

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

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### **CHIEF'S PREFACE**

We, the members of the Kings County District Attorney's Office Bureau of Investigation, are committed to excellence in law enforcement and are dedicated to the protection and wellbeing of the citizen's of Kings County. In order to protect life and property, prevent crime and reduce the fear of crime, we will provide service with understanding, respond with compassion, perform with integrity, and instill the profession of law enforcement with vision. We accept the responsibility for efficient and uniform enforcement of criminal laws and the administration of criminal justice to assist in the conviction of offenders in violation of the laws governing the State of California and the Unites States of America.

**MISSION STATEMENT**

It is the mission of the Kings County District Attorney's Office Bureau of Investigations to provide a service that ensures the safety and quality of life throughout our community.

We serve anyone in need and do so with honor, integrity and respect. We place the needs of our victims first and are committed to ensuring justice is found on their behalf

We value our law enforcement partners and work united in response to crime.

We strive to build professional working relationships throughout our community and place the need of others before our own. We value the differences found within every individual and seek to uplift those in their time of need.

We respect the constitutional and human rights of all citizens. We safeguard life, fairness and truth.

We are committed to service.

Chief Investigator Charlie S. Flores

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## **Chapter 1 - Law Enforcement Role and Authority**

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## Law Enforcement Authority

### 100.1 PURPOSE AND SCOPE

The purpose of this policy is to affirm the authority of the members of the Kings County District Attorney Investigation Division to perform their functions based on established legal authority.

### 100.2 PEACE OFFICER POWERS

Sworn members of this [department/office] are authorized to exercise peace officer powers pursuant to applicable state law (Penal Code § 830.1 et seq.).

#### 100.2.1 ARREST AUTHORITY INSIDE THE JURISDICTION OF THE KINGS COUNTY DISTRICT ATTORNEY INVESTIGATION DIVISION

The arrest authority within the jurisdiction of the Kings County District Attorney Investigation Division includes (Penal Code § 830.1; Penal Code § 836):

- (a) When the investigator has probable cause to believe the person has committed a felony, whether or not committed in the presence of the investigator.
- (b) When the investigator has probable cause to believe the person has committed a misdemeanor in this jurisdiction and in the presence of the investigator.
- (c) When the investigator has probable cause to believe the person has committed a public offense outside this jurisdiction, in the presence of the investigator and the investigator reasonably believes there is an immediate danger to person or property, or of escape.
- (d) When the investigator has probable cause to believe the person has committed a misdemeanor for which an arrest is authorized or required by statute even though the offense has not been committed in the presence of the investigator such as certain domestic violence offenses.
- (e) In compliance with an arrest warrant.

#### 100.2.2 ARREST AUTHORITY OUTSIDE THE JURISDICTION OF THE KINGS COUNTY DISTRICT ATTORNEY INVESTIGATION DIVISION

The arrest authority outside the jurisdiction of the Kings County District Attorney Investigation Division includes (Penal Code § 830.1; Penal Code § 836):

- (a) When the investigator has probable cause to believe the person committed a felony.
- (b) When the investigator has probable cause to believe the person has committed a misdemeanor in the presence of the investigator and the investigator reasonably believes there is immediate danger to person or property or of escape.
- (c) When the investigator has probable cause to believe the person has committed a misdemeanor for which an arrest is authorized even if not committed in the presence of the investigator such as certain domestic violence offenses and there is immediate danger to person or property or of escape or the arrest is mandated by statute.
- (d) When authorized by a cross jurisdictional agreement with the jurisdiction in which the arrest is made.



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- (e) In compliance with an arrest warrant.

On-duty arrests will not generally be made outside the jurisdiction of this [department/office] except in cases of hot or fresh pursuit, while following up on crimes committed within the County, or while assisting another agency.

On-duty investigators who discover criminal activity outside the jurisdiction of the County should when circumstances permit, consider contacting the agency having primary jurisdiction before attempting an arrest.

#### **100.2.3 TIME OF MISDEMEANOR ARRESTS**

Investigators shall not arrest a person for a misdemeanor between the hours of 10:00 p.m. of any day and 6:00 a.m. of the next day unless (Penal Code § 840):

- (a) The arrest is made without a warrant pursuant to Penal Code § 836 which includes:
  1. A misdemeanor committed in the presence of the investigator.
  2. Misdemeanor domestic violence offenses (See the Domestic Violence Policy).
- (b) The arrest is made in a public place.
- (c) The arrest is made with the person in custody pursuant to another lawful arrest.
- (d) The arrest is made pursuant to a warrant which, for good cause shown, directs that it may be served at any time of the day or night.

#### **100.3 POLICY**

It is the policy of the Kings County District Attorney Investigation Division to limit its members to only exercise the authority granted to them by law.

While this [department/office] recognizes the power of peace officers to make arrests and take other enforcement action, investigators are encouraged to use sound discretion in the enforcement of the law. This [department/office] does not tolerate the abuse of law enforcement authority.

#### **100.4 INTERSTATE PEACE OFFICER POWERS**

Peace officer powers may be extended to other states:

- (a) As applicable under interstate compacts, memorandums of understanding or mutual aid agreements in compliance with the laws of each state.
- (b) When an investigator enters an adjoining state in close or fresh pursuit of a person believed to have committed a felony (ARS § 13-3832; NRS 171.158; ORS 133.430).

The person arrested out of state must be taken without unnecessary delay before a magistrate of the county in which the arrest was made (ARS § 13-3833; NRS 171.158; ORS 133.440).

#### **100.5 CONSTITUTIONAL REQUIREMENTS**

All members shall observe and comply with every person's clearly established rights under the United States and California Constitutions.

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## Chief Executive Officer

### 101.1 PURPOSE AND SCOPE

The California Commission on Peace Officer Standards and Training (POST) has mandated that all sworn officers and dispatchers employed within the State of California shall receive certification by POST within prescribed time periods.

#### 101.1.1 CHIEF EXECUTIVE OFFICER REQUIREMENTS

Any chief executive officer of this department appointed after January 1, 1999, shall, as a condition of continued employment, complete the course of training prescribed by POST and obtain the Basic Certificate by POST within two years of appointment (Penal Code § 832.4).

## Oath of Office

### 102.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that oaths, when appropriate, are administered to department members.

### 102.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division that, when appropriate, department members affirm the oath of their office as an expression of commitment to the constitutional rights of those served by the Department and the dedication of its members to their duties.

### 102.3 OATH OF OFFICE

All department members, when appropriate, shall take and subscribe to the oaths or affirmations applicable to their positions. All sworn members shall be required to affirm the oath of office expressing commitment and intent to respect constitutional rights in discharging the duties of a law enforcement officer (Cal. Const. Art. 20, § 3; Government Code § 3102). The oath shall be as follows:

“I, (employee name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.”

### 102.4 MAINTENANCE OF RECORDS

The oath of office shall be filed as prescribed by law (Government Code § 3105).

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## Policy Manual

### 103.1 PURPOSE AND SCOPE

The manual of the Kings County District Attorney Investigation Division is hereby established and shall be referred to as "The Policy Manual." The Policy Manual is a statement of the current policies, procedures, rules, and guidelines of this department. All employees are to conform to the provisions of this manual. All prior and existing manuals, orders, and regulations which are in conflict with this manual are revoked, except to the extent that portions of existing manuals, orders, and other regulations which have not been included herein shall remain in effect where they do not conflict with the provisions of this manual.

Except where otherwise expressly stated, the provisions of this manual shall be considered as guidelines. It is recognized, however, that police work is not always predictable and circumstances may arise which warrant departure from these guidelines. It is the intent of this manual to be viewed from an objective standard, taking into consideration the sound discretion entrusted to members of this department under the circumstances reasonably available at the time of any incident.

#### 103.1.1 DISCLAIMER

The provisions contained in this Policy Manual are not intended to create an employment contract, nor any employment rights or entitlements. The policies contained within this manual are for the internal use of the Kings County District Attorney Investigation Division Department and shall not be construed to create a higher standard or duty of care for civil or criminal liability against the County, its officials or employees. Violations of any provision of any policy contained within this manual shall only form the basis for departmental administrative action, training or discipline. The Kings County District Attorney Investigation Division Department reserves the right to revise any policy content, in whole or in part.

### 103.2 RESPONSIBILITIES

The ultimate responsibility for the contents of the manual rests with the Chief Investigator. Since it is not practical for the Chief Investigator to prepare and maintain the manual, the following delegations have been made:

The Assistant Chief Investigator will be responsible to maintain the Policy Manual as required.

#### 103.2.1 CHIEF INVESTIGATOR

The Chief Investigator shall be considered the ultimate authority for the provisions of this manual and shall continue to issue any Special Order which shall modify those provisions of the manual to which they pertain. A Special Order shall remain in effect until such time as they may be permanently incorporated into the manual.

#### 103.2.2 STAFF

Staff shall consist of the following:

- District Attorney

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- Chief Investigator
- Assistant Chief Investigator
- Senior Investigator
- Investigator I/II
- Computer Forensic Specialist
- Investigative Assistant
- Process Server

103.2.3 OTHER PERSONNEL

All Department employees suggesting revision of the contents of the Policy Manual shall forward their suggestion, in writing, to the Chief Investigator or Assistant Chief Investigator who will consider the recommendation and forward to staff.

**103.3 FORMATTING CONVENTIONS FOR THE POLICY MANUAL**

The purpose of this section is to provide examples of abbreviations and definitions used in this manual.

103.3.1 ACCEPTABLE ABBREVIATIONS

The following abbreviations are acceptable substitutions in the manual:

- Special Orders may be abbreviated as "SO"
- Policy Manual sections may be abbreviated as "Section 106.X" or "§ 106.X"

103.3.2 DEFINITIONS

The following words and terms shall have these assigned meanings, unless it is apparent from the content that they have a different meaning:

**Adult** - Any person 18 years of age or older.

**CHP** - The California Highway Patrol.

**C.F.R.** - Code of Federal Regulations.

**County** - The County of Kings .

**Department/KCDA-ID** - The Kings County District Attorney Investigation Division.

**DMV** - The Department of Motor Vehicles.

**Employee/Personnel** - Any person employed by the Department.

**Juvenile** - Any person under the age of 18 years.

**Manual** - The Kings County District Attorney Investigation Division Policy Manual.

**May** - Indicates a permissive, discretionary or conditional action.

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**Member** - Any person who is employed by the or appointed by the Kings County District Attorney Investigation Division including sworn investigators, reserve investigators, non-sworn employees and volunteers.

**Non-sworn** - Employees and volunteers who are not sworn peace officers.

**Investigator/Sworn** - Those employees, regardless of rank, who are sworn employees of the Kings County District Attorney Investigation Division.

**On-Duty** - Employee status during the period when he/she is actually engaged in the performance of his/her assigned duties.

**Order** - A written or verbal issued by a superior.

**POST** - The California Commission on Peace Officer Standards and Training.

**Rank** - The job classification title held by an investigator.

**Shall or will** - Indicates a mandatory action.

**Should** - Indicates a generally required or expected action, absent a rational basis for failing to conform.

**U.S.C.** - United States Code

#### 103.3.3 DISTRIBUTION OF MANUAL

Copies of the Policy Manual shall be distributed to the following:

- District Attorney
- Chief Investigator
- Assistant Chief Investigator
- Senior Investigators
- Investigators
- Investigative Assistant
- Computer Forensic Specialist
- Process Server

A computerized version of the Policy Manual will be made available on the Department network for access by all employees. The computerized version will be limited to viewing and printing of specific sections. No changes shall be made to the electronic version without authorization from Staff.

#### 103.4 MANUAL ACCEPTANCE

As a condition of employment, all employees are required to read and obtain necessary clarification of this department's policies. All employees are required to sign a statement of receipt

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acknowledging that they have received a copy, or have been provided access to the Policy Manual and understand they are responsible to read and become familiar with its contents.

103.4.1 REVISIONS TO POLICIES

All employees are responsible for keeping abreast of all Policy Manual revisions. All changes to the Policy Manual will be posted by use of the Kings County email system titled "Recent Policy Manual Revisions". The Assistant Chief Investigator will forward revisions to the Policy Manual as needed to all personnel via electronic mail. Each employee shall acknowledge receipt by return email, review the revisions and seek clarification as needed.

The Chief Investigator and/or the Assistant Chief Investigator will ensure that employees under his/her command are aware of any Policy Manual revisions.

## Law Enforcement Code of Ethics

### 104.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that all peace officers are aware of their individual responsibilities to maintain their integrity and that of their [department/office] at all times.

### 104.2 POLICY

The Law Enforcement Code of Ethics shall be administered to all peace officer trainees during the Basic Academy course and to all other persons at the time of appointment (11 CCR 1013).

### 104.3 LAW ENFORCEMENT CODE OF ETHICS

AS A LAW ENFORCEMENT OFFICER, my fundamental duty is to serve; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against abuse or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I WILL keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my [department/office]. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I WILL never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I RECOGNIZE the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before god to my chosen profession... law enforcement.

#### 104.3.1 OBJECTION TO RELIGIOUS AFFIRMATION

Reference to religious affirmation in the Law Enforcement Code of Ethics may be omitted where objected to by the investigator.



## **Chapter 2 - Organization and Administration**

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## Organizational Structure and Responsibility

### 200.1 PURPOSE AND SCOPE

The organizational structure of this department is designed to create an efficient means to accomplish our mission and goals and to provide for the best possible service to the public.

### 200.2 DIVISIONS

The Chief Investigator is responsible for administering and managing the Kings County District Attorney Investigation Division. The Assistant Chief Investigator is responsible for administering and managing the Kings County District Attorney Investigation Division in the absence of the Chief Investigator. Senior Investigators are responsible for the direct supervision of their assigned units and Investigators. The Investigation Division is divided into the following specialized units:

- General Unit
- Workers' Compensation / Auto Insurance Unit
- Prison Unit
- Sexual Assault Unit
- Child Abduction Unit)
- Computer Forensics
- Major Crimes Task Force
- Rural Crimes Task Force

## Special Order

### 201.1 PURPOSE AND SCOPE

Special Orders establish an interdepartmental communication that may be used by the Chief Investigator to make immediate changes to policy and procedure consistent with the current Memorandum of Understanding and as permitted by Government Code § 3500 et seq. Special Orders will immediately modify or change and supersede sections of this manual to which they pertain.

#### 201.1.1 SPECIAL ORDER PROTOCOL

Special Orders will be incorporated into the manual as required upon approval of Staff. Special Orders will modify existing policies or create a new policy as appropriate and will be rescinded upon incorporation into the manual.

All existing Special Orders have now been incorporated in the updated Policy Manual as of the below revision date.

Date: January 2nd, 2020.

Any Special Orders issued after publication of the manual shall be numbered consecutively starting with the last two digits of the year, followed by the number "01" For example, 20-01 signifies the first Special Order for the year 2020.

### 201.2 RESPONSIBILITIES

#### 201.2.1 STAFF

The staff shall review and approve revisions of the Policy Manual, which will incorporate changes originally made by a Special Order.

#### 201.2.2 CHIEF INVESTIGATOR

The Chief Investigator shall issue all Special Orders. In the absence of the Chief Investigator the Assistant Chief Investigator may issue Special Orders.

## Training

### 202.1 PURPOSE AND SCOPE

It is the policy of The Kings County District Attorney's Office Bureau of Investigation to administer a training program that will provide for the professional growth and continued development of its personnel. By doing so, the Bureau will ensure its personnel possess the knowledge and skills necessary to provide a professional level of service that meets the needs of the community.

### 202.2 PHILOSOPHY

The Bureau of Investigation seeks to provide ongoing training and encourages all personnel to participate in advanced training and formal education on a continual basis. Training is provided within the confines of funding, requirements of a given assignment, staffing levels, and legal mandates. Whenever possible, the Bureau will use courses certified by the California Commission on Peace Officer Standards and Training (POST).

### 202.3 OBJECTIVES

The objectives of the Training Program are to:

- (a) Enhance the level of law enforcement service to the public.
- (b) Increase the technical expertise and overall effectiveness of our personnel.
- (c) Provide for continued professional development of Bureau personnel.
- (d) Ensure compliance with POST rules and regulations concerning law enforcement training.

### 202.4 TRAINING PLAN

A training plan will be developed and maintained by the Training Manager. It is the responsibility of the Training Manager to maintain, review, and update the training plan on an annual basis. The plan will address the following areas:

- Mandatory Range Training
- Perishable Skills Training
- Officer Involved Shooting/Critical Incident Training
- Homicide Investigation Training
- District Attorney Investigator Training
- Surveillance Training
- Misc. Tactical Training
- Any other POST mandated training
- Any specialized training required to successfully operate within the scope and duty required by the Bureau.

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**202.5 TRAINING NEEDS ASSESSMENT**

The Training Manager will conduct an annual training-needs assessment of Bureau personnel.. The needs assessment will be reviewed by the Chief Investigator.. Upon approval by the Chief Investigator, the needs assessment will form the basis for the training plan for the fiscal year.

**202.6 TRAINING PROCEDURES**

- (a) All employees assigned to attend training shall attend as scheduled unless previously excused by their immediate supervisor. Excused absences from mandatory training should be limited to the following:
  - 1. Court appearances
  - 2. First choice vacation
  - 3. Sick leave
  - 4. Physical limitations preventing the employee's participation.
  - 5. Emergency situations
- (b) When an employee is unable to attend mandatory training, that employee shall:
  - 1. Notify his/her supervisor as soon as possible but no later than one hour prior to the start of training.
  - 2. Document his/her absence in a memorandum to his/her supervisor.
  - 3. Make arrangements through his/her supervisor and the Training Manager to attend the required training on an alternate date.

**202.7 POLICY**

The Bureau of Investigations shall administer a training program that will meet the standards of federal, state, local, and POST training requirements. It is a priority of the Buearu to provide continuing education and training for the professional growth and development of its members.

**202.8 TRAINING MANAGER**

The Chief Investigator shall designate a Training Manager who is responsible for developing, reviewing, updating, and maintaining the Bureau training plan so that required training is completed. The Chief Investigator should review the training plan annually.

**202.8.1 TRAINING RESTRICTION**

The Training Manageris responsible for establishing a process to identify personnel who are restricted from training other investigators for the time period specified by law because of a sustained use of force complaint (Government Code § 7286(b)).

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## Electronic Mail

### **203.1 PURPOSE AND SCOPE**

The purpose of this policy is to establish guidelines for the proper use and application of the Department's electronic mail (email) system by employees of this department. Email is a communication tool available to employees to enhance efficiency in the performance of job duties and is to be used in accordance with generally accepted business practices and current law (e.g., California Public Records Act). Messages transmitted over the email system must only be those that involve official business activities or contain information essential to employees for the accomplishment of business-related tasks and/or communication directly related to the business, administration, or practices of the Department.

### **203.2 EMAIL RIGHT OF PRIVACY**

All email messages, including any attachments, that are transmitted over department networks are considered department records and therefore are department property. The Department reserves the right to access, audit or disclose, for any lawful reason, any message including any attachment that is transmitted over its email system or that is stored on any department system.

The email system is not a confidential system since all communications transmitted on, to or from the system are the property of the Department. Therefore, the email system is not appropriate for confidential communications. If a communication must be private, an alternative method to communicate the message should be used instead of email. Employees using the Department's email system shall have no expectation of privacy concerning communications utilizing the system.

Employees should not use personal accounts to exchange email or other information that is related to the official business of the Department.

## Staffing Levels

### 204.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that proper supervision is available for all assignments. The Department intends to balance the employee's needs against the need to have flexibility and discretion in using personnel to meet operational needs. While balance is desirable, the paramount concern is the need to meet operational requirements of the Department.

### 204.2 MINIMUM STAFFING LEVELS

Minimum staffing levels should result in the scheduling of at least one regular supervisor on duty whenever possible. The Chief Investigator will ensure that at least one supervisor is deployed during each shift.

### 204.3 ADMINISTRATION

The following are Administration within the Kings County District Attorney's Office Bureau of Investigation:

- Chief Investigator
- Assistant Chief Investigator

### 204.4 SUPERVISORS

The following are Supervisors within the Kings County District Attorney's Office Bureau of Investigation:

- Senior District Attorney Investigators.

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## Retiree Concealed Firearms

### 205.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the issuance, denial, suspension or revocation of Kings County District Attorney Investigation Division identification cards under the Law Enforcement Officers' Safety Act (LEOSA) and California law (18 USC § 926C; Penal Code § 25455).

### 205.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division to provide identification cards to qualified former or retired investigators as provided in this policy.

### 205.3 LEOSA

The Chief Investigator may issue an identification card for LEOSA purposes to any qualified former investigator of this [department/office] who (18 USC § 926C(c)):

- (a) Separated from service in good standing from this [department/office] as an investigator.
- (b) Before such separation, had regular employment as a law enforcement officer for an aggregate of 10 years or more or, if employed as a law enforcement officer for less than 10 years, separated from service after completing any applicable probationary period due to a service-connected disability as determined by this [department/office].
- (c) Has not been disqualified for reasons related to mental health.
- (d) Has not entered into an agreement with this [department/office] where the investigator acknowledges that he/she is not qualified to receive a firearm qualification certificate for reasons related to mental health.
- (e) Is not prohibited by federal law from receiving or possessing a firearm.

#### 205.3.1 LEOSA IDENTIFICATION CARD FORMAT

The LEOSA identification card should contain a photograph of the former investigator and identify him/her as having been employed as an investigator.

If the Kings County District Attorney Investigation Division qualifies the former investigator, the LEOSA identification card or separate certification should indicate the date the former investigator was tested or otherwise found by the [Department/Office] to meet the active duty standards for qualification to carry a firearm.

#### 205.3.2 AUTHORIZATION

Any qualified former law enforcement officer, including a former investigator of this [department/office], may carry a concealed firearm under 18 USC § 926C when he/she is:

- (a) In possession of photographic identification that identifies him/her as having been employed as a law enforcement officer, and one of the following:



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1. An indication from the person's former law enforcement agency that he/she has, within the past year, been tested or otherwise found by the law enforcement agency to meet agency-established active duty standards for qualification in firearms training to carry a firearm of the same type as the concealed firearm.
2. A certification, issued by either the state in which the person resides or by a certified firearms instructor who is qualified to conduct a firearms qualification test for active duty law enforcement officers within that state, indicating that the person has, within the past year, been tested or otherwise found to meet the standards established by the state or, if not applicable, the standards of any agency in that state.
  - (b) Not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.
  - (c) Not prohibited by federal law from receiving a firearm.
  - (d) Not in a location prohibited by California law or by a private person or entity on his/her property if such prohibition is permitted by California law.

#### **205.4 CALIFORNIA IDENTIFICATION CARD ISSUANCE**

Any full-time sworn investigator of this [department/office] who was authorized to, and did, carry a concealed firearm during the course and scope of his/her employment shall be issued an identification card with a Carrying Concealed Weapon endorsement, "CCW Approved," upon honorable retirement (Penal Code § 25455).

- (a) For the purpose of this policy, honorably retired includes all peace officers who have qualified for, and accepted, a service or disability retirement. It shall not include any investigator who retires in lieu of termination.
- (b) No CCW Approved endorsement shall be issued to any investigator retiring because of a psychological disability (Penal Code § 26305).

##### **205.4.1 CALIFORNIA IDENTIFICATION CARD FORMAT**

The identification card issued to any qualified and honorably retired investigator shall be 2 inches by 3 inches, and minimally contain (Penal Code § 25460):

- (a) A photograph of the retiree.
- (b) The retiree's name and date of birth.
- (c) The date of retirement.
- (d) The name and address of this [department/office].
- (e) A stamped CCW Approved endorsement along with the date by which the endorsement must be renewed (not more than one year). If a CCW endorsement has been denied or revoked, the identification card shall be stamped "No CCW Privilege."

##### **205.4.2 QUALIFIED RETIRED RESERVES**

Qualified retired part time officers who meet the [department/office] requirements shall be provided an identification card with a CCW Approved endorsement (Penal Code § 26300).

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#### **205.5 FORMER INVESTIGATOR RESPONSIBILITIES**

A former investigator with a card issued under this policy shall immediately notify the Chief Investigator of his/her arrest or conviction in any jurisdiction, or that he/she is the subject of a court order, in accordance with the Reporting of Employee Convictions policy.

##### **205.5.1 RESPONSIBILITIES UNDER LEOSA**

In order to obtain or retain a LEOSA identification card, the former investigator shall:

- (a) Sign a waiver of liability of the [Department/Office] for all acts taken related to carrying a concealed firearm, acknowledging both his/her personal responsibility as a private person for all acts taken when carrying a concealed firearm as permitted by LEOSA and also that these acts were not taken as an employee or former employee of the [Department/Office].
- (b) Remain subject to all applicable [department/office] policies and federal, state and local laws.
- (c) Demonstrate good judgment and character commensurate with carrying a loaded and concealed firearm.
- (d) Successfully pass an annual criminal history background check indicating that he/she is not prohibited by law from receiving or possessing a firearm.

##### **205.5.2 MAINTAINING A CALIFORNIA IDENTIFICATION CARD CCW ENDORSEMENT**

In order to maintain a CCW Approved endorsement on an identification card issued under California law, the retired investigator shall (Penal Code § 26305):

- (a) Qualify annually with the authorized firearm at a course approved by this [department/office] at the retired investigator's expense.
- (b) Remain subject to all applicable [department/office] policies and federal, state and local laws.
- (c) Not engage in conduct that compromises public safety.
- (d) Only be authorized to carry a concealed firearm inspected and approved by the [Department/Office].

#### **205.6 DENIAL, SUSPENSION, OR REVOCATION OF A LEOSA IDENTIFICATION CARD**

A LEOSA identification card may be denied or revoked upon a showing of good cause as determined by the [Department/Office]. In the event that an identification card is denied, suspended, or revoked, the former investigator may request a review by the Chief Investigator. The decision of the Chief Investigator is final.

#### **205.7 DENIAL, SUSPENSION, OR REVOCATION OF A CALIFORNIA CCW ENDORSEMENT CARD**

A CCW endorsement for any investigator retired from this [department/office] may be denied or revoked only upon a showing of good cause. The CCW endorsement may be immediately and temporarily revoked by the Chief Investigator when the conduct of a retired peace officer compromises public safety (Penal Code § 25470).

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- (a) In the event that a CCW endorsement is initially denied, the retired investigator shall have 15 days from the date of denial to request a formal hearing. The failure to submit a timely written request for a hearing shall be deemed a waiver of such right. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received.
- (b) Prior to revocation of any CCW endorsement, the [Department/Office] shall provide the affected retiree with written notice of a hearing by either personal service or first class mail, postage prepaid, return receipt requested to the retiree's last known address (Penal Code § 26315).
  - 1. The retiree shall have 15 days from the date of service to file a written request for a hearing.
  - 2. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received (Penal Code § 26315).
  - 3. The failure to submit a timely written request for a hearing shall be deemed a waiver of such right.
- (c) A hearing for the denial or revocation of any CCW endorsement shall be conducted before a hearing board composed of three members, one selected by the [Department/Office], one selected by the retiree or his/her employee organization, and one selected jointly (Penal Code § 26320).
  - 1. The decision of such hearing board shall be binding on the [Department/Office] and the retiree.
  - 2. Any retiree who waives the right to a hearing or whose CCW endorsement has been revoked at a hearing shall immediately surrender his/her identification card. The [Department/Office] will then reissue a new identification card which shall be stamped "No CCW Privilege."
- (d) Members who have reason to suspect the conduct of a retiree has compromised public safety shall notify the Chief Investigator as soon as practicable. The Chief Investigator should promptly take appropriate steps to look into the matter and, if warranted, contact the retiree in person and advise him/her of the temporary suspension and hearing information listed below.
  - 1. Notification of the temporary suspension should also be promptly mailed to the retiree via first class mail, postage prepaid, return receipt requested (Penal Code § 26312).
  - 2. The Chief Investigator should document the investigation, the actions taken and, if applicable, any notification made to the retiree. The memo should be forwarded to the Chief Investigator.
  - 3. The personal and written notification should be as follows:
    - (a) The retiree's CCW endorsement is immediately and temporarily suspended.
    - (b) The retiree has 15 days to request a hearing to determine whether the temporary suspension should become permanent revocation.

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- (c) The retiree will forfeit his/her right to a hearing and the CCW endorsement will be permanently revoked if the retiree fails to respond to the notice of hearing within the 15-day period.
- 4. In the event that personal contact with the retiree cannot be reasonably achieved in a timely manner, the Chief Investigator should attempt to make the above notice of temporary suspension through another law enforcement officer. For example, if a retiree was arrested or detained by a distant agency, the Chief Investigator may request that a law enforcement officer from that agency act as the agent of the [Department/Office] to deliver the written notification.

**205.8 FIREARM QUALIFICATIONS**

The Rangemaster may provide former investigators from this [department/office] an opportunity to qualify. Written evidence of the qualification and the weapons used will be provided and will contain the date of the qualification. The Rangemaster will maintain a record of the qualifications and weapons used.

## **Chapter 3 - General Operations**

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## Use of Force

### 300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this [department/office] is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Government Code § 7286).

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

Retaliation prohibitions for reporting suspected violations are addressed in the Anti-Retaliation Policy.

#### 300.1.1 DEFINITIONS

Definitions related to this policy include:

**Deadly force** - Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm (Penal Code § 835a).

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the investigator or another person (Government Code § 7286(a)).

**Force** - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

**Serious bodily injury** - A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement (Penal Code § 243(f)(4)).

**Totality of the circumstances** - All facts known to the investigator at the time, including the conduct of the officer and the subject leading up to the use of force (Penal Code § 835a).

### 300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Investigators are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Investigators must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

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The [Department/Office] recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting investigators with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

#### 300.2.1 DUTY TO INTERCEDE

Any investigator present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable investigator under the circumstances, shall, when in a position to do so, intercede (as defined by Government Code § 7286) to prevent the use of unreasonable force.

When observing force used by a law enforcement officer, each investigator should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)).

#### 300.2.2 NON-DEADLY FORCE APPLICATIONS

Any application of force that is not reasonably anticipated and intended to create a substantial likelihood of death or very serious injury shall be considered non-deadly force. Each investigator is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of investigators and the public. Non-deadly force applications may include but are not limited to leg restraints, control devices and EMDT devices described in Policy Manual §§ 306, and 308 respectively.

#### 300.2.3 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be very effective in controlling a passive or actively resisting individual. Investigators may only apply those pain compliance techniques for which the investigator has received departmentally approved training and only when the investigator reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Investigators utilizing any pain compliance technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the investigator(s) or others if the technique is not used
- (b) The potential risk of serious injury to the individual being controlled
- (c) The degree to which the pain compliance technique may be controlled in application according to the level of resistance
- (d) The nature of the offense involved
- (e) The level of resistance of the individual(s) involved
- (f) The need for prompt resolution of the situation
- (g) If time permits (e.g., passive demonstrators), other reasonable alternatives

The application of any pain compliance technique shall be discontinued once the investigator determines that compliance has been achieved.

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#### 300.2.4 FAIR AND UNBIASED USE OF FORCE

Investigators are expected to carry out their duties, including the use of force, in a manner that is fair and unbiased (Government Code § 7286(b)). See the Bias-Based Policing Policy for additional guidance.

#### 300.2.5 DUTY TO REPORT EXCESSIVE FORCE

Any investigator who observes a law enforcement officer or an employee use force that potentially exceeds what the investigator reasonably believes to be necessary shall immediately report these observations to a supervisor (Government Code § 7286(b)).

As used in this subsection, "immediately" means as soon as it is safe and feasible to do so.

#### 300.2.6 FAILURE TO INTERCEDE

An investigator who has received the required training on the duty to intercede and then fails to act to intercede when required by law, may be disciplined in the same manner as the investigator who used force beyond that which is necessary (Government Code § 7286(b)).

### **300.3 USE OF FORCE**

Investigators shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the investigator at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable investigator on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that investigators are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an investigator might encounter, investigators are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Investigators may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which investigators reasonably believe that it would be impractical or ineffective to use any of the approved or authorized tools, weapons, or methods provided by the [Department/Office]. Investigators may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an investigator to retreat or be exposed to possible physical injury before applying reasonable force.



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#### 300.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an investigator be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code § 835a).

#### 300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an investigator has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (Government Code § 7286(b)). These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to investigators or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the investigator at the time (Penal Code § 835a).
- (c) Investigator/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of investigators available vs. subjects).
- (d) The conduct of the involved investigator leading up to the use of force (Penal Code § 835a).
- (e) The effects of suspected drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with investigator commands (Penal Code § 835a).
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- (k) Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.
- (l) Training and experience of the investigator.
- (m) Potential for injury to investigators, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the investigator.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.

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- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the investigator or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

#### 300.3.3 USE OF FORCE TO SEIZE EVIDENCE

In general, investigators may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, investigators are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, investigators should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Investigators are encouraged to use techniques and methods taught by the Kings County District Attorney Investigation Division for this specific purpose.

#### 300.3.4 ALTERNATIVE TACTICS - DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, investigators should consider actions that may increase investigator safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding investigators before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase investigator jeopardy.

In addition, when reasonable, investigators should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

#### 300.3.5 RESTRICTIONS ON THE USE OF A CHOKE HOLD

Investigators of this [department/office] are not authorized to use a choke hold. A choke hold means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe (Government Code § 7286.5).

#### 300.3.6 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such

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as narcotics or alcohol influence or pre-existing medical conditions. While it is impractical to restrict an investigator's use of reasonable control methods when attempting to restrain a combative individual, investigators are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once the individual is safely secured, investigators should promptly check and continuously monitor the individual's condition for signs of medical distress (Government Code § 7286.5).

#### **300.4 DEADLY FORCE APPLICATIONS**

Where feasible, the investigator shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the investigator has objectively reasonable grounds to believe the person is aware of those facts (Penal Code § 835a).

If an objectively reasonable investigator would consider it safe and feasible to do so under the totality of the circumstances, investigators shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, investigators should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the investigator reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- (a) An investigator may use deadly force to protect themselves or others from what the investigator reasonably believes is an imminent threat of death or serious bodily injury to the investigator or another person.
- (b) An investigator may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the investigator reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

Investigators shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable investigator would believe the person does not pose an imminent threat of death or serious bodily injury to the investigator or to another person (Penal Code § 835a).

Additionally, an investigator should not use deadly force against a person whose actions are a threat solely to property.

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable investigator in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the investigator or another person. An investigator's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

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#### 300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of deadly force. When feasible, investigators should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An investigator should only discharge a firearm at a moving vehicle or its occupants when the investigator reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the investigator or others (Government Code § 7286(b)).

Investigators should not shoot at any part of a vehicle in an attempt to disable the vehicle.

#### 300.4.2 MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE

Prior to booking or release, medical assistance shall be obtained for any person who has sustained visible injury, expressed a complaint of injury or continuing pain, or who has been rendered unconscious. Based upon the investigator's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another investigator and/or medical personnel. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple investigators to be brought under control, may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

#### 300.4.3 DISPLAYING OF FIREARMS

Given that individuals might perceive the display of a firearm as a potential application of force, investigators should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines (Government Code § 7286(b)):

- (a) If the investigator does not initially perceive a threat but reasonably believes that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- (b) If the investigator reasonably believes that a threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward such threat until the investigator no longer perceives such threat.

Once it is reasonably safe to do so, investigators should carefully secure all firearms.

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#### **300.5 REPORTING THE USE OF FORCE**

Any use of force by a member of this [department/office] shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The investigator should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis, and related purposes, the [Department/Office] may require the completion of additional report forms, as specified in [department/office] policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

##### **300.5.1 NOTIFICATION TO SUPERVISORS**

Any use of force by an investigator shall be reported immediately to a supervisor, including but not limited to the following circumstances (Penal Code § 832.13):

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable investigator to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a conducted energy device or control device.
- (f) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

As used in this subsection, "immediately" means as soon as it is safe and feasible to do so.

##### **300.5.2 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records Policy.

##### **300.5.3 REPORT RESTRICTIONS**

Investigators shall not use the term "excited delirium" to describe an individual in an incident report. Investigators may describe the characteristics of an individual's conduct, but shall not generally describe the individual's demeanor, conduct, or physical and mental condition at issue as "excited delirium" (Health and Safety Code § 24402).

#### **300.6 MEDICAL CONSIDERATIONS**

Once it is reasonably safe to do so, properly trained investigators should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

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Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed.

Based upon the investigator's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another investigator and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling investigator shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the investigator reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain, or who require a protracted physical encounter with multiple investigators to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Investigators who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

See the Medical Aid and Response Policy for additional guidelines.

### **300.7 SUPERVISOR RESPONSIBILITY**

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to (Government Code § 7286(b)):

- (a) Obtain the basic facts from the involved investigators. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her *Miranda* rights, the following shall apply:
  1. The content of the interview should not be summarized or included in any related criminal charges.
  2. The fact that a recorded interview was conducted should be documented in a property or other report.

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3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
  - (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
  - (e) Identify any witnesses not already included in related reports.
  - (f) Review and approve all related reports.
  - (g) Determine if there is any indication that the subject may pursue civil litigation.
    1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
  - (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

### **300.8 TRAINING**

Investigators, investigators, and supervisors will receive annual training on this policy and demonstrate their knowledge and understanding (Government Code § 7286(b)).

#### **300.8.1 TRAINING REQUIREMENTS**

Required annual training shall include:

- (a) Legal updates.
- (b) De-escalation tactics, including alternatives to force.
- (c) The duty to intercede.
- (d) The duty to request and/or render medical aid.
- (e) Warning shots (see the Firearms Policy).
- (f) All other subjects covered in this policy (e.g., use of deadly force, chokeholds and carotid holds, discharge of a firearm at or from a moving vehicle, verbal warnings).
- (g) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

See the Training Policy for restrictions relating to investigators who are the subject of a sustained use of force complaint.

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#### **300.8.2 STATE-SPECIFIC TRAINING REQUIREMENTS**

Required state-specific training shall include guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities (Government Code § 7286(b)).

#### **300.9 USE OF FORCE ANALYSIS**

At least annually, the Investigations Chief Investigator should prepare an analysis report on use of force incidents. The report should be submitted to the Chief Investigator. The report should not contain the names of investigators, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

#### **300.10 USE OF FORCE COMPLAINTS**

The receipt, processing, and investigation of civilian complaints involving use of force incidents should be handled in accordance with the Personnel Complaints Policy (Government Code § 7286(b)).

#### **300.11 POLICY REVIEW**

The Chief Investigator or the authorized designee should regularly review and update this policy to reflect developing practices and procedures (Government Code § 7286(b)).

#### **300.12 POLICY AVAILABILITY**

The Chief Investigator or the authorized designee should ensure this policy is accessible to the public (Government Code § 7286(c)).

#### **300.13 PUBLIC RECORDS REQUESTS**

Requests for public records involving an investigator's personnel records shall be processed in accordance with Penal Code § 832.7 and the Personnel Records and Records Maintenance and Release policies (Government Code § 7286(b)).



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## Deadly Force Review

### 301.1 PURPOSE AND SCOPE

This policy establishes a process for the Kings County District Attorney Investigation Division to review the use of force by its employees.

This review process shall be in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or evaluation of the use of deadly force.

### 301.2 POLICY

The Kings County District Attorney's Office is responsible for conducting a thorough, complete and detailed criminal investigation into all Lethal Force Encounters (LFE) incidents by a member of the Kings County District Attorney's Office, within Kings County or at the request of another agency.

The Kings County District Attorney, or their designee, will be notified of any LFE as soon as practical. Notification of the LFE will be made as soon as practical to the law enforcement agency responsible for the jurisdiction where the incident occurred. The law enforcement jurisdiction may send representatives to assist in the investigation and/or take the lead if necessary and requested by the Chief Investigator or their designee.

These investigations include use of force by Investigators, which result in the death of an armed or unarmed person.

In the event the death was as a result of a use of force by an Investigator of an unarmed person the notification process outlined in DOJ Bulletin 2021-DLE-03 will be followed, with an official notification to DOJ coming from the Chief Investigator or their designee.

Prior to the DOJ notification, the Chief Investigator will consult with the District Attorney and/or their designee to detail why the notification meets the criteria and definitions in the Law Enforcement Bulletin, requiring notification.

These LFE investigations shall be comprehensive and include all aspects of a criminal investigation, including but not limited to processing the crime scene, recovering all relevant evidence and conducting interviews with involved Investigators, witness Investigators, supervisors, citizen witnesses and suspects. Some ancillary involved Investigators may be instructed to complete their own written reports.

The Kings County District Attorney Supervisor(s) shall ensure all involved Investigators, witness Investigators and/or their attorney, receive a copy of the appropriate audio and/or body camera recording(s), as well as other video/audio evidence discovered by the investigation, prior to being interviewed by Investigators. The members shall be allowed to review the recording(s) prior to being interviewed.

The supervisor shall be responsible for updating the Chief Investigator, or their designee, relative to significant developments of the ongoing investigation. The supervisor shall be responsible for

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## Kings County District Attorney Bureau of Investigations Policy Manual

### *Deadly Force Review*

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providing the Chief Investigator, or their designee, with a verbal briefing after the initial portion of the LFE investigation is complete. The supervisor will include the known facts of the LFE so the Chief Investigator may report the details to the District Attorney Elect. The Chief Investigator, or their designee, will provide press release information to the assigned public information officer for their review and consideration for release.

Once the LFE criminal investigation is complete the Chief Investigator, or their designee, will review the entire criminal investigation and will ensure any follow up necessary is assigned. Once complete, copies of the entire investigation will be distributed to the Kings County District Attorney for review.

Investigators assigned to the criminal investigation may be asked to prepare a detailed presentation for review. Personnel should be prepared to answer any questions concerning the facts surrounding the LFE incident, and the result of their criminal investigation.

The Chief Investigator shall make a timely notification to the affected staff and chain of command when a decision on the legality of the force used during the LFE incident. If a written response is provided it will be kept with the file (a digital version is acceptable).

[See attachment: 2021-DLE-03 Information Bulletin.pdf](#)

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## Shooting Policy

### 304.1 PURPOSE AND SCOPE

The purpose of the shooting policy is to establish procedures for the use and reporting of incidents involving the discharge of firearms. This policy is for internal use only and does not increase the Department's and/or an investigator's civil or criminal liability in any way. Violations of this policy can only form the basis for departmental administrative actions.

#### 304.1.1 POLICY

It is the policy of this department to resort to the use of a firearm, when it reasonably appears to be necessary, and generally:

- (a) An investigator may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) An investigator may use deadly force to effect the arrest or prevent the escape of a suspected felon when the investigator has probable cause to believe that the suspect has committed or intends to commit a felony involving the inflicting or threatened inflicting of serious bodily injury or death and the investigator reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force where feasible.
- (c) To stop a dangerous animal.
  - 1. Investigators are authorized to use deadly force against an animal in circumstances where the animal reasonably appears to pose an imminent threat to human safety and alternative methods to neutralize the threat are not reasonably available or would likely be ineffective.
  - 2. In circumstances in which investigators have sufficient advanced notice that a potentially dangerous domestic animal (e.g. dog) may be encountered, such as in the serving of a search warrant, investigators should develop reasonable contingency plans for dealing with the animal without the use of deadly force (e.g. fire extinguisher, Taser, OC Spray, animal control officer). Nothing in this policy shall prohibit any investigator from resorting to deadly force to control a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.
- (d) With the approval of a supervisor, an investigator may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impractical (Penal Code § 597.1(e)). Injured animals (with the exception of dogs and cats) may only be euthanized after a reasonable search to locate the owner has been made (Penal Code § 597.1(b)). Injured dogs and cats found

### *Shooting Policy*

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without their owners shall be taken to an appropriate veterinarian for determination of whether they should be treated or humanely destroyed .

- (e) For target practice at an approved range.

Where feasible, a warning should be given before an investigator resorts to deadly force as outlined (a) and (b) above. A specific warning that deadly force will be used is not required by this policy; only that a warning be given if feasible.

#### 304.1.2 WARNING SHOTS

Generally, warning shots or shots fired for the purpose of summoning aid are discouraged and may not be discharged unless the investigator reasonably believes that they appear necessary, effective and reasonably safe.

#### 304.1.3 MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and are generally discouraged.

- (a) Unless it reasonably appears that it would endanger investigators or the public, investigators are expected to move out of the path of any approaching vehicle.
- (b) This is not intended to restrict an investigator's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the investigator or others.
- (c) Investigators may use deadly force to stop a fleeing suspect when the investigator has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death and the investigator reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force when feasible.

#### 304.1.4 REPORT OF WEAPON DISCHARGE

Except during training or recreational use, any member who discharges a weapon accidentally or intentionally, on or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If on-duty at the time of the incident the member shall file a written report with his/her Chief Investigator prior to the end of shift and if off-duty, as directed by the supervisor but no later than the end of the next regularly scheduled shift.

If the weapon is discharged due to an Officer Involved Shooting refer to Policy 310.

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## Handcuffing and Restraints

### 302.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of handcuffs and other restraints during detentions and arrests.

### 302.2 POLICY

The Kings County District Attorney Investigation Division authorizes the use of restraint devices in accordance with this policy, the Use of Force Policy, and [department/office] training. Restraint devices shall not be used to punish, to display authority, or as a show of force.

### 302.3 USE OF RESTRAINTS

Only members who have successfully completed Kings County District Attorney Investigation Division- or equivalent approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use any restraint, investigators should carefully balance officer safety concerns with factors that include but are not limited to:

- The circumstances or crime leading to the arrest.
- The demeanor and behavior of the arrested person.
- The age and health of the person.
- Whether the person is known to be pregnant.
- Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes.
- Whether the person has any other apparent disability.

#### 302.3.1 RESTRAINT OF DETAINEES

Situations may arise where it may be reasonable to restrain a person who may, after brief investigation, be released without arrest. Unless arrested, the use of restraints on detainees should continue only for as long as is reasonably necessary to ensure the safety of investigators and others. When deciding whether to remove restraints from a detainee, investigators should continuously weigh the safety interests at hand against the continuing intrusion upon the detainee.

#### 302.3.2 RESTRAINT OF PREGNANT PERSONS

Persons who are known to be pregnant should be restrained in the least restrictive manner that is effective for officer safety. Leg irons, waist chains, or handcuffs behind the body should not be used unless the investigator has a reasonable suspicion that the person may resist, attempt escape, injure self or others, or damage property.

No person who is in labor, delivery, or recovery after delivery shall be handcuffed or restrained except in extraordinary circumstances and only when a supervisor makes an individualized

### *Handcuffing and Restraints*

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determination that such restraints are necessary for the safety of the arrestee, investigators, or others (Penal Code § 3407; Penal Code § 6030).

#### **302.3.3 RESTRAINT OF JUVENILES**

A juvenile under 14 years of age should not be restrained unless he/she is suspected of a dangerous felony or when the investigator has a reasonable suspicion that the juvenile may resist, attempt escape, injure him/herself, injure the investigator, or damage property.

#### **302.3.4 NOTIFICATIONS**

Whenever an investigator transports a person with the use of restraints other than handcuffs, the investigator shall inform the jail staff upon arrival at the jail that restraints were used. This notification should include information regarding any other circumstances the investigator reasonably believes would be potential safety concerns or medical risks to the person (e.g., prolonged struggle, extreme agitation, impaired respiration) that may have occurred prior to, or during, transportation to the jail.

#### **302.4 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS**

Handcuffs, including temporary nylon or plastic cuffs, may be used only to restrain a person's hands to ensure officer safety.

Although recommended for most arrest situations, handcuffing is discretionary and not an absolute requirement of the [Department/Office]. Investigators should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, investigators should not conclude that in order to avoid risk every person should be handcuffed, regardless of the circumstances.

In most situations, handcuffs should be applied with the hands behind the person's back. When feasible, handcuffs should be double-locked to prevent tightening, which may cause undue discomfort or injury to the hands or wrists.

In situations where one pair of handcuffs does not appear sufficient to restrain the person or may cause unreasonable discomfort due to the person's size, investigators should consider alternatives, such as using an additional set of handcuffs or multiple plastic cuffs.

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

#### **302.5 APPLICATION OF SPIT HOODS**

Spit hoods are temporary protective devices designed to prevent the wearer from biting and/or transferring or transmitting fluids (saliva and mucous) to others.

Spit hoods may be placed upon persons in custody when the investigator reasonably believes the person will bite or spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport.

Investigators utilizing spit hoods should ensure that the spit hood is fastened properly to allow for adequate ventilation and so that the restrained person can breathe normally. Investigators should

### *Handcuffing and Restraints*

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provide assistance during the movement of a restrained person due to the potential for impairing or distorting that person's vision. Investigators should avoid comingling those wearing spit hoods with other detainees.

Spit hoods should not be used in situations where the restrained person is bleeding profusely from the area around the mouth or nose, or if there are indications that the person has a medical condition, such as difficulty breathing or vomiting. In such cases, prompt medical care should be obtained. If the person vomits while wearing a spit hood, the spit hood should be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should be thoroughly decontaminated, including hair, head, and clothing, prior to application of a spit hood.

Those who have been placed in a spit hood should be continually monitored and shall not be left unattended until the spit hood is removed. Spit hoods shall be discarded after each use.

#### **302.6 APPLICATION OF AUXILIARY RESTRAINT DEVICES**

Auxiliary restraint devices include transport belts, waist or belly chains, transportation chains, leg irons, and other similar devices. Auxiliary restraint devices are intended for use during long-term restraint or transportation. They provide additional security and safety without impeding breathing, while permitting adequate movement, comfort, and mobility.

Only [department/office]-authorized devices may be used. Any person in auxiliary restraints should be monitored as reasonably appears necessary.

#### **302.7 APPLICATION OF LEG RESTRAINT DEVICES**

Leg restraints may be used to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest, or transportation. Only restraint devices approved by the [Department/Office] shall be used.

In determining whether to use the leg restraint, investigators should consider:

- (a) Whether the investigator or others could be exposed to injury due to the assaultive or resistant behavior of a person.
- (b) Whether it is reasonably necessary to protect the person from his/her own actions (e.g., hitting his/her head against the interior of the patrol vehicle, running away from the arresting investigator while handcuffed, kicking at objects or investigators).
- (c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol vehicle).

##### **302.7.1 GUIDELINES FOR USE OF LEG RESTRAINTS**

When applying leg restraints, the following guidelines should be followed:

- (a) If practicable, investigators should notify a supervisor of the intent to apply the leg restraint device. In all cases, a supervisor shall be notified as soon as practicable after the application of the leg restraint device.

### *Handcuffing and Restraints*

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- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the investigator arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) Once secured, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.
- (d) The restrained person should be continually monitored by an investigator while in the leg restraint. The investigator should ensure that the person does not roll onto and remain on his/her stomach.
- (e) The investigator should look for signs of labored breathing and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
- (f) When transported by emergency medical services, the restrained person should be accompanied by an investigator when requested by medical personnel. The transporting investigator should describe to medical personnel any unusual behaviors or other circumstances the investigator reasonably believes would be potential safety or medical risks to the person (e.g., prolonged struggle, extreme agitation, impaired respiration).

#### **302.8 REQUIRED DOCUMENTATION**

If a person is restrained and released without an arrest, the investigator shall document the details of the detention and the need for handcuffs or other restraints.

If a person is arrested, the use of handcuffs or other restraints shall be documented in the related report.

Investigators should document the following information in reports, as appropriate, when restraints other than handcuffs are used on a person:

- (a) The factors that led to the decision to use restraints.
- (b) Supervisor notification and approval of restraint use.
- (c) The types of restraint used.
- (d) The amount of time the person was restrained.
- (e) How the person was transported and the position of the person during transport.
- (f) Observations of the person's behavior and any signs of physiological problems.
- (g) Any known or suspected drug use or other medical problems.



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## Less Lethal Force Options

### 303.1 PURPOSE AND SCOPE

This policy provides guidelines for the use and maintenance of control devices that are described in this policy.

#### 303.1.1 WHEN DEVICES MAY BE USED

When a decision has been made to restrain or arrest a violent or threatening suspect, an approved control device may only be used when its use appears reasonable under the circumstances.

#### 303.1.2 REVIEW, INSPECTION AND APPROVAL

Every control device will be periodically inspected by the department Armorer or Rangemaster, or the designated instructor for a particular control device.

#### 303.1.3 TRAINING FOR LESS LETHAL DEVICES

- (a) Only investigators trained and having shown adequate proficiency in the use of any less lethal device and this agency's Use of Force policy are authorized to carry the device. Proficiency training must be monitored and documented by a certified weapons or tactics instructor.
- (b) Training for all less lethal devices should occur every two years at a minimum.
- (c) All training and proficiency for less lethal devices will be documented in the investigator's training file.
- (d) Investigators failing to demonstrate proficiency with the weapon or knowledge of this agency's Use of Force policy will be provided remedial training. If, after two additional attempts, an investigator still cannot demonstrate proficiency with a less lethal device or knowledge of this agency's Use of Force policy, the investigator may be subject to discipline.

### 303.2 LESS LETHAL / KINETIC ENERGY PROJECTILES (BEAN BAG / 40MM)

The use of less lethal munitions is an element of force that may be utilized to compel an individual to cease their actions when less lethal munitions present a viable option for resolving the situation at hand. The use of force by law enforcement has long been judged by what is held reasonable. The use of less lethal munitions is a reasonable law enforcement option when an impact weapon used from a distance will compel the combative suspect to submit to arrest. This option should only be used when it is apparent greater force will be necessary should less lethal options not be deployed.

Investigators who have successfully completed a departmental yearly qualification course may carry a kinetic energy projectile while on duty. Only departmentally issued and approved munitions shall be carried and deployed.

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### *Less Lethal Force Options*

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#### 303.2.1 USE OF LESS LETHAL MUNITIONS

The use of less lethal munitions on armed or unarmed suspects shall be based on the evaluation of the tactical situation by the Investigators on scene, taking into consideration the following:

- (a) The suspect is armed with the type of weapon that allows for the application of less lethal munitions. Should the suspect be armed with a firearm or knife, the less lethal option may be considered when appropriate.
- (b) The suspect has made threats to harm Investigators or threats to harm themselves or others and the credibility of that threat is significant.
- (c) Where the subject is engaging in riotous behavior or throwing dangerous projectiles at citizens or Law Enforcement.
- (d) The suspect has stated or exhibited intent to violently resist being taken into custody. The suspect's actions demonstrated the credibility of prior statements or exhibited intent.
- (e) Information about the suspect's expertise in martial arts or other unarmed means of defensive tactics.
- (f) Indication of drug or alcohol intoxication that indicates violent tendencies and the suspect is exhibiting those tendencies.
- (g) Less lethal munitions are generally prohibited for use on juveniles exhibiting behavior indicated in sections 1,2,3,4,5 or 6. An evaluation of the potential for injury to the involved Investigator and the juvenile must undertaken before the less lethal munitions are used.

#### 303.2.2 TACTICAL DEPLOYMENT OF LES LETHAL MUNITIONS

- (a) Whenever possible, a team of Investigators should be involved in the deployment of less lethal munitions.
  1. An Investigator or team of Investigators will be assigned prior to any operation to deploy the less lethal munitions.
  2. An investigator or team of Investigators should be assigned to cover those assigned to less lethal deployment.
  3. Distraction of the suspect just prior to the deployment of less lethal munitions will assist in surprising the suspect with the impact of the beanbag or 40mm round device.
  4. An arrest team, preferably at least two Investigators, should be ready for immediate action upon the use of less lethal munitions.
  5. All Investigators present should be advised and the suspect provided warning by loud announcement, of the potential deployment/discharge of less lethal munitions as not to be surprised upon the report of the device if it is fired.

### *Less Lethal Force Options*

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#### 303.2.3 MEDICAL SCREENING

(a) As soon as is practical, all subjects who come in contact with less lethal munitions will be medically screened and, if needed, afforded medical treatment.

1. Depending on the condition of the impact suspect, the Investigator has the option of transporting the suspect by their assigned unit or ambulance. The impact suspect should be examined at the scene and a decision made on how the suspect will be taken to the medical facility for screening or treatment.

2. A medical release for the suspect should be obtained prior to the booking process. A copy of the medical release will be attached to the report of the incident.

#### 303.2.4 INVESTIGATION AND REPORTING THE USE OF LESS LETHAL MUNITIONS

(a) All use of less lethal munitions will be reported to a supervisor as soon as practical.

(b) The use of less lethal munitions shall be documented in accordance with departmental reporting procedures.

1. The report regarding the investigation, which resulted in the use of less lethal munitions, will indicate the reason the impact munition was utilized.

(c) The collection of evidence will include, but is not limited to, photographs of the impact area, recovery of the spent munition casing, and if possible, the less lethal round.

1. A copy of the report will be sent to the Chief and Assistant Chief for review.

### **303.3 CHEMICAL AGENTS SPRAY GUIDELINES**

Only authorized personnel may possess and maintain department issued oleoresin capsicum spray. Chemical agents are weapons used to minimize the potential for injury to investigators, offenders, or other persons. They should be used only in situations where such force reasonably appears justified and necessary.

#### 303.3.1 REQUIRED INSTRUCTION FOR USE

All personnel authorized to carry oleoresin capsicum spray, shall complete the required course of instruction prior to possessing and using the oleoresin capsicum spray.

#### 303.3.2 TREATMENT FOR OC SPRAY EXPOSURE

Persons who have been affected by the use of chemical agents should be promptly provided with the proper solution to cleanse the affected areas. Those persons who complain of further severe effects shall be afforded a medical examination by competent medical personnel.

#### 303.3.3 REPORT OF USE

All uses of chemical agents shall be documented in the related arrest/crime report. The Investigator(s) shall report the use of a chemical agent on a suspect to their immediate supervisor as soon as it is safe to do so.

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**303.4 BATON GUIDELINES**

The need to immediately control a suspect must be weighed against the risk of causing serious injury. The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the investigator reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the investigator or others.

When carrying a baton, uniformed personnel shall carry the baton in a pouch, vest pocket or any other means that provides retention.. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.

**303.5 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES**

Any application of a control device and/or technique listed within this section shall be documented pursuant to Policy Manual § 300.4 and 300.5. Upon use of a less lethal device, Investigators shall contact their immediate supervisor and report the use of force when it is safe to do so.

**303.6 POST-APPLICATION NOTICE**

Whenever tear gas or OC has been introduced into a residence, building interior, vehicle or other enclosed area, investigators should provide the owners or available occupants with notice of the possible presence of residue that could result in irritation or injury if the area is not properly cleaned. Such notice should include advisement that clean up will be at the owner's expense. Information regarding the method of notice and the individuals notified should be included in related reports.

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## Conducted Energy Device

### 304.1 PURPOSE AND SCOPE

This policy provides guidelines for the issuance and use of TASER devices.

### 304.2 POLICY

The TASER® device is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury. The appropriate use of such a device should result in fewer serious injuries to Investigators and suspects.

### 304.3 ISSUANCE AND CARRYING TASER DEVICES

Only members who have successfully completed department-approved training may be issued and carry the TASER device.

TASER devices are issued for use during a member's current assignment. Those leaving a particular assignment may be required to return the device to the department's inventory.

Investigators shall only use the TASER device and cartridges that have been issued by the Department. Uniformed deputies who have been issued the TASER device shall wear the device in an approved holster on their person. Non-uniformed deputies may secure the TASER device in a locked and secured compartment of their vehicle.

Members carrying the TASER device should perform a spark test on the unit prior to every shift.

When carried while in uniform Investigators shall carry the TASER device in a weak-side holster on the side opposite the duty weapon.

(a) All TASER devices shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.

(b) Whenever practicable, deputies should carry two or more cartridges on their person when carrying the TASER device.

(c) Investigators shall be responsible for ensuring that their issued TASER device is properly maintained and in good working order.

(d) Investigators should not hold both a firearm and the TASER device at the same time.

### 304.4 VERBAL AND VISUAL WARNINGS

A verbal warning of the intended use of the TASER device should precede its application, unless it would otherwise endanger the safety of Investigators or when it is not practicable due to the circumstances. The purpose of the warning is to:

(a) Provide the individual with a reasonable opportunity to voluntarily comply.

(b) Provide other deputies and individuals with a warning that the TASER device may be deployed.

### *Conducted Energy Device*

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If, after a verbal warning, an individual is unwilling to voluntarily comply with a Investigator's lawful orders and it appears both reasonable and feasible under the circumstances, the Investigator may, but is not required to, display the electrical arc (provided that a cartridge has not been loaded into the device), or the laser in a further attempt to gain compliance prior to the application of the TASER device. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision. The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the deputy deploying the TASER device in the related report.

#### **304.5 USE OF THE TASER DEVISE**

The TASER device has limitations and restrictions requiring consideration before its use.

The TASER device should only be used when its operator can safely approach the subject within the operational range of the device. Although the TASER device is generally effective in controlling most individuals, Investigators should be aware that the device may not achieve the intended results and be prepared with other options.

##### **304.5.1 APPLICATION OF THE TASER DEVISE**

The TASER device may be used in any of the following circumstances, when the circumstances perceived by the Investigator at the time indicate that such application is reasonably necessary to control a person:

- (a) The subject is violent or is physically resisting.
- (b) The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm Investigators, him/herself or others.

Mere flight from a pursuing Investigator, without other known circumstances or factors, is not good cause for the use of the TASER device to apprehend an individual.

##### **304.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS**

The use of the TASER device on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the Investigator, the subject or others, and the Investigator reasonably believes that the need to control the individual outweighs the risk of using the device. This includes:

- (a) Individuals who are known to be pregnant.
- (b) Elderly individuals or obvious juveniles.
- (c) Individuals with obviously low body mass.
- (d) Individuals who are handcuffed or otherwise restrained.
- (e) Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capsicum (OC) spray.

### *Conducted Energy Device*

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(f) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

Because the application of the TASER device in the drive-stun mode (i.e., direct contact without probes) relies primarily on pain compliance, the use of the drive-stun mode generally should be limited to supplementing the probe-mode to complete the circuit, or as a distraction technique to gain separation between Investigator and the subject, thereby giving Investigators time and distance to consider other force options or actions. The TASER device shall not be used to psychologically torment, elicit statements or to punish any individual.

#### 304.5.3 TARGETING CONSIDERATIONS

Reasonable efforts should be made to target lower center mass and avoid the head, neck, chest and groin. If the dynamics of a situation or officer safety do not permit the Investigator to limit the application of the TASER device probes to a precise target area, Investigators should monitor the condition of the subject if one or more probes strikes the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.

#### 304.5.4 MULTIPLE APPLICATIONS OF THE TASER DEVICE

Investigators should apply the TASER device for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Multiple applications of the TASER device against a single individual are generally not recommended and should be avoided unless the deputy reasonably believes that the need to control the individual outweighs the potentially increased risk posed by multiple applications.

If the first application of the TASER device appears to be ineffective in gaining control of an individual, the Investigator should consider certain factors before additional applications of the TASER device, including:

- (a) Whether the probes are making proper contact.
- (b) Whether the individual has the ability and has been given a reasonable opportunity to comply.
- (c) Whether verbal commands, other options or tactics may be more effective.

Investigators should generally not intentionally apply more than one TASER device at a time against a single subject.

#### 304.5.5 ACTIONS FOLLOWING DEPLOYMENTS

Investigators shall notify a supervisor of all TASER device discharges. Confetti tags should be collected and the expended cartridge, along with both probes and wire, should be submitted into evidence. The cartridge serial number should be noted and documented on the evidence paperwork. The evidence packaging should be marked "Biohazard" if the probes penetrated the subject's skin.

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#### 304.5.6 DANGEROUS ANIMALS

The TASER device may be deployed against an animal as part of a plan to deal with a potentially dangerous animal, such as a dog, if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

#### **304.6 DOCUMENTATION**

Investigators shall document all TASER device discharges in the related arrest/crime report and the TASER device report form. Notification shall also be made to a supervisor in compliance with the Use of Force Policy. Unintentional discharges, pointing the device at a person, laser activation and arcing the device will also be documented on the report form.

##### 304.6.1 TASER DEVICE FORM

Items that shall be included in the TASER device report form are:

- (a) The type and brand of TASER device and cartridge and cartridge serial number.
- (b) Date, time and location of the incident.
- (c) Whether any display, laser or arc deterred a subject and gained compliance.
- (d) The number of TASER device activations, the duration of each cycle, the duration between activations, and (as best as can be determined) the duration that the subject received applications.
- (e) The range at which the TASER device was used.
- (f) The type of mode used (probe or drive-stun).
- (g) Location of any probe impact.
- (h) Location of contact in drive-stun mode.
- (i) Description of where missed probes went.
- (j) Whether medical care was provided to the subject.
- (k) Whether the subject sustained any injuries.
- (l) Whether any deputies sustained any injuries.

The Training Manager should periodically analyze the report forms to identify trends, including deterrence and effectiveness. The Training Manager should also conduct audits of data downloads and reconcile TASER device report forms with recorded activations. TASER device information and statistics, with identifying information removed, should periodically be made available to the public.

##### 304.6.2 REPORTS

The Investigators should include the following in the arrest/crime report:



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- (a) Identification of all personnel firing TASER devices
- (b) Identification of all witnesses
- (c) Medical care provided to the subject
- (d) Observations of the subject's physical and physiological actions
- (e) Any known or suspected drug use, intoxication or other medical problems

#### **304.7 MEDICAL TREATMENT**

Consistent with local medical personnel protocols and absent extenuating circumstances, only qualified personnel should remove TASER device probes from a person's body. Used TASER device probes shall be treated as a sharps biohazard, similar to a used hypodermic needle, and handled appropriately. Universal precautions should be taken. All persons who have been struck by TASER device probes or who have been subjected to the electric discharge of the device shall be medically assessed prior to booking. Additionally, any such individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

- (a) The person is suspected of being under the influence of controlled substances and/or alcohol.
- (b) The person may be pregnant.
- (c) The person reasonably appears to be in need of medical attention.
- (d) The TASER device probes are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).
- (e) The person requests medical treatment.

Any individual exhibiting signs of distress or who is exposed to multiple or prolonged applications (i.e., more than 15 seconds) shall be transported to a medical facility for examination or medically evaluated prior to booking. If any individual refuses medical attention, such a refusal should be witnessed by another Investigator and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible. The transporting Investigator shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of the TASER device.

#### **304.8 SUPERVISOR RESPONSIBILITIES**

When possible, supervisors should respond to calls when they reasonably believe there is a likelihood the TASER device may be used. A supervisor should respond to all incidents where the TASER device was activated.

A supervisor should review each incident where a person has been exposed to an activation of the TASER device. The device's onboard memory should be downloaded through the data port by a supervisor or Rangemaster and saved with the related arrest/crime report. Photographs of probe sites should be taken and witnesses interviewed.

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#### **304.9 TRAINING**

Personnel who are authorized to carry the TASER device shall be permitted to do so only after successfully completing the initial department-approved training. Any personnel who have not carried the TASER device as a part of their assignment for a period of one year or more shall be recertified by a TASER device instructor prior to again carrying or using the device.

Proficiency training for personnel who have been issued TASER devices should occur every year. A reassessment of a Investigator's knowledge and/or practical skill may be required at any time if deemed appropriate by the Training Manager. All training and proficiency for TASER devices will be documented in the Investigator's training file.

Command staff, supervisors and investigators should receive TASER device training as appropriate for the investigations they conduct and review. Investigators who do not carry TASER devices should receive training that is sufficient to familiarize them with the device and with working with Investigators who use the device.

The Training Manager is responsible for ensuring that all members who carry TASER devices have received initial and annual proficiency training. Periodic audits should be used for verification.

Application of TASER devices during training could result in injury to personnel and should not be mandatory for certification. The Training Manager should ensure that all training includes:

- (a) A review of this policy.
- (b) A review of the Use of Force Policy.
- (c) Performing weak-hand draws or cross-draws to reduce the possibility of accidentally drawing and firing a firearm.
- (d) Target area considerations, to include techniques or options to reduce the accidental application of probes near the head, neck, chest and groin.
- (e) Handcuffing a subject during the application of the TASER device and transitioning to other force options.
- (f) De-escalation techniques.
- (g) Restraint techniques that do not impair respiration following the application of the TASER device.

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## Officer-Involved Shootings and Deaths

### 305.1 PURPOSE AND SCOPE

The purpose of this policy is to establish policy and procedures for the investigation of an incident in which a person is injured or dies as the result of an officer-involved shooting or dies as a result of another action of an investigator.

In other incidents not covered by this policy, the Chief Investigator may decide that the investigation will follow the process provided in this policy.

### 305.2 TYPES OF INVESTIGATIONS

Officer-involved shootings and deaths involve several separate investigations. The investigations may include:

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved officer's actions.
- An administrative investigation as to policy compliance by involved investigators.

### 305.3 CONTROL OF INVESTIGATIONS

Investigators from surrounding agencies may be assigned to work on the criminal investigation of officer-involved shootings and deaths. This may include at least one investigator from the agency that employs the involved officer.

Jurisdiction is determined by the location of the shooting or death and the agency employing the involved officer. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.

#### 305.3.1 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

The investigation of any possible criminal conduct by the suspect is controlled by the agency in whose jurisdiction the suspect's crime occurred.

If multiple crimes have been committed in multiple jurisdictions, identification of the agency that will control the investigation may be reached in the same way as with any other crime. The investigation may be conducted by the agency in control of the criminal investigation of the involved officer, at the discretion of the Chief Investigator and with concurrence from the other agency.

#### 305.3.2 CRIMINAL INVESTIGATION OF OFFICER ACTIONS

The control of the criminal investigation into the involved investigator's conduct during the incident will be determined by the employing agency's protocol. When an investigator from this [department/office] is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

Requests made of this [department/office] to investigate a shooting or death involving an outside agency's officer shall be referred to the Chief Investigator or the authorized designee for approval.

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#### 305.3.3 ADMINISTRATIVE AND CIVIL INVESTIGATION

Regardless of where the incident occurs, the administrative and civil investigation of each involved officer is controlled by the respective employing agency.

#### **305.4 INVESTIGATION PROCESS**

The following procedures are guidelines used in the investigation of an officer-involved shooting or death.

##### 305.4.1 UNINVOLVED INVESTIGATOR RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting, the first uninvolved KCDA-ID investigator will be the investigator-in-charge and will assume the responsibilities of a supervisor until properly relieved. This investigator should, as appropriate:

- (a) Secure the scene and identify and eliminate hazards for all those involved.
- (b) Take reasonable steps to obtain emergency medical attention for injured individuals.
- (c) Request additional resources from the [Department/Office] or other agencies.
- (d) Coordinate a perimeter or pursuit of suspects.
- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor upon arrival.

##### 305.4.2 SUPERVISOR'S RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the Senior Investigator shall be responsible for coordinating all aspects of the incident until he/she is relieved by the Chief Investigator or the Assistant Chief Investigator

All outside inquiries about the incident shall be directed to the Chief Investigator.

##### 305.4.3 NOTIFICATIONS

The following person(s) shall be notified as soon as practicable:

- Chief Investigator
- Assistant Chief Investigator
- District Attorney
- Outside agency watch commander
- Psychological/peer support personnel
- Chaplain
- Coroner (if necessary)
- Involved officer's agency representative (if requested)

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#### 305.4.4 SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene, the first uninvolved KCDA-ID supervisor should ensure completion of the duties as outlined above, plus:

- (a) Attempt to obtain a brief overview of the situation from any uninvolved officers.
  1. In the event that there are no uninvolved officers who can supply adequate overview, the supervisor should attempt to obtain a brief voluntary overview from one involved officer.
- (b) If necessary, the supervisor may administratively order any KCDA-ID investigator to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
  1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of any shots fired, perimeter of the incident scene, identity of known or potential witnesses and any other pertinent information.
  2. The initial on-scene supervisor should not attempt to order any involved officer to provide any information other than public safety information.
- (c) Provide all available information to the Chief Investigator and the Communications Center. If feasible, sensitive information should be communicated over secure networks.
- (d) Take command of and secure the incident scene with additional KCDA-ID members until properly relieved by another supervisor or other assigned personnel or investigator.
- (e) As soon as practicable, ensure that involved officers are transported (separately, if feasible) to a suitable location for further direction.
  1. Each involved KCDA-ID investigator should be given an administrative order not to discuss the incident with other involved officers or KCDA-ID members pending further direction from a supervisor.
  2. When an involved officer's weapon is taken or left at the scene for other than officer-safety reasons (e.g., evidence), ensure that he/she is provided with a comparable replacement weapon or transported by other investigators.

#### 305.4.5 INVOLVED OFFICERS

The following shall be considered for the involved officer:

- (a) Any request for legal or union representation will be accommodated.
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- (c) Discussions with agency representatives/employee groups will be privileged only as to the discussion of non-criminal information (Government Code § 3303(i)).
- (d) A licensed psychotherapist shall be provided by the [Department/Office] to each involved KCDA-ID investigator. A licensed psychotherapist may also be provided to any other affected KCDA-ID members, upon request.

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1. Interviews with a licensed psychotherapist will be considered privileged.
  2. An interview or session with a licensed psychotherapist may take place prior to the member providing a formal interview or report. However, involved members shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.
  3. A separate fitness-for-duty exam may also be required (see the Fitness for Duty Policy).
- (e) Peer counselors are cautioned against discussing the facts of any incident with an involved or witness officer (Government Code § 8669.4).

Care should be taken to preserve the integrity of any physical evidence present on the involved officer's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.

Each involved KCDA-ID investigator shall be given reasonable paid administrative leave following an officer-involved shooting or death. It shall be the responsibility of the Chief Investigator to make schedule adjustments to accommodate such leave.

#### 305.4.6 NOTIFICATION TO DEPARTMENT OF JUSTICE

The California Department of Justice (DOJ) is required to investigate an officer-involved shooting resulting in the death of an unarmed civilian. The Chief Investigator should promptly notify the DOJ in all incidents involving an officer-involved shooting resulting in the death of an unarmed civilian, including where it is undetermined if the civilian was unarmed.

For purposes of notification, "unarmed civilian" means anyone who is not in possession of a deadly weapon (Government Code § 12525.3).

#### **305.5 CRIMINAL INVESTIGATION**

The law enforcement agency responsible of the jurisdiction where the incident occurred is responsible for the criminal investigation into the circumstances of any officer-involved shooting or death.

If available, investigative personnel from this [department/office] may be assigned to partner with investigators from outside agencies or the District Attorney's Office to avoid duplicating efforts in related criminal investigations.

Once public safety issues have been addressed, criminal investigators should be given the opportunity to obtain a voluntary statement from involved officers and to complete their interviews. The following shall be considered for the involved officer:

- (a) KCDA-ID supervisors and Assistant Chief Investigator personnel should not participate directly in any voluntary interview of KCDA-ID investigators. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.

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- (b) If requested, any involved officer will be afforded the opportunity to consult individually with a representative of his/her choosing or an attorney prior to speaking with criminal investigators (Government Code § 3303(i)).
- (c) If any involved officer is physically, emotionally or otherwise not in a position to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.
- (d) Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

#### 305.5.1 REPORTS BY INVOLVED KCDA-ID INVESTIGATORS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this [department/office] shall retain the authority to require involved KCDA-ID investigators to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals (Government Code § 3304(a)).

While the involved KCDA-ID investigator may write the report, it is generally recommended that such reports be completed by assigned investigators, who should interview all involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved KCDA-ID investigator of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures but should also be included for reference in the investigation of the officer-involved shooting or death.

#### 305.5.2 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an officer-involved shooting or death may become unavailable or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available personnel for the following:

- (a) Identification of all persons present at the scene and in the immediate area.
  - 1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
  - 2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or

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probable cause to arrest. Without detaining the individual for the sole purpose of identification, investigators should attempt to identify the witness prior to his/her departure.

- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by a member of the [Department/Office].
  - 1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
- (c) Promptly contacting the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

#### **305.5.3 INVESTIGATIVE PERSONNEL**

Once notified of an officer-involved shooting or death, it shall be the responsibility of the Chief Investigator or their designee to assign appropriate investigative personnel to handle the investigation of related crimes.

All related department reports, except administrative and/or privileged reports, will be forwarded to the Chief Investigator or Assistant Chief Investigator for approval. Privileged reports shall be maintained exclusively by members who are authorized such access. Administrative reports will be forwarded to the Chief Investigator or Assistant Chief Investigator in his/her absence

#### **305.6 ADMINISTRATIVE INVESTIGATION**

In addition to all other investigations associated with an officer-involved shooting or death, this [department/office] will conduct an internal administrative investigation of KCDA-ID investigators to determine conformance with [department/office] policy. The investigation will be conducted under the supervision of the Assistant Chief Investigator and will be considered a confidential investigator personnel file.

Interviews of members shall be subject to [department/office] policies and applicable laws (see the Personnel Complaints Policy).

- (a) Any investigator involved in a shooting or death may be requested or administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the investigator, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (b) If any investigator has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved investigator.
  - 1. If a further interview of the investigator is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved



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investigator shall be provided with a copy of his/her prior statement before proceeding with any subsequent interviews.

- (c) In the event that an involved investigator has elected to not provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the investigator's physical and psychological needs have been addressed before commencing the interview.
  2. If requested, the investigator shall have the opportunity to select an uninvolved representative to be present during the interview. However, in order to maintain the integrity of each individual investigator's statement, involved investigators shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed (Government Code § 3303(i)).
  3. Administrative interviews should be recorded by the investigator. The investigator may also record the interview (Government Code § 3303(g)).
  4. The investigator shall be informed of the nature of the investigation. If an investigator refuses to answer questions, he/she should be given his/her *Lybarger* or *Garrity* rights and ordered to provide full and truthful answers to all questions. The investigator shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.
  5. The Assistant Chief Investigator shall compile all relevant information and reports necessary for the [Department/Office] to determine compliance with applicable policies.
  6. Regardless of whether the use of force is an issue in the case, the completed administrative investigation shall be submitted to the Use of Force Review Board, which will restrict its findings as to whether there was compliance with the Use of Force Policy.
  7. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

#### **305.7 AUDIO AND VIDEO RECORDINGS**

Any Investigator involved in a shooting or death may be permitted to review available Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports.

Upon request, non-law enforcement witnesses who are able to verify their presence and their ability to contemporaneously perceive events at the scene of an incident may also be permitted to review available MAV, body-worn video, or other video or audio recordings with approval of assigned investigators or a supervisor.

Any MAV, body-worn and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the prosecuting attorney or County Counsel's Office, as appropriate.

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#### **305.8 DEBRIEFING**

Following an officer-involved shooting or death, the Kings County District Attorney Investigation Division should conduct both a critical incident/stress debriefing and a tactical debriefing.

#### **305.9 MEDIA RELATIONS**

Any media release shall be prepared with input and concurrence from the supervisor and [department/office] representative responsible for each phase of the investigation. Releases will be available to the Chief Investigator, District Attorney and Assistant District Attorney in the event of inquiries from the media.

The [Department/Office] shall not subject any involved Investigator to visits by the media (Government Code § 3303(e)). No involved Investigator shall make any comment to the media unless he/she is authorized by the Chief Investigator. [Department/Office] members receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

#### **305.10 REPORTING**

If the death of an individual occurs in the Kings County District Attorney Investigation Division jurisdiction and qualifies to be reported to the state as a justifiable homicide or an in-custody death, the Investigations Chief Investigator will ensure that the Investigator is provided with enough information to meet the reporting requirements (Penal Code § 196; Penal Code § 13022; Government Code § 12525).

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## Firearms

### 306.1 PURPOSE AND SCOPE

This policy provides guidelines for issuing firearms, the safe and legal carrying of firearms, firearms maintenance and firearms training.

This policy does not apply to issues related to the use of firearms that are addressed in the Use of Force or Officer-Involved Shootings and Deaths policies.

This policy only applies to those members who are authorized to carry firearms.

### 306.2 POLICY

The Kings County District Attorney Investigation Division will equip its members with firearms to address the risks posed to the public and [department/office] members by violent and sometimes well-armed persons. The [Department/Office] will ensure firearms are appropriate and in good working order and that relevant training is provided as resources allow.

#### 306.2.1 DUTY RIFLES

Duty Rifles are assigned to individual Investigators by Chief Investigator, Assistant Chief Investigator, or rangemaster.. These firearms shall be stored in a secure location when not in use. Duty Rifles are for use as determined necessary by each Investigator based on operational needs. Under special circumstances, Investigators may carry personal duty rifles that have been inspected by the department Armorer and approved by the Chief Investigator or Assistant Chief Investigator.

#### 306.2.2 LESS LETHAL FIREARMS

Kings County District Attorney Investigators are authorized to use department authorized less lethal firearms and approved less lethal munitions upon completion formal training as set forth by range staff. Ammunition other than department approved less lethal ammunition should never be loaded into a less lethal designated firearm unless an immediate threat of death or great bodily harm dictates otherwise. Investigators may utilize a less lethal firearm to meet mission specific requirements, but are required to do so within the parameters of their required training.

### 306.3 AUTHORIZED FIREARMS

Members shall only use firearms that are issued or approved by the [Department/Office] and have been thoroughly inspected by the Rangemaster. Except in an emergency or as directed by a supervisor, no firearm shall be carried by a member who has not qualified with that firearm..

#### 306.3.1 DEPARTMENT ISSUED SIDEARM

The department-issued sidearm is the Glock model 45 M.O.S. 9mm. Personally owned pistols may be carried upon receiving authorization from the Chief Investigator, undergoing an inspection by the Range Master and conducting a formal range qualification. Personally owned sidearms must be either a 9mm,.40 S&W or .45 ACP in caliber.

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#### 306.3.2 SHOTGUNS

The authorized department-issued shotgun is the Mossberg 500 and 590.

When not deployed, the shotgun shall be properly secured in a safe and secure location.

#### 306.3.3 DUTY RIFLE DEPLOYMENT

Members may deploy their assigned rifle in any circumstance where the member can articulate a reasonable expectation that its use may be needed. Examples of some general guidelines for deploying a duty rifle may include, but are not limited to:

- (a) Situations where the member reasonably anticipates an armed encounter.
- (b) When a member is faced with a situation that may require accurate and effective fire at long range.
- (c) Situations where a member reasonably expects the need to meet or exceed a suspect's firepower.
- (d) When a member reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage.
- (e) When a member reasonably believes that a suspect may be wearing body armor.
- (f) When authorized or requested by a supervisor.
- (g) When needed to euthanize an animal.
- (h) During the service of a search warrant or other high risk operation

When not deployed, weapons shall be properly secured in a safe location. When being stored within the KCDA armory the weapon should be unloaded with the magazine removed and the bolt locked to the rear so as the chamber can be visually inspected.

#### 306.3.4 PERSONALLY OWNED DUTY FIREARMS

Members desiring to carry an authorized but personally owned duty firearm must receive approval from the Chief Investigator or the authorized designee. Once approved, personally owned duty firearms are subject to the following restrictions:

- (a) The firearm shall be in good working order and on the [department/office] list of approved firearms.
- (b) The firearm shall be inspected by the Rangemaster prior to being carried and thereafter shall be subject to inspection whenever it is deemed necessary.
- (c) Prior to carrying the firearm, members shall qualify under range supervision and thereafter shall qualify in accordance with the [department/office] qualification schedule. Members must demonstrate proficiency and safe handling, and that the firearm functions properly.
- (d) Members shall provide written notice of the make, model, color, serial number and caliber of the firearm to the Rangemaster, who will maintain a list of the information.

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#### 306.3.5 AUTHORIZED SECONDARY HANDGUN

Members desiring to carry department or personally owned secondary handguns are subject to the following restrictions:

- (a) The handgun shall be in good working order.
- (b) The purchase of the handgun and ammunition shall be the responsibility of the member unless the handgun and ammunition are provided by the Department.
- (c) The handgun shall be carried concealed at all times and in such a manner as to prevent unintentional cocking, discharge or loss of physical control.
- (d) The handgun shall be inspected by the Rangemaster prior to being carried and thereafter shall be subject to inspection whenever it is deemed necessary.
- (e) Ammunition should be the same as department issue. If the caliber of the handgun is other than department issue, the Chief Investigator or the authorized designee shall approve the ammunition.
- (f) Prior to carrying the secondary handgun, members shall qualify under range supervision and thereafter shall qualify in accordance with the department qualification schedule. Members must demonstrate proficiency and safe handling, and that the handgun functions properly.
- (g) Members shall provide written notice of the make, model, color, serial number and caliber of a secondary handgun to the Rangemaster, who will maintain a list of the information.

#### 306.3.6 AUTHORIZED OFF-DUTY FIREARMS

The carrying of firearms by members while off-duty is permitted by the Chief Investigator but may be rescinded should circumstances dictate (e.g., administrative leave). Members who choose to carry a firearm while off-duty, based on their authority as peace officers, will be required to meet the following guidelines:

- (a) When armed, Investigators shall not consume alcohol, drugs or any intoxicant that would otherwise alter their judgment.
- (b) When armed, investigators shall carry their Kings County District Attorney Investigation Division identification cards.

#### 306.3.7 AMMUNITION

Members shall carry only department-authorized ammunition while on duty. Members shall be issued fresh duty ammunition in the specified quantity for all department-issued firearms during the member's firearms qualification. Replacements for unserviceable or depleted ammunition issued by the Department shall be dispensed by the Rangemaster when needed, in accordance with established policy.

Members carrying personally owned authorized firearms of a caliber differing from department-issued firearms shall be responsible for obtaining fresh duty ammunition in accordance with the above, at their own expense.

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#### **306.4 EQUIPMENT**

Firearms carried on- or off-duty shall be maintained in a clean, serviceable condition. Maintenance and repair of authorized personally owned firearms are the responsibility of the individual member.

##### **306.4.1 REPAIRS OR MODIFICATIONS**

Each member shall be responsible for promptly reporting any damage or malfunction of an assigned firearm to a supervisor or the Rangemaster.

Firearms that are the property of the Department or personally owned firearms that are approved for department use may be repaired or modified only by a person who is department-approved and certified as an armorer or gunsmith. Such modification or repair must be authorized in advance by the Rangemaster.

Any repairs or modifications to the member's personally owned firearm shall be done at his/her expense and must be approved by the Rangemaster.

##### **306.4.2 HOLSTERS**

Only department-approved holsters shall be used and worn by members while on duty. Members shall periodically inspect their holsters to make sure they are serviceable and provide the proper security and retention of the handgun.

##### **306.4.3 TACTICAL LIGHTS**

Tactical lights may be installed on a firearm carried on duty after they have been examined and approved by the Rangemaster. Once the approved tactical lights have been properly installed on any firearm, the member shall qualify with the firearm to ensure proper functionality and sighting of the firearm prior to carrying it.

##### **306.4.4 OPTICS OR LASER SIGHTS**

Optics or laser sights may only be installed on a firearm carried on duty after they have been examined and approved by a Rangemaster. Any approved sight shall only be installed in strict accordance with manufacturer specifications. Once approved sights have been properly installed on any firearm, the member shall qualify with the firearm to ensure proper functionality and sighting of the firearm prior to carrying it.

The sighting in of any optic or laser device shall only be conducted at an official range facility.

RDS (red dot sight) pistols are approved for duty use. Investigators may also choose to have their personally owned pistol modified by a qualified gunsmith to accept an RDS. The Trijicon RMR model number RM07 Type 2 (6.5 moa) and Holosun 508T X2 multi-reticle optic are the Kings County District Attorney's Office issued RDS.

A. RDS equipped pistols shall have co-witnessing iron sights installed as backup to the RDS. The authorized RDS shall either be a LED adjustable Trijicon RMR, Leupold Delta Point Pro or Holosun models 508T/509T.. Either sighting system shall be installed to meet manufacturer specifications and recommendations. Battery sealing plates shall be used when applicable.

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B. RDS equipped pistols shall be zeroed at 25 yards. Batteries shall be replaced upon annual inspection. Removal of the sight or battery replacement will require the Investigator to re-zero the optic.

C. Investigators shall complete a qualification course demonstrating proficiency with the RDS and co-witnessing sights prior to carrying an RDS equipped pistol on duty.

### **306.5 SAFE HANDLING, INSPECTION AND STORAGE**

Members shall maintain the highest level of safety when handling firearms and shall consider the following:

- (a) Members shall not unnecessarily display or handle any firearm.
- (b) Members shall be governed by all rules and regulations pertaining to the use of the range and shall obey all orders issued by the Rangemaster. Members shall not dry fire or practice quick draws except as instructed by the Rangemaster or other firearms training staff.
- (c) Members shall not clean, repair, load or unload a firearm anywhere in the Department, except within a secure office outside the view of the public only after the firearm has been properly unloaded and deemed safe.
- (d) Firearms removed from vehicles or the equipment storage room shall be loaded and unloaded in a safe location away from the general public..
- (e) Members shall not place or store any firearm or other weapon on department premises except where the place of storage is locked. No one shall carry firearms into the jail section or any part thereof when securing or processing an arrestee, but shall place all firearms in a secured location. Members providing access to the jail section to persons from outside agencies are responsible for ensuring firearms are not brought into the jail section.
- (f) Any firearm authorized by the Department to be carried on- or off-duty that is determined by a member to be malfunctioning or in need of service or repair shall not be carried. It shall be promptly presented to the Department or a Rangemaster approved by the Department for inspection and repair. Any firearm deemed in need of repair or service by the Rangemaster will be immediately removed from service. If the firearm is the member's primary duty firearm, a replacement firearm will be issued to the member until the duty firearm is serviceable.

#### **306.5.1 ARMORER DUTIES**

The Armorer has the responsibility of making periodic inspection, at least once a year, of all duty weapons carried by investigators of this department to verify proper operation. The Armorer has the authority to deem any privately owned weapon unfit for service. The investigator will be responsible for all repairs to his or her personal weapon and it will not be returned to service until inspected by the Armorer. Optional duty weapons purchased by individual Investigators will not be repaired or maintained by the Kings County District Attorney's Office unless otherwise indicated.

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### 306.5.2 INSPECTION AND STORAGE

Handguns shall be inspected regularly and upon access or possession by another person. Shotguns and rifles shall be inspected prior to any deployment by the member to whom the weapon is issued. The member shall ensure that the firearm is carried in the proper condition and loaded with approved ammunition. Inspection of the shotgun and rifle shall be done while pointed in a safe direction.

Firearms may be safely stored in the armory or another approved location at the end of the shift. All firearms shall be unloaded in a safe manner and stored in the armory or other suitable firearm locker..

### 306.5.3 STORAGE AT HOME

Members shall ensure that all firearms and ammunition are secured while in their homes, vehicles or any other area under their control, and in a manner that will keep them inaccessible to children and others who should not have access. Members should be aware that negligent storage of a firearm could result in civil and criminal liability (Penal Code § 25100).

### 306.5.4 ALCOHOL AND DRUGS

Firearms shall not be carried by any member, either on- or off-duty, who has consumed an amount of an alcoholic beverage, or has taken any drugs or medication, or has taken any combination thereof that would tend to adversely affect the member's senses or judgment.

### 306.5.5 STORAGE IN VEHICLES

When leaving a handgun in an unattended vehicle, members shall ensure that it is locked in the trunk, or in a locked container that is placed out of view, or in a locked container that is permanently affixed to the vehicle's interior and not in plain view, or in a locked toolbox or utility box permanently affixed to the vehicle (Penal Code § 25140; Penal Code § 25452).

If the vehicle does not have a trunk or a locked container, then the firearm should be locked within the center utility console that can be locked with a padlock, keylock, combination lock, or other similar locking device (Penal Code § 25140).

Investigators are exempt from these requirements during circumstances requiring immediate aid or action in the course of official duties (Penal Code § 25140).

## **306.6 FIREARMS TRAINING AND QUALIFICATIONS**

All members who carry a firearm while on-duty are required to successfully complete training quarterly with their duty firearms. In addition to quarterly training, all members will qualify at least annually with their duty firearms. Training and qualifications must be under the supervision of a Rangemaster.

At least annually, all members carrying a firearm should receive practical training designed to simulate field situations including low-light shooting.



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#### 306.6.1 NON-CERTIFICATION OR NON-QUALIFICATION

If any member fails to meet minimum standards for firearms training or qualification for any reason, including injury, illness, duty status or scheduling conflict, that member shall submit a memorandum to his/her immediate supervisor prior to the end of the required training or qualification period.

Those who fail to meet minimum standards or qualify on their first shooting attempt shall be provided remedial training and will be subject to the following requirements:

- (a) Additional range assignments may be scheduled to assist the member in demonstrating consistent firearm proficiency.
- (b) Members shall be given credit for a range training or qualification when obtaining a qualifying score or meeting standards after remedial training.
- (c) No range credit will be given for the following:
  1. Unauthorized range make-up
  2. Failure to meet minimum standards or qualify after remedial training

Members who repeatedly fail to meet minimum standards will be removed from field assignment and may be subject to disciplinary action.

#### **306.7 FIREARM DISCHARGE**

Except during training or recreational use, any member who discharges a firearm intentionally or unintentionally, on- or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If the discharge results in injury or death to another person, additional statements and reports shall be made in accordance with the Officer-Involved Shootings and Deaths Policy. If a firearm was discharged as a use of force, the involved member shall adhere to the additional reporting requirements set forth in the Use of Force Policy.

In all other cases, written reports shall be made as follows:

- (a) If on-duty at the time of the incident, the member shall file a written report with his/her Chief Investigator or provide a recorded statement to investigators prior to the end of shift, unless otherwise directed.
- (b) If off-duty at the time of the incident, the member shall file a written report or provide a recorded statement no later than the end of the next regularly scheduled shift, unless otherwise directed by a supervisor.

#### 306.7.1 DESTRUCTION OF ANIMALS

Members are authorized to use firearms to stop an animal in circumstances where the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

In circumstances where there is sufficient advance notice that a potentially dangerous animal may be encountered, [department/office] members should develop reasonable contingency plans for dealing with the animal (e.g., fire extinguisher, conducted energy device, oleoresin capsicum (OC))

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spray, animal control officer). Nothing in this policy shall prohibit any member from shooting a dangerous animal if circumstances reasonably dictate that a contingency plan has failed, becomes impractical, or if the animal reasonably appears to pose an imminent threat to human safety.

### **306.7.2 INJURED ANIMALS**

With the approval of a supervisor, a member may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impractical.

Stray or abandoned injured animals that may be moved or taken to an available veterinarian should not be euthanized. With supervisor approval, abandoned injured animals (with the exception of dogs and cats) may only be euthanized after a reasonable search to locate the owner has been made. Injured dogs and cats found without their owners shall be taken to an appropriate veterinarian for determination of whether they should be treated or humanely destroyed (Penal Code § 597.1).

### **306.7.3 WARNING AND OTHER SHOTS**

Generally, shots fired for the purpose of summoning aid are discouraged and may not be discharged unless the member reasonably believes that they appear necessary, effective, and reasonably safe.

Warning shots should not be used.

## **306.8 RANGEMASTER DUTIES**

The range will be under the exclusive control of the Rangemaster. All members attending will follow the directions of the Rangemaster. The Rangemaster will maintain a roster of all members attending the range and will submit the roster to the Training Coordinator after each range date.

The range shall remain operational and accessible to Department members during hours established by the Department.

The Rangemaster has the responsibility of making periodic inspection, at least once a year, of all duty firearms carried by members of this department to verify proper operation. The Rangemaster has the authority to deem any department-issued or personally owned firearm unfit for service. The member will be responsible for all repairs to his/her personally owned firearm and it will not be returned to service until inspected by the Rangemaster.

The Rangemaster has the responsibility for ensuring each member meets the minimum requirements during training shoots and, on at least a yearly basis, can demonstrate proficiency in the care, cleaning and safety of all firearms the member is authorized to carry.

The Rangemaster shall complete and submit to the Training Coordinator documentation of the training courses provided. Documentation shall include the qualifications of each instructor who provides the training, a description of the training provided and, on a form that has been approved by the Department, a list of each member who completes the training. The Rangemaster should

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keep accurate records of all training shoots, qualifications, repairs, maintenance or other records as directed by the Training Coordinator.

#### **306.9 FLYING WHILE ARMED**

The Transportation Security Administration (TSA) has imposed rules governing law enforcement officers flying armed on commercial aircraft. The following requirements apply to investigators who intend to be armed while flying on a commercial air carrier or flights where screening is conducted (49 CFR 1544.219):

- (a) Investigators wishing to fly while armed must be flying in an official capacity, not for vacation or pleasure, and must have a need to have the firearm accessible, as determined by the Department based on the law and published TSA rules.
- (b) Investigators must carry their Kings County District Attorney Investigation Division identification card, bearing the investigator's name, a full-face photograph, the signature of the Chief Investigator or the official seal of the Department and must present this identification to airline officials when requested. The investigator should also carry the standard photo identification needed for passenger screening by airline and TSA officials (e.g., driver license, passport).
- (c) The Kings County District Attorney Investigation Division must submit a National Law Enforcement Telecommunications System (NLETS) message prior to the investigator's travel. If approved, TSA will send the Kings County District Attorney Investigation Division an NLETS message containing a unique alphanumeric identifier. The investigator must present the message on the day of travel to airport personnel as authorization to travel while armed.
- (d) An official letter signed by the Chief Investigator authorizing armed travel may also accompany the investigator. The letter should outline the investigator's need to fly armed, detail his/her itinerary, and include that the investigator has completed the mandatory TSA training for a law enforcement officer flying while armed.
- (e) Investigators must have completed the mandated TSA security training covering investigators flying while armed. The training shall be given by the department-appointed instructor.
- (f) It is the investigator's responsibility to notify the air carrier in advance of the intended armed travel. This notification should be accomplished by early check-in at the carrier's check-in counter.
- (g) Any investigator flying while armed should discreetly contact the flight crew prior to take-off and notify them of his/her assigned seat.
- (h) Discretion must be used to avoid alarming passengers or crew by displaying a firearm. The investigator must keep the firearm concealed on his/her person at all times. Firearms are not permitted in carry-on luggage and may not be stored in an overhead compartment.
- (i) Investigators should try to resolve any problems associated with flying armed through the flight captain, ground security manager, TSA representative or other management representative of the air carrier.

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- (j) Investigators shall not consume alcoholic beverages while aboard an aircraft, or within eight hours prior to boarding an aircraft.

#### **306.10 CARRYING FIREARMS OUT OF STATE**

Qualified, active, full-time investigators of this department are authorized to carry a concealed firearm in all other states subject to the following conditions (18 USC § 926B):

- (a) The investigator shall carry his/her Kings County District Attorney Investigation Division identification card whenever carrying such firearm.
- (b) The investigator is not the subject of any current disciplinary action.
- (c) The investigator may not be under the influence of alcohol or any other intoxicating or hallucinatory drug.
- (d) The investigator will remain subject to this and all other department policies (including qualifying and training).

Investigators are cautioned that individual states may enact local regulations that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property, or that prohibit or restrict the possession of firearms on any state or local government property, installation, building, base or park. Federal authority may not shield an investigator from arrest and prosecution in such locally restricted areas.

Active law enforcement officers from other states are subject to all requirements set forth in 18 USC § 926B.

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## Vehicle Pursuits

### 307.1 PURPOSE AND SCOPE

This policy provides guidelines for vehicle pursuits in order to protect the safety of involved investigators, the public, and fleeing suspects.

#### 307.1.1 DEFINITIONS

**Blocking** - A low-speed tactic where one or more authorized bureau [department/office] emergency vehicles intentionally restrict the movement of a suspect vehicle, with the goal of containment or preventing a pursuit. Blocking is not boxing in or a roadblock.

**Boxing-in** - A tactic designed to stop a suspect's moving vehicle by surrounding it with law enforcement vehicles and then slowing all vehicles to a stop.

**Pursuit Intervention** - An attempt to stop the suspect's ability to continue to flee in a vehicle through tactical application of technology, tire deflation devices, blocking or vehicle intercept, boxing-in, the PIT (known as Pursuit Intervention Technique or Precision Immobilization Technique), ramming, or roadblock procedures.

**Pursuit Intervention Technique (PIT)** - A low-speed tactic intentionally applied to cause the suspect vehicle to spin out and terminate the pursuit.

**Ramming** - The deliberate act of impacting a suspect's vehicle with another vehicle to functionally damage or otherwise force the suspect's vehicle to stop.

**Roadblocks** - A tactic designed to stop a suspect's vehicle by intentionally placing an emergency vehicle or other immovable object in the path of the suspect's vehicle.

**Tire deflation device** - A device that extends across the roadway designed to puncture the tires of the pursued vehicle, sometimes referred to as spike strips.

**Terminate** - To discontinue a pursuit or stop chasing fleeing vehicles.

**Trail** - Following the path of the pursuit at a safe speed while obeying all traffic laws and without activating emergency equipment. If the pursuit is at a slow rate of speed, the trailing vehicle will maintain sufficient distance from the pursuit vehicles so as to clearly indicate an absence of participation in the pursuit

**Vehicle Pursuit** - An event involving one or more law enforcement officers attempting to apprehend a suspect, who is attempting to avoid arrest while operating a motor vehicle by using high-speed driving or other evasive tactics, such as driving off a highway, turning suddenly, or driving in a legal manner but willfully failing to yield to an investigator's signal to stop.

### 307.2 INVESTIGATOR RESPONSIBILITIES

Vehicle pursuits shall only be conducted using authorized bureau [department/office] emergency vehicles that are equipped with and displaying emergency lighting and sirens as required by

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Vehicle Code § 21055. Investigators are responsible for continuously driving with due regard and caution for the safety of all persons and property (Vehicle Code § 21056).

#### 307.2.1 WHEN TO INITIATE A PURSUIT

Investigators are authorized to initiate a pursuit when the investigator reasonably believes that a suspect, who has been given appropriate signal to stop by a law enforcement officer, is attempting to evade arrest or detention by fleeing in a vehicle.

Factors that should be considered in deciding whether to initiate a pursuit include:

- (a) The seriousness of the known or reasonably suspected crime and its relationship to community safety.
- (b) The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to investigators, innocent motorists, and others.
- (c) The safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic (e.g., school zones), and the speed of the pursuit relative to these factors.
- (d) The pursuing investigators' familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the [dispatcher supervisor, and the driving capabilities of the pursuing investigators under the conditions of the pursuit.
- (e) Whether weather, traffic, and road conditions unreasonably increase the danger of the pursuit when weighed against the risk of the suspect's escape.
- (f) Whether the identity of the suspect has been verified and whether there is comparatively minimal risk in allowing the suspect to be apprehended at a later time.
- (g) The performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.
- (h) Emergency lighting and siren limitations on unmarked bureau [department/office] vehicles that may reduce visibility of the vehicle, such as visor or dash-mounted lights, concealable or temporary emergency lighting equipment, and concealed or obstructed siren positioning.
- (i) Suspect and investigator vehicle speeds.
- (j) Other persons in or on the pursued vehicle (e.g., passengers, co-offenders, hostages).
- (k) Availability of other resources such as air support or vehicle locator or deactivation technology.

#### 307.2.2 WHEN TO TERMINATE A PURSUIT

Pursuits should be terminated whenever the totality of objective circumstances known or which reasonably ought to be known to the investigator or supervisor during the pursuit indicates that the present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the suspect's escape.

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The factors listed in this policy on when to initiate a pursuit will apply equally to the decision to terminate a pursuit. Investigators and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists, themselves, and the public when electing to continue a pursuit.

In addition to the factors that govern when to initiate a pursuit, other factors should be considered in deciding whether to terminate a pursuit, including:

- (a) The distance between the pursuing vehicle and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time and/or distance.
- (b) The pursued vehicle's location is no longer definitely known.
- (c) The pursuing vehicle sustains damage or a mechanical failure that renders it unsafe to drive.
- (d) The pursuing vehicle's emergency lighting equipment or siren becomes partially or completely inoperable.
- (e) Hazards to uninvolved bystanders or motorists.
- (f) The danger that the continued pursuit poses to the public, the investigators, or the suspect, balanced against the risk of allowing the suspect to remain at large.
- (g) The identity of the suspect is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit.
- (h) Extended pursuits of violators for misdemeanors not involving violence, risk of serious harm, or weapons (independent of the pursuit) are generally discouraged.

#### **307.2.3 SPEED LIMITS**

The speed of a pursuit is a factor that should be evaluated on a continuing basis by the investigator and supervisor. Evaluation of vehicle speeds should take into consideration public safety, officer safety, and the safety of the occupants of the fleeing vehicle.

Should high vehicle speeds be reached during a pursuit, investigators and supervisors should also consider these factors when determining the reasonableness of the speed of the pursuit:

- (a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
- (b) Pursuit speeds have exceeded the driving ability of the investigator.
- (c) Pursuit speeds are beyond the capabilities of the pursuit vehicle thus making its operation unsafe.

#### **307.3 PURSUIT UNITS**

When involved in a pursuit, unmarked bureau [department/office] emergency vehicles should be replaced by marked emergency vehicles whenever practicable

Vehicle pursuits should be limited to three vehicles (two units and a supervisor); however, the number of units involved may vary with the circumstances.

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An investigator or supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it reasonably appears that the number of investigators involved may be insufficient to safely arrest the suspects. All other investigators should stay out of the pursuit, but should remain alert to its progress and location. Any investigator who drops out of a pursuit may then, if necessary, proceed to the termination point at legal speeds, following the appropriate rules of the road.

#### 307.3.1 VEHICLES WITHOUT EMERGENCY EQUIPMENT

Investigators operating vehicles not equipped with red light and siren are prohibited from initiating or joining in any pursuit.

#### 307.3.2 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing unit will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless the investigator is unable to remain reasonably close to the suspect's vehicle. The primary responsibility of the investigator initiating the pursuit is the apprehension of the suspects without unreasonable danger to any person.

The primary unit should notify the [dispatcher commencing with a request for priority radio traffic, that a vehicle pursuit has been initiated, and as soon as practicable provide information including but not limited to:

- (a) The location, direction of travel, and estimated speed of the suspect's vehicle.
- (b) The description of the suspect's vehicle including license plate number, if known.
- (c) The reason for the pursuit.
- (d) Known or suspected weapons. Threat of force, violence, injuries, hostages, or other unusual hazards.
- (e) The suspected number of occupants and identity or description.
- (f) The weather, road, and traffic conditions.
- (g) The need for any additional resources or equipment.
- (h) The identity of other law enforcement agencies involved in the pursuit.

Until relieved by a supervisor or secondary unit, the investigator in the primary unit is responsible for the broadcasting of the progress of the pursuit. Unless circumstances reasonably indicate otherwise, the primary pursuing investigator should, as soon as practicable, relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or air support joining the pursuit to minimize distractions and allow the primary pursuing investigator to concentrate foremost on safe pursuit tactics.

#### 307.3.3 SECONDARY UNIT RESPONSIBILITIES

The second investigator in the pursuit will be designated as the secondary unit and is responsible for:

- (a) Immediately notifying the dispatcher of entry into the pursuit.



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- (b) Remaining a safe distance behind the primary unit unless directed to assume the role of primary pursuit vehicle or if the primary pursuit vehicle is unable to continue the pursuit.
- (c) Broadcasting the progress, updating known or critical information, and providing changes in the pursuit, unless the situation indicates otherwise.
- (d) Identifying the need for additional resources or equipment as appropriate.
- (e) Serving as backup to the primary pursuing investigator once the suspect has been stopped.

#### 307.3.4 PURSUIT DRIVING

The decision to use specific driving tactics requires the same assessment of the factors the investigator considered when determining whether to initiate and/or terminate a pursuit. The following are tactics for units involved in the pursuit:

- (a) Investigators, considering their driving skills and vehicle performance capabilities, will space themselves from other involved vehicles such that they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle.
- (b) Because intersections can present increased risks, the following tactics should be considered:
  1. Available units not directly involved in the pursuit may proceed safely to controlled intersections ahead of the pursuit in an effort to warn cross traffic.
  2. Pursuing units should exercise due regard and caution when proceeding through controlled intersections.
- (c) As a general rule, investigators should not pursue a vehicle driving left of center (wrong way) against traffic. In the event that the pursued vehicle does so, the following tactics should be considered:
  1. Requesting assistance from available air support.
  2. Maintain visual contact with the pursued vehicle by paralleling it on the correct side of the roadway.
  3. Request other units to observe exits available to the suspects.
- (d) Notify the California Highway Patrol (CHP) and/or other law enforcement agency if it appears that the pursuit may enter its jurisdiction.
- (e) Investigators involved in a pursuit should not attempt to pass other units unless the situation indicates otherwise or they are requested to do so by the primary unit and with a clear understanding of the maneuver process between the involved units.

#### 307.3.5 PURSUIT TRAILING

In the event the initiating unit from this agency either relinquishes control of the pursuit to another unit or jurisdiction, that initiating unit may, with permission of a supervisor, trail the pursuit to the termination point in order to provide information and assistance for the arrest of the suspects and reporting the incident.

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#### 307.3.6 AIR SUPPORT ASSISTANCE

When available, air support assistance should be requested. Once the air unit has established visual contact with the pursued vehicle, the unit should assume control over the pursuit. The primary and secondary ground units, or involved supervisor, will maintain operational control but should consider whether the participation of air support warrants the continued close proximity and/or involvement of ground units in the pursuit.

The air unit should coordinate the activities of resources on the ground, report progress of the pursuit and provide investigators and supervisors with details of upcoming traffic congestion, road hazards, or other pertinent information to evaluate whether to continue the pursuit. If ground units are not within visual contact of the pursued vehicle and the air support unit determines that it is unsafe to continue the pursuit, the air support unit should recommend terminating the pursuit.

#### 307.3.7 UNITS NOT INVOLVED IN THE PURSUIT

There should be no paralleling of the pursuit route. Investigators are authorized to use emergency equipment at intersections along the pursuit path to clear intersections of vehicular and pedestrian traffic to protect the public. Investigators should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.

The primary and secondary units should be the only units operating under emergency conditions (red light and siren) unless other units are assigned to the pursuit.

### **307.4 SUPERVISORY CONTROL AND RESPONSIBILITIES**

Available supervisory and management control will be exercised over all vehicle pursuits involving investigators from this [department/office].

The field supervisor of the investigator initiating the pursuit, or if unavailable, the nearest field supervisor will be responsible for:

- (a) Immediately notifying involved unit and the [dispatcher of supervisory presence and ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit.
- (b) Engaging in the pursuit, when appropriate, to provide on-scene supervision.
- (c) Exercising management and control of the pursuit even if not engaged in it.
- (d) Ensuring that no more than the required number of units are involved in the pursuit under the guidelines set forth in this policy.
- (e) Directing that the pursuit be terminated if, in the supervisor's judgment, it is unreasonable to continue the pursuit under the guidelines of this policy.
- (f) Ensuring that assistance from air support, canines, or additional resources is requested, if available and appropriate.
- (g) Ensuring that the proper radio channel is being used.
- (h) Ensuring that the Chief Investigator is notified of the pursuit as soon as practicable.

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- (i) Ensuring the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this [department/office].
- (j) Controlling and managing Kings County District Attorney Investigation Division units when a pursuit enters another jurisdiction.
- (k) Preparing a post-pursuit review and documentation of the pursuit.
  - 1. Supervisors should initiate follow up or additional review when appropriate.

#### **307.4.1 CHIEF INVESTIGATOR RESPONSIBILITIES**

Upon becoming aware that a pursuit has been initiated, the Chief Investigator should monitor and continually assess the situation and ensure the pursuit is conducted within the guidelines and requirements of this policy. Once notified, the Chief Investigator has the final responsibility for the coordination, control, and termination of a vehicle pursuit and shall be in overall command.

The Chief Investigator shall review all pertinent reports for content and forward to the Chief Investigator.

#### **307.5 THE COMMUNICATIONS CENTER**

If the pursuit is confined within the County limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or [dispatcher]. If the pursuit leaves the jurisdiction of this [department/office] or such is imminent, involved units should, whenever available, switch radio communications to a tactical or emergency channel most accessible by participating agencies and units.

#### **307.5.1 LOSS OF PURSUED VEHICLE**

When the pursued vehicle is lost, the primary unit should broadcast pertinent information to assist other units in locating suspects. The primary unit or supervisor will be responsible for coordinating any further search for either the pursued vehicle or suspects fleeing on foot.

#### **307.6 INTER-JURISDICTIONAL CONSIDERATIONS**

When a pursuit enters another agency's jurisdiction, the primary investigator or supervisor, taking into consideration distance traveled, unfamiliarity with the area and other pertinent facts, should determine whether to request the other agency to assume the pursuit. Unless entry into another jurisdiction is expected to be brief, it is generally recommended that the primary investigator or supervisor ensure that notification is provided to each outside jurisdiction into which the pursuit is reasonably expected to enter, regardless of whether such jurisdiction is expected to assist.

#### **307.6.1 ASSUMPTION OF PURSUIT BY ANOTHER AGENCY**

Investigators will relinquish control of the pursuit when another agency has assumed the pursuit, unless the continued assistance of the Kings County District Attorney Investigation Division is requested by the agency assuming the pursuit. Upon relinquishing control of the pursuit, the involved investigators may proceed, with supervisory approval, to the termination point of the pursuit to assist in the investigation. The supervisor should coordinate such assistance with the assuming agency and obtain any information that is necessary for any reports. Notification of a

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pursuit in progress should not be construed as a request to join the pursuit. Requests to or from another agency to assume a pursuit should be specific.

#### **307.6.2 PURSUITS EXTENDING INTO THIS JURISDICTION**

The agency that initiates a pursuit is responsible for conducting the pursuit. Units from this [department/office] should not join a pursuit unless specifically requested to do so by the pursuing agency and with approval from a supervisor. The exception to this is when a single unit from the initiating agency is in pursuit. Under this circumstance, a supervisor may authorize units from this [department/office] to join the pursuit until sufficient units from the initiating agency join the pursuit or until additional information is provided allowing withdrawal of the pursuit.

When a request is made for this [department/office] to assist or take over a pursuit that has entered the jurisdiction of Kings County District Attorney Investigation Division, the supervisor should consider:

- (a) The public's safety within this jurisdiction.
- (b) The safety of the pursuing investigators.
- (c) Whether the circumstances are serious enough to continue the pursuit.
- (d) Whether there is adequate staffing to continue the pursuit.
- (e) The ability to maintain the pursuit.

As soon as practicable, a supervisor or the Chief Investigator should review a request for assistance from another agency. The Chief Investigator or supervisor, after considering the above factors, may decline to assist in, or assume the other agency's pursuit.

Assistance to a pursuing allied agency by investigators of this [department/office] will terminate at the County limits provided that the pursuing officers have sufficient assistance from other sources. Ongoing participation from this [department/office] may continue only until sufficient assistance is present.

In the event that a pursuit from another agency terminates within this jurisdiction, investigators should provide appropriate assistance to officers from the allied agency including but not limited to scene control, coordination and completion of supplemental reports, and any other reasonable assistance requested or needed.

#### **307.7 WHEN PURSUIT INTERVENTION IS AUTHORIZED**

Whenever practicable, an investigator shall seek approval from a supervisor before employing any intervention to stop the pursued vehicle. In deciding whether to use intervention tactics, investigators/supervisors should balance the risks of allowing the pursuit to continue with the potential hazards to the public arising from the use of each tactic, the investigators, and persons in or on the pursued vehicle to determine which, if any, intervention tactic may be reasonable.

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#### 307.7.1 USE OF FIREARMS

An investigator should only discharge a firearm at a moving vehicle or its occupants when the investigator reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the investigator or others.

Investigators should not shoot at any part of a vehicle in an attempt to disable the vehicle (see the Use of Force Policy).

#### 307.7.2 INTERVENTION STANDARDS

Any intervention tactic, depending upon the conditions and circumstances under which it is used, may present dangers to the investigators, the public, or anyone in or on the vehicle being pursued. Certain applications of intervention tactics may be construed to be a use of force, including deadly force, and subject to the policies guiding such use. Investigators should consider these facts and requirements prior to deciding how, when, where, and if an intervention tactic should be employed.

- (a) Blocking should only be used after giving consideration to the following:
  - 1. The technique should only be used by investigators who have received training in the technique.
  - 2. The need to immediately stop the suspect vehicle or prevent it from leaving reasonably appears to outweigh the risks of injury or death to occupants of the suspect vehicle, investigators, or other members of the public.
  - 3. It reasonably appears the technique will contain or prevent the pursuit.
- (b) The PIT should only be used after giving consideration to the following:
  - 1. The technique should only be used by investigators who have received training in the technique, including speed restrictions.
  - 2. Supervisory approval should be obtained before using the technique.
  - 3. The need to immediately stop the suspect vehicle reasonably appears to outweigh the risks of injury or death to occupants of the suspect vehicle, investigators, or other members of the public.
  - 4. It reasonably appears the technique will terminate or prevent the pursuit.
- (c) Ramming a fleeing vehicle should only be done after giving consideration to the following:
  - 1. Supervisory approval should be obtained before using the technique.
  - 2. The need to immediately stop the suspect vehicle reasonably appears to substantially outweigh the risks of injury or death to occupants of the suspect vehicle, investigators, or other members of the public.
  - 3. It reasonably appears the technique will terminate or prevent the pursuit.
  - 4. Ramming may be used only under circumstances when deadly force would be authorized.
  - 5. Ramming may be used when all other reasonable alternatives have been exhausted or reasonably appear ineffective.

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- (d) Before attempting to box a suspect vehicle during a pursuit the following should be considered:
  - 1. The technique should only be used by investigators who have received training in the technique.
  - 2. Supervisory approval should be obtained before using the technique.
  - 3. The need to immediately stop the suspect vehicle reasonably appears to outweigh the risks of injury or death to occupants of the suspect vehicle, investigators, or other members of the public.
  - 4. It reasonably appears the technique will terminate or prevent the pursuit.
- (e) Tire deflation devices should only be used after considering the following:
  - 1. Tire deflation devices should only be used by investigators who have received training in their use.
  - 2. Supervisory approval should be obtained before using tire deflation devices.
  - 3. The need to immediately stop the suspect vehicle reasonably appears to outweigh the risks of injury or death to occupants of the suspect vehicle, investigators, or other members of the public.
  - 4. It reasonably appears the use will terminate or prevent the pursuit.
  - 5. Tire deflation devices should not be used when the pursued vehicle is a motorcycle, a vehicle transporting hazardous materials, or a school bus transporting children, except in extraordinary circumstances.
  - 6. Due to the increased risk to investigators deploying tire deflation devices, such deployment should be communicated to all involved personnel.
- (f) Roadblocks should only be used after considering the following:
  - 1. Roadblocks should only be used by investigators who have received training in their use.
  - 2. Supervisory approval should be obtained before using the technique.
  - 3. The need to immediately stop the suspect vehicle reasonably appears to substantially outweigh the risks of injury or death to occupants of the suspect vehicle, investigators, or other members of the public.
  - 4. It reasonably appears the technique will terminate or prevent the pursuit. Roadblocks may be used only under circumstances when deadly force would be authorized.
  - 5. Roadblocks may be used when all other reasonable alternatives have been exhausted or reasonably appear ineffective.

### 307.7.3 CAPTURE OF SUSPECTS

Proper self-discipline and sound professional judgment are the keys to a successful conclusion of a pursuit and apprehension of evading suspects. Investigators shall use only that amount of

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force, which reasonably appears necessary under the circumstances, to accomplish a legitimate law enforcement purpose.

Unless relieved by a supervisor, the primary pursuing investigator should coordinate efforts to apprehend the suspects following the pursuit. Investigators should consider safety of the public and the involved investigators when formulating plans for setting up perimeters or for containing and capturing the suspects.

#### **307.8 REPORTING REQUIREMENTS**

All appropriate reports should be completed to comply with applicable laws, policies, and procedures.

- (a) The primary investigator should complete appropriate crime/arrest reports.
- (b) The Chief Investigator shall ensure that an Allied Agency Vehicle Pursuit Report (form CHP 187A) is filed with the CHP not later than 30 days following the pursuit (Vehicle Code § 14602.1). The primary investigator should complete as much of the required information on the form as is known and forward the report to the Chief Investigator for review and distribution.
- (c) After first obtaining the available information, the involved, or if unavailable on-duty, field supervisor shall promptly complete a Supervisor's Log or interoffice memorandum, briefly summarizing the pursuit to the Chief Investigator or the authorized designee. This log or memorandum should include, at a minimum:
  1. Date and time of pursuit.
  2. Initial reason and circumstances surrounding the pursuit.
  3. Length of pursuit in distance and time, including the starting and termination points.
  4. Involved units and investigators.
  5. Alleged offenses.
  6. Whether a suspect was apprehended, as well as the means and methods used.
  7. Any use of force that occurred during the vehicle pursuit.
    - (a) Any use of force by a member should be documented in the appropriate report (See the Use of Force Policy).
  8. Any injuries and/or medical treatment.
  9. Any property or equipment damage.
  10. Name of supervisor at scene or who handled the incident.
- (d) After receiving copies of reports, logs, and other pertinent information, the Chief Investigator or the authorized designee should conduct or assign the completion of a post-pursuit review.

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Annually, the Chief Investigator should direct a documented review and analysis of [department/office] vehicle pursuit reports to minimally include policy suitability, policy compliance, and training or equipment needs.

#### **307.8.1 REGULAR AND PERIODIC PURSUIT TRAINING**

The Training Coordinator shall make available to all investigators initial and supplementary Police Officer Standard Training (POST) training on pursuits required by Penal Code § 13519.8, Vehicle Code § 17004.7(d), and 11 CCR 1081, and no less than annual training addressing:

- (a) This policy.
- (b) The importance of vehicle safety and protecting the public.
- (c) The need to balance the known offense and the need for immediate capture against the risks to investigators and others.

#### **307.8.2 POLICY REVIEW**

Investigators of this [department/office] shall certify in writing that they have received, read, and understand this policy initially, upon any amendments, and whenever training on this policy is provided. The POST attestation form, or an equivalent form, may be used to document the compliance and should be retained in the member's training file.

#### **307.9 APPLICATION OF VEHICLE PURSUIT POLICY**

This policy is expressly written and adopted pursuant to the provisions of Vehicle Code § 17004.7, with additional input from the POST Vehicle Pursuit Guidelines.

#### **307.10 POLICY**

It is the policy of this [department/office] to balance the importance of apprehending suspects who unlawfully flee from law enforcement against the risks associated with vehicle pursuits.



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## Investigator Response to Calls

### 308.1 PURPOSE AND SCOPE

This policy provides for the safe and appropriate response to emergency and non-emergency situations whether dispatched or self-initiated.

### 308.2 RESPONSE TO CALLS

Investigators dispatched "Code-3" shall consider the call an emergency response and proceed immediately. Investigators responding Code-3 shall continuously operate emergency lighting equipment, including at minimum a steady forward facing red light, and shall sound the siren as reasonably necessary pursuant to Vehicle Code § 21055.

Responding with emergency light(s) and siren does not relieve the investigator of the duty to continue to drive with due regard for the safety of all persons. The use of any other warning equipment without a red light and siren does not provide any exemption from the Vehicle Code.

Investigators should only respond Code-3 when so dispatched or when circumstances reasonably indicate an emergency response is required. Investigators not authorized to respond Code-3 shall observe all traffic laws and proceed without the use of emergency lights and siren.

### 308.3 REQUESTING EMERGENCY ASSISTANCE

Requests for emergency assistance should be limited to those situations where the involved personnel reasonably believe that there is an immediate threat to the safety of investigators, or assistance is needed to prevent imminent serious harm to a citizen. In any event, where a situation has stabilized and emergency response is not required, the requesting investigator shall immediately notify the Communications Center.

If circumstances permit, the requesting investigator should give the following information:

- The unit number
- The location
- The reason for the request and type of emergency
- The number of units required

#### 308.3.1 NUMBER OF UNITS ASSIGNED

Normally, only one unit should respond to an emergency call Code-3 unless the Chief Investigator or the field supervisor authorizes an additional unit(s).

### 308.4 INITIATING CODE 3 RESPONSE

If an investigator believes a Code-3 response to any call is appropriate, the investigator shall immediately notify the Communications Center. Generally, only one unit should respond Code-3 to any situation. Should another investigator believe a Code-3 response is appropriate, the Communications Center shall be notified and the Chief Investigator or field supervisor will make a determination as to whether one or more investigators driving Code-3 is appropriate.

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#### **308.5 RESPONSIBILITIES OF RESPONDING INVESTIGATOR(S)**

Investigators shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Investigators shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle.

The decision to continue a Code-3 response is at the discretion of the investigator. If, in the investigator's judgment, the roadway conditions or traffic congestion does not permit such a response without unreasonable risk, the investigator may elect to respond to the call without the use of red lights and siren at the legal speed limit. In such an event, the investigator should immediately notify the Communications Center. An investigator shall also discontinue the Code-3 response when directed by a supervisor.

Upon receiving authorization or determining a Code-3 response is appropriate, an investigator shall immediately give the location from which he/she is responding.

#### **308.6 SUPERVISORY RESPONSIBILITIES**

Upon being notified that a Code-3 response has been initiated, the Chief Investigator, Assistant Chief Investigator or field supervisor shall verify the following:

- (a) The proper response has been initiated
- (b) No more than those units reasonably necessary under the circumstances are involved in the response
- (c) Affected outside jurisdictions are being notified as practical

The field supervisor shall monitor the response until it has been stabilized or terminated and assert control by directing units into or out of the response if necessary. If, in the supervisor's judgment, the circumstances require additional units to be assigned a Code-3 response, the supervisor may do so.

It is the supervisor's responsibility to terminate a Code-3 response that, in his/her judgment is inappropriate due to the circumstances.

When making the decision to authorize a Code-3 response, the Chief Investigator, Assistant Chief Investigator or the field supervisor should consider the following:

- The type of call
- The necessity of a timely response
- Traffic and roadway conditions
- The location of the responding units

#### **308.7 FAILURE OF EMERGENCY EQUIPMENT**

If the emergency equipment on the vehicle should fail to operate, the investigator must terminate the Code-3 response and respond accordingly. In all cases, the investigator shall notify the Chief

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Investigator, Assistant Chief Investigator, field supervisor, or the Communications Center of the equipment failure so that another unit may be assigned to the emergency response.

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## Specialty Assignments

### 309.1 PURPOSE AND SCOPE

The Kings County District Attorney's Office currently participates in a number of specialty assignments. These assignments are subject to change based on the needs and resources of the department. Department participation in these assignments will be at the direction of the Chief Investigator. The Chief Investigator will make all assignment selections and chosen Investigators will serve at the Chief's discretion.

If the specialty assignment has an established set of policy and procedures, assigned Investigators will adhere to them.

If the specialty assignment does not have an established set of policies and procedures, assigned Investigators will adhere to the Kings County District Attorney's Office guidelines.

### 309.2 PROCESS OF SELECTION

Investigators wishing to participate in a specialty assignment within the Bureau of Investigation will be required to submit a formal letter of interest to the Chief Investigator indicating their desire for the assignment and briefly outlining their specific skill sets and experience.

Upon receiving a submitted letter of interest, the Chief Investigator will conduct a thorough review of each letter and meet with the Bureau of Investigation leadership to assess the following factors as it relates to the individual Investigator:

1. The Investigator's general performance.
2. The Investigator's current workload.
2. The Investigator's time management.
3. The Investigator's availability.
4. The strategic needs of the Bureau of Investigation.

The selection process may also include an oral interview at the discretion of the Chief Investigator if deemed necessary. Factors that may require oral interviews include, but are not limited to:

1. Multiple Investigators express formal interest for one specialty assignment position.
2. The specialty assignment requires the Investigator to provide direct supervision of other staff.
3. The specialty assignment and workload is highly stressful and demanding.
4. The specialty assignment will require highly specialized training.

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## Domestic Violence

### 310.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to deter, prevent and reduce domestic violence through vigorous enforcement and to address domestic violence as a serious crime against society. The policy specifically addresses the commitment of this [department/office] to take enforcement action when appropriate, to provide assistance to victims and to guide investigators in the investigation of domestic violence.

#### 310.1.1 DEFINITIONS

Definitions related to this policy include:

**Court order** - All forms of orders related to domestic violence that have been issued by a court of this state or another, whether civil or criminal, regardless of whether service has been made.

### 310.2 POLICY

The Kings County District Attorney Investigation Division's response to incidents of domestic violence and violations of related court orders shall stress enforcement of the law to protect the victim and shall communicate the philosophy that domestic violence is criminal behavior. It is also the policy of this [department/office] to facilitate victims' and offenders' access to appropriate civil remedies and community resources whenever feasible.

### 310.3 OFFICER SAFETY

The investigation of domestic violence cases often places investigators in emotionally charged and sometimes highly dangerous environments. No provision of this policy is intended to supersede the responsibility of all investigators to exercise due caution and reasonable care in providing for the safety of any investigators and parties involved.

### 310.4 INVESTIGATIONS

The following guidelines should be followed by investigators when investigating domestic violence cases:

- (a) Calls of reported, threatened, imminent, or ongoing domestic violence and the violation of any court order are of extreme importance and should be considered among the highest response priorities. This includes incomplete 9-1-1 calls.
- (b) When practicable, investigators should obtain and document statements from the victim, the suspect, and any witnesses, including children, in or around the household or location of occurrence.
- (c) Investigators should list the full name and date of birth (and school if available) of each child who was present in the household at the time of the offense. The names of other children who may not have been in the house at that particular time should also be obtained for follow-up.
- (d) When practicable and legally permitted, video or audio record all significant statements and observations.

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- (e) All injuries should be photographed, regardless of severity, taking care to preserve the victim's personal privacy. Where practicable, photographs should be taken by a person of the same sex. Victims whose injuries are not visible at the time of the incident should be asked to contact the Investigations Division in the event that the injuries later become visible.
- (f) Investigators should request that the victim complete and sign an authorization for release of medical records related to the incident when applicable.
- (g) If the suspect is no longer at the scene, investigators should make reasonable efforts to locate the suspect to further the investigation, provide the suspect with an opportunity to make a statement, and make an arrest or seek an arrest warrant if appropriate.
- (h) Seize any firearms or other dangerous weapons in the home, if appropriate and legally permitted, for safekeeping or as evidence. If the domestic violence involved threats of bodily harm, any firearm discovered in plain view or pursuant to consent or other lawful search must be taken into temporary custody (Penal Code § 18250).
- (i) When completing an incident or arrest report for violation of a court order, investigators should include specific information that establishes that the offender has been served, including the date the offender was served, the name of the agency that served the order, and the provision of the order that the subject is alleged to have violated. When reasonably available, the arresting investigator should attach a copy of the order to the incident or arrest report.
- (j) Investigators should take appropriate enforcement action when there is probable cause to believe an offense has occurred. Factors that should not be used as sole justification for declining to take enforcement action include:
  - 1. Whether the suspect lives on the premises with the victim.
  - 2. Claims by the suspect that the victim provoked or perpetuated the violence.
  - 3. The potential financial or child custody consequences of arrest.
  - 4. The physical or emotional state of either party.
  - 5. Use of drugs or alcohol by either party.
  - 6. Denial that the abuse occurred where evidence indicates otherwise.
  - 7. A request by the victim not to arrest the suspect.
  - 8. Location of the incident (public/private).
  - 9. Speculation that the complainant may not follow through with the prosecution.
  - 10. Actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or marital status of the victim or suspect.
  - 11. The social status, community status, or professional position of the victim or suspect.

#### 310.4.1 IF A SUSPECT IS ARRESTED

If a suspect is arrested, investigators should:

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- (a) Advise the victim that there is no guarantee the suspect will remain in custody.
- (b) Provide the victim's contact information to the jail staff to enable notification of the victim upon the suspect's release from jail.
- (c) Advise the victim whether any type of court order will be in effect when the suspect is released from jail.

#### **310.4.2 IF NO ARREST IS MADE**

If no arrest is made, the investigator should:

- (a) Advise the parties of any options, including but not limited to:
  - 1. Voluntary separation of the parties.
  - 2. Appropriate resource referrals (e.g., counselors, friends, relatives, shelter homes, victim witness unit).
- (b) Document the resolution in a report.

#### **310.5 VICTIM ASSISTANCE**

Because victims may be traumatized or confused, investigators should be aware that a victim's behavior and actions may be affected:

- (a) Victims should be provided with the [department/office]'s domestic violence information handout, even if the incident may not rise to the level of a crime.
- (b) Victims should also be alerted to any available victim advocates, shelters, and community resources.
- (c) When an involved person requests law enforcement assistance while removing essential items of personal property, investigators should stand by for a reasonable amount of time.
- (d) If the victim has sustained injury or complaints of pain, investigators should seek medical assistance as soon as practicable.
- (e) Investigators should ask the victim whether the victim has a safe place to stay and assist in arranging transportation to an alternate shelter if the victim expresses a concern for the victim's safety or if the investigator determines that a need exists.
- (f) Investigators should make reasonable efforts to ensure that children or dependent adults who are under the supervision of the suspect or victim are being properly cared for.
- (g) If appropriate, investigators should seek or assist the victim in obtaining an emergency order if appropriate.

An investigator shall advise an individual protected by a Canadian domestic violence protection order of available local victim services (Family Code § 6452).

#### **310.6 FOREIGN COURT ORDERS**

Various types of orders may be issued in domestic violence cases. Any foreign court order properly issued by a court of another state, Indian tribe, or territory shall be enforced by investigators as

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if it were the order of a court in this state. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC § 2265). An otherwise valid out-of-state court or foreign order shall be enforced, regardless of whether the order has been properly registered with this state (Family Code § 6403).

Canadian domestic violence protection orders shall also be enforced in the same manner as if issued in this state (Family Code § 6452).

#### **310.7 VERIFICATION OF COURT ORDERS**

Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, investigators should carefully review the actual order when available, and where appropriate and practicable:

- (a) Ask the subject of the order about his/her notice or receipt of the order, his/her knowledge of its terms and efforts to respond to the order.
  1. If a determination is made that a valid foreign order cannot be enforced because the subject has not been notified or served the order, the investigator shall inform the subject of the order, make a reasonable effort to serve the order upon the subject, and allow the subject a reasonable opportunity to comply with the order before enforcing the order. Verbal notice of the terms of the order is sufficient notice (Family Code § 6403).
- (b) Check available records or databases that may show the status or conditions of the order.
  1. Registration or filing of an order in California is not required for the enforcement of a valid foreign order (Family Code § 6403).
- (c) Contact the issuing court to verify the validity of the order.
- (d) Contact a law enforcement official from the jurisdiction where the order was issued to verify information.

Investigators should document in an appropriate report their efforts to verify the validity of an order, regardless of whether an arrest is made. Investigators should contact a supervisor for clarification when needed.

#### **310.8 STANDARDS FOR ARRESTS**

Investigators investigating a domestic violence report should consider the following:

- (a) An arrest should be made when there is probable cause to believe that a felony or misdemeanor domestic violence offense has been committed (Penal Code § 13701). Any decision to not arrest an adult when there is probable cause to do so requires supervisor approval.
  1. Investigators are only authorized to make an arrest without a warrant for a misdemeanor domestic violence offense if the investigator makes the arrest as soon as probable cause arises (Penal Code § 836).



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- (b) An investigator responding to a domestic violence call who cannot make an arrest will advise the victim of the victim's right to make a private person's arrest. The advisement should be made out of the presence of the suspect and shall include advising the victim how to safely execute the arrest. Investigators shall not dissuade victims from making a lawful private person's arrest. Investigators should refer to the provisions in the Private Persons Arrests Policy for options regarding the disposition of private person's arrests (Penal Code § 836(b)).
- (c) Investigators shall not cite and release a person for the following offenses (Penal Code § 853.6(a)(3)):
  - 1. Penal Code § 243(e)(1) (battery against spouse, cohabitant)
  - 2. Penal Code § 273.5 (corporal injury on spouse, cohabitant, fiancé/fiancée, person of a previous dating or engagement relationship, mother/father of the offender's child)
  - 3. Penal Code § 273.6 (violation of protective order) if violence or threats of violence have occurred or the suspect has gone to the workplace or residence of the protected party
  - 4. Penal Code § 646.9 (stalking)
  - 5. Other serious or violent felonies specified in Penal Code § 1270.1
- (d) In responding to domestic violence incidents, including mutual protective order violations, investigators should generally be reluctant to make dual arrests. Investigators shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person who has been determined to be the most significant, rather than the first, aggressor (Penal Code § 13701). In identifying the dominant aggressor, an investigator shall consider:
  - 1. The intent of the law to protect victims of domestic violence from continuing abuse.
  - 2. The threats creating fear of physical injury.
  - 3. The history of domestic violence between the persons involved.
  - 4. Whether either person acted in self-defense.
- (e) An arrest shall be made when there is probable cause to believe that a violation of a domestic violence court order has been committed (Penal Code § 13701; Penal Code § 836), regardless of whether the offense was committed in the investigator's presence. After arrest, the investigator shall confirm that a copy of the order has been registered, unless the victim provides a copy (Penal Code § 836).

### **310.9 REPORTS AND RECORDS**

- (a) A written report shall be completed on all incidents of domestic violence. All such reports should be documented on the appropriate form, which includes information and notations specific to domestic violence incidents as required by Penal Code § 13730.

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- (b) Reporting investigators should provide the victim with the case number of the report. The case number may be placed in the space provided on the domestic violence victim information handout provided to the victim. If the case number is not immediately available, an explanation should be given regarding how the victim can obtain the information at a later time.
- (c) Investigators who seize any firearm, ammunition, or other deadly weapon in a domestic violence incident shall issue the individual possessing such weapon a receipt that includes the name and residential mailing address of the owner or person who possessed the weapon and notice of where the weapon may be recovered, along with the applicable time limit for recovery (Penal Code § 18250; Penal Code § 18255; Penal Code § 33800; Family Code § 6389(c)).

#### **310.10 RECORD-KEEPING AND DATA COLLECTION**

This [department/office] shall maintain records of court orders related to domestic violence and the service status of each (Penal Code § 13710), as well as records on the number of domestic violence related calls reported to the [Department/Office], including whether weapons were used in the incident or whether the incident involved strangulation or suffocation (Penal Code § 13730). This information is to be reported to the Attorney General monthly. It shall be the responsibility of the Investigator to maintain and report this information as required.

#### **310.11 SERVICE OF COURT ORDERS**

- (a) An investigator who obtains an emergency protective order from the court shall serve it on the restrained person if the person can be reasonably located and shall provide the person protected or the person's parent/guardian with a copy of the order. The investigator shall file a copy with the court as soon as practicable and shall have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (Family Code § 6271; Penal Code § 646.91).
- (b) A temporary restraining order, emergency protective order, or an order issued after a hearing shall, at the request of the petitioner, be served on the restrained person by an investigator who is present at the scene of a reported domestic violence incident or when the investigator receives a request from the petitioner to provide service of the order (Family Code § 6383; Penal Code § 13710).
- (c) Any investigator serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm/ammunition be immediately surrendered (Family Code § 6389(c)).
- (d) During the service of a protective order any firearm discovered in plain view or pursuant to consent or other lawful search shall be taken into temporary custody (Penal Code § 18250).
  - 1. An investigator should ensure that the Records is notified of any firearm obtained for entry into the Automated Firearms System (Family Code § 6383) (see the Records Policy for additional guidance).
- (e) If a valid Canadian order cannot be enforced because the person subject to the order has not been notified or served with the order, the investigator shall notify the protected

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individual that reasonable efforts shall be made to contact the person subject to the order. The investigator shall make a reasonable effort to inform the person subject to the order of the existence and terms of the order and provide the person with a record of the order, if available, and shall allow the person a reasonable opportunity to comply with the order before taking enforcement action (Family Code § 6452).

#### **310.12 PUBLIC ACCESS TO POLICY**

A copy of this domestic violence policy will be provided to members of the public upon request (Penal Code § 13701).

#### **310.13 DECLARATION IN SUPPORT OF BAIL INCREASE**

Any investigator who makes a warrantless arrest for a felony or misdemeanor violation of a domestic violence restraining order shall evaluate the totality of the circumstances to determine whether reasonable cause exists to seek an increased bail amount. If there is reasonable cause to believe that the scheduled bail amount is insufficient to assure the arrestee's appearance or to protect the victim or family member of a victim, the investigator shall prepare a declaration in support of increased bail (Penal Code § 1269c).

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## Search and Seizure

### 311.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Kings County District Attorney Investigation Division personnel to consider when dealing with search and seizure issues.

### 311.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to investigators as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

### 311.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Whenever practicable, investigators are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

### *Search and Seizure*

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#### **311.4 SEARCH PROTOCOL**

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Investigators should explain to the person being searched the reason for the search and how the search will be conducted.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) When the person to be searched is of the opposite sex as the searching investigator, a reasonable effort should be made to summon an investigator of the same sex as the subject to conduct the search. When it is not practicable to summon an investigator of the same sex as the subject, the following guidelines should be followed:
  1. Another investigator or a supervisor should witness the search.
  2. The investigator should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

#### **311.5 DOCUMENTATION**

Investigators are responsible to document any search that resulted in an arrest or seizure of evidence to ensure that any required reports are sufficient including, at minimum, documentation of the following:

- Reason for the search
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- What, if any, injuries or damage occurred
- All steps taken to secure property
- The results of the search, including a description of any property or contraband seized
- If the person searched is the opposite sex, any efforts to summon an investigator of the same sex as the person being searched and the identification of any witness investigator

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.

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## Temporary Custody of Juveniles

### 312.1 PURPOSE AND SCOPE

This policy provides guidelines consistent with the Juvenile Justice and Delinquency Prevention Act for juveniles taken into temporary custody by members of the Kings County District Attorney Investigation Division (34 USC § 11133).

Guidance regarding contacting juveniles at schools or who may be victims is provided in the Child Abuse Policy.

#### 312.1.1 DEFINITIONS

Definitions related to this policy include:

**Juvenile non-offender** - An abused, neglected, dependent, or alien juvenile who may be legally held for the juvenile's own safety or welfare. This also includes any juvenile who may have initially been contacted for an offense that would not subject an adult to arrest (e.g., fine-only offense) but was taken into custody for the juvenile's protection or for purposes of reuniting the juvenile with a parent, guardian, or other responsible person. Juveniles 11 years of age or younger are considered juvenile non-offenders even if they have committed an offense that would subject an adult to arrest.

**Juvenile offender** - A juvenile 12 to 17 years of age who is alleged to have committed an offense that would subject an adult to arrest (a non-status offense) (Welfare and Institutions Code § 602). It also includes an offense under Penal Code § 29610 for underage possession of a handgun or concealable firearm (28 CFR 31.303).

**Non-secure custody** - When a juvenile is held in the presence of an investigator or other custody employee at all times and is not placed in a locked room, cell, or behind any locked doors. Juveniles in non-secure custody may be handcuffed but not to a stationary or secure object. Personal supervision, through direct visual monitoring and audio two-way communication is maintained. Monitoring through electronic devices, such as video, does not replace direct visual observation (Welfare and Institutions Code § 207.1; 15 CCR 1150).

**Safety checks** - Direct, visual observation personally by a member of this [department/office] performed at random intervals within time frames prescribed in this policy to provide for the health and welfare of juveniles in temporary custody.

**Secure custody** - When a juvenile offender is held in a locked room, a set of rooms, or a cell. Secure custody also includes being physically secured to a stationary object (15 CCR 1146).

Examples of secure custody include:

- (a) A juvenile left alone in an unlocked room within the secure perimeter of the adult temporary holding area.
- (b) A juvenile handcuffed to a rail.

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### *Temporary Custody of Juveniles*

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- (c) A juvenile placed in a room that contains doors with delayed egress devices that have a delay of more than 30 seconds.
- (d) A juvenile being processed in a secure booking area when a non-secure booking area is available.
- (e) A juvenile left alone in a secure booking area after being photographed and fingerprinted.
- (f) A juvenile placed in a cell within the adult temporary holding area, whether or not the cell door is locked.
- (g) A juvenile placed in a room that is capable of being locked or contains a fixed object designed for cuffing or restricting movement.

**Sight and sound separation** - Located or arranged to prevent physical, visual, or auditory contact that is more than brief or inadvertent.

**Status offender** - A juvenile suspected of committing a criminal violation of the law that would not be a criminal violation but for the age of the offender. Examples may include running away, underage possession of tobacco, curfew violation, and truancy. A juvenile in custody on a court order or warrant based upon a status offense is also a status offender. This includes the habitually disobedient or truant juvenile under Welfare and Institutions Code § 601 and any juvenile suspected of an offense that would not subject an adult to arrest (e.g., fine-only offense).

### **312.2 POLICY**

The Kings County District Attorney Investigation Division is committed to releasing juveniles from temporary custody as soon as reasonably practicable and keeping juveniles safe while they are in temporary custody at the Kings County District Attorney Investigation Division. Juveniles should be held in temporary custody only for as long as reasonably necessary for processing, transfer, or release.

#### **312.2.1 CONSTITUTIONAL RIGHTS ADVISEMENT**

In any case where a juvenile is taken into temporary custody, the juvenile should be promptly advised of his/her constitutional rights to ensure the admissibility of any spontaneous statements, whether or not questioning is intended (Welfare & Institutions Code § 625) .

#### **312.2.2 CHILDREN UNDER THE AGE OF 14**

Whenever a child under the age of 14 is arrested, the arresting investigator should take reasonable steps to verify and document the child's ability to differentiate between right and wrong, particularly in relation to the alleged offense (Penal Code § 26).

### **312.3 JUVENILES WHO SHOULD NOT BE HELD**

Juveniles who exhibit any of the following conditions should not be held at the Kings County District Attorney Investigation Division:

- (a) Unconscious
- (b) Seriously injured

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- (c) A known suicide risk or obviously severely emotionally disturbed
- (d) Significantly intoxicated except when approved by the Chief Investigator. A medical clearance shall be obtained for minors who are under the influence of drugs, alcohol or any other intoxicating substance to the extent that they are unable to care for themselves (15 CCR 1151).
- (e) Extremely violent or continuously violent

Investigators taking custody of a juvenile who exhibits any of the above conditions should take reasonable steps to provide medical attention or mental health assistance and notify a supervisor of the situation (15 CCR 1142; 15 CCR 1151).

These juveniles should not be held at the Kings County District Attorney Investigation Division unless they have been evaluated by a qualified medical and/or mental health professional (15 CCR 1142).

If the investigator taking custody of the juvenile believes the juvenile may be a suicide risk, the juvenile shall be under continuous direct supervision until evaluation, release or a transfer is completed (15 CCR 1142).

#### **312.3.1 EMERGENCY MEDICAL CARE OF JUVENILES IN CUSTODY**

When emergency medical attention is required for a juvenile, medical assistance will be called immediately. The Chief Investigator shall be notified of the need for medical attention for the juvenile. Department members should administer first aid as applicable (15 CCR 1142).

#### **312.3.2 SUICIDE PREVENTION OF JUVENILES IN CUSTODY**

[Department/Office] members should be alert to potential symptoms based upon exhibited behavior that may indicate the juvenile is a suicide risk. These symptoms may include depression, refusal to communicate, verbally threatening to kill themselves, or any unusual behavior which may indicate the juvenile may harm themselves while in either secure or non-secure custody (15 CCR 1142).

#### **312.4 CUSTODY OF JUVENILES**

Investigators should take custody of a juvenile and temporarily hold the juvenile at the Kings County District Attorney Investigation Division when there is no other lawful and practicable alternative to temporary custody. Refer to the Child Abuse Policy for additional information regarding detaining a juvenile that is suspected of being a victim.

No juvenile should be held in temporary custody at the Kings County District Attorney Investigation Division without authorization of the arresting investigator's supervisor or the Chief Investigator. Juveniles taken into custody shall be held in non-secure custody unless otherwise authorized by this policy.

Any juvenile taken into custody shall be released to the care of the juvenile's parent or other responsible adult or transferred to a juvenile custody facility or to other authority as soon as practicable and in no event shall a juvenile be held beyond six hours from the time of the juvenile's



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entry into the Kings County District Attorney Investigation Division (34 USC § 11133; Welfare and Institutions Code § 207.1).

#### 312.4.1 CUSTODY OF JUVENILE NON-OFFENDERS

Non-offenders taken into protective custody in compliance with the Child Abuse Policy should generally not be held at the Kings County District Attorney Investigation Division. Custodial arrangements should be made for non-offenders as soon as reasonably possible. Juvenile non-offenders shall not be held in secure custody (34 USC § 11133; Welfare and Institutions Code § 206).

Juveniles 11 years of age or younger who have committed an offense that would subject an adult to arrest may be held in non-secure custody for the offenses listed in Welfare and Institutions Code § 602(b) (murder and the sexual assault offenses) and should be referred to a probation officer for a placement determination (Welfare and Institutions Code § 602.1).

#### 312.4.2 CUSTODY OF JUVENILE STATUS OFFENDERS

Status offenders should generally be released by citation or with a warning rather than taken into temporary custody. However, investigators may take custody of a status offender if requested to do so by a parent or legal guardian in order to facilitate reunification (e.g., transported home or to the station to await a parent). Juvenile status offenders shall not be held in secure custody (34 USC § 11133).

#### 312.4.3 CUSTODY OF JUVENILE OFFENDERS

Juvenile offenders should be held in non-secure custody while at the Kings County District Attorney Investigation Division unless another form of custody is authorized by this policy or is necessary due to exigent circumstances.

Generally, a juvenile offender may be taken into custody when authorized by a court order or when there is probable cause to believe the juvenile has committed an offense that would subject an adult to arrest (Welfare and Institutions Code § 625).

A juvenile offender who is 14 years of age or older and taken into custody for committing or attempting to commit a felony with a firearm shall not be released and be transported to a juvenile facility (Welfare and Institutions Code § 625.3).

A juvenile offender suspected of committing murder, a sex offense described in Welfare and Institutions Code § 602(b) that may subject the juvenile to criminal jurisdiction under Welfare and Institutions Code § 707, or a serious or violent felony should be referred to a probation officer for a decision on further detention.

In all other cases the juvenile offender may be:

- (a) Released upon warning or citation.
- (b) Released to a parent or other responsible adult after processing at the [Department/Office].

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- (c) Referred to a probation officer for a decision regarding whether to transport the juvenile offender to a juvenile facility.
- (d) Transported to the juvenile offender's home or to the place where the juvenile offender was taken into custody (Welfare and Institutions Code § 207.2).

In determining which disposition is appropriate, the investigating investigator or supervisor shall prefer the alternative that least restricts the juvenile's freedom of movement, provided that alternative is compatible with the best interests of the juvenile and the community (Welfare and Institutions Code § 626).

Whenever a juvenile offender under the age of 14 is taken into custody, the investigator should take reasonable steps to verify and document the child's ability to differentiate between right and wrong, particularly in relation to the alleged offense (Penal Code § 26).

#### 312.4.4 JUVENILE'S PERSONAL PROPERTY

The investigator placing a juvenile into a detention room must make a thorough search of the juvenile's property. This will ensure all items likely to cause injury to the juvenile or the facility are confiscated and placed in a property bag. The property shall be inventoried in the juvenile's presence and sealed into the bag. The property will be maintained by the responsible detective or the desk personnel or locked in a juvenile property locker until the juvenile is released from the custody of the Kings County District Attorney Investigation Division.

#### 312.4.5 MONITORING OF JUVENILES

The juvenile shall constantly be monitored by the audio/video system during the entire detention. An in-person visual inspection shall be done to ensure the welfare of the juvenile and shall be conducted at least once each half-hour, on an unscheduled basis, until the juvenile is released. This inspection shall not be replaced by video monitoring. This inspection shall be conducted by a designee of the Chief Investigator, and the visual inspection shall be logged on the Inspection Log in the Chief Investigator's office.

More frequent visual inspections should be made as circumstances dictate as in the case of an injured or ill juvenile being detained, or if specific circumstances exist such as a disciplinary problem or suicide risk. In such instances the Chief Investigator shall be fully informed about the special circumstances in order to evaluate continued detention of such a juvenile. Juvenile Security Report Logs and Confinements of Juvenile Logs shall be turned into the Investigator or his/her designee at the end of each month.

#### 312.4.6 MANDATED JUVENILE PROVISIONS

While a juvenile is being detained in the detention room, he/she shall be provided with the following provisions:

- (a) Reasonable access to toilets and washing facilities
- (b) Food, if the juvenile has not eaten within the past four hours, or is otherwise in need of nourishment, including any special diet required for the health of the juvenile. All food given to a juvenile in custody shall be provided from the jail food supply

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- (c) Reasonable access to drinking water
- (d) Privacy during family, guardian, and/or lawyer visits
- (e) Blankets and clothing necessary to ensure the comfort of the juvenile (clothing shall be provided by the jail if the juvenile's clothing is taken as evidence or is otherwise unsuitable or inadequate for the continued wear while in custody)

**312.4.7 FORMAL BOOKING**

No juvenile shall be formally booked (Welfare and Institutions Code § 602 only) without the authorization of the arresting investigator's supervisor, or in his or her absence, the Chief Investigator.

Any juvenile, 14-years of age or older, who is taken into custody for a felony, or any juvenile whose acts amount to a sex crime, shall be booked, fingerprinted, and photographed.

For all other acts defined as crimes, juveniles may be booked, fingerprinted, or photographed upon the approval from the Chief Investigator or Detective Supervisor, giving due consideration to the following:

- (a) The gravity of the offense
- (b) The past record of the offender
- (c) The age of the offender

**312.4.8 DISPOSITIONS**

- (a) Any juvenile not transferred to a juvenile facility shall be released to one of the following:
  - 1. Parent or legal guardian
  - 2. An adult member of his/her immediate family
  - 3. An adult person specified by the parent/guardian
  - 4. An adult person willing to accept responsibility, when the juvenile's parents are unavailable as approved by the Chief Investigator
- (b) If the six hour time limit has expired, the juvenile should be transported to the juvenile hall to accept custody
- (c) After an investigator has taken a juvenile into temporary custody for a violation of law, the following dispositions are authorized:
  - 1. The arresting investigator may counsel or admonish the juvenile and recommend no further action be taken.
  - 2. If the arresting investigator or the Chief Investigator believes that further action is needed, the juvenile will be released to a responsible person as listed above.
  - 3.

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4. The juvenile may be transferred to Juvenile Hall with authorization of the appropriate supervisor or the Chief Investigator when the violation falls within the provisions of Welfare and Institutions Code § 602.
- (d) If a juvenile is to be transported to Juvenile Hall, the following shall accompany the juvenile:
  1. Application for Petition.
  2. Any personal property taken from the juvenile at the time of detention

#### **312.5 ADVISEMENTS**

Investigators shall take immediate steps to notify the juvenile's parent, guardian, or a responsible relative that the juvenile is in custody, the location where the juvenile is being held, and the intended disposition (Welfare and Institutions Code § 627).

Whenever a juvenile is taken into temporary custody, the juvenile shall be given the *Miranda* rights advisement regardless of whether questioning is intended. This does not apply to juvenile non-offenders taken into temporary custody for their safety or welfare (Welfare and Institutions Code § 625).

Anytime a juvenile offender is placed in secure custody, the juvenile offender shall be informed of the purpose of the secure custody, the length of time the secure custody is expected to last, and of the maximum six-hour limitation (Welfare and Institutions Code § 207.1).

Juveniles taken into custody for an offense shall immediately be advised (or at least within one hour from being taken into custody, if possible) that they may make three telephone calls: one call completed to their parent or guardian; one to a responsible relative or their employer; and another call completed to an attorney. The calls shall be at no expense to the juvenile when completed to telephone numbers within the local calling area. Juveniles should be asked whether they are a caregiver and provided two more phone calls in the same manner as provided to adults in the Temporary Custody of Adults Policy (Welfare and Institutions Code § 627; Penal Code § 851.5).

#### **312.6 JUVENILE CUSTODY LOGS**

Any time a juvenile is held in custody at the [Department/Office], the custody shall be promptly and properly documented in the juvenile custody log, including:

- (a) Identifying information about the juvenile.
- (b) Date and time of arrival and release from the Kings County District Attorney Investigation Division (15 CCR 1150).
- (c) Chief Investigator notification and approval to temporarily hold the juvenile.
- (d) Any charges for which the juvenile is being held and classification of the juvenile as a juvenile offender, status offender, or non-offender.
- (e) Any changes in status (e.g., emergency situations, unusual incidents).
- (f) Time of all safety checks.

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- (g) Any medical and other screening requested and completed (15 CCR 1142).
- (h) Circumstances that justify any secure custody (Welfare and Institutions Code § 207.1; 15 CCR 1145).
- (i) Any other information that may be required by other authorities, such as compliance inspectors or a local juvenile court authority.

The Chief Investigator shall initial the log to approve the custody, including any secure custody, and shall also initial the log when the juvenile is released.

#### 312.6.1 RELEASE OF INFORMATION BY SUPERIOR COURT ORDER

A copy of the current policy of the Juvenile Court concerning authorized release of information and appropriate acknowledgment forms shall be kept with copies of this procedure in the Policy Manual. Such releases are authorized by Welfare and Institutions Code § 827.

#### 312.6.2 RELEASE OF INFORMATION TO OTHER AGENCIES

Welfare and Institutions Code § 828 authorizes the release of certain information to other agencies. It shall be the responsibility of the Investigator and the appropriate supervisor to ensure that personnel of those agencies act within legal guidelines.

#### **312.7 NO-CONTACT REQUIREMENTS**

Sight and sound separation shall be maintained between all juveniles and adults while in custody at the [Department/Office] (34 USC § 11133; Welfare and Institutions Code § 207.1; Welfare and Institutions Code § 208; 15 CCR 1144). There should also be sight and sound separation between non-offenders and juvenile and status offenders.

In situations where brief or accidental contact may occur (e.g., during the brief time a juvenile is being fingerprinted and/or photographed in booking), a member of the Kings County District Attorney Investigation Division (trained in the supervision of persons in custody) shall maintain a constant, immediate, side-by-side presence with the juvenile or the adult to minimize any contact. If inadvertent or accidental contact does occur, reasonable efforts shall be taken to end the contact (15 CCR 1144).

#### 312.7.1 EMERGENCY MEDICAL CARE OF JUVENILES IN CUSTODY

When emergency medical attention is required for a juvenile who is either in secure or non-secure custody, the paramedics will be called. The Chief Investigator shall be notified of the need for medical attention for the juvenile.

In cases where injury or illness is life threatening and where lost minutes may be the deciding factor, the arresting investigator or the discovering investigator should administer first aid prior to the arrival of the paramedics. The juvenile will then be transported to a medical facility.

In the event of a serious illness, suicide attempt, injury or death of a juvenile, the following persons shall be notified as soon as possible:

- (a) The Juvenile Court

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- (b) The parent, guardian, or person standing in loco parentis, of the juvenile

312.7.2 SUICIDE PREVENTION OF JUVENILES IN CUSTODY

The arresting investigator should be alert to potential symptoms based upon exhibited behavior that may indicate the juvenile is a suicide risk. These symptoms may include depression, refusal to communicate, verbally threatening to kill himself/herself, or any unusual behavior which may indicate the juvenile may harm himself/herself while in custody in either secure or non-secure detention.

The detaining or transporting investigator is responsible to notify the Chief Investigator if he/she believes the juvenile may be a suicide risk. The Chief Investigator will then arrange to contact a mental health team for evaluation, or to contact Juvenile Hall and arrange for the transfer of the juvenile, providing the juvenile meets the intake criteria. The juvenile shall be under constant personal supervision until the transfer is completed.

312.7.3 USE OF RESTRAINT DEVICES

Policy Manual § 306 refers to the only authorized restraint device. It is the policy of this department that restraints will not be used for inmates retained in custody. This policy also applies to juveniles held in temporary custody. The use of a restraint is an extreme measure and only for a temporary measure pending transportation to another facility or until other custodial arrangements can be made. The use of restraints shall only be used when the juvenile:

- (a) Displays bizarre behavior that results in the destruction of property or shows intent to cause physical harm to self or others
- (b) Is a serious and immediate danger to himself/herself or others
- (c) Otherwise falls under the provisions of Welfare and Institutions Code § 5150

Restraint devices include devices which immobilize a juvenile's extremities and/or prevent the juvenile from being ambulatory. Restraints shall only be used after less restrictive measures have failed and with the approval of the Chief Investigator.

Restraints shall only be used so long as it reasonably appears necessary for the juvenile's protection or the protection of others.

Direct visual observation shall be conducted at least twice every 30 minutes to ensure that the restraints are properly employed, and to ensure the safety and well-being of the juvenile.

The Chief Investigator shall arrange to have the juvenile evaluated by a mental health team as soon as possible if there is evidence of mental impairment. When mental impairment is suspected, constant personal visual supervision shall be maintained in order to ensure that restraints are properly employed and to ensure the safety and well being of the juvenile. Such supervision shall be documented in the police report.

Juveniles who have been placed in restraint devices shall be isolated to protect them from abuse. Restraints shall not be used as a punishment, or as a substitute for treatment.

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#### 312.7.4 DEATH OF A JUVENILE WHILE DETAINED

The District Attorney's Office and the Sheriff-Coroner's Office will conduct the investigation of the circumstances surrounding the death of any juvenile being detained at this department. The Support Services Chief Investigator or his/her designee will conduct an administrative review of the incident.

In any case in which a juvenile dies while detained at the Kings County District Attorney Investigation Division, the following shall apply:

- (a) The Chief Investigator or his or her designee shall provide to the California Department of Corrections and Rehabilitation a copy of the report submitted to the Attorney General under Government Code § 12525. A copy of the report shall be submitted to the Department of Corrections and Rehabilitation within ten calendar days after the death.
- (b) Upon receipt of a report of death of a juvenile from the Chief Investigator or his or her designee, the Department of Corrections and Rehabilitation may within 30 calendar days inspect and evaluate the juvenile facility, jail, lockup or court holding facility pursuant to the provisions of Article 4, Title 15 California Code of Regulations § 1341. Any inquiry made by the Department of Corrections and Rehabilitation shall be limited to the standards and requirements set forth in these regulations.
- (c) A medical and operational review of every in-custody death of a juvenile shall be conducted. The review team shall include the following:
  1. Chief Investigator or his or her designee
  2. The health administrator
  3. The responsible physician and other health care and supervision staff who are relevant to the incident

#### 312.7.5 PROTECTIVE CUSTODY

Pursuant to Welfare and Institutions Code § 300 et seq., a child may be taken into protective custody if he/she is the victim of suspected child abuse. Before taking any minor into protective custody, the investigator should make reasonable attempts to contact the appropriate child welfare authorities to ascertain any applicable history or current information concerning the minor.

Under certain circumstances, investigators can be prohibited from taking a newborn who is the subject of a proposed adoption into protective custody, even when the newborn has tested positive for illegal drugs or the birth mother tested positive for illegal drugs. Investigators shall instead follow the provisions of Welfare and Institutions Code § 305.6 to ensure that the newborn is placed with the adoptive parents when it is appropriate.

#### **312.8 TEMPORARY CUSTODY REQUIREMENTS**

Members and supervisors assigned to monitor or process any juvenile at the Kings County District Attorney Investigation Division shall ensure the following:

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- (a) The Chief Investigator should be notified if it is anticipated that a juvenile may need to remain at the Kings County District Attorney Investigation Division more than four hours. This will enable the Chief Investigator to ensure no juvenile is held at the Kings County District Attorney Investigation Division more than six hours.
- (b) A staff member of the same sex shall supervise personal hygiene activities and care, such as changing clothing or using the restroom, without direct observation to allow for privacy.
- (c) Personal safety checks and significant incidents/activities shall be noted on the log.
- (d) Juveniles in custody are informed that they will be monitored at all times, except when using the toilet.
  - 1. There shall be no viewing devices, such as peep holes or mirrors, of which the juvenile is not aware.
  - 2. This does not apply to surreptitious and legally obtained recorded interrogations.
- (e) Juveniles shall have reasonable access to toilets and wash basins (15 CCR 1143).
- (f) Juveniles shall be provided sanitary napkins, panty liners, and tampons as requested (15 CCR 1143).
- (g) Food shall be provided if a juvenile has not eaten within the past four hours or is otherwise in need of nourishment, including any special diet required for the health of the juvenile (15 CCR 1143).
- (h) Juveniles shall have reasonable access to a drinking fountain or water (15 CCR 1143).
- (i) Juveniles shall have reasonable opportunities to stand and stretch, particularly if handcuffed or restrained in any way.
- (j) Juveniles shall have privacy during family, guardian, and/or lawyer visits (15 CCR 1143).
- (k) Juveniles shall be permitted to remain in their personal clothing unless the clothing is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody (15 CCR 1143).
- (l) Blankets shall be provided as reasonably necessary (15 CCR 1143).
  - 1. The supervisor should ensure that there is an adequate supply of clean blankets.
- (m) Adequate shelter, heat, light, and ventilation should be provided without compromising security or enabling escape.
- (n) Juveniles shall have adequate furnishings, including suitable chairs or benches.
- (o) Juveniles shall have the right to the same number of telephone calls as an adult in temporary custody.
- (p) Juveniles shall have access to language services (15 CCR 1143).
- (q) Juveniles shall have access to disability services (15 CCR 1143).
- (r) No discipline may be administered to any juvenile, nor may juveniles be subjected to corporal or unusual punishment, humiliation, or mental abuse (15 CCR 1142).



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While held in temporary custody, juveniles shall be informed in writing of what is available to them pursuant to 15 CCR 1143 and it shall be posted in at least one conspicuous place to which they have access (15 CCR 1143).

#### **312.9 USE OF RESTRAINT DEVICES**

Juvenile offenders may be handcuffed in accordance with the Handcuffing and Restraints Policy. A juvenile offender may be handcuffed at the Kings County District Attorney Investigation Division when the juvenile presents a heightened risk. However, non-offenders and status offenders should not be handcuffed unless they are combative or threatening (15 CCR 1142).

Other restraints shall only be used after less restrictive measures have failed and with the approval of the Chief Investigator. Restraints shall only be used so long as it reasonably appears necessary for the juvenile's protection or the protection of others (15 CCR 1142).

Juveniles in restraints shall be kept away from other unrestrained juveniles or monitored in such a way as to protect the juvenile from abuse (15 CCR 1142).

#### **312.10 PERSONAL PROPERTY**

The investigator taking custody of a juvenile offender or status offender at the Kings County District Attorney Investigation Division shall ensure a thorough search of the juvenile's property is made and all property is removed from the juvenile, especially those items that could compromise safety, such as pens, pencils, and belts.

The personal property of a juvenile should be placed in a property bag. The property should be inventoried in the juvenile's presence and sealed into the bag. The property should be kept in a monitored or secure location until the juvenile is released from the custody of the Kings County District Attorney Investigation Division.

#### **312.11 SECURE CUSTODY**

Only juvenile offenders 14 years of age or older may be placed in secure custody (Welfare and Institutions Code § 207; 15 CCR 1145). Chief Investigator approval is required before placing a juvenile offender in secure custody.

Secure custody should only be used for juvenile offenders when there is a reasonable belief that the juvenile is a serious risk of harm to themselves or others. Factors to be considered when determining if the juvenile offender presents a serious security risk to themselves or others include the following (15 CCR 1145):

- (a) Age, maturity, and delinquent history
- (b) Severity of offense for which the juvenile was taken into custody
- (c) The juvenile offender's behavior
- (d) Availability of staff to provide adequate supervision or protection of the juvenile offender
- (e) Age, type, and number of other individuals in custody at the facility

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Members of this [department/office] shall not use secure custody for convenience when non-secure custody is, or later becomes, a reasonable option (15 CCR 1145).

When practicable and when no locked enclosure is available, handcuffing one hand of a juvenile offender to a fixed object while otherwise maintaining the juvenile in non-secure custody should be considered as the method of secure custody. An employee must be present at all times to ensure the juvenile's safety while secured to a stationary object (15 CCR 1148).

Juveniles shall not be secured to a stationary object for more than 60 minutes. Supervisor approval is required to secure a juvenile to a stationary object for longer than 60 minutes and every 30 minutes thereafter (15 CCR 1148). Supervisor approval should be documented.

The decision for securing a minor to a stationary object for longer than 60 minutes and every 30 minutes thereafter shall be based upon the best interests of the juvenile offender (15 CCR 1148).

#### 312.11.1 LOCKED ENCLOSURES

A thorough inspection of the area shall be conducted before placing a juvenile into the enclosure. A second inspection shall be conducted after removing the juvenile. Any damage noted to the room should be photographed and documented in the crime report.

The following requirements shall apply to a juvenile offender who is held inside a locked enclosure:

- (a) The juvenile shall constantly be monitored by an audio/video system during the entire custody.
- (b) Juveniles shall have constant auditory access to [department/office] members (15 CCR 1147).
- (c) Initial placement into and removal from a locked enclosure shall be logged (Welfare and Institutions Code § 207.1).
- (d) Unscheduled safety checks to provide for the health and welfare of the juvenile by a staff member, no less than once every 15 minutes, shall occur (15 CCR 1147; 15 CCR 1151).
  1. All safety checks shall be logged.
  2. The safety check should involve questioning the juvenile as to the juvenile's well-being (sleeping juveniles or apparently sleeping juveniles should be awakened).
  3. Requests or concerns of the juvenile should be logged.
- (e) Juveniles of different genders shall not be placed in the same locked room (15 CCR 1147).
- (f) Juvenile offenders should be separated according to severity of the crime (e.g., felony or misdemeanor).
- (g) Restrained juveniles shall not be mixed in a cell or room with unrestrained juveniles.

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#### **312.12 SUICIDE ATTEMPT, DEATH, OR SERIOUS INJURY OF A JUVENILE**

The Chief Investigator will ensure procedures are in place to address the suicide attempt, death, or serious injury of any juvenile held at the Kings County District Attorney Investigation Division (15 CCR 1142; 15 CCR 1047). The procedures will address:

- (a) Immediate notification of the on-duty supervisor, Chief Investigator, and Investigations Division Supervisor.
- (b) Notification of the parent, guardian, or person standing in loco parentis of the juvenile.
- (c) Notification of the appropriate prosecutor.
- (d) Notification of the County attorney.
- (e) Notification to the coroner.
- (f) Notification of the juvenile court.
- (g) In the case of a death, providing a report to the Attorney General under Government Code § 12525 within 10 calendar days of the death, and forwarding the same report to the Board of State and Community Corrections within the same time frame (15 CCR 1046).
- (h) A medical and operational review of deaths and suicide attempts pursuant to 15 CCR 1046.
- (i) Evidence preservation.

#### **312.13 INTERVIEWING OR INTERROGATING JUVENILE SUSPECTS**

No interview or interrogation of a juvenile should occur unless the juvenile has the apparent capacity to consent, and does consent, to an interview or interrogation.

Prior to conducting a custodial interrogation, including the waiver of *Miranda* rights, an investigator shall permit a juvenile 17 years of age or younger to consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived by the juvenile (Welfare and Institutions Code § 625.6).

Threats, physical harm, deception, or psychologically manipulative interrogation tactics shall not be used by an investigator during a custodial interrogation of a juvenile (Welfare and Institutions Code § 625.7).

The requirements to consult with legal counsel or to refrain from the use of prohibited interrogation techniques do not apply when (Welfare and Institutions Code § 625.6; Welfare and Institutions Code § 625.7):

- (a) Information is necessary to protect life or property from an imminent threat.
  - 1. The questions are limited to what is reasonably necessary to obtain the information relating to the threat.

##### **312.13.1 MANDATORY RECORDINGS OF JUVENILES**

Any interrogation of an individual under 18 years of age who is in custody and suspected of committing murder shall be audio and video recorded when the interview takes place at a

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[department/office] facility, jail, detention facility, or other fixed place of detention. The recording shall include the entire interview and a *Miranda* advisement preceding the interrogation (Penal Code § 859.5).

This recording is not mandatory when (Penal Code § 859.5):

- (a) Recording is not feasible because of exigent circumstances that are later documented in a report.
- (b) The individual refuses to have the interrogation recorded, including a refusal any time during the interrogation, and the refusal is documented in a report. If feasible, the refusal shall be electronically recorded.
- (c) The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.
- (d) The interrogation occurs when no member conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating member develops a reason to believe the individual committed murder.
- (e) The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an investigator, the individual being interrogated, or another individual. Such circumstances shall be documented in a report.
- (f) A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.
- (g) The questions are part of a routine processing or booking, and are not an interrogation.
- (h) The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

These recordings shall be retained until a conviction is final and all direct and habeas corpus appeals are exhausted, a court no longer has any jurisdiction over the individual, or the prosecution for that offense is barred (Penal Code § 859.5; Welfare and Institutions Code § 626.8).

#### **312.14 FORMAL BOOKING**

No juvenile offender shall be formally booked without the authorization of the arresting investigator's supervisor, or in the supervisor's absence, the Chief Investigator.

Any juvenile 14 years of age or older who is taken into custody for a felony, or any juvenile whose acts amount to a sex crime, shall be booked, fingerprinted, and photographed.

For all other acts defined as crimes, juveniles may be booked, fingerprinted, or photographed upon the approval from the Chief Investigator or the Investigations Division supervisor, giving due consideration to the following:

- (a) The gravity of the offense
- (b) The past record of the offender

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- (c) The age of the offender

**312.15 RELEASE OF INFORMATION CONCERNING JUVENILES**

Court decisions and legislation have combined to carefully specify situations in which information may be given out or exchanged when a case involves a juvenile. Members of this [department/office] shall not divulge any information regarding juveniles unless they are certain of the legal authority to do so.

Welfare and Institutions Code § 828 authorizes the release of certain information to other agencies. It shall be the responsibility of the Investigator and the appropriate Investigations Division supervisors to ensure that personnel of those bureaus act within legal guidelines.

**312.16 BOARD OF STATE AND COMMUNITY CORRECTIONS CERTIFICATION**

The Investigations Chief Investigator shall coordinate the procedures related to the custody of juveniles held at the Kings County District Attorney Investigation Division and ensure any required certification is maintained (Welfare and Institution Code § 210.2).

**312.17 RELIGIOUS ACCOMMODATION**

Juveniles have the right to the same religious accommodation as adults in temporary custody (see the Temporary Custody of Adults Policy).

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## Senior and Disability Victimization

### 313.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the investigation and reporting of suspected abuse of certain adults who may be more vulnerable than others. This policy also addresses mandatory notification for Kings County District Attorney Investigation Division members as required by law (Penal Code § 368.6).

The Kings County District Attorney Investigation Division is committed to providing equal protection and demonstrating respect for all persons regardless of age or disabilities, and to conscientiously enforcing all criminal laws protecting elders, and adults and children with disabilities, regardless of whether these crimes also carry civil penalties (Penal Code § 368.6) (see Child Abuse Policy for child abuse investigations and reporting).

#### 313.1.1 DEFINITIONS

Definitions related to this policy include:

**Abuse of an elder (age 65 or older) or dependent adult** - Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. Neglect includes self-neglect (Welfare and Institutions Code § 15610.05 et seq.; Penal Code § 368.5).

**[Department/Office] protocols (or protocols)** - A procedure adopted by a local law enforcement agency consistent with the agency's organizational structure and stated in a policy adopted pursuant to this section, to effectively and accountably carry out a particular agency responsibility.

**Dependent adult** - An individual, regardless of whether the individual lives independently, between 18 and 64 years of age who has physical or mental limitations that restrict his/her ability to carry out normal activities or to protect his/her rights, including but not limited to persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. This also includes those admitted as inpatients to a 24-hour health facility, as defined in state law (Penal Code § 368; Welfare and Institutions Code § 15610.23).

**Elder and dependent adult abuse** - Any offense or attempted offense involving violence or neglect of an adult victim when committed by a person responsible for the adult's care, or any other act that would mandate reporting or notification to a social service agency or law enforcement (Penal Code § 368).

**Senior and disability victimization** - Means any of the following (Penal Code § 368.6):

- (a) Elder and dependent adult abuse
- (b) Unlawful interference with a mandated report
- (c) Homicide of an elder, dependent adult, or other adult or child with a disability

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- (d) Sex crimes against elders, dependent adults, or other adults and children with disabilities
- (e) Child abuse of children with disabilities
- (f) Violation of relevant protective orders
- (g) Hate crimes against persons with actual or perceived disabilities, including but not limited to disabilities caused by advanced age, or those associated with them
- (h) Domestic violence against elders, dependent adults, and adults and children with disabilities, including disabilities caused by advanced age

**313.2 DEFINITIONS**

For purposes of this policy, the following definitions are provided (Welfare and Institutions Code § 15610 et seq. and Penal Code § 368).

**Dependent Adult** - Is any person residing in this state, between the ages of 18 and 64-years, who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. Dependent Adult includes any person between the ages of 18 and 64-years who is admitted as an inpatient to a 24-hour health facility, as defined in Health and Safety Code §§ 1250, 1250.2, and 1250.3.

**Elder** - Is any person residing in this state, 65-years of age or older.

**Financial Abuse** - Is a situation in which any person who has the care or custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property to any use or purposes not in the due and lawful execution of his or her trust.

**Abuse of an Elder or a Dependent Adult** - Is physical abuse, neglect, financial abuse, abandonment, isolation or other treatment with resulting physical harm, pain, mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

**Adult Protective Services Agency** - Is a county welfare department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

**Neglect** - Is the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited to, all of the following:

- (a) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
- (b) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone instead of medical treatment.

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#### **313.3 MANDATORY REPORTING REQUIREMENTS**

Members of the Kings County District Attorney Investigation Division are mandated reporters.

Employees who observe, have knowledge of, or are told by an elder or dependant adult about any form of abuse (physical abuse, abandonment, abduction, isolation, financial abuse, neglect) shall make a report and notify the appropriate social services representative as soon as practicable (see Welfare & Institutions Code § 15630 for reporting details). Failure to make a report within two working days is a misdemeanor (Welfare and Institution Code § 15630(h)).

The Investigations Division Supervisor is responsible to ensure that cases of suspected elder abuse are forwarded to the District Attorney's Office and any other regulatory agency that may be applicable based upon where the abuse took place (care facility, hospital) per Welfare and Institution Code § 15630(b).

##### **313.3.1 RECORDS RESPONSIBILITY**

The Records is responsible for the following:

- (a) Provide a copy of the elder/dependent abuse report to Adult Protective Services. This requirement is applicable even if the initial call was received from Adult Protective Services.
- (b) Retain the original elder/dependent abuse report with the initial case file.

#### **313.4 INVESTIGATIONS AND REPORTING**

All reported or suspected cases of elder and dependent adult abuse require investigation and a report, even if the allegations appear unfounded or unsubstantiated (Penal Code § 368.6).

Investigations and reports related to suspected cases of elder and dependent adult abuse should address, as applicable:

- (a) The overall basis for the contact. This should be done by the investigating investigator in all circumstances where a suspected elder and dependent adult abuse victim is contacted.
- (b) Any relevant statements the victim may have made and to whom he/she made the statements.
- (c) If a person is taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.
- (d) Documentation of any visible injuries or any injuries identified by the victim. This should include photographs of such injuries, if practicable.
- (e) Whether the victim was transported for medical treatment or a medical examination.
- (f) Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other potential victims or witnesses who may reside in the residence.
- (g) Identification of any prior related reports or allegations of abuse, including other jurisdictions, as reasonably known.



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- (h) Previous addresses of the victim and suspect.
- (i) Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.
- (j) Witness and suspect statements if available.
- (k) Review of all portable audio/video recorders, devices, and other available video.
- (l) Call history related to the elder or dependent adult including calls from mandated reporters or other individuals.
- (m) Whether the abuse is related to a disability-bias hate crime and related bias motivations (Penal Code § 368.6) (see the Hate Crimes Policy for additional guidance).
- (n) Results of investigations shall be provided to those agencies (Adult Protective Services (APS), long-term ombudsman) that referred or reported the elder or dependent adult abuse (Welfare and Institutions Code § 15640(f)).
- (o) Whether a death involved the End of Life Option Act:
  - 1. Whether or not assistance was provided to the person beyond that allowed by law (Health and Safety Code § 443.14).
  - 2. Whether an individual knowingly altered or forged a request for an aid-in-dying drug to end a person's life without his/her authorization, or concealed or destroyed a withdrawal or rescission of a request for an aid-in-dying drug (Health and Safety Code § 443.17).
  - 3. Whether coercion or undue influence was exerted on the person to request or ingest an aid-in-dying drug or to destroy a withdrawal or rescission of a request for such medication (Health and Safety Code § 443.17).
  - 4. Whether an aid-in-dying drug was administered to a person without his/her knowledge or consent (Health and Safety Code § 443.17).

Any unexplained death of an adult who was in the care of a guardian or caretaker should be considered as potential elder or dependent adult abuse and investigated similarly.

An unexplained or suspicious death of an elder, dependent adult, or other adult or child with a disability should be treated as a potential homicide until a complete investigation including an autopsy is completed, and it should not be assumed that the death of an elder or person with a disability is natural simply because of the age or disability of the deceased (Penal Code § 368.6(c) (18)).

#### 313.4.1 ADDITIONAL INVESTIGATIVE CONSIDERATIONS

The following factors as provided in Penal Code § 368.6 should be considered when investigating incidents of elder and dependent adult abuse:

- (a) Elder and dependent adult abuse, sex crimes, child abuse, domestic violence, and any other criminal act, when committed in whole or in part because of the victim's actual or perceived disability, including disability caused by advanced age, is also a hate crime (Penal Code § 368.6) (see the Hate Crimes Policy for additional guidance).

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- (b) Senior and disability victimization crimes are also domestic violence subject to the mandatory arrest requirements of Penal Code § 836 if they meet the elements described in Penal Code § 273.5, including but not limited to a violation by a caretaker or other person who is or was a cohabitant of the victim, regardless of whether the cohabitant is or was a relative of, or in an intimate personal relationship with, the victim (Penal Code § 368.6(c)(10)).
- (c) Many victims of sexual assault and other sex crimes delay disclosing the crimes for reasons including but not limited to shame, embarrassment, self-doubt, fear of being disbelieved, and fear of retaliation by the perpetrator or others (Penal Code § 368.6(c)(11)).
- (d) Victims and witnesses with disabilities, including cognitive and communication disabilities, can be highly credible witnesses when interviewed appropriately by trained officers or other trained persons (Penal Code § 368.6(c)(14)).

#### **313.5 PROTECTIVE CUSTODY**

Before taking an elder or dependent adult abuse victim into protective custody when facts indicate the adult may not be able to care for him/herself, the investigator should make reasonable attempts to contact APS. Generally, removal of an adult abuse victim from his/her family, guardian, or other responsible adult should be left to the welfare authorities when they are present or have become involved in an investigation.

Generally, members of this [department/office] should remove an elder or dependent adult abuse victim from his/her family or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the victim. Prior to taking an elder or dependent adult abuse victim into protective custody, the investigator should take reasonable steps to deliver the adult to another qualified legal guardian, unless it reasonably appears that the release would endanger the victim or result in abduction. If this is not a reasonable option, the investigator shall ensure that the adult is delivered to APS.

Whenever practicable, the investigator should inform a supervisor of the circumstances prior to taking an elder or dependent adult abuse victim into protective custody. If prior notification is not practicable, investigators should contact a supervisor promptly after taking the adult into protective custody.

When elder or dependent adult abuse victims are under state control, have a state-appointed guardian, or there are other legal holdings for guardianship, it may be necessary or reasonable to seek a court order on behalf of the adult victim to either remove the adult from a dangerous environment (protective custody) or restrain a person from contact with the adult.

##### **313.5.1 EMERGENCY PROTECTIVE ORDERS**

In any situation which an investigator reasonably believes that an elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or threat of abuse (other than financial abuse alone), the investigator may seek an emergency protective order against the person alleged to have committed or threatened such abuse (Family Code § 6250(d)).

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#### 313.5.2 VERIFICATION OF PROTECTIVE ORDER

Whenever an investigator verifies that a relevant protective order has been issued, the investigator shall make reasonable efforts to determine if the order prohibits the person from possession of firearms or requires the relinquishment of firearms, and if the order does so, the investigator shall make reasonable efforts to (Penal Code § 368.6(c)(19)):

- (a) Inquire whether the restrained person possesses firearms. The investigator should make this effort by asking the restrained person and the protected person.
- (b) Query the California Law Enforcement Telecommunications System to determine if any firearms are registered to the restrained person.
- (c) Receive or seize prohibited firearms located in plain view or pursuant to a consensual or other lawful search in compliance with Penal Code § 18250 et seq. and in accordance with [department/office] procedures.

#### **313.6 INTERVIEWS**

##### 313.6.1 PRELIMINARY INTERVIEWS

Absent extenuating circumstances or impracticality, investigators should audio record the preliminary interview with a suspected elder or dependent adult abuse victim. Investigators should avoid multiple interviews with the victim and should attempt to gather only the information necessary to begin an investigation. When practicable, investigating investigators should defer interviews until a person who is specially trained in such interviews is available.

##### 313.6.2 DETAINING VICTIMS FOR INTERVIEWS

An investigator should not detain an adult involuntarily who is suspected of being a victim of abuse solely for the purpose of an interview or physical exam without his/her consent or the consent of a guardian unless one of the following applies:

- (a) Exigent circumstances exist, such as:
  1. A reasonable belief that medical issues of the adult need to be addressed immediately.
  2. A reasonable belief that the adult is or will be in danger of harm if the interview or physical exam is not immediately completed.
  3. The alleged offender is a family member or guardian and there is reason to believe the adult may be in continued danger.
- (b) A court order or warrant has been issued.

##### 313.6.3 INTERVIEWS WITH A PERSON WITH DEAFNESS OR HEARING LOSS

An investigator who is interviewing a victim or witness who reports or demonstrates deafness or hearing loss should secure the services of a qualified interpreter (as defined by Evidence Code § 754) prior to the start of the interview (Penal Code § 368.6) (see the Communications with Persons with Disabilities Policy for additional guidance).

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#### **313.7 MEDICAL EXAMINATIONS**

When an elder or dependent adult abuse investigation requires a medical examination, the investigating investigator should obtain consent for such examination from the victim, guardian, agency, or entity having legal custody of the adult. The investigator should also arrange for the adult's transportation to the appropriate medical facility.

In cases where the alleged offender is a family member, guardian, agency, or entity having legal custody and is refusing to give consent for the medical examination, investigators should notify a supervisor before proceeding. If exigent circumstances do not exist or if state law does not provide for investigators to take the adult for a medical examination, the supervisor should consider other government agencies or services that may obtain a court order for such an examination.

#### **313.8 DRUG-ENDANGERED VICTIMS**

A coordinated response by law enforcement and social services agencies is appropriate to meet the immediate and longer-term medical and safety needs of an elder or dependent adult abuse victim who has been exposed to the manufacturing, trafficking, or use of narcotics.

##### **313.8.1 INVESTIGATOR RESPONSIBILITIES**

Investigators responding to a drug lab or other narcotics crime scene where an elder or dependent adult abuse victim is present or where there is evidence that an elder or dependent adult abuse victim lives should:

- (a) Document the environmental, medical, social, and other conditions of the adult, using photography as appropriate and the checklist or form developed for this purpose.
- (b) Notify the Investigations Division supervisor so an interagency response can begin.

##### **313.8.2 SUPERVISOR RESPONSIBILITIES**

The Investigations Division supervisor should:

- (a) Work with professionals from the appropriate agencies, including APS, other law enforcement agencies, medical service providers, and local prosecutors, to develop community specific procedures for responding to situations where there are elder or dependent adult abuse victims endangered by exposure to methamphetamine labs or the manufacture and trafficking of other drugs.
- (b) Activate any available interagency response when an investigator notifies the Investigations Division supervisor that he/she has responded to a drug lab or other narcotics crime scene where an elder or dependent adult abuse victim is present or where evidence indicates that an elder or dependent adult abuse victim lives.
- (c) Develop a report format or checklist for use when investigators respond to drug labs or other narcotics crime scenes. The checklist will help investigators document the environmental, medical, social, and other conditions that may affect the adult.

#### **313.9 RECORDS BUREAU RESPONSIBILITIES**

The Records is responsible for:

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- (a) Providing a copy of the elder or dependent adult abuse report to the APS, ombudsman, or other agency as applicable within two working days or as required by law (Welfare and Institutions Code § 15630; Welfare and Institutions Code § 15640(c)).
- (b) Retaining the original elder or dependent adult abuse report with the initial case file.

#### **313.10 JURISDICTION**

The Kings County District Attorney Investigation Division has concurrent jurisdiction with state law enforcement agencies when investigating elder and dependent adult abuse and all other crimes against elder victims and victims with disabilities (Penal Code § 368.5).

Adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect and may assist in criminal investigations upon request, if consistent with federal law, in such cases. However, this [department/office] will retain responsibility for the criminal investigations (Penal Code § 368.5).

Additional jurisdiction responsibilities for investigations of abuse involving various facilities and agencies may be found in Welfare and Institutions Code § 15650.

#### **313.11 RELEVANT STATUTES**

##### **Penal Code § 288 (a) and Penal Code § 288 (b)(2)**

(a) Except as provided in subdivision (i), a person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1 (Of Crimes and Punishments of the Penal Code) upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b)(2) A person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

##### **Penal Code § 368 (c)**

A person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

##### **Penal Code § 368 (f)**

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A person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

Protections provided by the above Penal Code § 288 and Penal Code § 368 protect many persons with disabilities regardless of the fact they live independently.

#### **Welfare and Institutions Code § 15610.05**

"Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

#### **Welfare and Institutions Code § 15610.06**

"Abduction" means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court.

#### **Welfare and Institutions Code § 15610.30**

- (a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:
  - 1. Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
  - 2. Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
  - 3. Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.
- (b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.
- (c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.
- (d) For purposes of this section, "representative" means a person or entity that is either of the following:

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1. A conservator, trustee, or other representative of the estate of an elder or dependent adult.
2. An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

#### **Welfare and Institutions Code § 15610.43**

- (a) "Isolation" means any of the following:
1. Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
  2. Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.
  3. False imprisonment, as defined in Section 236 of the Penal Code.
  4. Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.
- (b) The acts set forth in subdivision (a) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.
- (c) The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safe.

#### **Welfare and Institutions Code § 15610.57**

- (a) "Neglect" means either of the following:
1. The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
  2. The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.
- (b) Neglect includes, but is not limited to, all of the following:
1. Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
  2. Failure to provide medical care for physical and mental health needs. A person shall not be deemed neglected or abused for the sole reason that the person voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

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3. Failure to protect from health and safety hazards.
  4. Failure to prevent malnutrition or dehydration.
  5. Substantial inability or failure of an elder or dependent adult to manage personal finances.
  6. Failure of an elder or dependent adult to satisfy any of the needs specified in paragraphs (1) to (5), inclusive, for themselves as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.
- (c) Neglect includes being homeless if the elder or dependent adult is also unable to meet any of the needs specified in paragraphs (1) to (5), inclusive, of subdivision (b).

### **Welfare and Institutions Code § 15610.63**

"Physical abuse" means any of the following:

- (a) Assault, as defined in Section 240 of the Penal Code.
- (b) Battery, as defined in Section 242 of the Penal Code.
- (c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.
- (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.
- (e) Sexual assault, that means any of the following:
  1. Sexual battery, as defined in Section 243.4 of the Penal Code.
  2. Rape, as defined in Section 261 of the Penal Code, or former Section 262 of the Penal Code.
  3. Rape in concert, as described in Section 264.1 of the Penal Code.
  4. Incest, as defined in Section 285 of the Penal Code.
  5. Sodomy, as defined in Section 286 of the Penal Code.
  6. Oral copulation, as defined in Section 287 or former Section 288a of the Penal Code.
  7. Sexual penetration, as defined in Section 289 of the Penal Code.
  8. Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code.
- (f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
  1. For punishment.
  2. For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.



*Senior and Disability Victimization*

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3. For any purpose not authorized by the physician and surgeon.

**313.12 ELDER AND DEPENDENT ADULT ABUSE LIAISON**

A [department/office] member appointed by the Chief Investigator or the authorized designee will serve as the Elder and Dependent Adult Abuse Liaison. Responsibilities of the liaison include but are not limited to (Penal Code § 368.6):

- (a) Acting as a liaison to other responsible agencies (defined by Penal Code § 368.6(b) (15)) to increase cooperation and collaboration among them while retaining the law enforcement agency's exclusive responsibility for criminal investigations (Welfare and Institutions Code § 15650).
- (b) Reaching out to the senior and disability communities and to the public to encourage prevention and reporting of senior and disability victimization.

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## Discriminatory Harassment

### 314.1 PURPOSE AND SCOPE

The purpose of this policy is to prevent [department/office] members from being subjected to discriminatory harassment, including sexual harassment and retaliation. Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

### 314.2 POLICY

The Kings County District Attorney Investigation Division is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation (Government Code § 12940(k); 2 CCR 11023). The [Department/Office] will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits and other privileges of employment. The [Department/Office] will take preventive and corrective action to address any behavior that violates this policy or the rights it is designed to protect.

The nondiscrimination policies of the [Department/Office] may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject a member to discipline.

### 314.3 DEFINITIONS

Definitions related to this policy include:

#### 314.3.1 DISCRIMINATION

The [Department/Office] prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law.

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment can include making derogatory comments; making crude and offensive statements or remarks; making slurs or off-color jokes, stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters, or material; making inappropriate physical contact; or using written material or [department/office] equipment and/or systems to transmit or receive offensive material, statements, or pictures. Such conduct is contrary to [department/office] policy and to a work environment that is free of discrimination.

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#### 314.3.2 SEXUAL HARASSMENT

The [Department/Office] prohibits all forms of discrimination and discriminatory harassment, including sexual harassment. It is unlawful to harass an applicant or a member because of that person's sex.

Sexual harassment includes but is not limited to unwelcome sexual advances, requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment, position, or compensation.
- (b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

#### 314.3.3 ADDITIONAL CONSIDERATIONS

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles, or standards, including:

- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission (EEOC) and the California Civil Rights Council guidelines.
- (b) Bona fide requests or demands by a supervisor that the member improve the member's work quality or output, that the member report to the job site on time, that the member comply with County or [department/office] rules or regulations, or any other appropriate work-related communication between supervisor and member.

#### 314.3.4 RETALIATION

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because the person has engaged in protected activity, filed a charge of discrimination, participated in an investigation, or opposed a discriminatory practice. Retaliation will not be tolerated.

### **314.4 RESPONSIBILITIES**

This policy applies to all [department/office] personnel. All members shall follow the intent of these guidelines in a manner that reflects [department/office] policy, professional standards, and the best interest of the [Department/Office] and its mission.

Members are encouraged to promptly report any discriminatory, retaliatory, or harassing conduct or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to the member's immediate supervisor may bypass the chain of command and make the report to a higher-ranking supervisor or manager. Complaints may also be filed with the Chief Investigator, the Director of Human Services, or the County Administrative Officer.

Any member who believes, in good faith, that the member has been discriminated against, harassed, or subjected to retaliation, or who has observed harassment, discrimination, or

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retaliation, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall proceed with resolution as stated below.

#### **314.4.1 SUPERVISOR RESPONSIBILITIES**

The responsibilities of supervisors and managers shall include but are not limited to:

- (a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment, or retaliation.
- (c) Ensuring that their subordinates understand their responsibilities under this policy.
- (d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- (e) Making a timely determination regarding the substance of any allegation based upon all available facts.
- (f) Notifying the Chief Investigator or the Director of Human Services in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment, or retaliation no later than the next business day.

#### **314.4.2 SUPERVISOR'S ROLE**

Supervisors and managers shall be aware of the following:

- (a) Behavior of supervisors and managers should represent the values of the [Department/Office] and professional standards.
- (b) False or mistaken accusations of discrimination, harassment, or retaliation can have negative effects on the careers of innocent members.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling members, or issuing discipline, in a manner that is consistent with established procedures.

#### **314.4.3 QUESTIONS OR CLARIFICATION**

Members with questions regarding what constitutes discrimination, sexual harassment, or retaliation are encouraged to contact a supervisor, a manager, the Chief Investigator, the Director of Human Services, the County Administrative Officer, or the California Civil Rights Department for further information, direction, or clarification (Government Code § 12950).

#### **314.5 INVESTIGATION OF COMPLAINTS**

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any

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continuing abusive or hostile work environment. It is the policy of the [Department/Office] that all complaints of discrimination, retaliation, or harassment shall be fully documented and promptly and thoroughly investigated.

#### **314.5.1 SUPERVISOR RESOLUTION**

Members who believe they are experiencing discrimination, harassment, or retaliation should be encouraged to inform the individual that the behavior is unwelcome, offensive, unprofessional, or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing the member's concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

#### **314.5.2 FORMAL INVESTIGATION**

If the complaint cannot be satisfactorily resolved through the supervisory resolution process, a formal investigation will be conducted.

The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint, or for offering testimony or evidence in an investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include but is not limited to details of the specific incident, frequency and dates of occurrences, and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, harassed, or retaliated against because of their protected status, are encouraged to follow the chain of command but may also file a complaint directly with the Chief Investigator, the Director of Human Services, or the County Administrative Officer.

#### **314.5.3 ALTERNATIVE COMPLAINT PROCESS**

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the [Department/Office]. Members who believe that they have been harassed, discriminated against, or retaliated against are entitled to bring complaints of employment discrimination to federal, state, and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

#### **314.6 DOCUMENTATION OF COMPLAINTS**

All complaints or allegations shall be thoroughly documented on forms and in a manner designated by the Chief Investigator. The outcome of all reports shall be:

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- (a) Approved by the Chief Investigator, the County Administrative Officer, or the Director of Human Services, depending on the ranks of the involved parties.
- (b) Maintained in accordance with the [department/office]'s established records retention schedule.

#### 314.6.1 NOTIFICATION OF DISPOSITION

The complainant and/or victim will be notified in writing of the disposition of the investigation and the actions taken to remedy or address the circumstances giving rise to the complaint.

### **314.7 TRAINING**

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that the member has been advised of this policy, is aware of and understands its contents, and agrees to abide by its provisions during the member's term with the [Department/Office].

All members shall receive annual training on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents, and agree that they will continue to abide by its provisions.

#### 314.7.1 STATE-REQUIRED TRAINING

The Training Coordinator should ensure that employees receive the required state training and education regarding sexual harassment, prevention of abusive conduct, and harassment based on gender identity, gender expression, and sexual orientation as follows (Government Code § 12950.1; 2 CCR 11024):

- (a) Supervisory employees shall receive two hours of classroom or other effective interactive training and education within six months of assuming a supervisory position.
- (b) All other employees shall receive one hour of classroom or other effective interactive training and education within six months of their employment or sooner for seasonal or temporary employees as described in Government Code § 12950.1.
- (c) All employees shall receive refresher training every two years thereafter.

If the required training is to be provided by the Civil Rights Department online training courses, the Training Coordinator should ensure that employees are provided the following website address to the training course: <https://calcivilrights.ca.gov> (Government Code § 12950; 2 CCR 11023).

#### 314.7.2 TRAINING RECORDS

The Training Coordinator shall be responsible for maintaining records of all discriminatory harassment training provided to members. Records shall be retained in accordance with established records retention schedules and for a minimum of two years (2 CCR 11024).

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## Child Abuse

### 315.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the investigation of suspected child abuse. This policy also addresses when Kings County District Attorney Investigation Division members are required to notify the county Child Protective Services (CPS) of suspected child abuse.

#### 315.1.1 DEFINITIONS

Definitions related to this policy include:

**Child** - Unless otherwise specified by a cited statute, a child is any person under the age of 18 years.

**Child abuse** - Any offense or attempted offense involving violence or neglect with a child victim when committed by a person responsible for the child's care or any other act that would mandate notification to a social service agency or law enforcement (Penal Code § 11165.9; Penal Code § 11166).

### 315.2 POLICY

The Kings County District Attorney Investigation Division will investigate all reported incidents of alleged criminal child abuse and ensure CPS is notified as required by law.

### 315.3 MANDATORY NOTIFICATION

The child protection agency shall be notified when (Penal Code § 11166):

- (a) There is a known or suspected instance of child abuse or neglect reported, which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or
- (b) A person responsible for the child's welfare fails to adequately protect the child from abuse when the person knew or reasonably should have known that the child was in danger of abuse.

The District Attorney's office shall be notified in all instances of known or suspected child abuse or neglect reported to this [department/office]. Notification of the District Attorney is not required for reports only involving neglect by a person, who has the care or custody of a child, to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred (Penal Code § 11166).

When the abuse or neglect occurs at a licensed facility or is alleged to have resulted from the actions of a person who is required to have a state license (e.g., foster homes, group homes, day care), notification shall also be made to the California Department of Social Services or other applicable licensing authority. When the alleged abuse or neglect involves a child of a minor parent or a dependent adult, notification shall also be made to the attorney of the minor or the dependent adult within 36 hours (Penal Code 11166.1; Penal Code 11166.2).

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For purposes of notification, the abuse or neglect includes physical injury or death inflicted by other than accidental means upon a child by another person; sexual abuse (Penal Code § 11165.1); neglect (Penal Code § 11165.2); the willful harming or injuring of a child or the endangering of the person or health of a child (Penal Code § 11165.3); and unlawful corporal punishment or injury (Penal Code § 11165.4). Child abuse or neglect does not include a mutual affray between minors, nor does it include an injury caused by the reasonable and necessary force used by a peace officer acting within the course and scope of the peace officer's employment as a peace officer.

#### **315.3.1 NOTIFICATION PROCEDURE**

Notification should occur as follows (Penal Code § 11166):

- (a) Notification shall be made immediately, or as soon as practicable, by telephone, fax or electronic transmission.
- (b) A written follow-up report should be forwarded within 36 hours of receiving the information concerning the incident.

#### **315.4 QUALIFIED INVESTIGATORS**

Qualified investigators should be available for child abuse investigations. These investigators should:

- (a) Conduct interviews in child appropriate interview facilities.
- (b) Be familiar with forensic interview techniques specific to child abuse investigations.
- (c) Present all cases of alleged child abuse to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and school administrators as needed.
- (e) Provide referrals to therapy services, victim advocates, guardians and support for the child and family as appropriate.
- (f) Participate in or coordinate with multidisciplinary investigative teams as applicable (Welfare and Institutions Code § 18961.7).

#### **315.5 INVESTIGATIONS AND REPORTING**

In all reported or suspected cases of child abuse, a report will be written. Investigators shall write a report even if the allegations appear unfounded or unsubstantiated.

Investigations and reports related to suspected cases of child abuse should address, as applicable:

- (a) The overall basis for the contact. This should be done by the investigating investigator in all circumstances where a suspected child abuse victim was contacted.
- (b) The exigent circumstances that existed if investigators interviewed the child victim without the presence of a parent or guardian.



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- (c) Any relevant statements the child may have made and to whom he/she made the statements.
- (d) If a child was taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.
- (e) Documentation of any visible injuries or any injuries identified by the child. This should include photographs of such injuries, if practicable.
- (f) Whether the child victim was transported for medical treatment or a medical examination.
- (g) Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other children who may reside in the residence.
- (h) Identification of any prior related reports or allegations of child abuse, including other jurisdictions, as reasonably known.
- (i) Previous addresses of the victim and suspect.
- (j) Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.

All cases of the unexplained death of a child should be investigated as thoroughly as if it had been a case of suspected child abuse (e.g., a sudden or unexplained death of an infant).

#### 315.5.1 EXTRA JURISDICTIONAL REPORTS

If a report of known or suspected child abuse or neglect that is alleged to have occurred outside this jurisdiction is received, [department/office] members shall ensure that the caller is immediately transferred to the agency with proper jurisdiction for the investigation of the case. If the caller cannot be successfully transferred to the appropriate agency, a report shall be taken and immediately referred by telephone, fax, or electronic transfer to the agency with proper jurisdiction (Penal Code § 11165.9).

#### 315.5.2 INITIAL REPORTS OF ABUSE FROM A NONMANDATED REPORTER

Members who receive a report of child abuse or neglect shall request the following information from the reporter (Penal Code § 11167):

- (a) Name and telephone number
- (b) Information and the source of information that gives rise to the knowledge or reasonable suspicion of child abuse or neglect

If the reporter refuses to provide their name and telephone number, the member should make a reasonable effort to determine the basis for the refusal and inform them that their information will remain confidential.

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#### **315.6 PROTECTIVE CUSTODY**

Before taking any child into protective custody, the investigator should make reasonable attempts to contact CPS. Generally, removal of a child from the child's family, guardian, or other responsible adult should be left to the child welfare authorities when they are present or have become involved in an investigation.

Generally, members of this [department/office] should remove a child from the child's parent or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the child. Prior to taking a child into protective custody, the investigator should take reasonable steps to deliver the child to another qualified parent or legal guardian, unless it reasonably appears that the release would endanger the child or result in abduction. If this is not a reasonable option, the investigator shall ensure that the child is delivered to CPS.

Whenever practicable, the investigator should inform a supervisor of the circumstances prior to taking a child into protective custody. If prior notification is not practicable, investigators should contact a supervisor promptly after taking a child into protective custody.

Children may only be removed from a parent or guardian in the following situations when a court order cannot reasonably be obtained in a timely manner (Welfare and Institutions Code § 305):

- (a) The investigator reasonably believes the child is a person described in Welfare and Institutions Code § 300, and further has good cause to believe that any of the following conditions exist:
  1. The child has an immediate need for medical care.
  2. The child is in immediate danger of physical or sexual abuse.
  3. The physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. In the case of a child left unattended, the investigator shall first attempt to locate and determine if a responsible parent or guardian is available and capable of assuming custody before taking the child into protective custody.
- (b) The investigator reasonably believes the child requires protective custody under the provisions of Penal Code § 279.6, in one of the following circumstances:
  1. It reasonably appears to the investigator that a person is likely to conceal the child, flee the jurisdiction with the child or, by flight or concealment, evade the authority of the court.
  2. There is no lawful custodian available to take custody of the child.
  3. There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child.
  4. The child is an abducted child.
- (c) The child is in the company of, or under the control of, a person arrested for Penal Code § 278 (Detainment or concealment of child from legal custodian) or Penal Code § 278.5 (Deprivation of custody of a child or right to visitation) (Penal Code § 279.6).

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A child taken into protective custody shall be delivered to CPS unless otherwise directed by court order.

#### **315.6.1 CALIFORNIA SAFELY SURRENDERED BABY LAW**

An individual having lawful custody of an infant less than 72 hours old is not guilty of abandonment if the individual voluntarily surrenders physical custody of the infant to personnel on-duty at a safe-surrender site, such as a hospital or fire department (Penal Code § 271.5). The law requires the surrender site to notify CPS.

#### **315.6.2 NEWBORNS TESTING POSITIVE FOR DRUGS**

Under certain circumstances, investigators can be prohibited from taking a newborn who is the subject of a proposed adoption into protective custody, even when the newborn has tested positive for illegal drugs or the birth mother tested positive for illegal drugs.

Investigators shall instead follow the provisions of Welfare and Institutions Code § 305.6 to ensure that the newborn is placed with the adoptive parents when it is appropriate.

### **315.7 INTERVIEWS**

#### **315.7.1 PRELIMINARY INTERVIEWS**

Absent extenuating circumstances or impracticality, investigators should record the preliminary interview with suspected child abuse victims. Investigators should avoid multiple interviews with a child victim and should attempt to gather only the information necessary to begin an investigation. When practicable, investigating investigators should defer interviews until a person who is specially trained in such interviews is available. Generally, child victims should not be interviewed in the home or location where the alleged abuse occurred.

#### **315.7.2 DETAINING SUSPECTED CHILD ABUSE VICTIMS FOR AN INTERVIEW**

An investigator should not detain a child involuntarily who is suspected of being a victim of child abuse solely for the purpose of an interview or physical exam without the consent of a parent or guardian unless one of the following applies:

- (a) Exigent circumstances exist, such as:
  1. A reasonable belief that medical issues of the child need to be addressed immediately.
  2. A reasonable belief that the child is or will be in danger of harm if the interview or physical exam is not immediately completed.
  3. The alleged offender is the custodial parent or guardian and there is reason to believe the child may be in continued danger.
- (b) A court order or warrant has been issued.

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#### 315.7.3 INTERVIEWS AT A SCHOOL

Any student at school who is a suspected victim of child abuse shall be afforded the option of being interviewed in private or selecting any qualified available adult member of the school staff to be present. The purpose of the staff member's presence is to provide comfort and support. The staff member shall not participate in the interview. The selection of a staff member should be such that it does not burden the school with costs or hardship (Penal Code § 11174.3).

#### **315.8 MEDICAL EXAMINATIONS**

If the child has been the victim of abuse that requires a medical examination, the investigating investigator should obtain consent for such examination from the appropriate parent, guardian or agency having legal custody of the child. The investigator should also arrange for the child's transportation to the appropriate medical facility.

In cases where the alleged offender is the custodial parent or guardian and is refusing consent for the medical examination, investigators should notify a supervisor before proceeding. If exigent circumstances do not exist or if state law does not provide for investigators to take the child for a medical examination, the notified supervisor should consider obtaining a court order for such an examination.

#### **315.9 DRUG-ENDANGERED CHILDREN**

A coordinated response by law enforcement and social services agencies is appropriate to meet the immediate and longer-term medical and safety needs of children exposed to the manufacturing, trafficking or use of narcotics.

##### 315.9.1 SUPERVISOR RESPONSIBILITIES

The Investigations Division supervisor should:

- (a) Work with professionals from the appropriate agencies, including CPS, other law enforcement agencies, medical service providers and local prosecutors to develop community specific procedures for responding to situations where there are children endangered by exposure to methamphetamine labs or the manufacture and trafficking of other drugs.
- (b) Activate any available interagency response when an investigator notifies the Investigations Division supervisor that the investigator has responded to a drug lab or other narcotics crime scene where a child is present or where evidence indicates that a child lives there.
- (c) Develop a report format or checklist for use when investigators respond to drug labs or other narcotics crime scenes. The checklist will help investigators document the environmental, medical, social and other conditions that may affect the child.

##### 315.9.2 INVESTIGATOR RESPONSIBILITIES

Investigators responding to a drug lab or other narcotics crime scene where a child is present or where there is evidence that a child lives should:

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- (a) Document the environmental, medical, social and other conditions of the child using photography as appropriate and the checklist or form developed for this purpose.
- (b) Notify the Investigations Division supervisor so an interagency response can begin.

**315.10 STATE MANDATES AND OTHER RELEVANT LAWS**

California requires or permits the following:

**315.10.1 RELEASE OF REPORTS**

Information related to incidents of child abuse or suspected child abuse shall be confidential and may only be disclosed pursuant to state law and the Records Maintenance and Release Policy (Penal Code § 841.5; Penal Code § 11167.5).

**315.10.2 REQUESTS FOR REMOVAL FROM THE CHILD ABUSE CENTRAL INDEX (CACI)**

Any person whose name has been forwarded to the California Department of Justice (DOJ) for placement in California's CACI, as a result of an investigation, may request that his/her name be removed from the CACI list. Requests shall not qualify for consideration if there is an active case, ongoing investigation or pending prosecution that precipitated the entry to CACI (Penal Code § 11169). All requests for removal shall be submitted in writing by the requesting person and promptly routed to the CACI hearing officer.

**315.10.3 CHILD DEATH REVIEW TEAM**

This [department/office] should cooperate with any interagency child death review team investigation. Written and oral information relating to the death of a child that would otherwise be subject to release restrictions may be disclosed to the child death review team upon written request and approval of a supervisor (Penal Code § 11174.32).

**315.11 TRAINING**

The [Department/Office] should provide training on best practices in child abuse investigations to members tasked with investigating these cases. The training should include:

- (a) Participating in multidisciplinary investigations, as appropriate.
- (b) Conducting forensic interviews.
- (c) Availability of therapy services for children and families.
- (d) Availability of specialized forensic medical exams.
- (e) Cultural competence (including interpretive services) related to child abuse investigations.
- (f) Availability of victim advocate or guardian ad litem support.

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## Missing Persons

### 316.1 PURPOSE AND SCOPE

This policy provides guidance for handling missing person investigations.

#### 316.1.1 DEFINITIONS

**At risk** - Includes, but is not limited to (Penal Code § 14215):

- A victim of a crime or foul play.
- A person missing and in need of medical attention.
- A missing person with no pattern of running away or disappearing.
- A missing person who may be the victim of parental abduction.
- A mentally impaired missing person, including cognitively impaired or developmentally disabled.

**Missing person** - Any person who is reported missing to law enforcement when the person's location is unknown. This includes a child who has been taken, detained, concealed, enticed away or kept by a parent in violation of the law (Penal Code § 277 et seq.). It also includes any child who is missing voluntarily, involuntarily or under circumstances that do not conform to his/her ordinary habits or behavior, and who may be in need of assistance (Penal Code § 14215).

**Missing person networks** - Databases or computer networks available to law enforcement and that are suitable for information related to missing persons investigations. These include the National Crime Information Center (NCIC), the California Law Enforcement Telecommunications System (CLETS), Missing Person System (MPS) and the Unidentified Persons System (UPS).

### 316.2 POLICY

The Kings County District Attorney Investigation Division does not consider any report of a missing person to be routine and assumes that the missing person is in need of immediate assistance until an investigation reveals otherwise. The Kings County District Attorney Investigation Division gives missing person cases priority over property-related cases and will not require any time frame to pass before beginning a missing person investigation (Penal Code § 14211).

### 316.3 REQUIRED FORMS AND BIOLOGICAL SAMPLE COLLECTION KITS

The Investigations supervisor should ensure the forms and kits are developed and available in accordance with this policy, state law, federal law and the California Peace Officer Standards and Training (POST) Missing Persons Investigations guidelines, including:

- [Department/Office] report form for use in missing person cases
- Missing person investigation checklist that provides investigation guidelines and resources that could be helpful in the early hours of a missing person investigation (Penal Code § 13519.07)
- Missing person school notification form

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- Medical records release form from the California Department of Justice
- California DOJ missing person forms as appropriate
- Biological sample collection kits

#### **316.4 ACCEPTANCE OF REPORTS**

Any employee encountering a person who wishes to report a missing person or runaway shall render assistance without delay (Penal Code § 14211). This can be accomplished by accepting the report via telephone or in-person and initiating the investigation. Those employees who do not take such reports or who are unable to render immediate assistance shall promptly dispatch or alert an employee who can take the report.

A report shall be accepted in all cases and regardless of where the person was last seen, where the person resides or any other question of jurisdiction (Penal Code § 14211).

#### **316.5 INITIAL INVESTIGATION**

Investigators or other employees conducting the initial investigation of a missing person should take the following investigative actions as applicable:

- (a) Respond to a dispatched call for service as soon as practicable.
- (b) Interview the reporting person and any witnesses to determine whether the person qualifies as a missing person and, if so, whether the person may be at risk.
- (c) Notify a supervisor immediately if there is evidence that a missing person is at risk.
- (d) Broadcast a "Be on the Look-Out#? (BOLO) bulletin if the person is under 16 years of age or there is evidence that the missing person is at risk. The BOLO should be broadcast as soon as practicable but in no event more than one hour after determining the missing person is under 16 or may be at risk (Penal Code § 14205).
- (e) Ensure that entries are made into the appropriate networks as follows:
  1. Immediately when the missing person is at risk
  2. In all other cases, as practicable but not later than two hours from the time of the initial report
- (f) Notify a supervisor if the missing person may qualify for a public alert, as provided in the Public Alerts Policy.
- (g) Complete the Department's missing person report forms accurately and completely.
- (h) Collect and/or review the following:
  1. A photograph and a fingerprint card of the missing person, if available
  2. A voluntarily provided DNA sample of the missing person, if available (toothbrush, etc)

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3. Any documents that may assist in the investigation, such as court orders regarding custody
  4. Any other evidence that may assist in the investigation, including personal electronic devices (cell phones, computers, etc)
- (i) Contact the lead agency if the report relates to a previously made missing person report and another agency is actively investigating that report. When this is not practical, the information should be documented in an appropriate report for transmission to the appropriate agency. If the information relates to an at risk missing person, the investigator should notify a supervisor and proceed with reasonable steps to locate the missing person.

### **316.6 REPORT PROCEDURES AND ROUTING**

Employees should complete all missing person reports and forms promptly and advise the appropriate supervisor as soon as a missing person report is ready for review.

#### **316.6.1 SUPERVISOR RESPONSIBILITIES**

The responsibilities of the supervisor shall include, but are not limited to:

- (a) Reviewing and approving missing person reports upon receipt.
  1. The reports should be promptly sent to the Records.
- (b) Ensuring resources are deployed as appropriate.
- (c) Initiating a command post as needed.
- (d) Ensuring applicable notifications and public alerts are made and documented.
- (e) Ensuring that records have been entered into the appropriate missing persons networks.
- (f) Taking reasonable steps to identify and address any jurisdictional issues to ensure cooperation among agencies.

If the case falls within the jurisdiction of another agency, the supervisor should facilitate transfer of the case to the agency of jurisdiction.

### **316.7 INVESTIGATIONS DIVISION FOLLOW-UP**

In addition to completing or continuing any actions listed above, the investigator assigned to a missing person investigation:

- (a) Shall ensure that the missing person's school is notified within 10 days if the missing person is a juvenile.
  1. The notice shall be in writing and should also include a photograph (Education Code § 49068.6).
  2. The investigator should meet with school officials regarding the notice as appropriate to stress the importance of including the notice in the child's student



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file, along with contact information if the school receives a call requesting the transfer of the missing child's files to another school.

- (b) Should recontact the reporting person and/or other witnesses within 30 days of the initial report and within 30 days thereafter to determine if any additional information has become available via the reporting party.
- (c) Should consider contacting other agencies involved in the case to determine if any additional information is available.
- (d) Shall verify and update CLETS, NCIC, and any other applicable missing person networks within 30 days of the original entry into the networks and every 30 days thereafter until the missing person is located (34 USC § 41308).
- (e) Should continue to make reasonable efforts to locate the missing person and document these efforts at least every 30 days.
- (f) Shall maintain a close liaison with state and local child welfare systems and the National Center for Missing and Exploited Children® (NCMEC) if the missing person is under the age of 21 and shall promptly notify NCMEC when the person is missing from a foster care family home or childcare institution (34 USC § 41308).
- (g) Should make appropriate inquiry with the [Medical Examiner/JOP].
- (h) Should obtain and forward medical and dental records, photos, X-rays, and biological samples pursuant to Penal Code § 14212 and Penal Code § 14250.
- (i) Shall attempt to obtain the most recent photograph for persons under 18 years of age if it has not previously been obtained and forward the photograph to California DOJ (Penal Code § 14210) and enter the photograph into applicable missing person networks (34 USC § 41308).
- (j) Should consider making appropriate entries and searches in the National Missing and Unidentified Persons System (NamUs).
- (k) In the case of an at-risk missing person or a person who has been missing for an extended time, should consult with a supervisor regarding seeking federal assistance from the FBI and the U.S. Marshals Service (28 USC § 566).

#### **316.8 WHEN A MISSING PERSON IS FOUND**

When any person reported missing is found, the assigned investigator shall document the location of the missing person in the appropriate report and notify the reporting party and other involved agencies.

The Investigator shall ensure that upon receipt of information that a missing person has been located, the following occurs:

- (a) Notification is made to California DOJ.
- (b) The missing child's school is notified.
- (c) Entries are made in the applicable missing person networks (Penal Code § 14207).

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- (d) When a child under 12 years of age or a person who is at risk is found, the report of finding shall be made within 24 hours to the California Attorney General's Office (Penal Code § 14207(b)).
- (e) Notification shall be made to any other law enforcement agency that took the initial report or participated in the investigation (Penal Code § 14207(b)).

#### **316.9 CASE CLOSURE**

The Investigations Division supervisor may authorize the closure of a missing person case after considering the following:

- (a) Closure is appropriate when the missing person is confirmed returned or evidence has matched an unidentified person or body.
- (b) If the missing person is a resident of Kings or this [department/office] is the lead agency, the case should be kept under active investigation for as long as the person may still be alive. Exhaustion of leads in the investigation should not be a reason for closing a case.
- (c) If this [department/office] is not the lead agency, the case can be made inactive if all investigative leads have been exhausted, the lead agency has been notified and entries are made in the applicable missing person networks as appropriate.
- (d) A missing person case should not be closed or reclassified because the person would have reached a certain age or adulthood or because the person is now the subject of a criminal or civil warrant.

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## Public Alerts

### 317.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for alerting the public to important information and soliciting public aid when appropriate.

### 317.2 POLICY

Public alerts may be employed using the Emergency Alert System (EAS), local radio, television and press organizations and other groups to notify the public of incidents, or enlist the aid of the public, when the exchange of information may enhance the safety of the community. Various types of alerts may be available based upon each situation and the alert system's individual criteria.

### 317.3 RESPONSIBILITIES

#### 317.3.1 MEMBER RESPONSIBILITIES

Members of the Kings County District Attorney Investigation Division should notify their supervisor, Chief Investigator, or Investigations Division Supervisor as soon as practicable upon learning of a situation where public notification, a warning, or enlisting the help of the media and public could assist in locating a missing person, apprehending a dangerous person, or gathering information.

#### 317.3.2 SUPERVISOR RESPONSIBILITIES

A supervisor apprised of the need for a public alert is responsible to make the appropriate notifications based upon the circumstances of each situation. The supervisor shall promptly notify the Chief Investigator, the appropriate Chief Investigator and the Chief Investigator when any public alert is generated.

The supervisor in charge of the investigation to which the alert relates is responsible for the following:

- (a) Updating alerts
- (b) Canceling alerts
- (c) Ensuring all appropriate reports are completed
- (d) Preparing an after-action evaluation of the investigation to be forwarded to the Chief Investigator

### 317.4 AMBER ALERTS

The AMBER Alert™ Program is a voluntary partnership between law enforcement agencies, broadcasters, transportation agencies and the wireless industry, to activate urgent bulletins in child abduction cases.

#### 317.4.1 CRITERIA FOR AMBER ALERT

The following conditions must be met before activating an AMBER Alert (Government Code § 8594(a)):

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- (a) A child has been abducted or taken by anyone, including but not limited to a custodial parent or guardian.
- (b) The victim is 17 years of age or younger, or has a proven mental or physical disability.
- (c) The victim is in imminent danger of serious injury or death.
- (d) There is information available that, if provided to the public, could assist in the child's safe recovery.

#### **317.4.2 PROCEDURE FOR AMBER ALERT**

The supervisor in charge will ensure the following:

- (a) An initial press release is prepared that includes all available information that might aid in locating the child:
  - 1. The child's identity, age and description
  - 2. Photograph if available
  - 3. The suspect's identity, age and description, if known
  - 4. Pertinent vehicle description
  - 5. Detail regarding location of incident, direction of travel, potential destinations, if known
  - 6. Name and telephone number of the Chief Investigator or other authorized individual to handle media liaison
  - 7. A telephone number for the public to call with leads or information
- (b) The local California Highway Patrol communications center should be contacted to initiate a multi-regional or statewide EAS broadcast, following any policies and procedures developed by CHP (Government Code § 8594).
- (c) The press release information is forwarded to the Sheriff's Department Emergency Communications Bureau so that general broadcasts can be made to local law enforcement agencies.
- (d) Information regarding the missing person should be entered into the California Law Enforcement Telecommunication System (CLETS).
- (e) Information regarding the missing person should be entered into the California Department of Justice Missing and Unidentified Persons System (MUPS)/National Crime Information Center (NCIC).
- (f) The following resources should be considered as circumstances dictate:
  - 1. The local FBI office
  - 2. National Center for Missing and Exploited Children (NCMEC)

#### **317.5 BLUE ALERTS**

Blue Alerts may be issued when an investigator is killed, injured or assaulted and the suspect may pose a threat to the public or other law enforcement personnel.

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#### **317.5.1 CRITERIA FOR BLUE ALERTS**

All of the following conditions must be met before activating a Blue Alert (Government Code § 8594.5):

- (a) A law enforcement officer has been killed, suffered serious bodily injury or has been assaulted with a deadly weapon, and the suspect has fled the scene of the offense.
- (b) The investigating law enforcement agency has determined that the suspect poses an imminent threat to the public or other law enforcement personnel.
- (c) A detailed description of the suspect's vehicle or license plate is available for broadcast.
- (d) Public dissemination of available information may help avert further harm or accelerate apprehension of the suspect.

#### **317.5.2 PROCEDURE FOR BLUE ALERT**

The supervisor in charge should ensure the following:

- (a) An initial press release is prepared that includes all available information that might aid in locating the suspect:
  1. The license number and/or any other available description or photograph of the vehicle
  2. Photograph, description and/or identification of the suspect
  3. The suspect's identity, age and description, if known
  4. Detail regarding location of incident, direction of travel, potential destinations, if known
  5. Name and telephone number of the Chief Investigator or other authorized individual to handle media liaison
  6. A telephone number for the public to call with leads or information
- (b) The local California Highway Patrol communications center is contacted to initiate a multi-regional or statewide EAS broadcast.
- (c) The information in the press release is forwarded to the Sheriff's Department Emergency Communications Bureau so that general broadcasts can be made to local law enforcement agencies.
- (d) The following resources should be considered as circumstances dictate:
  1. Entry into the California Law Enforcement Telecommunication System (CLETS)
  2. The FBI local office

#### **317.6 SILVER ALERTS**

Silver Alerts® is an emergency notification system for people who are 65 years of age or older, developmentally disabled or cognitively impaired and have been reported missing (Government Code § 8594.10).

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**317.6.1 CRITERIA FOR SILVER ALERTS**

All of the following conditions must be met before activating a Silver Alert (Government Code § 8594.10):

- (a) The missing person is 65 years of age or older, developmentally disabled or cognitively impaired.
- (b) The [department/office] has utilized all available local resources.
- (c) The investigating investigator or supervisor has determined that the person is missing under unexplained or suspicious circumstances.
- (d) The investigating investigator or supervisor believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or that there are other factors indicating that the person may be in peril.
- (e) There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

**317.6.2 PROCEDURE FOR SILVER ALERT**

Requests for a Silver Alert shall be made through the California Highway Patrol (Government Code § 8594.10).

**317.7 ADDITIONAL ALERTS FOR PUBLIC SAFETY EMERGENCIES**

Additional public safety emergency alerts may be authorized that utilize wireless emergency alert system (WEA) and emergency alert system (EAS) equipment for alerting and warning the public to protect lives and save property (Government Code § 8593.7).

**317.7.1 CRITERIA**

Public safety emergency alerts may be issued to alert or warn the public about events including but not limited to:

- (a) Evacuation orders (including evacuation routes, shelter information, key information).
- (b) Shelter-in-place guidance due to severe weather.
- (c) Terrorist threats.
- (d) HazMat incidents.

**317.7.2 PROCEDURE**

Public safety emergency alerts should be activated by following the guidelines issued by the Office of Emergency Services (Government Code § 8593.7).

**317.8 YELLOW ALERT**

A Yellow Alert may be issued when a person is killed due to a hit-and-run incident and the [department/office] has specified information concerning the suspect or the suspect's vehicle (Government Code § 8594.15).

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#### 317.8.1 CRITERIA FOR YELLOW ALERT

All of the following conditions must be met before activating a Yellow Alert (Government Code § 8594.15):

- (a) A person has been killed due to a hit-and-run incident.
- (b) There is an indication that a suspect has fled the scene utilizing the state highway system or is likely to be observed by the public on the state highway system.
- (c) The [department/office] has additional information concerning the suspect or the suspect's vehicle including but not limited to the following:
  - 1. The complete license plate number of the suspect's vehicle.
  - 2. A partial license plate number and additional unique identifying characteristics, such as the make, model, and color of the suspect's vehicle, which could reasonably lead to the apprehension of a suspect.
  - 3. The identity of a suspect.
  - 4. Public dissemination of available information could either help avert further harm or accelerate apprehension of a suspect based on any factor, including but not limited to the time elapsed between a hit-and-run incident and the request or the likelihood that an activation would reasonably lead to the apprehension of a suspect.

#### 317.8.2 PROCEDURE FOR YELLOW ALERT

Requests for a Yellow Alert shall be made through the California Highway Patrol (Government Code § 8594.15).

#### **317.9 FEATHER ALERT**

A Feather Alert may be issued when an indigenous person is reported missing under unexplained or suspicious circumstances (Government Code § 8594.13).

#### 317.9.1 CRITERIA FOR FEATHER ALERT

All of the following conditions must be met before activating a Feather Alert (Government Code § 8594.13):

- (a) The missing person is an indigenous person.
- (b) The [Department/Office] has utilized local and tribal resources.
- (c) The investigating investigator has determined the person has gone missing under unexplained or suspicious circumstances.
- (d) The investigating investigator or supervisor believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or that there are other factors indicating that the person may be in peril.
- (e) There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

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#### 317.9.2 PROCEDURE FOR FEATHER ALERT

Requests for a Feather Alert shall be made through the California Highway Patrol (Government Code § 8594.13).

#### **317.10 ENDANGERED MISSING ADVISORY**

An Endangered Missing Advisory may be requested when a person is reported missing who is developmentally disabled, or cognitively impaired, or has been abducted, or is unable to otherwise care for themselves, placing their physical safety at risk (Government Code § 8594.11).

##### 317.10.1 CRITERIA FOR ENDANGERED MISSING ADVISORY

All of the following conditions must be met before activating an Endangered Missing Advisory (Government Code § 8594.11):

- (a) The missing person is developmentally disabled, cognitively impaired, has been abducted or is otherwise unable to care for themselves, placing their physical safety at risk.
- (b) The [Department/Office] has utilized all available local resources.
- (c) The investigating investigator has determined the person has gone missing under unexplained or suspicious circumstances.
- (d) The investigating investigator or supervisor believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or that there are other factors indicating that the person may be in peril.
- (e) There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

##### 317.10.2 PROCEDURE FOR ENDANGERED MISSING ADVISORIES

Requests for an endangered missing advisory shall be made through the California Highway Patrol (Government Code § 8594.11).

#### **317.11 EBONY ALERT**

An Ebony Alert may be requested when it is determined the alert would be an effective tool in the investigation of missing Black youth, including a young woman or girl (Government Code § 8594.14).

##### 317.11.1 CRITERIA FOR EBONY ALERT

The investigating investigator may consider the following factors to make the determination that an Ebony Alert would be an effective tool (Government Code § 8594.14):

- (a) The missing person is between the ages of 12 and 25 years old, inclusive.
- (b) The missing person is missing under circumstances that indicate their physical safety is endangered or they have been subject to trafficking.
- (c) The missing person suffers from a mental or physical disability.



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- (d) Determination that the person has gone missing under unexplained or suspicious circumstances.
- (e) Belief that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or that there are other factors indicating that the person may be in peril.
- (f) The [Department/Office] has utilized all available local resources.
- (g) There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

#### 317.11.2 PROCEDURE FOR EBONY ALERT

Requests for an Ebony Alert shall be made through the California Highway Patrol (Government Code § 8594.14).

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## Standards of Conduct

### 318.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Kings County District Attorney Investigation Division and are expected of all [department/office] members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this [department/office] or a member's supervisors.

### 318.2 POLICY

The continued employment or appointment of every member of the Kings County District Attorney Investigation Division shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

### 318.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any [department/office] supervisor or person in a position of authority, absent a reasonable and bona fide justification.

#### 318.3.1 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or [department/office] policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, [department/office] policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.

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The person countermanning the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

#### 318.3.2 SUPERVISOR RESPONSIBILITIES

Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

- (a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.
- (b) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.
- (c) Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.
- (d) The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

#### 318.3.3 INTOXICANTS

- (a) Reporting for work or being at work following the use of intoxicants where such use may impair the employee's ability to perform assigned duties or where there is an immediate suspicion of ineffectiveness during public contact resulting from the use of intoxicants
- (b) Unauthorized possession or use of, or attempting to bring intoxicants to the work site, except as authorized in the performance of an official assignment. An employee who is authorized to consume intoxicants is not permitted to do so to such a degree that it may impair on-duty performance
- (c) Reporting for work or being at work following the use of a "controlled substance" or any drug (whether legally prescribed or otherwise) where such use may impair the employee's ability to perform assigned duties
- (d) Unauthorized possession, use of, or attempting to bring controlled substance or other illegal drug to any work site

#### 318.3.4 PERFORMANCE

- (a) Unauthorized sleeping during on-duty time or assignments.
- (b) Careless workmanship resulting in spoilage or waste of materials or work of an unacceptable nature as applicable to the nature of the work assigned.
- (c) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or instructions of supervisors without a reasonable and bona fide excuse.

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- (d) Concealing, attempting to conceal, removing or destroying defective or incompetent work.
- (e) Disobedience or insubordination to constituted authorities, including refusal or deliberate failure to carry out or follow lawful directives and orders from any supervisor or person in a position of authority.
- (f) The wrongful or unlawful exercise of authority on the part of any employee for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (g) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of the Department or subverts the good order, efficiency and discipline of the Department or which would tend to discredit any member thereof.
- (h) Knowingly making false, misleading or malicious statements that are reasonably calculated to harm or destroy the reputation, authority or official standing of the Department or members thereof.
- (i) The falsification of any work-related records, the making of misleading entries or statements with the intent to deceive, or the willful and unauthorized destruction and/or mutilation of any department record, book, paper or document.
- (j) Wrongfully loaning, selling, giving away or appropriating any department property for the personal use of the employee or any unauthorized person.
- (k) The unauthorized use of any badge, uniform, identification card or other department equipment or property for personal gain or any other improper purpose.
- (l) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the employee's duties (lawful subpoena fees and authorized work permits excepted).
- (m) Any knowing or negligent violation of the provisions of the department manual, operating procedures or other written directive of an authorized supervisor. The Department shall make this manual available to all employees. Employees shall familiarize themselves with this manual and be responsible for compliance with each of the policies contained herein.
- (n) Work-related dishonesty, including attempted or actual theft of department property, services or the property of others, or the unauthorized removal or possession of department property or the property of another person.
- (o) Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/employer relationship, whether on- or off-duty.
- (p) Failure to disclose or misrepresenting material facts, or the making of any false or misleading statement on any application, examination form, or other official document, report or form or during the course of any work-related investigation.

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- (q) Failure to take reasonable action while on-duty and when required by law, statute, resolution or approved department practices or procedures.
- (r) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when a department member knew or reasonably should have known of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by the Department.
- (s) Offer or acceptance of a bribe or gratuity.
- (t) Misappropriation or misuse of public funds.
- (u) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- (v) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions: while on department premises; at any work site; while on-duty or while in uniform; or while using any department equipment or system. Gambling activity undertaken as part of an investigator's official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- (w) Substantiated, active, continuing association on a personal rather than official basis with a person or persons who engage in or are continuing to engage in serious violations of state or federal laws, where the employee has or reasonably should have knowledge of such criminal activities, except where specifically directed and authorized by the Department.
- (x) Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty, on department property or while in any way representing him/herself as a member of this agency, except as expressly authorized by the Chief Investigator.
- (y) Engaging in political activities during assigned working hours except as expressly authorized by the Chief Investigator.
- (z) Violating any misdemeanor or felony statute.
- (aa) Any other on-duty or off-duty conduct which any employee knows or reasonably should know is unbecoming a member of the Department or which is contrary to good order, efficiency or morale, or which tends to reflect unfavorably upon the Department or its members.
- (ab) Any failure or refusal of an employee to properly perform the function and duties of an assigned position.
- (ac) Failure to maintain required and current licenses (e.g. driver's license) and certifications (e.g., first aid).

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- (ad) Giving false or misleading statements, or misrepresenting or omitting material information to a supervisor, or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.

**318.3.5 SAFETY**

- (a) Failure to observe posted rules, signs and written or oral safety instructions while on duty and/or within department facilities or to use required protective clothing or equipment.
- (b) Knowingly failing to report any on-the-job or work-related accident or injury within 24 hours.
- (c) Substantiated employee record of unsafe or improper driving habits or actions in the course of employment.
- (d) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (e) Any personal action contributing to involvement in a preventable traffic collision, or other unsafe or improper driving habits or actions in the course of employment.
- (f) Violating departmental safety standards or safe working practices.

**318.3.6 SECURITY**

- (a) Unauthorized, intentional release of designated confidential information, materials, data, forms or reports

**318.3.7 SUPERVISION RESPONSIBILITY**

- (a) Failure of a supervisor to take appropriate action to ensure that employees adhere to the policies and procedures of this department and the actions of all personnel comply with all laws
- (b) Failure of a supervisor to timely report known misconduct of an employee to his or her immediate supervisor or to document such misconduct appropriately or as required by policy
- (c) The unequal or disparate exercise of authority on the part of a supervisor toward any employee for malicious or other improper purpose

**318.4 GENERAL STANDARDS**

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California constitutions and all applicable laws, ordinances, and rules enacted or established pursuant to legal authority.

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Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

#### **318.4.1 WRITTEN REPRIMANDS**

Any employee wishing to formally appeal a written reprimand must submit a written request to his/her Chief Investigator within ten days of receipt of the written reprimand. The Chief Investigator will then assign the appeal to an uninvolved supervisor of at least one rank above the rank of the supervisor issuing the original written reprimand.

Absent a written stipulation to the contrary, the employee will be provided with an evidentiary hearing before the assigned, uninvolved supervisor within 30 days. The decision of the assigned, uninvolved supervisor to sustain, modify or dismiss the written reprimand shall be considered final.

#### **318.5 CAUSES FOR DISCIPLINE**

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient [department/office] service:

##### **318.5.1 LAWS, RULES AND ORDERS**

- (a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in [department/office] or County manuals.
- (b) Disobedience of any legal directive or order issued by any [department/office] member of a higher rank.
- (c) Violation of federal, state, local or administrative laws, rules or regulations.

##### **318.5.2 ETHICS**

- (a) Using or disclosing one's status as a member of the Kings County District Attorney Investigation Division in any way that could reasonably be perceived as an attempt to gain influence or authority for non[department/office] business or activity.
- (b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- (d) Acceptance of fees, gifts or money contrary to the rules of this [department/office] and/or laws of the state.

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- (e) Offer or acceptance of a bribe or gratuity.
- (f) Misappropriation or misuse of public funds, property, personnel or services.
- (g) Any other failure to abide by the standards of ethical conduct.

#### 318.5.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM

Unless required by law or policy, discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, and any other classification or status protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful.

#### 318.5.4 RELATIONSHIPS

- (a) Unwelcome solicitation of a personal or sexual relationship while on duty or through the use of one's official capacity.
- (b) Engaging in on-duty sexual activity, including but not limited to sexual intercourse, excessive displays of public affection, or other sexual contact.
- (c) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect, or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- (d) Associating with or joining a criminal gang, organized crime, and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this [department/office].
- (e) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this [department/office].
- (f) Participation in a law enforcement gang as defined by Penal Code § 13670. Participation is grounds for termination (Penal Code § 13670).

#### 318.5.5 ATTENDANCE

- (a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- (b) Unexcused or unauthorized absence or tardiness.
- (c) Excessive absenteeism or abuse of leave privileges.
- (d) Failure to report to work or to the place of assignment at the time specified and fully prepared to perform duties without reasonable excuse.



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#### 318.5.6 UNAUTHORIZED ACCESS, DISCLOSURE, OR USE

- (a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms, or reports obtained as a result of the member's position with this [department/office].
  - (a) Members of this [department/office] shall not disclose the name, address, or image of any victim of human trafficking except as authorized by law (Penal Code § 293).
- (b) Disclosing to any unauthorized person any active investigation information.
- (c) The use of any information, photograph, video, or other recording obtained or accessed as a result of employment or appointment to this [department/office] for personal or financial gain or without the express authorization of the Chief Investigator or the authorized designee.
- (d) Loaning, selling, allowing unauthorized use, giving away, or appropriating any [department/office] property for personal use, personal gain, or any other improper or unauthorized use or purpose.
- (e) Using [department/office] resources in association with any portion of an independent civil action. These resources include but are not limited to personnel, vehicles, equipment, and nonsubpoenaed records.

#### 318.5.7 EFFICIENCY

- (a) Neglect of duty.
- (b) Unsatisfactory work performance including but not limited to failure, incompetence, inefficiency, or delay in performing and/or carrying out proper orders, work assignments, or the instructions of supervisors without a reasonable and bona fide excuse.
- (c) Concealing, attempting to conceal, removing, or destroying defective or incompetent work.
- (d) Unauthorized sleeping during on-duty time or assignments.
- (e) Failure to notify the [Department/Office] within 24 hours of any change in residence address or contact numbers.
- (f) Failure to notify the Human Services Department of changes in relevant personal information (e.g., information associated with benefits determination) in a timely fashion.

#### 318.5.8 PERFORMANCE

- (a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any workrelated investigation.
- (b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration,

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destruction and/or mutilation of any [department/office] record, public record, book, paper or document.

- (c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any [department/office] - related business.
- (d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this [department/office] or its members.
- (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this [department/office] or subverts the good order, efficiency and discipline of this [department/office] or that would tend to discredit any of its members.
- (f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
  - 1. While on [department/office] premises.
  - 2. At any work site, while on duty or while in uniform, or while using any [department/office] equipment or system.
  - 3. Gambling activity undertaken as part of an investigator official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- (g) Improper political activity including:
  - 1. Unauthorized attendance while on duty at official legislative or political sessions.
  - 2. Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on duty or, on [department/office] property except as expressly authorized by County policy, the memorandum of understanding, or the Chief Investigator.
- (h) Engaging in political activities during assigned working hours except as expressly authorized by County policy, the memorandum of understanding, or the Chief Investigator.
- (i) Any act on or off duty that brings discredit to this [department/office].

#### 318.5.9 CONDUCT

- (a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency or that may result in criminal prosecution or discipline under this policy.
- (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.
- (c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.

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- (d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- (e) Engaging in horseplay that reasonably could result in injury or property damage.
- (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this [department/office] or the County.
- (g) Use of obscene, indecent, profane or derogatory language while on duty or in uniform.
- (h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this [department/office].
- (i) Unauthorized possession of, loss of, or damage to [department/office] property or the property of others, or endangering it through carelessness or maliciousness.
- (j) Attempted or actual theft of [department/office] property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of [department/office] property or the property of another person.
- (k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
- (l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief Investigator of such action.
- (m) Any other on or off duty conduct which any member knows or reasonably should know is unbecoming a member of this [department/office], is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this [department/office] or its members.

#### 318.5.10 SAFETY

- (a) Failure to observe or violating [department/office] safety standards or safe working practices.
- (b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
- (c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.
- (e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
- (f) Unsafe or improper driving habits or actions in the course of employment or appointment.
- (g) Any personal action contributing to a preventable traffic collision.

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- (h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

#### **318.6 EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief Investigator after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) This *Skelly* response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the *Skelly* response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief Investigator to consider.
- (d) In the event that the Chief Investigator elects to cause further investigation to be conducted, the employee shall be provided with the results of such subsequent investigation prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief Investigator on the limited issues of information raised in any subsequent materials.
- (f) Once the employee has completed his/her *Skelly* response or, if the employee has elected to waive any such response, the Chief Investigator shall consider all information received in regard to the recommended discipline. Once the Chief Investigator determines that discipline will be imposed, a timely written decision shall be provided to the employee within 30 days, imposing, modifying or rejecting the recommended discipline. In the event of a termination, the final notice of discipline shall also inform the employee of the reason for termination and the process to receive all remaining fringe and retirement benefits.
- (g) Once the Chief Investigator has issued a written decision, the discipline shall become effective.

#### **318.7 DISCIPLINARY ACTION AGAINST PROBATIONARY EMPLOYEES**

In the event that a probationary employee is terminated solely for unsatisfactory performance or the failure to meet department standards, the employee shall have no right to appeal and the following shall be considered:

- (a) Termination of a probationary employee for such failure to pass probation shall be so reflected in the employee's personnel file

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- (b) In the event that a probationary employee is disciplined or terminated for misconduct, the employee shall only be entitled to appeal the decision in the same manner as set forth in the *Skelly* procedure as set forth above. This appeal process may be held prior to or within a reasonable time after the imposition of discipline
- (c) At all times during any investigation of allegations of misconduct involving a probationary investigator, such investigator shall be afforded all procedural rights set forth in Government Code § 3303 and applicable Department policies
- (d) A probationary employee's appeal of disciplinary action shall be limited to an opportunity for the employee to attempt to establish that the underlying allegations should not be sustained. Nothing in this policy or procedure, however, should be construed to establish any sort of property interest in or right to the employee's continuation of employment
- (e) The burden of proof for any probationary employee's appeal of disciplinary action shall rest with the employee and will require proof by a preponderance of the evidence
- (f) In the event that a probationary employee meets his or her burden of proof in such a disciplinary appeal, the Department shall remove all reference to the underlying allegations of misconduct from the employee's personnel file
- (g) In the event that a probationary employee fails to meet his or her burden of proof in such a disciplinary appeal, the employee shall have no further right to appeal beyond the Chief Investigator

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## Information Technology Use

### 319.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the proper use of [department/office] information technology resources, including computers, electronic devices, hardware, software and systems.

#### 319.1.1 DEFINITIONS

Definitions related to this policy include:

**Computer system** - All computers (on-site and portable), electronic devices, hardware, software, and resources owned, leased, rented or licensed by the Kings County District Attorney Investigation Division that are provided for official use by its members. This includes all access to, and use of, Internet Service Providers (ISP) or other service providers provided by or through the [Department/Office] or [department/office] funding.

**Hardware** - Includes, but is not limited to, computers, computer terminals, network equipment, electronic devices, telephones, including cellular and satellite, pagers, modems or any other tangible computer device generally understood to comprise hardware.

**Software** - Includes, but is not limited to, all computer programs, systems and applications, including shareware. This does not include files created by the individual user.

**Temporary file, permanent file or file** - Any electronic document, information or data residing or located, in whole or in part, on the system including, but not limited to, spreadsheets, calendar entries, appointments, tasks, notes, letters, reports, messages, photographs or videos.

### 319.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division that members shall use information technology resources, including computers, software and systems, that are issued or maintained by the [Department/Office] in a professional manner and in accordance with this policy.

### 319.3 SYSTEM INSPECTION OR REVIEW

An employee's supervisor has the express authority to inspect or review the system, any and all temporary or permanent files and related electronic systems or devices, and any contents thereof when such inspection or review is in the ordinary course of his/her supervisory duties, or based on cause.

When requested by an employee's supervisor, or during the course of regular duties requiring such information, a member(s) of the agency's information systems staff may extract, download, or otherwise obtain any and all temporary or permanent files residing or located in or on the system.

Reasons for inspection or review may include, but are not limited to system malfunctions, problems or general system failure, a lawsuit against the agency involving the employee, or related to the employee's duties, an alleged or suspected violation of a department policy, or a need to perform or provide a service when the employee is unavailable.

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#### **319.4 AGENCY PROPERTY**

All information, data, documents, communications, and other entries initiated on, sent to or from, or accessed on any department computer, or through the department computer system on any other computer, whether downloaded or transferred from the original department computer, shall remain the exclusive property of the Department and shall not be available for personal or non-departmental use without the expressed authorization of an employee's supervisor.

##### **319.4.1 HARDWARE**

Access to technology resources provided by or through the [Department/Office] shall be strictly limited to [department/office]-related activities. Data stored on or available through [department/office] computer systems shall only be accessed by authorized members who are engaged in an active investigation or assisting in an active investigation, or who otherwise have a legitimate law enforcement or [department/office]-related purpose to access such data. Any exceptions to this policy must be approved by a supervisor.

#### **319.5 PROTECTION OF AGENCY SYSTEMS AND FILES**

All members have a duty to protect the computer system and related systems and devices from physical and environmental damage and are responsible for the correct use, operation, care, and maintenance of the computer system.

Members shall ensure [department/office] computers and access terminals are not viewable by persons who are not authorized users. Computers and terminals should be secured, users logged off and password protections enabled whenever the user is not present. Access passwords, logon information, and other individual security data, protocols, and procedures are confidential information and are not to be shared. Password length, format, structure, and content shall meet the prescribed standards required by the computer system or as directed by a supervisor and shall be changed at intervals as directed by IT staff or a supervisor.

It is prohibited for a member to allow an unauthorized user to access the computer system at any time or for any reason. Members shall promptly report any unauthorized access to the computer system or suspected intrusion from outside sources (including the internet) to a supervisor.

#### **319.6 PROHIBITED AND INAPPROPRIATE USE**

Access to department technology resources including Internet access provided by or through the Department shall be strictly limited to department-related business activities. Data stored on, or available through department systems shall only be accessed by authorized employees who are engaged in an active investigation, assisting in an active investigation, or who otherwise have a legitimate law enforcement or department business related purpose to access such data. Any exceptions to this policy must be approved by a supervisor.

An Internet site containing information that is not appropriate or applicable to departmental use and which shall not be intentionally accessed include, but are not limited to, adult forums, pornography, chat rooms and similar or related Web sites. Certain exceptions may be permitted with the approval of a supervisor as a function of an assignment.

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Downloaded information shall be limited to messages, mail and data files, which shall be subject to audit and review by the Department without notice. No copyrighted and/or unlicensed software program files may be downloaded.

Employees shall report any unauthorized access to the system or suspected intrusion from outside sources (including the Internet) to a supervisor.



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## Report Preparation

### 320.1 PURPOSE AND SCOPE

Report preparation is a major part of each investigator's job. The purpose of reports is to document sufficient information to refresh the investigator's memory and to provide sufficient information for follow-up investigation and successful prosecution. Report writing is the subject of substantial formalized training and on-the-job training.

#### 320.1.1 REPORT PREPARATION

Investigators are required to complete sufficiently detailed reports related to all "Requests for Investigation" submitted to the Bureau of Investigation and assigned to the individual Investigator unless otherwise directed by a supervisor. Investigators are required to ensure reports have been submitted for supervisory approval and in the process of discovery by the required date referenced on the Request for Investigation form. If an Investigator is unable to complete the investigation by the required date, he/she shall notify their supervisor of the circumstances and provide a case status update.

Reports related to in custody arrests shall be completed and approved by a supervisor prior to the end of an Investigator's shift unless otherwise directed by a supervisor.

Employees should ensure that reports are sufficiently detailed for their purpose and free from errors prior to submission.

All reports shall accurately reflect the identity of the persons involved, all pertinent information seen, heard or assimilated by any other sense, and any actions taken. Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing. Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such.

Investigators shall submit reports to their assigned supervisor for approval. If the Investigator's immediate supervisor is not available, the Investigator may defer to the next available supervisor for approval of their report. It is the responsibility of the Investigator to communicate the deferment of approval to the next available supervisor to ensure the report is fully completed in a timely manner.

### 320.2 REQUIRED REPORTING

Written reports are required in all of the following situations.

#### 320.2.1 CRIMINAL ACTIVITY

When a member responds to a call for service, or as a result of self-initiated activity becomes aware of any activity where a crime has occurred, the member shall document the incident regardless of whether a victim desires prosecution. Activity to be documented in a written report includes:

- (a) All arrests

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- (b) All felony crimes
- (c) Non-Felony incidents involving threats or stalking behavior
- (d) Situations covered by separate policy. These include:
  - 1. Use of Force Policy
  - 2. Domestic Violence Policy
  - 3. Child Abuse Policy
  - 4. Senior and Disability Victimization Policy
  - 5. Hate Crimes Policy
  - 6. Suspicious Activity Reporting Policy
- (e) All misdemeanor crimes where the victim desires a report

Misdemeanor crimes where the victim does not desire a report shall be documented using the [department/office]-approved alternative reporting method (e.g., dispatch log).

#### 320.2.2 NON-CRIMINAL ACTIVITY

The following incidents shall be documented using the appropriate approved report:

- (a) Anytime an investigator points a firearm at any person
- (b) Any use of force against any person by a member of this [department/office] (see the Use of Force Policy)
- (c) Any firearm discharge (see the Firearms Policy)
- (d) Anytime a person is reported missing, regardless of jurisdiction (see the Missing Persons Policy)
- (e) Any found property or found evidence
- (f) Any traffic collisions above the minimum reporting level (see Traffic Collision Reporting Policy)
- (g) Suspicious incidents that may indicate a potential for crimes against children or that a child's safety is in jeopardy
- (h) All protective custody detentions
- (i) Suspicious incidents that may place the public or others at risk
- (j) Whenever the employee believes the circumstances should be documented or at the direction of a supervisor

#### 320.2.3 DEATH CASES

Death investigations require specific investigation methods depending on circumstances and should be handled in accordance with the Death Investigations Policy. The handling investigator should notify and apprise a supervisor of the circumstances surrounding the incident to determine

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how to proceed. The following cases shall be appropriately investigated and documented using the approved report:

- (a) Sudden or accidental deaths.
- (b) Suicides.
- (c) Homicide or suspected homicide.
- (d) Unattended deaths (No physician or qualified hospice care in the 20 days preceding death).
- (e) Found dead bodies or body parts.

#### **320.2.4 MISCELLANEOUS INJURIES**

Any injury that is reported to this [department/office] shall require a report when:

- (a) The injury is a result of drug overdose
- (b) Attempted suicide
- (c) The injury is major/serious, whereas death could result
- (d) The circumstances surrounding the incident are suspicious in nature and it is desirable to record the event

The above reporting requirements are not intended to be all-inclusive. A supervisor may direct an employee to document any incident he/she deems necessary.

#### **320.2.5 MANDATORY REPORTING OF JUVENILE GUNSHOT INJURIES**

A report shall be taken when any incident in which a child 18 years or younger suffered an unintentional or self-inflicted gunshot wound. The Records shall notify the California Department of Public Health (CDPH) of the incident as required by CDPH (Penal Code § 23685).

#### **320.3 REPORT CORRECTIONS**

Supervisors shall review reports for content and accuracy. If a correction is necessary, the reviewing supervisor should reject the report by returning it to the Investigator and clearly indicate the reasons for rejection. It shall be the responsibility of the originating investigator to ensure that any report returned for correction is processed in a timely manner.

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## Media Relations

### 321.1 PURPOSE AND SCOPE

This policy provides guidelines for the release of official [department/office] information to the media. It also addresses coordinating media access to scenes of disasters, criminal investigations, emergencies, and other law enforcement activities.

### 321.2 RESPONSIBILITIES

The ultimate authority and responsibility for the release of information to the media shall remain with the Chief Investigator, or their designee.

### 321.3 ACCESS

Authorized media representatives shall be provided access to scenes of disasters, criminal investigations, emergencies, and other law enforcement activities as required by law.

Access by the media is subject to the following conditions (Penal Code § 409.5(d)):

- (a) The media representative shall produce valid press credentials that shall be prominently displayed at all times while in areas otherwise closed to the public. Media representatives may not bring or facilitate the transport of an unauthorized person into a closed area unless it is for the safety of the person.
- (b) Media representatives may be prevented from interfering with emergency operations and criminal investigations.
  - 1. Based upon available resources, reasonable effort should be made to provide a safe staging area for the media that is near the incident and that will not interfere with emergency or criminal investigation operations. All information released to the media should be coordinated through the [PIO] or other designated spokesperson.
- (c) No member of this [department/office] who is under investigation shall be subjected to media visits or interviews without the consent of the involved member (Government Code § 3303(e)).
- (d) Media interviews with individuals who are in custody should not be permitted without the approval of the Chief Investigator and the express consent of the person in custody.

#### 321.3.1 CRITICAL OPERATIONS

A critical incident or tactical operation should be handled in the same manner as a crime scene, except the media should not be permitted within the inner perimeter of the incident, subject to any restrictions as determined by the supervisor in charge. [Department/Office] members shall not jeopardize a critical incident or tactical operation in order to accommodate the media. All comments to the media shall be coordinated through a supervisor or the [PIO].

#### 321.3.2 TEMPORARY FLIGHT RESTRICTIONS

Whenever the presence of media or other aircraft pose a threat to public or member safety or significantly hamper incident operations, the field supervisor should consider requesting a

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Temporary Flight Restriction (TFR). All requests for a TFR should be routed through the Chief Investigator. The TFR request should include specific information regarding the perimeter and altitude necessary for the incident and should be requested through the appropriate control tower. If the control tower is not known, the Federal Aviation Administration (FAA) should be contacted (14 CFR 91.137).

#### **321.4 POLICY**

It is the policy of the Kings County District Attorney Investigation Division to protect the privacy rights of individuals, while releasing non-confidential information to the media regarding topics of public concern. Information that has the potential to negatively affect investigations will not be released.

#### **321.5 MEDIA REQUESTS**

Any media request for information or access to a law enforcement incident shall be referred to the [PIO], or if unavailable, to the first available supervisor. Prior to releasing any information to the media, members shall consider the following:

- (a) At no time shall any member of this [department/office] make any comment or release any official information to the media without prior approval from a supervisor or the [PIO].
- (b) In situations involving multiple agencies or government departments, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this [department/office].
- (c) Under no circumstance should any member of this [department/office] make any comments to the media regarding any law enforcement incident not involving this [department/office] without prior approval of the Chief Investigator. Under these circumstances the member should direct the media to the agency handling the incident.

#### **321.6 CONFIDENTIAL OR RESTRICTED INFORMATION**

It shall be the responsibility of the [PIO] to ensure that confidential or restricted information is not inappropriately released to the media (see the Records Maintenance and Release and Personnel Records policies). When in doubt, authorized and available legal counsel should be consulted prior to releasing any information.

##### **321.6.1 EMPLOYEE INFORMATION**

The identities of investigators involved in shootings or other critical incidents may only be released to the media upon the consent of the involved investigator or upon a formal request filed.

Any requests for copies of related reports or additional information not contained in the information log (see the Information Log section in this policy), including the identity of investigators involved in shootings or other critical incidents, shall be referred to the [PIO].

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Requests should be reviewed and fulfilled by the Custodian of Records, or if unavailable, the Chief Investigator or the authorized designee. Such requests will be processed in accordance with the provisions of the Records Maintenance and Release Policy and public records laws.

#### **321.7 RELEASE OF INFORMATION**

The [Department/Office] may routinely release information to the media without receiving a specific request. This may include media releases regarding critical incidents, information of public concern, updates regarding significant incidents, or requests for public assistance in solving crimes or identifying suspects. This information may also be released through the [department/office] website or other electronic data sources.

##### **321.7.1 INFORMATION LOG**

The [Department/Office] will maintain a daily information log of significant law enforcement activities. Log entries shall only contain information that is deemed public information and not restricted or confidential by this policy or applicable law. Upon request, the log entries shall be made available to media representatives through the Chief Investigator.

The daily information log will generally include:

- (a) The date, time, location, case number, type of crime, extent of injury or loss, and names of individuals involved in crimes occurring within this jurisdiction, unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation, or the information is confidential (e.g., juveniles or certain victims).
- (b) The date, time, location, case number, name, birth date, and charges for each person arrested by this [department/office], unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation or the information is confidential (e.g., juveniles).
- (c) The time and location of other significant law enforcement activities or requests for service with a brief summary of the incident.

At no time shall identifying information pertaining to a juvenile arrestee (13 years of age and under), victim, or witness be publicly released without prior approval of a competent court. The identity of a minor 14 years of age or older shall not be publicly disclosed unless the minor has been arrested for a serious felony and the release of such information has been approved by the Chief Investigator (Welfare and Institutions Code § 827.5).

Identifying information concerning deceased individuals shall not be released to the media until notification of next of kin or otherwise cleared through the [Medical Examiner/JOP].

Any requests for copies of related reports or additional information not contained in this log shall be referred to the designated [department/office] media representative, the custodian of records, or if unavailable, to the Chief Investigator. Such requests will generally be processed in accordance with the provisions of the Public Records Act (see the Records Maintenance and Release Policy).

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## Subpoenas and Court Appearances

### 322.1 PURPOSE AND SCOPE

This policy establishes the guidelines for department members who must appear in court. It will allow the Kings County District Attorney Investigation Division to cover any related work absences and keep the Department informed about relevant legal matters.

### 322.2 POLICY

Kings County District Attorney Investigation Division members will respond appropriately to all subpoenas and any other court-ordered appearances.

#### 322.2.1 VALID SUBPOENAS

No subpoena shall be accepted for an employee of this department unless it has been properly served and verified to have originated from a recognized legal authority.

### 322.3 CIVIL SUBPOENAS

The Department will compensate employees who appear in their official capacity on civil matters arising out of the employee's official duties as directed by the current Memorandum of Understanding. In such situations, the Department will also reimburse any investigator for reasonable and necessary travel expenses.

The Department will receive reimbursement for the investigator's compensation through the civil attorney of record who subpoenaed the investigator.

#### 322.3.1 PROCEDURE

To ensure that the investigator is able to appear when required, that the investigator is compensated for such appearance, and to protect the Department's right to reimbursement, investigators shall follow the established procedures for the receipt of a civil subpoena.

#### 322.3.2 CIVIL SUBPOENA

The Department will compensate members who appear in their official capacities on civil matters arising out of their official duties, as directed by the current memorandum of understanding or collective bargaining agreement.

The Department should seek reimbursement for the member's compensation through the civil attorney of record who subpoenaed the member.

#### 322.3.3 OFF-DUTY RELATED SUBPOENAS

Members receiving valid subpoenas for off-duty actions not related to their employment or appointment will not be compensated for their appearance. Arrangements for time off shall be coordinated through their immediate supervisors.

### 322.4 OVERTIME APPEARANCES

If the investigator appeared on his/her off-duty time, he/she will be compensated in accordance with the current employee Memorandum of Understanding.

## *Subpoenas and Court Appearances*

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The overtime on such appearance will be paid from the time the investigator left his/her residence until he/she returned.

### **322.5 COURTROOM PROTOCOL**

Employees must be punctual when appearing in court and shall be prepared to proceed immediately with the case for which they are subpoenaed.

#### **322.5.1 PREPARATION FOR TESTIMONY**

Before the date of testifying, the subpoenaed investigator shall request a copy of relevant reports and become familiar with their content in order to be prepared for court.

#### **322.5.2 COURTROOM ATTIRE**

Employees should dress in business attire. Suitable business attire for men would consist of a coat, tie, and dress pants. Suitable business attire for female employees would consist of a dress jacket, dress blouse, and skirt or slacks.

### **322.6 COURTHOUSE DECORUM**

Employees shall observe all rules of the court in which they are appearing, refrain from smoking or chewing gum in the courtroom, and shall remain alert to changes in the assigned courtroom where their matter is to be heard.

### **322.7 TESTIFYING AGAINST THE INTEREST OF THE PEOPLE OF THE STATE**

Any member or employee who is subpoenaed to testify, who has agreed to testify, or who anticipates testifying or providing information on behalf of or at the request of any party other than the People of the State of California, any county, any city, or any of their officers and employees in which any of those entities are parties, will notify their immediate supervisor without delay. The supervisor will then notify the Chief Investigator, District Attorney's Office in criminal cases, County Counsel or City Attorney, as may be indicated by the case.

This includes, but is not limited to the following situations:

- (a) Providing testimony or information for the defense in any criminal trial or proceeding;
- (b) Providing testimony or information for the plaintiff in a civil proceeding against any county, any city, or their officers and employees; or
- (c) Providing testimony or information on behalf of or at the request of any party other than any County, city, or any county or city official in any administrative proceeding, including but not limited to personnel and/or disciplinary matter.



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## Outside Agency Assistance

### 323.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to investigators in the request of or answering the request for assistance involving another law enforcement agency.

It is the policy of this department to provide assistance whenever possible, consistent with the applicable laws of arrest and detention policies of this department, when another law enforcement agency requests assistance with an arrest or detention of any person. This department may also request an outside agency to provide assistance.

#### 323.1.1 ASSISTING OUTSIDE AGENCIES

Generally, calls for assistance from other agencies are routed to the Chief or Assistant Chief for approval. When an authorized employee of an outside agency requests the assistance of this department in taking a person into custody, available investigators shall respond and assist in making a lawful arrest. If an investigator receives a request in the field for assistance, that investigator shall notify a supervisor. Arrestees may be temporarily detained by our agency until arrangements for transportation are made by the outside agency. Only in exceptional circumstances will this department provide transportation of arrestees to other county facilities.

When such assistance is rendered, a case number will be issued to report action taken by Kings County District Attorney Investigation Division Personnel. Probation violators temporarily detained by this department will not ordinarily be booked at this department.

#### 323.1.2 REQUESTING ASSISTANCE FROM OUTSIDE AGENCIES

If assistance is needed from another agency, the employee requesting assistance shall first notify a supervisor of his/her intentions. The handling investigator or supervisor should direct assisting personnel to where they are needed and to whom they should report when they arrive.

The requesting investigator should secure radio frequencies for use by all involved agencies so that communication can be coordinated as needed. If necessary, reasonable effort should be taken to provide radio equipment capable of communicating on the assigned frequency to any personnel who do not have compatible radios.

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## Handcuff Policy

### 354.1 PURPOSE AND SCOPE

This procedure provides guidelines for handling situations involving handcuffing during detentions and arrests. This policy is also applicable to Flexcuffs, which will be considered synonymous with handcuffs for purposes of this policy.

### 354.2 HANDCUFFING POLICY

Although recommended for most arrest situations, handcuffing is a discretionary procedure and not an absolute rule of the Department. When deciding whether to handcuff an arrestee, investigators should carefully balance officer safety concerns with factors including, but not limited to the following:

- The circumstances leading to the arrest.
- The attitude and behavior of the arrested person.
- The age, sex and health of the person.
- Whether the person has a hearing or speaking disability. In such cases consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes.
- Whether the person has any other apparent disability.

It is not the intent of the Department to dissuade investigators from handcuffing all persons they believe warrant that degree of restraint, nor is it the intent of this policy to create the atmosphere that in order to avoid risk, an investigator should handcuff all persons regardless of the circumstances. In most situations handcuffs should be applied with the hands behind the person. Handcuffs should be removed as soon as the arrested person is safely confined within the jail.

#### 354.2.1 IMPROPER USE OF HANDCUFFS

Handcuffing is never done to punish, to display authority, or as a show of force. Persons are handcuffed only to restrain their hands to ensure officer safety. When practical, handcuffs shall be double locked to prevent tightening which may cause undue discomfort or injury to the hands or wrists.

#### 354.2.2 JUVENILES

Juveniles 14-years of age or older may be handcuffed when the act committed is of a felonious nature or when their acts have amounted to crimes where the investigator has a reasonable suspicion the suspect may have a desire to escape, injure themselves, injure the investigator, or destroy property.

Juveniles under 14-years of age generally will not be handcuffed unless their acts have amounted to a dangerous felony or when they are of a state of mind which suggests a reasonable probability of their desire to escape, injure themselves, the investigator, or to destroy property.

*Handcuff Policy*

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**354.2.3 HANDCUFFING OF DETAINEES**

Situations may arise where it may be reasonable to handcuff an individual who may, after subsequent investigation, be released prior to arrest. Such a situation is considered a detention, rather than an actual arrest. Unless arrested, the use of handcuffs on detainees should continue for only as long as is reasonably necessary to assure the safety of investigators and others. Investigators should continuously weigh the safety interests at hand against the intrusion upon the detainee when deciding to remove handcuffs from a detainee.

When an individual is handcuffed and released without an arrest, a written report of the incident shall be made to document the details of the detention and need for use of handcuffs.

**354.2.4 HANDCUFFING OF PREGNANT ARRESTEES**

No arrestee who is in labor shall be handcuffed or restrained by the wrists, ankles or both unless it is reasonably necessary for the safety of the arrestee, investigators or others (Penal Code § 6030).

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## Registered Offender Information

### 324.1 PURPOSE AND SCOPE

This policy establishes guidelines by which the Kings County District Attorney Investigation Division will address issues associated with certain offenders who are residing in the jurisdiction and how the [Department/Office] will disseminate information and respond to public inquiries for information about registered sex, arson and drug offenders.

### 324.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division to identify registered offenders living within this jurisdiction and to take reasonable steps to address the risks those persons may pose.

### 324.3 REGISTRATION

Information about a specific offender may be publicly disclosed by way of the department Internet Web site only when the Department determines that such disclosure is necessary to ensure the public safety (Penal Code § 290.46(g)).

#### 324.3.1 CONTENTS OF REGISTRATION

The information collected from the registering offenders shall include a signed statement as required by the California DOJ, fingerprints and a photograph, and any other information required by applicable law (Penal Code § 457.1; Penal Code § 290 et seq.).

### 324.4 MONITORING OF REGISTERED OFFENDERS

As a general rule information may not be given over the telephone. Members of the public may access detailed sexual offender information by way of their personal computer through the Internet at the Megan's Law Web site maintained by the Department of Justice ([www.meganslaw.ca.gov](http://www.meganslaw.ca.gov)). They may also submit a list of at least six persons directly to the Department of Justice on a designated form to inquire whether any of those persons are required to register as a sex offender and are subject to public notification (Department of Justice fees may apply) (Penal Code § 290.4(a)).

### 324.5 DISSEMINATION OF PUBLIC INFORMATION

Members will not unilaterally make a public notification advising the community of a particular registrant's presence in the community. Members who identify a significant risk or other public safety issue associated with a registrant should promptly advise their supervisor. The supervisor should evaluate the request and forward the information to the Chief Investigator if warranted. A determination will be made by the Chief Investigator, with the assistance of legal counsel as necessary, whether such a public alert should be made.

Members of the public requesting information on sex registrants should be provided the Megan's Law website or the Kings County District Attorney Investigation Division's website. Information on

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## Kings County District Attorney Bureau of Investigations Policy Manual

### *Registered Offender Information*

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sex registrants placed on the Kings County District Attorney Investigation Division's website shall comply with the requirements of Penal Code § 290.46.

The Investigator may release local registered offender information to residents only in accordance with applicable law and in compliance with a California Public Records Act request (Government Code § 7920.000 et seq.; Penal Code § 290.45; Penal Code § 290.46; Penal Code § 457.1).

#### 324.5.1 LIMITED RELEASE WITHIN COLLEGE CAMPUS COMMUNITY

California law allows the following additional information regarding a registered sex offender on campus, whose information is not available to the public via the internet website, to be released to a campus community (Penal Code § 290.01(d)):

- (a) The offender's full name
- (b) The offender's known aliases
- (c) The offender's sex
- (d) The offender's race
- (e) The offender's physical description
- (f) The offender's photograph
- (g) The offender's date of birth
- (h) Crimes resulting in the registration of the offender under Penal Code § 290
- (i) The date of last registration

For purposes of this section, campus community shall be defined as those persons present at or regularly frequenting any place constituting campus property, satellite facilities, laboratories, public areas contiguous to the campus and other areas set forth in Penal Code § 290.01(d).

#### 324.5.2 RELEASE NOTIFICATIONS

Registrant information that is released should include notification that:

- (a) The offender registry includes only those persons who have been required by law to register and who are in compliance with the offender registration laws.
- (b) The information is provided as a public service and may not be current or accurate.
- (c) Persons should not rely solely on the offender registry as a safeguard against offenses in their communities.
- (d) The crime for which a person is convicted may not accurately reflect the level of risk.
- (e) Anyone who uses information contained in the registry to harass registrants or commit any crime may be subject to criminal prosecution.
- (f) The purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders (Penal Code 290.45).

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## Major Incident Notification

### 325.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members of this department in determining when, how and to whom notification of major incidents should be made.

### 325.2 POLICY

The Kings County District Attorney Investigation Division recognizes that certain incidents should be brought to the attention of supervisors or other specified personnel of this department to facilitate the coordination of activities and ensure that inquiries from the media and the public may be properly addressed.

### 325.3 MINIMUM CRITERIA FOR NOTIFICATION

Most situations where the media show a strong interest are also of interest to the Chief Investigator. The following list of incident types is provided as a guide for notification and is not intended to be all inclusive:

- Homicides
- Traffic accidents with fatalities
- Officer-involved shooting - on or off duty (see Officer-Involved Shootings and Deaths Policy for special notifications)
- Significant injury or death to employee - on or off duty
- Death of a prominent Kings official
- Arrest of a department employee or prominent Kings official
- Aircraft crash with major damage and/or injury or death
- In-custody deaths

### 325.4 SUPERVISOR RESPONSIBILITY

The Supervisor is responsible for making the appropriate notifications to the Chief Investigator and Assistant Chief Investigator. The Supervisor shall make reasonable attempts to obtain as much information on the incident as possible before notification. The Supervisor shall attempt to make the notifications as soon as practicable.

#### 325.4.1 CHIEF INVESTIGATOR (PIO)

The Chief Investigator shall be called after members of staff have been notified that it appears the media may have a significant interest in the incident.

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## Death Investigation

### 326.1 PURPOSE AND SCOPE

The investigations of cases involving death include those ranging from natural cause to homicide. Some causes of death may not be readily apparent and some cases differ substantially from what they appeared to be initially. The thoroughness of death investigations cannot be emphasized enough.

### 326.2 INVESTIGATION CONSIDERATIONS

Death investigation cases require certain actions be taken. Paramedics shall be called in all suspected death cases unless the death is obvious (decapitated, decomposed, etc.). A supervisor shall be notified in all death investigations.

#### 326.2.1 SEARCHING DEAD BODIES

The Coroner or Deputy Coroner is generally the only person permitted to search a body known to be dead from any of the circumstances set forth in Government Code § 27491. The only exception is that an investigator is permitted to search the body of a person killed in a traffic collision for the limited purpose of locating an anatomical donor card (Government Code § 27491.3). If such a donor card is located, the Coroner or a designee shall be promptly notified. Should exigent circumstances indicate to an investigator that any search of a known dead body is warranted prior to the arrival of the Coroner or a designee; the investigating investigator shall first obtain verbal consent from the Coroner or a designee (Government Code § 27491.2).

Whenever possible, a witness, preferably a relative to the deceased or a member of the household, should be requested to remain at the scene with the investigator pending the arrival of the Coroner or a designee. The name and address of this person shall be included in the narrative of the death report. Whenever personal effects are removed from the body of the deceased by the Coroner or a designee, a receipt shall be obtained. This receipt shall be attached to the death report.

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## Identity Theft

### 327.1 PURPOSE AND SCOPE

Identity theft is a growing trend that frequently involves related crimes in multiple jurisdictions. This policy is intended to provide guidelines for the reporting and investigation of such crimes.

### 327.2 REPORTING

- (a) In an effort to maintain uniformity in reporting, investigators presented with the crime of identity theft (Penal Code § 530.6) shall initiate a report for victims residing within the jurisdiction of this department when the crime occurred. For incidents of identity theft occurring outside this jurisdiction, investigators should observe the following:
  - 1. For any victim not residing within this jurisdiction, the investigator may either take a courtesy report to be forwarded to the victim's residence agency or the victim should be encouraged to promptly report the identity theft to the law enforcement agency where he or she resides.
- (b) While the crime of identity theft should be reported to the law enforcement agency where the victim resides, investigators of this department should investigate and report crimes occurring within this jurisdiction which have resulted from the original identity theft (e.g., the identity theft occurred elsewhere, but the credit card fraud occurred and is reported in this jurisdiction).
- (c) Investigators should include all known incidents of fraudulent activity (e.g., credit card number applied for in victim's name when the victim has never made such an application).
- (d) Investigators should also cross-reference all known reports made by the victim (e.g., U.S. Secret Service, credit reporting bureaus, U.S. Postal Service and DMV) with all known report numbers.
- (e) The reporting investigator should inform victims of identity theft that the California Identity Theft Registry is available to help those who are wrongly linked to crimes. The registry can be checked by law enforcement and other authorized persons to investigate whether a criminal history or want was created in the victim's name (Penal Code § 530.7). Information regarding the California Identity Theft Registry can be obtained by calling toll free (888) 880-0240.
- (f) Following supervisory review and departmental processing, the initial report should be forwarded to the appropriate detective for follow up investigation, coordination with other agencies and prosecution as circumstances dictate.



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## Private Persons Arrests

### 328.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the handling of private person's arrests made pursuant to Penal Code § 837.

### 328.2 ADVISING PRIVATE PERSONS OF THE ARREST PROCESS

Penal Code § 836(b) expressly mandates that all investigators shall advise victims of domestic violence of the right to make a private person's arrest, including advice on how to safely execute such an arrest. In all other situations, investigators should use sound discretion in determining whether or not to advise an individual of the arrest process.

- (a) When advising any individual regarding the right to make a private person's arrest, investigators should refrain from encouraging or dissuading any individual from making such an arrest and should instead limit advice to the legal requirements for such an arrest as listed below.
- (b) Private individuals should be discouraged from using force to effect a private person's arrest, and absent immediate threat to their own safety or the safety of others, private individuals should be encouraged to refer matters to law enforcement officials for further investigation or arrest.

### 328.3 ARRESTS BY PRIVATE PERSONS

Penal Code § 837 provides that a private person may arrest another:

- (a) For a public offense committed or attempted in his or her presence;
- (b) When the person arrested has committed a felony, although not in his or her presence;
- (c) When a felony has been in fact committed, and he or she has reasonable cause for believing the person arrested has committed it.

Unlike peace officers, private persons may not make an arrest on suspicion that a felony has been committed - the felony must in fact have taken place.

### 328.4 INVESTIGATOR RESPONSIBILITIES

Any investigator presented with a private person wishing to make an arrest must determine whether or not there is reasonable cause to believe that such an arrest would be lawful (Penal Code § 847).

- (a) Should any investigator determine that there is no reasonable cause to believe that a private person's arrest is lawful, the investigator should take no action to further detain or restrain the individual beyond that which reasonably appears necessary to investigate the matter, determine the lawfulness of the arrest and protect the public safety.

### *Private Persons Arrests*

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1. Any investigator who determines that a private person's arrest appears to be unlawful should promptly release the arrested individual pursuant to Penal Code § 849(b)(1). The investigator must include the basis of such a determination in a related report.
  2. Absent reasonable cause to support a private person's arrest or other lawful grounds to support an independent arrest by the investigator, the investigator should advise the parties that no arrest will be made and that the circumstances will be documented in a related report.
- (b) Whenever an investigator determines that there is reasonable cause to believe that a private person's arrest is lawful, the investigator may exercise any of the following options:
1. Take the individual into physical custody for booking
  2. Release the individual pursuant to a Notice to Appear
  3. Release the individual pursuant to Penal Code § 849

#### **328.5 REPORTING REQUIREMENTS**

In all circumstances in which a private person is claiming to have made an arrest, the individual must complete and sign a department Private Person's Arrest form under penalty of perjury.

In addition to the Private Person's Arrest Form (and any other related documents such as citations, booking forms, etc.), investigators shall complete a narrative report regarding the circumstances and disposition of the incident.

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## Limited English Proficiency Services

### 329.1 PURPOSE AND SCOPE

Language barriers can sometimes inhibit or even prohibit individuals with limited English proficiency (LEP) from gaining meaningful access to, or an understanding of important rights, obligations and services. It is therefore the policy of this department to take all reasonable steps to ensure timely and equal access to all individuals, regardless of national origin or primary language (Title VI of the Civil Rights Act of 1964, § 601, 42 USC 2000d).

#### 329.1.1 DEFINITIONS

Definitions related to this policy include:

**Authorized interpreter** - Any employee who is bilingual and has successfully completed department-prescribed interpreter training and is authorized to act as an interpreter or translator.

**Bilingual** - The ability to communicate in two languages fluently, including the ability to communicate technical and law enforcement terminology. Bilingual includes a variety of skill levels. For example, some bilingual individuals may be fluent enough to engage in direct communications in a non-English language but insufficiently fluent to interpret or translate from one language into another. For example, a bilingual individual, depending on his/her skill level, could be utilized to communicate fluently in a non-English language but not to interpret between two languages if he/she does not possess the specialized skills necessary to interpret between two languages effectively. In order to be utilized to interpret or translate from one language into another, an individual must possess the skill, training and demonstrated competence to do so. For purposes of this policy, employees, in order to be identified as bilingual, must initially and periodically demonstrate, through a procedure to be established by the Department, their level of skill and competence such that the Department is able to determine the purposes for which an employee's language skills may be used.

**Interpretation** - The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.

**Limited English Proficient (LEP)** - Designates individuals whose primary language is not English and who have a limited ability to read, write, speak or understand English. LEP individuals may be competent in certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing). Similarly, LEP designations are context-specific: An individual may possess sufficient English language skills to function in one setting but these skills may be insufficient in other situations.

**Translation** - The replacement of written text from one language (source language) into an equivalent written text (target language).

### 329.2 FOUR FACTOR ANALYSIS

Since there are potentially hundreds of languages department personnel could encounter, the Department will utilize the four-factor analysis outlined in the Department of Justice LEP *Guidance*

### *Limited English Proficiency Services*

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to *Federal Financial Assistance Recipients* available at the DOJ [website](#) in determining which measures will provide reasonable and meaningful access to various rights, obligations, services and programs to everyone. It is recognized that law enforcement contacts and circumstances will vary considerably. This analysis therefore, must remain flexible and requires an ongoing balance of the following four factors:

- (a) The number or proportion of LEP individuals eligible to be served or likely to be encountered by department personnel or who may benefit from programs or services within the Department's jurisdiction or a particular geographic area.
- (b) The frequency with which LEP individuals are likely to come in contact with department personnel, programs or services.
- (c) The nature and importance of the contact, program, information or service provided.
- (d) The cost of providing LEP assistance and the resources available.

As indicated above, the intent of this analysis is to provide a balance that reasonably ensures meaningful access by LEP individuals to critical services while not imposing undue burdens on the Department its personnel.

While this department will not discriminate against or deny any individual access to services, rights or programs based upon national origin or any other protected interest or right, the above analysis will be utilized to determine the availability and level of assistance provided to any LEP individual or group.

#### **329.2.1 IDENTIFICATION OF LEP INDIVIDUAL'S LANGUAGE**

The Department will utilize all reasonably available tools when attempting to determine an LEP individual's primary language in an effort to avoid misidentifying that language.

#### **329.3 TYPES OF LEP ASSISTANCE AVAILABLE**

Depending on the balance of the above four factors, this department will make every reasonable effort to provide meaningful and timely assistance to LEP individuals through a variety of services, where available. LEP individuals may elect to accept interpreter services offered by the Department at no cost or choose to provide their own interpreter services at their own expense. Department personnel should document in any related report whether the LEP individual elected to use interpreter services provided by the Department or some other source. Department-provided interpreter services may include, but are not limited to, the assistance methods described in this section.

#### **329.3.1 BILINGUAL PERSONNEL**

Personnel utilized for LEP services need not be certified as interpreters, but must have demonstrated, through established department procedures, a level of competence to ascertain whether his/her language skills are best suited to monolingual communications, interpretation, translation, or all or none of these functions.

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All personnel used for communication with LEP individuals must demonstrate knowledge of the functions of an interpreter and the ethical issues involved when acting as a language conduit. In addition, employees who serve as interpreters and/or translators must have demonstrated competence in both English and the non-English language. When bilingual personnel from this department are not available, personnel from other city departments who have the requisite training may be requested.

#### **329.3.2 WRITTEN FORMS AND GUIDELINES**

This department will determine the most frequently used and critical forms and guidelines and translate these documents into the languages most likely to be requested. The Department will arrange to make these translated forms available to department personnel and other appropriate individuals.

#### **329.3.3 AUDIO RECORDINGS**

The Department may develop audio recordings of information that is either important to or frequently requested by LEP individuals for broadcast in a language most likely to be understood by involved LEP individuals.

#### **329.3.4 TELEPHONE INTERPRETER SERVICES**

The Chief Investigator will maintain a list of qualified interpreter services. These services shall be available, with the approval of a supervisor, to assist department personnel in communicating with LEP individuals via official cellular telephones.

#### **329.3.5 COMMUNITY VOLUNTEERS AND OTHER SOURCES OF INTERPRETATION**

Where competent bilingual departmental personnel or other County-certified staff are unavailable to assist, responsible members of the community who have demonstrated competence in either monolingual (direct) communication and/or in interpretation and translation (as noted in above) may be called upon to assist in communication efforts. Sources for these individuals may include neighboring police departments, university languages and linguistics departments, local businesses, banks, churches, neighborhood leaders and school officials. Department personnel should ensure that community members are able to provide unbiased assistance. The nature of the contact and relationship between the LEP individual and the individual offering services must be carefully considered (e.g., victim/suspect).

Except for exigent or very informal and non-confrontational circumstances, the use of an LEP individual's bilingual friends or family members, particularly children, are generally not recommended and department personnel shall make case-by-case determinations on the appropriateness of using such individuals (for further guidance see: Section V(3) of the DOJ Final Guidance available at the DOJ [website](#)).

#### **329.4 LEP CONTACT SITUATIONS AND REPORTING**

While all law enforcement contacts, services and individual rights are important, this department will utilize the four-factor analysis to prioritize language services so that they may be targeted where they are most needed.

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### *Limited English Proficiency Services*

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Whenever any member of this department is required to complete a report or when other documentation and interpretation or translation services are provided to any involved LEP individual, such services should be noted in the related report.

#### 329.4.1 FIELD ENFORCEMENT AND INVESTIGATIONS

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts which may involve LEP individuals. The scope and nature of these activities and contacts will inevitably vary. Department personnel must assess each situation to determine the need and availability for translation services to all involved LEP individuals and utilize the methods outlined in § 368.3 to provide appropriate language assistance.

Although not every situation can be addressed in this policy, it is important that department personnel are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action taken with an LEP individual. It would, for example, be meaningless to request consent to search if the person requesting is unable to effectively communicate with an LEP individual.

#### 329.4.2 INVESTIGATIVE INTERVIEWS

In any situation where the translation of an interview may contain information that might be used in a criminal trial, it is important to take certain steps to improve the chances of admissibility. This includes interviews conducted during an investigation with victims, witnesses and suspects. In such situations, audio recordings of the interviews should be made when reasonably possible. Identification and contact information for the interpreter (e.g., name, address) should be documented so that the person can be subpoenaed for trial if necessary.

Any person selected as an interpreter and/or translator must have demonstrated competence in both English and the non-English language involved and knowledge of the functions of an interpreter that allows for correct and effective translation, and should not be a person with an interest in the case. The person providing interpretation or translation services may be required to establish the accuracy and trustworthiness of the interpretation or translation to the court.

#### 329.4.3 CUSTODIAL INTERROGATIONS AND BOOKINGS

In an effort to ensure the rights of LEP individuals are protected during arrest and custodial interrogation, this department places a high priority on providing competent interpretation during such situations. It is further recognized that miscommunication during custodial interrogations may have a substantial impact on the evidence presented in any related criminal prosecution. As such, department personnel providing interpretation services or translated forms in these situations will have demonstrated competence in interpretation/translation and make every reasonable effort to accurately interpret/translate all communications with LEP individuals.

In order to ensure that translations during criminal investigations are documented accurately and admissible as evidence, audio recordings of interrogations, victim interviews and witness interviews should be used whenever reasonably possible.

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Employees providing interpretation or translation services shall also be aware of the inherent communication impediments to gathering information from the LEP individual throughout the booking process or any other situation in which an LEP individual is within the control of department personnel. Medical screening questions are commonly used to elicit information on an individual's medical needs, suicidal inclinations, presence of contagious diseases, potential illness, resulting symptoms upon withdrawal from certain medications, or the need to segregate the arrestee from other prisoners, therefore it is important for members of this department to make every reasonable effort to provide effective language services in these situations.

#### **329.5 TRAINING**

In an effort to ensure that all personnel in public contact positions (or having contact with those in custody) are properly trained, the Department will provide periodic training to personnel about LEP policies and procedures, including how to access department-authorized telephonic and in-person interpreters and other available resources.

The Training Coordinator shall be responsible for ensuring all new personnel receive LEP training and that all personnel receive refresher training at least once every two years thereafter. The Training Coordinator shall maintain records of all LEP training provided, with a copy in each member's training file, in accordance with established records retention schedules.

#### **329.6 INTERPRETERS AND TRANSLATORS**

Department personnel who are called upon to interpret, translate, or provide other language assistance will be trained annually on language skills competency (including specialized terminology) and ethical considerations.

- (a) **Assessment:** The Kings County District Attorney Investigation Division personnel identified as bilingual, who are willing to act as authorized interpreters, will have their language skills assessed by a professional interpreter using a structured assessment tool established by the Training Coordinator. Personnel found proficient in interpreting into and from the target language will be placed conditionally on the authorized interpreters list.
- (b) **Training:** All personnel conditionally placed on the authorized interpreter list must successfully complete the prescribed interpreter training within one year. After successful completion of interpreter training, the individual will be unconditionally placed on the authorized interpreter list. To complete interpreter training successfully, an interpreter must demonstrate proficiency in and ability to communicate information accurately in both English and in the target language; demonstrate knowledge in both languages of any specialized terms or phraseology and understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal advisor.
- (c) **Refresher course for authorized interpreters:** Personnel who have been unconditionally placed on the authorized interpreter list must receive refresher training annually or they will be removed from the authorized interpreter list. The Training

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Bureau shall be responsible for coordinating the annual refresher training and will maintain a record of training that the interpreters have received.

The LEP Coordinator will ensure that the authorized interpreters list is kept current and a copy is forwarded to the Communications Center.

**329.7 SUPPLEMENTAL MATERIALS PROVIDED TO DEPARTMENT EMPLOYEES**

The following materials will be made available to employees to assist in providing access and service to LEP individuals:

- (a) A list of departmental bilingual employees, languages spoken and contact and shift information
- (b) A list of department-certified interpretation services, bilingual interpreters, languages spoken and contact and availability information
- (c) The telephone number and access code of telephonic interpretation services
- (d) Language identification cards
- (e) Translated *Miranda* warning cards and other frequently used documents
- (f) Audio recordings/warnings that are developed in non-English languages

**329.8 MONITORING AND UPDATING LANGUAGE ASSISTANCE EFFORTS**

**329.8.1 LEP COORDINATOR**

The Chief Investigator will appoint an LEP Coordinator who is responsible for coordinating and implementing all aspects of the Kings County District Attorney Investigation Division LEP services to LEP individuals.

The LEP Coordinator shall assess demographic data, review contracted language access services utilization data, and consult with community-based organizations annually in order to determine if there are additional languages into which vital documents should be translated.

The LEP Coordinator will also be responsible for annually reviewing all new documents issued by the Kings County District Attorney Investigation Division to assess whether they should be considered vital documents and be translated.



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## Communications with Persons with Disabilities

### 330.1 PURPOSE AND SCOPE

This policy provides guidance to members when communicating with individuals with disabilities, including those who are deaf or hard of hearing, have impaired speech or vision, or are blind.

#### 330.1.1 DEFINITIONS

Definitions related to this policy include:

**Auxiliary aids** - Tools used to communicate with people who have a disability or impairment. They include, but are not limited to, the use of gestures or visual aids to supplement oral communication; a notepad and pen or pencil to exchange written notes; a computer or typewriter; an assistive listening system or device to amplify sound; a teletypewriter (TTY) or videophones (video relay service or VRS); taped text; qualified readers; or a qualified interpreter.

**Disability or impairment** - A physical or mental impairment that substantially limits a major life activity, including hearing or seeing, regardless of whether the disabled person uses assistive or adaptive devices or auxiliary aids. Individuals who wear ordinary eyeglasses or contact lenses are not considered to have a disability (42 USC § 12102).

**Qualified interpreter** - A person who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include oral interpreters, translators, sign language interpreters and intermediary interpreters.

### 330.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division to reasonably ensure that people with disabilities, including victims, witnesses, suspects and arrestees have equal access to law enforcement services, programs and activities. Members must make efforts to communicate effectively with individuals with disabilities.

The Department will not discriminate against or deny any individual access to services, rights or programs based upon disabilities.

### 330.3 AMERICANS WITH DISABILITIES (ADA) COORDINATOR

The Chief Investigator shall delegate certain responsibilities to an ADA Coordinator (28 CFR 35.107). The ADA Coordinator shall be appointed by, and directly responsible, to the Investigations Chief Investigator or the authorized designee.

The responsibilities of the ADA Coordinator shall include, but not be limited to:

- (a) Working with the County ADA coordinator regarding the Kings County District Attorney Investigation Division's efforts to ensure equal access to services, programs and activities.
- (b) Developing reports, new procedures, or recommending modifications to this policy.

### *Communications with Persons with Disabilities*

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- (c) Acting as a liaison with local disability advocacy groups or other disability groups regarding access to department services, programs and activities.
- (d) Ensuring that a list of qualified interpreter services is maintained and available to each Chief Investigator and Communications Supervisor. The list should include information regarding the following:
  - 1. Contact information
  - 2. Availability
- (e) Developing procedures that will enable members to access auxiliary aids or services, including qualified interpreters, and ensure the procedures are available to all members.
- (f) Ensuring signage is posted in appropriate areas, indicating that auxiliary aids are available free of charge to people with disabilities.
- (g) Ensuring appropriate processes are in place to provide for the prompt and equitable resolution of complaints and inquiries regarding discrimination in access to department services, programs and activities.

#### **330.4 FACTORS TO CONSIDER**

Because the nature of any law enforcement contact may vary substantially from one situation to the next, members of this department should consider all information reasonably available to them when determining how to communicate with an individual with a disability. Members should carefully balance all known factors in an effort to reasonably ensure people who are disabled have equal access to services, programs and activities. These factors may include, but are not limited to:

- (a) Members should not always assume that effective communication is being achieved. The fact that an individual appears to be nodding in agreement does not always mean he/she completely understands the message. When there is any doubt, members should ask the individual to communicate back or otherwise demonstrate their understanding.
- (b) The nature of the disability (e.g., deafness or blindness vs. hard of hearing or low vision).
- (c) The nature of the law enforcement contact (e.g., emergency vs. non-emergency, custodial vs. consensual contact).
- (d) The availability of auxiliary aids. The fact that a particular aid is not available does not eliminate the obligation to reasonably ensure access. However, in an emergency, availability may factor into the type of aid used.

#### **330.5 INITIAL AND IMMEDIATE CONSIDERATIONS**

Recognizing that various law enforcement encounters may be potentially volatile and/or emotionally charged, members should remain alert to the possibility of communication problems.

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Members should exercise special care in the use of all gestures, and verbal and written communication to minimize initial confusion and misunderstanding when dealing with any individual with known or suspected disabilities.

In a non-emergency situation, when a member knows or suspects an individual requires assistance to effectively communicate, the member shall identify the individual's choice of auxiliary aid or service.

The individual's preferred communication method must be honored unless another effective method of communication exists under the circumstances (28 CFR 35.160).

Factors to consider when determining whether an alternative method is effective include:

- (a) The methods of communication usually used by the individual.
- (b) The nature, length and complexity of the communication involved.
- (c) The context of the communication.

In emergency situations involving an imminent threat to the safety or welfare of any person, members may use whatever auxiliary aids and services that reasonably appear effective under the circumstances. This may include, for example, exchanging written notes or using the services of a person who knows sign language but is not a qualified interpreter, even if the person who is deaf or hard of hearing would prefer a qualified sign language interpreter or another appropriate auxiliary aid or service. Once the emergency has ended, the continued method of communication should be reconsidered. The member should inquire as to the individual's preference and give primary consideration to that preference.

If an individual who is deaf, hard of hearing or has impaired speech must be handcuffed while in the custody of the Kings County District Attorney Investigation Division, consideration should be given, safety permitting, to placing the handcuffs in the front of the body to facilitate communication using sign language or writing.

**330.6 TYPES OF ASSISTANCE AVAILABLE**

Kings County District Attorney Investigation Division members shall never refuse to assist an individual with disabilities who is requesting assistance. The Department will not charge anyone to receive auxiliary aids, nor shall they require anyone to furnish their own auxiliary aid or service as a condition for receiving assistance. The Department will make every reasonable effort to provide equal access and timely assistance to individuals who are disabled through a variety of services.

A person who is disabled may choose to accept department-provided auxiliary aids or services or they may choose to provide their own.

Department-provided auxiliary aids or services may include, but are not limited to, the assistance methods described in this policy.

### *Communications with Persons with Disabilities*

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#### **330.7 AUDIO RECORDINGS AND ENLARGED PRINT**

The Department may develop audio recordings to assist people who are blind or have a visual impairment with accessing important information. If such a recording is not available, members may read aloud from the appropriate form, for example a personnel complaint form, or provide forms with enlarged print.

#### **330.8 QUALIFIED INTERPRETERS**

A qualified interpreter may be needed in lengthy or complex transactions (e.g., interviewing a victim, witness, suspect or arrestee), if the individual to be interviewed normally relies on sign language or speechreading (lip-reading) to understand what others are saying. The qualified interpreter should not be a person with an interest in the case or investigation involving the disabled individual. A person providing interpretation services may be required to establish the accuracy and trustworthiness of the interpretation in a court proceeding.

Qualified interpreters should be:

- (a) Available within a reasonable amount of time but in no event longer than one hour if requested.
- (b) Experienced in providing interpretation services related to law enforcement matters.
- (c) Familiar with the use of VRS and/or video remote interpreting services.
- (d) Certified in either American Sign Language (ASL) or Signed English (SE).
- (e) Able to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.
- (f) Knowledgeable of the ethical issues involved when providing interpreter services.

Members should use department-approved procedures to request a qualified interpreter at the earliest reasonable opportunity, and generally not more than 15 minutes after a request for an interpreter has been made or it is reasonably apparent that an interpreter is needed. No individual who is disabled shall be required to provide his/her own interpreter (28 CFR 35.160).

#### **330.9 TTY AND RELAY SERVICES**

In situations where an individual without a disability would have access to a telephone (e.g., booking or attorney contacts), members must also provide those who are deaf, hard of hearing or have impaired speech the opportunity to place calls using an available TTY (also known as a telecommunications device for deaf people, or TDD). Members shall provide additional time, as needed, for effective communication due to the slower nature of TTY and TDD communications.

The Department will accept all TTY or TDD calls placed by those who are deaf or hard of hearing and received via a telecommunications relay service (28 CFR 35.162).

Note that relay services translate verbatim, so the conversation must be conducted as if speaking directly to the caller.

### *Communications with Persons with Disabilities*

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#### **330.10 COMMUNITY VOLUNTEERS**

Interpreter services may be available from community volunteers who have demonstrated competence in communication services, such as ASL or SE, and have been approved by the Department to provide interpreter services.

Where qualified interpreters are unavailable to assist, approved community volunteers who have demonstrated competence may be called upon when appropriate. However, department members must carefully consider the nature of the contact and the relationship between the individual with the disability and the volunteer to ensure that the volunteer can provide neutral and unbiased assistance.

#### **330.11 FAMILY AND FRIENDS**

While family or friends may offer to assist with interpretation, members should carefully consider the circumstances before relying on such individuals. The nature of the contact and relationship between the individual with the disability and the person offering services must be carefully considered (e.g., victim/suspect).

Children shall not be relied upon except in emergency or critical situations when there is no qualified interpreter reasonably available.

Adults may be relied upon when (28 CFR 35.160):

- (a) There is an emergency or critical situation and there is no qualified interpreter reasonably available.
- (b) The person with the disability requests that the adult interpret or facilitate communication and the adult agrees to provide such assistance, and reliance on that adult for such assistance is reasonable under the circumstances.

#### **330.12 REPORTING**

Whenever any member of this department is required to complete a report or other documentation, and communication assistance has been provided, such services should be noted in the related report. Members should document the type of communication services utilized and whether the individual elected to use services provided by the Department or some other identified source. If the individual's express preference is not honored, the member must document why another method of communication was used.

All written communications exchanged in a criminal case shall be attached to the report or placed into evidence.

#### **330.13 FIELD ENFORCEMENT**

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve individuals with disabilities. The scope and nature of these activities and contacts will inevitably vary.

### *Communications with Persons with Disabilities*

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The Department recognizes that it would be virtually impossible to provide immediate access to complete communication services to every member of this department. Members and/or supervisors must assess each situation and consider the length, complexity and importance of the communication, as well as the individual's preferred method of communication, when determining the type of resources to use and whether a qualified interpreter is needed.

Although not every situation can be addressed in this policy, it is important that members are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action. For example, it would be meaningless to verbally request consent to search if the investigator is unable to effectively communicate with an individual who is deaf or hard of hearing and requires communications assistance.

If available, investigators should obtain the assistance of a qualified interpreter before placing an individual with a disability under arrest. Individuals who are arrested and are assisted by service animals should be permitted to make arrangements for the care of such animals prior to transport.

#### **330.13.1 FIELD RESOURCES**

Examples of methods that may be sufficient for transactions, such as checking a license or giving directions to a location or for urgent situations such as responding to a violent crime in progress, may, depending on the circumstances, include such simple things as:

- (a) Hand gestures or visual aids with an individual who is deaf, hard of hearing or has impaired speech.
- (b) Exchange of written notes or communications.
- (c) Verbal communication with an individual who can speechread by facing the individual and speaking slowly and clearly.
- (d) Use of computer, word processing, personal communication device or similar device to exchange texts or notes.
- (e) Slowly and clearly speaking or reading simple terms to individuals who have a visual or mental impairment.

Members should be aware that these techniques may not provide effective communication as required by law and this policy depending on the circumstances.

#### **330.14 CUSTODIAL INTERROGATIONS**

In an effort to ensure that the rights of individuals who are deaf, hard of hearing or have speech impairment are protected during a custodial interrogation, this department will provide interpreter services before beginning an interrogation, unless exigent circumstances exist or the individual has made a clear indication that he/she understands the process and desires to proceed without an interpreter. The use of a video remote interpreting service should be considered, where appropriate, if a live interpreter is not available. *Miranda* warnings shall be provided to suspects who are deaf or hard of hearing by a qualified interpreter or by providing a written *Miranda* warning card.

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In order to ensure that communications during custodial investigations are accurately documented and are admissible as evidence, interrogations should be recorded whenever reasonably possible. See guidance on recording custodial interrogations in the Investigation and Prosecution Policy.

#### **330.15 ARREST AND BOOKINGS**

If an individual with speech or hearing disabilities is arrested, the arresting investigator shall use department-approved procedures to provide a qualified interpreter at the place of arrest or booking as soon as reasonably practicable, unless the individual indicates that he/she prefers a different auxiliary aid or service or the investigator reasonably determines another effective method of communication exists under the circumstances.

When gathering information during the booking process, members should remain alert to the impediments that often exist when communicating with those who are deaf, hard of hearing, who have impaired speech or vision, are blind, or have other disabilities. In the interest of the arrestee's health and welfare, the safety and security of the facility and to protect individual rights, it is important that accurate medical screening and booking information be obtained. If necessary, members should seek the assistance of a qualified interpreter whenever there is concern that accurate information cannot be obtained or that booking instructions may not be properly understood by the individual.

Individuals who require and possess personally owned communication aids (e.g., hearing aids, cochlear processors) should be permitted to retain them while in custody.

#### **330.16 COMPLAINTS**

The Department shall ensure that individuals with disabilities who wish to file a complaint regarding members of this department are able to do so. The Department may provide a qualified interpreter or forms in enlarged print, as appropriate. Complaints will be referred to the department ADA Coordinator.

Investigations into such complaints shall be handled in accordance with the Personnel Complaints Policy. Qualified interpreters used during the investigation of a complaint should not be members of this Department.

#### **330.17 TRAINING**

To ensure that all members who may have contact with individuals who are disabled are properly trained, the Department will provide periodic training that should include:

- (a) Awareness and understanding of this policy and related procedures, related forms and available resources.
- (b) Procedures for accessing qualified interpreters and other available resources.
- (c) Working with in-person and telephone interpreters and related equipment.

The Training Coordinator shall be responsible for ensuring new members receive training related to interacting with individuals who have disabilities, including individuals who are deaf, hard of hearing, who have impaired speech or vision, or are blind. Those who may have contact with such

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individuals should receive refresher training at least once every two years thereafter. The Training Coordinator shall maintain records of all training provided, and will retain a copy in each member's training file in accordance with established records retention schedules.



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## Mandatory Employer Notification

### 331.1 PURPOSE AND SCOPE

The purpose of this policy is to describe the requirements and procedures to follow when a public or private school employee (teacher and non-teacher) has been arrested under certain circumstances.

### 331.2 MANDATORY SCHOOL EMPLOYEE ARREST REPORTING

In the event a school employee is arrested for any offense enumerated below, the Chief Investigator or his/her designee is required to report the arrest as follows.

#### 331.2.1 ARREST OF PUBLIC SCHOOL TEACHER

In the event a public school teacher is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290, Penal Code § 261(a), or Education Code § 44010, the Chief Investigator or his/her designee is mandated to immediately notify by telephone the superintendent of the school district employing the teacher and to immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed (Health and Safety Code § 11591; Penal Code § 291).

#### 331.2.2 ARREST OF PUBLIC SCHOOL NON-TEACHER EMPLOYEE

In the event a public school non-teacher employee is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290, Penal Code § 261(a), or Education Code § 44010, the Chief Investigator or his/her designee is mandated to immediately notify by telephone the superintendent of the school district employing the non-teacher and to immediately give written notice of the arrest to the governing board of the school district employing the person (Health and Safety Code § 11591; Penal Code § 291).

#### 331.2.3 ARREST OF PRIVATE SCHOOL TEACHER

In the event a private school teacher is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290 or Education Code § 44010, the Chief Investigator or his/her designee is mandated to immediately notify by telephone the private school authority employing the teacher and to immediately give written notice of the arrest to the private school authority employing the teacher (Health and Safety Code § 11591; Penal Code § 291.1).

#### 331.2.4 ARREST OF COMMUNITY COLLEGE INSTRUCTOR

In the event a teacher or instructor employed in a community college district school is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591.5 or Health

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and Safety § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(9), or for any of the offenses enumerated in Penal Code § 290 or in Penal Code § 261(a)(1), the Chief Investigator or the authorized designee is mandated to immediately notify by telephone the superintendent of the community college district employing the person, and shall immediately give written notice of the arrest to the California Community Colleges Chancellor's Office (Health and Safety Code § 11591.5; Penal Code § 291.5).

**331.3 ARREST OF PERSONS EMPLOYED IN COMMUNITY CARE FACILITIES**

In the event an employee of a community treatment facility, a day treatment facility, a group home, a short-term residential therapeutic program or a foster family agency is arrested for child abuse (as defined in Penal Code § 11165.6) and the employee is free to return to work where children are present, the investigating member shall notify the licensee of the charge of abuse (Health and Safety Code § 1522.2).

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## Biological Samples

### 332.1 PURPOSE AND SCOPE

This policy provides guidelines for the collection of biological samples from those individuals required to provide samples upon conviction or arrest for certain offenses. This policy does not apply to biological samples collected at a crime scene or taken from a person in conjunction with a criminal investigation. Nor does it apply to biological samples from those required to register, for example, sex offenders.

### 332.2 POLICY

The Kings County District Attorney Investigation Division will assist in the expeditious collection of required biological samples from offenders in accordance with the laws of this state and with as little reliance on force as practicable.

### 332.3 PERSONS SUBJECT TO DNA COLLECTION

Those who must submit a biological sample include (Penal Code § 296):

- (a) A person, including a juvenile, upon conviction or other adjudication of any felony offense.
- (b) A person, including a juvenile, upon conviction or other adjudication of any offense if the person has a prior felony on record.
- (c) An adult arrested or charged with any felony.

### 332.4 PROCEDURE

When an individual is required to provide a biological sample, a trained employee shall obtain the sample in accordance with this policy.

#### 332.4.1 COLLECTION

The following steps should be taken to collect a sample:

- (a) Verify that the individual is required to provide a sample pursuant to Penal Code § 296; Penal Code § 296.1.
- (b) Verify that a biological sample has not been previously collected from the offender by querying the individual's criminal history record for a DNA collection flag or, during regular business hours, calling the California Department of Justice (DOJ) designated DNA laboratory. There is no need to obtain a biological sample if one has been previously obtained.
- (c) Use a DNA buccal swab collection kit provided by the California DOJ to perform the collection and take steps to avoid cross contamination.

### 332.5 USE OF FORCE TO OBTAIN SAMPLES

If a person refuses to cooperate with the sample collection process, investigators should attempt to identify the reason for refusal and seek voluntary compliance without resorting to using force. Force will not be used in the collection of samples except as authorized by court order and only

### *Biological Samples*

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with the approval of a supervisor. Methods to consider when seeking voluntary compliance include contacting:

- (a) The person's parole or probation officer when applicable.
- (b) The prosecuting attorney to seek additional charges against the person for failure to comply or to otherwise bring the refusal before a judge.
- (c) The judge at the person's next court appearance.
- (d) The person's attorney.
- (e) A chaplain.
- (f) Another custody facility with additional resources, where an arrestee can be transferred to better facilitate sample collection.
- (g) A supervisor who may be able to authorize custodial disciplinary actions to compel compliance, if any are available.

The supervisor shall review and approve any plan to use force and be present to document the process.

#### **332.5.1 VIDEO RECORDING**

A video recording should be made anytime force is used to obtain a biological sample. The recording should document all staff participating in the process, in addition to the methods and all force used during the collection. The recording should be part of the investigation file, if any, or otherwise retained in accordance with the department's records retention schedule (15 CCR 1059).

#### **332.5.2 CELL EXTRACTIONS**

If the use of force includes a cell extraction, the extraction shall be video recorded, including audio. Video shall be directed at the cell extraction event. The video recording shall be retained by the [Department/Office] for the length of time required by statute. Notwithstanding the use of the video as evidence in a criminal proceeding, the tape shall be retained administratively (15 CCR 1059).

### **332.6 LEGAL MANDATES AND RELEVANT LAWS**

California law provides for the following:

#### **332.6.1 DOCUMENTATION RELATED TO FORCE**

The Chief Investigator or the on-duty authorized designee shall prepare prior written authorization for the use of any force (15 CCR 1059). The written authorization shall include information that the subject was asked to provide the requisite specimen, sample, or impression and refused, as well as the related court order authorizing the force.

#### **332.6.2 BLOOD SAMPLES**

A blood sample should only be obtained under this policy when:

- (a) The California DOJ requests a blood sample and the subject consents, or
- (b) A court orders a blood sample following a refusal.

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The withdrawal of blood may only be performed in a medically approved manner by health care providers trained and qualified to draw blood. A California DOJ collection kit shall be used for this purpose (Penal Code § 298(a); Penal Code § 298(b)(2)).

#### 332.6.3 LITIGATION

The Chief Investigator or authorized designee should notify the California DOJ's DNA Legal Unit in the event this [department/office] is named in a lawsuit involving the DNA Data Bank sample collection, sample use or any aspect of the state's DNA Data Bank Program.

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## Off-Duty Law Enforcement Actions

### 333.1 PURPOSE AND SCOPE

The decision to become involved in a law enforcement action when off-duty can place an investigator as well as others at great risk and must be done with careful consideration. This policy is intended to provide guidelines for investigators of the Kings County District Attorney Investigation Division with respect to taking law enforcement action while off-duty.

### 333.2 POLICY

Initiating law enforcement action while off-duty is generally discouraged. Investigators should not attempt to initiate enforcement action when witnessing minor crimes, such as suspected intoxicated drivers, reckless driving or minor property crimes. Such incidents should be promptly reported to the appropriate law enforcement agency.

Investigators are not expected to place themselves in unreasonable peril. However, any sworn member of this department who becomes aware of an incident or circumstance that he/she reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage may take reasonable action to minimize the threat.

When public safety or the prevention of major property damage requires immediate action, investigators should first consider reporting and monitoring the activity and only take direct action as a last resort.

### 333.3 FIREARMS

Investigators of this department may carry firearms while off-duty in accordance with federal regulations and department policy. All firearms and ammunition must meet guidelines as described in the department Firearms Policy. When carrying firearms while off-duty investigators shall also carry their department identification.

Investigators should refrain from carrying firearms when the consumption of alcohol is likely or when the need to carry a firearm is outweighed by safety considerations. Firearms shall not be carried by any investigator who has consumed an amount of an alcoholic beverage or taken any drugs or medications or any combination thereof that would tend to adversely affect the investigator's senses or judgment.

### 333.4 DECISION TO INTERVENE

There is no legal requirement for off-duty investigators to take law enforcement action. However, should investigators decide to intervene, they must evaluate whether the action is necessary or desirable, and should take into consideration the following:

- (a) The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.
- (b) The inability to communicate with responding units.
- (c) The lack of equipment, such as handcuffs, OC or baton.

### *Off-Duty Law Enforcement Actions*

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- (d) The lack of cover.
- (e) The potential for increased risk to bystanders if the off-duty investigator were to intervene.
- (f) Unfamiliarity with the surroundings.
- (g) The potential for the off-duty investigator to be misidentified by other peace officers or members of the public.

Investigators should consider waiting for on-duty uniformed investigators to arrive, and gather as much accurate intelligence as possible instead of immediately intervening.

#### **333.4.1 INTERVENTION PROCEDURE**

If involvement is reasonably necessary the investigator should attempt to call or have someone else call 9-1-1 to request immediate assistance. The dispatcher should be informed that an off-duty investigator is on-scene and should be provided a description of the officer if possible.

Whenever practicable, the investigator should loudly and repeatedly identify him/herself as an Kings County District Attorney Investigation Division investigator until acknowledged. Official identification should also be displayed.

#### **333.4.2 INCIDENTS OF PERSONAL INTEREST**

Investigators should refrain from handling incidents of personal interest, (e.g., family or neighbor disputes) and should remain neutral. In such circumstances investigators should call the responsible agency to handle the matter.

#### **333.4.3 NON-SWORN RESPONSIBILITIES**

Non-sworn personnel should not become involved in any law enforcement actions while off-duty except to notify the local law enforcement authority and remain at the scene, if safe and practicable.

#### **333.4.4 OTHER CONSIDERATIONS**

When encountering a non-uniformed investigator in public, uniformed investigators should wait for acknowledgement by the non-uniformed investigator in case he/she needs to maintain an undercover capability.

### **333.5 REPORTING**

Any off-duty investigator who engages in any law enforcement activity, regardless of jurisdiction, shall notify the Chief Investigator as soon as practicable. The Chief Investigator shall determine whether a report should be filed by the employee.

Investigators should cooperate fully with the agency having jurisdiction in providing statements or reports as requested or as appropriate.

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## **Admonition of Constitutional Rights "Miranda Advisement"**

### **334.1 PURPOSE AND SCOPE**

#### **PURPOSE**

The purpose of this regulation is to establish a uniform system for advising a suspect or an arrested person of his/her constitutional rights.

#### **ADMONITION OF CONSTITUTIONAL RIGHTS**

- A. The right to remain silent.
- B. Warned that anything he/she says can and will be used against him/her in court.
- C. The right to be represented by an attorney of his/her own choosing; or if unable to afford an attorney, one will be appointed prior to any questioning.

### **334.2 WHEN ADMONITION SHOULD BE MADE - JUVENILES AND ADULTS**

(a) The Miranda Advisement pertaining to juveniles is governed by the Welfare and Institutions Code Section 625.

(b) All adults (18 or over) who are under arrested (custody), must be advised of their constitutional rights before questioning by an Investigator (investigation).

(c) Two pronged theory = custody and interrogation before a Miranda Advisement becomes necessary.

(d) The warning need not be given under the following circumstances:

1. When a person is stopped under suspicious circumstances (stop and frisk) no warning need be given unless and until the Investigator has developed probable cause to arrest.
2. Traffic citations.
3. Statements made over the phone.
4. Persons who volunteer statements; e.g., when a person states that he/she wishes to confess to a crime. In this situation, an admonishment need only be given if the Investigator asks a question to bring further detail or encourages the person in any way to continue talking.
5. When the Investigator is engaged in "general on-the-scene" questioning, as to the facts surrounding a crime or other general questioning of citizens in the fact-finding process, when the crime does not focus on the particular subjects.
6. If the Investigator has no intention of interrogating a person in custody, he should not be admonished. For example: If, following an arrest, the Investigator feels that interrogation would serve no purpose at such time, he/she should not admonish the subject. A follow-up Investigator



*Admonition of Constitutional Rights "Miranda Advisement"*

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can then admonish the subject and interrogate him. If, however, the arrestee expresses a desire to speak, he should certainly be admonished and be permitted to speak.

**334.3 FURTHER GENERAL ADMONITION GUIDELINES**

(A) 1. A felony suspect in custody should not be warned of his rights, and a waiver solicited, unless an interrogation is to follow immediately or in the very near future. Conversely, if a suspect is given a warning and a waiver is obtained, he/she should be interrogated immediately or in the very near future. All too often arrest reports indicate that a suspect was advised of his rights and a waiver obtained and no interrogation followed. In some cases, a warning is given and no waiver is solicited. In such cases the deputy who gave the admonishment has engaged in an idle act.

2. Where the suspect appears likely to waive his rights and talk about the case, questioning should begin as soon as possible. Compliance with admonishment rules, must precede the interrogation.

3. Questioning should be deferred, together with warning of constitutional rights, when the arresting Investigator is unfamiliar with the case. For example, it often happens that an Investigator making an arrest upon a warrant, or pursuant to instructions, will be unfamiliar with the case.

**334.4 WHEN A WAIVER IS NOT RECEIVED**

(a) 1. Once the admonition has been given and the individual indicates in any manner, prior to or during questioning, that he/she wishes to remain silent, the interrogator must be clear if the individual is requesting an attorney or merely not wanting to speak to a specific topic or question. If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. Any words or conduct which indicates that the suspect is not willing to discuss his case freely with the Investigator at any given time, requires that the questioning be terminated. However, merely refusing to answer certain questions does not imply that the person is invoking his right not to talk to the Investigator and the questioning need not cease at that time.

2. Juveniles. If a juvenile makes a request to see an attorney, one of his/her parents, a guardian, or anyone else of his/her choosing, at any time prior to or during questioning, the interrogation must cease until he /she is given an opportunity to see his attorney, parent, guardian or other person of their choosing.

3. If, after once asserting his Fifth Amendment right not to talk to Investigators, the person changes their mind without any inducement by law enforcement personnel, he/she should then be re-admonished, and allowed to talk.

4. When an individual has been appointed or retained an attorney to represent them., their lawyer must give his/her consent prior to any questioning.

## **Chapter 4 - Field Operations**

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## **Bias-Based Policing**

### **400.1 PURPOSE AND SCOPE**

This policy provides guidance to [department/office] members that affirms the Kings County District Attorney Investigation Division's commitment to policing that is fair and objective.

Nothing in this policy prohibits the use of specified characteristics in law enforcement activities designed to strengthen the [department/office]'s relationship with its diverse communities (e.g., cultural and ethnicity awareness training, youth programs, community group outreach, partnerships).

### **400.2 POLICY**

The Kings County District Attorney Investigation Division is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this [department/office] to provide law enforcement services and to enforce the law equally, fairly, objectively and without discrimination toward any individual or group.

### **400.3 BIAS-BASED POLICING PROHIBITED**

Bias-based policing is strictly prohibited.

However, nothing in this policy is intended to prohibit an investigator from considering protected characteristics in combination with credible, timely and distinct information connecting a person or people of a specific characteristic to a specific unlawful incident, or to specific unlawful incidents, specific criminal patterns or specific schemes.

#### **400.3.1 CALIFORNIA RELIGIOUS FREEDOM ACT**

Members shall not collect information from a person based on religious belief, practice, affiliation, national origin or ethnicity unless permitted under state or federal law (Government Code § 8310.3).

Members shall not assist federal government authorities (Government Code § 8310.3):

- (a) In compiling personal information about a person's religious belief, practice, affiliation, national origin or ethnicity.
- (b) By investigating, enforcing or assisting with the investigation or enforcement of any requirement that a person register with the federal government based on religious belief, practice, or affiliation, or national origin or ethnicity.

### **400.4 MEMBER RESPONSIBILITIES**

Every member of this [department/office] shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any suspected or known instances of bias-based policing to a supervisor. Members should, when reasonable to do so, intervene to prevent any biased-based actions by another member.

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### *Bias-Based Policing*

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#### 400.4.1 REASON FOR CONTACT

Investigators contacting a person shall be prepared to articulate sufficient reason for the contact, independent of the protected characteristics of the individual.

To the extent that written documentation would otherwise be completed (e.g., arrest report, field interview (FI) card), the involved investigator should include those facts giving rise to the contact, as applicable.

Except for required data-collection forms or methods, nothing in this policy shall require any investigator to document a contact that would not otherwise require reporting.

#### 400.4.2 REPORTING OF STOPS

Unless an exception applies under 11 CCR 999.227, an investigator conducting a stop of a person shall collect the data elements required by Government Code § 12525.5 and 11 CCR 999.226 for every person stopped and prepare a stop data report. When multiple investigators conduct a stop, the investigator with the highest level of engagement with the person shall collect the data elements and prepare the report (11 CCR 999.227).

If multiple agencies are involved in a stop and the Kings County District Attorney Investigation Division is the primary agency, the Kings County District Attorney Investigation Division investigator shall collect the data elements and prepare the stop data report (11 CCR 999.227).

The stop data report should be completed by the end of the investigator's shift or as soon as practicable (11 CCR 999.227).

#### 400.4.3 DISCLOSURE AND DOCUMENTATION OF TRAFFIC OR PEDESTRIAN STOP

An investigator conducting a traffic or pedestrian stop shall state the reason for the stop prior to questioning the individual related to a criminal investigation or traffic violation unless the investigator reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including but not limited to cases of terrorism or kidnapping (Vehicle Code § 2806.5).

Investigators shall document the reason for the stop on any citation or report (Vehicle Code § 2806.5).

#### **400.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

The Assistant Chief Investigator shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against investigators is collected and provided to the Investigator for required reporting to the DOJ (Penal Code § 13012; Penal Code § 13020). See the Records Policy.

Supervisors should ensure that data stop reports are provided to the Investigator for required annual reporting to the DOJ (Government Code § 12525.5) (See Records Bureau Policy).

#### **400.6 ADMINISTRATION**

Each year, the Chief Investigator should review the efforts of the [Department/Office] to provide fair and objective policing and submit an annual report, including public concerns and complaints.

### *Bias-Based Policing*

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The annual report should not contain any identifying information about any specific complaint, member of the public or investigators. It should be used to identify any changes in training or operations that should be made to improve service.

Supervisors should review the annual report and discuss the results with those they are assigned to supervise.

#### **400.7 TRAINING**

Training on fair and objective policing and review of this policy shall be conducted annually and include:

- (a) Explicit and implicit biases.
- (b) Avoiding improper profiling.

##### **400.7.1 ADDITIONAL STATE REQUIREMENTS**

Training should be conducted as directed by the Training Manager.

- (a) All sworn members of this [department/office] will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of bias-based policing.
- (b) Pending participation in such POST-approved training and at all times, all members of this [department/office] are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.
- (c) Each sworn member of this [department/office] who received initial bias-based policing training will thereafter be required to complete an approved POST refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial, identity, and cultural trends (Penal Code § 13519.4(i)).

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## Crime and Disaster Scene Integrity

### 401.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance in handling a major crime or disaster.

### 401.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division to secure crime or disaster scenes so that evidence is preserved, and to identify and mitigate the dangers associated with a major crime or disaster scene for the safety of the community and those required to enter or work near the scene.

### 401.3 SCENE RESPONSIBILITY

The first investigator at the scene of a crime or major incident is generally responsible for the immediate safety of the public and preservation of the scene. Investigators shall also consider officer safety and the safety of those persons entering or exiting the area, including those rendering medical aid to any injured parties. Once an investigator has assumed or been assigned to maintain the integrity and security of the crime or disaster scene, the investigator shall maintain the crime or disaster scene until he/she is properly relieved by a supervisor or other designated person.

### 401.4 FIRST RESPONDER CONSIDERATIONS

The following list generally describes the first responder's function at a crime or disaster scene. This list is not intended to be all-inclusive, is not necessarily in order and may be altered according to the demands of each situation:

- (a) Broadcast emergency information, including requests for additional assistance and resources.
- (b) Provide for the general safety of those within the immediate area by mitigating, reducing or eliminating threats or dangers.
- (c) Locate or identify suspects and determine whether dangerous suspects are still within the area.
- (d) Provide first aid to injured parties if it can be done safely.
- (e) Evacuate the location safely as required or appropriate.
- (f) Secure the inner perimeter.
- (g) Protect items of apparent evidentiary value.
- (h) Secure an outer perimeter.
- (i) Identify potential witnesses.
- (j) Start a chronological log noting critical times and personnel allowed access.

### 401.5 SEARCHES

Investigators arriving at crime or disaster scenes are often faced with the immediate need to search for and render aid to victims, and to determine if suspects are present and continue to pose a

*Crime and Disaster Scene Integrity*

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threat. Once investigators are satisfied that no additional suspects are present and/or there are no injured persons to be treated, those exigent circumstances will likely no longer exist. Investigators should thereafter secure the scene and conduct no further search until additional or alternate authority for the search is obtained, such as consent or a search warrant.

**401.5.1 CONSENT**

When possible, investigators should seek written consent to search from authorized individuals. However, in the case of serious crimes or major investigations, it may be prudent to also obtain a search warrant. Consent as an additional authorization may be sought, even in cases where a search warrant has been granted.

**401.6 EXECUTION OF HEALTH ORDERS**

Any sworn member of this department is authorized to enforce all orders of the local health officer that have been issued for the purpose of preventing the spread of any contagious, infectious or communicable disease (Health and Safety Code § 120155).

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## Hazardous Material Response

### 402.1 PURPOSE AND SCOPE

Exposure to hazardous materials presents potential harm to [department/office] members and the public. This policy outlines the responsibilities of members who respond to these events and the factors that should be considered while on-scene, including the reporting of exposures and supervisor responsibilities. To comply with 8 CCR § 5194, the following is to be the policy of this [department/office].

#### 402.1.1 DEFINITIONS

Definitions related to this policy include:

**Hazardous material** – A substance which, by its nature, containment, or reactivity, has the capability of inflicting harm during exposure; characterized as being toxic, corrosive, flammable, reactive, an irritant or strong sensitizer and thereby posing a threat to health when improperly managed.

### 402.2 HAZARDOUS MATERIAL RESPONSE

Members may encounter situations involving suspected hazardous materials, such as at the scene of a traffic accident, chemical spill, or fire. When members come into contact with a suspected hazardous material, certain steps should be taken to protect themselves and citizens.

The following steps should be considered at any scene involving suspected hazardous materials:

- (a) Attempt to identify the type of hazardous substance. (Identification can be determined by placard, driver's manifest, or statements from the person transporting).
- (b) Notify the fire department.
- (c) Provide first-aid for injured parties if it can be done safely and without contamination.
- (d) Begin evacuation of the immediate area and surrounding areas, depending on the substance. Voluntary evacuation should be considered; however, depending on the substance, mandatory evacuation may be necessary.
- (e) Notify the local health authority. Such notification is mandatory when a spilled or released item is a pesticide (Health and Safety Code § 105215).
- (f) Notify the Department of Toxic Substances Control. This is mandatory when an investigator comes in contact with, or is aware of, the presence of a suspected hazardous substance at a site where an illegal controlled substance is or was manufactured (Health and Safety Code § 79355).

### 402.3 REPORTING EXPOSURE

[Department/Office] members who believe that they have been exposed to a hazardous material shall immediately report the exposure to a supervisor. Each exposure shall be documented by the member in an employee memorandum that shall be forwarded via chain of command to the Chief Investigator as soon as practicable. Should the affected member be unable to document



*Hazardous Material Response*

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the exposure for any reason, it shall be the responsibility of the notified supervisor to complete the report.

Injury or illness caused or believed to be caused from exposure to hazardous materials shall be reported the same as any other on-duty injury or illness in addition to a crime report or incident report as applicable.

**402.3.1 SUPERVISOR RESPONSIBILITY**

When a supervisor has been informed that a member has been exposed to a hazardous material, the supervisor shall ensure that immediate medical treatment is obtained and appropriate action is taken to lessen the exposure.

To ensure the safety of members, safety equipment is available through supervisory personnel. Safety items not maintained by the [Department/Office] will be obtained through the fire department.

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## Hostage and Barricade Incidents

### 403.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for situations where investigators have legal cause to contact, detain or arrest a person, and the person refuses to submit to the lawful requests of the investigators by remaining in a structure or vehicle and/or by taking a hostage.

The scope of this policy is not intended to address all variables that investigators encounter during their initial response or when a hostage or barricade situation has developed. This policy does not require or purport to recommend specific strategies or tactics for resolution as each incident is a dynamic and rapidly evolving event.

#### 403.1.1 DEFINITIONS

Definitions related to this policy include:

**Barricade situation** - An incident where a person maintains a position of cover or concealment and ignores or resists law enforcement personnel, and it is reasonable to believe the subject is armed with a dangerous or deadly weapon.

**Hostage situation** - An incident where it is reasonable to believe a person is:

- (a) Unlawfully held by a hostage-taker as security so that specified terms or conditions will be met.
- (b) Unlawfully held against his/her will under threat or actual use of force.

### 403.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division to address hostage and barricade situations with due regard for the preservation of life and balancing the risk of injury, while obtaining the safe release of hostages, apprehending offenders and securing available evidence.

### 403.3 COMMUNICATION

When circumstances permit, initial responding investigators should try to establish and maintain lines of communication with a barricaded person or hostage-taker. Investigators should attempt to identify any additional subjects, inquire about victims and injuries, seek the release of hostages, gather intelligence information, identify time-sensitive demands or conditions and obtain the suspect's surrender.

When available, [department/office]-authorized negotiators should respond to the scene as soon as practicable and assume communication responsibilities. Negotiators are permitted to exercise flexibility in each situation based upon their training, the circumstances presented, suspect actions or demands and the available resources.

#### 403.3.1 EMERGENCY COMMUNICATIONS

Only an investigator who has been designated by the District Attorney or Attorney General may use or authorize the use of an electronic amplifying or recording device to eavesdrop on or record,

### *Hostage and Barricade Incidents*

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or both, oral communication in response to an emergency situation involving a hostage or the barricading of a location, and only when (Penal Code § 633.8(b)):

- (a) The investigator reasonably determines an emergency situation exists that involves the immediate danger of death or serious physical injury to any person within the meaning of 18 USC § 2518(7)(a)(i),
- (b) The investigator reasonably determines that the emergency situation requires that eavesdropping on oral communication occur immediately, and
- (c) There are grounds upon which an order could be obtained pursuant to 18 USC § 2516(2).
- (d) An application for an order approving the eavesdropping and complying with the requirements of Penal Code § 629.50 is made within 48 hours of the beginning of the eavesdropping.
- (e) The contents of any oral communications overheard are recorded on tape or other comparable device.

#### **403.4 FIRST RESPONDER CONSIDERATIONS**

First responding investigators should promptly and carefully evaluate all available information to determine whether an incident involves, or may later develop into, a hostage or barricade situation.

The first responding investigator should immediately request a supervisor's response as soon as it is determined that a hostage or barricade situation exists. The first responding investigator shall assume the duties of the supervisor until relieved by a supervisor or a more qualified responder. The investigator shall continually evaluate the situation, including the level of risk to investigators, to the persons involved and to bystanders, and the resources currently available.

The handling investigator should brief the arriving supervisor of the incident, including information about suspects and victims, the extent of any injuries, additional resources or equipment that may be needed, and current perimeters and evacuation areas.

##### **403.4.1 BARRICADE SITUATION**

Unless circumstances require otherwise, investigators handling a barricade situation should attempt to avoid a forceful confrontation in favor of stabilizing the incident by establishing and maintaining lines of communication while awaiting the arrival of specialized personnel and trained negotiators. During the interim the following options, while not all-inclusive or in any particular order, should be considered:

- (a) Ensure injured persons are evacuated from the immediate threat area if it is reasonably safe to do so. Request medical assistance.
- (b) Assign personnel to a contact team to control the subject should he/she attempt to exit the building, structure or vehicle, and attack, use deadly force, attempt to escape or surrender prior to additional resources arriving.

### *Hostage and Barricade Incidents*

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- (c) Request additional personnel, resources and equipment as needed (e.g., canine team, air support).
- (d) Provide responding emergency personnel with a safe arrival route to the location.
- (e) Evacuate uninjured persons in the immediate threat area if it is reasonably safe to do so.
- (f) Attempt or obtain a line of communication and gather as much information on the subject as possible, including weapons, other involved parties, additional hazards or injuries.
- (g) Establish an inner and outer perimeter as circumstances require and resources permit to prevent unauthorized access.
- (h) Evacuate bystanders, residents and businesses within the inner and then outer perimeter as appropriate. Check for injuries, the presence of other involved subjects, witnesses, evidence or additional information.
- (i) Determine the need for and notify the appropriate persons within and outside the [Department/Office], such as command officers and the Chief Investigator ([PIO]).
- (j) If necessary and available, establish a tactical or exclusive radio frequency for the incident.
- (k) Establish a command post.

#### 403.4.2 HOSTAGE SITUATION

Investigators presented with a hostage situation should attempt to avoid a forceful confrontation in favor of controlling the incident in anticipation of the arrival of specialized personnel and trained hostage negotiators. However, it is understood that hostage situations are dynamic and can require that investigators react quickly to developing or changing threats. The following options, while not all-inclusive or in any particular order, should be considered:

- (a) Ensure injured persons are evacuated from the immediate threat area if it is reasonably safe to do so. Request medical assistance.
- (b) Assign personnel to a contact team to control the subject should he/she attempt to exit the building, structure or vehicle, and attack, use deadly force, attempt to escape or surrender prior to additional resources arriving.
- (c) Establish a rapid response team in the event it becomes necessary to rapidly enter a building, structure or vehicle, such as when the suspect is using deadly force against any hostages (see the Rapid Response and Deployment Policy).
- (d) Assist hostages or potential hostages to escape if it is reasonably safe to do so. Hostages should be kept separated if practicable pending further interview.
- (e) Request additional personnel, resources and equipment as needed (e.g., canine team, air support).
- (f) Provide responding emergency personnel with a safe arrival route to the location.
- (g) Evacuate uninjured persons in the immediate threat area if it is reasonably safe to do so.

### *Hostage and Barricade Incidents*

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- (h) Coordinate pursuit or surveillance vehicles and control of travel routes.
- (i) Attempt to obtain a line of communication and gather as much information about the suspect as possible, including any weapons, victims and their injuries, additional hazards, other involved parties and any other relevant intelligence information.
- (j) Establish an inner and outer perimeter as resources and circumstances permit to prevent unauthorized access.
- (k) Evacuate bystanders, residents and businesses within the inner and then outer perimeter as appropriate. Check for injuries, the presence of other involved subjects, witnesses, evidence or additional information.
- (l) Determine the need for and notify the appropriate persons within and outside the [Department/Office], such as command officers and the [PIO].
- (m) If necessary and available, establish a tactical or exclusive radio frequency for the incident.
- (n) Notify the local jurisdiction and request a tactical team respond

#### **403.5 SUPERVISOR RESPONSIBILITIES**

Upon being notified that a hostage or barricade situation exists, the supervisor should immediately respond to the scene, assess the risk level of the situation, establish a proper chain of command and assume the role of Incident Commander until properly relieved. This includes requesting a [Crisis Response Unit] ([CRU]) response if appropriate and apprising the [CRU] Commander of the circumstances. In addition, the following options should be considered:

- (a) Ensure injured persons are evacuated and treated by medical personnel.
- (b) Ensure the completion of necessary first responder responsibilities or assignments.
- (c) Request crisis negotiators, specialized units, additional personnel, resources or equipment as appropriate.
- (d) Establish a command post location as resources and circumstances permit.
- (e) Designate assistants who can help with intelligence information and documentation of the incident.
- (f) If it is practicable to do so, arrange for video documentation of the operation.
- (g) Consider contacting utility and communication providers to restrict such services (e.g., restricting electric power, gas, telephone service).
  1. When considering restricting communication services, a supervisor should make the determination that there is reason to believe an emergency situation exists involving immediate danger of death or great bodily harm and that an interruption to communication services is necessary to protect public safety (Penal Code § 11471). The supervisor must ensure the [Department/Office] obtains a court order, in accordance with Penal Code § 11472, prior to requesting the interruption. In the case of an extreme emergency when there is insufficient time to obtain an order prior to the request, application for the order must be submitted within six hours after initiating the interruption. If six hours is not

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### *Hostage and Barricade Incidents*

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possible, then the application for the court order shall be made at the first reasonably available opportunity, but no later than 24 hours in accordance with Penal Code § 11475.

- (h) Ensure adequate law enforcement coverage for the remainder of the County during the incident. The supervisor should direct non-essential personnel away from the scene unless they have been summoned by the supervisor or the Communications Center.
- (i) Identify a media staging area outside the outer perimeter and have the [department/office] Chief Investigator or a designated temporary media representative provide media access in accordance with the Media Relations Policy.
- (j) Identify the need for mutual aid and the transition or relief of personnel for incidents of extended duration.
- (k) Debrief personnel and review documentation as appropriate.

#### **403.6 REPORTING**

Unless otherwise relieved by a supervisor or Incident Commander, the handling investigator at the scene is responsible for completion and/or coordination of incident reports.

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## Response to Bomb Calls

### **404.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidelines to assist members of the Kings County District Attorney Investigation Division in their initial response to incidents involving explosives, explosive devices, explosion/bombing incidents or threats of such incidents. Under no circumstances should these guidelines be interpreted as compromising the safety of first responders or the public. When confronted with an incident involving explosives, safety should always be the primary consideration.

### **404.2 POLICY**

It is the policy of the Kings County District Attorney Investigation Division to place a higher priority on the safety of persons and the public over damage or destruction to public or private property.

### **404.3 RECEIPT OF BOMB THREAT**

Department members receiving a bomb threat should obtain as much information from the individual as reasonably possible, including the type, placement and alleged detonation time of the device.

If the bomb threat is received on a recorded line, reasonable steps should be taken to ensure that the recording is preserved in accordance with established department evidence procedures.

The member receiving the bomb threat should ensure that the Chief Investigator is immediately advised and informed of the details. This will enable the Chief Investigator to ensure that the appropriate personnel are dispatched, and, as appropriate, the threatened location is given an advance warning.

### **404.4 GOVERNMENT FACILITY OR PROPERTY**

A bomb threat targeting a government facility may require a different response based on the government agency.

#### **404.4.1 KINGS COUNTY DISTRICT ATTORNEY INVESTIGATION DIVISION FACILITY**

If the bomb threat is against the Kings County District Attorney Investigation Division facility, the Chief Investigator will direct and assign investigators as required for coordinating a general building search or evacuation of the bureau department, as he/she deems appropriate.

#### **404.4.2 OTHER COUNTY OR MUNICIPAL FACILITY OR PROPERTY**

If the bomb threat is against a county or municipal facility within the jurisdiction of the Kings County District Attorney Investigation Division that is not the property of this department, the appropriate agency will be promptly informed of the threat. Assistance to the other entity may be provided as the Chief Investigator deems appropriate.

### *Response to Bomb Calls*

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#### **404.5 PRIVATE FACILITY OR PROPERTY**

When a member of this department receives notification of a bomb threat at a location in the County of Kings, the member receiving the notification should obtain as much information as reasonably possible from the notifying individual, including:

- (a) The location of the facility.
- (b) The nature of the threat.
- (c) Whether the type and detonation time of the device is known.
- (d) Whether the facility is occupied and, if so, the number of occupants currently on-scene.
- (e) Whether the individual is requesting bureau assistance at the facility.
- (f) Whether there are any internal facility procedures regarding bomb threats in place, such as:
  1. No evacuation of personnel and no search for a device.
  2. Search for a device without evacuation of personnel.
  3. Evacuation of personnel without a search for a device.
  4. Evacuation of personnel and a search for a device.

The member receiving the bomb threat information should ensure that the Chief Investigator is immediately notified so that he/she can communicate with the person in charge of the threatened facility.

##### **404.5.1 ASSISTANCE**

The Chief Investigator should be notified when bureau assistance is requested. The Chief Investigator will make the decision whether the Department will render assistance and at what level. Information and circumstances that indicate a reasonably apparent, imminent threat to the safety of either the facility or the public may require a more active approach, including bureau control over the facility.

Should the Chief Investigator determine that the Department will assist or control such an incident, he/she will determine:

- (a) The appropriate level of assistance.
- (b) The plan for assistance.
- (c) Whether to evacuate and/or search the facility.
- (d) Whether to involve facility staff in the search or evacuation of the building.
  1. The person in charge of the facility should be made aware of the possibility of damage to the facility as a result of a search.
  2. The safety of all participants is the paramount concern.
- (e) The need for additional resources, including:



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### *Response to Bomb Calls*

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1. Notification and response, or standby notice, for fire and emergency medical services.

Even though a facility does not request bureau assistance to clear the interior of a building, based upon the circumstances and known threat, investigators may be sent to the scene to evacuate other areas that could be affected by the type of threat, or for traffic and pedestrian control.

#### **404.6 FOUND DEVICE**

When handling an incident involving a suspected explosive device, the following guidelines, while not all inclusive, should be followed:

- (a) No known or suspected explosive item should be considered safe regardless of its size or apparent packaging.
- (b) The device should not be touched or moved except by the bomb squad or military explosive ordnance disposal team.
- (c) Personnel should not transmit on any equipment that is capable of producing radio frequency energy within the evacuation area around the suspected device. This includes the following:
  1. Two-way radios
  2. Cell phones
  3. Other personal communication devices
- (d) The appropriate bomb squad or military explosive ordnance disposal team should be summoned for assistance.
- (e) The largest perimeter reasonably possible should initially be established around the device based upon available personnel and the anticipated danger zone.
- (f) A safe access route should be provided for support personnel and equipment.
- (g) Search the area for secondary devices as appropriate and based upon available resources.
- (h) Consider evacuation of buildings and personnel near the device or inside the danger zone and the safest exit route.
- (i) Promptly relay available information to the Chief Investigator including:
  1. The time of discovery.
  2. The exact location of the device.
  3. A full description of the device (e.g., size, shape, markings, construction).
  4. The anticipated danger zone and perimeter.
  5. The areas to be evacuated or cleared.

#### **404.7 EXPLOSION/BOMBING INCIDENTS**

When an explosion has occurred, there are multitudes of considerations which may confront the responding investigators. As in other catastrophic events, a rapid response may help to minimize

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injury to victims, minimize contamination of the scene by gathering crowds, or minimize any additional damage from fires or unstable structures.

#### 404.7.1 CONSIDERATIONS

Investigators responding to explosions, whether accidental or a criminal act, should consider the following actions:

- (a) Assess the scope of the incident, including the number of victims and extent of injuries.
- (b) Request additional personnel and resources, as appropriate.
- (c) Assist with first aid.
- (d) Identify and take appropriate precautions to mitigate scene hazards, such as collapsed structures, bloodborne pathogens and hazardous materials.
- (e) Assist with the safe evacuation of victims, if possible.
- (f) Establish an inner perimeter to include entry points and evacuation routes. Search for additional or secondary devices.
- (g) Preserve evidence.
- (h) Establish an outer perimeter and evacuate if necessary.
- (i) Identify witnesses.

#### 404.7.2 NOTIFICATIONS

When an explosion has occurred, the following people should be notified as appropriate:

- Fire department
- Bomb squad
- Additional department personnel, such as investigators and forensic services
- Field supervisor
- Chief Investigator
- Other law enforcement agencies, including local, state or federal agencies, such as the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
- Other government agencies, as appropriate

#### 404.7.3 CROWD CONTROL

Only authorized members with a legitimate need should be permitted access to the scene. Spectators and other unauthorized individuals should be restricted to a safe distance as is reasonably practicable given the available resources and personnel.

#### 404.7.4 PRESERVATION OF EVIDENCE

As in any other crime scene, steps should immediately be taken to preserve the scene. The Chief Investigator should assign investigators to protect the crime scene area, which could extend over

*Response to Bomb Calls*

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a long distance. Consideration should be given to the fact that evidence may be imbedded in nearby structures or hanging in trees and bushes.

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## Mental Illness Commitments

### 405.1 PURPOSE AND SCOPE

This policy provides guidelines for when investigators may take a person into custody for psychiatric evaluation and treatment (5150 commitment) (Welfare and Institutions Code § 5150).

### 405.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division to protect the public and individuals through legal and appropriate use of the 72-hour treatment and evaluation commitment (5150 commitment) process.

### 405.3 AUTHORITY

An investigator having probable cause may take a person into custody and place the person in an approved mental health facility for 72-hour treatment and evaluation when the investigator believes that, as a result of a mental disorder, the person is a danger to him/herself or others or the person is gravely disabled (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5585.50).

When determining whether to take a person into custody, investigators are not limited to determining the person is an imminent danger and shall consider reasonably available information about the historical course of the person's mental disorder, which may include evidence presented from any of the following (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5150.05):

- (a) An individual who is providing or has provided mental health treatment or related support services to the person
- (b) A family member
- (c) The person subject to the determination or anyone designated by the person

#### 405.3.1 VOLUNTARY EVALUATION

If an investigator encounters an individual who may qualify for a 5150 commitment, he/she may inquire as to whether the person desires to voluntarily be evaluated at an appropriate facility. If the person so desires, the investigators should:

- (a) Transport the person to an appropriate facility that is able to conduct the evaluation and admit the person pursuant to a 5150 commitment.
- (b) If at any point the person changes his/her mind regarding voluntary evaluation, investigators should proceed with the 5150 commitment, if appropriate.
- (c) Document the circumstances surrounding the individual's desire to pursue voluntary evaluation and/or admission.

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#### 405.3.2 RESTRAINTS

If the patient is violent or potentially violent, the investigator will notify the staff of this concern. The staff member in charge will have discretion as to whether soft-restraints will be used. If these restraints are desired, the investigator will wait while they are being applied to help provide physical control of the patient, if needed.

#### 405.3.3 MENTAL HEALTH DOCUMENTATION

The investigator will complete an Application For 72-Hour Detention for Evaluation and Treatment form (MH-302) and provide it to the staff member assigned to that patient. The investigator will retain a copy of the 72-hour evaluation for inclusion in the case report. The investigator shall also provide a verbal summary to an emergency department staff member regarding the circumstances leading to the involuntary detention.

#### 405.3.4 SECURING OF WEAPONS

If a receiving and secured facility prohibits weapons or if an extraordinary event occurs in the treatment facility and investigators determine a need to secure their firearms, the firearm shall be secured in the appropriate gun locker at the facility or in the bureau unit.

### **405.4 CONSIDERATIONS AND RESPONSIBILITIES**

Any investigator handling a call involving an individual who may qualify for a 5150 commitment should consider, as time and circumstances reasonably permit:

- (a) Available information that might assist in determining the cause and nature of the person's action or stated intentions.
- (b) Community or neighborhood mediation services.
- (c) Conflict resolution and de-escalation techniques.
- (d) Community or other resources available to assist in dealing with mental health issues.

While these steps are encouraged, nothing in this section is intended to dissuade investigators from taking reasonable action to ensure the safety of the investigators and others.

Investigators should consider a 5150 commitment over arrest when mental health issues appear to be a mitigating factor for people who are suspected of committing minor crimes or creating other public safety issues.

#### 405.4.1 SECURING OF PROPERTY

When a person is taken into custody for evaluation, or within a reasonable time thereafter, and unless a responsible relative, guardian or conservator is in possession of the person's personal property, the investigator shall take reasonable precautions to safeguard the individual's personal property in his/her possession or on the premises occupied by the person (Welfare and Institutions Code § 5150).

The investigator taking the person into custody shall provide a report to the court that describes the person's property and its disposition in the format provided in Welfare and Institutions Code §

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5211, unless a responsible person took possession of the property, in which case the investigator shall only include the name of the responsible person and the location of the property (Welfare and Institutions Code § 5150).

#### **405.5 TRANSPORTATION**

When transporting any individual for a 5150 commitment, the transporting investigator should have the Communications Center notify the receiving facility of the estimated time of arrival, the level of cooperation of the individual and whether any special medical care is needed.

Investigators may transport individuals in a patrol unit and shall secure them in accordance with the Handcuffing and Restraints Policy. Should the detainee require transport in a medical transport vehicle and the safety of any person, including the detainee, requires the presence of an investigator during the transport, Chief Investigator approval is required before transport commences.

##### **405.5.1 RETURN OF CONFISCATED FIREARMS AND WEAPONS**

- (a) Whenever the handling investigator has cause to believe that the future return of any confiscated weapon(s) might endanger the person or others, the investigator shall detail those facts and circumstances in a report. The report shall be forwarded to the Investigations Division which shall be responsible for initiating a petition to the superior court for a hearing in accordance with Welfare and Institutions Code § 8102(b), to determine whether or not the weapon(s) will be returned.
- (b) The petition to the Superior Court shall be initiated within 30 days of the release of the individual from whom such weapon(s) have been confiscated unless the Department makes an ex parte application to the court to extend the time to file such a petition, up to a maximum of 60 days. At the time any such petition is initiated, the Department shall send written notice to the individual informing him or her of the right to a hearing on the issue and that he or she has 30 days to confirm with the court clerk any desire for a hearing and that the failure to do so will result in the forfeiture of any confiscated weapon(s).
- (c) If no petition is initiated within the above period, the Department shall make the weapon(s) available for return in accordance with subsection (d) below. If the person does not confirm a desire for a hearing within the prescribed 30 days, the Department may file a petition for an order of default.
- (d) Under no circumstances shall any firearm be returned to any individual unless and until such person presents valid identification and written notification from the California Department of Justice which conforms to the provisions of Penal Code § 33865.
- (e) In no case in which a firearm or other deadly weapon is not retained as evidence shall the Department be required to retain such firearms or other deadly weapon longer than 180 days after notice has been provided to the owner that such firearm or other deadly weapon is available for return. At the expiration of such period, the firearm or

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other deadly weapon may be processed for disposal in accordance with applicable law (Penal Code § 33875).

#### **405.6 TRANSFER TO APPROPRIATE FACILITY**

Upon arrival at the facility, the investigator will escort the individual into a treatment area designated by a facility staff member. If the individual is not seeking treatment voluntarily, the investigator should provide the staff member with the written application for a 5150 commitment and remain present to provide clarification of the grounds for detention, upon request.

Absent exigent circumstances, the transporting investigator should not assist facility staff with the admission process, including restraint of the individual. However, if the individual is transported and delivered while restrained, the investigator may assist with transferring the individual to facility restraints and will be available to assist during the admission process, if requested. Under normal circumstances, investigators will not apply facility-ordered restraints.

#### **405.7 CRIMINAL OFFENSES**

Investigators investigating an individual who is suspected of committing a minor criminal offense and who is being taken on a 5150 commitment should resolve the criminal matter by issuing a warning or a Notice to Appear as appropriate.

When an individual who may qualify for a 5150 commitment has committed a serious criminal offense that would normally result in an arrest and transfer to a jail facility, the investigator should:

- (a) Arrest the individual when there is probable cause to do so.
- (b) Notify the appropriate supervisor of the facts supporting the arrest and the facts that would support the 5150 commitment.
- (c) Facilitate the individual's transfer to jail.
- (d) Thoroughly document in the related reports the circumstances that indicate the individual may qualify for a 5150 commitment.

In the supervisor's judgment, the individual may instead be arrested or booked and transported to the appropriate mental health facility. The supervisor should consider the seriousness of the offense, the treatment options available, the ability of this [department/office] to regain custody of the individual, [department/office] resources (e.g., posting a guard) and other relevant factors in making this decision.

#### **405.8 FIREARMS AND OTHER WEAPONS**

Whenever a person is taken into custody for a 5150 commitment, the handling investigators should seek to determine if the person owns or has access to any firearm or other deadly weapon defined in Welfare and Institutions Code § 8100. Investigators should consider whether it is appropriate and consistent with current search and seizure law under the circumstances to seize any such firearms or other dangerous weapons (e.g., safekeeping, evidence, consent).

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Investigators are cautioned that a search warrant may be needed before entering a residence or other place to search, unless lawful, warrantless entry has already been made (e.g., exigent circumstances, consent). A search warrant may also be needed before searching for or seizing weapons

The handling investigators shall issue a receipt describing the deadly weapon or any firearm seized, and list any serial number or other identification that is on the firearm. Investigators shall advise the person of the procedure for the return of any firearm or other weapon that has been taken into custody (Welfare and Institutions Code § 8102 (b)) (see Property and Evidence Policy).

#### **405.8.1 PETITION FOR RETURN OF FIREARMS AND OTHER WEAPONS**

Whenever the handling investigator has cause to believe that the future return of any confiscated weapon might endanger the person or others, the investigator shall detail those facts and circumstances in a report. The report shall be forwarded to the Investigations Division, which shall be responsible for initiating a petition to the Superior Court for a hearing in accordance with Welfare and Institutions Code § 8102(c), to determine whether the weapon will be returned.

The petition to the Superior Court shall be initiated within 30 days of the release of the individual from whom such weapon has been confiscated, unless the [Department/Office] makes an ex parte application to the court to extend the time to file such a petition, up to a maximum of 60 days. At the time any such petition is initiated, the [Department/Office] shall send written notice to the individual informing him/her of the right to a hearing on the issue, that he/she has 30 days to confirm with the court clerk any desire for a hearing and that the failure to do so will result in the forfeiture of any confiscated weapon.

#### **405.9 TRAINING**

This [department/office] will endeavor to provide Peace Officer Standards and Training (POST)-approved advanced officer training on interaction with persons with mental disabilities, 5150 commitments and crisis intervention.



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## Cite and Release Policy

### 406.1 PURPOSE AND SCOPE

This policy provides guidance on when to release adults who are arrested for a criminal misdemeanor offense on a written notice to appear (citation) and when to hold for court or bail.

### 406.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division to release all persons arrested on misdemeanor or other qualifying charges on a citation with certain exceptions (Penal Code § 853.6).

If there is a reason for non-release, the [Department/Office]'s mission to protect the community will be the primary consideration when determining whether to release any individual in lieu of holding for court or bail.

### 406.3 RELEASE BY CITATION

Except in cases where a reason for non-release as described below exists, adults arrested for a misdemeanor offense, including a private person's arrest, shall be released from custody on a citation (Penal Code § 853.6).

The citing investigator shall, at the time the defendant signs the notice to appear, call attention to the time and place for appearance and take any other steps they deem necessary to ensure that the defendant understands their written promise to appear.

#### 406.3.1 FIELD CITATIONS

In most cases an adult arrested for a misdemeanor offense may be released in the field on a citation in lieu of physical arrest when booking and fingerprinting is not practicable or immediately required provided the individual can be satisfactorily identified, there is no outstanding arrest warrant for the individual and none of the below described disqualifying circumstances are present (Penal Code § 853.6; Penal Code § 1270.1). In such cases the arresting investigator should check the booking required box on the citation form to indicate that the person will be photographed and fingerprinted at a later time when ordered by the court.

When a booking photo or fingerprints are needed for the furtherance of any investigation, the person should be released on citation after booking instead of on a field citation.

#### 406.3.2 DISQUALIFYING CIRCUMSTANCES

A person arrested for a misdemeanor shall be released on a notice to appear unless one of the following situations is present (Penal Code § 853.6(i)):

- (a) The person arrested is so intoxicated that he/she could be a danger to him/herself or to others. Release may occur as soon as this condition no longer exists.
- (b) The person arrested requires medical examination or medical care or is otherwise unable to care for his/her own safety

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1. The Kings County District Attorney Investigation Division shall not release an arrestee from custody for the purpose of allowing that person to seek medical care at a hospital, and then immediately re-arrest the same individual upon discharge from the hospital, unless the hospital determines this action will enable it to bill and collect from a third-party payment source (Penal Code § 4011.10).
- (c) The person is arrested for one or more of the offenses listed in Vehicle Code §§ 40302, 40303 and 40305.
1. Any person arrested for any offense listed in Vehicle Code § 40303(b) shall, in the judgment of the arresting investigator, either be given a 10 day notice to appear or be taken without delay before a magistrate in the county of arrest.
  2. If a person under Vehicle Code §§ 40303 or 40305 does not have satisfactory identification, the investigator may require the individual to provide a right thumbprint (or other finger). However such print may not be used for other than law enforcement purposes.
  3. Should any person arrested on a notice to appear claim under penalty of perjury not to be the person listed in the notice, such person may request that his/her thumbprint be taken for comparison at a fee not to exceed the actual cost of such service.
- (d) There are one or more outstanding arrest warrants for the person.
- (e) The person could not provide satisfactory evidence of personal identification.
- (f) The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by the immediate release of the person arrested.
- (g) There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by the release of the person arrested.
- (h) The person arrested demands to be taken before a magistrate or has refused to sign the notice to appear.
- (i) There is reason to believe that the person would not appear at the time and place specified in the notice to appear. The basis for this determination shall be specifically documented.
- (j) The charges fall under Penal Code § 1270.1 (serious or violent felonies, domestic violence, etc.)

When a person is arrested on a misdemeanor offense and is not released by criminal citation, the reason for non-release shall be noted on the booking form. This form shall be submitted to the Chief Investigator for approval and included with the case file in the Records.

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**406.4 MISDEMEANOR WARRANTS**

An adult arrested on a misdemeanor warrant may be released, subject to Chief Investigator approval, unless any of the following conditions exist:

- (a) The misdemeanor cited in the warrant involves violence.
- (b) The misdemeanor cited in the warrant involves a firearm.
- (c) The misdemeanor cited in the warrant involves resisting arrest.
- (d) The misdemeanor cited in the warrant involves giving false information to a peace investigator.
- (e) The person arrested is a danger to themselves or others due to intoxication or being under the influence of drugs or narcotics.
- (f) The person requires medical examination or medical care or was otherwise unable to care for their own safety.
- (g) The person has other ineligible charges pending against themselves.
- (h) There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be immediately endangered by the release of the person.
- (i) The person refuses to sign the notice to appear.
- (j) The person cannot provide satisfactory evidence of personal identification.
- (k) The warrant of arrest indicates that the person is not eligible to be released on a notice to appear.

Release under this section shall be done in accordance with the provisions of this policy.

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# Foreign Diplomatic and Consular Representatives

## 407.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that members of the Kings County District Attorney Investigation Division extend appropriate privileges and immunities to foreign diplomatic and consular representatives in accordance with international law.

### 407.1.1 DEFINITIONS

**Foreign National** - Anyone who is not a citizen of the United States (U.S.). A person with dual citizenship, U.S. and foreign, is not a foreign national.

**Immunity** - Refers to various protections and privileges extended to the employees of foreign governments who are present in the U.S. as official representatives of their home governments. These privileges are embodied in international law and are intended to ensure the efficient and effective performance of their official "missions" (i.e., embassies, consulates, etc.) in foreign countries. Proper respect for the immunity to which an individual is entitled is necessary to ensure that U.S. diplomatic relations are not jeopardized and to maintain reciprocal treatment of U.S. personnel abroad. Although immunity may preclude U.S. courts from exercising jurisdiction, it is not intended to excuse unlawful activity. It is the policy of the U.S. Department of State's Office of Foreign Missions (OFM) that illegal acts by Foreign Service personnel should always be pursued through proper channels. Additionally, the host country's right to protect its citizens supersedes immunity privileges. Peace officers may intervene to the extent necessary to prevent the endangerment of public safety or the commission of a serious crime, regardless of immunity claims.

## 407.2 ARREST OR DETENTION OF FOREIGN NATIONALS

Investigators should take appropriate enforcement action for all violations observed, regardless of claims of diplomatic or consular immunity received from violators. A person shall not, however, be subjected to in-custody arrest when diplomatic or consular immunity is claimed by the individual or suspected by the investigator, and the investigator has verified or reasonably suspects that the claim of immunity is valid.

## 407.3 CLAIMS OF IMMUNITY

If a member comes into contact with a person where law enforcement action may be warranted and the person claims diplomatic or consular privileges and immunities, the member should, without delay:

- (a) Notify a supervisor.
- (b) Advise the person that his/her claim will be investigated and he/she may be released in accordance with the law upon confirmation of the person's status.
- (c) Request the person's identification card, either issued by the U.S. Department of State (DOS), Office of the Chief of Protocol, or in the case of persons accredited to the

### *Foreign Diplomatic and Consular Representatives*

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United Nations, by the U.S. Mission to the United Nations. These are the only reliable documents for purposes of determining privileges and immunities.

- (d) Contact the DOS Diplomatic Security Command Center at 571-345-3146 or toll free at 866-217-2089, or at another current telephone number and inform the center of the circumstances.
- (e) Verify the immunity status with DOS and follow any instructions regarding further detention, arrest, prosecution and/or release, as indicated by the DOS representative. This may require immediate release, even if a crime has been committed.

Identity or immunity status should not be presumed from the type of license plates displayed on a vehicle. If there is a question as to the status or the legitimate possession of a Diplomat or Consul license plate, a query should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state.

#### 407.3.1 DIPLOMATIC AGENTS

Diplomatic agents (e.g., ambassadors and United Nations representatives) are afforded the highest levels of immunity. They are exempt from arrest or detention and are immune from all criminal (and most civil) prosecution by the host state. The family members of diplomatic agents enjoy these same immunities. Currently there are no diplomatic agents permanently assigned to California; but they do occasionally visit the state.

#### 407.3.2 CONSULAR OFFICERS

Consular officers are the ranking members of consular posts who perform various formal functions on behalf of their own governments. Typical titles include consul general, consul, and vice consul. These officials are immune from arrest or detention, except pursuant to a felony warrant. They are only immune from criminal and civil prosecution arising from official acts. Official acts immunity must be raised as an affirmative defense in the court jurisdiction, and its validity is determined by the court. Under this defense, the prohibited act itself must have been performed as an official function. It is not sufficient that the consular agent was on-duty or in an official capacity at the time of the violation. The family members of consular officers generally enjoy no immunity, however, any family member who enjoys a higher level of immunity is issued an identification card by Department of State (DOS) enumerating any privileges or immunities on the back of the card. Examples are consular officers and family members from Russia or China.

There are approximately 600 consular officers in California, with most located in Los Angeles, San Francisco and San Diego.

#### 407.3.3 HONORARY CONSULS

Honorary consuls are part-time employees of the country they represent and are either permanent residents of the U.S. or U.S. nationals (unlike career consular officers, who are foreign nationals on temporary assignment to the U.S.). Honorary consuls may be arrested and detained; limited immunity for official acts may be available as a subsequent defense. Family members have no immunity. There are less than 100 honorary consuls in California.

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#### **407.4 ENFORCEMENT**

If the DOS is not immediately available for consultation regarding law enforcement action, members shall be aware of the following:

- (a) Generally, all persons with diplomatic and consular privileges and immunities may be issued a citation or notice to appear. However, the person may not be compelled to sign the citation.
- (b) All persons, even those with a valid privilege or immunity, may be reasonably restrained in exigent circumstances for purposes of self-defense, public safety or the prevention of serious criminal acts.
- (c) An impaired foreign diplomatic or consular representative may be prevented from driving a vehicle, even if the person may not be arrested due to privileges and immunities.
  - 1. Investigations, including the request for field sobriety tests, chemical tests and any other tests regarding impaired driving may proceed but they shall not be compelled.
- (d) The following persons may not be detained or arrested, and any property or vehicle owned by these persons may not be searched or seized:
  - 1. Diplomatic-level staff of missions to international organizations and recognized family members
  - 2. Diplomatic agents and recognized family members
  - 3. Members of administrative and technical staff of a diplomatic mission and recognized family members
  - 4. Career consular officers, unless the person is the subject of a felony warrant
- (e) The following persons may generally be detained and arrested:
  - 1. International organization staff; however, some senior officers are entitled to the same treatment as diplomatic agents.
  - 2. Support staff of missions to international organizations
  - 3. Diplomatic service staff and consular employees; however, special bilateral agreements may exclude employees of certain foreign countries.
  - 4. Honorary consular officers
  - 5. Whenever an investigator arrests and incarcerates, or detains for investigation for over two hours, a person with diplomatic and consular privileges and immunities, the investigator shall promptly advise the person that he/she is entitled to have his/her government notified of the arrest or detention (Penal Code § 834c). If the individual wants his/her government notified, the investigator shall begin the notification process.

#### **407.4.1 VEHICLE REGISTRATION**

Vehicles that are owned by foreign missions or Foreign Service personnel and their dependents are registered with the Department of State OFM and display distinctive red, white, and blue

### *Foreign Diplomatic and Consular Representatives*

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license plates. Vehicles assigned to diplomatic or consular officers will generally have license plates labels with the words "diplomat" or "consul." Vehicles owned by honorary consuls are not issued OFM license plates; but may have California license plates with an "honorary consul" label. Driver's identity or immunity status should not be presumed from the type of license plates displayed on the vehicle. The status of an OFM license plate should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state, if the investigator has reason to question the legitimate possession of the license plate.

#### **407.5 DOCUMENTATION**

All contacts with persons who have claimed privileges and immunities afforded foreign diplomatic and consular representatives should be thoroughly documented and the related reports forwarded to DOS.

##### **407.5.1 IN-CUSTODY ARRESTS**

Diplomatic agents and consular officers are immune from arrest or detention (unless they have no identification and the detention is to verify their diplomatic status). Proper identification of immunity claimants is imperative in potential in-custody situations. Claimants who are not entitled to immunity shall be placed in custody in accordance with the provisions outlined in Policy Manual § 422.6 of this policy.

A subject who is placed under arrest and claims diplomatic or consular immunity shall not be physically restrained before verification of the claim (unless restraint is necessary for the protection of the investigator or others.)

A supervisor shall be promptly notified and should respond to the scene when possible.

Field verification of the claimant's identity is to be attempted as follows:

- (a) Identification cards issued by the Department of State, Protocol Office, are the only valid evidence of diplomatic or consular immunity. The following types of identification cards are issued: Diplomatic (blue bordered), Consular (red bordered), and Official (green bordered), The Department of State identification cards are 3-3/4 inch by 1-1/2 inch and contain a photograph of the bearer.
- (b) Initiate telephone verification with the Department of State. Newly arrived members of diplomatic or consular missions may not yet have official Department of State identity documents. Verify immunity by telephone with the Department of State any time an individual claims immunity and cannot present satisfactory identification, the investigator has reason to doubt the claim of immunity, or there is a possibility of physical arrest. Law enforcement personnel should use the following numbers in order of preference:

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Office of Foreign Missions San Francisco, CA (415) 744-2910, Ext. 22 or 23 (415) 744-2913 FAX (0800-1700 PST)	Office of the Foreign Missions Los Angeles, CA (310) 235-6292, Ext. 121 or 122 (310) 235-6297 FAX (0800-1700 PST)
Office of Foreign Missions Diplomatic Motor Vehicle Office Washington D.C. (202) 895-3521 (Driver License Verification) or (202) 895-3532 (Registration Verification) (202) 895-3533 FAX (0815-1700 EST)	Department of State Diplomatic Security Service Command Center Washington D.C. (202) 647-7277 (202) 647-1512 (Available 24 hours) (202) 647-0122 FAX

Members of diplomatic or consular missions also may have other forms of identification. These include identification cards issued by California Emergency Management Agency (Cal EMA), local law enforcement agencies, the foreign embassy, or consulate; driver licenses issued by Department of State; and, Department of State license indicia on the vehicle. All these items are only an indication that the bearer may have some form of immunity.

Subjects verified through the above procedures as being officials entitled to immunity (diplomatic agent, consular officers and consular staff and family members from countries with which the U.S. has special agreements) may not be arrested. The procedures below shall be followed. These procedures should also be used in the event immunity cannot be verified, but another form of identification indicates that immunity is probable.

If the release of the violator will not create an additional hazard, adequate information to properly identify the violator shall be obtained then the official shall be released. A supervisor's approval for the release shall be obtained whenever possible. The necessary release documents and/or a Certificate of Release form should only be issued under the proper conditions.

If the violator appears to have been driving while under the influence, field sobriety tests, including Preliminary Alcohol Screening (PAS) device tests and chemical tests should be offered and obtained whenever possible, however, these tests cannot be compelled. The subject shall not be permitted to drive. A supervisor's approval for release shall be obtained whenever possible and alternative transportation should be arranged.



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All facts of the incident shall be documented in accordance with this policy in a Driving Under the Influence (DUI) Arrest-Investigation Report, Arrest-Investigation Report and/or any other relevant Report form. Notwithstanding the field release of the subject, prosecution is still appropriate and should be pursued by the command concerned. The Department of State will take appropriate sanctions against errant foreign service personnel, even where prosecution is not undertaken by the agency.

#### **407.6 DIPLOMATIC IMMUNITY TABLE**

Reference table on diplomatic immunity:

<b>Category</b>	<b>Arrested or Detained</b>	<b>Enter Residence Subject to Ordinary Procedures</b>	<b>Issued Traffic Citation</b>	<b>Subpoenaed as Witness</b>	<b>Prosecuted</b>	<b>Recognized Family Members</b>
<b>Diplomatic Agent</b>	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
<b>Member of Admin and Tech Staff</b>	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
<b>Service Staff</b>	Yes (note (a))	Yes	Yes	Yes	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
<b>Career Consul Officer</b>	Yes if for a felony and pursuant to a warrant (note (a))	Yes (note (d))	Yes	No for official acts Testimony may not be compelled in any case	No for official acts. Yes otherwise (note (a))	No immunity or inviolability
<b>Honorable Consul Officer</b>	Yes	Yes	Yes	No for official acts Yes otherwise.	No for official acts Yes otherwise	No immunity or inviolability
<b>Consulate Employees</b>	Yes (note (a))	Yes	Yes	No for official acts Yes otherwise.	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))

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<b>Int'l Org Staff (note (b))</b>	Yes (note (c))	Yes (note (c))	Yes	Yes (note (c))	No for official acts. Yes otherwise (note (c))	No immunity or inviolability
<b>Diplomatic-Level Staff of Missions to Int'l Org</b>	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
<b>Support Staff of Missions to Int'l Orgs</b>	Yes	Yes	Yes	Yes	No for official acts. Yes otherwise	No immunity or inviolability

Notes for diplomatic immunity table:

- (a) This table presents general rules. The employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.
- (b) Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or in the prevention of serious criminal acts.
- (c) A small number of senior officers are entitled to be treated identically to diplomatic agents.
- (d) Note that consul residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.

#### 407.6.1 VEHICLES

Vehicles, which are owned by subjects with full immunity, may not be searched, stored, or impounded without the owner's permission. (Such permission may be assumed if the vehicle has been stolen.) These vehicles may, however, be towed the necessary distance to remove them from obstructing traffic or creating any other hazard.

#### **407.7 FOREIGN NATIONALS WHO DO NOT CLAIM IMMUNITY**

These policies and procedures apply to foreign nationals who do not claim diplomatic or consular immunity.

Investigators shall arrest foreign nationals only under the following circumstances:

- (a) There is a valid warrant issued for the person's arrest
- (b) There is probable cause to believe that the foreign national has violated a federal criminal law, a state law, or a local ordinance
- (c) Investigators shall not arrest foreign nationals solely for alleged undocumented entry into the U.S. unless the undocumented entry is committed in the investigator's presence

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After a lawful detention or criminal arrest, investigators may detain foreign nationals solely for alleged undocumented presence in the U.S. if the U.S. Immigration and Customs Enforcement (ICE) is contacted and can respond to take custody within a reasonable time. Investigators shall not arrest foreign nationals for undocumented presence. Federal courts have consistently held that undocumented presence is not a crime but a federal civil violation only enforceable by federal officers.

- Investigators shall not stop or detain persons solely for determining immigration status.
- International treaty obligations provide for notification of foreign governments when foreign nationals are arrested or otherwise detained in the U.S.
- Whenever an investigator arrests and incarcerates a foreign national or detains a foreign national for investigation for over two hours, the investigator shall promptly advise the individual that he/she is entitled to have his/her government notified of the arrest or detention. (Penal Code § 834c). If the individual wants his/her government notified, the investigator shall begin the notification process.

#### 407.7.1 ARREST PROCEDURE

Whenever an investigator physically arrests or detains an individual for criminal investigation and the investigator reasonably believes the person to be a foreign national, the investigator shall inquire to determine the person's citizenship.

This procedure applies to detentions of more than two hours. An inquiry is not required if the individual is detained less than two hours for criminal investigation.

If the individual indicates that he/she is other than a U.S. citizen, the investigator shall advise the individual that he/she has a right to have the nearest appropriate embassy or consulate notified of the arrest/detention (Vienna Convention on Consular Relations, Art. 36, (1969)).

If the individual requests such notification, the investigator shall contact the Communications Center as soon as practical and request the appropriate embassy/consulate be notified. Investigators shall provide the Communications Center with the following information concerning the individual:

- Country of citizenship
- Full name of individual, including paternal and maternal surname, if used
- Date of birth or age
- Current residence
- Time, date, place, location of incarceration/detention and the 24-hour telephone number of the place of detention if different from the Department itself

If the individual claims citizenship of one of the countries for which notification of the consulate/embassy is mandatory, investigators shall provide the Communications Center with the information above as soon as practicable, regardless of whether the individual desires that the

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### *Foreign Diplomatic and Consular Representatives*

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embassy/consulate be notified. This procedure is critical because of treaty obligations with the particular countries. The list of countries and jurisdictions that require notification can be found on the U.S. Department of State website.

#### 407.7.2 DOCUMENTATION

Investigators shall document on the face page and in the narrative of the appropriate Arrest-Investigation Report the date and time the Communications Center was notified of the foreign national's arrest/detention and his/her claimed nationality.

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## Rapid Response and Deployment

### 408.1 PURPOSE AND SCOPE

Violence that is committed in schools, workplaces and other locations by individuals or a group of individuals who are determined to target and kill persons and to create mass casualties presents a difficult situation for law enforcement. The purpose of this policy is to identify guidelines and factors that will assist responding investigators in situations that call for rapid response and deployment.

### 408.2 POLICY

The Kings County District Attorney Investigation Division will endeavor to plan for rapid response to crisis situations, and to coordinate response planning with other emergency services as well as with those that are responsible for operating sites that may be the target of a critical incident.

Nothing in this policy shall preclude the use of reasonable force, deadly or otherwise, by members of the [Department/Office] in protecting themselves or others from death or serious injury.

### 408.3 FIRST RESPONSE

If there is a reasonable belief that acts or threats by a suspect are placing lives in imminent danger, first responding investigators should consider reasonable options to reduce, prevent or eliminate the threat. Investigators must decide, often under a multitude of difficult and rapidly evolving circumstances, whether to advance on the suspect, take other actions to deal with the threat or wait for additional resources.

If a suspect is actively engaged in the infliction of serious bodily harm or other life-threatening activity toward others, investigators should take immediate action, if reasonably practicable, while requesting additional assistance.

Investigators should remain aware of the possibility that an incident may be part of a coordinated multi-location attack that may require some capacity to respond to other incidents at other locations.

When deciding on a course of action investigators should consider:

- (a) Whether to advance on or engage a suspect who is still a possible or perceived threat to others. Any advance or engagement should be based on information known or received at the time.
- (b) Whether to wait for additional resources or personnel. This does not preclude an individual investigator from taking immediate action.
- (c) Whether individuals who are under imminent threat can be moved or evacuated with reasonable safety.
- (d) Whether the suspect can be contained or denied access to victims.
- (e) Whether the investigators have the ability to effectively communicate with other personnel or resources.
- (f) Whether planned tactics can be effectively deployed.

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### *Rapid Response and Deployment*

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- (g) The availability of rifles, shotguns, shields, breaching tools, control devices and any other appropriate tools, and whether the deployment of these tools will provide a tactical advantage.

In a case of a barricaded suspect with no hostages and no immediate threat to others, investigators should consider summoning and waiting for additional assistance (special tactics and/or hostage negotiation team response).

#### 408.3.1 RESPONSE TO SCHOOL THREATS

Upon receiving a threat or perceived threat from a school official that involves grades 6 to 12, investigators shall immediately investigate and conduct a threat assessment. The investigation shall include a review of the firearm registry of the California Department of Justice. A reasonable search of the school at issue shall be conducted when the search is justified by reasonable suspicion that it would produce evidence related to the threat or perceived threat (Education Code § 49394).

For purposes of this subsection a "threat" or "perceived threat" means any writing or action of a pupil that creates a reasonable suspicion that the pupil is preparing to commit a homicidal act related to school or a school activity. This may include possession, use, or depictions of firearms, ammunition, shootings, or targets in association with infliction of physical harm, destruction, or death in a social media post, journal, class note, or other media associated with the pupil. It may also include a warning by a parent, pupil, or other individual (Education Code § 49390).

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## Immigration Violations

### 409.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Kings County District Attorney Investigation Division relating to immigration and interacting with federal immigration officials.

#### 409.1.1 DEFINITIONS

The following definitions apply to this policy (Government Code § 7284.4):

**Criminal immigration violation** - Any federal criminal immigration violation that penalizes a person's presence in, entry, or reentry to, or employment in, the United States. This does not include any offense where a judicial warrant already has been issued.

**Immigration enforcement** - Any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, including any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry or reentry to, or employment in the United States.

**Judicial warrant** - An arrest warrant for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge.

### 409.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this [department/office] in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

### 409.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and not in any way that would violate the United States or California constitutions.

### 409.4 IMMIGRATION INQUIRIES PROHIBITED

Investigators shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

#### 409.4.1 CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM (CLETS)

Members shall not use information transmitted through CLETS for immigration enforcement purposes except for criminal history information and only when consistent with the California Values Act (Government Code § 15160).

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Members shall not use the system to investigate immigration violations of 8 USC § 1325 (improper entry) if that violation is the only criminal history in an individual's record (Government Code § 15160).

#### 409.4.2 CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

Members shall not obtain, access, use, or otherwise disclose noncriminal history information maintained by the DMV for immigration enforcement (Vehicle Code § 1808.48).

#### **409.5 DETENTIONS AND ARRESTS**

An investigator shall not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant (Government Code § 7284.6).

An investigator who has a reasonable suspicion that an individual already lawfully contacted or detained has committed a criminal violation of 8 USC § 1326(a) (unlawful reentry) that may be subject to an enhancement due to a previous conviction of an aggravated felony under 8 USC § 1326(b)(2), may detain the person for a reasonable period of time to contact federal immigration officials to verify whether the United States Attorney General has granted the individual permission for reentry and whether the violation is subject to enhancement (Government Code § 7284.6). No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

If the investigator has facts that establish probable cause to believe that a person already lawfully detained has violated 8 USC § 1326(a) and the penalty may be subject to enhancement due to prior conviction for specified aggravated felonies, he/she may arrest the individual for that offense (Government Code § 7284.6).

An investigator shall not detain any individual, for any length of time, for any other criminal immigration violation of federal immigration laws (Government Code § 7284.6).

An investigator should notify a supervisor as soon as practicable whenever an individual is arrested for violation of 8 USC § 1326(a).

#### 409.5.1 SUPERVISOR RESPONSIBILITIES

When notified that an investigator has arrested an individual for violation of 8 USC § 1326(a) or under the authority of a judicial warrant, the supervisor should determine whether it is appropriate to:

- (a) Transfer the person to federal authorities.
- (b) Transfer the person to jail.

#### **409.6 FEDERAL REQUESTS FOR ASSISTANCE**

Absent an urgent issue of officer safety or other emergency circumstances, requests by federal immigration officials for assistance from this [department/office] should be directed to a supervisor. The supervisor is responsible for determining whether the requested assistance would be permitted under the California Values Act (Government Code § 7284.2 et seq.).



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#### **409.7 INFORMATION SHARING**

No member of this [department/office] will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373; Government Code § 7284.6):

- (a) Sending information to, or requesting or receiving such information from federal immigration officials
- (b) Maintaining such information in [department/office] records
- (c) Exchanging such information with any other federal, state, or local government entity

Nothing in this policy restricts sharing information that is permissible under the California Values Act.

#### **409.7.1 IMMIGRATION DETAINERS**

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 (Government Code § 7284.6).

Notification to a federal authority may be made prior to release of an individual who is the subject of a notification request only if the individual meets one of the following conditions (Government Code § 7282.5; Government Code § 7284.6):

- (a) The individual has been arrested and had a judicial probable cause determination for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c).
- (b) The individual has been arrested and had a judicial probable cause determination for a felony punishable by time in a state prison.
- (c) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (d) The individual is a current registrant on the California Sex and Arson Registry.
- (e) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

#### **409.7.2 TRANSFERS TO IMMIGRATION AUTHORITIES**

Members shall not transfer an individual to immigration authorities unless one of the following circumstances exist (Government Code § 7282.5; Government Code § 7284.6):

- (a) Transfer is authorized by a judicial warrant or judicial probable cause determination.
- (b) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (c) The individual is a current registrant on the California Sex and Arson Registry.
- (d) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

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#### 409.7.3 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Investigations Division supervisor shall ensure that data regarding the number of transfers of an individual to immigration authorities, as permitted by Government Code § 7284.6(a)(4), and the offense that allowed for the transfer is collected and provided to the Investigator for required reporting to the DOJ (Government Code § 7284.6(c)(2)(see the Records Policy).

#### **409.8 U VISA AND T VISA NONIMMIGRANT STATUS**

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Investigations Division supervisor assigned to oversee the handling of any related case. The Investigations Division supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
  1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
  2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). The certification shall be completed and not refused for the specified reasons in Penal Code § 679.10(k)(3).
  3. Form I-914 Supplement B declaration shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking). The declaration shall be completed and not refused for completion for the specified reasons in Penal Code § 679.11(j)(3).
  4. Forward the completed Form I-918 Supplement B certification or completed Form I-914 declaration B to the victim, family member, or authorized representative (as defined in Penal Code § 679.10 and Penal Code § 679.11) without requiring the victim to provide government-issued identification (Penal Code § 679.10; Penal Code § 679.11)
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
  1. If Form I-918 Supplement B is not certified, a written explanation of denial shall be provided to the victim or authorized representative. The written denial shall

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include specific details of any reasonable requests for cooperation and a detailed description of how the victim refused to cooperate (Penal Code § 679.10).

- (e) Inform the victim liaison of any requests and their status.

#### **409.8.1 TIME FRAMES FOR COMPLETION**

Investigators and their supervisors who are assigned to investigate a case of human trafficking as defined by Penal Code § 236.1 shall complete the above process and the documents needed for indicating the individual is a victim for the T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Investigators and their supervisors shall complete the above process and the documents needed certifying victim cooperation for a U visa or T visa application pursuant to Penal Code § 679.10 and Penal Code § 679.11 within 30 days of a request from the victim, victim's family, or authorized representative related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within seven days of the first business day following the day the request was received.

#### **409.9 TRAINING**

The Training Coordinator should ensure that all appropriate members receive training on immigration issues.

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration violation has been committed.
- (c) Prohibitions contained in the California Values Act (Government Code § 7284 et seq.).

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## Obtaining Air Support

### 410.1 PURPOSE AND SCOPE

The use of a police air support unit can be invaluable in certain situations. This policy specifies potential situations where the use of a helicopter may be requested and the responsibilities for making a request.

### 410.2 REQUEST FOR HELICOPTER ASSISTANCE

If a supervisor or investigator in charge of an incident determines that the use of an air support unit would be beneficial, a request to obtain helicopter assistance may be made.

#### 410.2.1 REQUEST FOR ASSISTANCE FROM ANOTHER AGENCY

After consideration and approval of the request for an air support unit, the Chief Investigator, or his/her designee, will call the closest agency having helicopter support available. The Chief Investigator, or his/her designee, will apprise that agency of the specific details of the incident prompting the request.

#### 410.2.2 CIRCUMSTANCES UNDER WHICH AID MAY BE REQUESTED

Police air support units may be requested under any of the following conditions:

- (a) When the air unit is activated under existing mutual aid agreements
- (b) Whenever the safety of law enforcement personnel is in jeopardy and the presence of an air unit may reduce such hazard
- (c) When the use of the air unit will aid in the capture of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community
- (d) When an air unit is needed to locate a person who has strayed or is lost and whose continued absence constitutes a serious health or safety hazard
- (e) Vehicle pursuits

While it is recognized that the availability of air unit support will generally provide valuable assistance to ground personnel, the presence of an air unit will rarely replace the need for investigators on the ground.

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## Contacts and Temporary Detentions

### 411.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for temporarily detaining but not arresting persons in the field, conducting field interviews (FI) and pat-down searches, and the taking and disposition of photographs.

#### 411.1.1 DEFINITIONS

Definitions related to this policy include:

**Consensual encounter** - When an investigator contacts an individual but does not create a detention through words, actions, or other means. In other words, a reasonable individual would believe that his/her contact with the investigator is voluntary.

**Field interview** - The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purpose of determining the individual's identity and resolving the investigator's suspicions.

**Field photographs** - Posed photographs taken of a person during a contact, temporary detention, or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a Mobile Audio Video (MAV) system, body-worn camera, or public safety camera when persons are not posed for the purpose of photographing are not considered field photographs.

**Pat-down search** - A type of search used by investigators in the field to check an individual for dangerous weapons. It involves a thorough patting-down of clothing to locate any weapons or dangerous items that could pose a danger to the investigator, the detainee, or others.

**Reasonable suspicion** - When, under the totality of the circumstances, an investigator has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

**Temporary detention** - When an investigator intentionally, through words, actions, or physical force, causes an individual to reasonably believe he/she is required to restrict his/her movement without an actual arrest. Temporary detentions also occur when an investigator actually restrains a person's freedom of movement.

### 411.2 POLICY

The Kings County District Attorney Investigation Division respects the right of the public to be free from unreasonable searches or seizures. Due to an unlimited variety of situations confronting the investigator, the decision to temporarily detain a person and complete a field interview (FI), pat-down search, or field photograph shall be left to the investigator based on the totality of the circumstances, officer safety considerations, and constitutional safeguards.

### *Contacts and Temporary Detentions*

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#### **411.3 FIELD INTERVIEWS**

Based on observance of suspicious circumstances or upon information from investigation, an investigator may initiate the stop of a person, and conduct an FI, when there is articulable, reasonable suspicion to do so. A person, however, shall not be detained longer than is reasonably necessary to resolve the investigator's suspicion.

Nothing in this policy is intended to discourage consensual contacts. Frequent casual contact with consenting individuals is encouraged by the Kings County District Attorney Investigation Division to strengthen community involvement, community awareness, and problem identification.

##### **411.3.1 INITIATING A FIELD INTERVIEW**

When initiating the stop, the investigator should be able to point to specific facts which, when considered with the totality of the circumstances, reasonably warrant the stop. Such facts include but are not limited to an individual's:

- (a) Appearance or demeanor suggesting that he/she is part of a criminal enterprise or is engaged in a criminal act
- (b) Actions suggesting that he/she is engaged in a criminal activity
- (c) Presence in an area at an inappropriate hour of the day or night
- (d) Presence in a particular area is suspicious
- (e) Carrying of suspicious objects or items
- (f) Excessive clothes for the climate or clothes bulging in a manner that suggest he/she is carrying a dangerous weapon
- (g) Location in proximate time and place to an alleged crime
- (h) Physical description or clothing worn that matches a suspect in a recent crime
- (i) Prior criminal record or involvement in criminal activity as known by the investigator

#### **411.4 PAT-DOWN SEARCHES**

Once a valid stop has been made, and consistent with the investigator's training and experience, an investigator may pat a suspect's outer clothing for weapons if the investigator has a reasonable, articulable suspicion the suspect may pose a safety risk. The purpose of this limited search is not to discover evidence of a crime, but to allow the investigator to pursue the investigation without fear of violence. Circumstances that may establish justification for performing a pat-down search include but are not limited to:

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.
- (b) Where more than one suspect must be handled by a single investigator.
- (c) The hour of the day and the location or neighborhood where the stop takes place.
- (d) Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
- (e) The actions and demeanor of the suspect.

### *Contacts and Temporary Detentions*

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- (f) Visual indications which suggest that the suspect is carrying a firearm or other weapon.

Whenever practicable, a pat-down search should not be conducted by a lone investigator. A cover investigator should be positioned to ensure safety and should not be involved in the search.

#### **411.5 FIELD PHOTOGRAPHS**

Before photographing any field detainee, the investigator shall carefully consider, among other things, the factors listed below.

##### **411.5.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT**

Field photographs may be taken when the subject being photographed knowingly and voluntarily gives consent. When taking a consensual photograph, the investigator should have the individual read and sign the appropriate form accompanying the photograph.

##### **411.5.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT**

Field photographs may be taken without consent only if they are taken during a detention that is based upon reasonable suspicion of criminal activity, and the photograph serves a legitimate law enforcement purpose related to the detention. The investigator must be able to articulate facts that reasonably indicate that the subject was involved in or was about to become involved in criminal conduct. The subject should not be ordered to remove or lift any clothing for the purpose of taking a photograph.

If, prior to taking a photograph, the investigator's reasonable suspicion of criminal activity has been dispelled, the detention must cease and the photograph should not be taken.

All field photographs and related reports shall be submitted to a supervisor and retained in compliance with this policy.

#### **411.6 SUPERVISOR RESPONSIBILITY**

While it is recognized that field photographs often become valuable investigative tools, supervisors should monitor such practices in view of the above listed considerations. This is not to imply that supervisor approval is required before each photograph. Access to field photographs shall be strictly limited to law enforcement purposes.

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## Criminal Organizations

### 412.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that the Kings County District Attorney Investigation Division appropriately utilizes criminal intelligence systems and temporary information files to support investigations of criminal organizations and enterprises.

#### 412.1.1 DEFINITIONS

Definitions related to this policy include:

**Criminal intelligence system** - Any record system that receives, stores, exchanges or disseminates information that has been evaluated and determined to be relevant to the identification of a criminal organization or enterprise, its members or affiliates. This does not include temporary information files.

### 412.2 POLICY

The Kings County District Attorney Investigation Division recognizes that certain criminal activities, including but not limited to gang crimes and drug trafficking, often involve some degree of regular coordination and may involve a large number of participants over a broad geographical area.

It is the policy of this [department/office] to collect and share relevant information while respecting the privacy and legal rights of the public.

### 412.3 CRIMINAL INTELLIGENCE SYSTEMS

No [department/office] member may create, submit to or obtain information from a criminal intelligence system unless the Chief Investigator has approved the system for [department/office] use.

Any criminal intelligence system approved for [department/office] use should meet or exceed the standards of 28 CFR 23.20.

A designated supervisor will be responsible for maintaining each criminal intelligence system that has been approved for [department/office] use. The supervisor or the authorized designee should ensure the following:

- (a) Members using any such system are appropriately selected and trained.
- (b) Use of every criminal intelligence system is appropriately reviewed and audited.
- (c) Any system security issues are reasonably addressed.

#### 412.3.1 SYSTEM ENTRIES

It is the designated supervisor's responsibility to approve the entry of any information from a report, field interview (FI), photo or other relevant document into an authorized criminal intelligence system. If entries are made based upon information that is not on file with this [department/office], such as open or public source documents or documents that are on file at another agency, the designated supervisor should ensure copies of those documents are retained by the Records.



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Any supporting documentation for an entry shall be retained by the Records in accordance with the established records retention schedule and for at least as long as the entry is maintained in the system.

The designated supervisor should ensure that any documents retained by the Records are appropriately marked as intelligence information. The Investigator may not purge such documents without the approval of the designated supervisor.

#### 412.3.2 GANG DATABASES

The Chief Investigator may approve participation by the gang unit in a shared criminal gang intelligence database, such as CALGANG®. Members must obtain the requisite training before accessing any such database (11 CCR 751.6).

It is the gang unit supervisor's responsibility to determine whether any report or FI contains information that would qualify for entry into the database. Prior to designating any person as a suspected gang member, associate, or affiliate in a shared gang database; or submitting a document to the Attorney General's office for the purpose of designating a person in a shared gang database; or otherwise identifying the person in a shared gang database, the gang unit supervisor shall provide written notice to the person and, if the person is under the age of 18, to his/her parent or guardian of the designation and the basis for the designation, unless providing that notification would compromise an active criminal investigation or compromise the health or safety of a minor. Notice shall also describe the process to contest the designation (Penal Code § 186.34).

The person, an attorney working on his/her behalf, or his/her parent or guardian (if the person is under 18 years of age) may request, in writing, information as to whether the person is designated as a suspected gang member, associate, or affiliate in a shared gang database accessible by the [Department/Office], the basis for that designation, and the name of the agency that made the designation. The [Department/Office] shall respond to a valid request in writing within 30 days, and shall provide the information requested unless doing so would compromise an active investigation or compromise the health and safety of the person if he/she is under 18 years of age (Penal Code § 186.34).

The person, or his/her parent or guardian if the person is under 18 years of age, may contest the designation by submitting written documentation, which shall be reviewed by the gang unit supervisor. If it is determined that the person is not a suspected gang member, associate, or affiliate, the person shall be removed from the database. The person and the parent or guardian shall be provided written verification of the [department/office]'s decision within 30 days of receipt of the written documentation contesting the designation and shall include the reason for a denial when applicable (Penal Code § 186.34).

The gang unit supervisor should forward reports or FIs to the Records after appropriate database entries are made. The supervisor should clearly mark the report/FI as gang intelligence information.

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It is the responsibility of the Records supervisor to retain reports and FIs in compliance with the database rules and any applicable end user agreement.

Records contained in a shared gang database shall not be disclosed for employment or military screening purposes, and shall not be disclosed for the purpose of enforcing federal immigration law unless required by state or federal statute or regulation (Penal Code § 186.36).

### **412.4 TEMPORARY INFORMATION FILE**

No member may create or keep files on individuals that are separate from the approved criminal intelligence system. However, members may maintain temporary information that is necessary to actively investigate whether a person or group qualifies for entry into the [department/office]-approved criminal intelligence system only as provided in this section. Once information qualifies for inclusion, it should be submitted to the supervisor responsible for consideration of criminal intelligence system entries.

### **412.5 INFORMATION RECOGNITION**

[Department/Office] members should document facts that suggest an individual, organization or enterprise is involved in criminal activity and should forward that information appropriately. Examples include, but are not limited to:

- (a) Gang indicia associated with a person or residence.
- (b) Information related to a drug-trafficking operation.
- (c) Vandalism indicating an animus for a particular group.
- (d) Information related to an illegal gambling operation.

[Department/Office] supervisors who utilize an authorized criminal intelligence system should work with the Training Coordinator to train members to identify information that may be particularly relevant for inclusion.

### **412.6 RELEASE OF INFORMATION**

[Department/Office] members shall comply with the rules of an authorized criminal intelligence system regarding inquiries and release of information.

Information from a temporary information file may only be furnished to [department/office] members and other law enforcement agencies on a need-to-know basis and consistent with the Records Maintenance and Release Policy.

When an inquiry is made by the parent or guardian of a juvenile as to whether that juvenile's name is in a temporary information file, such information should be provided by the supervisor responsible for the temporary information file, unless there is good cause to believe that the release of such information might jeopardize an ongoing criminal investigation.

### **412.7 CRIMINAL STREET GANGS**

The Investigations Division supervisor should ensure that there are an appropriate number of [department/office] members who can:

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- (a) Testify as experts on matters related to criminal street gangs, and maintain an above average familiarity with:
  - 1. Any organization, associate or group of three or more persons that meets the definition of a criminal street gang under Penal Code § 186.22(f).
  - 2. Identification of a person as a criminal street gang member and criminal street gang-related crimes.
  - 3. The California Street Terrorism Enforcement and Prevention Act (Penal Code § 186.21 et seq.), associated crimes and what defines a criminal street gang (Penal Code § 186.22).
- (b) Coordinate with other agencies in the region regarding criminal street gang-related crimes and information.
- (c) Train other members to identify gang indicia and investigate criminal street gang-related crimes.

## Chief Investigators

### **442.1 PURPOSE AND SCOPE**

Each shift should be directed by supervisors who are capable of making decisions and communicating in a manner consistent with departmental policies, procedures, practices, functions and objectives. To accomplish this goal, the Chief Investigator heads each shift

### **442.2 DESIGNATION AS ACTING CHIEF INVESTIGATOR**

When the Chief Investigator is unavailable for duty the Assistant Chief Investigator will supervise in his/her absence.

If the Chief Investigator and the Assistant Chief Investigator are not available for duty a Chief Deputy DA will supervised the Investigations Division.

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## Portable Audio/Video Recorders

### 413.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this [department/office] while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment.

This policy does not apply to mobile audio/video recordings, interviews or interrogations conducted at any Kings County District Attorney Investigation Division facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

### 413.2 MEMBER PRIVACY EXPECTATION

All recordings made by members on any department-issued device at any time, and any recording made while acting in an official capacity for this department, regardless of ownership of the device it was made on, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

### 413.3 MEMBER RESPONSIBILITIES

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should notify persons that they are being recorded, whenever possible.

Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members should include the reason for deactivation.

#### 413.3.1 SUPERVISOR RESPONSIBILITIES

Supervisors should take custody of a portable audio/video recording device as soon as practicable when the device may have captured an incident involving the use of force, an officer-involved shooting or death or other serious incident, and ensure the data is downloaded (Penal Code § 832.18).

### 413.4 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

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Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

#### 413.4.1 PROHIBITED USE OF BIOMETRIC SURVEILLANCE SYSTEM

The installation, activation, or use of biometric surveillance systems, including facial recognition, in connection with portable recorders is prohibited (Penal Code § 832.19).

#### **413.5 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

To assist with identifying and preserving data and recordings, members should download, tag or mark these in accordance with procedure and document the existence of the recording in any related case report.

A member should transfer, tag or mark recordings when the member reasonably believes:

- (a) The recording contains evidence relevant to potential criminal, civil or administrative matters.
- (b) A complainant, victim or witness has requested non-disclosure.
- (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person.
- (d) Disclosure may be an unreasonable violation of someone's privacy.
- (e) Medical or mental health information is contained.
- (f) Disclosure may compromise an undercover officer or confidential informant.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

#### **413.6 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the [Department/Office] who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.

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- (c) By media personnel with permission of the Chief Investigator or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

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## Foot Pursuits

### 414.1 PURPOSE AND SCOPE

This policy provides guidelines to assist investigators in making the decision to initiate or continue the pursuit of suspects on foot.

### 414.2 DECISION TO PURSUE

The safety of department members and the public should be the primary consideration when determining whether a foot pursuit should be initiated or continued. Investigators must be mindful that immediate apprehension of a suspect is rarely more important than the safety of the public and department members.

Investigators may be justified in initiating a foot pursuit of any individual the investigator reasonably believes is about to engage in, is engaging in or has engaged in criminal activity. The decision to initiate or continue such a foot pursuit, however, must be continuously re-evaluated in light of the circumstances presented at the time.

Mere flight by a person who is not suspected of criminal activity shall not serve as justification for engaging in an extended foot pursuit without the development of reasonable suspicion regarding the individual's involvement in criminal activity or being wanted by law enforcement.

Deciding to initiate or continue a foot pursuit is a decision that an investigator must make quickly and under unpredictable and dynamic circumstances. It is recognized that foot pursuits may place department members and the public at significant risk. Therefore, no investigator or supervisor shall be criticized or disciplined for deciding not to engage in a foot pursuit because of the perceived risk involved.

If circumstances permit, surveillance and containment are generally the safest tactics for apprehending fleeing persons. In deciding whether to initiate or continue a foot pursuit, an investigator should continuously consider reasonable alternatives to a foot pursuit based upon the circumstances and resources available, such as:

- (a) Containment of the area.
- (b) Saturation of the area with law enforcement personnel, including assistance from other agencies.
- (c) A canine search.
- (d) Thermal imaging or other sensing technology.
- (e) Air support.
- (f) Apprehension at another time when the identity of the suspect is known or there is information available that would likely allow for later apprehension, and the need to immediately apprehend the suspect does not reasonably appear to outweigh the risk of continuing the foot pursuit.



### *Foot Pursuits*

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#### **414.3 GUIDELINES FOR FOOT PURSUIT**

Unless the investigator reasonably believes that exigent circumstances exist (e.g. a serious threat to the safety of personnel or members of the public), investigators should consider alternatives to engaging in or continuing a foot pursuit under the following conditions:

- (a) When directed by a supervisor to terminate the foot pursuit. Such an order shall be considered mandatory
- (b) When the investigator is acting alone.
- (c) When two or more investigators become separated, lose visual contact with one another, or obstacles separate them to the degree that they cannot immediately assist each other should a confrontation take place. In such circumstances, it is generally recommended that a single investigator keep the suspect in sight from a safe distance and coordinate the containment effort.
- (d) The investigator is unsure of his/her location and direction of travel.
- (e) When pursuing multiple suspects and the pursuing investigators do not reasonably believe that they would be able to control the suspect should a confrontation occur.
- (f) When the physical condition of the investigators renders them incapable of controlling the suspect if apprehended.
- (g) When the investigator loses radio contact with the Communications Center or with backup investigators.
- (h) When the suspect enters a building, structure, confined space or a wooded or otherwise isolated area and there are insufficient investigators to provide backup and containment. The primary investigator should consider discontinuing the pursuit and coordinating containment pending the arrival of sufficient investigators.
- (i) The investigator becomes aware of unanticipated or unforeseen circumstances that unreasonably increase the risk to investigators or the public.
- (j) The investigator reasonably believes that the danger to the pursuing investigators or public outweighs the objective of immediate apprehension.
- (k) The investigator loses possession of his/her firearm or other essential equipment.
- (l) The investigator or a third party is injured during the pursuit, requiring immediate assistance, and there are no other emergency personnel available to render assistance.
- (m) The suspect's location is no longer definitely known.
- (n) The identity of the suspect is established or other information exists that will allow for the suspect's apprehension at a later time, and it reasonably appears that there is no immediate threat to department personnel or the public if the suspect is not immediately apprehended.

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- (o) The investigator's ability to safely continue the pursuit is impaired by inclement weather, darkness or other conditions.

#### **414.4 RESPONSIBILITIES IN FOOT PURSUITS**

##### **414.4.1 INITIATING INVESTIGATOR RESPONSIBILITIES**

Unless relieved by another investigator or a supervisor, the initiating investigator shall be responsible for coordinating the progress of the pursuit. When acting alone and when practicable, the initiating investigator should not attempt to overtake and confront the suspect but should attempt to keep the suspect in sight until sufficient investigators are present to safely apprehend the suspect.

Early communication of available information from the involved investigators is essential so that adequate resources can be coordinated and deployed to bring a foot pursuit to a safe conclusion. Investigators initiating a foot pursuit should, at a minimum, broadcast the following information as soon as it becomes practicable and available:

- (a) Location and direction of travel
- (b) Call sign identifier
- (c) Reason for the foot pursuit, such as the crime classification
- (d) Number of suspects and description, to include name if known
- (e) Whether the suspect is known or believed to be armed with a dangerous weapon

Investigators should be mindful that radio transmissions made while running may be difficult to understand and may need to be repeated.

Absent extenuating circumstances, any investigator unable to promptly and effectively broadcast this information should terminate the foot pursuit. If the foot pursuit is discontinued for any reason, immediate efforts for containment should be established and alternatives considered based upon the circumstances and available resources.

When a foot pursuit terminates, the investigator will notify the [dispatcher of his/her location and the status of the pursuit termination (e.g., suspect in custody, lost sight of suspect), and will direct further actions as reasonably appear necessary, to include requesting medical aid as needed for investigators, suspects or members of the public.

##### **414.4.2 ASSISTING INVESTIGATOR RESPONSIBILITIES**

Whenever any investigator announces that he/she is engaged in a foot pursuit, all other investigators should minimize non-essential radio traffic to permit the involved investigators maximum access to the radio frequency.

##### **414.4.3 SUPERVISOR RESPONSIBILITIES**

Upon becoming aware of a foot pursuit, the supervisor shall make every reasonable effort to ascertain sufficient information to direct responding resources and to take command, control and

### *Foot Pursuits*

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coordination of the foot pursuit. The supervisor should respond to the area whenever possible; the supervisor does not, however, need not be physically present to exercise control over the foot pursuit. The supervisor shall continuously assess the situation in order to ensure the foot pursuit is conducted within established department guidelines.

The supervisor shall terminate the foot pursuit when the danger to pursuing investigators or the public appears to unreasonably outweigh the objective of immediate apprehension of the suspect.

Upon apprehension of the suspect, the supervisor shall promptly proceed to the termination point to direct the post-foot pursuit activity.

#### **414.5 REPORTING REQUIREMENTS**

The initiating investigator shall complete appropriate crime/arrest reports documenting, at minimum:

- (a) Date and time of the foot pursuit.
- (b) Initial reason and circumstances surrounding the foot pursuit.
- (c) Course and approximate distance of the foot pursuit.
- (d) Alleged offenses.
- (e) Involved vehicles and investigators.
- (f) Whether a suspect was apprehended as well as the means and methods used.
  - 1. Any use of force shall be reported and documented in compliance with the Use of Force Policy.
- (g) Arrestee information, if applicable.
- (h) Any injuries and/or medical treatment.
- (i) Any property or equipment damage.
- (j) Name of the supervisor at the scene or who handled the incident.

Assisting investigators taking an active role in the apprehension of the suspect shall complete supplemental reports as necessary or as directed.

The supervisor reviewing the report will make a preliminary determination that the pursuit appears to be in compliance with this policy or that additional review and/or follow-up is warranted.

In any case in which a suspect is not apprehended and there is insufficient information to support further investigation, a supervisor may authorize that the initiating investigator need not complete a formal report.

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## Public Recording of Law Enforcement Activity

### 415.1 PURPOSE AND SCOPE

This policy provides guidelines for handling situations in which members of the public photograph or audio/video record law enforcement actions and other public activities that involve members of this [department/office]. In addition, this policy provides guidelines for situations where the recordings may be evidence.

### 415.2 POLICY

The Kings County District Attorney Investigation Division recognizes the right of persons to lawfully record members of this [department/office] who are performing their official duties. Members of this [department/office] will not prohibit or intentionally interfere with such lawful recordings. Any recordings that are deemed to be evidence of a crime or relevant to an investigation will only be collected or seized lawfully.

Investigators should exercise restraint and should not resort to highly discretionary arrests for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

### 415.3 RECORDING LAW ENFORCEMENT ACTIVITY

Members of the public who wish to record law enforcement activities are limited only in certain aspects.

- (a) Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).
- (b) Beyond the act of photographing or recording, individuals may not interfere with the law enforcement activity. Examples of interference include, but are not limited to:
  - 1. Tampering with a witness or suspect.
  - 2. Inciting others to violate the law.
  - 3. Being so close to the activity as to present a clear safety hazard to the investigators.
  - 4. Being so close to the activity as to interfere with an investigator's effective communication with a suspect or witness.
- (c) The individual may not present an undue safety risk to the investigators, him/herself or others.

### 415.4 INVESTIGATOR RESPONSE

Investigators should promptly request that a supervisor respond to the scene whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence. If practicable, investigators should wait for the supervisor to arrive before taking enforcement action or seizing any cameras or recording media.

### *Public Recording of Law Enforcement Activity*

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Whenever practicable, investigators or supervisors should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or behavior to be unlawful. Accompanying the warnings should be clear directions on what an individual can do to be compliant; directions should be specific enough to allow compliance. For example, rather than directing an individual to clear the area, an investigator could advise the person that he/she may continue observing and recording from the sidewalk across the street.

If an arrest or other significant enforcement activity is taken as the result of a recording that interferes with law enforcement activity, investigators shall document in a report the nature and extent of the interference or other unlawful behavior and the warnings that were issued.

#### **415.5 SUPERVISOR RESPONSIBILITIES**

A supervisor should respond to the scene when requested or any time the circumstances indicate a likelihood of interference or other unlawful behavior.

The supervisor should review the situation with the investigator and:

- (a) Request any additional assistance as needed to ensure a safe environment.
- (b) Take a lead role in communicating with individuals who are observing or recording regarding any appropriate limitations on their location or behavior. When practical, the encounter should be recorded.
- (c) When practicable, allow adequate time for individuals to respond to requests for a change of location or behavior.
- (d) Ensure that any enforcement, seizure or other actions are consistent with this policy and constitutional and state law.
- (e) Explain alternatives for individuals who wish to express concern about the conduct of [Department/Office] members, such as how and where to file a complaint.

#### **415.6 SEIZING RECORDINGS AS EVIDENCE**

Investigators should not seize recording devices or media unless (42 USC § 2000aa):

- (a) There is probable cause to believe the person recording has committed or is committing a crime to which the recording relates, and the recording is reasonably necessary for prosecution of the person.
  1. Absent exigency or consent, a warrant should be sought before seizing or viewing such recordings. Reasonable steps may be taken to prevent erasure of the recording.
- (b) There is reason to believe that the immediate seizure of such recordings is necessary to prevent serious bodily injury or death of any person.
- (c) The person consents.
  1. To ensure that the consent is voluntary, the request should not be made in a threatening or coercive manner.

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### *Public Recording of Law Enforcement Activity*

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2. If the original recording is provided, a copy of the recording should be provided to the recording party, if practicable. The recording party should be permitted to be present while the copy is being made, if feasible.

Recording devices and media that are seized will be submitted within the guidelines of the Property and Evidence Policy.

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## Crisis Intervention Incidents

### 416.1 PURPOSE AND SCOPE

This policy provides guidelines for interacting with those who may be experiencing a mental health or emotional crisis. Interaction with such individuals has the potential for miscommunication and violence. It often requires an investigator to make difficult judgments about a person's mental state and intent in order to effectively and legally interact with the individual.

#### 416.1.1 DEFINITIONS

Definitions related to this policy include:

**Person in crisis** - A person whose level of distress or mental health symptoms have exceeded the person's internal ability to manage his/her behavior or emotions. A crisis can be precipitated by any number of things, including an increase in the symptoms of mental illness despite treatment compliance; non-compliance with treatment, including a failure to take prescribed medications appropriately; or any other circumstance or event that causes the person to engage in erratic, disruptive or dangerous behavior that may be accompanied by impaired judgment.

### 416.2 POLICY

The Kings County District Attorney Investigation Division is committed to providing a consistently high level of service to all members of the community and recognizes that persons in crisis may benefit from intervention. The [Department/Office] will collaborate, where feasible, with mental health professionals to develop an overall intervention strategy to guide its members' interactions with those experiencing a mental health crisis. This is to ensure equitable and safe treatment of all involved.

### 416.3 SIGNS

Members should be alert to any of the following possible signs of mental health issues or crises:

- (a) A known history of mental illness
- (b) Threats of or attempted suicide
- (c) Loss of memory
- (d) Incoherence, disorientation or slow response
- (e) Delusions, hallucinations, perceptions unrelated to reality or grandiose ideas
- (f) Depression, pronounced feelings of hopelessness or uselessness, extreme sadness or guilt
- (g) Social withdrawal
- (h) Manic or impulsive behavior, extreme agitation, lack of control
- (i) Lack of fear
- (j) Anxiety, aggression, rigidity, inflexibility or paranoia

### *Crisis Intervention Incidents*

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Members should be aware that this list is not exhaustive. The presence or absence of any of these should not be treated as proof of the presence or absence of a mental health issue or crisis.

#### **416.4 COORDINATION WITH MENTAL HEALTH PROFESSIONALS**

The Chief Investigator should designate an Investigator to collaborate with mental health professionals to develop an education and response protocol. It should include a list of community resources, to guide [department/office] interaction with those who may be suffering from mental illness or who appear to be in a mental health crisis.

#### **416.5 FIRST RESPONDERS**

Safety is a priority for first responders. It is important to recognize that individuals under the influence of alcohol, drugs or both may exhibit symptoms that are similar to those of a person in a mental health crisis. These individuals may still present a serious threat to investigators; such a threat should be addressed with reasonable tactics. Nothing in this policy shall be construed to limit an investigator's authority to use reasonable force when interacting with a person in crisis.

Investigators are reminded that mental health issues, mental health crises and unusual behavior alone are not criminal offenses. Individuals may benefit from treatment as opposed to incarceration.

An investigator responding to a call involving a person in crisis should:

- (a) Promptly assess the situation independent of reported information and make a preliminary determination regarding whether a mental health crisis may be a factor.
- (b) Request available backup investigators and specialized resources as deemed necessary and, if it is reasonably believed that the person is in a crisis situation, use conflict resolution and de-escalation techniques to stabilize the incident as appropriate.
- (c) If feasible, and without compromising safety, turn off flashing lights, bright lights or sirens.
- (d) Attempt to determine if weapons are present or available.
  1. Prior to making contact, and whenever possible and reasonable, conduct a search of the Department of Justice Automated Firearms System via the California Law Enforcement Telecommunications System (CLETS) to determine whether the person is the registered owner of a firearm (Penal Code § 11106.4).
- (e) Take into account the person's mental and emotional state and potential inability to understand commands or to appreciate the consequences of his/her action or inaction, as perceived by the investigator.
- (f) Secure the scene and clear the immediate area as necessary.
- (g) Employ tactics to preserve the safety of all participants.
- (h) Determine the nature of any crime.
- (i) Request a supervisor, as warranted.



### *Crisis Intervention Incidents*

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- (j) Evaluate any available information that might assist in determining cause or motivation for the person's actions or stated intentions.
- (k) If circumstances reasonably permit, consider and employ alternatives to force.

#### **416.6 DE-ESCALATION**

Investigators should consider that taking no action or passively monitoring the situation may be the most reasonable response to a mental health crisis.

Once it is determined that a situation is a mental health crisis and immediate safety concerns have been addressed, responding members should be aware of the following considerations and should generally:

- Evaluate safety conditions.
- Introduce themselves and attempt to obtain the person's name.
- Be patient, polite, calm, courteous and avoid overreacting.
- Speak and move slowly and in a non-threatening manner.
- Moderate the level of direct eye contact.
- Remove distractions or disruptive people from the area.
- Demonstrate active listening skills (e.g., summarize the person's verbal communication).
- Provide for sufficient avenues of retreat or escape should the situation become volatile.

Responding investigators generally should not:

- Use stances or tactics that can be interpreted as aggressive.
- Allow others to interrupt or engage the person.
- Corner a person who is not believed to be armed, violent or suicidal.
- Argue, speak with a raised voice or use threats to obtain compliance.

#### **416.7 INCIDENT ORIENTATION**

When responding to an incident that may involve mental illness or a mental health crisis, the investigator should request that the [dispatcher provide critical information as it becomes available.

This includes:

- (a) Whether the person relies on drugs or medication, or may have failed to take his/her medication.
- (b) Whether there have been prior incidents, suicide threats/attempts, and whether there has been previous bureau response.
- (c) Contact information for a treating physician or mental health professional.

Additional resources and a supervisor should be requested as warranted.

### *Crisis Intervention Incidents*

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#### **416.8 SUPERVISOR RESPONSIBILITIES**

A supervisor should respond to the scene of any interaction with a person in crisis. Responding supervisors should:

- (a) Attempt to secure appropriate and sufficient resources.
- (b) Closely monitor any use of force, including the use of restraints, and ensure that those subjected to the use of force are provided with timely access to medical care (see the Handcuffing and Restraints Policy).
- (c) Consider strategic disengagement. Absent an imminent threat to the public and, as circumstances dictate, this may include removing or reducing law enforcement resources or engaging in passive monitoring.
- (d) Ensure that all reports are completed and that incident documentation uses appropriate terminology and language.
- (e) Conduct an after-action tactical and operational debriefing, and prepare an after-action evaluation of the incident to be forwarded to the Chief Investigator.

Evaluate whether a critical incident stress management debriefing for involved members is warranted.

#### **416.9 INCIDENT REPORTING**

Members engaging in any oral or written communication associated with a mental health crisis should be mindful of the sensitive nature of such communications and should exercise appropriate discretion when referring to or describing persons and circumstances.

Members having contact with a person in crisis should keep related information confidential, except to the extent that revealing information is necessary to conform to [department/office] reporting procedures or other official mental health or medical proceedings.

##### **416.9.1 DIVERSION**

Individuals who are not being arrested should be processed in accordance with the Mental Illness Commitments Policy.

#### **416.10 TRAINING**

In coordination with the mental health community and appropriate stakeholders, the [Department/Office] will develop and provide comprehensive education and training to all department members to enable them to effectively interact with persons in crisis.

This [department/office] will endeavor to provide Peace Officer Standards and Training (POST)-approved advanced officer training on interaction with persons with mental disabilities, welfare checks and crisis intervention (Penal Code § 11106.4; Penal Code § 13515.25; Penal Code § 13515.27; Penal Code § 13515.30).

## **Chapter 5 - Traffic Operations**

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## Impaired Driving

### 500.1 PURPOSE AND SCOPE

This policy provides guidance to those [department/office] members who play a role in the detection and investigation of driving under the influence (DUI).

### 500.2 POLICY

The Kings County District Attorney Investigation Division is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of California's impaired driving laws.

#### 500.2.1 COLLECTING BLOOD EVIDENCE

Only a certified phlebotomy technician, licensed physician, nurse or other individual authorized by Vehicle Code § 23158(a) may withdraw a blood sample. Whether such evidence is collected at the Department or other location, the withdrawal of the blood sample shall be witnessed by the assigned investigator.

When a person cannot submit to a blood test because he/she is a hemophiliac or is using an anticoagulant under the direction of a physician for a heart condition, he or she shall not be required to take a blood test (Vehicle Code § 23612(b) and (c)).

All blood samples shall be booked into evidence for later transfer to the crime laboratory for analysis.

#### 500.2.2 COLLECTING BREATH AS EVIDENCE

If the arrested person chooses a breath test and it can be accomplished without undue delay, the arrested person shall first be transported to the jail for breath testing preparatory to booking. At the jail, an investigator trained in the use of the alcohol breath machine will record the blood alcohol level by obtaining samples of the person's breath.

When the arrested person chooses a breath test the handling investigator shall advise the person that the breath-testing equipment does not retain a sample, and the person may, if desired, provide a blood or urine specimen which will be retained to facilitate subsequent verification testing (Vehicle Code § 23614).

#### 500.2.3 COLLECTING URINE AS EVIDENCE

If the arrested person chooses a urine test, as permitted by law, he/she shall be promptly transported to the jail. Urine evidence collection kits are maintained in the jail. The investigator shall follow the directions listed on the instruction sheet accompanying the urine evidence collection kit. If the arrested person's urine is necessarily collected elsewhere, the procedure will remain the same.

Urine samples shall be collected and/or witnessed by an investigator or matron of the same gender as the person giving the sample. The person tested shall be given such privacy in the taking of

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the urine specimen as will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved (Vehicle Code § 23158(i)).

The urine evidence collection kit shall be marked with the arrestee's name, offense, department, case number and the name of the witnessing investigator. The urine evidence collection kit shall then be placed in the evidence refrigerator to await transportation to the crime laboratory.

#### 500.2.4 TESTING OF CONSCIOUS PERSON AT A HOSPITAL

Most blood, breath and urine tests will be administered at the jail. However, if a timely breath or urine test cannot be administered because the person is transported to a medical facility where such tests cannot be facilitated, the person shall be advised that a blood test will be the only choice available and a blood sample may be taken at the medical facility (Vehicle Code § 23612(a)(3)).

Based on probable cause, the investigator should place the conscious person under arrest in the presence of a witnessing investigator or medical personnel and advise the attending physician of the intention to collect a sample of the person's blood. Unless the attending physician objects for medical reasons a blood sample will be collected in the prescribed manner.

#### 500.2.5 TESTING OF UNCONSCIOUS PERSON AT A HOSPITAL

When a person is suspected of driving under the influence of alcohol and/or drugs and the person is unconscious or in a condition rendering him or her incapable of refusal, that person is deemed not to have withdrawn his or her consent and a blood test may be ordered by the arresting investigator. The investigator shall advise the attending physician of the intention to collect a sample of the person's blood as evidence. If the physician does not object based on medical reasons, the blood will be collected in the prescribed manner.

A person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered. In such cases the handling investigator should coordinate with the Coroner's Office to ensure that a viable test will be obtained (Vehicle Code § 23612(a)(5)).

#### 500.2.6 EXIGENT CIRCUMSTANCES DOCTRINE

Under the exigent circumstances doctrine, the level of influence of an intoxicant can be important evidence. Since it is not of a permanent nature, it will be lost if not seized immediately. The above sections will generally come within the guidelines of the exigent circumstances doctrine.

#### 500.2.7 EXIGENT CIRCUMSTANCES DOCTRINE

Under the exigent circumstances doctrine, the level of influence of an intoxicant can be important evidence. Since it is not of a permanent nature, it will be lost if not seized immediately. The above sections will generally come within the guidelines of the exigent circumstances doctrine.

#### 500.2.8 COLLECTING URINE AS EVIDENCE

If the arrested person chooses a urine test, as permitted by law, he/she shall be promptly transported to the jail. The jailer will furnish a urine kit for collecting samples of the arrested person's urine. The investigator shall follow the directions listed on the container instruction sheet.

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If the arrested person's urine is necessarily collected elsewhere, the procedure will remain the same.

The collection kit shall then be marked accordingly with the suspect's name, offense, department, case number, and the name of the witnessing investigator.

The collection kit shall then be placed in the evidence refrigerator to await transportation to the crime laboratory.

Urine samples shall be collected and/or witnessed by an investigator or matron of the same gender as the suspect.

#### **500.3 REFUSAL OR FAILURE TO TEST**

If a person who has been arrested for a violation of Vehicle Code § 23140; Vehicle Code § 23152; Vehicle Code § 23153, after having been advised of his/her rights per Vehicle Code § 23612, refuses or fails through statements or actions to complete a chemical test, the handling investigator shall serve the notice of order of suspension on behalf of the Department of Motor Vehicles and confiscate all California driver's licenses in the person's possession (Vehicle Code § 23612(e); Vehicle Code § 23612(f)).

Investigators shall first obtain a search warrant authorizing the collection of blood evidence when there is probable cause to believe the arrestee's blood will produce relevant evidence as to the arrestee's guilt or innocence. Blood may be taken by force in any felony or in a misdemeanor impaired driver investigation when the person refuses to take a chemical test. If the person makes a timely and reasonable request to undergo a different and viable form of testing, such request shall be considered. Blood may only be taken by force when the following circumstances have been met:

- (a) A search warrant has been issued authorizing the collection of blood evidence from the arrestee.
- (b) The person must be in custody and the investigator must have reason to believe the person is intoxicated.
- (c) The person's alternative choice, if selected, is either unavailable or not a viable test for the nature of the suspected intoxication (e.g., breath is not a viable test for suspected drug influence).
- (d) The blood is taken in a medically approved manner.
- (e) Only reasonable force may be used to restrain the arrestee.

A supervisor shall be present whenever blood is forcibly extracted from a person who is uncooperative and has refused a chemical test. The amount of force used to accomplish the collection of this evidence will be controlled by that supervisor, keeping in mind the seriousness of the suspected offense and the factors used to determine the reasonableness of force in accordance with the Use of Force Policy. In misdemeanor cases, force will generally be limited to handcuffing or similar restraint methods during the withdrawal of blood.

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*Impaired Driving*

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The amount of force and methods used to accomplish the blood sample draw shall be detailed in the related report.

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## Automated License Plate Readers (ALPRs)

### 501.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

### 501.2 POLICY

The policy of the Kings County District Attorney Bureau of Investigation is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for official use of this department. Because such data may contain confidential information, it is not open to public review.

### 501.3 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates. It is used by the Kings County District Attorney Bureau of Investigation to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and the recovery of stolen property.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Chief Investigator or their designee.

#### 501.3.1 APLR ADMINISTRATOR

The Chief Investigator shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code 1798.90.5 et seq. This includes, but is not limited to (Civil Code 1798.90.1; Civil Code 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operations to maintain records of access in compliance with Civil Code 1798.90.52
- (e) The title and name of the current designee in overseeing ALPR operation.
- (f) Working with the Custodian of Records on the retention and destruction of ALPR data.
- (g) Ensuring this policy and related procedures are conspicuously posted on the department's website.



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### *Automated License Plate Readers (ALPRs)*

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#### **501.4 OPERATIONS**

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow other to use the equipment or database records for any unauthorized purpose (Civil Code 1798.90.51; Civil Code 1798.90.53).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.
- (d) No member of this department shall operate the ALPR equipment or access ALPR data without first completing department-approved training.
- (e) No ALPR operator may access department, state, or federal data unless otherwise authorized to do so.
- (f) If practicable, the Investigator should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

#### **501.5 DATA COLLECTION AND RETENTION**

The Chief Investigator or their designee is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with departmental procedures.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code 34090.6) and in accordance with the established records retention schedule. Thereafter ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a discovery request or other lawful action to produce records. In those circumstances that applicable data should be downloaded from the server onto portable media and booked into evidence.

#### **501.6 ACCOUNTABILITY**

All data will be closely safeguarded and protected by both procedural and technological means. The Kings County District Attorney Bureau of Investigation will observe the following safeguards regarding access to and the storage data (Civil Code 1798.90.51; Civil Code 1798.90.53):

- (a) All ALPR data downloaded to the mobile workstation storage shall be accessible only through login/password-protected system capable of documenting all access or information by name, date and time (Civil Code 1798.90.52).

*Automated License Plate Readers (ALPRs)*

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(b) Members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relates to a specific criminal investigation or department related civil or administrative action.

(c) ALPR system audits should be conducted on a regular basis.

**501.7 RELEASING ALPR DATA**

The ALPR data may be shared with only other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

(a) The agency makes a written request for the ALPR data that includes:

1. The name of the agency.
2. The name of the person requesting.
3. The intended purpose of obtaining the information.

(b) The request is reviewed by the Chief Investigator or their designee and approved before the request is fulfilled.

(c) The approved request is retained on file.

Request for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code 1798.90.55).

## Traffic Citations

### **502.1 PURPOSE AND SCOPE**

This policy outlines the responsibility for traffic citations, the procedure for dismissal, correction, and voiding of traffic citations.

### **502.2 VOIDING TRAFFIC CITATIONS**

Voiding a traffic citation may occur when a traffic citation has not been completed or where it is completed, but not issued.

### **502.3 CORRECTION OF TRAFFIC CITATIONS**

When a traffic citation is issued and in need of correction, the investigator issuing the citation shall submit a citation amendment indicating the necessity for the correction. Both the citation and amendment shall be submitted to court.

### **502.4 DISPOSITION OF TRAFFIC CITATIONS**

Upon separation from employment with this [department/office], all employees issued traffic citation books shall return any unused citations to their supervisor..

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## Disabled Vehicles

### **506.1 PURPOSE AND SCOPE**

Vehicle Code § 20018 provides that all law enforcement agencies having responsibility for traffic enforcement may develop and adopt a written policy to provide assistance to motorists in disabled vehicles within their primary jurisdiction.

### **506.2 INVESTIGATOR RESPONSIBILITY**

When an on-duty investigator observes a disabled vehicle on the roadway, the investigator should make a reasonable effort to provide assistance. If that investigator is assigned to a call of higher priority, the dispatcher should be advised of the location of the disabled vehicle and the need for assistance. The dispatcher should then assign another available investigator to respond for assistance as soon as practical.

### **506.3 EXTENT OF ASSISTANCE**

In most cases, a disabled motorist will require assistance. After arrangements for assistance are made, continued involvement by department personnel will be contingent on the time of day, the location, the availability of departmental resources, and the vulnerability of the disabled motorist.

#### **506.3.1 MECHANICAL REPAIRS**

Department personnel shall not make mechanical repairs to a disabled vehicle. The use of push bumpers to relocate vehicles to a position of safety is not considered a mechanical repair.

### **506.4 PUBLIC ACCESS TO THIS POLICY**

This written policy is available upon request.

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## Administrative Per Se Law (APS)

### 506.1 PURPOSE AND SCOPE

This policy provides for the immediate suspension of California driver's licenses in certain Driving Under the Influence (DUI) cases and in Zero Tolerance incidents. Vehicle Code §§ 13382 (a) and (b), and 13388 (b) require that peace officers immediately suspend driving privileges in certain situations involving arrests for Vehicle Code §§ 23152 and 23153. This policy also describes the policy dealing with Zero Tolerance laws.

### 506.2 SUSPENSION OF CALIFORNIA DRIVER'S LICENSES

The driver's license of a person suspected of driving under the influence of alcohol, shall immediately be suspended under any of the following circumstances:

- (a) The arrestee refuses to submit to a chemical test
- (b) The arrestee fails to complete the selected test
- (c) The arrestee declines a breath test and demands a blood or urine test, and, the arresting investigator has reasonable cause to believe that the arrestee's Blood Alcohol Content (BAC) will exceed the .08-percent level
- (d) The arrestee completes the breath tests which show a BAC of .08-percent or higher

#### 506.2.1 ZERO TOLERANCE LAW

Vehicle Code §§ 23136 & 23140 were enacted to reduce alcohol related incidents by persons under the age of 21-years. A person under 21-years of age may have his or her license suspended under the following circumstances:

- (a) When suspected of consuming alcohol and refusing a PAS test
- (b) Who has a blood-alcohol level of .01-percent or greater

Zero Tolerance requires a Preliminary Alcohol Screening (PAS) device as the primary test. If the device is not available, one of the other chemical tests must be completed. Under Zero Tolerance, only the PAS device result is required. If, based on the PAS results, the driver's blood alcohol reading warrants arrest and further chemical testing, the Department of Motor Vehicles does not require completion of the chemical test section of the DS367m form. Once the PAS certification is complete, the Zero Tolerance requirement has been met.

### 506.3 PEACE OFFICER'S RESPONSIBILITY

In any of the above situations, the peace officer, acting on behalf of the Department of Motor Vehicles, shall do the following:

- (a) Confiscate any California driver's license(s) in the possession of the driver. If the subject has an Admin Per Se (APS ) temporary license document, do not confiscate.

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- (b) Complete and serve the Administrative Per Se Order of Suspension (DMV form DS367, DS367m or DS367s - Officer's Statement and Order of Suspension), 4th page on the driver, regardless of license status.
- (c) The investigator will inform the driver that the "Administrative Per Se Order of Suspension", form DS367, DS367m or DS367s' along with his/her violator's notice to appear (except Zero Tolerance) or other release from custody document, will serve as the driver's temporary license. If the driver's privilege to drive is suspended or revoked, the order will not be a valid temporary license. If the subject presents an Admin Per Se suspension order/temporary license, do not confiscate the order but do issue another order pursuant to the current DUI arrest.

**506.4 DEPARTMENT OF MOTOR VEHICLES NOTIFICATION**

The following specified items must be forwarded to the Department of Motor Vehicles within five regular business days:

- (a) Officer's Statement form DS367 or DS367m (Minor) or DS367s (Spanish)
- (b) Order of suspension (form DS367, DS367m or DS367s, pages 2 and 3)
- (c) Copy of the printout of the breath test (if taken)
- (d) Traffic collision report if applicable
- (e) The offender's driver's license

## **Chapter 6 - Investigation Operations**

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## Investigation and Prosecution

### 600.1 PURPOSE AND SCOPE

The purpose of this policy is to set guidelines and requirements pertaining to the handling and disposition of criminal investigations.

### 600.2 POTENTIALLY EXCULPATORY EVIDENCE OR FACTS

Investigators must include in their reports adequate reference to all material evidence and facts which are reasonably believed to be exculpatory to any individual in the case. If an investigator learns of potentially exculpatory information anytime after submission of the case, the investigator must notify the prosecutor as soon as practicable.

Evidence or facts are considered material if there is a reasonable probability that they may impact the result of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If an investigator is unsure whether evidence or facts are material, the investigator should address the issue with a supervisor.

Supervisors uncertain about whether evidence or facts are material should address the issue in a written memo to an appropriate prosecutor. A copy of the memo should be retained in the department case file.

### 600.3 POLICY

It is the policy of the Kings County District Attorney Investigation Division to investigate crimes thoroughly and with due diligence, and to evaluate and prepare criminal cases for appropriate clearance or submission to a prosecutor.

### 600.4 CUSTODIAL INTERROGATION REQUIREMENTS

Suspects who are in custody and subjected to an interrogation shall be given the *Miranda* warning, unless an exception applies. Interview or interrogation of a juvenile shall be in accordance with the Temporary Custody of Juveniles Policy.

#### 600.4.1 MANDATORY RECORDING OF ADULTS

Any custodial interrogation of an adult who is suspected of having committed any murder shall be recorded in its entirety. The recording should be video with audio if reasonably feasible (Penal Code § 859.5).

This recording is not mandatory when (Penal Code § 859.5):

- (a) Recording is not feasible because of exigent circumstances that are later documented in a report.
- (b) The suspect refuses to have the interrogation recorded, including a refusal any time during the interrogation, and the refusal is documented in a report. If feasible, the refusal shall be electronically recorded.



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- (c) The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.
- (d) The interrogation occurs when no member conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating member develops a reason to believe the individual committed murder.
- (e) The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an investigator, the individual being interrogated or another individual. Such circumstances shall be documented in a report.
- (f) A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.
- (g) The questions are part of a routine processing or booking, and are not an interrogation.
- (h) The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

The [Department/Office] shall maintain an original or an exact copy of the recording until a conviction relating to the interrogation is final and all appeals are exhausted or prosecution is barred by law (Penal Code § 859.5).

### **600.5 INITIAL INVESTIGATION**

#### **600.5.1 INVESTIGATOR RESPONSIBILITIES**

An investigator responsible for an initial investigation shall complete no less than the following:

- (a) Make a preliminary determination of whether a crime has been committed by completing, at a minimum:
  - 1. An initial statement from any witnesses or complainants.
  - 2. A cursory examination for evidence.
- (b) If information indicates a crime has occurred, the investigator shall:
  - 1. Preserve the scene and any evidence as required to complete the initial and follow-up investigation.
  - 2. Determine if additional investigative resources (e.g., investigators or scene processing) are necessary and request assistance as required.
  - 3. If assistance is warranted, or if the incident is not routine, notify a supervisor or the Chief Investigator.
  - 4. Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects.
  - 5. Collect any evidence.
  - 6. Take any appropriate law enforcement action.

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7. Complete and submit the appropriate reports and documentation.
- (c) If the preliminary determination is that no crime occurred, determine what other action may be necessary, what other resources may be available, and advise the informant or complainant of this information.

**600.6 CELLULAR COMMUNICATIONS INTERCEPTION TECHNOLOGY**

The Investigations Chief Investigator is responsible for ensuring the following for cellular communications interception technology operations (Government Code § 53166):

- (a) Security procedures are developed to protect information gathered through the use of the technology.
- (b) A usage and privacy policy is developed that includes:
  - (a) The purposes for which using cellular communications interception technology and collecting information is authorized.
  - (b) Identification by job title or other designation of employees who are authorized to use or access information collected through the use of cellular communications interception technology.
  - (c) Training requirements necessary for those authorized employees.
  - (d) A description of how the [Department/Office] will monitor the use of its cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws.
  - (e) Process and time period system audits.
  - (f) Identification of the existence of any memorandum of understanding or other agreement with any other local agency or other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.
  - (g) The purpose of, process for and restrictions on the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.
  - (h) The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.

Members shall only use approved devices and usage shall be in compliance with [department/office] security procedures, the [department/office]'s usage and privacy procedures and all applicable laws.

**600.7 USE OF CERTAIN DNA SAMPLES**

Known samples of DNA collected from a victim of a crime or alleged crime, and known reference samples of DNA from any individual that were voluntarily provided for the purpose of exclusion are to be used only for the purpose directly related to the incident being investigated and in compliance with the procedures identified in Penal Code § 679.12.

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#### **600.8 ANTI-REPRODUCTIVE RIGHTS CRIMES**

A member should take a report any time a person living within the jurisdiction of the Kings County District Attorney Investigation Division reports that the person has been a victim of an anti-reproductive rights crime as defined by Penal Code § 13776 and Penal Code § 423.3. This includes:

- (a) Taking a report, even if the location of the crime is outside the jurisdiction of this [department/office] or has not been determined (e.g., online harassment).
- (b) Providing the victim with the appropriate information, as set forth in the Victim and Witness Assistance Policy. Members should encourage the person to review the material and should assist with any questions.

A report should also be taken if a person living outside [department/office] jurisdiction reports an anti-reproductive rights crime that may have been committed or facilitated within this jurisdiction (e.g., use of a post office box in the [city/county] to facilitate the crime).

A member investigating an anti-reproductive rights crime should ensure that the case is referred to the appropriate agency if it is determined that this [department/office] should not be the investigating agency. The victim should be advised that the case is being transferred to the agency of jurisdiction. The appropriate entries should be made into any databases that have been authorized for [department/office] use and are specific to this type of investigation.

The Investigations Division supervisor should provide the Investigator with enough information regarding the number of calls for assistance and number of arrests to meet the reporting requirements to the California Department of Justice as required by Penal Code § 13777. See the Records Policy for additional guidance.

#### **600.9 STATE REQUIREMENTS FOR FIREARM INVESTIGATIONS**

##### **600.9.1 CALIFORNIA DOJ NOTICE OF LOCATION OF REPORTED LOST OR STOLEN FIREARM**

When notification is received from the California Department of Justice (DOJ) that a firearm purchase matches an entry made into the Automated Firearms System by the [Department/Office] as lost or stolen, the Investigations Division supervisor shall assign an investigator to retrieve the firearm and book the firearm into evidence in accordance with the Property and Evidence Policy. Recovery of the firearm shall be reported pursuant to Penal Code § 11108.2, Penal Code § 11108.3, and Penal Code § 11108.5. If appropriate, arrangements may be made to have another state or local law enforcement agency retrieve the firearm on behalf of the [Department/Office] (Penal Code § 28220).

##### **600.9.2 RELINQUISHMENT OF FIREARMS VERIFICATION**

The Investigations Division supervisor shall designate a member to have access to the Armed Prohibited Persons System (APPS) to receive information regarding individuals in the jurisdiction of the [Department/Office] who have become a prohibited possessor of a firearm registered in their name and have not provided proof of relinquishment. The member shall document steps taken

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to verify that the individual is no longer in possession of firearms and provide the information to the Records for preparation of a quarterly report to the California DOJ (Penal Code § 29813) (see the Records Policy for additional guidance).

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## Sexual Assault Investigations

### 601.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the investigation of sexual assaults. These guidelines will address some of the unique aspects of such cases and the effects that these crimes have on the victims.

Mandatory notifications requirements are addressed in the Child Abuse and Senior and Disability Victimization policies.

#### 601.1.1 DEFINITIONS

Definitions related to this policy include:

**Sexual assault** - Any crime or attempted crime of a sexual nature, to include, but not limited to, offenses defined in Penal Code § 243.4, Penal Code § 261 et seq., and Penal Code § 285 et seq.

**Sexual Assault Response Team (SART)** - A multidisciplinary team generally comprised of advocates; law enforcement officers; forensic medical examiners, including sexual assault forensic examiners (SAFEs) or sexual assault nurse examiners (SANEs) if possible; forensic laboratory personnel; and prosecutors. The team is designed to coordinate a broad response to sexual assault victims.

### 601.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division that its members, when responding to reports of sexual assaults, will strive to minimize the trauma experienced by the victims, and will aggressively investigate sexual assaults, pursue expeditious apprehension and conviction of perpetrators, and protect the safety of the victims and the community.

### 601.3 QUALIFIED INVESTIGATORS

Qualified investigators should be available for assignment of sexual assault investigations. These investigators should:

- (a) Have specialized training in, and be familiar with, interview techniques and the medical and legal issues that are specific to sexual assault investigations.
- (b) Conduct follow-up interviews and investigation.
- (c) Present appropriate cases of alleged sexual assault to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and medical personnel as needed.
- (e) Provide referrals to therapy services, victim advocates and support for the victim.
- (f) Participate in or coordinate with SART.

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#### **601.4 REPORTING**

In all reported or suspected cases of sexual assault, a report should be written and assigned for follow-up investigation. This includes incidents in which the allegations appear unfounded or unsubstantiated.

#### **601.5 VICTIM INTERVIEWS**

The primary considerations in sexual assault investigations, which begin with the initial call to the Communications Center, should be the health and safety of the victim, the preservation of evidence, and preliminary interviews to determine if a crime has been committed and to attempt to identify the suspect.

Whenever possible, a member of SART should be included in the initial victim interviews. An in-depth follow-up interview should not be conducted until after the medical and forensic examinations are completed and the personal needs of the victim have been met (e.g., change of clothes, bathing). The follow-up interview may be delayed to the following day based upon the circumstances. Whenever practicable, the follow-up interview should be conducted by a qualified investigator.

No opinion of whether the case is unfounded shall be included in the report.

Victims shall not be asked or required to take a polygraph examination (34 USC § 10451; Penal Code § 637.4).

Victims should be apprised of applicable victim's rights provisions, as outlined in the Victim and Witness Assistance Policy.

##### **601.5.1 VICTIM RIGHTS**

Whenever there is an alleged sexual assault, the assigned investigator shall accomplish the following:

- (a) Prior to the commencement of the initial interview, advise the victim in writing of the right to have a victim advocate and a support person of the victim's choosing present at any interview or contact by law enforcement, about any other rights of a sexual assault victim pursuant to the sexual assault victim card described in Penal Code § 680.2, and the right to have a person of the same or opposite gender present in the room during any interview with a law enforcement official unless no such person is reasonably available (Penal Code § 679.04).
- (b) If the victim is transported to a hospital for any medical evidentiary or physical examination, the investigator shall immediately cause the local rape victim counseling center to be notified (Penal Code § 264.2).
  1. The investigator shall not discourage a victim from receiving a medical evidentiary or physical examination (Penal Code § 679.04).
  2. A support person may be excluded from the examination by the investigator or the medical provider if the support person's presence would be detrimental to the purpose of the examination (Penal Code § 264.2).

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#### 601.5.2 VICTIM CONFIDENTIALITY

Investigators investigating or receiving a report of an alleged sex offense shall inform the victim, or the victim's parent or guardian if the victim is a minor, that his/her name will become a matter of public record unless the victim requests that his/her name not be made public. The reporting investigator shall document in his/her report that the victim was properly informed and shall include any related response made by the victim, or if a minor, any response made by the victim's parent or guardian (Penal Code § 293).

Except as authorized by law, members of this [department/office] shall not publicly disclose the name of any victim of a sex crime who has exercised his/her right to confidentiality (Penal Code § 293).

#### **601.6 COLLECTION AND TESTING OF BIOLOGICAL EVIDENCE**

Whenever possible, a SART member should be involved in the collection of forensic evidence from the victim.

When the facts of the case indicate that collection of biological evidence is warranted, it should be collected regardless of how much time has elapsed since the reported assault.

If a drug-facilitated sexual assault is suspected, urine and blood samples should be collected from the victim as soon as practicable.

Subject to requirements set forth in this policy, biological evidence from all sexual assault cases, including cases where the suspect is known by the victim, should be submitted for testing.

Victims who choose not to assist with an investigation, do not desire that the matter be investigated, or wish to remain anonymous may still consent to the collection of evidence under their control. In these circumstances, the evidence should be collected and stored appropriately (Penal Code § 680).

#### 601.6.1 COLLECTION AND TESTING REQUIREMENTS

Members investigating a sexual assault offense should take every reasonable step to ensure that DNA testing of such evidence is performed in a timely manner and within the time periods prescribed by Penal Code § 803(g). SAFE kits should be submitted to the crime lab within 20 days after being booked into evidence (Penal Code § 680).

In order to maximize the effectiveness of such testing and identify the perpetrator of any sexual assault, the assigned investigator shall ensure that an information profile for the SAFE kit evidence has been created in the California Department of Justice (DOJ) SAFE-T database within 120 days of collection and should further ensure that the results of any such test have been timely entered into and checked against both the DOJ Cal-DNA database and the Combined DNA Index System (CODIS) (Penal Code § 680.3).

If the assigned investigator determines that a SAFE kit submitted to a private vendor laboratory for analysis has not been tested within 120 days after submission, the investigator shall update the SAFE-T database to reflect the reason for the delay in testing. The assigned investigator shall

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continue to update the status every 120 days thereafter until the testing is complete, the statute of limitations has run, or the SAFE kit is exempt from the update requirement (Penal Code § 680.3).

If, for any reason, DNA evidence in a sexual assault case in which the identity of the perpetrator is in issue and is not going to be analyzed within 18 months of the crime, the assigned investigator shall notify the victim of such fact in writing no less than 60 days prior to the expiration of the 18-month period (Penal Code § 680).

Additional guidance regarding evidence retention and destruction is found in the Property and Evidence Policy.

#### 601.6.2 DNA TEST RESULTS

A SART member should be consulted regarding the best way to deliver biological testing results to a victim so as to minimize victim trauma, especially in cases where there has been a significant delay in getting biological testing results (e.g., delays in testing the evidence or delayed DNA databank hits). Members should make reasonable efforts to assist the victim by providing available information on local assistance programs and organizations as provided in the Victim and Witness Assistance Policy.

- (a) Upon receipt of a written request from a sexual assault victim or the victim's authorized designee, members investigating sexual assault cases shall inform the victim of the status of the DNA testing of any evidence from the victim's case (Penal Code § 680).
  - 1. Although such information may be communicated orally, the assigned investigator should thereafter follow-up with and retain a copy of confirmation by either written or electronic mail.
  - 2. Absent a written request, no member of this [department/office] is required to, but may, communicate with the victim or the victim's authorized designee regarding the status of any DNA testing.
- (b) Sexual assault victims shall further have the following rights (Penal Code § 680):
  - 1. To be informed if a DNA profile of the assailant was obtained from the testing of the SAFE kit or other crime scene evidence from their case.
  - 2. To be informed if there is a confirmed match between the DNA profile of the assailant developed from the evidence and a DNA profile contained in the DOJ Convicted Offender DNA Database, providing that disclosure would not impede or compromise an ongoing investigation.
  - 3. To be informed if the DNA profile of the assailant developed from the evidence has been entered into the DOJ Databank or the federal Department of Justice or Federal Bureau of Investigation CODIS database of case evidence.
  - 4. To access the DOJ SAFE-T database portal consistent with Penal Code § 680.3(e) for information involving their own forensic kit and the status of the kit.
- (c) Provided that the sexual assault victim or the victim's authorized designee has kept the assigned investigator informed with regard to current address, telephone number, and email address (if available), any victim or the victim's authorized designee shall,



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upon request, be advised of any known significant changes regarding the victim's case (Penal Code § 680).

1. Although such information may be communicated orally, the assigned investigator should thereafter follow-up with and retain a copy of confirmation by either written or electronic mail.
2. No investigator shall be required or expected to release any information which might impede or compromise any ongoing investigation.

**601.6.3 COLLECTION OF DNA REFERENCE SAMPLES**

Reference samples of DNA collected directly from a victim of sexual assault, and reference samples of DNA collected from any individual that were voluntarily provided for the purpose of exclusion, shall be protected as provided in Penal Code § 679.12 (Penal Code § 680).

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## Trauma Service Dog Program

### 602.1 POLICY

It is the policy of the trauma service dog program to serve those who are victims of criminal incidents, or those that have been exposed to trauma, directly or indirectly, or are generally in need of comfort and a sense of well-being. The program shall maintain reasonable availability for anyone who either seeks its assistance or is otherwise identified as having a need for it. Priority shall be given to child victims, or any person under the age of 18. Additionally, the program shall be used to encourage and cultivate positive relationships with the public through attendance at community events.

### 602.2 TRAUMA SERVICE DOG

A trauma service dog shall be regarded as a dog trained in such a way that it provides a sense of comfort to people in need of emotional support and can be utilized for public or private meetings as a resource to build trust and positive associations between law enforcement and the community.

The trauma service dog team shall consist of an approved dog certified by a licensed trainer and a "handler" who is trained to handle and control the dog. Multiple handlers may be assigned to one dog as deemed necessary by the Chief Investigator.

#### Trauma Service Dog Selection

A. A canine to be utilized as a trauma service dog must be selected based on the following criteria.

1. Temperment
2. Medical History
3. Breed Type
4. Any other factor that is deemed suitable to the animal's specialized use

B. The dog may be acquired from a breeder, shelter, or other reputable resource.

### 602.3 PROGRAM MANAGEMENT PERSONNEL

A. Trauma service dog handler(s) shall be full-time employee(s) of the Kings County District Attorney's Office, Bureau of Investigations, and have successfully completed a probationary period. Handlers should be qualified forensic interviewers and assigned to the Multi Disciplinary Interview Center (MDIC) team.

B. Handler assignments shall be voluntary.

C. The handler in immediate control of the dog shall solely responsible for the correct stewarding of the dog and must function as the animal's advocate.

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D. The selection of the trauma service dog handlers, the required training program, and the assignment of the special details, shall be directly controlled by the Chief Investigator.

E. Changes of the handler assignments may be made at the discretion of the Chief Investigator at any time.

#### **TRAINING**

A. All trauma service dog handlers will be required to complete obedience and control training with the selected canine prior to being recognized as a handler.

B. Training shall be consistent with the current industry standards.

C. The trauma service dog and handler will be evaluated regularly by a certified canine instructor.

D. Handlers will routinely practice obedience and control related exercises with the dog.

E. Handlers will be responsible for educating other department personnel about the rules and correct behavior to be practiced while in proximity of the dog.

#### **OUTREACH /PUBLIC DEMONSTRATION**

All public requests for a canine demonstration shall be reviewed and, if appropriate, approved by the assigned canine supervisor prior to making any resource commitment. The canine supervisor is responsible for obtaining resources and coordinating involvement in the demonstration. Investigators shall provide the contact information of the individual or organization requesting the demonstration to the canine supervisor as soon as practical as to provide a timely response.

#### **EQUIPMENT**

A. The trauma service dog handler will be provided the following equipment:

1. Appropriate transportation equipment

2. Food and other nutritional supplies

3. Medications or equipment related to veterinary care

4. Items related to training needs

5. Other equipment as deemed suitable for the proper upkeep or general contentment of the canine.

#### **CARE**

A. The handlers shall make certain the trauma service dog has a regular feeding schedule and provided with food appropriate for its age or exceptional dietary needs, as recommended by a veterinarian or professional trainer. The dog shall not be given any food or substance that have not already been authorized for its consumption or approved by its handlers.

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B. The handler shall make sure the trauma service dog attend regularly scheduled health check-ups, as recommended by a veterinarian, and receive all immunizations required by law.

C. The handlers will maintain records of registration and shots.

D. The handlers shall contact the approved veterinarian clinic if she or he observes the dog to be sick in appearance or injured in such a way that veterinary care may be required. Any required veterinarian care must be immediately reported to the K9 Unit Supervisor.

### **HOUSING**

A. The handler will be allowed to retain the trauma service dog at their residence while not on duty. The dog shall be housed in doors and kept in a safe and secure environment to prevent escape or injury.

B. If the handler requires the dog to be boarded, the secondary handler will assume responsibility for the dog. In the event the secondary handler is unavailable, a licensed and certified boarding kennel may be used as an option.

### **ASSIGNMENTS AND USES**

**A trauma service dog team may be utilized under the following circumstances:**

**A. Assist in interviews of victims**

**B. Assist in traumatic incidents**

**C. Courtroom testimony with approval from the court**

**D. Grief for loss of loved ones**

**E. Major incidents of decompression**

**F. Crisis response within the community**

**G. Community outreach**

**H. School Demonstrations**

**I. Public Events**

**J. Home visits (case by case basis)**

**K. Hospital (following major incidents for families, distress staff members, death notifications, ICU waiting rooms)**

**L. Schools (student, staff or parent deaths or traumatic incidents affecting student body)**

**M. Assist behavioral staff (crisis intervention)**

**N. Other duties as assigned or deemed appropriate by supervisory staff.**

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**UNAPPROVED USES**

- A. Areas where subjects with dog related allergies are present**
- B. Areas where persons who have a fear of dogs are present**
- C. Locations where the existence of a zoonotic disease is known or possible**

**ASSISTANCE OUTSIDE OF THE COUNTY**

**While the trauma service dog team's work is primarily expected to be conducted within Kings County, the team may attend to witnesses, victims, or other persons located outside of Kings County with supervisory approval. If the trauma service dog is requested by an agency outside of Kings County, it shall be approved by a supervisor.**

**RETIREMENT**

**In the event the trauma service dog is physically or medically unable to perform the duties set forth in this policy, and the condition is validated by a veterinarian, consideration must be made to retire the dog from active duty service. At the discretion of the Chief Investigator and District Attorney, the primary handler may be considered as a first option of purchasing the dog from the county. All Kings County policies shall be adhered to during this transaction and are subject to Board of Supervisors' approval.**

**Donations**

**Upon the receipt of any monetary or in-kind donation made to the Kings County District Attorney K9 fund, otherwise known as the Kings County District Attorney K9 Services, shall require staff to immediately notify the K9 Unit supervisor of the donation. Should the donation be monetary, the funds are to be delivered to the District Attorney Fiscal Analyst as soon as practical for deposit within the existing account held by the Kings County Department of Finance.**

**Any solicitation of donations made in public or otherwise related to the Kings County District Attorney K9 Unit that result in a monetary or in-kind donation shall be considered official unit funds that shall be handled in the manor mentioned above.**

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## Asset Forfeiture

### 603.1 PURPOSE AND SCOPE

This policy describes the authority and procedure for the seizure, forfeiture and liquidation of property associated with designated offenses.

#### 603.1.1 DEFINITIONS

Definitions related to this policy include:

**Fiscal agent** - The person designated by the Chief Investigator to be responsible for securing and maintaining seized assets and distributing any proceeds realized from any forfeiture proceedings. This includes any time the Kings County District Attorney Investigation Division seizes property for forfeiture or when the Kings County District Attorney Investigation Division is acting as the fiscal agent pursuant to a multi-agency agreement.

**Forfeiture** - The process by which legal ownership of an asset is transferred to a government or other authority.

**Forfeiture reviewer** - The department member assigned by the Chief Investigator who is responsible for reviewing all forfeiture cases and for acting as the liaison between the Department and the assigned attorney.

**Property subject to forfeiture** - The following may be subject to forfeiture:

- (a) Property related to a narcotics offense, which includes (Health and Safety Code § 11470; Health and Safety Code § 11470.1):
  1. Property (not including real property or vehicles) used, or intended for use, as a container for controlled substances, materials to manufacture controlled substances, etc.
  2. Interest in a vehicle (car, boat, airplane, other vehicle) used to facilitate the manufacture, possession for sale or sale of specified quantities of controlled substances.
  3. Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, proceeds traceable to an exchange, etc.
  4. Real property when the owner is convicted of violating Health and Safety Code § 11366, Health and Safety Code § 11366.5 or Health and Safety Code § 11366.6 (drug houses) when the property was not used as a family residence or for other lawful purposes, or property owned by two or more persons, one of whom had no knowledge of its unlawful use.
  5. The expenses of seizing, eradicating, destroying or taking remedial action with respect to any controlled substance or its precursors upon conviction for the unlawful manufacture or cultivation of any controlled substance or its precursors.

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- (b) Property related to criminal profiteering (may include gang crimes), to include (Penal Code § 186.2; Penal Code § 186.3):
  - 1. Any property interest, whether tangible or intangible, acquired through a pattern of criminal profiteering activity.
  - 2. All proceeds acquired through a pattern of criminal profiteering activity, including all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity.

**Seizure** - The act of law enforcement officials taking property, cash or assets that have been used in connection with or acquired by specified illegal activities.

#### **603.2 ASSET SEIZURE AUTHORITY**

Health & Safety Code § 11470 provides for the forfeiture of any currency, and real and/or personal property, which represents proceeds or was used to facilitate narcotic activity in violation of the Health & Safety Code. The offense(s) must involve the manufacturing, distribution, transportation for sale, sales, possession for sale, offer for sale, offer to manufacture, or the conspiracy to commit certain Health & Safety Code violations.

Health & Safety Code § 11488(a) specifies that any peace officer having probable cause, may seize all moneys, negotiable instruments, securities, vehicles, boats, airplanes or other things of value which are forfeitable pursuant to Health & Safety Code § 11470 (e) or (f).

#### **603.3 ASSET FORFEITURE PROCEDURE**

Before seizing any currency, vehicle or personal property pursuant to Health & Safety Code § 11470, a patrol investigator should contact a narcotics detective. The following guidelines will be observed:

- (a) The seizing investigator or the detective will serve all persons with Notice of Seizure and Intended Forfeiture forms which includes an attached County of Origin Claim form Opposing Forfeiture, and a forfeiture receipt. Disclaimers (English/Spanish) will be completed on all persons disclaiming ownership of currency, vehicle or property seized.
- (b) When someone has made notification other than the Asset Forfeiture detective, a copy of all reports and all applicable asset forfeiture paperwork must be forwarded to the Asset Forfeiture detective in the Investigations Division, for review.
- (c) Interview all persons involved concerning their possession of the seized assets, financial situation, employment, income and other resources. The interviewing investigator shall ensure that *Miranda* warnings are given and waivers obtained before interviewing any person who is in custody.
- (d) Attempt to promptly determine all lien holders or all persons who may have a legal interest in the seized currency, vehicle or property for further contact, investigation and notification.

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- (e) The seizure of assets subject to forfeiture is a civil proceeding filed through the county of origin, Office of the District Attorney Forfeiture Unit or Narcotic Enforcement Team.

#### 603.3.1 SEIZED PROPERTY

Property seized subject to forfeiture will be inventoried and booked into Property. The property will be checked through the Automated Property System to determine if the property has been stolen.

The property will be booked as evidence, with the notation in the comment section of the property form, "Seized Subject to Forfeiture." Property seized subject to forfeiture should be booked on a separate property form. No other evidence from the case should be booked on this form.

#### 603.3.2 PROPERTY NOT SUBJECT TO SEIZURE

The following property should not be seized for forfeiture:

- (a) Cash and property that does not meet the forfeiture counsel's current minimum forfeiture thresholds should not be seized.
- (b) Real property is not subject to seizure, absent exigent circumstances, without a court order (Health and Safety Code § 11471).
- (c) A vehicle which may be lawfully driven on the highway if there is a community property interest in the vehicle by a person other than the suspect and the vehicle is the sole vehicle available to the suspect's immediate family (Health and Safety Code § 11470).
- (d) Vehicles, boats or airplanes owned by an "innocent owner," such as a common carrier with no knowledge of the suspected offense (Health and Safety Code § 11490).
- (e) Any property when the associated activity involves the possession of marijuana or related paraphernalia that is permissible under the Control, Regulate and Tax Adult Use of Marijuana Act (Health and Safety Code § 11362.1).

#### 603.3.3 SEIZED VEHICLES

Vehicles seized subject to forfeiture will be taken to a designated secure storage facility. A seized vehicle should not be impounded. The investigator seizing the vehicle shall notify the detective supervisor of the seizure of the vehicle and circumstances of the seizure as soon as possible.

If the vehicle cannot be driven, a tow truck will be used to tow the vehicle to the storage facility.

Personal property located in a seized vehicle shall be removed and booked into Property as either evidence or for safekeeping.

#### **603.4 PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS**

When property or cash subject to this policy is seized, the investigator making the seizure should ensure compliance with the following:

- (a) Complete applicable seizure forms and present the appropriate copy to the person from whom the property is seized. If cash or property is seized from more than one person, a separate copy must be provided to each person, specifying the items seized. When property is seized and no one claims an interest in the property, the investigator



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must leave the copy in the place where the property was found, if it is reasonable to do so.

- (b) Complete and submit a report and original seizure forms within 24 hours of the seizure, if practicable.
- (c) Forward the original seizure forms and related reports to the forfeiture reviewer within two days of seizure.

The investigator will book seized property as evidence with the notation in the comment section of the property form, "Seized Subject to Forfeiture." Property seized subject to forfeiture should be booked on a separate property form. No other evidence from the case should be booked on this form.

Photographs should be taken of items seized, particularly cash, jewelry and other valuable items.

Investigators who suspect property may be subject to seizure but are not able to seize the property (e.g., the property is located elsewhere, the whereabouts of the property is unknown, it is real estate, bank accounts, non-tangible assets) should document and forward the information in the appropriate report to the forfeiture reviewer.

#### **603.5 MAINTAINING SEIZED PROPERTY**

The Kings County Sheriff's Department Supervisor is responsible for ensuring compliance with the following:

- (a) All property received for forfeiture is reasonably secured and properly stored to prevent waste and preserve its condition.
- (b) All property received for forfeiture is checked to determine if the property has been stolen.
- (c) All property received for forfeiture is retained in the same manner as evidence until forfeiture is finalized or the property is returned to the claimant or the person with an ownership interest.
- (d) Property received for forfeiture is not used unless the forfeiture action has been completed.

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## Brady Material Disclosure

### 604.1 PURPOSE

The Kings County District Attorney's Office (KCDA) must disclose to the defense all evidence favorable to the accused in criminal cases. Sometimes this duty requires KCDA to disclose evidence that may be used to impeach a peace officer's testimony.

To comply with discovery obligations, KCDA implements the following policy in partnership with law enforcement agencies (hereafter "Agencies" in the plural and "Agency" in the singular) to meet the following goals:

1. Identify exculpatory evidence
2. Develop communication between KCDA and the Agencies regarding exculpatory evidence related to peace officer witnesses.
3. Complying with *Brady* and its progeny, and
4. Protecting the peace officer's privacy.

### 604.2 SCOPE

This policy applies to all criminal and juvenile delinquency cases prosecuted by KCDA that are currently pending and completed.

### 604.3 EXCULPATORY EVIDENCE

Exculpatory evidence is evidence that is favorable to the accused material to either guilt or punishment. *Maryland V. Brady (1963) U.S. 83*

KCDA's Statutory and Constitutional Requirements to disclose Exculpatory Evidence.

KCDA has an affirmative duty to disclose exculpatory evidence in its possession or the investigating agency's possession with or without the defense making a discovery request. *Izazaga v. Superior Court (1991) 54 Cal. 3d 35, 378*

Pursuant to Penal Code section 1054.1, KCDA must disclose to the defense the following materials and information in its possession or the investigating agency's possession:

1. The names and addresses of all persons the prosecutor intends to call as a witness at trial;
2. Statements of all defendants;
3. All relevant real evidence seized or obtained as a part fo the investigation of the offense charged;
4. The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial;
5. Any exculpatory evidence; and

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### Brady Material Disclosure

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6. Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons, which the prosecutor intends to offer at the trial.

In addition to the statutory requirements set for in Penal Code section 1054.1, KCDA must disclose exculpatory materials or information that may be used to impeach a key prosecution witness. *People V. Ballard (1991) 1 Cal.App.4th 752, 758*

Impeachment evidence is defined in Evidence Code section 780, and CALCRIM 226. Examples of impeachment evidence includes but is not limited to the following:

1. The character of the witness for honesty or veracity (Evid. Code 780, subd. (e);)
2. A bias, interest, or other motive (Evid. Code 780, subd. (f);)
3. A statement by a witness that is inconsistent with the witness's testimony (Evid. Code 780, subd. (h);)
4. Felony convictions involving moral turpitude (*People V. Castro (1985) 38 Cal. 3d 301, 314;*)
5. Facts establishing criminal conduct involving moral turpitude including misdemeanor convictions (*People v. Wheeler (1992) 4 Cal.4th 284, 295-297;*)
6. False reports by a prosecution witness (*People v. Hayes (1992) 3 Cal.App.4th 1238, 1244;*)
7. Pending criminal charges against a prosecution witness (*People v. Coyer (1983) 142 Cal.App.3d 839, 842;*)
8. Parole or probation status of a witness (*Davis v. Alaska (1974) 415 U.S. 308, 319;*)
9. Evidence undermining a witness's expertise (*People v. Garcia (1993) 17 Cal.App.4th 1169, 1179;*) *and*
10. Evidence that a witness has racial, religious, or personal bias against the defendant individually or as a member of a group (*In re Anthony P. (1985) 167 Cal.App.3d 502, 507-510;*)

If any question arises regarding the exculpatory nature of the evidence, KCDA will err on the side of disclosure.

#### Exculpatory Evidence in Law Enforcement Personnel Files

Peace officers are often key prosecution witnesses whose testimony may be central to the prosecution's case. KCDA must disclose any impeachment evidence of any material witness (including peace officers) to the defense regarding a peace officer's credibility.

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If the law enforcement agency maintains any personnel files containing impeachment materials or information, then any such exculpatory evidence must be disclosed to the defense in any criminal or delinquency prosecution.

#### **604.4 COMMUNICATION BETWEEN KCDA AND THE AGENCIES**

##### The Agency's Responsibility to Disclose Exculpatory Evidence to KCDA

It is incumbent on the Agencies to provide KCDA with any exculpatory materials and information relating to any criminal case. However, both KCDA and the Agencies acknowledge that a peace officer's personnel file includes confidential information. (Penal Code section 832.7)

As the custodian of records, the Agency has a duty to review personnel records of its peace officers who report and investigate criminal cases. If after a review of its personnel files and the Agency determines that a peace officer has a founded or sustained allegation of misconduct which may constitute exculpatory evidence, the Agency agrees to disclose to KCDA the name of the peace officer related to a particular case and that peace officer may have relevant exonerating or impeaching material in his or her confidential personnel file. Agency does not need to disclose suspicious or unfounded information about a peace officer. An allegation is considered founded for the purposes of this policy when it has been approved by the agency head after a hearing pursuant to *Skelly V. State Personnel Board* (1975) 15 Cal.3d 194 or when the discipline has been imposed, whichever occurs first. If the peace officer resigns before a *Skelly* hearing or imposed discipline, and the Agency would have imposed discipline, then the material or information is considered founded for the purposes of this policy.

The California Supreme Court approved of this process and determined that *Pitchess* or any of its related statutes do not prevent the Agency from disclosing to KCDA as it relates to a criminal or delinquency matter. *Association for Los Angeles Deputy Sheriffs v. Supreme Court* (2019) 8 Cal.5th 28, 50.

##### KCDA Disclosure of Possibly Exculpatory Information About a Peace Officer to the Agency

If KCDA obtains information or material that may be exculpatory relating to a peace officer outside of the *Pitchess* (*Pitchess v. Supreme Court* (1974) 11 Cal.3d 531, superseded by statues Penal Code section 832.7;) procedure, then KCDA will notify the Agency of any information obtained. The notification shall include the peace officer's name and a summary of the facts constituting exculpatory information. The Agency will have ten (10) days to notify KCDA whether the Agency intends to initiate an investigation to verify the exculpatory information. If the Agency elects to investigate, then KCDA will request the court to continue the criminal or delinquency matter for a reasonable time. However, if the court will not continue the case to allow the Agency to complete its investigation, then KCDA will disclose the possibly exculpatory information to the defense. If the Court allows the case to be continued pending the conclusion of the Agency's investigation, KCDA will request an *in camera* review of the peace officer's personnel file to determine if the information has been verified.

##### Information Obtained from an *In Camera* Review in a Separate Criminal or Delinquency Matter

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KCDA will maintain a list of peace officers names for whom the Agencies have given notice that possible exculpatory information or materials may exist in personnel files (*Brady list*). Additionally, KCDA will place a notification in Karpel, its case management system, notifying deputy district attorneys that they will need to contact their supervisor to determine if a *Pitchess* motion is necessary.

If a peace officer has been placed on KCDA's list, then KCDA will notify the peace officer in writing that he or she has been placed on a *Brady* list.

If KCDA files a *Pitchess* motion and obtains documents from a peace officer's personnel file in a separate criminal matter, KCDA will maintain those documents in the case file relating to the *Pitchess* motion. The documents will be password protected requiring authorization from a supervisor to access the documents. If the peace officer's personnel file needs to be disclosed pursuant to *Pitchess* or *Brady* in the present case, KCDA will make a request pursuant to *Pitchess*.

#### **604.5 PROCEDURE TO OBTAIN LAW ENFORCEMENT PERSONNEL FILES**

When KCDA subpoenas or intends to subpoena a peace officer for whom notification of possible exculpatory information has given, KCDA shall apply to the Kings County Superior Court for an *in camera* review of the records pursuant to *Pitchess*. The peace officer, the Agency, and the defense will be notified of the *Pitchess* motion. (Evidence Code section 1043, 1045) KCDA's request for an *in camera* review will include a request for a protective order limiting the disclosure of any confidential information to the defense for the narrow purpose of conducting a defense in the present case.

If following the *in camera* review, the court orders disclosure under *Pitchess* or *Brady*, disclosure shall only be made to the defense attorney or the defendant (if he or she is unrepresented by counsel), to the peace officer, the Agency, and to those KCDA members who will be involved in the prosecution of the case, and to the court pursuant to law.

#### **604.6 CONCLUSION**

The goal of this policy is to ensure that KCDA complies of its constitutional, statutory, and ethical requirements while protecting the privacy and rights of peace officers. Nothing in this policy is intended to create or confer any rights, privileges, or benefits to a defendant or witness.

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## Informants

### 605.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the use of informants.

#### 605.1.1 DEFINITIONS

Definitions related to this policy include:

**Informant** - A person who covertly interacts with other individuals or suspects at the direction of, request of, or by agreement with, the Kings County District Attorney Investigation Division for law enforcement purposes. This also includes a person agreeing to supply information to the Kings County District Attorney Investigation Division for a benefit (e.g., a quid pro quo in the form of a reduced criminal penalty, money).

### 605.2 INFORMANT FILE SYSTEM

The Chief Investigator or his/her designee shall be responsible for maintaining informant files. A separate file shall be maintained on each confidential informant.

#### 605.2.1 FILE SYSTEM PROCEDURE

Each file shall be coded with an assigned informant control number. An informant history shall be prepared to correspond to each informant file and include the following information:

- (a) Informant's name and/or aliases
- (b) Date of birth
- (c) Physical description: height, weight, hair color, eye color, race, sex, scars, tattoos or other distinguishing features
- (d) Current home address and telephone numbers
- (e) Current employer(s), position, address(es) and telephone numbers
- (f) Vehicles owned and registration information
- (g) Places frequented
- (h) Informant's photograph
- (i) Briefs of information provided by the informant and his or her subsequent reliability. If an informant is determined to be unreliable, the informant's file is marked as "Unreliable"
- (j) Name of investigator initiating use of the informant
- (k) Signed informant agreement
- (l) Update on active or inactive status of informant

The informant files shall be maintained in a secure area within the Kings County District Attorney's Office. These files shall be used to provide a source of background information about the informant, enable review and evaluation of information given by the informant, and minimize

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incidents that could be used to question the integrity of investigators or the reliability of the confidential informant.

Access to the informant files shall be restricted to the Chief Investigator, Chief Investigator, Assistant Chief Investigator, or their designees.

#### **605.3 USE OF INFORMANTS**

Before using an individual as a confidential informant, an investigator must receive approval from their Investigations Division Supervisor. The investigator shall compile sufficient information through a background investigation in order to determine the reliability, credibility and suitability, of the individual, including age, maturity and risk of physical harm.

##### **605.3.1 JUVENILE INFORMANTS**

The use of juvenile informants under the age of 13-years is prohibited. Except as provided for in the enforcement of the Tobacco Enforcement Act, Business & Professions Code §§ 22950, et seq., the use of any juvenile informant between the ages of 13 and 18-years is only authorized by court order obtained pursuant to Penal Code § 701.5.

For purposes of this policy, a "juvenile informant" means any juvenile who participates, on behalf of this department, in a prearranged transaction or series of prearranged transactions with direct face-to-face contact with any party, when the juvenile's participation in the transaction is for the purpose of obtaining or attempting to obtain evidence of illegal activity by a third party and where the juvenile is participating in the transaction for the purpose of reducing or dismissing a pending juvenile petition against the juvenile.

#### **605.4 GUIDELINES FOR HANDLING CONFIDENTIAL INFORMANTS**

All confidential informants are required to sign and abide by the provisions of the departmental Informant Agreement. The investigator using the confidential informant shall discuss each of the provisions of the agreement with the confidential informant.

Details of the agreement are to be approved in writing by the Chief Deputy District Attorney or Chief Investigator before being finalized with the confidential informant.

##### **605.4.1 RELATIONSHIPS WITH CONFIDENTIAL INFORMANTS**

No member of the Kings County District Attorney Investigation Division shall knowingly maintain a social relationship with a confidential informant while off duty, or otherwise become intimately involved with a confidential informant. Members of the Kings County District Attorney Investigation Division shall neither solicit nor accept gratuities nor engage in any private business transaction with a confidential informant.

To maintain investigator/informant integrity, the following must be adhered to:

- (a) Investigators shall not withhold the identity of an informant from their superiors
- (b) Identities of informants shall otherwise be kept confidential
- (c) Criminal activity by informants shall not be condoned

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- (d) Informants shall be told they are not acting as investigators, employees or agents of the Kings County District Attorney Investigation Division, and that they shall not represent themselves as such
- (e) The relationship between investigators and informants shall always be ethical and professional
- (f) Social contact shall be avoided unless necessary to conduct an official investigation, and only with prior approval of the Investigations Division supervisor
- (g) Investigators shall not meet with informants of the opposite sex in a private place unless accompanied by at least one additional investigator or with prior approval of the Chief Investigator. Investigators may meet informants of the opposite sex alone in an occupied public place such as a restaurant. When contacting informants of either sex for the purpose of making payments investigators shall arrange for the presence of another investigator, whenever possible
- (h) In all instances when department funds are paid to informants, a voucher shall be completed in advance, itemizing the expenses

#### **605.5 INFORMANT PAYMENTS**

No informant will be told in advance or given an exact amount or percentage for his/her service. The amount of funds to be paid to any informant will be evaluated against the following criteria:

- The extent of the informant's personal involvement in the case
- The significance, value or effect on crime
- The value of assets seized
- The quantity of the drugs or other contraband seized
- The informant's previous criminal activity
- The level of risk taken by the informant

The supervisor will discuss the above factors with the Investigations Chief Investigator and recommend the type and level of payment subject to approval by the Chief Investigator.

##### **605.5.1 PAYMENT PROCESS**

Approved payments to an informant should be in cash using the following process:

- (a) Payments of \$500 and under may be paid in cash from a Investigations Division buy/expense fund.
  - 1. The Investigations Division supervisor shall sign the voucher for cash payouts from the buy/expense fund.
- (b) Payments exceeding \$500 shall be made by issuance of a check, payable to the investigator who will be delivering the payment.
  - 1. The check shall list the case numbers related to and supporting the payment.



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2. A written statement of the informant's involvement in the case shall be placed in the informant's file.
  3. The statement shall be signed by the informant verifying the statement as a true summary of his/her actions in the case.
  4. Authorization signatures from the Chief Investigator and the County Administrative Officer are required for disbursement of the funds.
- (c) To complete the payment process for any amount, the investigator delivering the payment shall complete a cash transfer form.
1. The cash transfer form shall include the following:
    - (a) Date
    - (b) Payment amount
    - (c) Kings County District Attorney Investigation Division case number
    - (d) A statement that the informant is receiving funds in payment for information voluntarily rendered.
  2. The cash transfer form shall be signed by the informant.
  3. The cash transfer form will be kept in the informant's file.

#### 605.5.2 AUDIT OF PAYMENTS

The Investigations Division supervisor or the authorized designee shall be responsible for compliance with any audit requirements associated with grant provisions and applicable state and federal law.

At least once every six months, the Chief Investigator or the authorized designee should conduct an audit of all informant funds for the purpose of accountability and security of the funds. The funds and related documents (e.g., buy/expense fund records, cash transfer forms, invoices, receipts and logs) will assist with the audit process.

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## Eyewitness Identification

### 606.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this office employ eyewitness identification techniques (California Penal Code § 859.7).

#### 606.1.1 DEFINITIONS

Definitions related to the policy include:

**Eyewitness identification process** - Any field identification, live lineup or photographic identification.

**Field identification** - A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

**Live Lineup** - A live presentation of individuals to a witness for the purpose of identifying or eliminating an individual as the suspect.

**Photographic lineup** - Presentation of photographs to a witness for the purpose of identifying or eliminating an individual as the suspect.

### 606.2 POLICY

The Kings County District Attorney's Office will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

### 606.3 INTERPRETIVE SERVICES

Investigators should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

Before the interpreter is permitted to discuss any matter with the witness, the Investigator should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided within this policy.

### 606.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

The Assistant Chief Investigator, or their designee, shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

The process should include appropriate forms or reports that provide (Penal Code § 859.7):

- (a) The date, time and location of the eyewitness identification procedure.
- (b) The name and identifying information of the witness.

### *Eyewitness Identification*

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- (c) The name of the person administering the identification procedure.
- (d) If applicable, the names of all the individuals present during the identification procedure.
- (e) An instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.
- (f) An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification.
- (g) If the identification process is photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as they did on the date of the incident.
- (h) An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.
- (i) A signature line where the witness in the witness acknowledges that they understand the identification procedures and instructions.
- (j) A statement from the witness in the witness' own words describing how certain they are of the identification or non-identification. This statement should be taken at the time of the identification procedure.
- (k) Any other direction to meet the requirements of California Penal Code § 859.7, including direction regarding blind or blinded administrations and filler selections.

The process and related forms should be reviewed at least annually and modified when necessary.

#### **606.5 EYEWITNESS IDENTIFICATION**

Investigators are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in the lineup is in any way connected to the case.

Investigators should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified or failed to identify the individual as the suspect.

In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

The eyewitness identification procedure should be audio and video recorded and the recording should be retained according to the current evidence procedures. When it is not feasible to make a recording with both audio and visual representations, an audio recording should be made (California Penal Code § 859.7).

## *Eyewitness Identification*

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### **606.6 DOCUMENTATION**

A thorough description of the eyewitness process and the results of any eyewitness identification should be documented in the case report.

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

#### **606.6.1 DOCUMENTATION RELATED TO RECORDINGS**

The handling Investigator shall document the reason that a video recording or any other recording of the identification was not obtained. (Penal Code § 859.7)

#### **606.6.2 DOCUMENTATION RELATED TO BLIND ADMINISTRATION**

If a presentation of a lineup is not conducted using blind administration, the handling member shall document the reason (Penal Code § 859.7).

### **606.7 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS**

When practicable, the member presenting the lineup should not be involved in the investigation of the case or know the identity of the suspect. In no case should the member presenting a lineup to a witness know which photograph or person in the lineup is being viewed by the witness (Penal Code § 859.7). Techniques to achieve this include randomly numbering photographs, shuffling folders, or using a computer program to order the persons in the lineup.

Individuals in the lineup should reasonably match the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup (Penal Code § 859.7).

The member presenting the lineup should do so sequentially (i.e., show the witness one person at a time) and not simultaneously. The witness should view all persons in the lineup.

A live lineup should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceeding have begun, the Investigator should contact the appropriate prosecuting attorney before proceeding.

#### **606.7.1 OTHER SAFEGUARDS**

Witnesses should be asked for suspect descriptions as close in time to the incident as possible and before conducting an eyewitness identification. No information concerning a suspect should be given prior to obtaining a statement from the witness describing how certain they are of the identification or non-identification. Investigators should not say anything to a witness that may validate or invalidate an eyewitness' identification. In photographic lineups, writings or information concerning any previous arrest of a suspect shall not be visible to the witness (Penal Code § 859.7).

*Eyewitness Identification*

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**606.8 FIELD IDENTIFICATION CONSIDERATIONS**

Field identification, also known as field elimination show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impractical to conduct a photo or live lineup identifications. A field elimination show-up or one-on-one identification should not be used when independent probable cause exists to arrest a suspect. In such cases a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.

When initiating a field identification, the member should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.
- (b) Assess whether a witness should be included in a field identification process by considering:
  - 1. The length of time the witness observed the suspect.
  - 2. The distance between the witness and the suspect.
  - 3. Whether the witness could view the suspect's face.
  - 4. The quality of the lighting when the suspect was observed by the witness.
  - 5. Whether there was distracting noises or activity during the observation.
  - 6. Any other circumstances affecting the witness' opportunity to observe the suspect.
  - 7. The length of time that has elapsed since the witness observed the suspect.
- (c) If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.
- (d) When feasible, Investigators should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.
- (e) The person who is the subject of the show-up should not be shown to the same witness more than once.
- (f) In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.
- (g) The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.
- (h) If a witness positively identifies a subject of the show-up as the suspect, Investigators should not conduct any further field identifications with other witnesses for that suspect. In such instances Investigators should document the contact information for any additional witnesses for follow up, if necessary.

## **Chapter 7 - Equipment**

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## Department Owned and Personal Property

### 700.1 PURPOSE AND SCOPE

Department employees are expected to properly care for department property assigned or entrusted to them. Employees may also suffer occasional loss or damage to personal or department property while performing their assigned duty. Certain procedures are required depending on the loss and ownership of the item.

### 700.2 CARE OF DEPARTMENTAL PROPERTY

Employees shall be responsible for the safekeeping, serviceable condition, proper care, use and replacement of department property assigned or entrusted to them. An employee's intentional or negligent abuse or misuse of department property may lead to discipline including, but not limited to the cost of repair or replacement.

- (a) Employees shall promptly report through their chain of command, any loss, damage to, or unserviceable condition of any department issued property or equipment assigned for their use.
- (b) The use of damaged or unserviceable department property should be discontinued as soon as practical and replaced with comparable Department property as soon as available and following notice to a supervisor.
- (c) Except when otherwise directed by competent authority or required by exigent circumstances, department property shall only be used by those to whom it was assigned. Use should be limited to official purposes and in the capacity for which it was designed.
- (d) Department property shall not be thrown away, sold, traded, donated, destroyed, or otherwise disposed of without proper authority.
- (e) In the event that any Department property becomes damaged or unserviceable, no employee shall attempt to repair the property without prior approval of a supervisor.

### 700.3 FILING CLAIMS FOR PERSONAL PROPERTY

Claims for reimbursement for damage or loss of personal property must be made in writing. This memorandum is submitted to the Chief Investigator and may require a separate written report of the loss or damage.

Upon review by staff and a finding that no misconduct or negligence was involved, repair or replacement may be recommended by the Chief Investigator who will then forward the claim to the Finance Department.

The Department will not replace or repair luxurious or overly expensive items (jewelry, exotic equipment, etc.) that are not reasonably required as a part of work.

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Department Owned and Personal Property*

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#### 700.3.1 REPORTING REQUIREMENT

A verbal report shall be made to the employee's immediate supervisor as soon as circumstances permit.

A written report shall be submitted before the employee goes off duty or within the time frame directed by the supervisor to whom the verbal report is made.

#### **700.4 LOSS OR DAMAGE OF PROPERTY OF ANOTHER**

Investigators and other employees intentionally or unintentionally may cause damage to the real or personal property of another while performing their duties. Any employee who damages or causes to be damaged any real or personal property of another while performing any law enforcement functions, regardless of jurisdiction, shall report it as provided below.

- (a) A verbal report shall be made to the employee's immediate supervisor as soon as circumstances permit.
- (b) A written report shall be submitted before the employee goes off duty or within the time frame directed by the supervisor to whom the verbal report is made.

#### 700.4.1 DAMAGE BY PERSON OF ANOTHER AGENCY

If employees of another jurisdiction cause damage to real or personal property belonging to the County, it shall be the responsibility of the employee present or the employee responsible for the property to make a verbal report to his/her immediate supervisor as soon as circumstances permit. The employee shall submit a written report before going off duty or as otherwise directed by the supervisor.

These written reports, accompanied by the supervisor's written report, shall promptly be forwarded to the Chief Investigator.



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## Vehicle Maintenance

### 701.1 PURPOSE AND SCOPE

Employees are responsible for assisting in maintaining Department vehicles so that they are properly equipped, properly maintained, properly refueled and present a clean appearance.

### 701.2 DEFECTIVE VEHICLES

When a department vehicle becomes inoperative or in need of repair that affects the safety of the vehicle, that vehicle shall be removed from service for repair. Proper documentation shall be promptly completed by the employee who first becomes aware of the defective condition, describing the correction needed. The paperwork shall be promptly forwarded to vehicle maintenance for repair.

### 701.3 VEHICLE EQUIPMENT

Certain items shall be maintained in all department vehicles for emergency purposes and to perform routine duties.

#### 701.3.1 UNMARKED VEHICLES

An employee driving unmarked department vehicles shall ensure that the minimum following equipment is present in the vehicle:

- Emergency road flares or approved emergency warning device
- 1 First aid kit, CPR mask
- 1 Blood-borne pathogen kit, Incl. protective gloves
- Fire Extinguisher

### 701.4 WASHING OF VEHICLES

All units shall be kept clean at all times and weather conditions permitting, shall be washed as necessary to enhance their appearance.

Confidential material should be placed in a designated receptacle provided for the shredding of this matter.

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## Vehicle Use

### 702.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a system of accountability to ensure [department/office] vehicles are used appropriately. This policy provides guidelines for on- and off-duty use of [department/office] vehicles and shall not be construed to create or imply any contractual obligation by the County of Kings to provide assigned take-home vehicles.

### 702.2 POLICY

The Kings County District Attorney Investigation Division provides vehicles for [department/office]-related business and may assign patrol and unmarked vehicles based on a determination of operational efficiency, economic impact to the [Department/Office], requirements for tactical deployments, and other considerations.

#### 702.2.1 ASSIGNED VEHICLES

Chief Investigator

Vehicle assignments will be made by the Chief Investigator or their designee. Assigned take home vehicles may be taken away or reassigned by the Chief Investigator or his designee at any time or if there is reason to believe an Investigator is unable to fulfill his or her duties.

#### 702.2.2 UNSCHEDULED USE OF VEHICLES

Personnel utilizing a vehicle for any purpose other than their normally assigned duties shall first notify the supervisor of the reasons for use.

### 702.3 USE OF VEHICLES

Members shall not operate a County-owned vehicle at any time when impaired by drugs and/or alcohol.

Any member operating a vehicle equipped with a two-way communications radios should ensure the devices are on and set to an audible volume when the vehicle is in operation.

#### 702.3.1 PARKING

Except when responding to an emergency or other urgent official business requires otherwise, members driving County-owned vehicles should obey all parking regulations at all times.

#### 702.3.2 INSPECTIONS

The interior of any vehicle that has been used to transport any person other than a member should be inspected prior to placing another person in the vehicle and again after the person is removed. This is to ensure that unauthorized or personal items have not been left in the vehicle.

When transporting any suspect, prisoner or arrestee, the transporting investigator shall search all areas of the vehicle that are accessible by the person before and after the person is transported.

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Vehicle Use*

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#### 702.3.3 AUTHORIZED PASSENGERS

Members operating [department/office] vehicles shall not permit persons other than County personnel or persons required to be conveyed in the performance of duty, or as otherwise authorized, to ride as passengers in the vehicle, except as stated in the Ride-Along Policy.

#### 702.4 ENFORCEMENT ACTIONS

When driving an assigned vehicle to and from work outside of the jurisdiction of the Kings County District Attorney Investigation Division, an investigator should not become involved in enforcement actions except in those circumstances where a potential threat to life or serious property damage exists.

Investigators driving marked vehicles shall be armed at all times.

Investigators may render public assistance, e.g. to a stranded motorist, when deemed prudent.

#### 702.5 MAINTENANCE

Members are responsible for the cleanliness (exterior and interior) and overall maintenance of their assigned vehicles.

Members shall make daily inspections of their assigned vehicles for service/maintenance requirements and damage. It is the assigned member's responsibility to ensure that his/her assigned vehicle is maintained according to the established service and maintenance schedule.

Supervisors shall make, at a minimum, monthly inspections of vehicles assigned to members under their command to ensure the vehicles are being maintained in accordance with policy.

#### 702.5.1 ACCESSORIES AND/OR MODIFICATIONS

No modifications, additions or removal of any equipment or accessories shall be made to the vehicle without written permission from the Chief Investigator.

#### 702.6 VEHICLE DAMAGE, ABUSE AND MISUSE

When a County-owned vehicle is involved in a traffic collision or otherwise incurs damage, the involved member shall promptly notify a supervisor. Any traffic collision report shall be filed with the agency having jurisdiction (see also Traffic Collision Reporting Policy).

When a collision involves a County vehicle or when a member of this department is an involved driver in a collision that occurs in this jurisdiction, and the collision results in serious injury or death, the supervisor should request that an outside law enforcement agency be summoned to investigate the collision.

The member involved in the collision shall complete the County's vehicle collision form. If the member is unable to complete the form, the supervisor shall complete the form.

Any damage to a vehicle that was not caused by a traffic collision shall be immediately reported during the shift in which the damage was discovered, documented in memorandum format and forwarded to the Chief Investigator. An administrative investigation should be initiated to determine if there is any vehicle abuse or misuse.

*Vehicle Use*

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**702.7 TOLL ROAD USAGE**

Law enforcement vehicles are not routinely exempted from incurring toll road charges.

To avoid unnecessary toll road charges, all members operating [department/office] vehicles on a toll road shall adhere to the following:

- (a) Members operating [department/office] vehicles for any reason other than in response to an emergency shall pay the appropriate toll charge or utilize the appropriate toll way transponder. Members may submit a request for reimbursement from the County for any toll fees incurred in the course of official business.
- (b) Members passing through a toll plaza or booth during a response to an emergency shall notify, in writing, the appropriate Chief Investigator within five working days explaining the circumstances.

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## Military Equipment

### 703.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

#### 703.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

**Governing body** – The Kings County Board of Supervisors.

**Military equipment** – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Military Equipment*

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#### **703.2 POLICY**

It is the policy of this Department that members comply with the provisions of Government Code § 7071 with respect to military equipment.

#### **703.3 USE CONSIDERATION**

(a) The military equipment acquired and authorized by the Department is:

1. Necessary because there is no reasonable alternative that can archive the same objective of officer and civilian safety.
2. If purchased, reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.

(b) Military equipment shall only be used by a Department employee after applicable training, including courses required by the Commission on Peace Officer Standards and Training, has been completed, unless exigent circumstances arise.

(c) Military equipment used by other jurisdictions that are providing mutual aid to this Department or operating in conjunction in a law enforcement capacity with this Department, shall comply with their respective military equipment use policies.

#### **703.4 MILITARY EQUIPMENT COORDINATOR**

The Chief Investigator should designate a member of the Department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department.

#### **703.5 APPROVAL**

The Chief Investigator or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief Investigator or authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the Department's website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.

# Kings County District Attorney Investigation Division

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### *Military Equipment*

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- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of the District Attorney's Office..
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

#### **703.6 ANNUAL REPORT**

Upon approval of a military equipment policy, the Chief Investigator or authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072; Government Code § 7073).

The Chief Investigator or authorized designee should also make each annual military equipment report publicly available on the Department's website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072; Government Code § 7073 for the preceding calendar year for each type of military equipment in the Department's inventory.

#### **703.7 COMMUNITY ENGAGEMENT**

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

Pursuant to California Government Code section 7070(d)(7), members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment in this policy by any of the following means:

1. In person at the Kings County District Attorney's Office during normal working hours 8:00 am to 5:00 pm Monday - Friday. 1400 W. Lacey Blvd, Hanford Ca., 93230
2. Via telephone at (559) 582-0326
3. Via mail sent to:

Kings County District Attorney's Office

Attention Military Equipment Use Coordinator

1400 W. Lacey Blvd, Hanford, Ca., 93230

## **Chapter 8 - Support Services**



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## Property and Evidence

### 800.1 PURPOSE AND SCOPE

This policy provides for the proper collection, storage, and security of evidence and other property. Additionally, this policy provides for the protection of the chain of evidence and identifies those persons authorized to remove and/or destroy property.

### 800.2 DEFINITIONS

**Property** - Includes all items of evidence, items taken for safekeeping and found property.

**Evidence** - Includes items taken or recovered in the course of an investigation that may be used in the prosecution of a case. This includes photographs and latent fingerprints.

**Safekeeping** - Includes the following types of property:

- Property obtained by the [Department/Office] for safekeeping such as a firearm
- Personal property of an arrestee not taken as evidence
- Property taken for safekeeping under authority of a law (e.g., Welfare and Institutions Code § 5150 (mentally ill persons))

**Found property** - Includes property found by an employee or citizen that has no apparent evidentiary value and where the owner cannot be readily identified or contacted.

### 800.3 PROPERTY HANDLING

Any employee who first comes into possession of any property shall retain such property in his/her possession until it is properly tagged and placed in the designated property locker or storage room along with the property form. Care shall be taken to maintain the chain of custody for all evidence.

Where ownership can be established as to found property with no apparent evidentiary value, such property may be released to the owner without the need for booking. The property form must be completed to document the release of property not booked and the owner shall sign the form acknowledging receipt of the items.

#### 800.3.1 PROPERTY BOOKING PROCEDURE

All property must be booked prior to the employee going off-duty unless otherwise approved by a supervisor. Employees booking property shall observe the following guidelines:

- (a) Complete the property form describing each item of property separately, listing all serial numbers, owner's name, finder's name, and other identifying information or markings.
- (b) Mark each item of evidence with the booking employee's initials and the date booked using the appropriate method so as not to deface or damage the value of the property.
- (c) Complete an evidence/property tag and attach it to each package or envelope in which the property is stored.

# Kings County District Attorney Investigation Division

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### *Property and Evidence*

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- (d) The original property form shall be submitted with the case report. A copy shall be placed with the property in the temporary property locker or with the property if property is stored somewhere other than a property locker.
- (e) When the property is too large to be placed in a locker, the item may be retained in the evidence vault.. Submit the completed property record into a numbered locker indicating the location of the property.

#### 800.3.2 NARCOTICS AND DANGEROUS DRUGS

All narcotics and dangerous drugs shall be booked separately using a separate property record. Paraphernalia as defined by Health and Safety Code § 11364, seized pursuant to a search warrant shall also be booked separately.

The investigator seizing the narcotics and dangerous drugs shall place them in the designated locker accompanied by two copies of the form for the Records and detectives. The remaining copy will be detached and submitted with the case report.

#### 800.3.3 EXPLOSIVES

Investigators who encounter a suspected explosive device shall promptly notify their immediate supervisor or the Chief Investigator. The bomb squad will be called to handle explosive-related incidents and will be responsible for the handling, storage, sampling and disposal of all suspected explosives.

Explosives will not be retained in the bureau facility. Only fireworks that are considered stable and safe and road flares or similar signaling devices may be booked into property. All such items shall be stored in proper containers and in an area designated for the storage of flammable materials. The property and evidence technician is responsible for transporting to the Fire Department, on a regular basis, any fireworks or signaling devices that are not retained as evidence.

#### 800.3.4 EXCEPTIONAL HANDLING

Certain property items require a separate process. The following items shall be processed in the described manner:

- (a) Bodily fluids such as blood or semen stains shall be air dried prior to booking.
- (b) License plates found not to be stolen or connected with a known crime, should be released directly to the property and evidence technician, or placed in the designated container for return to the Department of Motor Vehicles. No formal property booking process is required.
- (c) All bicycles and bicycle frames require a property record. Property tags will be securely attached to each bicycle or bicycle frame. The property may be released directly to the property and evidence technician, or placed in the bicycle storage area until a property and evidence technician can log the property.
- (d) All cash shall be counted in the presence of a supervisor and the envelope initialed by the booking investigator and the supervisor. The Chief Investigator shall be contacted for cash in excess of \$1,000 for special handling procedures.

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Property and Evidence*

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County property, unless connected to a known criminal case, should be released directly to the appropriate County department. No formal booking is required. In cases where no responsible person can be located, the property should be booked for safekeeping in the normal manner.

#### **800.3.5 FIREARMS**

Firearms are involved, collected and retained in criminal and non-criminal cases. Due to the very nature of these items, extreme care must be taken to ensure the safe handling of the weapon and preservation of its evidentiary value.

Weapons should be unloaded only after noting the position of the safety, bolt, breechblock, hammer, cylinder, magazine, etc.

Never place a loaded firearm into an evidence locker. If for any reason the weapon cannot be unloaded, the investigating officer shall contact the department rangemaster or armorer for assistance.

Unfired cartridges may be left in the magazine provided the magazine is removed for the gun. Make an effort not to touch the sides of the magazine as this may destroy latent prints.

All firearms and ammunition shall be packaged separately from other property.

#### **800.3.6 RELINQUISHED FIREARMS**

Individuals who relinquish firearms pursuant to the provisions of Penal Code § 29850 shall be issued a receipt that describes the firearm, the serial number or other identification of the firearm at the time of relinquishment (Penal Code § 29810).

Relinquished firearms shall be retained for 30 days, after which time they may be destroyed, retained, sold or otherwise transferred, unless (Penal Code § 29810):

- (a) A certificate is issued by a judge of a court of record or the District Attorney stating the firearms shall be retained; or
- (b) The convicted person provides written notice of an intent to appeal the conviction that necessitated the relinquishment; or
- (c) The Automated Firearms System indicates that the firearm was reported lost or stolen.
  1. In such event, the firearm shall be restored to the lawful owner as soon as it is no longer needed as evidence, the lawful owner has identified the weapon and provided proof of ownership, and the [Department/Office] has complied with the requirements of Penal Code § 33850 et seq.

The property and evidence technician shall ensure the Investigator is notified of the relinquished firearm for purposes of updating the Automated Firearms System and the disposition of the firearm for purposes of notifying the California Department of Justice (DOJ) (See the Records Policy).

#### **800.4 RECORDING OF PROPERTY**

The property and evidence technician receiving custody of evidence or property shall record his/her signature, the date and time the property was received and where the property will be stored on the property control card.

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Property and Evidence*

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A property number shall be obtained for each item or group of items. This number shall be recorded on the property tag and the property control card.

Any changes in the location of property held by the Kings County District Attorney Investigation Division shall be noted in the property logbook.

#### **800.5 PROPERTY CONTROL**

Each time the property and evidence technician receives property or releases property to another person, he/she shall enter this information on the property control card. Investigators desiring property for court shall contact the property and evidence technician at least one day prior to the court day.

##### **800.5.1 RESPONSIBILITY OF OTHER PERSONNEL**

Every time property is released or received, an appropriate entry on the evidence package shall be completed to maintain the chain of evidence. No property or evidence is to be released without first receiving written authorization from a supervisor or detective.

Request for analysis for items other than narcotics or drugs shall be completed on the appropriate forms and submitted to the property and evidence technician. This request may be filled out any time after booking of the property or evidence.

##### **800.5.2 TRANSFER OF EVIDENCE TO CRIME LABORATORY**

The transporting employee will check the evidence out of property, indicating the date and time on the property control card and the request for laboratory analysis.

The property and evidence technician releasing the evidence must complete the required information on the property control card and the evidence. The lab forms will be transported with the property to the examining laboratory. Upon delivering the item involved, the investigator will record the delivery time on both copies, and indicate the locker in which the item was placed or the employee to whom it was delivered. The original copy of the lab form will remain with the evidence and the copy will be returned to the Records for filing with the case.

##### **800.5.3 AUTHORITY TO RELEASE PROPERTY**

The Investigations Division shall authorize the disposition or release of all evidence and property coming into the care and custody of the [Department/Office].

##### **800.5.4 RELEASE OF PROPERTY**

All reasonable attempts shall be made to identify the rightful owner of found property or evidence not needed for an investigation.

Release of property shall be made upon receipt of an authorized release form, listing the name and address of the person to whom the property is to be released. The release authorization shall be signed by the authorizing supervisor or detective and must conform to the items listed on the property form or must specify the specific item(s) to be released. Release of all property shall be documented on the property form.

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### *Property and Evidence*

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With the exception of firearms and other property specifically regulated by statute, found property and property held for safekeeping shall be held for a minimum of 90 days. During such period, property personnel shall attempt to contact the rightful owner by telephone and/or mail when sufficient identifying information is available. Property not held for any other purpose and not claimed within 90 days after notification (or receipt, if notification is not feasible) may be auctioned to the highest bidder at a properly published public auction. If such property is not sold at auction or otherwise lawfully claimed, it may thereafter be destroyed (Civil Code § 2080.6). The final disposition of all such property shall be fully documented in related reports.

A property and evidence technician shall release the property upon proper identification being presented by the owner for which an authorized release has been received. A signature of the person receiving the property shall be recorded on the original property form. After release of all property entered on the property control card, the card shall be forwarded to the Records for filing with the case. If some items of property have not been released, the property card will remain with the Kings County Sheriff's Department. Upon release, the proper entry shall be documented in the Property Log.

Under no circumstances shall any firearm, magazine, or ammunition be returned to any individual unless and until such person presents valid identification and written notification from the California Department of Justice that conforms to the provisions of Penal Code § 33865.

The Kings County Sheriff's Department Supervisor should also make reasonable efforts to determine whether the person is the subject of any court order preventing the person from possessing a firearm and, if so, the firearm should not be released to the person while the order is in effect.

The [Department/Office] is not required to retain any firearm, magazine, or ammunition longer than 180 days after notice has been provided to the owner that such items are available for return. At the expiration of such period, the firearm, magazine, or ammunition may be processed for disposal in accordance with applicable law (Penal Code § 33875).

#### 800.5.5 DISPUTED CLAIMS TO PROPERTY

Occasionally more than one party may claim an interest in property being held by the [Department/Office], and the legal rights of the parties cannot be clearly established. Such property shall not be released until one party has obtained a valid court order or other undisputed right to the involved property.

All parties should be advised that their claims are civil and in extreme situations, legal counsel for the [Department/Office] may wish to file an interpleader to resolve the disputed claim (Code of Civil Procedure § 386(b)).

#### 800.5.6 RELEASE OF FIREARMS AND WEAPONS IN MENTAL ILLNESS MATTERS

Firearms and other deadly weapons confiscated from an individual detained for an evaluation by a mental health professional or subject to the provisions of Welfare and Institutions Code § 8100 or Welfare and Institutions Code § 8103 shall be released or disposed of as follows:

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- (a) If a petition for a hearing regarding the return of a firearm or a weapon has been initiated pursuant to Welfare and Institutions Code § 8102(c), the firearm or weapon shall be released or disposed of as provided by an order of the court. If the court orders a firearm returned, the firearm shall not be returned unless and until the person presents valid identification and written notification from the California Department of Justice (DOJ) that conforms to the provisions of Penal Code § 33865.
- (b) If no petition has been initiated pursuant to Welfare and Institutions Code § 8102(c) and the firearm or weapon is not retained as evidence, the [Department/Office] shall make the firearm or weapon available for return. No firearm will be returned unless and until the person presents valid identification and written notification from the California DOJ that conforms to the provisions of Penal Code § 33865.
- (c) Unless the person contacts the [Department/Office] to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Penal Code § 33870, firearms not returned should be sold, transferred, destroyed, or retained as provided in Welfare and Institutions Code § 8102.

#### **800.5.7 RELEASE OF FIREARMS IN GUN VIOLENCE RESTRAINING ORDER MATTERS**

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order and in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18120).

If the restrained person who owns the firearms or ammunition does not wish to have the firearm or ammunition returned, he/she is entitled to sell or transfer title to a licensed dealer, provided that the firearms or ammunition are legal to own or possess and the restrained person has right to title of the firearms or ammunition (Penal Code § 18120).

If a person other than the restrained person claims title to the firearms or ammunition surrendered pursuant to Penal Code § 18120 and the Kings County District Attorney Investigation Division determines him/her to be the lawful owner, the firearms or ammunition shall be returned in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18120).

Firearms and ammunition that are not claimed are subject to the requirements of Penal Code § 34000.

#### **800.5.8 RELEASE OF FIREARMS, MAGAZINES, AND AMMUNITION**

The [Department/Office] shall not return any firearm, magazine, or ammunition taken into custody to any individual unless all requirements of Penal Code § 33855 are met.

#### **800.6 DISPOSITION OF PROPERTY**

All property not held for evidence in a pending criminal investigation or proceeding, and held for six months or longer where the owner has not been located or fails to claim the property, may be disposed of in compliance with existing laws upon receipt of proper authorization for disposal. The property and evidence technician shall request a disposition or status on all property which

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has been held in excess of 120 days, and for which no disposition has been received from a supervisor or detective.

#### 800.6.1 EXCEPTIONAL DISPOSITIONS

The following types of property shall be destroyed or disposed of in the manner, and at the time prescribed by law, unless a different disposition is ordered by a court of competent jurisdiction:

- Weapons declared by law to be nuisances (Penal Code § 29300; Penal Code § 18010; Penal Code § 32750)
- Animals, birds, and related equipment that have been ordered forfeited by the court (Penal Code § 599a)
- Counterfeiting equipment (Penal Code § 480)
- Gaming devices (Penal Code § 335a)
- Obscene matter ordered to be destroyed by the court (Penal Code § 312)
- Altered vehicles or component parts (Vehicle Code § 10751)
- Narcotics (Health and Safety Code § 11474 et seq.)
- Unclaimed, stolen, or embezzled property (Penal Code § 1411)
- Destructive devices (Penal Code § 19000)
- Sexual assault evidence (Penal Code § 680)

#### 800.6.2 UNCLAIMED MONEY

If found or seized money is no longer required as evidence and remains unclaimed after three years, the [Department/Office] shall cause a notice to be published each week for a period of two consecutive weeks in a local newspaper of general circulation (Government Code § 50050). Such notice shall state the amount of money, the fund in which it is held and that the money will become the property of the agency on a designated date not less than 45 days and not more than 60 days after the first publication (Government Code § 50051).

Any individual item with a value of less than \$15.00, or any amount if the depositor/owner's name is unknown, which remains unclaimed for a year or by order of the court, may be transferred to the general fund without the necessity of public notice (Government Code § 50055).

If the money remains unclaimed as of the date designated in the published notice, the money will become the property of this [department/office] to fund official law enforcement operations. Money representing restitution collected on behalf of victims shall either be deposited into the Restitution Fund or used for purposes of victim services.

#### 800.6.3 RETENTION OF BIOLOGICAL EVIDENCE

The Kings County Sheriff's Department Supervisor shall ensure that no biological evidence held by the [Department/Office] is destroyed without adequate notification to the following persons, when applicable:

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- (a) The defendant
- (b) The defendant's attorney
- (c) The appropriate prosecutor and Attorney General
- (d) Any sexual assault victim
- (e) The Investigations Division supervisor

Biological evidence shall be retained for either a minimum period that has been established by law (Penal Code § 1417.9) or that has been established by the Kings County Sheriff's Department Supervisor, or until the expiration of any imposed sentence that is related to the evidence, whichever time period is greater. Following the retention period, notifications should be made by certified mail and should inform the recipient that the evidence will be destroyed after a date specified in the notice unless a motion seeking an order to retain the sample is filed and served on the [Department/Office] within 180 days of the date of the notification. A record of all certified mail receipts shall be retained in the appropriate file. Any objection to, or motion regarding, the destruction of the biological evidence should be retained in the appropriate file and a copy forwarded to the Investigations Division supervisor.

Biological evidence related to a homicide shall be retained indefinitely and may only be destroyed with the written approval of the Chief Investigator and the head of the applicable prosecutor's office.

Biological evidence or other crime scene evidence from an unsolved sexual assault should not be disposed of prior to expiration of the statute of limitations and shall be retained as required in Penal Code § 680. Even after expiration of an applicable statute of limitations, the Investigations Division supervisor should be consulted and the sexual assault victim shall be notified at least 60 days prior to the disposal (Penal Code § 680). Reasons for not analyzing biological evidence shall be documented in writing (Penal Code § 680.3).

#### **800.7 INSPECTIONS OF THE EVIDENCE ROOM**

- (a) On a monthly basis, the supervisor of the evidence custodian shall make an inspection of the evidence storage facilities and practices to ensure adherence to appropriate policies and procedures.
- (b) Unannounced inspections of evidence storage areas shall be conducted annually as directed by the Chief Investigator.
- (c) An annual audit of evidence held by the [Department/Office] shall be conducted by a Chief Investigator (as appointed by the Chief Investigator) not routinely or directly connected with evidence control.
- (d) Whenever a change is made in personnel who have access to the evidence room, an inventory of all evidence/property shall be made by an individual not associated to the property room or function to ensure that records are correct and all evidence property is accounted for.



## Records

### **801.1 PURPOSE AND SCOPE**

This policy establishes the guidelines for the operational functions of the Kings County District Attorney Investigation Division Records. The policy addresses [department/office] file access and internal requests for case reports.

#### **801.1.1 NUMERICAL FILING SYSTEM**

Case reports and associated case numbers are automatically generated and stored within the Spillman records/report writing program.

### **801.2 POLICY**

It is the policy of the Kings County District Attorney Investigation Division to maintain [department/office] records securely, professionally, and efficiently.

### **801.3 DETERMINATION OF FACTUAL INNOCENCE**

In any case where a person has been arrested by investigators of the Kings County District Attorney Investigation Division and no accusatory pleading has been filed, the person arrested may petition the Department to destroy the related arrest records. Petitions should be forwarded to the Investigations Supervisor. The Investigations Supervisor should promptly contact the prosecuting attorney and request a written opinion as to whether the petitioner is factually innocent of the charges (Penal Code § 851.8). Factual innocence means the accused person did not commit the crime.

Upon receipt of a written opinion from the prosecuting attorney affirming factual innocence, the Investigations Supervisor should forward the petition to the Investigations Division Supervisor and the County Counsel for review. After such review and consultation with the County Counsel, the Investigations Division Supervisor and the Investigations Supervisor shall decide whether a finding of factual innocence is appropriate.

Upon determination that a finding of factual innocence is appropriate, the Investigations Supervisor shall ensure that the arrest record and petition are sealed for later destruction and the required notifications are made to the California Department of Justice and other law enforcement agencies (Penal Code § 851.8).

The Investigations Supervisor should respond to a petition with the Department's decision within 45 days of receipt. Responses should include only the decision of the Department, not an explanation of the analysis leading to the decision.

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## Restoration of Firearm Serial Numbers

### 802.1 PURPOSE AND SCOPE

The primary purpose for restoring firearm serial numbers is to determine the prior owners or origin of the item from which the number has been recovered. Thus, property can be returned to rightful owners or investigations can be initiated to curb illegal trade of contraband firearms. The purpose of this plan is to develop standards, methodologies, and safety protocols for the recovery of obliterated serial numbers from firearms and other objects using procedures that are accepted as industry standards in the forensic community. All personnel who are involved in the restoration of serial numbers will observe the following guidelines. This policy complies with Penal Code § 11108.9.

### 802.2 PROCEDURE

Any firearm coming into the possession of the Kings County District Attorney Investigation Division as evidence, found property, etc., where the serial numbers have been removed or obliterated will be processed in the following manner:

#### 802.2.1 PRELIMINARY FIREARM EXAMINATION

- (a) Always keep the muzzle pointed in a safe direction. Be sure the firearm is in an unloaded condition. This includes removal of the ammunition source (e.g., the detachable magazine, contents of the tubular magazine) as well as the chamber contents.
- (b) If the firearm is corroded shut or in a condition that would preclude inspection of the chamber contents, treat the firearm as if it is loaded. Make immediate arrangements for a firearms examiner or other qualified examiner to render the firearm safe.
- (c) Accurately record/document the condition of the gun when received. Note the positions of the various components such as the safeties, cylinder, magazine, slide, hammer, etc. Accurately record/document cylinder chamber and magazine contents. Package the ammunition separately.
- (d) If the firearm is to be processed for fingerprints or trace evidence, process before the serial number restoration is attempted. First record/document important aspects such as halos on the revolver cylinder face or other relevant evidence that might be obscured by the fingerprinting chemicals.

#### 802.2.2 PROPERTY BOOKING PROCEDURE

Any employee taking possession of a firearm with removed/obliterated serial numbers shall book the firearm into property following standard procedures. The employee booking the firearm shall indicate on the property form that serial numbers have been removed or obliterated.

### *Restoration of Firearm Serial Numbers*

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#### **802.2.3 INVESTIGATOR RESPONSIBILITY**

The property and evidence technician receiving a firearm when the serial numbers have been removed or obliterated shall arrange for the firearm to be transported to the crime lab for restoration and maintain the chain of evidence.

#### **802.2.4 DOCUMENTATION**

Case reports are prepared in order to document the chain of custody and the initial examination and handling of evidence from the time it is received/collected until it is released.

This report must include a record of the manner in which and/or from whom the firearm was received. This may appear on the request form or property form depending on the type of evidence.

#### **802.2.5 FIREARM TRACE**

After the serial number has been restored (or partially restored) by the criminalistics laboratory, the property and evidence technician will complete a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Tracing Center (NTC) Obliterated Serial Number Trace Request Form (ATF 3312.1-OBL) and forward the form to the NTC in Falling Waters, West Virginia or enter the data into the ATF eTrace system.

#### **802.3 BULLET AND CASING IDENTIFICATION**

Exemplar bullets and cartridge cases from the firearm, depending upon acceptance criteria and protocol, may be submitted to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Integrated Ballistic Information Network (NIBIN) which uses the Integrated Ballistic Identification System (IBIS) technology to search the national database and compare with ballistic evidence recovered from other crime scenes.

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## Records Maintenance and Release

### 803.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of [department/office] records. Protected information is separately covered in the Protected Information Policy.

### 803.2 POLICY

The Kings County District Attorney Investigation Division is committed to providing public access to records in a manner that is consistent with the California Public Records Act (Government Code § 7920.000 et seq.).

#### 803.2.1 PROCESSING OF REQUESTS

Any member of the public, including the media and elected officials, may access unrestricted records of this department by submitting a written and signed request for each record sought and paying any associated fees (Government Code § 6253).

The processing of requests is subject to the following limitations:

- (a) The employee processing the request shall determine if the requested record is available and, if so, whether the record is exempt from disclosure. Either the requested record or the reason for non-disclosure will be provided promptly, but no later than 10 days from the date of request, unless unusual circumstances preclude doing so. If more time is needed, an extension of up to 14 additional days may be authorized by the Chief Investigator or the authorized designee. If an extension is authorized, the Department shall provide written notice of the extension to the requesting party (Government Code § 6253(c)).
- (b) In accordance with the Public Records Act, the Department is not required to create records that do not otherwise exist in order to accommodate a request under the Act.

Requests by elected officials for records that are not open to public inspection should be referred to the Investigations Chief Investigator for a determination as to whether the records will be released.

### 803.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

The Chief Investigator shall designate a Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to:

- (a) Managing the records management system for the [Department/Office], including the retention, archiving, release, and destruction of [department/office] public records.
- (b) Maintaining and updating the [department/office] records retention schedule including:
  - 1. Identifying the minimum length of time the [Department/Office] must keep records.
  - 2. Identifying the [department/office] division responsible for the original record.

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- (c) Establishing rules regarding the inspection and copying of [department/office] public records as reasonably necessary for the protection of such records (Government Code § 7922.525; Government Code § 7922.530).
- (d) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
- (e) Establishing rules regarding the processing of subpoenas for the production of records.
- (f) Ensuring a current schedule of fees for public records as allowed by law is available (Government Code § 7922.530).
- (g) Determining how the [department/office]'s website may be used to post public records in accordance with Government Code § 7922.545.
- (h) Ensuring that all [department/office] current standards, policies, practices, operating procedures, and education and training materials are posted on the [department/office] website in accordance with Penal Code § 13650.
- (i) Ensuring that public records posted on the [Department/Office] website meet the requirements of Government Code § 7922.680 including but not limited to posting in an open format where a record may be retrieved, downloaded, indexed, and searched by a commonly used internet search application.
- (j) Ensuring that a list and description, when applicable, of enterprise systems (as defined by Government Code § 7922.700) is publicly available upon request and posted in a prominent location on the [Department/Office]'s website (Government Code § 7922.710; Government Code § 7922.720).

#### 803.3.1 GENERAL CASE AND CRIME REPORTS

Reports containing any of the items listed below will not be released:

- (a) **Victim information** - Victims of crimes who have requested that their identifying information be kept confidential, victims who are minors and victims of certain offenses (e.g., sex crimes, Penal Code § 293) shall not be made public. No employee shall disclose to any arrested person or to any person who may be a defendant in a criminal action the address or telephone number of any person who is a victim or witness in the alleged offense, unless it is required by law (Penal Code § 841.5).
- (b) **Confidential information** - Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved or information that would endanger the successful completion of the investigation or a related investigation shall not be made public.
  - 1. Analysis and conclusions of investigating investigators may also be exempt from disclosure.
  - 2. If it has been noted in any report that any individual wishes to protect his/her right to privacy under the California Constitution, such information may not be subject to public disclosure.

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- (c) **Specific crimes** - Certain types of reports involving, but not limited to, **child abuse/molestation** (Penal Code § 11167.5), **elder abuse** (Welfare and Institutions Code § 15633) and **juveniles** (Welfare and Institutions Code § 827) shall not be made public.
- (d) **General information** - Absent statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Government Code § 6254(f).
- (e) **Deceased juvenile crime victims** - The Code of Civil Procedure § 130 limits the dissemination of autopsy and private medical information concerning a murdered child by allowing families to request that the autopsy report of the victim be sealed from public inspection. Such requests shall be honored, with the exceptions that allow dissemination of those reports to law enforcement agents, prosecutors, defendants or civil litigants under state and federal discovery laws (Code of Civil Procedure §130).

#### 803.3.2 ARREST REPORTS

Arrestee information shall be subject to release in the same manner as information contained in other reports as set forth above.

In addition to the restrictions stated above, all requests from criminal defendants and their authorized representatives (including attorneys) shall be referred to the District Attorney, County Counsel or the courts pursuant to Penal Code § 1054.5.

Local criminal history information including, but not limited to, arrest history and disposition, and fingerprints shall only be subject to release to those agencies and individuals set forth in Penal Code § 13300.

#### 803.3.3 PERSONNEL RECORDS

Personnel records, medical records and similar records which would involve personal privacy shall not be made public (Government Code § 3303(e)).

Peace officer personnel records are deemed confidential (Penal Code § 832.7, et seq.) and shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order (Evidence Code § 1043, et seq.).

The identity of any investigator subject to any criminal or administrative investigation shall not be released without the consent of the involved investigator, prior approval of the Chief Investigator or as required by law (Government Code § 3303 (e)).

#### 803.3.4 DOMESTIC VIOLENCE REPORTS

Victims of domestic violence or their representative shall be provided, without charge, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, pursuant to the requirements and time frames of Family Code § 6228.

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#### **803.4 PROCESSING REQUESTS FOR PUBLIC RECORDS**

Any [department/office] member who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

##### **803.4.1 REQUESTS FOR RECORDS**

Any member of the public, including the media and elected officials, may access unrestricted records of this [department/office], during regular business hours by submitting a written and signed request that reasonably describes each record sought and paying any associated fees (Government Code § 7922.530).

The processing of requests for any record is subject to the following (Government Code § 7922.530; Government Code § 7922.535):

- (a) The [Department/Office] is not required to create records that do not exist.
- (b) Victims of an incident or their authorized representative shall not be required to show proof of legal presence in the United States to obtain [department/office] records or information. If identification is required, a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship or current Matricula Consular card is acceptable (Government Code § 7923.655).
- (c) Either the requested record or the reason for non-disclosure will be provided promptly, but no later than 10 days from the date of request, unless unusual circumstances preclude doing so. If more time is needed, an extension of up to 14 additional days may be authorized by the Custodian of Records or the authorized designee. If an extension is authorized, the [Department/Office] shall provide the requester written notice that includes the reason for the extension and the anticipated date of the response.
  - 1. When the request does not reasonably describe the records sought, the Custodian of Records shall assist the requester in making the request focused and effective in a way to identify the records or information that would be responsive to the request including providing assistance for overcoming any practical basis for denying access to the records or information. The Custodian of Records shall also assist in describing the information technology and physical location in which the record exists (Government Code § 7922.600).
  - 2. If the record requested is available on the [department/office] website, the requester may be directed to the location on the website where the record is posted. If the requester is unable to access or reproduce the record, a copy of the record shall be promptly provided.
- (d) Upon request, a record shall be provided in an electronic format utilized by the [Department/Office]. Records shall not be provided only in electronic format unless specifically requested (Government Code § 7922.570; Government Code § 7922.580).
- (e) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.

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1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the [department/office]-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
- (f) If a record request is denied in whole or part, the requester shall be provided a written response that includes the statutory exemption for withholding the record or facts that the public interest served by nondisclosure outweighs the interest served by disclosure. The written response shall also include the names, titles, or positions of each person responsible for the denial (Government Code § 7922.000; Government Code § 7922.540).

### **803.5 RELEASE RESTRICTIONS**

Examples of release restrictions include:

- (a) Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record, or any [department/office] record, including traffic collision reports, are restricted except as authorized by the [Department/Office], and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722).
- (b) Social Security numbers (Government Code § 7922.200).
- (c) Personnel records, medical records, and similar records that would involve an unwarranted invasion of personal privacy except as allowed by law (Government Code § 7927.700; Penal Code § 832.7; Penal Code § 832.8; Evidence Code § 1043 et seq.).
  1. Peace officer personnel records that are deemed confidential shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order.
  2. The identity of any investigator subject to any criminal or administrative investigation shall not be released without the consent of the involved investigator, prior approval of the Chief Investigator, or as required by law.
- (d) Victim information that may be protected by statutes, including victims of certain crimes who have requested that their identifying information be kept confidential, victims who are minors, and victims of certain offenses (e.g., sex crimes or human trafficking (Penal Code § 293)). Addresses and telephone numbers of a victim or a witness shall not be disclosed to any arrested person or to any person who may be a defendant in a criminal action unless it is required by law (Government Code § 7923.615; Penal Code § 841.5).
  1. Victims of certain offenses (e.g., domestic violence, sexual assault, stalking, human trafficking, elder and dependent adult abuse) or their representatives shall be provided, upon request and without charge, one copy of all incident report face sheets, one copy of all incident reports, a copy of any accompanying



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- or related photographs of the victim's injuries, property damage, or any other photographs that are noted in the incident report, and a copy of 9-1-1 recordings, if any, pursuant to the requirements and time frames of Family Code § 6228.
2. Victims of sexual assault, upon written request, shall be provided a free copy of the initial crime report regardless of whether the report has been closed. Personal identifying information may be redacted (Penal Code § 680.2(b)).
- (e) Video or audio recordings created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident except as provided by Government Code § 7923.750.
  - (f) Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved, or information that would endanger the successful completion of the investigation or a related investigation. This includes analysis and conclusions of investigating investigators (Evidence Code § 1041; Government Code § 7923.605).
    1. Absent a statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Government Code § 7923.605.
  - (g) Local criminal history information including but not limited to arrest history and disposition, and fingerprints shall only be subject to release to those agencies and individuals set forth in Penal Code § 13300.
    1. All requests from criminal defendants and their authorized representatives (including attorneys) shall be referred to the [District/County Attorney], the County Counsel, or the courts pursuant to Penal Code § 1054.5.
  - (h) Certain types of reports involving but not limited to child abuse and molestation (Penal Code § 11167.5), elder and dependent abuse (Welfare and Institutions Code § 15633), and juveniles (Welfare and Institutions Code § 827).
  - (i) Sealed autopsy and private medical information concerning a murdered child with the exceptions that allow dissemination of those reports to law enforcement agents, prosecutors, defendants, or civil litigants under state and federal discovery laws (Code of Civil Procedure § 130).
  - (j) Information contained in applications for licenses to carry firearms or other files that indicates when or where the applicant is vulnerable or which contains medical or psychological information (Government Code § 7923.800).
  - (k) Traffic collision reports (and related supplemental reports) shall be considered confidential and subject to release only to the California Highway Patrol, Department of Motor Vehicles (DMV), other law enforcement agencies, and those individuals and their authorized representatives set forth in Vehicle Code § 20012.
  - (l) Any record created exclusively in anticipation of potential litigation involving this [department/office] (Government Code § 7927.200).
  - (m) Any memorandum from legal counsel until the pending litigation has been adjudicated or otherwise settled (Government Code § 7927.205).

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- (n) Records relating to the security of the [department/office]'s electronic technology systems (Government Code § 7929.210).
- (o) A record of a complaint, or the investigations, findings, or dispositions of that complaint if the complaint is frivolous, as defined by Code of Civil Procedure § 128.5, or if the complaint is unfounded (Penal Code § 832.7 (b)(9)).
- (p) Any other record not addressed in this policy shall not be subject to release where such record is exempt or prohibited from disclosure pursuant to state or federal law, including but not limited to provisions of the Evidence Code relating to privilege (Government Code § 7927.705).
- (q) Information connected with juvenile court proceedings or the detention or custody of a juvenile. Federal officials may be required to obtain a court order to obtain certain juvenile information (Welfare and Institutions Code § 827.9; Welfare and Institutions Code § 827.95; Welfare and Institutions Code § 831).

#### **803.6 SUBPOENAS AND DISCOVERY REQUESTS**

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Custodian of Records for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the District Attorney, County Counsel or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the [Department/Office] so that a timely response can be prepared.

#### **803.7 SECURITY BREACHES**

The Investigator shall ensure notice is given anytime there is a reasonable belief an unauthorized person has acquired either unencrypted personal identifying information or encrypted personal information along with the encryption key or security credential stored in any [Department/Office] information system (Civil Code § 1798.29).

Notice shall be given as soon as reasonably practicable to all individuals whose information may have been acquired. The notification may be delayed if the [Department/Office] determines that notification will impede a criminal investigation or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

For the purposes of this requirement, personal identifying information includes an individual's first name or first initial and last name in combination with any one or more of the following (Civil Code § 1798.29):

- (a) Social Security number

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1. Driver license number, California identification card number, tax identification number, passport number, military identification number, or other unique identification number issued on a government document commonly used to verify the identity of a specific individual
  2. Account number or credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account
  3. Medical information
  4. Health insurance information
  5. Information or data collected by Automated License Plate Reader (ALPR) technology
  6. Unique biometric data
  7. Genetic data
- (b) A username or email address, in combination with a password or security question and answer that permits access to an online account

#### 803.7.1 FORM OF NOTICE

- (a) The notice shall be written in plain language, be consistent with the format provided in Civil Code § 1798.29 and include, to the extent possible, the following:
1. The date of the notice.
  2. Name and contact information for the Kings County District Attorney Investigation Division.
  3. A list of the types of personal information that were or are reasonably believed to have been acquired.
  4. The estimated date or date range within which the security breach occurred.
  5. Whether the notification was delayed as a result of a law enforcement investigation.
  6. A general description of the security breach.
  7. The toll-free telephone numbers and addresses of the major credit reporting agencies, if the breach exposed a Social Security number or a driver license or California identification card number.
- (b) The notice may also include information about what the Kings County District Attorney Investigation Division has done to protect individuals whose information has been breached and may include information on steps that the person whose information has been breached may take to protect him/herself (Civil Code § 1798.29).
- (c) When a breach involves an online account, and only a username or email address in combination with either a password or security question and answer that would permit access to an online account, and no other personal information has been breached (Civil Code § 1798.29):

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1. Notification may be provided electronically or in another form directing the person to promptly change either his/her password or security question and answer, as applicable, or to take other appropriate steps to protect the online account with the [Department/Office] in addition to any other online accounts for which the person uses the same username or email address and password or security question and answer.
2. When the breach involves an email address that was furnished by the Kings County District Attorney Investigation Division, notification of the breach should not be sent to that email address but should instead be made by another appropriate medium as prescribed by Civil Code § 1798.29.

#### 803.7.2 MANNER OF NOTICE

- (a) Notice may be provided by one of the following methods (Civil Code § 1798.29):
  1. Written notice.
  2. Electronic notice if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 USC § 7001.
  3. Substitute notice if the cost of providing notice would exceed \$250,000, the number of individuals exceeds 500,000 or the [Department/Office] does not have sufficient contact information. Substitute notice shall consist of all of the following:
    - (a) Email notice when the [Department/Office] has an email address for the subject person.
    - (b) Conspicuous posting of the notice on the [department/office]'s webpage for a minimum of 30 days.
  4. Notification to major statewide media and the California Information Security Office within the California Department of Technology.
- (b) If a single breach requires the [Department/Office] to notify more than 500 California residents, the [Department/Office] shall electronically submit a sample copy of the notification, excluding any personally identifiable information, to the Attorney General.

#### **803.8 RELEASE OF AUDIO OR VIDEO RECORDINGS RELATED TO CRITICAL INCIDENTS**

Video and audio recordings related to critical incidents shall be released upon a proper public record request and subject to delayed release, redaction, and other release restrictions as provided by law (Government Code § 7923.625).

For purposes of this section, a video or audio recording relates to a critical incident if it depicts an incident involving the discharge of a firearm at a person by an investigator, or depicts an incident in which the use of force by an investigator against a person resulted in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) (Government Code § 7923.625).

The Custodian of Records should work as appropriate with the Chief Investigator or the Assistant Chief Investigator supervisor in determining what recordings may qualify for disclosure when

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a request for a recording is received and if the requested recording is subject to delay from disclosure, redaction, or other release restrictions.

#### 803.8.1 DELAY OF RELEASE

Disclosure of critical incident recordings during active criminal or administrative investigations may be delayed as follows if disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source:

- (a) Disclosure may be delayed up to 45 days from the date the [Department/Office] knew or reasonably should have known about the incident.
- (b) Delay of disclosure may continue after the initial 45 days and up to one year if the [Department/Office] demonstrates that disclosure would substantially interfere with the investigation.
- (c) Any delay of disclosure longer than one year must be supported by clear and convincing evidence that disclosure would substantially interfere with the investigation (Government Code § 7923.625).

#### 803.8.2 NOTICE OF DELAY OF RELEASE

When there is justification to delay disclosure of a recording, the Custodian of Records shall provide written notice to the requester as follows (Government Code § 7923.625):

- (a) During the initial 45 days, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination that disclosure would substantially interfere with the investigation. The notice shall also include the estimated date for the disclosure.
- (a) When delay is continued after the initial 45 days, the Custodian of Records shall promptly provide the requester with written notice of the specific basis for the determination that the interest in preventing interference with an active investigation outweighs the public interest in the disclosure, and the estimated date for the disclosure. The Custodian of Records should work with the Chief Investigator in reassessing the decision to continue withholding a recording and notify the requester every 30 days.

Recordings withheld shall be disclosed promptly when the specific basis for withholding the recording is resolved.

#### 803.8.3 REDACTION

If the Custodian of Records, in consultation with the Chief Investigator or the authorized designee, determines that specific portions of the recording may violate the reasonable expectation of privacy of a person depicted in the recording, the [Department/Office] should use redaction technology to redact portions of recordings made available for release. The redaction should not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording, and the recording should not otherwise be edited or altered (Government Code § 7923.625).

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If any portions of a recording are withheld to protect the reasonable expectation of privacy of a person depicted in the recording, the Custodian of Records shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served (Government Code § 7923.625).

#### 803.8.4 RECORDINGS WITHHELD FROM PUBLIC DISCLOSURE

If the reasonable expectation of privacy of a person depicted in the recording cannot adequately be protected through redaction, and that interest outweighs the public interest in disclosure, the [Department/Office] may withhold the recording from the public, except that the recording, either redacted or unredacted, shall be disclosed promptly, upon request, to any of the following (Government Code § 7923.625):

- (a) The person in the recording whose privacy is to be protected, or the person's authorized representative.
- (b) If the person is a minor, the parent or legal guardian of the person whose privacy is to be protected.
- (c) If the person whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased person whose privacy is to be protected.

If the [Department/Office] determines that this disclosure would substantially interfere with an active criminal or administrative investigation, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination and the estimated date of disclosure (Government Code § 7923.625).

The [Department/Office] may continue to delay release of the recording from the public for 45 days with extensions as provided in this policy (Government Code § 7923.625).

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## Protected Information

### 804.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the access, transmission, release and security of protected information by members of the Kings County District Attorney Investigation Division. This policy addresses the protected information that is used in the day-to-day operation of the [Department/Office] and not the public records information covered in the Records Maintenance and Release Policy.

#### 804.1.1 DEFINITIONS

Definitions related to this policy include:

**Protected information** - Any information or data that is collected, stored or accessed by members of the Kings County District Attorney Investigation Division and is subject to any access or release restrictions imposed by law, regulation, order or use agreement. This includes all information contained in federal, state or local law enforcement databases that is not accessible to the public.

### 804.2 POLICY

Members of the Kings County District Attorney Investigation Division will adhere to all applicable laws, orders, regulations, use agreements and training related to the access, use, dissemination and release of protected information.

#### 804.2.1 REFERENCE TO AUTHORITY

The authority to establish local regulations for the Kings County District Attorney's Office is the "Regulations Regarding the Security of Criminal Offender Record Information in California" Title 11, Chapter I, California Administration Code. Other authority includes Penal Codes 11105 and 13300 which delineate who has access to criminal history information and under what circumstances it can be released; Penal Codes 11140-11144 and 13301-13305 prescribe penalties for misuse of Criminal Offender Record Information; Penal Codes 11120-11127, which detail the restrictions and requirements on a person reviewing his own record; Government Code 6200 prescribes the felony penalties for misuse of public records and C.L.E.T.S. information; Penal Code 502 prescribes the penalties relating to computer crimes and penalties; California Vehicle Code 1808.45, which prescribes the penalties relating to misuse of D.M.V. information.

Penal Code Sections 11142 and 13303 state:

"Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person not authorized by law to receive the record or information is guilty of a misdemeanor".

Under no circumstances will this policy and procedure manual supersede the policies and procedures of the F.B.I., N.L.E.T.S. the California Attorney General's Office, D.O.J., C.L.E.T.S., N.C.I.C., D.M.V., Cal Photo, or L.E.A.D.S.

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For the purposes of this policy, any information obtained through the C.L.E.T.S. network is considered confidential and will only be released as per codes, statutes and policies.

#### **804.3 RESPONSIBILITIES**

The Chief Investigator shall select a member of the [Department/Office] to coordinate the use of protected information.

The responsibilities of this position include, but are not limited to:

- (a) Ensuring member compliance with this policy and with requirements applicable to protected information, including requirements for the National Crime Information Center (NCIC) system, National Law Enforcement Telecommunications System (NLETS), Department of Motor Vehicle (DMV) records and California Law Enforcement Telecommunications System (CLETS).
- (b) Developing, disseminating and maintaining procedures that adopt or comply with the U.S. Department of Justice's current Criminal Justice Information Services (CJIS) Security Policy.
- (c) Developing, disseminating and maintaining any other procedures necessary to comply with any other requirements for the access, use, dissemination, release and security of protected information.
- (d) Developing procedures to ensure training and certification requirements are met.
- (e) Resolving specific questions that arise regarding authorized recipients of protected information.
- (f) Ensuring security practices and procedures are in place to comply with requirements applicable to protected information.

#### **804.4 ACCESS TO PROTECTED INFORMATION**

Protected information shall not be accessed in violation of any law, order, regulation, user agreement, Kings County District Attorney Investigation Division policy or training. Only those members who have completed applicable training and met any applicable requirements, such as a background check, may access protected information, and only when the member has a legitimate work-related reason for such access.

Unauthorized access, including access for other than a legitimate work-related purpose, is prohibited and may subject a member to administrative action pursuant to the Personnel Complaints Policy and/or criminal prosecution.

##### **804.4.1 CRIMINAL RECORD SECURITY OFFICER**

- (a) The Investigative Assistant is the designated Criminal Record Security Officer for the Kings County District Attorney Investigation Division. The criminal Record Security Officer is responsible for ensuring compliance with this procedure and with applicable records security regulations and requirements imposed by federal and state law. The Criminal Record Security Officer will resolve specific questions that arise regarding authorized recipients of CORI.



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- (b) All personnel hired after 7/1/75 who will have access to Criminal Offender Record Information must have record checks conducted prior to hiring. Per Article 11, Section 703 (d), Regulations Governing Release of C.O.R.I. in the State of California.
- (c) Personnel authorized access to CLETS or C.O.R.I. may be sworn law enforcement personnel, non-sworn law enforcement personnel, or non-criminal justice technical or maintenance personnel who have been subject to a character or security clearance prior to the individuals hire date that shall include the following checks:
  - 1. Department of Motor Vehicles Drivers License check.
  - 2. Department of Justice - Bureau of Criminal Identification Fingerprint check.
  - 3. Federal Bureau of Investigation Fingerprint check.
  - 4. Personnel History Statement must be completed.
  - 5. Complete background investigation.
- (d) Visitors to the District Attorney's Office, other than law enforcement personnel, such as witnesses, defense attorneys are not required to undergo a background check, but they must:
  - 1. be received at the secured lobby door, signed in by the District Attorney employee into the Visitor's log at the front desk. On the log, there is a date box, a time in box, a box for the visitor's name, a box for the District Attorney employee who is responsible for the visitor and the number of the pass that the visitor is given to wear while inside this office.
  - 2. receive and wear a visitor's pass from the District Attorney employee.
  - 3. be escorted at all times by the District Attorney employee.
  - 4. be escorted back to the lobby door by the District Attorney employee who will take back the pass and mark the time out on the visitor's log.
  - 5. all visitors will be met and released at the front lobby door. All other doors for this office are to be locked and only used by District Attorney employees who have been assigned fobs and keys.
- (e) No Kings County District Attorney's personnel shall operate C.L.E.T.S. equipment or access Criminal Offender Record Information (C.O.R.I.) until a background investigation is completed, has been approved by the District Attorney or his designated person and has been trained by the Agency CLETS COORDINATOR..
- (f) Following approval, depending on the level of the employee, the completed background investigation, or a memorandum, or other notation shall be placed in the employee's personnel file or in another pertinent file indicating that authorization has been granted to operate or access information from CLETS systems.
- (g) In all matters pertaining to office and personnel security, the District Attorney or his designee shall be responsible for making the final determination of the individuals authorized to access CLETS and or the District Attorney's Office.
- (h) Criminal Offender Record Information (C.O.R.I.) shall not be disseminated to out-of-state agencies. These agencies shall be advised to access Triple III for any

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criminal record information. Should special circumstances arise the District Attorney Management Staff shall be contacted for approval.

#### 804.4.2 RELEASE OF CORI

Only the persons listed below are authorized to release CORI. Each authorized person releasing CORI is responsible to ensure that each request granted appears legitimate and that the requester is an authorized recipient with a right and need to know.

Persons who can approve release of Criminal Offender Record Information:

- District Attorney
- Chief Deputy District Attorney
- Chief Trial Deputy District Attorney
- Deputy District Attorney
- Chief District Attorney Investigator
- Assistant Chief District Attorney Investigator
- District Attorney Investigator
- District Attorney Investigator Assistant

Authorized person who may release Criminal Offender Record Information: (Third party release log)

- Designated Criminal Discovery Clerk (Third party release log)

Non-Authorized release of information.

- Criminal Offender Record Information or Department Of Motor Vehicle information will not be disseminated by anyone who is not authorized to release said information.

#### 804.4.3 RELEASE OF CORI TO FIELD PERSONNEL

Personnel shall not have access to CORI until a background investigation has been completed and approved.

CORI shall not generally be transmitted by radio, cellular phone, or through computer terminals to field personnel or vehicles except in cases where circumstances reasonably indicate that the immediate safety of the investigator or the public are at significant risk. Examples of situations where the transmission of summary criminal history information would be justified include a hostage situation or an armed suspect however a routine investigation or traffic enforcement stop would not be sufficient justification.

Nothing in this procedure is intended to prohibit broadcasting warrant information concerning wanted persons.

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#### 804.4.4 EMPLOYEE REQUIREMENTS

This office requires any employee who has access to confidential record information to be cleared through a fingerprint check and background.

This office requires that each employee sign a statement of acknowledgement recognizing the confidentiality of any information obtained via the CLETS and NLETS systems as per DOJ policy. This office requires that each employee sign a separate statement of acknowledgement recognizing the confidentiality of any information obtained via the D.M.V. system as per that agency's policy.

#### 804.4.5 CLETS COORDINATOR REQUIREMENTS

The Agency CLETS Coordinator should be familiar with all aspects of the CLETS, NCIC, NLETS & CA DOJ criminal justice databases. The Agency CLETS Coordinator shall take the DOJ certified instructors training.

The Agency CLETS Coordinator shall obtain the signed statements from each employee on an annual basis and have them available at the time of audit by D.M.V. or D.O.J. field personnel.

The Coordinator will create records of training for all personnel, following guidelines from D.O.J. and the Attorney General. These records shall be maintained and subject to onsite audit by D.O.J. or D.M.V. overseers. The Coordinator is responsible for keeping all records current to then be compliant with D.O.J. policies.

#### 804.4.6 DISCOVERY PROCEDURE OF CRIMINAL OFFENDER HISTORY AND DMV INFORMATION

Law enforcement agencies requesting criminal complaints through this office usually supply one copy of the defendant's criminal offender record information (rap sheet). The Discovery Clerk for the District Attorney's Office will adhere to the following procedure. When necessary, any of the Investigators or Legal Clerks working for this office may perform the duties of the Discovery Clerk.

- (a) The defendant's criminal offender record information (rap sheet) that accompanies the police reports and complaint transmittal will be placed in the defendant's DA case file. The rap sheet is for the prosecuting attorney only. The defense attorney may not be given the entire history. Only the portions that directly effect the case which is being prosecuted. A redacted rap should be the only document given to the defense.
- (b) If the complaint is rejected; the police report and criminal offender record information will be returned to the submitting agency.
- (c) The authorized person will NOT furnish the defendant's criminal offender record information to anyone, except by court order, statute or decisional law. The following procedure will be followed.
  1. Upon receipt of a court order, the authorized clerk or Discovery Clerk will make a copy of the defendant's criminal offender record information (rap sheet). The copy will be stamped and the appropriate spaces in the stamped area will be filled in by the authorized person or Discovery Clerk.

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2. The Discovery Clerk will release the defendant's criminal offender record per the court order to the defendant's attorney or his/her designee person after a court order is received and verified by a supervisor. Once these actions are complete, the receiving party will sign the third party log in person at the front window. Again, release only histories that effect the individual case unless the court order indicates we are required to release all information.
  3. All Criminal Offender Record Information documents will be stamped with the Kings County District Attorney's Controlled Document stamp before the document is released to a third party. This pertains to all records received through the CLETS terminal.
- (d) Criminal Offender Record Information includes, prison packages, otherwise known as 969B packages, which contains the prisoner's criminal offender record information. The criminal offender record information will NOT be supplied to the defendant's attorney unless the court so orders. If the court orders the criminal offender record information released, then the Discovery clerk will adhere to the aforementioned procedure on the release of the criminal offender record information. Cal Photos shall be treated as C.O.R.I. with the same release policy.
- (e) On occasion defense attorneys, or in the case of a defendant acting as pro per, will request and the court will so order the release of felony convictions on victim(s) and witnesses. When this happens the Discovery Clerk will follow this procedure:
1. Upon receipt of a court order, the authorized Discovery Clerk will run the criminal offender record information on those person(s) as requested.
  2. The authorized Discovery Clerk will stamp the criminal offender record information with the controlled document stamp.
  3. The Discovery Clerk will release the copy of victim's/witness' criminal offender record information to the defendant's attorney or his/her designee only after they sign the third party log. If the defendant is acting as pro per and is in custody and the in-custody presents a court order releasing the C.O.R.I., the clerk will have the copy of the criminal offender record information (rap sheet) delivered to the defendant in jail by an investigator and follow the below listed procedure. The original will remain in the D.A. case file. The defendant will receive a Controlled Document-stamped copy.
- (f) Criminal Offender Record Information will remain in the D.A. case file until the file is destroyed.
- (g) Under no circumstance will any Criminal Offender Record Information be released to any unauthorized person.

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#### **804.5 RELEASE OR DISSEMINATION OF PROTECTED INFORMATION**

Protected information may be released only to authorized recipients who have both a right to know and a need to know.

A member who is asked to release protected information that should not be released should refer the requesting person to a supervisor or to the Investigator for information regarding a formal request.

Unless otherwise ordered or when an investigation would be jeopardized, protected information maintained by the [Department/Office] may generally be shared with authorized persons from other law enforcement agencies who are assisting in the investigation or conducting a related investigation. Any such information should be released through the Records to ensure proper documentation of the release (see the Records Maintenance and Release Policy).

##### **804.5.1 TRANSMISSION GUIDELINES**

Protected information, such as restricted Criminal Justice Information (CJI), which includes Criminal History Record Information (CHRI), should not be transmitted via unencrypted radio. When circumstances reasonably indicate that the immediate safety of investigators, other [department/office] members, or the public is at risk, only summary information may be transmitted.

In cases where the transmission of protected information, such as Personally Identifiable Information, is necessary to accomplish a legitimate law enforcement purpose, and utilization of an encrypted radio channel is infeasible, a [MDT/MDC] or [department/office]-issued cellular telephone should be utilized when practicable. If neither are available, unencrypted radio transmissions shall be subject to the following:

- Elements of protected information should be broken up into multiple transmissions, to minimally separate an individual's combined last name and any identifying number associated with the individual, from either first name or first initial.
- Additional information regarding the individual, including date of birth, home address, or physical descriptors, should be relayed in separate transmissions.

Nothing in this policy is intended to prohibit broadcasting warrant information.

#### **804.6 SECURITY OF PROTECTED INFORMATION**

The Chief Investigator will select a member of the [Department/Office] to oversee the security of protected information.

The responsibilities of this position include, but are not limited to:

- (a) Developing and maintaining security practices, procedures and training.
- (b) Ensuring federal and state compliance with the CJIS Security Policy and the requirements of any state or local criminal history records systems.
- (c) Establishing procedures to provide for the preparation, prevention, detection, analysis and containment of security incidents including computer attacks.

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- (d) Tracking, documenting and reporting all breach of security incidents to the Chief Investigator and appropriate authorities.

#### **804.7 TRAINING**

All members authorized to access or release protected information shall complete a training program that complies with any protected information system requirements and identifies authorized access and use of protected information, as well as its proper handling and dissemination.

##### **804.7.1 COMPUTER TERMINAL SECURITY**

Computer terminal equipment capable of providing access to automated criminal offender record information is located in the Records, the Communications Center and in the Investigations Division to preclude access by unauthorized persons.

No employee shall be authorized to operate computer terminal equipment with access to CORI until the operator has completed the appropriate training.

##### **804.7.2 DESTRUCTION OF CORI**

When any document providing CORI has served the purpose for which it was obtained, it shall be destroyed by shredding.

Each employee shall be responsible for destroying the CORI documents they receive.

#### **804.8 TRAINING PROGRAM**

All personnel authorized to process or release CORI shall be required to complete a training program prescribed by the Criminal Record Security Officer. The Training Bureau shall coordinate the course to provide training in the proper use, control, and dissemination of CORI.

##### **804.8.1 TRAINING PROGRAM**

It is the responsibility of all city, county, state and federal agencies that use information supplied via CLETS to participate in the D.O.J. training programs to ensure that all personnel (i.e. terminal operators, peace officers, investigators, clerical, agency management, supervisors, etc.) are trained in the operation, policies and procedures, pertaining to each file that is accessed or updated. Training can only be provided by D.O.J. training staff or the user agency's certified CLETS/NCIC trainer. Training for the District Attorney's Office shall be the responsibility of the Agency CLETS Coordinator.

Specifically, the training requirements are as follows:

- (a) Initially (within six months of employment or assignment) train, functionally test, and affirm the proficiency of terminal operators in order to assure compliance with CLETS/NCIC policies and regulations. Attorneys and management employees are not terminal operators but will by D.O.J. Policies and Procedures complete mandatory D.O.J. security awareness training. These employees will take and pass the test in the manual prepared by D.O.J. These employees will keep this initial manual test material and a copy of the Kings County District Attorney's Office procedures as explained

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herein in order to produce these items at times of D.O.J. audits. It is a matter of course for the auditor to question employees as to where their training materials are placed.

- (b) Biennially, provide in-service retraining, functional testing and reaffirmation of the proficiency of terminal operators in order to assure compliance with CLETS/NCIC policies and regulations.
- (c) Provide or present entry-level training on CLETS/NCIC system for criminal justice practitioners.
- (d) Biennially, provide or present in-service retraining on CLETS/NCIC system use for criminal justice practitioners.
- (e) Provide or present entry-level training on the use of the CLETS/NCIC system focusing on III requirements and record quality for criminal justice agency records personnel.
- (f) Biennially, provide or present in-service retraining for criminal justice agency record personnel.
- (g) Provide peer-level training on CLETS/NCIC system use, regulations, policies, audits, sanctions, and related civil liability for criminal justice administrators and upper-level managers. Specifically, the "Areas of Liability" article per D.O.J. edict.

To assure compliance with this training mandate, D.O.J. is responsible for monitoring the ongoing training provided to law enforcement personnel, on-site visits, including classroom observation and conducting reviews of training records at the time of yearly D.O.J. audits.

#### **804.9 PENALTIES FOR MISUSE OF RECORDS**

Penal Code §§ 11140 and 11144 make it a misdemeanor to furnish, buy, receive, or possess Department of Justice rap sheets without authorization by a court, statute, or case law.

Title 11, California Administrative Code § 702 provides that authorized persons or agencies violating the Regulations Regarding the Security of Criminal Offender Record Information in California may lose direct access to CORI maintained by the California Department of Justice.

Divulging the content of any criminal record to anyone other than authorized personnel is a violation of Policy Manual § 340.3.7(a).

Employees who obtain, or attempt to obtain, information from the department files other than that to which they are entitled in accordance with their official duties is a violation of Policy Manual § 340.3.7(a).

#### **804.9.1 AUDIT TRAIL REQUIREMENTS**

- (a) Procedure for authorized persons operating the CLETS terminal at Kings County District Attorney's Office and release of information:
  - 1. Log all communiques in log book, which will be sequentially numbered, dated, name of person entered, type of request (rap sheet, driver license record, vehicle registration, etc.), case number, by whom and for whom.
  - 2. If response is not printed, indicate so in log book.

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3. Printed responses will be placed in the appropriate case file until the file is destroyed.
4. Upon receipt of a court order by this office, the Defendant's attorney or his/her designee will sign for criminal offender record information of his/her client or other person(s) order by the court on the third party release log, which will be maintained by the designated Discovery Clerk. Again, the clerk will have stamped the document as "Controlled".
5. All DMV documents from the CLETS terminal may be disseminated to authorized persons after a court order is received by this office and the third party log is filled out.
6. All Criminal Offender Record Information will be released in person only. This information will not be mailed to, disclosed to anyone over a telephone or e-mailed to a third party.
7. Third party release log shall contain the date of dissemination, agency, subject's/ person's name information given to, D.A. case number, name of person receiving information and the person's name who is releasing the information. The original court order will be placed in the D.A. file.
8. All Cal Photos will remain in the case file and will be shredded when the file is shredded.

(b) Audits by State of California

1. The California Department of Justice shall conduct audits of criminal justice agencies and authorized departments using Criminal Offender Record Information to insure compliance with the regulations, therefore compliance to these rules is a must.
2. Audits are conducted on a random basis by the Department of Justice.
3. All logs will be kept for the requisite three year time period as per the Department of Justice's audit procedures. The Agency CLET Coordinator, designated by the District Attorney, will keep the logs and prepare for the D.O.J. audits.
4. The California Department of Motor Vehicles may conduct onsite audits. The Agency CLETS Coordinator. will be responsible for producing any records or documents that agency may want to examine.

### 804.9.2 AUTOMATED CRIMINAL OFFENDER RECORD INFORMATION

- (a) User agencies accessing criminal offender record information in CJIS/NCIC files, Automated Criminal History System (ACHS) and/or Interstate Identification Index (III), must adhere to the following additional requirements:
1. Adhere to and comply with the California/Federal statutes and regulations governing Criminal records Security. (Criminal Offender Record Information - CORI/Criminal History Record Information - CHRI).
  2. Ensure that the terminal is not used for (a) licensing, employment or certification purposes, or (b) accessing a record to be reviewed and/or challenged by the



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subject of record. Non-criminal record checks require the submission of a LiveScan application.

3. Designate the Agency CLETS Coordinator to be responsible for overseeing record releases and safeguard regulations associated with criminal history and confidential record information.
4. Designate the Agency CLETS Coordinator who has met all of the standards set by D.O.J. to submit to auditing/investigation by CJIS/NCIC with regard to allegations of security violations. The Agency CLETS Coordinator is responsible for submitting any CLETS misuse cases that have occurred in the past year, to D.O.J. by February 1st.
5. Maintain either a manual or automated record of names of persons to which criminal record information was secondarily disseminated for a minimum of three years for audit.

#### 804.9.3 SYSTEM DISCIPLINE

- (a) The CLETS Advisory Committee is responsible for overseeing system discipline. Messages processed by CLETS shall be subject to random sampling at the Department of Justice for validity of content and conformity with the CLETS Rules, Regulation, or Operating Procedure.
  1. Violation of CLETS Rules, Regulations, or Operating Procedure shall be investigated by the Communications Administration Section (CAS). CAS will provide a written report to the involved agency. A written explanation and statement of corrective action shall be submitted to the CLETS Executive Secretary by the Agency Head.
  2. If the reported explanation and corrective actions resolve the problem, the investigation and result will be reported to the CLETS Advisory Committee by the Executive Secretary.
  3. If the reported explanation and corrective actions do not resolve the problem to the satisfactions of CAS, then the head of the agency may be requested to appear before the CLETS Advisory Committee to explain the incident.
  4. Unresolved incidents shall be presented to the CLETS Advisory Committee by CAS with a recommendation. The CLETS Advisory Committee will decide on a course of action or sanction to apply. The Executive Secretary will issue a letter formally notifying the agency of the decision.
  5. Sanction - A violation of law, CLETS Rules, Regulations or D.O.J. Operating Procedures may result in any of the following sanctions, dependent upon the total circumstances of the incident:
    - (a) Letter of censure.

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- (b) Suspension of service - This may be for varying lengths of time and/or may include suspension for a specified data base or other system services.
- (c) Removal of CLETS service.
- (d) Section 1.8.6 of the CLETS Operating Policies, Practices, Procedures identifies the process for appeal of sanctions.

**804.10 CALIFORNIA RELIGIOUS FREEDOM ACT**

Members shall not release personal information from any agency database for the purpose of investigation or enforcement of any program compiling data on individuals based on religious belief, practice, affiliation, national origin or ethnicity (Government Code § 8310.3).

## **Chapter 9 - Custody**

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## Custodial Searches

### 900.1 PURPOSE AND SCOPE

This policy provides guidance regarding searches of individuals in custody. Such searches are necessary to eliminate the introduction of contraband, intoxicants or weapons into the Kings County District Attorney Investigation Division facility. Such items can pose a serious risk to the safety and security of [department/office] members, individuals in custody, contractors and the public.

Nothing in this policy is intended to prohibit the otherwise lawful collection of evidence from an individual in custody.

### 900.2 DEFINITIONS OF SEARCHES

**Pat-Down Search** - This is the normal type of search used by investigators in the field to check an individual for weapons. It involves a thorough patting down of clothing to locate any weapons or dangerous items that could pose a danger to the investigator, the prisoner, or other prisoners.

**Booking Search** - This search is used in the jail and again involves a thorough patting down of an individual's clothing. All pockets, cuffs, etc., on the clothing are checked to locate all personal property, contraband, or weapons. The prisoner's personal property is taken and inventoried.

**Strip Search or Visual Body Cavity Search** - This is a search that requires a person to remove or rearrange some or all of his/her clothing to permit a visual inspection of the underclothing, breasts, buttocks or genitalia of such person (Penal Code § 4030(d)(2)). This includes monitoring of an arrestee showering or changing clothes where the arrestee's underclothing, buttocks, genitalia or female breasts are visible to the monitoring employee.

**Physical Body Cavity Search** - This is a search that includes physical intrusion into a body cavity. Body cavity means the stomach or rectal cavity of a person, and the vagina of a female person (Penal Code §§ 4030(d)(1) and 4030(d)(3)).

### 900.3 FIELD AND TRANSPORTATION SEARCHES

An investigator should conduct a custody search of an individual immediately after the individual's arrest, when receiving an individual from the custody of another, and before transporting a person who is in custody in any [department/office] vehicle.

Whenever practicable, a custody search should be conducted by an investigator of the same sex as the person being searched. If an investigator of the same sex is not reasonably available, a witnessing investigator should be present during the search.

## **Chapter 10 - Personnel**

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## Recruitment and Selection

### 1000.1 PURPOSE AND SCOPE

This policy provides a framework for employee recruiting efforts and identifying job-related standards for the selection process. This policy supplements the rules that govern employment practices for the Kings County District Attorney Bureau of Investigation and that are promulgated and maintained by the Human Services Department.

### 1000.2 POLICY

In accordance with applicable federal, state, and local law, the Kings County District Attorney Bureau of Investigation provides equal opportunities for applicants and employees regardless of actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law. The office does not show partiality or grant any special status to any applicant, employee, or group of employees unless otherwise required by law.

The office will recruit and hire only those individuals who demonstrate a commitment to service and who possess the traits and characteristics that reflect personal integrity and high ethical standards.

### 1000.3 RECRUITMENT

The Investigations Chief Investigator shall employ a comprehensive recruitment and selection strategy to recruit and select employees from a qualified and diverse pool of candidates.

The strategy shall include:

- (a) Establishment of a written recruitment plan.
  - 1. The plan shall include an outline of steps for recruiting candidates who are representative of the community. This should include candidates who live in or are from the community, if appropriate and consistent with applicable laws and memorandums of understanding or collective bargaining agreements.
- (b) Identification of racially and culturally diverse target markets.
- (c) Use of marketing strategies to target diverse applicant pools.
- (d) Expanded use of technology and maintenance of a strong internet presence. This may include an interactive office website and the use of officemanaged social networking sites, if resources permit.
- (e) Expanded outreach through partnerships with media, community groups, citizen academies, local colleges, universities, and the military if available.
- (f) .
- (g) .

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Recruitment and Selection*

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The Investigations Chief Investigator shall avoid advertising, recruiting, and screening practices that tend to stereotype, focus on homogeneous applicant pools, or screen applicants in a discriminatory manner.

The office should strive to facilitate and expedite the screening and testing process, and should periodically inform each candidate of their status in the recruiting process.

#### **1000.4 SELECTION PROCESS**

The [Department/Office] shall actively strive to identify a diverse group of candidates who have in some manner distinguished themselves as being outstanding prospects. Minimally, the [Department/Office] shall employ a comprehensive screening, background investigation, and selection process that assesses cognitive and physical abilities and includes review and verification of the following:

- (a) A comprehensive application for employment (including previous employment, references, current and prior addresses, education, military record)
  - 1. The personnel records of any applicant with prior peace officer experience in this state shall be requested from the appropriate law enforcement agency and reviewed prior to extending an offer of employment (Penal Code § 832.12).
  - 2. This includes review of prior law enforcement employment information maintained by POST (Penal Code § 13510.9).
- (b) Driving record
- (c) Personal and professional reference checks
- (d) Employment eligibility, including U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form I-9 and acceptable identity and employment authorization documents consistent with Labor Code § 1019.1. This required documentation should not be requested until a candidate is hired. This does not prohibit obtaining documents required for other purposes.
- (e) Information obtained from public internet sites
  - 1. This review should include the identification of any activity that promotes or supports unlawful violence or unlawful bias against persons based on protected characteristics (e.g., race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, disability).
- (f) Financial history consistent with the Fair Credit Reporting Act (FCRA) (15 USC § 1681 et seq.)
- (g) Local, state, and federal criminal history record checks
- (h)
- (i) Medical and psychological examination (may only be given after a conditional offer of employment)
  - 1. The Medical Suitability Declaration (POST form 2-363) provided by the evaluating physician shall be maintained in the candidate's background investigation file (11 CCR 1954).

### *Recruitment and Selection*

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2. The Psychological Suitability Declaration (POST form 2-364) provided by the evaluator shall be maintained in the candidate's background investigation file (11 CCR 1955).
  - (j) Review board or selection committee assessment
  - (k) Relevant national and state decertification records, if available
  - (l) Any relevant information in the National Law Enforcement Accountability Database

#### 1000.4.1 VETERAN'S PREFERENCE

Qualifying veterans of the United States Armed Forces who receive a passing score on an entrance examination shall be ranked in the top rank of any resulting eligibility list. The veteran's preference shall also apply to a widow or widower of a veteran or a spouse of a 100 percent disabled veteran (Government Code § 18973.1).

#### **1000.5 BACKGROUND INVESTIGATION**

Every candidate shall undergo a thorough background investigation to verify his/her personal integrity and high ethical standards, and to identify any past behavior that may be indicative of the candidate's unsuitability to perform duties relevant to the operation of the Kings County Bureau of Investigation(11 CCR 1953).

The narrative report and any other relevant background information shall be shared with the psychological evaluator. Information shall also be shared with others involved in the hiring process if it is relevant to their respective evaluations (11 CCR 1953).

#### 1000.5.1 INVESTIGATOR TRAINING

Background investigators shall complete POST-certified background investigation training prior to conducting investigations (11 CCR 1953; 11 CCR 1959).

#### 1000.5.2 BACKGROUND INVESTIGATION UPDATE

A background investigation update may, at the discretion of the Chief Investigator, be conducted in lieu of a complete new background investigation on a peace officer candidate who is reappointed within 180 days of voluntary separation from the Kings County District Attorney Investigation Division, or who is an interim police chief meeting the requirements contained in 11 CCR 1953(f).

#### 1000.5.3 NOTICES

Background investigators shall ensure that investigations are conducted and notices provided in accordance with the requirements of the FCRA and the California Investigative Consumer Reporting Agencies Act (15 USC § 1681d; Civil Code § 1786.16).

#### 1000.5.4 STATE NOTICES

If information disclosed in a candidate's criminal offender record information (CORI) is the basis for an adverse employment decision, a copy of the CORI shall be provided to the applicant (Penal Code § 11105).



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### *Recruitment and Selection*

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#### 1000.5.5 REVIEW OF SOCIAL MEDIA SITES

All peace officer candidates shall be subject to a social media search for statements, postings, and/or endorsements made by the candidate that are relevant to suitability for peace officer employment, including bias-relevant information consistent with the requirements of 11 CCR 1955(d)(3) and any public expression of hate made in an online forum, as defined in Penal Code § 13680(g) (11 CCR 1953(e)(12)).

Due to the potential for accessing unsubstantiated, private, or protected information, the Investigations Chief Investigator shall not require candidates to provide passwords, account information, or access to password-protected social media accounts (Labor Code § 980).

The Investigations Chief Investigator should consider utilizing the services of an appropriately trained and experienced third party to conduct open source, internet-based searches, and/or review information from social media sites to ensure that:

- (a) The legal rights of candidates are protected.
- (b) Material and information to be considered are verified, accurate, and validated.
- (c) The [Department/Office] fully complies with applicable privacy protections and local, state, and federal law.

Regardless of whether a third party is used, the Investigations Chief Investigator should ensure that potentially impermissible information is not available to any person involved in the candidate selection process.

#### 1000.5.6 DOCUMENTING AND REPORTING

The background investigator shall summarize the results of the background investigation in a narrative report that includes sufficient information to allow the reviewing authority to decide whether to extend a conditional offer of employment. The report shall include sections that summarize relevant Background Investigation Dimensions and include any findings of behaviors, traits, and/or attributes relevant to bias per the Bias Assessment Framework as described in the POST Background Investigation Manual. The report shall identify the data sources reviewed for the findings, regardless of weight given. The report shall include narrative information in the format described in 11 CCR 1953(g)(1). The report shall also include whether the candidate has engaged or is engaging in membership in a hate group, participation in hate group activity, or advocacy or public expressions of hate, pursuant to Penal Code § 13680 et seq. (11 CCR 1953).

The report shall not include any information that is prohibited from use, including that from social media sites, in making employment decisions. The report and all supporting documentation including relevant documentation of bias-related findings and documentation obtained through the social media search shall be included in the candidate's background investigation file (11 CCR 1953).

The background investigator shall document proof of verification of qualification for peace officer appointment on the Verification of Qualification for Peace Officer Appointment form and forward to the Investigations Chief Investigator for final review and submission to POST (11 CCR 1953).

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The background investigation file shall be made available during POST compliance inspections (11 CCR 1953).

#### **1000.5.7 RECORDS RETENTION**

The background report and all supporting documentation shall be maintained according to the established records retention schedule and at a minimum as follows (Government Code § 12946; 11 CCR 1953):

- (a) Reports and documentation for candidates hired by the [Department/Office] shall be retained for the entire term of employment and a for a minimum of four years after separation from the [Department/Office].
- (b) Reports and documentation for candidates not hired by the [Department/Office] for a minimum of four years.

#### **1000.5.8 CONFIDENTIAL POST RECORDS**

Records released to the [Department/Office] from POST that were previously withheld from the candidate by POST shall be kept confidential as provided in Penal Code § 13510.9.

#### **1000.6 DISQUALIFICATION GUIDELINES**

As a general rule, performance indicators and candidate information and records shall be evaluated by considering the candidate as a whole, and taking into consideration the following:

- Age at the time the behavior occurred
- Passage of time
- Patterns of past behavior
- Severity of behavior
- Probable consequences if past behavior is repeated or made public
- Likelihood of recurrence
- Relevance of past behavior to public safety employment
- Aggravating and mitigating factors
- Other relevant considerations

A candidate's qualifications will be assessed on a case-by-case basis, using a totality-of-the-circumstances framework.

#### **1000.7 EMPLOYMENT STANDARDS**

All candidates shall meet the minimum standards required by state law (Government Code § 1029; Government Code § 1031; Penal Code § 13510.1; 11 CCR 1950 et seq.). Candidates will be evaluated based on merit, ability, competence, and experience, in accordance with the high standards of integrity and ethics valued by the [Department/Office] and the community. The California Commission on Peace Officer Standards and Training (POST) developed a Job Dimensions list, which is used as a professional standard in background investigations.

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### *Recruitment and Selection*

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Validated, job-related, and nondiscriminatory employment standards shall be established for each job classification and shall minimally identify the training, abilities, knowledge, and skills required to perform the position's essential duties in a satisfactory manner. Each standard should include performance indicators for candidate evaluation. The Human Services Department should maintain validated standards for all positions.

#### 1000.7.1 STANDARDS FOR INVESTIGATORS

Candidates shall meet the minimum standards established by POST or required by state law (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.):

- (a) Free of any felony convictions
- (b) Be legally authorized to work in the United States under federal law
- (c) At least 21 years of age except as provided by Government Code § 1031.4
- (d) Fingerprinted for local, state, and national fingerprint check
- (e) Good moral character as determined by a thorough background investigation (11 CCR 1953)
- (f) High school graduate, passed the GED or other high school equivalency test, or obtained a two-year, four-year, or advanced degree from an accredited or approved institution
- (g) Free from any physical, emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation which might adversely affect the exercise of police powers (11 CCR 1954; 11 CCR 1955)
- (h) Free of hate group memberships, participation in hate group activities, or advocacy of public expressions of hate within the previous seven years, and since 18 years of age, as determined by a background investigation (Penal Code § 13681)
- (i) Candidates must also satisfy the POST selection requirements, including (11 CCR 1950 et seq.):
  - 1. Reading and writing ability assessment (11 CCR 1951)
  - 2. Oral interview to determine suitability for law enforcement service (11 CCR 1952)
- (j) POST certification that has not been revoked, denied, or voluntarily surrendered pursuant to Penal Code § 13510.8(f)
- (k) Not identified in the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training or similar federal government database that reflects revoked certification for misconduct or reflects misconduct that would result in a revoked certification in California.

In addition to the above minimum POST required standards, candidates may be subjected to additional standards established by the [Department/Office] (Penal Code § 13510(d)).

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**1000.8 PROBATIONARY PERIODS**

The Investigations Chief Investigator should coordinate with the Kings Human Services Department to identify positions subject to probationary periods and procedures for:

- (a) Appraising performance during probation.
- (b) Assessing the level of performance required to complete probation.
- (c) Extending probation.
- (d) Documenting successful or unsuccessful completion of probation.

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## Evaluation of Employees

### 1001.1 PURPOSE AND SCOPE

The [Department/Office]'s employee performance evaluation system is designed to record work performance for both the [Department/Office] and the employee, providing recognition for good work and developing a guide for improvement.

### 1001.2 POLICY

The Kings County District Attorney Investigation Division utilizes a performance evaluation report to measure performance and to use as a factor in making personnel decisions that relate to merit increases, promotion, reassignment, discipline, demotion, and termination. The evaluation report is intended to serve as a guide for work planning and review by the supervisor and employee. It gives supervisors a way to create an objective history of work performance based on job standards.

The [Department/Office] evaluates employees in a non-discriminatory manner based upon job-related factors specific to the employee's position, without regard to actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law.

### 1001.3 FULL TIME PROBATIONARY PERSONNEL

Non-sworn personnel are on probation for 12 months before being eligible for certification as permanent employees.

Sworn personnel are on probation for 12 months before being eligible for certification as permanent employees. Probationary investigators are evaluated daily, weekly and monthly during the probationary period.

### 1001.4 FULL-TIME PERMANENT STATUS PERSONNEL

Permanent employees are subject to three types of performance evaluations:

**Regular** - An Employee Performance Evaluation shall be completed once each year by the employee's immediate supervisor on the anniversary of the employee's date of hire except for employees who have been promoted in which case an Employee Performance Evaluation shall be completed on the anniversary of the employee's date of last promotion.

**Transfer** - If an employee is transferred from one assignment to another in the middle of an evaluation period and less than six months have transpired since the transfer, then an evaluation shall be completed by the current supervisor with input from the previous supervisor.

**Special** - A special evaluation may be completed any time the rater and the rater's supervisor feel one is necessary due to employee performance that is deemed less than standard. Generally, the special evaluation will be the tool used to demonstrate those areas of performance deemed less

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### *Evaluation of Employees*

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than standard when follow-up action is planned (action plan, remedial training, retraining, etc.). The evaluation form and the attached documentation shall be submitted as one package.

#### 1001.4.1 RATINGS

When completing the Employee Performance Evaluation, the rater will place a check mark in the column that best describes the employee's performance. The definition of each rating category is as follows:

**Outstanding** - Is actual performance well beyond that required for the position. It is exceptional performance, definitely superior or extraordinary.

**Exceeds Standards** - Represents performance that is better than expected of a fully competent employee. It is superior to what is expected, but is not of such rare nature to warrant outstanding.

**Meets Standards** - Is the performance of a fully competent employee. It means satisfactory performance that meets the standards required of the position.

**Needs Improvement** - Is a level of performance less than that expected of a fully competent employee and less than standards required of the position. A needs improvement rating must be thoroughly discussed with the employee.

**Unsatisfactory** - Performance is inferior to the standards required of the position. It is very inadequate or undesirable performance that cannot be tolerated.

Space for written comments is provided at the end of the evaluation in the rater comments section. This section allows the rater to document the employee's strengths, weaknesses, and suggestions for improvement. Any rating under any job dimension marked unsatisfactory or outstanding shall be substantiated in the rater comments section.

#### 1001.5 EVALUATION INTERVIEW

When the supervisor has completed the preliminary evaluation, arrangements shall be made for a private discussion of the evaluation with the employee. The supervisor should discuss the results of the just completed rating period and clarify any questions the employee may have. If the employee has valid and reasonable protests of any of the ratings, the supervisor may make appropriate changes to the evaluation. Areas needing improvement and goals for reaching the expected level of performance should be identified and discussed. The supervisor should also provide relevant counseling regarding advancement, specialty positions and training opportunities. The supervisor and employee will sign and date the evaluation. Permanent employees may also write comments in the Employee Comments section of the performance evaluation report.

##### 1001.5.1 DISCRIMINATORY HARASSMENT FORM

At the time of each employee's annual evaluation, the reviewing supervisor shall require the employee to read the County and [Department/Office] harassment and discrimination policies. Following such policy review, the supervisor shall provide the employee a form to be completed and returned by the employee certifying the following:

### *Evaluation of Employees*

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- (a) That the employee understands the harassment and discrimination policies.
- (b) Whether any questions the employee has have been sufficiently addressed.
- (c) That the employee knows how and where to report harassment policy violations.
- (d) Whether the employee has been the subject of, or witness to, any conduct that violates the discrimination or harassment policy which has not been previously reported.

The completed form should be returned to the supervisor (or other authorized individual if the employee is uncomfortable returning the form to the presenting supervisor) within one week.

The employee's completed answers shall be attached to the evaluation. If the employee has expressed any questions or concerns, the receiving supervisor or other authorized individual shall insure that appropriate follow up action is taken.

#### **1001.6 EVALUATION REVIEW**

After the supervisor finishes the discussion with the employee, the signed performance evaluation is forwarded to the rater's supervisor (Chief Investigator). The Chief Investigator shall review the evaluation for fairness, impartiality, uniformity, and consistency. The Chief Investigator shall evaluate the supervisor on the quality of ratings given.

#### **1001.7 EVALUATION DISTRIBUTION**

The original performance evaluation shall be maintained in the employee's personnel file in the District Attorney's office for the tenure of the employee's employment. A copy will be given to the employee and a copy will be forwarded to County Human Services Department.

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## Special Assignments and Promotions

### 1002.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for promotions and for making special assignments within the Kings County District Attorney Investigation Division.

#### 1002.1.1 GENERAL REQUIREMENTS

The following conditions will be used in evaluating employees for promotion:

- (a) Presents a professional, neat appearance;
- (b) The member maintains a physical condition, which aids in their performance;
- (c) Demonstrates:
  - 1. Emotional stability and maturity
  - 2. Sound judgment and decision making
  - 3. Personal integrity
  - 4. Honesty
  - 5. Leadership
  - 6. Initiative
  - 7. Ability to confront and/or deal with issues both positive and/or negative
  - 8. Ability to conform to organizational goals and objectives

#### 1002.1.2 DESIRABLE QUALIFICATIONS

The following qualifications apply to consideration for promotion:

- (a) Off probation
- (b) Has shown an expressed interest in the position applied for
- (c) Education, training and demonstrated abilities in related areas; such as, enforcement activities, investigative techniques, report writing, public relations, etc.
- (d) Complete any training required by POST or law

### 1002.2 SELECTION PROCESS

The following criteria apply to promotions.

- (a) Administrative evaluation as determined by the Chief Investigator. This shall include a review of supervisor recommendations. Each supervisor who has supervised or otherwise been involved with the candidate(s) will submit these recommendations.
- (b) The supervisor recommendations will be submitted to the Chief Investigator. The Chief Investigator will schedule interviews with each candidate.



### *Special Assignments and Promotions*

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- (c) Based on supervisor recommendations and the interview by the Chief Investigator an investigator will be appointed by the District Attorney.

The policy and procedures for all positions may be waived for temporary assignments, emergency situations or for training.

#### **1002.3 PROMOTIONAL REQUIREMENTS**

Requirements and information regarding any promotional process are available at the Kings Human Services Department.

#### **1002.4 SPECIAL ASSIGNMENT POSITIONS**

The following positions are considered special assignments and not promotions:

- (a) Canine Handler
- (b) Kings County Major Crimes Task Force Investigator
- (c) Kings County Rural Crimes Task Force

##### **1002.4.1 GENERAL REQUIREMENTS**

The following requirements should be considered when selecting a candidate for a special assignment:

- (a) Full time Investigator in good standing
- (b) Off probation
- (c) Possession of or ability to obtain any certification required by POST or law
- (d) Exceptional skills, experience, or abilities related to the special assignment

##### **1002.4.2 EVALUATION CRITERIA**

The following criteria will be used in evaluating candidates for a special assignment:

- (a) Presents a professional, neat appearance.
- (b) Maintains a physical condition that aids in his/her performance.
- (c) Expressed an interest in the assignment and submission of a formal letter of interest to his/her supervisor.
- (d) Demonstrates the following traits:
  1. Emotional stability and maturity
  2. Stress tolerance
  3. Sound judgment and decision-making
  4. Personal integrity and ethical conduct
  5. Leadership skills
  6. Initiative
  7. Adaptability and flexibility

*Special Assignments and Promotions*

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8. Ability to conform to [department/office] goals and objectives in a positive manner

1002.4.3 SELECTION PROCESS

The selection process for special assignments will include an administrative evaluation as determined by the Chief Investigator to include:

- (a) Supervisor recommendations - Each supervisor who has supervised or otherwise been involved with the candidate will submit a recommendation.
  - 1.
- (b) Chief Investigator interview - The Chief Investigator will schedule interviews with each candidate.
  1. Based on supervisor recommendations and candidate's performance during their interview, the Chief Investigator will make a selection for the available position.
- (c)

The selection process for all special assignment positions may be waived for temporary assignments, emergency situations, training, and at the discretion of the Chief Investigator.

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## Grievance Procedure

### 1003.1 PURPOSE AND SCOPE

It is the policy of this [department/office] that all grievances be handled quickly and fairly without discrimination against employees who file a grievance whether or not there is a basis for the grievance. Our [Department/Office]'s philosophy is to promote a free verbal communication between employees and supervisors.

#### 1003.1.1 GRIEVANCE DEFINED

A grievance is any difference of opinion concerning terms or conditions of employment or the dispute involving the interpretation or application of any of the following documents by the person(s) affected:

- The employee bargaining agreement (Memorandum of Understanding)
- This Policy Manual
- County rules and regulations covering personnel practices or working conditions

Grievances may be brought by an individual affected employee or by a group representative.

Specifically outside the category of grievance are complaints related to allegations of discrimination or harassment subject to the Discriminatory Harassment Policy. Also outside the category of grievances are personnel complaints regarding any allegation of misconduct or improper job performance against any [department/office] employee that, if true, would constitute a violation of [department/office] policy, federal, state, or local law as set forth in the Personnel Complaint Policy.

### 1003.2 PROCEDURE

Except as otherwise required under a collective bargaining agreement, if an employee believes that he or she has a grievance as defined above, then that employee shall observe the following procedure:

- (a) Attempt to resolve the issue through informal discussion with immediate supervisor. Initial discussion should be sought by the employee not later than five (5) working days after the alleged grievance occurred or after the employee should reasonably have been aware of the incident causing the grievance.
- (b) If, within five working days, a mutually acceptable solution has not been reached at the informal level, the employee shall submit the grievance in writing to the immediate supervisor's superior. At this point, the grievance hearing process becomes formal and the employee may choose to be accompanied by a representative of his/her choice. After formal hearing the supervisor's superior will render a written decision within five working days.

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- (c) If the written decision of the superior is unsatisfactory to the employee, the employee may request the grievance be presented to the department head for review. This request must be made within five working days of the receipt of the written decision. The department head will hear the grievance and give a written decision within five working days of the receipt of the formal grievance papers.
- (d) If the employee is dissatisfied with the decision of the department head, he/she may, within five (5) working days of the receipt of that decision, request that the grievance be presented to the Personnel Appeals Board for review. A hearing shall be scheduled within thirty (30) working days from the filing of the appeal unless extended for good cause.

**1003.3 EMPLOYEE REPRESENTATION**

Employees are entitled to have representation during the grievance process. The representative may be selected by the employee from the appropriate employee bargaining group.

**1003.4 GRIEVANCE RECORDS**

At the conclusion of the grievance process, all documents pertaining to the process shall be forwarded to Investigations for inclusion into a secure file for all written grievances.

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# Reporting of Arrests, Convictions, and Court Orders

## 1004.1 PURPOSE AND SCOPE

The purpose of this policy is to describe the notification requirements and procedures that members must follow when certain arrests, convictions, and court orders restrict their ability to perform the official duties and responsibilities of the Kings County District Attorney Investigation Division. This policy will also describe the notification requirements and procedures that certain retired investigators must follow when an arrest, conviction, or court order disqualifies them from possessing a firearm.

## 1004.2 DOMESTIC VIOLENCE CONVICTIONS AND COURT ORDERS

Federal and California law prohibit individuals convicted of, or having an outstanding warrant for, certain offenses and individuals convicted of certain offenses and individuals subject to certain court orders from lawfully possessing firearms. Such convictions and court orders often involve allegations of the use or attempted use of force, or threatened use of a weapon on any individual in a domestic relationship (e.g., spouse, cohabitant, parent, child) (18 USC § 922; Penal Code § 29805).

All members and retired investigators with identification cards issued by the [Department/Office] are responsible for ensuring that they have not been disqualified from possessing firearms by any such conviction or court order, and shall promptly report any such conviction or court order to a supervisor, as provided in this policy.

## 1004.3 OTHER CRIMINAL CONVICTIONS AND COURT ORDERS

Government Code § 1029 prohibits any person convicted of a felony from being a peace officer in the State of California. This prohibition applies regardless of whether the guilt was established by way of a verdict, guilty, or nolo contendere plea.

Convictions of certain violations of the Vehicle Code and other provisions of law may also place restrictions on a member's ability to fully perform the duties of the job.

Outstanding warrants as provided in Penal Code § 29805 also place restrictions on a member's ability to possess a firearm.

While legal restrictions may or may not be imposed by statute or by the courts upon conviction of any criminal offense, criminal conduct by members of this [department/office] may be inherently in conflict with law enforcement duties and the public trust, and shall be reported as provided in this policy.

## 1004.4 REPORTING

All members and all retired investigators with an identification card issued by the [Department/Office] shall immediately notify their supervisors (retired investigators should immediately notify the Chief Investigator or the Chief Investigator) in writing of any past or current criminal detention,

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arrest, charge, or conviction in any state or foreign country, regardless of whether or not the matter was dropped or rejected, is currently pending or is on appeal, and regardless of the penalty or sentence, if any.

All members and all retired investigators with an identification card issued by the [Department/Office] shall further promptly notify their supervisors (retired investigators should immediately notify the Chief Investigator or the Chief Investigator) in writing if they become the subject of a domestic violence-related order or any court order that prevents the member or retired investigator from possessing a firearm or requires suspension or revocation of applicable POST certification.

Any member whose criminal arrest, conviction, or court order restricts or prohibits that member from fully and properly performing their duties, including carrying a firearm, may be disciplined. This includes but is not limited to being placed on administrative leave, reassignment, and/or termination. Any effort to remove such disqualification or restriction shall remain entirely the responsibility of the member, on the member's own time and expense.

Any member failing to provide prompt written notice pursuant to this policy shall be subject to discipline, up to and including termination.

Retired investigators may have their identification cards rescinded or modified, as may be appropriate (see the Retiree Concealed Firearms Policy).

#### 1004.4.1 NOTIFICATION REQUIREMENTS

The Investigations Chief Investigator shall submit within 10 days of final disposition a notice to POST of a conviction or Government Code § 1029 reason that disqualifies any current peace officer employed by this [department/office] or any former peace officer if this [department/office] was responsible for the investigation (11 CCR 1003).

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## Drug- and Alcohol-Free Workplace

### 1005.1 PURPOSE AND SCOPE

The purpose of this policy is to establish clear and uniform guidelines regarding drugs and alcohol in the workplace (41 USC § 8103).

### 1005.2 POLICY

It is the policy of this [department/office] to provide a drug- and alcohol-free workplace for all members.

#### 1005.2.1 PURCHASE OR POSSESSION OF DRUGS OR ALCOHOL ON-DUTY

Department employees shall not purchase or possess alcohol or other controlled substances on County property, at work, or while on-duty except in the performance of a special assignment as described in this policy.

Department employees shall not illegally manufacture any alcohol or drugs while on-duty, on County property or at any other time.

#### 1005.2.2 USE OF PRESCRIBED MEDICATIONS

Any employee who is required to take any medication with side effects which might impair his/her ability to fully and safely perform all requirements of the position shall report the need for such medication to the immediate supervisor prior to commencing any on-duty status. No employee shall be permitted to work or drive a department-owned or department-leased vehicle while taking such potentially impairing medication without a written release from his/her physician.

Possession of medical marijuana or being under the influence of marijuana on- or off-duty is prohibited and may lead to disciplinary action.

### 1005.3 GENERAL GUIDELINES

Alcohol and drug use in the workplace or on [department/office] time can endanger the health and safety of [department/office] members and the public.

Members who have consumed an amount of an alcoholic beverage or taken any medication, or combination thereof, that would tend to adversely affect their mental or physical abilities shall not report for duty. Affected members shall notify the Chief Investigator or appropriate supervisor as soon as the member is aware that the member will not be able to report to work. If the member is unable to make the notification, every effort should be made to have a representative contact the supervisor in a timely manner. If the member is adversely affected while on-duty, the member shall be immediately removed and released from work (see the Work Restrictions section in this policy).

#### 1005.3.1 USE OF MEDICATIONS

Members should not use any medications that will impair their ability to safely and completely perform their duties. Any member who is medically required or has a need to take any such medication shall report that need to the member's immediate supervisor prior to commencing any on-duty status.

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No member shall be permitted to work or drive a vehicle owned or leased by the [Department/Office] while taking any medication that has the potential to impair the member's abilities, without a written release from the member's physician.

#### 1005.3.2 USE OF MARIJUANA

Possession of marijuana, including medical marijuana, or being under the influence of marijuana on- or off-duty is prohibited and may lead to disciplinary action.

#### **1005.4 MEMBER RESPONSIBILITIES**

Members shall report for work in an appropriate mental and physical condition. Members are prohibited from purchasing, manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol on [department/office] premises or on [department/office] time (41 USC § 8103). The lawful possession or use of prescribed medications or over-the-counter remedies is excluded from this prohibition.

Members who are authorized to consume alcohol as part of a special assignment shall not do so to the extent of impairing on-duty performance.

Members shall notify a supervisor immediately if they observe behavior or other evidence that they believe demonstrates that a fellow member poses a risk to the health and safety of the member or others due to drug or alcohol use.

Members are required to notify their immediate supervisors of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction (41 USC § 8103).

#### **1005.5 EMPLOYEE ASSISTANCE PROGRAM**

There may be available a voluntary employee assistance program to assist those who wish to seek help for alcohol and drug problems (41 USC § 8103). Insurance coverage that provides treatment for drug and alcohol abuse also may be available. Employees should contact the Human Services Department, their insurance providers or the employee assistance program for additional information. It is the responsibility of each employee to seek assistance before alcohol or drug problems lead to performance problems.

##### 1005.5.1 ADDITIONAL SCREENING TESTS FOR INVESTIGATORS

The Department may request an employee to submit to a screening test if the employee:

- (a) Is a law enforcement officer and, during the performance of his/her duties, discharges a firearm other than by accident.
- (b) During the performance of his/her duties, drives a motor vehicle in such a manner as to cause bodily injury to him/herself or another person or substantial damage to property.

##### 1005.5.2 SCREENING TEST REFUSAL

An employee is subject to disciplinary action if he/she:

- (a) Fails or refuses to submit to a screening test as requested.



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- (b) After taking a screening test that indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested by his/her appointing authority, that he/she took the controlled substance as directed, pursuant to a current and lawful prescription issued in his/her name.

#### **1005.6 WORK RESTRICTIONS**

If a member informs a supervisor that he/she has consumed any alcohol, drug or medication that could interfere with a safe and efficient job performance, the member may be required to obtain clearance from his/her physician before continuing to work.

If the supervisor reasonably believes, based on objective facts, that a member is impaired by the consumption of alcohol or other drugs, the supervisor shall prevent the member from continuing work and shall ensure that he/she is safely transported away from the [Department/Office].

#### **1005.7 SCREENING TESTS**

A supervisor may require an employee to submit to a screening under any of the following circumstances:

- (a) The supervisor reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs that are impairing the employee's ability to perform duties safely and efficiently.
- (b) The employee discharges a firearm in the performance of the employee's duties (excluding training or authorized euthanizing of an animal).
- (c) The employee discharges a firearm issued by the [Department/Office] while off-duty, resulting in injury, death, or substantial property damage.
- (d) The employee drives a motor vehicle in the performance of the employee's duties and becomes involved in an incident that results in bodily injury, death, or substantial damage to property.

##### **1005.7.1 SUPERVISOR RESPONSIBILITIES**

The supervisor shall prepare a written record documenting the specific facts that led to the decision to require the test, and shall inform the employee in writing of the following:

- (a) The test will be given to detect either alcohol or drugs, or both.
- (b) The result of the test is not admissible in any criminal proceeding against the employee.
- (c) The employee may refuse the test, but refusal may result in dismissal or other disciplinary action.

##### **1005.7.2 DISCIPLINE**

An employee may be subject to disciplinary action if the employee:

- (a) Fails or refuses to submit to a screening test as requested.
- (b) After taking a screening test that indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested, that the employee took the

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controlled substance as directed, pursuant to a current and lawful prescription issued in the employee's name.

**1005.8 COMPLIANCE WITH THE DRUG-FREE WORKPLACE ACT**

No later than 30 days following notice of any drug statute conviction for a violation occurring in the workplace involving a member, the [Department/Office] will take appropriate disciplinary action, up to and including dismissal, and/or requiring the member to satisfactorily participate in a drug abuse assistance or rehabilitation program (41 USC § 8104).

**1005.9 CONFIDENTIALITY**

The [Department/Office] recognizes the confidentiality and privacy due to its members. Disclosure of any information relating to substance abuse treatment, except on a need-to-know basis, shall only be with the express written consent of the member involved or pursuant to lawful process.

The written results of any screening tests and all documents generated by the employee assistance program are considered confidential medical records and shall be maintained in the member's confidential medical file in accordance with the Personnel Records Policy.

## Sick Leave

### 1006.1 PURPOSE AND SCOPE

This policy provides general guidance regarding the use and processing of sick leave. The accrual and terms of use of sick leave for eligible employees are detailed in the County personnel manual or applicable collective bargaining agreement.

This policy is not intended to cover all types of sick or other leaves. For example, employees may be entitled to additional paid or unpaid leave for certain family and medical reasons as provided for in the Family and Medical Leave Act (FMLA) (29 USC § 2601 et seq.), the California Family Rights Act, leave for victims of crime or abuse, or for organ or bone marrow donor procedures (29 CFR 825; Government Code § 12945.2; Labor Code § 230.1; Labor Code § 1510).

### 1006.2 EMPLOYEE RESPONSIBILITIES

Sick leave may be used for absences caused by illness, injury, diagnosis, care or treatment for existing health conditions, temporary disability (including pregnancy/maternity), or for medical, dental or vision exams or medical treatment of the employee or the employee's immediate family when it is not possible to schedule such appointments during non-working hours.

Sick leave is not considered vacation, and abuse of sick leave may result in discipline and/or denial of sick-leave benefits. Employees on sick leave shall not engage in other employment or self-employment, or participate in any sport, hobby, recreational or other activity which may impede recovery from the injury or illness.

Upon return to work, employees shall complete and submit a leave request describing the type of leave used and the specific amount of time taken.

#### 1006.2.1 NOTIFICATION

Employees are encouraged to notify their supervisor or appropriate supervisor as soon as they are aware that they will not be able to report to work. At a minimum, employees shall make such notification no less than one hour before the start of their scheduled shift. If an employee is unable to contact the supervisor in the case of an emergency, every effort should be made to have a representative contact the supervisor (Labor Code § 246).

When the necessity for leave is foreseeable, such as an expected birth or planned medical treatment, the employee shall, whenever possible, provide the Department with no less than 30-days notice of the intent to take leave (Labor Code § 246).

### 1006.3 EXTENDED ILLNESS

Employees on extended absences shall, if possible, contact their unit supervisor at three-day intervals to provide an update on their absence and expected date of return. Employees absent from duty due to personal illness in excess of three consecutive days may be required to furnish a statement from their health care provider supporting the use of sick leave and/or the ability to return to work.

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Nothing in this section precludes a supervisor, with cause, from requiring a physician's statement if three or fewer sick days are taken.

**1006.4 SUPERVISOR RESPONSIBILITY**

Supervisors should monitor sick leave usage and regularly review the attendance of employees under their command to ensure that the use of sick leave is consistent with this policy. Supervisors should address sick-leave use in the employee's performance evaluation when it has negatively affected the employee's performance or ability to complete assigned duties, and when unusual amounts of sick leave by the employee has had a negative impact on department operations. When appropriate, supervisors should counsel employees regarding the excessive use of sick leave and should consider referring the employee to the Employee Assistance Program.

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## Communicable Diseases

### 1007.1 PURPOSE AND SCOPE

This policy provides general guidelines to assist in minimizing the risk of [department/office] members contracting and/or spreading communicable diseases.

#### 1007.1.1 DEFINITIONS

Definitions related to this policy include:

**Communicable disease** - A human disease caused by microorganisms that are present in and transmissible through human blood, bodily fluid, tissue, or by breathing or coughing. These diseases commonly include, but are not limited to, hepatitis B virus (HBV), HIV and tuberculosis.

**Exposure** - When an eye, mouth, mucous membrane or non-intact skin comes into contact with blood or other potentially infectious materials, or when these substances are injected or infused under the skin; when an individual is exposed to a person who has a disease that can be passed through the air by talking, sneezing or coughing (e.g., tuberculosis), or the individual is in an area that was occupied by such a person. Exposure only includes those instances that occur due to a member's position at the Kings County District Attorney Investigation Division. (See the exposure control plan for further details to assist in identifying whether an exposure has occurred.)

### 1007.2 PROCEDURES FOR EXPOSURE TO BLOOD, BODILY FLUIDS OR AEROSOLTRANSMISSIBLE DISEASES

All department personnel who are exposed to another person's blood, bodily fluids or an aerosol transmissible disease (e.g., during an altercation or while attending to any injured person) shall follow these procedures and guidelines.

Exposure to blood or other potentially infectious materials includes, but is not limited to, the contact of such substances with the eye, mouth, other mucous membranes, non-intact skin, needle sticks, human bites, cuts or abrasions or any exposure that otherwise qualifies under Health and Safety Code § 121060.1 or 8 CCR § 5193.

Exposure to an aerosol transmissible disease is any event in which all of the following have occurred (8 CCR 5199):

- (a) An employee has been exposed to an individual who is a case or a suspected case of a reportable aerosol transmissible disease, or to a work area or to equipment that is reasonably expected to contain aerosol transmissible pathogens associated with a reportable aerosol transmissible disease.
- (b) The exposure occurred without the benefit of applicable exposure controls required by this policy.
- (c) It reasonably appears from the circumstances of the exposure that transmission of disease is sufficiently likely to require medical evaluation.

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#### 1007.2.1 UNIVERSAL PRECAUTIONS

All human blood and body fluids such as saliva, urine, semen, and vaginal secretions are to be treated as if they are known to be infectious. Where it is not possible to distinguish between body fluid types, all body fluids are to be assumed potentially infectious.

#### 1007.2.2 PERSONAL PROTECTIVE EQUIPMENT

Personal protective equipment is the last line of defense against communicable disease. Therefore, the following equipment is provided for all personnel to assist in the protection against such exposures:

- Not less than two pair disposable latex gloves. (Keeping a box in the car recommended.)
- Safety glasses or goggles
- Rescue mask with a one-way valve
- Alcohol (or similar substance) to flush skin at emergency site. (Keeping several alcohol hand wipes in the car recommend)

The protective equipment is to be kept in each bureau vehicle; inspected at the start of each shift and replaced immediately upon returning to the station if used or damaged during the shift, or as otherwise needed.

#### 1007.2.3 IMMUNIZATIONS

All department personnel who, in the line of duty, may be exposed to or have contact with a communicable disease shall be offered appropriate treatment immunization.

#### 1007.2.4 WORK PRACTICES

All personnel shall use the appropriate barrier precautions to prevent skin and mucous membrane exposure whenever contact with blood or body fluid is anticipated.

Disposable gloves shall be worn on all medical emergency responses. Disposable gloves shall be worn before making physical contact with any patient and/or when handling items (e.g., evidence, transportation vehicle) soiled with blood or other body fluids. Should one's disposable gloves become contaminated with blood or other body fluids, the gloves shall be disposed of as contaminated waste. Care should be taken to avoid touching other items (e.g., pens, books, and personal items in general) while wearing the disposable gloves in a potentially contaminated environment.

All procedures involving blood or other potentially infectious materials shall be done in a way to minimize splashing, spraying, or otherwise generating droplets of those materials.

Eating, drinking, smoking, applying lip balm, and handling contact lenses shall be prohibited in areas where a potential for an exposure exists.

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#### **1007.3 DISPOSAL AND DECONTAMINATION**

The following procedures will apply to the disposal and decontamination after responding to an event that involved contact with a person's blood or body fluids:

##### **1007.3.1 USE OF WASTE CONTAINERS**

Investigators shall dispose of biohazard with the on-scene fire response vehicle, or at the attending clinic/hospital with their approval, or in an appropriately marked biohazard waste container at the station immediately upon arrival.

The biohazard waste container located at the station shall be collapsible, leakproof, red in color or appropriately labeled with a biohazard warning and routinely emptied.

##### **1007.3.2 DECONTAMINATION OF SKIN AND MUCOUS MEMBRANES**

Personnel shall wash their hands immediately (on-scene if possible), or as soon as possible following the removal of potentially contaminated gloves. Antibacterial soap and warm water or an approved disinfectant shall be used to wash one's hands, paying particular attention to the fingernails.

If an employee's intact skin contacts someone else's blood or bodily fluids or other potentially infectious materials, the employee shall immediately wash the exposed part of his/her body with soap and warm water and/or an approved disinfectant, as soon as possible. If the skin becomes grossly contaminated, body washing shall be followed by an approved hospital strength disinfectant. If large areas of the employee's skin are contaminated, the employee shall shower as soon as possible, using warm water and soap and/or an approved disinfectant. Medical treatment should be obtained.

Contaminated non-intact skin (e.g., injured skin, open wound) shall be cleaned using an approved disinfectant and then dressed or bandaged as required. Medical treatment is required.

All hand, skin, and mucous membrane washing that takes place in the station shall be done in the designated cleaning or decontamination area. Cleaning shall not be done in the kitchen, bathrooms, or other locations not designated as the cleaning or decontamination area.

##### **1007.3.3 SHARPS AND ITEMS THAT CUT OR PUNCTURE**

All personnel shall avoid using or holding sharps (needles) unless needed to do so while assisting a paramedic, or collecting them for evidence. Unless required for evidentiary reasons related to evidence preservation, employees are not to recap sharps. If recapping is necessary, a one-handed method shall be employed to avoid a finger prick. Disposal, when practicable, shall be into a puncture proof biohazard container.

All sharps and items that cut or puncture (e.g., broken glass, razors, and knives) shall be treated cautiously to avoid cutting, stabbing, or puncturing one's self or any other person. In addition, if a sharp object contains known or suspected blood or other bodily fluids, that item is to be treated as a contaminated item. If the item is not evidence, touching it with the hands shall be avoided. Rather, use a device such as tongs, or a broom and a dustpan to cleanup debris. If the material must be hand held, protective gloves must be worn.

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#### 1007.3.4 DISPOSABLE PROTECTIVE EQUIPMENT

Contaminated disposable supplies (gloves, dressings, CPR mask) shall be transported with the patient or suspect in the ambulance or bureau vehicle. The waste material shall then be disposed of in a biohazard waste container at the hospital or bureau station. Disposable gloves are to be worn while placing the waste into the waste biohazard container, placing the gloves in with the waste when through.

#### 1007.3.5 DECONTAMINATION OF PERSONAL PROTECTIVE EQUIPMENT

After using any reusable personal protective equipment, it shall be washed or disinfected and stored appropriately. If the personal protective equipment is non-reusable (e.g., disposable gloves), it shall be discarded in a biohazard waste container as described in Policy Manual § 1016.3.4.

Any personal protective equipment that becomes punctured, torn, or loses its integrity, shall be removed as soon as feasible. The employee shall wash up and replace the personal protective equipment if the job has not been terminated. If this situation resulted in a contaminated non-intact skin event, Policy Manual § 1016.3.2 shall be implemented.

Contaminated reusable personal protective equipment that must be transported prior to cleaning it shall be placed into a biohazard waste bag and transported in the ambulance, paramedic truck or bureau vehicle. Gloves shall be worn while handling the biohazard waste bag and during placement into the biohazard waste container, and then included in with the waste.

#### 1007.3.6 DECONTAMINATION OF NON-DISPOSABLE EQUIPMENT

Contaminated non-disposable equipment (e.g., flashlight, gun, baton, clothing, portable radio) shall be decontaminated as soon as possible. If it is to be transported, it shall be done by first placing it into a biohazard waste bag.

Grossly contaminated non-disposable equipment items shall be transported to a hospital, fire station, or bureau station for proper cleaning and disinfecting. Porous surfaces such as nylon bags and straps shall be brushed and scrubbed with a detergent and hot water, laundered and allowed to dry. Non-porous surfaces (e.g., plastic or metal) shall be brushed and scrubbed with detergent and hot water, sprayed with a bleach solution, rinsed, and allowed to dry. Delicate equipment (e.g., radios) should be brushed and scrubbed very carefully using a minimal amount of a type of germicide that is approved by Environmental Protection Agency (EPA) .

While cleaning equipment, pay close attention to handles, controls, portable radios, and corners (tight spots). Equipment cleaning shall not be done in the kitchen, bathrooms, or other areas not designated as the cleaning/decontamination area.

Contaminated equipment should be cleaned using an approved EPA germicide or a 1:100 solution of chlorine bleach (one-quarter-cup of bleach per one gallon of water) while wearing disposable gloves and goggles. Large particles of contaminants such as, vomit, feces, blood clots, etc. should first be removed (using a disposable towel or other means to prevent direct contact) and properly disposed of.



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#### 1007.3.7 DECONTAMINATION OF CLOTHING

Contaminated clothing such as uniforms and undergarments shall be removed as soon as feasible and rinsed in cold water to prevent the setting of bloodstains. If the clothing may be washed in soap and hot water, do so as soon as possible. If the clothing must be dry cleaned, place it into a biohazard waste bag and give it to the employees supervisor. The supervisor will secure a dry cleaner that is capable of cleaning contaminated clothing, and inform them of the potential contamination. This dry cleaning will be done at the Department's expense.

Contaminated leather boots shall be brushed and scrubbed with detergent and hot water. If the contaminant soaked through the boot, the boot shall be discarded.

#### 1007.3.8 DECONTAMINATION OF VEHICLES

Contaminated vehicles and components such as the seats, radios, and doors shall be washed with soap and warm water and disinfected with an approved germicide as soon as feasible.

#### 1007.3.9 DECONTAMINATION OF STATION AND CLEANING AREA

The Chief Investigator shall designate a location at the station that will serve as the area for cleaning/decontamination. This area is to be used to keep equipment clean and sanitary and for the employees to wash any potential contamination from their bodies. This area is to be thoroughly cleaned after each use and to be maintained in a clean and sanitary order at all times between each use. The application of cosmetics, smoking cigarettes, food and drink are prohibited in this designated area at all times.

### **1007.4 POST-EXPOSURE REPORTING AND FOLLOW-UP REQUIREMENTS**

In actual or suspected exposure incidents, proper documentation and follow-up action must occur to limit potential liabilities and to ensure the best protection and care for the employee(s).

#### 1007.4.1 EMPLOYEE RESPONSIBILITY TO REPORT EXPOSURE

To provide appropriate and timely treatment should exposure occur, all employees shall verbally report the exposure to their immediate supervisor and complete a written exposure report as soon as possible following the exposure or suspected exposure. That report shall be submitted to the employee's immediate supervisor. Additionally, employees should document in the exposure report whether they would like the person who was the source of the exposure to be tested for communicable diseases.

#### 1007.4.2 SUPERVISOR REPORTING REQUIREMENTS

The supervisor on-duty shall investigate every exposure that occurs as soon as possible following the incident, while gathering the following information:

- (a) Name and social security number of the employee(s) exposed.
- (b) Date and time of incident.
- (c) Location of incident.
- (d) What potentially infectious materials were involved.

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- (e) Source of material or person.
- (f) Current location of material or person.
- (g) Work being done during exposure.
- (h) How the incident occurred or was caused.
- (i) PPE in use at the time of the incident.
- (j) Actions taken post-event (e.g., clean-up, notifications).

The supervisor shall advise the employee of the laws and regulations concerning disclosure of the identity and infectious status of a source, and Policy § 1016.5, which addresses source testing.

If the ECO is unavailable to seek testing of the person who was the source of the exposure, it is the responsibility of the exposed employee's supervisor to ensure testing is sought (Policy § 1016.5).

#### 1007.4.3 MEDICAL CONSULTATION, EVALUATION AND TREATMENT

Any employee who was exposed or who suspects he/she was exposed to HIV or to hepatitis B or C should be seen by a physician or qualified health care provider as soon as possible. The doctor or qualified health care provider should be provided with the supervisor's report and the employee's medical records relevant to the visit and examination. The blood of the exposed employee shall be tested.

The health care professional will provide the ECO and/or the County's Risk Manager with a written opinion/evaluation of the exposed employee's medical condition. This opinion should only contain the following information:

- If a post-exposure treatment is indicated for the employee.
- If the employee received a post-exposure treatment.
- Confirmation that the employee received the evaluation results.
- Confirmation that the employee was informed of any medical condition resulting from the exposure incident and whether further treatment or evaluation will be required.
- Whether communicable disease testing from the source is warranted, and if so, which diseases should the testing include.

All other findings or diagnosis shall remain confidential and are not to be included in the written report.

#### 1007.4.4 COUNSELING

The Department shall provide the exposed employee (and his/her family if necessary) the opportunity for counseling and consultation.

#### 1007.4.5 CONFIDENTIALITY OF REPORTS

Most of the information involved in this process must remain confidential. The ECO shall ensure that all records and reports are kept in the strictest confidence.

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The ECO shall be responsible for maintaining records containing the employee's treatment status and the results of examinations, medical testing and follow-up procedures.

The Risk Manager shall be responsible for maintaining the name and social security number of the employee and copies of any information provided to the consulting health care professional.

This information is confidential and shall not be disclosed to anyone without the employee's written consent (except as required by law). Test results from persons who may have been the source of an exposure are to be kept confidential as well.

#### **1007.5 SOURCE TESTING**

Testing for communicable diseases of a person who was the source of an exposure should be sought when it is desired by the exposed employee or when it is otherwise appropriate. There are five methods to obtain such testing. It is the responsibility of the ECO to ensure that the proper testing and reporting occur. These methods are:

- (a) Obtaining voluntary consent from any person who may be the source of an exposure to cover testing for any communicable disease.
- (b) Filing a report with the county health officer when an employee is exposed to the bodily fluids of an arrestee. The county health officer may pursue testing for HIV or hepatitis B or C (Penal Code § 7510 et seq.).
- (c) Seeking consent for testing or applying for a court order for HIV, hepatitis B and hepatitis C testing (Health and Safety Code § 121060 et seq.).
- (d) Seeking a court order when the person who may be the source of an exposure will not consent to testing and the exposure does not fall under the statutory schemes for testing. This covers testing for any communicable disease as deemed appropriate by a health care professional and documented in the request for the court order.
- (e) Under certain circumstances, a court may issue a search warrant for the purpose of HIV testing an adult or juvenile when an employee of the Kings County District Attorney Investigation Division qualifies as a crime victim (Penal Code § 1524.1).

##### **1007.5.1 EXPOSURE FROM A NON-ARRESTEE**

Upon notification of an employee's exposure to a person who was not arrested, the ECO should attempt to determine if the person who was the source of the exposure will voluntarily consent to testing. If consent is indicated, the following steps should be taken:

- (a) A licensed health care provider should notify the person to be tested of the exposure and make a good faith effort to obtain voluntary informed consent from the person or his/her authorized legal representative to perform a test for HIV, hepatitis B, hepatitis C and other communicable diseases the health care provider deems appropriate.
- (b) The voluntary informed consent obtained by the health care provider must be in writing and include consent for three specimens of blood for testing. The ECO should document the consent as a supplement to the Exposure Control Report.

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- (c) The results of the tests should be made available to the source and the exposed employee.

If consent is not obtained, the ECO should promptly consult with County Counsel and consider requesting that a court order be sought for appropriate testing.

#### 1007.5.2 EXPOSURE FROM AN ARRESTEE

Upon notification of an exposure to an employee by a person who was arrested, the ECO should take the following steps:

- (a) Comply with the statutory scheme of Health and Safety Code § 121060. This includes seeking consent from the person who was the source of the exposure and seeking a court order if consent is not given.
- (b) Take reasonable steps to immediately contact the County Health Officer and provide preliminary information regarding the circumstances of the exposure and the status of the involved individuals to determine whether the County Health Officer will order testing (Penal Code § 7510).
- (c) In all cases, comply with the reporting and testing scheme of Penal Code § 7510 et seq. This includes completing a State Department of Health Services Form CDPH 8479 and submitting it to the County Health Officer with a copy of the Exposure Control Report by the end of the employee's shift. If submission by the end of the shift is not practicable, it must occur as soon as possible but no later than two days after the incident. The exposed employee's name should not appear on this form.
- (d) Remain in contact with the County Health Officer to determine whether testing of the arrestee will occur and whether the testing satisfies the medical needs of the employee.
- (e) The results of the tests should be made available to the donor and the exposed employee.

Since there is potential for overlap between the two statutory schemes, the ECO is responsible for coordinating the testing with the County Health Officer to prevent unnecessary or duplicate testing.

In the rare event that the exposed employee is not covered by either statutory scheme, the ECO should seek consent or a court order in the same manner as for a non-arrestee.

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## Smoking and Tobacco Use

### 1008.1 PURPOSE AND SCOPE

This policy establishes limitations on smoking and the use of tobacco products by members and others while on-duty or while in Kings County District Attorney Investigation Division facilities or vehicles.

For the purposes of this policy, smoking and tobacco use includes, but is not limited to, any tobacco product, such as cigarettes, cigars, pipe tobacco, snuff, tobacco pouches and chewing tobacco, as well as any device intended to simulate smoking, such as an electronic cigarette or personal vaporizer.

### 1008.2 POLICY

The Kings County District Attorney Investigation Division recognizes that tobacco use is a health risk and can be offensive to others.

Smoking and tobacco use also presents an unprofessional image for the Department and its members. Therefore smoking and tobacco use is prohibited by members and visitors in all department facilities, buildings and vehicles, and as is further outlined in this policy (Government Code § 7597; Labor Code § 6404.5).

### 1008.3 SMOKING AND TOBACCO USE

Smoking and tobacco use by members is prohibited anytime members are in public view representing the Kings County District Attorney Investigation Division.

It shall be the responsibility of each member to ensure that no person under his/her supervision smokes or uses any tobacco product inside County facilities and vehicles.

### 1008.4 ADDITIONAL PROHIBITIONS

No person shall use tobacco products within 20 feet of a main entrance, exit or operable window of any public building (including any department facility), or buildings on the campuses of the University of California, California State University and California community colleges, whether present for training, enforcement or any other purpose (Government Code § 7596 et seq.).

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## Personnel Complaints

### 1009.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Kings County District Attorney Investigation Division. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

### 1009.2 POLICY

The Kings County District Attorney Bureau of Investigation takes seriously all complaints regarding the service provided by the Bureau and the conduct of its members.

The District Attorney's Office will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of the District Attorney's Office to ensure that the community can report misconduct without concern for reprisal or retaliation.

### 1009.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of office policy or of federal, state or local law, county policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate office policy or federal, state or local law, county policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the office.

#### 1009.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

**Informal** - A matter in which the Chief Investigator is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

**Formal** - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Assistant Chief Investigator, depending on the seriousness and complexity of the investigation.

**Incomplete** - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Assistant Chief Investigator, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

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#### 1009.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public alleging misconduct of a peace officer require the complainant to read and sign the advisory as outlined in California Penal Code Section 148.6.
- (b) Any Bureau member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d)
- (e) Tort claims and lawsuits may generate a personnel complaint.

#### **1009.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS**

##### 1009.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the bureau facility and be accessible through the [department/office] website.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

##### 1009.4.2 ACCEPTANCE

All complaints will be courteously accepted by any office member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs, or physical evidence may be obtained as necessary.

A complainant shall be provided with a copy of the complaining party's statement at the time it is filed with the office. (Penal Code § 832.7).

##### 1009.4.3 HATE COMPLAINTS AGAINST PEACE OFFICERS

Internal complaints or complaints from the public shall be accepted and investigated in accordance with this policy where it is alleged that an investigator has in the previous seven years, and since 18 years of age, engaged in membership in a hate group, participated in a hate group activity, or advocated any public expression of hate (Penal Code § 13682).

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#### 1009.4.4 AVAILABILITY OF WRITTEN PROCEDURES

The [Department/Office] shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

#### **1009.5 DOCUMENTATION**

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Chief Investigator should audit the log and send an audit report to the District Attorney or their authorized designee.

#### **1009.6 ADMINISTRATIVE INVESTIGATIONS**

The administrative investigation of employee misconduct is of the great importance to the Kings County District Attorney's Office. Administrative Investigations shall be conducted in such a way that ensures fairness and a complete investigation. At times the Kings County District Attorney's Office will be required to delegate an administrative investigation to a third party investigative body. The evaluation of a third party delegation shall be considered on a case by case basis after careful consideration of the facts available at the time of the complaint. This evaluation should include, but not be limited too, the following.

- a. Conflict of Interest: When there is a potential conflict of interest that could compromise the impartiality or fairness of an investigation.
- b. Complexity: Investigations that involve complex, legal, technical, or procedural issues that may benefit from the expertise and resources that an external Investigator may provide.
- c. Resource constraints: If the Bureau lacks the resources, manpower, experience or specialized equipment required to complete an efficient investigation.
- d. Legal compliance: If the Bureau is legally required to delegate an administrative investigation to a third party.

Allegations of misconduct will be administratively investigated as follows.

##### 1009.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief Investigator or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.



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The responsibilities of supervisors include but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
  - 1. The original complaint form will be directed to the Chief Investigator of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
  - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Chief Investigator or the Chief Investigator, who will initiate appropriate action.
- (b) Responding to all complainants in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
  - 1. Follow-up contact with the complainant should be made within 24 hours of the [Department/Office] receiving the complaint.
  - 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Chief Investigator.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Chief Investigator and the Chief Investigator are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Human Services Department and the Chief Investigator for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Chief Investigator, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:
  - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
  - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed (Government Code § 3303 et seq.).
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

#### 1009.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

The following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

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- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Kings County District Attorney Investigation Division or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank and command of the investigator in charge of the investigation, the interviewing officers and all other persons to be present during the interview.
- (e) All interviews shall be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
  - 1. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Lybarger* advisement. Administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
  - 2. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
- (i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All members shall provide complete and truthful responses to questions posed during interviews.
- (k) No member may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

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No investigation shall be undertaken against any investigator solely because the investigator has been placed on a prosecutor's *Brady* list or the name of the investigator may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the investigator has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

#### 1009.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

**Introduction** - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

**Synopsis** - Provide a brief summary of the facts giving rise to the investigation.

**Summary** - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

**Evidence** - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

**Conclusion** - A recommendation regarding further action or disposition should be provided.

**Exhibits** - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

#### 1009.6.4 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

**Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve [department/office] members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

**Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

**Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

**Sustained** - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an investigator were found to violate law or [department/office] policy (Penal Code § 832.8).

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

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#### 1009.6.5 COMPLETION OF INVESTIGATIONS

Anyone assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (Government Code § 3304).

In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

#### 1009.6.6 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

#### **1009.7 ADMINISTRATIVE SEARCHES**

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code § 3309).

#### 1009.7.1 DISCLOSURE OF FINANCIAL INFORMATION

An employee may be compelled to disclose personal financial information under the following circumstances (Government Code § 3308):

- (a) Pursuant to a state law or proper legal process
- (b) Information exists that tends to indicate a conflict of interest with official duties
- (c) If the employee is assigned to or being considered for a special assignment with a potential for bribes or other improper inducements

#### **1009.8 ADMINISTRATIVE LEAVE**

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the office, the Chief Investigator or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any office badge, identification, assigned weapons and any other office equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

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#### **1009.9 CRIMINAL INVESTIGATION**

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief Investigator shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief Investigator may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

The Kings County District Attorney Investigation Division may release information concerning the arrest or detention of any member, including an investigator, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

#### **1009.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief Investigator through the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Chief Investigator may accept or modify any classification or recommendation for disciplinary action.

##### **1009.10.1 CHIEF INVESTIGATOR RESPONSIBILITIES**

Upon receipt of any completed personnel investigation, the Chief Investigator of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Chief Investigator may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the District Attorney, the Chief Investigator may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the District Attorney, the Chief Investigator shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

##### **1009.10.2 DISTRICT ATTORNEY RESPONSIBILITIES**

Upon receipt of any written recommendation for disciplinary action, the District Attorney shall review the recommendation and all accompanying materials. The District Attorney may modify any recommendation and/or may return the file to the Chief Investigator for further investigation or action.

Once the District Attorney is satisfied that no further investigation or action is required by staff, the District Attorney shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the District Attorney shall provide the member with a pre-

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disciplinary procedural due process hearing (*Skelly*) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within one year from the date of discovery of the misconduct (Government Code § 3304(d)). The District Attorney shall also provide the member with:

- (a) Access to all of the materials considered by the District Attorney in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the District Attorney within five days of receiving the notice.
  - (a) Upon a showing of good cause by the member, the District Attorney may grant a reasonable extension of time for the member to respond.
  - (b) If the member elects to respond orally, the presentation may be recorded by the office. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the District Attorney shall consider all information received in regard to the recommended discipline. The District Attorney shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the District Attorney has issued a written decision, the discipline shall become effective.

#### 1009.10.1 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The District Attorney or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint (Penal Code § 832.7(f)).

#### 1009.10.4 NOTICE REQUIREMENTS

The disposition of any civilian's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall not include what discipline, if any, was imposed (Penal Code § 832.7(f)).

#### **1009.11 PRE-DISCIPLINE EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the District Attorney after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the District Attorney to consider.

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- (d) In the event that the District Attorney elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the District Attorney on the limited issues of information raised in any subsequent materials.

#### **1009.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline (Penal Code § 13510.8).

#### **1009.13 POST-DISCIPLINE APPEAL RIGHTS**

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

During any administrative appeal, evidence that an investigator has been placed on a *Brady* list or is otherwise subject to *Brady* restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such *Brady* evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

#### **1009.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS**

At-will and probationary employees and those members other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary investigator subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the POBR (Government Code § 3303; Government Code § 3304).

At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Chief Investigator or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief Investigator shall be final.

#### **1009.15 RETENTION OF PERSONNEL INVESTIGATION FILES**

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

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#### **1009.16 REQUIRED REPORTING TO POST**

The Chief Investigator or the authorized designee shall notify POST on the appropriate POST form within 10 days of certain investigator personnel events, including but not limited to (Penal Code § 13510.9):

- (a) Termination or separation from employment or appointment. Separation from employment or appointment includes any involuntary termination, resignation, or retirement.
  - 1. A POST affidavit-of-separation form shall be executed and maintained by the office and submitted to POST as required by Penal Code § 13510.9 and 11 CCR 1003.
- (b) Events that could affect an investigator's POST certification, such as:
  - 1. Complaints, charges, or allegations of serious misconduct (as defined by Penal Code § 13510.8).
  - 2. Findings of civilian review boards.
  - 3. Final dispositions of any investigations.
  - 4. Civil judgments or court findings based on conduct, or settlement of a civil claim against an investigator or the Kings County District Attorney Investigation Division based on allegations of conduct by an investigator.

The Chief Investigator or the authorized designee shall be responsible for providing POST access to or duplication of investigation documentation (e.g., physical or documentary evidence, witness statements, analysis, conclusions) within the applicable timeframe provided in Penal Code § 13510.9.

#### **1009.16.1 NOTIFICATIONS TO POST FOR SERIOUS MISCONDUCT**

The Chief Investigator or the authorized designee shall report allegations of serious misconduct by an investigator to POST and the report shall include the following (11 CCR 1207):

- (a) Name of the office
- (b) Administrative case number
- (c) Name, current address, and phone number of the complainant, if available
- (d) Name, POST ID, current address, and phone number of the involved investigator
- (e) A summary of the alleged misconduct including:
  - 1. A narrative of the allegations
  - 2. Date and time of incidents
  - 3. Location of occurrence
  - 4. Any witness information, if available
  - 5. Summary of arrest or indictment of involved investigator



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- (f) A change in employment status of the involved investigator (e.g., administrative leave, suspension, termination)
- (g) Name and contact information of the assigned investigator

The Chief Investigator or the authorized designee shall provide updates of the investigation to POST every 90 days until the final disposition in the method designated by POST (11 CCR 1207).

Upon completion of the investigation, the Chief Investigator or the authorized designee shall submit to POST the final disposition of the investigation as well as investigation materials and the investigator's service record as provided by 11 CCR 1207.

#### 1009.16.2 ADDITIONAL NOTIFICATIONS TO POST FOR SERIOUS MISCONDUCT

Additional notification shall be made to POST (11 CCR 1207):

- (a) If the imposed disciplinary action is pending appeal or other review through an administrative or judicial proceeding:
  - 1. The office shall provide the name of the body conducting the proceeding.
  - 2. The status of the proceeding, if known.
- (b) If criminal charges are pending:
  - 1. The name of the court having jurisdiction over the criminal charges against the investigator.
  - 2. The status of the criminal case, if known.

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## Seat Belts

### 1010.1 PURPOSE AND SCOPE

This policy establishes guidelines for the use of seat belts and child restraints. This policy will apply to all members operating or riding in [department/office] vehicles (Vehicle Code § 27315.5).

### 1010.2 WEARING OF SAFETY RESTRAINTS

All members shall wear properly adjusted safety restraints when operating or riding in a seat equipped with restraints, in any vehicle owned, leased or rented by this [department/office] while on- or off-duty, or in any privately owned vehicle while on-duty. The member driving such a vehicle shall ensure that all other occupants, including non-members, are also properly restrained.

Exceptions to the requirement to wear safety restraints may be made only in exceptional situations where, due to unusual circumstances, wearing a seat belt would endanger the member or the public. Members must be prepared to justify any deviation from this requirement.

#### 1010.2.1 TRANSPORTING CHILDREN

Children under the age of 8 should be transported in compliance with California's restraint system requirements (Vehicle Code § 27360).

A child may be transported by sworn personnel without the use of a child passenger restraint system in an authorized emergency vehicle if a child passenger restraint system is unavailable and the child is secured by a seat belt (Vehicle Code § 27363(b) and Vehicle Code § 165).

Members should deactivate, if available, the passenger side airbag when appropriate, such as when transporting a rear-facing infant or child in the front seat.

### 1010.3 TRANSPORTING PERSONS IN CUSTODY

Persons who are in custody should be in a seated position and secured in the rear seat of any [department/office] vehicle with a restraint system or, when a restraint system is not available, by seat belts provided by the vehicle manufacturer. The restraint system is not intended to be a substitute for handcuffs or other appendage restraints.

An incarcerated person in leg restraints shall be transported in accordance with the Handcuffing and Restraints Policy.

### 1010.4 INOPERABLE SEAT BELTS

[Department/Office] vehicles shall not be operated when the seat belt in the driver's position is inoperable. Persons shall not be transported in a seat in which the seat belt is inoperable.

[Department/Office] vehicle seat belts shall not be modified, removed, deactivated or altered in any way, except by the vehicle maintenance and repair staff, who shall do so only with the express authorization of the Chief Investigator.

Members who discover an inoperable restraint system shall report the defect to the appropriate supervisor. Prompt action will be taken to replace or repair the system.

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## Body Armor

### 1011.1 PURPOSE AND SCOPE

The purpose of this policy is to provide law enforcement officers with guidelines for the proper use of body armor.

### 1011.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division to maximize officer safety through the use of body armor in combination with prescribed safety procedures. While body armor provides a significant level of protection, it is not a substitute for the observance of officer safety procedures.

### 1011.3 ISSUANCE OF BODY ARMOR

The Investigations supervisor shall ensure that body armor is issued to all investigators when the investigator begins service at the Kings County District Attorney Investigation Division and that, when issued, the body armor meets or exceeds the standards of the National Institute of Justice.

The Investigations supervisor shall establish a body armor replacement schedule and ensure that replacement body armor is issued pursuant to the schedule or whenever the body armor becomes worn or damaged to the point that its effectiveness or functionality has been compromised.

#### 1011.3.1 USE OF SOFT BODY ARMOR

Generally, the use of body armor is required subject to the following:

- (a) Investigators shall only wear agency-approved body armor.
- (b) Investigators shall wear body armor anytime they are in a situation where they could reasonably be expected to take enforcement action.
- (c) Investigators may be excused from wearing body armor when they are functioning primarily in an administrative or support capacity and could not reasonably be expected to take enforcement action.
- (d) Body armor shall be worn when an investigator is working in uniform and conducting enforcement actions.
- (e) An investigator may be excused from wearing body armor when he/she is involved in undercover or plainclothes work that his/her supervisor determines could be compromised by wearing body armor, or when a supervisor determines that other circumstances make it inappropriate to mandate wearing body armor.

#### 1011.3.2 INSPECTIONS OF BODY ARMOR

Supervisors should ensure that body armor is worn and maintained in accordance with this policy through routine observation and periodic documented inspections. Annual inspections of body armor should be conducted by an authorized designee for fit, cleanliness, and signs of damage, abuse and wear.

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## Personnel Records

### 1012.1 PURPOSE AND SCOPE

This policy governs maintenance and access to personnel records. Personnel records include any file maintained under an individual member's name.

### 1012.2 POLICY

It is the policy of this [department/office] to maintain personnel records and preserve the confidentiality of personnel records pursuant to the Constitution and the laws of California (Penal Code § 832.7).

### 1012.3 [DEPARTMENT/OFFICE] FILE

The [department/office] file shall be maintained as a record of a person's employment/appointment with this [department/office]. The [department/office] file should contain, at a minimum:

- (a) Personal data, including photographs, marital status, names of family members, educational and employment history, or similar information. A photograph of the member should be permanently retained.
- (b) Election of employee benefits.
- (c) Personnel action reports reflecting assignments, promotions, and other changes in employment/appointment status. These should be permanently retained.
- (d) Original performance evaluations. These should be permanently retained.
- (e) Discipline records, including copies of sustained personnel complaints (see the Personnel Complaints Policy).
  - 1. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained pursuant to the established records retention schedule and at least four years (Government Code § 12946).
  - 2. Disciplinary action resulting from a sustained civilian's complaint involving misconduct shall be maintained pursuant to the established records retention schedule and at least 15 years (Penal Code § 832.5).
  - 3. A civilian's complaint involving misconduct that was not sustained shall be maintained pursuant to the established records retention schedule and at least five years (Penal Code § 832.5).
- (f) Adverse comments such as supervisor notes or memos may be retained in the [department/office] file after the member has had the opportunity to read and initial the comment (Government Code § 3305).
  - 1. Once a member has had an opportunity to read and initial any adverse comment, the member shall be given the opportunity to respond in writing to the adverse comment within 30 days (Government Code § 3306).
  - 2. Any member response shall be attached to and retained with the original adverse comment (Government Code § 3306).

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3. If a member refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment and the member should sign or initial the noted refusal. Such a refusal, however, shall not be deemed insubordination, nor shall it prohibit the entry of the adverse comment into the member's file (Government Code § 3305).
- (g) Commendations and awards.
  - (h) Any other information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

#### **1012.4 DIVISION FILE**

Division files may be separately maintained internally by a member's supervisor for the purpose of completing timely performance evaluations. The Division file may contain supervisor comments, notes, notices to correct and other materials that are intended to serve as a foundation for the completion of timely performance evaluations.

All materials intended for this interim file shall be provided to the employee prior to being placed in the file in accordance with Government Code § 3305 and Government Code § 3306.

#### **1012.5 TRAINING FILE**

An individual training file shall be maintained by the Training Coordinator for each member. Training files will contain records of all training; original or photocopies of available certificates, transcripts, diplomas and other documentation; and education and firearms qualifications. Training records may also be created and stored remotely, either manually or automatically (e.g., Daily Training Bulletin (DTB) records).

- (a) The involved member is responsible for providing the Training Coordinator or immediate supervisor with evidence of completed training/education in a timely manner.
- (b) The Training Coordinator or supervisor shall ensure that copies of such training records are placed in the member's training file.

#### **1012.6 INTERNAL AFFAIRS FILE**

Internal affairs files shall be maintained under the exclusive control of the Assistant Chief Investigator in conjunction with the office of the Chief Investigator. Access to these files may only be approved by the Chief Investigator or the Assistant Chief Investigator supervisor.

These files shall contain the complete investigation of all formal complaints of member misconduct, regardless of disposition (Penal Code § 832.12). Investigations of complaints that result in the following findings shall not be placed in the member's file but will be maintained in the internal affairs file:

- (a) Not sustained
- (b) Unfounded
- (c) Exonerated

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Investigation files arising out of sustained civilian's complaints involving misconduct shall be maintained pursuant to the established records retention schedule and for a period of at least 15 years. Investigations that resulted in other than a sustained finding may not be used by the [Department/Office] to adversely affect an employee's career (Penal Code § 832.5).

Investigation files arising out of internally generated complaints shall be maintained pursuant to the established records retention schedule and for at least four years (Government Code § 12946).

Investigation files arising out of a civilian complaint involving misconduct that was not sustained shall be maintained pursuant to the established records retention schedule and for at least five years (Penal Code § 832.5).

#### **1012.7 SECURITY**

Personnel records should be maintained in a secured location and locked either in a cabinet or access-controlled room. Personnel records maintained in an electronic format should have adequate password protection.

Personnel records are subject to disclosure only as provided in this policy, the Records Maintenance and Release Policy or according to applicable discovery procedures.

Nothing in this policy is intended to preclude review of personnel records by the County Administrative Officer, County Counsel or other attorneys or representatives of the County in connection with official business.

##### **1012.7.1 REQUESTS FOR DISCLOSURE**

Any member receiving a request for a personnel record shall promptly notify the Custodian of Records or other person charged with the maintenance of such records.

Upon receipt of any such request, the responsible person shall notify the affected member as soon as practicable that such a request has been made (Evidence Code § 1043).

The responsible person shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this may require assistance of available legal counsel.

All requests for disclosure that result in access to a member's personnel records shall be logged in the corresponding file.

##### **1012.7.2 RELEASE OF PERSONNEL INFORMATION**

Personnel records shall not be disclosed except as allowed by law (Penal Code § 832.7; Evidence Code § 1043) (See also Records Maintenance and Release Policy).

Any person who maliciously, and with the intent to obstruct justice or the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any member of this [department/office] may be guilty of a misdemeanor (Penal Code § 146e).

The [Department/Office] may release any factual information concerning a disciplinary investigation if the member who is the subject of the investigation (or the member's representative)

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publicly makes a statement that is published in the media and that the member (or representative) knows to be false. The disclosure of such information, if any, shall be limited to facts that refute any such false statement (Penal Code § 832.7).

#### 1012.7.3 RELEASE OF LAW ENFORCEMENT GANG INFORMATION

Information relating to the termination of an investigator from this [department/office] for participation in a law enforcement gang shall be disclosed to another law enforcement agency that is conducting a pre-employment background investigation except where specifically prohibited by law (Penal Code § 13670).

#### 1012.7.4 RELEASE OF PEACE OFFICER RECORDS RELATING TO HATE COMPLAINTS

Records relating to an investigator for an investigation of a hate complaint described in Penal Code § 13682 with a sustained finding that the investigator engaged in membership in a hate group, participated in a hate group activity, or advocacy of public expressions of hate are not confidential and shall be made available for public inspection through a public records request (Penal Code § 13683).

Records disclosed may be redacted as provided in Penal Code § 13683.

### **1012.8 BRADY MATERIAL IN PERSONNEL FILES**

The purpose of this section is to establish a procedure for releasing potentially exculpatory information (so-called Brady material) contained within confidential peace officer personnel files.

#### 1012.8.1 DEFINITIONS

**Brady Material** - In the Brady v. Maryland decision ( 373 U.S. 83 (1963)) the United States Supreme Court held that the prosecution has an affirmative duty to disclose to the defendant evidence which is both favorable and material to the guilt and/or punishment of the defendant.

**The Prosecution** - Refers to the District Attorney and all investigative agencies involved in the criminal prosecution of a defendant, including this department.

**Penal Code § 1054.1** - California law also establishes a criminal defendant's right to access potentially exculpatory evidence.

#### 1012.8.2 RELEASE OF PERSONNEL FILES TO DISTRICT ATTORNEY

Pursuant to Penal Code § 832.7(a), the only time the District Attorney (Attorney General or Grand Jury) is entitled to access confidential peace officer personnel files without filing a so-called Pitchess motion (Evidence Code § 1043 et seq.) is when they are investigating the conduct of an investigator or this department. Such access shall not be considered a waiver of the confidentiality of the information contained in these files.

Absent a specific investigation of identified investigator(s) or a specific investigation of this department (or the consent of an involved investigator), no confidential information from any investigator's personnel file shall be released to the District Attorney or Grand Jury without full compliance with the Pitchess process. The prosecution of a criminal defendant is not considered an investigation of any involved investigator.

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Should an investigator's credibility or other issues related to an investigator's personnel file arise in the context of an investigator acting as a witness for the prosecution, access to that investigator's personnel file by either the District Attorney or the criminal defendant shall be limited to that which is authorized by the process set forth in Evidence Code § 1043, et seq.

#### 1012.8.3 PROCEDURE

If an investigator is a material witness in a criminal case, a person or persons designated by the Chief Investigator or Assistant Chief Investigator may examine the subject investigator's personnel file to determine whether there are Brady materials contained therein (e.g., evidence which is both favorable and material to the guilt and/or punishment of the defendant). If Brady material is located, the following procedure shall apply:

- (a) In the event that a Pitchess motion has not already been filed by the criminal defendant or other party, the District Attorney shall be notified of the potential presence of Brady material in the investigator's personnel file
- (b) The District Attorney should be instructed to file a Pitchess motion in order to initiate an in camera review by the court
- (c) As with any Pitchess motion, and prior to any review of the files by the court, subject investigator(s) shall be notified in writing that a Pitchess motion has been filed
- (d) The responsible Custodian of Records shall accompany all relevant personnel files during any in camera inspection and address any issues or questions raised by the court in determining whether or not any material contained in the file is both material and favorable to the criminal defendant
- (e) If the court determines that there is relevant Brady material contained in the file(s), only that material ordered released will be copied and released to the parties filing the Pitchess motion
  1. Prior to the release of any materials pursuant to this process, the Custodian of Records should request a protective order from the Court limiting the use of such materials to the involved case and requiring the return of all copies upon completion of the case.

#### **1012.9 MEMBERS' ACCESS TO THEIR PERSONNEL RECORDS**

Any member may request access to the member's own personnel records during the normal business hours of those responsible for maintaining such files. Any member seeking the removal of any item from the member's personnel records shall file a written request to the Chief Investigator through the chain of command. The [Department/Office] shall remove any such item if appropriate, or within 30 days provide the member with a written explanation of why the contested item will not be removed. If the contested item is not removed from the file, the member's request and the written response from the [Department/Office] shall be retained with the contested item in the member's corresponding personnel record (Government Code § 3306.5).

Members may be restricted from accessing files containing any of the following information:



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- (a) An ongoing internal affairs investigation to the extent that it could jeopardize or compromise the investigation pending final disposition or notice to the member of the intent to discipline.
- (b) Confidential portions of internal affairs files that have not been sustained against the member.
- (c) Criminal investigations involving the member.
- (d) Letters of reference concerning employment/appointment, licensing, or issuance of permits regarding the member.
- (e) Any portion of a test document, except the cumulative total test score for either a section of the test document or for the entire test document.
- (f) Materials used by the [Department/Office] for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments, or other comments or ratings used for department planning purposes.
- (g) Information of a personal nature about a person other than the member if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
- (h) Records relevant to any other pending claim between the [Department/Office] and the member that may be discovered in a judicial proceeding.

#### **1012.10 RETENTION AND PURGING**

Unless provided otherwise in this policy, personnel records shall be maintained in accordance with the established records retention schedule.

- (a) During the preparation of each member's performance evaluation, all personnel complaints and disciplinary actions should be reviewed to determine the relevancy, if any, to progressive discipline, training and career development. Each supervisor responsible for completing the member's performance evaluation should determine whether any prior sustained disciplinary file should be retained beyond the required period for reasons other than pending litigation or other ongoing legal proceedings.
- (b) If a supervisor determines that records of prior discipline should be retained beyond the required period, approval for such retention should be obtained through the chain of command from the Chief Investigator.
- (c) If, in the opinion of the Chief Investigator, a personnel complaint or disciplinary action maintained beyond the required retention period is no longer relevant, all records of such matter may be destroyed in accordance with the established records retention schedule.

#### **1012.11 RELEASE OF PERSONNEL RECORDS AND RECORDS RELATED TO CERTAIN INCIDENTS, COMPLAINTS, AND INVESTIGATIONS OF INVESTIGATORS**

Personnel records and records related to certain incidents, complaints, and investigations of investigators shall be released pursuant to a proper request under the Public Records Act and subject to redaction and delayed release as provided by law.

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The Custodian of Records should work as appropriate with the Chief Investigator or the Assistant Chief Investigator supervisor in determining what records may qualify for disclosure when a request for records is received and if the requested record is subject to redaction or delay from disclosure.

For purposes of this section, a record includes (Penal Code § 832.7(b)(3):

- All investigation reports.
- Photographic, audio, and video evidence.
- Transcripts or recordings of interviews.
- Autopsy reports.
- All materials compiled and presented for review to the District Attorney or to any person or body charged with determining whether to file criminal charges against an investigator in connection with an incident, whether the investigator's action was consistent with law and [department/office] policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take.
- Documents setting forth findings or recommending findings.
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the *Skelly* or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Unless a record or information is confidential or qualifies for delayed disclosure as provided by Penal Code § 832.7(b)(8) or other law, the following records (hereinafter qualifying records) shall be made available for public inspection no later than 45 days from the date of a request (Penal Code § 832.7(b)(1)):

- (a) Records relating to the report, investigation, or findings of:
  1. The discharge of a firearm at another person by an investigator.
  2. The use of force against a person resulting in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) by an investigator.
  3. A sustained finding involving a complaint that alleges unreasonable or excessive force.
  4. A sustained finding that an investigator failed to intervene against another investigator using force that is clearly unreasonable or excessive.
- (b) Records relating to an incident where a sustained finding was made by the [Department/Office] or oversight agency regarding:
  1. An investigator engaged in sexual assault of a member of the public (as defined by Penal Code § 832.7(b)).
  2. Dishonesty of an investigator relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another investigator, including but not limited to any false

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statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

3. An investigator engaged in conduct including but not limited to verbal statements, writings, online posts, recordings, and gestures involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
4. An investigator made an unlawful arrest or conducted an unlawful search.

Qualifying records will be made available regardless of whether the investigator resigns before the [Department/Office] or an oversight agency concludes its investigation (Penal Code § 832.7(b)(3)).

A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure (Penal Code § 832.7(b)(4)).

When an investigation involves multiple investigators, the [Department/Office] shall not release information about allegations of misconduct or the analysis or disposition of an investigation of an investigator unless it relates to a sustained finding of a qualified allegation as provided by Penal Code § 832.7(b)(5). However, factual information about the action of the investigator during an incident or the statements of an investigator shall be released if the statements are relevant to a finding of the qualified allegation against another investigator that is subject to release (Penal Code § 832.7(b)(5)).

#### 1012.11.1 REDACTION

The Custodian of Records, in consultation with the Chief Investigator or authorized designee, shall redact the following portions of qualifying records made available for release (Penal Code § 832.7(b)(6)):

- (a) Personal data or information (e.g., home address, telephone number, identities of family members) other than the names and work-related information of investigators
- (b) Information that would compromise the anonymity of whistleblowers, complainants, victims, and witnesses
- (c) Confidential medical, financial, or other information where disclosure is prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force
- (d) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the investigator or another person

Additionally, a record may be redacted, including redacting personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing it (Penal Code § 832.7(b)(7)).

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#### 1012.11.2 DELAY OF RELEASE

Unless otherwise directed by the Chief Investigator, the Custodian of Records should consult with a supervisor familiar with the underlying investigation to determine whether to delay disclosure of qualifying records due to any of the following conditions (Penal Code § 832.7):

- (a) Active criminal investigations
  - 1. Disclosure may be delayed 60 days from the date the misconduct or use of force occurred or until the District Attorney determines whether to file criminal charges, whichever occurs sooner.
  - 2. After the initial 60 days, delay of disclosure may be continued if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an investigator or against someone other than an investigator who engaged in misconduct or used the force.
- (b) Filed criminal charges
  - 1. When charges are filed related to an incident in which misconduct occurred or force was used, disclosure may be delayed until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea has passed.
- (c) Administrative investigations
  - 1. Disclosure may be delayed until:
    - (a) There is a determination from the investigation whether the misconduct or use of force violated law or [department/office] policy, but no longer than 180 days after the date of the [department/office]'s discovery of the misconduct or use of force or allegation of misconduct or use of force

#### 1012.11.3 NOTICE OF DELAY OF RECORDS

When there is justification for delay of disclosure of qualifying records, the Custodian of Records shall provide written notice of the reason for any delay to a requester as follows (Penal Code § 832.7):

- (a) Provide the specific basis for the determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. The notice shall also include the estimated date for the disclosure of the withheld information.
- (b) When delay is continued beyond the initial 60 days because of criminal enforcement proceedings against anyone, at 180-day intervals provide the specific basis that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding and the estimated date for disclosure.
  - 1. Information withheld shall be disclosed when the specific basis for withholding the information is resolved, the investigation or proceeding is no longer active, or no later than 18 months after the date of the incident, whichever occurs sooner, unless:
    - (a) When the criminal proceeding is against someone other than an investigator and there are extraordinary circumstances to warrant a

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continued delay due to the ongoing criminal investigation or proceeding, then the [Department/Office] must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest for prompt disclosure of records about misconduct or use of force by investigators.

In cases where an action to compel disclosure is brought pursuant to Government Code § 7923.000, the [Department/Office] may justify delay by filing an application to seal the basis for withholding if disclosure of the written basis itself would impact a privilege or compromise a pending investigation (Penal Code § 832.7(b)(8)).

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## Request for Change of Assignment

### 1013.1 PURPOSE AND SCOPE

It is the intent of the Department that all requests for change of assignment are considered equally. To facilitate the selection process, the following procedure is established whereby all such requests will be reviewed on an equal basis as assignments are made.

### 1013.2 REQUEST FOR CHANGE OF ASSIGNMENT

Personnel wishing a change of assignment are to complete a memorandum documenting the request for a new assignment that will be forwarded to the Chief Investigator.

#### 1013.2.1 PURPOSE OF MEMORANDUM

The memorandum is designed to aid employees in listing their qualifications for specific assignments. All relevant experience, education and training should be included when writing the memorandum.

All assignments an employee is interested in should be listed on the memorandum.

The memorandum will remain in effect until the end of the calendar year in which it was submitted.

Effective January 1<sup>st</sup> of each year, employees still interested in new positions will need to complete and submit a new memorandum.

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## Commendations and Awards

### 1014.1 PURPOSE AND SCOPE

This policy provides general guidelines for recognizing commendable or meritorious acts of members of the Kings County District Attorney Investigation Division and individuals from the community.

### 1014.2 POLICY

It is the policy of the Kings County District Attorney Investigation Division to recognize and acknowledge exceptional individual or group achievements, performance, proficiency, heroism and service of its members and individuals from the community through commendations and awards.

### 1014.3 COMMENDATIONS

Commendations for members of the [Department/Office] or for individuals from the community may be initiated by any [department/office] member or by any person from the community.

### 1014.4 CRITERIA

A meritorious or commendable act may include, but is not limited to:

- Superior handling of a difficult situation.
- Conspicuous bravery or outstanding performance.
- Any action or performance that is above and beyond typical duties.

#### 1014.4.1 [DEPARTMENT/OFFICE] MEMBER DOCUMENTATION

Members of the [Department/Office] should document meritorious or commendable acts. The documentation should contain:

- (a) Identifying information:
  1. For members of the [Department/Office] - name, division and assignment at the date and time of the meritorious or commendable act
  2. For individuals from the community - name, address, telephone number
- (b) A brief account of the meritorious or commendable act with report numbers, as appropriate.
- (c) The signature of the member submitting the documentation.

#### 1014.4.2 COMMUNITY MEMBER DOCUMENTATION

Documentation of a meritorious or commendable act submitted by a person from the community should be accepted in any form. However, written documentation is preferred. [Department/Office] members accepting the documentation should attempt to obtain detailed information regarding the matter, including:

- (a) Identifying information:

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1. For members of the [Department/Office] - name, division and assignment at the date and time of the meritorious or commendable act
  2. For individuals from the community - name, address, telephone number
- (b) A brief account of the meritorious or commendable act with report numbers, as appropriate.
- (c) The signature of the person submitting the documentation.

#### 1014.4.3 PROCESSING DOCUMENTATION

Documentation regarding the meritorious or commendable act of a member of the [Department/Office] should be forwarded to the appropriate Chief Investigator for his/her review. The Chief Investigator should sign and forward the documentation to the Chief Investigator for his/her review.

The Chief Investigator or the authorized designee will present the commendation to the [department/office] member for his/her signature. The documentation will then be returned to the Investigations secretary for entry into the member's personnel file.

Documentation regarding the meritorious or commendable act of an individual from the community should be forwarded to the Investigations Chief Investigator. The documentation will be signed by the Chief Investigator and forwarded to the Chief Investigator for his/her review. An appropriate venue or ceremony to acknowledge the individual's actions should be arranged. Documentation of the commendation shall be maintained in a file designated for such records.

#### **1014.5 AWARDS**

Awards may be bestowed upon members of the [Department/Office] and individuals from the community. These awards include:

- Award of Merit.
- Award of Valor.
- Lifesaving Award.
- Meritorious Conduct.

Criteria for each award and the selection, presentation and display of any award are determined by the Chief Investigator.



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## **Fitness for Duty**

### **1015.1 PURPOSE AND SCOPE**

All investigators are required to be free from any physical, emotional, or mental condition which might adversely affect the exercise of peace officer powers. The purpose of this policy is to ensure that all investigators of this department remain fit for duty and able to perform their job functions (Government Code § 1031).

### **1015.2 EMPLOYEE RESPONSIBILITIES**

- (a) It shall be the responsibility of each member of this department to maintain good physical condition sufficient to safely and properly perform essential duties of their position.
- (b) Each member of this department shall perform his/her respective duties without physical, emotional, and/or mental constraints.
- (c) During working hours, all employees are required to be alert, attentive, and capable of performing his/her assigned responsibilities.
- (d) Any employee who feels unable to perform his/her duties shall promptly notify a supervisor. In the event that an employee believes that another employee is unable to perform his/her duties, such observations and/or belief shall be promptly reported to a supervisor.

### **1015.3 SUPERVISOR RESPONSIBILITIES**

- (a) A supervisor observing an employee, or receiving a report of an employee who is perceived to be, unable to safely perform his/her duties due to a physical or mental condition shall take prompt and appropriate action in an effort to resolve the situation.
- (b) Whenever feasible, the supervisor should attempt to ascertain the reason or source of the problem and in all cases a preliminary evaluation should be made in an effort to determine the level of inability of the employee to perform his/her duties.
- (c) In the event the employee appears to be in need of immediate medical or psychiatric treatment, all reasonable efforts should be made to provide such care.
- (d) In conjunction with the Chief Investigator or employee's available supervisor a determination should be made whether or not the employee should be temporarily relieved from his/her duties.
- (e) The Chief Investigator shall be promptly notified in the event that any employee is relieved from duty.

### **1015.4 NON-WORK RELATED CONDITIONS**

Any employee suffering from a non-work related condition which warrants a temporary relief from duty may be required to use sick leave or other paid time off (PTO) in order to obtain medical treatment or other reasonable rest period.

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#### **1015.5 WORK RELATED CONDITIONS**

Any employee suffering from a work related condition which warrants a temporary relief from duty shall be required to comply with personnel rules and guidelines for processing such claims.

Upon the recommendation of the Chief Investigator or unit supervisor and concurrence of a Chief Investigator, any employee whose actions or use of force in an official capacity result in death or serious injury to another may be temporarily removed from regularly assigned duties and/or placed on paid administrative leave for the wellbeing of the employee and until such time as the following may be completed:

- (a) A preliminary determination that the employee's conduct appears to be in compliance with policy and, if appropriate.
- (b) The employee has had the opportunity to receive necessary counseling and/or psychological clearance to return to full duty.

#### **1015.6 PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS**

- (a) Whenever circumstances reasonably indicate that an employee is unfit for duty, the Chief Investigator or Chief Deputy District Attorney may serve that employee with a written order to undergo a physical and/or psychological examination in cooperation with Human Services Department to determine the level of the employee's fitness for duty. The order shall indicate the date, time and place for the examination.
- (b) The examining physician or therapist will provide the Department with a report indicating that the employee is either fit for duty or, if not, listing any functional limitations which limit the employee's ability to perform job duties (Civil Code § 56.10(c)(8)(A)). If the employee places his/her condition at issue in any subsequent or related administrative action/grievance, the examining physician or therapist may be required to disclose any and all information which is relevant to such proceeding (Civil Code § 56.10(c)(8)(B)).
- (c) In order to facilitate the examination of any employee, the Department will provide all appropriate documents and available information to assist in the evaluation and/or treatment.
- (d) All reports and evaluations submitted by the treating physician or therapist shall be part of the employee's confidential personnel file.
- (e) Any employee ordered to receive a fitness for duty examination shall comply with the terms of the order and cooperate fully with the examining physician or therapist regarding any clinical interview, tests administered or other procedures as directed. Any failure to comply with such an order and any failure to cooperate with the examining physician or therapist may be deemed insubordination and shall be subject to discipline up to and including termination.

*Fitness for Duty*

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- (f) Once an employee has been deemed fit for duty by the examining physician or therapist, the employee will be notified to resume his/her duties.

**1015.7 LIMITATION ON HOURS WORKED**

Absent emergency operations members should not work more than:

- 16 hours in one day (24 hour) period or
- 30 hours in any 2 day (48 hour) period or
- 84 hours in any 7 day (168 hour) period

Except in very limited circumstances members should have a minimum of 8 hours off between shifts. Supervisors should give consideration to reasonable rest periods and are authorized to deny overtime or relieve to off-duty status any member who has exceeded the above guidelines.

Limitations on the number of hours worked apply to shift changes, shift trades, rotation, holdover, training, general overtime and any other work assignments.

**1015.8 APPEALS**

An employee who is separated from paid employment or receives a reduction in salary resulting from a fitness for duty examination shall be entitled to an administrative appeal as outlined in the Personnel Complaints Policy.

## Meal Periods

### 1016.1 PURPOSE AND SCOPE

This policy regarding meals and breaks, insofar as possible shall conform to the policy governing all County employees that has been established by the County Administrative Officer.

#### 1016.1.1 MEAL PERIODS

Investigators shall remain on duty subject to call during meal breaks. All other employees are not on call during meal breaks unless directed otherwise by a supervisor.

The time spent for the meal period shall not exceed the authorized time allowed.

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## Lactation Break Policy

### 1017.1 PURPOSE AND SCOPE

The purpose of this policy is to provide reasonable accommodations to members desiring to express breast milk for the member's infant child (Labor Code § 1034).

### 1017.2 POLICY

It is the policy of this [department/office] to provide, in compliance with the Fair Labor Standards Act, reasonable break time and appropriate facilities to accommodate any member desiring to express breast milk for the member's nursing infant child (29 USC § 218d; Labor Code § 1030).

### 1017.3 LACTATION BREAK TIME

A rest period should be permitted each time the member has the need to express breast milk (29 USC § 218d; Labor Code § 1030). In general, lactation breaks that cumulatively total 30 minutes or less during any four-hour work period or major portion of a four-hour work period would be considered reasonable. However, individual circumstances may require more or less time. Such breaks, if feasible, should be taken at the same time as the member's regularly scheduled rest or meal periods.

While a reasonable effort will be made to provide additional time beyond authorized breaks, any such time exceeding regularly scheduled and paid break time will be unpaid (Labor Code § 1030).

Members desiring to take a lactation break shall notify the Communications Center or a supervisor prior to taking such a break. Such breaks may be reasonably delayed if they would seriously disrupt [department/office] operations (Labor Code § 1032).

Once a lactation break has been approved, the break should not be interrupted except for emergency or exigent circumstances.

### 1017.4 PRIVATE LOCATION

The [Department/Office] will make reasonable efforts to accommodate members with the use of an appropriate room or other location to express milk in private. Such room or place should be in close proximity to the member's work area and shall be other than a bathroom or toilet stall. The location must be shielded from view and free from intrusion from co-workers and the public (29 USC § 218d; Labor Code § 1031).

Members occupying such private areas shall either secure the door or otherwise make it clear to others that the area is occupied with a need for privacy. All other members should avoid interrupting a member during an authorized break, except to announce an emergency or other urgent circumstance.

Authorized lactation breaks for members assigned to the field may be taken at the nearest appropriate private area.

*Lactation Break Policy*

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**1017.5 STORAGE OF EXPRESSED MILK**

Any member storing expressed milk in any authorized refrigerated area within the [Department/Office] shall clearly label it as such and shall remove it when the member ends her shift.

**1017.5.1 STATE REQUIREMENTS**

Members have the right to request lactation accommodations. If a break time or location accommodation cannot be provided, the supervisor shall provide the member with a written response regarding the reasons for the determination (Labor Code § 1034).

Lactation rooms or other locations should comply with the prescribed feature and access requirements of Labor Code § 1031.

Members who believe that their rights have been violated under this policy or have been the subject of discrimination or retaliation for exercising or attempting to exercise their rights under this policy, are encouraged to follow the chain of command in reporting a violation, but may also file a complaint directly with the Labor Commissioner (Labor Code § 1033).

## **Payroll Record Procedures**

### **1018.1 PURPOSE AND SCOPE**

Payroll records are submitted to Investigations on a bi-weekly basis for the payment of wages.

#### **1018.1.1 RESPONSIBILITY FOR COMPLETION OF PAYROLL RECORDS**

Employees are responsible for the accurate and timely submission of payroll records for the payment of wages.

#### **1018.1.2 TIME REQUIREMENTS**

All employees are paid on a bi-weekly basis usually on Friday with certain exceptions such as holidays. Payroll records shall be completed and submitted to Investigations no later than 8:00 a.m. on the Friday morning before the end of the pay period, unless specified otherwise.

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## Overtime Compensation Requests

### 1019.1 PURPOSE AND SCOPE

It is the policy of the Department to compensate non-exempt salaried employees who work authorized overtime either by payment of wages as agreed and in effect through the Memorandum of Understanding (MOU), or by the allowance of accrual of compensatory time off. In order to qualify for either, the employee must complete and submit a Request for Overtime Payment as soon as practical after overtime is worked.

#### 1019.1.1 DEPARTMENT POLICY

Because of the nature of police work, and the specific needs of the Department, a degree of flexibility concerning overtime policies must be maintained.

Non-exempt employees are not authorized to volunteer work time to the Department. All requests to work overtime shall be approved in advance by a supervisor. If circumstances do not permit prior approval, then approval shall be sought as soon as practical during the overtime shift and in no case later than the end of shift in which the overtime is worked.

Short periods of work at the end of the normal duty day (e.g., less than one hour in duration) may be handled unofficially between the supervisor and the employee by flexing a subsequent shift schedule to compensate for the time worked rather than by submitting requests for overtime payments. If the supervisor authorizes or directs the employee to complete a form for such a period, the employee shall comply.

The individual employee may request compensatory time in lieu of receiving overtime payment, however, the employee may not exceed 480 hours of compensatory time.

### 1019.2 ACCOUNTING FOR OVERTIME WORKED

Employees are to record the actual time worked in an overtime status. In some cases, the Memorandum of Understanding provides that a minimum number of hours will be paid, (e.g., two hours for Court, four hours for outside overtime).

Employees shall notify supervisors of the necessity for overtime and obtain authorization prior to working any overtime.

#### 1019.2.1 ACCOUNTING FOR PORTIONS OF AN HOUR

When accounting for less than a full hour, time worked shall be rounded up to the nearest quarter of an hour as indicated by the following chart:

<u>TIME WORKED</u>	<u>INDICATE ON CARD</u>
1 to 15 minutes	.25
16 to 30 minutes	.50
31 to 45 minutes	.75
46 to 60 minutes	1 hour



*Overtime Compensation Requests*

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1019.2.2 VARIATION IN TIME REPORTED

Where two or more employees are assigned to the same activity, case, or court trial and the amount of time for which payment is requested varies from that reported by the other investigator, the Chief Investigator or other approving supervisor may require each employee to include the reason for the variation on the back of the overtime payment request.

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## Work Hours

### 1020.1 PURPOSE AND SCOPE

To maintain a work schedule of Investigator's within the District Attorney's Office.

It will be the discretion of the Chief Investigator to adjust shift schedules for the needs of the Department when necessary.

#### 1020.1.1 SHIFT SCHEDULE

Investigators have the choice between a 10 hour and 8 hour shift within a 24 hour day. Normally Investigator's working a 10 hour shift will work from 7:00 A.M. to 5:00 P.M. and Investigator's working an 8 hour shift will work from 8:00 A.M. to 4:00 P.M. The work hours may be adjusted by the Investigator as necessary, and with the approval of the Chief Investigator, as long as the required hours per day are worked, with the exception of the Investigator's use of sick leave, vacation and compensatory time.

Investigator's working a straight 10 or 8 hour shift does not specifically include a lunch break period. Investigator's will be allowed a lunch break each day but if required to work through lunch will not receive any compensation such as overtime or compensatory time.

Investigator's working a 10 hour shift will take either Monday or Friday off of that work week. An exception may be made with the approval of the Chief Investigator.

Investigator's will revert to an 8 hour work week when a holiday falls within that week. Investigators will also adjust their individual schedules from a 10 hour shift to an 8 hour shift as is reasonable when training or a court appearance falls on their scheduled day off, Monday or Friday.

#### 1020.1.2 SCHEDULING EMERGENCIES

The Chief Deputy District Attorney or the Chief Investigator may require investigators to revert to 8 hours shifts for a specific duration due to a major case or manpower crisis.

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## Outside Employment

### 1021.1 PURPOSE AND SCOPE

In order to avoid actual or perceived conflicts of interest for departmental employees engaging in outside employment, all employees shall obtain written approval from the Chief Investigator prior to engaging in any outside employment. Approval of outside employment shall be at the discretion of the Chief Investigator in accordance with the provisions of this policy.

#### 1021.1.1 DEFINITIONS

**Outside Employment** - Any member of this department who receives wages, compensation or other consideration of value from another employer, organization or individual not affiliated directly with this department for services, product(s) or benefits rendered. For purposes of this section, the definition of outside employment includes those employees who are self-employed and not affiliated directly with this department for services, product(s) or benefits rendered.

**Outside Overtime** - Any member of this department who performs duties or services on behalf of an outside organization, company, or individual within this jurisdiction. Such outside overtime shall be requested and scheduled directly through this department so that the Department may be reimbursed for the cost of wages and benefits.

### 1021.2 OBTAINING APPROVAL

No member of this department may engage in any outside employment without first obtaining prior written approval of the District Attorney. Failure to obtain prior written approval for outside employment or engaging in outside employment prohibited by this policy may lead to disciplinary action.

In order to obtain approval for outside employment, the employee must complete a memorandum describing the desired employment which shall be submitted to the Chief Investigator. The application will then be forwarded through channels to the District Attorney for consideration.

If approved, the employee will receive a memorandum from the District Attorney or his/her designee. Unless otherwise indicated in writing in the memorandum, the employment will be valid through the end of the calendar year in which the memorandum was created. Any employee seeking to renew outside employment shall submit a new memorandum in a timely manner.

Any employee seeking approval of outside employment, whose request has been denied, shall be provided with a written reason for the denial of outside employment at the time of the denial (Penal Code § 70(e)(3)).

#### 1021.2.1 APPEAL OF DENIAL OF OUTSIDE EMPLOYMENT

If an employee's Outside Employment Application is denied or withdrawn by the Department, the employee may file a written notice of appeal to the Chief Investigator within ten days of the date of denial.

### *Outside Employment*

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If the employee's appeal is denied, the employee may file a grievance pursuant to the procedure set forth in the current Memorandum of Understanding (MOU).

#### **1021.2.2 REVOCATION/SUSPENSION OF OUTSIDE EMPLOYMENT PERMITS**

Any outside employment permit may be revoked or suspended under the following circumstances:

- (a) Should an employee's performance at this department decline to a point where it is evaluated by a supervisor as needing improvement to reach an overall level of competency, the Chief Investigator may, at his or her discretion, revoke any previously approved outside employment permit(s). That revocation will stand until the employee's performance has been reestablished at a satisfactory level and his/her supervisor recommends reinstatement of the outside employment permit
- (b) Suspension or revocation of a previously approved outside employment permit may be included as a term or condition of sustained discipline
- (c) If, at any time during the term of a valid outside employment permit, an employee's conduct or outside employment conflicts with the provisions of department policy, the permit may be suspended or revoked
- (d) When an employee is unable to perform at a full duty capacity due to an injury or other condition, any previously approved outside employment permit may be subject to similar restrictions as those applicable to the employee's full time duties until the employee has returned to a full duty status

#### **1021.3 PROHIBITED OUTSIDE EMPLOYMENT**

Consistent with the provisions of Government Code § 1126, the Department expressly reserves the right to deny any Outside Employment Application submitted by an employee seeking to engage in any activity which:

- (a) Involves the employee's use of departmental time, facilities, equipment or supplies, the use of the Department badge, uniform, prestige or influence for private gain or advantage
- (b) Involves the employee's receipt or acceptance of any money or other consideration from anyone other than this department for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course or hours of employment or as a part of the employee's duties as a member of this department
- (c) Involves the performance of an act in other than the employee's capacity as a member of this department that may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other employee of this department
- (d) Involves time demands that would render performance of the employee's duties for this department less efficient

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Outside Employment*

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#### 1021.3.1 OUTSIDE SECURITY AND PEACE OFFICER EMPLOYMENT

Consistent with the provisions of Penal Code § 70, and because it would further create a potential conflict of interest, no member of this department may engage in any outside or secondary employment as a private security guard, private investigator or other similar private security position.

Any private organization, entity or individual seeking special services for security or traffic control from members of this department must submit a written request to the Chief Investigator in advance of the desired service. Such outside extra duty overtime assignments will be assigned, monitored and paid through the Department.

- (a) The applicant will be required to enter into an indemnification agreement prior to approval.
- (b) The applicant will further be required to provide for the compensation and full benefits of all employees requested for such outside security services.
- (c) Should such a request be approved, any employee working outside overtime shall be subject to the following conditions:
  1. The investigator(s) shall wear the departmental uniform/identification.
  2. The investigator(s) shall be subject to the rules and regulations of this department.
  3. No investigator may engage in such outside employment during or at the site of a strike, lockout, picket, or other physical demonstration of a labor dispute.
  4. Compensation for such approved outside security services shall be pursuant to normal overtime procedures.
  5. Outside security services shall not be subject to the collective bargaining process.
  6. No investigator may engage in outside employment as a peace officer for any other public agency without prior written authorization of the Chief Investigator.

#### 1021.3.2 OUTSIDE OVERTIME ARREST AND REPORTING PROCEDURE

Any employee making an arrest or taking other official police action while working in an approved outside overtime assignment shall be required to complete all related reports in a timely manner pursuant to department policy. Time spent on the completion of such reports shall be considered incidental to the outside overtime assignment.

#### 1021.3.3 SPECIAL RESTRICTIONS

Except for emergency situations or with prior authorization from the Division Commander, undercover investigators or investigators assigned to covert operations shall not be eligible to work overtime or other assignments in a uniformed or other capacity which might reasonably disclose the investigator's law enforcement status.

### *Outside Employment*

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#### **1021.4 DEPARTMENT RESOURCES**

Employees are prohibited from using any department equipment or resources in the course of or for the benefit of any outside employment. This shall include the prohibition of access to official records or databases of this department or other agencies through the use of the employee's position with this department.

##### **1021.4.1 REVIEW OF FINANCIAL RECORDS**

Employees approved for outside employment expressly agree that their personal financial records may be requested and reviewed/audited for potential conflict of interest (Government Code § 3308; Government Code § 1126). Prior to providing written approval for an outside employment position, the Department may request that an employee provide his/her personal financial records for review/audit in order to determine whether a conflict of interest exists. Failure of the employee to provide the requested personal financial records could result in denial of the off-duty work permit. If, after approving a request for an outside employment position, the Department becomes concerned that a conflict of interest exists based on a financial reason, the Department may request that the employee provide his/her personal financial records for review/audit. If the employee elects not to provide the requested records, his/her off-duty work permit may be revoked pursuant to the Revocation/Suspension of Outside Employment Permits section of this policy.

#### **1021.5 CHANGES IN OUTSIDE EMPLOYMENT STATUS**

If an employee terminates his or her outside employment during the period of a valid permit, the employee shall promptly submit written notification of such termination to the Chief Investigator through channels. Any subsequent request for renewal or continued outside employment must thereafter be processed and approved through normal procedures set forth in this policy.

Employees shall also promptly submit in writing to the Chief Investigator any material changes in outside employment including any change in the number of hours, type of duties, or demands of any approved outside employment. Employees who are uncertain whether a change in outside employment is material are advised to report the change.

#### **1021.6 OUTSIDE EMPLOYMENT WHILE ON DISABILITY**

Department members engaged in outside employment who are placed on disability leave or modified/light-duty shall inform their immediate supervisor in writing within five days whether or not they intend to continue to engage in such outside employment while on such leave or light-duty status. The immediate supervisor shall review the duties of the outside employment along with any related doctor's orders, and make a recommendation to the Chief Investigator, Chief Deputy District Attorney, and District Attorney whether such outside employment should continue.

In the event the District Attorney determines that the outside employment should be discontinued or if the employee fails to promptly notify his/her supervisor of his/her intentions regarding their work, a notice of revocation of the member's outside employment will be forwarded to the involved employee, and a copy attached to the original memorandum requesting outside employment.

Criteria for revoking the outside employment include, but are not limited to, the following:

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- (a) The outside employment is medically detrimental to the total recovery of the disabled member, as indicated by the County's professional medical advisors.
- (b) The outside employment performed requires the same or similar physical ability, as would be required of an on-duty member.
- (c) The employee's failure to make timely notice of their intentions to their supervisor.

When the disabled member returns to full duty with the Kings County District Attorney Investigation Division, a request (in writing) may be made to the Chief Investigator to restore the permit.

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# Occupational Disease and Work-Related Injury Reporting

## 1022.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance regarding the timely reporting of occupational diseases, mental health issues, and work-related injuries.

### 1022.1.1 DEFINITIONS

Definitions related to this policy include:

**Occupational disease or work-related injury** - An injury, disease, or mental health issue arising out of employment (Labor Code § 3208; Labor Code § 3208.3; Labor Code § 3212 et seq.).

## 1022.2 POLICY

The Kings County District Attorney Investigation Division will address occupational diseases and work-related injuries appropriately, and will comply with applicable state workers' compensation requirements (Labor Code § 3200 et seq.).

## 1022.3 RESPONSIBILITIES

### 1022.3.1 MEMBER RESPONSIBILITIES

Any member sustaining any occupational disease or work-related injury shall report such event as soon as practicable, but within 24 hours, to a supervisor, and shall seek medical care when appropriate (8 CCR 14300.35).

### 1022.3.2 SUPERVISOR RESPONSIBILITIES

A supervisor learning of any occupational disease or work-related injury should ensure the member receives medical care as appropriate.

Supervisors shall ensure that required documents regarding workers' compensation are completed and forwarded promptly. Any related Countywide disease- or injury-reporting protocol shall also be followed.

Supervisors shall determine whether the Major Incident Notification and Illness and Injury Prevention policies apply and take additional action as required.

### 1022.3.3 CHIEF INVESTIGATOR RESPONSIBILITIES

The Chief Investigator who receives a report of an occupational disease or work-related injury should review the report for accuracy and determine what additional action should be taken. The report shall then be forwarded to the Chief Investigator, the County's risk management entity, and the Investigations Chief Investigator to ensure any required Division of Occupational Health and Safety Administration (Cal/OSHA) reporting is made as required in the illness and injury prevention plan identified in the Illness and Injury Prevention Policy.



### *Occupational Disease and Work-Related Injury Reporting*

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#### 1022.3.4 CHIEF INVESTIGATOR RESPONSIBILITIES

The Chief Investigator shall review and forward copies of the report to the Human Services Department. Copies of the report and related documents retained by the [Department/Office] shall be filed in the member's confidential medical file.

#### 1022.4 OTHER DISEASE OR INJURY

Diseases and injuries caused or occurring on-duty that do not qualify for workers' compensation reporting shall be documented on the designated report of injury form, which shall be signed by a supervisor. A copy of the completed form shall be forwarded to the appropriate Chief Investigator through the chain of command and a copy sent to the Investigations Chief Investigator.

Unless the injury is extremely minor, this report shall be signed by the affected member, indicating that he/she desired no medical attention at the time of the report. By signing, the member does not preclude his/her ability to later seek medical attention.

#### 1022.5 SETTLEMENT OFFERS

When a member sustains an occupational disease or work-related injury that is caused by another person and is subsequently contacted by that person, his/her agent, insurance company or attorney and offered a settlement, the member shall take no action other than to submit a written report of this contact to his/her supervisor as soon as possible.

##### 1022.5.1 NO SETTLEMENT WITHOUT PRIOR APPROVAL

No less than 10 days prior to accepting and finalizing the settlement of any third-party claim arising out of or related to an occupational disease or work-related injury, the member shall provide the Chief Investigator with written notice of the proposed terms of such settlement. In no case shall the member accept a settlement without first providing written notice to the Chief Investigator. The purpose of such notice is to permit the County to determine whether the offered settlement will affect any claim the County may have regarding payment for damage to equipment or reimbursement for wages against the person who caused the disease or injury, and to protect the County's right of subrogation, while ensuring that the member's right to receive compensation is not affected.

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## Personal Appearance Standards

### 1023.1 PURPOSE AND SCOPE

In order to project uniformity and neutrality toward the public and other members of the [department/office], employees shall maintain their personal hygiene and appearance to project a professional image appropriate for this [department/office] and for their assignment.

### 1023.2 GROOMING STANDARDS

Unless otherwise stated and because deviations from these standards could present officer safety issues, the following appearance standards shall apply to all employees, except those whose current assignment would deem them not appropriate, and where the Chief Investigator has granted exception.

#### 1023.2.1 HAIR

Hairstyles of all members shall be neat in appearance.

#### 1023.2.2 MUSTACHES

A neatly trimmed mustache may be worn.

#### 1023.2.3 SIDEBURNS

Sideburns shall be trimmed and neat.

#### 1023.2.4 FACIAL HAIR

Facial hair, beards, shall be trimmed and neat.

#### 1023.2.5 FINGERNAILS

Fingernails extending beyond the tip of the finger can pose a safety hazard to investigators or others. For this reason, fingernails shall be trimmed so that no point of the nail extends beyond the tip of the finger.

### 1023.3 TATTOOS

While on-duty or representing the [Department/Office] in any official capacity, members should make every reasonable effort to conceal tattoos or other body art. At no time while the member is on-duty or representing the [Department/Office] in any official capacity shall any offensive tattoo or body art be visible. Examples of offensive tattoos include but are not limited to those that exhibit or advocate discrimination; those that exhibit gang, supremacist, or extremist group affiliation; and those that depict or promote drug use, sexually explicit acts, or other obscene material.

### 1023.4 BODY PIERCING OR ALTERATION

Body piercing or alteration to any area of the body visible in any authorized uniform or attire that is a deviation from normal anatomical features and which is not medically required is prohibited. Such body alteration includes, but is not limited to:

- (a) Tongue splitting or piercing.

*Personal Appearance Standards*

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- (b) The complete or transdermal implantation of any material other than hair replacement.
- (c) Abnormal shaping of the ears, eyes, nose or teeth
- (d) Branding or scarification.

**1023.5 EXEMPTIONS**

Members who seek cultural (e.g., culturally protected hairstyles) or other exemptions to this policy that are protected by law should generally be accommodated (Government Code § 12926). A member with an exemption may be ineligible for an assignment if the individual accommodation presents a security or safety risk. The Chief Investigator should be advised any time a request for such an accommodation is denied or when a member with a cultural or other exemption is denied an assignment based on a safety or security risk.

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## Uniform Regulations

### 1024.1 PURPOSE AND SCOPE

The uniform policy of the Kings County District Attorney Investigation Division is established to ensure that uniformed investigators will be readily identifiable to the public through the proper use and wearing of [department/office] uniforms. Employees should also refer to the following associated policies:

[Department/Office] Owned and Personal Property

Body Armor

Personal Appearance Standards

The Uniform and Equipment Specifications manual is maintained and periodically updated by the Chief Investigator or his/her designee. That manual should be consulted regarding authorized equipment and uniform specifications.

The Kings County District Attorney Investigation Division will provide uniforms for all employees required to wear them in the manner, quantity and frequency agreed upon in the respective employee group's collective bargaining agreement.

### 1024.2 WEARING AND CONDITION OF UNIFORM AND EQUIPMENT

Investigative Bureau employees wear the uniform to be identified as the law enforcement authority in society during enforcement actions. The uniform also serves an equally important purpose to identify the wearer as a source of assistance in an emergency, crisis or other time of need.

- (a) Uniform and equipment shall be maintained in a serviceable condition and shall be ready at all times for immediate use. Uniforms shall be neat, clean, and appear professionally pressed when applicable.
- (b) All Investigator's of this department shall possess and maintain at all times, a serviceable uniform and the necessary equipment to perform uniformed field duty.
- (c) Personnel shall wear only the uniform specified for their assignment.
- (d) Periodic inspections of personnel to ensure conformance to these regulations.
- (e) Uniforms are only to be worn while on duty, while in transit to or from work, for court, or at other official department functions or events.
- (f) Employees are not to purchase or drink alcoholic beverages while wearing any part of the department uniform, including the uniform pants.
- (g) Visible jewelry, other than those items listed below, shall not be worn with the uniform unless specifically authorized by the Chief Investigator or his designee.
  1. Wrist watch
  2. Wedding ring(s), class ring, or other ring of tasteful design. A maximum of one ring/set may be worn on each hand
  3. Medical alert bracelet

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Uniform Regulations*

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#### 1024.2.1 DEPARTMENT ISSUED IDENTIFICATION

The Department issues each employee an official department identification card bearing the employee's name, identifying information and photo likeness. All employees shall be in possession of their department issued identification card at all times while on duty or when carrying a concealed weapon.

- (a) Whenever on duty or acting in an official capacity representing the department, employees shall display their department issued identification in a courteous manner to any person upon request and as soon as practical.
- (b) Investigators working specialized assignments may be excused from the possession and display requirements when directed by the Chief Investigator.

#### 1024.3 INSIGNIA AND PATCHES

- (a) Shoulder Patches - The authorized shoulder patch supplied by the Department shall be attached to the sleeves of all uniform shirts and jackets.
- (b) Flag Pin - A flag pin may be worn on the uniform or civilian attire.
- (c) Badge - The department issued badge, or an authorized cloth replica, must be worn and visible at all times while in uniform.
- (d) Lapel badge - A department lapel badge may be worn on a class 1 uniform in addition to a department issued badge.

#### 1024.3.1 MOURNING BADGE

Investigations employees shall wear a black mourning band across the department badge whenever a law enforcement officer is killed in the line of duty. The following mourning periods will be observed:

- (a) An investigator of this department " From the time of death until midnight on the 14th day after the death.
- (b) An investigator from this or an adjacent county " From the time of death until midnight on the day of the funeral.
- (c) Funeral attendee " While attending the funeral of an out of region fallen officer.
- (d) National Peace Officers Memorial Day (May 15th) " From 0001 hours until 2359 hours.
- (e) As directed by the Chief Investigator.

#### 1024.4 INVESTIGATOR UNIFORM

The Kings County District Attorney's Office Bureau Of Investigations utilizes five uniform classifications to provide Investigators with direction and proper application. Each classification is specific to a scope of duty and will be dictated by a supervisor based on the unit needs.

INVESTIGATOR UNIFORM CLASSIFICATION:

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Uniform Regulations*

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**Class 1 Uniform (Business Formal)** - Class 1 uniforms is described as a formal suit consisting of a coat, dress belt, dress shoes and a tie where applicable. Class 1 uniforms should be utilized during court appearances where Investigations will knowingly provide testimony. Class 1 uniforms should additionally be utilized for special events to include funerals, dignitary security or any setting that requires formal attire.

**Class 2 Uniform (Business)** - Class 2 uniforms consist of a collard shirt, dress slacks, belt and shoes. Class 2 uniforms may be used throughout the regular work week both in the office and while conducting investigations within the field.

**Class 3 Uniform (Utility)**- Class 3 utility uniforms consists of a black polo or utility shirt, gray 5.11 or similar designed pants. Polo and utility shirts will clearly display the department badge, Investigator's name and position. An unmarked black polo or utility shirt may be substituted at times when working in the office and interaction with the public will be minimal. Officially marked polo and utility shirts should be utilized during public events including outreach. Class 3 utility uniforms may be worn throughout the work week and during field operations in conjunction with high visibly body armor.

**Class 4 Uniform (Surveillance/Undercover Operation)** - Class 4 surveillance/undercover operation uniforms consist of civilian attire that is appropriate for the given location, weather and operational circumstance. Class 4 uniforms many be any combination of civilian clothing to include a t-shirt, sweater, blue jeans or athletic shoes. Class 4 uniforms should provide concealment of an Investigator's firearm, badge or any other equipment that would unintentionally reveal an Investigator as a law enforcement officer.

**Class 5 Uniform (Field Operation)** - Class 5 field operation uniforms consist of 5.11 tactical long sleeve green shirt, 5.11 green BDU pants and boots. Uniform shirts shall be equipped with departmental shoulder patches. Class 5 uniforms will commonly be worn in conjunction high visibility body armor, helmets and other personal protective equipment. Class 5 uniforms should be used during enforcement operations, search/arrest warrant services or any other high risk operation that requires Investigators to clearly be identified as law enforcement officers.

**Friday/Casual** - On Fridays only casual wear is generally allowed for investigative staff. A neat, conservative and professional presentation shall be made to the public on these days.

(a) **Shirts, Blouses and Tops.** Casual shirts are acceptable. No tank tops, see-through tops, tube tops, backless or strapless tops. Tops will not expose the stomach or the back. Necklines shall be conservative. No offensive logos are permitted. Female employees shall wear a bra at all times.

(b) **Slack and Pants.** No shorts sweat pants or excessively baggy pants are permitted. Females shall not wear mini-skirts. Jeans are acceptable. This excludes jeans that are excessively faded, frayed, torn, tattered or decorated. An evaluation of these descriptions will be conducted by a supervisor.

(a) All employees shall wear clothing that fits properly, is clean and free of stains, and not damaged or excessively worn.

### *Uniform Regulations*

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- (b) All investigative personnel should be identifiable as a peace officer to the public by wearing the department badge and service weapon during enforcement actions.
- (c) The following items shall not be worn on duty without the authorization of their supervisor:
  - 1. Open toed sandals or thongs
  - 2. Swimsuit, tube tops, or halter-tops
  - 3. Spandex type pants or see-through clothing
  - 4. Distasteful printed slogans, buttons or pins
- (d) Variations from this order are allowed as needed when the employee's assignment or current task is not conducive to the wearing of such clothing.
- (e) No item of civilian attire may be worn on duty that would adversely affect the reputation of the Kings County District Attorney Investigation Division or the morale of the employees.

#### **1024.5 POLITICAL ACTIVITIES, ENDORSEMENTS, AND ADVERTISEMENTS**

Unless specifically authorized by the Chief Investigator, Kings County District Attorney Investigation Division employees may not wear any part of the uniform, be photographed wearing any part of the uniform, utilize a department badge, patch or other official insignia, or cause to be posted, published, or displayed, the image of another employee, or identify himself/herself as an employee of the Kings County District Attorney Investigation Division to do any of the following (Government Code §§ 3206 and 3302):

- (a) Endorse, support, oppose, or contradict any political campaign or initiative.
- (b) Endorse, support, oppose, or contradict any social issue, cause, or religion.
- (c) Endorse, support, or oppose, any product, service, company or other commercial entity.
- (d) Appear in any commercial, social, or non-profit publication, or any motion picture, film, video, public broadcast, or any website.

#### **1024.6 OPTIONAL EQUIPMENT - MAINTENANCE, AND REPLACEMENT**

- (a) Any item not purchased by the Department is considered optional and shall be purchased totally at the expense of the employee. No part of the purchase cost shall be offset by the Department.
- (b) Maintenance of optional items shall be the financial responsibility of the purchasing employee. For example, repairs due to normal wear and tear.
- (c) Replacement of optional items shall be done as follows:
  - 1. When the item is no longer functional because of normal wear and tear, the employee bears the full cost of replacement.

*Uniform Regulations*

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2. When the item is no longer functional because of damage in the course of the employee's duties, it shall be replaced following the procedures for the replacement of damaged personal property. (Policy Manual § 700)

**1024.6.1 RETIREE BADGES**

The Chief Investigator may issue identification in the form of a badge, insignia, emblem, device, label, certificate, card or writing that clearly states the person has honorably retired from the Kings County District Attorney Investigation Division. This identification is separate and distinct from the identification authorized by Penal Code § 25455 and referenced in the Retired Investigator CCW Endorsement Policy in this manual.

A badge issued to an honorably retired peace officer that is not affixed to a plaque or other memento will have the words "Honorably Retired" clearly visible on its face. A retiree shall be instructed that any such badge will remain the property of the Kings County District Attorney Investigation Division and will be revoked in the event of misuse or abuse (Penal Code § 538d).

**1024.7 UNAUTHORIZED UNIFORMS, EQUIPMENT AND ACCESSORIES**

Kings County District Attorney Investigation Division employees may not wear any uniform item, accessory or attachment unless specifically authorized in the Uniform and Equipment Specifications or by the Chief Investigator or designee.



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## Department Badges

### 1025.1 PURPOSE AND SCOPE

The Kings County District Attorney Investigation Division badge and uniform patch as well as the likeness of these items and the name of the Kings County District Attorney Investigation Division are property of the Department and their use shall be restricted as set forth in this policy.

### 1025.2 POLICY

The uniform badge shall be issued to department members as a symbol of authority and the use and display of departmental badges shall be in strict compliance with this policy. Only authorized badges issued by this department shall be displayed, carried or worn by members while on duty or otherwise acting in an official or authorized capacity.

#### 1025.2.1 FLAT BADGE

Sworn investigators, with the written approval of the Chief Investigator may purchase, at his/her own expense, a flat badge capable of being carried in a wallet. The use of the flat badge is subject to all the same provisions of departmental policy as the uniform badge.

- (a) An investigator may sell, exchange, or transfer the flat badge he/she purchased to another investigator within the Kings County District Attorney Investigation Division with the written approval of the Chief Investigator.
- (b) Should the flat badge become lost, damaged, or otherwise removed from the investigator's control, he/she shall make the proper notifications as outlined in the Policy Manual 700.
- (c) An honorably retired investigator may keep his/her flat badge upon retirement.
- (d) The purchase, carrying or display of a flat badge is not authorized for non-sworn personnel.

#### 1025.2.2 NON-SWORN PERSONNEL

Badges and departmental identification cards issued to non-sworn personnel shall be clearly marked to reflect the position of the assigned employee (e.g. Parking Control, Dispatcher).

- (a) Non-sworn personnel shall not display any department badge except as a part of his/her uniform and while on duty, or otherwise acting in an official and authorized capacity.
- (b) Non-sworn personnel shall not display any department badge or represent him/herself, on or off duty, in such a manner which would cause a reasonable person to believe that he/she is a sworn peace officer.

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Department Badges*

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#### 1025.2.3 RETIREE UNIFORM BADGE

Upon honorable retirement employees may receive, as approved by the District Attorney, his/her assigned duty badge for display purposes. It is intended that the duty badge be used only as private memorabilia as other uses of the badge may be unlawful or in violation of this policy.

#### 1025.3 UNAUTHORIZED USE

Except as required for on-duty use by current employees, no badge designed for carry or display in a wallet, badge case or similar holder shall be issued to anyone other than a current or honorably retired peace officer.

Department badges are issued to all sworn employees for official use only. The department badge, shoulder patch or the likeness thereof, or the department name shall not be used for personal or private reasons including, but not limited to, letters, memorandum, and electronic communications such as electronic mail or web sites and web pages.

The use of the badge, uniform patch and department name for all material (printed matter, products or other items) developed for department use shall be subject to approval by the Chief Investigator.

Employees shall not loan his/her department badge or identification card to others and shall not permit the badge or identification card to be reproduced or duplicated.

#### 1025.4 PERMITTED USE BY EMPLOYEE GROUPS

The likeness of the department badge shall not be used without the expressed authorization of the Chief Investigator and shall be subject to the following:

- (a) The employee associations may use the likeness of the department badge for merchandise and official association business provided they are used in a clear representation of the association and not the Kings County District Attorney Investigation Division. The following modifications shall be included:
  - 1. The text on the upper and lower ribbons is replaced with the name of the employee association.
  - 2. The badge number portion displays the acronym of the employee association.
- (b) The likeness of the department badge for endorsement of political candidates shall not be used without the expressed approval of the Chief Investigator.

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# Employee Speech, Expression and Social Networking

## 1026.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the [Department/Office].

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or investigator associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

### 1026.1.1 APPLICABILITY

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

## 1026.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Kings County District Attorney Investigation Division will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

## 1026.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the internet. Speech and expression that may negatively affect the safety of the Kings County District Attorney Investigation Division employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's family, or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Employee Speech, Expression and Social Networking*

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- Disclosing a photograph and name or address of an investigator who is working undercover.
- Disclosing the address of a fellow investigator.
- Otherwise disclosing where another investigator can be located off-duty.

#### **1026.4 PROHIBITED SPEECH, EXPRESSION, AND CONDUCT**

To meet the [department/office]'s safety, performance, and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or investigator associations, on a matter of public concern):

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation, or professionalism of the Kings County District Attorney Investigation Division or its employees.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Kings County District Attorney Investigation Division and tends to compromise or damage the mission, function, reputation, or professionalism of the Kings County District Attorney Investigation Division or its employees. Examples may include:
  1. Statements that indicate disregard for the law or the state or U.S. Constitution.
  2. Expression that demonstrates support for criminal activity.
  3. Participating in sexually explicit photographs or videos for compensation or distribution.
- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination, or illegal behavior.
- (d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the [Department/Office]. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.
- (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Kings County District Attorney Investigation Division.
- (f) Use or disclosure, through whatever means, of any information, photograph, video, or other recording obtained or accessible as a result of employment with the [Department/Office] for financial or personal gain, or any disclosure of such materials without the express authorization of the Chief Investigator or the authorized designee.
- (g) Posting, transmitting, or disseminating any photographs, video or audio recordings, likenesses or images of [department/office] logos, emblems, uniforms, badges, patches, marked vehicles, equipment, or other material that specifically identifies

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Employee Speech, Expression and Social Networking*

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the Kings County District Attorney Investigation Division on any personal or social networking or other website or web page, without the express authorization of the Chief Investigator.

Employees must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

#### 1026.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or investigator associations, employees may not represent the Kings County District Attorney Investigation Division or identify themselves in any way that could be reasonably perceived as representing the Kings County District Attorney Investigation Division in order to do any of the following, unless specifically authorized by the Chief Investigator (Government Code § 3206; Government Code § 3302):

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group or investigator associations), is affiliated with this [department/office], the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Kings County District Attorney Investigation Division.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or investigator associations, on political subjects and candidates at all times while off-duty.

However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

#### 1026.5 CONSIDERATIONS

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Chief Investigator or authorized designee should consider include:

- (a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.

# Kings County District Attorney Investigation Division

## Kings County District Attorney Bureau of Investigations Policy Manual

### *Employee Speech, Expression and Social Networking*

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- (b) Whether the speech or conduct would be contrary to the good order of the [Department/Office] or the efficiency or morale of its members.
- (c) Whether the speech or conduct would reflect unfavorably upon the [Department/Office].
- (d) Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.
- (e) Whether similar speech or conduct has been previously authorized.
- (f) Whether the speech or conduct may be protected and outweighs any interest of the [Department/Office].

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## Anti-Retaliation

### 1027.1 PURPOSE AND SCOPE

This policy prohibits retaliation against members who identify workplace issues, such as fraud, waste, abuse of authority, gross mismanagement or any inappropriate conduct or practices, including violations that may pose a threat to the health, safety or well-being of members.

This policy does not prohibit actions taken for nondiscriminatory or non-retaliatory reasons, such as discipline for cause.

These guidelines are intended to supplement and not limit members' access to other applicable remedies. Nothing in this policy shall diminish the rights or remedies of a member pursuant to any applicable federal law, provision of the U.S. Constitution, law, ordinance or memorandum of understanding.

### 1027.2 POLICY

The Kings County District Attorney Investigation Division has a zero tolerance for retaliation and is committed to taking reasonable steps to protect from retaliation members who, in good faith, engage in permitted behavior or who report or participate in the reporting or investigation of workplace issues. All complaints of retaliation will be taken seriously and will be promptly and appropriately investigated.

### 1027.3 RETALIATION PROHIBITED

No member may retaliate against any person for engaging in lawful or otherwise permitted behavior; for opposing a practice believed to be unlawful, unethical, discriminatory or retaliatory; for reporting or making a complaint under this policy; or for participating in any investigation related to a complaint under this or any other policy.

Retaliation includes any adverse action or conduct, including but not limited to:

- Refusing to hire or denying a promotion.
- Extending the probationary period.
- Unjustified reassignment of duties or change of work schedule.
- Real or implied threats or other forms of intimidation to dissuade the reporting of wrongdoing or filing of a complaint, or as a consequence of having reported or participated in protected activity.
- Taking unwarranted disciplinary action.
- Spreading rumors about the person filing the complaint or about the alleged wrongdoing.
- Shunning or unreasonably avoiding a person because he/she has engaged in protected activity.

### *Anti-Retaliation*

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#### 1027.3.1 RETALIATION PROHIBITED FOR REPORTING VIOLATIONS

An investigator shall not be retaliated against for reporting a suspected violation of a law or regulation of another investigator to a supervisor or other person in the [Department/Office] who has the authority to investigate the violation (Government Code § 7286(b)).

#### 1027.4 COMPLAINTS OF RETALIATION

Any member who feels he/she has been retaliated against in violation of this policy should promptly report the matter to any supervisor, command staff member, Chief Investigator or the County Director of Human Services.

Members shall act in good faith, not engage in unwarranted reporting of trivial or minor deviations or transgressions, and make reasonable efforts to verify facts before making any complaint in order to avoid baseless allegations. Members shall not report or state an intention to report information or an allegation knowing it to be false, with willful or reckless disregard for the truth or falsity of the information or otherwise act in bad faith.

Investigations are generally more effective when the identity of the reporting member is known, thereby allowing investigators to obtain additional information from the reporting member. However, complaints may be made anonymously. All reasonable efforts shall be made to protect the reporting member's identity. However, confidential information may be disclosed to the extent required by law or to the degree necessary to conduct an adequate investigation and make a determination regarding a complaint. In some situations, the investigative process may not be complete unless the source of the information and a statement by the member is part of the investigative process.

#### 1027.5 SUPERVISOR RESPONSIBILITIES

Supervisors are expected to remain familiar with this policy and ensure that members under their command are aware of its provisions.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring complaints of retaliation are investigated as provided in the Personnel Complaints Policy.
- (b) Receiving all complaints in a fair and impartial manner.
- (c) Documenting the complaint and any steps taken to resolve the problem.
- (d) Acknowledging receipt of the complaint, notifying the Chief Investigator via the chain of command and explaining to the member how the complaint will be handled.
- (e) Taking appropriate and reasonable steps to mitigate any further violations of this policy.
- (f) Monitoring the work environment to ensure that any member making a complaint is not subjected to further retaliation.
- (g) Periodic follow-up with the complainant to ensure that retaliation is not continuing.



### *Anti-Retaliation*

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- (h) Not interfering with or denying the right of a member to make any complaint.
- (i) Taking reasonable steps to accommodate requests for assignment or schedule changes made by a member who may be the target of retaliation if it would likely mitigate the potential for further violations of this policy.

#### **1027.6 COMMAND STAFF RESPONSIBILITIES**

The Chief Investigator should communicate to all supervisors the prohibition against retaliation.

Command staff shall treat all complaints as serious matters and shall ensure that prompt actions take place, including but not limited to:

- (a) Communicating to all members the prohibition against retaliation.
- (b) The timely review of complaint investigations.
- (c) Remediation of any inappropriate conduct or condition and instituting measures to eliminate or minimize the likelihood of recurrence.
- (d) The timely communication of the outcome to the complainant.

#### **1027.7 WHISTLE-BLOWING**

California law protects members who (Labor Code § 1102.5; Government Code § 53296 et seq.):

- (a) Report a violation of a state or federal statute or regulation to a government or law enforcement agency, including the member's supervisor or any other member with the authority to investigate the reported violation.
- (b) Provide information or testify before a public body if the member has reasonable cause to believe a violation of law occurred.
- (c) Refuse to participate in an activity that would result in a violation of a state or federal statute or regulation.
- (d) File a complaint with a local agency about gross mismanagement or a significant waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. Members shall exhaust all available administrative remedies prior to filing a formal complaint.
- (e) Are family members of a person who has engaged in any protected acts described above.

Members are encouraged to report any legal violations through the chain of command (Labor Code § 1102.5).

Members who believe they have been the subject of retaliation for engaging in such protected behaviors should promptly report it to a supervisor. Supervisors should refer the complaint to the Assistant Chief Investigator for investigation pursuant to the Personnel Complaints Policy.

*Anti-Retaliation*

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**1027.7.1 DISPLAY OF WHISTLE-BLOWER LAWS**

The [Department/Office] shall display a notice to members regarding their rights and responsibilities under the whistle-blower laws, including the whistle-blower hotline maintained by the Office of the Attorney General (Labor Code § 1102.8).

**1027.8 RECORDS RETENTION AND RELEASE**

The Investigator shall ensure that documentation of investigations is maintained in accordance with the established records retention schedules.

**1027.9 TRAINING**

The policy should be reviewed with each new member.

All members should receive periodic refresher training on the requirements of this policy.

# Kings County District Attorney Bureau of Investigations Policy Manual

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## **Attachments**

Kings County District Attorney  
Investigation Division

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**Commission on Peace Officer Standards and  
Training Hate Crimes Model Policy 2019.pdf**



# POST HATE CRIMES MODEL POLICY



COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

2019

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## FOREWORD

Hate Crimes (i.e. crimes motivated by bias) convey a message of terror and exclusion, not just to the immediate victims but to entire communities. They often target victims who are least able to defend themselves. They cause trauma that is more extreme and longer lasting than similar crimes committed for other motivations. They can spark retaliatory crimes, escalating the cycle of crime and violence. If not addressed professionally and thoroughly they may undermine public confidence in law enforcement.

The 2018 California State Auditor's Report, titled "Hate Crimes in California," found that California law enforcement has not taken adequate action to identify, report, and respond to hate crimes. The report found that agencies did not properly identify some hate crimes, and underreported or misreported hate crimes as well. The report also noted that hate crimes are on the rise in California, increasing in both 2015 and 2016.

California Penal Code (CPC) 422.87 added new language and requirements to any newly created or updated agency hate crimes policy. Effective January 1, 2019, any local law enforcement agency that updates an existing hate crimes policy, or adopts a new one, shall include the content of the model policy framework provided in this document as well as any revisions or additions to the model policy in the future.

These guidelines are the primary elements that law enforcement executives are now required to incorporate into their hate crimes policy if an agency creates a new hate crimes policy or updates an existing one. The guidelines are designed for department-wide application and are intended to reflect a values-driven "top-down" process. They are intended to assist with the development and delivery of training and ensure proper identification, investigation, and reporting of hate crimes within each agency's jurisdiction.



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# POLICY GUIDELINES

## GUIDELINE #1

*Develop the foundation for the agency's hate crimes policy.*

The law enforcement executive is responsible for providing leadership, communicating organizational values to the department and the community, paying attention to hate crime trends and current events that could trigger hate incidents and/or hate crimes in the community, and providing education and training to establish the foundation for the agency's hate crimes policy. Employees' ability to respond appropriately to hate crimes and hate incidents is maximized when the executive effectively establishes and communicates the foundational values of the organization.

## GUIDELINE #2

*Develop a hate crimes policy for the agency.*

- I. An agency's hate crimes policy shall include the statutory definition of a hate crime, and its policy and programs should minimally include the following:
  - A. Response
  - B. Training
  - C. Planning and Prevention
  - D. Reporting

The law enforcement executive is responsible for the initial development of the policy and should be actively involved in its implementation. See the appendix for the exemplar "Message from the Agency Chief Executive".

## GUIDELINE #3

*Develop expertise to identify and investigate hate crimes.*

The law enforcement executive is responsible for ensuring that the agency possesses expertise to identify and investigate hate crimes, as well as ensuring compliance with state and federal

reporting and public information requirements. Agencies should assign identified personnel to appropriate training to develop expertise and knowledge to investigate hate crimes.

Hate crimes are low-frequency events with high-risk consequences for the agency and community. Agencies shall provide a checklist to first responders to provide direction for the investigation of all hate crimes as mandated by CPC 422.87.

## GUIDELINE #4

*Develop and implement cooperative hate crimes plans with other law enforcement agencies.*

- I. Coordinate cooperative efforts among regional, state, federal, and tribal law enforcement agencies to share information and training, and develop strategies to prevent hate crime activity.
- II. Develop and/or participate in law enforcement intelligence networks to enhance the agency's ability to anticipate potential hate crime targets. This interaction should include sharing intelligence information with other jurisdictions and cooperative investigations, arrests, and prosecutions if appropriate.

## GUIDELINE #5

*Develop and implement cooperative hate crime plans with the community and related governmental and non-governmental organizations, as appropriate.*

- I. Collaborate with the community, including human relations/civil rights organizations, advocacy groups, service organizations, neighborhood associations, religious institutions, local schools and colleges, to do the following:
  - Develop a network to build rapport with community groups

- 
- Develop a protocol for response to hate crimes
  - Obtain witness and victim cooperation
  - Provide support services to victims
  - Collect demographic information about specific communities
  - Identify hate crime trends based upon current events and activity (hate crimes and/or hate incidents)
  - Identify periods of increased vulnerability based on significant dates and events for affected communities
- II. Law enforcement should identify and seek out cultural diversity training and information from/about specific communities within its jurisdiction (immigrant, Muslim, Arab, LGBTQ, Black or African American, Jewish, Sikh, disability, etc.) to strengthen agency awareness.

## **GUIDELINE #6**

*Conduct an annual assessment of the agency's hate crimes policy and its ongoing implementation.*

The assessment should include:

- I. A review to ensure compliance with the POST Hate Crimes Model Policy and California law.
- II. A review and analysis of the agency's data collection, policy, and annual mandated reporting of hate crimes.
- III. A review and updating of the agency's hate crimes brochure to ensure compliance with CPC 422.92.
- IV. A review of any existing or available data or reports, including the annual California Attorney General's report on hate crimes, in preparation for, and response to, future hate crime trends.



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# MINIMUM LEGAL REQUIREMENTS FOR AN AGENCY'S HATE CRIMES POLICY

## **CPC 13519.6, effective January 1, 2005, minimally requires:**

1. A message from the law enforcement agency's chief executive officer to the agency's officers and staff concerning the importance of hate crime laws and the agency's commitment to enforcement.
2. The definition of "hate crime" in Penal Code section 422.55.
3. References to hate crime statutes including Penal Code section 422.6.
4. A title-by-title specific protocol that agency personnel are required to follow, including, but not limited to, the following:
  - a. Preventing and preparing for likely hate crimes by, among other things, establishing contact with persons and communities who are likely targets, and forming and cooperating with community hate crime prevention and response networks.
  - b. Responding to reports of hate crimes, including reports of hate crimes committed under the color of authority.
  - c. Accessing assistance, by, among other things, activating the Department of Justice hate crimes rapid response protocol when necessary.
  - d. Providing victim assistance and follow-up, including community follow-up.
  - e. Reporting

## **CPC 422.87, effective January 1, 2019, states and minimally requires:**

Each local law enforcement agency may adopt a hate crimes policy. Any local law enforcement agency that updates an existing hate crimes policy or adopts a new one shall include, but not limited to, the following:

1. The definitions in Penal Code sections 422.55 and 422.56.
2. The content of the model policy framework that the Commission on Peace Officer Standards and Training developed pursuant to Section 13519.6 (above) and any content that the commission may revise or add in the future, including any policy, definitions, response and reporting responsibilities, training resources, and planning and prevention methods.
3. Information regarding bias motivation
  - a. For the purposes of this paragraph, "bias motivation" is a preexisting negative attitude toward actual or perceived characteristics referenced in Section 422.55. Depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender.
    - i. In recognizing suspected disability-bias hate crimes, the policy shall advise officers to consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as, but not limited to, dislike of persons who arouse

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fear or guilt, a perception that persons with disabilities are inferior and therefore “deserving victims,” a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations.

- ii. In recognizing suspected disability-bias hate crimes, the policy also shall advise officers to consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in anti-disability bias. This includes, but is not limited to, if a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons such as inebriated persons or persons with perceived disabilities different than those of the victim, those circumstances could be evidence that the perpetrator’s motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity.
- b. Information regarding the general underreporting of hate crimes and the more extreme underreporting of anti-disability and anti-gender hate crimes *and a plan for the agency to remedy this underreporting* (emphasis added).
- c. A protocol for reporting suspected hate crimes to the Department of Justice pursuant to Penal Code section 13023.
- d. A checklist of first responder responsibilities, including, but not limited to, being sensitive to effects of the crime on the victim, determining whether any additional resources are needed on the scene to assist the victim or whether to refer the victim to appropriate community and legal services, and giving the victims and any interested persons the agency’s hate crimes brochure, as required by Section 422.92.
- e. A specific procedure for transmitting and periodically retransmitting the policy and any related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed.
- f. The title or titles of the officer or officers responsible for assuring that the department has a hate crime brochure as required by Section 422.92 and ensuring that all officers are trained to distribute the brochure to all suspected hate crime victims and all other interested persons.
- g. A requirement that all officers be familiar with the policy and carry out the policy at all times unless directed by the chief, sheriff, director, or other chief executive of the law enforcement agency or other command-level officer to whom the chief executive officer formally delegates this responsibility.
- h. Any local law enforcement agency that updates an existing hate crimes policy or adopts a new hate crimes policy may include any of the provisions of a model hate crime policy and other relevant documents developed by the International Association of Chiefs of Police that are relevant to California and consistent with this chapter.

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# MODEL POLICY FRAMEWORK

## Purpose

This model policy framework is designed to assist in identifying and handling crimes motivated by hate or other bias toward individuals and groups with legally defined protected characteristics, to define appropriate steps for assisting victims, and to provide a guide to conducting related investigations. It outlines the general policy framework for prevention, response, accessing assistance, victim assistance and follow up, and reporting as related to law enforcement's role in handling hate crimes. It also serves as a declaration that hate crimes are taken seriously and demonstrates how law enforcement agencies may best use its resources to investigate and solve an offense, in addition to building community trust and increasing police legitimacy.

## Policy

It is the policy of this agency to safeguard the rights of all individuals irrespective of their disability, gender, nationality, race or ethnicity, religion, sexual orientation, and/or association with a person or group with one or more of these actual or perceived characteristics. Any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by hate or bias should be viewed very seriously and given high priority.

This agency will employ necessary resources and vigorous law enforcement action to identify and arrest hate crime perpetrators. Also, recognizing the particular fears and distress typically suffered by victims, the potential for reprisal and escalation of violence, and the far-reaching negative consequences of these crimes on the community, this agency should attend to the security and related concerns of the immediate victims and their families as feasible.

The agency policy shall include a requirement that all officers be familiar with the policy and carry out the policy at all times unless directed by the chief, sheriff, director, or other chief executive of the law enforcement agency or other command-level officer to whom the chief executive officer formally delegates this responsibility.

The agency policy shall provide a specific procedure for transmitting and periodically retransmitting the policy and any related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed.

## Response, Victim Assistance and Follow-up

### *Initial response*

First responding officers should know the role of all department personnel as they relate to the agency's investigation of hate crimes and/or incidents. Responding officers should evaluate the need for additional assistance, and working with supervision and/or investigations, access needed assistance if applicable. Responding officers should ensure the crime scene is properly protected, preserved and processed.

At the scene of a suspected hate or bias crimes, officers should take preliminary actions deemed necessary, to include, but not limited to, the following:

1. Use agency checklist (per CPC 422.87) to assist in the investigation of any hate crime (see appendix, page 21, for exemplar checklist based on the Los Angeles Police Department Hate Crimes Supplemental Report with the agency's permission).

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2. Stabilize the victim(s) and request medical attention when necessary.
  3. Ensure the safety of victims, witnesses, and perpetrators.
    - a. Issue a Temporary Restraining Order (if applicable).
  4. Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
  5. Ensure that the crime scene is properly protected, preserved, and processed and that all physical evidence of the incident is removed as soon as possible after the offense is documented. If evidence of an inflammatory nature cannot be physically removed, the property owner should be contacted to ensure that it is removed or covered up as soon as possible. Agency personnel should follow-up to ensure that this is accomplished in a timely manner.
  6. Collect and photograph physical evidence or indicators of hate crimes such as:
    - a. Hate literature.
    - b. Spray paint cans.
    - c. Threatening letters.
    - d. Symbols used by hate groups.
  7. Identify criminal evidence on the victim.
  8. Request the assistance of translators or interpreters when needed to establish effective communication with witnesses, victims, or others as appropriate.
  9. Conduct a preliminary investigation and record pertinent information including, but not limited to:
    - a. Identity of suspected perpetrator(s).
    - b. Identity of witnesses, including those no longer at the scene.
    - c. The offer of victim confidentiality per Government Code (GC) 5264.
    - d. Prior occurrences, in this area or with this victim.
    - e. Statements made by suspects; exact wording is critical.
    - f. The victim's protected characteristics and determine if bias was a motivation "in whole or in part"<sup>1</sup> in the commission of the crime.
      1. "Bias motivation" is a preexisting negative attitude toward actual or perceived characteristics referenced in Section 422.55. Depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender.
        - (a) In recognizing suspected disability-bias hate crimes, the policy shall advise officers to consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as, but not limited to, dislike of persons

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<sup>1</sup>See Appendix, page 15, for definition

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who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore “deserving victims,” a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations.

(b) In recognizing suspected disability-bias hate crimes, the policy also shall advise officers to consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in anti-disability bias. This includes, but is not limited to, if a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons such as inebriated persons or persons with perceived disabilities different than those of the victim, those circumstances could be evidence that the perpetrator’s motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity.

10. Adhere to CPC 422.93, which protects hate crime victims and witnesses from being reported to federal immigration authorities if they have not committed any crime under state law.
11. Provide information regarding immigration remedies available to victims of crime. (U-Visa, T-Visa, S-Visa, etc.).
12. Provide the agency’s Hate Crimes Brochure (per CPC 422.92) if asked, if necessary or per policy (if applicable).
13. Utilize proper techniques for interviewing people with disabilities and being aware of and providing appropriate accommodations (such as ADA standards, Braille, visuals, translators for the deaf or hard of hearing, etc.).
14. Report any suspected multi-mission extremist crimes to the agency Terrorism Liaison Officer (TLO), or assigned designee, and direct the TLO/ designee to send the data to the Joint Regional Information Exchange System.

### *Investigation*

Investigators at the scene of or while performing follow-up investigation on a suspected hate or bias crimes (or hate incident if agency policy requires it) should take all actions deemed necessary, including, but not limited to, the following:

1. Consider typologies of perpetrators of hate crimes and incidents, including but not limited to thrill, reactive/defensive, and mission (hard core).
2. Utilize investigative techniques and methods to handle hate crimes or hate incidents in a professional manner.
3. Utilize proper techniques for interviewing people with disabilities and being aware of and providing appropriate accommodations (such as ADA standards, Braille, visuals, translators for the deaf or hard of hearing, etc.).
4. Fully investigate any report of hate crime committed under the color of authority per CPC 422.6 and CPC 13519.6.

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5. Collect and photograph physical evidence or indicators of hate crimes such as:
    - a. Hate literature.
    - b. Spray paint cans.
    - c. Threatening letters.
    - d. Symbols used by hate groups.
    - e. Desecration of religious symbols, objects, or buildings.
  6. Request the assistance of translators or interpreters when needed to establish effective communication.
  7. Conduct a preliminary investigation and record information regarding:
    - a. Identity of suspected perpetrator(s).
    - b. Identity of witnesses, including those no longer at the scene.
    - c. Offer of victim confidentiality per GC 5264.
    - d. Prior occurrences, in this area or with this victim.
    - e. Statements made by suspects; exact wording is critical.
    - f. Document the victim's protected characteristics.
  8. Provide victim assistance and follow-up.
  9. Canvass the area for additional witnesses.
  10. Examine suspect's social media activity for potential evidence of bias motivation.
  11. Coordinate the investigation with agency, state, and regional intelligence operations. These sources can provide the investigating officer with an analysis of any patterns, organized hate groups, and suspects potentially involved in the offense.
  12. Coordinate the investigation with the crime scene investigation unit (if applicable) or other units of the agency.
  13. Determine if the incident should be classified as a hate crime.
  14. Take steps to ensure appropriate assistance is provided to hate crime victim(s), including the following measures:
    - a. Contact the victim periodically to determine whether he/she is receiving adequate and appropriate assistance.
    - b. Provide ongoing information to the victim about the status of the criminal investigation.
    - c. Provide the victim and any other interested person the brochure on hate crimes per CPC 422.92 and information on any local advocacy groups (if asked).
  15. Report any suspected multi-mission extremist crimes to the agency TLO, or assigned designee, and direct the TLO or designee to send the data to the Joint Regional Information Exchange System.
  16. Coordinate with other law enforcement agencies in the area to assess patterns of hate crimes and/or hate incidents (if directed by policy), and determine if organized hate groups are involved.

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## *Supervision*

The supervisor shall confer with the initial responding officer(s) and ensure that necessary preliminary actions have been taken. The supervisor shall request any appropriate personnel necessary to accomplish the following:

1. Provide immediate assistance to the crime victim by:
  - a. Expressing the law enforcement agency's official position on the importance of these cases and the measures that will be taken to apprehend the perpetrators.
  - b. Expressing the department's interest in protecting victims' anonymity (confidentiality forms GC 6254) to the extent possible. Allow the victim to convey his/her immediate concerns and feelings.
  - c. Identifying individuals or agencies that may provide victim assistance and support. Local victim assistance resources may include family members or close acquaintances, clergy or departmental chaplain, as well as community service agencies that provide shelter, food, clothing, child care, or other related services (per CPC 422.92).
2. Ensure that all relevant facts are documented on an incident and/ or arrest report and make an initial determination as to whether the incident should be classified as a hate crime for federal and state bias-crimes reporting purposes.
3. Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
4. In cases of large-scale hate crime waves, or in circumstances where the potential exists for subsequent hate crimes or incidents, consider directing resources to protect vulnerable sites (such as assigning an officer at specific locations that could become targets).
5. Ensure hate crimes are properly reported, including reporting to the Department of Justice, pursuant to CPC 13023.
6. Ensure adherence to CPC 422.93, which protects hate crime victims and witnesses from being reported to federal immigration authorities if they have not committed any crime under state law. Supervisors should also be aware of the immigration remedies available to victims of crime. (U-Visa, T-Visa, S-Visa, etc.)
7. Respond to and investigate any reports of hate crimes committed under the color of authority.
8. Provide appropriate assistance, including activating the California Department of Justice hate crime rapid response protocol if necessary. For information see the California Department of Justice webpage or use following link: <https://oag.ca.gov/sites/all/files/agweb/pdfs/civilrights/AG-Rapid-Response-Team-Protocol-2.pdf>
9. Report or ensure any suspected multi-mission extremists crimes are reported to the agency TLO, or assigned designee, and direct the TLO/ designee to send the data to the Joint Regional Information Exchange System.
10. Make a final determination as to whether the incident should be classified as a hate crime.

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## Training

All staff, including dispatch, desk personnel, volunteers, records, support staff, officers, supervisors, and managers shall be properly trained on the department's hate crimes policy. The agency will follow all legislatively mandated training requirements.

POST offers training and video courses to assist law enforcement in the identification, investigation, documentation and reporting of hate crimes. These courses provide officers with information and skills necessary to effectively identify, investigate, document and report hate crimes. Various training programs include the history and definitions of hate crimes, recognition of hate groups, international terrorism, legal considerations, victims' considerations, initial response duties, victim interviewing and care, suspect identification and interrogation, evidence identification, report writing, the role of law enforcement, investigative strategies, intelligence collection, supervisory roles, community relations, media relations and local program training development, and other topics such as proper use of computer systems and methods for reporting. POST also maintains an extensive array of training videos on applicable topics such as working with those with mental illness and intellectual disabilities, hate crimes, and working with minority communities.

For more information on POST training opportunities and available videos, visit the POST website at [www.post.ca.gov](http://www.post.ca.gov). In conjunction with POST training opportunities, trainers may utilize other state and federal agencies that offer training courses, such as the U.S. Department of Justice.

## Planning and Prevention

The general underreporting of hate crimes is an identified issue in California. Underreporting is caused by victims not reporting hate crimes or hate incidents due to a number of factors, including fear of reprisal and the belief that law enforcement will not properly investigate them. A report by the State Auditor in 2018 determined that California law enforcement has not taken adequate action to identify, report and respond to hate crimes. There is also an extreme underreporting of anti-disability and anti-gender hate crimes. The agency's plan to remedy this underreporting *shall be inserted into the policy* (emphasis added).

In order to facilitate the recommendations contained within this policy, it is strongly recommended that agencies build and strengthen relationships with the community, engage in dialogue, and provide education to the community about this policy. Agency personnel are also encouraged to learn about the inherent issues concerning their communities in relation to hate crimes. Assigned personnel should perform the following:

1. Meet with residents in target communities to allay fears; emphasize the agency's concern over this and related incidents; reduce the potential for counter-violence; and provide safety, security, and crime prevention information. Cultural diversity education and immersion programs (if available) could facilitate this process.
2. Provide direct and referral assistance to the victim and his/her family.
3. Conduct public meetings on hate crime threats and violence in general.
4. Establish relationships with formal community-based organizations and leaders.
5. Expand, where appropriate, preventive programs such as hate, bias, and crime reduction seminars for school children.



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6. Review the Attorney General's latest opinion on hate crime statistics and targets in order to prepare and plan for future crimes, specifically for Arab/Middle Eastern and Islamic communities.<sup>2</sup>
  7. Provide orientation of and with communities of specific targeted victims such as immigrants, Muslims, Arabs, LGBTQ, Black or African-American, Jewish, Sikh, disabled persons, etc.

Hate crimes are not only a crime against the targeted victim(s) but also have impacts on the victim's family and community. Working constructively with segments of this larger community after such crimes is essential to help reduce fears, stem possible retaliation, prevent additional hate crimes, and encourage any other previously victimized individuals to step forward and report such crimes. This is particularly important if an upward trend has been identified in these crimes.

Although hate incidents are not criminal events, they can be indicators of, or precursors to, hate crimes. Most California law enforcement agencies do not track hate incidents. It is recommended that hate incidents be investigated and documented, if directed by policy, as part of the overall planning to prevent hate crime.

Tracking social media is also another identified area to find indicators of, or precursors to, hate crimes. It is recommended that agencies assign personnel to find, evaluate and monitor public social media sources to identify possible suspects in reported hate crimes, or to determine suspects or suspect groups in future hate crimes or hate incidents affecting the identified individuals, groups or communities that may be victimized, and planned hate-based events.

### *Release of Information*

Agencies should have procedure and/or policy on public disclosure of hate crimes. Establishing a relationship with stakeholders, before any incident occurs, to develop a network and protocol for disclosure would assist greatly in any disclosure.

The benefit of public disclosure of hate crime incidents includes:

1. Dissemination of correct information.
2. Assurance to affected communities or groups that the matter is being properly and promptly investigated.
3. The ability to request information regarding the commission of the crime(s) from the victimized community.

Agencies should provide the supervisor, public information officer, or designee with information that can be responsibly reported to the media. When appropriate, the law enforcement media spokesperson should reiterate that the hate crimes will not be tolerated, will be taken seriously, and will be prosecuted to the full extent of the law.

Agencies are encouraged to consider the following when releasing information to the public regarding hate crimes and hate incidents that have been reported within the jurisdiction:

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<sup>2</sup>As described in CPC 13519.6(b)(8)

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1. Informing community organizations in a timely manner when a community group has been the target of a hate crime.
  2. Informing the community of the impact of these crimes on the victim, the victim's family, and the community, and the assistance and compensation available to victims.
  3. Informing the community regarding hate crime law and the legal rights of, and the remedies available to, victims of hate crimes.
  4. Providing the community with on-going information regarding hate crime and/or hate incidents (if policy requires it).

## Reporting

The agency policy shall require development of a procedure for data collection, documentation, and mandated reporting requirements. The agency shall:

1. Ensure that hate crimes are properly investigated, documented and reported.
2. During documentation, ensure hate crimes are flagged properly to allow for required reporting to the California Department of Justice. This is typically indicated by the title/penal code section identifying the report as a hate crime. Some agencies have added a check box specifically indicating a hate crime that could, if required by the agency policy, require a secondary review by an investigator/detective, supervisor or other identified party. It is the agency executive's responsibility to determine the form of documentation and type of indicators on crime reports.
3. The agency head or their designee (identified in the agency policy) should make a final determination as to whether the incident should be classified as a hate crime by the agency.
4. Agencies shall develop procedures to comply with legally mandated reporting, including the California Department of Justice, pursuant to CPC 13023.

## Checklist for the agency's policy creation

- Message from the law enforcement's agency's chief executive is included
  - The updated existing policy or newly adopted policy includes the content of the model policy framework from POST.
  - Definition of "hate crime" included from:
    - CPC 422.55
    - CPC 422.56
    - CPC 422.6
  - Title by title specific protocol regarding:
    - Prevention
      - Is contact is established with identified persons and/or communities who are likely targets?
      - Have we formed and/or are we cooperating with hate crime prevention and response networks?
      - Has a plan for the agency to remedy underreporting of hate crimes and the more extreme underreporting of anti-disability and anti-gender hate crimes been created?
    - Response
      - Requirement that all hate crimes be properly investigated and supervised
      - Requirement that any hate crimes committed under the color of authority are investigated
    - Accessing Assistance
      - Information provided for activating the Department of Justice hate crime rapid response protocol when necessary
    - Victim assistance and follow-up
    - Reporting
      - Protocol for reporting suspected hate crimes to the Department of Justice per CPC 13023
    - Training
      - Has a checklist for first responders been created and provided personnel (see exemplar officer checklist in appendix)
        - Does the checklist include first responder responsibilities include:
          - Determining the need for additional resources if necessary?
          - Referral information for appropriate community and legal services?
          - The requirement to provide the agency's hate crimes brochure per CPC 422.92?
        - Information regarding bias motivation from CPC 422.87
        - Information regarding the general underreporting of hate crimes and the more extreme underreporting of anti-disability and anti-gender hate crimes
- Definitions of terms used in the policy are listed
- Specific procedure for transmitting and periodically retransmitting the policy and any related orders to officers is included.
  - Procedure shall include a simple and immediate way for officers to access the policy in the field when needed
- Title or titles of the officer or officers responsible for assuring the department has a hate crime brochure (per CPC 422.92) and ensuring that all officers are trained to distribute the brochure to all suspected hate crime victims and all other interested persons.
- A requirement that all officers be familiar with the policy and carry out the policy at all times unless directed by the law enforcement chief executive or the chief executive's designee.



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# APPENDIX

## Definitions and Laws

In accordance with CPC sections 422.55, 422.56, 422.6, and 422.87, for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

### *Hate crime*

“Hate crime” means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

- (1) Disability.
- (2) Gender.
- (3) Nationality.
- (4) Race or ethnicity.
- (5) Religion.
- (6) Sexual orientation.
- (7) Association with a person or group with one or more of these actual or perceived characteristics.

(b) “Hate crime” includes, but is not limited to, a violation of Section 422.6.

“Association with a person or group with these actual or perceived characteristics” Includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of “hate crime” under paragraphs 1 to 6, inclusive, of CPC 422.55 subdivision (a).

**Note:** A “hate crime” need not be motivated by hate but may be motivated by any bias against a protected characteristic.

### *Hate Speech*

The First Amendment to the U.S. Constitution protects most speech, even when it is disagreeable, offensive, or hurtful. The following types of speech are generally not protected: fighting words, true threats, perjury, blackmail, incitement to lawless action, conspiracy and solicitation to commit any crime.

### *Hate incident*

A hate incident is an action or behavior motivated by hate or bias but legally protected by the First Amendment right to freedom of expression. Examples of hate incidents include:

- Name-calling
- Insults and epithets
- Distributing hate material in public places
- Displaying hate material on your own property

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## ***Bias Motivation***

Bias motivation is a preexisting negative attitude toward actual or perceived characteristics referenced in Section 422.55. Depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender.

## ***Disability Bias***

In recognizing suspected disability-bias hate crimes, officers should consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as, but not limited to, dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore "deserving victims," a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations.

In recognizing suspected disability-bias hate crimes, officers should consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in anti-disability bias. This includes, but is not limited to, if a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons such as inebriated persons or persons with perceived disabilities different than those of the victim, those circumstances could be evidence that the perpetrator's motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity.

## ***Disability***

Disability includes mental disability and physical disability as defined in GC 12926, regardless of whether those disabilities are temporary, permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.

## ***Gender***

Gender means sex and includes a person gender identity and gender expression. Gender expression means a person's gender-related appearance and behavior, whether or not stereotypically associated with the persons assigned sex at birth. A person's gender identity and gender related appearance and behavior, whether or not stereotypically associated with the person's assigned sex at birth.

## ***In Whole or In Part***

"In whole or in part because of" means that the bias motivation must be a cause in fact of the offense whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that crime would not have been committed but for the actual or perceived characteristic.

## ***Nationality***

Nationality includes citizenship, country of origin, and national origin.

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***Race or Ethnicity***

Race or ethnicity includes ancestry, color, and ethnic background.

***Religion***

Religion includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

***Sexual orientation***

Sexual orientation means heterosexuality, homosexuality, or bisexuality.

***Victim***

Victim includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public





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## Statutes and Legal Requirements

Items listed in this section include sections from the California Penal Code (CPC), Welfare and Institutions Code (WI) and Government Code (GC).

### *Definitions*

CPC 422.55 - Provides general definition of hate crimes in California.

CPC 422.56- Provides definitions of terms included in hate crimes statutes.

GC 12926- Disability-related definitions applicable to some hate crime statutes.

## Felonies

### *Hate Crimes*

CPC 422.7 - Commission of a crime for the purpose of interfering with another's exercise of civil rights.

### *Related Crimes*

CPC 190.2(a)(16) - Homicide penalties related to certain hate crime related acts.

CPC 190.03(a) - Homicide penalties related to certain hate crime related acts.

CPC 288(b)(2) - Sexual assault of dependent person by caretaker

CPC 368(b) - Dependent adult abuse generally - may apply as disability-related hate crime.

CPC 594.3 - Vandalism of places of worship.

CPC 11412 - Causing or attempting to cause other to refrain from exercising religion by threat.

CPC 11413 - Arson or destructive device at place of worship.

## Misdemeanors

### *Hate Crimes*

CPC 422.6 - Use of force, threats, or destruction of property to interfere with another's exercise of civil rights.

CPC 422.77 - Violation of civil order (Bane Act) protecting the exercise of civil rights

### *Related Crimes*

CPC 302 - Disorderly conduct during an assemblage of people gathered for religious worship at a tax-exempt place of worship.

CPC 538(c) - Unauthorized insertion of advertisements in newspapers and redistribution to the public.

CPC 640.2 - Placing handbill, notice of advertisement on a consumer product or product packaged without authorization.

CPC 11411 - Terrorism of owner or occupant of real property. Placement or display of sign, symbol, or other physical impression without authorization, engagement in pattern of conduct, or burning or desecration of religious symbols.

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## Enhancements

**CPC 190.2(a)(16)** - Special circumstances imposing the Death Penalty or Life Without Possibility of Parole, if the victim was intentionally killed because of sexual orientation, gender, or disability.

**CPC 190.3** - Special circumstances imposing LWOP if the victim was intentionally killed because of sexual orientation, gender, or disability.

**CPC 422.75** - Penalty for felony committed because of victim's race, color, religion, nationality, country or origin, ancestry, disability, or sexual orientation shall be enhanced one, two, or three years in prison, if the person acts alone; and two, three, or four years if the person commits the act with another.

**CPC 1170.8** - Enhancement for robbery or assault at a place of worship.

**CPC 1170.85(b)** - Felony assault or battery enhancement due to age or disability.

## Reporting

**CPC 13023**- Requirement for law enforcement agencies to report hate crime data to DOJ.

**WI 15630** – Elder and Dependent Adult Abuse Mandated Reporting (may apply in disability-related hate crimes).

## Training and Policy Requirements

**CPC 422.87** - Hate crimes policy adoption and update requirements (AB 1985, Effective January 1, 2019).

**CPC 13519.6** - Defines hate crime training requirements for peace officers.

**CPC 13519.41** - Training requirements on sexual orientation and gender identity-related hate crimes for peace officers and dispatchers (AB 2504, Effective January 1, 2019).

## Miscellaneous Provisions

**CPC 422.78** - Responsibility for prosecution of stay away order violations.

**CPC 422.86** - Public policy regarding hate crimes.

**CPC 422.89** - Legislative intent regarding violations of civil rights and hate crimes

**CPC 422.92** - Hate crimes victims brochure requirement for law enforcement agencies.

**CPC 422.93** - Protection of victims and witnesses from being reported to immigration authorities.

**GC 6254** - Victim confidentiality.

# HATE CRIME CHECKLIST

Page \_\_\_\_\_ of \_\_\_\_\_

<b>VICTIM</b>	<p style="text-align: center;"><b><u>Victim Type:</u></b></p> <p><input type="checkbox"/> <b>Individual</b>                  Legal name (Last, First): _____                  Other Names used (AKA): _____</p> <p><input type="checkbox"/> <b>School, business or organization</b>                  Name: _____                  Type: _____  <i>(e.g., non-profit, private, public school)</i>                  Address: _____</p> <p><input type="checkbox"/> <b>Faith-based organization</b>                  Name: _____                  Faith: _____                  Address: _____</p>	<p style="text-align: center;"><b><u>Target of Crime (Check all that apply):</u></b></p> <p><input type="checkbox"/> Person    <input type="checkbox"/> Private property    <input type="checkbox"/> Public property</p> <p><input type="checkbox"/> Other _____</p> <p style="text-align: center;"><b><u>Nature of Crime (Check all that apply):</u></b></p> <p><input type="checkbox"/> Bodily injury                      <input type="checkbox"/> Threat of violence</p> <p><input type="checkbox"/> Property damage</p> <p><input type="checkbox"/> Other crime: _____</p> <p>Property damage - estimated value _____</p>
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<b>BIAS</b>	<p style="text-align: center;"><b><u>Type of Bias</u></b>  <b>(Check all characteristics that apply):</b></p> <p><input type="checkbox"/> Disability</p> <p><input type="checkbox"/> Gender</p> <p><input type="checkbox"/> Gender identity/expression</p> <p><input type="checkbox"/> Sexual orientation</p> <p><input type="checkbox"/> Race</p> <p><input type="checkbox"/> Ethnicity</p> <p><input type="checkbox"/> Nationality</p> <p><input type="checkbox"/> Religion</p> <p><input type="checkbox"/> Significant day of offense  <i>(e.g., 9/11, holy days)</i></p> <p><input type="checkbox"/> Other: _____</p> <p>Specify disability (be specific):                  _____                  _____</p>	<p style="text-align: center;"><b><u>Actual or Perceived Bias – Victim’s Statement:</u></b></p> <p><input type="checkbox"/> Actual bias [Victim actually has the indicated characteristic(s)].</p> <p><input type="checkbox"/> Perceived bias [Suspect believed victim had the indicated characteristic(s)].  <i>If perceived, explain the circumstances in narrative portion of Report.</i></p> <hr/> <p style="text-align: center;"><b><u>Reason for Bias:</u></b></p> <p><b>Do you feel you were targeted based on one of these characteristics?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Explain in narrative portion of Report.</i></p> <p><b>Do you know what motivated the suspect to commit this crime?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Explain in narrative portion of Report.</i></p> <p><b>Do you feel you were targeted because you associated yourself with an individual or a group?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Explain in narrative portion of Report.</i></p> <p><b>Are there indicators the suspect is affiliated with a Hate Group (i.e., literature/tattoos)?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Describe in narrative portion of Report.</i></p> <p><b>Are there Indicators the suspect is affiliated with a criminal street gang?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Describe in narrative portion of Report.</i></p>
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	<p style="text-align: center;"><b><u>Bias Indicators (Check all that apply):</u></b></p> <p><input type="checkbox"/> Hate speech                      <input type="checkbox"/> Acts/gestures                      <input type="checkbox"/> Property damage                      <input type="checkbox"/> Symbol used</p> <p><input type="checkbox"/> Written/electronic communication                      <input type="checkbox"/> Graffiti/spray paint                      <input type="checkbox"/> Other: _____</p> <p><i>Describe with exact detail in narrative portion of Report.</i></p>
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<b>HISTORY</b>	<p style="text-align: center;"><b><u>Relationship Between Suspect &amp; Victim:</u></b></p> <p>Suspect known to victim?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p>Nature of relationship: _____</p> <p>Length of relationship: _____</p> <p><i>If Yes, describe in narrative portion of Report</i></p>	<p><input type="checkbox"/> Prior reported incidents with suspect? Total # _____</p> <p><input type="checkbox"/> Prior unreported incidents with suspect? Total # _____</p> <p>Restraining orders?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><i>If Yes, describe in narrative portion of Report</i></p> <p>Type of order: _____    Order/Case# _____</p>
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<b>WEAPONS</b>	<p>Weapon(s) used during incident?    <input type="checkbox"/> Yes    <input type="checkbox"/> No    Type: _____</p> <p>Weapon(s) booked as evidence?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p>Automated Firearms System (AFS) Inquiry attached to Report?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
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# HATE CRIME CHECKLIST

Page \_\_\_\_ of \_\_\_\_

<b>EVIDENCE</b>	Witnesses present during incident? <input type="checkbox"/> Yes <input type="checkbox"/> No	Statements taken? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Evidence collected? <input type="checkbox"/> Yes <input type="checkbox"/> No	Recordings: <input type="checkbox"/> Video <input type="checkbox"/> Audio <input type="checkbox"/> Booked
	Photos taken? <input type="checkbox"/> Yes <input type="checkbox"/> No	Suspect identified: <input type="checkbox"/> Field ID <input type="checkbox"/> By photo
	Total # of photos: _____ D#: _____ Taken by: _____ Serial #: _____	<input type="checkbox"/> Known to victim

<b>OBSERVATIONS</b>	<b><u>VICTIM</u></b>	<b><u>SUSPECT</u></b>
	<input type="checkbox"/> Tattoos <input type="checkbox"/> Shaking <input type="checkbox"/> Unresponsive <input type="checkbox"/> Crying <input type="checkbox"/> Scared <input type="checkbox"/> Angry <input type="checkbox"/> Fearful <input type="checkbox"/> Calm <input type="checkbox"/> Agitated <input type="checkbox"/> Nervous <input type="checkbox"/> Threatening <input type="checkbox"/> Apologetic <input type="checkbox"/> Other observations: _____	<input type="checkbox"/> Tattoos <input type="checkbox"/> Shaking <input type="checkbox"/> Unresponsive <input type="checkbox"/> Crying <input type="checkbox"/> Scared <input type="checkbox"/> Angry <input type="checkbox"/> Fearful <input type="checkbox"/> Calm <input type="checkbox"/> Agitated <input type="checkbox"/> Nervous <input type="checkbox"/> Threatening <input type="checkbox"/> Apologetic <input type="checkbox"/> Other observations: _____

**ADDITIONAL QUESTIONS (Explain all boxes marked "Yes" in narrative portion of report):**

Has suspect ever threatened you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has suspect ever harmed you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does suspect possess or have access to a firearm?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are you afraid for your safety?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you have any other information that may be helpful?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Resources offered at scene:**  Yes  No Type: \_\_\_\_\_

<b>MEDICAL</b>	<b><u>Victim</u></b>	<b><u>Suspect</u></b>	
	<input type="checkbox"/>	<input type="checkbox"/>	Declined medical treatment
	<input type="checkbox"/>	<input type="checkbox"/>	Will seek own medical treatment
	<input type="checkbox"/>	<input type="checkbox"/>	Received medical treatment
Authorization to Release Medical Information, Form 05.03.00, signed? <input type="checkbox"/> Yes <input type="checkbox"/> No			<b>Paramedics at scene?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No Unit # _____ Name(s)/ID #: _____ Hospital: _____ Jail Dispensary: _____ Physician/Doctor: _____ Patient #: _____


Officer (Name/Rank)	Date
Officer (Name/Rank)	Date
Supervisor Approving (Name/Rank)	Date

Kings County District Attorney  
Investigation Division

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**2021-DLE-03 Information Bulletin.pdf**

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Acting Chief</p> 	<p><b>INFORMATION BULLETIN</b></p>	
<p><i>Subject:</i></p> <p><b>Assembly Bill (AB) 1506 Definitions and Law Enforcement Agency's Notification Responsibility</b></p>	<p><i>No.</i></p> <p>2021-DLE-03</p>	<p><i>Contact for information:</i></p> <p>John D. Marsh, Acting Chief Division of Law Enforcement (916) 210-6300</p>
	<p><i>Date:</i></p> <p>6/24/2021</p>	

**TO: ALL DISTRICT ATTORNEYS, CHIEFS OF POLICE, SHERIFFS, AND STATE LAW ENFORCEMENT AGENCIES**

Effective July 1, 2021, pursuant to AB 1506, the Department of Justice (DOJ) is required to investigate “incidents of an officer-involved shooting resulting in the death of an unarmed civilian.” (Gov. Code, § 12525.3, subd. (b)(1).) The following is DOJ’s understanding of the terms used in this statute, and is to be used as guidance for all law enforcement partners in determining whether a case falls within the ambit of AB 1506. These definitions are meant to apply *only* in the context of AB 1506, and these terms may have different meanings in other contexts or in different statutes.

Notwithstanding these definitions, DOJ may elect to assume jurisdiction in cases where jurisdiction is unclear, or based on other extenuating circumstances, as determined by the Attorney General. (See Cal. Const., art V, § 13 [Attorney General is “chief law officer of the State” and has a duty “to see that the laws of the State are uniformly and adequately enforced”].)

1. “Officer-involved”

A shooting is “officer-involved” if the death to the unarmed civilian is caused by a California peace officer, within the meaning of Penal Code section 830, acting under color of authority. All shootings committed by officers while on duty are officer-involved shootings. Shootings committed by officers while off-duty are considered officer-involved shootings only if the officer is acting under color of authority.

Officers are acting under “color of authority” when they are performing an act that is made possible only because they are clothed with the authority of law, or when they are acting under pretense of law. Conversely, officers are not acting under “color of authority” when they commit private acts in furtherance of personal pursuits. Shootings by correctional officers as defined in Penal Code section 830.55 are excluded.

2. “Shooting”

A “shooting” is the discharge of a metal projectile by a firearm. A “firearm” is a “device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.” (Pen. Code, § 16520.) A “shooting” does not include incidents involving

the use of electronic control devices, stun guns, BB, pellet, air, gas-powered guns, or weapons that discharge rubber bullets or beanbags.

3. “Unarmed civilian”

An “unarmed civilian” is “anyone who is not in possession of a deadly weapon.” (Gov. Code, § 12525.3, subd. (a)(2).)

4. “Possession”

A civilian is in “possession” if the weapon is under the civilian’s dominion and control at the time of the shooting. Possession usually requires that the weapon is available for use. Where a civilian attempts to take control of an officer’s firearm, the civilian is not in possession unless the officer loses control of the firearm.

5. “Deadly weapon”

“‘Deadly weapon’ includes, but is not limited to, any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum, ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles.” (Gov. Code, § 12525.3, subd. (a)(1).) All firearms, and BB/pellet guns, even if unloaded or inoperable, are deadly weapons.

Objects that have a legitimate non-weapon purposes are considered deadly weapons only when, based on all the circumstances, they are actually being used in a manner likely to produce death or great bodily injury. The following are examples of objects that have been considered a deadly weapon when used in that manner: knives, box cutters, screwdrivers, bottles, chains, automobiles, rocks, razor blades, and iron bars.

Replica firearms are not considered deadly weapons unless they are used in some particular manner likely to produce death or great bodily injury (e.g., as a bludgeon).

6. “Death”

Death occurs when “[a]n individual ... has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem[.]” (Health & Saf. Code, § 7180.) DOJ may assume responsibility for cases where death appears to be imminent.

### **Law Enforcement Agency’s (LEA) Notification Responsibility**

Effective July 1, 2021, immediately notify the DOJ when the LEA has an incident of an officer-involved shooting resulting in the death of an unarmed civilian. When situations arise and it is undetermined if the civilian was unarmed, a notification to DOJ is still requested. The Los Angeles Regional Criminal Information Clearinghouse (LA CLEAR) will be the central point of contact for all officer-involved shooting incident notifications: **(800) 522-5327**.

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**Statutes and Legal Requirements.pdf**



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## Statutes and Legal Requirements

Items listed in this section include sections from the California Penal Code (CPC), Welfare and Institutions Code (WI) and Government Code (GC).

### *Definitions*

CPC 422.55 - Provides general definition of hate crimes in California.

CPC 422.56- Provides definitions of terms included in hate crimes statutes.

GC 12926- Disability-related definitions applicable to some hate crime statutes.

## Felonies

### *Hate Crimes*

CPC 422.7 - Commission of a crime for the purpose of interfering with another's exercise of civil rights.

### *Related Crimes*

CPC 190.2(a)(16) - Homicide penalties related to certain hate crime related acts.

CPC 190.03(a) - Homicide penalties related to certain hate crime related acts.

CPC 288(b)(2) - Sexual assault of dependent person by caretaker

CPC 368(b) - Dependent adult abuse generally - may apply as disability-related hate crime.

CPC 594.3 - Vandalism of places of worship.

CPC 11412 - Causing or attempting to cause other to refrain from exercising religion by threat.

CPC 11413 - Arson or destructive device at place of worship.

## Misdemeanors

### *Hate Crimes*

CPC 422.6 - Use of force, threats, or destruction of property to interfere with another's exercise of civil rights.

CPC 422.77 - Violation of civil order (Bane Act) protecting the exercise of civil rights

### *Related Crimes*

CPC 302 - Disorderly conduct during an assemblage of people gathered for religious worship at a tax-exempt place of worship.

CPC 538(c) - Unauthorized insertion of advertisements in newspapers and redistribution to the public.

CPC 640.2 - Placing handbill, notice of advertisement on a consumer product or product packaged without authorization.

CPC 11411 - Terrorism of owner or occupant of real property. Placement or display of sign, symbol, or other physical impression without authorization, engagement in pattern of conduct, or burning or desecration of religious symbols.

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## Enhancements

**CPC 190.2(a)(16)** - Special circumstances imposing the Death Penalty or Life Without Possibility of Parole, if the victim was intentionally killed because of sexual orientation, gender, or disability.

**CPC 190.3** - Special circumstances imposing LWOP if the victim was intentionally killed because of sexual orientation, gender, or disability.

**CPC 422.75** - Penalty for felony committed because of victim's race, color, religion, nationality, country or origin, ancestry, disability, or sexual orientation shall be enhanced one, two, or three years in prison, if the person acts alone; and two, three, or four years if the person commits the act with another.

**CPC 1170.8** - Enhancement for robbery or assault at a place of worship.

**CPC 1170.85(b)** - Felony assault or battery enhancement due to age or disability.

## Reporting

**CPC 13023**- Requirement for law enforcement agencies to report hate crime data to DOJ.

**WI 15630** – Elder and Dependent Adult Abuse Mandated Reporting (may apply in disability-related hate crimes).

## Training and Policy Requirements

**CPC 422.87** - Hate crimes policy adoption and update requirements (AB 1985, Effective January 1, 2019).

**CPC 13519.6** - Defines hate crime training requirements for peace officers.

**CPC 13519.41** - Training requirements on sexual orientation and gender identity-related hate crimes for peace officers and dispatchers (AB 2504, Effective January 1, 2019).

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Investigation Division

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**Hate Crime Checklist.pdf**

# HATE CRIME CHECKLIST

Page \_\_\_\_\_ of \_\_\_\_\_

<b>VICTIM</b>	<p style="text-align: center;"><b><u>Victim Type:</u></b></p> <p><input type="checkbox"/> <b>Individual</b>                  Legal name (Last, First): _____                  Other Names used (AKA): _____</p> <p><input type="checkbox"/> <b>School, business or organization</b>                  Name: _____                  Type: _____  <i>(e.g., non-profit, private, public school)</i>                  Address: _____</p> <p><input type="checkbox"/> <b>Faith-based organization</b>                  Name: _____                  Faith: _____                  Address: _____</p>	<p style="text-align: center;"><b><u>Target of Crime (Check all that apply):</u></b></p> <p><input type="checkbox"/> Person    <input type="checkbox"/> Private property    <input type="checkbox"/> Public property</p> <p><input type="checkbox"/> Other _____</p> <p style="text-align: center;"><b><u>Nature of Crime (Check all that apply):</u></b></p> <p><input type="checkbox"/> Bodily injury                      <input type="checkbox"/> Threat of violence</p> <p><input type="checkbox"/> Property damage</p> <p><input type="checkbox"/> Other crime: _____</p> <p>Property damage - estimated value _____</p>
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<b>BIAS</b>	<p style="text-align: center;"><b><u>Type of Bias</u></b>  <b>(Check all characteristics that apply):</b></p> <p><input type="checkbox"/> Disability</p> <p><input type="checkbox"/> Gender</p> <p><input type="checkbox"/> Gender identity/expression</p> <p><input type="checkbox"/> Sexual orientation</p> <p><input type="checkbox"/> Race</p> <p><input type="checkbox"/> Ethnicity</p> <p><input type="checkbox"/> Nationality</p> <p><input type="checkbox"/> Religion</p> <p><input type="checkbox"/> Significant day of offense  <i>(e.g., 9/11, holy days)</i></p> <p><input type="checkbox"/> Other: _____</p> <p>Specify disability (be specific):                  _____                  _____</p>	<p style="text-align: center;"><b><u>Actual or Perceived Bias – Victim’s Statement:</u></b></p> <p><input type="checkbox"/> Actual bias [Victim actually has the indicated characteristic(s)].</p> <p><input type="checkbox"/> Perceived bias [Suspect believed victim had the indicated characteristic(s)].  <i>If perceived, explain the circumstances in narrative portion of Report.</i></p> <p style="text-align: center;"><b><u>Reason for Bias:</u></b></p> <p><b>Do you feel you were targeted based on one of these characteristics?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Explain in narrative portion of Report.</i></p> <p><b>Do you know what motivated the suspect to commit this crime?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Explain in narrative portion of Report.</i></p> <p><b>Do you feel you were targeted because you associated yourself with an individual or a group?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Explain in narrative portion of Report.</i></p> <p><b>Are there indicators the suspect is affiliated with a Hate Group (i.e., literature/tattoos)?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Describe in narrative portion of Report.</i></p> <p><b>Are there Indicators the suspect is affiliated with a criminal street gang?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Describe in narrative portion of Report.</i></p>
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	<p style="text-align: center;"><b><u>Bias Indicators (Check all that apply):</u></b></p> <p><input type="checkbox"/> Hate speech                      <input type="checkbox"/> Acts/gestures                      <input type="checkbox"/> Property damage                      <input type="checkbox"/> Symbol used</p> <p><input type="checkbox"/> Written/electronic communication                      <input type="checkbox"/> Graffiti/spray paint                      <input type="checkbox"/> Other: _____</p> <p><i>Describe with exact detail in narrative portion of Report.</i></p>
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<b>HISTORY</b>	<p style="text-align: center;"><b><u>Relationship Between Suspect &amp; Victim:</u></b></p> <p>Suspect known to victim?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p>Nature of relationship: _____</p> <p>Length of relationship: _____</p> <p><i>If Yes, describe in narrative portion of Report</i></p>	<p><input type="checkbox"/> Prior reported incidents with suspect? Total # _____</p> <p><input type="checkbox"/> Prior unreported incidents with suspect? Total # _____</p> <p>Restraining orders?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><i>If Yes, describe in narrative portion of Report</i></p> <p>Type of order: _____    Order/Case# _____</p>
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<b>WEAPONS</b>	<p>Weapon(s) used during incident?    <input type="checkbox"/> Yes    <input type="checkbox"/> No    Type: _____</p> <p>Weapon(s) booked as evidence?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p>Automated Firearms System (AFS) Inquiry attached to Report?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
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# HATE CRIME CHECKLIST

Page \_\_\_\_ of \_\_\_\_

<b>EVIDENCE</b>	Witnesses present during incident? <input type="checkbox"/> Yes <input type="checkbox"/> No	Statements taken? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Evidence collected? <input type="checkbox"/> Yes <input type="checkbox"/> No	Recordings: <input type="checkbox"/> Video <input type="checkbox"/> Audio <input type="checkbox"/> Booked
	Photos taken? <input type="checkbox"/> Yes <input type="checkbox"/> No	Suspect identified: <input type="checkbox"/> Field ID <input type="checkbox"/> By photo
	Total # of photos: _____ D#: _____ Taken by: _____ Serial #: _____	<input type="checkbox"/> Known to victim

<b>OBSERVATIONS</b>	<b><u>VICTIM</u></b>	<b><u>SUSPECT</u></b>
	<input type="checkbox"/> Tattoos <input type="checkbox"/> Shaking <input type="checkbox"/> Unresponsive <input type="checkbox"/> Crying <input type="checkbox"/> Scared <input type="checkbox"/> Angry <input type="checkbox"/> Fearful <input type="checkbox"/> Calm <input type="checkbox"/> Agitated <input type="checkbox"/> Nervous <input type="checkbox"/> Threatening <input type="checkbox"/> Apologetic <input type="checkbox"/> Other observations: _____	<input type="checkbox"/> Tattoos <input type="checkbox"/> Shaking <input type="checkbox"/> Unresponsive <input type="checkbox"/> Crying <input type="checkbox"/> Scared <input type="checkbox"/> Angry <input type="checkbox"/> Fearful <input type="checkbox"/> Calm <input type="checkbox"/> Agitated <input type="checkbox"/> Nervous <input type="checkbox"/> Threatening <input type="checkbox"/> Apologetic <input type="checkbox"/> Other observations: _____

**ADDITIONAL QUESTIONS (Explain all boxes marked "Yes" in narrative portion of report):**

Has suspect ever threatened you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has suspect ever harmed you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does suspect possess or have access to a firearm?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are you afraid for your safety?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you have any other information that may be helpful?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Resources offered at scene:**  Yes  No Type: \_\_\_\_\_

<b>MEDICAL</b>	<b><u>Victim</u></b>	<b><u>Suspect</u></b>	<b>Paramedics at scene?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No Unit # _____
	<input type="checkbox"/>	<input type="checkbox"/>	Declined medical treatment
	<input type="checkbox"/>	<input type="checkbox"/>	Will seek own medical treatment
	<input type="checkbox"/>	<input type="checkbox"/>	Received medical treatment
Authorization to Release Medical Information, Form 05.03.00, signed? <input type="checkbox"/> Yes <input type="checkbox"/> No			Name(s)/ID #: _____ Hospital: _____ Jail Dispensary: _____ Physician/Doctor: _____ Patient #: _____

Officer (Name/Rank)	Date
Officer (Name/Rank)	Date
Supervisor Approving (Name/Rank)	Date

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**Supplemental Hate Crime Report.pdf**

**Hate incident (No Crime Committed)**

**Hate Crime (422.6 PC, 51.7 CC, 52.1 CC)**

**VICTIM**

**VICTIM TYPE**

**Individual**

Legal name (Last, First):  
 \_\_\_\_\_

Date of Birth	Age	Sex	Race

**School, business or organization**

Name: \_\_\_\_\_

Type: \_\_\_\_\_  
 (e.g., non-profit, private, public school)

**Faith-based organization**

Name: \_\_\_\_\_

Faith: \_\_\_\_\_

**Other**

Name: \_\_\_\_\_

Type: \_\_\_\_\_

Address: \_\_\_\_\_

Date and time of incident:  
 \_\_\_\_\_

Location of incident:  
 \_\_\_\_\_

Date and time of report:  
 \_\_\_\_\_

Location of report:  
 \_\_\_\_\_

Agency Case #:  
 \_\_\_\_\_

**NATURE OF CALL FOR SERVICE (check all that apply)**

Crime against persons

Crime against property

Gang activity

Other \_\_\_\_\_

**BIAS**

**TYPE OF BIAS**

*(Check all characteristics that apply)*

- Disability
- Gender
- Gender identity/expression
- Sexual orientation
- Race
- Ethnicity
- Nationality
- Religion
- Significant day of offense  
 (e.g., 9/11, holy days)
- Association with a person or group with  
 one or more of these characteristics  
 (actual or perceived)
- Other: \_\_\_\_\_

**ACTUAL OR PERCEIVED BIAS – VICTIM’S STATEMENT**

- Actual bias [Victim has the indicated characteristic(s)].
- Perceived bias [Suspect believed victim had the indicated characteristic(s)].

**REASON FOR BIAS:**

Do you feel you were targeted based on one of these characteristics?

Yes     No

Do you know what motivated the suspect to commit this crime?

Yes     No

Do you feel you were targeted because you associated yourself with an individual or a group?

Yes     No

Are there indicators the suspect is affiliated with a Hate Group (i.e., literature/tattoos)?

Yes     No

Are there Indicators the suspect is affiliated with a criminal street gang?

Yes     No

**BIAS INDICATORS (CHECK ALL THAT APPLY):**

- Hate speech
- Acts/gestures
- Property damage
- Symbol used
- Written/electronic communication
- Graffiti/spray paint
- Other: \_\_\_\_\_

**HISTORY**

<b>SUSPECT INFORMATION</b>				<b>RELATIONSHIP BETWEEN SUSPECT &amp; VICTIM</b>			
Legal name (Last, First): _____				Suspect known to victim: <input type="checkbox"/> Yes <input type="checkbox"/> No			
Other Names used (AKA): _____				Nature of relationship: _____			
Date of Birth	Age	Sex	Race	Length of relationship: _____			
Relationship to Victim: _____				<input type="checkbox"/> Prior reported incidents with suspect: <i>Total #</i> _____ <input type="checkbox"/> Prior unreported incidents with suspect: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown			

**WEAPONS/FORCE**

Weapon(s) used during incident?  Yes  No Type: \_\_\_\_\_

Force used during incident?  Yes  No Type: \_\_\_\_\_

**EVIDENCE**

Witnesses present during incident?  Yes  No Statements taken?  Yes  No

Evidence collected?  Yes  No Recordings:  Video  Audio  Booked

Photos taken?  Yes  No Suspect identified:  Field ID  By photo/video  Known

**RESOURCES**

Resources offered at scene:  Yes  No

Marsy's Law Handout  Hate Crimes Brochure  Other: \_\_\_\_\_

**MEDICAL**

Victim	Suspect	
<input type="checkbox"/>	<input type="checkbox"/>	Declined medical treatment
<input type="checkbox"/>	<input type="checkbox"/>	Will seek own medical treatment
<input type="checkbox"/>	<input type="checkbox"/>	Received medical treatment
<input type="checkbox"/>	<input type="checkbox"/>	Injuries observed

Completed by	Date
Name/Title/ID number	



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