

**VENTURA COUNTY SHERIFF'S OFFICE  
PROFESSIONAL STANDARDS BUREAU**



**INTERNAL AFFAIRS INVESTIGATION MANUAL**

## **Law Enforcement Oath of Honor**

**On my honor**

**I will never betray my badge,**

**my integrity, my character**

**or the public trust.**

**I will always have**

**the courage to hold myself**

**and others accountable for our actions.**

**I will always uphold the constitution,**

**my community, and the agency I serve.**

## MISSION

*As Sheriff of Ventura County, it is my responsibility to ensure that my office enforces the law fairly and impartially with respect for each person's dignity. An element of that role is to investigate objectively all Department and citizen complaints as expeditiously as possible. These investigations must be done in order to get to the truth of the matter at hand.*

**Bill Ayub, Sheriff**

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## **Introduction and Purpose**

This manual was prepared to assist first-line supervisors and others who may be charged with the investigation of citizens' complaints and administrative internal investigations involving sworn and non-sworn law enforcement personnel. It is intended as a walk-through, but should not replace input from management and the agency's counsel.

### **Statement of Purpose**

The goal of an internal affairs investigation is to insure that the integrity of the department is maintained through a system of internal discipline where objectivity, fairness and justice are assured by intensive, impartial investigations and review.

It is hoped that this manual, together with impartial investigations, will help determine real or potential causes of problems relating to human relations and remedy identified deficiencies; to insure proper corrective action is taken when appropriate; and, to protect personnel from unwarranted criticism when they perform their duties in an approved manner. Such procedures are intended to do the following:

- Clear those innocent of misconduct.
- Establish the fault of wrongdoers.
- Facilitate prompt and just disciplinary action.
- Reveal faulty practices or procedures.

Working familiarity with the Public Safety Officers' Procedural Bill of Rights Act and applicable decisional law is essential, and a copy of the act as it existed as of November 2011, is part of this manual.

## Agency Obligation to Investigate Employee Misconduct

The obligation of a law enforcement agency to investigate alleged or suspected employee misconduct stems from several sources. For example Penal Code 832.5 provides:

*(a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.*

The oath of office taken by officials of law enforcement agencies obliges them to enforce all laws and agency rules and regulations governing employee misconduct. In addition, the failure to investigate and correct subordinate employee misconduct can provide the basis for removal of an official from office or constitute grounds for civil liability.

In carrying out an agency's duty to investigate complaints of employee misconduct, agency officials conducting an administrative investigation have the legal right to ask employees, under pain of discipline, any questions which are **narrowly, specifically,** and **directly** related to the employee's performance of his or her official duties as a peace officer. An employee who fails or refuses to answer such narrow, specific and direct questions concerning the performance of his or her duties may be disciplined for insubordination.

As a rule, no constitutional protections against self-incrimination exist in administrative investigations. However, any incriminating statements, which are the product of such compulsion, are inadmissible in criminal proceedings against the same employee. Statements obtained in violation of rights secured by Government Code 3300-3311 might similarly be inadmissible in an administrative disciplinary proceeding.

## Administrative Investigations

The Department administrative investigations may be conducted by an investigator assigned to the Professional Standards Bureau, a supervisor within the employee's division, or a combination of the two. In any case where a department's investigation could lead to "discipline," i.e., any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment." (Government Code 3303), the investigation is administrative in nature and must be conducted in a manner consistent with provisions of the Public Safety Officers Procedural Bill of Rights Act, (Government Code 3300) and other applicable statutory and decisional law. The guarantees of the bill of rights apply to "All peace officers as defined in 830.1 and subdivisions (a) and (b) of 830.2 of the Penal Code."and "All persons employed by the state of California and designated by law as peace officers." Government Code 3301.

[CLICK HERE FOR VENTURA COUNTY SHERIFF'S POLICY MANUAL](#)

## **Internal Affairs Formal Investigations Procedures**

A complaint, both citizen and department-initiated, will be classified as formal investigation based on the allegation, if sustained, would seemingly result in discipline of a Letter of Written Reprimand or higher. These complaints will be investigated by a sergeant assigned to Internal Affairs.

### **Complaint Received**

The following will give you the detailed sequence of events that the investigating officer should follow when investigating an internal affairs complaint:

Once you receive the complaint to investigate you need to start a log. This log will be used to chronologically detail the investigation of the complaint, starting with when you receive the complaint.

The log is to be used in every investigation to document all contacts or attempts to contact and dates in which portions of the investigation were completed. It is important to accurately show the times you did things and how long you took to complete each part of the investigation.

Example:

1. Date/Time - Received complaint
2. Date/Time- Reviewed complaint
3. Date/Time - Attempted to call complainant, no answer
4. Date/Time - Called Deputy Doe, will contact VCDSA
5. Date/Time - Contacted complainant, will come on (date)
6. Date/Time - Report or exhibit obtained-from xyz, P.D.
7. ETC.

The log shows diligence in the investigation and is evidence of your efforts, and is also used administratively to track I.A. costs for reimbursement (SB90).

### ***Read the complaint!***

Determine the specifics of the complaint. Make sure you truly know what the complainant is saying and what the allegation(s) are. The complaint memorandum from the Professional Standards captain will indicate whether the complaint is a Formal or a Divisional investigation. This distinction is important because the two types of investigations are handled differently. The following instructions will guide you for all Formal investigations. Refer to the section titled Divisional Investigations for guidance in performing divisional investigations.

## ***Set up interviews***

Decide whether to interview the named employee or the complainant first. Barring unforeseen circumstances, it is better to interview the complainant first. This will help you understand the basis for the complaint, and the circumstances surrounding it. You are not obligated to immediately call the named employee and tell them you have received a complaint; it is up to you when you notify them.

Always attempt to conduct the interviews at a location where you are comfortable and are free from distractions. The Sheriff's Professional Standards interview room is available for use. Only as a last resort should you go to a complainant for an interview. However, be reasonable and accommodating.

## **The Interviews**

### **Tape/Digital recording**

1. Tape/Digitally record every interview. Do not interview without it.
2. The tape/digital recorder should be turned on prior to the employee admonishment. The tape/digital recorder should be on during the interview and turned off only after the concluding admonishment has been read and acknowledged by the named employee. There may be times during an interview when the named employee or his representative will request a break. The recording may be stopped with the appropriate time notation, and reason. The recording should be started again when the parties are ready. The investigator should articulate the time the recording was resumed. You do not talk "off the record." Anything you say should be repeatable. The comments you make explaining what is going to happen or clarifying procedure are very important.
3. Always identify everyone present on the recording and state the I.A. number on the recording. Make sure everyone knows the interview is being recorded.
4. If you are recording a phone interview, you must inform the other person you are recording the conversation. This is not a criminal investigation and recording the conversation without the knowledge of the other person is a crime.

### **Interviews**

1. Interviews should be done with two investigators present. Even though only one individual is the primary investigator, a second less involved investigator is often helpful because:
  - An individual performing an interview may not always hear answers they are not expecting and thus a second set of ears in the interview is important.



- A second interviewer can write questions while the other can stay focused on specific issues.
  - Good interviewing tactics suggest the odds in an interview be at least even if not greater. The person you are interviewing can and most often will have a representative present. *Per POBR there may only be two interviewing investigators.*
  - Do not overlook this important tool of interviewing.
2. Phone interviews should only be done as a last resort. YOU lose the ability to see the responses of your interviewee, and they often feel protected over the phone and thus are more likely to be less than forthright.

YOU will be the judge as to when you can perform a telephone interview. It is acceptable to call a named employee or witness to ask a simple, non-incriminating question. Be careful not to use the phone to cut corners.

## **Participants in the interviews**

### ***Investigator – You***

Be prepared. Never conduct an off-the-cuff interview. You are talking about careers and the reputation of the department.

Have written questions for every interview and check them off as you address the issues.

Make sure your co-interviewer is as prepared as you are. Plan your interview with them and tell them what you expect. (i.e., do not talk until I address you.)

At the time of the interview give the named employee a copy of the complaint and any reports they wrote. Give the witness employees only reports they have written, nothing more. Give them all the time they and their representative need to read the reports in private. Even if it is a short complaint or report, let them read it without you present.

If a subsequent interview of a named employee is necessary, the employee must again be read the administrative investigations admonishment and given a transcript of their last interview or allowed to listen to their recorded interview.

Make sure the administrative investigations admonishment is read and tape/digitally recorded to the named employees in every case. Make sure it is understood.

Give only the witness admonishment to witnesses.

Let the interviewee talk. Do not interrupt their train of thought unless they have really strayed from the point.

Make sure they answer the questions that you have put to them; often an individual will talk around a point and never answer. Be direct with your questions.

Do not engage in threats or browbeating, but if you don't believe them, tell them. Ask them how their statement will read, not to you, but to those who will review the investigation.

If you believe they are lying, explain why their story is unbelievable and the consequences.

When you have completed your questioning, ask your co-investigator if they have any questions. Pay attention to their line of questioning, as you may need to follow up on their questions.

At the end of your interview, ask the interviewee if they have any questions or information they feel is important to the investigation.

If an employee or their representative requests a copy of their recorded interview, one must be given to them as soon as is reasonable. During normal business hours, a copy may be made by a representative of the Professional Standards Bureau. In most cases where a labor representative is present they will also record the interview.

**DO NOT GIVE YOUR OPINION AS TO THE OUTCOME OF THE INVESTIGATION!**

You may state that once you have gathered all of the facts of the case, you will submit your conclusions to the captain for review.

***Co-investigator***

Be prepared.

Do not conduct an interview without having read the complaint. Read all documentation available.

Write down prepared questions and make sure you or the primary investigator cover them.

Do not interrupt the primary investigator if you have a question. Write it down and ask it at the appropriate time.

When asked if you have any questions, ask them, and then turn the interview back to the primary investigator.

## ***Complainants***

Most often complainants are considered hostile. They will usually be interviewed first because the investigator may want to clarify their complaint.

Follow the same guidelines as with witnesses. If they have to have a witness in the interview room, it can be allowed.

If they want to see a copy of the complaint they filed, give them a copy. If they want a copy of their taped interview, give them a copy.

Complainants are not entitled to any other documentation or evidence.

If the complainant complains of injuries:

1. Photograph the location of the injury whether the injuries are visible or not (especially if they are not visible).
2. Obtain a signed waiver for medical records of any medical treatment received by the complainant.

## ***Witnesses***

Notify employee witnesses of the complaint and of your intention to interview them. They do not have a right to a representative so make the interview soon after your contact.

Order the employee witness not to discuss the case or any aspect of it with anyone; make sure they understand your order. (Refer to written instructions.)

The only reports employee witnesses are allowed to see are those they have prepared, such as arrest or incident reports.

If, during the course of an interview, a witness makes a statement or otherwise gives you information that leads you to believe they are or could be guilty of a violation of the Sheriff's Office Policy Manual or other policy/statute violation that could lead to discipline, you must stop the interview and read them the administrative investigations admonishment. This means if they want a representative, you will have to reschedule the interview.

## ***Non-Employee Witnesses***

Non-employee witnesses are not required to talk to you. However, the decision when to interview a non-employee witness will depend on whether the witness is considered hostile or not.

The witness has no rights during the interview per se; however, diplomacy and reasonableness will be your guide. As with any interview, every attempt should be made to perform the interview at a location where you are comfortable and can provide the needed privacy. The Professional Standards interview room may be available for the interview. Witnesses on occasion may want to bring a friend or parent into the interview. Although it is not recommended, often it is the only way to get the interview. Be reasonable.

Every effort should be made to keep potential witnesses from sitting in on each other's interviews. Simply tell them, including parents, if they insist on being present during the interview, it will taint the investigation.

Do not discount any potential witnesses. Interview everyone who was there. If they didn't see anything, then so state. The one witness you do not interview will be the one who will testify in court they saw everything.

### ***Named Employee***

Notify the employee of the complaint and of your intention to read them the department administrative investigations admonishment. Recording the notification, advisement of the nature of the allegations, and admonishment is necessary to avoid miscommunication and confusion.

Give them a specific amount of time to get representation, be reasonable.

Order the employee not to discuss the nature of the complaint with anyone other than his or her chosen representative; make sure they understand your order.

Sworn employees have the option to have a representative of their choice present during the interview. Usually an Association representative will represent them if the investigation is not likely to turn into a criminal matter, and a PORAC attorney will represent them if the investigation may turn into a criminal matter. Refer the employee to the Association if they have any questions.

Non-sworn employees may get representation through their respective bargaining unit.

Employee representatives cannot be a witness to the incident or another named employee who may be interviewed regarding the complaint.

### ***Representatives***

Representatives are not silent observers, but they do not run interviews. They are there to clarify questions or answers for the employee. If a representative interrupts or tries to run an interview, they can be told to leave and another representative obtained (only in severe cases). Most representatives know their job and do it quite well.

If a representative objects to a question, allow them to state their objection, review the question to see if it can be stated a different way, and if so restate the question. If the question is pertinent to the interview, acknowledge the objection and order the named employee to answer the question. There are remedies should your question be deemed inappropriate.

Always give a representative a chance to ask questions or clarify points at the end of an interview.

If a representative requests a break to consult with their client, allow it, unless it will put you at a disadvantage. A representative should never tell their client not to answer a question; the representative will not be the one who gets fired. The only time this will happen is if the criminal consequences outweigh the administrative consequences. Once again, be reasonable with employees and their representatives.

# **VENTURA COUNTY SHERIFF'S OFFICE**

## **ADMINISTRATIVE INVESTIGATION ADMONISHMENT**

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### **Named Admonishment**

1. Date and time of interview: \_\_\_\_\_
2. Case #: \_\_\_\_\_
3. Introduction of investigator(s): \_\_\_\_\_
4. Named Employee: \_\_\_\_\_

5. Summary of allegations:

- Have you read the reports we have furnished you?
- Do you need additional time to review the reports?

6. This investigation could lead to disciplinary measures. You have the right to have a representative of your choice present during this interview.

*Note: If a representative is present, identify him/her for the record.*

Name of representative: \_\_\_\_\_

Do you want a representative present before continuing with any questioning?

7. You have the right to record this interview, or you may request a copy of our recording.
8. I am going to advise you of your Miranda rights. Your decision as to whether to waive these rights is entirely up to you. If you waive your rights, your statements may be used against you criminally as well as administratively. If you decline to waive your rights under Miranda, I will order you to answer questions under the threat of administrative discipline. Once I order you to answer questions, nothing you say can be used against you in any criminal or civil proceeding except as authorized by law.
9. Do you have any questions about what I have just said?



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### **Miranda Advisement**

- You have the right to remain silent.
- Anything you say may be used against you in a court of law.
- You have the right to talk to your lawyer and have him/her present before and while being questioned.
- If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, at no cost to you.
- Do you understand each of these rights I've explained to you?
- Having these rights in mind, do you want to talk to me/us now?
- *If waived no further advisement is necessary.*
- *If invoked, read the following:*

### **Lybarger Admonishment**

- I am ordering you to answer questions relating to this interview with complete and truthful answers as specified in the Policy Manual on Conduct and Ethics.
- Although you have the right to remain silent and not incriminate yourself criminally, your silence during this administrative investigation will be deemed insubordination and will result in discipline up to and including termination from employment. Any statement you make under the threat of such discipline or any information arising there from, cannot be used against you in any criminal or civil proceeding, except as authorized by law
- Do you have any questions about your rights or anything I have said?

Named employee signature \_\_\_\_\_ Date \_\_\_\_\_

Print name \_\_\_\_\_ ID # \_\_\_\_\_

### Concluding Admonishment

To protect the integrity and efficiency of the Sheriff's Office and its operations and to ensure that all personnel investigations are kept confidential as required by law, I am ordering you not to discuss any part of this investigation with any department member and or any person you know is involved with this complaint until notified in writing by the Professional Standards Bureau that the investigation is finished. Any violation of this order will be cause for the imposition of discipline up to and including possible termination.

Do you understand this order?

Signature \_\_\_\_\_ Date \_\_\_\_\_

**VENTURA COUNTY SHERIFF'S OFFICE**  
**ADMINISTRATIVE INVESTIGATION ADMONISHMENTS**



**Witness Admonishment**

1. Date and time of interview: \_\_\_\_\_
2. Case #: \_\_\_\_\_
3. Introduction of investigator(s): \_\_\_\_\_
4. Witness: \_\_\_\_\_
5. Purpose of the investigation
  6. I'm ordering you to answer questions relating to this interview with complete and truthful answers as specified in the Policy Manual on Conduct and Ethics.
7. Your failure to respond to questions directly related to this investigation may result in punitive action.

Witness employee signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print name: \_\_\_\_\_ ID # \_\_\_\_\_

***Concluding Admonishment***

To protect the integrity and efficiency of the Sheriff's Office and its operations, and to ensure that all personnel investigations are kept confidential as required by law, I am ordering you not to discuss any part of this investigation with any person until notified in writing by the Professional Standards Bureau that the investigation is finished. Any violation of this order will be cause for the imposition of discipline up to and including possible termination.

Do you understand this order?

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# ***Formal Investigations Reporting Template***

**County of Ventura  
Sheriff's Office  
Professional Standards Bureau**

**Memorandum**

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**To:** Internal File

**Reference:** IA#

**From:** Sergeant

**Date:** February 15, 2012

**Subject:** Internal Investigation

**Nature of Complaint:** One line explanation of complaint (Excessive force, rude behavior, etc.)

**Complainant:** Name of individual or individuals who filed the complaint. If the complaint was department-initiated, so state.

Name:  
Address:  
Telephone:

**Named Personnel:** Sworn and/or Non-sworn, if complaint does not actually name someone, but the investigation has revealed them, list them here.

Name:  
Division:  
Bureau:  
Address: 800 South Victoria Ave. Ventura, CA 93009

**Representative:** John Doe  
Smith, Doe and Doe  
(805) 123-1234

**Witnesses:** ***(Employees and non-Department members)***  
List sworn first  
Name:  
Division:  
Bureau:  
Address: 800 South Victoria Ave. Ventura, CA 93009

**Investigator's Log and Actions** (Separate page)

Oct 1, 2010 Received and reviewed complaint

Oct 3, 2010 Contacted named employee XXX and advised of IA

Oct 4, 2010 Investigative steps taken

**Interview Table of Contents** (Separate page)

- |                        |                      |
|------------------------|----------------------|
| <b>1. Deputy Smith</b> | <b>Pages XX – XX</b> |
| <b>2. Deputy Jones</b> | <b>Pages XX – XX</b> |

**Interview:** Deputy Smith (Each interview is separate)

**Location:** Professional Standards (Location of interview)

**Investigator's Opinions and Conclusions** (Separate page)

***Investigator***

Sergeant XXXXX

***Executive Summary***

This is a concise summary of the investigation for the reviewing administration.

***Allegations:***

Based on the complaint information and subsequent investigation, it was determined the following allegation needed to be examined.

1. XXXXXX
2. XXXXXX

***Opinions and Conclusions:***

1. Allegation of XXXXX
2. Allegation of XXXXX

Based on the investigation, it is my opinion....

In summary, (Investigator's final conclusions and thoughts about the allegation(s) or complaint.)

## **Divisional Internal Affairs Investigations Procedures**

A complaint is determined to be a divisional when the allegation, if sustained, would seemingly result only in a Divisional Personnel Report (DPR). The Professional Standards Bureau will normally assign these divisional complaints to the division level where a sergeant will be assigned the case.

### **Divisional Complaint Received**

Every divisional complaint assigned will have an Internal Affairs investigator co-assigned to the case. The IA investigator will provide you guidance in the case, and will be your liaison with the Professional Standards Bureau. Once you are assigned a divisional complaint, read the complaint thoroughly and then retrieve any reports or supporting documents associated with the case. Contact the IA investigator co-assigned to your case for a discussion of the issues, and to develop an investigative plan.

Since a divisional complaint, if sustained, would not result in anything more than a DPR, the named employee is not entitled to representation during the interview. Additionally, employees **will not** be advised of either the Miranda advisement or the Lybarger and witness admonishments. Employee interviews will not be recorded either. Note taking is permissible and recommended.

The investigation of a divisional complaint differs from a formal complaint only in respect to how employee interviews are conducted, and the reporting format of the final investigative product. Regardless of whether a complaint is classified as formal or divisional, your diligence in pursuing the facts of the complaint remains the same.

### **Divisional complaint checklist**

- ✓ Read the complaint and retrieve connecting documents.
- ✓ Begin and maintain an investigative log.
- ✓ Contact your co-assigned IA investigator
- ✓ Gather all evidence in the case – photos, records, etc.
- ✓ Interview complainant and clarify the issues alleged.
- ✓ Schedule interview(s) with witnesses.
- ✓ Schedule interview(s) with named officer(s).
- ✓ Summarize interviews and begin analysis of complaint based upon facts known to you.
- ✓ Call your assigned IA investigator anytime for questions or assistance.
- ✓ Write your investigative report – Your co-assigned IA investigator will send you a divisional example based on an actual case.
- ✓ Forward your completed report to the IA investigator for review.

**VENTURA COUNTY SHERIFF'S OFFICE**  
**DIVISIONAL ADMINISTRATIVE ADMONISHMENT**



**Named Divisional I.A. Admonishment**

1. Date and time of interview: \_\_\_\_\_

2. Case No.: \_\_\_\_\_

3. Introduction of Investigator(s): \_\_\_\_\_

4. Named Employee: \_\_\_\_\_

5. Summary of Allegations: \_\_\_\_\_

- Have you read the reports or other documents we have furnished you?
- Do you need additional time to review the reports or documents?

6. Based upon all information available at this time, a determination has been made that the consequences of this investigation, if any, will include no punitive action against you. Punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, transfer for purposes of punishment, or denial of promotion on grounds other than merit. This means that the consequences of this investigation, if any, will not exceed a Divisional Personnel Report which would be placed in your Division File only and would be removed in one (1) year or at the time of your next Performance Appraisal, whichever occurs first.

7. This interview will not be recorded.

8. During the course of this interview, should the Investigator(s) have a reasonable suspicion that this investigation could potentially lead to punitive action against you, the Investigator(s) will immediately terminate the interview and ask no further questions of you, and you will be afforded all rights arising under the Public Safety Officers Procedural Bill of Rights Act, including but not limited to the right to have a representative of your choice present at all times during any subsequent interview or interrogation arising in the course of this investigation.

9. By participating in this interview, you are not waiving your rights under the Public Safety Officers Procedural Bill of Rights Act, your VCDSA MOA, or any other state or federal law.

10. I am ordering you to answer questions relating to this interview with complete and truthful answers as specified in the Policy Manual on Conduct and Ethics.

11. Do you have any questions about anything I have said?

Named employee signature \_\_\_\_\_ Date \_\_\_\_\_

Print name \_\_\_\_\_ ID No. \_\_\_\_\_

**Concluding Admonishment**

To protect the integrity and efficiency of the Sheriff's Office and its operations, and to ensure that all personnel investigations are kept confidential as required by law, I am ordering you not to discuss any part of this investigation with any department member and/or any person you know is involved with this complaint until notified in writing by the Professional Standards Bureau that the investigation is finished.

Do you understand this order?

Signature \_\_\_\_\_ Date \_\_\_\_\_

# Divisional Investigations Reporting Template

County of Ventura

Sheriff's Department  
Professional Standards Bureau



## Memorandum

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**To:** Internal File

**Reference:** IA #11-XXX

**From:** Sergeant

**Date:** 12-06-2011

**Subject:** Divisional Internal Investigation

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**Nature of Complaint:**

**Complainant Summary:**

**Named Personnel:**

**Witnesses:**

**Complaint Background:**

**Investigator's log:**

**Interviews:**

**Conclusions:**

For divisional investigations, the above headings do not require separate pages.

# Public Safety Officers Procedural Bill of Rights Act

## Government Code Sections 3300-3312

### **3300- Title**

This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

#### **3301- Definition; Legislative findings and declaration**

*For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision ©, 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.*

*The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.*

#### **3302- Political activity: Membership on school board**

(a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

#### **3303- Investigations interrogations; conduct; conditions; representation; reassignment**

When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the

interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

- (1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.
- (2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.
- (3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.
- (4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.



(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

### **3304-Lawful exercise of rights; insubordination; administrative appeal**

(a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure. Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefore and an opportunity for administrative appeal. For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons." Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This

one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

- (1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.
  - (2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.
  - (3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.
  - (4) If the investigation involves more than one employee and requires a reasonable extension.
  - (5) If the investigation involves an employee who is incapacitated or otherwise unavailable.
  - (6) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.
  - (7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.
  - (8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.
- (e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.
- (f) If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.
- (g) Notwithstanding the one-year time period specified in subdivision (c), an investigation may be reopened against a public safety officer if both of the following circumstances exist:
- (1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.
  - (2) One of the following conditions exist:

- (A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.
- (B) The evidence resulted from the public safety officer's predisciplinary response or procedure.

(h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (e) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

### **3304.5- Administrative appeal**

An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

### **3305- Comments adverse to interest; personnel files; opportunity to read and sign; refusal to sign**

No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

### **3306- Response to adverse comment in personnel file; time**

A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

### **3306.5-Inspection of personnel files; request for correction of file; time**

(a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof , and shall make the file or copy thereof available within a reasonable period of time after a request therefore by the officer.

(c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons

supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.

### **3307-Polygraph examination; right to refuse; effect**

(a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be

entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.

(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

### **3307.5-Use of photograph; penalties**

(a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.

### **3308-Financial disclosure; right to refuse; exceptions**

No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law

or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

### **3309-Search of locker or storage space; consent; search warrant**

No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

### **3309.5-Local public safety officers; applicability of chapter; jurisdiction; remedies**

(a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(b) Nothing in subdivision (h) of Section 11181 shall be construed to affect the rights and protections afforded to state public safety officers under this chapter or under Section 832.5 of the Penal Code.

(c) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(d) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of alike or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the parties' attorney, or both, pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department, as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(e) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages. Notwithstanding

these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a "hold harmless" or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.

**3310-Procedures of public agency providing same rights or protections; application of chapter**

Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

**3311-Mutual aid agreements; effect of chapter upon**

Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

**3312-American Flag; pins**

Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:

(a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.

(b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.

(c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.