

Office of Independent Review

Second Annual Report

Los Angeles County Probation Department



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EXECUTIVE SUMMARY

Our Second Annual Report marks the completion of two years that the County's Office of Independent Review ("OIR") has monitored the Los Angeles County Probation Department on a full time basis. The OIR office at Probation is comprised of two attorneys, one investigator, and one secretary. We must be a lean and efficient operation. In addition to providing "quality control" for the Department's disciplinary system, we try to focus on those tasks that will produce significant benefits for the Department and the community it serves. This past year, we have emphasized policy development, discussed in Part One of this report, training, as discussed in Part Four, and building a professional Arrest Unit because of the lasting impact of these initiatives.

In Part One of this report, we also provide an update on the progress of two tools that have helped make the disciplinary system more fair and efficient: pre-disposition settlement agreements, known as PDSAs, and the Education-Based discipline regime, known as EBD.

Part Two surveys the evolution of capabilities at the Professional Standards Bureau of the Department and its expansion to encompass other functions that affect employee integrity such as background investigations. We also describe special projects undertaken by OIR to evaluate and help diagnose troubles within Special Enforcement Operations ("SEO"), the unique unit of armed Probation Officers, and dissect the challenges presented to Probation by the new County Equity process.

Part Three is about misconduct, our central concern. We distinguish between on-duty misconduct, often in the highly specialized and difficult environment of juvenile detention and rehabilitation facilities, and off-duty misconduct, which often results in arrests. We also profile some of the most serious cases which have resulted in discharge from County employment.

Part Four takes you into the details of the keystone unit for the disciplinary system, the Internal Investigations Office ("IIO") and its efforts to improve skills and professionalism.

Transparency is one of the most important parts of the OIR mandate to help ensure integrity in the internal discipline process. Information about how the Department gives the public and the County's elected decision-makers a basis to judge the Department's efforts, helps restore public

confidence. This information additionally assists the Department's clients and gives Probation employees an independent basis for determining whether they and their colleagues are treated fairly. In providing a window into misconduct investigations and disciplinary processes, OIR is somewhat constrained by state laws providing for confidentiality surrounding peace officer personnel files. While respecting these legal strictures and redacting all names or other identifying information, we provide the maximum amount of concrete information about processes and trends as well as specific incidents of misconduct.

Our primary vehicle for providing transparency about critical incidents, misconduct and investigations is through our case tracking charts. We publish approximately three charts per year describing hundreds of internally investigated allegations of misconduct and off duty arrests. We describe our evaluation of each investigation, the Department's findings and disciplinary action, if any, and OIR's conclusion about the outcome.

We also publish an Annual Report, like this report, where we outline our activities as well as major trends and developments we have observed in the Department during the year. We occasionally prepare short reports on individual topics as the need arises or at the request of the Board of Supervisors.

To access our public reports and case charts, please go to www.laoir.com and look under Reports/ Probation Reports.

OIR has also helped the Probation Department increase its own transparency with regard to the substantial phenomenon of employee off-duty arrests by encouraging it to consistently research and track all arrests of Department employees and to send a notification letter to the Board of Supervisors about each arrest. The Department has in turn received positive feedback for its increased candor.

We strive to present an objective acknowledgment of Probation's progress as well as the challenges and shortcomings that remain. In the Evidence Preservation and Examination section of Part Four of this report, we describe at length a case which encapsulated many of the issues we engage with and observe in the Department every day. This case can be viewed as a snapshot of the current state of many of the Department's strengths and weaknesses. An incarcerated minor attacked a female staff member without warning. When other staff wrestled him to the

ground, the minor resisted vigorously and could not be handcuffed immediately. Staff resorted to punches, knee strikes, four bursts of pepper spray, standing on the prone minor's shoulders, and at several points, hitting the minor with the pepper spray can. Three or four staff members were directly involved in this use of force while two or three others looked on. The apparently impulsive and improvised nature of this lengthy display of force and the lack of coordination during the incident called into question the training of the officers. The incident reports were tardy and full of jargon in lieu of detailed reporting; perhaps the product of habit as much as intentional deception. Supervisors on the scene failed to take control of the incident. Most dismaying of all, the supervisors and managers tasked to review the incident failed to obtain and review the surveillance video that showed the entire event.

On the positive side, when the incident was brought to light weeks later, an executive realized its significance immediately and drafted an operations policy directed at the failure to review the video, placing future responsibility squarely on the supervisors and managers responsible for reviewing any critical incident and providing an extra level of scrutiny by requiring that such videos also be forwarded to the Bureau Chief. OIR assisted with the drafting of this policy, which was done without waiting for the internal investigation to be completed. We expect this systems change to have a lasting impact on the quality of force incident reviews, especially as video evidence becomes more prevalent in the camps and halls.

Part One

POLICY REFORM

POLICY DEVELOPMENT

Revising existing policies or implementing new policies is one of the most significant steps a Department can take to change its workplace culture with lasting effect. It is also a reality of large multi-layered departments that policy making is one of the major ways in which top management communicates its expectations to all Department members.

OIR has urged the Department to address deficiencies in its policies and procedures as issues have arisen from disciplinary investigations and other critical incidents. These efforts have resulted in major changes in the training and organization of internal investigators, the documentation of discipline decision-making by executives, and the creation of a roundtable forum for managers to discuss and seek guidance about a wide spectrum of personnel and disciplinary issues. We also assisted in drafting recommended operational guidelines and procedures for the Internal Investigations Office and the Special Enforcement Operations unit. We are pleased to note that this year, the Department has engaged in a consistent proactive effort to reform policies. An ad hoc committee consisting of the Research and Manuals unit and representatives from the Internal Investigations Office, Performance Management and OIR has developed into a more or less permanent policy committee and has begun to meet regularly to draft policy language.

At OIR's recommendation, the committee has tackled several policies that we identified as most acutely deficient or in need of clarification. These included the following policies:

OFF-DUTY DRUG POSSESSION

It is consistent with law enforcement best practices for management to place certain restrictions on the behavior of employees, especially sworn employees, even in their off-duty hours. The unique authority that law enforcement officers have to investigate and arrest others for violating the law as well as the prominent importance of maintaining public trust in law enforcement officers justify this level of intrusion into an employee's behavior off-duty. Possession or ingestion of illegal drugs falls squarely within this category, and Probation has had a policy about employees and drugs for some time. This policy had a major deficiency, however; it did not address possession or ingestion of marijuana unless there was an arrest, prosecution or conviction. Thus, if an employee was stopped by the police and found to be under the influence or in possession of marijuana, the Department could not impose discipline or order corrective action. This is not as unusual a set of circumstances as may be imagined. For instance, where a driver is arrested for DUI, and the passengers appear to be under the influence of marijuana or in possession of a small amount of the contraband, it is common for the passengers not to be charged. This gap in the policy left unaddressed off-duty employee behavior that was clearly inconsistent with the laws that Probation was mandated to enforce in its clientele. The ambiguity of policy guidelines also left Probation employees with a muddled idea of what the Department's expectations were with regard to marijuana. This ambiguity increased with the advent of medical marijuana in California. OIR recommended that Probation employees should receive clear, unambiguous guidelines about all controlled substances. The Chief of Probation embraced the need for a clearer and firmer policy and the policy committee is working on a significantly revised version of the drug policy that will explicitly state that employees involved in off-duty activity related to illicit drugs will be subject to disciplinary action "regardless of whether or not there is a citation, arrest, criminal filing or conviction." Also, the draft policy advises that if an employee receives a prescription for medication (including medical marijuana) the prescription will not alter the Department's expectation that employees are to report to work able to perform their assigned duties without being under the influence of controlled substances. Moreover, the policy requires employees to obey all laws and conduct themselves in a manner that does not negatively impact the image or operation of the Department, even while off-duty.

HONESTY

The backbone of any agency that serves the public and owes a duty of accuracy to the court system is honesty. This is incontrovertible, but like many law enforcement agencies, Probation has sometimes struggled with a “code of silence,” that is, the misplaced belief that loyalty to one’s fellow employees is more important than telling the whole truth. We have observed this attitude crop up in some cases of alleged excessive force at the juvenile detention halls and camps. Some potential witnesses to excessive force fail to document the incident in a complete or accurate manner or claim that they did not observe the incident even where evidence indicates otherwise. The Department has long had a policy forbidding staff from making false statements in reports or to department investigators, but the Chief of the Department concluded that the policy needed to be stronger and more explicit. To that end, the policy committee drafted a directive on Employee Honesty and Trustworthiness that makes clear the Department’s expectation that employees “embrace honesty and truthfulness in all matters of work.” It spells out that acts of dishonesty extend to many types of conduct from pilfering office supplies to abusing leave policies by lying about illness or injury. The directive also emphasizes that intentionally incomplete reporting is a sanctionable form of dishonesty as well.

PROBATION DEPARTMENT

DIRECTIVE

No.:	1316
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Post until:	04/13/13

SUBJECT: EMPLOYEE HONESTY

This Directive incorporates elements of the Los Angeles County Employee Handbook, Performance Expectations section, Ethical and Moral Standards - page C6, and Probation Department Policy Manual sections 601 and 615 under Employee Conduct. It is not intended to be all inclusive.

The mission of the Probation Department can only be carried out with the expectation of honesty from all employees at all levels. While the majority of staff are honest in their day to day work habits, the actions of a few staff can tend to diminish the reputation of the Department. To this end, this policy has been formulated in order to cultivate and maintain the trust and confidence of our community, partner agencies and coworkers. In addition, it is intended to reemphasize existing standards of behavior.

Employees are expected to act in a way that embraces honesty in all matters of work, including oral and written communication. All dishonest acts committed during the course of employment are considered a violation of this policy. The following are some examples of situations where, if an employee is dishonest, discipline may be warranted. (This list is not intended to be exhaustive):

- Falsification of time records
- Work related written, oral, or electronic communications
- Responses to questions during investigations and or inquiries. Deliberate omission of relevant information will also be considered an act of dishonesty
- Leave requests (abusing leave policies to obtain time off while not ill or injured)
- Pilfering departmental property for personal use (regardless of the value)
- Using departmental funds or equipment, such as vehicles, for unauthorized personal use

When employees are completing documentation including Special Incident Reports (SIRs), Physical Intervention Reports (PIRs), court reports or any other document in the course of their duty, it is required that the information be truthful, accurate, and complete.

When employees commit dishonest acts, they negatively affect the interest of the County of Los Angeles, and this Department. Honesty is an essential element of an employee's official duties. Failure to adhere to the principles contained in this policy may be grounds for discipline, up to and including discharge from County service. In addition, in some instances, it could lead to criminal prosecution.

MANUAL HOLDERS: CROSS-REFERENCE YOUR MANUALS TO THIS DIRECTIVE WHERE APPROPRIATE

Known and suspected acts of dishonesty should be immediately reported to management staff or an outside investigative agency as appropriate.

Questions regarding this policy should be directed to your immediate manager or the Professional Standards Bureau.



Jerry E. Powers
Chief Probation Officer

REQUIRED NOTIFICATION FOLLOWING ARREST OR SIGNIFICANT POLICE CONTACT

When an employee is arrested, investigated, or even questioned as a witness as part of a police investigation, the employee is expected to let his or her supervisor know immediately. While this requirement seemed to be fairly explicit upon first reading, we saw ample evidence that employees were, in some cases, confused about the details, and in other cases, simply expected that no consequences would arise from a “failure to notify” based on past experience. It was possible to determine this in many cases because the Department eventually discovered the arrest through a courtesy call from the arresting police agency or through notification from the California Department of Justice which maintains an employer notification protocol for arrests of law enforcement officers. OIR asked the policy committee to make this a priority policy revision and it helped draft new language that makes it clear that notification is required after any police contact beyond a simple traffic violation and that it must be immediate and in writing.

In a related development, we also noticed a number of cases where, following the arrest of an employee, even where the employee may have notified the Department, the arrest desk ran a criminal background check and discovered that there were prior arrests that the employee had failed to disclose. In addition to the current notification requirement, such arrests must also be disclosed on initial employment applications as well as applications for promotion within the Department. A more conscientious effort by the arrest desk to research criminal backgrounds had slowly revealed a pattern showing that there were a few employees with criminal records that would have influenced hiring or promotion decisions. OIR made two recommendations as a result: (1) perform criminal background checks on more employees besides those recently arrested and (2) do follow up disciplinary investigations when pre-employment nondisclosure is discovered and apply appropriate discipline. (See “Live-Scan” section in this report for further details). As of this writing, several such investigations are under way. Exploration of this issue also led us to conclude that the notification policy, even when adhered to, needs to be accompanied by a central repository for records of arrest notifications from employees. Otherwise, without a consistent standard for documenting law enforcement contact notifications to supervisors and a convenient place to find such documentation long after the fact, internal investigators are forced to track down sometimes retired former supervisors and rely on their inconsistent powers of recall. OIR has made a recommendation to establish a repository for this documentation and we hope the Department will act on it.

FITNESS FOR DUTY EVALUATIONS

We have observed situations during the year where managers were frustrated and confused over whether and when it would be appropriate to request a “fitness for duty” psychological examination for an employee. The question can arise after an employee has exhibited bizarre behavior on or off-duty or has been detained by police for a mental health evaluation under Welfare and Institutions Code (“WIC”) 5150.¹ In one incident, for instance, an employee was the subject of a burglary-in-progress call where Sheriff’s deputies found him standing outside an apartment building shaking and speaking incoherently. He had torn window screens off a first floor apartment and scattered the pieces. The deputies concluded he might be a danger to himself or others and had him transported to a hospital by ambulance. This was not a criminal arrest but rather a 72-hour involuntary hold for mental health evaluation. After release from the hospital, the employee eventually returned to work without incident. Both OIR and Professional Standards Division had recommended a “fitness for duty” hearing, but managers were not well versed in who should decide and how to effectuate the process. In practical terms, the situation requires the work location manager, the Professional Standards Division and the Return to Work unit to come to a mutual decision and work together with some urgency to provide the County’s psychological examiner with all the necessary background documentation on the employee. In the meantime, the Department must decide what to do with the employee while the fitness examination is pending. Difficulties in coordinating and the lack of clear guidelines have resulted in delays in seeking a fitness hearing or, as in this case, the failure to seek one at all.

Following these sometimes frustrating and confusing results, OIR concluded that, at least in the case of a WIC 5150 hold, confusion and delay could be avoided by implementing clear guidelines of responsibility and procedure within the Department following a mental health hold. OIR brought the issue to the Policy Committee and participated in the preparation of a draft directive that outlines the obligations of the employee, the employee’s manager and the Return to Work unit of the Human Resources Bureau. The draft directive also requires that any similarly situated employees obtain clearance from the Return to Work unit before returning to work following their release. It further places an affirmative duty on the employee’s manager to confirm that the Return to Work unit has cleared the employee. This Directive is currently going through the approval process and OIR will monitor its implementation.

¹ Section 5150 allows a qualified officer or clinician to involuntarily confine a person who, as a result of mental disorder, is a danger to him or herself, and/or others or is gravely disabled.

THE PROHIBITION ON MAINTAINING PERSONAL OR BUSINESS RELATIONS WITH CLIENTS OF THE DEPARTMENT, FELONS, GANG MEMBERS OR PRISON INMATES

Close ties between Probation employees and criminally involved individuals are an obvious security risk to a law enforcement agency, especially one that serves many other law enforcement agencies and controls confidential information about a large number of adult and juvenile probationers. The Department's main policy manual contains a policy directly addressing this issue, but it contained a few gaps and ambiguities. The relatively high frequency of disciplinary investigations involving violations of this policy and the misunderstanding of the policy offered by some subject employees in their defense showed OIR that revision of the policy was an important first step to reducing this type of misconduct. The revised draft policy makes it clear that employees are obligated to inform their supervisor of all relationships that are potential violations, even those that may fall into an exception category, such as with "close family members" (grandparents, parents, legal spouse, siblings or any child for whom the employee is the parent, step-parent, or legal guardian). The policy will also require employees to notify their manager in writing prior to every non-work related visit made to a prison or jail.

ATTENDANCE

Historically, the Probation Department has experienced acute absenteeism problems in some of its divisions. OIR became aware of this early in our tenure at Probation. It is not a subtle phenomenon. At the juvenile halls, for instance, there is an average absenteeism rate among staff of 25% or higher. This causes manpower shortages and scheduling problems and is corrosive to morale. Many causes of absence are legitimate and authorized, such as maternity/paternity leave, vacations, illness and injury. In some cases, however, employees who miss work chronically are perceived by the employees who do show up for work as "gaming the system." Because of so many absent employees, those at work frequently complain about the added work burden and the difficulty of scheduling and securing approval for vacation days ahead of time.

This long standing problem does not appear to be amenable to a simple solution. Some observe, for instance, that new types of low priced disability insurance exacerbate the problem by creating an increased economic incentive to stay home rather than come to work. We have heard from managers and supervisors that they are confused about the many overlapping rules and regulatory schemes that govern time off: federal family leave policies, County sick day standards and disability laws, to name a few. They seek guidance in communicating the rules to staff and

enforcing Department policy consistently. At the same time, the Department should have a strong interest in upholding attendance rules while respecting the rights of sick, injured employees or those facing family emergencies. During the past year, the Department's Return to Work unit within the Human Resources Division has improved tracking of persons on sick leave and advised managers of the documentation required of employees on extended leave. In extreme cases, Performance Management has worked with the Return to Work unit to give notice to employees with long term unexcused absences that they will ultimately be "deemed resigned" if they do not return to work or supply the needed medical documentation. After ironing out the legal and procedural tangles for a fair and effective "deemed resigned" procedure, these two units have made headway with many old cases. During 2012, seven employees were deemed resigned and have been taken off the Department's roster.

The Policy Committee has engaged in another strategy that may help alleviate part of the problem. It is crafting a policy that will give managers a clear step-by-step guideline for determining sick leave parameters and enforcing a fair and consistent policy. This important effort is still in the draft stage. It is hoped that these efforts may put a dent in the chronically high absenteeism that challenges the Department's effectiveness.

As of this writing, the Honesty policy has been formally promulgated and is now established policy of the Department. The other draft policies described above are currently being reviewed by Department executives and the employee unions as part of the pre-implementation process.

PRE-DISPOSITION SETTLEMENT AGREEMENTS—UPDATE

As we discussed in our First Annual Report, OIR introduced the Department to an early resolution process called Pre-Disposition Settlement Agreements ("PDSA") which was designed as a tool to resolve employee misconduct cases swiftly and reduce the need to conduct a full blown administrative investigation in every case. If the facts are undisputed, the employee takes full responsibility for the misconduct and the misconduct does not warrant discipline exceeding a 15 day suspension then the case is suitable for the PDSA process and the employee may be presented with a settlement offer.

Recognizing the benefits of the PDSA process, the Department has continued to make frequent use of the process and has expanded its use to resolve employee grievances. In 2011, the Department presented approximately twenty PDSA offers to employees. In 2012, approximately fifty cases were resolved using the PDSA process. The majority of PDSA cases resolve off-duty misconduct incidents—primarily driving under the influence arrests/convictions. Other types of misconduct cases resolved through PDSA include failure to timely notify the Department of law enforcement contact, discourtesy and use of profanity in the workplace.

PDSAs for driving under the influence cases show a wide spectrum of discipline severity because of the Department's May 1, 2012 adoption of the County-wide disciplinary guidelines which increased the standard minimum administrative discipline level from three to 15 days suspension for a first time DUI. Prior to May 1, 2012, most PDSA DUI cases resulted in three to five day suspension settlement offers because this was consistent with the well-established practice of the Department at the time of the arrest. There are instances, however, where pre-May 2012 drunk driving cases resulted in more significant discipline because of aggravating circumstances.² One Pre-May 2012 PDSA DUI case, for example, resulted in a settlement for a 15 day suspension because—in addition to the criminal conduct—the employee was belligerent toward the arresting officer and attempted to obtain leniency by using his probation officer status. OIR continues to urge the Department to incorporate such aggravating circumstances into its punishment scheme in order to achieve deterrence and protect the reputation of the Department.

In keeping with the new county-wide discipline guidelines, employees arrested for driving under the influence after May 1, 2012, receive a minimum suspension of 15 days. OIR monitors these cases and is consulted before a PDSA offer is made to the employee.

We are gratified to see that the PDSA process, which OIR introduced to the Department in 2011, continues to expand and produce benefits. The relatively lean staffing of Internal Investigations, the Arrest Unit, and Performance Management have been relieved of a significant number of routine but time consuming cases, and they are now able to devote more time to the more complex cases. Also, the subject employees who agree to a PDSA resolution can resolve their disciplinary matter much more quickly and often have a forum for participation in their own remediation through Education-Based discipline.

² Visit www.laoir.com for OIR Probation's Arrest tables and updates covering all arrests from 2011 and 2012.

EDUCATION-BASED DISCIPLINE UPDATE

Last year, OIR reported that the Probation Department has, in selected cases, begun to move away from issuing traditional suspensions for misconduct to a more remedial and less punitive disciplinary option called Education-Based Discipline. The Department formally introduced the new disciplinary option in August 2012. Under the new system, instead of serving traditional suspension days (unpaid) an employee has the option of completing an EBD plan where some or all of those days can be served by attending relevant training classes without loss of pay which are designed to remediate the employee's conduct. The executive decision maker must ultimately decide how many of the disciplinary suspension days may be served as EBD. All suspensions, whether conventional discipline or EBD, are counted on the employee's permanent record as suspension days for purposes of future discipline. EBD is a companion piece to the PDSA process and is available to both sworn and non-sworn employees. To date, decision makers and employees have taken advantage of the EBD option in all of the PDSA cases, and have occasionally used it as a settlement option in non-PDSA cases.

Once the employee agrees to the EBD terms, he or she has one year to comply with the obligations, during which time some or all suspension days are held in abeyance in the original agreement. If the employee fails to comply with the EBD terms within the year, the initial suspension days are imposed. To date, there have been two instances where the employees failed to comply with the EBD terms within the specified time period. In one case, the employee was required to attend the Department's Optimal Decision-Making Class (discussed in full below) and failed to do so. In the other case, the employee was required, under the EBD terms, to write an apology letter to the other law enforcement agency for being rude and discourteous and failed to do so. In both cases, the employee was required to serve the original suspension days.

COUNTY OF LOS ANGELES
PROBATION DEPARTMENT

DIRECTIVE

No.: 1299 – REVISED
Issued: 7/27/12
Post Until: 8/27/12

SUBJECT: EDUCATION BASED DISCIPLINE

It is the policy of the Los Angeles County Probation Department to treat employees in a fair and consistent manner when administering corrective action. Education Based Discipline (EBD) is the latest tool that the Department intends to utilize in an effort to meet this goal. EBD is a companion piece to the previously issued Pre-Disposition Settlement Agreement (PDSA) Directive 1251 and EBD can be part of a PDSA. EBD is available to both sworn and non-sworn employees.

EBD can be offered when an employee must serve a suspension from duty as a result of some type of policy violation, but rather than serving the suspension days at home with a loss of pay, some or all of those days can be substituted for a relevant training class or classes. For example, if an employee was issued a 3-day suspension because of a low level policy violation, instead of serving a traditional 3-day suspension (with loss of pay) the employee may be offered an EBD plan and serve the suspension days by attending an EBD class. The employee benefits by not losing pay by agreeing to the EBD plan and the Department benefits by addressing the behavior with a corrective action that is more likely to prevent the behavior from re-occurring. The employee's master personnel file will reflect a 3-day suspension.

As with a PDSA, an EBD offer can be brought forth by any of the following:

- Employee who is subject to discipline
- Employee's representative
- Employee's Manager or Bureau Chief
- Internal Investigations or Performance Management staff
- Office of Independent Review

Any of the allegations that are eligible for a PDSA are eligible for an EBD. There must be a nexus between the behavior for which the employee is being disciplined and the EBD class. Classes may be offered from our current STC curriculum, classes held by the Los Angeles County Sheriff's Department as part of their EBD program, or other classes as approved by the Department. Employees participating in EBD classes will be expected to follow the guidelines in Directive 1254, Staff Training and failure to adhere to those policies could result in a revocation of the EBD settlement.

MANUAL HOLDERS: CROSS-REFERENCE YOUR MANUALS TO THIS DIRECTIVE WHERE APPROPRIATE

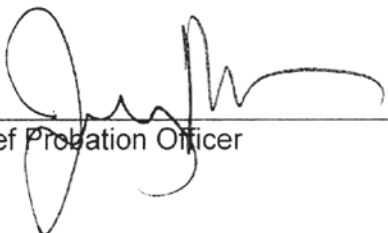
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In addition, the following applies to the EBD policy:

- All EBD classes are on-duty;
- If an employee accepts EBD, he/she must complete all conditions of the EBD agreement within the specified time period, or will be required to serve the full suspension and loss of pay;
- Regardless of whether an employee agrees to EBD, all discipline is documented in the employee's master personnel file for purposes of progressive discipline;
- The employee is encouraged to participate in the process and to propose his/her own plan. However, the Department makes the final decision on discipline and EBD plans;
- The employee's rights are preserved while he/she chooses between suspension of pay or EBD. The employee has the right to seek representation to assist in reviewing an EBD proposal;
- All employees are eligible for EBD if they are issued a 1 – 5 day suspension. If the suspension is 6 days or more, EBD may be offered to satisfy all or part of the suspension, provided the employee has had no prior discipline for a similar offense;
- The Office of Independent Review may be consulted before the Department presents an EBD offer to an employee;
- Discharges and demotions are not eligible for EBD.

As with the PDSA, EBD is not a requirement and employees facing disciplinary action are under no obligation to request or accept EBD. EBD is simply another tool to streamline the disciplinary process and offer employees an alternative to traditional unpaid suspensions. Once an EBD agreement is finalized employees waive all further rights to appeal.

If you have questions regarding this Directive, please contact the Performance Management Office at (562) 658-1857.



Chief Probation Officer

OPTIMAL DECISION-MAKING CLASS

As part of an Education-Based Discipline plan an employee may be offered the opportunity to attend classes from the Department's current Standards and Training and Corrections ("STC") curriculum, classes offered by the Los Angeles County Sheriff's Department or other training/ classes approved by the Department. In an effort to build its EBD coursework, the Department developed an eight-hour class called "Optimal Decision Making" ("ODM"). In the ODM class, employees participate in group discussions and exercises about consequences and how to make better decisions. As part of an EBD plan, employees may also be asked to write a memorandum regarding their thoughts about the ODM class and the EBD process. The following are excerpts from the memoranda written by employees who have participated in the EBD process.

I am glad to have been offered the opportunity to participate in the Optimal Decision-Making class which is an integral part of the Department's alternative discipline program (Education-Based Discipline). I think that education is key. It is best to educate and counsel than to just discipline...I not only learned a great deal in the [ODM] class but I was reminded of some things that we may forget or not think about that may cause us to make mistakes that we later regret. Peace officers must always model the expected behavior. We are also held to a higher standard.

I believe that [the] Probation Department's alternative discipline program (Education-Based Discipline) is a good program, as it allows individuals to reflect on their mistakes and realize they can handle the situation differently in order to avoid it from happening again. It also shows the employee that the Probation Department does care about its employees. The ODM class helped me to continue thinking about the consequences of my actions and the impact my actions had on my reputation, relationships, co-workers, the Department's reputation and public opinion of the Department.

I believe that the Probation Department has taken a step in the right direction with the implementation of the Department's new approach to employee discipline by offering the ODM course...it gave me a new way of thinking about my behavior on and off the job. I obviously made a poor decision outside of work...I now understand that being in the line of work that we are in, we have to conduct ourselves in a better way and hold ourselves to a higher standard.

The Optimal Decision-Making class reaffirmed my knowledge on how to make positive decisions when faced with different stressful situations...I am grateful to the Probation Department for allowing me to participate in such a great class. I believe that our Department will benefit greatly in offering an alternative discipline program. As a peace officer, I promise to lead by example... and embrace the Department's core values as well as the Department's vision and mission. Thank you for having alternative discipline classes like ODM and allowing me to continue to work for this distinguished department.

Part Two

SPECIAL PROJECTS

PROFESSIONAL STANDARDS BUREAU

The Professional Standards Division (PSD) has been upgraded this year to a Bureau, henceforward “PSB,” with a Bureau Chief level executive at its head. This upgrade has included expansion and consolidation as well. PSB has been responsible for all functions related to misconduct investigations and discipline as well as staff training. The Background Investigations unit, formerly in Human Resources, is now part of PSB. Background Investigations is comprised of four investigators, one manager, one supervisor and three support staff who screen all applicants seeking to be hired by the Probation Department. They also update all background information on employees who are eligible for promotion. We agree with the logic of bringing Background Investigations under the Professional Standards umbrella to interact with the other PSB units. Internal Investigations, also part of PSB, is the primary repository for investigations expertise in the Department. Interaction with Internal Investigations can benefit Background Investigations staff and help maintain their skill level. Additionally, the mission of Professional Standards coincides well with the early detection of criminal histories, financial problems, chemical dependencies, and other issues that might constitute a disqualifier for potential employees.

REFORMS IN HIRING STANDARDS

Faced with the stark reality that the number of employee misconduct cases continues at a high rate (see Employee Misconduct Section of this Report), the Department set out to find ways to decrease the risk of making job offers to the wrong candidates. Beginning in 2012, to ensure that the most qualified applicants—particularly those applying for peace officer positions—are hired

as employees, the Probation Department raised standards in its hiring process. The Department recognized that one of the most effective tools it had to screen candidates seeking peace officer positions was the background phase of the hiring process which occurs once an applicant receives a notice of eligibility.

After an applicant is deemed “eligible” to apply for a peace officer position, the applicant must complete a backgrounds packet which is then processed by an investigator in the Department’s Backgrounds Unit. The investigator will review and verify information in the backgrounds packet such as an applicant’s employment history, personal references and education. The applicant will also be asked to disclose any past criminal convictions.

CREDIT REPORT

As part of the backgrounds investigation, the Department has now added a credit check for all applicants seeking peace officer positions (Deputy Probation Officer, Detention Services Officer, Group Supervisor Nights). The purpose of adding the credit check component is to determine the applicant’s level of fiscal responsibility. If, for instance, a credit report shows that an applicant has debts that have been referred to collections and the applicant has made no effort to resolve the delinquent account, it suggests a lack of integrity and character. Also, if a credit report shows an applicant has significant debt it may suggest the applicant has an incentive to engage in fraudulent activities. In the spirit of thoroughness and fairness, after a credit report is provided to the Department, an applicant will have an opportunity to provide a detailed, written explanation of any negative information found in the report. A family crisis, divorce, job loss or serious illness, for example, may satisfactorily explain debt or untimely payments. Significant negative information in the credit report (i.e. late payments, collections, loan defaults, delinquent child support payment, repossessions, delinquent tax payments, etc.), however, may be cause to disqualify the applicant.

TATTOOS, BODY ART AND BRANDING

The Department has also implemented a new tattoo disclosure requirement as part of the backgrounds process. In the past, applicants (sworn and non-sworn) were required to disclose and describe their tattoos. Applicants were also required to indicate the date they obtained each tattoo, where they acquired it and the meaning of each tattoo. OIR recommended that the Department make the disclosure requirement more robust. The Department agreed and decided

to require disclosure of all forms of body art including tattoos and branding. The Department also now requires applicants to provide a photograph of the tattoos, body art and/or branding located in areas that are not visible. On the disclosure form, applicants are put on notice that failure to disclose any tattoo, body art and/or branding may result in a disqualification or dismissal if the applicant is hired. Prospective employees also understand that the disclosures are subject to verification during the pre-placement medical examination. Background investigators are responsible for reviewing the information and determining if any of the disclosures raise potential issues (such as possible gang affiliation).

We believe it is important for the Department to strive not to intrude unnecessarily into the private lives or tastes of its current employees. The competing interests and risks during pre-employment screening, however, are somewhat different. The Department has a strong interest, especially when hiring peace officers, in full disclosure of past gang activity or criminal associations for the protection in of its juvenile and adult clientele.



COUNTY OF LOS ANGELES PROBATION DEPARTMENT

BACKGROUND INVESTIGATIONS UNIT
PROFESSIONAL STANDARDS DIVISION
9150 E. Imperial Highway
Downey, California 90242
(562) 940-2873



JERRY E. POWERS
Chief Probation Officer

TATTOO DISCLOSURE FORM

Applicant's name: _____ **SS#:** _____

Investigator: _____ **Date:** _____

Time: _____

Instructions: Describe **ALL** tattoos in detail. Include tattoos that have been covered up, altered, or removed. This includes branding or other forms of body art. Describe in detail the origin and personal meaning of tattoos disclosed. You must provide a photograph of the tattoos, body art and/or branding that is located in areas that are not visible.

I understand that the appearance and location of my tattoos and tattoo removal scars are subject to verification during my pre-placement medical examination. Failure to disclose any tattoo, branding or other forms of body art, whether it has or has not been removed, altered or covered up, will result in my disqualification or immediate dismissal if any appointment is made.

Applicant Signature

Date

1. Tattoo Location: _____
Date / Place acquired: _____
Description of tattoo: _____
Meaning of tattoo: _____

2. Tattoo Location: _____
Date / Place acquired: _____
Description of tattoo: _____
Meaning of tattoo: _____

NEW HIRING GUIDELINES

In 2012, the Department also implemented stricter guidelines for applicants seeking peace officer positions. In the past, in evaluating an applicant's prior criminal conduct, the Department had relatively relaxed standards for applicants with prior drug use and violent crimes (i.e. battery, assault, etc.). As long as an applicant did not exceed the Department's threshold for these offenses, an applicant's prior criminal conduct would not be grounds for automatic disqualification. The new guidelines, however, are much stricter and now reflect the Department's growing reluctance to offer peace officer positions to applicants who have engaged in these types of criminal behavior. The new hiring standards also reflect a commitment to address the driving under the influence problem the Department now faces with current employees³ by increasing the period of scrutiny for applicants who have prior driving under the influence incidents. Previously, a DUI conviction within the last two years was a disqualifying offense. Now, a similar conviction within the last seven years will disqualify an applicant. OIR is hopeful that the Department's new hiring standards and proactive approach to better screen applicants will help decrease the risk of hiring the wrong candidates and avoid potential future risk management issues.

COMPUTER VOICE STRESS ANALYZER

As part of the hiring process reform measures, the Department has also begun to train and certify Background Unit investigators to be Computer Voice Stress Analyzer ("CVSA") operators for the background interview process. In 2012, a supervisor and four investigators attended a one week training course to be certified. CVSA is a technology designed to detect deception and is intended to be used during the pre-employment backgrounds process. The system involves computer software designed to measure, quantify and display voice patterns on the computer in a graph format. A certified operator then evaluates the graphic results for stress indicators in the voice to determine whether any deception is indicated. Results may then point to areas of inquiry that the background investigator should explore further through the interview process.

The Department plans to conduct a CVSA examination for all applicants (sworn and non-sworn). The Department is also considering utilizing the CVSA on a case-by-case basis in administrative investigations. Under these circumstances, the Department would only be permitted to use CVSA if the subjects/witnesses voluntarily signed a waiver permitting its use. OIR continues to monitor the implementation of the CVSA and any protocols and procedures relating to its use.

³ See the "Arrest Unit Cases" section for further discussion about driving under the influence incidents.

FIELD VISITS

In order to form a more complete picture of applicants for peace officer positions, Probation Department investigators will engage friends and neighbors of these applicants in face-to-face site visit interviews about the candidates. This procedure would only apply to candidates who have been successful in all other phases of the application process. This labor intensive addition to the Department's background investigation protocol mirrors a pre-hiring practice that has long been a standard procedure among law enforcement agencies and helps move the Department toward a best practice hiring process.

PERFORMANCE MANAGEMENT

Performance Management ("PM"), another Professional Standards unit, is in the process of adding capabilities and personnel. Performance Management coordinates and issues discipline and defends it on appeal. It provides advice on disciplinary matters to managers throughout the Department, helps determine appropriate discipline levels and negotiates settlements of disciplinary cases. Performance Management must process and evaluate each substantiated case that issues from the Internal Investigations Office and prepare letters of intended discipline, arrange for internal appeals/ "Skelly" hearings and prepare final letters imposing discipline or outlining a settlement agreement. PM has had trouble avoiding the case processing bottlenecks and delays that have plagued its end of the process and have frequently needed to engage private contract counsel to do the time-consuming work of preparing and appearing at appeal hearings before Civil Service. The PDSA early settlement process (see section on "PDSAs" in this report) has helped alleviate some of these delays, but PM has remained chronically short-handed during the past year. To address this issue squarely, Probation sought authority to have two lawyers from the County Counsel's office assigned permanently to PM. This has created a hybrid unit using both County Counsel lawyers and the Department's own Departmental Civil Service Representatives ("DCSR"). Additionally, the Department will be filling a long vacant DCSR position. As of this writing, the "embedded" County Counsel attorneys have just begun their work at Probation.

We view this increase in legal personnel and capabilities as a very positive step. The two County Counsel attorneys will give PM much more flexibility in providing advocacy services to defend the Department's disciplinary decisions on appeal. Appeals can now be allocated among the unit's DCSRs, its County Counsel and, under limited circumstances, private contract counsel

hired for specific cases. Moreover, with the addition of the DCSR, PM will at last be up to “full strength,” and we anticipate that it will become better able to act as both an effective arm of the Department’s disciplinary system and as a resource to management in many related areas.

INTEGRATED CASE TRACKING SYSTEM

Last year, we reported that Professional Standards Bureau had greatly improved its case tracking systems by making software changes in the case tracking database already employed by Performance Management. The new and expanded “Performance Management System” database has been utilized throughout the year and we have observed an improvement in the accuracy of case tracking and the accessibility of statistics and archival information.

The Internal Investigations Office persists in using its own spreadsheet based system, but because of the greatly improved communication among IIO, PM and the other components of PSB, as well as OIR’s independent verification of deadline dates⁴ and case status, there have been no expired statutes of limitation in the past year or other systems failures that can undermine the discipline system.⁵ Nevertheless, we remain strong proponents of a unified tracking system. Fortunately, PSB has an excellent near term opportunity to abandon its separate tracking spread sheets and embrace a unified system. The County Department of Human Resources has developed a case tracking database called the Performance Management Tracking System (PMTS) and is striving to persuade individual County departments to accept the system. The Department has agreed to do this and several PSD staff have received PMTS training. Additionally, some features of the database have been tailored to meet Probation’s expressed needs. The new County system may, in the long run, have cost and capacity advantages over Probation’s current PMS system. OIR believes that either system would be adequate to the task, but we have a strong preference for an across the board commitment by all PSB units to one system. The potential near term conversion to the PMTS database presents an excellent opportunity for the Bureau to finally abandon its collection of orphan databases and place all case entries at every stage of the case life cycle—from intake through investigation, evaluation, discipline imposition, and appeal—on one unified system. We will continue to urge the Department to take advantage of this opportunity in this manner.

⁴ For an explanation of the one-year statute of limitations specified by the Peace Officers Bill of Procedural Rights, see our discussion in the “Policy of Equity Cases” section in this Part.

⁵ This record holds for cases investigated internally by the Probation Department. The same is not true for Probation cases investigated by County Equity. See section on “Policy of Equity Cases” below.

The innovations in PSB units discussed above will help it move closer to full compliance with some of the recommendations in OIR's original Probation Report concerning timeliness, accurate case tracking and effective representation of the Department on appeal.

LESSONS FROM THE COURTROOM

During the past year, Professional Standards has strengthened its rapport with the Justice System Integrity Division (JSID) of the District Attorney's Office, which specializes in prosecutions of peace officers. This increased communication has yielded benefits that improve Probation's ability to punish and deter criminal misconduct by employees. During the year, the District Attorney's Office brought a case of excessive force by a juvenile hall officer to trial and secured a conviction, opened two investigations against other employees for excessive force and stalking, and referred an alleged sex crime case to Los Angeles Police Department detectives for further investigation. Recently, JSID has also committed one of its own investigators to investigate a possible fraud case involving a Department employee.

The criminal prosecution of the juvenile hall detention services officer arose when the victim minor created a disturbance in his room and was sent to an office with the officer. The officer sat the victim minor, a 13 year-old boy, down on the floor and stood over him in a threatening manner. When the boy raised a hand up, the officer kned him in the face and pushed his face to the floor, bruising his face and breaking a front tooth. The jury found the officer guilty of assault by a public officer, corporal injury to a child, assault with a deadly weapon and willful cruelty to a child likely to cause great bodily injury. The officer was sentenced to four years in state prison.

While criminal prosecutions of on-duty misconduct are very rare, the trial process can yield very valuable information. The standard of proof in criminal court – "beyond a reasonable doubt" – is much more rigorous than that which applies to administrative discipline cases – "preponderance of the evidence." The courtroom is a highly adversarial venue and juries may require a more elaborate presentation of basic information about the Probation Department's operations than an experienced hearing officer in the Civil Service system would require. Consequently, "problems of proof" arise in criminal proceedings that are less likely to emerge in an administrative disciplinary appeal. After the trial, OIR interviewed the trial prosecutor to facilitate a feedback loop of the unvarnished lessons of the trial back to Internal Investigations personnel. In the trial above, the prosecutor expected to use one of the Probation Department's use of force trainers as an expert

witness. The Department was unable to proffer a trainer it had confidence in as a convincing expositor of the force doctrine used in the juvenile camps and halls called “Safe Crisis Management.” The prosecutor had to go forward without an expert, but the Department realized the current lack of an expert witness goes beyond this trial and could undermine administrative disciplinary appeals also. Investigation problems were highlighted in the trial also. Investigators turned the tape recorder on and off during some of their interviews. The juvenile hall failed to produce surveillance video from the period and internal investigators failed to determine why this had occurred or to obtain documentation from the facility. These glitches constitute valuable lessons that will be addressed in future investigations. We will continue to foster useful feedback from the District Attorney’s Office and the courtroom.

SPECIAL ENFORCEMENT OPERATIONS UNIT

Probation Officers are peace officers under California law and in various assignments the sworn personnel of Probation come into regular contact with convicted probationers and juvenile detainees. The Department’s primary mission is one of service to the community and to probationers as clients. Most Probation Officers do not carry firearms. However, one unit within the Department is armed, the Special Enforcement Operations unit mentioned above. The SEO is comprised of approximately thirty-three sworn deputies. It was created in 1999 as a six month pilot program authorizing some Los Angeles County Probation Department Deputies to be armed to participate in a multi-agency project targeting gang and drug activities. Successful completion of the pilot program led to creation of a permanent unit.

Today, most SEO deputies are embedded in federal, state or local law enforcement agencies operating within Los Angeles County. These partnerships usually target hard-core, gang-involved or violent high-risk probationers and their activities while under Probation Department supervision. SEO is also customarily called upon by Probation Department managers to assist in the apprehension of escaped minors from one of the camps or halls or to take on other unusual or high-risk temporary assignments within the Department. The scope of SEO activities is varied and the mission of the unit continues to evolve.

As armed participants in dangerous and unpredictable search, arrest, and enforcement operations with partner law enforcement agencies, SEO is a highly visible unit that regularly encounters

the risk of significant injury to SEO deputies and potential liability for the Department. Despite the elite nature of the unit, indications emerged that it had severe operations, management and morale problems. Anonymous members of the unit wrote letters denouncing colleagues and alleging mismanagement and unfairness in the distribution of assignments. There were rumors and complaints about a range of topics from equipment to overtime. Factions and quarrels within the unit emerged on social media and in e-mailed comments to articles in newspapers. Because of the unit's prominence and the growing concerns about internal friction and possible operational shortcomings, OIR sought input from Department managers about what diagnostic and remedial tools Probation might use to address SEO's issue. Following those discussions, OIR recommended to Probation Department Chief Powers that an internal "management review" of the unit be done. Such a review would focus on and attempt to quantify the health of internal controls, procurement and tracking of equipment, specialized training, distribution of overtime, relations with partner agencies, application and hiring into the unit, and the effectiveness of its management and supervision. In January of 2012, the Chief of Probation requested that an internal management review be conducted of SEO operations. He also asked OIR to oversee and provide guidance to the review. We agreed and met twice weekly with the reviewer to discuss the topics of the review's focus and its methodology.

Over the course of the review, the reviewer conducted lengthy interviews with over 90% of the Deputy Probation Officers, support staff and supervisors. Some former SEO line staff and managers were also interviewed. The review delved into the internal written policies and customary procedures of the unit, documentation of its activities as well as the Probation Department and County policies that affect the armed unit. The review also looked at the state laws and regulations governing firearms qualification. Finally, the reviewer talked to officers and supervisors at four partner agencies in which SEO staff are embedded.

Generally speaking, the review found that the Department needed to strengthen the internal controls within SEO to ensure the unit operates in accordance with County and Departmental regulations and expectations. The following target area findings were among the clear results that emerged from the review:

- Before accepting tasks or engaging in long-term relationships or operations, SEO does not weigh them against the unit's or the Department's mission and priorities. This can lead to inefficient use of SEO's scant resources;

- The selection process for SEO deputies is not systematic, fair or transparent;
- SEO deputies are not provided adequate training to prepare them to perform the duties for which they have been tasked. The necessary training should include additional tactics and firearms use, as well as training in the legal and constitutional issues relevant to SEO operations;
- SEO applicants can remain in the reserve deputy pool in excess of five years without appointment or rejection;
- SEO is operating under capacity. Consequently, staff must complete a greater number of assignments than originally anticipated;
- Safety equipment issued to SEO deputies, such as bullet-resistant vests, is not upgraded, repaired or replaced as required;
- Some of the unit's task force commitments provide minimal direct benefit to Probation's mission and may be driven primarily by salary subsidies provided by outside grants;
- Overtime distribution within the SEO unit is not in accordance with County and Departmental policies;
- Routine background checks are not routinely completed on SEO or reserve deputy pool staff to ensure the deputies continue to meet arming qualification requirements;
- The lack of effective leadership and supervision within SEO has caused the unit's components to become isolated resulting in a general lack of cohesiveness and cooperation.

The review recommended a host of specific remedial actions taken by management aimed at the following, among other, objectives:

1. Well-selected, fairly selected and adequate staff for the unit.
2. A more robust and well-organized training program for SEO deputies.

3. Adequate, well-maintained and efficiently used equipment and vehicles.
4. Fair and transparent distribution of assignments and overtime.
5. Application of a cost benefit analysis to present and future task force and partner agency agreements.
6. Organized management and updating of authorizations to carry firearms.
7. Better SEO management communication with staff and with partner agencies.
8. An updated comprehensive unit manual clarifying SEO objectives and procedures and providing appropriate guidelines for specialized tasks such as forced entries or evidence handling.

During and after the review process, the Department rearranged the management of SEO. The new management and supervisor team has responded positively to the reviewer's recommendations and is providing status reports on their progress and strategies for implementing them.

OIR commends the Probation Department for committing itself to this frank self-examination of one of its important component parts. It is important to note that the review did not confirm the lurid accusations of corruption or exploitation that was commonly alleged before the review took place. Indeed, the reviewer encountered a majority of dedicated and very energetic SEO deputies and supervisors who were eager to discuss ways to improve the unit. Many of these topic areas and suggestions made their way into the review recommendations. Nevertheless, the reviewer found extensive shortcomings in the unit's general readiness, documentation and adherence to Department, County and State guidelines.

With the advent of the AB-109 jail population,⁶ the armed unit's responsibilities have expanded and may continue to do so. OIR found the review to be thorough, wide-ranging and timely. It gives the Department a useful template and a practical list of precautions to guide it as the size and responsibilities of SEO grow.

⁶ Assembly Bill 109 and related state legislation have implemented what is referred to as the "realignment" of the California prison system due to budget constraints and the need to conform to the limits on prison inmate population density imposed by the federal court. As a result, thousands of inmates sentenced to state prison who meet certain criteria (i.e., their sentencing crime was non-violent, non-serious and non-sexual) are being transferred to the supervision of the county jails and probation departments.

POLICY OF EQUITY CASES

Incidents of sexual harassment by employees or acts driven by bias or discrimination on the basis of race, sex, religion, sexual orientation, disability or other protected characteristic, ranging from the use of derogatory language or slurs to discriminatory treatment in assignments and promotions fall under the county's Policy of Equity.

The Policy became a County-wide mandate for all employees in 2011 as the County launched a major initiative to make the pursuit of equity violations more robust. Until recently, each department did its own intake and screening of equity complaints, as well as investigations and evaluations of the results based on its own standards and procedures. The County Equity initiative aimed to unify almost all⁷ equity investigations under one protocol, with centralized fact-finding and evaluation of the evidence independent of the originating department. The initiative launched three new entities: the County Intake Specialist Unit (CISU) does initial screening of complaints and conducts brief clarifying interviews with complainants. The County Equity Investigations Unit (CEIU) investigates the alleged policy violations. The County Equity Oversight Panel (CEOP), an independent panel of experts, makes findings on whether allegations should be deemed substantiated and recommends the level of discipline after holding an interactive briefing with Department executives and managers. For convenience, we refer to these three entities collectively as "County Equity."⁸ The County Equity design also lowered the bureaucratic threshold for making an equity complaint or case referral by providing a direct, automated complaint form through its website and accepting complaints directly from alleged victims as well as from the equity liaison managers or other staff at individual departments.

The County Equity initiative became fully operational in July of 2011. The component entities started to work through their backlog of cases and were immediately deluged with a steady flood of new allegations. It soon became evident that Probation would be one of County Equity's biggest "customers." In addition to the extremely large volume of cases generated by Probation

⁷ The Sheriff's Department, as a result of the highly structured settlement of a discrimination lawsuit, has had its own equity screening/investigation/adjudication process, involving a panel of outside experts and separate from other internal affairs functions, for over a decade. While the settlement agreement from that lawsuit has expired, the Sheriff chose to continue with their Equity system rather than join the County initiative. Many aspects of County Equity are, in fact modeled after the Sheriff's Department system.

⁸ While we use this collective term, it is important to note that the component entities answer to different authorities within the County. CISU and CEOP are part of the Executive Office of the Board of Supervisors; CEIU is part of the County Department of Human Resources.

employees, the majority of Probation cases carried with them a rigid time limit. The statute of limitations provided for in the Peace Officers Bill of Procedural Rights meant that, if the subject of the investigation was any of the three quarters of Probation employees who are “sworn,” that is a peace officer, then the case would have to be completed and the subject notified of any resulting discipline within one year. If the investigation and notification is not accomplished before the one-year statute expires, the Department would be precluded from imposing any form of discipline, the Department would lose an important tool in remediating its workplace problems and the victim of the Equity violation would lose faith in the system.

As we began to perceive the vulnerable position this put both the Department and its employees in, we engaged the administrators of County Equity in a dialogue about their challenges and the Probation Department’s desire for a practical solution to glitches that remained in the Equity case system. County Equity administrators agreed to place a priority on cases with sworn subjects and assigned a dedicated segment of their investigators to those cases alone. When this did not appear to solve all of the timeliness problems, we compiled data on a sample of Equity cases involving Probation employees and followed their investigative results through the outcome of the cases at the CEOP hearings. We quantified substantial bottlenecks and delays in the Equity case lifecycle and found that in many cases involving sworn subjects, the statute of limitations had expired by the time the investigations were complete. We also noted that Probation, for its part was unable to track the cases being handled by County Equity due to poor data organization by Probation and disorganized communication with County Equity. OIR has recommended that Probation track equity cases in the County’s new “PMTS” case tracking system. Inputting case information at the time the Department first learns of an Equity complaint will help the Department actively monitor and assist in taking timely administrative action at each phase of the disciplinary process. (See “Integrated Case Tracking System” section in Part II of this report for further discussion). OIR reviewed a more recent sampling of cases and found that substantial progress had been made in reducing delays and bottlenecks, even though cases were still suffering expired statutes of limitations. Fortunately, most of these later cases were deemed unsubstantiated allegations. In the meantime, County Equity administrators recently reached out to the client County departments and changed several procedures to streamline the case resolution process and make active engagement and participation by the agencies with CEOP panels easier. County Equity now plans to hold some of its CEOP case briefings at Probation Headquarters rather than in downtown Los Angeles and will not expect Probation executives to attend briefings for cases that have been deemed “unsubstantiated.” Given the volume of Probation Equity cases, these

accommodations will relieve Probation's stretched resources and may facilitate communication with County Equity staff. Most importantly, these changes set the stage for a healthy dialogue to work out any remaining impediments to making the system work efficiently. Probation and County Equity have already begun to move forward in solving one thorny problem – a pragmatic way to provide CEIU investigators access to Probation records.

Despite the growing pains that County Equity has experienced, we believe this County initiative is promising and extremely valuable. Centralization of the investigation and evaluation of equity cases presents the prospect of consistent treatment for a type of case that can otherwise gravitate toward subjectivity and produce inconsistent results. County Equity also reinforces the strong message that bias, discrimination and harassment is not tolerated in any County workplace. We have been particularly impressed by the willingness of County Equity administrators to listen to Probation's point of view and make adjustments to the needs of one of their client agencies a priority. We will continue to press Probation to provide County Equity with the access and the documentation they need to complete cases in a timely manner and we will monitor the progress toward an efficient working relationship between the two that produces satisfactory results for all stakeholders.

Part Three

EMPLOYEE MISCONDUCT

ON-DUTY MISCONDUCT

Two thirds of the almost six thousand employees of the Probation Department are “sworn” staff. That means they have peace officer status conferred upon them by state statute. They exercise legal custody over the thousands of juvenile offenders who reside at the three juvenile halls for a brief time or at one of the eighteen juvenile camps for six months and more. Additionally, Probation Officers wield a great deal of power and influence through the court over adult probationers. They can file new allegations against a probationer or report information to the court that will often result in the court sending the probationer back to jail. These are among the grave responsibilities that the majority of Probation Officers take up every day with wisdom and professionalism. Department leadership must be acutely aware of the risks inherent in the powers that Probation employees may wield over the Department’s probationer clients. For this reason, a high concern for scrutiny of on-duty conduct is not misplaced. Last year, nine Probation employees were discharged for on-duty misconduct. This is disappointing, even though it represents less than half of the total of twenty-three employees discharged during the year.⁹ We describe representative on-duty misconduct cases below.

CASE ONE

A detained minor in a juvenile hall was observed receiving food and special privileges including access to staff offices, from one of the more experienced officers who was the staff shift leader in the module. The sworn officer also allowed this minor to roughhouse with him. Other minors

⁹For purposes of this discussion we have adopted a very broad definition of “discharged.” Twelve of the twenty-three employees received final discharge notifications in 2012. Another six employees received a letter of intent to discharge them during 2012 but not yet a final discharge notice. Five more employees received letters of intent to discharge and decided to resign in 2012.

found this minor to be physically intimidating. On one occasion, the sworn employee instructed this minor (Minor 1) to strip another minor's clothes off, put him in a suicide gown and remove all his personal items from the room. While the subject employee was present, Minor 1 threatened the second minor that he would be harmed if he "snitched." The second minor was supposed to be on heightened one-on-one supervision by staff as a possible self-harm risk. Evidence also established the subject employee allowed Minor 1 to go into the second minor's room alone. During the administrative interview, the subject employee denied he instructed Minor 1 to perform any actions related to the second minor. A fellow employee, however, provided a statement corroborating the misconduct. Additional evidence also established the subject employee engaged in horseplay with Minor 1 (allowing Minor 1 to put the employee in a chokehold), permitted Minor 1 to remain in the staff office for long periods of time and provided Minor 1 electronic music devices (iPods). Minor 1 had also been seen by other staff looking at the written records of other juveniles and sitting at the facility computers with the subject officer. When investigators from IIO interviewed the minor, he revealed to them his immense hidden stash of contraband food, candy and cash the employee had provided him. The internal investigation determined the subject officer had violated Department policy by conferring authority upon a detained minor, supplying him with contraband, violating security rules, allowing the minor access to confidential records, lying during an administrative interview, and exercising poor judgment. The employee, who had a twenty year career with the Department, had prior significant discipline for dishonesty, timecard fraud and insubordination. He was discharged. OIR concurred with this decision. The employee has appealed the discharge.

Case Two

A Probation Officer at a camp was engaging a minor in friendly horseplay when a social worker who happened to be walking by saw the Officer suddenly become angry with the minor and yell at him, "You don't touch a staff." The social worker saw the Officer shove the minor in the chest with his hands and push him up against a wall. The apparently shocked minor did not react to the Officer, even when the Officer tried to twist the minor's shoulders and take him to the ground. Other staff members responded and ordered the minor into a prone position on the ground. The minor complied and the incident ended without injury. According to witnesses, the minor had not taken a combative position, struck the Probation Officer or made any verbal threats against him. The evidence showed that the Probation Officer had violated the Department's policies on employee conduct and adherence to the Department's use of force doctrine for the juvenile camps and halls called "Safe Crisis Management." Additionally, the Officer failed to answer the

investigator's questions honestly and denied any physical contact with the minor, including the friendly horseplay. Any type of physical horseplay is prohibited in the camps and halls because it can easily lead to misunderstandings and fights. The Department has notified the subject that it intends to impose a 15-day suspension.

Case Three

A Probation Officer responsible for monitoring youths on probation making the transition from foster care to independent living conveyed government checks to the minors to assist with this process. In one instance, he arranged to meet a youth at her bank, explaining there had been an unintentional overpayment and he would need her to cash the check and give him \$300 back in cash. This was a false story and an apparent ruse to pocket the \$300. When confronted by investigators, the subject employee explained that the \$300 was actually repayment from a loan to the youth he had previously made out of his own pocket. The investigators researched the Probation Officer's caseload and attempted to contact other youths who had interacted with him. Only two youths were located, in part because the youths in this program tend to be a transient population, difficult to locate and contact. The investigator successfully located and interviewed two youths. One recalled no suspicious transactions with the subject, but the second youth recounted an incident which followed a methodology very similar to the first incident, this time involving a \$120 cash payment that the subject demanded out of a \$300 check. The Probation Officer has received a letter of intent to discharge him from County Service.

Case Four

Another incident has resulted in the Department's decision to discharge three Probation Officers. During an outdoor recreation period at a camp, about ten minors formed a circle around a pair of minors participating in an informal wrestling match. Two minors wrestled briefly, falling to the ground before they stopped. The smaller minor's injury was not immediately apparent. He did not complain of pain until two days later when the camp nurse sent him to the hospital for further medical evaluation. The examination revealed a spinal fracture in the neck and the minor was placed in a "halo" neck, head and body brace for weeks afterward. Witness statements showed that this wrestling match and others before it were originally started by the minors but then one of the Probation Officers had started taking over, acting as referee, then imposing his own rules so things did not get too rough, and deciding when to end the matches. The matches went on for at least ten minutes. Two other probation officers watched from a few feet away. It is a basic rule of the juvenile facilities that rough housing or organized combat is not allowed and should not be

permitted or condoned by staff. Probation Officers have an affirmative duty to intervene and stop incidents of this nature. After the incident occurred, the two staff members closest to the incident failed to document their observations and allowed the third officer to complete the entire write up. This third officer's one-paragraph report described the incident as a spontaneous moment of horse play that staff neither condoned nor had an opportunity to stop. He did not mention the other two officers present. There was also evidence that, after the incident, involved Probation Officers visited the minor in the hospital on more than one occasion on their days off, even though the minor was not on any of their caseloads, and then again at his parent's home, apologizing and pledging future loyalty and support for the minor. Eventually, the parents asked Department administrators to tell the Probation Officers to stop coming to their house.

The Department found all three officers culpable for failing to exercise sound judgment and for violating the camp bureau policies regarding proactive supervision and group control, and for failing to report the incident accurately.

TEACHER MISCONDUCT

In last year's OIR Annual report, we discussed the high number of misconduct allegations that related to teachers in classrooms.¹⁰ In 2011, there were fourteen such investigations conducted by the Internal Investigations Office.¹¹ The allegations ranged from allowing minors access to pornographic material to encouraging minors to assault one another. In seven of those cases (50%), the allegations were substantiated by the evidence learned through the investigation.

In 2012, there was a slight decline in the frequency of teacher misconduct investigations. In total, IIO investigated eleven teacher misconduct cases. The number of substantiated findings, however, dropped dramatically. Last year, there were only two cases (18%) in which the evidence was sufficient to support the allegations. It is difficult to determine with any precision what triggered the steep decline in substantiated findings but one explanation may be that the joint investigations—conducted by one Probation IIO investigator and one Los Angeles County Office of Education ("LACOE") investigator—have resulted in an increase in cooperation from subject teachers which, in turn, have helped produce important evidence, more complete investigative

¹⁰ Educators providing instruction to minor clients in the halls and camps work for the Los Angeles County Office of Education.

¹¹ The statistics referenced in this section reflect the number of completed investigations received by OIR in a calendar year.

records and confident findings.¹² As we discussed in our last report, when teachers refuse to participate in the investigative process, the Department errs on the side of substantiating the allegations. This practice—intended to protect the minors—may have resulted in a higher number of substantiated findings in 2011.

The joint investigation agreement, implemented in early 2012, clarified procedures for investigating subject teachers and appears to have stimulated subject interviews. In 2011, teachers were interviewed in 42% of the cases (6 in 14 cases). In 2012, subject interviews of teachers rose to 54% (6 in 11 cases). Per the agreement, subject teachers are permitted to have union representation and/or legal counsel at all steps of the investigative process, including during the investigative interview. Also, a LACOE representative may be present to interview minors and other potential witnesses (i.e. LACOE and Probation staff). And although the subject teacher still maintains the right to decline to be interviewed (LACOE teachers are not Probation Department employees) the Probation Department reserves the right to keep the employee “locked out” of Probation facilities for a refusal to participate in the Probation Department’s investigative process.

Subject interviews are a critical part of the investigative process and help the Department better understand what actually occurred during an incident. Information learned in subject interviews can also provide mitigating factors for the alleged misconduct. In one 2012 substantiated case, for example, photographs of minors were discovered when a teacher’s stolen phone was found during a search of a dorm. A minor client (the teacher’s student) admitted to taking the phone but denied taking the photographs (which depicted minors in a classroom). There were no video surveillance cameras inside the classroom and none of the twelve minors that were present on the day the minor obtained the teacher’s phone stated that they witnessed him take photographs. The subject teacher agreed to be interviewed and was afforded the “rights” outlined in the joint agreement. When interviewed, the LACOE teacher admitted violating policy by taking the photographs of the minors, without prior authorization and Department approval. She explained, however, that they were taken at a science fair and that she had intended to post the photographs (minors looking into microscopes) on the school bulletin located at the Probation camp. Based on the teacher’s admission and explanation for the photographs, the Probation Department determined that the teacher’s misconduct did not warrant permanent exclusion from its facilities. Corrective action was imposed, however, and the teacher was counseled about the relevant Probation Department

¹² OIR discussed the inception of the “joint investigation agreement” between LACOE and the Probation Department in its First Annual Report at page 40-43.

policies and briefed about the proper protocols for bringing personal items, including cell phones, into Department facilities. If the teacher had not agreed to be interviewed, she would have been permanently banned from entering Probation Department facilities immediately following a substantiated finding.

In another substantiated case, a LACOE teacher refused to permit a minor to use the restroom, even after he told her he had a dysentery condition. After being instructed to sit down in his chair, the minor soiled his pants. When the minor reported the incident, the camp Director immediately requested that IIO initiate a formal investigation. At the same time, per the usual protocol, the Director sent LACOE managers a memorandum requesting that the teacher “not be allowed on the premises” until the investigation was complete. As part of the investigation, the minor and other witnesses were interviewed. IIO investigators attempted to interview the teacher but she refused to participate in the process.¹³ OIR reviewed the investigation and concurred that the allegation of teacher misconduct was supported by the evidence. Based on the substantiated finding and the fact that the teacher refused to be interviewed by investigators, OIR recommended that the teacher be permanently banned from entering Probation Department facilities. OIR learned later, however, that the teacher was removed from the classroom for a short period but returned to the classroom when the LACOE investigation, which included a subject interview, revealed mitigating circumstances.

ARREST UNIT CASES

The frequency of off-duty employee misconduct incidents continues to plague the Department. In 2012, there were sixty-four employee arrests or significant police contacts.¹⁴ This statistic is consistent with last year’s trend (sixty-nine arrests in 2011). With the exception of one incident, all the 2012 arrests were the result of off-duty incidents and a vast majority of the arrests involved sworn personnel. Five of the employee subjects had multiple cases in 2012. There are fifteen criminal cases distributed among this group with charges ranging from burglary and DUI to drug dealing. Collectively these fifteen cases account for almost 25% of the 2012 case total. At present, one of the five employees has received a letter of intent to discharge him from the Department. Another has resigned pending discharge proceedings. A third has been suspended without pay. Investigations are still ongoing for the remaining two employees.

¹³ The “joint agreement” had not been fully implemented at the time this investigation was initiated.

¹⁴ This statistic includes law enforcement contacts where the employee may not have been arrested but was detained, questioned or issued a citation in a criminal matter, other than a traffic violation, and was required to notify the Department of the encounter.

Also in trend with last year's numbers is the high number of driving under the influence incidents—twenty-five in 2012. Last year, there were twenty-nine DUI arrests. This 14% reduction is somewhat encouraging. We hope to report a more significant decline in DUI arrests in future years as a result of the May 2012 implementation of the revised County-Wide Guidelines for Discipline which raises the minimum discipline for a DUI from a three-day suspension to 15 days.

The other off-duty incidents ranged from bench warrants (failing to pay traffic tickets) to possession of drugs, domestic violence and theft/fraud. The following are examples of some of the 2012 off-duty incidents:

Workers' Compensation Fraud

Probation Department Chief Jerry Powers has stated publically that that Department will work closely with law enforcement agencies to crack down on instances of employee fraud. An early result of that effort involved Probation Department managers assisting investigators from the California Department of Insurance in serving an arrest warrant on a sworn employee for workers' compensation fraud, a felony offense. The six-year employee is accused of filing nine fraudulent workers' compensation claims over the last three years. The 27 count criminal complaint alleges that the employee forged department and medical documents, including signatures, to support her fraudulent claims. The District Attorney's Office filed felony fraud and forgery charges in mid-2012. The employee pled not guilty to the charges. The criminal case is currently pending trial. The employee was placed on unpaid administrative leave pending the criminal and administrative matters.

Lewd Conduct

In this case, a sworn employee was observed masturbating in a public park by vice law enforcement officers. The area was known for people engaging in lewd conduct in the public areas. While working undercover, officers observed the employee's vehicle stop on the roadway leading to the park. A female transient approached the employee and then went inside the vehicle. Later, the driver's side door opened and the employee was observed masturbating outside the vehicle. The officers detained the employee and the female for questioning. Based on the evidence, the employee was arrested for indecent exposure and lewd conduct. In an interview with the investigating officer, the employee admitted to masturbating in the park while the female pulled down her shirt, exposing her breasts. The employee was arrested at the scene at a time he was

scheduled to be at work. When notified of the arrest, the Department relocated the employee and assigned him administrative duties with no direct client contact. The employee pled not guilty to the charges and a jury trial was held. A jury convicted the employee of lewd conduct. He was acquitted for indecent exposure. Following the administrative investigation, the Department issued a letter of intent to discharge the employee.

Hit and Run

In this case, a non-sworn employee was involved in a hit and run incident (non-alcohol related) with two vehicles. A police vehicle happened to be stopped on the shoulder of the freeway nearby when the incident occurred. One of the victims pulled alongside the police vehicle and reported the incident. The employee's vehicle had just passed the police vehicle. A vehicle pursuit was initiated. The employee failed to yield immediately but was eventually detained and arrested. The pursuit and the detention were captured on the police vehicle's "dash cam" video device. The employee pled "no contest" to hit and run and was sentenced to a three year probationary term. The employee neither notified the Department of the incident nor of his contact with police. The employee was placed on unpaid administrative leave pending the outcome of the administrative investigation.

Burglary

In an apparent downward spiral, six days after this non-sworn employee was involved in a hit and run incident (discussed above), he entered a store, concealed several electronic items in his waistband and exited the store without paying for the merchandise. Video surveillance captured the employee's actions. The employee later pled "no contest" to burglary. During his administrative interview, he admitted he stole the items and added that he was "intoxicated" at the time. In 2012, this employee had four encounters with law enforcement. OIR continues to closely monitor his administrative investigations.

Attempted Murder

In this case, the Department employee, a sworn officer, was at a bar with his ex-wife. While at the bar, the employee began to argue with other male patrons. Security guards quickly interrupted the argument and the male patrons were escorted out of the establishment. The employee and his ex-wife were also asked to leave. As the employee entered his vehicle a verbal exchange began between him and one of the other male patrons. Witnesses heard the verbal exchange and then saw two of the male patrons approach the driver's side of the employee's vehicle. As

one of the males lifted his shirt, the employee grabbed his own firearm from inside his car and fired one round, striking the male in the chest area, and then drove away. The employee did not report the incident to police. When interviewed, the employee told the investigating officer that he feared the male patron had a gun and fired his weapon in self-defense. There were no weapons found at the scene. When interviewed by detectives, the victim stated he could not recall much about the evening since he was extremely intoxicated after consuming over a twelve pack of beer. The victim also stated that he would not testify if requested and was unwilling to participate in any photo identifications. After reviewing the evidence, the District Attorney's Office declined to file criminal charges against the employee finding that it would be "unable to disprove" that the employee acted in self-defense. The Department has initiated an administrative investigation of the incident. OIR will continue to monitor the case.

Fraud

In this case, the FBI arrested a top Department manager for allegedly defrauding a bank and two credit card companies. The six count indictment alleged that the manager obtained credit cards and loans from banks and purchased thousands of dollars' worth of goods and services. He then falsely claimed to be a victim of identity theft and reported that the credit cards and loans had been opened by someone else. The manager then provided a copy of the police report to the credit reporting agency and had them remove the credit cards and loans and their unpaid balances from his credit report. Once removed, the manager applied for new credit cards and repeated the ruse. It was not alleged that the manager used public funds or used Department equipment to carry out the scheme. In early 2013, the manager pled guilty to federal bank fraud charges and admitted that he stole nearly \$200,000 from financial institutions. The Department discharged the employee.

The Probation Department Chief declared,

For those employees who are engaged in criminal conduct of any kind, my message is this: I will utilize every resource at my disposal to bring you to justice...We will not stop or be detoured until we are sure that justice has been served.

OIR supports this focus on fraud and other criminal conduct and has worked closely with the Department to address gaps in current policies¹⁵ so the Department can clearly define what

¹⁵ See the Policy Development section in Part One of this report.

conduct is expected of its employees and to make clear to employees what on-duty and off-duty behavior may result in significant discipline or discharge. Also, in 2012, at OIR's urging, the Department began to send the Board of Supervisors timely notifications of employee arrests. The notifications are an added layer of transparency and keep the Board of Supervisors abreast of employee misconduct and potential liability issues. Moreover, as discussed below, in 2012, the Department launched a project intended to capture any arrests employees failed to disclose during the pre-employment process or failed to report while employed by the Department.

“LIVE-SCAN” PROJECT

Beginning in 1996, all new Probation Department hires and transfers from other County departments were required to be “live-scanned” as a condition of employment.¹⁶ The live-scan fingerprint database records are maintained by the California Department of Justice (“CDOJ”). Once hired, if the employee is arrested in California, the employee's name is run through the CDOJ database and if there is a “hit”, the CDOJ will notify the Department of the incident. The Department will then take administrative action, if appropriate.

For employees who were hired prior to 1996, there is no “live-scan” on record with the CDOJ. Thus, “post-hire” arrests of these employees may never be known to the Department unless one of three things happens—the Probation Department is contacted by another source (i.e. the arresting law enforcement agency) about the arrest, the employee is transferred or promoted, at which time the employee is required to submit to a “live-scan” and a criminal background check is conducted¹⁷ or the employee, per Department policy, self-reports the incident. If none of these three things happen then the Department remains in the dark about an employee's off-duty criminal conduct and is put in a vulnerable position unable to timely assess liability issues or concerns and unable to take appropriate action (e.g. reassign the employee, place the employee on administrative leave, initiate an investigation).

In an effort to address the “notification gap” issue, the Department's Backgrounds Unit conducted an audit to determine which employees did not have “live-scan” records. The audit revealed that

¹⁶ “Live-scan” is a technology that submits digitally scanned fingerprints electronically to the California Department of Justice thereby allowing criminal background checks to be processed in a short period of time.

¹⁷ Starting in 2009, the Department required employees who were promoted to undergo a background investigation that includes a “live-scan”.

of the approximately 5,500 Department employees (4,200 sworn; 1,300 non-sworn), there were approximately 1,500 employees who did not have live-scan records. After concluding the audit, the Department ordered the identified employees to be live-scanned. By the end of 2012, the Department had successfully live-scanned approximately 1,250 of the identified employees. The Backgrounds unit is in the process of completing live-scans for the remaining employees.

After the employees are live-scanned, the employees' names are run through the CDOJ database which then reveals whether there are any "hits" i.e. an employee has arrests or convictions. Some of the "hits" may be for arrests or convictions that occurred before an employee was hired and other "hits" may reveal post-hire arrests/convictions. For the pre-hire "hits" an employee would have been required to disclose a conviction in the pre-hire application.¹⁸ Failure to disclose a conviction in an application would be cause to disqualify the applicant. For post-hire "hit" cases, the employees would have been required to notify the Department of their arrest or contact with law enforcement. Failure to make the required notification violates Department policy and may result in discipline.

To date, there have been ninety-seven "hit" results from the live-scan project. The "hit" cases are transferred to the Arrest Unit for review and undergo a triage process. Investigators review an employee's pre-employment application, promotion application and discipline history. In consultation with OIR, the Arrest Unit then determines if the information learned in the triage process warrants an administrative investigation. Currently, there are sixteen cases in which further review was warranted. For the remaining "hit" cases, records revealed that the employees either already disclosed the arrests or convictions to the Department or were not required to disclose the incident (i.e. traffic violation). OIR will continue to monitor the "live-scan" project and subsequent reviews and investigations.

DISCHARGE CASES

When the Department decides to discharge an employee it has determined that, after a fair and thorough administrative investigation, the employee has engaged in gross misconduct that both violates a policy and falls significantly below the Department's expectations and standards.

¹⁸ For employees who submitted an application on or before 1984, the disclosure requirement was broad. Applicants were required to disclose if they had ever been "detained for investigation, named as a suspect in a police report, held on suspicion, questioned, fingerprinted or arrested by any law enforcement agency or military authority including traffic offense resulting in a warrant being issued."

Sworn personnel, specifically, are held to a higher standard and are expected to act in a manner that is consistent with the “Core Values” of the Probation Department. The Core Values mandate that employees “**do the right things for the right reasons – all of the time.**” This expectation applies to both on-duty and off-duty conduct. Other important factors that can contribute to a decision to discharge are significant prior discipline and lack of cooperation or truthfulness during the misconduct investigation. In 2012, twelve employees received a final discharge for failing to meet the Department’s expectations.¹⁹ With the exception of one case, the discharge cases involved sworn personnel and seven of the misconduct cases occurred off-duty. In five additional cases, after being served a “letter of intent” to discharge, the employees elected to resign or retire before the Department had the opportunity to issue a final letter of imposition.

The following is a sample of the types of misconduct incidents that warranted discharge. OIR continues to be consulted on discipline cases and concurred with the Department’s decision to discharge the employees discussed below.

Theft and/or Drug Possession Cases

In last year’s OIR Annual report we discussed an off-duty case in which a sworn employee was observed shoplifting a jacket by undercover security. (See OIR Annual Report at page 32). When confronted, the employee fled the scene and was later detained and cited for petty theft by the responding officers. After the District Attorney dismissed the criminal case “in furtherance of justice” the Department initiated a formal administrative investigation (a departure from past practice), which included an interview of the subject employee and the store security officer. Since our last report, the administrative investigation was completed. Based on the evidence, the Department issued the employee an “intent to discharge” letter. The employee resigned before the Department issued the final letter of imposition.

In a second off-duty, theft and drug case, a sworn employee was observed by a store employee removing a security tag from an alcoholic beverage and hiding the bottle in his waistband. The employee then concealed deodorant and lemonade powder in his pockets. The employee walked out of the store without paying for any of the items. Local law enforcement officers were called and conducted a search of the employee and, in addition to the stolen items, recovered a clear plastic baggy containing white powder that resembled cocaine. When asked by the officer why he stole the items, the employee stated he did it to “impress a girl.” During the subject interview,

¹⁹ This number includes the cases in which an employee was served a final discharge letter (“letter of imposition”) in 2012. It does not include cases in which the Department served a “letter of intent” to discharge in 2012 (a total of six cases) but did not issue the final letter before the end of the year. This number is a slight decline from last year’s total of fourteen.

the employee admitted to stealing the alcohol, deodorant and the lemonade. He also admitted to stealing items from the same store on other occasions. When asked about the “baggy”, the employee stated he “assum[ed] it was cocaine.” The amount of white powder was too small to be tested by the police laboratory. Based on the facts and the employee’s admissions, the Department discharged the employee. The employee has appealed the discipline.

In a third drug-related case, officers responded to a sworn employee’s home for a welfare check. The employee’s step-mother had reported to police that (the employee) had been in the bathroom for over two hours and failed to respond to his family’s calls. The family reported that he was using drugs and they feared he was injured. Officers arrived and searched the bathroom and found a glass pipe with burnt residue in the shower. The employee admitted to police (and the Department’s investigator during the administrative interview) that the glass pipe belonged to him. He also admitted during his administrative interview that he had used cocaine on the day he had contact with police. In criminal court, the employee accepted a deferred plea and diversion agreement for possession of drug paraphernalia. He was required to attend forty Narcotics Anonymous meetings as part of his plea agreement. After showing proof of meeting the conditions of the agreement, the criminal case against the employee was dismissed. Based on the nature of the misconduct and the employee’s admissions, the Department discharged him. The employee invoked his appeal rights and the appeal is pending.

“Peeping Tom” Case

In this case, a sworn employee was observed peeping through the bedroom and living room window of a female neighbor’s home. The female victim had set up a hidden camera to capture the employee’s image and conduct. The victim reported the incident to police and a criminal investigation was initiated. The employee admitted to the police investigator that he had been watching the victim three times a week for several months. He stated that he “peeked” through her window because he was curious and estimated watching the victim twenty-seven times. The District Attorney filed a “Peeking While Prowling” charge. The employee later pled “no contest” to the amended charge of “Disturb by Loud/Unreasonable Noise”. After the administrative investigation was completed, he received a “letter of intent” to discharge and then resigned.

Driving Under the Influence

In this case, the sworn employee was involved in two traffic collisions on a freeway. The employee was found to be at fault. The passenger in the employee’s car had mental and physical disabilities.

When contacted, the responding officer noticed that the employee's eyes were bloodshot and that the employee's speech was slurred. The employee failed the field sobriety tests and his blood alcohol content was .27, more than three times the legal limit. The employee was arrested and later pled "no contest" to driving under the influence. The employee failed to report the arrest to the Department. Approximately four months after the employee's plea was entered, the court revoked probation. A probation violation hearing was scheduled but the employee failed to appear in court so a bench warrant was issued. This was the employee's second DUI conviction within five years. He also failed to report the previous DUI arrest to the Department. The employee had only served seven years with the Department. Because of the aggravating circumstances (second DUI arrest, failure to report arrest, at fault for the collisions, high blood alcohol level, "failure to appear" bench warrant, endangerment of mentally and physically disabled passenger) the Department discharged the employee.

In another DUI case, a sworn employee was stopped for speeding through a college campus and was observed driving on the wrong side of a street. When detained, the employee told officers that he was on his way to work. A half empty bottle of brandy was discovered on the front passenger seat of the vehicle. The employee's blood alcohol level was .17%. The employee was arrested and later pled "no contest" to DUI. The employee resigned shortly after he was served with a "letter of intent" to discharge him.

Relationship Inconsistent with Probation Department Employment

In this off-duty incident, a sworn employee was discharged for associating with a parolee who had served jail time for second degree murder and accompanying him on his appointments with his parole agent. The employee disclosed to the parole agent that she was the parolee's "girlfriend" and had requested permission to travel with the parolee out of Los Angeles County. The administrative investigation also revealed that the employee had submitted requests to visit the parolee while he was still serving a sentence in prison. During the subject interview, the employee admitted to knowing she was associating with someone who was on active parole. The employee is appealing her discharge from the Department.

Misuse of Department Computer

An employee's 17 year service with the Department was peppered with prior significant discipline for misconduct, including a 2009 30-day suspension for battery and infliction of corporal injury on a spouse. The sworn employee was the subject of a protective order issued in 2009 ordering him

to keep away from and to not contact his former wife. The protective order also prohibited the employee from obtaining the addresses or locations of his ex-wife. In violation of the court order and restrictions placed on him by the Department, the employee used a Department computer, network and databases to search for his ex-wife's address. The employee was discharged. His appeal is pending.

Use of Excessive Force, Abusive Language and False Statements in Official Documents

In this on-duty case, the sworn employee was discharged for excessive force, using abusive language toward a minor and making false statements in official Department records. Video surveillance showed the sworn employee grabbing a minor from behind, as the minor stood stationary facing a water fountain. After grabbing hold of the minor, the employee forcefully threw him to the ground. The minor's feet came off the ground as he hit the floor. The employee then pressed his knee into the minor's back when he was on the ground. During the incident, the employee referred to the minor as a "bitch". The minor suffered abrasions to his back, shoulder, neck and nose. The employee falsely reported in the Physical Intervention Report that the minor was the aggressor and had struck him first when he walked past him. The employee admitted to using profanity during the incident and explained that he uses profanity as part of his "teaching style." The employee is appealing his discharge.

Part Four

INVESTIGATIVE REFORM

EVIDENCE PRESERVATION & EXAMINATION

A minor at a juvenile hall, sitting at a cafeteria table in the dayroom, among several other minors, stood up suddenly, walked up to a female staff member and punched her in the head without warning. The other minors nearby jumped up and began pulling the assaultive minor away from the staff member and attacked him. Other staff members quickly reached the fray, separated the staff victim from the group, stopped the fighting, and pulled the attacker away from the other minors. The assaultive minor continued to struggle as two Detention Services Officers wrestled him to the ground and attempted to handcuff him. This attempt was unsuccessful until other officers joined in and relieved the two now-winded officers. Officers finally got the assaultive minor handcuffed and face down on the floor. They left him that way for a few minutes, then stood him up and walked him away for medical evaluation. They then placed him in isolation in the Special Housing Unit. The nurse who assessed the minor noted that he was shaking, crying, and extremely angry and upset, but when he calmed down he was treated for bruising and swelling to his ears and minor abrasions.

Per protocol, the involved staff -- eight in all, including two supervisors -- wrote physical intervention reports describing the incident. These were collated and reviewed by supervisors assigned to perform the "child safety assessment" following the incident and the "Safe Crisis Management" review. These reviews were required because a minor had been injured and staff had used force. Nothing in the incident was deemed outside of Department guidelines. It received no further scrutiny until weeks later when a complaint by the minor and his attorney caused facility managers to access the video recorded by the surveillance camera mounted in the dayroom and view the incident, evidently for the first time.

The incident represented in the surveillance video proved to be a surprising contrast to the incident depicted in the staff's written reports. The video showed staff using OC spray multiple times, striking the minor in the shoulder and head area with hands and knees, placing shod feet against the minor's head, and at certain points, standing on the minor's shoulders as he lay prone on the floor. The officer striking the minor in the shoulder area appeared to have an OC spray canister in his fist at the time. The entire process of using force against the minor lasted a total of eight and one half minutes and involved six staff members in the hands-on struggle with the minor and two more who appeared to observe most of the action. After the handcuffing was finally accomplished, staff members kept the minor on the floor for several more minutes before preparing him for pepper spray decontamination and standing him up to walk him out of the day room. Fortunately, the injuries to the minor were not serious.

The internal investigation showed this to be an incident where the techniques employed by the staff to subdue and control a combative minor went beyond the type and duration of uses of force trained and approved by the Department.²⁰ The more troubling aspects of the case were what happened after the incident concluded. Involved staff members failed to write their reports on the incident until several days after the event and when they did so, unanimously failed to accurately reflect their own actions or their observations of the actions of others. They left out, for instance, fist and knee strikes and stepping on the minor's upper body. These reporting problems were then compounded by the supervisors designated to do the incident reviews. They failed to view the surveillance video of the incident or scrutinize the reports in comparison to the video. The documentation of the incident was therefore simply filed and forgotten until seven weeks later when the minor complained to his mental health counselor that he had been punched, kicked and stepped on by Probation staff. Shortly thereafter, the minor's attorney asked to see a copy of the surveillance video covering the incident. At that point, the Department's Risk Management office alerted the juvenile hall to the request. Managers finally reviewed the video and realized the apparent conflict between the video and the reports written by staff members. The case was then referred to the Internal Investigations Office for investigation of possible misconduct. At the conclusion of its investigation, IIO determined that most of the involved staff had used excessive force, had failed to properly document the physical intervention or both. Department executives and the Performance Management unit are currently evaluating the level of discipline appropriate to the misconduct.

²⁰ Probation's use of force doctrine in the juvenile facilities is called "Safe Crisis Management" and prohibits a wide array of standard law enforcement techniques including wrist locks, arm bars, punches, extreme pressure to the neck or back area and many other forms of pain compliance, except in extreme self-defense circumstances.

While the disciplinary process is still pending, the Department is engaged in an important response to the systemic problem exposed by this case: supervisors at the juvenile hall failed to view the videotape of the incident before completing and approving the incident review. In response to this, the executive responsible for the juvenile halls as well as the juvenile camps determined that supervisors needed explicit guidance on the Department's expectations following critical incidents. This executive consulted OIR and drafted a directive enumerating the responsibilities of supervisors who are tasked to review incidents. The directive admonishes managers to review video footage of incidents, whenever such footage exists. This is a strong message that should eliminate all ambiguity about the importance of reviewing video evidence before completing any standard post-incident review. The Directive further instructs managers, that, "[i]f any type of internal investigation is anticipated after viewing the video evidence," personnel involved in the incident should not view the video footage except under the guidance of Internal Investigations. This is a prudent practice that helps preserve the integrity of eye witness testimony and should bring the juvenile camps and halls into harmony with the procedure advocated by IIO.

COUNTY OF LOS ANGELES
PROBATION DEPARTMENT
DIRECTIVE

No.:
Issued:
Post until:

Draft

SUBJECT: JUVENILE - MANAGERIAL REVIEW OF VIDEO FOOTAGE FROM SAFE CRISIS MANAGEMENT AND YOUTH-ON-YOUTH VIOLENCE INCIDENTS

Probation Directive No. 1187 (issued January 29, 2010), established the Probation Department's policy and guidelines for reporting allegations of Suspected Child Abuse and shall remain in full force and effect.

Probation Directive No. 1194 (issued January 27, 2011), established the Probation Department's Use of Force Policy and shall remain in full force and effect.

The purpose of this directive is to establish policy and operating procedures for the post-incident managerial review of video footage, whenever such footage exists, following the following incidents: any Disturbances, any Safe Crisis Management (SCM - including Level A1, "Step Between"), any Youth-on-Youth Violence (YOYV) incident, Room Extractions, OC Pepper Spray incidents and any incident that results in injury to staff and/or youth. A Safe Crisis Management incident is defined for the purposes of this Directive as any incident in which staff use physical force to restrain or subdue any minor.

Effective, immediately, it shall be the policy of the Residential Treatment Services Bureau (RTSB) and Detention Services Bureau (DSB) that Senior Management—including the Bureau Chief for the appropriate Bureau, Regional Directors and Superintendents—shall immediately be notified of all SCM incidents and incidents of YOYV.

The Facility Director (RTSB)/Division Director (DSB) shall immediately make all appropriate referrals to the Probation Department's Child Abuse Special Investigations Unit (CASIU) in accordance with Directive 1187, Child Abuse Reporting Policy for Juvenile Detention Facilities and the Dorothy Kirby Center.

The Facility Director/Division Director shall make three (3) copies of the video surveillance of the above incidents, and distribute to the Bureau Chief and the Regional Director/Superintendent within one (1) business day of the incident.

The Facility Director/Division Director shall complete Section I of the Juvenile Institutions Managerial Video Footage Review Report (Prob. XXXX, Rev. 06/12 - Attachment A) and forward to the Regional Director/Superintendent within two (2)

Juvenile – Managerial Review of Video Footage from Safe Crisis Management and Youth-on-Youth Violence Incidents

Page 2 of 2

business days of the incident. The Regional Director/Superintendent shall review the report submitted by the Facility Director/Division Director and video surveillance, complete Section II of the report and forward to the Bureau Chief within four (4) business days of the incident. The Bureau Chief shall review the report and video surveillance, complete Section III and finalize the report. Completed report shall be forwarded to the Deputy Chief within six (6) business days of the incident.

The Facility Director/Division Director shall retain the video surveillance for all SCM and YOYV incidents in a secure location for a period of 12 months.

All questions and inquiries regarding this Directive should be directed to the Residential Treatment Services Consultant at (562) 940-3554 or the Detention Services Bureau Consultant at (562)940-2523.

Jerry E. Powers
Chief Probation Officer

MANUAL HOLDERS: CROSS-REFERENCE YOUR MANUALS TO THIS DIRECTIVE WHERE APPROPRIATE

THE USE OF VIDEO EVIDENCE

As an independent monitor, OIR's main mission is to ensure that the Department conducts fair and thorough internal affairs investigations. One way OIR accomplishes that goal is by reviewing administrative investigations and identifying areas in which investigative techniques can be improved. In our review of administrative cases, OIR identified the need for changes in the use of videos during subject interviews. In some cases, investigators were showing the video to subjects before or after an interview and asking them questions. Others were not using the video evidence at all with interviewees or not asking questions about it. In most cases, the better investigative practice is to view the video as one component of the interview process to help elicit further information from a subject (or witness) that would help establish what exactly happened during an incident.

In 2012, OIR worked with IIO to draft a guideline for investigators regarding the use of video during an administrative interview. Now, IIO investigators have become adept at showing subjects and witnesses video evidence of an incident under investigation as an integral part of the interview process. The practice captures the principle of obtaining a "pure" statement from the subject or witness and the value that a video may serve in helping to refresh a witness' or subject's memory so he or she can provide a fuller account of the incident. In order to obtain a subject's or witness's untainted recollection of the incident, the video is shown after an initial interview has been conducted. The investigator then seeks further information about what is depicted in the video and asks about circumstances surrounding the actions shown on that video that can help illuminate the context of the video evidence. This also gives subjects a chance to explain their state of mind or other factors that may be relevant but not apparent in the video.

These guidelines are applicable to videos capturing both an employee's on-duty and off-duty misconduct. OIR continues to monitor the Department's implementation of this investigative practice. The development of these guidelines has had a clear positive influence on IIO investigations and the effective integration of video evidence into the interview technique. This evolution is timely because enhanced video equipment is expected to come on line at the juvenile halls and at six of the camps this year.

OTHER DEVELOPMENTS IN INTERNAL INVESTIGATIONS

Format

OIR works closely with PSD's Internal Investigations Office and all of their completed written reports are the subject of our scrutiny. We give IIO supervisors detailed written feedback about the sufficiency and quality of investigations and the effectiveness of the investigators' case reports. We sometimes request further investigation on the case at hand or suggest how similar shortcomings can be avoided in future investigations. We believe the format and structure of IIO reports is a representation of the investigative mind and method behind them. A well-structured report tends to reveal with clarity whether the investigation was thorough, fair and focused on all of the relevant issues. Consequently, while IIO investigators have made strides forward in the quality of their interviewing, the thoroughness of their gathering of medical evidence and other documentation, and their effective use of video evidence, we have been frustrated with the repetitive or elliptical quality of some IIO investigation reports and their neglect of key elements of the relevant policy violations. As a result of many discussions with IIO about report structure, the unit's director and supervisors overhauled the report format, sought revisions from OIR and trained their investigators on the new format. We expect to start seeing and reviewing the resulting product shortly and we hope that all IIO reports will now consistently focus more clearly on setting down a coherent factual narrative of the events in question.

Specialized Training

Because Probation Officers rarely conduct criminal investigations in the course of their developing careers, there is no natural pool of analogous experience from which internal investigators at Probation can draw. There is also very little training available within the Department that specifically meets the needs of IIO investigators striving to raise their skill level. The Professional Standards Bureau and OIR have discussed this problem and sought ways to solve it. Over the course of the last year, OIR developed specialized training for IIO investigators and supervisors. The training has focused on areas of interest to the unit and areas where we perceived gaps in their preparation. OIR's investigator, a retired Los Angeles Sheriff's Department sergeant with extensive experience in internal affairs, gave a series of seminars on interview techniques to small groups of IIO investigators and supervisors. The OIR attorneys followed that up with a presentation on the Peace Officers' Procedural Bill of Rights, a statutory regime in the California Government

Code outlining acceptable interview and investigatory practices when investigating peace officers and providing strict time limits and other due process rights governing those investigations. In addition to the OIR training, IIO has recently reinforced and supplemented their training by putting investigators and supervisors through a once-a-week regimen of course material relevant to investigating peace officers presented by a law enforcement training contractor. This training approach is a prudent alternative to the previous tendency to allow investigators to make do with whatever coursework they could find to fulfill their yearly 40-hour state mandated training requirement. Providing the same training to all investigators also helps reinforce a consistent approach to legal questions and investigative strategies within the unit.

Part Five

OIR PROFILES

MICHAEL GENNACO came to OIR from the Office of the United States Attorney, where he served as Chief of the Civil Rights Section. In that position, Mr. Gennaco was responsible for overseeing all police misconduct, hate crimes, and involuntary servitude investigations and prosecutions for the Central District of California. He also served as the federal civil rights liaison for community and public interest groups and federal and local law enforcement agencies. Prior to working at the U.S. Attorney's Office, Mr. Gennaco served for ten years as a trial attorney with the Civil Rights Division in Washington, D.C. While there, Mr. Gennaco successfully prosecuted an LAPD officer for using excessive force and false arrest and was involved in prosecuting numerous other hate crimes and police misconduct cases. Mr. Gennaco also served for two years in the Voting Section of the Division where he litigated voting discrimination cases.

Mr. Gennaco is a graduate of Dartmouth College and received his Doctorate of Jurisprudence from Stanford Law School. He has also taught as an adjunct professor at American University Law School, George Washington University School of Law, Loyola Law School, and Chapman College of Law.

ROB MILLER is the Deputy Chief Attorney at OIR-Probation and a founding member of the Office of Independent Review. He has also performed reviews of critical incidents and high profile cases for the City of Portland, Mississippi Department of Youth Services, San Diego County, and the city of Oakland. He came to the OIR from a fifteen-year career in the Los Angeles County

District Attorney's Office. His assignments there included central felony trials, juvenile crimes, environmental crimes, OSHA death cases and administration. He has prosecuted 70 jury trials for crimes ranging from murder and kidnapping to toxic dumping and corporate fraud. He has lectured on internal investigations topics and techniques at seminars sponsored by the National Association of Civilian Oversight of Law Enforcement, California District Attorneys Association, and the AFL-CIO. He has been invited to provide training for the Los Angeles County Sheriff's Department, California prison investigators, the Independent Investigations Office of British Columbia and the Los Angeles County Probation Department.

Mr. Miller attended law school at UCLA and received his undergraduate degree from Stanford University. He was a research fellow of the University of California Institute on Global Conflict and Cooperation and received a MacArthur Foundation grant in Rome for research on terrorism.

CYNTHIA HERNÁNDEZ joined OIR in 2008 after practicing law at the union-side law firm of Gilbert & Sackman in Los Angeles, where she specialized in representing private and public sector labor unions and was responsible for arbitrating discharge and contract disputes. Ms. Hernandez is currently an attorney at OIR-Probation. She has also conducted audits of misconduct cases for other law enforcement agencies and was a member of a team that assessed the internal affairs unit of Mexico's Secretaria de Seguridad Pública. Ms. Hernández began her law career as a trial attorney at the National Labor Relations Board where she investigated unfair labor practices committed by employers and labor organizations. In 2001, she was appointed by the United Nations International Criminal Tribunal for Rwanda to defend Rwandan detainees who were charged with genocide, crimes against humanity and war crimes for the atrocities that occurred in Rwanda in 1994. Ms. Hernández received her J.D. degree from USC Law School in 2000. While in law school, she served as an extern for US District Court Judge, Consuelo Marshall. In 2006, USC's La Raza Law Students Association selected Ms. Hernández as the recipient of its annual "Inspirational Alumnus Award." As an undergraduate, Ms. Hernández attended UC San Diego, Universidad de Guadalajara, Mexico and the University of Nairobi, Kenya, East Africa. In 1993, she earned a M.A. in Education from Claremont Graduate School. She was a bilingual educator before becoming an attorney and speaks Spanish and Swahili.

BENJAMIN GARCIA, the OIR's investigator, retired in 2010 from the Los Angeles County Sheriff's Department after proudly serving 33 years. During his career with the Sheriff's Department, Mr. Garcia worked assignments in custody, patrol, investigations and training. He was promoted to the rank of Sergeant in 1992 and spent his last ten years with the Department's Internal Affairs Bureau (IAB). While at the IAB, Mr. Garcia conducted personnel administrative investigations involving sexual harassment allegations, force/shooting incidents and general misconduct issues. He also trained many of the newly assigned IAB sergeants in the policy and procedures of conducting administrative investigations under the guidelines set forth in California's Police Officers Bill of Rights.

LUCY GUTIERREZ has been a Los Angeles County employee for over ten years. Ms. Gutierrez started her county career as a secretary at the Department of Health Services then promoted to the Probation Department where, for six years, she was assigned to work with the Probation Camps Bureau. In that assignment she was responsible for collecting, reviewing and monitoring camp data. Ms. Gutierrez was promoted again and transferred to the Department of Mental Health where she spent a short time as the secretary to the Data Integration and Business Intelligence Division Chief. She returned to the Probation Department in May 2011 and joined OIR and assists two attorneys and one investigator. She maintains the criminal and internal investigations database, triages and tracks and manages the incoming criminal and misconduct cases and provides secretarial support for the unit.

