

**The Bill Blackwood
Law Enforcement Management Institute of Texas**

**The Need for Appearance Standards
in Regards to Facial Hair, Hairstyles, and Tattoos**

**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**

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September 2019**

ABSTRACT

Law enforcement agencies are tasked with providing competent and professional police services to the public for which they serve. The officers' appearance factors into the judgment and perception the public formulate when interacting with officers. Each community establishes the standards for which they expect from their public servants. Therefore, it is critical police departments be allowed to control the appearance standards of their employees. Appearance includes, yet is not limited to, hair length, hair style, facial hair, and tattoos. Departments should outline these standards in a specific policy while refraining from vague or misleading language, which can lead to possible litigation.

Agencies are allowed to set standards yet should take into consideration what is acceptable for the public, the agency, and the employees. Agencies that restrict all facial hair, head hairstyles, and tattoos may find the policy easier to defend than allowing the different tattoos and hairstyles as long as they are not offensive. This policy may be easier to defend in legal proceedings than the latter. If a stricter policy is decided upon than accommodations should be considered that would still allow for a professional appearance yet reasonable for officers to maintain. For instance, if no tattoos are to be visible officers should be afforded the opportunity for breathable sleeves or bandages. If hair length is restricted for females, then a clause could be placed in the policy allowing for hair length as long as the hair can be placed in a bun or similar style that prevents the hair from interfering with the officer's functions and safety. In allowing accommodations, this could assist in the recruitment and retention of officers.

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INTRODUCTION

Over the years, police departments have mandated grooming standards. This can include the length of hair, facial hair, and tattoos. Many departments regulate hair style for both male and female employees. Further some departments restrict the color of hair for employees. Many departments also require males to be clean shaven and do not allow facial hair in the form of a beard, mustache, or goatee. Lastly, employees are to cover any tattoos that are visible outside the confines of their uniform. Some departments mandate that if an employee has tattoos on their arms that a long sleeve shirt must be worn to cover the tattoos. The standards of these policies differ from department to department. Some departments have altered policies to allow mustaches that do not extend over the top lip. Some allow personnel to have goatees. Others have allowed tattoos to be exposed with limitations.

Departments cite the need to maintain grooming standards for a professional appearance and officer safety. A good number of police departments follow stricter military rules thus adopting similar grooming regulations. Social acceptance is more significant now for tattoos than in years past, yet a portion of society still associates those with tattoos as being more rebellious and living a lifestyle that tends not to follow the social norms (Forbes, 2001). Female officers with long hair may have restrictions placed on the length or how the hair is worn. This is due to officer safety concerns that if the hair is worn long or in a ponytail that someone could gain control of the officer by pulling on their hair. This is similar to many manufacturing or industrial employers having hair restrictions due to the fear of hair becoming entangled in equipment causing injury or death.

Officers that desire to have the policies on grooming and appearance altered feel society is more accepting of their desired changes whether it be long hair, facial hair, or tattoos. Departments that maintain grooming standards for head hair, facial hair, and tattoos feel they are promoting a safe environment for the officers and public while maintaining a high standard of professionalism. It appears most departments with these standards are allowing officers to have tattoos yet require them to be covered in some form or fashion. Departments should be allowed to regulate the appearance of their employees if there is a definite concern for safety or a decline in professional appearance.

Officers have challenged these grooming standards for decades. As officers have attempted to circumvent the hair policies, tattoos are becoming an issue that needs to be addressed. Tattoos continue to grow in popularity. There appears to be no definitive number of persons with tattoos as different polls report different percentages. The consensus is around 30% of Americans have tattoos. The industry continues to grow as more youth are getting tattoos than prior generations (Lanxon, 2017). This will equate to an increase in potential candidates with tattoos.

Officers have attempted to alter policy through civil suits. One of the earliest cases regarding grooming standards was in 1974 when Officer Troy Ashley sued the City of Macon, Georgia in the United States District Court of Georgia claiming it was his constitutional right to dictate the length of his head hair and to have facial hair. He cited that since female officers were allowed to have long hair as long as it is pinned to keep it above the collar. Due to the different standard for females, he was being discriminated against due to being a male. The district court ruled in favor of the City of

Macon and dismissed Officer Ashley's case citing the Constitution of the United States of America does not define hairstyle as a protected right (*Ashley v. City of Macon, GA*, 1974).

There are exceptions to the facial hair and tattoo policies when dealing with religious or medical conditions. The courts have ruled that if an employee has a medical condition that is being treated by a physician than that employee has the right to have facial hair. The most common medical condition is pseudofolliculitis barbae, otherwise known as PFB, which irritates the skin from frequent shaving. The courts have stated that if an employee has a medical condition, the employer shall allow them to grow facial hair to treat it, yet employers can regulate the length of the facial hair. One-quarter of an inch in diameter or one millimeter is a standard acceptable length (*Lewis v. Univ. of Pennsylvania*, 2018). The length of the hair varies from department to department

Regarding religious exemptions, departments must allow officers also to grow facial hair. The same length and regulations are in place as in the medical exemptions. Interestingly, the argument for religious exemptions stems from the medical conditions when officers sued the City of Newark, New Jersey. The officers stated that the department allows exceptions for medical reasons yet not religious. In doing so, they have shown the no-beard policy does have pre-existing exemptions and therefore should grant religious exemptions. The court ruled in the officers' favor (*FOP Newark Lodge No. 12 v. City of Newark*, 1999). Since that time, other cases were filed over the length of the beard. Recently, a

New York Police Department officer filed suit and won the right to have a long beard. The length is still to be determined. This case was settled in January 2018 and is still awaiting final disposition from the court (Fuchs, 2018).

With cases not dealing with religious or medical exemptions, officers have tried arguing other reasons that facial hair, hairstyles, and tattoos should be allowed.

Numerous other examples similar have been filed alleging that officers have a constitutional right to have hair below their ears, beards, or other facial hair. Many of those cases still claim the constitutional right of the officer in their right to freedom of expression. The issue of the First Amendment of the right to free speech, the Supreme Court has ruled government employees have the right to free speech with limitations. In balancing the employer's rights to the employee's rights, the Supreme Court established a balancing test commonly referred to as the Pickering test (Pickering v. Board of Education, 1968).

This test evaluates the rights of the employee to have free speech against the power of the employer to limit the expression or activity if it is detrimental to the employer's operations. Therefore, the employees' right to free speech must be of public interest in a manner that would be held in higher regard than that of the employer's right of operational functionality (*San Diego v. Roe*, 2004). With the test as mentioned earlier in place, the right to grow facial hair, head hair, and tattoos does not meet a high enough standard to where the courts have found that right out weights the organizations right to regulate it. Departments should be allowed to control appearance standards, and in doing so, they should have a specific policy outlining the expectations of their employees without vague language.

POSITION

Appearance standards are a form of regulation governmental agencies utilize to ensure a safe, professional, and uniform standard for their employees. Each agency needs to balance the professional standards their community expects, legal standing, the morale of employees, and consistent application of rules and regulations when dealing with the departments' image. Over the last few years, society is showing signs of being more tolerant of the individual's right to self-expression. There is debate over what percentage of society does not associate personal image with facial hair, head hairstyles, and tattoos to professional image. This could be divided along generational lines. As generation X, millennial, and generation Z continue to increase as a higher percentage of the workforce the stigma of hairstyles and tattoos could begin to fade.

A survey was conducted about personal opinions on tattoos and what the individual perceived of the person with a tattoo (Dean, 2010). The study, conducted in 2010 (Dean), did not identify the specific generation yet asked questions on the respondents' age. Further, the survey did not address tattoo style only the appropriateness of visible tattoos. The purpose of the study was to see how customers responded to visible tattoos on service employees. The survey found that older respondents viewed tattoos negatively more so than younger respondents (Dean, 2010). With the study in mind, the perception of tattoos being linked to professional conduct appears to be fading as younger generations emerge. For this reason, departments should reevaluate their policies from time to time to take this into account.

In regards to facial and head hair length, the perception is a professional image is to be clean shaven and hair not to be below the ears. Aside from the officer safety

aspect longer hair or facial hair also carries a stigma. Some people associate facial hair and long hair with being dirty, aloof, and aggressive (Antonio, 2014). A study was conducted in Brazil with supervisors' perception of hiring cleanly-shaven individuals versus those with facial hair. The study consisted of 22 female and 28 male supervisors. The consensus was the managers preferred a clean-shaven candidate over the other (de Souza, Baiao, & Otta, 2003).

Society has changed its perception of facial hair and tattoos. To the extent it has changed is still debatable. There are still negative associations with both. With the addition of possible litigation for inconsistent application of policy, departments must weigh this in the decision to create, abolish, or amend policies dealing with personal appearance. Agencies must be transparent in the wording and the reasoning for the existence of the policy. With tattoos, it is recommended that agencies stay clear of interpretation and initiate a policy that defines either to allow them or to ban them. If approved the policy needs to state whether to have them visible or covered and not allow a case by case basis or vague language that says the tattoo is not offensive or obscene. If an agency desires having tattoos covered, there should be different options should be available. For instance, long sleeve shirts, adhesive pads, waterproof makeup, or skin tone breathable sleeves. To assist in recruiting different options should be allowed other than just long sleeve shirts.

In regards to facial and head hair standards departments also need to decide if beards, mustaches, goatees or long hair will be allowed. If an agency elects to authorize facial hair or long hair, there needs to be a clear policy stating the standards.

Selective enforcement or vague policies can equate to civil cases from officers. This could lead to the courts holding the policy invalid along with possible litigation costs.

Demographics of the community for each agency can vary. Some communities might not have a negative view towards beards, goatees, different hairstyles, and tattoos. Therefore an agency should have the option of allowing employees to display different hairstyles, facial hair, and tattoos. There should be in place some form of written policy outlining what is acceptable. If no policy is in place, this leaves the agency open for challenges in each category. It is easier to have a written standard then be forced to adopt one after a situation in which the agency feels the need to regulate officer appearance.

If an agency decides to regulate appearance through policy, there needs to be a clear language without vague statements. The Austin Police Department governs hairstyles and colors in a specific fashion (Austin PD, 2017). Male officers will not have hair that extends below a shirt collar. Females' hair may not extend beyond the shoulder blade area. There is language specifying hair will not interfere with safety or cause conflict with equipment that might be worn. Officers are not authorized for goatees or beards unless a medical or religious exemption is approved (Austin PD, 2018). The language in the policy manual is specific and not open to interpretation. Austin Police Department prohibits tattoos. The policy states that tattoos, if able, should be covered (Austin PD, 2018). The policy further states no offensive images or words should be displayed (Austin PD, 2018). No definition is provided that lists what constitutes offensive. Having a vague language could lead to potential litigation.

Starbucks Coffee Company regulates employees' display of hairstyle and tattoos. The company allows different hair colors, yet state hair must be secured to be compliant with food safety standards. Tattoos are allowed except for any tattoo on the neck or face. Other visible tattoos are permitted that do not contain, "obscene, profane, racist, sexual, or objectionable words or imagery" (Starbucks, n.d.).

COUNTER ARGUMENTS

Agencies have struggled to recruit new officers into the field of law enforcement. There are many factors involved in the reason why the profession is lacking a diversified applicant pool. Some have stated that regulating personal appearances not to allow tattoos, regulation of facial hair or head hairstyles is limiting the number of applicants that meet the stringent standards. As stated, earlier there is roughly 30% of the population with a tattoo (Lanxon, 2017). In allowing officers to have facial hair, longer hair, or tattoos would increase the applicants that are discouraged due to being eligible in all categories except the personal appearance standards. This includes military personnel that would be valid candidates as they have training and experience in firearms, stressful situations, and understand the structure of most police departments.

There is validity to this claim, yet in regards to hair length, and styles officer safety must be factored in. For instance, a Chicago police officer was attempting to arrest an offender when the suspect grabbed her by her hair and proceeded to fling her to the ground. He was able to overpower the officer due to gaining control of her head by her hair. The officer was rendered unconscious after repeatedly being struck against the concrete causing a neck injury, and bone chips to her wrist and shoulder (Clark, 2016). It is possible the injury would not have occurred if the officer's hair met stricter

standards set forth by the department. In these types of situations having a policy that regulates hair length and styles is based on safety reasons along with professional appearance.

With tattoos, there is not a safety standard for the basis of departments regulating any visible tattoos. It is based solely on professional appearance. A department has the right to control appearance per case law in that the Federal courts have ruled governmental agencies have the power to regulate such standards (*Ashley v. City of Macon, GA, 1974*).

. Many agencies require that officers wear long sleeve shirts to hide any visible tattoos. For recruiting, agencies may loosen this requirement in allowing waterproof makeup or skin tone sleeves which accomplish the same goal in not drawing attention to the tattoos or markings. It will enable the officer to have a more comfortable work environment while maintaining the standards set forth by the agency. Several Texas agencies have implemented policies that require officers cover the tattoo so that it is not visible yet do not specify or require long sleeve uniform shirts be utilized to cover the tattoo (El Paso Police Department, 2017). This would be a compromise that should appeal to possible candidates as it allows a more flexible option during the hotter months. Some officers complain not about having to wear the long sleeve shirt as much as the discomfort during the elevated temperatures in the summer. Having a breathable skin tone sleeve on would assist during these times. If a watch can cover a visible tattoo on the wrist, this would be an option that appeals to more candidates.

Arguments are made that departments should allow tattoos and hairstyles yet regulate them in a manner that any offensive markings or styles would not be allowed.

This would be by following similar policies that are established in the private sector. McDonald's restaurants have roughly 14,300 franchises in the United States in 2016. They are one of the largest employers in the United States (McDonald's, 2016). The employee handbook regulates the covering of extreme tattoos, hair should not exceed over the collar, and beards are prohibited. They do allow mustaches that do not dip below the upper lip (McDonald's, 2015).

One issue with this type of policy is it opens the door to interpretation. What one person finds as acceptable another might find as offensive or obscene. For instance, someone has a tattoo of raw cotton on his or her arm. To many, this would not be offensive in any manner. To some, they may view this as oppressive. This was the case for Hobby Lobby in displaying raw cotton in a vase on their shelves. A Texas woman found this offensive since cotton to her represented a product harvested by slaves (Perez, 2017). Further, the statement of objectionable words or images is too vague and open for debate. It does not set the groundwork for who decides on what standards are offensive. If cotton is construed as oppressive, then the theory is almost anyone can be offended by almost any image or statement.

The same could be said for what defines a racist comment. It is possible this would lead to lawsuits over departments allowing one officer to display a tattoo or hairstyle yet denying another. This was the case with Texas Parks and Wildlife when two employees claimed disparate treatment. One employee, Jackson, asserted managers were scrutinizing her tattoo more so than three other employees who also had visible tattoos. Jackson states she had a visible tattoo on her neck. Supervisors questioned her more frequently about the tattoo yet did not do so with the three other

employees about their tattoos (*Jackson, et al v. Texas Parks and Wildlife Department*, 2016).

The other employee, Keil, who filed suit with Jackson also claimed disparate treatment in regards to how supervision questioned her over a visible tattoo along with blonde highlights in her hair. Keil claims she was asked more frequently and with more scrutiny than other employees. Keil states that she dyed her hair brown to be more in line with natural hair colors (*Jackson, et al v. Texas Parks and Wildlife Department*, 2015). Blonde hair coloring is considered to be a natural hair color by most agencies. By allowing subjective selection of hairstyles, colors, lengths, along with tattoos, in the same manner, this opens the door to potential litigation. It also could lead to the repeal of the desired policy through litigation.

Some departments have elected to mirror or are contemplating adopting policies that the military utilize for facial hair, hairstyles, and tattoos. The military over the last decade has changed their policy several times. During the height of the wars, the policy is relaxed. Once the need for personnel decreased, the procedures are tightened. In the last couple of years, the military has gone back to a less strict policy. Each branch is different. The most rigorous branch is the Marines and the most liberal is the Navy. With hairstyles, males may not have hair that goes over the ears. Most branches regulate that men will have tapered hair. Females may have longer hair, yet it must be pinned to the head for safety reasons or interfere with the use of equipment that must be worn on their heads (Powers, 2017). With beards, some soldiers are authorized yet the vast majority still must be cleanly shaven.

Tattoos in the military vary from the different services. The Navy now allows visible tattoos even on the neck. There is no limitation to the size visible on the lower arms or legs. There is still a policy in place for content (Faram, 2017). The strictest policy goes to the Marines. They limit the number of exposed tattoos to one on the arm and one on the lower leg with regulations in size. Further, the exact location of the tattoo is restricted between the elbow and the wrist. If a Marine has a visible tattoo, it must be small enough to be covered with their hand. No tattoos will be visible on the neck or face (Marines, 2016).

Departments or officers that claim policies should follow the military may not realize that depending on the branch they can differ substantially. The question still returns to which military branch does a department follow. The military has gone back and forth on policies several times over the years because they are also trying to find a balance between professionalism, fair standards, and recruitment. The commanding officer of the Marines provided a statement to the media about tattoos. Marine Corps Commandant General Robert Neller advised that even with stricter policy on tattoos it has not harmed the ability to recruit new members into the Marines. He stated that if they began to see the inability to hire, then he would reexamine the policy (Seck, 2018).

RECOMMENDATION

It is best for an agency to have some form of policy on having standards for personal appearance. Without a written policy in effect, it allows interpretation. Appearance standards have been under scrutiny for several decades, and the controversy surrounding them do not appear to be going away any time soon. It is up to the individual agency as to what standard they desire to set. If facial hair, hairstyles,

and tattoos will be allowed then parameters should still be established to safeguard the department. This could include that officers are allowed to have facial hair or head hair longer than over the ears with a limitation on how long. With visible tattoos, it would be wise to have a policy outlining what is to be expected with visible tattoos. To assist in regulating visible tattoos agencies might establish a review committee or language dictating the chief or his designee will review the tattoo for approval. This could be beneficial if officers bring a civil suit against the agency.

Although there is opposition to agencies that do not allow facial hair, head hairstyles, and tattoos this seems to be the most logical decision. This belief is formulated from the risk assessment of potential negative feedback from the community and potential lawsuit from officers feeling targeted or isolated. Deciding to restrict officers' personal appearance is difficult, yet the overall mission of departments is to safeguard the communities they serve. If someone feels threatened or intimidated by an officers appearance, this would out weight the comfort or personal styles of the officers. Law enforcement is under a microscope in everyday actions that officers take. Any undue risk of scrutiny or public mistrust that can be eliminated should be considered.

An agency that decides not to allow facial hair, head hairstyles, and tattoos should try to accommodate officers when feasible. Accommodations could be allowing female officers to have long hair yet requiring them to keep it pinned against the scalp for officer safety issues. Male officers may be allowed to have sideburns yet not beards or mustaches, no goatees. If an agency regulates no visible tattoos, there are options for enabling waterproof makeup or bandages to cover smaller tattoos. Agencies could

specify the size of tattoo that qualifies for these types of covers. If the tattoo is on the wrist, a watch might suffice in covering the body art. For more substantial tattoos, breathable skin tone sleeves are a possible option. The desire to hide the tattoo is to keep from drawing attention to it or not to offend anyone. If the tattoo can be covered with the items as mentioned earlier that does not interfere with the officers' activities while still having a uniform appearance, then the desired goal is achieved. This could lessen morale issues and assist in potential recruiting of officers.

The purpose of having a more stringent policy is not to punish officers. It is a business decision similar to that of the private sectors businesses who have similar policies. In that to provide the best customer service to the community in a professional manner while maintaining consistency and diminishing any potentially harmful or negative publicity that hurts the overall image of the department. It could be wise to revisit the policy from time to time as society's perception continues to change.

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