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REPORT OF 2010 AUDIT OF THE EFFECTIVENESS OF THE COUNTY OF HUDSON'S HARASSMENT POLICY AND PROCEDURE

Prepared By:
LECLAIRRYAN, A *Virginia Professional Corporation*
One Riverfront Plaza, 16th Floor
1037 Raymond Boulevard
Newark, New Jersey 07102
(973)-491-3600

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I. PURPOSE OF THE AUDIT

The New Jersey Supreme Court has held that employers who promulgate and support an active anti-harassment policy should be entitled to a form of safe haven from hostile work environment claims. Cavuoti v. New Jersey Transit Corporation, 161 N.J. 107, 120-21 (1999). Indeed, courts have held that an effective grievance procedure -- one that is known to the victim and that timely stops the harassment -- shields the employer from liability for a hostile work environment. Bouton v. BMW of North America, Inc., 201 F.3d 103, 106-11 (3d Cir. 1994). The New Jersey Supreme Court has held also that an employer may claim a safe harbor from potential hostile work environment claims if it can show it has an effective anti-harassment policy. Gaines v. Bellino, 173 N.J. 301, 303 (2002). In order to meet its duty of care and operate within the safe harbor, an employer must be able to show "the existence of effective sensing or monitoring mechanisms to check the trustworthiness of the policies and complaint structure" See Gaines v. Bellino, 173 N.J. 301, 313 (2001) citing Lehman v. Toys R' Us, 132 N.J. 587, 617 (1993). Indeed, "the efficacy" of an employer's anti-harassment policy is "highly pertinent" to an employer's defense in a potential discrimination lawsuit. See Payton v. New Jersey Turnpike Auth., 148 N.J. 524, 535-38 (1997).

To that end, the County of Hudson ("County") engaged this Firm to conduct an audit to measure the effectiveness of its Anti-Harassment Policy and Complaint Procedure (the "Policy"). A copy of the Policy is attached as Exhibit A.

II. THE POLICY

The Policy prohibits any form of harassment prohibited under law¹, includes definitions of sexual harassment and gives detailed examples of prohibited conduct. The Policy further contains a Complaint procedure which provides in pertinent part:

Employees who have a complaint of harassment, including sexual harassment, by anyone, including supervisors, co-workers, vendors or visitors are encouraged to promptly report all incidents. A complaint may be filed with a Supervisor, Department Director or the Personnel Director. . . . Employees who believe it would be inappropriate to discuss the matter with their supervisor should report it to another supervisor or County official.

The Policy also contains an anti-retaliation which Policy prohibits reprisals against any person who files a Complaint under the Policy.² Finally, the Policy contains Complaint forms which are available to employees who make complaints under the Policy.

The Policy is contained within the County's Employee Handbook which is distributed to all employees when they become employed by the County. The County further requires employees to attend mandatory training sessions where the Policy is redistributed and discussed.

¹ The prohibited forms of harassment include harassment based upon "race, creed, color, national origin, ancestry, age, sex marital status, political affiliation, liability for service in the armed forces of the United States, physical or mental disability or handicap, status as Vietnam-era or special disabled veteran, atypical heredity cellular or blood trait, affectional or sexual orientation, genetic information or because of the refusal to submit to a genetic test or make available the results of a genetic test to the County."

² The retaliation provision provides in pertinent part: It is a violation of this policy for any employee to take reprisals against any person because she/he has filed a complaint, testified or assisted in any proceeding under this policy. Threats other forms of intimidation, and /or retaliation against the complainant or any other party based on involvement in the complaint process may be cause for disciplinary action.

III. METHODOLOGY FOR MEASURING THE EFFECTIVENESS AND TRUSTWORTHINESS OF THE POLICY

A. The Audit Questions

In order to measure the effectiveness and trustworthiness of the Policy we developed a series of six questions which were designed to examine: (1) employee awareness of the Policy, (2) employee receipt of training on the Policy, (3) employee awareness of the complaint procedures under the Policy in the event the employee became a victim of unlawful harassment, (4) employee awareness of the complaint procedures under the Policy in the event the employee witnessed unlawful harassment, (5) employee awareness of his/her ability to file a complaint under the Policy with the Department of Personnel, and (6) employee willingness to file a complaint under the Policy ("Audit Questions"). A copy of the Audit Questions are attached as Exhibit B.

We chose the above factors for several reasons. Initially, numerous New Jersey courts have held that in order for an anti-harassment policy and complaint procedure to be effective, it must be **known** to the victim. See Cavuoti v. N.J. Transit Corp. 161 N.J. 17, 120-21 (1999); Gaines, 173 N.J. at 314-319; Smith v. Exxon Mobile Corp., 374 F. Supp. 374 F. Supp. 2d 40, 422 (D. N.J. 2005). Therefore, we measured employee awareness of the Policy, employee awareness of the complaint procedures both if the employee became a victim and employee awareness of the complaint procedures if the employee witnessed harassment.

In addition, New Jersey Courts have held that a factor in determining whether a policy is effective is whether the employer offers employees training in that policy. See Gaines, 173 N.J. at 313; Cavuoti, 161 N.J. at 20-21. Therefore, we measured the

employee receipt of training under the Policy. Finally, the New Jersey Supreme Court has found the unwillingness of an employee to file a formal complaint under an anti-harassment procedure may factor into whether the employer has “established meaningful and effective policies and procedures for employees to use in response to harassment.” See Gaines, at 318. Therefore, we measured employee willingness to file a complaint under the Policy.

B. The Selection of Employees

The County employs approximately 3,200 employees. We selected 373 County employees or approximately 11.6 percent of the County’s workforce to participate in the audit. The employees were randomly selected employees along a cross-section of titles, races and genders.

Of the 373 employees we interviewed, 59 employees were assigned to the Department of Corrections, 24 employees were assigned to the Sheriff’s Department, 78 employees were assigned to the Department of Welfare, 28 employees were assigned to the Department of Parks, 42 employees were assigned to the Department of Roads and Public Property, 54 employees were assigned to the Prosecutor’s Office, 16 employees were assigned to the Law Department, 19 employees were assigned to the Department of Finance and Administration, 6 employees were assigned to the Surrogate’s Office, 7 employees were assigned to the County Clerk’s Office, 9 employees were assigned to the Department of the Register, 11 employees were assigned to the Superintendent of Elections, and 20 employees were assigned to the Department of Health and Human Services.

We met with each employee individually and solicited their response to each of the Audit Questions.

IV. THE RESULTS³

Ninety-nine percent, or 368 out of the 373 employees we interviewed, responded yes when asked if they were aware of the County's policies concerning harassment, discrimination and retaliation. Eighty-seven percent, or 323 of the 373 employees we interviewed, responded yes when asked if they were trained in the County's policies and procedures concerning harassment, discrimination and retaliation. Ninety-four percent, or 350 of the 373 employees we interviewed, responded that they knew how to file a complaint under the Policy if they became the victim of unlawful harassment, discrimination or retaliation and ninety-one percent, or 341 out of 373 employees, responded that they knew how to file a complaint under the Policy if they witnessed unlawful harassment, discrimination or retaliation. Eighty-three percent, or 310 of the 373 employees we interviewed, responded that they were aware that if they felt uncomfortable complaining to a supervisor about unlawful harassment, discrimination or retaliation, under the Policy, they could file a complaint directly with the Department of Personnel. Finally, ninety-seven percent, or 361 of the 373 employees we interviewed, responded that they would file a complaint under the policy if they became the victim of harassment, discrimination or retaliation.

V. CONCLUSIONS

Based upon the above information, we conclude that the Policy is both effective and trustworthy. Indeed, an overwhelming number of employees (99%) are aware of the

³ Attached as Exhibit C is a chart outlining the results of the audit for all of the employees we selected. Attached as Exhibit D are charts outlining the results of the audit broken down by department.

Policy. In addition, 94% of the employees interviewed know how to file a complaint under the Policy if they became the victim of unlawful harassment, while 91% know how to file a complaint under the Policy if they witness unlawful harassment.⁴ Significantly, the employees who participated in the audit overwhelmingly responded that they are not only aware of the Policy and complaint procedures, but are also willing to utilize the Policy and file a complaint if they became the victim of unlawful harassment. Indeed, 97% of the employees reported that they would file a complaint under the Policy if they became a victim of harassment.

Finally, a large majority of employees who participated in the audit reported that they had received training on the policy (87%) and were aware that they could file a complaint with the Department of Personnel if they felt uncomfortable reporting harassment to their supervisors (83%).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴ Ninety-nine percent of the employees who participated in the audit stated they were aware of the Policy, ninety-four percent of the employees who participated in the audit stated they were aware of the procedures for filing a complaint if they became the victim of harassment and ninety-one percent of the employees who participated in the audit reported they were aware of the procedures for filing a complaint if they witnessed unlawful harassment.

EXHIBIT A

For purposes of this policy, an alcoholic beverage is any beverage that may be legally sold and consumed and has an alcoholic content in excess of 3% by volume.

Drug means any substance other than alcohol capable of altering an individual's mood, perception, pain level or judgment. A prescribed drug is any substance prescribed for individual consumption by a licensed medical practitioner. An illegal drug is any drug or controlled substance the sale or consumption of which is illegal.

Pursuant to the Federal Drug-Free Workplace Act of 1989, all County employees, as a condition of their employment, must comply with these rules and must notify their supervisor or this office if they are convicted of violating any criminal drug law during working hours or on County property no later than five days after the conviction within five days may result in discipline, including discharge.

The purpose of the policy set forth above are:

1. to establish and maintain a safe, healthy working environment for all employees;
2. to ensure the reputation of the County and its employees within the community;
3. to reduce the number of accidental injuries to person or property;
4. to reduce absenteeism and, tardiness and improve productivity; and
5. to provide rehabilitation assistance for any employee who seeks such help.

Law enforcement employees who have an alcohol or prescription drug abuse problem are encouraged to contact their supervisors, the County medical staff or this office for assistance. Such assistance may include drug counseling, treatment and rehabilitation. Law enforcement employees who seek such assistance will not be disciplined for making the request. The cost of any counseling, treatment or rehabilitation may be paid partly or fully by the County provided health insurance benefits. The County will provide an unpaid medical leave of absence of up to 30 calendar days for counseling, treatment or rehabilitation. The details of the request and treatment will be kept confidential. Any employee who wrongfully releases information concerning a request for assistance or the details of counseling, treatment or rehabilitation is subject to discipline up to and including discharge.

ALCOHOL AND DRUG TESTING **FOR EMPLOYEES WHO HOLD COMMERCIAL DRIVERS' LICENSES(CDL'S)**

The County complies with Federal law that requires alcohol and drug testing of employees who hold commercial drivers' licenses. Details are contained in a separate policy that is distributed to all affected employees and their managers and supervisors.

HARASSMENT POLICY **(INCLUDING SEXUAL HARASSMENT)**

General Policy

The County expressly prohibits any form of harassment based on race, creed, color, national origin, ancestry, age, sex, marital status, political affiliation, liability for service in the armed forces of the United States, physical or mental disability or handicap, status as a Vietnam-era or special disabled veteran, atypical hereditary cellular or blood trait, affectional or sexual orientation, genetic information or because of the refusal to submit to a genetic test or make available the results of a genetic test to the County.

Sexual Harassment Policy

It is the County policy that all employees are responsible for assuring that the workplace is free from harassment, including sexual harassment. Because of the County's strong disapproval of offensive or inappropriate sexual behavior at work, all employees must avoid any action or conduct which could be viewed as sexual harassment.

Definitions

Sexual harassment is defined as: unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct based on gender when:

submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment including, but not limited to:

Gender Harassment: Generalized gender-based remarks and behavior;

Seductive Behavior: Inappropriate, unwanted, offensive physical or verbal sexual advances;

Sexual Bribery: Solicitation of sexual activity or other sex-linked behavior by promise of reward;

Sexual Coercion: Coercion of sexual activity by threat of punishment; and

Sexual Assault: Gross sexual imposition like touching, fondling, grabbing or assault.

Examples of Prohibited Conduct

- demanding sexual favors in exchange for favorable reviews, assignments, promotions, continued employment or promises of the same;
- demanding sexual activity by threat of punishment;
- continued or repeated sexual jokes, languages, epithets, flirtation, advances or propositions;
- verbal abuse of a sexual nature;
- graphic verbal commentary about an individual's body, sexual prowess or sexual deficiencies;
- sexually degrading or vulgar words to describe an individual;
- leering, whistling, touching, pinching, brushing the body, assault, coerced sexual acts, or suggestive, insulting, or obscene comments or gestures; the display in the workplace of sexually suggestive objects, pictures, posters or cartoons;

- name calling, relating stories, gossip, comments or jokes that may be derogatory toward a particular sex;
- the display of sexually suggestive graffiti;
- retaliation against employees for complaining about such behaviors;
- asking questions about sexual conduct or sexual orientation or preferences;
- harassment consistently targeted at only one sex, even if the content of the verbal abuse is not sexual.

Managerial/Supervisory Responsibilities

Managers and supervisors must enforce this policy. Upon being informed of possible harassment, including sexual harassment, managers and supervisors are required to immediately take appropriate action, including informing employees of their rights to file a complaint pursuant to this policy.

Employee Responsibilities

Employees are encouraged, whether directly or through a third party, to notify the alleged harasser that the behavior in question is offensive and unwelcome. However, failure to do so does not prevent an employee from filing a complaint.

Employees are encouraged to promptly report all alleged incidents of harassment, including sexual harassment, even if someone else is a possible victim.

Complaint Procedure

Employees who have a complaint of harassment, including sexual harassment, by anyone, including supervisors, co-workers, vendors or visitors are encouraged to promptly report all incidents. A complaint may be filed with a Supervisor, Department Director or the Personnel Director. A blank complaint form is located on Page 71 of this Handbook. Employees who believe it would be inappropriate to discuss the matter with their supervisor should report it to another supervisor or County official.

Complaints should be filed within 15 days of the event complained about. Complaints filed after 15 days may be dismissed.

Confidentiality

To the maximum extent possible, the investigative proceedings will be conducted in a manner to protect the confidentiality of the complainant, the alleged harasser and all witnesses. All parties involved in the proceedings will be advised to maintain strict confidentiality, from the initial meeting to the final agency decision, to safeguard the privacy and reputation of all involved.

Remedial Action

If the County determines that an employee is guilty of harassing another employee, appropriate disciplinary action will be taken against the offending employee, including the following:

- referral to counseling;
- verbal warning;
- written warning;
- reassignment;
- suspension;
- termination;
- referral to the criminal justice system for possible violation.

Retaliation

It is a violation of this policy for any employee to take reprisals against any person because she/he has filed a complaint, testified or assisted in any proceeding under this policy. Threats, other forms of intimidation, and/or retaliation against the complainant or any other party based on involvement in the complaint process may be cause for disciplinary action.

However, if, after investigating any complaint of harassment, the County determines that the complaint is not bona fide or that an employee has provided false information regarding the complaint, disciplinary action may be taken against the individual who filed the complaint or provided the false information.

CONSCIENTIOUS EMPLOYEE PROTECTION POLICY

Pursuant to a State law known as the Conscientious Employee Protection Act, the County cannot take any retaliatory action against an employee because the employee does any of the following:

1. discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the County that the employee reasonably believes is in violation of a law, or a rule or regulations promulgated pursuant to law;
2. provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the County; or
3. objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes:
 - (a) is in violation of a law, or a rule or regulation promulgated pursuant to law;
 - (b) is fraudulent or criminal; or
 - (c) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare.

An employee who makes a disclosure to a public body must notify his or her supervisor in writing of the activity, policy or practice which is in violation of law. This notice requirement is intended to give the County a reasonable opportunity to correct the activity, policy or practice. Employees who do not first notify their supervisor are not protected against retaliation.

However, employees do not first have to notify their supervisor under the following circumstances.

1. where it is reasonably certain that the activity, policy or practice is known to one or more County supervisors; or

EMPLOYEE COMPLAINT FORM

DEPARTMENT: _____

DIVISION: _____

EMPLOYEE NAME: _____

JOB TITLE: _____

DETAILS OF COMPLAINT:

(Include who was involved, what was said/done, when incident took place, where incident took place, why incident took place and how incident took place.)

REMEDY REQUESTED:

Employee signature

Date

Employee Printed Name

EXHIBIT B

**AUDIT OF COUNTY'S ANTI-HARASSMENT AND DISCRIMINATION
PROCEDURES**

1. Are you aware of the County's policies concerning harassment, discrimination and retaliation?

___Yes ___No
2. Have you received any training on the County's policies and procedures concerning harassment, discrimination and retaliation?

___Yes ___No
3. Do you know how to file a complaint if you became the victim of unlawful harassment, discrimination or retaliation?

___Yes ___No
4. Do you know how to file a complaint if you witness unlawful harassment, discrimination or retaliation?

___Yes ___No
5. Are you aware that if you feel uncomfortable complaining to your supervisor about unlawful, harassment, discrimination or retaliation, under the County's policies and procedures, you can file a complaint directly with the County's Department of Personnel?

___Yes ___No
6. If you became the victim of harassment, discrimination or retaliation, would you file a complaint under the County's policies and procedures?

___Yes ___No

If no, why not?

EXHIBIT C

TOTAL OF ALL EMPLOYEES WHO PARTICIPATED IN THE AUDIT

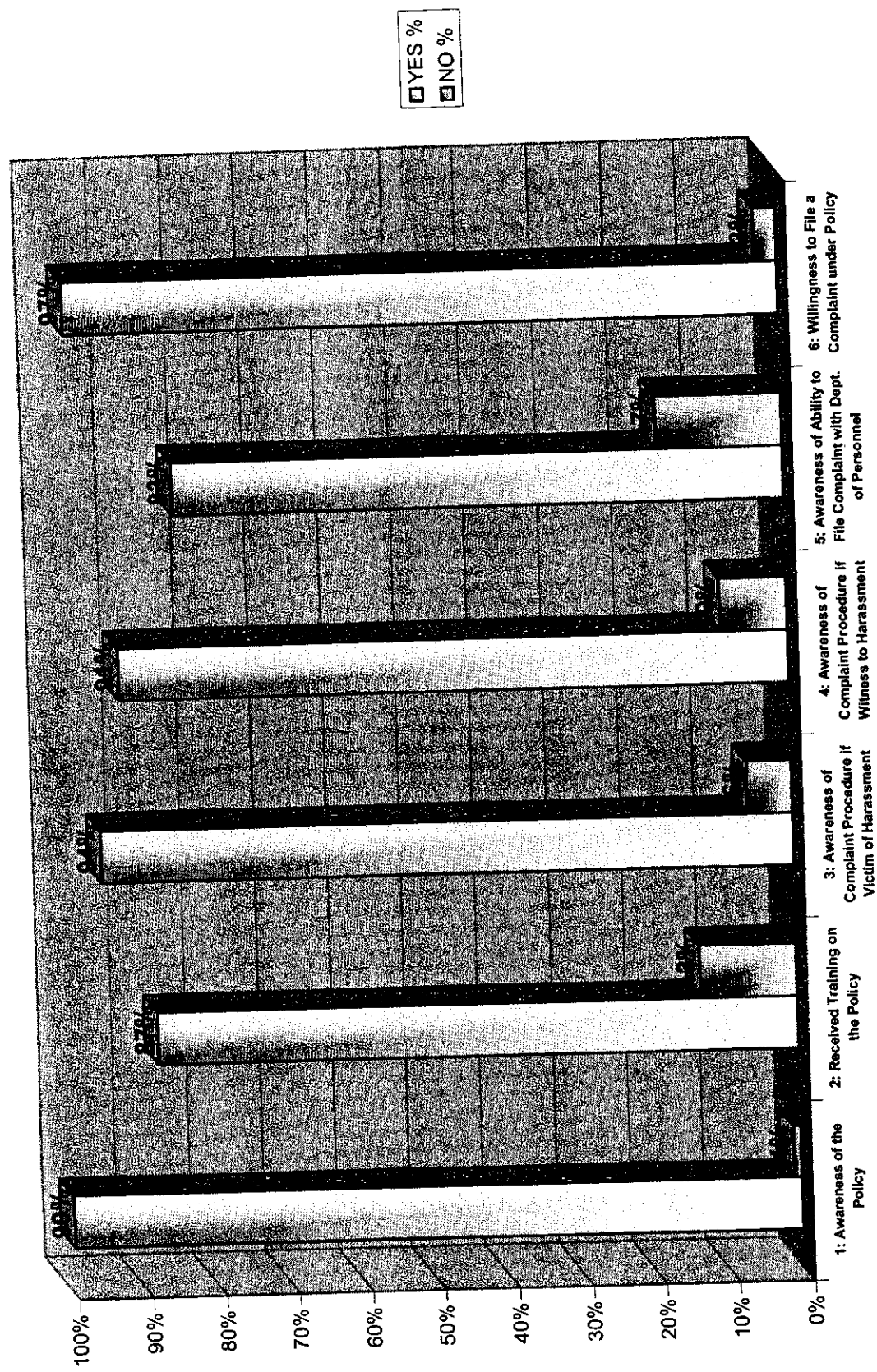
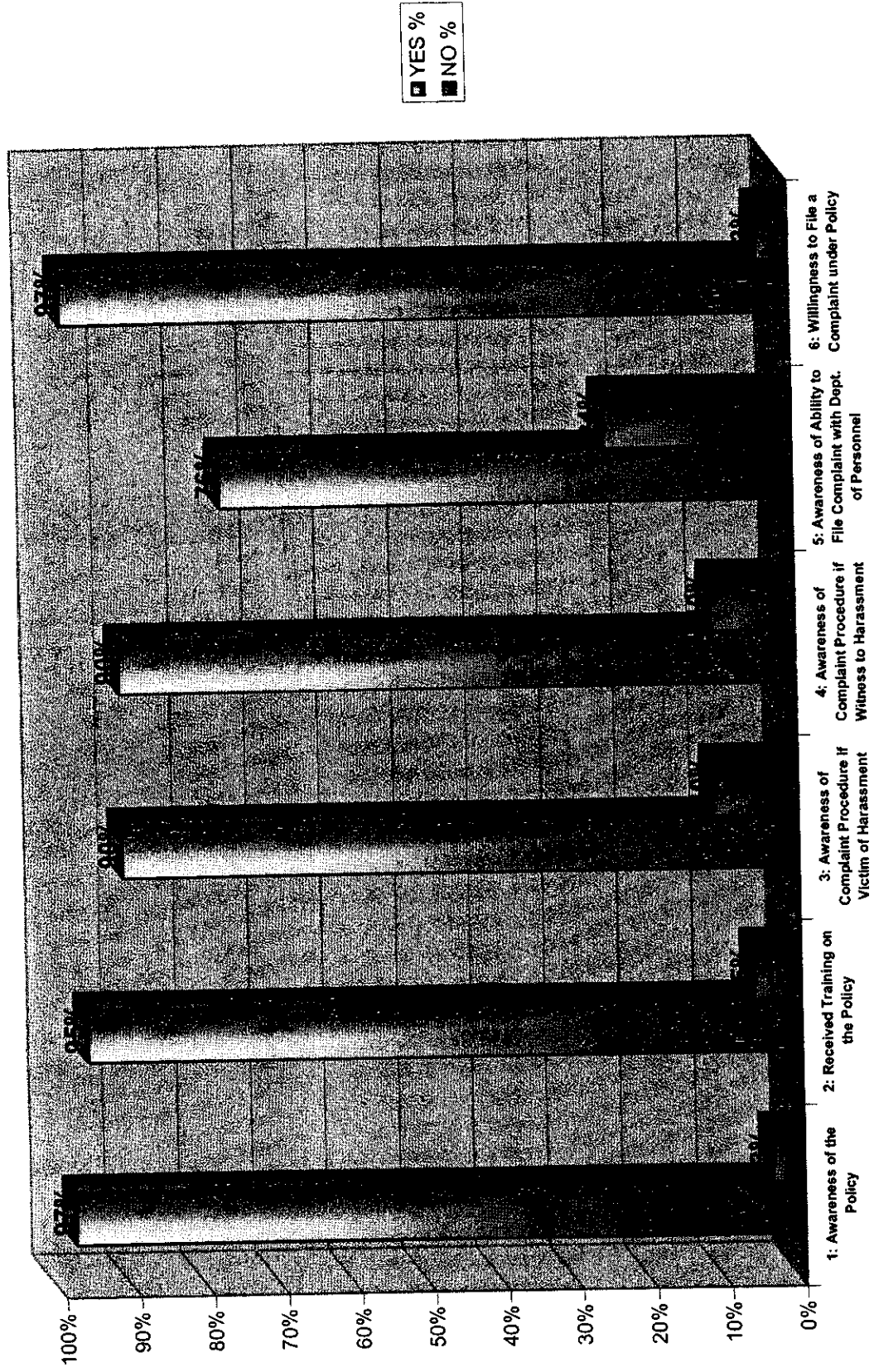
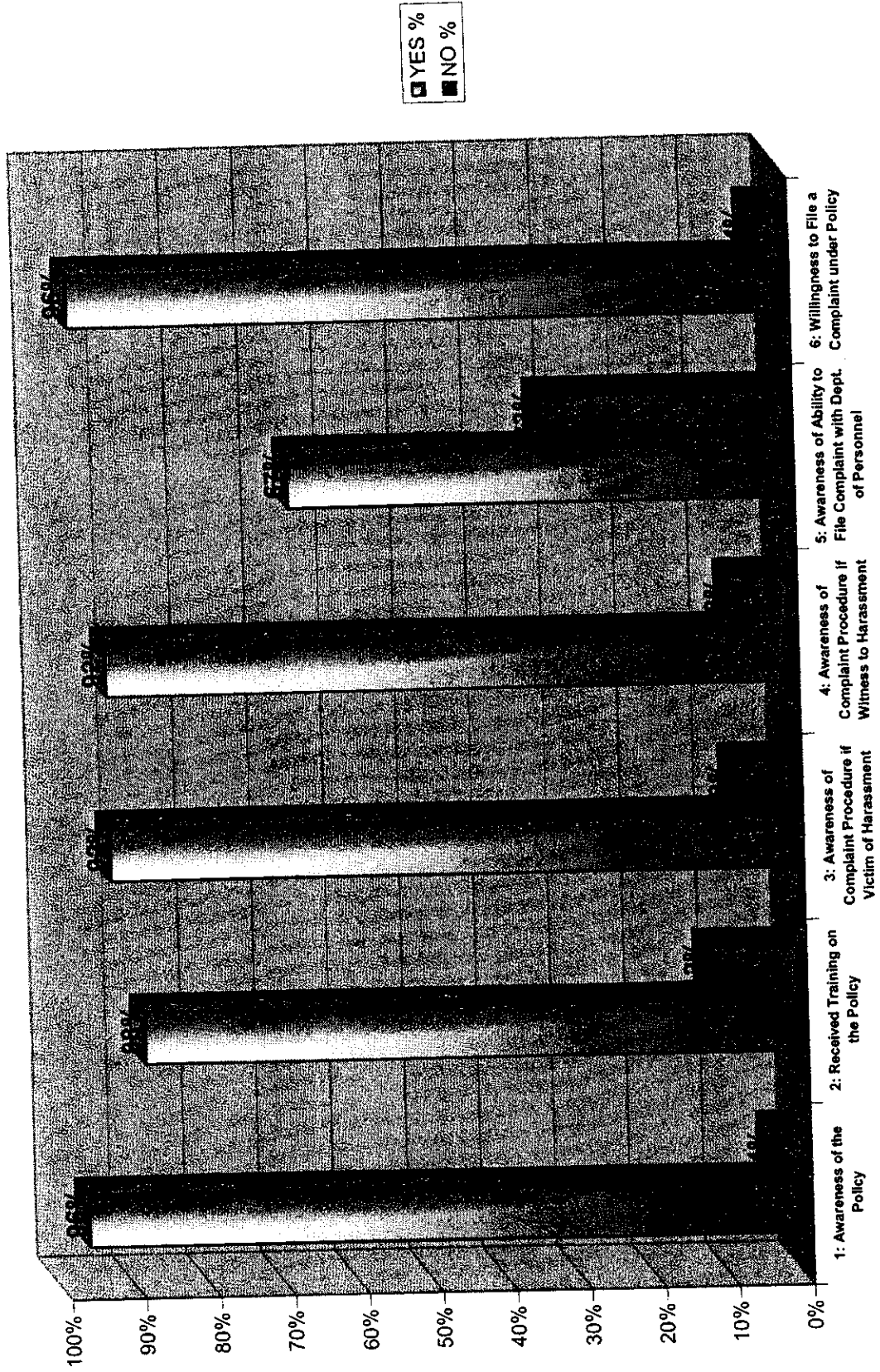


EXHIBIT D

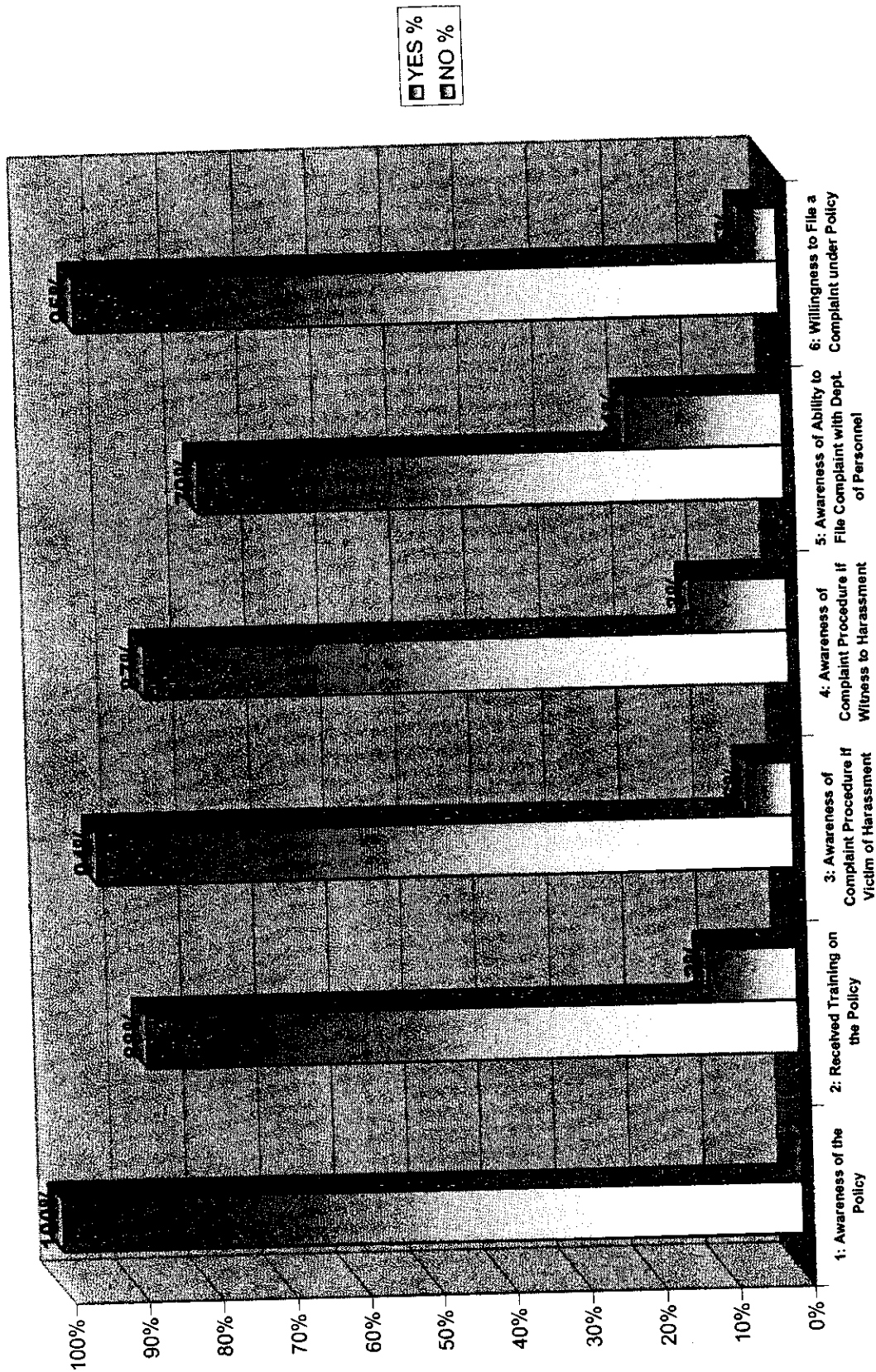
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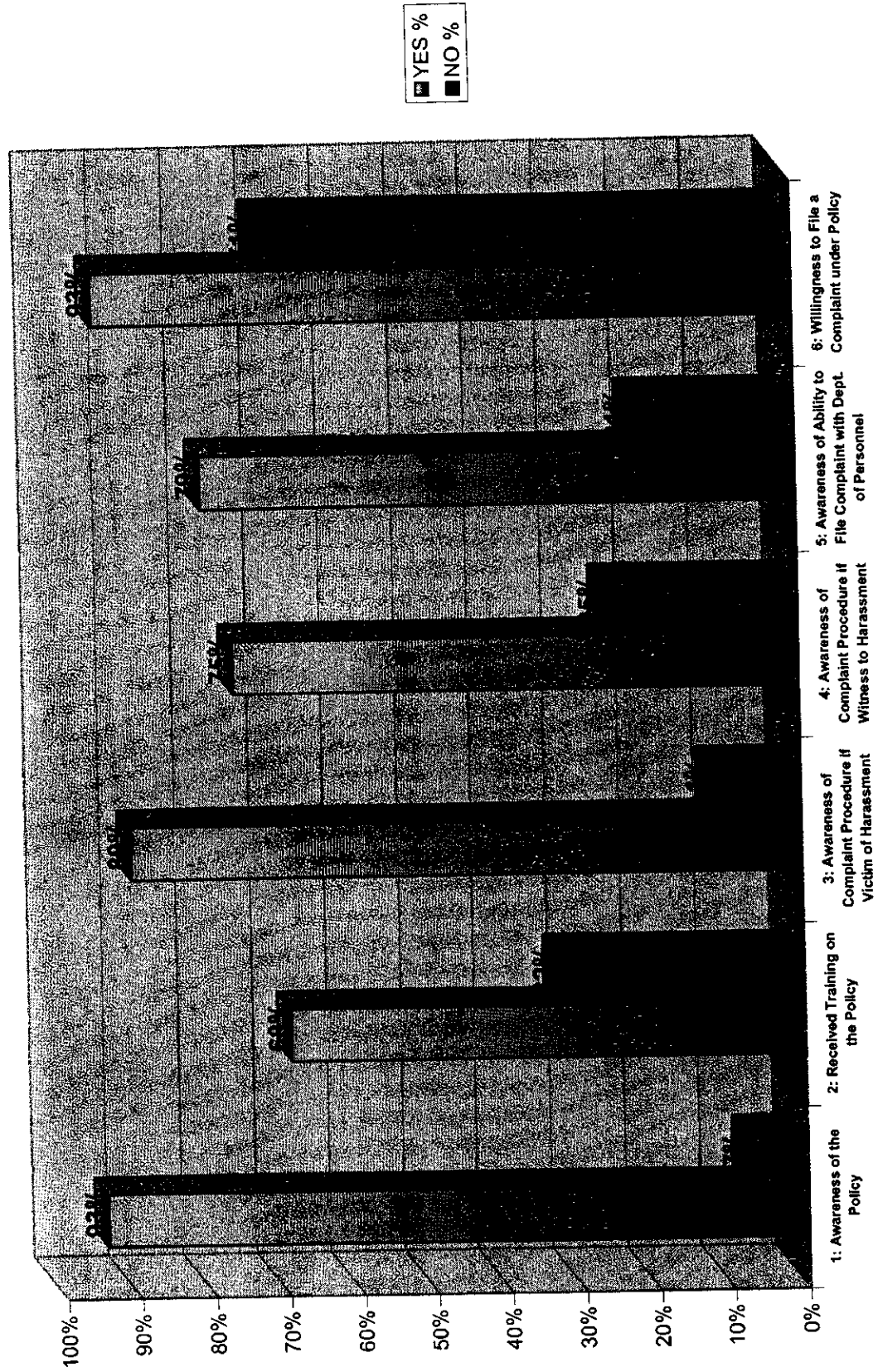
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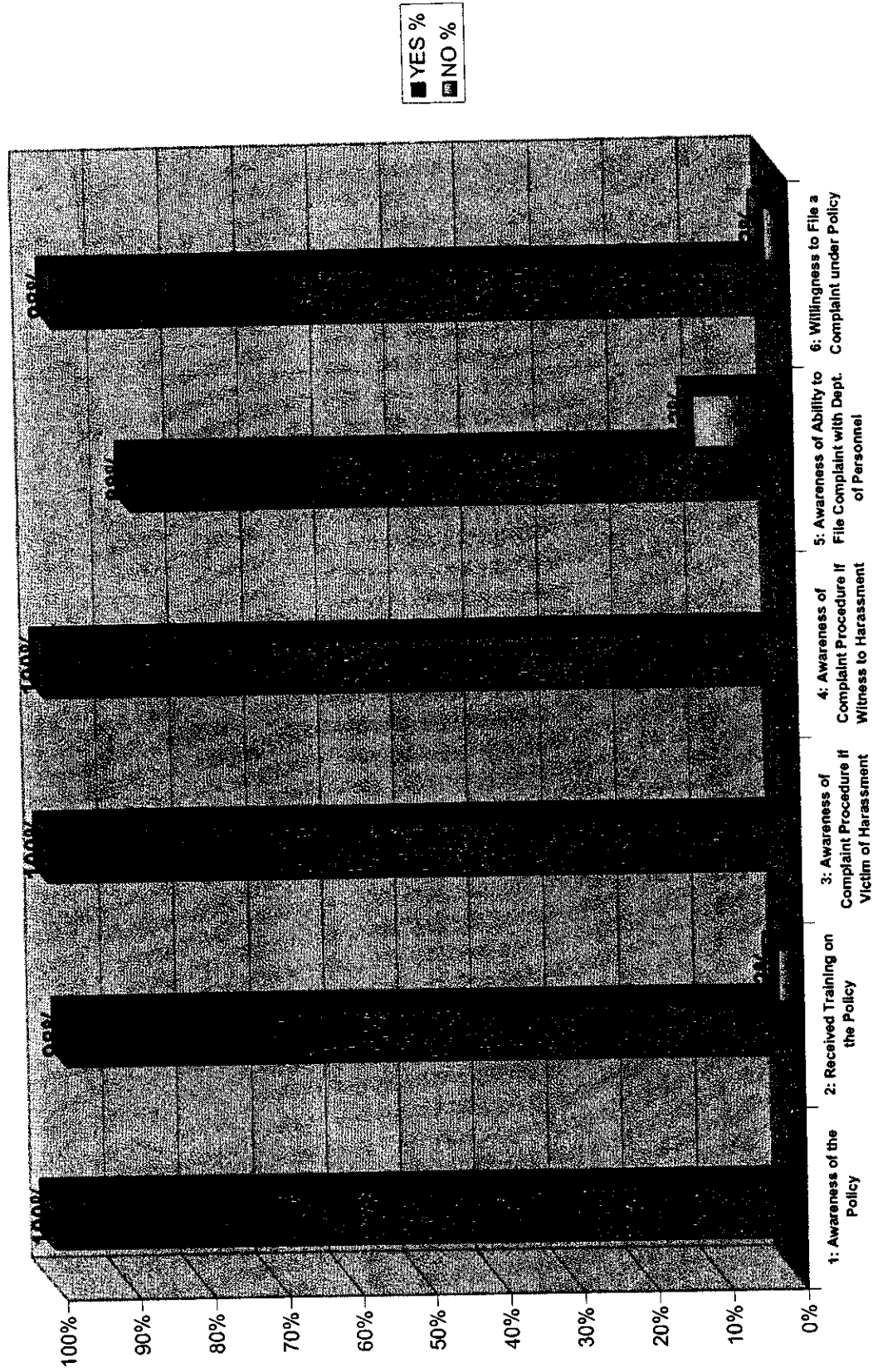
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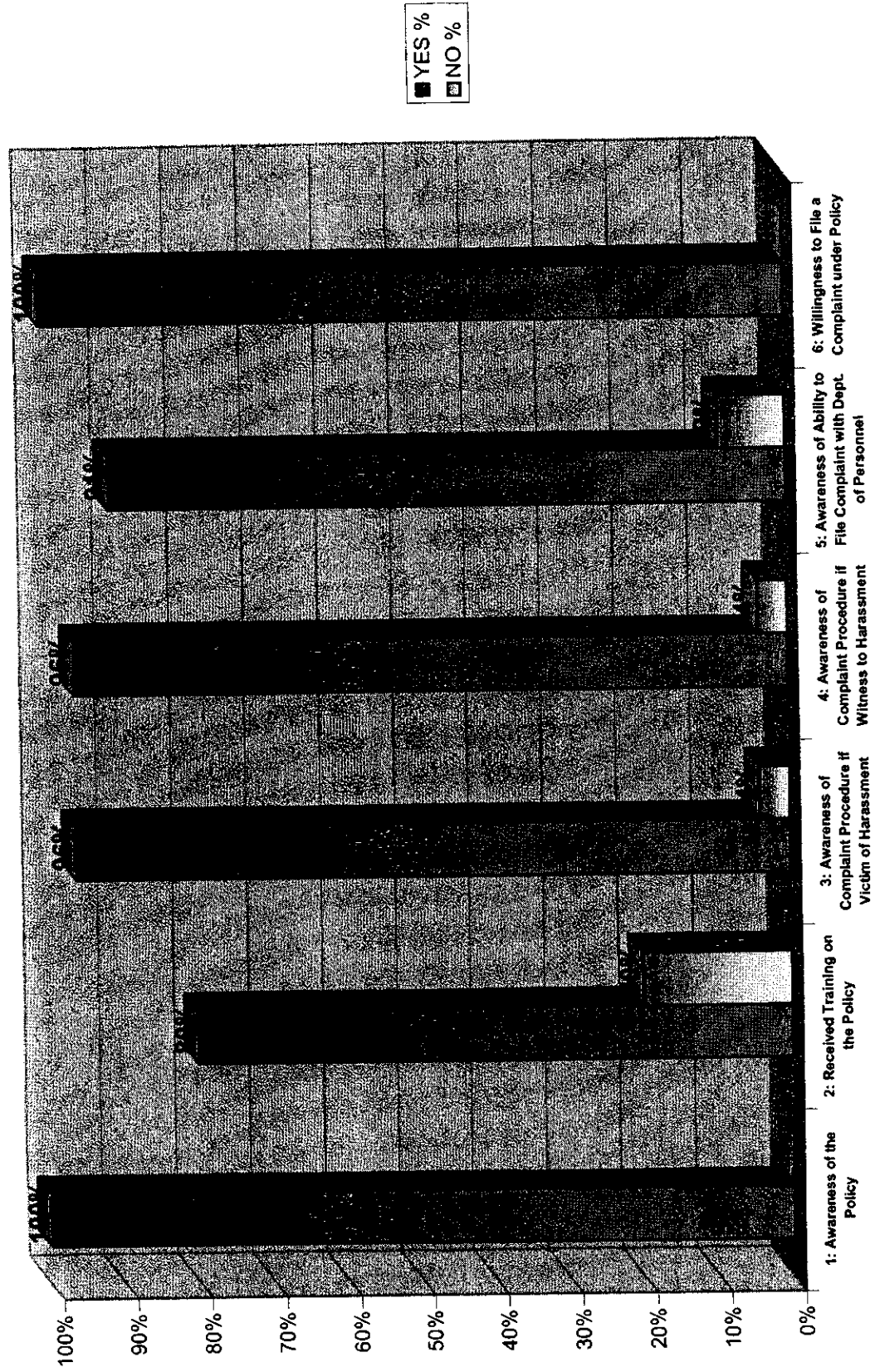
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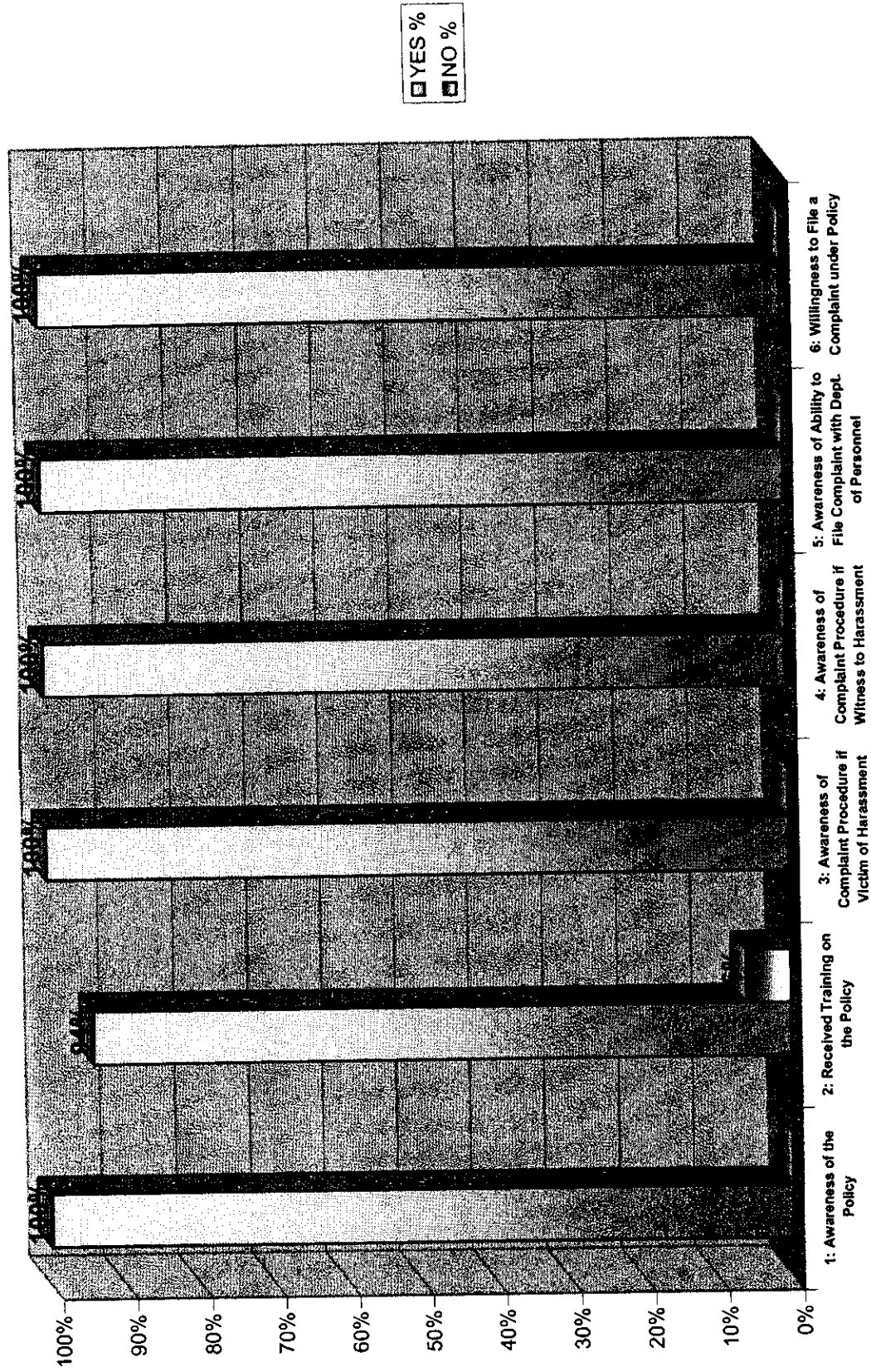
DEPARTMENT OF ROADS & PUBLIC PROPERTY



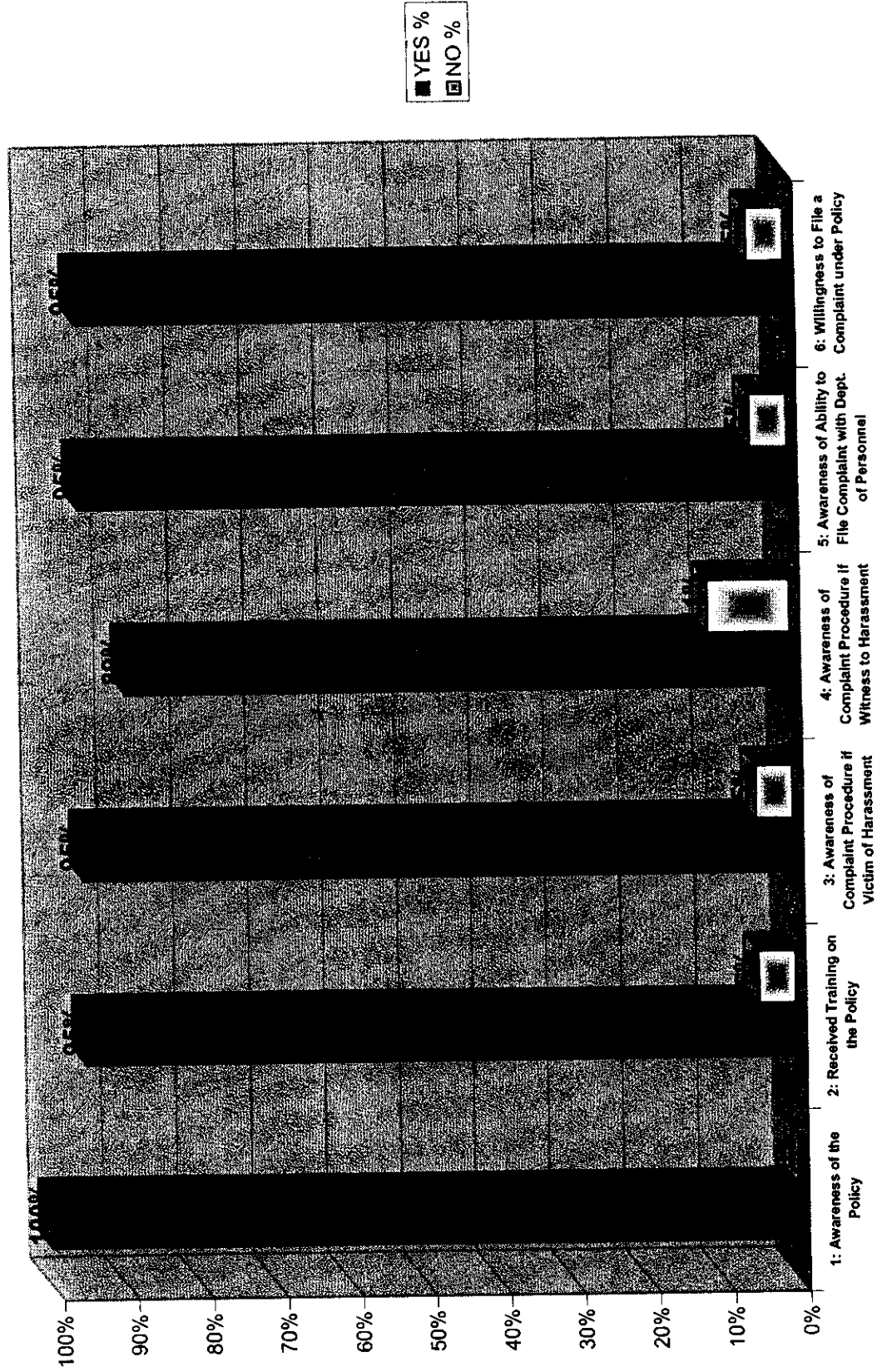
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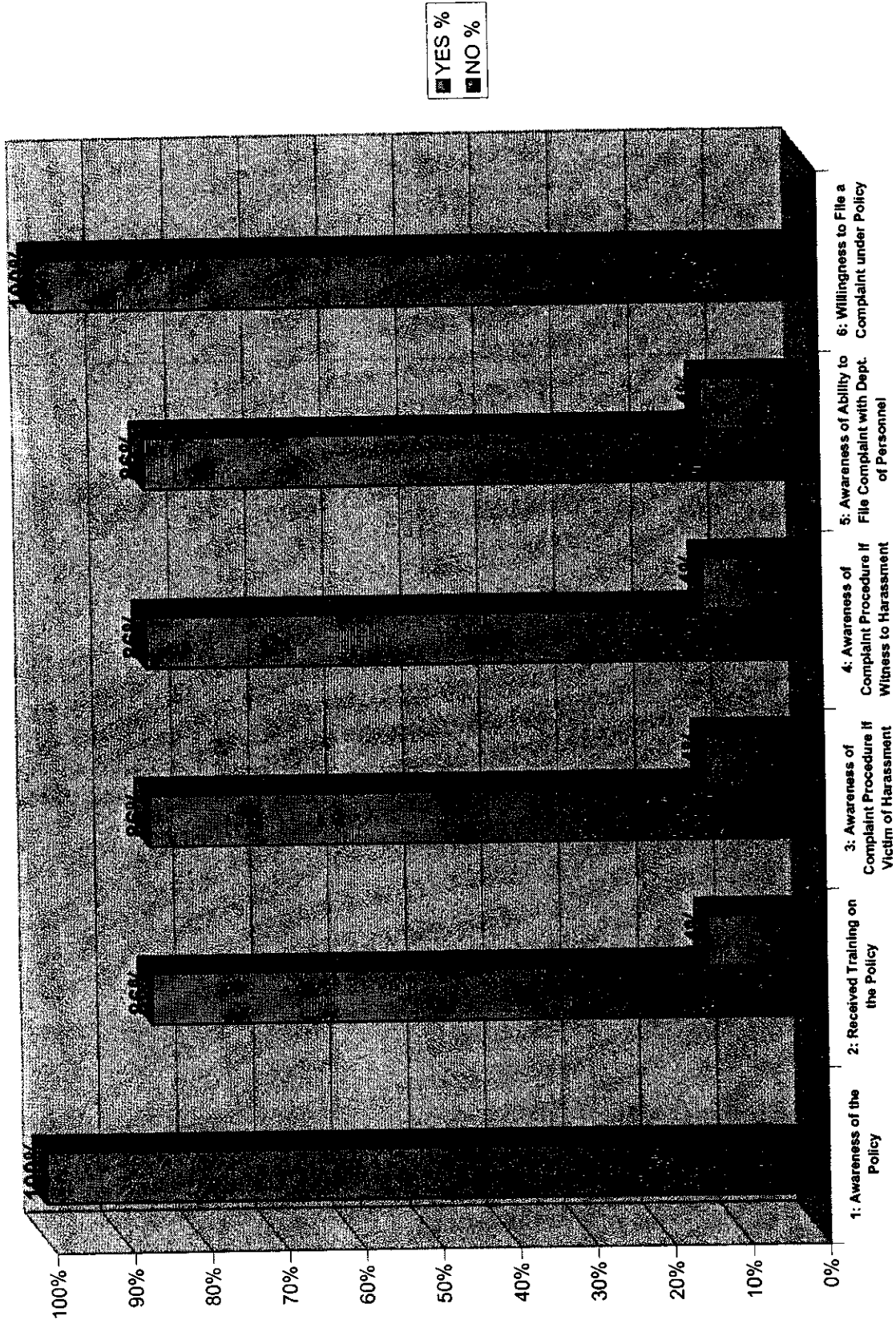
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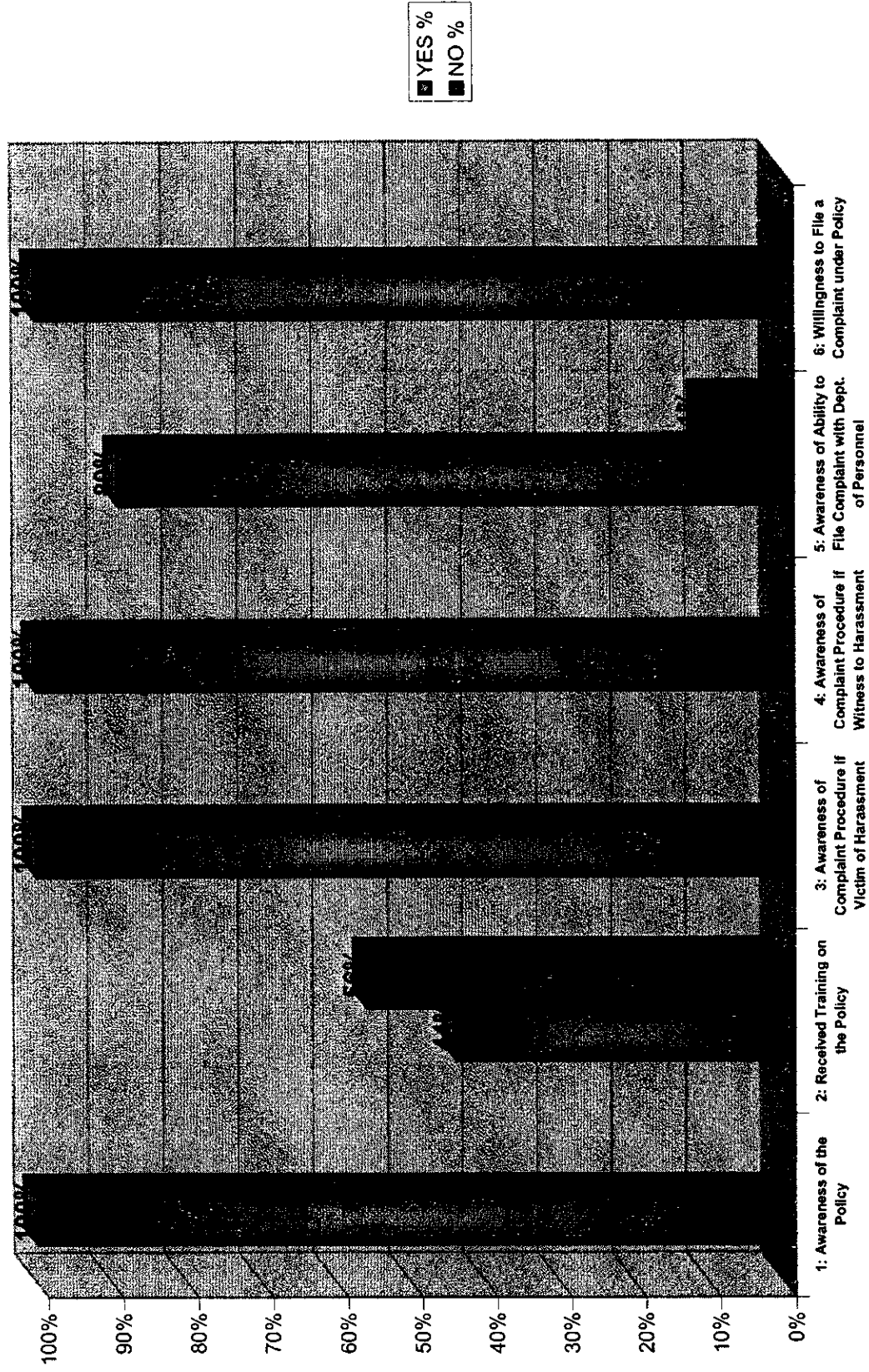
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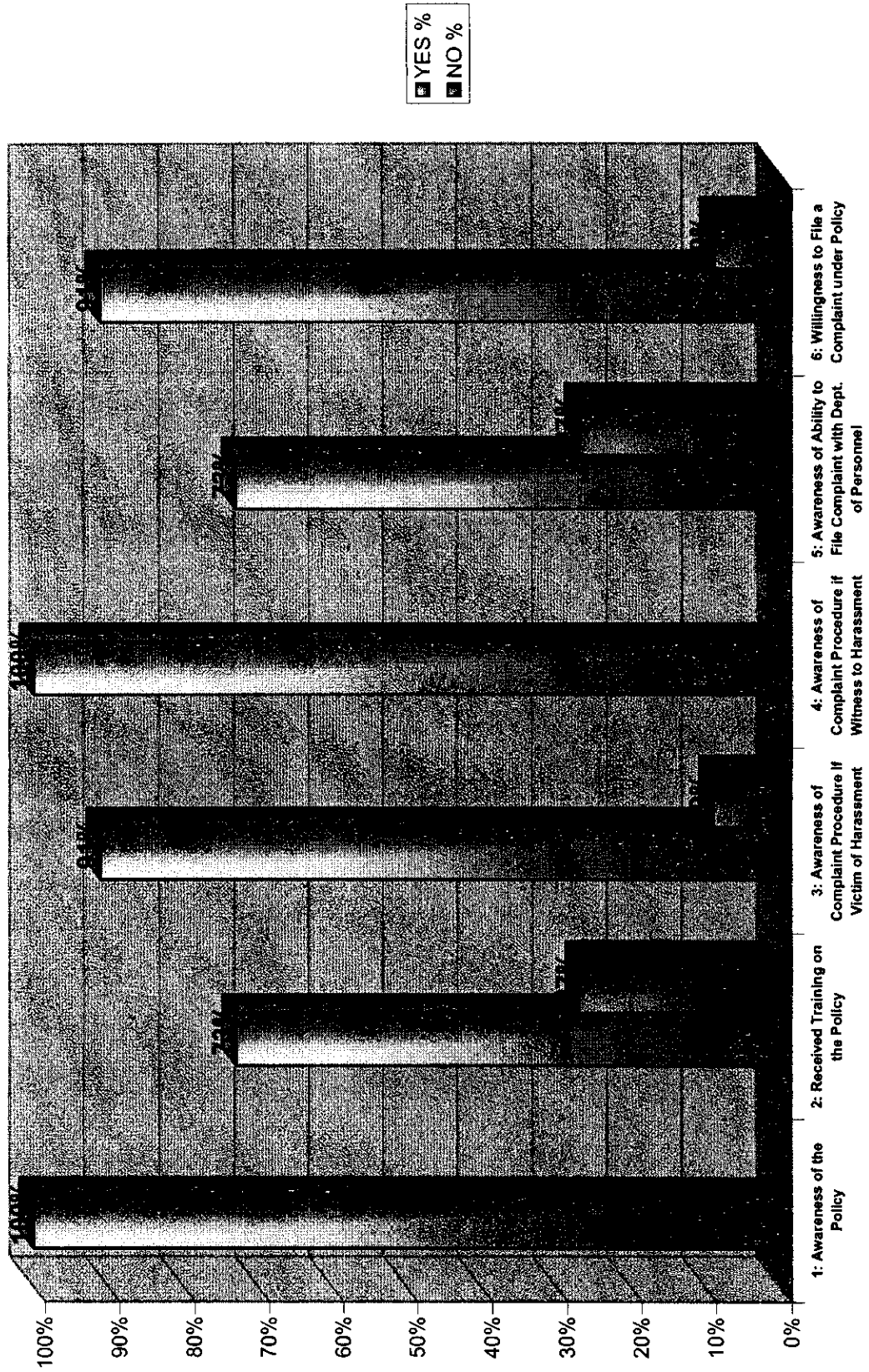
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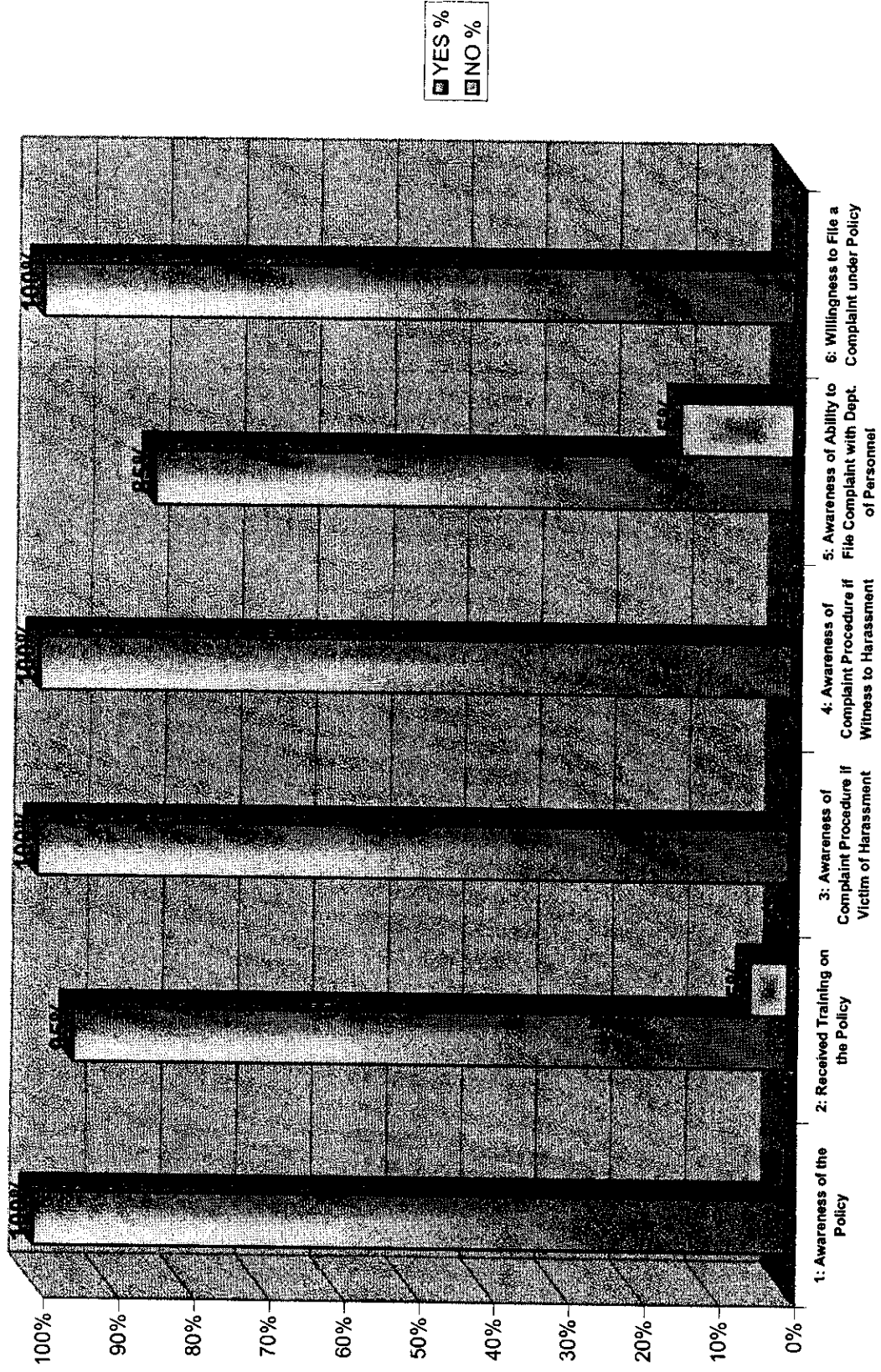
REGISTER EMPLOYEES



SUPERINTENDENT OF ELECTIONS



HEALTH & HUMAN SERVICES



SURROGATE'S OFFICE

