Model Policy Resource: Law Enforcement Sexual Misconduct Prevention and Accountability

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This project was supported by Grant No. 15JOVW-23-GK-05135-MUMU awarded by the Office on Violence Against Women, US Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of the US Department of Justice.

June 2024

Executive Summary

When victims reach out for assistance in the aftermath of a sexual assault, the response they receive from both formal support providers (such as law enforcement professionals, health care providers, and victim advocates) and informal support providers (such as family members or friends) can have a profound impact.

Many victims of sexual assault are hesitant to report the crime to law enforcement because they're afraid of being blamed for the assault, or because they don't want other people to know what happened to them. Some are afraid of the criminal justice system, and others are concerned that there isn't enough evidence that the assault took place. When it comes to accessing services like medical care, a victim might be worried about their privacy or others finding out, feeling ashamed or embarrassed, or have anxieties about not being believed or being blamed for the assault.

Improving these responses can help eliminate barriers for victims, leading to more effective care and better outcomes. Several public awareness and action campaigns have been created to achieve these goals, including the Start by Believing campaign developed by End Violence Against Women International. Preliminary evidence suggests the campaign can have positive effects.

Reducing a victim's fear of a negative response means more victims will be willing to report the crime and seek essential services such as medical care, victim advocacy, and counseling. Such support can help facilitate healing, interrupt the cycle of sexual violence, and facilitate the criminal justice system's ability to hold offenders accountable.

Electronic Access

The publication may be downloaded from End Violence Against Women International's Resource Library.

Organizational Features

Throughout this document, the following icons are used to highlight promising practices, resources, and policy recommendations; material and language not generally used in agency policies and procedures.

Innovative and promising practices

Policy recommendations

Resources and tools

Introduction

Most law enforcement officers serve their communities with honor and distinction, having taken an oath to protect all people, regardless of race, religion, gender, sexual orientation or social status. Any officer who misuses the power and authority of law enforcement by engaging in sexual misconduct commits an extremely serious breach of professional ethics, causing traumatic victimization of a colleague or member of the community whom law enforcement has sworn to protect. Depending on the severity of the misconduct, it may also result in civil and/or criminal liability, including violations of federal criminal civil rights laws and/or violations of state statutes which law enforcement is charged with enforcing. Public and private agencies have taken a variety of steps to prevent such misconduct and respond appropriately when it does happen.

This document was created to help law enforcement agencies work collaboratively with agency personnel, community partners, and legal counsel to develop their own agency-specific policy to address sexual misconduct committed by sworn and civilian personnel. It is provided in an accessible format that can be easily adapted by law enforcement agencies to create a new policy or build on an existing policy.[1]

Background

Efforts to address law enforcement sexual misconduct do not take place in a vacuum. Rather they reflect the growing national and international demand to improve responses to all forms of sexual harassment and assault, including in criminal justice settings.

In 2003, for example, the Prison Rape Elimination Act (PREA) was passed with unanimous, bipartisan support, with the goal of preventing rape and other forms of sexual victimization against those in the custody and care of law enforcement. A core requirement of PREA standards is that law enforcement agencies create a written policy addressing "all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct." PREA's requirements for sexual abuse prevention, detection, and response are applicable to law enforcement agencies' facilities such as holding cells, where civilians are detained in facilities within a law enforcement agency's jurisdiction and control.

In 2011, the International Association of Chiefs of Police (IACP) worked with law enforcement leaders from across the country to develop an Executive Guide for Addressing Sexual Offenses and Misconduct by Law Enforcement. This Guide advises law enforcement agencies to adopt policies specifically addressing sexual misconduct committed against members of the public by law enforcement. The Guide also encourages agencies to apply the same principles to all employees, civilian and sworn, as appropriate.

[1] This model policy resource is provided in Word, so agencies can easily revise the document to reflect their own policies, procedures, and formatting. This will often require tailoring the specific language used for agency units and personnel. For example, we use the term "officer" throughout this model policy resource, but we recognize that agencies use different titles for sworn personnel (e.g., agent, trooper, deputy). Many agencies also have specific Units they will want to refer to in this policy, such as Internal Affairs (IA), Professional Standards Unit (PSU) and the Office of Professional Responsibility (OPR) or Standards (OPS). No authorization or attribution is required to adapt this material to an agency's policies and procedures. On the contrary, our hope is that we have made it as easy as possible to implement the recommendations identified in this policy.

In 2015, the United States Department of Justice (DOJ) similarly published initial guidance for law enforcement, and in 2022, DOJ updated the guidance and release it with the title: Improving Law Enforcement Response to Sexual Assault and Domestic Violence by Identifying and Preventing Gender Bias. This document outlines eight core principles for law enforcement agencies to follow in pursuit of this objective, including the recommendation that law enforcement agencies develop policies and practices aimed at holding officers who commit domestic violence and sexual assault accountable, including those who commit sexual assault while acting under the color of law.

In 2017, the US Department of Justice, Office of Community Oriented Policing Services (COPS Office) published Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community. Appendix B of this report includes a 9-page sample policy that addresses PREA standards as well as sexual harassment and misconduct perpetrated by law enforcement against members of the public.[2]

In 2022, when Congress passed the reauthorization of the Violence Against Women Act (VAWA), it enacted two criminal statutes that strengthen the federal government's ability to prosecute law enforcement officers who commit sexual misconduct. First, 18 U.S.C. § 250 is a penalty statute for civil rights offenses involving sexual misconduct. As a result, every form of sexual assault committed by those acting under color of law in violation of 18 U.S.C. § 242 (as discussed below) is a federal felony, punishable with a sentence ranging from two years in prison to up to life in prison, depending upon the severity of the misconduct. This applies to all law enforcement officers and government actors at every level of government (e.g. state, federal, tribal). Second, 18 U.S.C. § 2243(c) makes it a crime for any federal law enforcement officer to knowingly engage in a sexual act with an individual who is under arrest, under supervision, in detention, or in federal custody. It is punishable by up to 15 years in prison, and consent is not a defense to this crime.

In 2021, the San Diego Police Department (SDPD) implemented a new policy guiding officer interactions with transgender and gender-nonbinary people. This policy was created in partnership with the local LGBTQ community and is designed to create a mutual understanding among community members and the police department to prevent conflict and ensure appropriate interactions.

A few of the key components include the following:

- A search or pat down shall not be performed for the sole purpose of determining an individual's anatomical gender.

- Transgender and gender non-binary individuals shall not be subject to more invasive search or frisk procedures than non-transgender or cisgender individuals based solely on transgender or gender non-binary status.

[2] This sample policy was developed by Andrea J. Ritchie, and the Policing Subgroup of the LGBT/HIV Federal Criminal Justice Policy Working Group. Ms**. Ritchie** is a police misconduct attorney, and a 2014 Senior Soros Justice Fellow, with more than two decades of experience advocating against police violence and the criminalization of women and LGBT people of color.

- When an arresting officer has reason to believe the arrestee is a transgender person or gender non-binary person, the officer shall specifically inform the arrestee that, as with any other arrestee, he/she/they must be searched. The officer shall ask the arrestee if there is a preference to be searched by a male or female officer. If the arrestee's gender request can be reasonably and expeditiously accommodated without risk to officer safety, the request should be granted.

- Officers transporting transgender or gender non-binary individuals as passengers or prisoners shall notify the radio dispatcher of their beginning mileage and ending mileage.

- Booking transgender and nonbinary people into a jail facility that aligns with their preferred identity.

Importance of Leadership

Strong leadership on any important issue must begin at the top. And the more sensitive and controversial an issue is, the stronger the leadership must be to convey and model the appropriate message and guide corrective actions. Command staff must therefore act as role models and communicate in no uncertain terms that sexual misconduct of any kind will not be tolerated, and that the agency will make every effort to prevent, accurately document, appropriately investigate, fairly adjudicate, and sufficiently discipline offenders for any such reports that are sustained and/or prosecuted. This message can be communicated both verbally and through the personal behaviors of those in top command at every available opportunity. Yet this must be supplemented with executive leadership that underscores the message, by ensuring that supervisors and command staff have the authority and resources to comply with this policy.

For more information on law enforcement sexual misconduct, see EVAWI's archived webinar, Public Trust: Confronting Law Enforcement Misconduct in the #MeToo Era. This 90-minute presentation was given by Chief Tom Tremblay, and it was designed to encourage courageous conversations and inspire proactive leadership to prevent and address law enforcement sexual misconduct.

Model Policy Language

Purpose

This agency acknowledges the responsibility of law enforcement to proactively develop policies, procedures, training, and supervision to prevent and effectively address any sexual misconduct committed by agency personnel, whether sworn or civilian. By developing and implementing this policy, our agency is taking a leadership position to address the serious problem of law enforcement sexual misconduct, and to model best practices and accountability for the law enforcement profession.

Policy

It is the policy of this agency to proactively address and prevent law enforcement sexual misconduct and to hold agency personnel responsible for any violations. This agency strictly prohibits sexual harassment, sexual assault, or sexual abuse of any member of the community or fellow employee by any member of the agency. All agency personnel are required to report suspected violations of this policy, and reports will be thoroughly and fairly investigated in accordance with all relevant laws (federal, state, and tribal), agency policies, human resource guidelines, and collective bargaining agreements. If any report includes behavior that could potentially meet the legal elements for a criminal offense, separate but concurrent administrative and criminal investigations shall be conducted.

Agency personnel found responsible for violating this policy will be subject to discipline up to and including suspension, termination, and/or decertification. Reports involving criminal behavior will be referred to the prosecutor's office to evaluate possible charges.

Any required documentation for decertification procedures will be forwarded to the certifying agency, in accordance with state law, agency policy, and relevant regulations.

Defining Law Enforcement Sexual Misconduct

Law enforcement sexual misconduct is generally defined as including sexual harassment, sexual assault, sexual battery, and any inappropriate or unwanted sexual behavior[3] committed against a member of the community or fellow employee by agency personnel. It also includes any sexual act committed by agency personnel while on-duty, or while acting under the color of law, or any sexual act committed while off-duty but involving agency or government equipment, or within agency/government property or vehicles, involving the use of a service weapon, or information obtained through law enforcement activity or databases, or secured through threat of taking or denying official action. Consent is not an affirmative defense to sexual misconduct, for the purpose of this policy. The term "agency personnel" is an inclusive term including all law enforcement agency employees, sworn and non-sworn.

Sexual misconduct also includes behavior that takes advantage of a law enforcement position to misuse authority and power (including force, or threats of force, arrest, charging, ticketing, reporting to immigration or child welfare authorities, refusal to investigate a crime, etc.)) 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) by another person. It also includes any communication or behavior by agency personnel that would likely be construed by a reasonable person as lewd or lascivious, or that is sexually inappropriate, nonprofessional, or violates general principles of acceptable conduct common to law enforcement agencies for maintaining the public's trust.[4]

[3] For more information about the overlap (and non-overlap) of the definitions for sexual harassment and sexual assault, please see EVAWI's (2018) training bulletin entitled, Sexual Harassment and Sexual Assault: Understanding the Distinctions and Intersections.

[4] This definition and the examples of prohibited behavior are adapted from the IACP's (2011) Executive Guide: Addressing Sexual Offenses and Misconduct by Law Enforcement.

Acting Under the Color of Law

Title 18 USC. Section 242 makes it a federal crime for a person acting under color of law to willfully deprive a person of a right protected by the Constitution or laws of the United States. Sexual assault by someone acting under color of law is a violation of 18 U.S.C. § 242. And, with the enactment of 18 U.S.C. § 250, as of October 1, 2022, any form of sexual assault committed by an individual acting under color of law is a felony, whether the behavior ranges from unwanted touching to violent sexual assault. This applies to all agency personnel, sworn and non-sworn, including police officers, prison guards, probation officers, and other law enforcement officials, as well as judges, prosecutors, public school employees, care providers in public health facilities, and other government actors and government contractors. It includes all acts while on-duty, and can include off-duty conduct when agency personnel are using their cloak of government authority to facilitate the misconduct (e.g., off-duty contacts or visits to crime victims, witnesses, or suspects, use of government vehicle or service weapon, threats of criminal prosecution or refusal to investigate).[5]

Prohibited Conduct

Prohibited behaviors may include, but are not limited to, the following:

- Any criminal conduct of a sexual nature as defined by state, federal, or tribal laws (e.g., sexual assault, sexual battery, rape).
- Exposing any uncovered genitalia, buttocks, or breasts to a member of the community or co-worker.
- Engaging in sexual misconduct or behavior while on-duty, when in uniform, or using agency or government equipment such as laptops and cellular phones (e.g., sexting, taking unnecessary or inappropriate photos/videos of community members, detainees, or co-workers).
- Possessing or sending sexually inappropriate material while on-duty, unless the employee can demonstrate a legitimate agency interest in the activity, for example as part of an investigation into criminal activity or employee misconduct.
- Using a law enforcement position, badge, or identification card to solicit, initiate, or coerce sexual contact with anyone. This includes sexual “shakedowns” (e.g., extorting sexual favors in exchange for not ticketing or arresting a member of the community).
- Unnecessary contacts that are nonprofessional and sexually motivated (e.g., unwarranted call backs or visits to crime victims, witnesses, or suspects, making a traffic stop to get a closer look at the driver for nonprofessional reasons).

[5] Consent is an affirmative defense to sexual misconduct while acting under the color of law in violation of 18 U.S.C. § 242, although it is not a defense to a violation of agency policy. For more information about investigating sexual misconduct in violation of 18 U.S.C. § 242, see Investigating and Prosecuting Law Enforcement Sexual Misconduct and 2022 Update: Investigating and Prosecuting Sexual Misconduct by Government Actors.

- Inappropriate and unauthorized use of agency resources or information systems (e.g., obtaining telephone numbers or addresses of community members), for purposes that are nonprofessional, sexually motivated, or as part of a pattern of domestic violence and/or stalking behaviors.

- Attempting to initiate sexual contact or engaging in a sexual act with anyone contacted within the context of law enforcement duties and activities, even if off-duty.

- Attempting to initiate sexual contact or engaging in a sexual act with any juvenile, including participants in a Police Explorer program or other youth program (such as Drug Abuse Resistance Education (DARE) or Gang Resistance Education and Training (GREAT), or between School Resource Officers and students.

- Voyeuristic acts committed against community members (e.g., looking in residences or vehicles for sexually motivated purposes, or as part of a pattern of stalking behaviors).

- Voyeuristic acts committed against detainees, including invasions of privacy that are unrelated to official duties (e.g., peering at an arrestee using a toilet; requiring an arrestee to expose his/her buttocks, genitals, or breasts; or taking images of all or part of an arrestee's naked body or of an arrestee performing bodily functions).

- Gratuitous physical contact with suspects or detainees (e.g., inappropriate or unnecessary searches, frisks, or pat downs).[6]

Mandatory Reporting of Suspected Violations

Agency personnel are required to immediately report any knowledge, suspicion, or information regarding possible violations of this policy to their direct supervisor. If the suspected policy violation involves the direct supervisor, the incident/information shall be reported to the next person in the chain of command as soon as possible. If the reported incident involves the chief executive of a law enforcement agency, the supervisor shall immediately notify the appropriate prosecutors for the jurisdiction and the individual in government who has direct oversight of the individual.

Because of the sensitive nature of any complaints involving an individual in the chain of command, reports can also be made directly to the Unit responsible for conducting administrative investigations of officer misconduct, and can be made to the Human Resources/Equal Employment Opportunity Office, as applicable and appropriate. Any personnel who experience sexual misconduct also have a legal right to file a complaint with the US Federal Equal Opportunity Commission (EEOC) and/or a state EEOC agency.

If agency personnel have knowledge or suspicion that officers or employees who work at another law enforcement agency have committed behaviors that would constitute a violation of this policy, they shall immediately provide this information to their direct supervisor. The supervisor will coordinate with the chain of command to determine if the

[6] For research on the nature, context, and characteristics of police sexual violence see: Stinson, P.M., Taylor, R.W. & Liederbach, J. (2020). The Situational Context of Police Sexual Violence: Data and Policy Implications. Family and Intimate Partner Violence Quarterly, 12 (4), 59-68.

information requires a criminal investigation, and if so, determine what agency has jurisdiction over that investigation. The supervisor will also ensure that information about a suspected code of conduct violation is reported to the agency of the suspected officer/employee as soon as practically possible.

Personnel who learn or suspect that they are being investigated by another law enforcement agency for behavior that could potentially constitute a violation of this policy (whether a criminal investigation or an administrative investigation for off-duty conduct), must immediately report this fact to their direct supervisor. The supervisor will notify the chain of command to ensure adherence to this policy.

Immediate action will be taken to maintain the complainant's privacy and protect the complainant from retaliation or other adverse consequences of reporting. Additionally, the complainant will immediately be referred to a local sexual assault advocacy organization and to the civilian oversight agency, where available.

Personnel who fail to comply with the mandatory reporting requirements described in this policy will be subject to discipline up to and including, suspension, termination, and/or decertification.

Confidentiality Protected

Any personnel receiving a report of possible policy violations shall not reveal information about the report, beyond what is required to fulfill mandatory reporting requirements.

Retaliation Prohibited

Any members of the community or agency personnel reporting possible violations of this policy shall be protected from retaliation. No agency personnel will harass or retaliate against any reporting person or potential witness. Agency personnel found to be responsible for harassment or retaliation of a reporting person or potential witness will be subject to discipline up to and including suspension, termination, and/or decertification.

Training and Prevention

This agency recognizes the value of training for prevention and appropriate response to sexual misconduct. A variety of strategies will be used for training personnel, including the basic academy, in-service, roll call, and Field Training Officer (FTO) programs, as well as training bulletins and other national resources, to regularly reinforce this policy and provide mandatory comprehensive training. Required topics will include:

- Law enforcement authority, oath, ethics, and civil rights.
- Defining law enforcement sexual misconduct and color of law, including case examples for on-duty and off-duty violations.
- Predatory behavior and common conduct of sexual offenders such as targeting, testing, grooming, isolation, and other "power and control" behaviors.
- Early warning signs and bystander intervention strategies for sexual misconduct.

- Mandatory reporting responsibilities and reporting mechanisms.
- Responsibilities of supervisors.
- Confidentiality protections for reporting parties and witnesses.
- Prohibited retaliation against reporting parties and witnesses.
- Potential disciplinary outcomes and criminal prosecution.
- Special considerations regarding frisks and searches of persons.

Training will also cover agreements with advocacy organizations or other agencies regarding reporting protocols (e.g., Memoranda of Understanding). For example, community members might be provided information that they can report sexual misconduct to an entity other than the law enforcement agency involved in the complaint – either the advocacy organization, prosecutor's office, or another law enforcement agency.

Finally, training will address the special considerations pertaining to vulnerable populations (including children, teens, runaways, homeless individuals, victims of human trafficking, people who are prostituted, and individuals with addictions, mental illness, and physical/cognitive disabilities), as well as LGBTQ+ community members.

Pre-Hiring and Screening

One of the best prevention efforts is to ensure that recruits are screened carefully for abusive behaviors that might escalate to sexual misconduct. Candidates will therefore be asked if they have engaged in, or ever been investigated for, sexual harassment, sexual assault, domestic violence, elder abuse, or child molestation. This includes any past discipline within their employment history, as well as their educational or military experience. Background investigations must also determine whether the candidate has any past arrests, convictions, suspended or deferred sentences, involvement in any diversion programs, and any protection orders related to sexual assault, domestic violence, elder abuse, child abuse, or stalking.

Candidates will also be asked questions to determine if they have engaged in power and control behaviors that are common for perpetrators of domestic violence, sexual assault, and child abuse, such as threats, intimidation, dominance, isolation and use of child pornography. Polygraph examinations can be a helpful tool in the hiring process.

All recruit candidates will be provided with a copy of the law enforcement code of ethics[7] and the agency's code of conduct[8] to communicate expected standards, including zero tolerance for domestic violence, sexual misconduct, and stalking.

[7] See the IACP's Law Enforcement Code of Ethics.

[8] See for example, the IACP's (1991) Law Enforcement Code of Conduct, which is posted online by the Illinois Institute of Technology, Center for the Study of Ethics in the Profession.

Post conditional offers of employment will include a psychological screening of all viable candidates for indicators of abusive tendencies in their background. If substantial, or multiple indicators of abusive behavior are found, a “no-hire” decision will be made.

Identifying Early Warning Signs

Agency personnel are expected to be mindful of early warning signs and behaviors that could lead to sexual misconduct and are required to follow the mandatory reporting requirements of this policy. Early warning signs include, but are not limited to:

- Aggressiveness, abuse of power, excessive or increasing use of force.
- Unusually high incidence of physical altercations or verbal disputes, in comparison with other personnel responding to the same types of calls or incidents.
- Public or employee complaints of aggression, harassment, stalking, or physical, and/or verbal abuse.
- Public or employee complaints regarding sexually suggestive comments/jokes, or comments about women that are objectifying/degrading with respect to gender, sexual orientation, or LGBTQ+ people in the sex trades, and survivors of sexual or domestic violence.
- Excessive/unnecessary call-backs or visits to the homes or workplaces of victims, witnesses, and suspects.
- Stalking or inappropriate surveillance activities and/or the misuse of police technology and information systems.
- Consistent patterns of time not accounted for, not answering calls for service, or patrolling or investigating out of assigned areas of responsibility.
- Suspicious patterns of enforcement and engagement activity, including traffic stops, ticketing, detentions, arrests (e.g., times, locations, race, gender, gender identity, age, etc.).[9]
- Suspicious patterns of activity such as frequent patrol of places where people engage in sexual activity (“Lover’s Lane” patrol), sex worker locations, vulnerable populations, campus residence halls, LGBTQ+ hangouts.
- Suspicious patterns regarding frequent volunteer transports (e.g., picking up intoxicated or vulnerable populations and offering rides, not calling in mileage).
- Suspicious patterns of use, or inconsistent use, of in-car or body-worn cameras.

[9] For example, supervisors may review the number of stops, as well as the case dispositions and clearance rates for stops and arrests of various groups of people: women, LGBTQ+ individuals, and members of vulnerable populations such as runaways, drug users, or prostituted individuals. Supervisors may also review the language used in reports to describe women and LGBTQ+ individuals.

- Testing/grooming behaviors or lack of appropriate boundaries with juveniles, including participants in youth programs (e.g., Police Explorer Programs, DARE, GREAT) or encountered as a Juvenile Investigator, School Resource Officer, etc.

- Violations of agency policies and procedures that could facilitate sexual misconduct (e.g., not calling in transport mileage, violating policies for in-car or body-worn cameras, patrolling or investigating out of assigned areas, inappropriate pat downs or searches).

- Rumors and reputation ("skirt chaser," "child predator," "peeper," "bully").

- Reported or suspected violence against family members.

These early warning signs and patterns of concerning behavior are meant to deter potential misconduct and to guide intervention before policy violations occur. This effort is designed to protect potential victims, and ensure employees maintain the high ethical standards of this agency and the law enforcement profession.

Supervisory Oversight and Response

Supervisors are in a unique position to detect warning signs and patterns or indicators of possible sexual misconduct by agency personnel. Supervisors shall receive training on these early warning signs and supervisory responsibility for effective oversight of this policy. Oversight activities may include, but are not limited to the following:

- Data collection and analysis of activities related to the early warning signs and behaviors described in this policy (e.g., traffic stops, detentions, arrests, activity reports, radio logs, narrative reports, case dispositions, locations of activities, and subject populations).

- Quality control audits to ensure compliance with operational policies (e.g., in-car and body-worn camera systems, access and use of criminal records, GPS monitoring).

- Random call-backs by non-sworn employees or contracted sexual assault advocacy agencies, to members of the public, to obtain feedback on their interactions with an officer and the officer's level of professionalism exhibited during that contact, including specific questions regarding sexual harassment or misconduct.

- Reviews of agency personnel social media use and posted content.

- Random observations and in-person supervision/support at calls for service, traffic stops, field detentions, pat downs and searches.

- Integrity audits where an officer has been the subject of a complaint or series of complaints for which complainants do not wish to proceed with an investigation.

Supervisor's Duties after Receiving a Report

When a supervisor receives a report of possible sexual misconduct committed by agency personnel, the supervisor will:

- Thank the complainant or other reporting party for reporting the potential violation and assure them that the report will be taken seriously, remain confidential, and thoroughly investigated. Refer the complainant to a local sexual assault advocacy agency.

- Offer support and safety planning for the complainant or other reporting party. Complainants and reporting parties will be advised that their safety is the highest priority, and informed that they will be supported throughout the investigative process, including connecting them to an advocacy organization if they choose.

- Notify the chain of command as soon as practically possible, in addition to the Human Resources and/or Equal Employment Opportunity Office, as applicable and appropriate. Notification should include the supervisor's initial assessment of whether the conduct might violate agency policy, criminal law, and/or a person's civil rights.

- Evaluate the resources and steps necessary for a thorough investigation to be initiated by the proper authority, based on the initial assessment of the report.

- Thoroughly document incident details and steps taken for further review and follow-up by the authority or investigative body assigned to the administrative investigation.

- Secure any evidence and identify potential witnesses as soon as possible.

- Ensure that a crime report is written, and all other applicable procedures are followed if the reported incident meets the elements of a criminal offense.

Investigation and Documentation

All administrative and criminal investigations, as well as any administrative or criminal actions taken as a result of the investigative findings, will be conducted in accordance with all relevant federal, state, and tribal laws, and applicable agency policies, human resource guidelines and collective bargaining agreements.

★ Administrative and criminal investigations of law enforcement sexual misconduct should be conducted by highly trained investigators, with sex crimes investigative experience whenever possible. In larger agencies, this may include a sergeant in Internal Affairs or a ranking supervisor who consults or works closely with an experienced sex crimes investigator. If there is more than one investigator assigned to the report, it is best to have representatives from diverse gender and racial groups whenever possible. However, smaller agencies may designate a single person with responsibility for investigating reports of sexual misconduct.

In some cases, both large and small agencies may need to hand over the investigation to an external agency or investigative authority. This may be the case when agency resources are limited, when someone of high rank is implicated in the report, or to avoid real or perceived conflicts of interest.

Any sustained complaints of policy violations, and any administrative or criminal actions taken as a result, will be documented in an employee's personnel file. Any required documentation for decertification procedures will then be forwarded to the certifying agency, in accordance with state law, agency policy, and other relevant regulations.

Concurrent Administrative and Criminal Investigations

When a report of suspected policy violation also includes potential violations of criminal law, an administrative investigation and criminal investigation will both be conducted. The two investigations will run concurrently, and it is important to maintain the integrity of both investigations. Investigators should seek legal guidance prior to initiating these separate investigations to ensure that the suspected officer's constitutional rights (as well as departmental bargaining agreements) are upheld. Legal guidance is particularly important with respect to how a suspected officer's statement is taken, and to ensure that criminal investigators and prosecutors neither use nor know of its contents.[10]

Concurrent investigations are a recommended practice to ensure any necessary administrative actions are taken in accordance with the investigation findings as soon as practically possible, and independent of any potentially lengthy criminal proceedings. The agency's responsibility to professional ethics and public trust requires efficient and necessary actions being taken without unreasonable delay, following a thorough and objective administrative investigation.

To ensure transparency and fairness, all criminal investigations, whether founded or unfounded, will be referred for review by the prosecuting attorney's office for the consideration of possible criminal charges. A request for a letter of intent to charge, follow up, or decline charges will then be obtained from the prosecutor's office.

Support for Personnel Suspected of Misconduct

Law enforcement is a demanding profession that can impact employee health and wellness, especially when faced with an investigation and disciplinary process that could potentially be career-ending. Regardless of the outcome, the investigative process can have severe personal and professional impacts on employees, and the destabilizing effects can pose a threat to the safety and well-being of not only the employee, but also the employee's family as well as the complainant or reporting party. Any employee named in a sexual misconduct complaint must therefore be assured that right to due process will be protected throughout the investigative process and advised that all investigations will be conducted professionally and objectively.

Appropriate resources and referrals shall also be offered to employees, with a focus on their health and safety, to help support them through the stress and uncertainty they may experience throughout the investigative process and any administrative or criminal

[10] Special considerations should be taken to ensure adherence to the "Garrity Principle" as established by the US Supreme Court in *Garrity v. New Jersey,* 385 US 493 (1967). The integrity of administrative and criminal investigations can be achieved by following sound legal counsel and separating the investigations to ensure that any compelled testimony provided by the subject officer during the administrative investigation: (a) is not, and cannot, be shared with the criminal investigator or prosecutor, and also (b) is not used against the officer in a criminal proceeding or while making charging decisions.

actions. This could include crisis intervention, if necessary, as well as counseling and mental health services, family counseling, human resources/employee assistance, peer support programs, addiction treatment, or police union/associations, among others.

After-Incident Reviews and Audits

An after-incident review will be conducted at the conclusion of every investigation into a report of law enforcement sexual misconduct, including those that are unfounded. This review shall ordinarily occur within 30 calendar days of the conclusion of the investigation. The review team shall include upper-level management officials and legal counsel, and the process should include input from line supervisors and investigators. As part of their review, the review team will evaluate whether any changes are needed to agency policies or practices to better prevent, detect, or respond to law enforcement sexual misconduct. The team will also consider whether the incident or allegation was motivated by perceived (a) race, (b) ethnicity, (c) gender identity, or (d) gender expression, and or/ (e) sexual orientation.

In addition to after-incident reviews, agencies should regularly conduct integrity audits to proactively detect potential violations of this policy. For example, agencies may consider hiring an independent agency to audit compliance with this policy on an annual basis. The audit should include collecting and analyzing data regarding personnel activities and policy violations, as well as reviewing policies and practices designed to improve the agency's prevention, detection, and response to law enforcement sexual misconduct. A comprehensive audit should also include a comparison of the aggregate data and corrective actions from the current year, with those from prior years, to evaluate the agency's ongoing progress in addressing this problem. The agency's report on the audit should then be made readily available to the public through its website.

Collaboration with Advocacy Organizations

Sexual harassment and assault are both significantly underreported, but victims may be especially reluctant to report when the offender is a member of law enforcement. Partnerships with advocacy organizations are critical to addressing this problem, because they are often the first agency to receive complaints about law enforcement sexual misconduct, and also the first to provide supportive services for victims.

This agency will ensure there is an open, transparent, and ongoing dialogue between agency personnel and local advocacy organizations, to create an environment that is conducive for enhancing professionalism and promoting public trust. As an important component of this dialogue, local advocacy agencies will be given a copy of this policy, as well as any related training materials, to solicit their input on any necessary revisions.

Law enforcement and advocacy organizations should work together to develop a memorandum of understanding (MOU) to offer a variety of reporting methods for potential policy violations. For example, community members may be offered the option of reporting sexual misconduct to the advocacy organization instead of the law enforcement agency, and these options may include online and/or

anonymous reporting. All reporting protocols and MOUs shall identify the specific law enforcement unit or agency personnel to contact, in order to learn more about a complainant's reporting options. In addition, all reporting protocols and MOUs must include safety planning for complainants and other reporting parties.

Once a reporting protocol and MOU is developed, the law enforcement agency and advocacy organization will need to work together to inform the public about their options for reporting law enforcement sexual misconduct. At a minimum, this will include posting reporting options on the department website. However, additional steps can also be taken to reduce barriers and encourage reporting, including traditional media, social media, and outreach to community groups.

★ **Community-Police Relations and Civilian Review Boards**

Law enforcement ethics require agency personnel to hold themselves and their colleagues accountable for their actions – policing themselves, to maintain the public's trust. Professional civilian oversight and civilian review boards comprised of community representatives can help establish and maintain that trust, when they are charged with investigating complaints of misconduct committed by law enforcement against members of the public. The National Association for Civilian Oversight of law Enforcement (NACOLE) lists several ways in which civilian review boards can help to improve community relations These include:

- Fostering communication between communities and police agencies.
- Reducing public concern about high-profile incidents.
- Improving department policies and procedures.
- Identifying areas of concern and subsequently officering options to improve policing and policy recommendations.
- Assisting a jurisdiction in liability management to reduce the likelihood of costly litigation by identifying problems and proposing corrective measures before a lawsuit is filed.

Although civilian review is sometimes seen as controversial, it is an essential tool for the future and beneficial for community relations with law enforcement.

Authors

Chief Thomas Tremblay (Ret.) has a distinguished 30-year career in policing, serving as an officer, detective, supervisor, police chief, and state public safety commissioner. Throughout his career, Chief Tremblay has been a passionate leader for the prevention of domestic and sexual violence. He is a retired Chief of Police from Burlington, Vermont, and the former Commissioner of the Vermont Department of Public Safety. He is now a highly regarded national and international advisor and trainer for police, prosecutors, advocates, higher education, the military, and the private sector.

Chief Tremblay is a contracted subject matter expert on domestic violence and sexual assault for numerous organizations including the International Association of Chiefs of Police, Police Executive Research Forum, Rape Abuse Incest National Network, RTI Sexual Assault Kit Initiative, Battered Women's Justice Project, and the US Department of Justice, Civil Rights Division and Office on Violence Against Women. Chief Tremblay also assisted the US Department of Justice in promoting gender bias prevention efforts for law enforcement response to domestic violence and sexual assault, including prevention and accountability strategies to address police perpetrated domestic violence and sexual misconduct.

Sergeant Joanne Archambault (Ret.) was the Founder and Chief Executive Officer for EVAWI from 2003-2023. Prior to founding EVAWI, Sgt. Archambault worked for the San Diego Police Department for almost 23 years, in a wide variety of assignments. During the last 10 years of her service, she supervised the Sex Crimes Unit, which had 13 detectives and was responsible for investigating approximately 1,000 felony sexual assaults each year. Sgt. Archambault has provided training for tens of thousands of practitioners, policymakers and others, and she has been instrumental in creating system – level change through individual contacts, as well as policy initiatives and recommendations for best practice.

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Acknowledgements

We are extremely grateful to the following individuals (listed in alphabetical order), for their valuable contributions to this *Model Policy Resource: Law Enforcement Sexual Misconduct Prevention and Accountability.*

- Rachael Arietti, Senior Research Associate, Police Executive Research Forum, Washington, DC
- Ann Burdges, Board President, EVAWI; Consultant / Trainer, Atlanta, GA
- Puneet Cheema, JD, Staff Attorney, Lambda Legal, Washington, DC
- Mike Davis, Sergeant (Ret.), Vancouver Washington Police Department, Vancouver, WA
- Maureen Evans, Clery Compliance Coordinator, Old Dominion University Police Department, Norfolk, VA
- Rachael Frost, Master Investigator (Ret.), Riverside County Sheriff's Office; Chief Executive Officer, ICED, Murrieta, CA
- Cathy Garcia, Supervising Investigator (Ret.), District Attorney's Office, San Diego, CA
- Fara Gold, Attorney Advisor, Office on Violence Against Women, US Department of Justice
- Carlton Hershman, Detective (Ret.), San Diego Police Department, San Diego, CA
- Catherine Johnson, Board Secretary, EVAWI; Investigator, Beaufort, NC
- Richard Mankewich, Sergeant, Orange County Sheriff's Office, Orlando, FL
- Michael Milnor, Chief (Ret.), Altavista VA Police Department; Consultant, Justice3D, Long Island, VA
- Sarah Mostyn, Research Associate, Police Executive Research Forum, Washington, DC
- Andrea Munford, Lieutenant, Michigan State University Police Department; Advisor to the MSU Office of the President, East Lansing, MI
- Bob Passonno, Coordinator, Criminal Justice Training Programs, New York State Office for the Prevention of Domestic Violence, Albany, NY
- Wendy Patrick, PhD, Deputy District Attorney, San Diego County District Attorney's Office, San Diego, CA
- Andrea J. Ritchie, Researcher in Residence on Race, Gender, Sexuality and Criminalization, Barnard Center for Research on Women, New York, NY
- Michael Schentrup, Patrol Support Commander, Gainesville Police Department, Gainesville, FL

- David R. Thomas, Program Manager II, International Association of Chiefs of Police, Alexandria, VA

- Judith Weber, Sergeant, (Ret.), San Diego Police Department, Frederick, MD

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Recommended Citation

Tremblay, T., Archambault, J., & Lonsway, K. (2024). *Model Policy Resource: Law Enforcement Sexual Misconduct Prevention and Accountability*. End Violence Against Women International.

For More Information

As noted previously, the **United States Department of Justice** issued updated guidance in 2022 aimed at Improving Law Enforcement Response to Sexual Assault and Domestic Violence by Identifying and Preventing Gender Bias. The guidance provides a set of eight basic principles that – if integrated into law enforcement policies, practices, and training – can help ensure that gender bias (either intentionally or unintentionally), does not undermine efforts to keep survivors safe and hold offenders accountable. The guidance also includes a list of annotated resources to assist law enforcement agencies working to implement the guidance and its core principles.

Additional resources on the topic of law enforcement sexual misconduct include:

Gold, F. (2018, January). Investigating and Prosecuting Law Enforcement Sexual Misconduct Cases. United States Attorneys' Bulletin.

Gold, F. (2022, March). 2022 Update: Prosecuting Sexual Misconduct by Government Actors. DOJ Journal of Federal Law and Practice.

End Violence Against Women International (EVAWI) offers numerous resources to support law enforcement in conducting high-quality, victim-centered, evidence-based investigations of sexual assault and other gender-based crimes. This includes our Online Training Institute, Advanced Training Institutes, Comprehensive Victim Interviewing courses, live and archived webinars, Sexual Assault Medical Forensic Examination (SAMFE) Virtual Practicum, and annual International Conferences.

The **International Association of Chiefs of Police (IACP)** also offers resources, tools, and policies to assist law enforcement in responding effectively to sexual assault, as well as intimate partner violence, human trafficking, and stalking, including:

Executive Guide: Addressing Sexual Offenses and Misconduct by Law Enforcement.

Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence

IACP also offers a Model Policy on Sexual Harassment & Misconduct, which is available (to members-only) in their Policy Center Resources.