ANATOMY OF TRAFFIC STOPS

By Tristan Bonn
Public Safety Auditor
City of Omaha
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EXECUTIVE SUMMARY

This report represents a culmination of the work done in the Auditor's Office during the four and one half years it was open. Very early on, it became clear that there was a pattern of complaint about the manner in which the Omaha Police Department conducted traffic stops, especially in north and south Omaha. As the Auditor followed the string of evidence about traffic stop complaints, each tug further unraveled the knot of problems plaguing the Omaha Police Department's troubled relations with the community over the past twenty years or so.

For instance, a citizen may complain that an officer was rude or treated them like a criminal for a minor traffic offense. As the Auditor began to look into what the department's definition of rudeness was, it was clear that the department did not have clear policies about a number of important policing matters. A seemingly simple complaint of rudeness during a traffic stop quite organically grew into many more serious complaints about the department, such as:

---- Officers were rude, dismissive, non-responsive or overly-aggressive during minor traffic stops;

---- People of color complained of much harsher treatment in their communities than in other parts of town;

---- Citizens complained that they were handcuffed and searched for minor traffic cases;

---- Uses of force often escalated unnecessarily, resulting in further charges and arrest;

---- Complaints were disposed of in an unsatisfactory manner, sometimes giving rise to new or additional complaints;

---- Numerous fourth and fourteenth amendment violations were discovered, as well as incorrect interpretations of the law;

---- There appeared to be lax or complicit supervision and management did very little, if anything, to address the ongoing community concerns;

---- In-service training had been neglected for years;

---- These complaints were longstanding and left unaddressed, causing great distrust and fear of the department within the community.

The department has not adopted the modern policing practice of reviewing citizen complaints to determine the department's effectiveness. Nearly every police department nationally of any prestige has turned to this method of improving its delivery of policing services. The Omaha Police Department has remained stuck in the past relying on reactive, harsh policies that have been discarded by more effective police departments throughout the country.

This report sets out to describe, by analyzing traffic stop complaints, how the department finds itself currently estranged from many of the communities it serves and offers suggestions about how it can repair those relations.

Table of Contents

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I. OVERVIEW

The Omaha Police Department has serious problems with how it conducts traffic stops.

These problems include (1) legally questionable conduct by officers, (2) inadequate policies, training and supervision, (3) rudeness in dealing with citizens, and (4) possible patterns of discrimination.

This report opens with brief summaries of three traffic stops that dramatize these problems. The report then analyzes these problems in detail.

--- **Traffic Stop #1:** *Two Hispanic females driving in a car are stopped by two male Omaha police officers for having a "white light shining through" the back of the vehicle. When approached, one female stated, "You have no probable cause to pull us over." One officer responded, "What, are you a lawyer?" The other officer asked the passenger to get out to look at the back of the vehicle. When she stated there is no white light shining through, the officer said he had had enough and shoved her up against the car door. She screamed that she was pregnant and tried to protect her stomach. The other officer came around and grabbed her by her ponytail and both officers dragged her to the ground and handcuffed her for "Resisting Arrest."*

--- Traffic Stop #2: *An African-American father and his two teenage sons were driving home with their car loaded with groceries. Two male Omaha police officers pulled them over for having a "white light shining through" the back of the vehicle. As the officers approached the vehicle, one officer shouted for everyone to raise their hands. The father asked why they were being stopped but the officer ignored his question. The other officer removed the son from the back seat and began to pat him down. The father again asked what was going on and got out of his vehicle. An officer slammed him to the ground and handcuffed him and put him in the cruiser with a "spit hood" over his head. The father was charged for the "white light" violation as well as "Disorderly," "Resisting" and "Obstructing."*

--- **Traffic Stop #3**: *One male and one female Omaha police officers followed a young African-American female college student for having an "Expired Plate." When the young woman pulled over, she got out of the car screaming and said she was going to be sick because she was pregnant. The officers ordered her to get back into the car.*

When she did not get back in the car, they tackled her to the ground, placed her on her stomach, kneed her in the back and handcuffed her. Her new plates were on the front seat of her car.

Discussion

These examples highlight just a few of the many, many complaints filed against the Omaha Police Department (OPD) over traffic stops. In fact traffic stops represent the vast majority of complaints filed by citizens against OPD. Most of the complaints focus on harsh treatment, but they also involve a pattern of unfairness and discrimination.

Why do complaints of racial profiling persist in Omaha? Why are traffic stops the source of so much discontent and formal complaints in Omaha's minority communities but not in white communities? Why hasn't OPD, adjusted its practices to ensure that traffic stops are lawful and professional?

Professional police departments today make a practice of learning from citizen complaints and other problems that arise. They have learned how to engage in effective proactive preventive policing without aggravating relations with citizens. OPD and some other departments, however, are stuck in the past, still relying on tactics such as pre-text traffic stops that are ineffective in fighting crime and offend law abiding citizens. None of the three cases described earlier involved a serious crime. No dangerous criminal was arrested. The only result was damage to community relations.

A modern police department truly understands and cultivates its relationship with the community. The community is an important crime prevention and crime fighting tool: indispensable to the department's success. While modern departments recognize the value of a true community partnership, outdated departments, like OPD, treat the community with suspicion and disdain, alienating the very community that could assist the department in its crime fighting efforts.

The Scope of this Report

In an attempt to illuminate the causes of these complaints, this report examines the separate and distinct parts of a traffic stop typically conducted by OPD and the resulting complaint patterns. The report goes on to analyze the practices and procedures that give rise to the community's repeated complaints. By closely examining both the complaint patterns and dissecting the traffic stop practices, this report will lay bare the anatomy of these traffic stops in an attempt to uncover some of the root causes of these complaints.

II. TRAFFIC STOP ANALYSIS

A. Traffic Stop Complaints

When the Auditor's Office opened its doors in June 2001, the first of many traffic stop complaints began to trickle in. Patterns regarding the nature of complaints were immediately noticeable.[1] Complainants were generally people of color, sometimes Hispanic, but usually African-American. They typically complained that they were stopped for no good reason or for a very minor offense, such as "Improper Display of Plates."

Complainants often reported that the officer would not answer their questions, like "Why was I pulled over?" Officers were often silent or rude. Many stops deteriorated as the complainant insisted on information and sometimes became argumentative when the officer maintained his silence. Searches and pat downs often created more hostility. Complainants often reported feeling like they were treated like criminals.

Some traffic stops deteriorated even further resulting in officers putting hands on the complainant, taking the complainant to the ground, putting a knee in the complainant's back, and handcuffing the complainant. In many of these cases, the complainant is booked in to jail and charged with "Disorderly Conduct," "Obstructing," or "Resisting." Bookings caused some complainants to lose their job because they failed to make it to work or they lost their vehicle because their car had been towed. Tow and storage charges are often too expensive for complainants to retrieve their vehicle. And remember, all of these problems arise from a very minor charge such as "Improper Display of Plates."

B. The Reason for the Stop

Few of the citizens who complain about stops of this kind are found to be involved in any serious crime. Occasionally, the complainant was found to be in possession of less than an ounce of marijuana or had an outstanding traffic warrant, or had a passenger with an open container or no seat belts; the additional charges were very minor.

The success of officers in finding additional criminal charges through a traffic stop is measured by the so-called "hit rate."[2] That is, what percentages of stops yield contraband, or weapons, or wanted offenders? Where there is a "hit," the stop can be

[1] In both the June 2003 and the June 2005 quarterly reports, the Auditor's Office documented a two year analysis of complaint information. Those reports and the fourteen additional quarterly reports can be found at www.ci.omaha.ne.us, click on departments, and then click on Public Safety Auditor.
[2] Fridell, Lorie A. "By the Numbers: A Guide to Analyzing Race Data from Vehicle Stops." COPS Office, www.cops.usdoj.gov/default.asp?Item=1476.

described as a success. The Police Auditor has asked OPD if they can establish any type of "hit rate." They do not keep such records. As a result, OPD has no idea if traffic stops for minor violations are effective in locating serious offenders. The "hit rate" issue dramatizes the extent to which OPD continues to engage in a practice that does not address serious crime and only antagonizes citizens.

The very worst of all of the traffic stops are those where completely law-abiding people are stopped only because they fit an overly broad description of a suspect, and are then treated as though they are were criminals. The people who suffer these types of traffic stops are probably lost to the police department forever. Good citizens, who ordinarily would support the department in any way they can, become so disenchanted with the department because of the way they have been treated that they no longer assist the department in any type of crime prevention.

---Traffic Stop #4: *One particularly memorable case illustrates this problem. A Hispanic male, about 30 years of age, was driving his fiancée's properly plated and registered vehicle with his mother as a passenger. She was about sixty years of age, still recovering from a recent surgery that required she wear thick, dark sunglasses and she spoke little English. They were on their way to the airport to begin picking up guests arriving for the son's upcoming wedding.*

On their way to the airport, on busy Abbott Road, they were spotted by two OPD officers. The officers were in a single cruiser and the more experienced officer was training the younger officer. The older officer suggested to the younger officer that certain license plates with rust marks may indicate a plate had been improperly changed to another vehicle or, perhaps, even stolen.

Without any other information or observation of any violation, the officers, operating under the rust markings assumption, began following the Hispanic man and his mother. They radioed in to run the plates and improper information was either conveyed or heard, indicating the plates did not fit the vehicle or the plate number radioed in was stolen (It was never entirely clear who in OPD was responsible for the mistake). The officers, based on the incorrect information, concluded the vehicle was likely stolen and decided to conduct a felony traffic stop. A felony or high-risk traffic stop includes tactics where the driver of the vehicle is contacted by the officers from behind their car door, voice contact is made by shouts or the PA system and officers' guns are drawn, as they are anticipating danger.

The two officers shouted at the son and mother to get out of the vehicle with hands high. They were ordered to kneel or lay on the ground. The son was all the while shouting that this must be a mistake and also attempted to translate the orders for his mother, who ended up kneeling too near or actually on the busy roadway. When the son tried to tell his mother to move, he claimed he was told to "shut up." The officers did, however, need to move the mother.

Apparently, she did not understand what was being asked of her and she was having difficulty seeing, so she stayed where she was. Then, one of the officers tried to physically lift her off the roadway. While attempting to do so, he knocked her over, and then fell on top of her, injuring her further. Once the officers picked themselves up and sorted things out, all the while, leaving the mother and son laying along the roadside, they rechecked radio and discovered the entire contact had been a mistake. The son disputed that any apology was given and he and his mother filed a complaint. After the stop was concluded, the mother sought medical care.

Because the complaint process is so secretive and convoluted, the family was never very satisfied with the results of the investigation or the explanation they were given by OPD as to why they were stopped in the first place and why they were treated as they were. I suspect their dissatisfaction derived from the fact that there really was no good reason for the stop or for their treatment. But, left to draw their own conclusions about what and why this occurred, it is fairly obvious what they might discern.

C. Pre-text Traffic Stops

Pre-text traffic stops involve stopping a driver in a vehicle for any number of the many, many regulatory traffic violations on the books today.[3] They include having a dirty license plate, flicking a cigarette out the window, having too dark window tint, or an "obstruction" hanging from the rear view mirror.

The more odious practice of pre-text stops occur when police are randomly looking for wanted persons and stop every vehicle in an area to check who is in it. Typically, the police would need a reasonable articulable suspicion that a driver was involved in a crime to stop them. With the pre-text stop, law enforcement need not make such a nexus so long as they have probable cause for any type of minor violation. When police departments use traffic stops as crime investigation tactics, the officers inevitably treat the drivers as criminals.

The question for OPD, then, is whether or not this longstanding and seldom reviewed practice is yielding the type of results the department desires or whether this tactic serves only to alienate the community.

The following section examines some of the serious legal and policy issues associated with pretext traffic stops.[4] The analysis is based on actual citizen complaints

[3] *Whren v. United States*, 517 U.S. 806 (1996).

[4] D. The Data and the Methodology:
In the seventeen quarters, or more than four years, that the Auditor's Office issued quarterly reports, this Office reviewed approximately 464 completed internal affairs investigations of citizen complaints. We typically categorized a complaint as an "in house," "in person," or "in vehicle" contact between citizen and officer. Of the 464 completed investigations, a random spot check of ten percent of the total completed investigations revealed that "in vehicle" or traffic complaints comprised exactly half or 50% of the completed investigations. The balance of the investigations was fairly evenly split between "in home" and

filed against OPD officers and supplemented by other sources of citizen feedback. OPD has not accepted this approach, which an increasing number of departments are using: analyzing citizen complaints to identify problems that need to be corrected.

D. Probable Cause Issues

All traffic stops for a traffic violation begin with probable cause. Probable cause refers to having enough evidence or facts to reasonably support all elements of a violation, in this case, a traffic violation. This threshold of facts is required before a police officer can contact a driver for a traffic stop.

A slightly lower threshold of facts or evidence permits a police officer to contact a driver for a traffic stop for further investigation of a crime. This standard is referred to as "reasonable articulable suspicion" (RAS). If an officer can reasonably articulate facts, also taking into account exculpable facts that a crime has been committed or is about to be committed, then the officer can contact that driver for further investigation.

The upshot is there are two different standards for traffic stops: one, probable cause, applies to traffic violations; and the other, RAS, applies to non-traffic crimes (keeping in mind that a few driving violations, like DUI are considered crimes, not traffic

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"in person" contacts. Even so, traffic contacts comprised a sizeable portion of the complaints, and therefore – the review data.

While the complaint investigations comprise the bulk of the data, the data of complaint feedback also includes cases the department refers to as "DNF's" or "Did Not Formalize." These are cases where the citizen begins the complaint process by filling out a complaint form and contacting Internal Affairs, but, for some reason, does not complete the formal investigation. In these cases, citizens sometimes convert the formal complaint to an informal complaint, where the officer's supervisor is notified of the citizen's complaint and the supervisor handles it. In addition, some citizens simply do not go through with the formal investigations, but the Auditor's Office has still discovered the nature of their complaint against the department. In the same seventeen quarters of reporting, the Auditor's Office reviewed approximately 350 "DNF" files.

When Internal Affairs conducts investigations, they rely on interviews to build their case. These are interviews of the complainant, witnesses, target officers, and witness officers. The interviews also provide the Auditor with yet another rich source of information to analyze for patterns and trends of complaint. In the four and one-half years the Auditor's Office was open, the Auditor reviewed over 2000 interviews. Likewise, the Auditor tracked citizen contacts – phone calls, drop ins, emails etc, which were generally questions and feedback about officers. Over the same period, those citizen contacts reached approximately 3200. In addition, the Auditor spoke at over 200 public speaking engagements where citizens were also able to share their complaints and feedback about OPD.

All in all, the amount of data from which the Auditor could draw on to analyze trends and patterns of complaint was quite extensive. Unfortunately, the Auditing Committee never fully supported the office, especially requests of software or staff that would allow for more statistical analysis of the data. Even so, the Auditor applied as many quality assurances as possible to ensure the collection of accurate data. The data was analyzed critically, best described as a legal analysis. As a result, the analysis, conclusions, and recommendations are those of the Auditor's alone.

violations). It is further important to note that probable cause requires more facts than RAS and probable cause applies typically to traffic violations that have *already* occurred while RAS more likely applies to criminal conduct that is *about* to occur.

In the very first month on the job, the Police Auditor visited with the Lieutenant in charge of training. In preparation for an in-service training on traffic enforcement (the first of its kind in over twenty years, I was told), he discovered an error in OPD's Standard Operating Procedures (SOP). The SOP confused the distinction between probable cause and reasonable articulable suspicion. We discussed how long he thought the error had been on the "books" and the Lieutenant guessed twenty years. The error, in my estimation, was very serious, and I immediately notified the Chief. The error in the SOP was soon corrected, but there were no changes in either training or on-the-street traffic enforcement practices.

The error in the SOP (Attached as "Exhibit 1") illustrates two problems. First, the SOP states that you can stop a car based on reasonable articulable suspicion if you end up with probable cause by the conclusion of the stop. This statement is only correct if the original offense is something criminal in nature. It is incorrect as applied to a traffic violation, however. This crucial distinction is not made clear in the SOP. The SOP literally reads as though you could stop someone for speeding without corroboration – like using a visual estimate instead of a radar clock (see the discussion of this problem below), but arrest them for something else, like possession of less than an ounce of marijuana. The arrest would be based on evidence discovered by the end of the search of the vehicle even though there was insufficient probable cause to support the original contact.

The second error involves the sentence, "the vehicle to be stopped has committed or is about to commit a traffic violation . . . . " This is a misstatement of the law because it allows an officer to stop someone who is about to speed, or about to run a red light. It is impossible to prove that someone is about to speed or run a red light. (This example is also illustrated by the use of VES in speeding cases which is discussed further below).

While the SOP was corrected by General Order, there was no additional training or discussion to explain why this distinction was so important or to discuss what changes needed to be made to the department's traffic patrol practices. I believe, based on the hundreds of traffic stop complaints that I have received, that this practice of stopping vehicles *too soon*, without sufficient probable cause, continues today, particularly in the minority communities where the ratio of traffic stops is much greater.

In further support of my statements regarding OPD's inability to identify and apply the critical policing distinction between RAS and probable cause, I note a Nebraska Supreme Court case, *State v. Johnson*, 256 Neb. 133, 589NW2d 108 (1999) (Attached as "Exhibit 2") that was discovered during research on this topic. While this case deals more specifically with the issuance of a warrant, it speaks directly to the difference between RAS and probable cause. The court goes on to say that it has applied the wrong standard, RAS, when probable cause was required, for nearly the past *twenty years*. As

incredible as this is to believe, it is possible that the Supreme Court's error was somehow adopted by OPD.

The ramification of having a police department operating without a clear understanding of the important distinction between RAS and probable cause is breathtaking. It is quite simply the difference between a citizen being properly stopped, detained, arrested, or jailed and not. And even more importantly for the future, it can be the difference between having a criminal record follow that person around the rest of their life or not.

E. Visual Estimates of Speed Issues

Visual estimates of speed by officers is another pattern of conduct that constitutes a serious Fourth Amendment violation.

Many of the first complaints received by the Police Auditor involved speeding cases. Most came from racial or ethnic minorities. Citizens frequently reported that although they were told they were stopped for speeding, they were never told their speed and were never actually charged with speeding. Instead, the officer would then search their car, pat them down, and charge them with something other than speeding: lack of insurance or registration, minor possession charges, etc. Often these stops resulted in numerous charges, sometimes jail, and sometimes, a tow of their vehicle. These stops created great animus in the community and most citizens suspected racial profiling.

Reviewing these complaints, I often suspected bad traffic stops, but could not, at first, prove why. If officers were stopping people without sufficient evidence of speed, they would have no probable cause – a prerequisite for a lawful traffic stop. Through discussions with officers and statements by complainants, I eventually realized that OPD officers were stopping citizens for "Speeding" based on a Visual Estimate of Speed (VES), rather than a radar reading. A VES is a procedure where officers estimate a vehicle's speed based solely on his or her observation.

While VES, as a practice, has many valuable assets, I had never heard of it used to establish *actual* speed for the purpose of a speeding ticket. Think about it. How could the City ever prove in court the actual speed of a vehicle when the only evidence was a visual *estimate* of speed? Since VES has an error rate of +/-3MPH, it could never be used to accurately determine speed.

Using only a VES violates Nebraska law. Section 60-6,192 Neb. Rev. Stat. (Attached as "Exhibit 3") requires that the actual speed of a vehicle be corroborated by electronic, mechanical, or radio microwave. That means that a radar clock or a pace or some other means must also be used in addition to VES to prove up speed in a speeding case.

Armed with this information, I began to ask around OPD about proof in speeding tickets. I asked officers, Sergeants, Lieutenants, Captains, and even a former Chief and they all confirmed that they had stopped vehicles for speeding based on a VES alone, in spite of the statute requiring corroboration. I reported this misapplication of law in a Quarterly Report. When I was asked about my recommendation at a Union Hall meeting, I was nearly booed off the stage.

I recount these episodes to illustrate how widespread and entrenched this belief was within the department. I was also very surprised that this aberrant practice had not been detected sooner and wondered how long it had gone on. It is impossible to know how many people were improperly stopped by OPD officers using a VES of speed alone to prove up speeding. But, if this practice has been used in only certain parts of town, it could certainly support a selective enforcement complaint and, again, raises serious Fourth and Fourteenth Amendment concerns.

Recently, Chief Warren assured me that this practice was no longer being used at the department. Nonetheless, I also recently received yet another call from a young African-American man who was stopped in his vehicle and was told it was for "speeding." When he asked "where is the radar clock," he reports that the gang unit officer replied, "I'm the radar," implying that VES was all that was needed for the charge. The young man never was charged with speeding.

F. Approaching the Vehicle

Another category of complaints relate to "the approach," referring to how officers approach a citizen or vehicle and make the initial contact. Initial contacts with citizens are covered by the OPD SOP in the section entitled "Citizen/Officer Contact," (Attached as "Exhibit 4"). Part III directs officers to "inform the citizen as to the nature of the contact, as soon as immediately practicable." It further directs that, "[o]fficers shall at all times be courteous, patient and respectful in dealing with the public [and] shall avoid asking or answering questions in a short and abrupt manner and shall not use harsh, course, violent, profane, insolent, indecent, suggestive, sarcastic, or insulting language."

A large category of citizen complaints involve violations of the SOP on "Citizen/Officer Contact." The formal allegation by the citizen is often "rudeness." Many of these complaints also involve additional allegations, including Fourth Amendment issues that dramatically increase the seriousness of the incident.

1. The Problem with Rudeness

After reviewing the actions of hundreds of officers over the years, it is clear that a great many officers have mistaken so-called "aggressive policing" with rudeness and disrespect. When I refer to rudeness, I am not talking about a case where the officer forgot to say "thank you." Many complaints describe officers' behavior as "out of

control," "over the top," "aggressive," and profane. This is a tragic and regrettable development for any police department.

Nothing chafes citizens more than being treated rudely by their tax paid public servants. I hear this complaint over and over. Citizens frequently comment that while they are prepared to pay their ticket if they violated a traffic law, they are offended by rudeness. The damage done extends far beyond the citizen involved. Many tell any and everyone about the incident, with the result that the department gets a reputation for rudeness even among people who have never been stopped.

Citizens also complain that the officer failed to explain why they have contacted the citizen. Not only is this another form of disrespect, but it is in direct violation of the section of the SOP mentioned above. There is no reason why an officer cannot give a citizen some explanation for the contact. Explanations are important not just in traffic stops but also in "in-person" or "in-home" contacts. Officers'silence or stonewalling invariably escalates an incident and leads to a physical arrest.

When citizens complain about this type of treatment, they are invited to file a citizen complaint. Some of these complaints turn into line investigations – an abbreviated investigation conducted by a sergeant. However, I have not seen a SINGLE line investigation for approach or rudeness result in counseling or reprimand of an officer.

If the citizen does file a formal complaint, an Internal Affairs investigation ensues. In almost all cases, allegations are not sustained unless there is some independent corroborating evidence in the form of a video or audio recording. The citizen eventually receives a very weak letter from command describing that nothing can be done; the evidence is insufficient etc., etc.

It is important to point out that OPD makes no effort to identify officers who receive many complaints for rudeness. There is little or no effort to identify a pattern of inappropriate behavior and take steps to correct it.

2. The Impact of Rudeness on Crime Fighting

The negative impact of officer rudeness can have a serious impact on police crime fighting efforts. To investigate a crime, the police need information. The best information comes from people. This requires citizen cooperation, and common sense suggests that people who are alienated from the police are less likely to cooperate.

To obtain information from a citizen, an officer must make contact. There are essentially three ways an officer can lawfully contact a citizen: 1) by consent; 2) based on reasonable articulable suspicion; or 3) based on probable cause.

Officers who are rude in their approaches or contacts with citizens jeopardize one of the greatest policing tools available to them: consent. Officers are free to contact citizens and ask them just about any questions they like so long as they are not detaining the citizen – the citizen is at all times free to go. A department with a reputation for rudeness will likely not receive that type of cooperation. A courteous, respectful officer who obtains information or compliance without the use of force or detention will invariably leave the citizen with a more favorable view than an officer employing an alternative, harsher method.

Absent consent, an officer has no basis to continue any contact with a citizen unless the officer has reasonable articulable suspicion or probable cause. Reasonable articulable suspicion requires that the officer have enough articulable facts to describe a suspicion that a crime is or is about to be committed. The suspicion must be more than a hunch. If the officer has this basis, he may approach the citizen and detain him long enough to ask for identification and ask enough questions to determine that the person is not involved in a crime. Once this information is obtained and the suspicion is resolved, the citizen is free to leave.

If the officer conducts this type of contact without reasonable articulable suspicion, then the officer has violated the citizen's Fourth Amendment rights by unlawfully detaining him without the requisite basis. How does rudeness cause this to happen? The following example illustrates.

---Example #5: *A young Hispanic teenager, fifteen years of age, was at the Cinco de Mayo celebration with his family. Several officers were patrolling the area. An officer yelled to the young man, "Hey you, get over here. You look like someone I know with an outstanding bench warrant. Give me some ID." The young man had no ID – he was too young to drive and is not required to carry ID. So, the officer took him to the station to try and ID him against the protests of the young man and his family. Not surprisingly, the young man was not wanted on any outstanding warrant. The officer offered to drive the young man back to the festivities. Hurt and humiliated, the young man refused the ride and walked back to the park.*

In this case, the officer had no reasonable articulable suspicion to detain the young man. At a minimum, the officer would need to have the wanted person's photo with him to compare it to the young man. Without some facts or evidence, the officer had no basis to contact this young man. In addition, the officer's rudeness or gruffness – "get over here" – would lead most people to believe they were not free to leave. Once the officer's words create this detention, the officer must be sure that he has the legal basis to detain the citizen. If not, he has violated the young man's rights. The officer then completely detains the young man by removing him from the area without his permission or sufficient legal basis.

The scenario in this case raises a number of questions. Why would an officer have this kind of contact at all? There was no allegation that the young man was doing anything wrong. The gruffness of the officer who presumably was providing crowd

control seems out of place in the setting. And, the officer was young so had presumably been to the training academy recently enough to have some memory of the requirements of a proper contact. Most troubling of all, though, is the disregard or complete ignorance of the Fourth Amendment.

One more example helps to illustrate the basis for citizen complaints about officers' approaches.

---Example #6: *A young officer was off-duty attending a school function at a local high school. The officer noticed three young Caucasian boys, about thirteen to fifteen years of age, acting "squirrelly," dressed in camouflage, and hiding behind a door. The officer noticed the boys "stacking" by the door – peeking from around it. He also, at some point, saw what he thought was a weapon – a lighter. Based on this information and without conducting any other observation or investigation, this officer approached the boys and conducted "pat down" searches, a fairly intrusive enforcement action – especially when conducted at a high school in the general vicinity of an audience of band concert attendees.*

A "pat down" search requires a reasonable belief that a person is armed and dangerous and the investigatory detention requires the officer to believe a crime has or is about to occur. In this case, the officer felt the facts warranted a contact and that the boys were attempting a "Columbine-like" ambush. Not surprisingly, the contact produced no evidence whatsoever of an ambush; in fact, the boys were there to surprise their sister/girlfriend at her band performance. When the boys told their parents what happened, they complained.

The department supported the officer's actions in this case and determined that his observations that a "Columbine-like ambush" was afoot were reasonable. The reason this contact was *not* reasonable is because the officer had done nothing to test his hunch. The off-duty officer did not contact security or another parent or school official to identify these boys and their purpose. The off-duty officer, acting as a parent or an officer, did not simply inquire of the boys to see what they were doing or who they were before taking enforcement action. The officer conducted absolutely no investigation prior to taking enforcement action. There was certainly no probable cause for an "ambush" and there was not even RAS for an "ambush;" it was a hunch at best, and a poor one, at that. There were simply too many other plausible and perfectly innocent explanations for the boys' actions for the officer to conclude a crime was afoot.

While these two examples are non-traffic contacts, the same rules apply. In addition, traffic stops produce similar rudeness and approach complaints. The one heard most frequently is that the officer will not tell the citizen the reason for the stop while the officer is taking the person out of the car, patting him down and searching the vehicle. Because no explanation is given by the officer during the approach, the traffic stop often deteriorates further as the driver grows upset by the officer's silence. The driver may begin arguing with the officer further escalating the officer's use of force, while at the same time, further degrading the stop to an actual arrest.

Often, during the search, the officer finds some other substantiation for the stop, like an open container or no insurance. This practice gives the impression, sometimes correctly, that the officer's initial silence was because there was no proper basis for the original stop. Only when the officer finds a basis does he announce the charge. As stated above in the "Probable Cause" section, if the officer has used the wrong standard to stop the car in the first place, then the entire stop is in violation of the Fourth Amendment, even though the driver may end up charged with something as serious as "Resisting."

These problems with officers' approaches can lead to rudeness complaints, further eroding the community's trust. Likewise, they may create an unlawful detention. The court's remedy for a Fourth Amendment violation is generally to exclude the evidence. In the event one of these afflicted approaches did lead to confiscation of any evidence of a crime that evidence would likely be excluded. So, these cases are not as minor as a simple rudeness case may lead one to believe.

3. Commentary

Several factors seem most noteworthy about these cases where citizens are complaining about the officer's approach. First, once again, the department misses a golden opportunity to engage the community in a positive fashion. Any initial contact with the public is an opportunity for community policing. By turning these contacts into rudeness complaints, the department loses out on the least expensive, most effective form of community policing.

Second, over the past four and one-half years, it has become abundantly clear to me that the department has a dangerously low understanding of the constraints of the Fourth Amendment. The Fourth Amendment is the most significant check on police powers. Unfortunately, most people cannot afford to hire an attorney when their rights have been violated, so there is often no other redress for these complaints. Even so, the department should be adhering to the constraints of the Fourth Amendment of its own volition. It is very clear that this department either does not understand those constraints or regularly disregards them.

This may be a by-product of lack of training and performance review, but it must be addressed. A courteous and respectful police department is quite simply the least expensive, but most dramatic improvement you can make to your department.

G. Air Freshener Cases

Another class of cases raising pre-text, selective enforcement, and Fourth and Fourteenth Amendment issues involves stops for minor violations, particularly for air fresheners hanging from rear view mirrors. Complaints about such stops mainly come

from north Omaha and, to a lesser extent, south Omaha. This pattern of complaints suggests selective enforcement and racial and ethnic discrimination.

Because there are so many traffic and regulatory violations, almost any vehicle can be stopped at any time for some violation. As a result, officers can stop *or not stop* whoever they choose. The broadest category of traffic complaint cases at OPD involve very minor traffic violations or traffic misdemeanors, like making too wide a turn, having white light show through a tail light, a dirty license plate, flicking a cigarette out the window, or for having air freshener dangling from their rear view mirror.

For instance, officers may rely on a dangling air freshener as a form of a "View Obstructed" violation as the probable cause for a misdemeanor "arrest." Even though the violation is generally just a citation charge, citizens complain that, once stopped, the officers remove the driver and passengers from the vehicle, usually handcuffing them, search the driver and passengers and then the vehicle.

The probable cause for such stops is a potential issue. The obstruction to a driver's view out the front or rear view window must be fairly significant to warrant a violation of this kind. This might involve dark decaling or decoration on a windshield *and* several items hanging from the rear view mirror.

An air freshener alone should not provide sufficient obstruction to cause a violation. The Nebraska statute governing obstructed windows, Section 60-6,256 Neb. Rev. Stat. (Attached as "Exhibit 5"), does state that "any" obstruction is a violation. The problem is that the "manner" and "obstruction" are not clearly defined in the statute, and consequently are subject to interpretation by police officers. This opens the door for selective enforcement.

In the many, many presentations I have given to the community, nobody --and I mean, nobody-- when asked, thought that an air freshener was a criminal misdemeanor violation. (If OPD is truly concerned about the hazard created by dangling air fresheners, they might consider doing a Public Service Announcement to alert the community).

The fact that the complaints received by the Police Auditor's office come almost exclusively from east Omaha suggests a clear pattern of selective enforcement. As a reality check, I conducted an informal survey of vehicles in the Westroads mall parking lot. I found any and every thing imaginable hanging from rear view mirrors and plastered to front and back windows. In fact, it was more the exception <u>not</u> to have something adorning the inside of your car than to have a perfectly clear window and rear view mirror. I spotted graduation tassels, parking passes, crucifixes, Mardi gras beads, handicap placards, dice, Garfield dolls, all types of Husker paraphernalia, and more. Anyone reading this report can do his or her own survey, at shopping malls, campus parking lots, or athletic events.

Judging by the absence of complaints from west Omaha, I was concerned that air freshener violations were being selectively enforced in north and south Omaha. And, the

fact that air fresheners were almost the exclusive item described to support this violation, when any number of items may qualify as an obstruction, caused me to believe OPD's enforcement of this statute was vague or confusing, at best, and selective, at worst.

Over many months and in various meetings and discussions, I have raised these concerns with the Internal Affairs Unit. I have also discussed them with the Chief of Police during our monthly meeting. I have had discussions with the City Prosecutor and I conveyed my concerns to the Mayor's Chief of Staff. I cannot report what action any of the above parties took to review, research, or discuss my concerns. I can, however, report that in May of this year, the Mayor's Chief of Staff told me that he was assured by the Chief of Police that traffic stops of this type shall cease.

H. Citations in Lieu of Arrest

The "Air Freshener" cases discussed above are only one part of a larger category of complaints where citizens are stopped for a very minor traffic infraction or minor misdemeanor and yet were handcuffed and subject to pat downs and/or automobile searches. Complainants most often ask, "Why was I treated like a criminal for such a minor stop?"

These pre-text stops typically involve flicking a cigarette out the window, a dirty license plate, or no insurance (however, the no insurance charge must attach to a proper probable cause stop, like making too wide a turn, for instance).

After reviewing many, many traffic stop investigations and reading hundreds of citizen and officer interviews, and reviewing the department's SOPs, and the state statutes and case law, the Auditor's Office has come to the conclusion that OPD officers confuse their SOPs and the law. Here's what happened.

When an officer stops someone in their vehicle for "traffic infractions, any other infraction, or a misdemeanor and for any violation of a city or village ordinance," Section 29-422 Neb. Rev. Stat. (Attached as "Exhibit 6"), the officer is allowed to issue a "citation in lieu of arrest." This is commonly referred to as "getting a ticket." The purpose of statutes such as these is to quickly process people on the street for low level offenses so as not to clog the jails.

However, when an officer issues a "citation in lieu of arrest," as opposed to a full-blown booking arrest where the suspect is taken to jail, the officer's authority and means to hold and detain that person is limited. Courts have determined that the greatest risk to an officer's safety during a full-blown booking arrest is when transporting the suspect to the jail. That is why officers are allowed to handcuff and search incident to arrest when they are booking and transporting a suspect. However, since this same risk does not apply when a person is simply cited and released, the handcuffing and search are not permitted.[5]

[5] *Knowles v. Iowa*, 119 S. Ct. 484 (1998).

This is where OPD runs into problems. OPD's SOP on "Handcuffing and Restraints," (Attached as "Exhibit 7") states that "All persons arrested and taken into custody . . . . will be handcuffed and searched." The SOP goes on to say, "This General Order pertains to those persons who are arrested and taken *into full custody to be logged into jail. . . .*" So far, the SOP comports with what we know about the law.

The SOP goes on to exclude "citizens who are merely detained for the issuance of a traffic citation . . . ." This too is consistent with the Nebraska statute on "citation in lieu of arrest." However, in practice, this department routinely handcuffs citizens based on their arrest for minor misdemeanors **even if they are cited and released.**

In addition, OPD officers routinely search vehicles on traffic stops even if a citizen has been detained for a minor misdemeanor and is issued a citation in lieu of arrest. The department's SOP on "Citations: Cite and Release (G)" states, "The right to search during the arrest process remains the same regardless of whether the arrestee is *cited or booked into Detention*." (Attached as "Exhibit 8"). This policy directly violates the holding of the United States Supreme Court in the *Knowles* case.

This is grave error for a number of reasons.

First, as is the case with air freshener stops, there are few if any citizen complaints involving handcuffing and searches of this type from the western half of Omaha. This suggests that OPD selectively practices this procedure of "handcuffing and searching incident to a citation."

Second, so many minorities complain of exactly this type of "harassment" during minor traffic stops. They feel they are being treated more harshly because of their race.

Third, when a citizen objects to this type of treatment, the traffic stop often escalates to more charges like "Disorderly Conduct" or "Resisting Arrest." And, the citizen often ends up in jail and with a record when none of this should have happened in the first place.

Fourth, the community animus toward the police department grows with each such stop.

Over the past year, I have sent memorandums to the Chief of Police, the City Attorney's office, and the Mayor's Chief of Staff expressing my concern about this practice and recommending that the department harmonize their SOP's and practices to comport with the law. I have also spoken directly to members of the Internal Affairs Unit and the Chief about this matter. I was told, only by the Chief, that one of the attorney's in the Prosecutor's Office disagreed with me. I was never told why nor have I ever received any response from any other party I raised this issue with.

I am aware of only one modification to the "Handcuffs and Restraints" SOP. The Chief was troubled by one case where a young African-American male dental student complained that he was "profiled" during a traffic stop. The young man was stopped, removed from his car, handcuffed, patted down, and his car searched for allegedly having no tags (he did have tags, the officer just did not see them) and no insurance (the young

man had several past insurance cards in his glove box, but not the current one – he did prove he had insurance to the prosecutor and the case was dismissed). There were no allegations that the citizen was armed or dangerous or that he did not cooperate – and still he was handcuffed, patted down, and his car searched.

The Chief's concerns resulted in this modification to the "Handcuffs and Restraint" SOP (Attached as "Exhibit 9"), "Officers arresting and citing a citizen for the traffic misdemeanor offense of No Proof of Insurance only, shall be prohibited from handcuffing the motorist unless other risk factors are present." But, does that really make sense? Is "No Proof of Insurance" any more or less dangerous than say "Littering" or having an air freshener hanging from your rear view mirror, as we have seen OPD enforce? Does it make sense to remain in your car while being cited for "Speeding," but removed from you car, handcuffed and searched for "Littering?"

No, it doesn't make sense. That's why state law and the Supreme Court tie the level of police intrusion to the level of risk, not the title of the offense. Even if the department has a better analysis than the one I have raised here, what practice is most consistent with meeting all of the stated interests? The community needs a practice that matches minimal intrusions with minimal offenses, but allows an officer to further protect himself when the **facts** of an individual case call for it. Most importantly, OPD needs a practice that is fairly and consistently applied throughout the entire community.

I. Disorderly Conduct, Obstructing, and Resisting Cases

Yet another series of citizen complaints involve charges of "Disorderly Conduct," "Obstructing," and/or "Resisting." Generally, these violations show up in the case of a questionable contact by the officer and often serve as a "cover" for the officer's conduct. When officers use harsher tactics than are reasonable, citizens very often will respond negatively. This then becomes the basis for a charge of "Obstruction" or "Resisting." There are two problems with this process.

Instead of using his or her negotiating skills to deescalate the encounter and to continue with legitimate police business, the officer threatens arrest or arrests short of facts that actually support the "cover" charge.

Second, an officer uses one the "cover" charges almost like a traffic pre-text stop. In these examples, the officers more clearly seem to simply misapply the statute or ordinance altogether. In fact, in many of these cases, it does not appear the officers understand the elements of the charges at all. Although the two problem categories are close cousins, I will try and distinguish them.

1. Cover Charges

When I first began work as the Police Auditor, I was very shocked to learn that there was a common practice of charging citizens with "Disorderly Conduct" if they

cussed at an officer. In my experience, profanity alone is almost never sufficient to prove up "Disorderly Conduct." I wondered if there was a special ordinance describing such an offense.

As usual, I found there was not. Instead, the department had once again twisted and contorted the reading of a Nebraska Supreme Court case to reach this conclusion. Absent an ordinance, it made no sense to say cussing, in general, was not a violation, but cussing at or in the presence of an officer is a violation. Instead, the *Groves*[6] case (See Auditor's memo, Attached as "Exhibit 10") is a classic disorderly conduct case where words **and** actions constituted the violation, not words alone.

Another common mistake is using "Obstructing" or "Resisting" as cover for a bad or difficult arrest. "Obstructing" should never be used when a person "refuses to submit to arrest," because that is specifically excluded from the statute. Section 28-901 Neb. Rev. Stat. (Attached as "Exhibit 11"). In addition, the charge of "Resisting" requires some use or threatened use of force to establish a violation. (Also at "Exhibit 11"). So, imagine an officer says to a citizen, "Get over here or I'll arrest you!!" And the citizen does not immediately move, but replies, "F*** you." In this scenario, this citizen has not yet committed "Disorderly," "Obstructing," or "Resisting." However, judging by the practices I have seen, I doubt many at OPD would agree.

2. Lack of Probable Cause

The second group of problematic cases in this category involve officers simply lacking probable cause. There are many, many examples to draw from, so I will use just a few to illustrate the point. For instance, "Disorderly Conduct" requires something more than words to establish the imminence of the violation. A genuine threat, fighting words, actions that signify imminent contact, etc. are the type of facts needed to establish this violation.

As mentioned above, <u>swearing alone or swearing at a police officer is insufficient to establish this offense</u>. So too should be the following cases where officers have actually charged "disorderly conduct": "he gave me a hard look;" "he flipped us off;" "he was arguing in his own home." By far, the most common improper use of "disorderly conduct" is when the citizen allegedly uses smart, fresh, boorish language or has "an attitude." I have also seen officers rely on "anti-police" behavior or the like as a description of "facts" that warrant "Disorderly Conduct." Obviously language such as this falls far short of conduct that is criminal.

The next set of examples illustrating a misunderstanding of the elements of the charges discussed involves "Obstructing." What is so troubling about these cases is that officers are charging and arresting citizens for actions that they have a legal right to do. For example, in several cases, the citizen refused to speak to the officer or to tell the officer something about another person. <u>You have a right not to speak to the officer</u>, and it is never "Obstructing" to do that which you have a legal right to do. You also do not

[6] *State v.Groves*, 469 N.W.2d 364 (Neb. 1991).

have to return an officer's phone call or let an officer into your home without a warrant – other examples of what OPD has characterized as "obstructing."

I have repeatedly seen this department arrest or threaten to arrest for just that. This is yet another chilling example and further illustration of OPD's tenuous grasp of basic constitutional principles.

3. Commentary

The inappropriate practices discussed above are reinforced in OPD training. Far too much emphasis is placed on "Command and Control" style of policing. Officers are trained to control the situation no matter what. Less time is spent on learning the law that underpins police action and even less on negotiating skills. I rarely see officers in complaint cases employing their "Verbal Judo" skills. As a result, you get this terrible product where the officer acts as though he is the law instead of a law enforcement officer. I have heard so many times citizens complain that the officer said, "I can do what I want, I'm a cop," or words to that effect.

In the case of traffic stops, using overly aggressive or harsh policing tactics so often escalate a relatively minor traffic or misdemeanor charge to something more serious. This can particularly happen in the instance where someone is pulled over for a very minor pre-text stop and voices objection to the nature of the stop. If the officer takes exception and uses these harsher techniques, the citizen will likely receive additional charges and possibly be taken to jail. Negotiation and de-escalation techniques so much better suit a situation such as this.

Needless to say, this harsher type of policing not only can subject the department to liability, but it creates even more distrust within the community.

When I have reported these observations to OPD, which I have on numerous occasions, they are ignored or discounted. At one point, I even suggested that the department simply track these three types of charges to see what I mean, but I never heard any more or it.

J. Consent Searches

As mentioned earlier, obtaining citizen consent is one of the most effective tools the police have available. The key to obtaining consent is that it must be free of any coercion, actual or perceived.

When the Auditor's Office opened in June 2001, OPD did not have a policy requiring written consent search cards. There had been some informal complaints about citizens feeling pressured to consent to searches during traffic stops, but there had been no recommendations made from this office. In January of 2003, Chief Carey decided to

require signed consent cards when searching vehicles, and in February, 2003 issued the attached General Order (Attached as "Exhibit 12).

The General Order, however, illustrates the problems OPD has in understanding the crucial difference between reasonable articulable suspicion (RAS) and probable cause as it applies to consent searches of vehicles.

The Order contains a misstatement of the law. Ordinarily a traffic infraction or citation stop will not have any other basis for police action. If the officer has reasonable suspicion that the person is armed and dangerous, however, a *Terry* stop or pat-down of the person and immediate area may be conducted. Probable cause for contraband or consent may also be used as the lawful basis for a search of the vehicle.

After reviewing the original Order, the Public Safety Auditor's Office published a "Separate Recommendation Report"[7] offering some suggestions to OPD regarding consent searches. The report was released March 10, 2003.

The original General Order caused a great uproar among the department rank and file. Chief Carey convened a workgroup to study the issue and propose a revised General Order. Chief Carey asked the Police Auditor to be on the workgroup, but I declined, explaining that it would cause a conflict of interest if I was subsequently asked to make recommendations about this SOP. The Chief, after all, already had all of my suggestions in the "Separate Recommendation Report."

On July 17, 2003, OPD released the revised General Order (Attached as "Exhibit 13"). It contained none of the Police Auditor's recommendations. One issue raised particular concerns. The General Order stated that a front seat passenger not wearing a seat belt is required to provide identification. We found absolutely no support for that proposition in the Nebraska seat belt statute, and have repeatedly communicated our concerns to OPD (Attached as "Exhibit 14"). I had a brief conversation with the City Prosecutor about this provision and he mentioned a possible interpretation that would require the party protected by the ordinance identify themselves, similar to minors transported across state lines for prostitution. The statute, however, provides no hint of such a possible interpretation.

As a result of the above-described process, the Police Auditor is again concerned that the senior command had misstated the law regarding the critical enforcement differences between RAS and probable cause. In this instance, moreover, the City Law Department had verified that the language in the Order regarding identification of the front seat passenger was incorrect, but the error was still included in the final General Order **and** is still in the SOP even after repeated requests to remove it.

It is entirely possible that OPD officers are unlawfully using this SOP as the basis to require passengers to identify themselves. Based on the other trends and patterns of complaint contained in this report, those same citizens may likewise be subject to some

[7] *Id.*, at Auditor's website.

of the other questionable practices identified, as well. Although this practice did not rise to the level of an identifiable complaint pattern while we were able to track it, the fact that the improper SOP is still authorized was worth reporting.

III. Consequences

It is nearly impossible to overestimate the corrosive effect on police/community relations of the police actions described in the previous section. It is fair to say that at least one, and generally some combination of bad practices, was used in nearly every traffic stop complaint I reviewed. The most common, because it was practiced by design, was the pat down, handcuffing, and car search incident to citation for the most minor violations.

What does this type of policing do to a community over time? Imagine yourself in the following scenario. You are driving down the street in your properly registered and plated vehicle when you see an officer in your rear view mirror. You are surprised and a bit alarmed when you realize you are being pulled over. You immediately reach to your glove compartment for your insurance and registration. Much to your amazement and horror, the officer has drawn his gun on you, pointed it at you, and screamed, "Put your hands where I can see them!" (*In north and south Omaha, this gesture of reaching for the glove compartment alone has been deemed "furtive," contrary to case law, and enough to substantiate a RAS that the driver is armed and dangerous*).

The next thing you know, the officer is ordering or pulling you out of the car. At that point, your experience felt surreal. "But officer, what have I done?" You are ignored or told to "Shut up!"(which the department has repeatedly determined is not rude). You are shoved against the vehicle, patted down, and handcuffed. Since you were in your neighborhood on your way home from work, you noticed that your neighbors drove by and slowed as they watched your encounter with the police. You were deeply humiliated.

Next, the officer searches your vehicle. You managed to regain some of your composure and you stated, "Hey, you can't search my vehicle – that's a violation of my Constitutional rights." And the officer responds, "You don't even know how to spell constitution." While the officer searched your car, he discovered a small "roach" in the back seat of the car. You are shocked but remember your teenage son and his friends had used your car to go to a concert the night before. You are frustrated but try to explain and are again rebuffed by the officer.

The officer then states, "Well, I pulled you over because of your dangling air freshener, but I'm going to have arrest you for possession of less than an ounce of marijuana." The officer approached you and grabbed your arm and smirked, "What kinda parent are you?" "Hey, what are you doing?" you shouted. The officer stated, "You're going to jail." You stated, "No, I have to go to work tomorrow! This is bulls***!" as you turned your shoulder while still in cuffs.

At that point, more officers have arrived and the officer that grabbed you sweeps your feet out from under you as your arm movement was considered resistance. Your head was knocked on the ground and because of your fall, you were scraped and bleeding. The officers lift you off the ground using your arms handcuffed behind your back. You strained your shoulder and complain that the cuffs are too tight.

You are placed in the back of the cruiser and are transported to jail. You have to find someone to bond you out of jail, and when you return to get your car, you discover that it was towed. You must pay tow charges and storage charges to get your car out of impound, in addition to going to court and or paying the ticket, which now includes five charges: "View Obstructed," "Possession of Marijuana," "Disorderly Conduct," "Obstructing," and "Resisting," If this happens to you on your way to work, you might lose your job. And the hassle and upset compounds all for having a dangling air freshener.

Although this scenario is a hypothetical, it is based on actual traffic stop complaints that I have reviewed primarily from north and south Omaha. It illustrates why there is so much concern about traffic stops. People in the west and southwest parts of Omaha do not report similar complaints.

Over these past five years, I have talked to hundreds of Omahans from north and south Omaha about their complaints against the police department. As a former prosecutor, I have a fairly good idea how to assess stories, evidence, conflicting statements etc., to determine veracity. There is little doubt that these complaints are sincere. In the complaints, the citizens are reporting true humiliation, shock, outrage, and embarrassment about how they have been treated.

I have heard from parents who fear for their kids of driving age. They are afraid that the wrong word or motion may cause their child serious consequences. I have spoken to too many young black men to keep count: college graduates, sports professionals, schoolteachers, music producers, fathers, sons, etc., who stated that they are leaving Omaha because they get stopped and hassled so much. Or, they are only in Omaha visiting family and they get stopped every time they are home, while they don't get stopped in the communities they now live. Many Hispanic families fear the police altogether and avoid the police at all costs.

Perhaps the most telling and disturbing evidence that this police department has a poor relationship with the city's communities of color is the very high rate of unsolved homicides. Serious crimes like rape and homicide rely heavily on the cooperation of witnesses and tips from the community. I have heard for five years now, members of the minority communities say they are not going to go to the police, help the police, or in any way get involved with the police, because they are afraid of the police and they don't like the way they are treated by the police.

IV. Solutions

What can be done to overcome the damage caused by these bad practices? How can OPD improve its relationship with the communities of color? The following section offers a number of constructive recommendations.

A. Improved Customer Service

Stop cussing. Stop telling people to "shut up." Stop being rude to people. Answer your phone. Return your phone calls. Answer questions asked of you. Be courteous. Be helpful. Remember that taxpayers are your shareholders. Remember that you are a service organization. Remember the golden rule of policing: treat EVERY person the way you would wish to be treated. This is the most simple and basic instruction and yet is almost entirely overlooked. Plus, it is free. It does not cost one cent to treat people with respect.

OPD does not appear to be aware that other styles of policing exist. Why not use a traffic stop for these more minor violations as a way to get to know someone from the community? Rather than turning the stop into a complaint, the officer could give the driver a warning or extend a courtesy ticket. In this way, the department might gain an ally instead of making an enemy.

Many other departments across the country have done a much better job than OPD ensuring that respectful policing is a core value of policing.

First, they conduct regular customer surveys and they respect the responses. If the response says the department is generally rude, the department doesn't say: prove it, as OPD does. Departments that value customer feedback act on the feedback by implementing appropriate changes. In a recent Colorado Springs Police Department Annual Report, that department reported that the response to the department's most recent citywide customer feedback survey was a 91% overall approval of policing service and a whooping 94% of the community reported the police were courteous. OPD has never, to my knowledge, conducted a citywide customer service survey in the five years I have been here.

Second a responsive department instills respectful values among its officers. This can be done by rewarding good behavior – like commendations. When the Auditor first arrived, OPD did not even keep track of citizen commendations of police officers. The Auditor's Office started tracking citizen initiated commendations the fourth quarter of 2003 and continued to do so through the third quarter of 2005 when the office was near closing. The office gathered eight quarters of data on citizen generated commendations. In all, there were 99 commendations - the quarterly average was only 12. By comparison, the Portland Police Department, which is somewhat larger than OPD

garnered 143 commendations in the first quarter of 2006! OPD has a long ways to go to increase the number and importance of garnering citizen initiated commendations.

Third, OPD could utilize the Biased-based Policing data that State statute requires each law enforcement agency to collect. If properly analyzed, a department could determine if there are either problems with individual officers or system-wide.

At OPD, the Police Union fought for, and management acquiesced to, the traffic stop data cards containing no information about the officer involved. This renders the data useless for monitoring patterns of conduct among individual officers. While the department dutifully collected and reported the traffic stop data to the State, it did absolutely nothing with the information it collected, allowing the statute to sunset without making a single effort to meaningfully examine data which was designed to assist a department in detecting any patterns of biased policing.

Fourth, OPD should take advantage of training opportunities. In August of 2004, PERF, a national police professional association, held a FREE seminar in Kansas City to help departments analyze their traffic data. There were departments from all over the country at the conference, including smaller local jurisdictions, like Papillion, Nebraska. And even though I invited and UNO Professor Sam Walker, the nationally recognized expert on civilian oversight, offered a scholarship to OPD to defray any expenses, not a single person from OPD attended this conference. The Police Union was extended an offer as well and likewise did not respond or attend.

Fifth, OPD needs to be more open about its policies and procedures. Across the country, police departments are making a commitment to openness and transparency. One way to accomplish this is to make the department's own rules and regulations (the SOPs), available to the public. This allows citizens to see if an officer is performing according to department policy. I have repeatedly fought with OPD, since I first came here, to make its SOP's public. I was first even told by a former Captain and a former Chief that they were not public record, which is simply incorrect. While the current Chief will provide copies upon request, the SOP should be easily accessible to the public –as it once was.

Many departments make their SOPs available on line. The Kansas City Police Department not only has its SOPs on line, along with Chief's memos, memos from the department's legal advisor on important matters of law and policy are available for review on line as well. This openness and transparency allows officers and the public alike to check the department's position on a variety of matters. It also helps to stimulate community dialogue in the event the department has taken an unpopular position or a position that is worthy of further discussion – like the use of Tasers. The important point, again, is the department's willingness to share its mode of doing business for examination by the public.

Departments have also developed attractive and informative web sites to reach community members. The Tulsa Police Department, for example, allows citizens to

regularly check crime hot spots in their own neighborhoods on line. Neighborhood crime data is also made available by the Mesa, Arizona, and Lincoln, Nebraska police departments on the web. Tulsa residents can also check for outstanding warrants on line. Some departments have even created the ability to pay tickets and get permits on line. One look at the OPD website again demonstrates how out-of-touch this department is.

Sixth, other police departments are successfully using internal and external and overlapping workgroups, response teams, or risk management groups to tackle ongoing police/community matters. By having better relationships and communication systems in place and working regularly, communities can diffuse problems before a crisis erupts. There are models for this all over the country but both the Pittsburg and Boston Police Departments come to mind.

OPD is fortunate to be in the same community as the Criminal Justice Department at UNO, which is nationally acclaimed. And yet, OPD has not developed or used that resource at all in furthering its work with the community. Many departments across the country will partner with their local university to conduct surveys, research, and the like. OPD has not availed itself of any of this support.

The list of improvements and innovations to good customer service and delivery of public safety services is endless. Modern police departments have taken this challenge on as its own reward, understanding the more you improve service the more COMPLIANCE and COOPERATION you will receive from your community. Unfortunately, this is simply a concept that escapes OPD as it avails itself of so little advancement and innovation. It is another form of disrespect. The citizens of Omaha deserve a much better police department.

B. Improved Training

Like customer service, OPD trails behind most police departments in training requirements. According to the 2004 Law Enforcement Management and Administrative Statistics kept by the Bureau of Justice Statistics (Attached as "Exhibit 15"), OPD requires no annual in-service training. The report lists many agencies that require up to 200 "in-service" hours per year. The majority of departments require between 40 to 60 hours.

This lack of in-service training has a direct impact on the department's problems with regard to the Fourth Amendment discussed in this report.

At this point, OPD's tenuous grasp of legal matters, particularly the Fourth Amendment requires special action. The department should convene an external blue ribbon review commission to assist it in sorting out its training and policy matters. In the long term there should be a full-time Legal Advisor within the department.

One last comment about OPD training is in order. Over the years, I have enjoyed working with many people in the Training Unit, so I do not mean this as any

disparagement of them as individuals. When I first arrived to work with OPD, I attended a number of the department's training classes. One of those classes was for the "FTO's" (Field Training Officers) who train new officers.

The FTO position should be a very prestigious one within a department and a high honor reserved for the very best officers. The class was eight hours a day for five working days. It was all class work: lecture and notes. I was not able to attend for the full session each day as I still had an office to run, so I attended when I could. Overall, I probably made it to about 50% of the class time. I took no notes and I did not study. I took the test along with the other officers at the end of the training and scored 100%. I was able to get a perfect score not because I'm smart but because the test was so simple. Moreover, the training included not one mention of the Fourth Amendment. In short, OPD is not training its key FTO officers who will orient new recruits about the legal issues that are central to police work.

Other departments do better. The Colorado Springs Police Department has a terrific officer manual with examples and explanations for difficult Fourth Amendment questions that officers keep with them at all times. Kansas City had an online lawyer that could answer questions for officers, etc. Once again, OPD employs none of these devices.

B. Shift Change Issues

When I started as Police Auditor, I often wondered why it was so difficult to keep track of officers. People were moving around all the time and it was hard to get to know officers and their units. This complaint is also heard frequently from the community. One officer will strike up a good relationship with a neighborhood association or a group, for instance, and start some exciting work, and then be gone in six months.

Another problem I had heard about was that so many of the youngest officers worked the nighttime shift in the northeast and southeast precincts, the busiest in terms of call load. I wondered why you would put all of your youngest officers in your most difficult positions. Well the answer to both of these questions is "Shift Change."

OPD's Shift Change procedures were designed with good intentions. They allow officers to "bid" their shift and location based on seniority. This procedure has some unintended consequences, however. First, all of the experienced officers drift to the least busy shifts – days in southwest precinct, for instance. The officers with the least experience end up in the busiest precinct – nights in northeast. The problem is all the seasoned officers are not where they need to be and many of the inexperienced officers are where they should not be. While the department tried to address this problem with the so-called "four year" rule, no group of officers could have fewer than so many officers with less than four years experience, it did not really solve the problem. Four years experience is still a far cry from fifteen years of experience.

Second, there is a constant turnover of officers. "Shift Change" occurs twice a year! So, every six months, you have your whole department (some positions are exempted) moving all over. Not only is that expensive and time-consuming, but it is confusing to the users of the system – the citizens. It is no wonder then that the people of north and south Omaha complain that the officers are too young and they never get to know the community. Well, the citizen's are right: young officers start out in northeast and generally move out of there as soon as they can.

It is time to seriously review OPD's Shift Change procedures. Management needs more control over assignments in order to ensure the appropriate experience and personalities in each and every precinct. Modifications to the procedures can strike a balance between the officers' need as employees and the needs of the community.

D. Recruitment

When Chief Warren was appointed Chief of Police, he told me there were no African-Americans working on the "night" shift in the northeast precinct. I found that shocking. Someone from north Omaha made this analogy: "That's like all police officers in Gretna being African-American." While matters of race and ethnicity have been historical problems for police departments, modern departments want their department to reflect the communities they serve.

Many, many people in north and south Omaha have commented on the alienation they feel from a predominantly male, white, and rural police force (a spot check of the home residence of OPD reflects a 20 -25% rate of non-Omaha residence). They would like to see more experience in their neighborhood, as noted above, more local officers who have a stake in the community, and more diversity.

OPD has not been very successful recruiting or maintaining a diverse workforce. I know that at least one large recruit class since I have been here did not have a single African-American in it. Unfortunately, another by-product of harsh and poor policing tactics in communities of color is that the young members of those communities do not select policing as a career.

In addition, if you have a smaller concentration of African-American or Latino neighborhoods that are over policed in the fashion this report describes AND the police department struggles with the proper application of probable cause, it is not beyond the realm of possibility that some of these bad stops this report describes have knocked a potential police academy applicant out of the application pool because of a misdemeanor police record. No matter what the reasons, OPD has to do a better job of recruiting and positioning its personnel.

V. Conclusion

It is no wonder there have been such persistent complaints from Omaha's minority communities about how the department conducts traffic stops. There are serious Fourth and Fourteenth Amendment matters raised in these many examples cited. In addition, it is clear that OPD does not listen to the community and it does not listen to the Auditor, for that matter either. It is very hard to imagine a department so closed and so obstinate succeeding in any efforts to change or to community police.

This report identifies the major problems and offers several practical suggestions for correcting those problems. As is mentioned throughout the report, all of the suggested improvements are currently in place in police departments across the country. And all of these practices are fully consistent with effective crime-fighting. Indeed, as this report has emphasized, respectful policing is an essential element of effective policing.

The current situation cannot be allowed to continue. The people of Omaha are entitled the best police service.

"Exhibit 1"

RAS vs PC

OMAHA POLICE DEPARTMENT
OMAHA, NEBRASKA

GENERAL ORDER

Number:		Date of Issue:	Effective Date: **DRAFT**
Rescinds:	Amends:	SOP Reference: Vol. 2, OPS T, Traffic Law Enforcement, p. 21	Accreditation Standard(s):
Subject: **TRAFFIC LAW ENFORCEMENT**			

POLICY:

Traffic law enforcement is intended to enhance the safety of public roadways. As a result, the Omaha Police Department strives to maintain the practices that result in fair, safe, and efficient traffic enforcement activities. Accordingly, Omaha Police Officers who observe traffic law violations are expected to take appropriate enforcement action, when practical.

PROCEDURE:

I. TRAFFIC STOPS

A. Officers must have justification (Reasonable Suspicion **or** Probable Cause) to legally stop a motor vehicle.

B. The element of Reasonable Suspicion can stand alone **as a reason for** the initiation of a traffic stop. **Probable Cause must attach to Reasonable Suspicion at the conclusion of the traffic stop in order to justify an arrest.** To apply these principles, officers must have a clear understanding of the legal elements of Reasonable Suspicion **and** Probable Cause.

C. A simple formula to assist officers in understanding the legal elements are called building blocks.

1. The building blocks of **Reasonable Suspicion** are specific Articulated Facts, Rational Inferences, and Plausible Conclusions. This means that given the totality of the circumstances, the **officer can articulate specific facts that, together with rational inferences, support the plausible conclusion that the** person(s) in the vehicle to **be stopped** has committed or is about to commit ~~a traffic violation or~~ some type of criminal activity. *Where you have reasonable suspicion of wrongdoing, you can conduct a brief investigative stop to seek additional information to confirm or dispel your concerns.*

2. The building blocks of **Probable Cause** are an awareness of the Articulated Facts and a gathering of supportive Evidence. This means that the person(s) has been involved or is about to be involved in ~~a traffic violation or~~ some type of criminal activity and **may be** subject to arrest, the issuance of a traffic citation, or both **if the stop leads to facts showing Probable Cause**. *Any facts suggesting criminal activity that you obtain after the stop commences cannot be used to justify the stop itself. However, these facts can be used to justify the* ***continued*** *detention* ***of the person(s)***.

or has been involved in a traffic violation

D. Traffic stops should be made in safe locations whenever possible, considering such factors as:

1. The need for making the stop immediately, as opposed to delaying the stop until a preferred location can be selected.

2. The traffic flow, roadway width, lighting, intersecting roadways, and similar circumstances that can affect safety.

E. **Officers should attempt to notify the dispatcher prior to the actual traffic stop or as soon as practical. Officers should request a back-up officer for the traffic stop, and officers will transmit the following information and:**

1. Location of the stop.

2. License number of the vehicle.

3. Description of the vehicle.

4. Number of occupants.

F. When parking a cruiser and approaching the violator's vehicle, officers should position themselves to avoid unnecessary future accidents as well as to afford adequate cover and safety for the officers.

XII. RACIAL PROFILING

A. Nebraska law prohibits officers from engaging in racial profiling. Officers may not use racial profiling to justify the detention of an individual or to conduct a motor vehicle stop.

B. Motor vehicle stops based solely on race are prohibited unless officers are seeking an individual with one or more of those attributes.

C. The detention of any individual that is not based on factors related to a violation of or an investigation of a violation of federal law, Nebraska Statutes, Omaha's Municipal Code or any combination

"Exhibit 2"

RASIS PC

Supreme Court of Nebraska.
STATE of Nebraska, appellee,
v.
Michael E. JOHNSON, appellant.
Nos. S-97-632, S-97-633.

Feb. 12, 1999.

Defendant was convicted in the District Court, Dakota County, Maurice Redmond, J., of possession of methamphetamine with intent to deliver and unauthorized possession of diazepam, and he appealed. The Court of Appeals, 6 Neb.App. 817, 578 N.W.2d 75, reversed and remanded. State appealed. The Supreme Court, Stephan, J., held that: (1) facts set forth in police officer's affidavit did not establish probable cause required to support the issuance of the search warrant for defendant's residence, and (2) good faith exception did not apply to preclude suppression of evidence seized pursuant to warrant obtained with invalid affidavit.

Court of Appeals' judgment affirmed.

West Headnotes

[1] Criminal Law ⇐1158(4)
110k1158(4) Most Cited Cases
Trial court's ruling on a motion to suppress evidence, apart from determinations of reasonable suspicion to conduct investigatory stops and probable cause to perform warrantless searches, is to be upheld on appeal unless its findings of fact are clearly erroneous.

[2] Criminal Law ⇐1158(4)
110k1158(4) Most Cited Cases
In determining whether trial court's ruling on motion to suppress was clearly erroneous, an appellate court does not reweigh the evidence or resolve conflicts in the evidence, but, rather, recognizes the trial court as the finder of fact and takes into consideration that it observed the witnesses; however, to the extent questions of law are involved, an appellate court is obligated to reach conclusions independent of the decisions reached by the courts below.

[3] Searches and Seizures ⇐113.1
349k113.1 Most Cited Cases
Under "totality of the circumstances" rule for determining whether an affidavit is sufficient to establish probable cause for the issuance of a search warrant, question is whether, considering the totality of the circumstances, the issuing magistrate had a substantial basis for finding that the affidavit established probable cause. U.S.C.A. Const.Amend. 4.

[4] Searches and Seizures ⇐113.1
349k113.1 Most Cited Cases
To be valid, the search warrant must be supported by an affidavit establishing probable cause; overruling *State v. Lytle,* 255 Neb. 738, 587 N.W.2d 665; *State v. Grimes,* 246 Neb. 473, 519 N.W.2d 507; State v. Flores, 245 Neb. 179, 512 N.W.2d 128; *State v. Stott,* 243 Neb. 967, 503 N.W.2d 822; *State v. Morrison,* 243 Neb. 469, 500 N.W.2d 547; State v. Farrell, 242 Neb. 877, 497 N.W.2d 17; *State v. Utterback,* 240 Neb. 981, 485 N.W.2d 760; *State v. Armendariz,* 234 Neb. 170, 449 N.W.2d 555; *State v. Cullen,* 231 Neb. 57, 434 N.W.2d 546; *State v. Hodge and Carpenter,* 225 Neb. 94, 402 N.W.2d 867; *State v. Abraham,* 218 Neb. 475, 356 N.W.2d 877; *State v. Robish,* 214 Neb. 190, 332 N.W.2d 922; *State v. Nelson,* 6 Neb.App. 519, 574 N.W.2d 770; *State v. Flemming,* 1 Neb.App. 12, 487 N.W.2d 564. U.S.C.A. Const.Amend. 4.

[5] Criminal Law ⇐394.4(6)
110k394.4(6) Most Cited Cases
In evaluating the sufficiency of an affidavit used to obtain a search warrant, an appellate court is restricted to consideration of the information and

circumstances contained within the four corners of the affidavit, and evidence which emerges after the warrant is issued has no bearing on whether the warrant was validly issued. U.S.C.A. Const.Amend. 4.

[6] Searches and Seizures 108
349k108 Most Cited Cases
Purpose of the four corners doctrine is to require a police officer seeking a search warrant to include in the affidavit all information he or she possesses bearing on the probable cause determination at the time of issuance of the warrant, thus preventing supplementation of that information if the warrant is subsequently challenged. U.S.C.A. Const.Amend. 4.

[7] Criminal Law 394.4(6)
110k394.4(6) Most Cited Cases
In reviewing sufficiency of police officer's affidavit used to obtain search warrant for defendant's residence, four corners doctrine did not preclude Court of Appeals from considering defendant's prior conviction at some unspecified time, facts relating to amount of methamphetamine defendant possessed at the time of his arrest, and whether that amount was consistent with personal use, all of which was information material to determination of probable cause which was known by officer but omitted from his affidavit. U.S.C.A. Const.Amend. 4.

[8] Searches and Seizures 121.1
349k121.1 Most Cited Cases
Proof of probable cause justifying issuance of a search warrant generally must consist of facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time. U.S.C.A. Const.Amend. 4.

[9] Controlled Substances 146
96Hk146 Most Cited Cases
(Formerly 138k188(2) Drugs and Narcotics)
Facts set forth in police officer's affidavit, regarding defendant's possession of unspecified amount of methamphetamine and three snow seals at his arrest hours earlier, without any inference that the amount was other than that consistent with personal use, and defendant's prior drug conviction at some unspecified time in the past, did not establish probable cause required to support the issuance of the search warrant for defendant's residence. U.S.C.A. Const.Amend. 4.

[10] Criminal Law 394.4(7)
110k394.4(7) Most Cited Cases
Good faith exception provides that even in the absence of a valid affidavit to support a search warrant, evidence seized pursuant thereto need not be suppressed where police officers act in objectively reasonable good faith in reliance upon the warrant. U.S.C.A. Const.Amend. 4.

[11] Criminal Law 394.4(7)
110k394.4(7) Most Cited Cases
In regard to a police officer's reasonable reliance on an invalid warrant, the test for reasonable reliance is whether the affidavit was sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause; this is an objective standard of reasonableness, which requires officers to have a reasonable knowledge of what the law prohibits. U.S.C.A. Const.Amend. 4.

[12] Criminal Law 394.4(6)
110k394.4(6) Most Cited Cases
Suppression of evidence seized pursuant to search warrant remains appropriate if (1) the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his or her reckless disregard of the truth, (2) the issuing magistrate wholly abandoned his or her judicial role, (3) the warrant is based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, or (4) the warrant is so facially deficient that the executing officer cannot reasonably presume it to be valid. U.S.C.A. Const.Amend. 4.

[13] Criminal Law 394.4(6)
110k394.4(6) Most Cited Cases
Good faith exception does not preclude suppression of evidence seized pursuant to search warrant where the issuing magistrate was misled by omissions in an affidavit; omissions in an affidavit used to obtain a search warrant are considered to be misleading

when the facts contained in the omitted material tend to weaken or damage the inferences which can logically be drawn from the facts as stated in the affidavit. U.S.C.A. Const.Amend. 4.

[14] Criminal Law ⚿394.4(6)
110k394.4(6) Most Cited Cases
Search warrant issued for defendant's residence was misleading in that it omitted the fact, known to officer who prepared affidavit and executed warrant, that the methamphetamine found in defendant's possession was of a small quantity not inconsistent with possession for personal use, such that good faith exception did not apply to preclude suppression of evidence seized pursuant to warrant obtained with invalid affidavit. U.S.C.A. Const.Amend. 4.

****110** Syllabus by the Court

***133** 1. **Motions to Suppress: Investigative Stops: Warrantless Searches: Probable Cause: Judgments: Appeal and Error.** A trial court's ruling on a motion to suppress evidence, apart from determinations of reasonable suspicion to conduct investigatory stops and probable cause to perform warrantless searches, is to be upheld on appeal unless its findings of fact are clearly erroneous. In making this determination, an appellate court does not reweigh the evidence or resolve conflicts in the evidence, but, rather, recognizes the trial court as the finder of fact and takes into consideration that it observed the witnesses. However, to the extent questions of law are involved, an appellate court is obligated to reach conclusions independent of the decisions reached by the courts below.

2. **Search Warrants: Affidavits: Probable Cause.** The Nebraska Supreme Court has adopted the "totality of the circumstances" rule established by *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), as the basis for determining whether an affidavit is sufficient to establish probable cause for the issuance of a search warrant. Under this standard, the question is whether, considering the totality of the circumstances, the issuing magistrate had a substantial basis for finding that the affidavit established probable cause.

3. **Search Warrants: Affidavits: Probable Cause.** In order to be valid, a search warrant must be supported by an affidavit establishing probable cause.

4. **Case Overruled: Search Warrants: Probable Cause: Constitutional Law.** To the extent that our decisions in *State v. Lytle*, 255 Neb. 738, 587 N.W.2d 665 (1998); *State v. Grimes*, 246 Neb. 473, 519 N.W.2d 507 (1994); *State v. Flores*, 245 Neb. 179, 512 N.W.2d 128 (1994); *State v. Stott*, 243 Neb. 967, 503 N.W.2d 822 (1993); *State v. Morrison*, 243 Neb. 469, 500 N.W.2d 547 (1993); ****111***State v. Farrell*, 242 Neb. 877, 497 N.W.2d 17 (1993); *State v. Utterback*, 240 Neb. 981, 485 N.W.2d 760 (1992); *State v. Armendariz*, 234 Neb. 170, 449 N.W.2d 555 (1989); *State v. Cullen*, 231 Neb. 57, 434 N.W.2d 546 (1989); *State v. Hodge and Carpenter*, 225 Neb. 94, 402 N.W.2d 867 (1987); *State v. Abraham*, 218 Neb. 475, 356 N.W.2d 877 (1984); *State v. Robish*, 214 Neb. 190, 332 N.W.2d 922 (1983), and the opinions of the Nebraska Court of Appeals in ***134***State v. Nelson*, 6 Neb.App. 519, 574 N.W.2d 770 1998), and *State v. Flemming*, 1 Neb.App. 12, 487 N.W.2d 564 (1992), suggest that issuance of a search warrant may be based upon something less than probable cause required by the Fourth Amendment to the U.S. Constitution, they are disapproved.

5. **Search Warrants: Affidavits: Evidence: Appeal and Error.** In evaluating the sufficiency of an affidavit used to obtain a search warrant, an appellate court is restricted to consideration of the information and circumstances contained within the four corners of the affidavit, and evidence which emerges after the warrant is issued has no bearing on whether the warrant was validly issued.

6. **Search Warrants: Affidavits: Police Officers and Sheriffs: Probable Cause.** The purpose of the four corners doctrine is to require a police officer seeking a search warrant to include in the affidavit all information he or she possesses bearing on the probable cause determination at the time of issuance of the warrant, thus preventing supplementation of that information if the warrant is subsequently challenged.

7. **Search Warrants: Probable Cause: Proof: Time.** Proof of probable cause justifying issuance of a search warrant generally must consist of facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time.

8. **Search Warrants: Affidavits: Police Officers and Sheriffs: Evidence: Search and Seizure.** The good faith exception recognized in *United States v. Leon,* 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), provides that even in the absence of a valid affidavit to support a search warrant, evidence seized pursuant thereto need not be suppressed where police officers act in objectively reasonable good faith in reliance upon the warrant.

9. **Search Warrants: Affidavits: Police Officers and Sheriffs: Probable Cause.** In regard to a police officer's reasonable reliance on an invalid warrant, the test for reasonable reliance is whether the affidavit was sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause. This is an objective standard of reasonableness, which requires officers to have a reasonable knowledge of what the law prohibits.

10. **Motions to Suppress: Search Warrants: Affidavits: Police Officers and Sheriffs: Evidence.** Under *United States v. Leon,* 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), suppression of evidence remains appropriate if (1) the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his or her reckless disregard of the truth, (2) the issuing magistrate wholly abandoned his or her judicial role, (3) the warrant is based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, or (4) the warrant is so facially deficient that the executing officer cannot reasonably presume it to be valid.

11. **Motions to Suppress: Search Warrants: Affidavits: Evidence.** The good faith exception recognized in *United States v. Leon,* 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), does not preclude suppression where the issuing magistrate was misled by omissions in an affidavit. Omissions in an affidavit used to obtain a search warrant are considered to be misleading when the facts contained in the omitted material tend to weaken or damage the inferences which can logically be drawn from the facts as stated in the affidavit.

***135** Thomas A. Fitch, of Fitch & Tott Law Firm, South Sioux City, for appellant.

Don Stenberg, Attorney General, and Ronald D. Moravec, Lincoln, for appellee.

****112** HENDRY, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, and McCORMACK, JJ., and CHEUVRONT, D.J.

STEPHAN, J.

In these consolidated appeals, we granted the State's petition for further review of a decision by the Nebraska Court of Appeals which reversed Michael E. Johnson's convictions for possession with intent to distribute a controlled substance (methamphetamine and cocaine) and unauthorized possession of a controlled substance (diazepam), based upon that court's determination that a search warrant for Johnson's home was not supported by probable cause and that the fruits of the search were therefore not admissible. *State v. Johnson,* 6 Neb.App. 817, 578 N.W.2d 75 (1998). Finding no error, we affirm the judgment of the Court of Appeals in both cases.

FACTUAL AND PROCEDURAL BACKGROUND

The pertinent facts are set forth in detail in the opinion of the Court of Appeals and are summarized here only to the extent necessary for our consideration of the issues raised in the petition for further review. At approximately 11:25 p.m. on May 19, 1995, police officers arrested Johnson in South Sioux City, Nebraska, pursuant to an arrest warrant on charges of failing to pay child support. Officer Terry Ivener conducted a pat-down search incident to the arrest and felt a small, cylindrical

What.

object in one of Johnson's pockets, which Johnson identified as a knife. Ivener retrieved the object, which was a small, clear plastic vial with a black lid containing several small, off-white "rocks." Chemical field tests performed at the scene of the ***136** arrest confirmed Ivener's suspicion that the vial contained methamphetamine. The police officers then searched Johnson's vehicle, which he had occupied immediately prior to his arrest, and found a plastic bag containing two small paper packets which Ivener suspected to be "snow seals," commonly used as containers for controlled substances. Johnson's billfold was searched and found to contain an empty snow seal and $269.50 in cash.

Within hours after arresting Johnson, Ivener prepared an affidavit and complaint for a warrant to search Johnson's home for controlled substances, drug paraphernalia, currency, weapons, and other items generally associated with illicit drug trafficking. The affidavit described Johnson's arrest and the seizure of the vial "containing a substance later identified ... as methamphetamine." However, the quantity of the substance was not stated in the affidavit. The affidavit also recited the discovery of the snow seals, which Ivener characterized on the basis of his training and experience as "an item used for the sale of controlled substances." The affidavit concluded with the following statements:

> 6. I am aware from my training and experience and from information received from other law enforcement officers that individuals frequently keep controlled substances on their persons; as well as at their residence.
>
> 7. I am aware from my training and experience, and from information received from other law enforcement officers, that individuals involved in the possession, use and distribution of controlled substances use paraphernalia to ingest the controlled substance and that this paraphernalia is retained by the individual for the [sic] future use and that this paraphernalia retains residue of the controlled substance.
>
> 8. I am aware that Michael E. Johnson is a person known to have engaged in the use and sale of controlled substances. I am further aware that Michael E. Johnson has previously been convicted of drug charges. I know that Michael E. Johnson lives at 3401 El Dorado Way, South Sioux City, Dakota County, Nebraska as I have been to his home on service calls on at least three separate occasions.
>
> ***137** 9. Based upon my knowledge and training in the area of dealing with persons suspected to be involved with the drug trade it is my belief that a search warrant on Michael E. Johnson's residence will needed [sic] to be served as soon as possible so as to avoid any possibility of destruction of evidence. Therefore, I request that this warrant be allowed to be served during the hours of darkness.

****113** Pursuant to this affidavit, a magistrate issued a search warrant for Johnson's residence which was executed by Ivener at 2 a.m. on May 20, 1995. Items seized from the residence during this search included a small quantity of cocaine; tablets later confirmed to be diazepam; a triple-beam scale; precut small squares of glossy paper, alleged to be unused snow seals; two pair of scissors; a razor blade; a small, black, glass board; and drug paraphernalia. Johnson was then charged in separate informations with the two offenses of which he was eventually convicted.

Johnson filed a pretrial motion to suppress in each case, alleging that the search warrant was not supported by probable cause. During a suppression hearing on these motions, Ivener testified that he had been to Johnson's residence three or four times prior to May 19, 1995, in response to domestic calls. He admitted that he did not observe drugs or contraband on these occasions. He admitted that he had not been in Johnson's house on May 19 and that he did not have any direct knowledge of what may have been there on that date. He testified that his application for a search warrant was based entirely upon the controlled substance and the snow seals he had found on Johnson's person at the time of the arrest and the fact that other officers told him that Johnson had been previously convicted on an unspecified drug-related offense and had served time in jail. Ivener stated that he did not know the details of Johnson's prior conviction or when it

occurred and that he had no personal knowledge about it. Finally, he testified that the relatively small quantity of methamphetamine and the snow seals found in Johnson's possession at the time of his arrest could be consistent with either personal use or distribution.

The trial court denied both of Johnson's motions to suppress evidence seized in the search of Johnson's home, finding that

> ***138** the fact that the Defendant had a previous conviction for drug related offense and the Defendant was in possession of snow seals which had markings associated with the delivery or selling of controlled substances on them is probable cause to believe that controlled substances would be found at the Defendant's residence.

During Johnson's trial on the consolidated charges, evidence gathered from the search of his home was received over his objection. He was convicted of possession with intent to distribute a controlled substance (methamphetamine and cocaine), a Class III felony, for which he was sentenced to 2 to 4 years' imprisonment, and unauthorized possession of a controlled substance (diazepam), for which he received a concurrent sentence of 1 to 2 years' imprisonment. Johnson was also sentenced to 1 to 2 years' imprisonment on an unrelated conviction of failure to appear, to be served consecutively to the sentences involved in these consolidated appeals.

In his appeals, Johnson asserted that the district court erred in overruling his motions to suppress evidence seized during the search of his residence and admitting such evidence at trial over his objection. The Court of Appeals determined that Ivener's affidavit did not establish probable cause for issuance of the search warrant in that it contained generalizations about the habits of users and dealers of controlled substances but lacked "articulable facts ... to support a finding of probable cause that these generalizations applied to Johnson." *State v. Johnson,* 6 Neb.App. 817, 828, 578 N.W.2d 75, 83 (1998). The court concluded:

> The facts of Johnson's arrest hours earlier, of the discovery of drugs without an indication of the amount or an inference that the amount was other than that consistent with personal use, and of a prior conviction at some unspecified time in the past did not support the issuance of the search warrant.

Id. The Court of Appeals therefore reversed both convictions and remanded the cause in case No. A-97-632 for a new trial because of the existence of other admissible evidence. Based upon its determination that the conviction in case No. A-97-633 rested entirely upon the diazepam unlawfully seized during the ***139** search of Johnson's residence, the Court of Appeals remanded that cause with directions to dismiss. We granted the State's petition for further review.

**114 ASSIGNMENTS OF ERROR

The State assigns that the Court of Appeals erred in (1) finding that the information contained in the affidavit did not provide probable cause for the issuance of the residence search warrant, (2) failing to find that the officers acted in "good faith" when executing the warrant, (3) reweighing or resolving evidence outside the confines of the affidavit for issuance of the warrant, and (4) issuing inconsistent opinions.

SCOPE OF REVIEW

[1][2] A trial court's ruling on a motion to suppress evidence, apart from determinations of reasonable suspicion to conduct investigatory stops and probable cause to perform warrantless searches, is to be upheld on appeal unless its findings of fact are clearly erroneous. In making this determination, an appellate court does not reweigh the evidence or resolve conflicts in the evidence, but, rather, recognizes the trial court as the finder of fact and takes into consideration that it observed the witnesses. *State v. Lytle,* 255 Neb. 738, 587 N.W.2d 665 (1998); *State v. Fitch,* 255 Neb. 108, 582 N.W.2d 342 (1998). However, to the extent questions of law are involved, an appellate court is obligated to reach conclusions independent of the decisions reached by the courts below. *State v. Fitch, supra; State v. Swift,* 251 Neb. 204, 556 N.W.2d 243 (1996).

ANALYSIS

[3] The principal issue raised in these cases is whether Ivener's affidavit was sufficient to establish probable cause for the issuance of a warrant to search Johnson's residence. This court has adopted the "totality of the circumstances" rule established by *Illinois v. Gates,* 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), as the basis for determining whether an affidavit is sufficient to establish probable cause for the issuance of a search warrant. *State v. Jackson,* 255 Neb. 68, 582 N.W.2d 317 (1998); *State v. Detweiler,* 249 Neb. 485, 544 N.W.2d 83 (1996); ***140***State v. Utterback,* 240 Neb. 981, 485 N.W.2d 760 1992). Under this standard, the question is whether, considering the totality of the circumstances, the issuing magistrate had a " 'substantial basis' " for finding that the affidavit established probable cause. *State v. Detweiler,* 249 Neb. at 489, 544 N.W.2d at 88. If the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, indicate there is a fair probability that evidence of a crime may be found at the place described, the affidavit is sufficient. *State v. Jackson, supra.*

[4] Although the Court of Appeals articulated and applied the totality of the circumstances test in this case, it also stated the proposition that "[t]o be valid, the search warrant obtained ... must have been supported by an affidavit establishing probable cause to search the home *or by reasonable suspicion based on articulable facts that evidence of crime would be found in the home.*" (Emphasis supplied.) *State v. Johnson,* 6 Neb.App. 817, 824, 578 N.W.2d 75, 80 (1998). The italicized portion of this proposition appears in several of our opinions beginning with *State v. Robish,* 214 Neb. 190, 332 N.W.2d 922 (1983). See, also, *State v. Lytle, supra; State v. Grimes,* 246 Neb. 473, 519 N.W.2d 507 (1994), *overruled on other grounds, State v. Burlison,* 255 Neb. 190, 583 N.W.2d 31 (1998); *State v. Flores,* 245 Neb. 179, 512 N.W.2d 128 (1994); *State v. Stott,* 243 Neb. 967, 503 N.W.2d 822 (1993); *State v. Morrison,* 243 Neb. 469, 500 N.W.2d 547 (1993); *State v. Farrell,* 242 Neb. 877, 497 N.W.2d 17 (1993); *State v. Utterback, supra; State v. Armendariz,* 234 Neb. 170, 449 N.W.2d 555 (1989); *State v. Cullen,* 231 Neb. 57, 434 N.W.2d 546 (1989); *State v. Hodge and Carpenter,* 225 Neb. 94, 402 N.W.2d 867 (1987); *State v. Abraham,* 218 Neb. 475, 356 N.W.2d 877 (1984). The Court of Appeals has also cited this proposition previously in reliance on our holdings. See, *State v. Nelson,* 6 Neb.App. 519, 574 N.W.2d 770 (1998); *State v. Flemming,* 1 Neb.App. 12, 487 N.W.2d 564 (1992).

The phrase "reasonable suspicion, supported by articulable facts, that criminal activity exists" is the test for determining the sufficiency of grounds for an investigatory stop. See, *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Soukharith,* 253 Neb. 310, 570 N.W.2d 344 (1997). ****115** In that ***141** context, "reasonable suspicion" entails some minimal level of objective justification for detention, which has been described as something more than an inchoate and unparticularized suspicion or hunch, but less than the level of suspicion required for probable cause. *United States v. Sokolow,* 490 U.S. 1, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989); *State v. Soukharith, supra.* Like probable cause, reasonable suspicion is determined from the totality of the circumstances. *State v. Soukharith, supra; State v. Ellington,* 242 Neb. 554, 495 N.W.2d 915 (1993). However, a reasonable suspicion sufficient to justify an investigative stop may exist even if probable cause is lacking under the Fourth Amendment. *State v. Soukharith, supra; State v. Bowers,* 250 Neb. 151, 548 N.W.2d 725 (1996); *State v. Staten,* 238 Neb. 13, 469 N.W.2d 112 (1991). To the extent that our decisions beginning with *State v. Robish, supra,* and continuing through *State v. Lytle, supra,* and those of the Court of Appeals in *State v. Nelson, supra,* and *State v. Flemming, supra,* suggest that issuance of a search warrant may be based upon something less than probable cause required by the Fourth Amendment, they are disapproved.

[5][6] The State's petition for further review raises the issue of what "circumstances" may be examined under this test. As the Court of Appeals correctly stated in its opinion, an appellate court is restricted to consideration of the information and circumstances contained within the four corners of the affidavit, and evidence which emerges after the

warrant is issued has no bearing on whether the warrant was validly issued. *State v. Johnson, supra,* citing *State v. Utterback,* 240 Neb. 981, 485 N.W.2d 760 (1992). The purpose of the four-corners doctrine is to require a police officer seeking a search warrant to include in the affidavit all information he or she possesses bearing on the probable cause determination at the time of issuance of the warrant, thus preventing supplementation of that information if the warrant is subsequently challenged. *State v. Barrilleaux,* 620 So.2d 1317 (La.1993). See, also, *State v. Payne,* 201 Neb. 665, 271 N.W.2d 350 (1978) (White, J., dissenting). We have also held that this doctrine precluded a defendant from challenging a search warrant on the ground that an informant who provided information contained in the affidavit subsequently proved to be unreliable ***142** in deposition and trial testimony. *State v. Grimes,* 246 Neb. 473, 519 N.W.2d 507 (1994), *overruled on other grounds, State v. Burlison,* 255 Neb. 190, 583 N.W.2d 31 (1998).

The State argues that by considering Ivener's testimony at the suppression hearing that the amount of controlled substance which he observed in Johnson's possession was "consistent with personal use" and that the "drug conviction" mentioned in the affidavit was 10 years prior to the incident involved in this case, the Court of Appeals "improperly utilized evidence outside the four corners of the affidavit, and reweighed evidence at the trial court level." Memorandum brief for appellee in support of petition for further review at 4.

[7] The Court of Appeals wrote, "For the sake of completeness, we note that the testimony shows that the statement regarding Johnson's drug history pertains to a drug conviction which was 10 years prior to this incident." *State v. Johnson,* 6 Neb.App. 817, 826, 578 N.W.2d 75, 82 (1998). At the suppression hearing, Ivener was asked the date of Johnson's prior conviction referred to in Ivener's affidavit. He responded, "I don't know the details other than that he had been convicted and did some time for it." When questioned further, he indicated that the conviction occurred before he was hired by the South Sioux City Police Department in March 1994. Johnson's counsel then stated, "Okay. If I stated it was 10 years at least would you disagree with that?" Ivener replied, "I wouldn't disagree, because I don't know." While we do not regard this testimony as sufficient to support the aforementioned statement by the Court of Appeals, neither do we regard it as material to the Court of Appeals' conclusion or our review. The Court of Appeals determined that the information in Ivener's affidavit, including information regarding "a prior conviction at some unspecified time in the past" did not support the issuance of a search warrant. *Id.* at 828, 578 N.W.2d at 83. The fact that ****116** the conviction occurred at some unspecified time in the past is clearly within the four corners of the affidavit and is therefore properly considered in determining whether the affidavit provided an adequate basis for the issuance of the search warrant.

The affidavit stated that Johnson was in possession of methamphetamine at the time of his arrest. Facts relating to the ***143** amount of the substance and whether it was consistent with personal use were omitted from the affidavit but supplied by Ivener in his testimony at the suppression hearing. The consideration by the Court of Appeals of information known to Ivener but omitted from his affidavit was consistent with our decisions in *State v. Utterback,* 240 Neb. 981, 485 N.W.2d 760 (1992), and *State v. Morrison,* 243 Neb. 469, 500 N.W.2d 547 (1993). In *Utterback,* we determined that in overruling a motion to suppress, a district court erred in failing to consider evidence at the suppression hearing that the officer was aware of certain facts affecting the reliability of an informant but omitted them from the affidavit used to obtain a search warrant. We held that the district court should have considered "whether the omissions from the detective's affidavit misled the county judge [who issued the warrant] and whether the omitted information was material to a determination of probable cause." *Id.* at 995, 485 N.W.2d at 772. We concluded that based upon the known facts which the officer omitted from the affidavit, there was no probable cause for issuance of the search warrant. *Id.* In *State v. Morrison, supra,* we

considered the suppression hearing testimony of the officer who executed the affidavit, including details which had been omitted from the affidavit, and concluded that had this information been presented to the magistrate, there would still have been probable cause to issue the search warrant.

In *United States v. Stanert,* 762 F.2d 775, 781 (9th Cir.1985), the court stated, "By reporting less than the total story, an affiant can manipulate the inferences a magistrate will draw. To allow a magistrate to be misled in such a manner could denude the probable cause requirement of all real meaning." We agree and therefore conclude that in determining whether the affidavit was sufficient to establish probable cause for the search of Johnson's residence, the Court of Appeals was not precluded by the four-corners doctrine from considering information material to the determination of probable cause which was known by Ivener but omitted from his affidavit.

[8][9] In the Court of Appeals' analysis, it correctly stated the rule that " ' "[p]roof of probable cause justifying issuance of a search warrant generally must consist of *facts* so closely related to the time of the issuance of the warrant as to justify a finding ***144** of probable cause at that time." ' " (Emphasis omitted.) (Emphasis supplied.) *State v. Johnson,* 6 Neb.App. 817, 827, 578 N.W.2d 75, 82 (1998), quoting *State v. Reeder,* 249 Neb. 207, 543 N.W.2d 429 (1996), *cert. denied* 519 U.S. 1006, 117 S.Ct. 506, 136 L.Ed.2d 397, quoting *State v. Hodge and Carpenter,* 225 Neb. 94, 402 N.W.2d 867 (1987). We agree with the Court of Appeals that the general statements in the affidavit concerning Johnson's prior conviction and involvement with controlled substances do not provide the temporal nexus necessary to establish probable cause. However, that nexus is present with respect to the methamphetamine and snow seals which were found in Johnson's possession hours before the search warrant was requested. The question, then, is whether these facts establish probable cause to believe that evidence of a crime would be found at Johnson's residence.

The State urges that we follow authority from other jurisdictions holding that a magistrate is entitled to draw reasonable inferences from the information in an affidavit, including the inference that drug dealers will have drugs in their homes. See, e.g., *United States v. Angulo-Lopez,* 791 F.2d 1394 (9th Cir.1986). However, a common thread among these cases is that the affidavit provided facts establishing that the defendant was a drug dealer as opposed to someone in possession of drugs for personal use. See, e.g., *U.S. v. Williams,* 974 F.2d 480 (4th Cir.1992) (affidavit clearly established that defendant was drug dealer); *Angulo-Lopez, supra* (evidence that defendant was engaged in drug trafficking); ****117State v. Godbersen,*** 493 N.W.2d 852 (Iowa 1992) (large amount of cash and 12 baggies of marijuana were discovered in vehicle search); *State v. Bynum,* 579 N.W.2d 485 (Minn.App.1998) (defendant sold drugs from his automobile).

In the present cases, we find nothing in the affidavit which would lead to a reasonable inference that Johnson was engaged in the sale of controlled substances at or near the time of his arrest. The general statement that Iverson was aware of Johnson's previous conviction of "drug charges" would not support such an inference, since there is no indication of the date of the conviction or whether it involved the sale, as opposed to possession, of controlled substances. Likewise, the fact that ***145** Johnson was in possession of an unspecified quantity of methamphetamine and three snow seals, described in the affidavit as "an item used for the sale of controlled substances," provides no basis for inferring that Johnson was a seller of controlled substances, rather than a purchaser. Thus, even if we were to accept the State's premise that incriminating evidence is likely to be found in the homes of drug dealers, the affidavit on its face contains no facts from which it could reasonably be inferred that Johnson was a drug dealer at or near the time of his arrest. For these reasons, the district court's findings of fact upon which it denied Johnson's motions to suppress were clearly erroneous, and the Court of Appeals correctly concluded that Ivener's affidavit did not establish probable cause to justify the search of Johnson's residence.

[10] The State also contends that the Court of Appeals erred in failing to consider and apply the "good faith exception" recognized in *United States v. Leon,* 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). The exception provides that even in the absence of a valid affidavit to support a search warrant, evidence seized pursuant thereto need not be suppressed where police officers act in objectively reasonable good faith in reliance upon the warrant. We agree that the Court of Appeals should have addressed this issue, and we therefore do so on further review.

[11] We summarized the principles governing application of the *Leon* good faith exception in *State v. Reeder,* 249 Neb. 207, 214, 543 N.W.2d 429, 434 (1996), *cert. denied* 519 U.S. 1006, 117 S.Ct. 506, 136 L.Ed.2d 397 (1996), as follows:

> In regard to an officer's reasonable reliance on the invalid warrant, the test for reasonable reliance is whether the affidavit was sufficient to " ' "create disagreement among thoughtful and competent judges as to the existence of probable cause." ' " *State v. Parmar,* 231 Neb. 687, 697, 437 N.W.2d 503, 510 (1989) (quoting *U.S. v. Hove,* 848 F.2d 137 (9th Cir.1988)). Also, this is an objective standard of reasonableness, which "requires officers to have a reasonable knowledge of what the law prohibits." *Leon,* 468 U.S. at 920 n. 20, 104 S.Ct. 3405. See, also, *United States v. Peltier,* 422 U.S. 531, 95 S.Ct. 2313, 45 L.Ed.2d 374 (1975).

[12] ***146** Pursuant to *Leon, supra,* suppression of the evidence remains appropriate if (1) the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his or her reckless disregard of the truth; (2) the issuing magistrate wholly abandoned his or her judicial role; (3) the warrant is based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (4) the warrant is so facially deficient that the executing officer cannot reasonably presume it to be valid.

[13] Additionally, we stated in *State v. Utterback,* 240 Neb. 981, 485 N.W.2d 760 (1992), that the *Leon* good faith exception does not preclude suppression where the issuing magistrate was misled by omissions in the affidavit. Thus, we held that "[o]missions in an affidavit used to obtain a search warrant are considered to be misleading when the facts contained in the omitted material tend to weaken or damage the inferences which can logically be drawn from the facts as stated in the affidavit." *Utterback,* 240 Neb. at 995, 485 N.W.2d at 772.

In the present cases, as in *Reeder* and *Utterback,* the officer who executed the search warrant was the same person who prepared the affidavit upon which it was ****118** issued. In *Reeder,* we held that it was entirely unreasonable for the officer to rely upon the affidavit he presented in support of the search warrant because it lacked any information pertaining to the reliability of an informant and another person who supplied the information set forth in the affidavit. In *Utterback,* we held that the good faith exception was inapplicable and suppression was required, because the information which the officer omitted from his affidavit was material to a determination of its probable cause such that the omission was misleading to the issuing judge.

[14] We conclude that the affidavit upon which the search warrant was issued in the present cases was misleading in that it omitted the fact, known to Ivener, that the methamphetamine found in Johnson's possession was of a small quantity not inconsistent with possession for personal use. We note that Ivener had been employed in law enforcement for less than a year at the time of Johnson's arrest and testified that this was probably the first ***147** occasion on which he submitted an affidavit in support of an application for a search warrant. He testified that his affidavit was not intended to mislead the issuing magistrate. While we do not conclude otherwise, we find that the facts omitted from his affidavit nevertheless weaken any possible inference that Johnson was a drug dealer who kept drugs at his residence, and the omission was therefore misleading under our analysis in *Utterback.* We therefore conclude that the *Leon*

good faith exception is inapplicable in these cases.

Finally, the State argues that the results reached by the Court of Appeals in these cases are inconsistent with that in *State v. Pittman,* 5 Neb.App. 152, 556 N.W.2d 276 (1996). We need not decide this issue, since we find no error by the Court of Appeals in the present cases.

CONCLUSION

In summary, we conclude that the Court of Appeals did not err in determining that the search warrant for Johnson's residence was not supported by probable cause. Based on this and our determination that the *Leon* good faith exception is inapplicable, we agree with the Court of Appeals that the fruits of the search were inadmissible and that the district court erred in overruling Johnson's motions to suppress and objections at trial. We therefore affirm the judgment of the Court of Appeals in both cases.

AFFIRMED.

MILLER-LERMAN, J., not participating.

256 Neb. 133, 589 N.W.2d 108

END OF DOCUMENT

"Exhibit 3"

Dept using YES

Source: Laws 1973, LB 45, § 63; Laws 1984, LB 861, § 17; Laws 1986, LB 436, § 1; R.S.1943, (1988), § 39-663; Laws 1993, LB 370, § 286; Laws 1996, LB 901, § 10.

§ 60-6,191. Repealed. Laws 1993, LB 575, § 55.

§ 60-6,192. Speed determination; use of speed measurement devices; requirements; apprehension of driver; when.

(1) Determinations made regarding the speed of any motor vehicle based upon the visual observation of any peace officer, while being competent evidence for all other purposes, shall be corroborated by the use of a radio microwave, mechanical, or electronic speed measurement device. The results of such radio microwave, mechanical, or electronic speed measurement device may be accepted as competent evidence of the speed of such motor vehicle in any court or legal proceeding when the speed of the vehicle is at issue. Before the state may offer in evidence the results of such radio microwave, mechanical, or electronic speed measurement device for the purpose of establishing the speed of any motor vehicle, the state shall prove the following:

(a) The radio microwave, mechanical, or electronic speed measurement device was in proper working order at the time of conducting the measurement;

(b) The radio microwave, mechanical, or electronic speed measurement device was being operated in such a manner and under such conditions so as to allow a minimum possibility of distortion or outside interference;

(c) The person operating the radio microwave, mechanical, or electronic speed measurement device and interpreting such measurement was qualified by training and experience to properly test and operate the radio microwave, mechanical, or electronic speed measurement device; and

(d) The operator conducted external tests of accuracy upon the radio microwave, mechanical, or electronic speed measurement device, within a reasonable time both prior to and subsequent to an arrest being made, and the device was found to be in proper working order.

(2) The driver of any motor vehicle measured by use of a radio microwave, mechanical, or electronic speed measurement device to be driving in excess of the applicable speed limit may be apprehended if the apprehending officer:

(a) Is in uniform and displays his or her badge of authority; and

(b)(i) Has observed the recording of the speed of the motor vehicle by the radio microwave, mechanical, or electronic speed measurement device; or

(ii) Has received a radio message from a peace officer who observed the speed recorded and the radio message (A) has been dispatched immediately after the speed of the motor vehicle was recorded and (B) gives a description of the vehicle and its recorded speed.

Source: Laws 1973, LB 45, § 64; Laws 19[illegible] R.S.1943, (1988), § 39-664; Laws 1993, LB 370, [illegible] LB 25, § 1.

§ 60-6,193. Minimum speed regulation; impeding traffic.

(1) No person shall drive a motor vehicle at a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(2) On a freeway no motor vehicle, except emergency vehicles, shall be operated at a speed of less than forty miles per hour or at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for the safe operation of the motor vehicle because of weather, visibility, roadway, or traffic conditions. All vehicles entering or leaving the freeway from an acceleration or deceleration lane shall conform with the minimum speed requirement while they are within the roadway of the freeway. The minimum speed of forty miles per hour may be altered by the Department of Roads or local authorities on freeways under their respective jurisdictions.

(3) Whenever the department or any local authority within its respective jurisdiction determines on the basis of an engineering and traffic investigation that low speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the department or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

(4) Vehicular, animal, and pedestrian traffic prohibited on freeways by the Nebraska Rules of the Road shall not travel on any other roadway where minimum speed limits of twenty miles per hour or more are posted.

(5) Any minimum speed limit which is established under subsection (2) or (3) of this section shall not be effective until appropriate and adequate signs are erected along the roadway affected by such regulation apprising motorists of such limitation.

(6) On any freeway, or other highway providing for two or more lanes of travel in one direction, vehicles shall not intentionally impede the normal flow of traffic by traveling side by side at the same speed while in adjacent lanes. This subsection shall not be construed to prevent vehicles from traveling side by side in adjacent lanes because of congested traffic conditions.

Source: Laws 1973, LB 45, § 65; R.S.1943, (1988), Laws 1993, LB 370, § 289.

§ 60-6,194. Charging violations of speed regulation; summons; burden of proof; elements of offense.

(1) In every charge of violation of any speed regulation in the Nebraska Rules of the Road

"Exhibit 4"

CITIZEN / OFFICER CONTACT

POLICY:

Omaha Police officers routinely question or interview the general populace for a variety of reasons. Therefore, it is essential they remain alert, businesslike and courteous. Accordingly, the department requires officers to explain the reason and the nature of any citizen contact as a means of alleviating possible misunderstandings and complaints.

PROCEDURE:

I. DEFINITIONS

Officers shall consider the extent to which they interrupt the citizen's freedom based upon the following definitions.

A. Contact: A contact is a brief discussion between an officer and citizen where the citizen is free to walk away or ignore the officer's questions.

B. Stop: A stop is when an officer, by means of physical force or show of authority, restrains the freedom of a citizen.

C. Detention: A detention is the restriction of free movement of a suspect after a stop for a reasonable period of time while the officer investigates.

II. RACIAL PROFILING – See Bias Based Profiling (SOP, Vol. II., B).

III. RESPONSIBILITIES

A. On all citizen/officer contacts, whether it be a radio call, traffic stop, officer-initiated observation, or other circumstances, the officer will always inform the citizen as to the nature of the contact, as soon as immediately practical.

B. Officers shall at all times be courteous, patient and respectful in dealing with the public.

C. Officers shall avoid asking or answering questions in a short and abrupt manner and shall not use harsh, course, violent, profane, insolent, indecent, suggestive, sarcastic, or insulting language.

D. If an officer determines that his/her initial response to a given situation may have been inappropriate, officers are to explain thoroughly the reason for the contact. In these situations, officers should indicate they regret any inconvenience that may have been caused.

E. Upon conclusion of the situation, the officer shall brief their supervisor on the circumstances surrounding the incident.

IV. CONFLICT OF INTEREST

A. Officers and employees will not engage in any action that conflicts with or creates an appearance of impropriety or unfairness or conflict of interest with the performance of official duties.

EXCEPTION: Undercover situations and pretext stops for investigative reasons may require officers to appear to act in conflict of interest with their official duties.

B. Officers will not take an active role in the criminal investigation of an off-duty incident in which they are a victim or a suspect.

1. When an on-duty officer is the victim of an assault, another on-duty officer will prepare the INCIDENT REPORT (OPD Form 189).

2. The on-duty officer who is the victim of an assault shall document his/her actions in a Supplementary Report (OPD Form 200).

C. Officers will not take an active role in the criminal investigation of any incident in which an immediate family member is a victim or a suspect.

D. Please see the Rules of Conduct, Chapter 1 – Section 27 (Vol. 1, Personnel, Rules of Conduct, p. 112).

(Source: General Order #3-93, 34-98 & 42-99, 33-02)

"Exhibit 5"

to be controlled or operated by the driver of the vehicle.

Source: Laws 1931, c. 110, § 41, p. 318; C.S.Supp.,1941, § 39-1172; R.S.1943, § 39-776; Laws 1977, LB 314, § 3; Laws 1987, LB 504, § 7; Laws 1989, LB 155, § 1; R.S.Supp.,1992, § 39-6,136; Laws 1993, LB 370, § 351.

§ 60-6,256. Objects placed or hung to obstruct or interfere with view of operator; unlawful; penalty.

It shall be unlawful for any person to operate a motor vehicle with any object placed or hung in or upon such vehicle, except required or permitted equipment of the vehicle, in such a manner as to obstruct or interfere with the view of the operator through the windshield or to prevent the operator from having a clear and full view of the road and condition of traffic behind such vehicle. Any sticker or identification authorized or required by the federal government or any agency thereof or the State of Nebraska or any political subdivision thereof may be placed upon the windshield without violating the provisions of this section. Any person violating the provisions of this section shall be guilty of a Class V misdemeanor.

Source: Laws 1959, c. 173, § 1, p. 624; R.R.S.1943, § 39-7,123.04; Laws 1977, LB 41, § 30; R.S.1943, (1988), § 39-6,170; Laws 1993, LB 370, § 352.

§ 60-6,257. Windshield and windows; tinting; sunscreening; prohibited acts; terms, defined.

(1) It shall be unlawful for a person to drive a motor vehicle required to be registered in this state upon a highway:

(a) If the windows in such motor vehicle are tinted so that the driver's clear view through the windshield or side or rear windows is reduced or the ability to see into the motor vehicle is substantially impaired;

(b) If the windshield has any sunscreening material that is not clear and transparent below the AS-1 line or if it has a sunscreening material that is red, yellow, or amber in color above the AS-1 line;

(c) If the front side windows have any sunscreening or other transparent material that has a luminous reflectance of more than thirty-five percent or has light transmission of less than thirty-five percent;

(d) If the rear window or side windows behind the front seat have sunscreening or other transparent material that has a luminous reflectance of more than thirty-five percent or has light transmission of less than twenty percent except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus; or

(e) If the windows of a camper, motor home, [illegible] vehicle

(2) For purposes of this section and sections 60-6,258 and 60-6,259:

(a) AS-1 line shall mean a line extending from the letters AS-1, found on most motor vehicle windshields, running parallel to the top of the windshield or shall mean a line five inches below and parallel to the top of the windshield, whichever is closer to the top of the windshield;

(b) Camper shall mean a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle with motive power for the purpose of providing shelter for persons;

(c) Glass-plastic glazing material shall mean a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle;

(d) Light transmission shall mean the ratio of the amount of total light, expressed in percentages, which is allowed to pass through the sunscreening or transparent material to the amount of total light falling on the motor vehicle window;

(e) Luminous reflectance shall mean the ratio of the amount of total light, expressed in percentages, which is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window;

(f) Motor home shall mean a multipurpose passenger vehicle that provides living accommodations;

(g) Multipurpose vehicle shall mean a motor vehicle designed to carry ten or fewer passengers that is constructed on a truck chassis or with special features for occasional off-road use;

(h) Pickup cover shall mean a camper having a roof and sides but without a floor designated to be mounted on and removable from the cargo area of a truck by the user;

(i) Slide-in camper shall mean a camper having a roof, floor, and sides designed to be mounted on and removable from the cargo area of a truck by the user; and

(j) Sunscreening material shall mean a film, material, tint, or device applied to motor vehicle windows for the purpose of reducing the effects of the sun.

Source: Laws 1989, LB 155, § 2; Laws 1990, LB 1119, § 1; R.S.Supp.,1992, § 39-6,136.01; Laws 1993, LB 370, § 353.

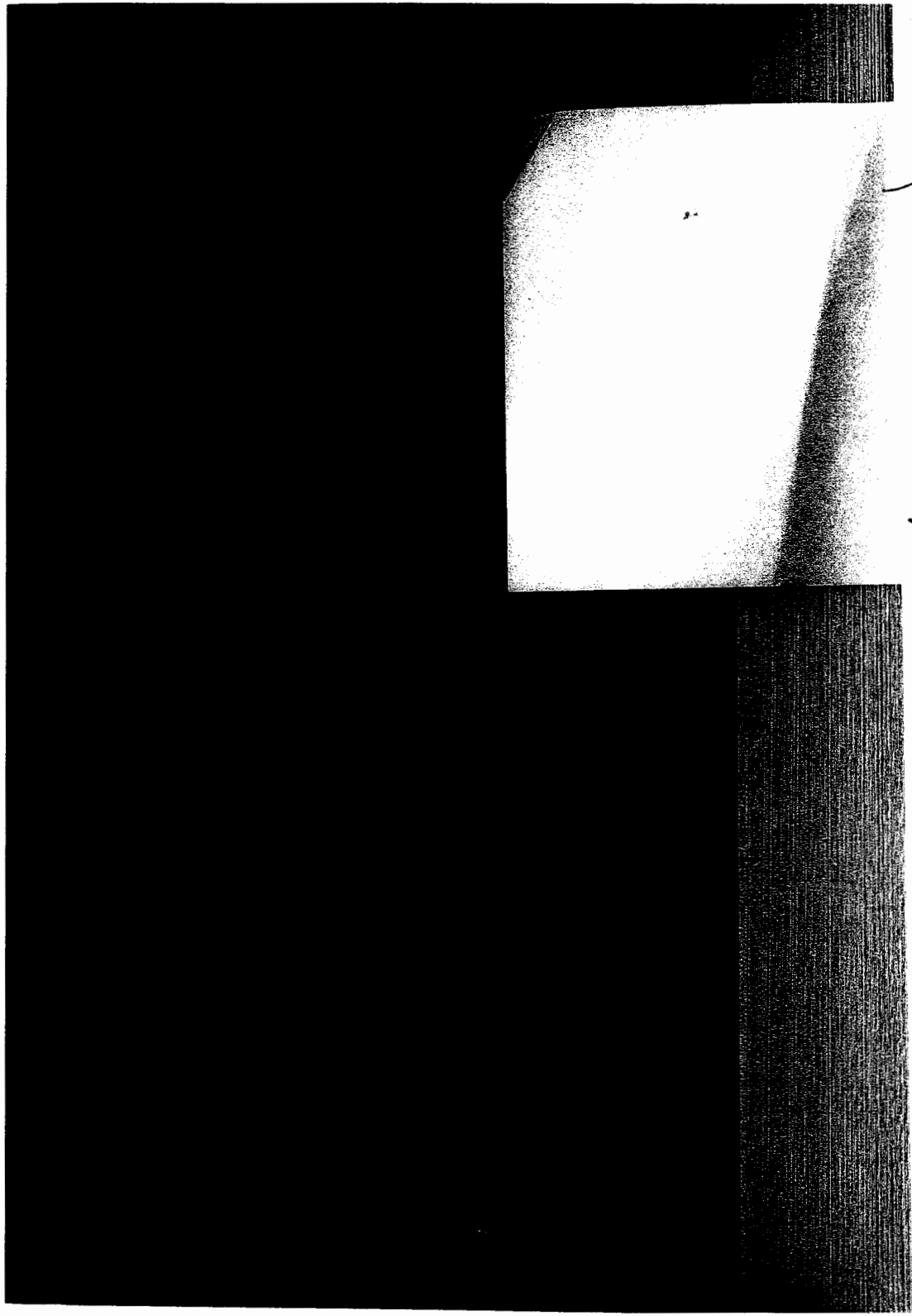
§ 60-6,258. Windshield and windows; violations; penalty.

Any person owning or operating a motor vehicle in violation of section 60-6,257 shall be guilty of a Class V misdemeanor.

Source: Laws 1989, LB 155, § 3; R.S.Supp.,1992, § 39-6,136.02; Laws 1993, LB 370, § 354.

§ 60-6,259. Windshield and windows; applicator; prohibited acts; penalty.

[illegible] sunscreening material



Source: Laws 1937, c. 70, § 8, p. 257; C.S.Supp.,1941, § 29-423.

§ 29-422. Citation in lieu of arrest; legislative intent.

It is hereby declared to be the policy of the State of Nebraska to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law and the protection of the public. In furtherance of that policy, except as provided in sections 42-928 and 42-929, any peace officer shall be authorized to issue a citation in lieu of arrest or continued custody for any offense which is a traffic infraction, any other infraction, or a misdemeanor and for any violation of a city or village ordinance. Such authorization shall be carried out in the manner specified in sections 29-422 to 29-429 and 60-684 to 60-686.

Source: Laws 1974, LB 829, § 1; Laws 1978, LB 808, § 6; Laws 1985, LB 19, § 2; Laws 1989, LB 330, § 2; Laws 1993, LB 370, § 12.

Exhibit 4

§ 29-423. Citation; Supreme Court; prescribe form; contents.

To achieve uniformity, the Supreme Court may prescribe the form of citation. The citation shall include a description of the crime or offense charged, the time and place at which the person cited is to appear, a warning that failure to appear in accordance with the command of the citation is a punishable offense, and such other matter as the court deems appropriate. The court may provide that a copy of the citation shall constitute the complaint filed in the trial court.

Source: Laws 1974, LB 829, § 2.

§ 29-424. Citation; contents; procedure; complaint; waiver; use of credit card authorized.

When a citation is used by a peace officer or when a citation is used by an official or inspector pursuant to section 19-4801, he or she shall enter thereon all required information, including the name and address of the cited person, the offense charged, and the time and place the person cited is to appear in court. Unless the person cited requests an earlier date, the time of appearance shall be at least three days after the issuance of the citation. One copy of the citation shall be delivered to the person cited, and a duplicate thereof shall be signed by such person, giving his or her promise to appear at the time and place stated therein. Such person thereupon shall be released from custody. As soon as practicable, the copy signed by the person cited shall be delivered to the prosecuting attorney.

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Source: Laws 1974, LE
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HANDCUFFS AND RESTRAINTS

POLICY:

All persons arrested and taken into custody by Omaha Police officers will be handcuffed and searched, unless specifically exempted by this General Order. Officers will receive additional training on the use of leg restraints, and will exercise reasonable care in the use of these devices.

PROCEDURE:

A. This General Order pertains to those persons who are arrested and taken into full custody to be logged in jail or any other detention facility.

B. When placing a suspect in custody, the officer will make a thorough and complete search of the person.

C. Citizens who are merely detained for investigation, for the issuance of a traffic citation, or for an identification check, shall not be handcuffed or restrained unless officers are able to justify a reasonable suspicion the person or the circumstances pose a significant danger to the officer or the public.

I. USE OF HANDCUFFS

A. Persons arrested and taken into custody will be handcuffed unless they fall into one of the following exceptions, in which case handcuffing will be at the discretion of the officer.

1. Elderly, disabled, ill, or injured persons who do not represent an apparent risk to others and are incapacitated. Officers are reminded, persons confined to a wheelchair may have tremendous upper body strength and caution should be exercised.

2. Juveniles under the age of 16 who do not represent an apparent risk to others, or risk of escape.

B. Insofar as possible, handcuffs will be applied behind the back, palms out, and double locked.

II. USE OF OTHER RESTRAINTS

A. Temporary devices such as flex-cuffs or cord-cuffs may be used when conventional handcuffs are unavailable or impractical.

B. A restraint cord may be used as a waist belt to secure handcuffs.

C. When necessary, officers may immobilize the legs of combative prisoners with soft leg restraints, commonly known as "hobbles." Hobbles may be flexible handcuffs, commercial leg restraint devices, or lengths of approximately half-inch diameter cotton or nylon rope with a fixed loop on one end. Officers must have received defensive tactics training in proper leg restraint procedures before attempting to immobilize the legs of prisoners.

D. When leg restraints are used, the officer must state in the arrest report; "the subjects legs had to be immobilized with leg restraints" and explain why.

III. RESTRAINT GUIDELINES

A. The officer who has custody of a handcuffed person will check the handcuffs after application and make adjustments as necessary.

B. If a restrained subject is transported by ambulance, an officer shall ride in the ambulance with the subject.

C. Ordinarily, persons in restraints should not be left unsupervised including those who are placed in the back seat of a cruiser with a cage. Restraints should not be attached to vehicles, objects, or to the arrestee's handcuffs. The restraint position known as "hog tying" (face down with their hands behind their back and their legs tied to the handcuffs) is strictly prohibited.

D. When transporting a person in leg restraints, the trailing end of the restraint must be anchored (pinched) in the passenger door of the vehicle so as not to catch on anything while the vehicle is motion.

E. The officer assumes the responsibility for the safety and security of the person taken into custody and their personal property. The officer shall assist when walking up and down stairs and on questionable footing.

IV. REQUESTING ASSISTANCE

A. Whenever possible, an officer alone shall summon assistance to initiate an arrest.

B. When circumstances permit, a police officer alone, shall summon assistance when there is more than one person taken into custody or when the person is presumed dangerous.

(Source: General Order #34-74, 73-85, 15-92 & 45-97)

"Exhibit 8"

CITATIONS

POLICY:

The Omaha Police Department will set traffic citation court arraignments for dates and times according to a specific schedule. Each Bureau will have times and days of the week assigned for arraignments.

PROCEDURE:

I. TYPES OF CITATIONS

A. Traffic citations (computerized).
B. Parking citations (computerized).
C. Criminal citations (computerized).
D. Courtesy citations (non-computerized).
E. Courtesy Vehicle Check - "Red Tag" (non-computerized).

II. CHECKING OUT CITATIONS

A. The minimum issue of citations is:

1. Traffic citations - 10 each in tablet form.
2. Parking citations - 10 each in tablet form.
3. Criminal citations - 10 each in tablet form.
4. Courtesy citations - 25 each in tablet form.
5. Courtesy Vehicle Check - 1 or more in single form.
6. Officers will be issued all five (5) types of citations as needed.

B. Parking Control Technicians are issued Parking Citations only.

C. The Vehicle Impound Unit only uses the Courtesy Vehicle Check (Red Tag) Citations.

D. Officers should fill out the **ISSUE CARD** completely and correctly, and turn the card into their respective supervisors. The supervisor turns the card into the Information Squad, before the shift ends.

1. The **traffic and parking citation "Issue Cards"** are placed in the metal lock box with citations.

2. The **criminal citation "Issue Cards"** are sent to the Data Center.

III. TRACKING CITATIONS

A. If citations cannot be issued within a reasonable time period, (due to illness, transfer, or termination) return them to the responsible Sergeant for computer cancellation.

B. A Verification Report is prepared to account for citations issued to employees. Red Tags have no inventory procedure.

C. Use citations in numerical order from the lowest number to the highest number.

D. Do not abbreviate the month on citations. This procedure is necessary for citation entry into the computer system.

IV. SHIFT ASSIGNMENT DESIGNATION ON CITATIONS

A. "A" to be used by "A" Shift Patrol Officers, and "A" Shift Traffic Officers (2300-0700).

B. "B" to be used by "B" Shift Patrol Officers, Parking Control Technicians, and Airport Authority personnel.

C. "C" to be used by "C" Shift patrol Officers.

D. "D" to be used by "B" Shift Traffic Officers (0700-1500).

E. "E" to be used by "C" Shift Traffic Officers (1500-2300).

F. "F" to be used by "D" Shift Patrol Officers.

V. TURNING IN CITATIONS

A. As soon as possible completed citations are turned into the officer's field sergeant.

B. The sergeant promptly turns the citations into the Information Squad.

C. The Information Squad places the traffic and parking citations in the metal lock box for transportation to the courts.

D. Criminal citations are attached to pertinent reports, and returned to the field sergeant.

VI. CITE AND RELEASE

A. Where And When Criminal Citations Are To Be Written

1. The issuing of a citation to a person for a misdemeanor offense may take place any time during the process from original apprehension to custodial situations within Police Headquarters.

2. The investigating officer will determine when and where to issue a citation. The investigating officer must evaluate all information, evidence, and other indicators to determine if issuing a criminal citation is appropriate in lieu of booking.

3. A citation is a substitute for the booking and the bonding process and implies the accused is in custody when the citation is issued.

4. Prior to issuing a criminal citation, the officer will ensure the subject is not presently wanted. The subject is checked through Information Channel 5 by telephone or police radio.

NOTE: A few crimes require a booking after one (1) or more prior convictions; consequently, a data check for PRIOR CONVICTIONS IS IMPORTANT. (Information regarding prior convictions for shoplifting cannot be given over the radio and must be obtained via telephone only.)

B. Grounds For Arrest

1. Whenever possible issue citations instead of custody for booking type arrests, consistent with the following:

2. Officers who have grounds to make an arrest may take the accused into custody or, already having done so, detain him further when the accused fails to identify himself satisfactorily, or refuses to sign the citation or when the officer has reasonable grounds to believe that:

a) The accused will refuse to respond to the citation.

b) Such action is necessary in order to carryout out legitimate investigative functions.

c) The accused has no ties to the jurisdiction reasonably sufficient to assure his appearance.

d) The accused has previously failed to appear in response to a citation or has one or more outstanding warrants.

e) The accused was stopped for any driving code violation requiring physical arrest, e.g. Felony Motor Vehicle Homicide;

f) The offense was ineligible for citation release as noted in departmental written policy.

g) There was a reasonable likelihood that the offense or offenses would continue or resume, or the safety of the arrestee or other persons or property would be imminently endangered by release of the person arrested.

h) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offense, would be jeopardized by immediate release of the person arrested.

C. Booking In Lieu Of Criminal Citation.

Because the policy of the Omaha Police Department is to issue citations in lieu of booking process (for misdemeanor arrests), the arresting officer must justify, in the crime reports, the use of the physical arrest, booking, and bonding procedures, in lieu of issuing a citation.

1. EXAMPLE: Arrestee has one or more failures to appear, or refuses to sign the citation, or lives in another state, etc.

2. A Command Officer must approve the booking of arrestees under these circumstances. The arresting Officer will include in the narrative section of the reports all reasons and circumstances contributing to the decision to book the suspect as well as the name of the Command Officer who authorized the booking. Approval of the reports may be done by the authorizing Command Officer or through the arresting Officer's normal Command practice.

D. Combining Criminal And Traffic Charges

1. All charges, traffic and criminal, resulting from a misdemeanor arrest that is not booked, will be cited together on a single criminal citation. This does not include parking charges where the driver of the vehicle is identified and present.

2. Traffic citations will not be used when traffic charges accompany any misdemeanor arrest involving a criminal citation.

3. The elements of any traffic charge will be explained in the narrative section of the incident report.

4. If there are more than three charges brought against a violator, additional criminal citations should be initiated and all citations relating to the incident should be stapled together along with the accompanying INCIDENT REPORT.

E. Refusal To Sign A Criminal Citation

1. Officer's are authorized to take into custody and further detain a person who refuses to sign a criminal citation. Unlike a traffic citation, however, there is no separate charge of refusal to sign on which to additionally charge the person.

2. When an officer issues a criminal citation to a person who refuses to sign the citation, the officer will:

a) Inform the person being cited that his/her signature on the citation is not an admission of guilt but only a promise to appear in court.

b) Further inform the person being cited that the citation is being issued in lieu of arrest and continued custody.

c) If the person being cited still refuses to sign the citation, he/she is taken into custody like any normal arrest and taken to Central Station where he/she is booked rather than cited for the charge.

d) The arresting officer will detail in the crime report the circumstances of the person's refusal to sign the citation. The officer will write "REFUSED TO SIGN-BOOKED" on the signature line of the citation and issue a copy of the unsigned citation to the arrested person.

F. Exception To Refusing To Sign A Criminal Citation

1. Possession of Marijuana, One Ounce or Less (first offense) and Possession of Drug Paraphernalia are infractions. If a person is cited for Possession of Marijuana, One Ounce or Less, or Possession of Drug Paraphernalia and he/she refuses to sign the citation and/or put a fingerprint on the citation, the citation is issued and the violator's copy (even though unsigned and/or no fingerprint) is given tot he suspect.

2. The suspect will not be booked for these violations because they are infractions and not subject to the same procedures as other criminal citations.

G. Search Of Arrestee. The right to search during the arrest process remains the same regardless of whether the arrestee is cited or booked into Detention.

H. Reports. A criminal citation MUST NEVER stand-alone. An INCIDENT REPORT must always accompany the criminal citation and should provide details for which the criminal citation was written.

I. Warrant Arrests. Citations will not be issued in lieu of serving warrants. Warrants are to be served on persons. As result, subjects of warrants are to be booked and released on the bond as stated on the warrant.

VII. OFF-DUTY EMPLOYMENT

A. Privately employed off-duty uniformed officers, may issue traffic or criminal citations for violations occurring in their presence. Such violations or criminal incidents could occur inside the establishment or on the parking lot.

B. Off-duty uniformed officers may also take action if they witness a misdemeanor crime or if a felony occurs. The off-duty officer may call an on-duty officer for assistance.

"Exhibit 9"

OMAHA POLICE DEPARTMENT
OMAHA, NEBRASKA

GENERAL ORDER

Number: 25-05		Date of Issue: 09 September 2005	Effective Date: 09 September 2005
Rescinds:	Amends: Vol. II, "H", page 2	SOP Reference: Vol. II, "H", page 2	Accreditation Standard(s):
Subject: **HANDCUFFS AND RESTRAINTS**			

POLICY:

All persons arrested and taken into custody by Omaha Police officers will be handcuffed and searched, unless specifically exempted by this General Order. Officers will receive additional training on the use of leg restraints, and will exercise reasonable care in the use of these devices.

PROCEDURE:

A. This General Order pertains to those persons who are arrested and taken into full custody to be logged in jail or any other detention facility.

B. When placing a suspect in custody, the officer will make a thorough and complete search of the person.

C. Citizens who are merely detained for an investigation, the issuance of a traffic citation, or for an identification check will not be handcuffed or restrained unless officers are able to justify a reasonable suspicion that the person or the circumstances pose a significant danger to the officer or to the public. **Officers arresting and citing a citizen for the traffic misdemeanor offense of No Proof of Insurance only, shall be prohibited from handcuffing the motorist unless other risk factors are present. Officers issuing a citation for Driving during Suspension are strongly encouraged to use good judgment and discretion when deciding whether or not to place the citizen in handcuffs. Vehicle searches incident to the arrest and citation for the above misdemeanor traffic offenses will be limited to accessible areas within the vehicle passenger compartment unless articulable facts dictate an expanded search of the vehicle.**

I. USE OF HANDCUFFS

A. Persons arrested and taken into custody will be handcuffed unless they fall into one of the following exceptions, in which case handcuffing will be at the discretion of the officer.

1. Elderly, disabled, ill, or injured persons who do not represent an apparent risk to others and are incapacitated. Officers are reminded that persons confined to a wheelchair may have tremendous upper body strength and caution should be exercised.

2. Juveniles under the age of 16 who do not represent an apparent risk to others, or risk of escape.

B. Insofar as possible, handcuffs will be applied behind the back, palms out, and double locked.

II. USE OF OTHER RESTRAINTS

A. Temporary devices such as flex-cuffs or cord-cuffs may be used when conventional handcuffs are unavailable or impractical.

B. A restraint cord may be used as a waist belt to secure handcuffs.

C. When necessary, officers may immobilize the legs of combative prisoners with soft leg restraints, commonly known as "hobbles." Hobbles may be flexible handcuffs, commercial leg restraint devices, or lengths of approximately half-inch diameter cotton or nylon rope with a fixed loop on one end. Officers must have received defensive tactics training in proper leg restraint procedures before attempting to immobilize the legs of prisoners.

D. When leg restraints are used, the officer must state in the arrest report; "the subjects legs had to be immobilized with leg restraints" and explain why.

III. RESTRAINT GUIDELINES

A. The officer who has custody of a handcuffed person will check the handcuffs after application and make adjustments as necessary.

B. If a restrained subject is transported by ambulance, an officer shall ride in the ambulance with the subject.

C. Ordinarily, persons in restraints should not be left unsupervised including those who are placed in the back seat of a cruiser with a cage. Restraints should not be attached to vehicles, objects, or to the arrestee's handcuffs. The restraint position known as "hog tying" (face down with their hands behind their back and their legs tied to the handcuffs) is strictly prohibited.

D. When transporting a person in leg restraints, the trailing end of the restraint must be anchored (pinched) in the passenger door of the vehicle so as not to catch on anything while the vehicle is motion.

E. The officer assumes the responsibility for the safety and security of the person taken into custody and their personal property. The officer will assist when walking up and down stairs and on questionable footing.

IV. REQUESTING ASSISTANCE

A. Whenever possible, an officer alone will summon assistance to initiate an arrest.

B. When circumstances permit, a police officer alone will summon assistance when there is more than one person taken into custody or when the person is presumed dangerous.

By Order of

Thomas H. Warren, Sr.
Chief of Police

THW:R&P/hbb/shp

"Exhibit 10"

•MEMORANDUM•

TO: Tristan Bonn, Public Safety Auditor
FROM: Denise DeForest
RE: Analyzing Disorderly Conduct Arrests Based Upon Citizen Speech Directed To Officers -- Policy, Training, and Investigative Considerations
Date: March 31, 2004

I. Introduction and Overview of Auditor Concerns:

The Auditor's Office has, for some time, been aware of citizen complaints in which a citizen has been arrested for disorderly conduct on the grounds that he or she had sworn at, or otherwise insulted, the arresting officer In these situations, the arrest process usually does not proceed smoothly, with the citizen's objections becoming more vociferous as he or she protests the arrest. As a result, the citizen is often charged with resisting arrest as well as disorderly conduct. The Auditor has also had a number of conversations with individual line officers, as well as with members of the OPD management, about the department's current interpretation of the Omaha disorderly conduct ordinance as it applies to speech issues.

These complaints and discussions have recently prompted the Auditor's Office to more closely examine the issues of disorderly conduct crimes and the First Amendment protection of speech. You asked me to examine the legal underpinnings of First Amendment concerns as they relate to arrests on the basis of speech directed at officers, and to suggest guidelines for Departmental policies and investigations concerning these issues.

This memo outlines the basic principles of First Amendment law concerning speech directed at officers and disorderly conduct, identifies the written OPD policies which currently are available to guide officers about this issue, and proposes a series of points that the department's policy on disorderly conduct arrests should include. The memo finishes with a short series of investigative issues which should be part of any internal affairs inquiry into a complaint involving arrest or detention on the basis of speech toward an officer.

II. 1st Amendment Basics:

The issue of what type of language directed as a police officer may be proscribed by criminal penalty has been discussed in several U.S. Supreme Court cases.

The First Amendment to the United States constitution protects a significant amount of verbal criticism and challenge directed at police officers. Speech is often provocative and challenging but it is nevertheless protected against censorship or

punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconveniences, annoyance, or unrest. [1]

Speech which can lawfully result in the arrest of the speaker, therefore, is restricted to language which fits within narrowly limited classes of speech. [2]

A. The "Fighting Words" Exception to Free Speech:

The best-known class of speech which may be lawfully punished involves "fighting words." "Fighting words" are words that "by their very utterance inflict injury or tend to incite an immediate breach of the peace."[3] "Fighting words" must be inherently likely to induce the ordinary person to immediately react in a violent manner.[4] The United States Supreme Court has also defined the concept of "fighting words" to require "a direct personal insult or an invitation to exchange fisticuffs." [5]

Words may be "fighting words" only if words are personally directed to a specifically identifiable individual.[6] Moreover, "the mere presumed presence of unwitting listeners or viewers does not serve automatically to justify curtailing all speech capable of giving offense."[7]

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[1] City of Houston, Texas v. Hill, 482 U.S. 451, 461 (1987).

[2] Gooding v. Wilson, 405 U.S. 518, 521-22 (1972).

[3] Hill, 482 U.S. at 461-62.

[4] Cohen v. California, 403 U.S. 15, 20 (1971). See also Chaplinsky v. New Hampshire, 315 U.S. 568, 574 (1942)(defining "fighting words as those "likely to provoke the average person to retaliation, and thereby cause a breach of the peace"); Gooding, 405 U.S. at 528(overturning a conviction on First Amendment grounds because the relevant Georgia statute criminalized speech in which there "was no likelihood that the person addressed would make an immediate violent response").

[5] Johnson v. Texas, 491 U.S. 397, 409 (holding that the expressive conduct of flag burning does not meet the test for fighting words).

[6] See Cohen, 403 U.S. at 30 (reversing a conviction of a man who wore a jacket through the hallways of a courthouse with the words "F*** the Draft" on the back on the grounds that "[n]o individual actually or likely to be present could reasonably be regarded the words on appellant's jacket as a direct personal insult"). See also Gooding, 405 U.S. at 524 (holding that fighting words "have a direct tendency to cause acts of violence by the person who whom, individually, the remark is addressed").

[7] Cohen, 403 U.S. at 21.

Whether a particular statement is to be considered to constitute "fighting words" is to be measured by an objective standard: An objective standard does not permit the recipient of the speech to be the sole judge of whether the words are likely to provoke a violent reaction from him or her. The test is, instead, one of what men of common intelligence understand would be words likely to cause an average addressee to fight.[8]

It is also not simply the specific content of the words themselves which determines whether they are within the "fighting words" doctrine. The circumstances in which the words are spoken are as important as the words themselves.[9]

"Fighting words" are not limited to uses of profanity.[10] The simple use of profanity, however, is generally not in itself sufficient to constitute "fighting words" and to justify an arrest.[11][12]

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[8] Chaplinsky, 315 U.S. at 573.

[9] State v. Boss, 238 N.W.2d 639, 643 (Neb. 1976)("[W]e agree that whether any particular use of abusive language constitutes 'fighting words' depends not only upon the words, but upon the circumstances as well"). Cf. Chaplinsky, 315 U.S. at 573 ("The English language has a number of words and expressions which by general consent are 'fighting words' *when said without a disarming smile*")(emphasis added).

[10] See e.g. Chaplinsky, 315 U.S. at 573.

[11] See Buffkins v. City of Omaha, Douglas County, Nebraska, 922 F.2d 465, 472 (8th Cir. 1990)(holding that a suspect's statement which included use of the term "a**h**" directed at an officer could not reasonably have prompted a violent response from the arresting officers, was not "fighting words" under Chaplinsky, and could not be the basis of a lawful arrest under Omaha's disorderly conduct statute). See also State v. Mauk, 1992 WL 340670 (Neb. App., November 24, 1992)(adopting Buffkins, and holding that Mauk's use of the term "a**h**" directed at an Omaha police officer during a traffic stop was not, by itself, a violation of the Omaha disorderly conduct ordinance).

[12] It has been suggested to the Auditor that the Nebraska Supreme Court opinion in State v. Groves, 469 N.W.2d 364 (Neb. 1991), authorizes the arrest of a citizen who uses a profanity at an officer simply because of the profanity. This is not a good reading of the Groves opinion for at least four reasons.

First, this alternative reading of Groves ignores the unambiguous facts of that opinion. Groves was indeed issuing an invitation to fisticuffs to the arresting officer -- he was so menacing a the start of the contact that the officer drew his gun early in the incident, he taunted the officer to try and come arrest him one-on-one before backup arrived, he fought with the arresting officers, and he did indeed use profanity during these interactions. It is a classic disorderly case that fits within the fighting words doctrine because of what Groves did during the interaction.

Second, this interpretation of the Groves opinion also ignores what the Groves court did not identify as within the fighting words doctrine. Early in the contact with the officer; Groves said, "What the f** do you want?" and "I don't' care who the f** you

It is not sufficient to meet the test for "fighting words" that the words are "vulgar or offensive."[13] It is also not sufficient that the words are "abusive," except to the extent that they meet the test for "fighting words."[14] Words which are "derisive or annoying" are not sufficient to permit an arrest, in the absence of true "fighting words[15]. Words which would be considered to be merely "harsh insulting language" or which are "conveying...disgrace" are not within the ambit of the "fighting words" doctrine.

It is also not disorderly conduct, *per se*, to argue with an officer. In the Hill case, the U.S. Supreme Court held that a statute which made it a crime to "oppose, molest, abuse or interrupt" a police officer in the performance of his duty impermissibly tread on the First Amendment: "The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."[16] Verbal opposition to police action, therefore, is not lawful grounds for an arrest until it rises to the level of "fighting words."[17]

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are." The Groves opinion does not find that these uses of profanity were part of the fighting words -- the fighting words doctrine is applied once Groves is taunting the officer. It was not merely the use of profane words which triggers application of the doctrine, but the whole of the circumstances.

Third, this alternative view of Groves also ignores the Nebraska Supreme Court's other decisions in this area, such as Boss, as well as the decisions of the Eight Circuit and the United States Supreme Court referenced in this memo.

Fourth and most importantly, this alternative of interpretation has already led to successful §1983 civil rights actions against officers and departments. See Buffkins, 922 F.2d at 472, and the cases noted in footnote 24. It is additionally notable that the Sixth Circuit opinion cited in footnote 24 went so far as to deny an officer qualified immunity for arresting an individual who had shouted "f*** you" because the officer should have known that the words used by the defendant were protected by the First Amendment.

[13] Cohen, 403 U.S. at 23.

[14] State v. Boss, 238 N.W.2d 639, 643 (1976)("The word 'abuse' and similarly broad terms in like statutes [to Nebraska's legislation making it a crime to resist or abuse an officer] have been held to pass constitutional muster under the First Amendment . . only if they are construed so as to apply the statute to punish only what have been called "fighting words").

[15] See Chaplinsky, 315 U.S. at 573.

[16] Hill, 482 U.S. at 462.

[17] Hill, 482 U.S. at 466, note 12.

B. Threats Or Intimidation Are Also Proscribed:

The Nebraska Supreme Court has also defined the exceptions to First Amendment protection for words which are "threatening, intimidating, or terrifying."[18]

C. Inciting Imminent Lawless Action:

A third area of speech which can be the lawful basis for an arrest is speech which "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[19] This type of speech occurs most often when a speaker is addressing a group of like-minded individuals and is exhorting them to take specific, and unlawful, action.

The government may not "assume that every expression of a provocative idea will incite a riot, but have instead required careful consideration of the actual circumstances surrounding such expression."[20] It is not sufficient to justify arrest that the speech has the potential to create a breach of the peace.[21] The fact that the speech may be offensive or disagreeable is, again, not sufficient to permit criminalization of that speech. "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.[22]

III. Current OPD Policy On Disorderly Conduct Arrests and First Amendment Issues:

In my review of the Department's policies and procedures manual, I found no written policy which addressed disorderly conduct arrests or profanity by citizens.

The Department has a written policy on resisting arrest. This policy defines one of the alternative elements for a lawful resisting charge as "[u]ses or threatens to use physical force or violence against a police officer" while "intentionally preventing or attempting to prevent a police officer...from effecting the arrest of the actor or

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[18] State v. McKee, 568 N.W.2d 559, 565 (Neb. 1997). See also Watts v. United States, 394 U.S. 705, 707 (1969)("What is a threat must be distinguished from what is constitutionally protected speech").

[19] Brandenberg v. Ohio, 395 U.S. 444, 447 (1969).

[20] Texas v. Johnson, 491 U.S. 397, 409 (1989).

[21] Id.

[22] Id. at 414.

another..." Resisting Arrest - Assaulting An Officer, Procedure § I.A. (as revised January, 2001).

IV. Policy Considerations:

The Department's Resisting Arrest policy uses the term "threatens to use physical force or violence" to describe the type of citizen action which could lawfully prompt a detention or arrest. The nature of a threat is typically rather obvious to the listener, and the use of this phrase does not appear to create confusion as to the application or limits of that policy. The Resisting Arrest policy, however, also does not address the disorderly conduct issues. Disorderly conduct arrests on the basis of speech toward officers implicates a far more complex set of legal issues than does an arrest on the basis of threats. Given that this is a relatively complex area of the law, as well as an issue which could be involved in many citizen-officer interactions, it would be advantageous to the Department and for the officers that there be written policy guidance for officers on disorderly conduct arrests.

A. The Necessary Elements for a Disorderly Conduct Arrest Policy:

Any policy addressing the proper use of law enforcement authority as a response to citizen speech should explain that the language of a citizen is the lawful basis for an arrest only when it rises to one of three levels:

1) words which fit the "fighting words" doctrine,

2) words which are "threatening, intimidating, or terrifying," or

3) words which are "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

In discussing the "fighting words" doctrine, the policy should explain that the doctrine is met only when the words are directed to a specific individual. These words must be of the type which a reasonable person would believe would cause an immediate and violent response. Whether or not the words reach the level of "fighting words" is an objective test to be based on all of the circumstances of the encounter. As a matter of law, however, it is not enough to justify an arrest if the words are merely vulgar, offensive, disagreeable, annoying, or disrespectful. It is not sufficient to constitute fighting words for a citizen to use profanity toward an officer without anything more to justify a lawful arrest. It is also not sufficient to justify an arrest for an individual to use words to express opposition to an officer's actions or statements.

B. The Law On First Amendment Protections of Speech Create A Specific Training Need:

As the discussion of the relevant legal principles demonstrates, there is quite a bit of latitude in the law for boorish, insulting, and crass behavior by individuals. It is not that the courts and the law condone wretched behavior by citizens toward officers or toward each other. There are, however, constitutional limits to governmental action, and the government generally cannot force citizens to speak civilly.[23] The use of insulting language toward officers creates an understandable problem for officers. This problem, however, cannot be solved with an arrest or other use of law enforcement authority unless the elements of a crime have also been met.[24]

As is true whenever the Department creates a new written policy, the new policy should be the topic of in-service training for officers. In addition to that new training, however, the Department should consider expanding its academy training on verbal defensive tactics. The Department already trains officers on the use of verbal judo to defuse tense situations. This training should include specific discussions on how to respond to, and decrease, verbal opposition, including the use of profanity, without resort to detentions and arrests or other hands-on procedures.

C. Checklist of Investigative Issues:

As noted in the introduction, the Auditor's Office is aware that there have been citizen complaints filed with Internal Affairs in which the Department will need to determine if an officer abused his or her discretion by arresting or detaining a citizen on the basis of the citizen's speech. Before Internal Affairs can perform an adequate analysis of whether such a complaint states a legitimate claim, the Internal Affairs investigator should at least be able to answer all of the following questions:

Why was the individual arrested or detained?

What were the precise words used which were the basis of the arrest or detention?

To which specific individual, if any, were the words directed?

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[23] Gooding, 405 U.S. at 521-22 ("Constitutional guarantees of freedom of speech forbid the state to punish the use of words or language not within narrowly limited classes of speech").

[24] Detaining and arresting an individual because of a use of profanity has been the successful basis for §1983 civil rights action in several reported cases. See e.g. Johnson v. Campbell, 332 F.3d 199 (3rd Cir. 2003)(holding that the officer who arrested Johnson for calling him a "son of a b***" had, as a matter of law, arrested Johnson without probable cause of a crime); Sandul v. Larion, 119 F.3d 1250, 1255 (6th Cir. 1997)(holding that an officer was not entitled to qualified immunity in a §1983 civil rights action because he should have known that arresting Sandul for shouting "f*** you" at protestors was protected speech and not the lawful basis for arrest).

What circumstances existed at the time of the speech which have a bearing on whether or not those words were an invitation to fisticuffs (or were capable of producing an immediate violent response), constituted a threat, or were an attempt to incite imminent violence by others?

"Exhibit # 11"

§ 28-901. Obstructing government operations; penalty.

(1) A person commits the offense of obstructing government operations if he intentionally obstructs, impairs, or perverts the administration of law or other governmental functions by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

(2) Obstructing government operations is a Class I misdemeanor.

Source: Laws 1977, LB 38, § 186.

§ 28-902. Failure to report injury of violence; physician or surgeon; emergency room or first-aid station attendant; penalty.

(1) Every person engaged in the practice of medicine and surgery, or who is in charge of any emergency room or first-aid station in this state, shall report every case, in which he is consulted for treatment or treats a wound or injury of violence which appears to have been received in connection with the commission of a criminal offense, immediately to the chief of police of the municipality or to the sheriff of the county wherein the consultation or treatment occurs. Such report shall include the name of such person, the residence, if ascertainable, and a brief description of the injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this section are concerned.

(2) Any person who fails to make the report required by subsection (1) of this section commits a Class III misdemeanor.

Source: Laws 1977, LB 38, § 187.

§ 28-903. Refusing to aid a peace officer; penalty.

(1) A person commits the offense of refusing to aid a peace officer if, upon request by a person known to him to be a peace officer, he unreasonably refuses or fails to aid such peace officer in:

(a) Apprehending any person charged with or convicted of any offense against any of the laws of this state; or

(b) Securing such offender when apprehended; or

(c) Conveying such offender to the jail of the county.

(2) Refusing to aid a peace officer is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 188.

§ 28-904. Resisting arrest; penalty; affirmative defense.

(1) A person commits the offense of resisting arrest if, while intentionally preventing or attempting to prevent a peace officer, acting under color of his or her official authority, from effecting an arrest of the actor or another, he or she:

(a) Uses or threatens to use physical force or violence against the peace officer or another; or

(b) Uses any other means which creates a substantial risk of causing physical injury to the peace officer or another; or

(c) Employs means requiring substantial force to overcome resistance to effecting the arrest.

(2) It is an affirmative defense to prosecution under this section if the peace officer involved was out of uniform and did not identify himself or herself as a peace officer by showing his or her credentials to the person whose arrest is attempted.

(3) Resisting arrest is (a) a Class I misdemeanor for the first such offense and (b) a Class IIIA felony for any second or subsequent such offense.

(4) Resisting arrest through the use of a deadly or dangerous weapon is a Class IIIA felony.

Source: Laws 1977, LB 38, § 189; Laws 1982, LB 465, § 2; Laws 1997, LB 364, § 10.

§ 28-905. Operating a motor vehicle or a vessel to avoid arrest; penalty.

(1) Any person who operates any motor vehicle to flee in such vehicle in an effort to avoid arrest or citation for the violation of any law of the State of Nebraska constituting a misdemeanor, infraction, traffic infraction, or any city or village ordinance, except nonmoving traffic violations, commits the offense of misdemeanor operation of a motor vehicle to avoid arrest.

(2) Any person who operates any motor vehicle to flee in such vehicle in an effort to avoid arrest for the violation of any law of the State of Nebraska constituting a felony commits the offense of felony operation of a motor vehicle to avoid arrest.

(3) Operating a motor vehicle to avoid arrest under subsection (1) of this section is a Class I misdemeanor. The court shall, as part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years and shall order that the operator's license of such person be revoked for a like period.

(4) Operating a motor vehicle to avoid arrest under subsection (2) of this section is a Class IV felony. The court shall, as part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years and shall order that the operator's license of such person be revoked for a like period.

(5)(a) Any person who operates a vessel as defined in section 37-1203 to flee in such vessel in an effort to avoid arrest or citation for the violation of

"Exhibit 12"

OMAHA POLICE DEPARTMENT
OMAHA, NEBRASKA

GENERAL ORDER

Number: 7-03		Date of Issue: 11 February 2003	Effective Date: 11 February 2003
Rescinds:	Amends:	SOP Reference: Vol. 2, OPS T, p. 27	Accreditation Standard(s): 1.2.4
Subject: **TRAFFIC LAW ENFORCEMENT**			

POLICY:

Traffic law enforcement is intended to enhance the safety of public roadways. As a result, the Omaha Police Department strives to maintain the practices that result in fair, safe, and efficient traffic enforcement activities. Accordingly, Omaha Police Officers who observe traffic law violations are expected to take appropriate enforcement action, when practical.

PROCEDURE:

VIII. SEARCHES OF **VEHICLES**

A. Normally, a vehicle should not be searched solely on the basis of a traffic infraction or citation stop without reasonable suspicion, probable cause **and** without the consent of the individual.

B. **An** exception to this policy would be the "PLAIN VIEW; OPEN VIEW" doctrine.

1. Courts have long noted that no search is involved when an officer "fortuitously views evidence from a place in which he has a right to be."

2. An officer may seize any item which he/she observes in plain view or open view (including items observed by using a flashlight), **IF HE/SHE HAS PROBABLE CAUSE** to believe that the item is a weapon, contraband, loot, anything used in committing a crime, or other evidence of crime.

C. Officers may also search vehicles when consent to search is given. When permission to search is given, officers must complete a PERMISSION FOR SEARCH Form.

By Order of

Donald L. Carey

Donald L. Carey
Chief of Police

R&P/mam

"Exhibit 13"

OMAHA POLICE DEPARTMENT
OMAHA, NEBRASKA

GENERAL ORDER

Number:		Date of Issue:	Effective Date:
7-03 Supplement #2		17 July 2003	17 July 2003
Rescinds: G.O. 7-03 and G.O. 7-03 Supplement #1	Amends:	SOP Reference: Vol. 2, OPS T, p. 27	Accreditation Standard(s): 1.2.4
Subject: **TRAFFIC LAW ENFORCEMENT – CONSENT TO SEARCH**			

POLICY:

Traffic law enforcement is intended to enhance the safety of public roadways. As a result, the Omaha Police Department strives to maintain the practices that result in fair, safe, and efficient traffic enforcement activities. Accordingly, Omaha Police Officers who observe traffic law violations are expected to take the appropriate enforcement action, when practical.

PROCEDURE:

I. WARRANTLESS SEARCHES OF VEHICLES – TRAFFIC STOPS

A. Traffic Infraction
A vehicle should not be searched solely on the basis of a traffic infraction. Requesting permission to search on a random basis and absent any articulable suspicion is prohibited. Officers must be able to articulate the suspicion that led to the request for permission to search.

B. Initial Investigation
Following a stop, officers may conduct a preliminary investigation, of the driver and passengers, reasonably related to the stop. The preliminary investigation may include requesting identification, vehicle information, and running data checks.

Driver
- ***Required*** to provide a driver's license or identification, vehicle registration, and/or proof of ownership and insurance.

Passenger(s)
- A passenger may *not* be ordered from a lawfully stopped vehicle without "***reasonable suspicion***" that the passenger violated the law. However, the passenger may be ordered from the vehicle if they interfere with the search of the vehicle or the conducting of an investigation.
- An adult, front seat passenger, not wearing a vehicle restraint is ***required*** to provide identification. *

- An officer may ***request*** identification from any other passengers in a vehicle, however, it is not required that the passenger comply, unless there is probable cause or reasonable suspicion that the passenger violated the law.

- If a passenger is in close proximity to contraband in plain view, the officer has probable cause to arrest the passenger.

C. Expanded Inquiry

1. Articulable Facts

Articulable facts are those facts that the officer can verbalize which give rise to a reasonable suspicion that a person has committed, is committing or is about to commit a crime.

- **Reasonable Suspicion.** Reasonable suspicion is specific reasonable inferences which the officer is entitled to draw from the facts in light of his / her experience. Reasonable suspicion is something less than the probable cause standard, and will not support an arrest.

- **Probable Cause.** Where the facts and circumstances within the officer's knowledge are more probable than not to warrant a belief that the suspect has committed, or is in the process of committing a crime.

2. Further Detainment

Reasonable Suspicion of criminal activity allows an officer to detain a person stopped for a traffic offense in order to obtain additional information regarding the officer's observations and or suspicions. Absent any additional articulable reasonable suspicion, continued detention of a motorist is prohibited.

D. Open View Doctrine

An officer may seize any item which he/she observes in plain view or open view (including items observed by using a flashlight), if the officer has probable cause to believe that the item is a weapon, contraband, loot, anything used in committing a crime, or other evidence of a crime.

E. Scope of the Search

- **Officer Safety Vehicle Frisk**
  If reasonable suspicion exists that the vehicle's occupants may be armed and dangerous, an "officer safety vehicle frisk" may be conducted. The scope of the search is limited to only the area(s) that is accessible to the suspected individual. This area may include the passenger side glove compartment if that area is within reach of the suspect.

- **Probable Cause**
  If probable cause exists the search may extend to the entire vehicle including closed containers.

- **Search Incident to Arrest**
  Incident to a lawful arrest, an officer search is limited to the interior passenger compartment of the vehicle [which may include any containers found within the compartment] unless probable cause exists to expand the scope of the search.

- **Vehicle Inventory**
  When a vehicle has been impounded, an inventory of the contents of the vehicle should be conducted.

II. CONSENSUAL SEARCHES OF VEHICLES – TRAFFIC STOPS

A consensual search is permissible if the consent is voluntary; the consent may be verbal or written.

A. Written Consent
If an officer requests permission to conduct a warrantless vehicle search and permission is voluntarily given, the officer may request the individual to provide signed acknowledgment of the consent, prior to the search, as provided below. (P.O. 5).

B. Documentation on Field Observation Card
Officers shall document all consent searches on a completed Field Contact / Observation Card (OPD - PO 150). The Field Card shall document suspicions that resulted in a consent search, along with any other pertinent information regarding the contact.

By Order of

Alan Pepin

Alan F. Pepin
Chief of Police

AFP/R&P:shp

"Exhibit 14"

MEMORANDUM

DATE: December 19, 2003

TO: Chief Warren

FROM: Tristan Bonn

RE: Changes to General Order "Consent to Search"

Without going into too much history around this general order, suffice to say at some point this office was asked to review the committee's draft. We submitted the enclosed comments to Chief Pepin and Wendy Hahn. The most important comment was about the statement that an adult passenger not wearing a seat belt restraint be required to identify themselves. We found no support for that statement in the law and it was my understanding that Wendy concurred with that opinion. I also understood that this was going to be removed from the general order. Recently, we received the updated inserts and came across this general order again. I was surprised to see this language still in the ordinance. I am not sure how that language made its way to the final draft, but it puts the department at great risk. I again reread the seat belt statute and see nothing that even remotely provides that an adult passenger not belted be required to identify himself. I can't speak for the Law Department, but I would recommend that statement be removed.

I bring this to your attention because you may not have been aware of what turned up in the final draft. I thought you would want to check into this. Let me know if I can be of any assistance or if you have any questions. (I have included a copy of our original comments and the general order for your convenience).

Regards,

/s/

Tristan

B. Passenger, 2nd bullet

The standard says that "an adult passenger not wearing a vehicle restraint is required to provide identification according to state statutes . . ."

We searched for vehicle restraint and seatbelts in the state statutes. In an admittedly brief search, we found only a reference to a restraint system called the "occupant protection system" and a child passenger restraint. We found 60-6,270, which says that the driver and any front passenger must wear the occupant protection system. There is no requirement in this statute for back seat adult passengers to wear seatbelts. We found that a violation of 60-6,270 is an infraction, only a secondary violation and can only result in 1 ticket per stop, no matter how many people in the car do not have on seatbelts. 60-6,272. We found requirements for kids from 6 - 16 to wear belts in 60-6,267. We found a requirement for all persons in a motor vehicle driven by a provisional or school permit holder to wear seatbelts. 60-6,267(5).

We did not find a section which said that any adult in a car who is not wearing a seatbelt must provide identification. Could you let me know or double check the authority for that provision?

B. Passenger, Fourth Bullet

The standard refers to a passenger in close proximity to contraband, and the fact that an officer has probable cause to do an "investigative" arrest of the passenger.

That would be either probable cause to arrest, or reasonable articulable suspicion to investigatively detain the passenger.

C.1 Probable Cause

In the discussion of Probable Cause, the standard is stated as including that someone "is about to commit an offense." This phrase should be struck as contrary to law -- the definition for probable cause includes a reasonable belief that an offense has been or is being committed. (The ability to stop someone who is "about to commit an offense" is the reasonable suspicion standard and it provides for an investigative detention only, not an arrest. This is the same mistake earlier identified in the Traffic Stop SOP).

> Sample authority: "The lawfulness of the arrest without warrant, in turn, must be based upon **35* probable cause, which exists 'where 'the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that ' an offense has been or is being

committed.'" Ker v. State of California, -- U.S. --, --, 83 S.Ct. 1623, 1630-31, 10 L.Ed2d 726 (1963).

C.2 Further Detainment

The standard says that "Reasonable Suspicion allows an officer to detain a person stopped for a traffic offense in order to obtain additional information...." As the next sentence appears to recognize, the Reasonable Suspicion must be of criminal activity. Perhaps the first sentence should also reference criminal activity, as in "Reasonable Suspicion of criminal activity allows an officer to detain . . . "

E. Scope of Search - Officer Safety Frisk

The standard says that an officer safety vehicle frisk can be done if reasonable suspicion exists that the occupants present an officer safety risk. This is broader than the legal standard.

We did not have time to locate some caselaw, but know that it exists and given time, could find for you, which indicates the vehicle "stop and frisk" is based on the narrower pat down standard. In other words, "officer safety" is not the test – that is the reason for the test. The test is a reasonable suspicion that the occupant is armed and dangerous.

E. Scope of Search - Search Incident to Arrest:

In the discussion of the search which is possible as incident to arrest, the stated standard says that the search "is limited to the interior passenger compartment of the vehicle." It may be more complete to give the full standard: that search can be of the passenger compartment of that vehicle, and may include any containers found within the passenger compartment.

Authority: "When a police officer has made a lawful custodial arrest of the occupant of a vehicle, the officer may, as a contemporaneous incident of the arrest, search the passenger compartment of that vehicle. The officer may also examine the contents of any containers found within the passenger compartment. State v. Dallman, 621 N.W.2d 86, 98 (Neb. 2000)(citing State v. Roth, 331 N.W.2d 819 (Neb. 1983)).

E. Scope of Search – Search Incident to Arrest:

In order to conduct inventory searches, you must have a full inventory search policy that describes step by step how the inventory search is conducted. We have looked for this policy in the department's SOPs in the past and just can't remember right now if there is one – so just a word to the wise.

II. Consensual Searches of Vehicles

You may want to clarify somewhere in this section that even if written consent is not obtained, verbal consent must still be voluntarily given before the search is conducted.

"Exhibit 15" MARCH, 2004

U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics

Law Enforcement Management and Administrative Statistics, 2000: Data for Individual State and Local Agencies with 100 or More Officers

Personnel

Expenditures and pay

Operations

Community policing

Policies and programs

Equipment

Computers and information systems

Table 4a. Training requirements for new officer recruits and in-service officers, minimum education requirement for new officer recruits, and education-related incentives for officers in local law enforcement agencies, 2000

County	Name of agency	Hours of training required for: New officer recruits: Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
ALABAMA								
Etowah	Gadsden Police	1,320	640	680	40	HS	X	-
Houston	Dothan Police	800	640	160	12	HS	-	-
Jefferson	Jefferson County Sheriff	1,280	640	640	12	HS	X	X
Jefferson	Bessemer Police	480	480	0	12	HS	X	-
Jefferson	Birmingham Police	1,456	816	640	12	HS	X	X
Jefferson	Hoover Police	680	280	400	48	4Y	-	X
Madison	Huntsville Police	1,120	640	480	52	SC	-	X
Mobile	Mobile County Sheriff	672	492	180	24	HS	X	X
Mobile	Mobile Police	1,380	780	600	40	HS	X	X
Montgomery	Montgomery County Sheriff	560	560	0	12	HS	-	-
Montgomery	Montgomery Police	1,640	680	960	12	HS	-	-
Morgan	Decatur Police	1,200	720	480	32	HS	-	X
Tuscaloosa	Tuscaloosa Police	1,280	800	480	84	HS	-	-
ALASKA								
Anchorage	Anchorage Police	1,320	760	560	0	HS	X	X
ARIZONA								
Maricopa	Maricopa County Sheriff	—	—	—	—	—	—	—
Maricopa	Chandler Police	1,240	640	600	40	HS	-	X
Maricopa	Glendale Police	1,145	585	560	8	SC	-	X
Maricopa	Mesa Police	1,520	800	720	16	HS	-	X
Maricopa	Phoenix Police	1,320	800	520	40	HS	X	X
Maricopa	Scottsdale Police	640	640	0	8	SC	-	X
Maricopa	Tempe Police	1,225	665	560	16	SC	-	X
Pima	Pima County Sheriff	1,225	745	480	16	HS	-	X
Pima	Tucson Police	1,360	640	720	16	HS	-	X
Pinal	Pinal County Sheriff	960	480	480	8	HS	X	X
Yuma	Yuma Police	1,125	585	540	8	HS	-	X
ARKANSAS								
Craighead	Jonesboro Police	960	480	480	40	HS	-	-
Jefferson	Pine Bluff Police	988	508	480	28	HS	X	-
Pulaski	Pulaski County Sheriff	1,040	560	480	0	HS	-	-
Pulaski	Little Rock Police	1,280	800	480	40	HS	X	-
Pulaski	North Little Rock Police	1,280	720	560	0	HS	X	-
Sebastian	Fort Smith Police	960	480	480	40	HS	X	X
CALIFORNIA								
Alameda	Alameda County Sheriff	1,360	800	560	24	HS	X	X
Alameda	Alameda Police	1,560	1,040	520	24	HS	X	X
Alameda	Berkeley Police	1,560	920	640	24	SC	-	-
Alameda	Fremont Police	1,724	976	748	75	HS	X	-
Alameda	Hayward Police	1,520	1,040	480	90	HS	X	X
Alameda	Oakland Police	1,651	1,051	600	20	HS	X	X
Butte	Butte County Sheriff	1,440	880	560	72	HS	X	X
Contra Costa	Contra Costa County Sheriff	1,663	783	880	24	HS	X	X
Contra Costa	Concord Police	1,480	840	640	80	SC	X	X
Contra Costa	Richmond Police	1,640	960	680	44	SC	X	-
El Dorado	El Dorado County Sheriff	1,331	771	560	120	HS	X	X
Fresno	Fresno County Sheriff	1,224	664	560	24	SC	X	-
Fresno	Fresno Police	1,755	995	760	12	HS	X	X
Kern	Kern County Sheriff	1,360	800	560	24	HS	-	-
Kern	Bakersfield Police	1,480	800	680	12	HS	X	X
Los Angeles	Los Angeles County Sheriff	664	664	0	24	HS	X	X
Los Angeles	Beverly Hills Police	1,560	760	800	12	SC	X	X
Los Angeles	Burbank Police	1,766	726	1,040	34	HS	X	X
Los Angeles	Culver City Police	640	360	280	40	HS		
Los Angeles	Downey Police	1,064	664	400	12	HS	X	X
Los Angeles	El Monte Police	1,540	860	680	12	HS	X	-
Los Angeles	Glendale Police	1,724	884	840	12	HS	-	X
Los Angeles	Inglewood Police	1,864	664	1,200	24	HS	X	X
Los Angeles	Long Beach Police	1,800	1,000	800	54	HS	X	X
Los Angeles	Los Angeles Police	1,076	1,064	12	12	HS	X	-
Los Angeles	Pasadena Police	1,600	880	720	52	HS	X	-
Los Angeles	Pomona Police	1,858	858	1,000	24	HS	X	-
Los Angeles	Redondo Beach Police	2,004	964	1,040	12	HS	X	X
Los Angeles	Santa Monica Police	2,496	1,616	880	12	HS	X	-
Los Angeles	Torrance Police	1,064	664	400	12	HS	X	X
Los Angeles	West Covina Police	1,130	650	480	60	SC	X	X
Los Angeles	Whittier Police	1,338	858	480	24	HS	X	X

Table 4a - continued

County	Name of agency	Hours of training required for: New officer recruits: Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
CALIFORNIA (cont)								
Marin	Marin County Sheriff	1,200	800	400	24	HS	X	X
Monterey	Monterey County Sheriff	1,200	800	400	24	HS	X	X
Monterey	Salinas Police	1,640	880	760	12	HS	X	X
Orange	Orange County Sheriff-Coroner	1,892	952	940	24	HS	X	X
Orange	Anaheim Police	1,580	960	620	24	HS	X	X
Orange	Brea Police	1,552	992	560	24	HS	-	X
Orange	Costa Mesa Police	—	—	—	—	—	—	—
Orange	Fullerton Police	1,432	952	480	12	HS	X	X
Orange	Garden Grove Police	1,552	1,032	520	24	HS	X	-
Orange	Huntington Beach Police	1,304	664	640	12	HS	X	-
Orange	Irvine Police	1,224	664	560	12	2Y	X	X
Orange	Newport Beach Police	1,612	960	652	12	HS	X	X
Orange	Orange Police	1,448	968	480	12	HS	X	X
Orange	Santa Ana Police	1,596	952	644	12	HS	X	X
Orange	Westminster Police	2,200	960	1,240	12	HS	X	X
Placer	Placer County Sheriff	1,308	788	520	150	HS	X	X
Riverside	Riverside County Sheriff	1,200	800	400	24	HS	-	-
Riverside	Corona Police	1,710	830	880	44	HS	X	X
Riverside	Riverside Police	1,064	664	400	12	-	X	-
Sacramento	Sacramento County Sheriff	1,384	664	720	12	HS	X	-
Sacramento	Sacramento Police	1,960	1,080	880	0	SC	X	X
San Bernardino	San Bernardino County Sheriff	1,368	888	480	48	HS	X	X
San Bernardino	Fontana Police	1,688	888	800	24	SC	X	X
San Bernardino	Ontario Police	1,608	888	720	12	HS	X	X
San Bernardino	Rialto Police	1,040	640	400	20	HS	-	-
San Bernardino	San Bernardino Police	1,808	888	920	12	HS	X	X
San Diego	San Diego County Sheriff	1,539	944	595	12	HS	X	X
San Diego	Chula Vista Police	1,757	937	820	200	HS	X	-
San Diego	El Cajon Police	1,064	664	400	12	HS	X	X
San Diego	Escondido Police	1,701	945	756	38	HS	X	X
San Diego	Oceanside Police	1,824	944	880	80	2Y	-	X
San Diego	San Diego Police	1,424	944	480	30	HS	X	X
San Francisco	San Francisco Police	1,064	664	400	12	HS	X	X
San Joaquin	San Joaquin County Sheriff	1,064	664	400	24	HS	-	X
San Joaquin	Stockton Police	1,044	644	400	12	HS	X	X
San Luis Obispo	San Luis Obispo County Sheriff	1,200	800	400	24	HS	X	-
San Mateo	San Mateo County Sheriff	1,200	800	400	24	HS	X	X
San Mateo	Daly City Police	1,064	664	400	12	HS	X	-
San Mateo	San Mateo Police	1,064	664	400	12	SC	X	-
Santa Barbara	Santa Barbara County Sheriff	1,360	800	560	24	HS	X	X
Santa Barbara	Santa Barbara Police	1,700	980	720	24	HS	X	X
Santa Clara	Santa Clara County Sheriff	1,200	800	400	24	SC	X	X
Santa Clara	San Jose Police	1,544	904	640	20	SC	X	X
Santa Clara	Santa Clara Police	1,120	1,120	0	40	HS		
Santa Clara	Sunnyvale Police	1,280	880	400	12	SC	X	X
Santa Cruz	Santa Cruz County Sheriff	1,200	800	400	24	HS	-	-
Shasta	Shasta County Sheriff	1,720	640	1,080	12	HS	-	X
Solano	Fairfield Police	1,760	1,040	720	30	HS	X	X
Solano	Vallejo Police	1,064	664	400	12	HS	X	X
Sonoma	Sonoma County Sheriff-Coroner	1,504	784	720	24	HS	X	X
Sonoma	Santa Rosa Police	1,064	664	400	12	SC	X	X
Stanislaus	Stanislaus County Sheriff	1,064	664	400	24	HS	-	-
Stanislaus	Modesto Police	1,064	664	400	12	SC	-	X
Tulare	Tulare County Sheriff	1,064	664	400	24	HS	X	X
Tulare	Visalia Police	1,304	664	640	12	HS	-	X
Ventura	Ventura County Sheriff	1,346	946	400	24	HS	X	X
Ventura	Oxnard Police	1,064	664	400	12	HS	X	X
Ventura	Simi Valley Police	1,680	960	720	12	HS	X	X
Ventura	Ventura Police	2,000	960	1,040	12	HS	X	X
COLORADO								
Adams	Adams County Sheriff	334	64	270	88	HS	-	X
Adams	Thornton Police	1,758	795	963	84	4Y	-	X
Adams	Westminster Police	1,010	450	560	32	HS	X	X
Arapahoe	Arapahoe County Sheriff	1,101	581	520	120	SC	-	X
Arapahoe	Aurora Police	1,520	960	560	40	SC	-	X
Boulder	Boulder County Sheriff	995	435	560	40	HS	-	-
Boulder	Boulder Police	1,380	820	560	40	SC	-	X
Denver	Denver Police	1,412	852	560	18	HS	-	X
Douglas	Douglas County Sheriff	964	364	600	60	HS	-	X
El Paso	El Paso County Sheriff	1,146	746	400	40	SC	-	X
El Paso	Colorado Springs Police	2,048	648	1,400	40	2Y	-	X

Table 4a - continued

County	Name of agency	Hours of training required for: New officer recruits Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
COLORADO (cont)								
Jefferson	Jefferson County Sheriff	852	532	320	40	HS	-	X
Jefferson	Arvada Police	1,240	600	640	40	4Y	X	-
Jefferson	Lakewood Police	1,360	800	560	40	4Y	-	X
Larimer	Larimer County Sheriff	1,068	508	560	104	HS	-	X
Larimer	Fort Collins Police	1,360	800	560	40	SC	-	X
Pueblo	Pueblo Police	847	435	412	40	SC	X	X
Weld	Weld County Sheriff	1,440	760	680	96	HS	-	-
Weld	Greeley Police	1,080	560	520	20	HS	-	X
CONNECTICUT								
Fairfield	Bridgeport Police	1,464	984	480	18	HS	-	X
Fairfield	Danbury Police	1,040	640	400	22	HS	X	X
Fairfield	Fairfield Police	720	640	80	20	HS	X	X
Fairfield	Greenwich Police	1,020	680	340	5	2Y	X	X
Fairfield	Norwalk Police	600	520	80	41	HS	X	X
Fairfield	Stamford Police	742	662	80	45	2Y	X	X
Fairfield	Stratford Police	1,080	600	480	15	HS	-	X
Hartford	Bristol Police	1,160	760	400	25	HS	X	X
Hartford	East Hartford Police	1,280	800	480	22	HS	-	X
Hartford	Hartford Police	1,040	640	400	40	HS	X	X
Hartford	Manchester Police	1,280	680	600	45	SC	X	X
Hartford	New Britain Police	1,120	640	480	166	HS	X	X
Hartford	West Hartford Police	1,360	800	560	40	SC		
Middlesex	Middletown Police	1,302	742	560	43	HS	X	X
New Haven	Hamden Police	1,040	640	400	80	2Y	X	X
New Haven	Meriden Police	1,101	701	400	45	HS	X	X
New Haven	Milford Police	1,042	842	200	60	HS	X	-
New Haven	New Haven Police	1,170	770	400	64	HS	X	-
New Haven	Waterbury Police	758	678	80	40	HS	X	X
New Haven	West Haven Police	1,080	680	400	40	HS	X	-
DELAWARE								
New Castle	New Castle County Police	3,800	1,000	2,800	40	4Y		
New Castle	Wilmington Police	1,752	780	972	28	HS	-	X
DISTRICT OF COLUMBIA								
Washington, DC	Washington Metropolitan Police	1,640	1,040	600	40	HS	-	-
FLORIDA								
Alachua	Alachua County Sheriff	1,952	672	1,280	58	HS	X	X
Alachua	Gainesville Police	1,312	702	610	80	2Y	X	X
Bay	Bay County Sheriff	1,492	752	740	106	HS	X	X
Brevard	Brevard County Sheriff	1,332	692	640	90	HS	X	-
Brevard	Melbourne Police	1,240	600	640	50	HS	-	X
Brevard	Palm Bay Police	1,570	690	880	40	HS	X	X
Broward	Broward County Sheriff	842	730	112	24	HS	X	X
Broward	Coral Springs Police	1,250	730	520	40	2Y	X	X
Broward	Davie Police	840	600	240	56	HS	X	X
Broward	Fort Lauderdale Police	1,370	730	640	50	HS	X	X
Broward	Hollywood Police	1,480	840	640	64	HS	X	X
Broward	Margate Police	844	684	160	56	HS	X	X
Broward	Miramar Police	1,420	940	480	40	HS	X	X
Broward	Pembroke Pines Police	1,152	672	480	40	HS	X	X
Broward	Plantation Police	1,272	672	600	80	HS	X	X
Broward	Sunrise Police	1,152	672	480	0	HS	X	X
Charlotte	Charlotte County Sheriff	1,232	672	560	36	2Y	X	X
Citrus	Citrus County Sheriff	1,232	672	560	50	HS	X	X
Clay	Clay County Sheriff	1,312	672	640	72	HS	X	X
Collier	Collier County Sheriff	1,204	688	516	20	HS	X	X
Duval	Jacksonville Sheriff	1,232	672	560	32	2Y	X	X
Escambia	Escambia County Sheriff	1,312	672	640	42	HS	X	X
Escambia	Pensacola Police	1,204	700	504	124	HS	X	X
Hernando	Hernando County Sheriff	1,152	672	480	50	HS	X	-
Highlands	Highlands County Sheriff	1,188	672	516	10	HS	X	X
Hillsborough	Hillsborough County Sheriff	1,272	756	516	64	HS	X	X
Hillsborough	Tampa Police	1,475	675	800	40	SC	X	X
Indian River	Indian River County Sheriff	1,152	672	480	40	HS	X	X
Lake	Lake County Sheriff	1,144	672	472	92	HS	X	X
Lee	Lee County Sheriff	1,238	734	504	30	HS	X	X
Lee	Cape Coral Police	1,060	672	388	10	2Y	X	X
Lee	Fort Myers Police	840	680	160	40	2Y	X	X

Table 4a - continued

County	Name of agency	Hours of training required for: New officer recruits: Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
FLORIDA (cont)								
Leon	Leon County Sheriff	1,150	670	480	40	SC	X	-
Leon	Tallahassee Police	1,482	762	720	80	2Y	X	X
Manatee	Manatee County Sheriff	2,185	809	1,376	50	HS	X	X
Marion	Marion County Sheriff	1,320	760	560	60	-	X	-
Marion	Ocala Police	1,290	690	600	70	HS	X	X
Martin	Martin County Sheriff	1,230	710	520	80	HS	X	X
Miami-Dade	Miami-Dade Police	1,624	1,064	560	48	HS	X	X
Miami-Dade	Coral Gables Police	1,296	656	640	10	SC	X	X
Miami-Dade	Hialeah Police	1,480	840	640	10	HS	X	X
Miami-Dade	Miami Police	1,404	756	648	48	HS	X	X
Miami-Dade	Miami Beach Police	603	600	3	0	HS	X	-
Miami-Dade	North Miami Police	1,289	809	480	40	HS	X	X
Miami-Dade	North Miami Beach Police	1,304	744	560	40	HS	X	X
Monroe	Monroe County Sheriff	756	672	84	34	HS	X	X
Okaloosa	Okaloosa County Sheriff	1,152	672	480	50	HS	X	X
Orange	Orange County Sheriff	1,152	672	480	80	HS	X	X
Orange	Orlando Police	1,520	720	800	40	HS	X	X
Osceola	Osceola County Sheriff	1,312	672	640	106	HS	X	X
Palm Beach	Palm Beach County Sheriff	1,300	700	600	40	SC	X	X
Palm Beach	Boca Raton Police	1,152	672	480	40	SC	X	X
Palm Beach	Boynton Beach Police	1,012	712	300	50	HS	X	X
Palm Beach	Delray Beach Police	1,392	672	720	50	SC	X	X
Palm Beach	Riviera Beach Police	1,440	960	480	130	HS	X	X
Palm Beach	West Palm Beach Police	1,340	700	640	68	SC	X	X
Pasco	Pasco County Sheriff	1,312	672	640	40	HS	X	X
Pinellas	Pinellas County Sheriff	1,400	760	640	16	HS	X	X
Pinellas	Clearwater Police	1,280	720	560	0	SC	X	X
Pinellas	Largo Police	1,432	672	760	65	4Y	X	X
Pinellas	St. Petersburg Police	1,520	960	560	40	SC	X	X
Polk	Polk County Sheriff	1,370	690	680	40	HS	X	X
Polk	Lakeland Police	1,176	672	504	40	SC	X	X
Putnam	Putnam County Sheriff	1,400	920	480	136	HS	X	X
St. Johns	St. Johns County Sheriff	1,232	672	560	43	HS	X	X
St. Lucie	St. Lucie County Sheriff	1,190	710	480	56	HS	X	X
St. Lucie	Fort Pierce Police	1,270	710	560	40	HS	X	X
St. Lucie	Port St. Lucie Police	1,350	710	640	40	SC	X	X
Santa Rosa	Santa Ross County Sheriff	1,232	672	560	18	HS	X	-
Sarasota	Sarasota County Sheriff	1,510	830	680	160	2Y	X	X
Sarasota	Sarasota Police	1,278	690	588	43	HS	X	X
Seminole	Seminole County Sheriff	1,188	672	516	72	HS	X	X
Seminole	Altamonte Springs Police	1,312	672	640	56	HS	X	X
Volusia	Volusia County Sheriff	1,312	832	480	64	HS	X	X
Volusia	Daytona Beach Police	1,476	676	800	12	HS	X	X
GEORGIA								
Bartow	Bartow County Sheriff	640	400	240	40	HS	X	-
Bibb	Bibb County Sheriff	400	400	0	20	HS	X	-
Bibb	Macon Police	1,400	920	480	40	HS	X	X
Chatham	Chatham County Police	375	135	240	20	HS	-	X
Chatham	Savannah Police	1,200	560	640	20	HS	-	X
Cherokee	Cherokee County Sheriff	960	400	560	45	HS	X	-
Clarke	Athens-Clarke County Police	1,000	600	400	26	HS	-	-
Clayton	Clayton County Police	—	—	—	—	--	—	—
Cobb	Cobb County Police	1,480	680	800	40	HS	-	X
Cobb	Marietta Police	920	440	480	20	HS	-	X
Columbia	Columbia County Sheriff	830	400	430	40	HS	-	X
De Kalb	De Kalb County Police	1,596	952	644	12	HS	-	-
Dougherty	Albany Police	880	400	480	20	HS	-	X
Douglas	Douglas County Sheriff	1,240	520	720	40	HS	-	-
Forsyth	Forsyth County Sheriff	880	400	480	40	HS	X	X
Fulton	Fulton County Police	920	440	480	40	SC	-	-
Fulton	Atlanta Police	1,560	1,320	240	44	HS	X	X
Fulton	East Point Police	1,280	480	800	20	HS	-	-
Fulton	Roswell Police	876	640	236	20	HS	X	X
Glynn	Glynn County Police	640	400	240	20	HS	-	X
Gwinnett	Gwinnett County Police	1,072	640	432	20	HS	-	X
Hall	Hall County Sheriff	780	440	340	20	HS	-	-
Muscogee	Muscogee County Sheriff	640	440	200	24	2Y	X	-
Muscogee	Columbus Police	1,160	760	400	28	SC	X	-
Richmond	Augusta-Richmond Co Sheriff	1,100	460	640	20	HS	-	-

Table 4a - continued

County	Name of agency	Hours of training required for: New officer recruits: Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
HAWAII								
Hawaii	Hawaii County Police	1,400	800	600	0	HS	-	-
Honolulu	Honolulu Police	1,622	1,062	560	40	HS	-	X
Kauai	Kauai County Police	1,560	840	720	32	HS	-	-
Maui	Maui County Police	1,600	1,080	520	40	HS	-	X
IDAHO								
Ada	Boise Police	468	428	40	0	SC	X	-
Canyon	Canyon County Sheriff	1,360	800	560	40	2Y	X	-
ILLINOIS								
Champaign	Champaign Police	1,280	400	880	16	HS	-	X
Cook	Cook County Sheriff	--	--	--	--	--	--	--
Cook	Arlington Heights Police	1,000	400	600	0	SC	-	X
Cook	Chicago Police	1,314	1,230	84	0	SC	-	X
Cook	Cicero Police	400	400	0	0	SC	X	X
Cook	Evanston Police	1,205	485	720	8	SC	X	X
Cook	Oak Lawn Police	1,040	400	640	25	2Y	X	X
Cook	Oak Park Police	970	400	570	40	SC	-	X
Cook	Schaumburg Police	888	400	488	40	2Y	X	X
Cook	Skokie Police	1,040	560	480	40	SC	-	X
Du Page	Du Page County Sheriff	880	400	480	40	SC	-	X
Du Page	Naperville Police	1,200	400	800	40	4Y	-	X
Kane	Aurora Police	1,016	520	496	0	HS	X	X
Kane	Elgin Police	1,040	560	480	32	SC	-	X
Lake	Lake County Sheriff	1,080	480	600	0	2Y	-	X
Lake	Waukegan Police	880	400	480	40	HS	-	X
Macon	Decatur Police	1,040	480	560	40	SC	-	X
Peoria	Peoria Police	960	480	480	40	HS	X	X
Sangamon	Springfield Police	810	680	130	24	HS	X	X
Will	Will County Sheriff	960	480	480	40	HS	-	X
Will	Joliet Police	1,300	400	900	0	HS	-	X
Winnebago	Winnebago County Sheriff	1,160	480	680	36	HS	-	X
Winnebago	Rockford Police	1,240	640	600	24	HS	-	X
INDIANA								
Allen	Allen County Sheriff	720	640	80	32	HS	-	-
Allen	Fort Wayne Police	1,176	936	240	16	HS	X	-
Delaware	Muncie Police	500	500	0	20	HS	-	-
Elkhart	Elkhart Police	960	480	480	16	HS	X	X
Howard	Kokomo Police	2,176	1,440	736	46	HS	-	X
Lake	Lake County Sheriff	1,380	740	640	16	HS	X	-
Lake	East Chicago Police	832	512	320	16	HS	X	-
Lake	Gary Police	1,518	488	1,030	20	HS	X	X
Lake	Hammond Police	1,136	480	656	16	HS	X	X
Madison	Anderson Police	960	480	480	16	HS	X	X
Marion	Marion County Sheriff	800	480	320	16	HS	X	-
Marion	Indianapolis Police	1,640	920	720	40	HS	X	X
St Joseph	St Joseph County Sheriff	816	496	320	16	HS	-	-
St Joseph	South Bend Police	840	480	360	16	HS	-	X
Vanderburgh	Vanderburgh County Sheriff	1,296	496	800	16	SC	X	X
Vanderburgh	Evansville Police	1,608	820	788	40	HS	X	X
Vigo	Terre Haute Police	520	520	0	16	HS	-	-
IOWA								
Black Hawk	Waterloo Police	1,120	480	640	80	HS	-	-
Linn	Cedar Rapids Police	1,360	560	800	12	HS	-	-
Polk	Polk County Sheriff	880	480	400	36	HS	-	X
Polk	Des Moines Police	480	480	0	24	SC	X	X
Pottawattamie	Council Bluffs Police	480	480	0	36	HS	X	-
Scott	Davenport Police	480	480	0	32	HS	X	X
Woodbury	Sioux City Police	1,040	400	640	40	2Y	X	X
KANSAS								
Douglas	Lawrence Police	1,504	864	640	80	HS	X	X
Johnson	Johnson County Sheriff	800	400	400	40	HS	-	X
Johnson	Olathe Police	1,040	400	640	40	HS	X	X
Johnson	Overland Park Police	1,020	540	480	40	HS	-	X
Sedgwick	Sedgwick County Sheriff	1,444	1,104	340	80	HS	-	X
Sedgwick	Wichita Police	992	880	112	40	HS	X	-
Shawnee	Topeka Police	1,640	680	960	40	HS	X	X
Wyandotte	Kansas City Police	1,600	960	640	80	HS	X	X

Table 4a - continued

County	Name of agency	Hours of training required for: New officer recruits: Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
KENTUCKY								
Fayette	Lexington-Fayette County Police	1,520	1,040	480	40	HS	X	X
Jefferson	Jefferson County Police	1,360	800	560	40	HS	-	X
Jefferson	Louisville Police	2,080	800	1,280	40	HS	X	X
Kenton	Covington Police	2,120	680	1,440	40	SC	-	X
LOUISIANA								
Ascension	Ascension Parish Sheriff	952	400	552	12	HS	X	-
Bossier	Bossier Parish Sheriff	320	320	0	8	HS	-	-
Bossier	Bossier Police	800	280	520	42	HS	X	X
Caddo	Caddo Parish Sheriff	685	325	360	4	HS	X	X
Caddo	Shreveport Police	1,880	600	1,280	40	HS	X	X
Calcasieu	Calcasieu Parish Sheriff	510	0	510	3	HS	-	-
Calcasieu	Lake Charles Police	440	360	80	40	HS	X	X
E. Baton Rouge	E. Baton Rouge Parish Sheriff	560	320	240	0	HS	X	-
E. Baton Rouge	Baton Rouge Police	712	712	0	0	HS	X	X
Jefferson	Jefferson Parish Sheriff	720	480	240	0	HS	-	X
Jefferson	Kenner Police	1,040	320	720	40	HS	-	-
Lafayette	Lafayette Parish Sheriff	320	320	0	32	HS	-	-
Lafayette	Lafayette Police	880	320	560	52	HS	-	X
Lafourche	Lafourche Parish Sheriff	960	480	480	40	HS	X	X
Livingston	Livingston Parish Sheriff	87	87	0	40	HS	-	-
Morehouse	Morehouse Parish Sheriff	816	480	336	78	HS	-	-
Orleans	Orleans Parish Sheriff	580	580	0	36	HS	-	X
Orleans	New Orleans Police	1,240	600	640	80	HS	-	-
Ouachita	Ouachita Parish Sheriff	400	400	0	40	HS		
Ouachita	Monroe Police	800	320	480	0	HS	X	-
Plaquemines	Plaquemines Parish Sheriff	320	320	0	8	HS	-	X
Rapides	Rapides Parish Sheriff	1,000	520	480	160	HS	-	-
Rapides	Alexandria Police	520	520	0	40	HS	-	X
St. Charles	St. Charles Parish Sheriff	780	300	480	84	HS	-	X
St. John the Baptist	St. John the Baptist Sheriff	320	320	0	16	HS	-	-
St. Landry	St. Landry Parish Sheriff	1,000	480	520	116	HS	-	-
St. Martin	St. Martin Parish Sheriff	502	360	142	80	HS	-	-
St. Tammany	St. Tammany Parish Sheriff	1,160	520	640	48	HS	-	X
Terrebonne	Terrebonne Parish Sheriff	320	320	0	0	HS	-	-
MAINE								
Cumberland	Portland Police	680	520	160	24	HS	X	X
MARYLAND								
Anne Arundel	Anne Arundel County Police	1,260	1,100	160	18	HS	-	X
Anne Arundel	Annapolis Police	1,400	1,040	360	24	HS	X	X
Baltimore	Baltimore County Police	1,320	1,000	320	40	HS	-	X
Baltimore(city)	Baltimore Police	1,255	730	525	24	HS	-	X
Charles	Charles County Sheriff	1,475	915	560	21	HS	X	X
Harford	Harford County Sheriff	1,240	1,080	160	40	HS	-	X
Howard	Howard County Police	1,670	1,040	630	24	2Y	-	X
Montgomery	Montgomery County Police	2,240	1,680	560	30	SC	-	-
Prince George's	Prince George's County Police	2,250	1,050	1,200	40	HS	X	-
MASSACHUSETTS								
Bristol	Fall River Police	800	800	0	40	HS	X	-
Bristol	New Bedford Police	840	840	0	40	HS	X	-
Bristol	Taunton Police	1,080	840	240	40	HS	X	-
Essex	Lawrence Police	1,840	960	880	40	HS	X	-
Essex	Lynn Police	840	840	0	32	HS	X	X
Hampden	Chicopee Police	980	980	0	40	HS	X	-
Hampden	Holyoke Police	800	800	0	44	HS	X	-
Hampden	Springfield Police	800	800	0	40	HS	X	-
Middlesex	Cambridge Police	952	952	0	40	HS	X	X
Middlesex	Framingham Police	880	880	0	40	HS	X	-
Middlesex	Lowell Police	1,600	960	640	72	HS	X	-
Middlesex	Malden Police	1,000	880	120	16	HS	X	-
Middlesex	Medford Police	—	—	—	—	—	—	—
Middlesex	Newton Police	1,200	800	400	40	HS	X	-
Middlesex	Somerville Police	1,000	880	120	40		X	-
Middlesex	Waltham Police	1,440	880	560	40	HS	X	-
Norfolk	Brookline Police	1,000	960	40	48	HS	X	-
Norfolk	Quincy Police	1,136	880	256	16	HS	X	X
Plymouth	Brockton Police	960	880	80	40	HS	X	-
Suffolk	Boston Police	1,052	1,040	12	40	HS	X	-
Suffolk	Revere Police	—	—	—	—	--	—	—
Worcester	Worcester Police	1,120	1,000	120	40	HS	X	-

Table 4a - continued

County	Name of agency	Hours of training required for: New officer recruits Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
MICHIGAN								
Calhoun	Battle Creek Police	1,240	820	420	480	2Y	X	X
Genesee	Genesee County Sheriff	800	640	160	0	2Y	X	X
Genesee	Flint Police	1,240	640	600	80	HS	-	X
Ingham	Lansing Police	494	494	0	40	SC	X	X
Kalamazoo	Kalamazoo County Sheriff	1,054	494	560	12	SC	X	X
Kalamazoo	Kalamazoo Police	890	640	250	0	HS	X	X
Kent	Kent County Sheriff	980	500	480	40	HS		
Kent	Grand Rapids Police	1,214	734	480	44	HS	X	X
Kent	Wyoming Police	1,260	500	760	50	2Y	-	X
Macomb	Macomb County Sheriff	1,080	600	480	0	2Y	X	-
Macomb	Sterling Heights Police	1,120	560	560	96	2Y	X	X
Macomb	Warren Police	1,168	600	568	18	HS	X	-
Oakland	Oakland County Sheriff	760	640	120	16	HS	-	X
Oakland	Farmington Hills Police	1,200	480	720	40	2Y	X	X
Oakland	Pontiac Police	572	572	0	0	SC	-	X
Oakland	Royal Oak Police	1,532	572	960	40	2Y	-	X
Oakland	Southfield Police	1,320	600	720	48	HS	X	X
Oakland	Troy Police	1,054	494	560	40	2Y	X	X
Saginaw	Saginaw Police	1,040	560	480	40	HS	X	X
Washtenaw	Washtenaw County Sheriff	1,232	672	560	43	HS		
Washtenaw	Ann Arbor Police	1,374	814	560	24	HS	X	X
Wayne	Wayne County Sheriff	920	560	360	24	HS	-	X
Wayne	Dearborn Police	1,560	720	840	40	2Y	-	X
Wayne	Detroit Police	1,490	610	880	40	HS	-	X
Wayne	Livonia Police	1,167	527	640	40	2Y	X	X
Wayne	Taylor Police	1,200	640	560	0	SC	X	X
Wayne	Westland Police	702	494	208	0	HS	-	X
MINNESOTA								
Hennepin	Hennepin County Sheriff	0	0	0	16	2Y	-	X
Hennepin	Bloomington Police	1,000	360	640	18	2Y	X	X
Hennepin	Minneapolis Police	1,390	640	750	8	2Y	-	X
Olmsted	Rochester Police	978	738	240	16	2Y	-	X
Ramsey	Ramsey County Sheriff	520	520	0	40	HS		
Ramsey	St. Paul Police	1,100	500	600	16	2Y	-	X
St. Louis	Duluth Police	1,170	220	950	12	2Y	X	X
MISSISSIPPI								
Forrest	Hattiesburg Police	740	560	180	96	HS	X	-
Harrison	Harrison County Sheriff	1,040	400	640	0	HS	-	X
Harrison	Biloxi Police	600	400	200	82	HS	X	X
Harrison	Gulfport Police	400	400	0	0	HS	X	X
Hinds	Jackson Police	1,040	560	480	60	HS	-	X
Lauderdale	Meridian Police	1,120	800	320	40	HS	X	X
Lee	Tupelo Police	904	400	504	96	HS	-	X
Warren	Vicksburg Police	520	400	120	24	SC	-	-
Washington	Greenville Police	800	400	400	0	HS	X	X
MISSOURI								
Boone	Columbia Police	854	470	384	40	SC	X	X
Buchanan	St. Joseph Police	990	470	520	32	-	-	-
Greene	Springfield Police	1,472	952	520	88	SC	X	X
Jackson	Independence Police	960	600	360	16	HS	-	X
Jackson	Kansas City Police	1,280	960	320	16	HS	X	X
Jefferson	Jefferson County Sheriff	470	470	0	0	HS	-	-
St. Charles	St. Charles County Sheriff	600	600	0	0	HS	-	X
St. Charles	St. Charles Police	—	—	—	—	—	—	—
St. Louis	St. Louis County Police	840	840	0	0	HS	X	X
St. Louis(city)	St. Louis Police	1,440	880	560	48	2Y	X	X
MONTANA								
Yellowstone	Billings Police	1,100	540	560	20	HS	-	X
NEBRASKA								
Douglas	Douglas County Sheriff	1,177	617	560	0	2Y	X	X
Douglas	Omaha Police	1,400	800	600	16	HS	X	X
Lancaster	Lincoln Police	1,530	650	880	40	HS	X	-
Sarpy	Sarpy County Sheriff	930	530	400	16	HS	X	X

Table 4a - continued

County	Name of agency	Hours of training required for: New officer recruits Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
NEVADA								
Clark	Las Vegas Metropolitan Police	1,595	835	760	24	HS	-	X
Clark	Henderson Police	1,632	952	680	40	HS	-	X
Clark	North Las Vegas Police	1,200	480	720	40	HS	-	-
Washoe	Washoe County Sheriff	1,448	648	800	24	HS	-	X
Washoe	Reno Police	600	600	0	24	HS	X	X
NEW HAMPSHIRE								
Hillsborough	Manchester Police	1,080	880	200	8	HS	X	X
Hillsborough	Nashua Police	920	600	320	8	HS	X	X
NEW JERSEY								
Atlantic	Atlantic City Police	1,240	760	480	80	HS	X	X
Bergen	Hackensack Police	776	776	0	16	HS	X	-
Camden	Camden Police	1,330	880	450	40	HS	X	-
Camden	Cherry Hill Police	1,336	760	576	40	4Y	X	-
Cape May	Cape May County Sheriff	840	800	40	40	HS	X	-
Cumberland	Vineland Police	1,200	720	480	160	HS	X	-
Essex	Belleville Police	800	760	40	40	HS	-	-
Essex	Bloomfield Police	1,040	1,040	0	20	HS	X	-
Essex	East Orange Police	720	720	0	32	HS	-	-
Essex	Irvington Police	720	720	0	40	HS	-	-
Essex	Montclair Police	1,360	1,040	320	20	HS	X	-
Essex	Newark Police	860	740	120	17	HS	-	-
Essex	Orange Police	720	720	0	10	HS	-	-
Essex	West Orange Police	960	800	160	56	HS	X	-
Hudson	Hudson County Sheriff	928	928	0	0	HS	-	-
Hudson	Bayonne Police	1,040	1,040	0	191	HS	-	-
Hudson	Hoboken Police	1,170	850	320	20	HS	-	-
Hudson	Jersey City Police	1,400	920	480	16	HS	-	X
Hudson	Kearny Police	1,304	744	560	40	HS		
Hudson	North Bergen Police	784	760	24	8	HS	X	X
Hudson	Union City Police	759	639	120	24	HS	X	-
Hudson	West New York Police	818	778	40	16	HS	X	-
Mercer	Hamilton Police	1,840	840	1,000	40	HS	X	X
Mercer	Trenton Police	920	800	120	41	HS	X	-
Middlesex	Edison Police	—	—	—	--	--	—	—
Middlesex	New Brunswick Police	1,280	640	640	26	HS	-	-
Middlesex	Perth Amboy Police	1,244	784	460	20	HS	X	X
Middlesex	Woodbridge Police	1,370	920	450	75	HS	-	X
Morris	Parsippany Police	1,132	832	300	40	HS	X	X
Ocean	Brick Township Police	1,368	840	528	48	HS	X	X
Ocean	Dover Township Police	1,160	680	480	60	4Y	-	-
Passaic	Passaic County Sheriff	894	894	0	0	HS	X	X
Passaic	Clifton Police	1,440	1,240	200	16	HS	X	X
Passaic	Passaic Police	1,300	1,300	0	0	HS	-	X
Passaic	Paterson Police	—	—	—	—	--	—	—
Passaic	Wayne Police	1,040	880	160	40	2Y	X	-
Union	Elizabeth Police	1,870	830	1,040	48	HS	-	X
Union	Linden Police	1,500	700	800	8	HS	X	X
Union	Plainfield Police	1,248	664	584	8	HS	X	-
Union	Union Police	720	720	0	40	HS	X	-
NEW MEXICO								
Bernalillo	Bernalillo County Sheriff	1,530	1,050	480	20	HS	X	X
Bernalillo	Albuquerque Police	1,377	897	480	20	SC	X	X
Dona Ana	Las Cruces Police	640	640	0	40	HS	X	-
Santa Fe	Santa Fe Police	640	640	0	40	HS	X	X
NEW YORK								
Albany	Albany County Sheriff	600	600	0	0	HS	-	-
Albany	Albany Police	1,164	884	280	42	HS	-	X
Albany	Colonie Police	1,560	920	640	40	SC	-	X
Broome	Binghamton Police	1,350	1,150	200	48	HS	X	-
Dutchess	Dutchess County Sheriff	672	612	60	48	HS	X	X
Erie	Erie County Sheriff	1,480	1,040	440	61	SC	-	-
Erie	Amherst Police	1,250	850	400	21	SC	X	X
Erie	Buffalo Police	854	854	0	21	SC	X	-
Erie	Cheektowaga Police	1,480	920	560	21	2Y	X	X
Erie	Tonawanda Police	1,122	882	240	39	SC	-	-
Monroe	Monroe County Sheriff	1,125	900	225	24	HS	-	X
Monroe	Rochester Police	965	445	520	40	HS	X	X

Table 4a - continued

County	Name of agency	Hours of training required for: New officer recruits: Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
NEW YORK (cont)								
Nassau	Nassau County Police	1,138	958	180	8	SC	X	X
Nassau	Hempsteed Police	1,360	1,120	240	468	HS	-	-
New York City	New York City Police	2,043	1,343	700	60	SC	-	-
Niagara	Niagara County Sheriff	1,280	760	520	24	SC	-	-
Niagara	Niagara Falls Police	1,320	760	560	24	HS	X	-
Oneida	Utica Police	1,360	840	520	16	HS	-	X
Onondaga	Onondaga County Sheriff	728	568	160	20	HS	-	-
Onondaga	Syracuse Police	1,080	800	280	16	HS	-	-
Reneselaer	Troy Police	1,360	760	600	40	HS	-	-
Rockland	Rockland County Sheriff	1,280	760	520	40	HS	-	-
Rockland	Clarkstown Police	990	510	480	8	2Y	X	-
Rockland	Ramapo Police	1,280	800	480	0	SC	-	X
Schenectady	Schenectady Police	1,360	920	440	24	HS	-	X
Suffolk	Suffolk County Sheriff	1,500	1,210	290	16	HS	-	X
Suffolk	Suffolk County Police	1,660	1,140	520	8	HS	-	-
Westchester	Westchester County Police	1,011	691	320	80	HS	-	X
Westchester	Greenburgh Police	1,235	675	560	0	HS	-	X
Westchester	Mt. Vernon Police	720	640	80	40	HS	-	-
Westchester	New Rochelle Police	960	720	240	40	SC	-	X
Westchester	White Plains Police	1,515	955	560	40	HS	-	X
Westchester	Yonkers Police	840	800	40	8	HS	X	-
NORTH CAROLINA								
Alamance	Burlington Police	1,144	604	540	32	HS	X	X
Buncombe	Buncombe County Sheriff	1,060	660	400	40	HS	-	-
Buncombe	Asheville Police	1,457	617	840	56	2Y	X	X
Cabarrus	Cabarrus County Sheriff	826	576	250	25	HS	X	-
Catawba	Hickory Police	1,128	608	520	80	HS	-	X
Cumberland	Cumberland County Sheriff	977	577	400	0	HS	-	-
Cumberland	Fayetteville Police	1,240	680	560	32	HS	X	-
Davidson	Davidson County Sheriff	958	660	298	28	-	X	X
Durham	Durham County Sheriff	1,317	813	504	20	HS	-	X
Durham	Durham Police	1,485	925	560	38	HS	-	X
Forsyth	Forsyth County Sheriff	920	680	240	40	HS	-	X
Forsyth	Winston-Salem Police	1,596	1,047	549	27	HS	X	X
Gaston	Gaston County Police	1,400	600	800	48	4Y	-	X
Gaston	Gastonia Police	1,290	650	640	48	2Y	X	X
Guilford	Guilford County Sheriff	1,108	604	504	20	HS	X	X
Guilford	Greensboro Police	1,778	1,190	588	40	HS	X	X
Guilford	High Point Police	1,282	722	560	90	HS	X	X
Mecklenburg	Charlotte-Mecklenburg Police	1,180	700	480	30	HS	X	X
Nash	Rocky Mount Police	1,085	605	480	60	HS	X	X
New Hanover	Wilmington Police	1,214	734	480	48	HS	-	X
Orange	Orange County Sheriff	1,520	1,040	480	80	HS	-	X
Pitt	Greenville Police	770	450	320	40	HS	-	X
Rowan	Rowan County Sheriff	688	608	80	10	HS	X	-
Union	Union County Sheriff	782	602	180	60	2Y	-	X
Wake	Wake County Sheriff	1,173	973	200	50	HS	-	X
Wake	Raleigh Police	1,732	932	800	40	HS	-	X
Wilson	Wilson Police	1,270	630	640	60	HS	X	X
OHIO								
Butler	Butler County Sheriff	1,187	827	360	138	HS	-	X
Butler	Hamilton Police	1,040	520	520	64	HS	-	X
Clark	Clark County Sheriff	520	520	0	24	HS	-	X
Clark	Springfield Police	1,280	720	560	40	HS	-	X
Cuyahoga	Cleveland Police	2,040	1,000	1,040	32	HS	-	X
Cuyahoga	Cleveland Heights Police	1,150	550	600	80	4Y	X	X
Cuyahoga	Euclid Police	1,140	640	500	24	HS	-	-
Franklin	Franklin County Sheriff	200	200	0	16	HS	-	X
Franklin	Columbus Police	1,400	880	520	40	HS	-	X
Hamilton	Hamilton County Sheriff	1,080	600	480	40	HS	-	-
Hamilton	Cincinnati Police	1,400	920	480	40	HS	-	X
Lorain	Lorain Police	545	545	0	0	HS	X	X
Lucas	Lucas County Sheriff	520	520	0	40	HS	-	X
Lucas	Toledo Police	1,520	880	640	40	SC	X	X
Mahoning	Youngstown Police	750	590	160	24	HS	X	-
Montgomery	Montgomery County Sheriff	870	550	320	21	HS	-	X
Montgomery	Dayton Police	1,000	1,000	0	40	HS	X	X
Stark	Stark County Sheriff	1,430	950	480	63	HS	-	-
Stark	Canton Police	670	670	0	50	HS	-	X
Summit	Summit County Sheriff	611	611	0	40	HS	-	-
Summit	Akron Police	1,390	750	640	40	HS	-	-

Table 4a - continued

County	Name of agency	Hours of training required for: New officer recruits: Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
OKLAHOMA								
Cleveland	Norman Police	1,280	720	560	16	SC	X	X
Comanche	Lawton Police	1,040	480	560	56	HS	-	X
Oklahoma	Oklahoma County Sheriff	520	360	160	48	HS	-	-
Oklahoma	Oklahoma City Police	1,624	904	720	24	HS	X	X
Tulsa	Tulsa County Sheriff	320	320	0	16	SC	-	X
Tulsa	Tulsa Police	1,560	920	640	40	4Y	X	X
OREGON								
Clackamas	Clackamas County Sheriff	1,160	360	800	40	HS	X	X
Douglas	Douglas County Sheriff	320	320	0	0	HS	-	X
Jackson	Jackson County Sheriff	400	400	0	0	2Y	X	-
Lane	Lane County Sheriff	1,440	800	640	76	HS	X	-
Lane	Eugene Police	900	400	500	24	HS	-	-
Marion	Salem Police	1,240	400	840	48	HS	X	X
Multnomah	Gresham Police	950	400	550	78	HS	-	X
Multnomah	Portland Police	1,800	840	960	40	4Y	-	X
Washington	Washington County Sheriff	1,440	720	720	40	HS	X	X
Washington	Beaverton Police	1,976	376	1,600	30	SC	-	X
PENNSYLVANIA								
Allegheny	Allegheny County Sheriff	636	636	0	32	HS	-	-
Allegheny	Allegheny County Police	524	524	0	28	HS	-	X
Allegheny	Pittsburgh Police	1,235	755	480	48	SC	-	-
Berks	Reading Police	1,280	800	480	24	-	-	-
Dauphin	Harrisburg Police	960	520	440	22	HS	X	-
Delaware	Chester Police	1,608	536	1,072	116	SC	X	X
Delaware	Upper Darby Township Police	520	520	0	16	HS	X	-
Erie	Erie Police	1,044	600	444	40	HS	X	-
Lackawanna	Scranton Police	932	772	160	40	HS	X	-
Lancaster	Lancaster Police	1,240	760	480	12	HS	X	-
Lehigh	Allentown Police	1,240	840	400	56	2Y	X	-
Montgomery	Lower Merion Township Police	480	480	0	32	SC	-	X
Northampton	Bethlehem Police	1,360	880	480	0	SC	X	X
Philadelphia	Philadelphia Police	1,301	1,101	200	32	HS	-	-
RHODE ISLAND								
Kent	Warwick Police	1,010	560	450	8	SC	X	X
Providence	Cranston Police	960	640	320	40	SC	X	X
Providence	Pawtucket Police	720	480	240	24	HS	X	X
Providence	Providence Police	1,200	1,000	200	12	HS	X	X
SOUTH CAROLINA								
Anderson	Anderson County Sheriff	680	360	320	30	-	X	X
Beaufort	Beaufort County Sheriff	480	320	160	40	HS	X	-
Charleston	Charleston County Sheriff	720	360	360	38	2Y	X	-
Charleston	Charleston Police	1,040	480	560	13	2Y	-	X
Charleston	North Charleston Police	760	360	400	40	HS	-	-
Florence	Florence County Sheriff	412	380	32	40	HS	-	X
Greenville	Greenville County Sheriff	880	400	480	16	HS	X	X
Greenville	Greenville Police	1,398	360	1,038	59	HS	X	X
Horry	Horry County Police	840	400	440	40	HS	-	X
Horry	Myrtle Beach Police	680	360	320	53	HS	-	X
Lexington	Lexington County Sheriff	800	640	160	30	HS	X	-
Richland	Richland County Sheriff	520	360	160	28	2Y	-	X
Richland	Columbia Police	831	399	432	24	HS	-	X
Spartanburg	Spartanburg County Sheriff	830	320	510	52	HS	-	X
Spartanburg	Spartanburg Police	640	360	280	40	HS	-	X
SOUTH DAKOTA								
Minnehaha	Sioux Falls Police	1,000	520	480	24	HS	-	X
TENNESSEE								
Blount	Blount County Sheriff	1,320	840	480	40	-	-	X
Davidson	Nashville Metropolitan Police	1,632	720	912	40	SC	X	-
Hamilton	Hamilton County Sheriff	168	64	104	104	HS		
Hamilton	Chattanooga Police	1,600	1,040	560	40	HS	X	X
Knox	Knox County Sheriff	1,040	400	640	48	HS	-	-
Knox	Knoxville Police	1,680	1,040	640	40	HS	X	X

Table 4a - continued

County	Name of agency	Hours of training required for: New officer recruits: Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
TENNESSEE (cont)								
Madison	Jackson Police	1,120	480	640	40	HS	-	X
Montgomery	Clarksville Police	880	320	560	40	HS	-	X
Rutherford	Murfreesboro Police	1,105	430	675	40	HS	-	-
Shelby	Shelby County Sheriff	1,621	901	720	64	HS		
Shelby	Memphis Police	1,360	720	640	45	2Y	X	X
Sullivan	Sullivan County Sheriff	320	320	0	40	HS	X	-
Washington	Johnson City Police	960	320	640	40	HS	-	X
TEXAS								
Bell	Killeen Police	1,480	680	800	20	HS	X	-
Bell	Temple Police	720	0	720	40	HS	X	-
Bexar	Bexar County Sheriff	1,550	990	560	40	HS	-	X
Bexar	San Antonio Police	2,380	1,140	1,240	40	HS	X	X
Brazoria	Brazoria County Sheriff	740	500	240	20	HS	X	-
Cameron	Brownsville Police	880	560	320	20	HS	X	-
Cameron	Harlingen Police	1,100	620	480	40	SC	X	X
Collin	Plano Police	1,320	640	680	40	HS	-	X
Dallas	Dallas County Sheriff	980	500	480	40	HS	-	-
Dallas	Carrollton Police	800	160	640	32	SC	X	X
Dallas	Dallas Police	2,146	1,186	960	56	SC	X	X
Dallas	Garland Police	1,600	960	640	20	SC	X	X
Dallas	Grand Prairie Police	1,400	720	680	40	SC	X	X
Dallas	Irving Police	1,480	880	600	20	HS	X	X
Dallas	Mesquite Police	1,320	680	640	20	SC	X	-
Dallas	Richardson Police	1,240	560	680	80	HS	-	X
Denton	Denton County Sheriff	600	0	600	40	HS	X	-
Denton	Denton Police	1,520	560	960	20	-	X	X
Ector	Odessa Police	1,360	480	880	20	HS	X	X
El Paso	El Paso County Sheriff	1,621	901	720	64	HS	-	-
El Paso	El Paso Police	1,758	798	960	48	SC	-	X
Fort Bend	Fort Bend County Sheriff	1,285	645	640	20	HS	-	-
Galveston	Galveston County Sheriff	1,652	1,092	560	56	HS		
Galveston	Galveston Police	1,440	800	640	72	HS	X	-
Gregg	Longview Police	1,200	520	680	20	2Y	X	X
Harris	Harris County Sheriff	1,436	836	600	20	SC	X	-
Harris	Baytown Police	1,300	780	520	60	SC	-	-
Harris	Houston Police	1,560	1,120	440	40	SC	X	X
Harris	Pasadena Police	800	800	0	20	SC	-	X
Hidalgo	Hidalgo County Sheriff	920	680	240	20	HS	-	-
Hidalgo	McAllen Police	1,440	760	680	60	HS	X	X
Jefferson	Beaumont Police	1,560	680	880	20	HS	X	X
Jefferson	Port Arthur Police	1,360	560	800	40	HS	X	X
Lubbock	Lubbock Police	1,400	800	600	20	HS	X	-
McLennan	McLennan County Sheriff	1,120	720	400	40	HS		
McLennan	Waco Police	1,560	1,440	120	56	-	X	X
Midland	Midland Police	1,360	720	640	40	SC	X	X
Montgomery	Montgomery County Sheriff	1,080	540	540	40	HS	-	-
Nueces	Nueces County Sheriff	168	64	104	104	HS	-	-
Nueces	Corpus Christi Police	2,120	1,060	1,060	40	HS	X	X
Potter	Amarillo Police	1,512	872	640	20	HS	X	X
Smith	Smith County Sheriff	1,240	600	640	40	HS	X	-
Smith	Tyler Police	1,240	680	560	20	SC	X	X
Tarrant	Tarrant County Sheriff	0	0	0	80	HS	-	X
Tarrant	Arlington Police	3,800	1,000	2,800	40	4Y	X	X
Tarrant	Fort Worth Police	1,480	1,000	480	40	HS	X	X
Taylor	Abilene Police	1,460	820	640	80	SC	X	-
Tom Green	San Angelo Police	1,090	450	640	40	HS	X	-
Travis	Travis County Sheriff	1,200	560	640	40	HS	-	X
Travis	Austin Police	1,640	1,160	480	40	SC	X	X
Victoria	Victoria County Sheriff	636	636	0	40	HS	-	X
Webb	Webb County Sheriff	720	680	40	40	HS	X	-
Webb	Laredo Police	1,280	640	640	40	HS	X	-
Wichita	Wichita Falls Police	1,440	800	640	20	HS	X	X
Williamson	Williamson County Sheriff	1,648	640	1,008	40	HS	-	-
UTAH								
Salt Lake	Salt Lake County Sheriff	1,080	720	360	40	HS	X	X
Salt Lake	Salt Lake City Police	1,360	880	480	40	HS	X	X
Salt Lake	West Valley City Police	1,120	1,120	0	40	HS	-	X
Utah	Utah County Sheriff	720	480	240	40	HS	-	X
Weber	Ogden Police	1,100	540	560	40	HS	X	X

Table 4a - continued

County	Name of agency	Hours of training required for: New officer recruits Total	Academy	Field	Field/patrol officers (annual)	Minimum education requirement	Education incentive pay	Tuition reimbursement
VIRGINIA								
Albemarle	Albemarle County Police	1,000	520	480	40	SC	-	X
Alexandria(city)	Alexandria Police	1,376	816	560	36	HS	-	X
Arlington	Arlington County Police	1,400	920	480	56	SC	-	X
Chesapeake(city)	Chesapeake Police	1,360	880	480	20	HS	X	X
Chesterfield	Chesterfield County Police	1,560	1,200	360	40	HS	-	X
Danville(city)	Danville Police	244	144	100	40	HS	X	X
Fairfax	Fairfax County Police	996	896	100	40	HS	-	-
Hampton(city)	Hampton Police	752	480	272	0	HS	X	X
Hanover	Hanover County Sheriff	920	600	320	80	HS	-	X
Henrico	Henrico County Police	1,320	1,160	160	32	HS	X	X
Loudoun	Loudoun County Sheriff	1,740	1,100	640	40	HS	X	X
Lynchburg(city)	Lynchburg Police	1,084	764	320	40	SC	-	X
Newport News(city)	Newport News Police	1,240	760	480	40	HS	X	X
Norfolk(city)	Norfolk Police	1,560	1,080	480	80	HS	X	X
Portsmouth(city)	Portsmouth Police	540	480	60	40	HS	X	X
Prince William	Prince William County Police	1,950	1,400	550	76	HS	X	-
Richmond(city)	Richmond Police	1,200	880	320	40	SC	X	X
Roanoke(city)	Roanoke Police	1,076	976	100	40	HS	-	X
Suffolk(city)	Suffolk Police	1,280	880	400	110	HS	-	X
Virginia Beach(city)	Virginia Beach Police	1,400	880	520	56	HS	-	X
WASHINGTON								
Clark	Clark County Sheriff	1,120	720	400	40	HS	-	-
Clark	Vancouver Police	888	720	168	30	HS	X	X
King	King County Sheriff	1,120	720	400	40	HS	X	-
King	Bellevue Police	1,330	770	560	18	2Y	X	X
King	Federal Way Police	1,200	720	480	0	HS	X	X
King	Kent Police	880	720	160	60	HS	X	X
King	Seattle Police	1,400	840	560	56	HS	-	-
Kitsap	Kitsap County Sheriff	1,280	720	560	30	2Y	-	-
Pierce	Pierce County Sheriff	1,480	720	760	40	HS	-	-
Pierce	Tacoma Police	840	720	120	40	2Y	X	X
Snohomish	Snohomish County Sheriff	1,120	720	400	40	HS	X	-
Snohomish	Everett Police	1,296	720	576	40	HS	X	X
Spokane	Spokane County Sheriff	1,310	830	480	56	HS	X	-
Spokane	Spokane Police	1,520	800	720	40	SC	-	X
Thurston	Thurston County Sheriff	1,120	720	400	40	HS	X	-
Yakima	Yakima Police	1,200	720	480	40	HS		
WEST VIRGINIA								
Cabell	Huntington Police	640	400	240	8	HS	-	-
Kanawha	Charleston Police	1,406	734	672	40	HS	X	-
WISCONSIN								
Brown	Brown County Sheriff	400	400	0	24	2Y	-	X
Brown	Green Bay Police	1,000	400	600	24	2Y	-	X
Dane	Dane County Sheriff	400	400	0	24	SC	-	-
Dane	Madison Police	1,224	840	384	24	2Y	X	X
Kenosha	Kenosha County Sheriff	400	400	0	24	SC	-	X
Kenosha	Kenosha Police	1,120	480	640	32	2Y	X	X
Milwaukee	Milwaukee County Sheriff	400	400	0	24	HS	X	-
Milwaukee	Milwaukee Police	1,352	872	480	32	HS	X	X
Milwaukee	West Allis Police	1,100	400	700	24	2Y	-	X
Outgamie	Appleton Police	880	400	480	24	SC	X	X
Racine	Racine County Sheriff	400	400	0	24	SC	X	X
Racine	Racine Police	1,360	400	960	24	SC	X	-
Waukesha	Waukesha County Sheriff	400	400	0	24	SC	X	X
Waukesha	Waukesha Police	400	400	0	40	2Y	X	-

Note: Codes for minimum education requirements are as follows:

4Y=Four-year degree required
2Y=Two-year degree required
SC=Some college (but no degree) required
HS=High school diploma or equivalent required

—Data were not provided by an agency.