguided zeal or for other reasons, may come to view themselves and their police colleagues as exempt from the law on a general, selective, or situational basis. This element of the policy is intended to stress the importance of the rule of law for all officers and to hold each officer accountable for any legal wrongdoing.

In particular, the mandates of procedural due process for accused persons must remain paramount in the minds of law enforcement officers as they go about the task of protecting life and property. These legal protections and individual rights cannot be placed on hold as a matter of convenience to achieve agency or officer objectives. They must be recognized as an indispensable and non-negotiable part of law enforcement in a democratic state, and a recognized cornerstone of police agency policy. The fact that officers cannot disregard their own responsibility to the law or circumvent the rights of individuals as prescribed by law in the course of performing their duties is a matter that deserves repetition and reinforcement in a policy on police conduct as well as in the agency's code of conduct and core values.

By the same token, the model policy specifically states that officers shall not violate any agency policy, rule, or procedure and that they shall obey all lawful orders. The term lawful is included to acknowledge

the uncommon yet potential situation in which an order may be given that is unlawful and/or that is in violation of agency policy. An example of an unlawful order is one in which a subordinate is directed to use excessive force.

### C. Conduct Unbecoming an Officer

The model policy prohibits officers from engaging in “any conduct or activities on- or off-duty that reflect discredit on the officers, tend to bring the agency into disrepute, or impair its efficient and effective operation.” These actions are sometimes referred to as “conduct unbecoming and officer”(CUBO). Unbecoming conduct incorporates those acts that may not be specifically identified by policy but that could reasonably be regarded as so improper or inappropriate by their nature and in their context that they are harmful to the agency’s and officers’ reputations.

One of the problems in defining prohibited conduct is that one cannot reasonably itemize all forms of conduct that may be considered damaging to officers or their agency. Attempts by an agency to itemize all prohibited acts become excessively tedious and invariably overlook certain types of behavior that would be considered unacceptable. Under these circumstances, it is more difficult to hold an officer accountable for improper behavior if it is not listed in the defined list of prohibited actions. Therefore, CUBO is an attempt to incorporate the array of improper acts not specifically identified in the standards of conduct policy. But, to do this effectively, CUBO must be linked effectively to an agency’s code of conduct and/or values, and officers should receive training in its meaning.

Some agency administrators may hesitate to incorporate CUBO into their standards of conduct because it does not identify specific prohibited acts and presents the possibility that charges brought under this umbrella could more easily be challenged as being arbitrary. While this possibility exists, it is also true that most disciplinary measures relating to conduct violations are subject to similar challenges based on the alleged transgression’s relevance to the officer’s job and the efficient and effective operation of the agency. In all cases of conduct violations, the agency must be prepared to defend its position based on the connection of the behavior to negative outcomes on the agency’s officers and mission. This issue of relevance should be as important to the agency in standards formulation as it is to officers charged with standards infractions.

Charges of conduct unbecoming an officer should be brought only when there is particular reason and a rational justification for enforcing the standard. Absent such criteria, charges should not be brought whether specified under CUBO or other conduct prohibitions. As in the case of the grooming standards (i.e., hair length) brought under Kelley previously noted, there is normally a presumption that the regulation is valid. The officer, to overcome this presumption, must show that “there is no rational connection between the regulation ... and the promotion of safety of persons and property.”[2]

In addition to the above, agencies should be particularly cognizant of the need to enforce CUBO on a consistent and equitable basis. The agency should recognize that it may be setting precedent in some cases when disciplining officers for conduct that is not specified in the agency’s policy and procedure manual. To avoid charges of disparate treatment, the agency should make every effort to ensure that similar acts of offending conduct by officers are dealt with through similar disciplinary measures. Also, to provide officers with the information necessary to make informed decisions on such matters, the agency should provide in-service training on an initial basis upon introduction of the policy and on a periodic basis thereafter.

#### D. Accountability, Responsibility, and Discipline

Officers are reminded in the model policy that they are directly accountable for their actions through the chain of command to the agency’s chief executive officer. Further, the model policy requires that officers “cooperate fully in any internal administrative investigation conducted by this or other authorized agency and shall provide complete and accurate information in regard to any issue under investigation” and, that they “shall be accurate, complete, and truthful in all matters.”

The importance of these admonitions is lodged primarily in the recognition that police officers have traditionally been a generally closed social and professional group. Among the common characteristics of police officers in this context are silence and solidarity with respect to attacks on fellow officers. The sense of camaraderie and cohesiveness that these traits reflect clearly have positive side effects in many aspects of police work. But, they can also have a negative influence in some cases where officers face charges of wrongdoing. The model policy makes it clear that officers owe their first allegiance and responsibility to the agency that employs them, and that failure to cooperate in any internal investigation in an effort to protect oneself or a fellow officer is a separate violation of policy.

Along these same lines, the model policy states that:

Officers shall accept responsibility for their actions without attempting to conceal, divert, or mitigate their true culpability nor shall they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

This requirement is intended to expand on the requirement for truthfulness and cooperation from officers, particularly during internal investigations. But in addition to being truthful in response to questions that may be posed to them in an investigation or other matter, officers are expected to accept responsibility for inappropriate or improper conduct without attempting to cover up their mistakes or misdeeds. Attempts to withhold information necessary for the conduct of an internal investigation, or to interfere or influence such an investigation for one's own protection or to protect another, should be considered a separate violation of policy.

In fact, failure to fully cooperate in a purely administrative investigation can form the basis for disciplinary action up to and including termination of employment. In such investigations, officers must be informed of this fact prior to questioning as well as the fact that anything they say may not be used against them in a subsequent criminal proceeding. However, it should be noted that where officers are the subject of a criminal investigation, officers are under no duty to cooperate. Police officers have the same constitutional rights to remain silent and to consult with an attorney as do civilians in such situations.

Finally, with regard to issues of accountability and responsibility, the model policy recommends adoption of the requirement that officers "who are arrested, cited, or come under investigation for any criminal offense in this or another jurisdiction shall report this fact to a superior as soon as possible." Most often this issue arises when an officer is arrested or cited in another jurisdiction where the incident would not normally be reported to the employing agency. This information—either as a single incident or in the context of repeated problems—may have bearing upon an officer's ability to serve as a law enforcement officer generally or in specific assignments within the police agency. Therefore, agencies should require that any such criminal arrests, citations, or investigations be reported to a superior in a timely manner.

#### E. Conduct Toward Fellow Employees

Establishment of a working environment that is constructive and supportive is one of the better means of developing esprit de corps among employees and motivating them toward maximum personal and agency achievement. Dissension, squabbling, and in-fighting among staff members creates a dysfunctional working environment that can have serious negative implications for law enforcement efforts—an occupation where teamwork is so vital. All working environments experience some degree of discord on one level or another. The workplace is not always a bastion of civility, and some degree of friction between personalities can be expected. However, an employee can reasonably expect, and indeed should require, a workplace free from harassment and discrimination. The model policy contains two provisions that address this area of concern:

- a. Officers shall conduct themselves in a manner that will foster cooperation among members of this agency, showing respect, courtesy, and professionalism in their dealings with one another.
  
- b. Employees shall not use language or engage in acts that demean, harass, or intimidate another person. (Members should refer to this agency's policy on "Harassment and Discrimination in the Workplace" for additional information on this subject.

The issue addressed in the model policy is intended to reinforce the need for general civility and the idea that professionalism and respect toward fellow workers are at the heart of a healthy, productive police organization. An extreme example of a breakdown in conduct between employees involves instances of harassment and discrimination in the workplace, an issue that is also addressed in the policy. Workplace harassment and discrimination not only expose the organization and offending personnel to civil liability as well as possible prosecution under state and federal law, but also have other destructive effects on the police organization. Harassment has serious debilitating effects on its victims and creates disruptions to productivity. Many good employees often quit as a result of such harassment or develop a pattern of lost or unproductive time while on the job. Workplace harassment and discrimination are antithetical to the precepts of a professional law enforcement agency designed to uphold the law and the rights of all persons. Harassment and discrimination in the workplace are crimes as well as the basis for internal administrative discipline and, as such, run counter to the values and ethics of law enforcement.

Finally, with regard to workplace harassment and discrimination, executives must consider that an employee who harasses a fellow employee may also be carrying those same behavior patterns into the community that he or she serves. It is not hard to image the types of charges that could be leveled against an officer and his/her law enforcement agency should this prejudicial attitude be manifested

within the community. The types of persons who display harassing and discriminatory types of behavior within their agencies among their colleagues are generally not suitable for law enforcement careers.

The issue of harassment and discrimination within the workplace is a highly complex and evolving field of law and one that has routinely created some of the greater concerns for police personnel management. Agencies should address these issues in a separate comprehensive policy on this matter and remain cognizant of the broader applicability of workplace harassment and discrimination law. [3]

#### F. Conduct Toward the Public

Interaction with the public is the police officer's central focus. A positive police-community relationship is essential for gaining the public's confidence in the police and cementing their support in crime prevention and criminal apprehension. Research has confirmed what all police officers know from experience: that the public is the primary resource for successful criminal apprehension and crime prevention. Without public support and cooperation, the job of law enforcement is substantially more difficult and far less successful.

But public support and cooperation with the police do not come naturally. They are built upon mutual respect, a relationship that is largely the product of fair treatment by the police. The police image among citizens is delicate and often fickle. It is generally the product of a single or a few brief personal encounters with the police or the product of what are perceived as reliable stories passed on by friends or acquaintances who have had such experiences. Even a single negative public encounter can have a ripple effect, particularly in areas where police presence is more conspicuous and/or prevalent, such as in high-crime areas. Unfortunately, the public retains memories of bad incidents concerning the police far longer than it remembers favorable ones, and negative incidents can often undo or seriously damage long-standing positive police-community relationships.

All of the above indicate that good conduct of the police toward the public is not only proper from a professional and ethical standpoint but is "smart policing" as well. It is not simply a public relations tool: it is or should be a conscious attempt to nurture community good will and respect for the police so that the public's contributions to crime control can be fully realized. To this end, the model policy specifies

several general rules of conduct that if followed by officers on a consistent basis when dealing with the public should assist in building and maintaining public support.

Specifically, the model policy states the following:

- a. Officers shall conduct themselves toward the public in a civil and professional manner that connotes a service orientation and that will foster public respect and cooperation.
  
- b. Officers shall treat violators with respect and courtesy, guard against employing an officious or overbearing attitude or language that may belittle, ridicule, or intimidate the individual, or act in a manner that unnecessarily delays the performance of their duty.
  
- c. While recognizing the need to demonstrate authority and control over criminal suspects and prisoners, officers shall adhere to this agency's use-of-force policy and shall observe the civil rights and protect the well-being of those in their charge.

#### G. Use of Alcohol and Drugs

The model policy addresses the issues of consumption of alcoholic beverages and legal use of drugs whether over the counter or as prescribed by a physician. Use of drugs illegally as a controlled substance is an issue that is addressed in the model policy under the heading of adherence to laws and is not further discussed here.

The use of alcohol while on duty (with limited exceptions) is almost universally prohibited by police agency policy. Disciplinary measures based upon unauthorized on-duty use are almost always upheld by the courts. The model policy addresses this concern primarily in the first two statements in section IV.A.6. In particular, the policy states that "Officers shall not consume any intoxicating beverage while on duty unless authorized by a supervisor." This prohibition recognizes that officers on undercover

assignments or on certain types of surveillance, sting, or similar operations may have to consume alcoholic beverages as part of their role.

The policy also prohibits the serving or consumption of alcohol “on police premises or in vehicles owned by this jurisdiction.” This is generally intended to address situations in which on-duty or off-duty officers may consume alcohol for informal celebrations or other similar events, but it also includes other circumstances in which alcohol may be served or consumed. Police premises are generally open to the public, and the potentiality of citizens witnessing police officers consuming alcohol on duty—whether or not this is in fact the case and irrespective of the circumstances or the quantity of alcohol in question—is not conducive to the image of a professional police organization. There are also liability considerations associated with officers consuming alcohol on police premises whether formally or informally sanctioned by the agency should accidents or similar incidents occur as a result.

While the consumption of alcohol by on-duty officers is almost universally disallowed, departmental regulation of off-duty alcohol consumption, and disciplinary action for such use, involves more difficult questions.

The model policy addresses the issue of off-duty alcohol consumption by stating that:

- a. an officer shall not be under the influence of alcohol in a public place, whether on or off duty,
- b. shall not “report for duty with the odor of alcoholic beverage on his or her breath,” and
- c. shall not “report to work or be on duty as a law enforcement officer when his or her judgment or physical condition has been impaired by alcohol, medication or other substances.

Item (a) above is intended primarily to protect the image of the police agency against charges of inappropriate officer conduct while off duty just as the issue of on-duty consumption of alcohol is addressed elsewhere. The question could easily and legitimately be raised by members of the public about the professionalism and stability of an officer who lacks the self restraint and good judgment to appear in public in an inebriated condition. There is also the potentially serious problem of an officer in a public setting being required to take emergency police action while under the influence of alcohol. Items (b) and (c) are also intended to address this issue. The odor of alcohol on the breath of any officer

who reports for work should constitute sufficient basis alone to remove the officer from duty irrespective of how much alcohol the officer consumed.

Item (c) above is also meant to protect the agency and the public against the potential of officers reporting for work or being on duty whenever their judgment has been impaired by alcohol or other substances. Alcohol and certain forms of prescription and non-prescription medication affect individuals differently. Additionally, alcohol and certain medications taken in conjunction with one another can markedly diminish judgment, perception, and/or reactions. This may render the officer unfit to perform essential functions of the job and constitute a danger to him- or herself or others. The model policy employs this admonition as a caution to officers, prior to reporting to work, to avoid the use of any drug, including alcohol, that could negatively affect their performance.

Furthermore, the policy requires that officers “report the use of any substance, prior to reporting for duty, that impairs their ability to perform as a law enforcement officer.” This places a burden upon officers for self-control and self-appraisal, considering that they are often in the best position to assess their performance capabilities. While many officers may avoid reporting impairment for fear of repercussions, it is useful to place officers on notice that they are personally responsible for reporting to work in a fit condition and that they will be held accountable for negative consequences stemming from their consumption of alcohol and/or medication.

A measure of the burden for ensuring that on-duty officers are not impaired by drugs or alcohol falls upon their first-line supervisors. Therefore, the policy directs that

Supervisors shall order a drug or alcohol screening test when they have reasonable suspicion that an employee is using and/or under the influence of drugs or alcohol. Such screening shall conform to [the] agency’s policy on employee drug-screening and testing.

The above requirements and admonitions are considered to be reasonable restrictions upon officers to protect themselves, others, and the interests of the police agency. Some law enforcement agencies may wish to add additional or more stringent restrictions on the off-duty use of alcohol and prescription drugs. For example, some agencies place restrictions on officer consumption of alcoholic beverages within a specific time of reporting for duty—a practice that has been employed by some other types of employers to include commercial airlines for their flight crews. Still other police administrators take the position that officers reporting for duty with any amount of alcohol in their bloodstream are operating at diminished levels of proficiency. This, they argue, coupled with the potential need for these officers to

employ deadly force, creates an unacceptable risk to the agency and the public. While it is difficult to argue against more restrictive policies of this nature, the same argument could be used with regard to any substance that impairs, no matter how slight, the judgment and reaction of officers.

A near-zero tolerance approach to this issue is difficult to manage administratively, and measures designed to enforce such rules risk overstepping the legitimate interests of agencies to control their personnel. Advocacy of zero tolerance or near-zero tolerance for alcohol risks opening a much broader array of issues that can further complicate the matter. For example, a difficult question arises when an officer's ongoing off-duty use of alcohol so debilitates the officer that, although sober when reporting for work, his or her performance has been impaired by alcohol-related illnesses. By the same token, even common cold medicines, such as those containing codeine and antihistamines, can diminish many individuals' judgment and perception.

In the end, one must place the lion's share of the responsibility for controlling this matter on the shoulders of individual officers and their immediate supervisors to ensure that their performance is in keeping with acceptable agency standards. In addition, agency administrators should not lose sight of the fact that alcoholism (should that be involved) may be regarded as a handicap under federal and state law, and policies promulgated or actions taken in this context must take this into account.

#### H. Use of Tobacco Products

The model policy prohibits police officers from using tobacco products unless they are used in a designated smoking area and only when officers are not conducting police business. Smokeless tobacco products, such as snuff or chewing tobacco, are included as well as cigarettes, both because of the health risks involved as well as the poor public image they impart of police officers. Officers are also not permitted to use tobacco products in a vehicle owned or maintained by the law enforcement agency. This restriction is based on several factors, to include concern over the appearance of officers smoking on duty in public; concern for the health and well-being of both smoking officers and those who may be subjected to their secondhand smoke in the vehicle; and to a far lesser degree, the negative effect cigarette smoke has on vehicle cleanliness.

In the first regard, smoking by officers while on duty has always been perceived as a public relations or public image problem. In fact, the common and time-honored policy of many departments prohibiting smoking in patrol cars or while on duty in public places may in many instances be traced to a concern over the public perception of the department rather than to health issues. This is a problem that

predates the current focus on the adverse health effects of smoking by many years. It has long been a feeling among law enforcement executives that a uniformed officer with a cigarette dangling from his or her mouth presents an image to the public that is not acceptable to the department, hence the frequent incidence of prohibitions against uniformed officers smoking in public.

Now, as smoking increasingly becomes perceived by the public as something detrimental to the health of both smokers and nonsmokers, smoking by officers while on duty has become and will continue to be a matter of increased departmental attention. In this regard, the Environmental Protection Agency (EPA) has made it clear that the inhalation of secondhand smoke by non-smokers has a “serious and substantial public health impact” on nonsmokers. According to the EPA, about 3000 nonsmokers die annually in the United States due to lung cancer caused by secondary smoke. The EPA also found that secondary smoke was responsible for a significant number of cases of pneumonia, bronchitis, and other respiratory infections, as well as leading to the development or aggravation of asthma.

Of equal importance are the effects of smoke on the health and productivity of police officers themselves. Even before the EPA issued its landmark report, many health-conscious police agencies had made their own decisions on the risks and negative impact of smoking on the health of their officers and fellow employees. Many of those agencies took steps to limit smoking on duty, and many more today are prohibiting smoking both on and off duty for newly hired officers.

First among agency concerns is the fact that a law enforcement officer, in the course of his or her employment, will be required to perform certain demanding physical tasks that will require cardiovascular endurance. Cigarette smoking is a substantial inhibitor to the development and maintenance of this physical condition. Second, police agencies in general have come to recognize the significant financial and professional value of career officers. Cigarette smoking is a serious health risk that increases the possibility of officers’ contracting debilitating diseases preventing them from completing their full term of career employment.

Historically, U.S. courts have been willing to grant law enforcement organizations some legal leeway in situations in which the efficient functioning of the department, and therefore, public safety is implicated. In view of the documented health reasons alone connected with the use of tobacco products, restrictions on smoking in the law enforcement environment will most likely withstand legal challenges directed against them. [4]

## I. Abuse of Law Enforcement Powers and Position

Abuse of power by law enforcement officers can take many forms to include the use of excessive force, denial of civil rights, and related acts. These types of acts are dealt with separately in the model policy. The present discussion deals primarily with those acts or inactions committed by police officers for purposes of financial gain, privilege, or advantage not otherwise available to them as private citizens.

The abuse of power or position is one of the more serious of conduct violations that can be leveled against a law enforcement officer. Such violations range in severity from acceptance of nominal tokens of appreciation to the systematic exploitation of persons or organizations for gain. The history of law enforcement is replete with examples of this form of abuse of power, some of which have grown within police agencies to near-systemic corruption. The early 1970s reports of the Pennsylvania Crime Commission and the New York City Knapp Commission are examples of investigations that identified wide-scale corruption in two of this nation's larger police departments. Fortunately, such large-scale abuses are rare. But it is from the small, seemingly benign acts that take advantage of police power or position that an environment of tolerance grows within agencies, sometimes leading to more frequent and egregious transactions. From this historical perspective and with the intent of avoiding even the appearance of impropriety, the model policy assumes a position of zero tolerance for corruption.

The model policy addresses six issues relative to the abuse or potential abuse of police power and position. In particular, the model policy requires first, that

Officers report any unsolicited gifts, gratuities, or other items of value that they receive and ... provide a full report of the circumstances of their receipt if directed.

This reporting requirement is designed to ensure that all such items come to the attention of the law enforcement agency. Even though officers are prohibited from receiving gifts, gratuities, and similar items, such items may nevertheless be received by them through the mail or by other means on an unsolicited basis. The requirement that officers report these items helps to ensure that their receipt receives official notice, thus protecting the officer from allegations of misconduct and providing the agency with the opportunity to take any action deemed appropriate. Under provisions of the model policy, officers are also prohibited from using their authority or position for financial gain, for obtaining or granting privileges or favors not otherwise available to them or others except as a private citizen, to avoid the consequences of illegal acts for themselves or for others, or to barter, solicit, or accept any goods or services (to include, gratuities, gifts, discounts, rewards, loans, or fees) whether for the officer or another.

This restriction addresses the majority of concerns of police administrators with regard to an officer's use of authority for financial gain. It prohibits situations such as accepting special access to and treatment at public events or gatherings; negotiating with officers from the same or another jurisdiction to overlook violations of the law for themselves, their friends, or members of their family; or asking for, engaging in barter for or accepting outright any goods, services, or similar gains. These are only examples of possible scenarios covered by this directive, which is designed to address a broad waterfront of situations in which officers could willfully or inadvertently benefit from their position or authority.

Some will argue that a complete ban on the acceptance of goods, services, and favors is too far reaching and fails to recognize that gestures are sometimes made by citizens as tokens of appreciation without any expectation of special treatment. Each agency must make its own decision regarding what it will tolerate in this area. But as a matter of principle, it should be made clear to officers that they are in a high-profile position within the community as a representative of local government and are given a special level of trust and authority not available to persons in any other occupation. As such, they will be faced with situations in which persons or groups may, intentionally or unintentionally, attempt to coopt their authority and influence them for unauthorized purposes. The simple cup of coffee or a discounted meal from a friendly restaurateur may be nothing more than a courteous gesture or token of appreciation. However, it may also incorporate subtle manipulation intended to extract favors from officers, such as spending more time in and around the establishment than would normally be necessary or permitted.

Moreover, even simple gestures by business owners or individuals, provided and accepted on a routine basis, can easily lead officers down the slippery slope from appreciation to expectation. Within time, simple gestures can grow into significant gifts or rewards and become an anticipated part of officer compensation, or be regarded as perquisites of the job. With this subtle and gradual change of an officer's attitude comes a relatively easy transition into development of an expectation that such privileges or benefits will be forthcoming. When they are not, they may be requested or even demanded. The acceptance of "perks" from the public can degenerate into a downward spiral that leads to, in a worst-case scenario, establishment of a culture of corruption within the law enforcement agency.

Many agencies have adopted the zero-tolerance approach to this matter in view of the above concerns and realities. In addition, they recognize that the acceptance of gratuities and the like presents a bad image of the officers and the agency to the public. Citizens who witness or learn of officers receiving special treatment or gratuities can understandably feel a degree of resentment toward not only the

officers involved but the police agency as a whole. They may question the degree to which favoritism influences the decision-making process of officers in general, whether law enforcement resources are provided equitably and fairly within the community, even whether the apparently simple gesture may reflect a more pervasive degree of corruption within the police agency. The ability of law enforcement to deal with public safety effectively is greatly diminished when such actions erode the confidence of the public in their law enforcement agency.

In the above context, the model policy also prohibits officers from purchasing, “converting to their own use, or having any claim to any found, impounded, abandoned, or recovered property, or any property held or released as evidence.” Here again, the issue is one primarily of appearances. In situations involving the above, charges could be made that officers are engaged in a subterfuge by procuring property unnecessarily or inappropriately with personal intentions for its use or acquisition. Such appearances should not be permitted to germinate. However, this does not preclude the agency from selling at public auction or in other acceptable ways dispensing of abandoned, recovered, or related property after a reasonable amount of time and following legitimate and earnest attempts to locate owners.

Officers are also limited in the manner in which they can solicit funds as part of or on behalf of the police organization. The model policy states that

Officers shall not solicit or accept contributions for this agency or for any other agency, organization, event, or cause without the express consent of the agency chief executive or his or her designee.

Some jurisdictions have experienced problems with persons soliciting funds from the community and those who claim to be doing so on behalf of their police organization. This directive is intended to impose controls over all fund-raising activities so that legitimate activities can be sanctioned and managed by the agency.

Another issue in this realm of concern is addressed in item IV.A.8.e. of the model policy, which states that

Officers are prohibited from using information gained through their position as a law enforcement officer to advance financial or other private interests of themselves or others.

Concerns in this area can take a number of forms. For example, officers or other employees working in sensitive areas of the agency may sell criminal history records or other restricted information to commercial concerns as part of background investigations. Officers working in part-time jobs for security firms, process servers, or others may use confidential or other sensitive information developed by the agency to promote their interests and those of unauthorized outside parties. These are only a few of the many possible examples of unauthorized uses of police information that may benefit the financial interests of police employees.

Finally, the model policy takes the position that “officers who institute or reasonably expect to benefit from any civil action that arises from acts performed under color of authority shall inform their commanding officer.” Officers may initiate civil lawsuits or otherwise become party to civil actions against persons with whom they have had dealings in the course of their employment and from which they could realize monetary compensation. In some cases for example, officers may bring actions for physical injuries, infliction of psychological injuries, improper subjection of the officer to legal process (e.g., malicious prosecution), actions that are injurious to the officer’s professional status and reputation (as in the case of defamation suits), or similar actions. [5] While these lawsuits are not common and officers have the right to bring such actions, the model policy directs that involved officers notify their commanding officer in such cases. This will allow the agency to become aware of cases in which officers appear to be abusing this right or conspiring to use this legal avenue solely for personal gain or punishment of others.

#### J. Off-Duty Police Action

Actions taken under color of authority by off-duty police officers have traditionally been an arena ripe with problems both for police administrators and individual officers. The breadth of those problems hinge on a number of factors within the police agency which include but are not limited to (a) whether officers are considered peace officers under state statute or case law on a 24-hour basis within their own jurisdiction and whether that extends to other jurisdictions within their state where employed; (b) whether they are required by their agency to remain armed while off duty or do so by agency custom or practice in the absence of specific policy; (c) whether agency policy governs when and how officers should respond to violations of the law in an off-duty capacity in their own jurisdiction and other jurisdictions of the state; and (d) the degree to which the agency maintains control of off-duty employment of its officers. To the degree that the forgoing are not regulated by statute, case law or agency policy, situations involving actions taken by off-duty officers will remain problematic.

The Model Policy on Standards of Conduct is not designed to address these widely varied issues. The National Policy Center has established a Model Policy on Off-Duty Conduct that may be of assistance to agencies in resolving some of the forgoing issues. The present policy is designed to address only one aspect of this issue involving the inappropriate use of police powers.

The model policy provides two specific directives in this regard. First, the policy prohibits officers from

Using their police powers to resolve personal grievances (e.g., those involving the officer, family members, relatives, or friends) except under circumstances that would justify the use of self defense, actions to prevent injury to another person, or when a serious offense has been committed that would justify an arrest. In all other cases, officer shall summon on-duty police personnel and a supervisor in cases where there is personal involvement that would reasonably require law enforcement intervention.

While many officers are armed while off-duty, they are generally out of uniform and/or driving unmarked privately owned vehicles and thus not readily identifiable as law enforcement officers to the public or even some of their own colleagues. Additionally, most officers do not wear soft body armor while off-duty and do not have access to a police radio or other on-duty types of equipment. All these factors can place off-duty officers in awkward situations. With these factors in mind, the model policy provides some direction designed to limit the exposure of officers to danger and the agency to charges of civil liability.[6]

Beyond these personal safety considerations, the intent of this policy statement is to avoid instances that may involve conflicts of interest and that would consequently tend to negatively influence officers' judgment. Generally speaking, an officer should not invoke police powers for the purpose of resolving personal grievances or those of family or friends. An exception to this is when the officer, friends or family become victims of a crime or when the violations of law are so serious as to require immediate action.

For example, an off-duty officer becomes engaged in a conversation with a neighbor over loud music from a party at the neighbor's home. The officer resides in the jurisdiction where he is employed and, by statute, may take police action while off-duty. The neighbor becomes abusive and uncooperative and refuses to turn down the music. At that point the officer identifies himself as a police officer and issues a noise citation to the offending party with a threat that failure to comply will result in arrest.

In these and similar scenarios, the model policy requires that the officer refer the matter to an on-duty officer rather than issue the citation or make an arrest. However, in the same situation, should the neighbor become physically assaultive to the officer, or his friends or family, the officer would be justified in taking necessary action to include the possibility of making an arrest. A supervisor should also be summoned in such cases in order to ensure third-party impartiality and the authority necessary to make judgments and resolve differences. From the viewpoint of officer and public safety, the model policy also states that

Unless operating a marked police vehicle, off-duty officers shall not arrest or issue citations or warnings to traffic violators on sight, except when the violations is of such a dangerous nature that officers would reasonably be expected to take appropriate action.

This prohibition is based on the fact that the identity of out-of-uniform officers in unmarked vehicles is not easily determined by motorists or other third parties. The chance for mistaken identity provides fertile ground for a variety of dangerous situations. These include the possibility that a motorist who an off-duty officer is attempting to stop may mistakenly assume that he or she is being accosted.

#### K. Prohibited Associations and Establishments

In early 1998, the superintendent of one of the nation's largest police agencies resigned his position in the wake of accusations that he had maintained a long-standing friendship with a known felon. This illustrates an old problem area for law enforcement agencies affecting officers at all levels.

Many departments seek to prevent employees from associating with "undesirable" persons, other than in official capacities—that is, those who have a notorious criminal reputation or history that could present a potential threat to the department's reputation and effectiveness or present the potential of compromising the officer. This is generally considered a matter of legitimate departmental interest, and a policy prohibiting such associations may therefore be upheld by the courts. However, as with most issues that affect individual rights, there are limitations that must be observed and that have been built into the model policy. Where restrictions or prohibitions on such relationships exist within police organizations, questions often arise as to whether the rule serves a legitimate governmental interest, whether it impinges upon an employee's constitutional right to freedom of association, and where the balance falls between the two competing interests.

First, restrictions of this nature should not be overly broad. A policy that fails to provide specific guidance as to the types of associations that are prohibited may be held void for reason of vagueness. For example, a policy that merely prohibits association with “undesirables” would probably be considered too broad and vague. As with the other policy issues discussed in this document, the department should be prepared to give specific, articulable reasons why association with a named class of individuals will damage the department’s reputation or otherwise interfere with the department’s mission.

Second, the policy should provide an exception for family relationships or other associations that are similarly unavoidable. Most courts would not uphold a policy, for example, that prevents an officer from associating with his or her spouse or parents.

Finally, the policy should provide an exception for contents legitimately made in the line of duty. The nature of police work requires that officers deal with persons who, under traditional moral standards, would be considered undesirable as routine company. These include situations where officers are cultivating informants or working undercover assignments. The model policy addresses issues of prohibited associations by stating that

Officers shall not knowingly commence or maintain a relationship with any person who is under criminal investigation, indictment, arrest, or incarceration by this or another police or criminal justice agency, and/or who has an open and notorious criminal reputation in the community (for example, persons whom they know, should know, or have reason to believe are involved in felonious activity), except as necessary to the performance of official duties, or where unavoidable because of familial relationships.

This statement incorporates the three areas of concern previously discussed. The wording of the policy does not necessarily preclude officers from associating with persons solely because they have a criminal record. This is not advisable for police officers and many agencies may wish to discourage it. But association with persons who have served their sentence and who have reentered society, and who otherwise are pursuing legitimate occupations is consistent with the letter and intent of the model policy. On the other hand, should the individual’s past criminal history be so notorious and infamous as to cast doubt on that person’s reputation after having reentered society, and/or there is question concerning the individual’s continued connection to criminal enterprises, there would be legitimate grounds for the agency to prohibit such association unless it is work related or the individual in question is an immediate family member. In short, whenever there are questions concerning the reputation of persons with whom officers associate, officers are well advised to restrict or eliminate their associations with such individuals and/or to discuss the matter with an appropriate supervisor.

The model policy also prohibits arresting, investigating, or custodial officers from commencing “social relations with the spouse, immediate family member, or romantic companion of persons in the custody of the agency.” The same may also be said for persons in the custody of other criminal justice agencies. This directive is designed to remove the appearance of impropriety involving officers involved in such cases. For example, it may reasonably be claimed that an officer’s judgment and objectivity could be clouded by such associations or that the officer’s credibility in general or court testimony, in particular, may be similarly tainted. Such associations may also give rise to other speculation to include the pre-arrest relationship of the officer to the person in question and the possible interplay of the relationship to the arrest.

With regard to associations involving business establishments, the model policy suggests two restrictions. The first of these states that “except in the performance of official duties, officers shall not knowingly enter any establishment in which the law of that jurisdiction is regularly violated.” Again, the issue involved here is the protection of the image and reputation of officers and their agencies. Officers who, outside of the scope of their employment, enter gambling establishments, houses of prostitution, or any location that has a reputation for illegal activity risk sparking speculation about the officer’s integrity, judgment, impartiality, and professionalism.

Finally, the model policy prohibits officers from “knowingly join[ing] or participat[ing] in any organization that advocates, incites, or supports criminal acts or criminal conspiracies.” While uncommon, there are cases in which officers have affiliated off-duty with such organizations. The policy includes organizations that not only support criminal acts or conspiracies but also any that advocate such acts. Affiliation with so-called “hate groups” such as white supremacists, anti-Semites, militants, and other extremists that espouse and/or support criminal acts or criminal conspiracies are among those that run counter to the core values of law enforcement. Any affiliation of officers with such groups has a significant debilitating effect on the reputation of offices and their law enforcement agency.

#### L. Public Statements, Appearances, and Endorsements

The model policy covers several concerns with respect to public statements made by officers. Perhaps the most controversial of these is the first directive in section IV.B.1 of the policy, which reads

Officers shall not, under color of authority, make any public statement that could be reasonably interpreted as having an adverse effect upon department morale, discipline, operation of the agency, or perception of the public.

Police personnel in recent years have become increasingly willing to make adverse public statements regarding their departments. While police agencies may wish to limit or control such statements, the essence of the problem, of course, is the constitutionally guaranteed right to free speech. The extent to which a department may regulate speech by its personnel depends upon many factors and is a complex point of law to which only limited guidance has been given by the courts. Generally speaking, however, the basis for any discussion of the subject must distinguish between speech of a "personal" versus a "public" nature. For example, if an employee makes statements detrimental to the department, the department may be able to take disciplinary action as long as the statements are of "personal interest" only. If however, the statements deal with matters of "public concern," then the department may take action against the employee only if the "public concern" is outweighed by the interest of the public employer "in promoting the efficiency of the public services it performs." [7]

Supposedly, something is a matter of public concern if it relates to "any matter of political, social, or other concern to the community." [8] Unfortunately, the deciding line between that which is of "personal interest" only and that which is a matter of "public concern" is very vague, and, as with other free-speech issues, the outcome depends largely on the political makeup of the court considering the question. In general, however, personal insults directed at superiors and complaints regarding the individual treatment of the complaining employee are often considered matters of "personal interest" for which action may be taken, [9] whereas complaints about, for example, the alleged misuse of public funds or similar acts of official misconduct by superiors are likely to be regarded as matters of "public concern," however intemperate or outrageous they may be. In the long run, whether the matter is one of "personal interest" or "public concern" is a question of law to be decided by the judge. [10]

Another aspect of the freedom-of-speech issue is reflected in the following statement of the model policy:

Officers shall not, under color of authority, divulge or willfully permit to have divulged, any information gained by reason of their position, for anything other than its official, authorized purpose; or, unless expressly authorized, make any statements, speeches, or appearances that could reasonably be considered to represent the views of this agency.

The first part of this directive is clearly intended to protect confidential information from being released without authorization or to be used by officers for any purposes other than those for which they were intended. This may include but is not limited to the use of such information for private purposes or in conjunction with outside business endeavors, (such as private security or private investigative operations), that could benefit from information contained in criminal history and related departmental files.

The second element of this policy directive is intended to control unauthorized statements that may be interpreted by those outside the agency as representing official agency policy. Normally, all policy and position statements are provided to the media and others through the chief executive officer, the public information officer, or another designated spokesperson. Other officers who may appear in public either in uniform or as clearly designated members of the police agency must ensure that their comments with regard to their work and the agency are within the parameters of policy established by the agency for the release of information. [11] The final element of the model policy in this area of concern relates to restrictions on endorsements by officers. The policy states that

Officers may not, under color of authority, endorse, recommend, or facilitate the sale of commercial products or services. This includes but is not limited to the use of tow services, repair firms, attorneys, bail bondsmen, or other technical or professional services. It does not pertain to the endorsement of appropriate governmental services where there is a duty to make such endorsements.

This directive prohibits the promotion of products or services by any personnel who are clearly identified with their employing agency as a law enforcement officer. It is inappropriate for a governmental agent to do so in most capacities as it may imply governmental sanctioning of and support for specific products and services. This is both misleading and may provide an unfair trade advantage to competing product manufacturers or service providers. It may also give the impression that the officer and/or the agency is receiving remuneration for such endorsements and/or that they vouch for and stand behind product or service quality and customer satisfaction.

In some instances, officers may be approached by product or service providers for testimonials or endorsements. However, the officer's identification with their employing jurisdiction and police agency may give the improper impression that these entities also stand behind these products. Finally, it could be argued by some that recommendation of products and services directly to individual consumers by a police officer carries a degree of coercion that is improper even if unintended.

Such endorsements and recommendations do not apply to recommendations concerning governmental services when authorized by the law enforcement agency. For example, this may include recommendations regarding the use of family counseling or crisis intervention services, health clinics, social welfare or housing assistance services, or similar municipal, county or state services.

#### M. Political Activity

Political activity is also generally regarded as a matter of free speech. As such, there are limitations on what law enforcement administrators can do to restrict their officers' political activity. The demarcation line in limiting such activity is based generally upon whether or not the activity in question is being performed by the officer during working hours, while in uniform or while otherwise serving as a representative of the law enforcement agency. The model policy makes this distinction and also indicates that state law, where applicable, will take precedent over model policy recommendations.

It has now been well-established that the First Amendment prohibits officials from discharging or threatening to discharge public employees solely for not supporting the political party in power, unless the party affiliation is an appropriate requirement for the position involved. [12] While such patronage has been considered appropriate for high-level policy-making personnel within agencies, it has been considered inappropriate for actions against lower-level, non-policy-making personnel. [13]

Thus, during working hours, while officers are in uniform, or otherwise serving as representatives of their law enforcement agency, the model policy prohibits them from engaging in the following political activities:

Placing or affixing any campaign literature on city- or county-owned property.

Soliciting political funds from any member of the law enforcement agency or another governmental agency of the employing jurisdiction.

Soliciting contributions, signatures, or other forms of support for political candidates, parties, or ballot measures on property owned by the jurisdiction.

Using official authority to interfere with any election or interfere with the political actions of other employees or the general public

Favoring or discriminating against any person seeking employment because of political opinions or affiliations

#### N. Expectations of Privacy

This component of the model policy addresses an issue that is not traditionally or routinely regarded as a matter of employee conduct but one that can become involved in investigations of improper conduct. The need to access officers' desks, lockers, file cabinets, storage areas, assigned vehicles, or other areas can also come into play with respect to line inspections, in searching for evidence that officers may have stored inappropriately from a crime scene, in the search for missing property, or in other regards.

Officers do not normally have any expectation of privacy in the aforementioned types of areas that are owned by or under the control of the law enforcement agency. However, absent any notice to this effect by management, officers may develop a presumption of personal privacy in such areas—particularly if there is a generally accepted or long-held tradition or custom within the agency of observing or granting such privacy—that may become binding upon the agency unless explicitly countermanded.

Agency administrators who wish to reserve the right to gain access to agency-owned or -controlled property that is or can be used to house the personal property of officers should make their intentions clear in written agency policy. The model policy recommends the following language for this purpose:

Officers shall not store personal information or belongings with an expectation of personal privacy in such places as lockers, desks, departmentally owned vehicles, file cabinets, computers, [14] or similar areas that are under the control and management of this law enforcement agency. While this agency recognizes the need for officers to occasionally store personal items in such areas, officers should be aware that these and similar places may be inspected or otherwise entered—to meet operational needs, internal investigatory requirements, or for other reasons—at the direction of the agency chief executive or his or her designee.

The second component of this area of the model policy involves the unauthorized storage of agency documents outside the confines of the police department. For example, it is not uncommon to find an occasion that police officers and criminal investigators in particular have accumulated and/or stored files relating to criminal cases at home. This is often in conjunction with work officers are conducting off-duty on cases that are long-standing or that in some manner need extra attention. Over time, the accumulation of records can increase and include sensitive or confidential materials as well as the original or sole copy of documents that if misplaced, lost or destroyed could cause critical problems. Once outside the confines and security of the police agency, documents may also fall into the wrong hands or, should the officer be dismissed or leave employment of the agency, the documents may be difficult to recover. With these and related problems in mind, the model policy restricts this practice in stating that

No member of this agency shall maintain files or duplicate copies of official agency files in either manual or electronic formats at his or her place of residence or in other locations outside the confines of this agency without express permission