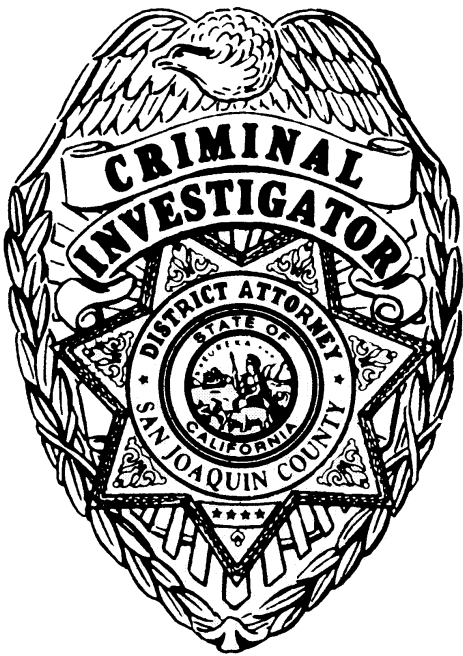


**SAN JOAQUIN COUNTY
DISTRICT ATTORNEY'S OFFICE
BUREAU OF INVESTIGATIONS**



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**POLICIES & PROCEDURES
MANUAL**

SAN JOAQUIN COUNTY
LAW ENFORCEMENT AGENCIES

OFFICER-INVOLVED CRITICAL INCIDENT
PROTOCOL MANUAL

JUNE 2018

FORWARD

Investigations of fatal incidents involving police employees often place extraordinary demands on the individuals and agencies involved. In addition to the knowledge, skill and resources required to investigate civilian homicide cases, officer-involved fatal incidents present unique combinations of complexities.

These cases tend to attract considerable interest from segments of the public and from the news media. The public's right to know what occurred may require balancing with investigative necessity, rights of privacy or rights to a fair trial. Doubts may be expressed by some about the propriety of police agencies conducting investigations of fatalities which involved their own officers as actors or victims.

The individuals and agencies involved in such fatal incidents, as well as those involved in the subsequent investigations, must realize that each incident has potential social, civil, administrative and criminal consequences. Incident investigators and agency managers must understand the legal rights, obligations and authority of the agencies and individuals involved. They must specifically recognize and reconcile police officers' constitutional rights against their rights and obligations resulting from the employer/agency relationship.

Confusion and even conflict can occur among individuals and agencies based on their different interests, duties, perspectives; authority, training and resources. Unless resolved in advance, questions such as who conducts the investigation, what type of investigation should be performed and who can be present when an involved officers is interviewed, can delay and compromise investigations.

Because these demands and complications exist, this Protocol was adopted August 1, 1994 by the law enforcement agencies within San Joaquin County to serve as a model or guideline for the investigation of officer-involved fatal incidents in San Joaquin County. The goal of the Protocol is to help assure that such cases are thoroughly and fairly investigated.

While this Protocol represents the understanding and agreement among member agencies about how such cases are to be investigated, it is anticipated that individual agencies will make minor modifications, not effecting interdepartmental provisions to meet agency requirements.

This Protocol, which is neither a statute, ordinance nor regulation, is not intended to increase the civil or criminal liability of agencies or their employees, and it shall not be construed as creating any mandatory obligations to, or on behalf of, third parties.

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1 **I. DEFINITIONS**

2 **A. “Officer Involved Critical Incidents”/”Incidents”**

3 1. “Officer Involved Critical Incidents” or “Incidents” include “Fatal Incidents” and
 “Critical Shooting Incidents” as defined in paragraphs #4-21

4 2. “Fatal Incidents”

 Incidents occurring in San Joaquin County involving two or more people, in which a
 police agency employee is involved as an Actor, Victim or Custodial Officer where a
 “Fatal Injury” as defined in paragraph 32, occurs. “Fatal Incidents” include but are
 not limited to the following situations if a “Fatal Injury” results:

5 a. Intentional and accidental shootings, including police tactical incidents
 involving specialized response teams.

6 b. Intentional and accidental use of any other dangerous or deadly weapons.

7 c. Assaults on police officers; assaults on other police employees who are on
 duty or are acting for a law enforcement purpose.

8 d. Assaults by police employees.

9 e. Attempts by police employees to make arrests or to otherwise gain physical
 control for a law enforcement purpose.

10 f. Physical altercations, mutual combat. and domestic violence in which the
 police employee is acting in a private citizen capacity.

11 g. Any fatal injury in police custody including injuries that occur during police
 transport, at a police facility, at the County Jail and at a courthouse, but
 excluding fatal injuries of prisoners which occur while the inmate is under
 physician’s treatment for a disease or other natural condition which has been
 diagnosed prior to death and which does not involve custodial trauma,
 custodial suicide, custodial ingestion of toxic substance, or sudden medical
 illness.

12 h. Any fatal injury to a person who is a passenger of a police officer (such as
 ride-alongs, emergency transports, etc.)

13 i. Vehicular collisions, and specifically:

14 1) Including any vehicle fatality which occurs:

15 a) After, although not necessary as a proximate cause of, police
 gunfire directed at the suspect or the suspect vehicle;

- 16 b) In connection with use of vehicle(s) by police as an “enforcement intervention” technique intended to apprehend a suspect. (“Enforcement intervention” includes vehicle ramming, roadblocks, and forcing a vehicle to alter its course by cutting in front of it or by contact.)
- 17 c) Police pursuits where the suspect vehicle which is being pursued by police vehicle(s) collides with another vehicle, a pedestrian.
- d) Excluding pursuits where the suspect vehicle which is being pursued by police vehicle(s) collides when an object and where that collision did not result from collision or contact between the suspect vehicle and a police vehicle, or from “enforcement intervention.”
- 18 2) Excluding any vehicle fatality, which involves:
- 19 a) Off duty non-sworn police employees who are not at the time of the incident acting for an actual, apparent or purported law enforcement purpose;
- 20 b) Solo vehicular collisions in which the only injury is suffered by a police employee who was the driver and sole occupant of a vehicle which was not involved in a collision with any other occupied vehicle;

21 3. Critical Shooting Incidents

 Incidents involving the intentional or accidental discharge of a firearm occurring in San Joaquin County in which a police employee is involved as a Victim and is injured. The intentional or accidental discharge of a firearm at (a) suspect(s) which results in non-fatal injuries excluded. Such “Shooting Incidents” do not include accidental shootings where both the Actor and victim are police employees.

22 **B. “Police Employee”**

 This Protocol applies to employees and to certain other people affiliated with the law enforcement agencies which are members of this Protocol agreement, as follows:

- 23 1. Full-time, part-time, and hourly sworn officers, whether on duty or off duty, and whether acting for a law enforcement or private purpose at the time of the incident;
- 24 2. Full-time and part-time non-sworn employees who are on duty at the time of the incident, or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the incident
- 25 3. Reserve police officers who are on duty or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the Incident;

26 4. Temporary employees and volunteers, whether paid or unpaid, who are on duty or
who are acting, actually, apparently or purportedly for a law enforcement purpose at
the time of the incident. This category includes informants when, they are working
under the direct control and supervision of a police officer.

27 **C. “Actor”**

28 1. A person whose act is a “proximate cause” of an injury to another person; or

29 2. A person who intends that his act be a “proximate cause” of serious bodily injury or
death to another person who is actually killed by another or shot and injured by
another.

30 **D. “Victim”**

The person who is injured by the act of the Actor, whether or not intentionally. When used
in this Protocol, this word does not imply the existence of criminality; it is used simply to
designate the person who is physically injured.

31 **E. “Proximate Cause”**

A cause which, in a natural and continuous sequence, produces the injury, without which
cause the injury would not have occurred. Reasonable foreseeability of the injury is not a
factor relevant to this definition.

32 **F. “Fatal Injury”**

Death, or injury which is so severe that death is likely to result.

33 **G. “Member Agencies”**

The law enforcement agencies in San Joaquin County which are members of this Protocol
agreement.

34 **H. “Venue Agency”**

The Member Agency, or Member Agencies, within whose jurisdiction the Incident occurs.
(See paragraphs # 62-75 for Venue determination factors.)

35 **I. “Employer Agency”**

The Member Agency, by whom the involved police employee is employed or with which
he/she is affiliated. In many cases the Venue Agency will also be the Employer Agency.

36 **J. “Criminal Investigators”**

Those investigators assigned by the Venue Agency(cies). the Employer Agency(cies), the
California Highway Patrol and the District Attorney’s Office to conduct the criminal
investigation of the incident.

37 **E. “Administrative Investigators”**

Those investigators assigned by the Employer Agency to conduct the Administrative Investigation of the Incident. (See paragraphs # 196-208.)

38 **II. INVOCATION OF, THIS PROTOCOL**

A. Automatic and Immediate Invocation:

39 This Protocol is automatically effective immediately on the occurrence of an Officer
Involved Critical Incident as defined in paragraphs # 2-21.

40 **B. Optional Invocation:**

41 1. Each Member Agency of this agreement, when in the capacity of a venue Agency or
Employer Agency, may itself invoke this Protocol on the occurrence of any other
sensitive or critical event involving a police employee which may have possible
criminal liability attached. On this unilateral invocation, the matter will be
investigated under the provisions of this Protocol.

42 a. Examples:

43 1) A fatality which is not covered by this Protocol;

44 2) An officer-involved incident, other than a shooting, where the injuries
are not fatal;

45 b. The District Attorney has discretion to decline participation in
optional invocations.

46 2. In lieu of invoking this Protocol for optional incidents, the involved Member
Agency(cies) may, of course, investigate the matter by itself or may seek aid from
other agencies.

47 **III. INVESTIGATIVE AGENCIES, FORMATS AND RESPONSIBILITIES:**

To properly recognize and accommodate the various interests and the various rules of law
which may be involved in any Incident, investigations of these matters must be performed
under two separate investigative formats: (1) the Criminal Investigation; and the (2)
Administrative Investigation (see paragraphs # 196208).

48 **A. The Criminal Investigation:**

49 1. The Criminal Investigation has investigative priority over the Administrative
Investigation, and it begins immediately after an incident has occurred.

50 2. The “Criminal Investigation Task Force” / “Task Force”

51 a. Non-Custodial Incidents

The Criminal Investigation of non-custodial incidents will be performed by criminal investigators from the Venue Agency(cies), the Employer Agency(cies), and the District Attorney's Office formed into a Task Force for each incident. The participating agencies are co-equal within the investigation, but the agency within whose jurisdiction the incident occurs has the ultimate authority to decide irreconcilable investigative issues.

52

b. Custodial Deaths

The criminal investigation of custodial deaths as defined in paragraph # 11 will be performed by criminal investigators from the agencies listed in paragraph # 51 serving as co-equal members of a Task Force formed for each custodial Incident. Additionally, any Member Agency which has police employees involved in obtaining and/or maintaining custody of the victim at any time during the chain of custody will be given the option of participating as co-equal members of the Task Force.

53

c. Task Force Teams

Within the Task Force, the criminal investigators will be divided into one or more teams. The number of teams will depend on the complexity of the incident and on the number of people to be interviewed. Each team will consist of one criminal investigator from the Venue Agency(cies), the Employer Agency(cies), the California Highway Patrol (for incidents within their jurisdiction) and from the District Attorney’s Office. In the case of custodial deaths, each team will also include criminal investigators from any member Agency given the option to participate under paragraph # 52. The Task Force investigation will be led by a primary team which is composed of the primary investigator from each of the Task Force agencies.

54

3. The goal of the Criminal Investigation is to develop all available relevant information about the incident. This information will be used in two ways:

55

a. To determine presence or absence of criminal liability on the part of all those involved in the incident. Specifically:

56

1) To determine whether the nature and the quality of the conduct involved is prohibited by statutes which provide for criminal penalties on conviction; and

57

2) If criminal conduct does exist, determine the identity of the person(s) responsible for that conduct; and

58

3) If criminal conduct does exist, determine the degree of the crime(s); the existence of any factual or legal defenses to that crime; and to determine the presence or absence of any factors which would mitigate or aggravate punishment for that crime.

59

b. To incidentally provide factual information to the Employer Agency’s management for its internal use. (While the Criminal Investigators do not direct their investigative attention to the Administrative concerns, it is recognized that the results of the Criminal Investigation are of proper interest to Employer Agency management for its internal use and the results of the criminal investigation will be fully available for that purpose. (See paragraphs 196-208.)

- 60 4. The Criminal Investigation is required to follow the rules of law which apply to all criminal proceedings including constitutional, statutory and case law regarding rights which are covered by the 4th, 5th, 6th, and 14th Amendments of the United States Constitution.
- 61 5. The Criminal Investigation is performed in a manner that is thorough, fair, complete and professional and is free of conflicts of interest.
- 62 6. Venue Determination:
- 63 a. When an incident occurs in part in two or more jurisdictions, each of those jurisdictions is a Venue Agency.
- 64 b. When an incident occurs on the boundary of two jurisdictions, or at a location where the relevant boundary is not readily ascertainable or is in dispute, the Venue Agency(cies) shall be:
- 65 1) The Employer Agency if the Actor is employed by either boundary agency;
- 66 2) Both boundary agencies if Actors are employed by both;
- 67 3) The agency which has the greater interest in the case by virtue of having the predominant police involvement in the incident or by virtue of having had the majority of acts leading up to the incident occur within its jurisdiction.
- 68 c. For custodial deaths as defined in paragraph # 11, the Member Agency having custody of the person at the time his/her distress was first discovered, the Member Agency within whose jurisdiction any fatal stroke was inflicted, and the Member Agency within whose jurisdiction the victim dies shall be Venue Agencies.
- 69 d. Special Venue situations-- Districts
- 70 1) Stockton Unified School District shall be a Venue Agency for incidents occurring on its property. If the SUSD property is within the City of Stockton, the Stockton Police Department shall also be a Venue Agency for such incidents. If the SUSD property is within an unincorporated area of San Joaquin County, the San Joaquin County Sheriff's Office shall also be a Venue Agency for such incidents. (As required by Vehicle Code section 12517.1, the California Highway Patrol is the investigating agency for all incidents involving school bus accidents.)
- 71 2) San Joaquin County Delta College shall be a Venue Agency for incidents occurring on its property. The Stockton Police Department shall also be a Venue Agency for such incidents.

- 3) The California Highway Patrol shall be a Venue Agency for traffic collisions occurring on an Interstate, State Route or county road, and incidents occurring on state property.
- 72 e. If a sworn officer is involved as the Actor in an incident which occurs within the jurisdiction of another Member Agency, and if that officer was acting in the performance of his/her duty at the time of the incident, the/a Venue Agency may elect to relinquish its role in the Criminal Investigation to the other Task Force agencies.
- 73 7. When a Venue or Employer Agency lacks sufficient resources, or when it believes it cannot properly investigate an incident for another reason, it has two options:
- 74 a. Obtain criminal investigative assistance from other Member Agency(cies). Borrowed officers would then be assigned to the Criminal Investigation Task Force as members of the requesting agency. The requesting agency will assume general supervisory authority over borrowed officers.
- 75 b. Relinquish criminal investigative responsibility to another Member Agency or to the California Department of Justice.
- 76 8. Vehicle Collision Incidents:
- 77 a. Vehicle collision fatalities shall be investigated by Task Force criminal investigators (see paragraph# 51), joined by accident investigation specialists from the California Highway Patrol (CHP) or from another agency when CHP accident investigation specialists are not available. CHP investigators will be selected by the on-duty CHP supervisor. The accident investigation specialists have the primary responsibility for documentation, collection and preservation of physical evidence. Task Force Agency field evidence technicians and accident investigation specialists from member agencies may assist under the supervision of CHP accident investigation specialists.
- 78 b. If the fatality results from a collision that was not accidental (e.g. use of “enforcement intervention” techniques), OR if a vehicle movement was merely incidental to a fatality which was caused by non-vehicular means, the role of the CHP personnel will be limited to investigation of physical movement of the vehicle(s) and to collision reconstruction.
- 79 9. Scene Security:

Each Agency has initial responsibility for immediately securing crime scene(s) within its territorial jurisdiction. (See paragraphs ## 82, 102-109 and Attachment A for scene procedures.) This responsibility includes preservation of the integrity of the scene(s) and its/their contents, access control, and the identification and sequestration of witnesses. Responsibility may be changed by mutual agreement as the investigation progresses.

- 80 10. Responsibility for physical evidence collection, preservation and analysis:
- 81 a. The California Department of Justice Regional Criminalistics Laboratory (hereinafter DOJ Laboratory) will direct and/or coordinate the collection of evidence that will be forensically tested, except in vehicular fatalities (see paragraph # 77). Venue Agency field evidence technicians will serve in a subordinate support role to DOJ with respect to forensic evidence. All other physical evidence will be collected and/or identified by crime scene investigators assigned to the Task Force and by Venue Agency field evidence technicians.
- 82 b. Pending arrival of DOJ laboratory personnel, there are several important duties to be performed by police field evidence technicians or others (See Attachment B).
- 83 c. In unusual cases the Task Force agencies may all agree that the DOJ laboratory need not be called to process the scenes) and to collect evidence. The DOJ Laboratory shall be used if any Task Force agency desires.
- 84 d. Prior to final relinquishment of the scene, the Task Force investigators and the criminalists will provide the Administrative Investigators an opportunity to assess the need for further evidence processing.

85 11. Notifications

On identifying an occurrence as an Officer-Involved Critical Incident, the Venue Agency(cies) shall make the following notifications as promptly as possible to:

- 86 a. Intra-departmental officers, as required by that agency's procedures.
- 87 b. The Employer Agency.
- 88 c. The Office of the District Attorney. Notification shall be made to the District Attorney's Chief Investigator, Larry Ferrari, at (209) 609-8007.
- 89 d. The California Department of Justice Regional Criminalistics Laboratory at (209) 599-1400 during business hours and at (916) 227-3244 or through the Sheriff's Command Center during non-business hours.

- 90 e. For vehicular collision deaths, the California Highway Patrol (see paragraphs # 76-78) should be notified through a supervisor at the appropriate field office:
- Stockton: 209. 943. 8600
 - Tracy: Bus. Hrs. 209. 835. 8920
Non-Bus. Hrs. 209. 943. 8600
- 91 f. The Coroner’s Office on confirmation of a fatality. This is a required notification. (Body removal can be delayed as necessary for evidence processing.)
- 92 g. Member Agencies agree that the notification requirements set forth in Penal Code section 5021 will be deemed satisfied in custodial deaths involving Member Agencies if this Protocol is invoked and the appropriate Member Agencies are promptly notified in accordance with this Protocol and those agencies are involved in the Criminal Investigation as members of the Task Force.
- 93 12. Scene Procedures (also see Patrol Sergeant’s Checklist Attachment A).
- 94 a. Emergency life-saving measures have the first priority.
- 95 b. If a person is transported to a hospital with “Fatal Injuries” as defined in paragraph # 32 or non-fatal gunshot wounds, an officer should accompany that injured person in the same vehicle in order to:
- 96 1) Locate, preserve, safeguard and maintain the chain of physical evidence.
- 97 2) Obtain a dying declaration (Evidence Code 1242); a spontaneous statement (Evidence Code 1240); a contemporaneous statement (Evidence Code 1241); a statement of then-existing or previous mental or physical state (Evidence Code 1250, 1251).
- 98 3) Maintain custody of the person if he/she has been arrested.
- 99 4) Provide information to medical personnel about the incident as relevant to treatment, and obtain information from medical personnel relevant to the investigation.
- 100 5) Identify relevant people, including witnesses and medical personnel.
- 101 6) Be available for contacts with the victim’s family, if appropriate.
- 102 c. The scenes must be secured immediately, with a perimeter established for each scene that is wide enough to safeguard evidence. In some circumstances an inner and an outer perimeter are appropriate.

- 103 1) Access to the scene(s) must be limited to only those officials
who must enter for an investigative purpose.
- 104 2) A written log will be established as quickly as possible to
identify all persons entering the scene(s), the time of their entry
and exit, and the reason for entry.
- 105 3) When not needed for life saving efforts, entry by fire and
ambulance personnel should be restricted to the absolute
minimum necessary to perform the needed duties.
- 106 4) No items shall be moved inside the scene(s) or removed from a
scene without approval of the Task Force and the DOJ
Laboratory unless absolutely necessary for public or officer
safety or for preservation of evidence. If removal without
approval is necessary, the removal must be witnessed and
logged. The log shall state the identity of the person removing
the described object, the reason for removal, a witness to the
removal, and the time of removal. The item should be photo-
graphed prior to removal.
- 107 d. If any type of weapon or instrument was involved in the incident, the
supervisor at the scene will promptly see to the security and/or
collection of such items, as follows:
- 108 1) If the area is secure, loose weapons or instruments shall be left
in place and undisturbed.
- 109 2) If the area is not secure, the supervising officer at the scene
shall decide whether the items can be safely left in place or
whether prompt removal is necessary. If such items must be
moved or removed for protection, they should be photographed
in place prior to removal if possible.
- 110 3) If an involved officer still has personal possession of a weapon
he or she used in the incident, the supervising officer at the
scene shall promptly, but discretely (i.e. in private, out of view
of the public and other officers, if possible) obtain possession
of the weapon. Side arms should not be removed from their
holsters. Obtain the entire gun belt, if necessary, to avoid
removing the weapon from its holster. Side arms should be
replaced by the supervisor as quickly as possible if the officer
so wishes, unless reason dictates otherwise.
- 111 4) In shooting cases, the supervising officer at the scene will
check the firearms of all officers who were present at the time
of the incident to ensure that all discharged firearms are
identified and collected, and to specifically document those
weapons which were not fired.

- 112 5) The supervising officer at the scene who collects any weapon
or instrument shall make note of the following to the extent
he/she can do so without removing the weapon from its holster
or otherwise compromising physical evidence:
- 113 a) Readily visible general description and condition of the
weapon or instrument;
- 114 b) The appearance and location of any trace evidence
adhering to the weapon or instrument;
- 115 c) The location where the weapon or instrument was first
observed by the supervising officer;
- 116 d) The identity of the person or location from which the
weapon or instrument was received;
- 117 e) In firearms cases, the supervising officer will also make
note of whether the firearm is cocked, has its safety
“on” or “off”, has its hammer back, any apparent
jamming of either fired or unfired ammunition; the
location and position of the weapon’s magazine (e.g.
fully or partially inserted, completely separate from the
firearm, missing, etc.), to the extent possible without
removal of the weapon from its holster (see paragraph #
110).
- 118 i) If the mechanism of a firearm is obviously
jammed, no attempt shall be made to unload the
weapon or clear the jam.
- 119 ii) If the firearm is cocked (or if a semi-automatic
pistol cannot be determined to be cocked or
not), the safety may be put “on” by the
supervising officer, who must make note of that
fact. If the firearm’s hammer is back, it may be
lowered but note must be made of that fact.
- 120 f) Any officer who receives a weapon or instrument from
another person or otherwise obtains an evidence
weapon or instrument shall note its serial number if
readily visible without removing the weapon from its
holster or compromising physical evidence (see
paragraphs # 108-118) and shall maintain the chain of
evidence.

- 121 g) Weapons and instruments will not be disturbed in any way other than as outlined in paragraphs # 108-118. They shall not be handled by anyone other than the supervising officer at the scene and that officer shall handle them minimally to preserve the exact state of the weapon or instrument when received.
- 122 6) The collected weapons or instruments shall be transferred to the DOJ laboratory staff on their arrival, along with all known relevant information regarding the weapon.
- 123 7) If the supervising officer at the scene was himself an Actor or Victim in the Incident, the responsibility for security and/or collection of weapons and instruments shall rest with an uninvolved supervisor or the next-in-line uninvolved officer at the scene.
- 124 8) At least twelve rounds of the same type(s) of ammunition fired will be collected by the criminal investigators from each shooting officer (or from another appropriate source if the officer does not have sufficient remaining rounds).
- 125 9) Firearms and holsters which do not need to be retained in evidence, as determined by the criminal investigators, will be returned to a representative of the Employer Agency promptly after the DOJ Laboratory has inspected and tested them. The DOJ Laboratory appreciates that prompt return of officers' firearms and holsters is important, and will return them as soon as possible.
- 126 e. Any other physical evidence at the scene which is in danger of being contaminated, destroyed or removed must be promptly and effectively observed, recorded and then protected for subsequent collection. Footprints, fingerprints, volatile substances, various types of trace evidence adhering to live persons, such as bloodstains, are examples.
- 127 f. Transporting and Sequestering of Involved Officers:
- 128 1) Officers who were present at the scene at the time of the incident, whether Actors or Witnesses will be relieved of their duties at the scene as soon as possible and shall be sent to their own police station, unless other suitable and agreeable arrangements are made for them. Officers not involved in the incident shall be assigned to accompany these officers, either in a group or individually. Actors should be driven to the station by an uninvolved officer.
- 129 2) If circumstances prohibit removal of all witnessing and involved officers from the scene at once, those officers who were Actors should be relieved first.

- 130 3) An uninvolved officer shall remain with the involved officers, either in a group or individually, until they can be interviewed. The sequestering officers are present to ensure that the officers have privacy, that their needs are accommodated, and to ensure the integrity of the officers' later statements to investigators by prohibiting involved officers from discussing the incident among themselves. They should not be present during confidential (privileged) conversations (see paragraph # 162).
- 131 4) Involved officers and members of special response teams (e.g. SWAT, Hostage Negotiation Teams, Bomb Task Force, etc.) are not to discuss the case among themselves, with sequestering officers, or with others, except their attorney representatives prior to being interviewed by Task Force criminal investigators.
- 132 5) While awaiting interviews, involved officers are encouraged to relax and to carefully reflect on what occurred. They may wish to make notes for future use, especially for later interviews.
- 133 6) Sequestered officers are entitled to make personal phone calls.
- 134 g. Custodial Death Scenes:
- When an incident occurs in a jail facility or other location where inmates may have witnessed something, inmates should be identified and separated if possible pending interviews by criminal investigators.
- 135 13. Selection of Primary Investigators
- Selection of the primary investigators by the Task Force Agencies is of great importance: Generally, the best available investigator(s) should receive the assignment. The following qualifications are important:
- 136 a. Experience in homicide investigations (or vehicular collisions, if applicable). Investigation experience in other crimes against persons is helpful.
- 137 b. Ability to effectively interview people of various backgrounds.
- 138 c. Good working knowledge of physical evidence collection and preservation techniques, and an appreciation of the abilities and limitations of scientific evidence.
- 139 d. Good knowledge of police operational procedures and the criminal justice system.
- 140 e. Excellent report writing and communication skills.
- 141 f. Good organizational and supervisory skills.

- 142 g. Respected professionally by those with whom he/she works for being
competent, thorough, objective, fair, and honest.
- 143 14. Interviewing Civilians
- 144 a. Interviews of civilians will be conducted separately when practical.
- 145 b. Interviews of civilians by Task Force criminal investigators will
normally be fully tape recorded.
- 146 15. Interviewing Police Employees
- 147 a. The Public Safety Officers Procedural Bill of Rights (Hereafter, “The
Act”) (Government Code 3300 *et. seq.*) (See Attachment C.)
- 148 The Act has limited application to many interviews conducted by Task
Force interview teams:
- 149 1) By statutory definition, The Act is applicable only to “Public
Safety Officers” (which is defined in Section 3301 to include
most peace officers in the county except railroad police).
Under this definition, The Act is not applicable to police
agency employees who are not peace officers. However, by
contract, MOU or otherwise, some police agencies may have
extended the appropriation of The Act to their non-peace
officer employees.
- 150 2) The Act is not applicable to interviews with Public Safety
Officers who are being interviewed by an agency other than
their Employing Agency.
- 151 3) Section 3303 of The Act (the section which pertains to the
conditions and conduct of interrogations of peace officers) is
not applicable to interviews with Public Safety Officers when
the investigation is concerned solely and directly with “alleged
criminal activities,” even when being interviewed by their
Employer Agency.
- 152 b. If and when the interview becomes a custodial interrogation, the
Miranda cases are applicable.
- 153 c. To ensure proof of voluntariness in a non-custodial interview, the Task
Force interviewers may wish to advise certain interviewees of the
following:
- 154 1) The interviewee is not in custody and is free to leave at any
time.
- 155 2) The interviewee is not obligated to answer any questions asked
by the investigators and no punitive action will be taken against
the interviewee if he/she refuses to be interviewed by the Task
Force Team.

- 156 d. Government Code section 3304(a) permits the heads of law enforcement agencies to order their officers to cooperate with criminal investigations being performed by other agencies. Failure to comply with such orders may result in a charge of insubordination. When applicable, interviewees may be advised of this provision. However, officers will not be compelled by threats of administrative punitive action (or otherwise) to answer questions of Task Force criminal investigators which would be self-incriminating.
- 157 e. Interviews of police employees will be conducted separately.
- 158 f. Interviews of police employees will normally be fully tape recorded
- 159 g. The interviewees will be considered as witnesses unless the circumstances dictate otherwise.
- 160 h. Police employees have the same rights and privileges regarding Task Force interviews that any other citizen would have, including the right to consult with an attorney prior to an interview and the right to have the attorney present during the interview.
- 161 i. If authorized by the police employee's agency policy, Protocol team members will allow officers to view all available video recordings of an incident prior to their interview. Employing agencies will also allow Protocol team members to view the same video records prior to any interviews and provide a copy of the recording to the Protocol team to be maintained as evidence.
- 162 1) The attorney should be allowed to consult about the facts of the incident privately with only one police employee at a time.
- 163 2) If the police employee consults with someone other than a lawyer, doctor, psychotherapist or priest, or an agent of such professional, or the police employee's legal spouse, the contents of private conversations between such individuals and the police employee are not privileged. (However, Government Code 3303(h) prohibits compelling any representative to disclose any information received from an officer who is under investigation for disciplinary matters.)
- 164 16. Intoxicant Testing
- 165 a. Criminal Investigation
- Police employees have the same rights and privileges that any civilian would have regarding intoxicant testing in a criminal investigation. When Task Force investigators determine that a police employee's state of sobriety is relevant to the Criminal Investigation, they have these options:
- 166 1) Obtain the blood and/or urine and/or breath sample by valid consent.
- 167 2) Obtain the blood and/or urine sample incident to valid arrest.

- 168 3) Obtain a search warrant.
- 169 4) When applicable, utilize Vehicle Code section 23612 for vehicular driving incidents.
- 170 5) If an arrestee refuses to comply with the request for a sample, attempts will be made to obtain the sample in accordance with the law.
- 171 b. Administrative Investigation
- 172 1) Intoxicant test results obtained by Task Force investigators are available to the Administrative Investigators.
- 173 2) In the event the Task Force does not obtain samples for intoxication testing, the Employer Agency may then seek to obtain samples. The Task Force investigators have the first opportunity, however.
- 174 3) Authority for the Employer Agency to obtain samples includes: (1) valid consent, and (2) ordering the employee to provide the samples based on the employment relationship. (See paragraph 204 for the rules pertaining to the disclosure of test results on samples obtained by administrative investigators.)
- 175 c. Miscellaneous
- 176 1) When collecting samples for intoxicant testing, samples of both blood and urine should be obtained for most complete results.
- 177 2) When collecting samples for intoxicant testing, samples should be collected promptly after the incident for the most meaningful results.
- 178 3) A police employee may volunteer to provide sample(s) for intoxicant testing, even if Task Force and Administrative Investigators haven't obtained samples. Also, a person from whom Task Force or Administrative Investigators have obtained samples may request that another sample be taken for independent testing. The taking of this sample and subsequent testing will not be at the expense of the Task Force or Employer. Such a request will be promptly honored.
- 179 4) All samples obtained from police employees by Task Force criminal investigators shall be analyzed by the California Department of Justice, Bureau of Forensic Services.
- 180 17. Autopsy
- 181 a. At least one member of the Task Force's primary investigative team will attend the autopsy, as will a District Attorney's representative from the Task Force. Investigators representing other Task Force agencies may also attend.

- 182 b. The autopsy pathologist will receive a complete briefing from Task Force criminal investigators prior to the post-mortem examination. The briefing shall include all information known at that time which may be relevant to the cause, manner and means of death. The briefing shall be attended by at least one member of the Task Force's primary team and a District Attorney's representative.
- 183 c. If DOJ Laboratory supervisors determine that criminalists are available, DOJ Laboratory criminalists will attend the autopsy and the pre-autopsy briefing. If DOJ Laboratory criminalists are in attendance at the autopsy, those criminalists will be responsible for documenting and collecting physical evidence that will be forensically tested by the DOJ Laboratory. Other physical evidence will be collected by Venue Agency field evidence technicians or Task Force criminal investigators in attendance. If DOJ Laboratory criminalists are not in attendance at the autopsy, all evidence will be collected by Venue Agency field evidence technicians or Task Force criminal investigators in attendance. In vehicular collision deaths the California Highway Patrol will be responsible for documenting and collecting physical evidence with assistance, if appropriate, from the DOJ Laboratory and/or Venue Agency field evidence technicians. (See paragraphs # 76-78).
- 184 d. Autopsies will be performed only by board certified forensic pathologists. If a qualified forensic pathologist is not available, the autopsy will be delayed until one is available.
- 185 18. The District Attorney's Office
- 186 a. The District Attorney's Office has the following roles in Officer-Involved Investigations:
- 187 1) Participate co-equally with the Venue and Employer Agency(cies) in the Task Force performing the Criminal Investigation.
- 188 2) Assist and advise the Task Force on various criminal law and criminal procedure issues which may arise, such as *Miranda*, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, and legal defenses. The District Attorney's Office will be the sole source of legal advice on issues affecting the Criminal Investigation unless the District Attorney's Office has a legal conflict of interest. In the event of a legal conflict of interest, the Task Force shall seek legal advice from the California Attorney General's Office.
- 189 3) On completion of the Criminal Investigation, analyze the facts of the incident and the applicable law to determine the following: 1) what, if any, criminal laws were broken; 2) who broke those laws; and 3) whether there is a reasonable likelihood of conviction. If so, prosecute as appropriate. The above shall be performed by the California Attorney General's Office when the District Attorney's Office has a legal conflict of interest.

190 b. The District Attorney has separate investigative authority. When deemed
appropriate by the District Attorney (or designee), the District Attorney's
Office may perform an independent investigation separate from the Task
Force.

191 19. Report Writing:

192 a. All criminal investigators will write reports documenting their participation in
the investigation.

193 b. The investigators within each Task Force team will allocate and divide among
themselves the responsibility for documenting interviews and observations.

194 c. If taped interviews are to be transcribed, the Task Force shall decide which
Task Force agency shall do the transcription.

195 d. The Venue Agency has the ultimate responsibility for report writing and for
collecting reports from other agencies.

196 e. Prompt completion and distribution of reports is essential. All involved
agencies and investigators will strive for prompt report completion and
distribution. .

197 B. **Administrative Investigation**

198 1. In addition to its concern about possible criminal law violations by civilians and its
own employees who are involved in an incident (which concerns are addressed by the
Criminal Investigation), the Employer Agency also has need for information about
the incident for such non-criminal purposes as the following:

199 a. Internal Affairs:
Determination of whether its employees violated departmental regulations.

200 b. Agency Improvement:
Determination of the adequacy of its policies, procedures, programs, training,
equipment, personnel programs and supervision.

201 c. Government and Community Relations:
Informing itself of the incident's details so it may adequately inform its parent
governmental body, and so it may be responsive to comments about the
incident from the public and the media.

202 d. Claims and Litigation:
Preparing for administrative claims and/or civil litigation that may be initiated
by or against the agency.

- 203 2. The Employer Agency may use an Administrative Investigation and/or a more specific “civil litigation investigation” format to investigate these concerns as it considers appropriate. While both the Criminal Investigation and the Administrative Investigation are important and should be aggressively pursued, investigative conflicts between the two formats shall be resolved by allowing the Criminal Investigation to have investigative priority. It is intended that this prioritization will preclude competition between the two formats for access to witnesses, physical evidence, and the involved parties, and that it will prevent the Criminal Investigation from being compromised by an untimely exercise of the Employer Agency’s Administrative rights.
- 204 3. The initiation of Administrative Investigations and the extent of those investigations is, of course, solely the responsibility of the Employer Agency.
- 205 4. Interview statements, physical evidence, toxicology test results and investigative leads which are obtained by Administrative Investigators shall not be revealed to Criminal Investigators without approval of the District Attorney’s Office. (Gov. Code § 3300 *et. seq.*; Pen Code, § 832.7; *Vela v. Superior Court* (1989) Cal.App.3d 141 (1989); *People v. Gwillim* (1990) 223 Cal.App.3d 1254; *Gwillim v. City of San Jose* (1991) F.2d 465) (See paragraph #187)
5. The Employer Agency should immediately assign at least one Administrative Investigator on being notified of the incident. This officer can function as a liaison between the Employer and the Task Force, can gather information for the Agency, and can be the Task Force’s contact for personnel matters, even if no actual investigation is then warranted by that officer. If the incident involves a non-member agency, that agency will be invited to assign at least one Administrative Investigator to fulfill the aforementioned functions.
- 206 6. The Task Force will promptly and periodically brief the Administrative Investigator(s) of the Criminal Investigation’s progress. The Administrative Investigators will have access to Criminal Investigation briefings, the scene(s), physical evidence, and witness statements.
- 207 7. Administrative Investigators are not bound by all of the same investigative restrictions that apply to Criminal Investigators (see paragraph # 60).
- 208 8. A civil investigator of a Member Agency represented in the Task Force may be present for observational purposes during interviews conducted by criminal investigators assigned to the Task Force. However, when the interviewee is a police employee of the civil investigator’s agency, the interviewee shall be told the contents of Attachment D at the commencement of the interview to insure proof of voluntariness. Additionally, if the interviewee is a police employee, regardless of whether the police employee is an employee of the civil investigator’s agency, the interviewee shall be given the option of not allowing the civil investigator to be present.

209 **IV. NEWS MEDIA RELATIONS**

- 210 **A.** The interests of the public’s right to know what occurred must be balanced with the requirements of the investigation and with the rights of involved individuals.

- 211 **B.** As in all other cases, care must be taken to ensure that misleading, erroneous or false
statements are not made.
- 212 **C.** Agencies and individuals who are not well informed and not intimately involved with
the progress and results of the Criminal Investigation should not make statements to
the press.
- 213 **D.** While no agency can be prohibited from making statements to the news media about
an incident, the following guidelines are established:
- 214 1. The Venue Agency
- The Venue Agency has the responsibility for making press releases about the
incident and its investigation for the first 48 hours. If there are multiple
Venue Agencies, press releases within the first 48 hours should be done
jointly.
- Officers in close contact with the Task Force are in the best position to
comment about the facts of the case and the progress of the investigation.
- 215 2. The Employer Agency
- If the Employer Agency is not also the Venue Agency, fewer problems will
arise, especially at the early stages of the investigation, if the Employer
Agency limits its comments to the following areas:
- 216 a. The employer employee relationship, including the names of police
employees who are involved.
- 217 b. Information which has been cleared for release by the Task Force.
- 218 3. The DOJ Laboratory
- As a matter of policy, the Department of Justice Regional Criminalistics
Laboratory will not issue press releases or answer press inquiries. However,
should the Laboratory be inclined to release information, that information will
be limited to general laboratory procedures and scientific facts and principles,
and testing procedures conducted in connection with the incident.
- 219 4. The Coroner's Office
- Unless the victim's known next of kin have been notified, no information will
be released by the Coroner's Office. If the victim's next of kin have been
notified, or if the victim has no known next of kin, the release of information
will generally be limited to the following:
- 220 a. The identity of the victim, the age of the victim, and the victim's city
or town of residence.
- 221 b. The cause of death, if known.

- 222 E. If Task Force Investigators determine that the release of a specific piece of
information would materially jeopardize the investigation, they shall notify those
agencies possessing that knowledge of the hazards of releasing it.
- 223 F. Interruptions to the investigators will be minimized if the agencies assign particular
individuals to be the sole designated contacts with the news media.

224 V. **AGENCY ACCESS TO REPORTS AND EVIDENCE**

225 A. Material listed in paragraphs # 226-230 which is created or collected by, or at the
request or direction of, Task Force Criminal Investigators (including the DOJ
Laboratory) will be made available in a timely manner to those agencies which have
an interest in the investigation, including the Administrative Investigators.

226 B. The material will include:

- 227 1. Reports, written and collected.
- 228 2. Access to physical evidence.
- 229 3. Photographs, diagrams, and video tapes.
- 230 4. Audio tape recordings.

231 C. When the Task Force and/or District Attorney's Office concludes that the physical
evidence collected by the Criminal Investigators is no longer needed for criminal law
purposes, the Employer Agency shall be notified of that decision so it can assume
responsibility for preservation of such evidence if it desires.

232 VI. **PUBLIC ACCESS TO REPORTS**

233 A. **Governmental and Reviewing Bodies**

Investigative reports prepared by the Task Force and the results of the investigation
may, of course, be disclosed to the governing body or civilian reviewing body of Task
Force Member Agencies. However, to preserve the integrity of the investigation and
to preserve the fair trial rights of potential criminal defendants, Task Force reports
will be provided to such bodies only after the District Attorney's Office has ruled that
no charges will be filed or after the disposition of any criminal prosecution filed as a
result of the investigation.

234 B. **General Public**

Investigative reports prepared by the Task Force will also be made available to the
general public either after the District Attorney's Office has ruled that no charges will
be filed or after the disposition of any criminal prosecution filed as a result of the
investigation.

235 C. **Confidentiality**

The access to Task Force investigative reports in paragraphs 233 and 234 shall be subject to the Superior Court's TNG order concerning juveniles. The names of persons who provide information confidentially will be redacted.

ATTACHMENT A

PATROL SERGEANT'S CHECKLIST

1. Life saving efforts are first priority.
2. Request additional patrol officers, as necessary.
3. Assign officer to ride in ambulance with injured, with tape recorder if possible, for: (1) physical evidence protection, securing, recovery; (2) custody of arrestee; (3) aid and comfort to injured officer; (4) spontaneous and other statements; (5) information to and from medical personnel; (6) identifying medical personnel; (7) contact with civilian witnesses and victim's family at hospital.
4. Protect sensitive investigative information.
5. Have notifications made per departmental procedures: chain of command; D.A.; Lab; CHP; Coroner; I.A.
6. Ask involved officers: "What happened?" (public safety/scene management questions only)
7. Radio broadcasts on outstanding suspects, vehicles, witnesses, etc.
8. Collect transient or perishable evidence from Actors and victim(s) before transportation if delay is not life threatening.
9. Identify and secure all scenes (*e.g.*, original felony, escape/chase route, fatal scene, collision scene, suspect vehicle, officer's vehicle, hospital, etc. Establish generous perimeters. Prevent scene contamination. Adjust boundaries outward as necessary.
10. Limit entry into scene(s) to absolute minimum.
11. Have scene log started to record every entry and exit (*e.g.*, who, when, why).
12. Shooting officer(s) with guns in possession: leave in holster, collect at appropriate time and place, in appropriate manner. Replace weapon as soon as possible. Don't open, or disturb condition of trace evidence. Secure weapon until transfer to Lab. Make note of the details of collection (*e.g.*, when, from whom, condition, adhering evidence, chain, etc.). If scene secure, leave discarded weapons in place, untouched if safe.
- 13: Check all firearms of all witness officers and make notes on each. Then collect any which misfired or were fired.
14. Have Actor (s) and Witness Officer(s) taken to station by independent officer(s). Order all not to talk about Incident amongst themselves.
15. Have Actor (s) and Witness Officer (s) sequestered with independent/peer support officer until detective interviews.

16. Locate, identify in detail, obtain contact information, and sequester civilian witnesses for detective interviews, as possible. If a “witness” won’t stay, get detailed (preferably taped) statement pinning down his/her knowledge or lack of knowledge.
17. Normally photographing or videotaping of the scene should not take place prior to the arrival of DOJ Criminalists. However, if the scene cannot be held secure prior to the arrival of DOJ Criminalists, and/or the scene is likely to change or objects are likely to be moved or destroyed prior to DOJ’s arrival, photographs and/or video should be taken to document the scene. When possible, avoid scene contamination and/or moving items to facilitate photographing.
18. Protect (and collect if necessary) physical evidence in imminent danger.
19. Start area canvas for: more witnesses; locating relevant vehicles/weapons/people/etc.
20. Determine what responding/scene officers have learned and what they’ve done.
21. Collect your information and thoughts to brief investigators

ATTACHMENT B

DUTIES OF FIELD EVIDENCE TECHNICIANS AT OFFICER INVOLVED INCIDENTS

INTRODUCTION

The California Department of Justice Regional Criminalistics Laboratory has the primary responsibility for directing and coordinating the collection of evidence that will be forensically tested in non-vehicular officer involved incidents. Officers from the California Highway Patrol will perform this function at the scene of officer involved vehicular incidents. Venue agency evidence technicians will serve in a subordinate capacity with respect to the collection of forensic evidence. All other physical evidence will be collected by Task Force crime scene investigators and/or venue agency evidence technicians.

Pending the arrival of DOJ criminalists, certain tasks should be taken by venue agency evidence technicians, preferably under the supervision of the patrol sergeant in charge or Task Force crime scene investigators.

Of course, care should be taken to avoid scene contamination. When possible, venue evidence technicians should first consult with the patrol sergeant in charge or Task Force crime scene investigators when taking action that might result in scene contamination.

TASKS TO BE COMPLETED PROMPTLY TO THE ARRIVAL OF DOJ CRIMINOLOGISTS

1. Assist in securing the scene and controlling access and routes.
2. Take photographs and/or videotape to show things that will or may likely change including emergency medical activities and locations of vehicles. Take care to minimize inadvertent alteration of evidence and scene contamination while taking photos.
3. Protect, and if necessary, collect evidence at the scene and/or from persons that is transient or otherwise, in danger of being lost or destroyed, such as shoe impressions/prints, bloodstains or firearms evidence. Check the ambulance and emergency room as possible locations of evidence.
4. Record transient detail such as vehicles in area, lighting (natural and artificial), windows and blinds or curtains (open/closed), doors (locked or unlocked), weather, furniture moved for emergency medical teams, etc.
5. Take stand-up (head to toe) color photographs of involved officers as dressed at the time of the incident. Pay special attention to wounds, damaged clothing, bloodstains, etc.
6. Assist the Supervising Officer, as needed, in the collection of weapons, duty belts and clothing of all actors. (Actor is defined as the person whose act is a proximate cause of an injury to another person)

ASSISTING CRIME LABORATORY PERSONNEL

When DOJ Criminalists arrive, they will assume primary responsibility for scene processing. Venue agency evidence technicians may be requested to assist with sketch preparation, dusting for latents, evidence collection, evidence transport, lighting, and other duties under the direction of lab staff.

ATTACHMENT C

PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS

CHAPTER 9.7¹

Sec.

- 3300.** Short title.
- 3301.** Definition; legislative findings and declaration.
- 3302.** Political activity; membership on school board.
- 3303.** Investigation and interrogations; conduct; conditions; representation; for reassignment.
- 3304.** Lawful exercise of rights; insubordination; administrative appeal.
- 3304.5.** Public safety officers; administrative appeals; procedures
- 3305.** Comments adverse to interest; entry in personnel file or' in 'other record; opportunity to read and sign instrument; refusal to sign.
- 3305.5.** Placement of officer's name on Brady list or otherwise subject to disclosure; punitive action or denial of promotion on grounds other than merit prohibited; permissible actions; admissibility of evidence
- 3306.** Response to adverse comment entered in personnel file time.
- 3306.5.** Inspection of personnel files; availability; correction of information; requests
- 3307.** Polygraph examination; right to refuse; effect.
- 3307.5.** Photograph or identity; internet use
- 3308.** Financial disclosure; right to refuse; exceptions.
- 3309.** Search of locker or storage space; consent; search warrant.
- 3309.5.** Local public safety officers; applicability of chapter; jurisdiction; remedies.
- 3310.** Procedures of public agency providing same rights or protections; application of chapter.
- 3311.** Mutual aid agreements; effect of chapter on.

¹ West's Ann.Cal.Gov.Code T. 1, D. 4, Ch. 9.7, Refs & Annos.

§ 3300. Short 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 (c), 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 on 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 and interrogations; conduct; conditions; admissibility of statements; 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) On 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. Punitive action barred for lawful exercise of rights; administrative appeal; removal of chief of police; limitations period for investigations; pre-disciplinary or grievance procedures; notice of intended discipline; reopening investigations

(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 therefor 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)

(1) 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 discipline by a Letter of Intent or Notice of Adverse Action articulating the discipline that year, except as provided in paragraph (2). The public agency shall not be required to impose the discipline within that one-year period.

- (2) (A) 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.
- (B) 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.
- (C) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.
- (D) If the investigation involves more than one employee and requires a reasonable extension.
- (E) If the investigation involves an employee who is incapacitated or otherwise unavailable.
- (F) 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.
- (G) 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.
- (H) 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 (d), 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 (f) 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. Public safety officers; administrative appeals; procedures

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; entry in personnel file or in other record; opportunity to read and sign instrument; 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.

§ 3305.5. Placement of officer's name on Brady list or otherwise subject to disclosure; punitive action or denial of promotion on grounds other than merit prohibited; permissible actions; admissibility of evidence

a) A punitive action, or denial of promotion on grounds other than merit, shall not be undertaken by any public agency against any public safety officer solely because that officer's name has been placed on a *Brady* list, or that the officer's name may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83.

(b) This section shall not prohibit a public agency from taking punitive action, denying promotion on grounds other than merit, or taking other personnel action against a public safety officer based on the underlying acts or omissions for which that officer's name was placed on a *Brady* list, or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, if the actions taken by the public agency otherwise conform to this chapter and to the rules and procedures adopted by the local agency.

(c) Evidence that a public safety officer's name has been placed on a *Brady* list, or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, shall not be introduced for any purpose in any administrative appeal of a punitive action, except as provided in subdivision (d).

(d) Evidence that a public safety officer's name was placed on a *Brady* list may only be introduced if, during the administrative appeal of a punitive action against an officer, the underlying act or omission for which that officer's name was placed on a *Brady* list is proven and the officer is found to be subject to some form of punitive action. If the hearing officer or other administrative appeal tribunal finds or determines that a public safety officer has committed the underlying acts or omissions that will result in a punitive action, denial of a promotion on grounds other than merit, or any other adverse personnel action, and evidence exists that a public safety officer's name has been placed on a *Brady* list, or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, then the evidence shall be introduced for the sole purpose of determining the type or level of punitive action to be imposed.

(e) For purposes of this section, "*Brady* list" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in *Brady v. Maryland* (1963) 373 U.S. 83.

§ 3306. Response to adverse comment entered 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; availability; correction of information; requests

(a) Every employer shall, at reasonable times and at reasonable intervals, on 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 therefor 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. Lie detector test; right to refuse; effect; definition

(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. Photograph or identity; internet use

(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 on 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. Public safety officers; applicability of chapter; violations; jurisdiction; liability; remedies and sanctions

(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 a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary injunction, 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 party's 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, on 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 on

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.

ATTACHMENT D

Introduction of Employer Agency Civil Investigator Present During Task Force Interviews of Employer Agency Employees

Introduce the Task Force investigators and then tell the interviewee the following:

- Also present during the interview is (name of civil investigator) as an investigator for the (name of city) City's Attorney's Office representing the (name of city) and its employees in anticipation of civil litigation.
- He/she will be observing but not asking questions during the interview.
- His/her presence should not be construed as an order to answer questions and no punitive administration action will be taken against you if you choose not to answer my questions.
- If you don't feel comfortable with his/her presence, he/she will step out of the room