



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

**POLICE ACCOUNTABILITY BOARD
FAIR & IMPARTIAL POLICING IMPLEMENTATION SUBCOMMITTEE**

Board Members Calavita (Chair), Moore, Owens, Ramsey;
Public Members Crook, Halpern, Lippman

**Wednesday, March 16, 2022
3:30 P.M.**

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/87490457845>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial 1 669 900 6833 and enter Meeting ID 874 9045 7845. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF AGENDA**
3. **PUBLIC COMMENT**

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

The Police Accountability Board and Office of the Director of Police Accountability (ODPA) were created to provide independent civilian oversight of the Berkeley Police Department. They review and make recommendations on police department policies, and investigate complaints made by members of the public against police officers. For more information, contact the ODPA.

1947 Center Street, 5th Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

4. **OLD BUSINESS (discussion and action)**
 - a. Discuss draft EIS policy
 - b. Discuss draft consent form
5. **NEW BUSINESS (discussion and action)**
 - a. Next steps for monitoring implementation of Fair and Impartial Policing recommendations.
6. **SCHEDULE NEXT MEETING DATE(S)**
7. **PUBLIC COMMENT**

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)
8. **ADJOURNMENT**

Communications Disclaimer

Communications to the Police Accountability Board, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the Board Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the Board Secretary for further information.



Communication Access Information (A.R. 1.12)

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5th Floor, Berkeley, CA.

Contact the Director of Police Accountability (Board Secretary) at dpa@cityofberkeley.info or (510) 981-4950.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 17, 2008

GENERAL ORDER E-13

SUBJECT: EARLY WARNING SYSTEM

PURPOSE

- 1 - The purpose of this Order is to establish policy and procedures for an informal performance review and intervention program, the "Early Warning System" (EWS). The program monitors employee performance that may be inconsistent with professional police conduct and cooperatively engages employees to resolve areas of concern. The goal of EWS is early identification of employee performance issues and correction of these issues through constructive counseling sessions rather than the formal disciplinary process.

POLICY

- 2 - All employees shall participate in the EWS program and comply with the guidelines set forth in this Order.
- 3 - Participation in the EWS program shall not be deemed punitive, nor a formal disciplinary process.
 - (a) Notwithstanding the initiation of the EWS process, the Department retains its right and responsibilities with regard to investigation of policy violation and enforcement of employee discipline.

PROCEDURES

- 4 - Employee behavior or performance that is subject to EWS review includes, but is not limited to:
 - (a) Poor attendance and/or abusive use of leave;
 - (b) Multiple formal sustained or not sustained complaints;
 - (c) Multiple informal complaint inquiries;
 - (d) Multiple use of force incidents;
 - (e) Multiple obstructing/resisting arrest incidents;
 - (f) Multiple vehicle collisions; and,
 - (g) Substandard conduct/performance concerns observed by a superior officer.
 - (h) ***Irregular demographic stop data on pedestrian, bike, and vehicle enforcement, while considering the factors of the assignment (geographical area of the city the officer is working, the specific detail/assignment, and the nature of enforcement).***

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5 - The Racial and Identify Protection Act (RIPA) data will be available to supervisors in the form of an electronic data dashboard. This will provide supervisors and commanders with the ability to review stop data created by officers assigned under their span of control. The individual stop data for individual officers should be considered a personnel record as it may provide supervisory guidance for specific officer stop data, if necessary. The public release of any RIPA data will remain anonymized as previously agreed upon Meet and Confer with the Berkeley Police Association and provisions of Government Code 3300 et.al.

Supervisors, commanders and managers shall monitor the activity of their subordinate employees to identify actual or perceived unprofessional behavior and/or substandard performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police via the Chain of Command.

- 6 - Personnel assigned to the Internal Affairs Bureau (IAB) shall monitor all formal and informal allegations of employee misconduct received by their office for behavior or performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police.
- 7 - Personnel assigned to the Support Services Division Report Review Detail shall forward to the Chief of Police copies of all reports pertaining to:
 - (a) Obstruction/resisting arrests cases (i.e., Penal Code §§148, 69, etc.)
- 8 - Administrative reports regarding use of force shall be forwarded to the Chief of Police as directed in General Order U-2.

Management of Program Records

- 9 - The Office of the Chief of Police shall be responsible for aggregation and administrative management of information, data and records associated with the EWS program.
 - (a) The administrative assistant assigned to the Office of the Chief of Police shall be responsible for preparing a quarterly report summarizing information and activities associated with the EWS program for use in administrative review.
 - 10 - Information, data and records associated with the EWS program are used for personnel purposes. Accordingly, they are confidential personnel files and not public records.
 - 11 - Documents, data and records shall be maintained by the Office of the Chief of Police for a period of two (2) years.
 - 12 - Access to EWS records shall be restricted to the supervisor, commander and/or
- * Entire text is revised.

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manager involved in the monitoring of a particular employee, subject to the approval of the Chief of Police.

- (a) An individual employee may be granted access to EWS records that pertain to him/her.

Administrative Review Board

- 13 - The Chief of Police will convene a quarterly Review Board comprised of all Division Commanders to review program records to determine if initiation of the EWS Program is recommended.
- 14 - Upon consideration of the Review Board's recommendation, the Chief of Police may direct an employee to participate in the EWS program.

Initiation of EWS Program

- 15 - Upon the direction of the Chief of Police, an informal counseling meeting will be held that may include:
 - (a) The subject employee;
 - (b) The employee's supervisor;
 - (c) An Internal Affairs Bureau sergeant;
 - (d) The employee's Lieutenant; and,
 - (e) The employee's Division Commander, who shall preside over the meeting.
- 16 - Unless impractical, the counseling meeting shall be held during the employee's regularly scheduled working hours.
 - (a) If the meeting cannot be scheduled during the employee's regularly scheduled working hours, personnel participating while off-duty shall be compensated with compensatory time (minimum time as may be authorized by the employee's MOU) or, with Division Commander approval, allowed to flex an equal amount of time within that same work week.
- 17 - The subject employee may have one fellow employee accompany him/her to the counseling meeting.
 - (a) The accompanying employee's presence is allowed to offer general support to the subject employee, not to be an active participant in the counseling meeting.

- 18 - As in general supervisor counseling meetings, the employee shall be informed of

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the behavioral and/or performance concern(s) at issue, and he/she shall be allowed an opportunity to offer a response.

- 19 - The subject employee may be given information regarding the City of Berkeley Employee Assistance Program.
- 20 - No formal document will be generated referencing this meeting, and the meeting shall not be deemed a punitive or disciplinary proceeding against the employee. There shall be no permanent record of the meeting.

References: General Orders P-26, P-28, R-3 and U-2

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SUBJECT: EARLY WARNING SYSTEM

PURPOSE

- 1 - The purpose of this Order is to establish policy and procedures for an informal performance review and intervention program, the "Early Warning System" (EWS). The program monitors employee performance that may be inconsistent with professional police conduct, including but not limited to racially disparate policing, and cooperatively engages employees to resolve areas of concern. The goal of EWS is early identification of employee performance issues, as well as any generalized patterns across the Department or within particular Divisions, and correction of these issues is through constructive counseling sessions, policy review, and/or training, rather than the formal disciplinary process.

POLICY

- 2 - All employees shall participate in the EWS program and comply with the guidelines set forth in this Order.
- 3 - Participation in the EWS program shall not be deemed punitive, nor a formal disciplinary process.
 - (a) Notwithstanding the initiation of the EWS process, the Department retains its right and responsibilities with regard to investigation of policy violation and enforcement of employee discipline.

PROCEDURES

- 4 - Employee behavior or performance that is subject to EWS review includes, but is not limited to:
 - (a) Poor attendance and/or abusive use of leave;
 - (b) Multiple formal sustained or not sustained complaints;
 - (c) Multiple informal complaint inquiries;
 - (d) Multiple use of force incidents;
 - (e) Multiple obstructing/resisting arrest incidents;
 - (f) Multiple vehicle collisions; **and,**
 - (g) Substandard conduct/performance concerns observed by a superior officer; **and,-**
 - (h) **Irregular racially disparate demographic stop, search and/or use of force data on pedestrian, bike, and vehicle enforcement, while**

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considering the factors of the assignment (geographical area of the city the officer is working, the specific detail/assignment, and the nature of enforcement).

5 - The Racial and Identify Protection Act (RIPA) data will be available to supervisors in the form of an electronic data dashboard. This will provide supervisors and commanders with the ability to review stop data created by officers assigned under their span of control. The individual stop data for individual officers should be considered a personnel record as it may provide supervisory guidance for specific officer stop data, if necessary. The public release of any RIPA data will remain anonymized as previously agreed upon Meet and Confer with the Berkeley Police Association and provisions of Government Code 3300 et.al.

Supervisors, commanders and managers shall monitor the activity of their subordinate employees to identify actual or perceived unprofessional behavior and/or substandard performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police via the Chain of Command.

- 6 - Personnel assigned to the Internal Affairs Bureau (IAB) shall monitor all formal and informal allegations of employee misconduct received by their office for behavior or performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police.
- 7 - Personnel assigned to the Support Services Division Report Review Detail shall forward to the Chief of Police copies of all reports pertaining to:
 - (a) Obstruction/resisting arrests cases (i.e., Penal Code §§148, 69, etc.)
- 8 - Administrative reports regarding use of force shall be forwarded to the Chief of Police as directed in General Order U-2.

Management of Program Records

- 9 - The Office of the Chief of Police shall be responsible for aggregation and administrative management of information, data and records associated with the EWS program.
 - (a) The administrative assistant assigned to the Office of the Chief of Police shall be responsible for preparing a quarterly report summarizing information and activities associated with the EWS program for use in administrative review.
- 10 - Information, data and records associated with the EWS program are used for personnel purposes. Accordingly, they are confidential personnel files and not public records.

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- 11 - Documents, data and records shall be maintained by the Office of the Chief of Police for a period of two (2) years.
- 12 - Access to EWS records shall be restricted to the supervisor, commander and/or manager involved in the monitoring of a particular employee, subject to the approval of the Chief of Police.
 - (a) An individual employee may be granted access to EWS records that pertain to him/her.

Administrative Review Board

- 13 - The Chief of Police will convene a quarterly Review Board comprised of all Division Commanders to review program records to determine if initiation of the EWS Program is recommended.
- 14 - Upon consideration of the Review Board's recommendation, the Chief of Police may direct an employee to participate in the EWS program.

Initiation of EWS Program

- 15 - Upon the direction of the Chief of Police, an informal counseling meeting will be held that may include:
 - (a) The subject employee;
 - (b) The employee's supervisor;
 - (c) An Internal Affairs Bureau sergeant;
 - (d) The employee's Lieutenant; and,
 - (e) The employee's Division Commander, who shall preside over the meeting.
- 16 - Unless impractical, the counseling meeting shall be held during the employee's regularly scheduled working hours.
 - (a) If the meeting cannot be scheduled during the employee's regularly scheduled working hours, personnel participating while off-duty shall be compensated with compensatory time (minimum time as may be authorized by the employee's MOU) or, with Division Commander approval, allowed to flex an equal amount of time within that same work week.
- 17 - The subject employee may have one fellow employee accompany him/her to the counseling meeting.
 - (a) The accompanying employee's presence is allowed to offer general

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support to the subject employee, not to be an active participant in the counseling meeting.

- 18 - As in general supervisor counseling meetings, the employee shall be informed of the behavioral and/or performance concern(s) at issue, and he/she shall be allowed an opportunity to offer a response.
- 19 - The subject employee may be given information regarding the City of Berkeley Employee Assistance Program.
- 20 - No formal document will be generated referencing this meeting, and the meeting shall not be deemed a punitive or disciplinary proceeding against the employee. There shall be no permanent record of the meeting.

References: General Orders P-26, P-28, R-3 and U-2

EWS FOLLOW UPS (Cheryl: This would be Section 1041.7 in the Lexipol version)

(a) In the case of an individual for whom an EWS process has been initiated, monthly reports shall be comprised to ensure that the original issue is being resolved.

i. If no progress is made on the original issue, further counseling may be ordered, and a permanent record shall be produced to enable tracking of the employee across Divisions or with different supervisors. Over time, a disciplinary process may be initiated.

(b) In the case of patterns across the Department or in particular Divisions, data will be examined quarterly to ensure that the irregular patterns or racial disparities are being adequately addressed through policy review and/or supervisory training.

EARLY WARNING SYSTEM

1041.1 PURPOSE

The purpose of this Order is to establish policy and procedures for an informal performance review and intervention program, the "Early Warning System" (EWS). The program monitors employee performance that may be inconsistent with professional police conduct and cooperatively engages employees to resolve areas of concern. The goal of EWS is early identification of employee performance issues and correction of these issues through constructive counseling sessions rather than the formal disciplinary process.

1041.2 POLICY

All employees shall participate in the EWS program and comply with the guidelines set forth in this Order.

Participation in the EWS program shall not be deemed punitive, nor a formal disciplinary process.

- (a) Notwithstanding the initiation of the EWS process, the Department retains its right and responsibilities with regard to investigation of policy violation and enforcement of employee discipline.

1041.3 PROCEDURES

Employee behavior or performance that is subject to EWS review includes, but is not limited to:

- (a) Poor attendance and/or abusive use of leave;
- (b) Multiple formal sustained or not sustained complaints;
- (c) Multiple informal complaint inquiries;
- (d) Multiple use of force incidents;
- (e) Multiple obstructing/resisting arrest incidents;
- (f) Multiple vehicle collisions; and,
- (g) Substandard conduct/performance concerns observed by a superior officer.
- (h) Irregular demographic stop data on pedestrian, bike, and vehicle enforcement, while considering the factors of the assignment (geographical area of the city the officer is working, the specific detail/assignment, and the nature of enforcement).

The Racial and Identify Protection Act (RIPA) data will be available to supervisors in the form of an electronic data dashboard. This will provide supervisors and commanders with the ability to review stop data created by officers assigned under their span of control. The individual stop data for individual officers should be considered a personnel record as it may provide supervisory guidance for specific officer stop data, if necessary. The public release of any RIPA data will remain anonymized as previously agreed upon Meet and Confer with the Berkeley Police Association and provisions of Government Code 3300 et.al.

EARLY WARNING SYSTEM

Supervisors, commanders and managers shall monitor the activity of their subordinate employees to identify actual or perceived unprofessional behavior and/or substandard performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police via the Chain of Command.

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Personnel assigned to the Support Services Division Report Review Detail shall forward to the Chief of Police copies of all reports pertaining to:

- (a) Obstruction/resisting arrests cases (i.e., Penal Code §§148, 69, etc.)

Administrative reports regarding use of force shall be forwarded to the Chief of Police as directed in Policy 300.

1041.4 MANAGEMENT OF PROGRAM RECORDS

The Office of the Chief of Police shall be responsible for aggregation and administrative management of information, data and records associated with the EWS program.

- (a) The administrative assistant assigned to the Office of the Chief of Police shall be responsible for preparing a quarterly report summarizing information and activities associated with the EWS program for use in administrative review.

Information, data and records associated with the EWS program are used for personnel purposes. Accordingly, they are confidential personnel files and not public records.

Documents, data and records shall be maintained by the Office of the Chief of Police for a period of two (2) years.

Access to EWS records shall be restricted to the supervisor, commander and/or manager involved in the monitoring of a particular employee, subject to the approval of the Chief of Police.

- (a) An individual employee may be granted access to EWS records that pertain to him/her.

1041.5 ADMINISTRATIVE REVIEW BOARD

The Chief of Police will convene a quarterly Review Board comprised of all Division Commanders to review program records to determine if initiation of the EWS Program is recommended.

Upon consideration of the Review Board's recommendation, the Chief of Police may direct an employee to participate in the EWS program.

1041.6 INITIATION OF EWS PROGRAM

Upon the direction of the Chief of Police, an informal counseling meeting will be held that may include:

- (a) The subject employee;

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Law Enforcement Services Manual

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- (b) The employee's supervisor;
- (c) An Internal Affairs Bureau sergeant;
- (d) The employee's Lieutenant; and,
- (e) The employee's Division Commander, who shall preside over the meeting.

Unless impractical, the counseling meeting shall be held during the employee's regularly scheduled working hours.

- (a) If the meeting cannot be scheduled during the employee's regularly scheduled working hours, personnel participating while off-duty shall be compensated with compensatory time (minimum time as may be authorized by the employee's MOU) or, with Division Commander approval, allowed to flex an equal amount of time within that same work week.

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- (a) The accompanying employee's presence is allowed to offer general support to the subject employee, not to be an active participant in the counseling meeting.

As in general supervisor counseling meetings, the employee shall be informed of the behavioral and/or performance concern(s) at issue, and he/she shall be allowed an opportunity to offer a response.

The subject employee may be given information regarding the City of Berkeley Employee Assistance Program.

No formal document will be generated referencing this meeting, and the meeting shall not be deemed a punitive or disciplinary proceeding against the employee. There shall be no permanent record of the meeting.



BERKELEY POLICE DEPARTMENT

2100 Martin Luther King, Jr. Way, Berkeley, CA 94704

TEL: (510) 981-5900, TDD: (510) 981-5799, FAX: (510) 981-5744

EMAIL: police@cityofberkeley.info

CONSENT SEARCH FORM

Case: _____

I, _____ have been informed of my constitutional right not to have a search made of my person, residence, property, vehicle, and/or electronic device(s) hereinafter mentioned, without a search warrant and of my right to refuse to consent to such a search.

Officer(s):

_____ of the Berkeley Police Department, and any other law enforcement agent, to conduct a complete search of the following:

TO BE SEARCHED	PERSON'S INITIALS	DATE	TIME
PERSON			
RESIDENCE			
PROPERTY			
VEHICLE			
ELECTRONIC DEVICE			

I give this written permission to the above-named police officers voluntarily. No threats or promises of any kind have been made to me.

(Signed) _____

Officer _____

Witness _____

Notes

1-1 I, _____ have been informed of my Constitutional right not to consent to have my person, residence, property, vehicle, and/or electronic device(s) hereinafter mentioned searched and of my Constitutional right not to be separately subjected to such a search without a warrant.

1-2 This is an incomplete sentence.

Should read:

I hereby (consent)/(do not consent) to

Officer(s): _____

of the Berkeley Police Department , and any other law enforcement agent, to conduct a complete search of the following without a warrant:

1-3 These should reflect what property, residence, and vehicle are being consented to. It should have a column that describes the items.

Berkeley Police Department

2100 Martin Luther King Jr. Way
Berkeley, CA 94704
(510) 981-5900

Consent to Search Form

Person to be Searched - Only check if you consent to a search of your person. IR#:

Person

By signing below, I, _____, agree to allow law enforcement to perform a complete search of my person, including all property on my person.

Property to be Searched - Check only the property, if any, you consent to have searched.

Vehicle Plate: _____ VIN: _____
 Make: _____ Model: _____

Bicycle Plate: _____ VIN: _____
 Make: _____ Model: _____

Electronic Device Type of Device: _____
 Make: _____ Model: _____
 Serial Number: _____

Passwords/log-ins/specific directions for entry: _____

Other (Describe property): _____

By signing below, I, _____, state that I own, possess, or have authority over the property described above and do hereby agree to allow law enforcement to perform a complete search of the property checked listed above.

Place your initials on the line that applies to you:

____ I do not consent to a search.

____ I have been advised of my right to refuse to consent to this search. I give this consent voluntarily, without any promises made to me, or threats of any kind made against me. I understand any evidence of a crime may be seized as a result of this search.

Signature: _____ Date/Time: _____

Person Authorizing:

Name: _____

Date of Birth: _____ Age: _____ Phone Number: _____

Address: _____

Officer Name: _____ Employee ID#: _____

Division/District/Unit: _____ Contact #: _____

Officer Signature: _____ Date/Time: _____

Berkeley Police Department

2100 Martin Luther King Jr. Way
Berkeley, CA 94704
(510) 981-5900

Formulario De Consentimiento Para Efectuar Un Registro

Persona Que Va a Ser Sometido A Un Registro

IR#:

Persona

Yo, _____, accedo a un registro completa de mi persona, incluyendo toda la propiedad que llevo en mi persona a los Oficiales de Policía.

Propiedad Que Va a Ser Registrada

Vehículo: Placa : _____ VIN: _____
Marca : _____ Modelo: _____

Bicicleta Placa : _____ VIN: _____
Marca: _____ Modelo: _____

Aparato Electrónico Tipo de Aparato: _____
Marca: _____ Modelo: _____
Número de Serie: _____

Clave/iniciar sesión/instrucciones
específicas para entrar:

Otra (Describe propiedad):

Yo, _____, dueño, poseo, o tengo autoridad sobre la propiedad descrita arriba y accedo a un registro completa de la propiedad escrita arriba, incluyendo toda la propiedad situada en o adentro de mi vehículo, local, aparato electrónico, u otra propiedad escrita arriba.

Yo he sido informado de mi derecho a negar a dar mi consentimiento. Yo doy este consentimiento voluntariamente, sin promesas dirigidas hacia mí, o amenazas de cualquier tipo hechas en contra de mí. Yo entiendo que toda evidencia de un crimen, objeto(s) o sustancia(s) ilegal(es) puede(n) ser confiscado(s) como el resultado de este registro.

Firma: _____ Fecha/Hora: _____

Marque si autorización es negada

Persona Que Autoriza

Nombre: _____
Fecha de Nacimiento: _____ Edad: _____ Número de teléfono: _____
Dirección: _____

Officer Name: _____ Employee ID#: _____

Division/District/Unit: _____ Contact #: _____

Officer Signature: _____ Date/Time: _____